

- (1) Personnel Officer.
- (2) Budget and Fiscal Officer.
- (3) Chief, Administrative Operations Division.
- (4) Deputy Chief, Administrative Operations Division.
- (5) Office Services Manager, GS-12.
- (6) Legislative Affairs Officer.
- (g) Division Chiefs, Bureau of Surface Transportation Safety.
- (h) Bureau of Aviation Safety:
 - (1) Assistant Director (Interdepartmental).
 - (2) Assistant to the Director.
 - (3) Supervisor, National Aircraft Accident Investigation School.
 - (4) Division Chiefs.
 - (5) Accident Inquiry Managers.
 - (6) Branch Chiefs.
 - (7) Area Supervisors.
 - (8) Chief or Senior Investigators, Field Offices.

[OR-3, Amdt. 1, 37 F.R. 21162, Oct. 6, 1972]

PART 421—RULES OF PRACTICE IN AIR SAFETY PROCEEDINGS

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AUTHORITY: Secs. 5, 12, 204, 602, 609, 1001, 1004, 1005, 1104; 72 Stat. 743, 776, 779, 788, 792-794, 797; 80 Stat. 935, 936, 949; 49 U.S.C. 1324, 1422, 1429, 1481, 1484, 1485, 1504, 1654.

SOURCE: 38 FR 33063, Nov. 30, 1973, unless otherwise noted.

GENERAL PROVISIONS

§ 421.1 Definitions.

As used in this part:

"Act" means the Federal Aviation Act of 1958 (49 U.S.C. 1301, et seq.);

"Administrator" means the Administrator of the Federal Aviation Administration (FAA);

"Airman certificate" means any certificate issued by the FAA to an airman and shall include medical certificates required for an airman;

"Appeal from an initial decision" means a request to the Board to review a law judge's decision;

"Appeal to the Board" means a request to the Board for the review of an order of the Administrator by a law judge;

"Board" means the National Transportation Safety Board;

"Certificate" means any certificate issued by the Administrator under Title VI of the Act;

"Chief Law Judge" means the administrative law judge in charge of the Office of Administrative Law Judges.

"Complaint" means an order of the Administrator from which an appeal to

the Board has been taken pursuant to section 609 of the Act;

“Emergency order” means an order of the Administrator issued pursuant to section 609 of the Act, which recites that an emergency exists and that safety in air commerce or air transportation and the public interest require the immediate effectiveness of such order;

“Initial decision” means the law judge’s decision on the issue remaining for disposition at the close of a hearing before him and/or an order granting a motion to dismiss in lieu of an answer, as provided in §§ 421.19 and 421.23, and terminating the proceeding, except that “initial decision” does not include cases where the record is certified to the Board, with or without a recommended decision, or orders partly granting a motion to dismiss and requiring an answer to any remaining allegation, or rulings by the law judge on interlocutory matters appealed to the Board under § 421.13;

“Law judge” means the administrative law judge assigned to hear and preside over the respective proceedings;

“Petition for review” means a petition filed pursuant to section 602(b) of the Act for review of the Administrator’s denial of an application for issuance or renewal of an airman certificate;

“Petitioner” means a person who has filed a petition for review;

“Respondent” means the holder of a certificate who has appealed to the Board from an order of the Administrator amending, modifying, suspending, or revoking such certificate.

Terms defined in the Act are used as so defined.

§ 421.2 Applicability and description of part.

The provisions of this part shall govern all air safety enforcement proceedings before a law judge upon petition for review, or upon appeal from any order of the Administrator amending, modifying, suspending, or revoking any certificate, and upon appeal to the Board from any order or decision of a law judge.

GENERAL RULES APPLICABLE TO PETITIONS FOR REVIEW, APPEALS TO THE BOARD, AND APPEALS FROM INITIAL DECISIONS

§421.3 Appearances and rights of witnesses.

(a) Any party to a proceeding may appear and be heard in person or by attorney or other representative designated

by him. No register of persons who may practice before the Board is maintained, and no application for admission to practice is required. Upon hearing, and for good cause shown, the Board may suspend or bar any person from practicing before it.

(b) Any person appearing in person in any proceeding governed by this part, may be accompanied, represented, and advised by counsel and may be examined by his own counsel or representative.

(c) Any person who submits data or evidence in a proceeding governed by this part, may by timely request procure a copy of any document submitted by him, or a copy of any transcript made of his testimony on payment of reasonable costs. Original documents or data or evidence may be retained by a party upon permission of the law judge or the Board, upon substitution of a copy therefor.

§ 421.4 Filing of documents with the Board.

