[Docket No. 7077; Amdt. 67-5]

PART 67—MEDICAL STANDARDS AND CERTIFICATION

Miscellaneous Amendments

The purpose of these amendments to Part 67 of the Federal Aviation Regulations is (1) to provide authorization for certain representatives of the Federal Air Surgeon within the Agency (the Chief, Aeromedical Certification Branch, Civil Aeromedical Institute, and Regional Flight Surgeons) to finally reconsider issuances and denials of medical certificates by aviation medical examiners, in certain situations; (2) to provide that a denial by such a representative in any of those situations is considered to be a denial by the Administrator for the purpose of review by the Civil Aeronautics Board; (3) to require the surrender, upon request, of a medical certificate whose issue is reversed, wholly or in part, upon reconsideration by the Federal Air Surgeon or such a representative; and (4) to state in the regulations that if an applicant for, or holder of, a medical certificate refuses to furnish additional medical information the Administrator may suspend, modify, or revoke a certificate, or refuse to issue it. Except for the scope of the first and second items mentioned, that is now made narrower than originally contemplated, these amendments were proposed in Notice 65-41 issued December 16, 1965 (30 F.R. 16084), for which the comment period was extended to March 23, 1966 by Notice 65-41A issued February 2, 1966 (31 F.R. 1312).

A number of the comments received on Notice 65-41 concurred in the proposals made. One of these comments (as well as several others that did not concur) displayed apprehension that delegation of authority to representatives of the Federal Air Surgeon to "finally reconsider" actions of aviation medical examiners would eliminate an applicant's recourse to petition for exemption from the rules. This apprehension is not well grounded, for Notice 65-41 is not concerned with the exemption procedure in any respect, either explicitly or implicitly. Both the notice and these amendments are concerned only with the administration of the rules in Part

AM

67, not with the grant or denial of exemptions issued in accordance with rules specifically provided in the rule-making procedures of Part 11.

Some comments presented strong objections to the proposed delegation of authority to representatives of the Federal Air Surgeon within the Agency. One comment concurred in the proposal so far as it would apply to cases where the Federal Air Surgeon does not have authority in any event to consider special issue of medical certificates (cases excluded from § 67.19). It was asserted that the proposed amendments would improperly tend to shift the Federal Air Surgeon's authority to make important decisions in the medical certification area to Regional Flight Surgeons; abrogate the denial authority of the Federal Air Surgeon; and result in a lack of uniformity in the application of medical standards. The first and second assertions display needless apprehension, since the proposals would not affect the general policy making responsibility of the Federal Air Surgeon, and the delegation to his representatives would not deprive him of his own authority in the area.

The assertion that a lack of uniformity might result, in the application of medical standards in the certification process, has pointed out an item susceptible of controversy, with strong arguments on each side. As stated in Notice 65–41, the proposal was in keeping with the Agency's policy of decentralization, and would foster a lessening of the delays incident to geographic distances and needless duplication of activity. However, it is recognized that the assertion may have merit, in this highly specialized field of medicine where various individuals may conceivably have different interpretations of a given set of medical facts.

