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designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 807.161–807.169 [Reserved]

§ 807.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Director, Bureau of Administration shall be responsible for coordinating implementation of this section. Complaints may be sent to Director, Bureau of Administration, 800 Independence Ave., SW., Room 802, Washington, DC 20594.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found;

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 807.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[51 FR 4579, Feb. 5, 1986, as amended at 51 FR 4579, Feb. 5, 1986]

PART 821—RULES OF PRACTICE IN AIR SAFETY PROCEEDINGS

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AUTHORITY: 49 U.S.C. 1101–1155, 44701–44723, 46301, Pub. L. 112–153, unless otherwise noted.

SOURCE: 68 FR 22625, Apr. 29, 2003, unless otherwise noted.

Subpart A—General Provisions

§ 821.1 Definitions.

(a) As used in this part:

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 airmen;

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 by a law judge of an order of the Administrator;

Appealable order means an order of a law judge that has the effect of terminating the proceeding, such as one granting a motion to dismiss in lieu of an answer, as provided in § 821.17, or

one granting a motion for judgment on the pleadings or summary judgment. *Appealable order* does not include an order granting in part a motion to dismiss and requiring an answer to any remaining allegation or allegations, an order granting in part judgment on the pleadings or summary judgment, or a ruling on an interlocutory matter;

Board means the National Transportation Safety Board;

Case Manager means the officer of the Board's Office of Administrative Law Judges responsible for the processing of cases within that office;

Certificate means any certificate issued by the Administrator under 49 U.S.C. Chapter 447;

Chief Law Judge means the administrative law judge in charge of the adjudicative function of the Board's Office of Administrative Law Judges;

Complaint means an order of the Administrator, reissued for pleading purposes, from which an appeal to the Board has been taken pursuant to sections 49 U.S.C. 44106, 44709 or 46301;

Emergency order means an order of the Administrator issued pursuant to 49 U.S.C. 44709, 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;

Flight engineer means a person who holds a flight engineer certificate issued under Part 63 of Title 14 of the Code of Federal Regulations;

Initial decision means the law judge's decision on the issue or issues remaining for disposition at the close of a hearing;

Law judge means the administrative law judge assigned to hear and preside over the respective proceeding;

Mechanic means a person who holds a mechanic certificate issued under Part 65 of Title 14 of the Code of Federal Regulations;

Order means the document (sometimes also termed the complaint) by which the Administrator seeks to amend, modify, suspend or revoke a certificate, or impose a civil penalty;

Petition for review means a petition filed pursuant to 49 U.S.C. 44703 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;

Pilot means a person who holds a pilot certificate issued under Part 61 of Title 14 of the Code of Federal Regulations;

Repairman means a person who holds a repairman certificate issued under Part 65 of Title 14 of the Code of Federal Regulations;

Respondent means the holder of a certificate who has appealed to the Board from an order of the Administrator amending, modifying, suspending or revoking a certificate, or imposing a civil penalty.

(b) Terms defined in 49 U.S.C. Chapters 11, 447 and 463 are used as so defined.

§ 821.2 Applicability and description of part.

The provisions of this part govern all air safety proceedings, including proceedings before a law judge on petition for review of the denial of any airman certificate (including a medical certificate), or on appeal from any order of the Administrator amending, modifying, suspending or revoking a certificate. The provisions of this part also govern all proceedings on appeal from an order of the Administrator imposing a civil penalty on a flight engineer, mechanic, pilot or repairman, or a person acting in such capacity. All proceedings on appeal to the Board from any initial decision or order of a law judge are also governed by this part.

§ 821.3 Description of docket numbering system.

In addition to sequential numbering of cases as received, each case formally handled by the Board will receive a letter prefix. These letter prefixes reflect the case type: ''SE'' for safety enforcement (certificate suspension/revocation) cases; ''SM'' (safety medical) for cases involving denials of medical certification; ''CD'' for cases involving non-medical certificate denials; ''SR'' for cases involving safety registration issues under 49 U.S.C. 44101 *et seq.;* ''CP'' for cases involving the imposition of civil penalties; ''NA'' for cases in which a petition for review or appeal is not accepted because of a patent procedural deficiency; and ''EAJA'' for

cases involving applications for fees and expenses under the Equal Access to Justice Act, governed by Part 826.

Subpart B—General Rules Applicable to Petitions for Review, Appeals to the Board, and Appeals From Law Judges Initial Decisions and Appealable Orders

§ 821.5 Procedural rules.

In proceedings under subparts C, D, F, and I, for situations not covered by a specific Board rule, the Federal Rules of Civil Procedure will be followed to the extent practicable.

[78 FR 57534, Sept. 19, 2013]

§ 821.6 Appearances and rights of witnesses.

(a) Any party to a proceeding may appear and be heard in person, or by an attorney or other representative designated by that party. Upon hearing, and for good cause shown, the Board may suspend or bar any person from practicing before it.

(b) Any person appearing in any proceeding governed by this part may be accompanied, represented and advised, and may be examined by, his or her 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 her, or a copy of any transcript made of his or her testimony, on payment of reasonable costs. Original documents, data or evidence may be retained by a party upon permission of the law judge or the Board, upon substitution of a copy thereof.

(d) Any party to a proceeding who is represented by an attorney or representative shall, in a separate written document, notify the Board of the name, address and telephone number of that attorney or representative. In the event of a change in representation or a withdrawal of representation, the party shall immediately, in a separate written document, notify the Board (in the manner provided in § 821.7) and the other parties to the proceeding (pursuant to § 821.8), before the new attorney or representative may participate in the proceeding in any way. Parties, and their attorneys and representatives, must notify the Board immediately of any changes in their contact information.

[68 FR 22625, Apr. 29, 2003, as amended at 77 FR 63251, Oct. 16, 2012]

§ 821.7 Filing of documents with the Board.

(a) *Filing address, method and date of filing.* (1) Except as provided in paragraph (a)(2) of this section, documents are to be filed with the Office of Administrative Law Judges, National Transportation Safety Board, 490 L'Enfant Plaza East SW., Washington, DC 20594, and addressed to the assigned law judge, if any. If the proceeding has not yet been assigned to a law judge, documents shall be addressed to the Case Manager. Paragraph (a)(3) of this section provides the acceptable methods for filing documents under this provision.

(2) Subsequent to the filing of a notice of appeal with the Office of Administrative Law Judges from a law judge's initial decision or appealable order, the issuance of a decision permitting an interlocutory appeal, or the expiration of the period within which an appeal from the law judge's initial decision or appealable order may be filed, all documents are to be filed with the Office of General Counsel, National Transportation Safety Board, 490 L'Enfant Plaza East SW., Washington, DC 20594. Paragraph (a)(3) of this section provides the acceptable methods for filing documents under this provision.