(a) *Filing address, date of filing, and airmail.* Documents to be filed with the Board shall be filed with the Office of Administrative Law Judges, National Transportation Safety Board, Washington, D.C. 20591, by personal delivery or by mail and shall be deemed to be filed on the date of actual personal delivery or on the date as shown on the postmark, as the case may be. Documents mailed to the Board from a point in the United States more than 800 miles from Washington, D.C., shall be sent by airmail.

(b) *Number of copies.* Unless otherwise specified, an executed original and three true copies of each document shall be filed with the Office of Administrative Law Judges. Copies need not be signed, but the name of the person signing the original shall be reproduced.

(c) *Form.* Petitions for review or appeals to the Board may be in the form of a letter to the Board signed by the petitioner or the party appealing and shall be typewritten or in legible handwriting. Appeals from initial decisions shall be in typewritten or printed form.

(d) *Contents.* Each document shall contain a concise and complete statement of the facts relied upon and the relief sought.

(e) *Subscription.* Every document filed shall be signed by the person filing it or his duly authorized representative.

(f) *Designation of person to receive service.* The initial document filed shall state on the first page the name and post

office address of the person or persons who may be served with documents in the proceeding.

(g) *Motions, request and documents.* All motions, requests, and documents in connection with petitions for review and appeals to the Board shall be filed with the chief law judge, until such time as he assigns a law judge to preside over the proceeding.

§ 421.5 Service of documents.

(a) *Service by the Board.* The Board will serve orders, initial decisions, rulings on motions, and similar documents which it issues upon all parties to the proceeding by registered or certified mail.

(b) *Service by others.* Copies of all documents filed with the Board must be served upon all parties to the proceeding by the person filing them.

(c) *How service may be made.* Service may be made by personal delivery, by regular mail, by registered mail, or by certified mail, except as provided in paragraph (a) of this section. When service is made by mail upon a party located more than 800 miles distant from the party effecting service (from Washington, D.C., in the case of service effected by the Board) airmail shall be used.

(d) *Who may be served.* Service upon a party or person may be made upon a person designated in accordance with § 421.4(f) to receive service. If no such person is designated, service may be made upon the party or person himself, if he is an individual, or upon an officer of a corporation or association, a member of a partnership, or an agent of an air carrier designated under section 1005(b) of the Act.

(e) *Where service may be made.* Service by regular or registered or certified mail shall be made at the address of the person designated in accordance with § 421.4(f) to receive service, or, if no such person is designated, at the usual residence or principal place of business of the party or person, or, if not known, at the address last furnished by him to the Federal Aviation Administration, except that an agent designated by an air carrier under section 1005(b) of the Act shall be served only at his office or usual place of residence. Service by mail on the Administrator shall be made at the office of his designee to receive service, or, if none, at the Federal Aviation Administration, Office of the General Counsel,

AGC-32, Washington, D.C. 20591. Personal service may be made on any of the persons described in paragraph (d) of this section wherever they may be found, except that an agent designated by an air carrier under section 1005(b) of the Act may be served only at his office or usual place of residence.

(f) *Certificate of service.* A certificate of service shall accompany all documents when they are tendered for filing and shall consist of a certificate of mailing executed by the person mailing the document.

(g) *Presumption of service.* There shall be a presumption of lawful service in the following instances:

(1) Where acknowledgment of receipt is made by a person who customarily receives mail or receives it in the ordinary course of business at either the residence or principal place of business of a person designated in accordance with § 421.4(f) to receive service; or

(2) Where there is no designee, acknowledgment of receipt at the residence or principal place of business of the party himself, by a person who customarily receives mail or receives it in the ordinary course of business; or

(3) Where a properly addressed envelope, indicating that it had been sent by regular, registered, or certified mail, has been returned marked "undelivered," "unclaimed," or "refused."

(h) *Date of service.* Whenever proof of the service by mail is made, the date of mailing or the date as shown on the postmark shall be the date of service, and where personal service is made, the date of personal delivery shall be the date of service.

§ 421.6 Intervention.

Any person may move for leave to intervene in a proceeding and may become a party thereto, if the law judge finds that such person may be bound by the order to be entered in the proceeding, or that such person has a property or financial interest which may not be adequately represented by existing parties: *Provided*, That such intervention would not unduly broaden the issues or delay the proceedings. Except for good cause shown, no motion for leave to intervene will be entertained if filed less than 10 days prior to hearing.

§ 421.7 Computation of time.

In computing any period of time prescribed or allowed by this part, by notice

or order of the Board or a law judge, or by any applicable statute, the date of the act, event, or default after which the designated period of time begins to run is not to be included in the computation. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or legal holiday for the Board, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a holiday. Saturdays, Sundays, and legal holidays for the Board shall be computed in the calculation of time in all emergency cases under § 421.38 of this part and shall be counted in the computation of time in all non-emergency cases where the period of time involves 7 days or more.

