CA-38

REGULATIONS OF THE ADMINISTRATOR

Federal Aviation Agency - Washington, D. C.

Part 408

Enforcement Procedures

(Effective February 7, 1962)

SUBCHAPTER A—PROCEDURAL REGULATIONS

[Reg. Docket No. 1060]

Revision

The primary purpose of this amendment is to enlarge the scope of § 408.25 (a) so as to provide a certificate holder with an opportunity to have a full hearing before a Hearing Officer of the Agency in certificate actions taken by the Administrator pursuant to section 609 of the Act; the provision of a new Subpart D—Rules of Practice for Hearings in FAA Certificate Actions; and other amendments of Subparts A, B, and C to reflect new enforcement procedures and the decentralization of responsibility.

The safety enforcement processes of the Federal Aviation Agency presently afforded a certificate holder against whom action is proposed an opportunity to confer with Agency counsel and be informally heard with respect to his position in the matter. It has been decided that in addition to this procedure the certificate holder should be afforded an opportunity for a full evidentiary hearing. Accordingly, a panel of Hearing Officers has been established in the Office of the Administrator. They are authorized to act for him and to decide matters on his behalf. They will, upon request, hold a hearing at a time and place convenient to the parties in which the Agency counsel will bear the burden of proof with respect to the charges, witnesses will be called and subjected to examination and cross-examination, and a full record will be made of all of the testimony and evidence. Upon this record the Hearing Officer will decide the issues and determine whether the proposed certificate action should be carried out or whether it should be modified or terminated.

At the present time certificate holders whose certificate is suspended or revoked by Order issued on behalf of the Administrator may appeal to the Civil Aeronautics Board. The provision of a hearing before an Agency Hearing Officer will in no way affect the certificate holder's continued right to make such an appeal. However, if he elects to appeal, he may also elect to have the appeal considered on the basis of the record of testimony and evidence taken before the FAA Hearing Officer, and thus avoid the necessity of duplication in this phase of the hearing process. It is the expectation of the Agency that hearings will be so fairly conducted by the assigned FAA Hearing Officer and the facts and other relevant evidence so fully developed in the course of the hearing before him that in most cases this record will be satisfactory to the certificate holder, as well as to the Agency, and that appeals will thus be taken on the record without the necessity of completely new hearing before the Civil Aeronautics Board. Where requested, however, the certificate holder will be entitled to obtain a Board hearing on the issues in dispute.

The rules of practice which will guide the Hearing Officer and the parties where such a hearing has been requested closely parallel those which presently govern safety enforcement proceedings before the Civil Aeronautics Board. They should therefore provide a familiar pattern to attorneys and other interested persons who heretofore have been involved in the hearing process as conducted by designated Examiners of the Civil Aeronautics Board.

This revision also serves to prescribe enforcement procedures which conform to those now being utilized by the Agency, particularly those modifications required by the recent decentralization of responsibility to handle cases involving scheduled and supplemental carriers and their personnel, air taxi operations, commercial operations and certificated repair stations. The previous division of authority, which reserved unto the General Counsel the authority for handling cases involving such certificate holders, has now been modified to permit the handling of such cases by the General Counsel and the Regional Counsels.

Since this amendment is not a substantive rule and one of Agency procedure, notice of public procedure hereon is unnecessary and the amendment may be made effective upon less than 30 days' notice.

In consideration of the foregoing, the Federal Aviation Agency hereby promulgates a revised Part 408 of the regulations of the Administrator of the Federal Aviation Agency (14 CFR Part 408), effective February 7, 1962:

Subpart A—Introduction

Sec.
408.1 Definition of terms.

Subpart B—Processes Used in Enforcement

408.11 Report channels.
408.12 Investigations.

Subpart C—Actions Taken in Enforcement

408.21 Filed for Record and Letter of Correction.
408.22 Reprimands.
408.23 Civil penalties.
408.24 Seizure of aircraft.
408.25 Certificate action.
408.26 Military aircraft.
408.27 Criminal violations.