(3) Documents shall be filed: By personal delivery, by U.S. Postal Service first-class mail, by overnight delivery service, by facsimile or by electronic mail as specified on the ''Administrative Law Judges'' Web page on the NTSB's public Web site. Documents filed by electronic mail must be signed and transmitted as specified on the ''Administrative Law Judges'' Web page on the NTSB's public Web site.

(4) Documents shall be deemed filed on the date of personal delivery; on the send date shown on the facsimile or the item of electronic mail; and, for mail delivery service, on the mailing date shown on the certificate of service, on

the date shown on the postmark if there is no certificate of service, or on the mailing date shown by other evidence if there is no certificate of service and no postmark. Where the document bears a postmark that cannot reasonably be reconciled with the mailing date shown on the certificate of service, the document will be deemed filed on the date of the postmark.

(b) *Number of copies.* Service on the Board of petitions for review, appeals from orders of the Administrator, and notices of appeal from law judges' initial decisions and appealable orders shall be by executed original and 3 copies. Service of all other documents shall be by executed original and one copy. Copies need not be signed, but the name of the person signing the original shall be shown thereon.

(c) *Form.* (1) Petitions for review, appeals to the Board from orders of the Administrator, and notices of appeal from law judges' initial decisions and appealable orders may be in the form of a letter signed by the petitioner or appealing party, and shall be typewritten or in legible handwriting.

(2) Documents filed with the Board consisting of more than one page may be affixed only in the upper left-hand corner by staple or clip, and shall not be bound or hole-punched. Any document failing to comply with this requirement is subject to being returned to the filing party.

(d) *Content.* Each document filed with the Board shall contain a concise and complete statement of the facts relied upon, and the relief sought, by the filing party.

(e) *Subscription.* The original of every document filed shall be signed by the filing party, or by that party's attorney or representative.

(f) *Designation of person to receive service.* The initial document filed by a party in a proceeding governed by this part, and any subsequent document advising the Board of any representation or change in representation of a party that is filed pursuant to § 821.6(d), shall show on the first page the name, address and telephone number of the person or persons who may be served with documents on that party's behalf.

(g) *To whom directed.* All motions, requests and documents submitted in connection with petitions for review and appeals to the Board from orders of the Administrator shall designate, and be addressed to, the law judge to whom the proceeding has been assigned, if any. If the proceeding has not yet been assigned to a law judge, the document shall bear the designation ''unassigned,'' and shall be addressed to the Case Manager. All motions, requests and documents submitted subsequent to the filing of a notice of appeal from a law judge's initial decision or appealable order, or a decision permitting an interlocutory appeal, or after the expiration of the period within which an appeal from the law judge's initial decision or appealable order may be filed, shall be addressed to the Board's General Counsel.

[68 FR 22625, Apr. 29, 2003, as amended at 77 FR 63251, Oct. 16, 2012]

§ 821.8 Service of documents.

(a) *Who must be served.* (1) Copies of all documents filed with the Board must be simultaneously served on (*i.e.*, sent to) all other parties to the proceeding, on the date of filing, by the person filing them. A certificate of service shall be a part of each document and any copy or copies thereof tendered for filing, and shall certify concurrent service on the Board and the parties. A certificate of service shall be in substantially the following form:

I hereby certify that I have this day served the foregoing [specify document] on the following party's counsel or designated representatives [or party, if without counsel or representative], at the address indicated, by [specify the method of service (e.g., first-class mail, electronic mail, personal service, etc.)] [List names and addresses of all persons served] Dated at _____this____ day of_____ 20__ (Signature)_____ For (on behalf of)_____

(2) Service shall be made on the person designated in accordance with § 821.7(f) to receive service. If no such person has been designated, service shall be made directly on the party.

(b) *Method of Service.* (1) Service of documents by any party on any other party shall be accomplished by any method prescribed in § 821.7(a)(3) for the filing of documents with the Board. A party may waive the applicability of

this paragraph, and elect to be served with documents by the other parties to the proceeding solely by electronic mail, by filing a written document with the Board (with copies to the other parties) expressly stating such a preference.

(2) Notices of hearing, written initial decisions, law judges' appealable orders and Board orders on appeal shall be served by the Board on parties other than the Administrator by certified mail. Such documents may be served on the Administrator by first-class mail or facsimile. The Board may serve all other documents on the parties by first-class mail or facsimile.

(c) *Where service shall be made.* Except for electronic mail, personal service, parties shall be served at the address appearing in the official record, which the Board must receive under §§ 821.6(d) and 821.7(f). In the case of an agent designated by an air carrier under 49 U.S.C. 46103, service may be accomplished only at the agent's office or usual place of residence.

(d) *Presumption of service.* There shall be a presumption of lawful service:

(1) When receipt has been acknowledged by a person who customarily or in the ordinary course of business receives mail at the residence or principal place of business of the party or of the person designated under § 821.7(f);

(2) When a properly addressed envelope, sent to the most current address in the official record, by regular, registered or certified mail, has been returned as unclaimed or refused; or

(3) When a document is transmitted by facsimile or electronic mail and there is evidence to confirm its successful transmission to the intended recipient.

(e) *Date of service.* The date of service shall be determined in the same manner as the filing date is determined under § 821.7(a)(4).

[68 FR 22625, Apr. 29, 2003, as amended at 77 FR 63252, Oct. 16, 2012]

§ 821.9 Intervention and amicus appearance.

(a) *Intervention.* Any person may move for leave to intervene in a proceeding, and may become a party thereto, if it is found that such person has a property, financial or other legitimate interest that will not be adequately represented by the existing parties, and that such intervention will not unduly broaden the issues or delay the proceeding. Except for good cause shown, no motion for leave to intervene will be entertained if filed less than 15 days prior to the hearing. The extent to which an intervenor may participate in the proceeding is wholly within the law judge's discretion.

(b) *Amicus curiae briefs.* A brief of amicus curiae in a matter on appeal from a law judge's initial decision or appealable order may be filed, if accompanied by written consent of all the parties, or by leave of the General Counsel if, in his or her opinion, the brief will not unduly broaden the matters at issue or prejudice any party to the proceeding. A brief may be conditionally filed with motion for leave. The motion for leave shall identify the interest of the movant and shall state the reasons why a brief of amicus curiae is desirable. Such brief and motion shall be filed within the briefing time allowed the party whose position the brief would support, unless good cause for late filing is shown, in which event the General Counsel may provide an opportunity for response in determining whether to accept the amicus brief.

