

### § 821.31

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

### 49 CFR Ch. VIII (10–1–07 Edition)

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:

## National Transportation Safety Board

## § 821.40

(1) To give notice of, and to hold, pre-hearing 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.

(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.

### 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 conven-

ience 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.

Each party shall have the right to present a case-in-chief, or defense, by oral and documentary evidence, to submit evidence in rebuttal, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Hearsay evidence (including hearsay within hearsay, where there are acceptable circumstantial indicia of trustworthiness) shall be admissible. All material and relevant evidence should be admitted, but the law judge may exclude unduly repetitious evidence.

#### § 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.