

[4910-13]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 17687; Amdt. No. 13-13]

PART 13—ENFORCEMENT PROCEDURES

Enforcement Procedures for Cases Involving the Transportation or Shipment by Air of Hazardous Materials

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments prescribe enforcement procedures for cases involving the transportation or shipment by air of hazardous materials under the Hazardous Materials Transportation Act, and update certain other procedures dealing with enforcement of the Federal Aviation Regulations. The requirements are intended to provide persons who are alleged to have violated the hazardous materials regulations with a simple but effective process for submitting information concerning an alleged violation or for contesting a violation determination.

DATE: Effective date, March 13, 1978. Comments requested on operation under the procedures before September 13, 1978.

ADDRESS: Send comments on the procedures to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-24), Docket No. 17687, 800 Independence Avenue SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:

Dewey R. Roark, Jr., Regulations and Enforcement Division (AGC-20), Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591, telephone 202-426-9097.

SUPPLEMENTARY INFORMATION:

THE RULE

In § 1.47(k) of the Regulations of the Office of the Secretary (49 CFR 1.47(d)), the Secretary of Transportation has delegated to the Administrator of the Federal Aviation Administration the functions vested in the Secretary by Sections 109, 110, and 111 of the Hazardous Materials Transportation Act (49 U.S.C. 1808, 1809, and 1810) relating to investigations, records, inspections, penalties, and spe-

cific relief so far as they apply to the transportation or shipment of hazardous materials by air.

Pursuant to this delegation, these amendments establish procedures for assessing civil penalties in accordance with Section 110 of the Hazardous Materials Transportation Act, for issuing orders of compliance in accordance with Section 109(a) of the Act, and for obtaining injunctive and other relief in accordance with Section 111 of the Act. The procedures adopted herein provide for notice to an alleged violator and an opportunity for informal conferences with the FAA official who issued the notice, a formal evidentiary hearing before a Hearing Officer, and an appeal to the Administrator. The procedures comply with the provisions of Sections 109 and 110 of the Hazardous Materials Transportation Act that provide for the issuance of an order of compliance and the assessment of a civil penalty "after notice and an opportunity for a hearing." Any appeal to the Administrator from a Hearing Officer's decision and order assessing a civil penalty will be decided on appeal on the record of the FAA hearing and will not involve a trial de novo. It is contemplated that appeal from the Administrator's decision and order would be to a United States Court of Appeals and also would be decided on the record of the FAA hearing and not involve a trial de novo because of a satisfaction of the requirements of due process. Moreover, if the alleged violator fails to request a hearing and refuses to pay a civil penalty assessed by an official authorized to assess a civil penalty, or if he refuses to pay a civil penalty assessed by a Hearing Officer following a hearing and following the exhaustion of his appeal rights, the agency would request the Attorney General to recover the assessed civil penalty in an action brought in the appropriate U.S. District Court in accordance with Section 110(a)(2) of the Hazardous Materials Transportation Act. Such an action in the District Court would be in effect a suit to collect on a judgment and it is contemplated that this would not involve a trial de novo.

With respect to specific procedures adopted herein, it should be noted that the revision of § 13.11 reflects the existing practice whereby not only the officials of the Flight Standards Service but also the officials of the Office of Airport Programs and the Civil Aviation Security Service are authorized to take administrative action. Moreover, the revision incorporates the existing practice of issuing a Warning Notice or a Letter of Correction as the two types of administrative action.

Section 110 of the Hazardous Materials Transportation Act provides that, prior to the referral to the Attorney General for collection, a civil penalty

may be compromised. Thus, § 13.16 provides that the FAA may not only reduce the amount of a proposed civil penalty prior to assessment, but may also compromise an assessed civil penalty at any time prior to referral of the action to the Attorney General.

At the present time, Subpart D of Part 13 provides rules of practice for formal hearings in aircraft registration certificate proceedings. Since it is desirable from the point of view of uniformity and convenience of Hearing Officers to have the same rules of practice apply to all hearings, § 13.31 has been amended to make Subpart D applicable to hearings in aircraft registration certificate proceedings and hazardous materials proceedings. The amendments also revise Subpart D by deleting certain obsolete provisions and by adding new provisions intended to streamline the hearings process.