§ 821.10 Computation of time.

In computing any period of time prescribed or allowed by this part, by notice or order of a law judge or the Board, 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 not a Saturday, Sunday or legal holiday. In all cases, Saturdays, Sundays and legal holidays for the Board shall be included in the computation of time, except they shall not be included in computations of time respecting petitions for review of determinations as to the existence of emergencies under § 821.54.

§ 821.11 Extensions of time.

(a) On written request filed with the Board and served on all other parties, or oral request with any extension granted confirmed in writing and served on all other parties by the requestor, and for good cause shown, the law judge or the Board may grant an extension of time to file any document; however, no extension of time will be granted for the filing of a document to which a statutory time limit applies.

(b) Extensions of time to file petitions for reconsideration shall not be granted upon a showing of good cause, but only in extraordinary circumstances.

(c) The General Counsel is authorized to grant unopposed extensions of time on timely oral request without a showing of good cause in cases on appeal to the Board from a law judge's initial decision or appealable order. Written confirmation of such a grant of extension of time must promptly be sent by the requesting party to the Board and served on all other parties to the proceeding.

§ 821.12 Amendment and withdrawal of pleadings.

(a) *Amendment.* At any time more than 15 days prior to the hearing, a party may amend its pleadings by filing an amended pleading with the Board and serving copies thereof on all other parties. After that time, amendment shall be allowed only at the discretion of the law judge. In the case of amendment of an answerable pleading, the law judge shall allow any adverse party a reasonable time to object or answer. Amendments to complaints shall be consistent with the requirements of 49 U.S.C. 44709(c) and 44710(c).

(b) *Withdrawal.* Except in the case of a petition for review, an appeal to the Board, a complaint, or an appeal from a law judge's initial decision or appealable order, pleadings may be withdrawn only upon approval of the law judge or the Board. The law judge may dismiss the case after receiving a motion to dismiss based on withdrawal of the complaint. The law judge shall accept arguments or motions, oral or written, from the parties, if offered, on the issue of whether a dismissal resulting from the withdrawal of a complaint should be deemed to occur with or without prejudice.

[68 FR 22625, Apr. 29, 2003, as amended at 77 FR 63252, Oct. 16, 2012]

§ 821.13 Waivers.

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

§ 821.14 Motions.

(a) *General.* Any application to a law judge or to the Board for an order or ruling not otherwise provided for in this part shall be by motion. Prior to the assignment of the proceeding to a law judge, all motions shall be addressed to the Case Manager. Thereafter, and prior to the expiration of the period within which an appeal from the law judge's initial decision may be filed, all motions shall be addressed to the law judge. At all other times, motions shall be addressed to the General Counsel.

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

(c) *Replies to motions.* Except when a motion is made during a hearing, any party may file a reply, accompanied by such affidavits or other evidence as that party desires to rely upon, within 15 days after the date of service of the motion on that party. Upon notice to the parties, the law judge or the Board may, where appropriate, set a shorter time for filing a reply. Where a motion is made during a hearing, the reply 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 a motion unless the law judge or the Board directs otherwise.

(e) *Effect of pendency of motions.* Except as provided in §§ 821.17(a) and 821.18(a), the filing or pendency of a

motion shall not automatically alter or extend the time fixed in this part (or any extension thereof previously granted) for the parties to take any actions.

§ 821.15 Motion to disqualify a Board Member.

A motion requesting that a Board Member disqualify himself or herself from participating in a proceeding under this part shall be filed in writing with the Board.

§ 821.16 Interlocutory appeals from law judges' rulings on motions.

Rulings of law judges on motions which are not dispositive of the proceeding as a whole 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. Interlocutory appeals shall be disallowed unless the law judge finds, either orally on the record or in writing, that to allow such an appeal is necessary to prevent substantial detriment to the public interest or undue prejudice to a party. If an interlocutory 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.

§ 821.17 Motions to dismiss, for judgment on the pleadings and for summary judgment.

(a) *Motions to dismiss petition for review or complaint.* A motion to dismiss a petition for review or a complaint may be filed in lieu of an answer, within the time limit for filing an answer set forth in § 821.24(c) or § 821.31(b). If such motion is not granted in its entirety, the answer shall be filed within 10 days after service of the law judge's order on the motion.

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

(c) *Motions for judgment on the pleadings.* A party may file a motion for judgment on the pleadings on the basis that no answer has been filed, or that the pleadings disclose that there are no material issues of fact to be resolved and that party is entitled to judgment as a matter of law.

(d) *Motions for summary judgment.* A party may file a motion for summary judgment on the basis that the pleadings and other supporting documentation establish that there are no material issues of fact to be resolved and that party is entitled to judgment as a matter of law.

(e) *Appeals of dismissal, judgment on the pleadings and summary judgment orders.* When a law judge grants a motion to dismiss, a motion for judgment on the pleadings or a motion for summary judgment, and terminates the proceeding without a hearing, an appeal of such order to the Board may be filed pursuant to the provisions of § 821.47. When a motion to dismiss, a motion for judgment on the pleadings or a motion for summary judgment is granted in part, § 821.16 applies.

§ 821.18 Motion for a more definite statement.

(a) A party may, in lieu of an answer, file a motion requesting that the petitioner's statement of reasons and supporting facts in a petition for review or the Administrator's allegations of fact in a complaint be made more definite and certain. The motion shall cite the defects complained of and the details sought. If the motion is granted and the law judge's order is not complied with within 15 days after service thereof, the law judge shall strike the portion or portions of the petition for review or complaint to which the motion is directed. If the motion is denied, the moving party shall file an answer within 10 days after service of the law judge's order on the motion.

(b) A party may file a motion to clarify an answer in the event that the answer fails to respond clearly to the petition for review or the complaint.

§ 821.19 Depositions and other discovery.

(a) *Depositions.* After a petition for review or a complaint is filed, any party may take the testimony of any person, including a party, by deposition, upon oral examination or written questions, without seeking prior Board approval. Reasonable notice shall be given in writing to the other parties,

stating the name of the witness and the time and place of the taking of the deposition, in accordance with the Federal Rules of Civil Procedure. A copy of any notice of deposition shall be served on the law judge to whom the proceeding has been assigned or, if no law judge has been assigned, on the Case Manager. In other respects, the taking of any deposition shall be compliance with the provisions of 49 U.S.C. 46104(c).

