

§ 406.123

date the document is due, the motion for an extension of time is granted for no more than 20 days after the original date the document was to be filed.

[Docket No. FAA-2001-8607, 66 FR 2180, Jan. 10, 2001, as amended at 72 FR 68476, Dec. 5, 2007]

§ 406.123 Waivers.

Waivers of any rights provided by statute or regulation must be in writing or by stipulation made at a hearing and entered into the record. The parties must set forth the precise terms of the waiver and any conditions.

§ 406.127 Complaint and answer in civil penalty adjudications.

(a) *Complaint—(1) Filing.* The complainant must file the original and one copy of the complaint with the Federal Docket Management System, or may file a written motion pursuant to 406.141(f)(1) instead of filing a complaint, not later than 20 days after receipt by the complainant of a request for hearing. The complainant should suggest a location for the hearing when filing the complaint.

(2) *Service.* The complainant must personally deliver or mail a copy of the complaint to the respondent, or the respondent's attorney or representative who has filed a notice of appearance in accordance with § 406.107.

(3) *Contents of complaint.* The final notice of proposed civil penalty issued under § 406.9(d) may be filed as the complaint. A complaint must set forth the following in sufficient detail to provide notice:

(i) The facts alleged.

(ii) Any requirement of the Act, a regulation issued under the Act, or any term or condition of a license or permit issued or transferred under the Act allegedly violated by the respondent.

(iii) The proposed civil penalty.

(b) *Answer—(1) Time for filing.* The respondent must file an answer to the complaint, or may file a written motion pursuant to § 406.141(f)(2) instead of filing an answer, not later than 30 days after service of the complaint.

(2) *Form.* The answer must be in writing. The answer may be in the form of a letter but must be dated and signed by the person responding to the complaint. The answer must be legible, and

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may be handwritten, typed, or printed from a computer.

(3) *Filing and service.* A respondent must file the answer with the Federal Docket Management System and serve a copy of the answer on the agency attorney who filed the complaint.

(4) *Contents of answer—(i) Specific denial of allegations required.* The respondent must admit, deny, or state that the respondent is without sufficient knowledge or information to admit or deny, each numbered paragraph of the complaint. Any statement or allegation contained in the complaint that is not specifically denied in the answer constitutes an admission of the truth of that allegation. An administrative law judge shall treat a general denial of the complaint as a failure to file an answer.

(ii) *Affirmative defenses.* The answer must specifically state any affirmative defense that the respondent asserts.

(iii) *Request for relief.* The answer may include a brief statement of any relief requested.

(iv) *Hearing location.* The respondent should suggest a location for the hearing when filing the answer.

(5) *Failure to file answer.* A respondent's failure to file an answer without good cause constitutes an admission of the truth of each allegation contained in the complaint.

[Docket No. FAA-2001-8607, 66 FR 2180, Jan. 10, 2001, as amended by Amdt. 406-4, 72 FR 17017, Apr. 6, 2007; 72 FR 68476, Dec. 5, 2007]

§ 406.133 Amendment of pleadings.

(a) *Time.* A party must file with the Federal Docket Management System and serve on each other party any amendment to a complaint or an answer as follows:

(1) Not later than 15 days before the scheduled date of a hearing, a party may amend a complaint or an answer without the consent of the administrative law judge.

(2) Less than 15 days before the scheduled date of a hearing, the administrative law judge may allow amendment of a complaint or an answer only for good cause shown in a motion to amend.

(b) *Responses.* The administrative law judge must allow a reasonable time, but not more than 20 days from the

date of filing, for other parties to respond to an amendment to a complaint or answer.

[Docket No. FAA-2001-8607, 66 FR 2180, Jan. 10, 2001, as amended at 72 FR 68477, Dec. 5, 2007]

§ 406.135 Withdrawal of complaint or request for hearing.

At any time before or during a hearing, the complainant may withdraw a complaint or a party may withdraw a request for a hearing without the consent of the administrative law judge. If the complainant withdraws the complaint or a party withdraws the request for a hearing and the answer, the administrative law judge must dismiss the proceedings under this subpart with prejudice.

§ 406.137 Intervention.

(a) A person may file with the Federal Docket Management System and serve on each other party a motion for leave to intervene as party in an adjudication. Except for good cause shown, a motion for leave to intervene must be filed not later than 10 days before the hearing.

(b) The administrative law judge may grant a motion for leave to intervene if the administrative law judge finds that—

(1) Intervention will not unduly broaden the issues or delay the proceedings, and

(2) The intervener will be bound by any order or decision entered in the action or the intervener has a property, financial, or other legitimate interest that may not be addressed adequately by the parties.

(c) The administrative law judge may determine the extent to which an intervener may participate in the proceedings.

[Docket No. FAA-2001-8607, 66 FR 2180, Jan. 10, 2001, as amended at 72 FR 68477, Dec. 5, 2007]

§ 406.139 Joint procedural or discovery schedule.

(a) *General.* The parties may agree to submit a schedule for filing all prehearing motions or for conducting discovery or both.

(b) *Form and content of schedule.* If the parties agree to a joint procedural or

discovery schedule, one of the parties must file with the Federal Docket Management System and serve the joint schedule, setting forth the dates to which the parties have agreed. One of the parties must draft an order establishing a joint schedule for the administrative law judge.

(1) The joint schedule may include, but need not be limited to, times for requests for discovery, any objections to discovery requests, responses to discovery requests, submission of prehearing motions, responses to prehearing motions, exchange of exhibits to be introduced at the hearing, and lists of witnesses that may be called at the hearing.

(2) Each party must sign the original joint schedule.

(c) *Time.* The parties may agree to submit all prehearing motions and responses and may agree to close discovery in the proceedings under the joint schedule within a reasonable time before the date of the hearing, but not later than 15 days before the hearing.

(d) *Order establishing joint schedule.* The administrative law judge must approve the joint schedule filed by the parties by signing the joint schedule and filing it with the Federal Docket Management System.

(e) *Disputes.* The administrative law judge must resolve any dispute regarding discovery or regarding compliance with the joint schedule as soon as possible so that the parties may continue to comply with the joint schedule.

(f) *Sanctions for failure to comply with joint schedule.* If a party fails to comply with the order establishing a joint schedule, the administrative law judge may direct that party to comply with a motion to compel discovery; or, limited to the extent of the party's failure to comply with a motion or discovery request, the administrative law judge may:

(1) Strike that portion of a party's pleadings;

(2) Preclude prehearing or discovery motions by that party;

(3) Preclude admission of that portion of a party's evidence at the hearing; or