A report, prepared by staff members of the Conference, that preceded the action of the Conference, stated, among other things:

A pilot who is confronted with proposed certificate action enjoys a procedural option which fairly invites inquiry. In brief, the pilot may elect to go to trial upon the decidedly favorable principle, "Heads I win, tails we flip again." To take advantage of this opportunity, the pilot must request the "formal hearing" proffered by the Administrator's Notice of Proposed Certificate Action. This hearing will be conducted before an FAA "hearing officer" under procedural rules which provide for the essential trappings of a trial. Accordingly, the burden of proof will be on the Administrator rather than the pilot.

If the airman prevails at the FAA trial, the action is terminated. His adversary, the agency enforcement staff, has no recourse, because the Administrator has granted the hearing officers the power to decide certificate action cases in his name and stead. But the pilot, on the other hand, is in no respect bound by an adverse decision of the FAA hearing officer. He may "appeal" his case to the National Transportation Safety Board and there receive a trial de novo before one of the Board's APA hearing examiners. As before, the FAA staff will carry the burden of proof.

The second trial in a certificate action case is usually a trial de novo in the literal sense of that term. That is, the findings of the FAA hearing officer and the record compiled before him are simply ignored in the second proceeding. In a few cases, the respondent has entered into a stipulation permitting all or part of the FAA record to be introduced into evidence before the NTSB examiner, but such action is not at all common. Thus, from the perspective of parties who are retrying a certificate case before a Board examiner, the FAA trial was a trial in name only; in retrospect, it was more a combination dress rehearsal and deposition session.

* * * * *

[A] respectable amount of governmental energy is dissipated by reason of the two-trial feature of the certificate action process. The question, of course, is whether it is not avoidable. It is certainly a basic assumption of our legal system that a defendant can be accorded "justice" in an adjudicatory system based on but one trial.

Before the adoption of the FAA hearing procedure in section 609 certificate proceedings, such a hearing did not exist before the agency primarily responsible for air safety. A formal hearing was afforded only before another independent agency, the Civil Aeronautics Board. Under the Department of Transportation Act (80 Stat. 931), FAA safety functions and the CAB functions formerly exercised under Title VI of the Federal Aviation Act of 1958 are exercised within the same Department, and there are now two formal evidentiary hearings in certificate actions within the Department responsible for air safety. According to the Staff Report mentioned above, the best way to eliminate the two-trial problem in the certificate action process is to eliminate the FAA trial, something that can be done simply by amending the FAA's rules of procedure. This would leave the matter in the hands of the NTSB which is independent of all other units of the Department of Transportation.

Therefore, in view of the FAA's experience with the formal hearing proceedings of Part 13, and in the light of the findings of the staff report and the recommendation of the Administrative Conference of the United States, it is proposed to eliminate those hearings in FAA certificate proceedings.

A notice of proposed rule making, Notice 69-37, that also involves Part 13, was issued on August 28, 1969, and published in the FEDERAL REGISTER on September 5, 1969 (34 F.R. 14079). In that notice, it was proposed to specifically include in Part 13 procedures for suspending or revoking an issued certificate of aircraft registration for any cause that renders the aircraft ineligible for registration. Those procedures would extend to such cases the opportunity for a formal hearing before an FAA hearing officer. The hearing would not be appealable to the National Transportation Safety Board, since the Federal Aviation Act of 1958 provides such an appeal only in certificate actions under title VI of the Act. In the event that Notice 69-37 is implemented by a final rule that includes the addition of formal hearings in aircraft registration enforcement matters, any final rule issued pursuant to this notice will reflect that action by preserving, so far as may be necessary for the purpose, Subpart D and the other relevant provisions of Part 13.

In consideration of the foregoing, it is proposed to amend Part 13 of the Federal Aviation Regulations as follows:

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

§ 13.19 Certificate action.

* * * * *

(c) Before issuing an order under paragraph (b) of this section, the General Counsel or the Regional Counsel concerned advises the certificate holder of the charges or other reasons upon which the Administrator bases the proposed action and, except in an emergency, allows the holder to answer any charges and to be heard as to why the certificate should not be amended, suspended, or revoked. The holder may, by checking the appropriate box on the form that is sent to him with the Notice of Proposed Certificate Action, elect to—

(1) Admit the charges and surrender his certificate;

(2) Answer the charges in writing; or

(3) Request an opportunity to be heard in an informal conference with the FAA counsel.

Unless the holder returns the form and, where required, an answer with a postmark of not later than 15 days after the date he received the notice, the order of the Administrator is issued as proposed. After considering any information submitted by the holder, the General Counsel or the Regional Counsel concerned issues the order of the Administrator.

