

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Agency

SUBCHAPTER B—PROCEDURAL RULES [New]

[Reg. Docket No. 1242]

PART 11—GENERAL RULE-MAKING PROCEDURES [New]

PART 13—ENFORCEMENT PROCEDURES [New]

Chapter III—Federal Aviation Agency

SUBCHAPTER A—PROCEDURAL REGULATIONS

PART 405—RULE MAKING PROCEDURES

PART 406—CERTIFICATION PROCEDURES

PART 408—ENFORCEMENT PROCEDURES

PART 409—PROCEDURES AND RULES FOR AIRSPACE ASSIGNMENT AND UTILIZATION

Revisions and Deletions

This amendment adds Subchapter B—Procedural Rules [New], to Chapter I of Title 14 of the Code of Federal Regulations. The amendment is a part of the program of the Federal Aviation Agency to recodify its regulatory material into a new series of regulations called the "Federal Aviation Regulations" to replace the present "Civil Air Regulations" and "Regulations of the Administrator."

During the life of the recodification project, Chapter I of Title 14 may contain more than one part bearing the same number. To differentiate between the two, the recodified parts, such as the ones in this subchapter, will be labeled "[New]". The label will of course be dropped at the completion of the project as all of the regulations will be new.

Subchapter B [New] was published as a notice of proposed rule making in the FEDERAL REGISTER on June 14, 1962 (27 F.R. 5686), and as Draft Release 62-27.

A part of the comments received recommended specific substantive changes to the regulations. Although some of these recommendations might, upon further study, appear to be meritorious, they cannot be adopted as a part of the recodification program. The purpose of the program is simply to streamline and clarify present regulatory language and to delete obsolete or redundant provisions. To attempt substantive changes in the recodification of these regulations (other than minor, relaxatory ones that are completely noncontroversial) would delay the project and would be contrary to the ground rules specified for it in the FEDERAL REGISTER on November 15, 1961 (26 F.R. 10698), and Draft Release 62-27. However, all comments of this nature will be preserved and considered in any later substantive revision of the affected parts.

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Recodification

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Draft Release 62-27 contained a notice of the revision of the procedural rules of the Federal Aviation Agency. The preamble to the release stated that the certification procedural rules in Part 406 of the regulations of the Administrator were being considered for transfer to the parts to which they specifically applied, insofar as they did not duplicate provisions already in those parts. Comment was particularly invited as to whether this change would be a convenience to the user. No adverse comment was received. Therefore Part 13 [New], as proposed in the draft release (based on present Part 406), has been deleted from the final rule. Those provisions of Part 406 relating to medical certification procedures (§§ 406.12 and 406.31) have been transferred to and included in Part 67 [New]. Those provisions of Part 406 relating to Airman Certificates (§ 406.13), and Air Agency Certificates (§ 406.16) are deleted as unnecessary and as covered in pertinent part by Subchapter D—Airmen [New]. The remaining provisions of Part 406, relating to Aircraft Certificates, Air Carrier Certificates and Air Navigation Certificates will be considered for inclusion in future subchapters of the recodification, as applicable.

As a result of the deletion of the proposed Part 13 (based on present Part 406) the proposed Part 15 (based on present Part 408) has been renumbered in the final rule as Part 13—Enforcement Procedures [New].

Section 11.25 has been revised and expanded to meet certain problems the Agency has encountered in processing petitions for rule making and exemption. Many petitions do not contain enough information to allow a determination to be made of the matter. Others fail to specify clearly the regulations involved or the nature and extent of the requested action. As a result, the Agency must get additional information from its field personnel, the petitioner, or other sources, thereby unnecessarily delaying the handling of the petition. A number of petitions for exemption have been filed so close to the requested effective date of the exemption as to require priority handling, with attendant disruption of normal Agency work schedules.

Accordingly, revised § 11.25 specifies in greater detail the information that must be included in petitions. In addition, except for good cause shown in the petition, it requires petitions for exemption to be filed at least 60 days before the requested effective date of the exemption to allow time for their orderly processing. As this revision is concerned only with agency procedure, compliance with the notice and public procedure provisions of the Administrative Procedure Act is unnecessary and it may be incorporated into the recodified Subchapter B [New].

Other minor changes of a technical clarifying nature or relaxatory nature have been made. They are not substantive and do not impose any burden on regulated persons.

Of the comments received on Draft Release 62-27, several suggested changes in style, format, or technical wording. These comments have been carefully considered and, where consistent with

the style, format, and terminology of the recodification project, were adopted.

The definitions, abbreviations, and rules of construction contained in Part 1 [New] of the Federal Aviation Regulations apply to the new Subchapter B.

Interested persons have been afforded an opportunity to participate in the making of this regulation, and due consideration has been given to all relevant matter presented. The Agency appreciates the cooperative spirit in which the public's comments were submitted.

In consideration of the foregoing, effective November 10, 1962, Chapter III of Title 14 of the Code of Federal Regulations is amended by deleting Parts 405, 408, and 409 and §§ 406.12, 406.13, 406.16, and 406.31, and Chapter I of Title 14 of the Code of Federal Regulations is amended by adding Subchapter B [New] reading as hereinafter set forth.

This amendment is made under the authority of sections 303(d), 313(a), 501 through 506, 601 through 608, and 1001 of the Federal Aviation Act of 1958 (49 U.S.C. 1344(d), 1354(a), 1401 through 1405, 1421 through 1428, and 1481).

