CIVIL AIR REGULATIONS

PART 97. ——RULES OF PRACTICE GOVERNING SAFETY CASES ARISING UNDER SECTIONS 602 AND 609 OF THE CIVIL AERONAUTICS ACT OF 1938, AS AMENDED, AND PETITIONS FOR WAIVERS OF CIVIL AIR REGULATIONS

As amended to January 1, 1947

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

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97.10 Initiation of Proceedings. A proceeding may be initiated by the Administrator of Civil Aeronautics as plaintiff by filing a complaint with the Board. In any case where, under the provisions of the Civil Aeronautics Act of 1938, as amended, the circumstances, in the opinion of the Board, require action and no complaint has been filed by the Administrator of Civil Aeronautics, the Board may institute proceedings on its own initiative by the issuance of an order to show cause.

97.11 Complaint: Order to Show Cause: Allegations. The complaint or order to show cause shall contain

(a) a short plain statement of the grounds upon which the Board's legal authority and jurisdiction rests;

(b) a plain statement of the facts which the Administrator or the Board proposes to establish; and

(c) a statement of the action the Administrator requests of the Board, or which the Board proposes to take on its own initiative.

97.12 Filing of Complaint or Order to Show Cause. An original and nine copies of the complaint or order to show cause, either in printed or typewritten form, shall be filed with the Docket Section of the Board.

97.13 Service. When a complaint or order to show cause is filed the Safety Legal Division shall send a copy thereof by registered mail, return receipt requested, to the defendant, together with a copy of these rules of practice and a statement concerning hearing as provided in section 97.16 hereof. The complaint or order to show cause will be deemed served upon the defendant on the date specified on the postal return receipt.

97.14 Answer. After service upon him of the complaint or order to show cause the defendant shall have ten days within which to answer in writing the allegations set forth therein. Such answer shall be deemed filed as of the date of mailing to the Civil Aeronautics Board properly addressed and postage prepaid. Failure to answer any of the allegations within the prescribed ten-day period shall be deemed an admission of the allegations not answered. Upon good cause shown, the examiner to whom the case is assigned or the Safety Legal Division may grant additional time within which to answer.

97.15 Motions to Make More Definite and Certain. Defendant may file with his answer a motion that the allegations in the complaint or order to show cause be made more definite and certain. Such motion shall point out the defects complained of and the details desired.

97.16 Request for or Waiver of Hearing. An appropriate form for requesting or waiving a hearing shall be mailed to defendant with a copy of the complaint or order to show cause. Defendant shall have until the time for filing of his answer to the complaint or order to show cause to request a hearing. Failure to make such request within the prescribed time shall be deemed a waiver of defendant's right to a hearing. The defendant may at any time cancel his request for a hearing.

97.17 Notice of Hearing. When a hearing has been requested, the Safety Legal Division shall give the defendant adequate notice of the date and place where such hearing will be held; the nature thereof; the legal authority and jurisdiction under which the hearing is to be held; and the matters of fact and law asserted. In fixing the times and places for hearings due regard shall be had for the convenience and necessity of the parties and their representatives.

97.18 Amendment of Pleadings. Either party to the prodeedings may amend his pleadings, as a matter of course, by serving a copy of such amended pleadings on the adverse party and by filing with the Board at any time more than 15 days prior to the date of hearing three copies of the amended pleadings. After that time, or in the event a hearing has been waived, amendment shall be allowed at the discretion of the examiner assigned to the case. In case of an amendment to any pleading, the examiner shall allow the party affected thereby a reasonable opportunity to reply thereto and to request a hearing thereon.

97.19 Appearances. Any party to a proceeding may appear and be heard in person or by attorney. No register of attorneys who may practice before the Board is maintained and no application for admission to practice is required. Any attorney practicing or desiring to practice before the Board may, upon hearing and good cause shown, be suspended or prohibited from so practicing.

97.20 Subpoenas. Subpoenas requiring the attendance of witnesses, or the production of evidence, at a designated place of hearing, shall be issued to any party to a proceeding upon proper application to an examiner duly designated by the Board for such purpose.

Such application shall be in writing and must show the general relevance and reasonable scope of the evidence sought. An application for the subpoena for the production of evidence must describe in detail the articles or documents desired.

97.21 Depositions After answer is filed by defendant the testimony of any person within the United States may be taken by deposition at the instance of either party to the proceedings. Such depositions shall be taken before any person having power to administer oaths who is designated by the Safety Legal Division or the examiner to whom the case is assigned, in accordance with the provisions of section 1004 of the Civil Aeronautics Act of 1938, as amended.

97.22 Submission Without Hearing or Appearance. Where a hearing has been waived by the defendant, the examiner, on the basis of the pleadings and the documentary evidence submitted to the Board by the parties, shall prepare the initial decision. The examiner shall serve a copy of this initial decision upon the defendant and his counsel, if any, and upon the plaintiff, by personal service or registered mail. The parties to the proceedings shall have ten days, or such other time as the examiner may specify, after the date of service of such initial decision within which to file exceptions and appeal to the Board. The date of service shall be the date shown upon which service was actually effected except where service is made by registered mail the date of service shall be the date shown on the postal return receipt. If no appeal to the Board is filed or action by the board to review such decision is entered within the

time allowed, such decision shall without further proceedings then become the decision of the Board.

97.23 Hearing Cases - Initial Decision - Exceptions - Oral Argument. In any case in which a hearing has been requested, at the close of the hearing the examiner may render his initial decision orally or, if either party requests or the examiner desires the initial decision to be in writing, the examiner shall prepare and cause the same to be served upon the parties by registered mail or personal service as soon as possible. An appeal to the Board must be made in writing and shall clearly state the exceptions taken and the assignments of error upon which the appeal is predicated. A request for oral argument must also be in writing and shall clearly state any special reasons therefor. If no appeal to the Board is filed or action by the Board to review such decision is entered within the time allowed, such decision shall without further proceedings then become the decision of the Board.