(b) *Exchange of information by the parties.* The parties must exchange information in accordance with the Federal Rules of Civil Procedure. Copies of discovery requests and responses shall be served on the law judge to whom the proceeding has been assigned or, if no law judge has been assigned, on the Case Manager. In the event of a dispute, either the assigned law judge or another law judge delegated this responsibility (if a law judge has not yet been assigned or if the assigned law judge is unavailable) may issue an appropriate order, including an order directing compliance with any ruling previously made with respect to discovery.

(c) *Failure to provide or preserve evidence.* The failure of any party to comply with a law judge's order compelling discovery, or to cooperate with a timely request for the preservation of evidence, may result in a negative inference against that party with respect to the matter sought and not provided or preserved, a preclusion order, dismissal or other relief deemed appropriate by the law judge.

(d) *Failure to provide copy of releasable portion of Enforcement Investigative Report (EIR).* (1) Except as provided in § 821.55 with respect to emergency proceedings, where the respondent requests the EIR and the Administrator fails to provide the releasable portion of the EIR to the respondent by the time he or she serves the complaint on the respondent, the respondent may move to dismiss the complaint or for other relief and, unless the Administrator establishes good cause for that failure, the law judge shall order such relief as he or she deems appropriate, after considering the parties' arguments.

(2) The releasable portion of the EIR shall include all information in the EIR, except for the following:

(i) Information that is privileged;

(ii) Information that constitutes work product or reflects internal deliberative process;

(iii) Information that would disclose the identity of a confidential source;

(iv) Information of which applicable law prohibits disclosure;

(v) Information about which the law judge grants leave to withhold as not relevant to the subject matter of the proceeding or otherwise, for good cause shown; or

(vi) Sensitive security information, as defined at 49 U.S.C. 40119 and 49 CFR 15.5.

(3) Nothing in this section shall be interpreted as preventing the Administrator from releasing to the respondent information in addition to that which is contained in the releasable portion of the EIR.

[77 FR 63245, Oct. 16, 2012, as amended at 78 FR 57534, Sept. 19, 2013; 79 FR 41650, July 17, 2014]

§ 821.20 Subpoenas, witness fees, and appearances of Board Members, officers and employees.

(a) *Subpoenas.* Except as provided in paragraph (c) of this section, subpoenas 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 presiding law judge (or the chief law judge, if the proceeding has not been assigned to a law judge) 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 of the subpoena, but in any event prior to the return date thereof, file with the law judge who issued the subpoena a motion to quash or modify the subpoena, and such filing shall stay the effectiveness of the subpoena pending final action by the law judge on the motion.

(b) *Witness fees.* Witnesses shall be entitled to the same fees and expenses for mileage as are paid to witnesses in the courts of the United States. The fees and expenses shall be paid by the party

at whose request the witness is subpoenaed or appears. The Board may decline to process a proceeding further should a party fail to compensate a witness pursuant to this paragraph.

(c) *Board Members, officers and employees.* In order to encourage a free flow of information to the Board's accident investigators, the Board disfavors the use of its personnel in enforcement proceedings. Therefore, the provisions of paragraph (a) of this section are not applicable to Board Members, officers and employees, or the production of documents in their custody. Applications for subpoenas requiring the attendance of such persons, or the production of such documents, must be addressed to the General Counsel, and shall set forth the need of the moving party for the testimony or documents sought, and a showing that such material is not now, and was not otherwise, reasonably available from other sources. Only upon the General Counsel's written approval for the issuance of a subpoena requiring a Board Member, officer or employee to provide testimony and/or to produce documents in connection with discovery or at a hearing may a law judge issue such a subpoena. The law judge shall not permit the testimony or documentary evidence provided by a Board Member, officer or employee to include any expression of opinion, or any account of statements of a party made during the Board's investigation of any accident.

§ 821.21 Official notice.

Where a 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 disputing that fact.

Subpart C—Special Rules Applicable to Proceedings Under 49 U.S.C. 44703

§ 821.24 Initiation of proceeding.

(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 denial. The petition must be filed with the Board within 60 days after the date on which notice of the Administrator's denial was served on the petitioner.

(b) *Form and content of petition.* The petition may be in letter form. It shall identify the Administrator's certificate denial action, and contain a complete but concise statement of the reasons why the petitioner believes the certificate denial was erroneous.

(c) *Answer to petition.* The Administrator shall file an answer to the petition for review within 20 days after the date of service of the petition. The answer shall specifically address each of the reasons set forth in the petition as to why the petitioner believes the certificate denial was erroneous.

(d) *Stay of proceeding pending request for special issuance (restricted) medical certificate.* The Board lacks the authority to review requests for special issuance (restricted) medical certificates, or to direct that they be issued. Where a request for a special issuance certificate has been filed with the Administrator pursuant to the Federal Aviation Regulations, the Board will, upon the petitioner's written request, hold a petition for review of a denial of an unrestricted medical certificate in abeyance pending final action by the Administrator on the special issuance request, but for no longer than 180 days after the date on which the unrestricted medical certificate denial was issued.

(e) *New evidence.* Where review of a denial of an unrestricted medical certificate is at issue, if the petitioner has undergone medical testing or evaluation in addition to that already submitted or known to the Administrator, and wishes to introduce the results into the record, such new medical evidence must be served on the Administrator at least 30 days prior to the hearing. Absent good cause, failure to so timely serve the new medical evidence on the Administrator will result in the exclusion of such evidence from the record. The Administrator may amend his or her answer to respond to such new medical evidence within 10 days after the date on which he or she was served therewith.

§ 821.25 Burden of proof.

In proceedings under 49 U.S.C. 44703, the burden of proof shall be upon the petitioner.

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

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

(a) If the petition seeks the issuance of the same type of certificate that was under an order of suspension on the date of the denial; or

(b) If the petition seeks the issuance of the same type of certificate that had been revoked within one year of the date of the denial, unless the order revoking such certificate provides otherwise.

Subpart D—Special Rules Applicable to Proceedings Under 49 U.S.C. 44709

§ 821.30 Initiation of proceeding.

(a) *Appeal.* Where the Administrator has issued an order amending, modifying, suspending or revoking a certificate, the affected certificate holder (respondent) may file with the Board an appeal from the Administrator's order. The respondent shall simultaneously serve a copy of the appeal on the Administrator. The appeal must be filed with the Board within 20 days after the date on which the Administrator's order was served on the respondent, except as provided with respect to emergency and other immediately effective orders under § 821.53(a).

(b) *Form and content of appeal.* The appeal may be in letter form. It shall identify the certificate or certificates affected and the Administrator's action from which the appeal is sought.