Issued in Washington, D.C., on September 25, 1962.

N. E. HALABY,
Administrator.

Chapter I—Federal Aviation Agency

SUBCHAPTER B—PROCEDURAL RULES [New]

Part

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PART 11—GENERAL RULE-MAKING PROCEDURES [New]

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AUTHORITY: §§ 11.1 to 11.75 issued under secs. 303(d), 313(a), 501 through 506, 601 through 608, and 1001 of Federal Aviation Act of 1958 (49 U.S.C. 1344(d), 1354(a), 1401 through 1405, 1421 through 1428, and 1481).

Subpart A—General

§ 11.1 Applicability.

This part applies to the issue, amendment, and repeal of—

(a) Rules and orders for airspace assignment and use issued under section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); and

(b) Other substantive rules, including those applicable to a class of persons, and those addressed to and served on named persons whenever the Administrator decides to use public rule-making procedures in such a case.

§ 11.11 Docket.

Official FAA records relating to rule-making actions, including proposals, notices of proposed rule making, written material received in response to notices, petitions for rule making and exemptions, petitions for rehearing or reconsideration, petitions for modification or revocation, notices granting or denying exemptions, reports of proceedings conducted under § 11.47, notices denying proposals, and final rules or orders are maintained in current docket form in the Office of the General Counsel. Any interested person may examine any docketed material at that office, at any time after the docket is established, except material that is ordered withheld from the public under section 1104 of the Federal Aviation Act of 1958 (49 U.S.C. 1504), and may obtain a photostatic or duplicate copy of it upon paying the cost of the copy.

Subpart B—Rules Other Than Airspace Assignment and Use

§ 11.21 Scope.

(a) This subpart applies to substantive rules, other than those relating to airspace assignment and use.

(b) Unless the Administrator, for good cause, finds that notice is impracticable, unnecessary, or contrary to the public interest, and incorporates that finding and a brief statement of the reasons for it in the rule, the FAA issues notices of proposed rule making and allows interested persons to participate in rule-making proceedings involving a substantive rule.

(c) Unless the Administrator determines that notice and rule-making procedures are to be followed, interpretive rules, general statements of policy, and rules of FAA organization, procedure, or practice are prescribed as final without notice or rule-making procedures.

(d) Whenever the Administrator so determines, the procedures prescribed in this subpart apply to exempting persons and classes from the requirements of a substantive rule.

§ 11.23 Initiating rule-making procedures.

The Administrator initiates rule-making procedures upon his own motion. However, in doing so, he considers the recommendations of other agencies of the United States and the petitions of other interested persons.

§ 11.25 Petitions for rule making or exemptions.

(a) Any interested person may petition the Administrator to issue, amend, or repeal a rule whether or not it is a substantive rule within the meaning of § 11.21, or for a temporary or permanent exemption from any rule issued under Title III or VI of the Federal Aviation Act of 1958.

(b) Each petition filed under this section must—

(1) In the case of a petition for exemption, unless good cause is shown in that petition, be submitted at least 60 days before the proposed effective date of the exemption;

(2) Be submitted in duplicate to the Federal Aviation Agency, Washington 25, D.C.;

(3) Set forth the text or substance of the rule or amendment proposed, or of the rule from which the exemption is sought, or specify the rule that the petitioner seeks to have repealed, as the case may be;

(4) Explain the interests of the petitioner in the action requested including, in the case of a petition for an exemption, the nature and extent of the relief sought and a description of each aircraft or person to be covered by the exemption; and

(5) Contain any information, views, or arguments available to the petitioner to support the action sought, the reasons why the granting of the request would be in the public interest and, if appropriate, in the case of an exemption, the reason why the exemption would not adversely affect safety or the action to be taken by the petitioner to provide a level of safety equal to that provided by the rule from which the exemption is sought.

§ 11.27 Action on petitions for rule making or exemptions.

(a) No public hearing, argument, or other formal proceeding is held directly on a petition filed under § 11.25, before its disposition by the FAA.

(b) If the Administrator determines that the petition discloses adequate reasons, he issues a notice of proposed rule making, or adopts a final rule, or, if it is in the public interest, grants the exemption.

(c) If the Administrator determines that the petition does not justify instituting rule-making procedures or granting the requested exemption, he notifies the petitioner to that effect.

(d) Specific provisions covering actions on petitions are set forth in Subpart C of this part.

§ 11.29 Notice of proposed rule making.

(a) Each general notice of proposed rule making is published in the FEDERAL REGISTER, unless all persons subject to it

are named and are personally served with a copy of it.

(b) Each notice, whether published in the FEDERAL REGISTER or personally served, includes—

(1) A statement of the time, place, and nature of the proposed rule-making proceeding;

(2) A reference to the authority under which it is issued;

(3) A description of the subjects and issues involved or the substance and terms of the proposed rule;

(4) A statement of the time within which written comments must be submitted and the required number of copies; and

(5) A statement of how and to what extent interested persons may participate in the proceeding, as prescribed by §§ 11.31 and 11.33.

§ 11.31 Participation of interested persons in rule-making procedures.

(a) Each interested person is entitled to participate in rule-making proceedings by submitting written information, views, or arguments. In addition, he may comment on the original information, views, and arguments submitted by other persons, if, after receiving them, the Administrator considers it desirable.

(b) In any appropriate case, the Administrator also allows interested persons to participate in the rule-making procedures described in § 11.33.