In addition, a new Subpart E is being adopted to provide procedures for orders of compliance issued in accordance with Section 109 of the Hazardous Materials Transportation Act. New § 13.81 of Subpart E provides that orders of immediate compliance may be issued in cases of imminent hazard. However such orders of immediate compliance will be issued only in the few cases where circumstances and lack of time preclude the use of any other procedures to prevent or ameliorate an imminent hazard to health or safety of life or property. Moreover, the accelerated hearing procedure in § 13.81 is being adopted to protect the alleged violator by affording him an opportunity for a hearing and appeal to the Administrator without delay.

Finally provisions for bringing an action in the appropriate United States District Court for an injunction or other equitable relief and punitive damages have been included in new § 13.25.

EFFECTIVE DATE AND REQUEST FOR COMMENTS

Since these amendments are procedural in nature and represent implementation of existing statutory authority, notice and public procedure thereon are not required, and good cause exists for making them effective less than 30 days after publication. However, the FAA contemplates a review of the procedures established by these amendments after they have been in operation for at least six months and desires public participation in that review. Interested persons are invited to submit such comments as they may desire with respect to the new enforcement procedures. Communications should identify the regulatory docket number and be submitted in duplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue

SW., Washington, D.C. 20591. All comments received on or before September 13, 1978, will be considered during the review, and will be available both before and after that date in the Rules Docket for examination by interested persons.

DRAFTING INFORMATION

The principal authors of this document are Matthew Z. Markotic and Dewey R. Roark, Jr., Office of the Chief Counsel.

ADOPTION OF THE AMENDMENTS

Accordingly, Part 13 of the Federal Aviation Regulations (14 CFR Part 13) is amended, effective March 13, 1978, as follows:

1. By revising § 13.11 to read as follows:

§ 13.11 Administrative disposition of certain violations.

(a) If it is determined that a violation or an alleged violation of the Federal Aviation Act of 1958, or an order or regulation issued under it, or of the Hazardous Materials Transportation Act, or an order or regulation issued under it, does not require legal enforcement action, an appropriate official of the Flight Standards Service, the Office of Airport Programs, or the Civil Aviation Security Service, or other appropriate FAA official may take administrative action in disposition of the case.

(b) An administrative action under this section does not constitute a formal adjudication of the matter and may be taken by issuing the alleged violator—

(1) A "Warning Notice" which recites available facts and information about the incident or condition, and indicates that it may have been a violation; or

(2) A "Letter of Correction" which confirms the FAA decision in the matter and states the necessary corrective action the alleged violator has taken or agrees to take. If the agreed corrective action is not fully completed, legal enforcement action may be taken.

2. By amending § 13.15 by changing the heading to read as follows:

§ 13.15 Civil penalties: Federal Aviation Act of 1958.

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3. By amending § 13.16 by adding new paragraphs (d) through (q) to read as follows:

§ 13.16 Civil penalties: Hazardous Materials Transportation Act.

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(d) If a civil penalty is contemplated in a case involving the transportation

or shipment by air of hazardous materials, the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, or the Regional Counsel concerned sends to the person charged with the violation a notice of proposed civil penalty advising him of the charges and stating the amount of the civil penalty proposed to be assessed. Within 30 days after the service of the notice, the person charged with a violation may—

(1) Present to the official who signed the notice written information in answer to the charges, and, if desired, request a conference with the official who signed the notice in order to present information in answer to the charges;

(2) Offer to pay the amount of the civil penalty proposed to be assessed, or offer to pay a reduced amount and submit reasons for the reduction; or

(3) Request a hearing in accordance with Subpart D of this part.

(e) Within 10 days after the receipt of a reply to any submission made in accordance with paragraphs (d)(1) and (d)(2) of this section, the person charged with a violation may request a hearing in accordance with Subpart D of this part.

(f) The person charged with the violation may pay the amount of the civil penalty proposed to be assessed, or an amount agreed upon, by sending a certified check or money order for that amount, payable to the Federal Aviation Administration, to the official who issued the notice of proposed civil penalty. The official then issues an order assessing the civil penalty in the proposed or agreed upon amount.

(g) If the person charged with the violation requests a hearing, the procedure in Subpart D of this part applies. At the close of the hearing, the Hearing Officer will, either on the record or subsequently in writing, issue—

(1) A decision which includes the reasons for his decision and order; and

(2) An order which either—

(i) Dismisses the charges; or

(ii) Sets forth the violation and assesses a civil penalty not greater than the amount proposed in the notice of proposed civil penalty.