(c) *Effect of filing 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 where the order appealed from is an emergency or other immediately effective order, in which case the effectiveness of the order will not be so stayed during the pendency of the appeal.

§ 821.31 Complaint procedure.

(a) *Filing, time of filing and service on respondent.* The order of the Administrator from which an appeal has been taken shall serve as the complaint. The Administrator shall (except as provided in § 821.55(a) with respect to emergency proceedings) file the complaint with the Board within 10 days after the date on which he or she was served with the appeal by the respondent, and shall simultaneously serve a copy of the complaint on the respondent. If the Administrator has determined that the respondent lacks qualification to be a certificate holder, the order filed as the complaint, or an accompanying statement, shall identify the pleaded factual allegations on which this determination is based.

(b) *Answer to complaint.* The respondent shall (except as provided in § 821.55(b) with respect to emergency proceedings) file with the Board an answer to the complaint within 20 days after the date on which the complaint was served by the Administrator, and shall simultaneously serve a copy of the answer on the Administrator. Failure by the respondent to deny the truth of any allegation or allegations in the complaint may be deemed an admission of the truth of the allegation or allegations not answered. The answer shall also identify any affirmative defenses that the respondent intends to raise at the hearing. The answer may be amended to include affirmative defenses in accordance with the provisions of § 821.12(a).

§ 821.32 Burden of proof.

In proceedings under 49 U.S.C. 44709, the burden of proof shall be upon the Administrator.

§ 821.33 Motion to dismiss stale complaint.

Where the complaint states allegations of offenses which occurred more than 6 months prior to the Administrator's advising the respondent as to reasons for proposed action under 49 U.S.C. 44709(c), the respondent may move to dismiss such allegations as

stale pursuant to the following provisions:

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

(1) The Administrator shall be required to show, by reply filed within 15 days after the date of service of the respondent's motion, that good cause existed for the delay in providing such advice, 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 the imposition of a sanction in the public interest notwithstanding the delay, the law judge shall dismiss the stale allegations and proceed to adjudicate the remaining portion of the complaint, if any.

(b) In those cases where the complaint alleges lack of qualification of the respondent, the law judge shall first determine whether an issue of lack of qualification would be presented if all of the allegations, stale and timely, are assumed to be true. If so, the law judge shall deny the respondent's motion. If not, the law judge shall proceed as in paragraph (a) of this section.

Subpart E—Law Judges

§ 821.35 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 each proceeding. Until such assignment, motions, requests and documents shall be addressed to the Case Manager for handling by the chief law judge, who may handle these matters personally or delegate them to other law judges for decision. After assignment of a proceeding to a law judge, all motions, requests and documents shall be addressed to that law judge. The authority of the assigned law judge shall terminate upon the expiration of the period within which appeals from initial decisions or appealable orders may be filed, or upon the law judge's withdrawal from the proceeding.

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

(1) To give notice of, and to hold, prehearing conferences and hearings, and to consolidate proceedings which involve a common question of law or fact;

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

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

(4) To dispose of procedural requests or similar matters;

(5) To rule on motions;

(6) To regulate the conduct of hearings;

(7) To administer oaths and affirmations;

(8) To examine witnesses;

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

(10) To issue initial decisions and dispositional orders.

(c) *Disqualification.* A law judge shall withdraw from a proceeding if, at any time, he or she deems himself or herself disqualified. If the law judge does not withdraw, and if an appeal from the law judge's initial decision is filed, the Board will, on motion of a party, determine whether the law judge should have withdrawn and, if so, order appropriate relief.

[68 FR 22625, Apr. 29, 2003, as amended at 77 FR 63252, Oct. 16, 2012]

Subpart F—Hearing

§ 821.37 Notice of hearing.

(a) *Time and location of hearing.* The law judge to whom the proceeding is assigned (or the chief judge) shall set a reasonable date, time and place for the hearing. Except as provided with respect to emergency proceedings in §821.56(a), a written notice of hearing shall be served on the parties at least 30 days in advance of the hearing. The law judge may set the hearing for a date fewer than 30 days after the date of the issuance of the notice of hearing if all of the parties consent to an earlier hearing date. In setting the date of the hearing, due regard shall be given to the parties' discovery needs. In setting the place of the hearing, due regard shall be given to the location of the subject incident, the convenience of the parties and their witnesses, and

the conservation of Board funds. Another relevant factor in determining the place of the hearing is the convenience of the hearing site to scheduled transportation service. Only in the most extraordinary circumstances may consideration be given to locating a hearing in a foreign country.

(b) *Hearing in several sessions.* Where appropriate, the law judge may hold a hearing in more than one session, at the same or different locations.

§ 821.38 Evidence.

In any proceeding under the rules in this part, all evidence which is relevant, material, reliable and probative, and not unduly repetitious or cumulative, shall be admissible. All other evidence shall be excluded. The Federal Rules of Evidence will be applied in these proceedings to the extent practicable.

[78 FR 57534, Sept. 19, 2013]

§ 821.39 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 proposed rulings. Prior to the issuance of the initial decision, the parties shall be afforded a reasonable opportunity to submit for consideration proposed findings and conclusions, and supporting reasons therefor.

§ 821.40 Record.

The transcript of testimony and exhibits, together with all papers, requests and rulings filed in the proceeding before the law judge, shall constitute the exclusive record of the proceeding. Copies of the transcript may be obtained by any party upon payment of the reasonable cost thereof. A copy of the transcript may be examined at the National Transportation Safety Board, Office of Administrative Law Judges, Public Docket Section.

Subpart G—Initial Decision

§ 821.42 Initial decision by law judge.

(a) *Written or oral decision.* The law judge may render his or her initial decision orally at the close of the hearing, or in writing at a later date, except as provided with respect to emergency proceedings in § 821.56(c).

(b) *Content.* The initial decision shall include findings and conclusions upon all material issues of fact, credibility of witnesses, law and discretion presented on the record, together with a statement of the reasons therefor.

(c) *Furnishing parties with, and issuance date of, oral decision.* If the initial decision is rendered orally, a copy thereof, excerpted from the hearing transcript, shall be furnished to the parties by the Office of Administrative Law Judges. Irrespective of the date on which the copy of the decision is transmitted to the parties, the issuance date of the decision shall be the date on which it was orally rendered.

§ 821.43 Effect of law judge's initial decision or appealable order and appeal therefrom.

If no appeal from the law judge's initial decision or appealable order is timely filed, the initial decision or order shall become final with respect to the parties, but shall not be binding precedent for the Board. The filing of a timely notice of appeal with the Board shall stay the effectiveness of the law judge's initial decision or order, unless the basis for the decision or order is that the Board lacks jurisdiction.

