

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 13

[Docket No. 18884; Amdt. No. 13-14]

Procedures for Filing Complaints, Issuing Certain Orders and Conducting Formal Fact Finding Investigations

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: The FAA amends its rules of practice in enforcement cases to provide a regulatory mechanism for the filing of formal complaints, and to prescribe enforcement procedures for the issuance of certain orders of denial, cease and desist orders and orders of compliance, and the conduct of formal fact finding investigations under the Federal Aviation Act of 1958, the Airport and Airway Development Act of 1970, and the Hazardous Materials Transportation Act.

EFFECTIVE DATE: November 5, 1979.

FOR FURTHER INFORMATION CONTACT:

Jonathan Howe, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C., Telephone (202) 426-3775.

SUPPLEMENTARY INFORMATION:

General Comment

These amendments are based on Notice 79-6, which was published in the Federal Register on March 19, 1979 (44 FR 16424). Interested persons have been afforded an opportunity to participate in the making of this amendment and due consideration has been given to all matter presented.

Since this amendment adopts a substantial redefinition and codification of investigative and enforcement procedures by the FAA, the statement of the objectives of this process which was published in Notice 79-6, is repeated below, together with a discussion of the more significant comments and changes to the proposed amendment resulting therefrom. Of the 7 comments received, only one objected generally to the proposed amendment. That commentator recommended the FAA propose in a new notice a general reorganization of the form and content of Part 13 of the Federal Aviation Regulations. Although a number of the commentator's recommendations may have merit, the benefit to the public of a regulatory mechanism for the filing of formal complaints and the provision of procedures for the conduct of formal investigations and certain enforcement

actions should not be delayed by the institution of additional rulemaking procedures related primarily to the form rather than the substance of the procedures. However, several changes in format and organization have been made as a result of the comments received. The FAA also contemplates a review of the procedures established by these amendments after they have been in operation for at least one year and desires public participation in that review. Interested persons are invited to submit such comments as they may desire with respect to the enforcement procedures and the format of Part 13. Communications should identify the regulatory docket number of this amendment (Docket No. 18884) 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 October 31, 1980, will be considered during this review, and will be available both before and after that date in the Rules Docket for examination by interested persons.

Regulatory History

As a result of the passage of the Airline Deregulation Act of 1978 (Pub. L. 95-504, 92 Stat. 1705), the FAA has placed added importance on its responsibility to assure that the laws under which it operates are strictly enforced. Implicit in the authority to issue regulations is the responsibility to enforce them. While compliance with the safety standards established under Title VI of the Federal Aviation Act of 1958 (FAAct) continues to be the principal focus of the agency's enforcement program, that program today extends to requirements imposed by Titles III and V of the FAAct, the Hazardous Materials Transportation Act, and the Airport and Airway Development Act.

The types of actions possible under these statutes are set out in Part 13 of the Federal Aviation Regulations (FAR). They span a range from Warning Notices to certificate suspensions and revocations, summary aircraft seizure and substantial civil penalties. The procedure followed by the FAA is essentially that followed by any law enforcement agency vested with authority to take civil actions. Criminal sanctions are provided by statute for certain violations; however, these actions are undertaken by the Department of Justice.

Except in the case of administrative actions taken as provided for in Subpart B of Part 13, an investigation is initiated

to determine whether a basis exists for taking legal action. Ordinarily, no final legal disposition within the meaning of the Administrative Procedure Act is taken without notice and an opportunity to be heard. Important exceptions, however, are the provisions of sections 603 and 1005 of the FAAct which allow for summary seizure of aircraft and emergency orders without prior notice or hearing.

In accordance with section 901(a)(2) of the FAAct, any civil penalty action may be compromised by the Administrator, and no administrative adjudications are made. A final adjudication on the merits is possible only after suit is brought in the United States District Court. Civil penalties imposed pursuant to the Hazardous Materials Transportation Act are administratively adjudicated since both that Act and the regulations provide for notice and an opportunity to be heard. All other orders and requirements imposed pursuant to these statutes are judicially enforceable and subject to judicial review.

The procedures adopted in these amendments will assure that all enforcement actions taken by the FAA fit within the process described above. They will also serve to codify and standardize existing procedures which were not set out in Part 13. Except in emergency actions and cases involving aircraft seizure, no order by the FAA will take effect without there first being notice and an opportunity for hearing either before the FAA or, in the case of actions pursuant to sections 602 and 609 of the FAAct, before the National Transportation Safety Board. Hearings before the FAA will be in accordance with Subpart D of Part 13.

As stated in Notice 79-6, no significant changes in the investigative process are intended. The formal fact-finding investigation procedures set forth in new Subpart F of Part 13 essentially codifies existing practices and is not expected to be used frequently. It should be emphasized, however, that these procedures are simply a part of the FAA's general investigative powers and in no way should be construed as an "opportunity to be heard" as previously discussed. It should also be noted that actions currently in process will not be affected by these amendments.

Formal Complaints

Procedures for processing formal complaints have been established in § 13.5 in Subpart A of Part 13 since the procedures pertain to investigation of complaints rather than legal enforcement action. (These procedures

were proposed in Notice 79-8 as a new § 13.12 in Subpart C of Part 13.) Section 13.5 establishes procedures for processing complaints alleging violations of any provision of a law, regulation, or order for which the Administrator of the FAA exercises enforcement responsibility. These procedures will also facilitate enforcement of regulations issued pursuant to the requirements of section 30 of the Airport and Airway Development Act of 1970 (49 U.S.C. 1730) and the processing of complaints filed thereunder. This section provides that no person shall be excluded on the grounds of race, creed, color, national origin, or sex from participating in any project for airport development, airport master planning, or airport system planning conducted with funds received from a grant made under the Airport Aid Program.

The amendment will assist persons who file formal complaints for orders or other enforcement actions by specifying: (1) A central location for the filing of complaints, (2) the information that must be submitted with the complaint, and (3) the procedures for processing the complaint. The procedures provide for notice to the person complained of; investigation of the allegations set forth in the complaint, including initiation of Subpart F fact-finding investigative procedures, as appropriate; and the initiation of enforcement action if the investigation substantiates the allegations set forth in the complaint.