§ 11.33 Additional rule-making proceedings.

(a) The rule-making procedure also includes any further procedural steps that best serve the purposes of a particular proceeding. For example, interested persons may be allowed to make oral arguments, participate in conferences between the Administrator or his representative and interested persons and organizations, appear at informal hearings presided over by a designated FAA official at which a stenographic transcript is made, or participate in any other procedure whenever it is desirable and appropriate to assure informed administrative action and adequate protection of private interests.

(b) Any appropriate combination of the procedures described in paragraph (a) of this section may be used in addition to the basic procedure of allowing interested persons to participate in rule-making proceedings by submitting written information, views, or arguments.

§ 11.35 Participation by Civil Aeronautics Board in rule-making proceedings.

(a) Under section 1001 of the Federal Aviation Act of 1958 (49 U.S.C. 1481), the Civil Aeronautics Board may appear and participate as an interested party in any proceeding conducted by the Administrator under Title III of that Act, and in any proceeding under Title VI of that Act that cannot be appealed to the Board.

(b) To indicate its intention to participate in any proceeding described in paragraph (a) of this section, the Board may file written information, views, or arguments in response to a notice of proposed rule making issued by the Admin-

istrator. The Board is entitled to the procedural privileges accorded other parties and is equally free to participate.

§ 11.37 Requests for informal appearances.

(a) Upon his request, any interested person may appear informally before an appropriate official of the FAA to present, adjust, or determine a question or controversy relating to a rule-making function of the FAA.

(b) A request for an appearance under this section must be sent in writing to the Federal Aviation Agency, Washington 25, D.C., or to the Regional or District Office nearest to the person making the request.

Subpart C—Processing of Rules Other Than Airspace Assignment and Use

§ 11.41 Scope.

(a) This subpart prescribes the supplemental procedures to be followed by the Offices and Services of the FAA in rule-making proceedings and in granting or denying exemptions from rules. It also designates the Office or Service that is authorized to act for the Administrator in connection with those proceedings and exemptions.

(b) This subpart does not apply to rule-making procedures under section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)).

§ 11.43 Processing of petitions for rule making or exemption from parts of this chapter, except Part 67.

Whenever the FAA receives a petition for rule making or for an exemption (other than from Part 67 of this chapter), a copy of the petition is referred for action, as provided in § 11.27, of the Office or Service having substantive responsibility for the subject involved.

§ 11.45 Issue of notice of proposed rule making.

Whenever he determines that a notice of proposed rule making is necessary or desirable, the head of the Office or Service concerned may, subject to the approval of the General Counsel with respect to form and legality, issue the notice provided for in § 11.29. In addition, he may grant or deny any request to extend the time specified in a notice for submitting information, views, or arguments in response thereto.

§ 11.47 Proceedings after notice of proposed rule making.

(a) Each person who submits written information, views, or arguments in response to a notice of proposed rule making, or during additional rule-making proceedings in connection with such a notice, must file the number of copies specified in the notice.

(b) Whenever the head of the Office or Service concerned determines that additional rule-making proceedings of the kind described in § 11.33 are necessary or desirable, he may designate representatives to conduct those proceedings.

§ 11.49 Adoption of final rules.

After the Office or Service concerned has completed its analysis and evalua-

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tion of the information, views, and arguments submitted with respect to a proposed rule, representatives of that Office or Service and the Office of the General Counsel prepare an appropriate rule, subject to the approval of the General Counsel as to form and legality. The rule is then submitted, with the recommendations of the head of the Office or Service concerned and the General Counsel, to the Administrator for his consideration. If he adopts the rule, it is published in the **FEDERAL REGISTER**.

§ 11.51 Denial of petition for rule making.

Whenever it is determined that a petition for rule making filed under § 11.25 should be denied, the Office or Service concerned prepares, subject to the approval of the General Counsel with respect to form and legality, a notice of denial for the Administrator's signature.

§ 11.53 Grant or denial of exemption, other than from Part 67.

(a) The head of the Office or Service concerned may, subject to the approval of the General Counsel with respect to form and legality, grant or deny any petition for an exemption (other than from Part 67 of this chapter). However, if the head of the Office or Service concerned finds that the grant or denial involves a technical or policy determination that should be made by the Administrator, he refers the petition and his recommendations and those of the General Counsel to the Administrator for final action.

(b) Whenever a petition is granted or denied under this section, the Office or Service concerned prepares, subject to the approval of the General Counsel with respect to form and legality, a notice to the petitioner informing him of the action taken.

§ 11.55 Exemptions from Part 67.

(a) A copy of each petition for an exemption from any provision of Part 67 of this chapter, and the medical information that the Aviation Medical Service has concerning the petitioner, is referred to an appropriate advisory panel of medical specialists for their recommendation.

(b) The function of the advisory panel of medical specialists is to examine the petitioner's medical condition and advise the Administrator whether it considers that the specific nature of the applicant's medical defect that makes him unable to meet the medical standards for his certificate is such that he can be exempted from those standards without endangering public safety during the period the medical certificate would be in effect. The panel shall obtain the views of the Civil Air Surgeon on the matters involved in each petition for exemption.

(c) If the advisory panel desires additional medical information or further medical examination of the petitioner, it shall so advise the Civil Air Surgeon who shall send the request to the petitioner. The Civil Air Surgeon shall give any information so obtained to the panel immediately after he receives it and

shall send a copy to be placed in the official rule-making docket.

