

§ 77.41

effective date of the determination; and

(2) The time necessary for the Commission to process the application except in a case where the Administrator determines a shorter effective period is required by the circumstances.

(e) If the Commission issues a construction permit, the final determination is effective until the date prescribed for completion of the construction. If the Commission refuses to issue a construction permit, the final determination expires on the date of its refusal.

[Doc. No. 1882, 30 FR 1839, Feb. 10, 1965, as amended by Amdt. 77-5, 33 FR 5257, Apr. 2, 1968]

Subpart E—Rules of Practice for Hearings Under Subpart D

§ 77.41 Scope.

This subpart applies to hearings held by the FAA under titles I, III, and X of the Federal Aviation Act of 1958 (49 U.S.C. subchapters I, III, and X), on proposed construction or alteration that affects the use of navigable airspace.

§ 77.43 Nature of hearing.

Sections 4, 5, 7, and 8 of the Administrative Procedure Act (5 U.S.C. 1003, 1004, 1006, and 1007) do not apply to hearings held on proposed construction or alteration to determine its effect on the safety of aircraft and the efficient use of navigable airspace because those hearings are factfinding in nature. As a factfinding procedure, each hearing is nonadversary and there are no formal pleadings or adverse parties.

§ 77.45 Presiding officer.

(a) If, under § 79.37, the Administrator grants a public hearing on any proposed construction or alteration covered by this part, the Director, Air Traffic Operations Service designates an FAA employee to be the presiding officer at the hearing.

(b) The presiding officer may:

(1) Give notice of the date and location of the hearing and any prehearing conference that may be held;

(2) Administer oaths and affirmations;

(3) Examine witnesses;

(4) Issue subpoenas and take depositions or have them taken;

(5) Obtain, in the form of a public record, all pertinent and relevant facts relating to the subject matter of the hearing;

(6) Rule, with the assistance of the legal officer, upon the admissibility of evidence;

(7) Regulate the course and conduct of the hearing; and

(8) Designate parties to the hearing and revoke those designations.

[Doc. No. 1882, 30 FR 1839, Feb. 10, 1965, as amended by Amdt. 77-11, 54 FR 39292, Sept. 25, 1989]

§ 77.47 Legal officer.

The Chief Counsel designates a member of his staff to serve as legal officer at each hearing under this subpart. The legal officer may examine witnesses and assist and advise the presiding officer on questions of evidence or other legal questions arising during the hearing.

[Doc. No. 1882, 30 FR 1839, Feb. 10, 1965, as amended at 38 FR 26444, Sept. 17, 1973]

§ 77.49 Notice of hearing.

In designating a time and place for a hearing under this subpart the presiding officer considers the needs of the FAA and the convenience of the parties and witnesses. The time and place of each hearing is published in the "Notices" section of the FEDERAL REGISTER before the date of the hearing, unless the notice is impractical or unnecessary.

§ 77.51 Parties to the hearing.

The presiding officer designates the following as parties to the hearing—

(a) The proponent of the proposed construction or alteration.

(b) Those persons whose activities would be substantially affected by the proposed construction or alteration.

§ 77.53 Prehearing conference.

(a) The presiding officer may, in his discretion, hold a prehearing conference with the parties to the hearing and the legal officer before the hearing.

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(b) At the direction of the presiding officer, each party to a prehearing conference shall submit a brief written statement of the evidence he intends to provide through his witnesses and by questioning other witnesses at the hearing, and shall provide enough copies of the statement so that the presiding officer may keep three for the FAA and give one to each other party.

(c) At the prehearing conference, the presiding officer reduces and simplifies the subject matter of the hearing so far as possible and advises the parties of the probable order of presenting the evidence.

§ 77.55 Examination of witnesses.

(a) Each witness at a hearing under this subpart shall, after being sworn by the presiding officer, give his testimony under oath.

(b) The party for whom a witness, other than an employee of the FAA, is testifying shall examine that witness. After that examination, other parties to the hearing may examine the witness, in the order fixed by the presiding officer. The presiding officer and the legal officer may then examine the witness. The presiding officer may grant any party an additional opportunity to examine any witness, if that party adequately justifies the additional examination.

(c) The legal officer examines each FAA employee who is a witness, before the other parties examine him. After that examination, the order prescribed in paragraph (b) of this section applies. An FAA employee may testify only as to facts within his personal knowledge and the application of FAA regulations, standards, and policies.

§ 77.57 Evidence.

(a) The presiding officer receives all testimony and exhibits that are relevant to the issues of the hearing. So far as possible, each party shall submit enough copies of his exhibits that the presiding officer may keep three copies for the FAA and give one to each other party.

(b) The presiding officer excludes any testimony that is irrelevant, unduly repetitious, or consists of statements made during an aeronautical study in an effort to reconcile or compromise

aviation or construction or alteration requirements. A party to the hearing may object to the admission of evidence only on the ground that it is irrelevant.

§ 77.59 Subpoenas of witnesses and exhibits.

(a) The presiding officer of a hearing may issue subpoenas for any witness or exhibit that he determines may be material and relevant to the issues of the hearing. So far as possible, each party to the hearing shall provide the witnesses and exhibits that he intends to present at the hearing.

(b) If any party to the hearing is unable to provide his necessary witnesses and exhibits, he shall advise the presiding officer far enough in advance that the presiding officer can determine whether he should issue subpoenas for the desired witnesses or exhibits.

§ 77.61 Revision of construction or alteration proposal.

(a) The sponsor of any proposed construction or alteration covered by this part may revise his proposal at any time before or during the hearing. If he revises it, the presiding officer decides whether the revision affects the proposal to the extent that he should send it to the Administrator for a redetermination of the need for a hearing.

(b) If the presiding officer decides that it does not need to be resubmitted to the Administrator, he advises the parties of the revised proposal and takes the action necessary to allow all parties to effectively participate in the hearing on the revised proposal. Without limiting his discretion, the presiding officer may recess and reconvene the hearing, or hold another prehearing conference.

§ 77.63 Record of hearing.

(a) Each hearing is recorded verbatim by an official reporter under an FAA contract. The transcript, and all exhibits, become a part of the record of the hearing.

(b) Any person may buy a copy of the transcript of the hearing from the reporter at the price fixed for it.