

§ 386.31

may be used to construe the terms of the order;

(5) Provisions that the order has the same force and effect, becomes final, and may be modified, altered, or set aside in the same manner as other orders issued under 49 U.S.C. Chapters 5, 131–149, 311 and 315;

(6) Provisions that the agreement will not be part of the record in the proceeding unless and until the Assistant Administrator executes it.

(b) A consent order may also contain any of the provisions enumerated in § 386.21—Compliance Order.

[50 FR 40306, Oct. 2, 1985. Redesignated and amended at 56 FR 10183, Mar. 11, 1991; 65 FR 7756, Feb. 16, 2000]

Subpart D—General Rules and Hearings

§ 386.31 Service.

(a) All service required by these rules shall be by mail or by personal delivery. Service by mail is complete upon mailing.

(b) A certificate of service shall accompany all pleadings, motions, and documents when they are tendered for filing, and shall consist of a certificate of personal delivery or a certificate of mailing, executed by the person making the personal delivery or mailing the document. The first pleading of the Government in a proceeding initiated under this part shall have attached to it a service list of persons to be served. This list shall be updated as necessary.

(c) Copies of all pleadings, motions, and documents must be served on the docket clerk and upon all parties to the proceedings by the person filing them, in the number of copies indicated on the Government's initial service list.

EFFECTIVE DATE NOTE: At 70 FR 28483, May 18, 2005, § 386.31 was revised, effective November 14, 2005. For the convenience of the user, the revised text is set forth as follows:

§ 386.31 Official notice.

Upon notification to all parties, the Assistant Administrator or Administrative Law Judge may take official notice of any fact or document not appearing in evidence in the record. Any party objecting to the official notice must file an objection within 10 days after service of the notice. If a Final Agency Order has been issued, and the decision rests

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on a material and disputable fact of which the Agency decisionmaker has taken official notice, a party may challenge the action of official notice in accordance with § 386.64 of this part.

§ 386.32 Computation of time.

EFFECTIVE DATE NOTE: At 70 FR 28483, May 18, 2005, § 386.32 was removed, effective November 14, 2005.

(a) Generally, in computing any time period set out in these rules or in an order issued hereunder, the time computation begins with the day following the act, event, or default. The last day of the period is included unless it is a Saturday, Sunday, or legal Federal holiday in which case the time period shall run to the end of the next day that is not a Saturday, Sunday, or legal Federal holiday. All Saturdays, Sundays, and legal Federal holidays except those falling on the last day of the period shall be computed.

(b) *Date of entry of orders.* In computing any period of time involving the date of the entry of an order, the date of entry shall be the date the order is served.

(c) *Computation of time for delivery by mail.* (1) Documents are not deemed filed until received by the docket clerk. However, when documents are filed by mail, 5 days shall be added to the prescribed period.

(2) Service of all documents is deemed effected at the time of mailing.

(3) Whenever a party has the right or is required to take some action within a prescribed period after the service of a pleading, notice, or other document upon said party, and the pleading, notice, or document is served upon said party by mail, 5 days shall be added to the prescribed period.

§ 386.33 Extension of time.

EFFECTIVE DATE NOTE: At 70 FR 28483, May 18, 2005, § 386.33 was removed, effective November 14, 2005.

All requests for extensions of time shall be filed with the Assistant Administrator or, if the matter has been called for a hearing, with the administrative law judge. All requests must state the reasons for the request. Only those requests showing good cause will be granted. No motion for continuance or postponement of a hearing date filed

within 7 days of the date set for a hearing will be granted unless it is accompanied by an affidavit showing that extraordinary circumstances warrant a continuance.

§ 386.34 Official notice.

EFFECTIVE DATE NOTE: At 70 FR 28483, May 18, 2005, §386.34 was removed, effective November 14, 2005.

The Assistant Administrator or administrative law judge may take official notice of any fact not appearing in evidence if he/she notifies all parties he/she intends to do so. Any party objecting to the official notice shall file an objection within 10 days after service of the notice.

§ 386.35 Motions.

(a) *General.* An application for an order or ruling not otherwise covered by these rules shall be by motion. All motions filed prior to the calling of the matter for a hearing shall be to the Assistant Administrator. All motions filed after the matter is called for hearing shall be to the administrative law judge.

(b) *Form.* Unless made during hearing, motions shall be made in writing, shall state with particularity the grounds for relief sought, and shall be accompanied by affidavits or other evidence relied upon.

(c) *Answers.* Except when a motion is filed during a hearing, any party may file an answer in support or opposition to a motion, accompanied by affidavits or other evidence relied upon. Such answers shall be served within 7 days after the motion is served or within such other time as the Assistant Administrator or administrative law judge may set.

(d) *Argument.* Oral argument or briefs on a motion may be ordered by the Assistant Administrator or the administrative law judge.

(e) *Disposition.* Motions may be ruled on immediately or at any other time specified by the administrative law judge or the Assistant Administrator.

(f) *Suspension of time.* The pendency of a motion shall not affect any time limits set in these rules unless expressly ordered by the Assistant Administrator or administrative law judge.

EFFECTIVE DATE NOTE: At 70 FR 28483, May 18, 2005, §386.35 was Redesignated as §386.34, and the new §386.34 was amended in paragraph (c) by removing the number "7" and adding, in its place, the number "20," effective November 14, 2005.

§ 386.36 Motions to dismiss and motions for a more definite statement.

(a) Motions to dismiss must be made within the time set for reply or petition to review, except motions to dismiss for lack of jurisdiction, which may be made at any time.

(b) Motions for a more definite statement may be made in lieu of a reply. The motion must point out the defects complained of and the details desired. If the motion is granted, the pleading complained of must be remedied within 15 days of the granting of the motion or it will be stricken. If the motion is denied, the party who requested the more definite statement must file his/her pleading within 10 days after the denial.

EFFECTIVE DATE NOTE: At 70 FR 28483, May 18, 2005, §386.36 was Redesignated as §386.35 and a new §386.36 was added, effective November 14, 2005. For the convenience of the user the added text is set forth as follows:

§ 386.36 Motions for final agency order.

(a) *Generally.* Unless otherwise provided in this section, the motion and answer will be governed by §386.34. Either party may file a motion for final order. The motion must be served in accordance with §§386.6 and 386.7. If the matter is still pending before the service center, upon filing, the matter is officially transferred from the service center to the Agency decisionmaker, who will then preside over the matter.

(b) *Form and content.*

(1) Movant's filing must contain a motion and memorandum of law, which may be separate or combined and must include all responsive pleadings, notices, and other filings in the case to date.

(2) The motion for final order must be accompanied by written evidence in accordance with §386.49.

(3) The motion will state with particularity the grounds upon which it is based and the substantial matters of law to be argued. A Final Agency Order may be issued if, after reviewing the record in a light most favorable to the non-moving party, the Agency decisionmaker determines no genuine issue exists as to any material fact.

(c) *Answer to Motion.* The non-moving party will, within 45 days of service of the motion for final order, submit and serve a response to rebut movant's motion.