Subpart H—Appeal From Initial Decision

§ 821.47 Notice of appeal.

(a) *Time within which to file notice of appeal.* A party may appeal from a law judge's initial decision or appealable order by filing with the Board, and simultaneously serving on the other parties, a notice of appeal, within 10 days after the date on which the oral initial decision was rendered or the written initial decision or appealable order was served (except as provided in § 821.57(a) with respect to emergency proceedings). At any time before the time limit for filing an appeal from an initial decision or appealable order has passed, the law judge may, for good cause, reopen the matter on notice to the parties.

(b) *Request for reconsideration of law judge's initial decision or order.* A law

judge may not reconsider an initial decision or appealable order after the time for appealing to the Board from the decision or order has expired, or after an appeal has been filed with the Board. However, a timely request for reconsideration by the law judge of the initial decision or appealable order, filed before an appeal to the Board is taken, will stay the deadline for filing an appeal until 10 days after the date on which the law judge serves his or her decision on the reconsideration request. For the purpose of this paragraph, if a request for reconsideration and a notice of appeal are filed on the same day, the reconsideration request will be deemed to have been filed first.

§ 821.48 Briefs and oral argument.

(a) *Appeal brief.* Except as provided in § 821.57(b) with respect to emergency proceedings, each appeal must be perfected, within 50 days after the date on which the oral initial decision was rendered, or 30 days after the date on which the written initial decision or appealable order was served, by the filing, and simultaneous service on the other parties, of a brief in support of the appeal. An appeal may be dismissed by the Board, either on its own initiative or on motion of another party, where a party who has filed a notice of appeal fails to perfect the appeal by filing a timely appeal brief.

(b) *Form and content of appeal brief.* (1) In addition to the general form requirements for documents set forth in § 821.7(c)(2), the appeal brief must be typewritten, double-spaced, on 8½-by-11 inch paper. The appeal brief shall set forth the name, address and telephone number of the party, or the attorney or other representative filing the brief on the party's behalf. No appeal brief may contain more than 35 pages of text without prior leave of the General Counsel, upon a showing of good cause.

(2) The appeal brief shall enumerate the appealing party's objections to the law judge's initial decision or appealable order, and shall state the reasons for such objections, including any legal precedent relied upon in support thereof.

(3) Any error contained in the initial decision which is not objected to in the appeal brief may be deemed waived.

(c) *Reply brief.* Any other party to the proceeding may file a brief in reply to the appeal brief within 30 days after the date on which the appeal brief was served on that party (except as provided in § 821.57(b) with respect to emergency proceedings). A copy of the reply brief shall simultaneously be served on the appealing party and any other parties to the proceeding. The form requirements governing the appeal brief set forth in paragraph (b)(1) also apply to the reply brief.

(d) *Other filings.* Subsequent to the filing of the appeal and reply briefs, the parties may file citations to supplemental authorities. This procedure may be used only for identifying new and relevant legal authority, and not to correct omissions in briefing or to respond to a reply brief. No argument may be included with such a filing. Such filing shall include a reference to the page of the brief to which the cited legal authority pertains. Any response shall be filed within 10 days of the date of service of the supplemental filing, and shall be similarly limited in scope. With these exceptions, the parties may make no other submissions, except by leave of the Board, upon on a showing of good cause.

(e) *Oral argument.* Oral argument before the Board will not be held in proceedings under this part unless the Board, on motion of a party or on its own initiative, determines that oral argument is needed.

§ 821.49 Issues on appeal.

(a) On appeal, the Board will consider only the following issues:

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

(2) Are conclusions made in accordance with law, precedent and policy?

(3) Are the questions on appeal substantial?

(4) Have any prejudicial errors occurred?

(b) If the Board determines that the law judge erred in any respect, or that his or her initial decision or order should be changed, the Board may make any necessary findings and may issue an order in lieu of the law judge's

initial decision or order, or may remand the proceeding for any such purpose as the Board may deem necessary.

§ 821.50 Petition for rehearing, reargument, reconsideration or modification of an order of the Board.

(a) *General.* Any party to a proceeding may petition the Board for rehearing, reargument, reconsideration or modification of a Board order on appeal from a law judge's initial decision or order. An initial decision or appealable order of a law judge that has become final because no timely appeal was taken therefrom may not be the subject of a petition under this section.

(b) *Timing and service.* The petition must be filed with the Board, and simultaneously served on the other parties, within 30 days after the date of service of the Board's order on appeal from the law judge's initial decision or order.

(c) *Content.* The petition shall state briefly and specifically the matters of record alleged to have been erroneously decided, and the ground or grounds relied upon. If the petition is based, in whole or in part, upon new matter, it shall set forth such new matter and shall contain affidavits of prospective witnesses, authenticated documents, or both, or an explanation of why such substantiation is unavailable, and shall explain why such new matter could not have been discovered in the exercise of due diligence prior to the date on which the evidentiary record closed. To the extent the petition is not based upon new matter, the Board will not consider arguments that could have been made in the appeal or reply briefs received prior to the Board's decision.

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

(e) *Reply to petition.* Any other party to the proceeding may file a reply to the petition within 15 days after the date on which the petition was served on that party. A copy of such reply shall simultaneously be served on the petitioner and any other parties to the proceeding.

(f) *Stay of effective date of Board's order.* The filing of a petition under this section shall operate to stay the effective date of the Board's order, unless the Board directs otherwise.

[68 FR 22625, Apr. 29, 2003, as amended at 77 FR 63252, Oct. 16, 2012]

Subpart I—Special Rules Applicable to Proceedings Involving Emergency and Other Immediately Effective Orders

§ 821.52 General.

(a) *Applicability.* This subpart shall apply to any order issued by the Administrator under 49 U.S.C. 44709 as an emergency order, as an order not designated as an emergency order but later amended to be an emergency order, and any order designated as immediately effective or effective immediately.

(b) *Effective date of emergency.* The procedure set forth herein shall apply as of the date on which written advice of the emergency character of the Administrator's order is received and docketed by the Board.

(c) *Computation of time.* Time shall be computed in accordance with the provisions of § 821.10.

(d) *Waiver.* Except as provided in § 821.54(f), or where the law judge or the Board determines that it would unduly burden another party or the Board, a certificate holder (respondent) affected by an emergency or other immediately effective order of the Administrator may, at any time after filing an appeal from such an order, waive the applicability of the accelerated time limits of this subpart; however, such a waiver shall not serve to lengthen any period of time for doing an act prescribed by this subpart which expired before the date on which the waiver was made.