§ 421.8 Extension of time.

Upon written request filed with the Board and served upon all parties, and for good cause shown, the chief law judge, the law judge, or the Board, may grant an extension of time to file any document except a petition for reconsideration. Extensions of time to file petitions for reconsideration will be granted only in extraordinary circumstances.

§ 421.9 Amendment and withdrawal of pleadings.

(a) *Amendment.* At any time more than 15 days prior to the time of hearing, a party may amend his pleadings by filing the amended pleading with the Board and serving copies on the other parties. After that time, amendment shall be allowed only at the discretion of the law judge. Where amendment to an answerable pleading has been allowed, the law judge shall allow the adverse party a reasonable opportunity to answer.

(b) *Withdrawal.* A party may withdraw his pleadings only upon approval of the law judge or the Board.

§ 421.10 Waivers.

Waivers of any rights provided by statute or regulation shall either be in writing, or by stipulation made at a hearing and entered into the record, and shall set forth their precise terms and conditions.

§ 421.11 Motions.

(a) *General.* An application to the Board or to a law judge for an order or ruling not otherwise specifically provided for in this part shall be by mo-

tion. Prior to the assignment of a law judge, all motions shall be addressed to the chief law judge. Thereafter, and prior to the expiration of the period within which an appeal from the law judge's initial decision may be filed, or the certification of the record to the Board, all motions shall be addressed to the law judge. At all other times, motions shall be addressed to the Board. All motions not specifically provided for in any other section of this part shall be made at an appropriate time, depending upon the nature thereof and the relief requested.

(b) *Form and contents.* Unless made during a hearing, motions shall be made in writing, shall state with particularity the grounds for the relief sought and the relief sought, and shall be accompanied by affidavits or other evidence relied upon. Motions made during hearings, answers thereto, and rulings thereon, may be made orally on the record, unless the law judge directs otherwise.

(c) *Answers to motions.* Except when an answer is made during a hearing, any party may file an answer in support of or in opposition to a motion, accompanied by such affidavits or other evidence as he desires to rely upon, provided that the answer is filed within 7 days after the motion has been served upon him, or such other period as the Board or a law judge may fix. In the case of an answer to a motion made during a hearing, the answer and the ruling thereon may be made at the hearing, or orally or in writing within such time as the law judge may fix.

(d) *Oral argument; briefs.* No oral argument will be heard on motions unless the Board or the law judge otherwise directs. Written memoranda or briefs may be filed with motions or answers to motions, stating the points and authorities relied upon in support of the positions taken.

(e) *Disposition of motions.* Except as provided in paragraph (c) of this section for rulings on motions made at a hearing, the law judge shall pass upon all motions properly addressed to him, except that if he finds that a prompt decision by the Board is essential to the proper conduct of the proceeding, he may refer such motion to the Board for decision.

(f) *Effect of pendency of motions.* Except as provided in §§ 421.14(a) and 421.15, the filing or pendency of a motion shall not automatically alter or extend

the time fixed in this part (or any extension granted thereunder) to take action.

§ 421.12 Motion to disqualify a Board Member.

A motion requesting a Board Member to disqualify himself shall be filed with the Board, supported by an affidavit setting forth grounds for disqualification. In nonemergency proceedings, where an appeal from an initial decision is filed, such motion shall be filed on or before the date on which the reply brief is due, pursuant to § 421.35. In emergency proceedings, where a notice of appeal has been filed, such motion shall be filed on or before the date the briefs are due, pursuant to § 421.41. Failure to file a timely motion shall be deemed a waiver of disqualification. Application for leave to file an untimely motion may be made accompanied by an affidavit setting forth in detail why the facts relied upon as grounds for disqualification were not known and could not have been discovered with reasonable diligence within the prescribed time.

§ 421.13 Appeals from law judge's interlocutory rulings and motions.

Rulings of law judges on motions may not be appealed to the Board prior to its consideration of the entire proceeding, except in extraordinary circumstances and with the consent of the law judge who made the ruling. An appeal shall be disallowed unless the law judge finds, either on the record or in writing, that the allowance of such appeal is necessary to prevent substantial detriment to the public interest or undue prejudice to any party. If an appeal is allowed, any party may file a brief with the Board within such time as the law judge directs. No oral argument will be heard unless the Board directs otherwise. The rulings of the law judge on motion may be reviewed by the Board in connection with its appellate action in the proceeding, irrespective of the filing of an appeal from the motion or any action taken thereon.

