

### Subpart K—Finality, Petitions for Hearing, and Availability of Orders

#### § 20.1101 Finality.

(a) *Civil penalty proceedings.* (1) Unless appealed pursuant to subpart J of this part, an ALJ's decision becomes an order assessing or denying a class II civil penalty 30 days after the date of its issuance.

(2) If the Commandant issues a decision under Subpart J of this part, the decision constitutes an order of the Commandant assessing or denying a class II civil penalty on the date of issuance of the Commandant's decisions.

(b) *S&R Proceedings.* (1) Unless appealed pursuant to subpart J of this part, an ALJ's decision becomes final action of the Coast Guard 30 days after the date of its issuance.

(2) If the Commandant issues a decision under Subpart J of this part, the decision constitutes final action of the Coast Guard on the date of its issuance.

#### § 20.1102 Petitions to set aside decisions and provide hearings for civil penalty proceedings.

(a) If no hearing takes place on a complaint for a class II civil penalty, any interested person may file a petition, 30 days or less after the issuance of an order assessing or denying a civil penalty, asking the Commandant to set aside the order and to provide a hearing.

(b) If the Commandant decides that evidence presented by an interested person in support of a petition under paragraph (a) of this section is material and that the ALJ did not consider the evidence in the issuance of the decision, the Commandant shall set aside the decision and direct that a hearing take place in accordance with the requirements of this part.

(c) If the Commandant denies a hearing sought under this section, he or she shall provide to the interested person, and publish in the FEDERAL REGISTER, notice of and the reasons for the denial.

#### § 20.1103 Availability of decisions.

(a)(1) Copies and indexes of decisions on appeal are available for inspection and copying at—

(i) The document inspection facility at the office of any Coast Guard District, Activity, or Sector Office;

(ii) The public reading room at Coast Guard Headquarters; and

(iii) The public reading room of the Coast Guard ALJ Docketing Center; Baltimore, Maryland.

(2) Appellate decisions in S&R proceedings, and both appellate and ALJs' decisions on class II civil penalties, are available on the Department of Transportation Home Page at [www.dot.gov](http://www.dot.gov) or the Coast Guard Home Page at [www.uscg.mil](http://www.uscg.mil).

(b) Any person wanting a copy of a decision may place a request with the Hearing Docket Clerk. The Clerk will bill the person on the terms prescribed in 49 CFR 7.43.

[CGD98-3472, 64 FR 28062, May 24, 1999, as amended by USCG-2006-25556, 72 FR 36327, July 2, 2007]

### Subpart L—Expedited Hearings

#### § 20.1201 Application.

(a) This subpart applies whenever the Coast Guard suspends a merchant mariner's license, certificate of registry, or document without a hearing under 46 U.S.C. 7702(d).

(b) The Coast Guard may, for 45 days or less, suspend and seize a license, certificate, or document if, when acting under the authority of the license, certificate, or document,—

(1) A mariner performs a safety-sensitive function on a vessel; and

(2) There is probable cause to believe that he or she—

(i) Has performed the safety-sensitive function in violation of law or Federal regulation regarding use of alcohol or a dangerous drug;

(ii) Has been convicted of an offense that would prevent the issuance or renewal of the license, certificate, or document; or,

(iii) Three years or less before the start of an S&R proceeding, has been convicted of an offense described in subparagraph 205(a)(3)(A) or (B) of the

## § 20.1202

National Driver Register Act of 1982 (23 U.S.C. 401, note).

### § 20.1202 Filing of pleadings.

(a) *Complaint.* If the Coast Guard has temporarily suspended a merchant mariner's license, certificate of registry, or document, it shall immediately file a complaint under § 20.307. The complaint must contain both a copy of a notice of temporary suspension and an affidavit stating the authority and reason for temporary suspension.

(b) *Answer.* In a case under this subpart—

(1) § 20.308 does not govern answers, and

(2) The respondent shall therefore enter his or her answer at the pre-hearing conference.

### § 20.1203 Commencement of expedited hearings.

Upon receipt of a complaint with a copy of the notice of temporary suspension and the affidavit supporting the complaint, the Chief ALJ will immediately assign an ALJ and designate the case for expedited hearing.

### § 20.1205 Motion for return of temporarily suspended license, certificate of registry, or document.

(a) *Procedure.* At any time during the expedited hearing, the respondent may move that his or her license, certificate of registry, or document be returned on the grounds that the agency lacked probable cause for temporary suspension. The motion must be in writing and explain why the agency lacked probable cause.

(b) *Ruling.* If the ALJ grants the motion, the ALJ may issue such orders as are necessary for the return of the suspended license, certificate, or document and for the matter to continue in an orderly way under standard procedure.

### § 20.1206 Discontinuance of expedited hearings.

(a) *Procedure.* At any time during the expedited hearing, the respondent may move that the hearing discontinue and that the matter continue under standard procedure. A motion to discontinue must be in writing and explain why the

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case is inappropriate for expedited hearing.

(b) *Ruling.* If the ALJ grants the motion to discontinue, the ALJ may issue such orders as are necessary for the matter to continue in an orderly way under standard procedure.

### § 20.1207 Pre-hearing conferences.

(a) *When held.* As early as practicable, the ALJ shall order and conduct a pre-hearing conference. He or she may order the holding of the conference in person, or by telephonic or electronic means.

(b) *Answer.* The respondent shall enter his or her answer at the pre-hearing conference. If the answer is an admission, the ALJ shall either issue an appropriate order or schedule a hearing on the order.

(c) *Content.* (1) At the pre-hearing conference, the parties shall:

(i) Identify and simplify the issues in dispute and prepare an agreed statement of issues, facts, and defenses.

(ii) Establish a simplified procedure appropriate to the matter.

(iii) Fix a time and place for the hearing 30 days or less after the temporary suspension.

(iv) Discuss witnesses and exhibits.

(2) The ALJ shall issue an order directing the exchange of witness lists and documents.

(d) *Order.* Before the close of the pre-hearing conference, the ALJ shall issue an order setting forth any agreements reached by the parties. The order must specify the issues for the parties to address at the hearing.

(e) *Procedures not to cause delay.* Neither any filing of pleadings or motions, nor any conduct of discovery, may interfere with—

(1) The holding of the hearing 30 days or less after the temporary suspension or

(2) The closing of the record early enough for the issuance of an initial decision 45 days or less after the temporary suspension.

(f) *Times.* The ALJ may shorten the time for any act required or permitted under this subpart to enable him or her to issue an initial decision 45 days or less after the temporary suspension.