(d) The Civil Air Surgeon shall make the facilities of his Service available to the advisory panel to the extent it considers helpful, furnish it with such administrative services as it requests in connection with a petition for exemption, and advise the panel of his views on each petition.

(e) Based on the public interest and in light of the specific situation involved, the Administrator grants or denies the petition after receiving the panel's recommendation. A notice of the action taken by the Administrator is sent to the petitioner.

Subpart D—Rules and Procedures for Airspace Assignment and Use

§ 11.61 Scope.

(a) This subpart establishes procedures for initiating, processing, issuing, and publishing rules and orders issued under section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)), including—

(1) Designations of Federal airways, control zones, control areas, control area extensions, positive control areas, positive control route segments, coded jet routes, transition areas, and antenna farm areas;

(2) Assignments of segments or parts of the navigable airspace for special use purposes, such as restricted areas, military climb corridors, and experimental flight test areas; and

(3) Special rules or orders relating to the assignment or use of navigable airspace.

(b) This subpart does not apply to emergency cases and cases in which the procedures described in paragraph (a) of this section are found to be impractical, unnecessary, or contrary to the public interest.

(c) For the purposes of this subpart, the word "Director" means the Director, Air Traffic Service or any person to whom he has delegated his authority in the matter concerned.

§ 11.63 Filing of proposals.

(a) Each proposal, except one arising in the FAA, for the designation of Federal airways or other areas for normal air traffic use, the assignment of navigable airspace for special use purposes, or the issue of a special rule or order relating to the use of navigable airspace, must be filed in writing, in triplicate, with a Regional Assistant Administrator or the Director.

(b) The director may, on his own motion, initiate the procedures prescribed in this subpart for proposals arising within the FAA.

(c) A proposal requesting the assignment of navigable airspace for special use purposes, or for the designation of an area for air traffic purposes, must include at least the following:

(1) The location and a description of the airspace desired for assignment or designation.

(2) A complete description of the activity or use to be made of that airspace, including a detailed description of the

type, volume, duration, time, and place of the operations to be conducted in the assigned or designated area.

(3) A description of the air navigation, air traffic control, surveillance, and communication facilities available and to be provided if the assignment or designation is made.

(4) The name and location of the agency, office, facility, or person to whom authority would be delegated to permit the use of the airspace during those times it would not be used for the purpose to which it would be assigned.

(d) Subject to the approval of the General Counsel with respect to form and legality, the Director issues a notice of any rejected proposal.

§ 11.65 Issue of notice of proposed rule making.

(a) If it is determined that the subject matter of a proposal should be submitted to the rule-making process, or if rule-making action is to be taken on his own motion, the Director, subject to the approval of the General Counsel with respect to form and legality, issues a notice of proposed rule making.

(b) Normally, a notice of proposed rule making is issued within approximately 30 days after receipt of a proposal with respect to which it has been determined that action might be taken.

(c) Each notice of proposed rule making is published in the **FEDERAL REGISTER** and includes at least the following:

(1) A statement of the time, place, and nature of the public rule-making proceedings.

(2) A reference to the authority under which it is proposed.

(3) Either the terms or substance of the proposed action or a description of the subjects and issues involved.

(d) Approximately 30 days are allowed for submitting written information, views, or arguments on the notice.

(e) If a public hearing is to be held, either the original notice of proposed rule making or a revised notice gives approximately 30 days notice. The Director may grant or deny any request to extend the time specified in the notice for submitting written material and may change the date of any hearing previously noticed.

(f) Written information, views, and arguments submitted in response to a notice of proposed rule making, or that are requested after the notice, must be submitted in triplicate.

(g) Each interested person is entitled to discuss or confer informally with appropriate FAA officials concerning a proposed action. However, to become a part of the formal record for consideration, any information, views, or arguments presented during a conference must also be submitted in writing in accordance with the notice.

§ 11.67 Hearings.

(a) Sections 7 and 8 of the Administrative Procedure Act do not apply to proceedings used to formulate rules under section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)). Whenever the Director, in his discretion,

considers that a hearing is necessary to provide informed Administrative action and assure adequate protection of private or public interests, he may hold an informal public hearing. However, any rule or order issued in a case in which such a hearing is held is not based exclusively on the record of the hearing.

(b) The Director designates a presiding officer for each hearing and the General Counsel designates a legal adviser.

(c) Normally, hearings held under this section are held in the vicinity of the affected airspace. Interested persons are allotted time to make an oral presentation without interruption and a verbatim transcript is made of the proceedings by a certified court reporter.

(d) The procedure in hearings held under this section is as follows:

(1) The presiding officer makes an opening statement with particular reference to the notice of proposed rule making.

(2) The presiding officer designates interested persons or their authorized representatives to speak at the hearing.

(3) The presiding officer allots enough time to each interested person on an equal basis so that his position may be expressed fully and placed on the record, with those who favor it speaking first followed by those who oppose it, initial statements being made as far as possible without interruption, and questions permitted after initial statements have been made by all designated persons.

(4) Arguments and oral statements are limited to the subject named in the notice of proposed rule making.

(5) Written information, views, arguments, or briefs may be offered for the record, but may not be accepted after the hearing unless good cause is shown or the submission is requested by the presiding officer or the Director.

(e) The presiding officer of a hearing may deviate from the procedures prescribed in this section to assure a more complete and informative record.

§ 11.69 Adoption of rules or orders.