(e) Acceptable methods of filing and service. All documents submitted by a party in a proceeding governed by this subpart must be filed with the Board by overnight delivery, facsimile or electronic mail, and simultaneously served on all other parties by the same means. If filing by electronic mail, parties must adhere to the requirements in § 821.7(a)(3).

[68 FR 22625, Apr. 29, 2003, as amended at 77 FR 63252, Oct. 16, 2012]

§ 821.53 Appeal.

(a) *Time within which to file appeal.* An appeal from an emergency or other immediately effective order of the Administrator must be filed within 10 days after the date on which the Administrator's order was served on the respondent. The respondent shall simultaneously serve a copy of the appeal on the Administrator.

(b) *Form and content of appeal.* The appeal may be in letter form. It shall identify the certificate or certificates affected and indicate that an emergency or other immediately effective order of the Administrator is being appealed.

§ 821.54 Petition for review of Administrator's determination of emergency.

(a) *Time within which to file petition.* A respondent may, within 2 days after the date of receipt of an emergency or other immediately effective order of the Administrator, file with the Board a petition for review of the Administrator's determination that an emergency, requiring the order to be effective immediately, exists. This 2-day time limit is statutory and the Board has no authority to extend it. If the respondent has not previously filed an appeal from the Administrator's emergency or other immediately effective order, the petition shall also be considered a simultaneously filed appeal from the order under § 821.53.

(b) *Form, content and service of petition.* The petition may be in letter form. A copy of the Administrator's order, from which review of the emergency determination is sought, must be attached to the petition. If a copy of the order is not attached, the petition will be dismissed. While the petition need only request that the Board review the Administrator's determination as to the existence of an emergency requiring the order be effective immediately, it may also enumerate the respondent's reasons for believing that the Administrator's emergency determination is not warranted in the interest of aviation safety. The respondent may include attachments to the petition for review (e.g., affidavits, other documents or records) limited to evidence the respondent believes supports the reasons enumerated in the petition for why the Administrator's emergency determination is not warranted in the interest of aviation safety. The petition must be filed with the Board by overnight delivery service or facsimile and simultaneously served on the Administrator by the same means.

(c) *Reply to petition.* If the petition enumerates the respondent's reasons for believing that the Administrator's emergency determination is unwarranted, the Administrator may, within 2 days after the date of service of the petition, file a reply, which shall be strictly limited to matters of rebuttal. No submissions other than the respondent's petition and the Administrator's reply in rebuttal will be accepted, except in accordance with paragraph (d) of this section.

(d) *Hearing.* No hearing shall be held on a petition for review of an emergency determination. However, the law judge may, on his or her own initiative, and strictly in keeping with the prohibition on ex parte communications set forth in § 821.61, solicit from the parties additional information to supplement that previously provided by the parties.

(e) *Disposition.* Within 5 days after the Board's receipt of the petition, the chief law judge (or, if the case has been assigned to a law judge other than the chief law judge, the law judge to whom the case is assigned) shall dispose of the petition by written order, and, in so doing, shall consider whether, based on the acts and omissions alleged in the Administrator's order, and assuming the truth of such factual allegations, the Administrator's emergency determination was appropriate under the circumstances, in that it supports a finding that aviation safety would likely be compromised by a stay of the effectiveness of the order during the pendency of the respondent's appeal. In making this determination, however, the law judge is not so limited to the order's factual allegations themselves, but also shall permit evidence, if appropriate, pertaining to the propriety of the emergency determination, presented by the respondent with the petition and the Administrator with the reply to the petition. This evidence can

include affidavits or other such records.

(f) *Effect of law judge's ruling.* If the law judge grants the petition, the effectiveness of the Administrator's order shall be stayed until final disposition of the respondent's appeal by a law judge or by the Board. In such cases, the remaining provisions of this subpart (§§ 821.55–821.57) shall continue to apply, unless the respondent, with the Administrator's consent, waives their applicability. If the petition is denied, the Administrator's order shall remain in effect, and the remaining provisions of this subpart shall continue to apply, unless their applicability is waived by the respondent. The law judge's ruling on the petition shall be final, and is not appealable to the Board. However, in the event of an appeal to the Board from a law judge's decision on the merits of the emergency or other immediately effective order, the Board may, at its discretion, note, in its order disposing of the appeal, its views on the law judge's ruling on the petition, and such views shall serve as binding precedent in all future cases.

[68 FR 22625, Apr. 29, 2003, as amended at 77 FR 63252, Oct. 16, 2012; 79 FR 41650, July 17, 2014]

§ 821.55 Complaint, answer to complaint, motions and discovery.

(a) *Complaint.* In proceedings governed by this subpart, the Administrator's complaint shall be filed and simultaneously served on the respondent within 3 days after the date on which the Administrator received the respondent's appeal, or within 3 days after the date of service of an order disposing of a petition for review of an emergency determination, whichever is later.

(b) *Answer to complaint.* The respondent shall file with the Board an answer to the complaint within 5 days after the date on which the complaint was served by the Administrator, and shall simultaneously serve a copy of the answer on the Administrator. Failure by the respondent to deny the truth of any allegation or allegations in the complaint may be deemed an admission of the truth of the allegation or allegations not answered. The answer shall also identify any affirmative defenses that the respondent intends to raise at the hearing.

(c) *Motion to dismiss and motion for more definite statement.* In proceedings governed by this subpart, no motion to dismiss the complaint or for a more definite statement of the complaint's allegations 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.

(d) *Discovery.* Discovery is authorized in proceedings governed by this subpart. Given the short time available for discovery, the parties shall cooperate to ensure timely completion of the discovery process prior to the hearing. Discovery requests shall be served by the parties as soon as possible. A motion to compel discovery should be expeditiously filed where any dispute arises, and the law judge shall promptly rule on such a motion. Time limits for compliance with discovery requests shall be set by the parties so as to accommodate, and not conflict with, the accelerated adjudication schedule set forth in this subpart. The provisions of § 821.19 shall apply, modified as necessary to meet the exigencies of this subpart's accelerated timeframes.

[68 FR 22625, Apr. 29, 2003, as amended at 77 FR 63253, Oct. 16, 2012]

§ 821.56 Hearing and initial decision or appealable order of law judge.

(a) *Notice of hearing.* Within 3 days after the date on which the Board receives the Administrator's complaint, or immediately upon the issuance of a law judge's order disposing of a petition for review of the Administrator's emergency determination, if later, the parties shall be served with a written notice of hearing, setting forth the date, time and place of the hearing. The hearing shall be set for a date no later than 30 days after the date on which the respondent's appeal was received and docketed. To the extent that they are not inconsistent with this section, the provisions of § 821.37(a) shall also apply.

