

holder an opportunity to *answer* the charges or reasons relied upon by the Administrator and to *be heard* in opposition.

For reasons which are not apparent, under the noise-certification procedures proposed by H.R. 3400, the certificate holder would not be afforded the right to answer the Administrator and receive a hearing. If the rights to answer and to be heard are acknowledged even in the case of safety issues affecting human life, it is difficult to perceive any justification for denying such basic procedural rights in the context of simple noise annoyance.

It is even more puzzling why, for noise-certification, H.R. 3400 would withhold the rights to notice and hearing *on appeal*, which are now provided in the Act for appeals from amendment, suspension and revocation of safety-certification.

In each of these situations—administrative review by the Administrator and appeal to the National Transportation Safety Board—the substitute bill would retain, for noise certification procedures, the same procedural guarantees now provided in section 609 of the Act with respect to amendment, suspension and revocation of safety certification. The substitute bill is to be preferred in this respect to H.R. 3400.

Even such minimal procedural safeguards as H.R. 3400 does provide are inexplicably restricted to those "actions"¹² of the Administrator "in which violation of aircraft noise or sonic boom standards, rules or regulations is at issue". (Subsection (b), underlining supplied.) No reason appears why the guaranty of basic procedural rights should be thus tied merely to "violations" of the noise standards and rules. The unfortunate inference is that the Administrator would use the new noise certification procedures primarily for punishment, and not for the promotion of improved noise reduction through positive measures calling for modification of outstanding noise certifications. Such a negative approach to promotion of noise alleviation is not warranted. But in any event, a certificate holder's right to appeal from arbitrary or unjust amendments or suspension or revocation of his certificate should not be confined to only those cases where violation of noise standards or rules is at issue, particularly when nothing in the bill would restrict such amendatory or revocation action to violation cases.

The substitute bill assures the customary procedural safeguards of notice, right to answer and hearing as to *all* orders amending, modifying, suspending or revoking an aircraft type-certificate as necessary and appropriate to encourage progress in aircraft noise (or sonic boom) abatement.

5. Modification and reversal by the Safety Board

Under H.R. 3400, on appeal from actions to amend, modify, suspend or revoke a certificate embodying noise standards, the National Transportation Safety Board is empowered to reverse the Secretary "if it finds that safety in air commerce or air transportation and the public interest do not require affirmation of the order."

This is a curious—and apparently inverted—statement of an intended condition-precedent to Board review on appeal. While its ostensible concession to the primacy of safety over noise is commendable, it is illusory. This is because the envisaged situation in which the Board must defer to safety would virtually never occur. The only occasion when the Board would have to affirm an order modifying a noise-certificate, would be where *safety* requires it. Such a situation on appeal is difficult to imagine.

An apparent situation might occur where a certificated noise-level were subsequently found to be unattainable safely in actual operations. If the Administrator (Secretary) were thereupon to modify the certificate by *raising* the prescribed noise level, the Board would be obliged to find that safety required affirmation of the order. But in such a case, it is unlikely that there would be any appeal, so the situation remains a hypothetical one.

Any ostensible restraint on the Board in the name of safety under this provision thus appears to be largely theoretical. At the same time, there is inexplicably absent from the appeal provisions any condition-precedent to appeal which is compatible with the noise-abatement purpose of the bill.

¹² Under the safety certification provisions of the Act, the Administrator must issue an "order" to amend, modify, suspend or revoke a certificate (section 609). The requirement of H.R. 3400 is not only looser, but is inconsistent with the bill's subsequent language regarding appeals to the Board, which refers to the "order" of the Secretary.