

National Transportation Safety Board

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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

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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

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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: