

WEST VIRGINIA RULES OF PRACTICE AND PROCEDURE
STATE AERONAUTICS COMMISSION

Chapter 29-2A

Series III

1964

obsolete
valid March 8, 1965
to Dec 27, 1982 when
refiled in accordance
with 29A-2-5

Subject: Matters pertaining to aeronautics in the State of West Virginia.

Rule 1. General Offices and Meetings. (a) The general offices of the West Virginia State Aeronautics Commission, at Kanawha Airport, shall be kept open in charge of the Director, or some other competent person designated by the Director, each week day, except legal holidays, from 9:00 A. M. o'clock until 5:00 P. M. o'clock, except that the office hours for Saturdays shall be from 9:00 A. M. o'clock to 12:00 noon.

(b) The Commission shall hold in its said offices four regular meetings annually, on the second Monday in January, April, July and October, and may hold special meetings and conduct hearings at such other times and at such other places as may be set by the Commission.

Rule 2. Director to Furnish Information.

The Director shall, upon request, advise any party interested as to the form of any application, complaint or other paper required to be filed by any law or regulation, or which any person desires to file with the Commission. The Director shall furnish from the files and records of the Commission any information required for a full presentation of the facts material to any person interested in any investigation, application or other proceeding to be presented to or pending before the Commission.

Adm. Reg. 29-2A
Series III

Rule 3. Records.

The Director shall keep the following record books, suitably indexed:

(1) Minute Book, in which shall be recorded the minutes of all official business sessions of the Commission, orders paying expenses of members, orders paying the salaries, compensation and expenses of employees of the Commission, and all orders pertaining to the administration of the Commission together with such orders as may be directed to be entered therein by the Commission.

(2) Docket Book, in which shall be entered each case pending before the Commission on complaint or application, or under investigation, with a file number corresponding to the number of the case, together with a brief chronological notation of the proceedings had in the case.

Rule 4. Filing Papers.

(a) Communications addressed to the Commission and all complaints, applications or other papers required to be filed with the Commission by statute, or by regulation, received or filed in the general offices kept by the Director, shall be stamped with the date of the receipt or filing thereof.

(b) All papers of whatever character offered for filing in any proceeding before the Commission shall show the title and style of the case, and the docket number. The Director will not be required to file any paper not so identified.

Rule 5. Parties.

The parties to proceedings before the Commission are complainants, respondents, interveners, applicants and petitioners, according to the nature of the proceeding, and the relation of the party thereto. Any party in interest may appear and be heard in person or by agent, attorney or counsel.

(a) In complaint cases, the party who complains to the Commission of anything done or omitted to be done in violation of statute or any rule or regulation of the Commission by any person subject to control or regulation by the Commission is styled a complainant.

(b) The person so complained of is styled the respondent.

(c) Any person interested in the subject matter of any application, complaint or other proceeding pending before the Commission who is not an original party in interest in the said proceeding may petition the Commission, either orally or in writing, for leave to intervene in such proceeding prior to or at the time it is called for hearing, but not thereafter except for good cause shown. The petition shall set forth the grounds of the proposed intervention, the position and interest of the petitioner in the proceeding, and if affirmative relief is sought, the basis for such relief. Leave to intervene will not be granted except on allegations reasonably pertinent to the issues presented in the original proceeding. A person granted leave to intervene is styled an intervener with the right to have notice of and appear at the taking of testimony, to produce and cross-examine witnesses, and to be heard on the argument of the case.

(d) In applications for licenses, certificates of approval or

other authority from the Commission, the person making application is styled an applicant.

(e) All others seeking any form of relief or authority from the Commission are styled petitioners.

Rule 6. Complaints.

Any person becoming cognizant of the violation of any statute, rule or regulation in effect in this State pertinent to the control and regulation of aeronautics may file a complaint with the Commission. Such complaints may be made by letter or other writing. No particular form for such complaint is prescribed, but in substance, the complaint should contain a brief statement of the violation, the name and address of the complainant, and the correct name and address of the complainant, and the correct name of the person against whom the complaint is made. Upon receipt and filing of such complaint, the Commission may, if the nature of the complaint warrants, take up with the respondent by correspondence the matter presented in an endeavor to bring about satisfactory adjustment of the complaint without a hearing by the Commission. In the event such adjustment can not be made, the Commission may, in its discretion, conduct an investigation and thereafter set the matter for hearing or at its election may set the matter for hearing without further investigation.