(a) After the closing date for submitting written comments on a notice, or, if a hearing is held, after the hearing, the Airspace Utilization Division of the Air Traffic Service studies the entire matter of a proposed rule or order. It then recommends a rule, order, or notice of denial to the Director. If the Director approves it, he sends it, subject to the approval of the General Counsel with respect to form and legality, to the Administrator for his action.

(b) Each rule or order issued by the Administrator is published in the FEDERAL REGISTER and in such other publications as the Director considers desirable. Each notice of denial is sent to the person who made the proposal and to such other interested persons as the Director considers desirable.

(c) Each rule or order issued under this subpart becomes effective not less than 30 days after it is published, except in an emergency, or when it is impractical, unnecessary, or contrary to the public interest.

§ 11.71 Exemptions.

(a) A petition for an exemption from any rule or order issued under section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) may be filed with the Director. Such a petition must be in triplicate and state clearly the nature of the requested exemption and the reasons why it should be granted.

(b) The Director may, subject to the approval of the General Counsel with respect to form and legality, grant or deny any petition filed under this section and shall notify the petitioner of his action.

§ 11.73 Petitions for rehearing or reconsideration of rules or orders.

(a) Any interested person may petition the Administrator for a rehearing on, or for reconsideration of, any rule or order issued under section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)). Such a petition must be filed, in triplicate, within 30 days after the rule or order is published in the FEDERAL REGISTER. It must contain a brief statement of the complaint and an explanation as to how the rule or order is contrary to the public interest.

(b) If the petitioner requests the consideration of additional facts, he must state their nature and purpose, and the reason they were not presented at the hearing or in writing within the allotted time.

(c) The Administrator does not consider repetitious petitions.

(d) Unless the Administrator orders otherwise, the filing of a petition under this section does not stay the effect of a rule or order.

§ 11.75 Petitions for revoking or modifying rules or orders.

(a) Any interested person may petition to revoke or modify any rule or order covered by this subpart. Such a petition must be filed, in triplicate, with the Director of the Air Traffic Service and must clearly state the information, views, and arguments the petitioner considers necessary to support the requested action and must clearly indicate the effect the action would have on the use of navigable airspace.

(b) A petition filed under this section is processed in the same manner as an original proposal, or in any other manner that the Director considers necessary or desirable.

PART 11—DISTRIBUTION TABLE

Former section	Revised section	Former section	Revised section
405.1	(1)	405.27	11.45
405.11(a)	11.1	405.28 (less last sentence of (b))	11.47
405.11 (less (a))	11.21	405.28 (last sentence of (b))	11.11
405.12	11.23	405.29	11.49
405.13	11.25	405.30	11.51
405.14	11.27	405.31(a) (1st two sentences)	11.43
405.15	11.29	405.31 (less 1st two sentences of (a))	11.53
405.16	11.31		
405.17	11.33		
405.18	11.35		
405.19	11.25		
405.20	11.27		
405.21	11.37		
405.25	11.41		
405.26	11.43		

¹ Transferred to Part 1.

PART II—DISTRIBUTION TABLE—Continued

Former section	Revised section	Former section	Revised section
405.32	11.55	409.13	11.65
405.33	11.11	409.14	11.67
409.1	(1)	409.15	11.69
409.11(a)	11.1	409.16	11.71
409.11 (less (a))	11.61	409.17	11.73
409.12	11.63	409.18	11.75
		409.19	11.11

PART 13—ENFORCEMENT PROCEDURES [New]

Subpart A—Enforcement Processes:

- Sec. 13.1 Reports of violations.
- 13.3 Investigations.
- Subpart B—Enforcement Actions**
- 13.11 Reports for record.
- 13.13 Reprimands.
- 13.15 Civil penalties.
- 13.17 Seizure of aircraft.
- 13.19 Certificate action.
- 13.21 Military aircraft.
- 13.23 Criminal penalties.
- Subpart C—Rules of Practice for Hearings in FAA Certificate Proceedings**
- 13.31 Applicability of rules.
- 13.33 Appearances.
- 13.35 Request for hearing.
- 13.37 Hearing Officer's powers.
- 13.39 Disqualification of Hearing Officer.
- 13.41 Pleadings.
- 13.43 Service and filing of pleadings, motions, and documents, other than Answer.
- 13.45 Amendment of Notice and Answer.
- 13.47 Withdrawal of Notice or Request for Hearing.
- 13.49 Motions.
- 13.51 Intervention.
- 13.53 Depositions.
- 13.55 Notice of hearing.
- 13.57 Subpoenas and witness fees.
- 13.59 Evidence.
- 13.61 Argument and submittals.
- 13.63 Record.
- 13.65 Federal Rules of Civil Procedure.
- 13.67 Order of Hearing Officer.

AUTHORITY: §§ 13.1 to 13.67 issued under secs. 303(d), 313(a), 501 through 506, 601 through 608, and 1001 of Federal Aviation Act of 1958 (49 U.S.C. 1344(d), 1354(a), 1401 through 1405, 1421 through 1428, and 1481).

Subpart A—Enforcement Processes

§ 13.1 Reports of violations.

(a) Any person who knows of a violation of the Federal Aviation Act of 1958, or of any regulation or order issued under it, may report it to appropriate personnel of an FAA regional or district office.

(b) Each report made under this section is investigated by FAA personnel. The results of that investigation are the basis for determining the enforcement action that the FAA will take.

§ 13.3 Investigations.