In response to the suggestion of one commentator, § 13.5(h) has been revised to make it clear that, if a complaint is dismissed, the person who filed the complaint and the person named in the complaint will be given the reasons for the dismissal.

Two comments expressed concern that the investigational authority in § 13.1 could lead to abuse of the power vested in the FAA and recommended guidelines be established to define when an investigation should be opened and when a formal complaint should be investigated and that limitations be placed on the investigations. Sections 313 and 1002 of the FAA Act authorizes the Administrator to conduct such investigations as he shall deem necessary to carry out the provisions of, and to exercise and perform his powers and duties, under the FAA Act. The Administrator has the duty to investigate any possible violations of the FAA Act or the regulations issued thereunder and to take appropriate enforcement or other action to provide for aviation safety and the public interest. The regulations cannot alter

that responsibility and authority and this amendment to § 13.1 merely adds the Airport and Airway Development Act of 1970 to the statutes listed in the present regulations under which the Administrator conducts investigations. In addition, the codification of existing procedures for formal investigations should eliminate any concern regarding abuse of the power vested in the Administrator.

FAA Hearings

Several comments were received concerning the hearing procedures of Subpart D of Part 13. One commentator recommended that Subpart D be rewritten to conform to the hearing procedures of the Administrative Procedure Act (APA) (5 U.S.C. 551 et seq.). Since the hearings held under Subpart D are not required by statute to be held on the record they are not required to conform to the APA procedures. However, the Subpart D procedures do satisfy statutory and due process requirements for such hearings.

Another comment expressed concern that § 13.59(b) could compel the entry of proprietary and trade secret information into the public record without protection to persons holding that information. Although this authority is implicit in the authority of Hearing Officers, in view of the comment, it is being made explicit in new § 13.59(c). This amendment provides that a Hearing Officer may, upon the Hearing Officer's own motion or the motion of any interested person and for good cause shown, issue a protective order withholding from public disclosure any information contained in any report or document filed or in any testimony given when, in the judgement of the Hearing Officer, disclosure would adversely affect the interest of any person and the information is not required in the public interest or is not otherwise required by statute to be made available to the public. Section 13.115 has also been modified to more clearly state this provision with regard to Presiding Officers in formal fact-finding investigations.

Commentator also felt that the 10 day period specified in §§ 13.20(d) and 13.75(c) to request a hearing should be increased to at least 30 days. Ten days should be sufficient time in most cases to note a request for a hearing since there is no requirement for the filing of any legal document or other material when requesting a formal hearing. However, the amendments do provide procedures for the granting of extensions of time should it be needed in a particular case.

As stated in Notice 79-8, any appeal to the Administrator from a Hearing

Officer's decision and order will be decided on the record of the FAA hearing and will not involve a trial *de novo*. The Administrator's decision and order is both an "adjudication" and "final disposition" within the meaning of section 551 of the APA and is therefore subject to judicial review in accordance with applicable statutes.

Provision has been made in new § 13.13 for the issuance of consent orders in any legal enforcement action taken under Subpart C. Similar procedures are presently provided for in § 13.77 in Subpart E of Part 13 relating to orders of compliance under the Hazardous Materials Transportation Act. In addition, § 13.13(c) has been changed, to correct a clerical error, by inserting after the word "include" the words, "a request to be filed."

Orders of Compliance, Cease and Desist Orders, Orders of Denial and Other Orders

Although Subpart E of Part 13 sets forth procedures for the issuance of orders of compliance under the Hazardous Materials Transportation Act, Part 13 does not contain procedures for the issuance of orders of compliance under the FAA Act or the Airport and Airway Development Act of 1970. Accordingly, this amendment to § 13.20 in Subpart C establishes procedures for the issuance of orders of compliance with the provisions of those acts and any orders or regulations issued thereunder.

The FAA also issues other orders which meet the "final disposition" test discussed above. Examples of these include orders to cease and desist, orders of denial, and orders under section 308(a) of the FAA Act. Since no statutory provision for an "opportunity to be heard" exists for orders of this type (except for orders of denial of airman certificates issued under section 602 of the FAA Act), the potential exists for administratively final orders to be issued without basic "due process" protections. Equally important is the requirement imposed by section 1006 of the FAA Act that such orders are subject to judicial review by the Courts of Appeals of the United States or the U.S. Court of Appeals for the District of Columbia. To assure due process and administrative records before these Courts sufficient to dispose of the matter properly, this amendment to § 13.20 provides notice and an opportunity for a hearing in accordance with Subpart D of Part 13. The amendment also expands the provisions of this section to orders other than to cease and desist. The limited scope of present § 13.20, which is confined to emergencies under section

1005(a) of the FAA Act, is no longer a proper reflection of the range of administratively final orders issued by the FAA. Furthermore, the authority conferred by section 1005(a) of the FAA Act is not available for proceedings arising under the Airport and Airway Development Act of 1970. One comment suggested that the procedures in present § 13.20 should be retained if the FAA intends to continue to respond to emergencies in the same manner it has in the past. No change in current procedure is intended. Section 13.20(b) recognizes that emergency action may be required and, in appropriate situations, the Administrator's emergency authority under section 1005(a) of the FAA Act may be exercised in the issuance of orders under the FAA Act.

One comment suggested that Subpart E of Part 13, which sets forth procedures for the issuance of orders under the Hazardous Materials Transportation Act, should be consolidated with Subpart C (Legal Enforcement Actions.) Revised § 13.20 in Subpart C contains procedures for issuing various orders, including orders of compliance, which are similar in many respects to the procedures set forth in subpart E. However, in view of differences in the statutes and regulations to which the procedures relate, Notice 79-6 retained their separate identity. Nevertheless, a codification of these procedures may be appropriate and comments on this aspect of the format of Part 13 are specifically requested in connection with the one year review of the procedures discussed above.