§ 421.14 Motions to dismiss.

(a) *General.* Motions to dismiss may be filed within the time limitation for filing an answer, except as otherwise provided in paragraph (c) of this section. In case the motion is not granted in its entirety, the answer shall be filed within 10 days of service of the order on the motion.

(b) *Appeal of dismissal orders.* Where a law judge grants a motion to dismiss in lieu of an answer and terminates the proceeding without hearing, an appeal of such order to the Board may be filed pursuant to the provisions of §§ 421.19 and 421.22(a). Where a law judge grants a motion to dismiss in part, § 421.13 is applicable.

(c) *Motions to dismiss for lack of jurisdiction.* A motion to dismiss on the ground that the Board lacks jurisdiction may be made at any time.

§ 421.15 Motion for more definite statement.

The parties, in lieu of an answer, may file a motion requesting that the allegations in the complaint or the petition, as the case may be, be made more definite and certain. Such motion shall point out the defects complained of and the details desired. If the motion is granted and the law judge's order is not complied with within 15 days after notice, the law judge shall strike the allegation or allegations in any complaint or petition to which the motion is directed. If the motion is denied, the moving party shall file his answer within 10 days after the denial.

§ 421.16 Depositions.

After a petition for review or a complaint is filed, any party may file a motion with the chief law judge requesting permission to take the testimony of any person, including a party, by deposition, upon oral examination or written interrogatories. Service of a copy of the motion shall be made upon all other parties to the proceeding on 7 days' notice. If the motion is granted, the taking of the deposition shall be in compliance with the provisions of § 1004 of the Act.

§ 421.17 Subpenas, witness fees, and appearances of Board Members, officers, or employees.

(a) *Subpenas.* Subpenas requiring the attendance of witnesses or the production of documentary or tangible evidence for the purpose of taking depositions or at a hearing may be issued by the chief law judge prior to the assignment of a law judge, or by the law judge to whom the case is assigned, upon application by any party. The application shall show the general relevance and reasonable scope of the evidence sought. Any person upon whom a subpoena is served may, within 7 days after service but in any event

prior to the return date thereof, file with the chief law judge or the law judge, as the case may be, a motion to quash or modify the subpoena, and such filing shall stay the subpoena pending final action by the chief law judge or the law judge on the motion.

(b) *Witness fees.* Witnesses shall be entitled to the same fees and mileage as are paid to witnesses in the courts of the United States. The fees shall be paid by the party at whose instance the witness is subpoenaed or appears.

(c) *Board Members, officers, or employees.* The provisions of paragraph (a) of this section are not applicable to Board Members, officers, or employees, or to the production of documents in their custody. Applications for the attendance of such persons or the production of such documents at a hearing or deposition shall be addressed to the chief law judge or the law judge, as the case may be, in writing, and shall set forth the need of the moving party for such evidence and its relevancy to the issues in the proceeding.

§ 421.18 Official notice.

Where the law judge or the Board intends to take official notice of a material fact not appearing in the evidence in the record, notice shall be given to all parties, who may within 10 days file a petition challenging such fact. Upon the filing of such petition, the party or parties shall be given reasonable opportunity to controvert the fact.

SPECIAL RULES APPLICABLE TO PROCEEDINGS UNDER SECTION 602(b) OF THE ACT

§ 421.19 Initiation of proceedings.

(a) *Petition for review.* Where the Administrator has denied an application for the issuance or renewal of an airman certificate, the applicant may file with the Board a petition for review of the Administrator's action. Such petition shall be filed within 60 days from the time of service on the petitioner of the Administrator's action. The petition shall contain a short, plain statement of the facts on which petitioner's case rests and a statement of the action requested. The petition may be filed in the form of a letter to the Board signed by the aggrieved party.

(b) *Filing petition with the Board.* In accordance with the provisions of § 421.4(a), a petition for review mailed to the Board shall be deemed timely if

postmarked before the end of the time limitation therefor, provided that if mailed from a point in the United States more than 800 miles from Washington, D.C., it is sent by airmail.

(c) *Answer to petition.* The Administrator shall file an answer to the petition for review within 20 days of service upon him by the petitioner of the petition for review. Failure to deny the truth of any allegation or allegations of the petition may be deemed an admission of the truth of the allegation or allegations not answered.

§ 421.20 Burden of proof.

In proceedings under § 602(b) of the Act, the burden of proof shall be upon the petitioner.

§ 421.21 Motion to dismiss petition for review for lack of standing.