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

408.31 Applicability of rules.
408.32 Appearances.
408.33 Request for hearing.
408.34 Hearing Officer's powers.
408.35 Disqualification of Hearing Officer.
408.36 Pleadings.
408.37 Time limitations.
408.38 Service and filing.
408.39 Amendment of Notice and Answer.
408.40 Withdrawal of Notice or Request for Hearing.
408.41 Motions.
408.42 Intervention.
408.43 Depositions.
408.44 Notice of hearing.
408.45 Subpoenas and witness fees.
408.46 Evidence.
408.47 Argument and submittals.
408.48 Record.
408.49 Federal Rules of Civil Procedure.
408.50 Order of Hearing Officer.

AUTHORITY: §§ 408.1 to 408.50 issued under secs. 313(a), 601, 609, 901, 902, 903, 1001, 1002, Federal Aviation Act of 1958 (72 Stat. 752, 775, 779, 783, 784, 786, 788; 49 U.S.C. 1354, 1421, 1429, 1471, 1472, 1474, 1481, 1482).

Subpart A—Introduction

§ 408.1 Definition of terms.

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As used in this part:

(a) "Act" means the Federal Aviation Act of 1958.

(b) "Administrator" means the Administrator of Federal Aviation Agency, or his designee.

(c) "Agency" means the Federal Aviation Agency.

(d) "Agency counsel" means the representative of the Federal Aviation Agency Office of General Counsel or Office of Regional Counsel, who represents the Administrator in an enforcement proceeding.

(e) "Answer" means the pleading which is filed by the holder of certificate in response to a Notice of Proposed Certificate Action, replying to the charges contained in the notice, when a hearing has been requested before an Agency Hearing Officer.

(f) "Board" means the Civil Aeronautics Board.

(g) "Certificate" means a type certificate, production certificate, airworthiness certificate, airman certificate (including medical certificate), air carrier operating certificate, air navigation facilities certificate, or air agency certificate, issued by the Civil Aeronautics Administration or the Federal Aviation Agency.

(h) "Hearing Officer" means a Federal Aviation Agency officer assigned to hear Agency proceedings for the amendment, modification, suspension or revocation of a certificate, conducted under the rules contained in this part.

(i) "Notice of Proposed Certificate Action" means a notice issued by Agency counsel to a certificate holder, under section 609 of the Federal Aviation Act proposing to amend, modify, suspend or revoke his certificate, and specifying the charges or grounds upon which the proposed action is based.

(j) "Parties" means the Agency counsel, certificate holder, and intervenors who appear before a Hearing Officer in an Agency enforcement proceeding.

(k) "Request for a Hearing" means a written statement, given by a certificate holder to Agency counsel, in response to a Notice of Proposed Certificate Action, requesting a formal hearing before an Agency Hearing Officer.

(l) "Respondent" means the holder of a certificate who has requested a formal hearing before an Agency Hearing Officer, in defense against a Notice of Proposed Certificate Action.

Subpart B—Processes Used in Enforcement

§ 408.11 Report channels.

Violations of the Act or any rule, regulation, or order issued thereunder, may be reported by any person having knowledge of such violations, to the appropriate personnel of the Agency assigned to one of the Agency's regional or district offices. Such a report will be investigated by personnel of the Agency and the results of such investigation will constitute the basis for determining the enforcement action to be taken by the Agency.

§ 408.12 Investigations.

(a) Under section 313 of the Act, the Administrator may conduct public hearings or investigations and is authorized to take evidence, issue subpoenas, take depositions, and compel testimony in the manner provided in section 1004 of the Act.

(b) For the purpose of investigating alleged violations of the Act, or of any rule, regulation or order issued thereunder, the Administrator's authority under sections 313 and 1004 has been delegated to the General Counsel, Deputy General Counsel, and to all Associate General Counsel and Regional Counsel.

Subpart C—Actions Taken in Enforcement

§ 408.21 Filed for Record and Letter of Correction.