It should also be noted that orders issued pursuant to sections 602 and 609 of the FAA Act are excluded from the provisions of § 13.20. This is because those sections specifically provide for review by or an appeal to the National Transportation Safety Board prior to judicial review under section 1006 of the FAA Act. Sections 602 and 609 of the FAA Act deal with the issuance of airman certificates and the amendment, suspension, and revocation of various certificates issued by the FAA. The National Transportation Safety Board's rules of practice for such proceedings may be found in 49 CFR Part 821.

Fact-Finding Investigations

The FAA has broad authority under the statutes it administers to conduct investigations. The fundamental purpose of these investigations is to gather facts necessary to determine whether some formal action under these laws should be taken. The possible formal actions which might be taken include enforcement or rulemaking and

adjudication as defined by section 551 of the APA. While the FAA relies primarily on informal investigative processes designed to obtain information from all segments of the public, the need occasionally arises for a more formal proceeding. The need arises primarily when the subject matter of the investigation is extremely controversial or persons are reluctant to provide information or otherwise cooperate. In such cases it is difficult to obtain facts without the taking of sworn testimony and the subpoenaing of records.

Under the laws set out above, the Administrator is empowered to conduct public hearings or investigations, take evidence and depositions and issue subpoenas. The Administrator may also require the production of documents, records, and property. In addition, the Administrator may compel testimony pursuant to the provisions of section 201(a) of the Organized Crime Control Act of 1970 (18 U.S.C. 8002 and 8004). The Federal Aviation Regulations presently do not expressly implement these powers and the agency has in the past relied on the language of the statutes themselves in the conduct of such investigations. This has frequently resulted in "ad hoc" proceedings. The lack of uniform, published procedures often makes it difficult for parties to such an investigation to know what is required of them. While the FAA does not anticipate any appreciable change from the present number of formal investigations, adoption of these regulations will both improve and simplify the existing uncodified procedures. It should be remembered that these formal fact-finding investigations are not adjudicatory in nature and are not proceedings in which a decision or order regarding the matter under investigation can be issued against any person. Rather, the proceedings are intended to determine whether sufficient facts exist to warrant further action. Likewise, these are not adversary proceedings in the common law sense, although the elements of fundamental due process are provided. To emphasize the distinction between proceedings under Subpart F and hearings held pursuant to Subpart D of Part 13, the official authorized to conduct these investigations is designated as the "Presiding Officer" as distinct from the "Hearing Officer" in the latter regulation. This terminology is also consistent with the language appearing in Subpart E of Part 77 of the Federal Aviation Regulations.

Sections 13.103(b) and 13.125 in Subpart F allow investigative depositions as provided for in section

1004(e) of the FAA Act as a part of the formal investigations conducted under Subpart F. However, nothing in these sections should be construed as limiting the authority of duly designated persons to issue subpoenas, administer oaths, examine witnesses and receive evidence in any informal fact-finding investigation as provided for in section 1604(a) of the FAA Act.

The authority to conduct formal fact-finding investigations is delegated to the Chief Counsel, the Deputy Chief Counsel, each Assistant Chief Counsel, and each Regional Counsel. The Aeronautical Center Counsel is also delegated such authority for the purpose of investigating alleged violations of Title V of the FAA Act, or any regulations issued under it. The investigation is initiated by the issuance of an order of investigation and the procedures are intended to provide an expeditious and efficient handling of investigations with a minimum of inconvenience to persons who may be required to appear and testify. Upon completion of the investigation, the Presiding Officer will issue a report of the investigation, including a summary of principal conclusions. If the facts indicate no action is warranted, the investigative files are closed. Where action is initiated, the Administrator proceeds in accordance with the prescribed procedures under the FAA Act, the Hazardous Materials Transportation Act, the Airport and Airway Development Act of 1970, or the Administrative Procedure Act as applicable, and the rules and regulations issued thereunder.

One comment suggested the consolidation of the procedures in Subpart F (Fact-Finding Investigations) into Subpart A (Investigative Procedures). Revised § 13.3 in Subpart A provides for the issuance of orders of investigation in situations where formal fact-finding investigations are needed. However, the procedures for the conduct of such investigations are issued in a separate subpart for clarity and convenience of reference in the use of such procedures. This use of a separate subpart for a principal division of procedural rules is consistent with the use of Subpart D for the procedural rules applicable to hearings in certain legal enforcement actions described in Subparts C and E of Part 13.

Use of Records, Documents and Reports

The Federal Aviation Regulations contain many recordkeeping and reporting requirements. These records and reports are necessary to assure safety in air transportation and compliance with the laws, regulations

and orders for which the Administrator of the FAA has enforcement responsibility.

The record-keeping and reporting requirements in the regulations have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942. The records and reports are routinely used in fact-finding investigations and enforcement proceedings. The only exceptions to such use provided for in the current regulations are in (1) §§ 121.359(e) and 135.151(b) which state that the Administrator does not use the cockpit voice recorder records required by those regulations in any civil penalty or certificate action, and (2) § 91.57 which states that the Administrator will not use reports submitted to the National Aeronautics and Space Administration under the Aviation Safety Reporting Program (or information derived therefrom) in any enforcement action, except information concerning criminal offenses or accidents which are wholly excluded from the program. One commentator correctly noted that Notice 79-6 failed to indicate the exception in § 135.151(b). This omission was inadvertent and not intentional. In this connection, it should also be noted that § 91.57 was issued June 25, 1979 (after the issuance of Notice 79-6).

In response to frequent questions concerning the use in enforcement actions of records and reports which are required by the Federal Aviation Regulations, the FAA policy concerning the use of these records and reports is set forth in new § 13.7. Section 13.7 specifically provides that any record, document or report required to be maintained, exhibited or submitted to the Administrator (1) may be used in any investigation conducted by the Administrator and (2), except to the extent such use may be specifically limited or prohibited by the section which imposes the requirement, may be used in any civil penalty action, certificate action, or other legal proceeding.