(h) Either party may appeal from the Hearing Officer's decision to the Administrator by filing a notice of appeal within 20 days after the date of the decision and serving a copy on the other party. The appellant shall file an appeal brief within 40 days after the date of the decision and serve a copy on the other party. Any reply brief must be filed within 20 days after service of the appeal brief. A copy of the reply brief must be served on the appellant.

(i) If no appeal is filed from the Hearing Officer's decision and order or if an appeal is withdrawn by the ap-

pellant prior to the Administrator's decision, the order of the Hearing Officer dismissing the charges or assessing the civil penalty is the final agency order in the case.

(j) If an appeal is filed from the Hearing Officer's order the Administrator reviews the record of the hearing, and issues a decision and order dismissing, reversing, modifying, or affirming the Hearing Officer's order. The Administrator does not assess a civil penalty in an amount greater than the amount proposed in the notice of proposed civil penalty. The Administrator's decision includes the reasons for his action, and his order is the final agency order in the case.

(k) If the person charged with the violation does not request a hearing in accordance with Subpart D of this part, and does not pay the amount of the civil penalty proposed to be assessed, or an amount agreed upon, the official who issued the notice of proposed civil penalty issues an order assessing a civil penalty in an amount he determines to be appropriate or takes such other action as may be appropriate. This official does not assess an amount greater than the amount proposed in the notice of proposed civil penalty. The order issued under this paragraph is the final agency order in the case.

(l) An order issued under this section assessing a civil penalty against a person charged with a violation is issued only after consideration of—

(1) The nature and circumstances of the violation;

(2) The extent and gravity of the violation;

(3) The person's degree of culpability;

(4) The person's history of prior violations;

(5) The person's ability to pay;

(6) The effect on the person's ability to continue in business; and

(7) Such other matters as justice may require.

(m) If the person charged with a violation asserts that he cannot pay the proposed penalty or assessment or that it would prevent him from continuing in business, he should provide substantiating information in support of the assertion to the official who is issuing the civil penalty assessment.

(n) If an assessed civil penalty is not paid within 60 days after service of the order assessing it, the official who issued the notice of proposed civil penalty may refer it to the Attorney General, or his delegate, with a request that an action to collect the assessed penalty be brought in the appropriate United States District Court.

(o) The amount of an assessed civil penalty may be compromised by the official who assessed the penalty at any time prior to its referral to the Attorney General.

(p) Filing and service of documents under this section shall be accomplished in accordance with § 13.43; and the periods of time specified in this section shall be computed in accordance with § 13.44.

(q) The officer who signed the notice of proposed civil penalty, for good cause shown, may grant an extension of time to file any document specified in this section, except documents to be filed with the Administrator. Extensions of time to file documents with the Administrator may be granted by the Administrator upon written request, served upon all parties, and for good cause shown.

4. By adding a new § 13.25 to read as follows:

§ 13.25 Injunctions.

(a) Whenever it is determined that a person has engaged, or is about to engage, in any act or practice constituting a violation of the Federal Aviation Act of 1958, or any regulation or order issued under it for which the FAA exercises enforcement responsibility, or, with respect to the transportation or shipment by air of any hazardous materials, in any act or practice constituting a violation of the Hazardous Materials Transportation Act, or any regulation or order issued under it for which the FAA exercises enforcement responsibility, the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, the Regional Counsel concerned, or the Aeronautical Center Counsel may request the Attorney General, or his delegate, to bring an action in the appropriate United States District Court for such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages, as provided by Section 1007 of the Federal Aviation Act of 1958 (49 U.S.C. 1487) and Section 111(a) of the Hazardous Materials Transportation Act (49 U.S.C. 1810).

(b) Whenever it is determined that there is substantial likelihood that death, serious illness, or severe personal injury, will result from the transportation by air of a particular hazardous material before an order of compliance proceeding, or other administrative hearing or formal proceeding to abate the risk of the harm can be completed, the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, or the Regional Counsel concerned may bring, or request the Attorney General to bring, an action in the appropriate United States District Court for an order suspending or restricting the transportation by air of the hazardous material or for such other order as is necessary to eliminate or ameliorate the imminent hazard, as provided by Section 111(b) of the Hazardous Materials Transportation Act (49 U.S.C. 1810).

