

non-delivery shall be given to the investigating officer or Administrative Law Judge who issued the subpoena.

### Subpart G—Witness Fees

#### § 5.401 Payment of witness fees and allowances.

(a) Duly subpoenaed witnesses, other than Federal government employees, may apply for payment of their attendance as witnesses at an investigation or hearing conducted pursuant to this part by submitting a request for payment (Standard Form 1157) accompanied by any necessary receipts.

(b) Fees and allowances will be paid as provided by 28 U.S.C. 1821, except that a person called to testify as an expert witness may be paid a higher fee to be fixed by the District Commander.

[CGD 82-002, 50 FR 32184, Aug. 9, 1985; 50 FR 35228, Aug. 30, 1985]

### Subpart H—Hearings

#### § 5.501 General.

A hearing concerning the suspension or revocation of a merchant mariner's license, certificate of registry, or document is a formal adjudication under the Administrative Procedure Act (APA) (5 U.S.C. 551, *et seq.*). It is presided over by, and conducted under the exclusive control of, an ALJ in accordance with applicable requirements in the APA, the rules in this part, and the rules of administrative practice at 33 CFR part 20. The ALJ shall regulate and conduct the hearing so as to bring out all the relevant and material facts and to ensure a fair and impartial hearing.

[USCG-1998-3472, 64 FR 28075, May 24, 1999]

#### § 5.521 Verification of license, certificate or document.

(a) The Administrative Law Judge shall require the respondent to produce and present at the opening of the hearing, and on each day the hearing is in session thereafter, all valid licenses, certificates, and/or documents issued by the Coast Guard to the respondent. In the event that the respondent alleges that such license, certificate or document has been lost, misplaced, stolen, destroyed, or is otherwise beyond

his ability to produce, the respondent shall execute a lost document affidavit (Form CG-4363). The Administrative Law Judge shall warn the respondent that a willful misstatement of any material item in such affidavit is punishable as a violation of a Federal criminal statute. (See 18 U.S.C. 1001).

(b) When a hearing is continued or delayed, the Administrative Law Judge returns the license, certificate, or document to the respondent: unless a prima facie case has been established that the respondent committed an act or offense which shows that the respondent's service on a vessel would constitute a definite danger to public health, interest or safety at sea.

[CGD82-002, 50 FR 32184, Aug. 9, 1985, as amended by CGD 97-057, 62 FR 51042, Sept. 30, 1997]

#### § 5.567 Order.

(a) The Administrative Law Judge enters an order which recites the disposition of the case. When the finding is *not proved*, the Administrative Law Judge issues an order *dismissing* the proceeding with or without prejudice to refile. When the finding is *proved*, the Administrative Law Judge may order an *admonition*, *suspension* with or without probation, or *revocation*.

(b) The order is directed against all licenses, certificates or documents, except that in cases of negligence or professional incompetence, the order is made applicable to specific licenses, certificates or documents. If the Administrative Law Judge determines that the respondent is professionally incompetent in the grade of the license, certificate or document held, but is considered competent in a lower grade, the license, certificate or document may be revoked and the issuance of one of a lower grade ordered.

(c) An order must specify whether the license, certificate or document affected is:

- (1) Revoked;
- (2) Suspended outright for a specified period after surrender;
- (3) Suspended for a specified period, but placed on probation for a specific period; or
- (4) Suspended outright for a specified period, followed by a specified period of suspension on probation.

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(d) The order will normally state, *that the license, certificate or document is to be surrendered to the Coast Guard immediately*, if the order is one of revocation or includes a period of outright suspension. In cases involving special circumstances, the order may provide for surrender on a certain date.

(e) The time of any period of outright suspension ordered does not commence until the license, certificate or document is surrendered to the Coast Guard. The time of any period of suspension on probation begins at the end of any period of outright suspension or the effective date of the order if there is no outright suspension.

[CGD 82-002, 50 FR 32184, Aug. 9, 1985, as amended by USCG-1998-3472, 64 FR 28075, May 24, 1999]

**§ 5.569 Selection of an appropriate order.**

(a) This section addresses orders in a general manner. The selection of an appropriate order is the responsibility of the Administrative Law Judge, subject to appeal and review. The investigating officer and the respondent may suggest an order and present argument in support of this suggestion during the presentation of aggravating or mitigating evidence.

(b) Except for acts or offenses for which revocation is mandatory, factors which may affect the order include:

(1) Remedial actions which have been undertaken independently by the respondent;

(2) Prior record of the respondent, considering the period of time between prior acts and the act or offense for which presently charged is relevant; and

(3) Evidence of mitigation or aggravation.

(c) After an order of revocation is entered, the respondent will be given an opportunity to present relevant material on the record for subsequent consideration by the special board convened in the event an application is filed in accordance with subpart L of this part.

(d) Table 5.569 is for the information and guidance of Administrative Law Judges and is intended to promote uniformity in orders rendered. This table should not affect the fair and impartial

adjudication of each case on its individual facts and merits. The orders are expressed by a range, in months of outright suspension, considered appropriate for the particular act or offense prior to considering matters in mitigation or aggravation. For instance, without considering other factors, a period of two to four months outright suspension is considered appropriate for *failure to obey a master's written instructions*. An order within the range would not be considered excessive. Mitigating or aggravating factors may make an order greater or less than the given range appropriate. Orders for repeat offenders will ordinarily be greater than those specified.

TABLE 5.569—SUGGESTED RANGE OF AN APPROPRIATE ORDER

Type of offense	Range of order (in months)
Misconduct:	
Failure to obey master's/ship officer's order.	1-3.
Failure to comply with U.S. law or regulations.	1-3.
Possession of intoxicating liquor.	1-4.
Failure to obey master's written instruction.	2-4.
Improper performance of duties related to vessel safety.	2-5.
Failure to join vessel (required crew member).	2-6.
Violent acts against other persons (without injury).	2-6.
Failure to perform duties related to vessel safety.	3-6.
Theft .....	3-6.
Violent acts against other persons (injury).	4-Revocation.
Use, possession, or sale of dangerous drugs.	Revocation (Note: see § 5.59).
Negligence:	
Negligently performing duties related to vessel navigation.	2-6.
Negligently performing non-navigational duties related to vessel safety.	1-3.
Neglect of vessel navigation duties.	3-6.
Neglect of non-navigational safety related duties.	2-4.
Incompetence .....	The only proper order for a charge of incompetence found proved is revocation.
Violation of Regulation:	
Refusal to take chemical drug test.	12-24
Refusal to take required alcohol test.	12-24