One comment objected to the use of flight recorder data as an enforcement tool and contended that such use was not intended by the recorder requirement in § 121.343. As noted above, the only records the FAA has never used in any civil penalty or certificate action are the cockpit voice recorder records and reports submitted to NASA under the Aviation Safety Reporting Program, and these exclusions are specifically provided for in the regulations. No such exemption is contained in the regulations concerning

flight recorder data. Flight recorder data is no different than any other record or report required by the regulations, and information from these recorders is reviewed and used in investigations and enforcement actions. The fact that information in records and reports required by the regulations may provide information which might be useful in determining the probable cause of an aircraft accident does not preclude its use for another safety purpose, i.e., to assure that the regulations are complied with as required by the Federal Aviation Act.

Other Changes

For clarity, a number of minor editorial changes have been made to Part 13, including changing the word "Act" to "FAAct" wherever it may appear as a reference to the Federal Aviation Act of 1958. Finally, in view of recent FAA organizational changes, § 13.11(a) has been changed to indicate that the FAA field office responsible for processing the enforcement case may take administrative action.

Adoption of the Amendment

Accordingly, Part 13 of the Federal Aviation Regulations (14 CFR Part 13) is amended, effective November 5, 1979, as follows:

1. By revising the Title of Part 13.
 2. By revising Subpart A by amending the table of contents and §§ 13.1 and 13.3, and by adding new §§ 13.5 "Formal complaints" and 13.7 "Records, documents and reports".
 3. By revising Subpart C by amending the table of contents, by adding a new § 13.13 "Consent orders", by amending § 13.20, by amending the title of § 13.21, and by redesignating § 13.67 as § 13.27 in Subpart C.
 4. By revising Subpart D by amending §§ 13.31 and 13.59(b), by adding a new § 13.59(c), and by redesignating § 13.67 as § 13.27 in Subpart C.
 5. By revising Subpart E by amending §§ 13.75 and 13.83(a).
 6. By adding a new Subpart F "Formal Fact-finding Investigation Under an Order of Investigation".
 7. By deleting the word "act" or "Act" wherever it may appear as a reference to the Federal Aviation Act of 1958 and inserting in lieu thereof the word "FAAct".
 8. By revising Part 13 by making minor editorial changes.
- As amended Part 13 of the Federal Aviation Regulations reads in its entirety as follows:

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

Subpart A—Investigative Procedures

- Sec.
- 13.1 Reports of violations.
 - 13.3 Investigations (General).
 - 13.5 Formal complaints.
 - 13.7 Records, documents and reports.

Subpart B—Administrative Actions

- 13.11 Administrative disposition of certain violations.

Subpart C—Legal Enforcement Actions

- 13.13 Consent orders.
- 13.15 Civil penalties: Federal Aviation Act of 1958.
- 13.16 Civil penalties: Hazardous Materials Transportation Act.
- 13.17 Seizure of aircraft.
- 13.19 Certificate action.
- 13.20 Orders of compliance, cease and desist and other orders.
- 13.21 Military personnel.
- 13.23 Criminal penalties.
- 13.25 Injunctions.
- 13.27 Final order of Hearing Officer in certificate of aircraft registration proceedings.

Subpart D—Rules of Practice for FAA Hearings

- 13.31 Applicability.
- 13.33 Appearances.
- 13.35 Request for hearing.
- 13.37 Hearing Officer's powers.
- 13.39 Disqualification of Hearing Officer.
- 13.41 [Reserved].
- 13.43 Service and filing of pleadings, motions, and documents.
- 13.44 Computation of time and extension of time.
- 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.

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

- 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.

Subpart F—Formal Fact-Finding Investigation Under an Order of Investigation

- 13.101 Applicability.
- 13.103 Order of investigation.
- 13.105 Notification.
- 13.107 Designation of additional parties.

Sec.

- 13.109 Convening the investigation.
- 13.111 Subpoenas.
- 13.113 Noncompliance with the investigative process.
- 13.115 Public proceedings.
- 13.117 Conduct of investigative proceeding or deposition.
- 13.119 Rights of persons against self-incrimination.
- 13.121 Witness fees.
- 13.123 Submission by party to the investigation.
- 13.125 Depositions.
- 13.127 Reports, decisions and orders.
- 13.129 Post-investigation action.
- 13.131 Other procedures.

Authority: Secs. 302(f), 303(d), 313(a) and (c), 501-506, 601-606, 1001, 1002(a), (b) and (c), and 1004 through 1009, Federal Aviation Act of 1958 (49 U.S.C. 1342(f), 1344(d), 1354(a) and (c), 1482(a), (b), and (c), and 1484 through 1489); Secs. 109, 110, and 111, Hazardous Materials Transportation Act (49 U.S.C. 1808, 1809, and 1810); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c); Secs. 27 and 30, Airport and Airway Development Act of 1970 (49 U.S.C. 1727 and 1730); Sec. 201(a) of the Organized Crime Control Act of 1970 (18 U.S.C. 6002 and 6004); and Secs. 1.47(f) and (k), Regulations of the Office of the Secretary of Transportation (49 CFR 1.47).

Subpart A—Investigative Procedures**§ 13.1 Reports of violations.**

(a) Any person who knows of a violation of the Federal Aviation Act of 1958, the Hazardous Materials Transportation Act relating to the transportation or shipment by air of hazardous materials, or the Airport and Airway Development Act of 1970, or of any regulation or order issued under those acts should report it to appropriate personnel of any FAA regional or district office.

(b) Each report made under this section, together with any other information the FAA may have that is relevant to the matter reported, will be reviewed by FAA personnel to determine the nature and type of any additional investigation or enforcement action the FAA will take.

§ 13.3 Investigations (general).

(a) Under the Federal Aviation Act of 1958 (49 U.S.C. 1301 et seq.), the Airport and Airway Development Act of 1970 (49 U.S.C. 1701 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. 1801 et seq.), and the Regulations of the Office of the Secretary of Transportation (49 CFR 1 et seq.), the Administrator may conduct investigations, hold hearings, issue subpoenas, require the production of relevant documents, records, and property, and take evidence and depositions.