(a) Under section 313 of the Federal Aviation Act of 1958 (49 U.S.C. 1354), the Administrator may conduct public hearings or investigations and take evidence and depositions, issue subpoenas, and compel testimony in the manner provided in section 1004 of the Act (49 U.S.C. 1484).

(b) For the purpose of investigating alleged violations of the Act, or any regulation or order issued under it, the Ad-

ministrator's authority under sections 313 and 1004 has been delegated to the General Counsel, the Deputy General Counsel, each Associate General Counsel, and each Regional Counsel.

Subpart B—Enforcement Actions

§ 13.11 Reports for record.

If, after his investigation, it appears to the reporting inspector that a violation of the Federal Aviation Act of 1958, or an order or regulation issued under it, was so minor and unintentional as not to require disciplinary or remedial action, he may, in accordance with standard Agency practices file a report of that violation for the record or may terminate the report by a letter of correction. The Regional Flight Standards Office and the Regional Counsel concerned shall review each action under this section.

§ 13.13 Reprimands.

The General Counsel or the Regional Counsel concerned may send a letter of reprimand to any person who commits a minor violation of the Federal Aviation Act of 1958, or any rule or order issued under it. A letter of reprimand terminates the action, but the violation will be considered in determining the action to be taken on any future violation committed by that person.

§ 13.15 Civil penalties.

(a) Under section 901 of the Federal Aviation Act of 1958 (49 U.S.C. 1471), a person who violates any provision of Title III, V, VI, or XII of that Act, or any regulation or order issued under one of those titles, is subject to a civil penalty of not more than \$1,000 for each violation.

(b) The Administrator may compromise any civil penalty. If a civil penalty is contemplated and it is considered advisable to compromise it, the General Counsel or the Regional Counsel concerned sends a letter to the person charged with the violation, advising him of the charges against him and the law, regulation, or order that he is charged with violating, and offering to compromise the penalty. The person charged with the violation may present, to the official who signed the letter, any oral or written material or information in answer to the charges, explaining, mitigating, or denying the violation, or showing extenuating circumstances. Material or information so presented is considered in making the final determination as to probable liability for a civil penalty, or the amount for which it will be compromised.

(c) If the person charged with the violation offers to compromise for a specific amount, he shall send a certified check or money order for that amount, payable to the Federal Aviation Agency. The General Counsel or the Regional Counsel concerned may accept or refuse it.

(d) If the compromise amount is accepted, the person charged with the violation is notified, by letter, that the acceptance is full settlement of the civil penalty for the violation.

(e) If a compromise settlement of the civil penalty cannot be made, the Ad-

ministrator may instigate proceedings in a United States District Court, under section 903 of the Act (49 U.S.C. 1473), to collect the penalty.

§ 13.17 Seizure of aircraft.

(a) Under section 903 of the Federal Aviation Act of 1958 (49 U.S.C. 1473), a State or Federal law enforcement officer, or a Federal Aviation Agency safety inspector, authorized in an order of seizure issued by the Assistant Administrator of the region in which the aircraft is located, may summarily seize an aircraft that is involved in a violation for which a civil penalty may be imposed on its owner or operator.

(b) Each person seizing an aircraft under this section shall place it in the nearest available and adequate public storage facility in the judicial district in which it was seized.

(c) The Assistant Administrator, without delay, sends a written notice and a copy of this section, to the registered owner of the seized aircraft, and to each other person shown by FAA records to have an interest in it, stating the—

(1) Time, date, and place of seizure;

(2) Name and address of the custodian of the aircraft;

(3) Reasons for the seizure, including the violations believed, or judicially determined, to have been committed; and

(4) Amount that may be tendered as—

(i) A compromise of a civil penalty for the alleged violation; or

(ii) Payment for a civil penalty imposed by a Federal court for a proven violation.

(d) The Regional Counsel of the region in which an aircraft is seized under this section immediately sends a report to the United States District Attorney for the judicial district in which it was seized, requesting him to institute proceedings to enforce a lien against the aircraft.

(e) The Assistant Administrator directs the release of a seized aircraft whenever—

(1) The alleged violator pays a civil penalty or an amount agreed upon in compromise, and the costs of seizing, storing, and maintaining the aircraft;

(2) The aircraft is seized under an order of a Federal Court in proceedings in rem to enforce a lien against the aircraft, or the United States Attorney for the judicial district concerned notifies the FAA that he refuses to institute those proceedings; or

(3) A bond in the amount and with the sureties prescribed by the Assistant Administrator is deposited, conditioned on payment of the penalty, or the compromise amount, and the costs of seizing, storing, and maintaining the aircraft.

§ 13.19 Certificate action.

(a) Under section 609 of the Federal Aviation Act of 1958 (49 U.S.C. 1429), the Administrator may reinspect any civil aircraft, aircraft engine, propeller, appliance, air navigation facility, or air agency, and may re-examine any civil airman.

(b) If, as a result of such a re-inspection, re-examination, or other investigation made by him, the Administrator determines that the public interest and

safety in air commerce requires it, he may issue an order amending, suspending, or revoking, all or part of any type certificate, production certificate, airworthiness certificate, airman certificate, air carrier operating certificate, air navigation facility certificate, or air agency certificate.

(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 elect to—

(1) Admit the charges and surrender his certificate;

(2) Answer the charges in writing;

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

(4) Have a formal hearing, either in place of or in addition to the informal conference, before a Hearing Officer appointed by and representing the Administrator.

