

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

SUBCHAPTER B—PROCEDURAL RULES

[Docket No. 10032; Amdt. 14-01]

PART 13—ENFORCEMENT PROCEDURES

Elimination of Formal Hearings in Certain FAA Certificate Proceedings

The purpose of these amendments to Part 13 of the Federal Aviation Regulations is to eliminate the FAA formal hearings in certificate proceedings taken by the Administrator pursuant to section 609 of the Federal Aviation Act of 1958 (49 U.S.C. 1429).

Interested persons have been afforded an opportunity to participate in the making of these amendments by a notice of proposed rule making (Notice 69-54) issued on December 17, 1969, and published in the FEDERAL REGISTER on December 23, 1969 (34 F.R. 20064).

Eleven public comments were received on the notice. Several commentators supported the proposal. Several commentators opposed the proposal on the grounds that it would deprive the certificate holder of an opportunity for one of two formal hearings or an opportunity for discovery (in the first hearing) of the FAA's case against him. However, as stated in the notice, the legislative history of the Federal Aviation Act of 1958 indicates that Congress, when enacting section 609 of the Act, contemplated only one adversary hearing in the CAB (now the NTSB). Furthermore, as stated in the notice, according to a report prepared by staff members of the Administrative Conference of the United States, the two-trial feature of the certificate action process dissipated a respectable amount of governmental energy. As also stated in the notice, the expectation of the FAA, when it provided a formal hearing in 1962, that in most cases appeals to the CAB would be taken on the record of the proceedings before the FAA Hearing Officer, was not fulfilled. Thus, the FAA formal hearing is not required by law, it has been wasteful of time and money, and hearings before NTSB Hearing Examiners have generally been de novo.

Other comments received in opposition to the proposal displayed lack of understanding of the nature of the proposal. Thus, it was asserted that the burden of proof would be shifted to the certificate holder. However, this does not result from these amendments. It was also asserted that the proposal would result in "punishment before trial". However, except in emergency cases the effectiveness of the order of the Administrator is stayed if the certificate holder appeals to the NTSB. It was also asserted that the proposed action would result in a hearing before a "biased" panel. As

stated in the notice, although the FAA and the NTSB are both within the Department of Transportation, the NTSB is independent of both the Secretary of Transportation and the Administrator when reviewing certificate actions under section 609 of the Federal Aviation Act. Still another assertion was that extra expense will be incurred by the United States and certificate holders for transporting NTSB Hearing Examiners and their staffs to the site of the hearings. On the contrary, as indicated by the notice, government expenses will be reduced as a result of the elimination of one formal hearing. Both the FAA Hearing Officers and the NTSB Hearing Examiners are based in Washington, D.C., and must travel to the site of the hearing. Thus, no increase in travel expense will result, and there will be no increase in expense to the certificate holder from elimination of one step in the enforcement process.

As indicated in the notice, another recent notice of proposed rule making also involved Part 13 (Notice 69-37 issued on Aug. 28, 1969, and published in the FEDERAL REGISTER on Sept. 5, 1969; 34 F.R. 14079). Notice 69-37 was implemented by a final rule issued on January 6, 1970, and published in the FEDERAL REGISTER on February 5, 1970 (35 F.R. 2578). Amendment 13-7 provided procedures for suspending or revoking a Certificate of Aircraft Registration for any cause that renders the aircraft ineligible for registration. That amendment extended to such cases an opportunity for a formal hearing before an FAA Hearing Officer. There is no appeal in such a case to the NTSB, since the Federal Aviation Act of 1958 provides the appeal only in certificate actions under title VI of the Act. The rule-making action now taken reflects the change made by Amendment 13-7.

In consideration of the foregoing, Part 13 of the Federal Aviation Regulations is amended, effective May 1, 1970, as follows:

1. By amending paragraph (c) of § 13.19 to read as follows:

§ 13.19 Certificate action.

(c) Before issuing an order under paragraph (b) of this section, the General Counsel, the Regional Counsel concerned, or the Aeronautical Center Counsel (as to matters under title V of the Act) 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 certificate;
- (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 if the charges concern a matter under title V of the Act.

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 and the charges concern a matter under title V of the Act, 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, the Regional Counsel concerned, or the Aeronautical Center Counsel (as to matters under title V of the Act) issues the order of the Administrator, except that if the holder has made a valid request for a formal hearing on a matter under title V of the Act initially or after an informal conference, Subpart D of this part governs further proceedings.

2. By amending the title of Subpart D to read as follows:

Subpart D—Rules of Practice for Hearings in FAA Certificate of Aircraft Registration Proceedings

3. By amending the last sentence in paragraph (b) of § 13.35 to read as follows:

§ 13.35 Request for hearing.

(b) * * * If he does not do so, the General Counsel or the Aeronautical Center Counsel issues the order of the Administrator.

§ 13.67 [Amended]

4. By striking out paragraph (a) of § 13.67.

5. By amending the first sentence in paragraph (c) of § 13.67 to read as follows: "If the final order of the Hearing Officer makes a decision on the merits, it contains a statement of his findings and conclusions on all material issues of fact and law."

6. By striking out paragraph (e) of § 13.67.

(Secs. 313(a), 601, 609, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1429); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); § 1.4(b)(1) of the regulations of the Office of the Secretary of Transportation)

Issued in Washington, D.C., on March 25, 1970.

J. H. SHAFFER,
Administrator.

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