(b) For the purpose of investigating alleged violations of the Federal Aviation Act of 1958 (except Title V),

the Airport and Airway Development Act of 1970, or the Hazardous Materials Transportation Act, or any regulation or order issued under these Acts, the Administrator's authority has been delegated to the various services and offices for matters within their respective areas for all routine investigations. When the compulsory processes of sections 313 and 1004 (49 U.S.C. 1354 and 1484) of the Federal Aviation Act, or section 109 of the Hazardous Materials Transportation Act (49 U.S.C. 1808) are invoked, the Administrator's authority has been delegated to the Chief Counsel, the Deputy Chief Counsel, each Assistant Chief Counsel, and each Regional Counsel. For the purpose of investigating alleged violations of Title V of the Federal Aviation Act, or any regulation or order issued under it, the Administrator's authority has been delegated to the Chief Counsel, the Deputy Chief Counsel, and the Aeronautical Center Counsel.

(c) In conducting formal investigations, the Chief Counsel, the Deputy Chief Counsel, each Assistant Chief Counsel, each Regional Counsel, and the Aeronautical Center Counsel may issue an order of investigation in accordance with Subpart F of this part.

§ 13.5 Formal complaints.

(a) Any person may file a complaint with the Administrator with respect to anything done or omitted to be done by any person in contravention of any provision of any Act or of any regulation or order issued under it, as to matters within the jurisdiction of the Administrator. This section does not apply to complaints against the Administrator or employees of the FAA acting within the scope of their employment.

(b) Complaints filed under this section must—

(1) Be submitted in writing and identified as a complaint filed for the purpose of seeking an appropriate order or other enforcement action.

(2) Be submitted to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Enforcement Docket (AGC-27), 800 Independence Avenue, S.W., Washington, D.C. 20591;

(3) Set forth the name and address, if known, of each person who is the subject of the complaint and, with respect to each person, the specific provisions of the Act or regulation or order that the complainant believes were violated;

(4) Contain a concise but complete statement of the facts relied upon to substantiate each allegation;

(5) State the name, address and telephone number of the person filing the complaint; and

(6) Be signed by the person filing the complaint or a duly authorized representative.

(c) Complaints which do not meet the requirements of paragraph (b) of this section will be considered reports under § 13.1.

(d) Complaints which meet the requirements of paragraph (b) of this section will be docketed and a copy mailed to each person named in the complaint.

(e) Any complaint filed against a member of the Armed Forces of the United States acting in the performance of official duties shall be referred to the Secretary of the Department concerned for action in accordance with the procedures set forth in § 13.21 of this part.

(f) The person named in the complaint shall file an answer within 20 days after service of a copy of the complaint.

(g) After the complaint has been answered or after the allotted time in which to file an answer has expired, the Administrator shall determine if there are reasonable grounds for investigating the complaint.

(h) If the Administrator determines that a complaint does not state facts which warrant an investigation or action, the complaint may be dismissed without a hearing and the reason for the dismissal shall be given, in writing, to the person who filed the complaint and the person named in the complaint.

(i) If the Administrator determines that reasonable grounds exist, an informal investigation may be initiated or an order of investigation may be issued in accordance with Subpart F of this part, or both. Each person named in the complaint shall be advised which official has been delegated the responsibility under § 13.3(b) or (c) for conducting the investigation.

(j) If the investigation substantiates the allegations set forth in the complaint, a notice of proposed order may be issued or other enforcement action taken in accordance with this part.

(k) The complaint and other pleadings and official FAA records relating to the disposition of the complaint are maintained in current docket form in the Enforcement Docket (AGC-27), Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, S. W., Washington, D. C. 20591. 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 applicable law or

regulations, and may obtain a photostatic or duplicate copy upon paying the cost of the copy.

§ 13.7 Records, documents and reports.

Each record, document and report that the Federal Aviation Regulations require to be maintained, exhibited or submitted to the Administrator may be used in any investigation conducted by the Administrator; and, except to the extent the use may be specifically limited or prohibited by the section which imposes the requirement, the records, documents and reports may be used in any civil penalty action, certificate action, or other legal proceeding.

Subpart B—Administrative Actions

§ 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 FAA field office responsible for processing the enforcement case 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.

Subpart C—Legal Enforcement Actions

§ 13.13 Consent orders.

(a) At any time before the issuance of an order under this subpart, the official who issued the notice and the person subject to the notice may agree to dispose of the case by the issuance of a consent order 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;
- (2) An admission of all jurisdictional facts;
- (3) An express waiver of the right to further procedural steps and of all rights to judicial review; and

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

(c) 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.

§ 13.15 Civil penalties: Federal Aviation Act of 1958.

(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 Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, the Aeronautical Center Counsel (as to matters under Title V of the FAA Act), 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 Administration. The Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, the Aeronautical Center Counsel (as to matters under Title V of the FAA Act), 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

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

§ 13.16 Civil penalties: Hazardous Materials Transportation Act.

(a) Section 110 of the Hazardous Materials Transportation Act (49 U.S.C. 1809) provides for civil penalties, for persons who knowingly commit acts that are violations of that Act, or of any regulation issued under it, of not more than \$10,000 for each violation.

(b) The authority under section 110 of the Hazardous Materials Transportation Act to initiate, compromise, and assess civil penalties, and refer cases to the United States Attorney General for collection of such civil penalties for violations of that Act, or of regulations dealing with transportation or shipment of hazardous materials by air issued under that Act, as delegated to the Administrator, has been redelegated to the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, and to each Regional Counsel.

(c) The redelegation in paragraph (b) of this section is in addition to the authority to take civil penalty action under § 13.15 of this part with respect to violations of the Federal Aviation Act of 1958, and regulations, or orders issued under that Act, involving transportation or shipment of hazardous materials, as delegated to the Administrator.

(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 the person 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 the 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 appellant 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 the decision, and the Administrator's 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 the official 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 the 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 or she cannot pay the proposed penalty or assessment or that it would prevent him or her from continuing in business, the person charged 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 penalty may refer to it to the United States Attorney General, or the delegate of the Attorney General, 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 United States 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.