Unless the holder has submitted a request for a formal hearing, the General Counsel or the Regional Counsel concerned, after considering the answer and information submitted by the holder, issues the order of the Administrator. If the holder requests a formal hearing, the Hearing Officer shall issue an oral or written Order of the Administrator after holding a hearing in accordance with this part.

(d) Any person whose certificate is affected by an order issued under this section may appeal to the Civil Aeronautics Board. If the certificate holder files an appeal with the Board, the Administrator's order is stayed unless he advises the board that an emergency exists and safety in air commerce requires that the order become effective immediately. If he so advises the Board, the order remains effective and the Board shall finally dispose of the appeal within 60 days after the date of the advise.

§ 13.21 Military aircraft.

If a report made under this Part indicates that, while performing his official duties, a member of the armed forces, or a civilian employee of the Department of Defense who is subject to the Uniform Code of Military Justice (10 U.S.C. Ch. 47), has violated the Federal Aviation Act of 1958, or a regulation or order issued under it, the General Counsel or the Regional Counsel concerned sends a copy of the report to the appropriate military authority for such disciplinary action as that authority considers appropriate and a report to the Administrator thereon.

§ 13.23 Criminal penalties.

(a) Sections 902 and 1203 of the Federal Aviation Act of 1958 (49 U.S.C. 1472 and 1523), provide criminal penalties for any person who knowingly and willfully violates specified provisions of that Act or any regulation or order issued under those provisions.

(b) If an inspector or other employee of the FAA becomes aware of a possible violation of any criminal provision of that Act (except a violation of section 902 (i) through (m) which is reported directly to the Federal Bureau of Investigation), he shall report it to the Office of the General Counsel or the Regional Counsel concerned. If appropriate, that office refers the report to the Department of Justice for criminal prosecution of the offender. If such an inspector or other employee becomes aware of a possible violation of a Federal statute that is within the investigatory jurisdiction of another Federal Agency, he shall immediately report it to that agency according to standard Agency practices.

Subpart C—Rules of Practice for Hearings in FAA Certificate Proceedings

§ 13.31 Applicability of rules.

This subpart applies to all proceedings before a Hearing Officer of the FAA in which the holder of an airman certificate requests a hearing in response to a Notice of Proposed Certificate Action that proposes to amend, suspend, or revoke his certificate.

§ 13.33 Appearances.

Any party to a proceeding under this subpart may appear and be heard in person or by attorney.

§ 13.35 Request for hearing.

(a) If, after a Notice of Proposed Certificate action is issued, the certificate holder concerned elects to have a formal hearing, he shall request it by checking the appropriate box on the form that is sent to him with the Notice of Proposed Certificate Action. He shall return the form, and his answer to the allegations in the Notice, to the FAA counsel. He must return the form, and, except as provided in § 13.49, his answer, with a postmark of not later than 15 days after the date he received the notice.

(b) If the certificate holder submits a Request for a Hearing after that 15-day period, but before an order is issued, the FAA counsel shall send it to the Hearing Officer. If, in the opinion of the Hearing Officer, there was good cause for the failure to request a hearing within the 15-day period he may, in his discretion, order a hearing.

(c) If, upon request, the certificate holder has an informal conference with FAA counsel, he then has 10 days from the date of the conference within which to request a formal hearing. The FAA counsel shall forward the Request and Answer to the Hearing Officer, together with a copy of the Notice of Proposed Certificate Action. The Hearing Officer shall docket the Notice, Request, and Answer, as of the time he receives them.

§ 13.37 Hearing Officer's powers.

Any Hearing Officer may—

- (a) Give notice concerning, and hold, prehearing conferences and hearings;
- (b) Administer oaths and affirmations;
- (c) Examine witnesses;
- (d) Issue subpoenas and take depositions or cause them to be taken;
- (e) Rule on offers of proof;

(f) Receive evidence;

(g) Regulate the course of the hearing;

(h) Hold conferences, before and during the hearing, to settle and simplify issues by consent of the parties;

(i) Dispose of procedural requests and similar matters; and

(j) Issue an order.

§ 13.39 Disqualification of Hearing Officer.

The Hearing Officer shall withdraw from a case if, at any time, he considers himself to be disqualified.

§ 13.41 Pleadings.

(a) In cases sent to the Hearing Officer, the Notice of Proposed Certificate Action constitutes the statement of the facts upon which the action is proposed.

(b) The certificate holder's Answer must be responsive to the allegations set out in the Notice. Any allegation that is not denied is considered to be admitted.

(c) Averments in an Answer, or other pleading, to which no responsive pleading is required, are considered to be denied.

§ 13.43 Service and filing of pleadings, motions, and documents, other than Answer.

Each pleading, motion, or document, other than an Answer, must at the time of filing, be served on each other party, by delivering a copy to him or by mailing a copy to him at the last address filed with the FAA by the certificate holder as required by this chapter. However, if a party is represented by an attorney, the service shall be made upon him.

§ 13.45 Amendment of Notice and Answer.

At any time more than 10 days before the date of hearing, any party may amend his Notice, Answer, or other pleading, by filing the amendment with the Hearing Officer and serving a copy of it on each other party. After that time, he may amend it only in the discretion of the Hearing Officer. If an amendment to an initial pleading has been allowed, the Hearing Officer shall allow the other parties a reasonable opportunity to answer. A pleading may be amended at any time to conform to the evidence.