5. By amending Subpart D by revising the heading to read as follows:

Subpart D—Rules of Practice for FAA Hearings

6. By revising § 13.31 to read as follows:

§ 13.31 Applicability.

This subpart applies to proceedings in which a hearing has been requested in accordance with §§ 13.16(d)(3), 13.16(e), 13.19(c)(5), 13.75(a)(2), 13.75(b), or 13.81(e).

7. By revising § 13.35 to read as follows:

§ 13.35 Request for hearing.

(a) A request for hearing must be made in writing to the Office of the Hearing Officers, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591. It must describe briefly the action proposed by the FAA, and must contain a statement that a hearing is requested. A copy of the request for hearing and a copy of the answer required by paragraph (b) of this section must be served on the official who issued the notice of proposed action.

(b) An answer to the notice of proposed action must be filed with the request for hearing. All allegations in the notice not specifically denied in the answer are deemed admitted.

(c) Within 15 days after service upon him of the copy of the request for hearing, the official who issued the notice of proposed action forwards a copy of that notice, which serves as the Complaint, to the Office of the Hearing Officers.

8. By revising § 13.37 (d) and (k) to read as follows:

§ 13.37 Hearing Officer's powers.

(d) Adopt procedures for the submission of evidence in written form.

(k) Issue decisions, make findings of fact, make assessments, and issue orders, as appropriate.

§ 13.41 [Reserved]

9. By revoking and reserving § 13.41.

10. By revising § 13.43 to read as follows:

§ 13.43 Service and filing of pleadings, motions, and documents.

(a) Copies of all pleadings, motions, and documents filed with the Office of the Hearing Officers must be served upon all parties to the proceeding by the person filing them.

(b) Service may be made by personal delivery or by mail.

(c) A certificate of service shall accompany all documents when they are tendered for filing and shall consist of a certificate of personal delivery or a certificate of mailing, executed by the person making the personal delivery or mailing the document.

(d) Whenever proof of service by mail is made, the date of mailing or the date as shown on the postmark shall be the date of service, and where personal service is made, the date of personal delivery shall be the date of service.

(e) The date of filing is the date the document is actually received.

11. By adding a new § 13.44 to read as follows:

§ 13.44 Computation of time and extension of time.

(a) In computing any period of time prescribed or allowed by this subpart, the date of the act, event, default, notice or order after which the designated period of time begins to run is not to be included in the computation. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or legal holiday for the FAA, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a legal holiday.

(b) Upon written request filed with the Office of the Hearing Officers and served upon all parties, and for good cause shown, a Hearing Officer may grant an extension of time to file any documents specified in this subpart.

12. By revising § 13.47 to read as follows:

§ 13.47 Withdrawal of notice or request for hearing.

At any time before the hearing, the FAA counsel may withdraw the notice of proposed action, and the party requesting the hearing may withdraw his request for hearing.

13. By amending § 13.49 by deleting the word "certificate" from paragraph (a), and by revoking and reserving paragraph (b).

§ 13.49 Motions.

(b) [Reserved.]

14. By revising § 13.55 to read as follows:

§ 13.55 Notice of hearing.

The Hearing Officer shall set a reasonable date, time, and place for the hearing, and shall give the parties adequate notice thereof and of the nature of the hearing. Due regard shall be given to the convenience of the parties with respect to the place of the hearing.

15. By amending § 13.57 by adding a new paragraph (d) to read as follows:

§ 13.57 Subpoenas and witness fees.

(d) Notwithstanding the provisions of paragraph (c) of this section, the FAA pays the witness fees and mileage if the Hearing Officer who issued the subpoena determines, on the basis of a written request and good cause shown, that—

(1) The presence of the witness will materially advance the proceeding; and

(2) The party at whose instance the witness is subpoenaed would suffer a serious hardship if required to pay the witness fees and mileage.

§ 13.59 [Amended]

16. By amending § 13.59 by deleting the second and third sentences of paragraph (a).

17. By amending § 13.67 by revising the heading to read as follows:

§ 13.67 Final order of Hearing Officer in certificate of aircraft registration proceedings.

18. By adding a new Subpart E to read as follows:

Subpart E—Orders of Compliance Under the Hazardous Transportation Act

Sec.