§ 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 Administration safety inspector, authorized in an order of seizure issued by the Regional Director of the region, or by the Chief Counsel, 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 Regional Director or Chief Counsel, without delay, sends a written notice and a copy of this section, to the registered owner of the seized aircraft, and to each other persons 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 Chief Counsel or 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 the District Attorney to institute proceedings to enforce a lien against the aircraft.

(e) The Regional Director or Chief Counsel 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 District Attorney for the judicial district concerned notifies the FAA that the District Attorney refuses to institute those proceedings; or

(3) A bond in the amount and with the sureties prescribed by the Chief Counsel or the Regional Counsel 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. Under section 501(e) of the FAA Act, any Certificate of Aircraft Registration may be suspended or revoked by the Administrator for any cause that renders the aircraft ineligible for registration.

(b) If, as a result of such a reinspection re-examination, or other investigation made by the Administrator under section 609 of the FAA Act, the Administrator determines that the public interest and safety in air commerce requires it, the Administrator 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. This authority may be exercised for remedial purposes in cases involving the Hazardous Materials Transportation Act (49 U.S.C. 1801 et seq.) or regulations issued under that Act. This authority is also exercised by the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, and the Regional Counsel concerned. If the Administrator finds that any aircraft registered under Part 47 of this chapter is ineligible for registration or if the holder of a Certificate of Aircraft Registration has refused or failed to submit Part 1, AC Form 8050-73, as required by § 47.44 of this chapter, the Administrator issues an order suspending or revoking that certificate. This authority as to aircraft found ineligible for registration is also exercised by the Aeronautical Center Counsel.

(c) Before issuing an order under paragraph (b) of this section, the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, the Regional Counsel concerned, or the Aeronautical Center Counsel (as to matters under Title V of the FAA 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 the holder with the notice of proposed certificate action, elect to—

- (1) Admit the charges and surrender his or her certificate;
- (2) Answer the charges in writing;
- (3) Request that an order be issued in accordance with the notice of proposed

certificate action so that the certificate holder may appeal to the National Transportation Safety Board, if the charges concerning a matter under Title VI of the FAA Act;

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

(5) Request a hearing in accordance with Subpart D of this part if the charges concern a matter under Title V of the FAA Act.

Except as provided in § 13.35(b), unless the certificate holder returns the form and, where required, an answer or motion, with a postmark of not later than 15 days after the date of receipt of the notice, the order of the Administrator is issued as proposed. If the certificate holder has requested an informal conference with the FAA counsel and the charges concern a matter under Title V of the FAA Act, the holder 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 certificate holder, the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, the Regional Counsel concerned, or the Aeronautical Center Counsel (as to matters under Title V of the FAA 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 FAA Act initially or after an informal conference, Subpart D of this part governs further proceedings.

(d) Any person whose certificate is affected by an order issued under this section may appeal to the National Transportation Safety Board. If the certificate holder files an appeal with the Board, the Administrator's order is stayed unless the Administrator advises the Board that an emergency exists and safety in air commerce requires that the order become effective immediately. If the Board is so advised, the order remains effective and the Board shall finally dispose of the appeal within 60 days after the date of the advise. This paragraph does not apply to any person whose Certificate of Aircraft Registration is affected by an order issued under this section.

§ 13.20 Orders of compliance, cease and desist orders, orders of denial and other orders.

(a) This section applies to the issuance of orders of compliance, cease and desist orders, orders of denial and other orders as the Administrator shall deem necessary to carry out the provisions of the Federal Aviation Act

of 1958 and the Airport and Airway Development Act of 1970. This section does not apply to orders issued pursuant to sections 602 and 609 of the FAA Act.

(b) Unless the Administrator determines that an emergency exists and safety in air commerce requires the immediate issuance of an order under this section, the person subject to the order shall be provided with notice prior to issuance.

(c) Within 30 days after service of the notice, the person subject to the order may reply in writing or request a hearing in accordance with Subpart D of this part.

(d) If a reply is filed, as to any charges not dismissed or not subject to a consent order, the person subject to the order 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.

(e) Failure to request a hearing within the period provided in paragraphs (c) or (d) of this section—

(1) Constitutes a waiver of the right to appeal and the right to a hearing, and

(2) Authorizes the official who issued the notice to find the facts to be as alleged in the notice, or as modified as the official may determine necessary based on any written response, and to issue an appropriate order, without further notice or proceedings.

(f) If a hearing is requested in accordance with paragraph (c) or (d) of this section, 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, shall set forth findings and conclusions and the reasons therefor, and either—

(1) Dismiss the notice; or

(2) Issue an order.

(g) Any party to the hearing 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.

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

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

(j) On appeal the Administrator reviews the available record of the proceeding, and issues an order dismissing, reversing, modifying or affirming the order. The Administrator's

order includes the reasons for the Administrator's action.

(k) For good cause shown, requests for extensions of time to file any document under this section may be granted by—

(1) The official who issued the order, if the request is filed prior to the designation of a Hearing Officer; or

(2) The Hearing Officer, if the request is filed prior to the filing of a notice of appeal; or

(3) The Administrator, if the request is filed after the filing of a notice of appeal.

(l) Except in the case of an appeal from the decision of a Hearing Officer, the authority of the Administrator under this section is also exercised by the Chief Counsel, Deputy Chief Counsel, each Assistant Chief Counsel and each Regional Counsel and the Aeronautical Center Counsel (as to matters under Title V of the Federal Aviation Act of 1958).

(m) 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.

§ 13.21 Military personnel.

If a report made under this part indicates that, while performing 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 Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, 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. Section 110(b) of the Hazardous Materials Transportation Act (49 U.S.C. 1809(b)) provides for a criminal penalty of a fine of not more than \$25,000, imprisonment for not more than five years, or both, for any person who willfully violates a provision of that Act or a regulation or order issued under it.