Rule 7. Hearings.

When the Commission deems a hearing necessary, or any party in interest requests a hearing on any application, complaint or petition, or other proceeding, the Commission will set a time and place for a

hearing, which will be at its offices in the City of Charleston or elsewhere in the State, at the discretion of the Commission, and such hearing will be held by one or more members of the Commission or by the Director. The applicant, complainant or petitioner shall first introduce evidence to establish the facts alleged to obtain the relief or authority sought. Other parties to the proceeding may then offer testimony in their behalf, unless for good cause shown, a delay or continuance for the presentation of such evidence is found to be necessary. Oral argument and briefs may be permitted in the discretion of the Commission. In case of the failure of any person to appear at the hearing, the Commission will hear such proof of facts as it may deem proper and reasonable and make such investigation, and enter such order as the facts justify and the circumstances may require.

In all cases where notice and opportunity for a hearing are required by the provisions of the statutes, the procedure shall conform to the provisions of Section 22, Article 2A, Chapter 29 of the Code of West Virginia, 1931.

All maps, prints, writings, statements, documents, or exhibits filed with the Commission must be accompanied by a sufficient number of copies to provide a copy for each party to the proceeding, and six copies for the use of the Commission.

The Director shall keep in his custody and be responsible for the original or one counterpart of all maps, prints, writings, statements, documents or exhibits made a part of the record, as aforesaid.

Rule 8. Stipulation of Facts.

The parties to any proceeding or investigation may, by stipulation in writing filed with the Commission, agree upon the facts or any portion thereof involved in any proceeding pending before the Commission, which stipulation shall be considered as evidence.

Rule 9. Witnesses.

Subpoenas requiring the attendance of witnesses from any place in the State of West Virginia at any designated place of hearing before the Commission for the purpose of taking the testimony of such witnesses will be issued upon the application of any party by the Director or any member of the Commission. Subpoenas for the production of books, papers or documents will also be issued by the Director or any member of the Commission upon application in writing or by the Commission upon its own motion. Such application shall be verified by affidavit, shall describe the books, papers or documents desired to be produced with sufficient particularity for identification and shall state that the applicant believes the same are necessary to the determination of the merits of the case.

Rule 10. Witness Fees.

Witness fees necessary and incidental to hearings before the Commission shall be paid by the party at whose instance the witness is summoned. No witness fees will be allowed except on subpoenas. In all cases, the fee allowed will be the same as that allowed by the Circuit Courts of this State.

Rule 11. Service of Subpoenas, Notices, and Orders.

All subpoenas for parties or witnesses, and all notices and orders which are required to be served shall be served by delivering a copy thereof by registered mail to the party to be served, or in the manner prescribed by Chapter 56, Article 2, Section 1, of the Code.

Rule 12. Reporting of Hearings.

The proceedings at any hearing, may if the Commission so desire, or any party in interest so request, be taken down in shorthand by a duly qualified and sworn shorthand reporter. A transcript of the proceedings thus reported shall be furnished to any party in interest so requesting. When a request for reporting or a transcript is made, the party making the request shall be liable for the cost thereof and shall give to the Commission security for such costs before the case is reported or the transcript is made, as the case may be.

Rule 13. Depositions.

The testimony of any witness may be taken by deposition at the instance of a party in any proceeding or investigation, at any time after the same is at issue, by the consent of the Commission. The Commission may, of its own motion, order testimony to be taken by deposition in any proceeding or investigation pending before it at any stage of such proceeding or investigation. Such deposition shall be taken in the manner prescribed by the laws of West Virginia for taking depositions in civil cases in courts of record.

Rule 14. Rules of Evidence and Procedure.

In any hearing before the Commission, the common law rules of evidence

and procedure shall apply in so far as they are applicable and are not in conflict with any specific statute, or any other rule or regulation adopted by the Commission.

Rule 15. Briefs.