97.24 Refusal of Administrator to Issue Airman Certificates. Any person whose application for the issuance or renewal of an airman certificate or rating has been denied may petition the Board for a review of the action of the Administrator. Upon request petitioner shall be granted a hearing which shall be conducted in accordance with the procedure set forth in section 97.23 hereof, or he may submit the matter for determination without a hearing in accordance with the procedure set forth in section 97.22.

97.25 Petition for Waiver of Civil Air Regulations. Any person adversely affected by the requirements of any Civil Air Regulation may petition the Board for a waiver of such requirements and the Board will, after a consideration of the matters presented in the petition, and as it may appear in the public interest, either grant or deny such petition in whole or in part. A public hearing will not be held on a petition for waiver of the Civil Air Regulations, unless expressly so ordered by the Board.

97.26 Stay of Order Pending Judicial Review. The filing of a petition for a judicial review of an order made under these rules as provided in section 1006 of the Civil Aeronautics Act of 1938, as amended, shall not operate to stay the effectiveness of the order unless specifically so ordered by the Board. The petitioner may request, and if good cause is shown therefor, the Board will stay the effectiveness of the order from which an appeal is being taken.

97.27 Petition for Rehearing, Reargument, Reconsideration or Modification of Order.

(a) Either party to a proceeding may petition for rehearing, reargument, reconsideration or modification of any final order of the Board within fifteen days after the receipt thereof. Every such petition shall be in writing, filed with the Board and served by petitioner upon the adverse party and his attorneys of record. If the petition be to take further evidence, the nature and purpose of the new evidence to be adduced must be briefly stated and the reasons why such evidence was not presented at the time of the prior hearing must be stated. If the petition be for reargument, reconsideration or modification of the order, the matters claimed to have been erroneously decided must be specified and the alleged errors briefly stated.

(b) Replies to petitions filed pursuant to this section shall be filed and served upon petitioner and his attorneys of record within ten days after the receipt of the petition. Upon good cause shown the Safety Legal Division may extend the time for filing such replies.

(c) The filing of a petition to rehear or reargue a proceeding or to reconsider or modify an order, shall not operate to stay the effectiveness of the order, unless otherwise ordered by the Board.

97.28 Evidence.

(a) *Right to Full and True Disclosure of the Facts.* Every party shall have the right to present his case or defense by oral or documentary evidence, to submit evidence in rebuttal, and to conduct such cross-examination as may be required for a full

and true disclosure of the facts.

(b) *Burden of Proof.* In General - The proponent of any rule or order shall have the burden of proof thereof.

(c) *Admission and Exclusion of Evidence.* The trial examiner shall admit relevant, material, and competent evidence, but shall exclude irrelevant, immaterial, incompetent, or unduly repetitious evidence.

(d) *Order to be based on Whole Record.* No order shall be issued except upon consideration of the whole record or such portions as may be cited by any party and as supported by and in accordance with reliable, probative and substantial evidence.

(e) *Objections.* Objections to the evidence before a trial examiner shall be in short form; but written argument in support of such objections, specifying the grounds thereof, may be presented at the discretion of the trial examiner. The transcript shall not include argument or debate thereon except as ordered by the trial examiner. Rulings on such objections shall be a part of the transcript. An objection not urged in an appeal from the examiner's initial decision will be deemed to have been waived.

97.29 Trial Examiners. Authority. Trial examiners shall have the authority, subject to the published rules of the Board and within its powers, as follows:

(a) To give notice concerning, and hold, hearings;
(b) To administer oaths and affirmations;
(c) To examine witnesses;
(d) To take or cause depositions to be taken whenever the ends of justice would be served thereby;
(e) To rule upon offers of proof and receive competent evidence;
(f) To regulate the course of the hearing;
(g) To hold conferences, before or during the hearing, for the settlement or simplification of issues, by consent of the parties;
(h) To dispose of procedural requests or similar matters;
(i) Within his discretion, or upon the direction of the Board, to certify any question to the Board for its consideration and disposition;
(j) To issue subpoenas as provided for in section 97.22;
(k) To make initial decisions;
(l) To take any other action authorized by these rules; and
(m) The trial examiner's authority in each case will terminate
  (1) when the time for appeal from the initial decision shall have expired,
  (2) when he shall have withdrawn from the case upon considering himself disqualified, and
  (3) whenever the Board shall have determined that the trial examiner is disqualified, upon the filing in good faith of a timely and sufficient affidavit of bias or disqualification.

97.30 Submittals and Decisions. At any time during the process of hearing and appeal to the Board, the examiner shall give the parties to the proceeding adequate opportunity for the presentation of arguments in support of motions, objections, and exceptions. Prior to each initial decision, or decision upon a Board review thereof, the parties shall be afforded a reasonable opportunity to submit for consideration (1) proposed findings and conclusions, or (2) exceptions to the initial decisions of the trial examiners, and (3) supporting reasons for such exceptions or proposed findings or conclusions. The record shall show the ruling upon each such finding, conclusion, or exception presented.

97.31 Saving Clause. The repeal or amendment of any Civil Air Regulation shall not affect any pending proceeding or any proceeding thereafter commenced to alter, amend, modify, suspend, or revoke any certificate issued by the Administrator for causes arising or acts committed prior to said repeal or amendment, unless the act of repeal or amendment specifically so provides.

97.32 **Applicable Rules of Federal Procedure.** In any situation not provided for or controlled by the foregoing rules of practice, the Rules of Civil Procedure for the District Courts of the United States, wherever applicable, shall govern.