

National Transportation Safety Board

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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 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:

(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

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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 convenience 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.

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§ 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.

Subpart G—Initial Decision

§ 821.42 Initial decision by law judge.

(a) *Written or oral decision.* The law judge may render his or her initial decision orally at the close of the hearing, or in writing at a later date, except as provided with respect to emergency proceedings in § 821.56(c).

(b) *Content.* The initial decision shall include findings and conclusions upon all material issues of fact, credibility of witnesses, law and discretion presented on the record, together with a statement of the reasons therefor.

(c) *Furnishing parties with, and issuance date of, oral decision.* If the initial decision is rendered orally, a copy thereof, excerpted from the hearing transcript, shall be furnished to the parties by the Office of Administrative Law Judges. Irrespective of the date on which the copy of the decision is transmitted to the parties, the issuance date of the decision shall be the date on which it was orally rendered.

§ 821.43 Effect of law judge's initial decision or appealable order and appeal therefrom.

If no appeal from the law judge's initial decision or appealable order is timely filed, the initial decision or order shall become final with respect to the parties, but shall not be binding precedent for the Board. The filing of a timely notice of appeal with the Board shall stay the effectiveness of the law judge's initial decision or order, unless the basis for the decision or order is that the Board lacks jurisdiction.