* * * * *

2. By striking out Subpart D.

These amendments are proposed under the authority of sections 313(a), 601, and 609, of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1429); section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)); and § 1.4(b)(1) of the regulations of the Office of the Secretary of Transportation.

Issued in Washington, D.C., on December 17, 1969.

NATHANIEL H. GOODRICH,
General Counsel.

[F.R. Doc. 69-15192; Filed, Dec. 22, 1969; 8:46 a.m.]

FEDERAL RESERVE SYSTEM

[12 CFR Part 226]

[Reg. Z]

TRUTH IN LENDING

Exemption of Certain State Regulated Transactions; Retention of Access to Federal Civil Remedies

Pursuant to the authority contained in the Consumer Credit Protection Act (15 U.S.C. 1604), the Board of Governors is considering amending Part 226 in the following respects.

Section 226.12 would be amended by revising paragraph (b) and by adding a new paragraph (c). As amended, § 226.12 would read as follows:

§ 226.12 Exemption of certain State regulated transactions.

(a) *Exemption for State regulated transactions.* In accordance with the provisions of Supplement II to Regulation Z (§ 226.12—Supplement), any State may make application to the Board for exemption of any class of transactions within that State from the requirements of Chapter 2 of the Act and the corresponding provisions of this part: *Provided,* That

(1) Under the law of that State, that class of transactions is subject to requirements substantially similar to those imposed under Chapter 2 of the Act and the corresponding provisions of this part; and

(2) There is adequate provision for enforcement.

(b) *Procedures and criteria.* The procedures and criteria under which any State may apply for the determination provided for in paragraph (a) of this section are set forth in Supplement II to Regulation Z (§ 226.12—Supplement).

(c) *Civil liability.* In order to assure that the concurrent jurisdiction of Federal and State courts created in section 130(e) of the Act shall continue to have substantive provisions to which such jurisdiction shall apply, and generally to aid in implementing the Act with respect to any class of transactions exempted pursuant to paragraph (a) of this section, the Board pursuant to sections 105 and 123 hereby prescribes that:

(1) No such exemption shall be deemed to extend to the civil liability provisions of sections 130 and 131; and

(2) After an exemption has been granted, the disclosure requirements of

the applicable State law shall be the disclosure requirements of this Act, and information required under such State law shall, accordingly, be the "information required under this chapter" (Chapter 2 of the Act) for the purposes of section 130(a).

The Board of Governors is required under section 123 of the Consumer Credit Protection Act (15 U.S.C. 1633) to exempt from the disclosure and rescission requirements of the Act (Chapter 2 of Title I of the Act; 15 U.S.C. 1631–41) credit transactions subject to State law if it determines that that law is substantially similar to that of the Act and that there is adequate provision for enforcement.

The proposed addition of paragraph (c) to § 226.12 is designed to preserve the right of a customer to maintain an action under sections 130 and 131 of the Act (15 U.S.C. 1640–41) for violations of disclosure provisions after the Board of Governors has exempted the class transactions as being subject to State regulation.

If the proposal is adopted, criminal and administrative responsibility would be under State control with respect to such exempted transactions.

Sections 130 and 131 provide civil remedies for violations of the disclosure requirements of the Act. After an exemption based upon State law has been granted, that law will provide the applicable disclosure requirements, and violations of such requirements would be actionable under sections 130 and 131. The customer would, therefore, retain the right granted by subsection (e) of section 130 to seek redress for violations of such State law in either Federal or State court and to avail himself of the respective State or Federal court procedural rules.

Paragraph (b) of § 226.12 would also be revised to indicate that Supplement II (§ 226.12–Supplement) has been published, and to eliminate an obsolete reference to the date of the proposed publication.

This notice is published pursuant to section 553(b) of title 5, United States Code, and § 226.2(a) of the rules of procedure of the Board of Governors of the Federal Reserve System (12 CFR 262.2(a)).

To aid in the consideration of this matter by the Board, interested persons are invited to submit relevant data, views or arguments. Any such material should be submitted in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than January 22, 1970. Under the Board's rules regarding availability of information (12 CFR Part 261), such materials will be available for inspection and copying unless the person submitting the material requests that it be considered confidential.

By order of the Board of Governors, December 15, 1969.

[SEAL] ROBERT P. FORRESTAL,
Assistant Secretary.

[F.R. Doc. 69–15199; Filed, Dec. 22, 1969; 8:46 a.m.]