certificate holder, together with the statement of charges, a form on which he initially may mark one of the four procedural choices he has. The right to ask for a hearing in addition to an informal conference should be exercised only after the conference, and the rule is being clarified to this effect. The revised rule also codifies the practice of issuing the Administrator's order in case of default of the certificate holder and contains a reference to the provisions governing when a hearing is requested.

Section 13.35 is amended by making editorial improvements; making the language dovetail with revised § 13.19(c); expressly referring to the right to make a motion; and making express provision for the contingency that the Hearing Officer does not take jurisdiction upon a belated request. Present paragraph (c) is omitted since its provisions have been inserted elsewhere by these amendments.

Section 13.31 is amended to correct inadvertent language purporting to limit the scope of Subpart C to hearings involving airman certificates, while of course these provisions apply as well in cases involving any other certificates. Section 13.45 is amended by striking the last sentence which reads as though amendments of the pleadings to conform to the evidence could be made as a matter of right. This change will make such amendments subject to the ruling of the Hearing Officer. This is the rule in the federal courts (F.R.C.P., Rule 15(a)(b)).

Section 13.49(a) is amended to make clear that failure of the allegations in the charges to show a violation of the Act or regulations or a lack of qualification may be asserted by motion to dismiss. A provision fixing the time for answers to motions is also added to this section. The policy of not holding hearings outside of the 50 States, the District of Columbia and Puerto Rico is codified by amendment to § 13.55.

Section 13.67 is amended by combining the provisions of present paragraphs (a) and (c) and spelling them out more clearly. It is also made clear that in appropriate cases the proceeding will be ordered terminated only upon actual payment of the civil penalty agreed upon.

Editorial improvements are made in several of the provisions mentioned.

Since these amendments are procedural in nature, notice and public procedure thereon are not required and the amendments may be made effective less than 30 days after publication.

In consideration of the foregoing, effective July 16, 1963, Part 13 [New] of the Federal Aviation Regulations is amended as follows:

§ 13.19 [Amendment]

1. Paragraph (c) of § 13.19 is amended to read as follows:

(c) Before issuing an order under paragraph (b) of this section, the General Counsel or the Regional Counsel concerned advises the certificate holder of the charges or other reasons upon which the Administrator bases the proposed action and, except in an emergency, allows the holder to answer any charges and to be heard as to why the certificate should not be amended, suspended, or revoked. The holder may, by checking the appropriate box on the form that is sent to him with the Notice of Proposed Certificate Action, elect to—

(1) Admit the charges and surrender his certificates;

(2) Answer the charges in writing;

(3) Request an opportunity to be heard in an informal conference with the FAA counsel; or

(4) Request a formal hearing.

Except as provided in § 13.35(b), unless the holder returns the form and, where required, an answer or motion, with a postmark of not later than 15 days after the date he received the notice, the order of the Administrator is issued as proposed. If the holder has requested an informal conference with the FAA counsel, he may after that conference also request a formal hearing in writing with a postmark of not later than 10 days after the close of the conference. After considering any information submitted by the holder the General Counsel or the Regional Counsel concerned issues the order of the Administrator, except that if the holder has made a valid request for a formal hearing initially or after an informal conference, Subpart C of this Part governs further proceedings.

2. Section 13.31 is amended to read as follows:

§ 13.31 Applicability.

This subpart applies to proceedings in which the holder of a certificate has made a request under § 13.19 for a formal hearing before a Hearing Officer of the FAA.

3. Section 13.35 is amended to read as follows:

§ 13.35 Request for hearing.

(a) If the certificate holder elects to have a formal hearing, either after he receives the Notice of Proposed Certificate Action or after an informal conference with the FAA counsel, he shall submit his answer to the allegations in the notice, or file a motion under § 13.49, together with his request for a formal hearing as provided in § 13.19(c).

(b) If the certificate holder submits a request for formal hearing, and his answer or motion, after the 15- or 10-day period provided in § 13.19(c), but before an order is issued, the FAA counsel sends it to the Hearing Officer. If, in the opinion of the Hearing Officer, there was good cause for the failure to submit a timely request for hearing, or answer or motion, he may, in his discretion, entertain the motion or order a hearing. If he does not do so, the General Counsel or Regional Counsel issues the order of the Administrator.

§ 13.45 [Amendment]

4. Section 13.45 is amended by striking out the last sentence thereof.

5. Section 13.49 is amended by amending the first sentence of paragraph (a) and by redesignating paragraph (d) as (b) and paragraphs (b) and (c) as (c) and (d), respectively, so that § 13.49 (a) to (d) reads as follows:

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Agency

[Reg. Docket No. 1793; Amdt. 13-1]

PART 13—ENFORCEMENT PROCEDURES [NEW]

Miscellaneous Amendments

The purpose of these amendments is to make technical improvements in the regulation and to clarify certain provisions. No change in policy or impairment of procedural rights is involved.

Revised paragraph (c) of § 13.19 reflects the practice of sending to the

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§ 13.49 Motions.

(a) *Motion to dismiss.* A respondent who requests a formal hearing may, in place of his answer, file a motion to dismiss for failure of the allegations in the Notice of Proposed Certificate Action to state a violation of the Act or of this chapter or to show lack of qualification of the respondent. If the Hearing Officer denies the motion, the respondent shall file his answer within 10 days.

(b) *Motion for more definite statement.* The certificate holder may, in place of his answer, file a motion that the allegations in the notice be made more definite and certain. If the Hearing Officer grants the motion, the Agency counsel shall comply within 10 days after the date it is granted. If the Hearing Officer denies the motion the certificate holder shall file his answer within 10 days after the date it is denied.

(c) *Motion for judgment on the pleadings.* After the pleadings are closed, either party may move for a judgment on the pleadings.

(d) *Motion to strike.* Upon motion of either party, the Hearing Officer may order stricken, from any pleading, any insufficient allegation or defense, or any immaterial, impertinent, or scandalous matter.

6. Section 13.49 is further amended by adding the following new paragraph at the end thereof:

(g) *Answers to motions.* Any party may file an answer to any motion under this section within five days after service of the motion.

§ 13.55 [Amendment]

7. Section 13.55 is amended by adding the following new sentence at the end thereof: "Hearings are held only within the 50 States, the District of Columbia, and Puerto Rico."

8. Section 13.67 is amended to read as follows:

§ 13.67 Order of Hearing Officer.

(a) The Hearing Officer shall include in the order a statement of his findings and conclusions upon all material issues of fact and law. If the Hearing Officer determines that safety in air commerce or air transportation and the public interest so require, he may issue an order amending, suspending or revoking the respondent's certificate; issue a reprimand; or terminate the proceeding upon payment by the respondent of a civil penalty in an amount agreed upon by the parties, as the case may be. However, any certificate sanction imposed may not be more severe than that proposed in the Notice of Proposed Certificate Action. If the Hearing Officer finds that the allegations of the notice have not been proved or that no sanction is required, he shall rescind the notice.

(b) If the order is issued in writing, it shall be served upon the parties.

(c) If the Hearing Officer orders respondent's certificate to be amended, suspended or revoked, he shall state in the order that the respondent has the right to appeal to the Civil Aeronautics Board.

These amendments are made under the authority of sections 303(d), 307, 313(a), 501–505, 601–610, and 1001 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1344, 1348, 1354, 1401–1405, 1421–1430, and 1481).

Issued in Washington, D.C., on June 7, 1963.

N. E. HALABY,
Administrator.

[F.R. Doc. 63-6246; Filed, June 13, 1963; 8:46 a.m.]