In all contested cases, printed or typewritten briefs may be filed in the discretion of the Commission, on behalf of any or all parties in interest. Unless the Commission indicates otherwise, such briefs shall be filed and copies served on the other parties in interest within the time hereinafter provided:

(a) The complainant, applicant, respondent or intervener, as the case may be, shall have twenty days after the receipt of a transcript of the evidence.

(b) Reply briefs, ten days after receipt of original brief.

(c) Subsequent briefs, five days after receipt of reply brief.

A sufficient number of copies of all briefs must be prepared to provide for service as aforesaid upon the adverse parties, and to provide at least six copies, if typewritten, or ten copies, if printed, for the use of the Commission.

Rule 16. Further Hearing, Reopening, or Rehearing.

(a) Applications for (1) further hearing in a proceeding after the close of testimony and before final submission of oral argument or brief, for (2) reopening a proceeding after final submission and before decision, or for (3) rehearing or reargument after decision, must be made by petition, within ten days after the date of such closing of testimony, final submission or decision, as the case may be.

Such petition shall state specifically the grounds relied upon and shall be filed with the Commission and a copy served by the petitioner upon each adverse party, or his attorney; who appeared at the hearing, or oral argument, if any, or on brief.

(b) If the application be for further hearing before final submission, or for reopening the proceeding to take further evidence after submission and before decision, the nature and purpose of the evidence to be adduced must be briefly stated and it must appear to be not merely cumulative.

(c) If the application be for rehearing or reargument after decision, the matters claimed to have been erroneously decided must be specified and the alleged errors stated. If thereby any order of the Commission is sought to be vacated, reversed, or modified, by reason of matters which have arisen since the hearing, or by reason of matters which have arisen since the hearing, or by reason of consequence which would result from compliance therewith, or by reason of facts not in possession of the petitioner at the time of the hearing, the matter so relied upon by the petitioner must be fully set forth in the petition.

(d) Application for modification of orders which seek only change in the date when they shall take effect, or in the period of notice thereby prescribed, must be made by petition seasonably filed and served in like manner as other applications under this rule, except that, in case of unforeseen emergency satisfactorily shown by the applicant, such relief may be sought informally, by telegram or otherwise, upon notice thereof to all parties or attorneys who appeared

as aforesaid.

(e) Each petition filed under this rule shall be accompanied by six additional copies thereof for the use of the Commission, and by certificate showing service upon the parties or their attorneys who appeared as aforesaid. Within five days after such service, any adverse party may file and serve in like manner a reply to the petition, and the reply so filed to be accompanied by a like manner of copies for the use of the Commission.

(f) Upon the filing of said reply or upon default thereof within the said period, the Commission will make such order with respect to the hearing of said petition, or the granting of the prayer thereof, as it shall deem just and right.

(g) Upon the filing of any application, petition or motion under this rule, the Commission may stay any pending proceeding or order or permit the same to continue in effect or to become effective.

Rule 17. Continuance of Hearings.

After date for hearing has been set, continuances will not be granted by the Commission except for good and sufficient cause.

Application for a continuance may be made orally to the Commission at the time and place the hearing sought to be continued is set for hearing, or by request in writing filed with the Director, and served on opposing counsel or parties, presented as far in advance of date fixed for hearing as possible under the circumstances.

Rule 18. Certified Copies.

(a) No original paper in any case shall be withdrawn from the

file, except upon special order of the Commission.

(b) Certified copies of papers on file in the Director's office may be obtained by any person desiring the same upon payment to the Director of the fees fixed by law to be paid to a clerk of the circuit court for like service, except that the fee for certifying a copy of any printed document furnished to the Director for certification, or a carbon copy of any typewritten document so furnished, shall be one dollar (1.00).

Rule 19. Representation at Formal Hearings.

Representation or appearance of parties in all formal proceedings pending before the Commission shall be only by attorneys at law admitted to practice before the courts of this state, before the court of last resort of other states, or before the Supreme Court of the United States. PROVIDED, HOWEVER, that a party may appear for and represent himself, a partner may represent his partnership, and a corporation or association may be represented by a duly authorized executive officer thereof, upon permission granted in the discretion of the presiding Commissioner, Director, or other person authorized to conduct the hearing in any proceeding.