13.71 Applicability.

13.73 Notice of proposed order of compliance.

13.75 Reply or request for hearing.

13.77 Consent order of compliance.

13.79 Hearing.

13.81 Order of immediate compliance.

13.83 Appeal.

13.85 Filing, service, and computation of time.

13.87 Extension of time.

AUTHORITY: Secs. 109, 110, 111, hazardous Materials Transportation Act (49 U.S.C. 1808, 1809, 1810); sec. 302(f), 303(d), 313(a), 1007, Federal Aviation Act of 1958 (49 U.S.C. 1343(f), 1344(d), 1354(a), 1487); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); § 1.47, Regulations of the Office of the Secretary of Transportation (49 CFR 1.47).

Subpart E—Orders of Compliance Under the Hazardous Materials Transportation Act

§ 13.71 Applicability.

Whenever the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, or the Regional Counsel concerned has reason to believe that a person is engaging in the transportation or shipment by air of hazardous materials in violation of the Hazardous Materials Transportation Act, or any regulation or order issued

under it for which the FAA exercises enforcement responsibility, and the circumstances do not require the issuance of an order of immediate compliance, he may conduct proceedings pursuant to section 109 of that Act (49 U.S.C. 1808) to determine the nature and extent of the violation, and may thereafter issue an order directing compliance.

§ 13.73 Notice of proposed order of compliance.

A compliance order proceeding commences when the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, or the Regional Counsel concerned sends the alleged violator a notice of proposed order of compliance advising him of the charges and setting forth the remedial action sought in the form of a proposed order of compliance.

§ 13.75 Reply or request for hearing.

(a) Within 30 days after service upon him of a notice of proposed order of compliance, the alleged violator may—

(1) File a reply in writing with the official who issued the notice; or

(2) Request a hearing in accordance with Subpart D of this part.

(b) If a reply is filed, as to any charges not dismissed or not subject to a consent order of compliance, the alleged violator may, within 10 days after receipt of notice that the remaining charges are not dismissed, request a hearing in accordance with Subpart D of this part.

(c) A reply must—

(1) Respond to each factual allegation and state whether it is admitted or denied; and

(2) Set forth any affirmative defenses and include a statement of the form and nature of proof by which those defenses are to be established.

(d) If it is necessary to respond to an amendment to the notice, the reply may be amended within 15 days after service of the amended notice.

(e) If the alleged violator elects not to contest one or more factual allegations, he shall so state in the reply. In the reply the alleged violator may propose an appropriate order for issuance or propose the negotiation of a consent order.

(f) Failure of the alleged violator to file a reply or request a hearing within the period provided in paragraph (a) of this section constitutes—

(1) A waiver of his right to appeal and contest the allegations, and to a hearing; and

(2) Authorizes the official who issued the notice to find the facts to be as alleged in the notice and to issue an appropriate order directing compliance, without further notice or proceedings.

§ 13.77 Consent order of compliance.

(a) At any time before the issuance of an order of compliance, the official

who issued the notice and the alleged violator may agree to dispose of the case by the issuance of a consent order of compliance by the official.

(b) A proposal for a consent order submitted to the official who issued the notice under this section must include—

(1) A proposed order of compliance;

(2) An admission of all jurisdictional facts;

(3) An express waiver of right to further procedural steps and of all rights to judicial review;

(4) An incorporation by reference of the notice and an acknowledgment that the notice may be used to construe the terms of the order of compliance; and

(5) If the issuance of a consent order has been agreed upon after the filing of a request for hearing in accordance with Subpart D of this part, the proposal for a consent order shall include a request to be filed with the Hearing Officer withdrawing the request for a hearing and requesting that the case be dismissed.

§ 13.79 Hearing.

If an alleged violator requests a hearing in accordance with § 13.75, the procedure of Subpart D of this part applies. At the close of the hearing, the Hearing Officer, on the record or subsequently in writing, sets forth his findings and conclusion and the reasons therefor, and either—

(a) Dismisses the notice of proposed order of compliance; or

(b) Issues an order of compliance.

§ 13.81 Order of immediate compliance.

(a) Notwithstanding §§ 13.73 through 13.79, the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, or the Regional Counsel concerned may issue an order of immediate compliance, which is effective upon issuance, if he finds that—

(1) There is strong probability that a violation is occurring or is about to occur;

(2) The violation poses a substantial risk to health or to safety of life or property; and

(3) The public interest requires the avoidance or amelioration of that risk through immediate compliance and waiver of the procedures afforded under §§ 13.73 through 13.79.