After careful consideration of all issues involved, the Agency has concluded that, in view of this argument against the proposed change, it is doubtful that the action would preserve the maintenance of uniformity in the application of medical standards, and its adoption in full is inappropriate at this time. Therefore, the Agency has dropped this proposed change so far as it pertains to cases in which the Federal Air Surgeon has authority under Part 67 to override a denial of a medical certificate. However, in certain areas listed in § 67.19(d), the regulations do not allow the Federal Air Surgeon to issue medical certificates specially to applicants with established inability to meet the applicable medical standards. In these areas the Federal Air Surgeon has no alternative but to confirm the denial action of his representatives, although he of course provides guidelines to aviation medical examiners for the application of the medical standards in all cases. The areas involved established medical history or clinical diagnosis of: (1) Myocardial infarction, or angina pectoris or other evidence of coronary heart disease that the Federal Air Surgeon finds may reasonably be expected to lead to myocardial infarction; (2) a character or behavior disorder that is severe enough to have repeatedly manifested itself by overt acts, a psychotic disorder, chronic alcoholism, drug addiction, epilepsy, or a disturbance of consciousness without satisfactory medical explanation of the cause; and (3) diabetes mellitus that requires insulin or any other hypoglycemic drug for control. In 1964, approximately 919 and in 1965 approximately 962 cases were referred to the Federal Air Surgeon for further review. Of these, 350 cases in 1964 and 316 cases in 1965, or about one-third of all of the cases so referred, involved denials of medical certificates in the areas described, and the Federal Air Surgeon routinely affirmed the denials, as required. The delegation of final Agency denial authority to representatives in these cases will spare the applicants, as well as the government, great expense and useless effort. These amendments therefore adopt the proposal made in Notice 65–41, to the extent indicated, and as a result greater and faster service will be provided to applicants. After an opportunity to evaluate operational experience under this limited delegation of authority, the Administrator may later delegate full authority to his representative at the Aeromedical Certification Branch, Oklahoma City, to finally reconsider all issuances and denials of medical certificates by aviation medical examiners.

It should be noted, in connection with this limited delegation of authority, that the Federal Air Surgeon and his representatives within the Agency not only retain authority to finally reconsider denials of medical certificates except in the situations listed above, but also have authority upon their own initiative to reconsider issuances of medical certificates by aviation medical examiners. In this manner, cases involving novel or important features may be inquired into by the highest medical authority of the Agency, even where certificates have been issued, as contemplated by subsection 314(b) of the Federal Aviation Act of 1958.

One comment asserted that any attempt by the Agency to reverse the issue of a medical certificate by an aviation medical examiner, without compliance with section 609 of the Federal Aviation Act of 1958, would be invalid, as well as undesirable. Several other comments also pointed out that the burden of proof is the Administrator's under section 609, whereas this burden is the applicant's under section 602 of the Act. Subsection 314(b) of the Act empowers the Administrator to "reconsider" either the denial or issuance of a medical certificate by an aviation medical examiner. It is the Agency's position that when the Administrator exercises that power to correct an error committed by a private person in the exercise of delegated authority (where the aviation medical examiner should have taken a different course of action based upon the information available to him when he issued the medical certificate) the airman must rely upon his rights under section 602 of the Act if he is dissatisfied. In such a case, a "reexamination" under section 609 of the Act is not necessary. The position of the Agency is clarified in these amendments by adding a provision in § 67.25(b) that any action taken by the Federal Air Surgeon or his authorized representative within the Agency under subsection 314(b) of the Act that reverses, wholly or in part, the issue of a medical certificate by an aviation medical examiner is the denial of a certificate by the Administrator under section 602 of the Act.

The proposal to require surrender, upon request, of a medical certificate whose issue is reversed or otherwise changed, upon reconsideration, was generally supported by the comments received. Two comments expressed concern that this would permit arbitrary deprival of a certificate legally issued. However, as stated in Notice 65–41, the obligation is imposed with respect to a certificate that has been found to have been issued to an applicant who in fact does not meet the applicable standards, and the Agency considers this a reasonable requirement in order to protect against the use of the certificate.

In each of these reconsideration provisions, the action taken by the Federal Air Surgeon or his representative within the Agency is described as one to "wholly or partly reverse" the issue of the medical certificate. This language is used in order to make clear that the provisions concern action taken that is adverse to the applicant. It would be clearly unreasonable to provide that action taken upon reconsideration that is advantageous to the applicant is the denial of a medical certificate.

Most of the comments received were not opposed to the proposal to require the applicant or certificate holder to furnish additional medical information. Some comments asserted this authority could be exercised improperly to delve into irrelevant matters. However, as is plain from the provision, the purpose is to obtain additional medical information needed to determine whether an applicant is eligible to hold a medical certificate.