(b) If an inspector or other employee of the FAA becomes aware of a possible violation of any criminal provision of the Federal Aviation Act of 1958 (except

a violation of section 902 (i) through (m) which is reported directly to the Federal Bureau of Investigation), or of the Hazardous Materials Transportation Act, relating to the transportation or shipment by air of hazardous materials, he or she shall report it to the Office of the Chief 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 or she shall immediately report it to that agency according to standard FAA practices.

§ 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 United States Attorney General, or the delegate of the Attorney General, 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 United States 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).

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

(a) If, in proceedings under section 501(b) of the Federal Aviation Act of 1958 (49 USC 1401), the Hearing Officer determines that the holder of the Certificate of Aircraft Registration has refused or failed to submit Part 1, AC Form 8050-73, as required by § 47.44 of this chapter, or that the aircraft is ineligible for a Certificate of Aircraft Registration, the Hearing Officer shall suspend or revoke the respondent's certificate, as proposed in the notice of proposed certificate action.

(b) If the final order of the Hearing Officer makes a decision on the merits, it shall contain a statement of law on all material issues of fact and law. If the Hearing Officer finds that the allegations of the notice have been proven, but that no sanction is required, the Hearing Officer shall make appropriate findings and issue an order terminating the notice. If the Hearing Officer finds that the allegations of the notice have not been proven, the Hearing Officer shall issue an order dismissing the notice. If the Hearing Officer finds it to be equitable and in the public interest, the Hearing Officer shall issue an order terminating the proceeding upon payment by the respondent of a civil penalty in an amount agreed upon by the parties.

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

Subpart D—Rules of Practice for FAA Hearings

§ 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), 13.20(c), 13.20(d), 13.75(a)(2), 13.75(b), or 13.81(e).

§ 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) A request for hearing must be made in writing to the Hearing Docket, Room 914E, Federal Aviation Administration, 800 Independence Avenue, S.W., 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 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 Hearing Docket.

§ 13.37 Hearing Officer's powers.

Any Hearing Officer may—

(a) Give notice concerning, and hold, prehearing conferences and hearings;

(b) Administrator oaths and affirmations;

(c) Examine witnesses;

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

(e) Issue subpoenas and take depositions or cause them to be taken;

(f) Rule on offers of proof;

(g) Receive evidence;

(h) Regulate the course of the hearing;

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

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

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

§ 13.39 Disqualification of Hearing Officer.

If disqualified for any reason, the Hearing Officer shall withdraw from the case.

§ 13.41 [Reserved]

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

(a) Copies of all pleadings, motions, and documents filed with the Hearing Docket must be served upon all parties to the proceedings 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.

§ 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 Hearing Docket 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.

§ 13.45 Amendment of notice and answer.

At any time more than 10 days before the date of hearing, any party may amend his or her 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, amendments may be allowed 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.

§ 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 the request for hearing.

§ 13.49 Motions.

(a) Motion to dismiss for insufficiency. A respondent who requests a formal hearing may, in place of an answer, file a motion to dismiss for failure of the allegations in the notice of proposed action to state a violation of the FAAct or of this chapter or to show lack of qualification of the respondent. If the Hearing Officer denies the motion, the respondent shall file an answer within 10 days.

(b) [Reserved]

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

certificate holder shall file an answer within 10 days after the date it is denied.

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

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

(f) 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 hearings, and that is in the party's possession, custody, or control.

(g) Consolidation of motions. A party who makes a motion under this section shall join with it all other motions that are then available to the party. Any objection that is not so raised is considered to be waived.

(h) Answers to motions. Any party may file an answer to any motion under this section within 5 days after service of the motion.

§ 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 the Hearing Officer for hearing, finds that the person may be bound by the order to be issued in the proceedings 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 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.

§ 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 subpoenas 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(f). A person who applies for the attendance of an FAA employee 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 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 Evidence.

(a) Each party to a hearing may present the parties 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 and orders of denial, the burden of proof is upon the FAA counsel.

(c) The Hearing Officer may order information contained in any report or document filed or in any testimony given pursuant to this subpart withheld from public disclosure when, in the judgment of the Hearing Officer, disclosure would adversely affect the

interests of any person and is not required in the public interest or is not otherwise required by statute to be made available to the public. Any person may make written objection to the public disclosure of such information, stating the ground for such objection.

§ 13.61 Argument and subtitles.

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 the Hearing Officer may, in the discretion of the Hearing Officer, allow each party to submit written 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.

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 the alleged violator 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 80 days after service upon the alleged violator 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) Failure of the alleged violator to file a reply or request a hearing within the period provided in paragraph (a) or (b) of this section—

- (1) Constitutes a waiver of the right to a hearing and the right to an appeal, 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 acknowledgement 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 the Hearing Officer's 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 the person who issues the order 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 three days after receipt of service 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 United States Attorney General, or the delegate of the Attorney General, to bring an action for appropriate relief in accordance with § 13.25.

§ 13.83 Appeal.

(a) Any party to the hearing 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 the action.

(h) In cases involving an order of immediate compliance, the Administrator's order on appeal is issued within ten 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.

Subpart F—Formal Fact-Finding Investigation Under an Order of Investigation.

§ 13.101 Applicability.

(a) This subpart applies to fact-finding investigations in which an order of investigation has been issued under § 13.3(c) or § 13.5(i) of this part.

(b) This subpart does not limit the authority of duly designated persons to issue subpoenas, administer oaths, examine witnesses and receive evidence in any informal investigation as provided for in sections 313 and 1004(a) of the Federal Aviation Act (49 U.S.C. 1354 and 1464(a)) and section 100(a) of the Hazardous Materials Transportation Act (49 U.S.C. 1806(a)).

§ 13.103 Order of investigation.

The order of investigation—

(a) Defines the scope of the investigation by describing the information sought in terms of its subject matter or its relevancy to specified FAA functions;

(b) Sets forth the form of the investigation which may be either by individual deposition or investigative proceeding or both; and

(c) Names the official who is authorized to conduct the investigation and serve as the Presiding Officer.

§ 13.105 Notification.

