Civil Aeronautics Administration U. S. Department of Commerce

REGULATIONS OF THE ADMINISTRATOR

PART 406

Rules of Practice Governing Proceedings to Alter, Amend, or Modify Certificates

As Amended to June 30, 1949

PART 406—RULES OF PRACTICE GOVERNING PROCEEDINGS TO ALTER, AMEND, OR MODIFY CERTIFICATES

Sec.

406.1 Definitions.
406.2 Initiation of proceedings.
406.3 Service of order to show cause.
406.4 Response to order to show cause.
406.5 Request for, or waiver of, hearing.
406.6 Notice of hearing.
406.7 Hearing.
406.8 Appearances.
406.9 Subpoenas.
406.10 Submission without hearing or appearance.
406.11 Stay of order pending judicial review.
406.12 Petition for rehearing, reargument, reconsideration or modification of order.
406.13 Authority of examiners.

AUTHORITY: §§ 406.1 to 406.13 issued under secs. 205 (a), 208, 52 Stat. 984, 986; 49 U. S. C. 425 (a), 458. Interpret or apply 52 Stat. 1011, 1017–1025; 49 U. S. C. 559, 641–649.

SOURCE: §§ 406.1 to 406.13 appear at 12 F. R. 2014, redesignated by Amendment 1, 13 F. R. 3047.

§ 406.1 *Definitions.* (a) "Act" means Civil Aeronautics Act of 1938, as amended (52 Stat. 973, 54 Stat. 1231, 1233, 1234, 1235–1236; 49 U.S.C. 401).

(b) "Administrator" means Administrator of Civil Aeronautics.

§ 406.2 *Initiation of proceedings.* A proceeding shall be initiated by the Administrator or his authorized representative by the issuance of an order addressed to the certificate holder or other party in interest, directing him to show cause why the certificate shall not be altered, amended, or modified as specified in the order.

§ 406.3 *Service of order to show cause.* The order to show cause will be served upon the party in interest by mailing a copy thereof by registered mail, return receipt requested, addressed to the party at his last known address.

§ 406.4 *Response to order to show cause.* After service upon him of the order to show cause, the respondent shall have ten days within which to respond in writing to the order. Such answer shall be deemed filed as of the date of mailing to the General Counsel properly addressed and postage prepaid. If respondent fails to answer the order within ten days, the Administrator or the Examiner assigned to hear the matter may forthwith order that the certificate be amended in accordance with the show cause order.

§ 406.5 *Request for, or waiver of, hearing.* The respondent shall have the right to have the matter set for hearing and the issue determined on the basis of the facts presented at such hearing. If respondent fails to request a hearing within ten days after serving of the order to show cause, the issues may be decided upon the basis of facts and arguments presented in writing by the respondent and the counsel assigned to represent the Government.

§ 406.6 *Notice of hearing.* When a hearing has been requested, the respondent shall be given adequate notice of the date and place where such hearing will be held. In fixing the times and places for hearings, due regard shall be had for the convenience and necessity of the parties and their representatives.

§ 406.7 *Hearing.* A hearing shall be held before an Examiner duly designated by the Administrator.

§ 406.8 *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 Administrator is maintained and no application for admission to practice is required. Any attorney practicing or desiring to practice before the Administrator may, upon hearing and good cause shown, be suspended or prohibited from so practicing.

§ 406.9 *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 the Examiner.

§ 406.10 *Submission without hearing or appearance.* Where respondent does not request a hearing, the Examiner, on the basis of the pleadings and the documentary evidence submitted by the parties, shall prepare an initial decision. A copy of the initial decision shall be served upon the respondent or his counsel, 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 Administrator. If no appeal to the Administrator is filed or action by the Administrator to review such decision is entered within the time allowed, such decision shall without further proceedings become the decision of the Administrator.

§ 406.11 *Stay of order pending judicial review.* The filing of a petition for a judicial review of an order made under this part as provided in section 1006 of the act shall not operate to stay the effectiveness of the order unless specifically so ordered by the Administrator. The petitioner may request, and if good cause is shown therefor, the Administrator will stay the effectiveness of the order from which an appeal is being taken.

§ 406.12 *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 Administrator within ten days after receipt thereof.

(b) 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

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order, unless otherwise ordered by the Administrator.

§ 406.13 *Authority of examiners.* Examiners shall have authority 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 Administrator, to certify any question to the Administrator for his consideration and disposition;

(j) To issue subpoenas;

(k) To make initial decisions.

A complete list of the Regulations of the Administrator and amendments to them appears in the CAA Journal, issued monthly by Civil Aeronautics Administration. Copies of amendments are obtainable, without charge, from the Office of Aviation Information, CAA, Washington 25, D. C.

AVIATION INFORMATION

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