Interested persons have been afforded an opportunity to participate in the making of these amendments, and due consideration has been given to all relevant matter presented.

In consideration of the foregoing, and for the reasons stated in Notice 65–41, Part 67 of the Federal Aviation Regulations is amended as follows, effective July 16, 1966:

1. Paragraph (b) of § 67.25 is amended to read as follows:

§ 67.25 Delegation of authority.

* * * * *

(b) The authority of the Administrator, under subsection 314(b) of the Federal Aviation Act of 1958 (49 U.S.C. 1355(b)), to reconsider the action of an aviation medical examiner is delegated to the Federal Air Surgeon, the Chief, Aeromedical Certification Branch, Civil Aeromedical Institute, and each Regional Flight Surgeon. Except where the applicant does not meet the standards of §§ 67.13 (d)(1), (e)(1), or (f)(1), 67.15 (d)(1), (e), or (f)(1), or 67.17

(d)(1), (e), or (f)(1), any action taken under this paragraph other than by the Federal Air Surgeon is subject to reconsideration by the Federal Air Surgeon. Unless an FAA official named in this paragraph wholly or partly, and on his own initiative, reverses a certificate issued by an aviation medical examiner, within 60 days after the date of issue, the certificate is considered to be affirmed as issued.

* * * * *

2. Section 67.27 is amended to read as follows:

§ 67.27 Denial of medical certificate.

(a) Any person who is denied a medical certificate by an aviation medical examiner may, within 30 days after the date of the denial, apply in writing and in duplicate to the Federal Air Surgeon, Attention: Chief, Aeromedical Certification Branch, Civil Aeromedical Institute, Federal Aviation Agency, Post Office Box 25082, Oklahoma City, Okla., 73125, for reconsideration of that denial. If he does not apply for reconsideration during the 30 day period after the date of the denial, he is considered to have withdrawn his application for a medical certificate.

(b) The denial of a medical certificate—

(1) By an aviation medical examiner is not a denial by the Administrator under section 602 of the Federal Aviation Act of 1958 (49 U.S.C. 1422);

(2) By the Federal Air Surgeon is considered to be a denial by the Administrator under that section of the Act; and

(3) By the Chief, Aeromedical Certification Branch, Civil Aeromedical Institute, or a Regional Flight Surgeon is considered to be a denial by the Administrator under that section of the Act where the applicant does not meet the standards of §§ 67.13 (d)(1), (e)(1), or (f)(1), 67.15 (d)(1), (e), or (f)(1), or 67.17 (d)(1), (e), or (f)(1).

Any action taken under § 67.25(b) that wholly or partly reverses the issue of a medical certificate by an aviation medical examiner is the denial of a medical certificate under this paragraph (b).

(c) If the issue of a medical certificate is wholly or partly reversed upon reconsideration by the Federal Air Surgeon, the Chief, Aeromedical Certification Branch, Civil Aeromedical Institute, or a Regional Flight Surgeon, the person holding that certificate shall surrender it, upon request of the FAA.

3. Section 67.31 is amended to read as follows:

§ 67.31 Medical records.

Whenever the Administrator finds that additional medical information or history is necessary to determine whether an applicant for or the holder of a medical certificate meets the medical standards for it, he requests that person to furnish that information or authorize any clinic, hospital, doctor, or other person to release to the Administrator any available information or records concerning that history. If the applicant, or holder, refuses to provide the requested medical information or history or to authorize the release so requested, the Administrator may suspend, modify, or revoke any medical certificate that he holds or may, in the case of an applicant, refuse to issue a medical certificate to him.

(Secs. 303(d), 313(a), 314(b), 601, 602, 609, Federal Aviation Act of 1958 (49 U.S.C. 1344, 1354, 1355(b), 1421, 1422, 1429))

Issued in Washington, D.C., on June 9, 1966.

WILLIAM F. MCKEE,
Administrator.

[F.R. Doc. 66-6544; Filed, June 14, 1966; 8:46 a.m.]