A report of a violation may be filed for record by the reporting inspector or may be terminated by a Letter of Correction, if it appears, after investigation, that the violation was so minor and unintentional as not to require disciplinary or remedial action, and the standards prescribed by Manual of Procedure 22 are satisfied. Such actions will be subject to review by Regional Flight Standards and Regional Counsels' Offices.

§ 408.22 Reprimands.

A letter may be sent to the violator by the General Counsel or Regional Counsel, reprimanding him for a minor violation. A Letter of Reprimand will terminate the action, but the violation will be taken into consideration in determining the action to be taken with respect to any future violations committed by the same person.

§ 408.23 Civil penalties.

Under section 901 of the Act, any person who violates any provision of Titles III, V, VI, or XII of the Act, or any rule, regulation, or order issued thereunder, shall be subject to a civil penalty not to exceed $1,000 for each such violation.[1] Such civil penalty may be compromised by the Administrator. In the event imposition of a civil penalty is contemplated, and it is considered advisable to compromise such penalty, a Regional Counsel or the General Counsel will send a letter to the violator advising as to the charges against him, stating what laws, rules, regulations, or orders have been violated, and affording an opportunity to compromise the civil penalty. The violator may submit to the official signing the letter, either orally or in writing, any material or information in answer to the charges, explaining, mitigating or denying the occurrence of the violation, or showing extenuating circumstances. Any material or information thus submitted will be considered in making the final determination as to probable existence of liability for a civil penalty, or the amount for which it will be compromised. If an offer is tendered to compromise the penalty for a specific amount, a certified check or money order in that amount, made payable to the Federal Aviation Agency, should be attached. The General Counsel, or the Regional Counsel handling the case, will accept or refuse the offer of compromise. If the offer of compromise is accepted, the violator will be notified by letter of its acceptance and that such acceptance constitutes full settlement of any civil penalties incurred by the violator. If a compromise settlement of the civil penalty cannot be effected, the Agency will, in an appropriate case, instigate proceedings in the United States District Court, pursuant to section 903 of the Act, for the purpose of collecting the civil penalty due.

[1] The same is true for violations of Title VII, but the Civil Aeronautics Board has cognizance of those violations.

§ 408.24 Seizure of aircraft.

(a) *Authority to seize aircraft.* Under section 903 of the Act, when an aircraft is involved in a violation for which a civil penalty may be imposed upon its owner or operator, such aircraft may be summarily seized by any State or Federal law enforcement officer or Federal Aviation Agency safety inspector authorized in an order of seizure issued by the Assistant Administrator of the region in which the aircraft is located.

(b) *Custody of seized aircraft.* When an aircraft has been seized pursuant to this section, it will be placed in the nearest available adequate public storage facility in the judicial district in which the seizure is made.

(c) *Notice of seizure.* When an aircraft has been seized pursuant to this section, a written notice and a copy of this section will be sent without delay by the Assistant Administrator to the registered owner of, and to other persons having a recorded interest in, the aircraft according to the records of the Federal Aviation Agency. The written notice will state:

(1) The time, date, and place of seizure;

(2) The name and address of the custodian of the aircraft;

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

(4) The amount which may be tendered:

(i) As an offer in compromise of any civil penalties which might have been incurred as a result of the alleged violation, or

(ii) As payment of civil penalties which have been imposed by a Federal Court as a result of the established violations.

(d) *Report of seizure.* When an aircraft has been seized pursuant to this section, a report will be transmitted immediately by the Regional Counsel to the United States Attorney for the judicial district in which the seizure is made, requesting the United States Attorney to institute proceedings for the enforcement of the lien.

(e) *Release of seized aircraft.* When an aircraft has been seized pursuant to this section, it will be released by direction of the Assistant Administrator under any one of the following conditions:

(1) Upon payment of the civil penalty or the amount agreed upon in compromise, and the costs incurred in connection with the seizure, storage, and maintenance of the aircraft;

(2) Upon seizure of the aircraft pursuant to process of a Federal court in