

Federal Communications Commission

§ 1.85

However, these procedures may be followed whenever the Commission, in its discretion, determines that they will better serve the ends of justice.

(1) Before imposing a forfeiture penalty under the provisions of this paragraph, the Commission will issue a notice of opportunity for hearing. The hearing will be a full evidentiary hearing before an administrative law judge, conducted under procedures set out in subpart B of this part, including procedures for appeal and review of initial decisions. A final Commission order assessing a forfeiture under the provisions of this paragraph is subject to judicial review under section 402(a) of the Communications Act.

(2) If, after a forfeiture penalty is imposed and not appealed or after a court enters final judgment in favor of the Commission, the forfeiture is not paid, the Commission will refer the matter to the Department of Justice for collection. In an action to recover the forfeiture, the validity and appropriateness of the order imposing the forfeiture are not subject to review.

(3) Where the possible assessment of a forfeiture is an issue in a hearing case to determine which pending application should be granted, and the applicant facing a potential forfeiture is dismissed pursuant to a settlement agreement or otherwise, and the presiding judge has not made a determination on the forfeiture issue, the order of dismissal shall be forwarded to the attention of the full Commission. Within the time provided by § 1.117, the Commission may, on its own motion, proceed with a determination of whether a forfeiture against the dismissing applicant is warranted. If the Commission so proceeds, it will provide the applicant with a reasonable opportunity to respond to the forfeiture issue (see paragraph (f)(3) of this section) and make a determination under the procedures outlined in paragraph (f) of this section.

(h) *Payment.* The forfeiture should be paid by check or money order drawn to the order of the Federal Communications Commission. The Commission does not accept responsibility for cash payments sent through the mails. The check or money order should be mailed to: Federal Communications Commis-

sion, P.O. Box 73482, Chicago, Illinois 60673-7482.

(i) *Remission and mitigation.* In its discretion, the Commission, or its designee, may remit or reduce any forfeiture imposed under this section. After issuance of a forfeiture order, any request that it do so shall be submitted as a petition for reconsideration pursuant to § 1.106.

(j) *Effective date.* Amendments to paragraph (b) of this section implementing Pub. L. No. 101-239 are effective December 19, 1989.

[43 FR 49308, Oct. 23, 1978, as amended at 48 FR 15631, Apr. 12, 1983; 50 FR 40855, Oct. 7, 1985; 55 FR 25605, June 22, 1990; 56 FR 25638, June 5, 1991; 57 FR 23161, June 2, 1992; 57 FR 47006, Oct. 14, 1992; 57 FR 48333, Oct. 23, 1992; 58 FR 6896, Feb. 3, 1993; 58 FR 27473, May 10, 1993; 62 FR 4918, Feb. 3, 1997; 62 FR 43475, Aug. 14, 1997; 63 FR 26992, May 15, 1998; 65 FR 60868, Oct. 13, 2000; 69 FR 47789, Aug. 6, 2004]

§ 1.83 Applications for radio operator licenses.

(a) Application filing procedures for amateur radio operator licenses are set forth in part 97 of this chapter.

(b) Application filing procedures for commercial radio operator licenses are set forth in part 13 of this chapter. Detailed information about application forms, filing procedures, and where to file applications for commercial radio operator licenses is contained in the bulletin "Commercial Radio Operator Licenses and Permits." This bulletin is available from the Commission's Forms Distribution Center by calling 1-800-418-FORM (3676).

[47 FR 53378, Nov. 26, 1982, as amended at 58 FR 13021, Mar. 9, 1993; 63 FR 68920, Dec. 14, 1998]

§ 1.85 Suspension of operator licenses.

Whenever grounds exist for suspension of an operator license, as provided in § 303(m) of the Communications Act, the Chief of the Wireless Telecommunications Bureau, with respect to amateur and commercial radio operator licenses, may issue an order suspending the operator license. No order of suspension of any operator's license shall take effect until 15 days' notice in writing of the cause for the proposed suspension has been given to the operator licensee, who may make written

application to the Commission at any time within the said 15 days for a hearing upon such order. The notice to the operator licensee shall not be effective until actually received by him, and from that time he shall have 15 days in which to mail the said application. In the event that physical conditions prevent mailing of the application before the expiration of the 15-day period, the application shall then be mailed as soon as possible thereafter, accompanied by a satisfactory explanation of the delay. Upon receipt by the Commission of such application for hearing, said order of suspension shall be designated for hearing by the Chief, Wireless Telecommunications Bureau and said suspension shall be held in abeyance until the conclusion of the hearing. Upon the conclusion of said hearing, the Commission may affirm, modify, or revoke said order of suspension. If the license is ordered suspended, the operator shall send his operator license to the Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, in Washington, DC, on or before the effective date of the order, or, if the effective date has passed at the time notice is received, the license shall be sent to the Commission forthwith.

[63 FR 68920, Dec. 14, 1998]

§ 1.87 Modification of license or construction permit on motion of the Commission.

(a) Whenever it appears that a station license or construction permit should be modified, the Commission shall notify the licensee or permittee in writing of the proposed action and reasons therefor, and afford the licensee or permittee at least thirty days to protest such proposed order of modification, except that, where safety of life or property is involved, the Commission may by order provide a shorter period of time.

(b) The notification required in paragraph (a) of this section may be effectuated by a notice of proposed rule making in regard to a modification or addition of an FM or television channel to the Table of Allotments (§§ 73.202 and 73.504) or Table of Assignments (§ 73.606). The Commission shall send a

copy of any such notice of proposed rule making to the affected licensee or permittee by certified mail, return receipt requested.

(c) Any other licensee or permittee who believes that its license or permit would be modified by the proposed action may also protest the proposed action before its effective date.

(d) Any protest filed pursuant to this section shall be subject to the requirements of section 309 of the Communications Act of 1934, as amended, for petitions to deny.

(e) In any case where a hearing is conducted pursuant to the provisions of this section, both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Commission except that, with respect to any issue that pertains to the question of whether the proposed action would modify the license or permit of a person filing a protest pursuant to paragraph (c) of this section, such burdens shall be as described by the Commission.

(f) In order to utilize the right to a hearing and the opportunity to appear and give evidence upon the issues specified in any hearing order, the licensee or permittee, in person or by attorney, shall, within the period of time as may be specified in the hearing order, file with the Commission a written statement stating that he or she will appear at the hearing and present evidence on the matters specified in the hearing order.

(g) The right to file a protest or have a hearing shall, unless good cause is shown in a petition to be filed not later than 5 days before the lapse of time specified in paragraph (a) or (f) of this section, be deemed waived:

(1) In case of failure to timely file the protest as required by paragraph (a) of this section or a written statement as required by paragraph (f) of this section.

(2) In case of filing a written statement provided for in paragraph (f) of this section but failing to appear at the hearing, either in person or by counsel.

(h) Where the right to file a protest or have a hearing is waived, the licensee or permittee will be deemed to have consented to the modification as proposed and a final decision may be