

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.

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**§ 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

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(4) Preclude that portion of the testimony of that party's witnesses at the hearing.

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### § 406.141 Motions.

(a) *General.* A party applying for an order or ruling not specifically provided in this subpart must do so by motion. A party must comply with the requirements of this section when filing a motion for consideration by the administrative law judge or the FAA decisionmaker on appeal.

(b) *Contents.* A party must state the relief sought by the motion and the particular grounds supporting that relief. If a party has evidence in support of a motion, the party must attach any evidence, including affidavits, to the motion.

(c) *Form and time.* Except for oral motions heard on the record, a motion made prior to the hearing must be in writing. Unless otherwise agreed by the parties or for good cause shown, a party must file any prehearing motion with the Federal Docket Management System and serve each other party not later than 30 days before the hearing.

(d) *Answers to motions.* Any party may file and serve an answer, with affidavits or other evidence in support of the answer, not later than 10 days after service of a written motion on that party. When a motion is made during a hearing, the answer may be made at the hearing on the record, orally or in writing, within a reasonable time determined by the administrative law judge.

(e) *Rulings on motions.* The administrative law judge must rule on all motions as follows:

(1) *Discovery motions.* The administrative law judge must resolve all pending discovery motions not later than 10 days before the hearing.

(2) *Prehearing motions.* The administrative law judge must resolve all pending prehearing motions not later than 7 days before the hearing. If the administrative law judge issues a ruling or order orally, the administrative law judge must serve a written copy of the ruling or order, within 3 days, on each party. In all other cases, the ad-

ministrative law judge must issue rulings and orders in writing and must serve a copy of the ruling or order on each party.

(3) *Motions made during the hearing.* The administrative law judge may issue rulings and orders on motions made during the hearing orally. Oral rulings or orders on motions must be made on the record.

(f) *Specific motions—*(1) *Complainant's motion to dismiss a request for a hearing as prematurely filed.* The complainant may file a motion to dismiss a request for a hearing as prematurely filed instead of filing a complaint. If the motion is not granted, the complainant must file the complaint and must serve a copy of the complaint on each party not later than 10 days after service of the administrative law judge's ruling or order on the motion to dismiss. If the motion to dismiss is granted and the proceedings are terminated without a hearing, the respondent may file an appeal in accordance with § 406.175. If required by the decision on appeal, the complainant must file a complaint and must serve a copy of the complaint on each party not later than 10 days after service of the decision on appeal.

(2) *Respondent's motions instead of an answer.* A respondent may file one or more of the following motions instead of filing an answer. If the administrative law judge denies the motion, the respondent must file an answer not later than 10 days after service of the denial of the motion.

(i) *Respondent's motion to dismiss complaint for failure to state a claim for which a civil penalty may be imposed.* A respondent may file a motion to dismiss the complaint for failure to state a claim for which a civil penalty may be imposed instead of filing an answer. The motion must show that the complaint fails to state a violation of the Act, a regulation issued under the Act, or any term or condition of a license issued or transferred under the Act.

(ii) *Respondent's motion to dismiss allegations or complaint for staleness.* Instead of filing an answer to the complaint, a respondent may move to dismiss the complaint, or that part of the complaint that alleges a violation that occurred more than 5 years before an