§ 13.47 Withdrawal of Notice or Request for Hearing.

At any time before hearing, the FAA counsel may withdraw the Notice of Proposed Certificate Action and the certificate holder may withdraw his Request for Hearing.

§ 13.49 Motions.

(a) *Motion to dismiss.* A respondent may, in place of his Answer, file a motion to dismiss, for failure of the allegations of the Notice to state a violation of this chapter, or for 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 judgment on the pleadings.* After the pleadings are closed, either party may move for a judgment on the pleadings.

(c) *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.

(d) *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.

(e) *Motion for production of documents.* Upon motion of any party showing good cause, the Hearing Officer may, in the manner provided by Rule 34, Federal Rules of Civil Procedure, order any party to produce any designated document, paper, book, account, letter, photograph, object, or other tangible thing, that is not privileged, that constitutes or contains evidence relevant to the subject matter of the hearing, and that is in the party's possession, custody, or control.

(f) *Consolidation of motions.* A party who makes a motion under this section shall join with it all other motions that are then available to him. Any objection that he does not so raise is considered to be waived.

§ 13.51 Intervention.

Any person may move for leave to intervene in a proceeding and may become a party thereto, if the Hearing Officer, after the case is sent to him for hearing, finds that the person may be bound by the order to be issued in the proceeding or has a property or financial interest that may not be adequately represented by existing parties, and that the intervention will not unduly broaden the issues or delay the proceedings. Except for good cause shown, a motion for leave to intervene may not be considered if it is filed less than 10 days before the hearing.

§ 13.53 Depositions.

After the respondent has filed a Request for Hearing and an Answer, either party may take testimony by deposition in accordance with section 1004 of the Federal Aviation Act of 1958 (49 U.S.C. 1484) or Rule 26, Federal Rules of Civil Procedure.

§ 13.55 Notice of hearing.

The Hearing Officer to whom the case is assigned shall give the parties adequate notice of the date of the hearing and the place where it will be held. The Hearing Officer may hold the hearing at the city in which there is located the Regional Headquarters of the FAA, the originating FAA office, or the Flight Standards District office nearest to the residence of the certificate holder, or at any other location that the Hearing Officer directs.

§ 13.57 Subpoenas and witness fees.

(a) The Hearing Officer to whom a case is assigned may, upon application by any party to the proceeding, issue sub-

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poenas requiring the attendance of witnesses or the production of documentary or tangible evidence at a hearing or for the purpose of taking depositions. However, the application for producing evidence must show its general relevance and reasonable scope. This paragraph does not apply to the attendance of FAA employees or to the production of documentary evidence in the custody of such an employee at a hearing.

(b) A person who applies for the production of a document in the custody of an FAA employee must follow the procedure in § 13.49(e). If he applies for the attendance of an FAA employee, he must send the application, in writing, to the Hearing Officer, setting forth the need for that employee's attendance.

(c) A witness in a proceeding under this subpart is entitled to the same fees and mileage as is paid to a witness in a court of the United States under comparable circumstances. The party at whose instance the witness is subpoenaed or appears shall pay the witness his fees.

§ 13.59 Evidence.

(a) Each party to a hearing may present his case or defense by oral or documentary evidence, submit evidence in rebuttal, and conduct such cross-examination as may be needed for a full disclosure of the facts.

(b) Except with respect to affirmative defenses, the burden of proof is upon the FAA counsel.

§ 13.61 Argument and submittals.

The Hearing Officer shall give the parties adequate opportunity to present arguments in support of motions, objections, and the final order. The Hearing Officer may determine whether arguments are to be oral or written. At the end of the hearing, each party is entitled to submit, in writing, proposed findings and conclusions and supporting reasons for them.

§ 13.63 Record.

The testimony and exhibits presented at a hearing, together with all papers, requests, and rulings filed in the proceedings are the exclusive basis for the issuance of an order. Either party may obtain a transcript from the official reporter upon payment of the fees fixed therefor.

§ 13.65 Federal Rules of Civil Procedure.

The Federal Rules of Civil Procedure, where applicable, govern any situation arising in a hearing that is not provided for or controlled by this subpart.

§ 13.67 Order of Hearing Officer.

(a) The Hearing Officer shall include in the Order a statement of findings and conclusions upon all material issues of fact and law presented in the record and the appropriate sanction or denial thereof.

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

(c) The order of the Hearing Officer may amend, suspend, or revoke the respondent's certificate as proposed, or in

a lesser degree, may rescind the Notice of Proposed Certificate Action, or may, if the Hearing Officer considers it to be equitable and in the public interest, terminate the action upon agreement by the parties for the payment of a civil penalty in an agreed amount.

(d) If the order amends, suspends, or revokes the respondent's certificate, the Hearing Officer shall state in the order that the respondent has a right of appeal to the Civil Aeronautics Board.

PART 13—DISTRIBUTION TABLE

Former section	Revised section	Former section	Revised section
408.1-----	(¹)	408.38 (1st	
408.11-----	13.1	sentence) --	13.35
408.12-----	13.3	408.38 (less 1st	
408.21-----	13.11	sentence) --	13.43
408.22-----	13.13	408.39-----	13.45
408.23-----	13.15	408.40-----	13.47
408.24-----	13.17	408.41-----	13.49
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408.35-----	13.39	408.49-----	13.65
408.36-----	13.41	408.50-----	13.67
408.37-----	13.35		

¹ Transferred to Part 1.

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