

## § 20.103

## 33 CFR Ch. I (7–1–01 Edition)

Commandant under paragraph 556(b)(3) of the Administrative Procedure Act (APA) (5 U.S.C. 556(b)(3)) to conduct hearings arising under 33 U.S.C. 1321(b); 42 U.S.C. 9609(b); or 46 U.S.C. Chapter 77.

*Chief Administrative Law Judge or Chief ALJ* means the Administrative Law Judge appointed as the Chief Administrative Law Judge of the Coast Guard by the Commandant.

*Class II Civil penalty proceeding* means a trial-type proceeding for the assessment of a civil penalty that affords an opportunity for an oral, fact-finding hearing before an ALJ.

*Coast Guard Representative* means an official of the Coast Guard designated to prosecute an administrative proceeding.

*Commandant* means the Commandant of the Coast Guard. It includes the Vice-Commandant of the Coast Guard acting on behalf of the Commandant in any matter.

*Complaint* means a document issued by a Coast Guard representative alleging a violation for which a penalty may be administratively assessed under 33 U.S.C. 1321(b) or 42 U.S.C. 9609(b), or a merchant mariner's license, certificate of registry, or document suspended or revoked under 46 U.S.C. 7703 or 7704.

*Hearing Docket Clerk* means an employee of the Office of the Chief ALJ who is responsible for receiving documents, determining their completeness and legibility, and distributing them to ALJs and others, as required by this part.

*Interested person* means a person who, as allowed in § 20.404, files written comments on a proposed assessment of a class II civil penalty or files written notice of intent to present evidence in any such hearing held on the proposed assessment.

*Mail* means first-class, certified, or registered matter sent by the Postal Service, or matter sent by an express-courier service.

*Motion* means a request for an order or ruling from an ALJ.

*Party* means a respondent or the Coast Guard.

*Person* means an individual, a partnership, a corporation, an association, a public or private organization, or a governmental agency.

*Personal delivery* means delivery by hand or in person, or through use of a contract service or an express-courier service. It does not include use of governmental interoffice mail.

*Pleading* means a complaint, an answer, and any amendment to such document permitted under this part.

*Respondent* means a person charged with a violation in a complaint issued under this part.

*Suspension and revocation proceeding or S&R proceeding* means a trial-type proceeding for the suspension or revocation of a merchant mariner's license, certificate of registry, or document issued by the Coast Guard that affords an opportunity for an oral, fact-finding hearing before an ALJ.

### § 20.103 Construction and waiver of rules.

(a) Each person with a duty to construe the rules in this part in an administrative proceeding shall construe them so as to secure a just, speedy, and inexpensive determination.

(b) Except to the extent that a waiver would be contrary to law, the Commandant, the Chief ALJ, or a presiding ALJ may, after notice, waive any of the rules in this part either to prevent undue hardship or manifest injustice or to secure a just, speedy, and inexpensive determination.

(c) Absent a specific provision in this part, the Federal Rules of Civil Procedure control.

### Subpart B—Administrative Law Judges

#### § 20.201 Assignment.

An ALJ, assigned by the Chief ALJ after receipt of the complaint, shall preside over each administrative proceeding under this part.

#### § 20.202 Powers.

The ALJ shall have all powers necessary to the conduct of fair, fast, and impartial hearings, including the powers to—

- (a) Administer oaths and affirmations;
- (b) Issue subpoenas authorized by law;
- (c) Rule on motions;

## Coast Guard, DOT

## § 20.301

(d) Order discovery as provided for in this part;

(e) Hold hearings or settlement conferences;

(f) Regulate the course of hearings;

(g) Call and question witnesses;

(h) Issue decisions;

(i) Exclude any person from a hearing or conference for disrespect, or disorderly or rebellious conduct; and

(j) Institute policy authorized by the Chief ALJ.

### § 20.203 Unavailability.

(a) If an ALJ cannot perform the duties described in §20.202 or otherwise becomes unavailable, the Chief ALJ shall designate a successor.

(b) If a hearing has commenced and the assigned ALJ cannot proceed with it, a successor ALJ may. The successor ALJ may, at the request of a party, recall any witness whose testimony is material and disputed, and who is available to testify again without undue burden. The successor ALJ may, within his or her discretion, recall any other witness.

### § 20.204 Withdrawal or disqualification.

(a) An ALJ may disqualify herself or himself at any time.

(b) Until the filing of the ALJ's decision, either party may move that the ALJ disqualify herself or himself for personal bias or other valid cause. The party shall file with the ALJ, promptly upon discovery of the facts or other reasons allegedly constituting cause, an affidavit setting forth in detail the reasons.

(1) The ALJ shall rule upon the motion, stating the grounds for the ruling. If the ALJ concludes that the motion is timely and meritorious, she or he shall disqualify herself or himself and withdraw from the proceeding. If the ALJ does not disqualify herself or himself and withdraw from the proceeding, the ALJ shall carry on with the proceeding, or, if a hearing has concluded, issue a decision.

(2) If an ALJ denies a motion to disqualify herself or himself, the moving party may, according to the procedures in subpart J of this part, appeal to the Commandant once the hearing has concluded. When that party does appeal,

the ALJ shall forward the motion, the affidavit, and supporting evidence to the Commandant along with the ruling.

### § 20.205 Ex parte communications.

Ex parte communications are governed by subsection 557(d) of the Administrative Procedure Act (5 U.S.C. 557(d)).

### § 20.206 Separation of functions.

(a) No ALJ may be responsible to, or supervised or directed by, an officer, employee, or agent who investigates for or represents the Coast Guard.

(b) No officer, employee, or agent of the Coast Guard who investigates for or represents the Coast Guard in connection with any administrative proceeding may, in that proceeding or one factually related, participate or advise in the decision of the ALJ or of the Commandant in an appeal, except as a witness or counsel in the proceeding or the appeal.

## Subpart C—Pleadings and Motions

### § 20.301 Representation.

(a) A party may appear—

(1) Without counsel;

(2) With an attorney; or

(3) With other duly authorized representative.

(b) Any attorney, or any other duly authorized representative, shall file a notice of appearance. The notice must indicate—

(1) The name of the case, including docket number if assigned;

(2) The person on whose behalf the appearance is made; and

(3) The person's and the representative's mailing addresses and telephone numbers.

(c) Any attorney or other duly authorized representative shall also file a notice, including the items listed in paragraph (a) of this section, for any withdrawal of appearance.

(d) Any attorney shall be a member in good standing of the bar of the highest court of a State, the District of Columbia, or any territory or commonwealth of the United States. A personal