Upon motion by the Administrator within the time limitation for filing an answer, a petition for review shall be dismissed for lack of standing in either of the following instances:

(a) If the petitioner's certificate at the time of the denial or renewal thereof was under an order of suspension; or

(b) If the petitioner's certificate had been revoked within one year of the date of the denial or renewal thereof, unless the order revoking such certificate provided otherwise.

SPECIAL RULES APPLICABLE TO PROCEEDINGS UNDER SECTION 609 OF THE ACT

§ 421.22 Initiation of proceedings.

(a) *Appeal.* A certificate holder may file with the Board an appeal from an order of the Administrator amending, modifying, suspending, or revoking a certificate. Such appeal shall be filed with the Board within 20 days from the time of service of the order, along with proof of service upon the Administrator.

(b) *Contents.* Each appeal shall contain a concise but complete statement of the facts relied upon and the relief sought. It shall identify the Administrator's order and the certificate affected and shall recite the Administrator's action from which the appeal is sought. It shall likewise contain proof of service upon the Administrator.

(c) *Effect of timely appeal with the Board.* Timely filing with the Board of an appeal from an order of the Administrator shall postpone the effective date of the order until final disposition of the

appeal by the law judge or the Board, except in emergency proceedings.

§ 421.23 Complaint.

(a) *Filing, time of filing, and service upon respondent.* The order of the Administrator from which an appeal has been taken shall serve as the complaint and shall be filed by the Administrator with the Board within 5 days after service by the Board upon the Administrator of an appeal from his order, along with proof of service upon respondent by the Administrator.

(b) *Contents of complaint.* If the Administrator claims that respondent lacks qualification as an airman, the order filed as the complaint, or an accompanying statement shall recite on which of the facts pleaded this contention is based.

(c) *Answer to complaint.* The respondent shall file an answer to the complaint within 20 days of service of the complaint upon him by the Administrator. Failure to deny the truth of any allegation or allegations of the complaint may be deemed an admission of the truth of the allegation or allegations not answered.

§ 421.24 Burden of proof.

In proceedings under section 609 of the Act, the burden of proof shall be upon the Administrator.

§ 421.25 Motion to dismiss stale complaint.

Where the complaint states allegations of offenses which occurred more than 6 months prior to the Administrator's advising respondent as to reasons for proposed action under section 609 of the Act, respondent may move to dismiss such allegations pursuant to the following provisions:

(a) In those cases where a complaint does not allege lack of qualification of the certificate holder:

(1) The Administrator shall be required to show by answer filed within 7 days of service of the motion that good cause existed for the delay, or that the imposition of a sanction is warranted in the public interest, notwithstanding the delay or the reasons therefor.

(2) If the Administrator does not establish good cause for the delay or for imposition of a sanction notwithstanding the delay, the law judge shall dismiss the stale allegations and proceed to adjudicate only the remaining portion, if any, of the complaint.

(3) If the law judge wishes some clarification as to the Administrator's factual assertions of good cause, he shall obtain this from the Administrator in writing, with due service made upon the respondent, and proceed to an informal determination of the good cause issue without a hearing. A hearing to develop facts as to good cause shall be held only where the respondent raises an issue of fact in respect of the Administrator's good cause issue allegations.

(b) In those cases where the complaint alleges lack of qualification of the certificate holder:

(1) The law judge shall first determine whether an issue of lack of qualification would be presented if any or all of the allegations, stale and timely, are assumed to be true. If not, the law judge shall proceed as in paragraph (a) of this section.

(2) If the law judge deems that an issue of lack of qualification would be presented by any or all of the allegations, if true, he shall proceed to a hearing on the lack of qualification issue only, and he shall so inform the parties. The respondent shall be put on notice that he is to defend against lack of qualification and not merely against a proposed remedial sanction.

LAW JUDGES

§ 421.26 Assignment, duties, and powers.

(a) *Assignment of law judge and duration of assignment.* The chief law judge shall assign a law judge to preside over the proceeding. Until such assignment, motions, requests, and documents shall be addressed to the chief law judge. Thereafter, all such motions, requests, and documents shall be addressed to the law judge assigned. The authority of the law judge shall terminate upon certification of the record to the Board, or upon expiration of the period within which appeals from initial decisions may be filed, or upon the law judge's withdrawal from the proceeding upon considering himself disqualified.

(b) *Powers of law judges.* Law judges shall have the following powers:

(1) To give notice concerning, and hold, prehearing conferences and hearings;

(2) To administer oaths and affirmations;

(3) To examine witnesses;

(4) To issue subpoenas and to take or cause depositions to be taken;

(5) To receive evidence and rule upon objections and offers of proof;

(6) To rule upon motions in assigned cases;

(7) To regulate the course of the hearing;

(8) To hold conferences, before or during the hearing for the settlement or simplification of issues;

(9) To dispose of procedural requests or similar matters; and

(10) To make initial decisions, and, if so directed by the Board to certify records with or without recommended decisions.