(b) *Conduct of hearing.* The provisions of §§ 821.38, 821.39 and 821.40, concerning

the taking of evidence, argument and submissions by the parties, and the composition of the hearing record, shall apply to proceedings governed by this subpart.

(c) *Initial decision and effect of initial decision or appealable order.* The law judge's initial decision shall be made orally on the record at the termination of the hearing. The provisions of §821.42, concerning the content of the initial decision, the furnishing of copies of the initial decision to the parties and the issuance date of the initial decision, and the provisions of §821.43, concerning the effect of the law judge's initial decision or appealable order and any appeal therefrom, shall apply to proceedings governed by this subpart.

§821.57 Procedure on appeal.

(a) *Time within which to file notice of appeal.* A party may appeal from a law judge's initial decision or appealable order by filing with the Board, and simultaneously serving on the other parties, a notice of appeal, within 2 days after the date on which the initial decision was orally rendered or the appealable order was served. The time limitations for the filing of documents respecting appeals governed by this subpart will not be extended by reason of the unavailability of the hearing transcript.

(b) *Briefs and oral argument.* Each appeal in proceedings governed by this subpart must be perfected, within 5 days after the date on which the notice of appeal was filed, by the filing, and simultaneous service on the other parties, of a brief in support of the appeal. Any other party to the proceeding may file a brief in reply to the appeal brief within 7 days after the date on which the appeal brief was served on that party. A copy of the reply brief shall simultaneously be served on the appealing party and any other parties to the proceeding. Aside from the time limits specifically mandated by this paragraph, the provisions of §§821.7(a)(3) and 821.48 shall apply.

(c) *Issues on appeal.* The provisions of §821.49(a) and (b) shall apply in proceedings governed by this subpart.

(d) *Petition for rehearing, reargument, reconsideration or modification of order.* The only petitions for rehearing, reargument, reconsideration or modification of an order which the Board will entertain in proceedings governed by this subpart are those based on the ground that new matter has been discovered. Such petitions must:

(1) Set forth the new matter;

(2) Contain affidavits of prospective witnesses, authenticated documents, or both, or an explanation of why such substantiation is unavailable; and

(3) Contain a statement explaining why such new matter could not have been discovered in the exercise of due diligence prior to the date on which the evidentiary record closed.

[68 FR 22625, Apr. 29, 2003, as amended at 77 FR 63253, Oct. 16, 2012]

Subpart J—Ex Parte Communications

AUTHORITY: Sec. 4, Pub. L. 94–409, 5 U.S.C. 556(d) and 557; 49 U.S.C. 1101–1155, 44701–44723, 46301.

§821.60 Definitions.

As used in this subpart:

Board decisional employee means a Board Member, law judge or other employee who is, or who may reasonably be expected to be, involved in the decisional process of the proceeding;

Ex parte communication means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but does not include requests for status reports on any matter or proceeding covered by this part.

§821.61 Prohibited ex parte communications.

(a) The prohibitions of this section shall apply from the time a petition for review or an appeal is filed unless the person responsible for the communication has knowledge that a petition for review or an appeal will be filed, in which case the prohibitions shall apply at the time of the acquisition of such knowledge. Such prohibitions shall continue until the time of the Board's final disposition of the petition, appeal and any ancillary matters, such as the adjudication of a claim for fees and expenses under the Equal Access to Justice Act.

(b) Except to the extent required for the disposition of ex parte matters as authorized by law:

(1) No interested person outside the Board shall make or knowingly cause to be made to any Board decisional employee an ex parte communication relevant to the merits of the proceeding;

(2) No Board decisional employee shall make or knowingly cause to be made to any interested person outside the Board an ex parte communication relevant to the merits of the proceeding. Ex parte communications solely relating to matters of Board procedure or practice are not prohibited by this section.

§ 821.62 Procedures for handling ex parte communications.

A Board decisional employee who receives, makes or knowingly causes to be made a communication prohibited by § 821.61 shall place in the public record of the proceeding:

(a) All such written communications;

(b) Memoranda stating the substance of all such oral communications; and

(c) All written responses, and memoranda stating the substance of all oral responses, to the communications described in paragraphs (a) and (b) of this section.

§ 821.63 Requirement to show cause and imposition of sanction.

(a) Upon receipt of a communication made or knowingly caused to be made by a party in violation of § 821.61, the presiding law judge (or the chief law judge, if the proceeding has not been assigned to a law judge) or the Board may, to the extent consistent with the interests of justice and the policy of the underlying statutes it administers, require the party to show cause why its claim or interest in the proceeding should not be dismissed, denied, disregarded or otherwise adversely affected on account of such violation.

(b) The Board may, to the extent consistent with the interest of justice and the policy of the underlying statutes it administers, consider a violation of § 821.61 sufficient grounds for a decision adverse to a party who has knowingly committed or knowingly caused such a violation to occur. Alternatively, the Board may impose a sanction on the party's attorney or representative, including suspending or barring the attorney or representative from practicing before it, where such action would be appropriate and penalizing the party represented would not be in the interest of justice.

Subpart K—Judicial Review of Board Orders

§ 821.64 Judicial review.

(a) *General.* Judicial review of a final order of the Board may be sought as provided in 49 U.S.C. 1153 and 46110 by the filing of a petition for review with the appropriate United States Court of Appeals or United States District Court, pursuant to the provisions of Pub. L. 112–53, 126 Stat. 1159 (August 3, 2012), 49 U.S.C. 44703 note. Such petition is due within 60 days of the date of entry (*i.e.*, service date) of the Board's order. Under the applicable statutes, any party may appeal the Board's decision. The Board is not a party in interest in such appellate proceedings and, accordingly, does not typically participate in the judicial review of its decisions. In matters appealed by the Administrator, the other parties should anticipate the need to make their own defense.

(b) *Stay pending judicial review.* No request for a stay pending judicial review will be entertained unless it is served on the Board within 15 days after the date of service of the Board's order. The non-moving party may, within 5 days after the date of service of such a motion, file a reply thereto.

[68 FR 22625, Apr. 29, 2003, as amended at 77 FR 63245, Oct. 16, 2012; 77 FR 63253, Oct. 16, 2012; 78 FR 57534, Sept. 19, 2013]

PART 825—RULES OF PROCEDURE FOR MERCHANT MARINE APPEALS FROM DECISIONS OF THE COMMANDANT, U.S. COAST GUARD

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