Any person under investigation and any person required to testify and produce documentary or physical evidence during the investigation will be advised of the purpose of the investigation, and of the place where the investigative proceeding or deposition will be convened. This may be accomplished by a notice of investigation or by a subpoena. A copy

of the order of investigation may be sent to such persons, when appropriate.

§ 13.107 Designation of additional parties.

(a) The Presiding Officer may designate additional persons as parties to the investigation, if in the discretion of the Presiding Officer, it will aid in the conduct of the investigation.

(b) The Presiding Officer may designate any person as a party to the investigation if that person—

(1) Petitions the Presiding Officer to participate as a party; and

(2) Is so situated that the disposition of the investigation may as a practical matter impair the ability to protect that person's interest unless allowed to participate as a party, and

(3) Is not adequately represented by existing parties.

§ 13.109 Convening the investigation.

The investigation shall be conducted at such place or places designated by the Presiding Officer, and as convenient to the parties involved as expeditious and efficient handling of the investigation permits.

§ 13.111 Subpoenas.

(a) Upon motion of the Presiding Officer, or upon the request of a party to the investigation, the Presiding Officer may issue a subpoena directing any person to appear at a designated time and place to testify or to produce documentary or physical evidence relating to any matter under investigation.

(b) Subpoenas shall be served by personal service, or upon an agent designated in writing for the purpose, or by registered or certified mail addressed to such person or agent. Whenever service is made by registered or certified mail, the date of mailing shall be considered as the time when service is made.

(c) Subpoenas shall extend in jurisdiction throughout the United States or any territory or possession thereof.

§ 13.113 Noncompliance with the investigative process.

If any person fails to comply with the provisions of this subpart or with any subpoena or order issued by the Presiding Officer or the designee of the Presiding Officer, judicial enforcement may be initiated against that person under applicable statutes.

§ 13.115 Public proceedings.

(a) All investigative proceedings and depositions shall be public unless the Presiding Officer determines that the public interest requires otherwise.

(b) The Presiding Officer may order information contained in any report or

document filed or in any testimony given pursuant to this subpart withheld from public disclosure when, in the judgment of the Presiding Officer, disclosure would adversely affect the interests of any person and is not required in the public interest or is not otherwise required by statute to be made available to the public. Any person may make written objection to the public disclosure of such information, stating the grounds for such objection.

§ 13.117 Conduct of investigative proceeding or deposition.

(a) The Presiding Officer or the designee of the Presiding Officer may question witnesses.

(b) Any witness may be accompanied by counsel.

(c) Any party may be accompanied by counsel and either the party or counsel may—

(1) Question witnesses, provided the questions are relevant and material to the matters under investigation and would not unduly impede the progress of the investigation; and

(2) Make objections on the record and argue the basis for such objections.

(d) Copies of all notices or written communications sent to a party or witness shall upon request be sent to that person's attorney of record.

§ 13.119 Rights of persons against self-incrimination.

(a) Whenever a person refuses, on the basis of a privilege against self-incrimination, to testify or provide other information during the course of any investigation conducted under this subpart, the Presiding Officer may, with the approval of the Attorney General of the United States, issue an order requiring the person to give testimony or provide other information. However, no testimony or other information so compelled (or any information directly or indirectly derived from such testimony or other information) may be used against the person in any criminal case, except in a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

(b) The Presiding Officer may issue an order under this section if—

(1) The testimony or other information from the witness may be necessary to the public interest; and

(2) The witness has refused or is likely to refuse to testify or provide other information on the basis of a privilege against self-incrimination.

(c) Immunity provided by this section will not become effective until the person has refused to testify or provide other information on the basis of a

privilege against self-incrimination, and an order under this section has been issued. An order, however, may be issued prospectively to become effective in the event of a claim of the privilege.

§ 13.121 Witness fees.

All witnesses appearing shall be compensated at the same rate as a witness appearing before a United States District Court.

§ 13.123 Submission by party to the investigation.

(a) During an investigation conducted under this subpart, a party may submit to the Presiding Officer—

(1) A list of witnesses to be called, specifying the subject matter of the expected testimony of each witness, and

(2) A list of exhibits to be considered for inclusion in the record.

(b) If the Presiding Officer determines that the testimony of a witness or the receipt of an exhibit in accordance with paragraph (a) of this section will be relevant, competent and material to the investigation, the Presiding Officer may subpoena the witness or use the exhibit during the investigation.

§ 13.125 Depositions.

Depositions for investigative purposes may be taken at the discretion of the Presiding Officer with reasonable notice to the party under investigation. Such depositions shall be taken before the Presiding Officer or other person authorized to administer oaths and designated by the Presiding Officer. The testimony shall be reduced to writing by the person taking the deposition, or under the direction of that person, and where possible shall then be subscribed by the deponent. Any person may be compelled to appear and testify and to produce physical and documentary evidence.

§ 13.127 Reports, decisions and orders.

The Presiding Officer shall issue a written report based on the record developed during the formal investigation, including a summary of principal conclusions. A summary of principal conclusions shall be prepared by the official who issued the order of investigation in every case which results in no action, or no action as to a particular party to the investigation. All such reports shall be furnished to the parties to the investigation and filed in the public docket. Insertion of the report in the Public Docket shall constitute "entering of record" and publication as prescribed by section 313(b) of the Federal Aviation Act.

§ 13.129 Post-investigation action.

A decision on whether to initiate subsequent action shall be made on the basis of the record developed during the formal investigation and any other information in the possession of the Administrator.

§ 13.131 Other procedures.

Any question concerning the scope or conduct of a formal investigation not covered in this subpart may be ruled on by the Presiding Officer on motion of the Presiding Officer, or on the motion of a party or a person testifying or producing evidence.

Note.—The FAA has determined that this document involves an amendment which is not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and is implemented by the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, the Federal Aviation Administration has determined that the expected impact of it is so minimal that it does not require an evaluation.

Issued in Washington, D.C., on October 28, 1979.

Langhorne Bond
Administrator.

[FR Doc. 79-33088 Filed 11-3-79; 9:45 am]

BILLING CODE 4910-13-M