(c) *Disqualification of a law judge.* A law judge shall withdraw from the proceedings if at any time he deems himself disqualified. If, prior to the initial decision, there is filed an affidavit of personal bias or disqualification, with substantiating facts, and the law judge does not withdraw, the Board will determine the matter as a part of the record and decision in the proceeding, if an appeal from the law judge's initial decision is filed. The Board will not otherwise consider any claim of bias or disqualification. The Board, in its discretion, may order a hearing on a charge of bias or disqualification.

HEARINGS

§ 421.27 Notice of hearing.

(a) *Notice.* The chief law judge or the law judge to whom the case is assigned shall set the date, time, and place for the hearing, at a reasonable date, time, and place, and shall give the parties adequate notice thereof and of the nature of such hearing. Due regard shall be given to the convenience of the parties with respect to the place for the hearing.

(b) *Hearings in several sessions.* Where appropriate, the law judge may determine that a hearing will be held in one or more sessions at the same or different places.

§ 421.28 Evidence.

Every party shall have the right to present his case or defense by oral or documentary evidence, to submit evidence in rebuttal, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

§ 421.29 Argument and submissions.

At the hearing, the law judge shall give the parties adequate opportunity for the presentation of arguments in support of,

or in opposition to, motions, objections, and exceptions to rulings. Prior to the initial decision, the parties shall be afforded a reasonable opportunity to submit for consideration proposed findings and conclusions and supporting reasons therefor.

§ 421.30 Record.

The transcript of testimony and exhibits, together with all papers, requests, and rulings filed in the proceeding shall constitute the exclusive record of the proceeding. The record shall also include any proceeding upon an affidavit of personal bias or disqualification of a law judge. Copies of the transcript may be obtained by any party upon payment of the reasonable cost thereof. A copy may be examined at the National Transportation Safety Board Public Reference Room No. 806D, at 800 Independence Ave., SW., Washington, D.C. 20591.

§ 421.31 Certification to the Board.

At any time prior to the close of the hearing, the Board may direct the law judge to certify any question or the entire record in the proceeding to the Board for decision, except an interlocutory ruling. In cases where the record is certified to the Board, the law judge shall not render an initial decision but shall only recommend to the Board a decision as provided in 5 U.S.C. 557 (Administrative Procedure).

INITIAL DECISION

§ 421.32 Initial decision by law judge.

(a) *Written or oral decision.* The law judge may render his initial decision orally at the close of the hearing, or he may render such decision in writing at a later date, except as provided in § 421.40(b).

(b) *Contents.* The initial decision shall include a statement of findings and conclusions, as well as the reasons or bases therefor, upon all material issues of fact (including credibility of witnesses, where such finding is material), law, or discretion, presented on the record, and the appropriate sanction or denial thereof.

(c) *Service of written decision and extension of time for appeal.* If the initial decision is in writing, it shall be served upon the parties. At any time before the date for filing an appeal from the initial decision has passed, the law judge or the Board may, for good cause shown,

extend the time within which to file an appeal from the initial decision, and the law judge may also reopen the case for good cause upon notice to the parties.

(d) *Furnishing copy of oral decision and issuance date.* If the initial decision is rendered orally, a copy thereof, excerpted from the transcript of the record, shall be furnished the parties by the Office of Administrative Law Judges. Irrespective of the date of mailing of such copy, the issuance date of the decision shall be the actual date of the rendering of the oral decision.

§ 421.33 Effect of law judge's initial decision, and filing an appeal therefrom.

If no appeal from the initial decision is filed with the Board by either party within the time allowed or no motion by the Board on its own initiative is made within 20 days to review the initial decision, it shall become final, but shall not be deemed to be a precedent binding on the Board. The timely review by the Board or the filing of such an appeal or motion shall stay the order in the initial decision.

APPEALS FROM INITIAL DECISIONS

§ 421.34 Notice of appeal.

A party may appeal from a law judge's order or from the initial decision by filing with the Board and serving upon the other parties (pursuant to § 421.5) a notice of appeal within 10 days after an oral initial decision has been rendered or a written decision has been served. Exceptions are not required.

§ 421.35 Briefs and oral argument.

(a) *Appeal briefs.* Each appeal must be perfected within 40 days after an oral initial decision has been rendered, or 30 days after service of a written initial decision, by the filing with the Board and the serving on the other party of a brief in support of the appeal. Appeals may be dismissed by the Board on its own initiative or on motion of the other party, in cases where a party who has filed a notice of appeal fails to perfect his appeal by filing a timely brief.