(b) An order of immediate compliance is served promptly upon the person against whom the order is issued by telephone or telegram, and a written statement of the relevant facts and the legal basis for the order, including the findings required by paragraph (a) of this section, is served promptly by personal service or by mail.

(c) The official who issued the order of immediate compliance may rescind or suspend the order if it appears that

the criteria set forth in paragraph (a) of this section are no longer satisfied, and, when appropriate, may issue a notice of proposed order of compliance under § 13.73 in lieu thereof.

(d) If at any time in the course of a proceeding commenced in accordance with § 13.73 the criteria set forth in paragraph (a) of this section are satisfied, the official who issued the notice may issue an order of immediate compliance, even if the period for filing a reply or requesting a hearing specified in § 13.75 has not expired.

(e) Within 3 days after the service upon him of an order of immediate compliance, the alleged violator may request a hearing in accordance with Subpart D of this part and the procedure in that subpart will apply except that—

(1) The case will be heard within fifteen days after the date of the order of immediate compliance unless the alleged violator requests a later date;

(2) The order will serve as the complaint; and

(3) The Hearing Officer shall issue his decision and order dismissing, reversing, modifying, or affirming the order of immediate compliance on the record at the close of the hearing.

(f) The filing of a request for hearing in accordance with paragraph (e) of this section does not stay the effectiveness of an order of immediate compliance.

(g) At any time after an order of immediate compliance has become effective, the official who issued the order may request the Attorney General, or his delegate, to bring an action for appropriate relief in accordance with § 13.25.

§ 13.83 Appeal

(a) Any person against whom an order of compliance has been issued by a Hearing Officer or the official who issued the notice of proposed order of compliance may appeal from the order of the Hearing Officer by filing a notice of appeal with the Administrator within 20 days after the date of issuance of the order.

(b) Any person against whom an order of immediate compliance has been issued in accordance with § 13.81 or the official who issued the order of immediate compliance may appeal from the order of the Hearing Officer by filing a notice of appeal with the Administrator within three days after the date of issuance of the order by the Hearing Officer.

(c) Unless the Administrator expressly so provides, the filing of a notice of appeal does not stay the effectiveness of an order of immediate compliance.

(d) If a notice of appeal is not filed from the order of compliance issued by a Hearing Officer, such order is the final agency order of compliance.

(e) Any person filing an appeal authorized by paragraph (a) of this section shall file an appeal brief with the Administrator within 40 days after the date of the issuance of the order, and serve a copy on the other party. Any reply brief must be filed within 20 days after service of the appeal brief. A copy of the reply brief must be served on the appellant.

(f) Any person filing an appeal authorized by paragraph (b) of this section shall file an appeal brief with the Administrator with the notice of appeal and serve a copy on the other party. Any reply brief must be filed within 3 days after receipt of the appeal brief. A copy of the reply brief must be served on the appellant.

(g) On appeal the Administrator reviews the available record of the proceeding, and issues an order dismissing, reversing, modifying, or affirming the order of compliance or the order of immediate compliance. The Administrator's order includes the reasons for his action.

(h) In cases involving an order of immediate compliance, the Administrator's order on appeal is issued within 10 days after the filing of the notice of appeal.

§ 13.85 Filing, service and computation of time.

Filing and service of documents under this subpart shall be accomplished in accordance with § 13.43, except service of orders of immediate compliance under § 13.81(b); and the periods of time specified in this subpart shall be computed in accordance with § 13.44.

§ 13.87 Extension of time.

(a) The official who issued the notice of proposed order of compliance, for good cause shown, may grant an extension of time to file any document specified in this subpart, except documents to be filed with the Administrator.

(b) Extensions of time to file documents with the Administrator may be granted by the Administrator upon written request, served upon all parties, and for good cause shown.

(Secs. 109, 110, and 111, Hazardous Materials Transportation Act (49 U.S.C. 1808, 1809, and 1810); sec. 302(f), 303(d), 313(a), and 1007, Federal Aviation Act of 1958 (49 U.S.C. 1343(f), 1344(d), 1354(a), and 1487); sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and § 1.47, Regulations of the Office of the Secretary of Transportation (49 CFR 1.47).)

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Washington, D.C., on February 28, 1978.

LANGHORNE BOND,
Administrator.

[FR Doc. 78-6447 Filed 3-10-78; 8:45 am]