(b) *Contents of appeal brief.* Each appeal brief shall set forth in detail the objections to the initial decision, and shall state whether such objections are related to alleged errors in the law judge's findings of fact and conclusions or alleged errors in his order. It shall

also state the reasons for such objections and the relief requested.

(c) *Waiver of objections on appeal.* Any error contained in the initial decision which is not objected to may be deemed to have been waived. Where any objection is based upon evidence of record, such objection need not be considered by the Board unless specific record citations to the pertinent evidence are furnished in the appeal brief.

(d) *Reply brief.* A brief in reply to the appeal brief may be filed by the other party within 30 days after the appeal brief has been served upon him. A copy of the reply brief shall be served upon the party who has appealed from the initial decision. Where the reply brief relies upon evidence of record, specific record citations to the pertinent evidence shall be furnished in the reply brief.

(e) *Other briefs.* No further briefs may be filed, except upon specific leave of the Board upon a showing of good cause therefor.

(f) *Number of copies.* Five copies of briefs shall be filed with the Board.

(g) *Oral argument.* Oral argument before the Board will normally not be held in proceedings under this part. However, when need therefor appears, the Board may permit oral argument, either on its own initiative or on motion of a party.

§ 421.36 Issues on appeal.

On appeal, the Board will consider only the following issues:

(a) Are the findings of fact each supported by a preponderance of reliable, probative, and substantial evidence?

(b) Are conclusions made in accordance with precedent and policy?

(c) Are the questions on appeal substantial?

(d) Have any prejudicial errors occurred?

If the Board determines that the law judge erred in any respect or that his order in his initial decision should be changed, the Board may make any necessary findings and may issue an order in lieu of the law judge's order, or may remand the case for such purposes as the Board may deem necessary. The Board on its own initiative may raise any issue, the resolution of which it deems important to a proper disposition of the proceedings, in which event a reasonable opportunity shall be afforded to the parties to submit argument thereon.

§ 421.37 Petitions for rehearing, reargument, reconsideration, or modification of an order of the Board.

(a) *General.* Any party to a proceeding may petition for rehearing, reargument, reconsideration, or modification of a Board order on appeal from an initial decision. Initial decisions which have become final because they were not appealed from shall not be deemed orders for this purpose.

(b) *Form and number of copies.* The petition shall be in writing. Five copies shall be filed with the Board and a copy shall be served upon each of the parties within 30 days after service of the Board's order on appeal from the initial decision.

(c) *Contents.* The petition shall state briefly and specifically the matters of record alleged to have been erroneously decided, the ground or grounds relied upon, and the relief sought. If the petition is based, in whole or in part, on allegations as to the consequences that would result from the order of the Board, the basis of such allegations shall be set forth. If the petition is based, in whole or in part, upon new matters, it shall set forth such new matter and shall contain affidavits of prospective witnesses, authenticated documents, or both, or an explanation why such substantiation is unavailable, and shall explain why such new matter could not have been discovered by the exercise of due diligence prior to the date the case was submitted for decision.

(d) *Grounds for dismissal.* Repetitious petitions will not be entertained by the Board and will be summarily dismissed.

(e) *Reply to petition.* Within 10 days after the service of the petition upon an adverse party, he may reply thereto by filing a copy of the reply with the Board, with proof of service upon the petitioner.

(f) *Stay of effective date of order.* The filing of a petition under this section shall operate to stay the effective date of the Board order, unless it is otherwise ordered by the Board.

RULES APPLICABLE TO EMERGENCY PROCEEDINGS

§ 421.38 General.

(a) *Applicability.* This section shall apply to any order issued by the Administrator as an emergency order, or any order issued by the Administrator not designated as an emergency order, which

is later amended to be an emergency order, as provided in section 609 of the Act, in cases where the respondent appeals or has appealed to the Board therefrom.

(b) *Effective date of emergency.* The procedure set forth in this section shall apply on the date when the Administrator's advice of the emergency character of his order has been received by the Office of Administrative Law Judges or by the Board.

(c) *Computation of time.* Time shall be computed in accordance with § 421.7, including the provision that Saturdays, Sundays, and legal holidays of the Board shall always be counted in the computation.

§ 421.39 Appeal, complaint, answer to the complaint, and motions.

(a) *Time within which to appeal.* Within 10 days after the service of the Administrator's emergency order on the certificate holder, he may file an appeal therefrom to the Board.

(b) *Form and content of appeal.* The appeal may be in the form of a letter to the Board signed by the aggrieved party. It shall identify the Administrator's order and the certificate affected, shall recite the Administrator's action from which the appeal is taken, and shall identify the issues of fact or law on which the appeal is based and the relief sought.

(c) *Complaint.* Within 3 days after receipt of the appeal from the Board, the Administrator shall file with the Board his emergency order as his complaint and serve a copy upon the respondent.

(d) *Answer to the complaint.* Within 5 days after service of the complaint upon respondent, he shall file his answer thereto. Failure to deny any allegation or allegations of the complaint may be deemed an admission of the allegation or allegations not answered.

(e) *Motion to dismiss and motion for more definite statement.* No motion to dismiss or for a more definite statement shall be made, but the substance thereof may be stated in the respondent's answer. The law judge may permit or require a more definite statement or other amendment to any pleading at the hearing, upon good cause shown and upon just and reasonable terms.

§ 421.40 Hearing and initial decision.

(a) *Notice of hearing.* Immediately upon the timely filing of the answer with the Board, or within the time set for such

filing, the law judge shall set the date and place for hearing upon motion to the parties, not to exceed 7 days.

(b) *Initial decision.* The initial decision shall be made orally on the record at the termination of the hearing and after opportunity for oral argument. The provisions of § 421.32(b) and (d) shall be applicable, covering content, furnishing of a copy of the initial decision excerpted from the record, and issuance date.

(c) *Conduct of hearing.* The provisions of §§ 421.28, 421.29, and 421.30, covering evidence, argument and submissions, and record, shall be applicable.

(d) *Effect of law judge's initial decision.* If no appeal to the Board by either party, by motion or otherwise, is filed within the time allowed, the law judge's initial decision shall become final but shall not be deemed to be a precedent binding on the Board.

§ 421.41 Notice of appeal from initial decision, briefs, issues, and petitions for reconsideration.

(a) *Time within which to file a notice of appeal and content.* Within 2 days after the initial decision has been orally rendered, either party to the proceeding may appeal therefrom by filing with the Board and serving upon the other parties a notice of appeal. Exceptions are not required.

(b) *Brief and oral argument.* Within 5 days after the filing of the notice of appeal, the appellant shall file a brief with the Board and serve a copy upon the other parties. Within 5 days after service of the appeal brief, a reply brief may be filed with the Board and a copy served upon the other parties. The briefs shall comply with the requirements of § 421.35 (b), (c), (d), (e), (f), and (g), covering contents, waiver of objections on appeal, reply brief, other briefs, number of copies, and oral argument. Where oral argument is granted, the Board will give 3 days' notice of such oral argument.

(c) *Issues on appeal.* The provisions of § 421.36 shall apply to issues on appeal. However, the Board may on its own initiative raise any issue, the resolution of which it deems important to a proper disposition of the proceeding. In such case, not more than 2 days shall be afforded to the parties to submit argument thereon.

(d) *Petitions for reconsideration, rehearing, reargument, or modification of order.* The only petitions for reconsideration,

rehearing, reargument, or modification of an order which the Board will entertain are petitions based on the ground that new matter has been discovered. Such petitions must set forth the following:

- (1) The new matter;
- (2) Affidavits of prospective witnesses, authenticated documents, or both, or an explanation of why such substantiation is unavailable; and
- (3) A statement that such new matter could not have been discovered by the exercise of due diligence prior to the date the case was submitted to the Board.

PART 425—RULES OF PROCEDURE FOR MERCHANT MARINE APPEALS FROM DECISIONS OF THE COMMANDANT, U.S. COAST GUARD¹

Sec.

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| 425.1 | Applicability. |
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AUTHORITY: The provisions of this Part 425 issued under secs. 5(b)(2), 5(k), 5(m), 80 Stat. 931 et seq.; 49 U.S.C. 1651 et seq.

SOURCE: The provisions of this Part 425 appear at FR-4, 33 F.R. 453, Jan. 12, 1968, unless otherwise noted.

§ 425.1 Applicability.

The provisions of this part govern all proceedings before the National Transportation Safety Board on appeals taken from decisions, on or after April 1, 1967, of the Commandant, U.S. Coast Guard, sustaining orders of revocation of licenses, certificates, documents, and registers in proceedings under:

- (a) R.S. 4450, as amended (46 U.S.C. 239);
- (b) Act of July 15, 1954 (46 U.S.C. 239 a-b); or
- (c) Section 4, Great Lakes Pilotage Act (46 U.S.C. 216(b)).

§ 425.5 Notice of appeal.

(a) When the Commandant has entered a decision on appeal sustaining an order of revocation of any license certificate, document, or register in proceedings described in 425.1, the party may appeal the decision to the National

¹ Amdt. 1, 38 FR 6170, Mar. 7, 1972.