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effective shall specify in the confirming written waiver order.

(f) No penalty shall be imposed because of failure to comply with any provision of law and/or regulation, the waiver of which has been made effective pursuant to the requirements of this section.

(g) This waiver order shall remain in effect until terminated by proper authority and notice of cancellation is published in the FEDERAL REGISTER.

[CGFR 64-86, 30 FR 88, Jan. 6, 1965, as amended by CGD 88-052, 53 FR 25119, July 1, 1988; CGD 96-026, 61 FR 33662, June 28, 1996]

§ 19.07 Chronological record of seaman's previous employment.

(a) Compliance is hereby waived with regard to the provisions of subsection (h) of R.S. 4551, as amended (46 U.S.C. 643), to the extent necessary to permit the Commandant of the United States Coast Guard to issue a chronological record of a seaman's previous employment on a single document, in lieu of making individual entry in a duplicate continuous discharge book or furnishing individual certificates of discharge.

(b) It is hereby found that the waiving of the provisions of R.S. 4551(h), as amended (46 U.S.C. 643), is necessary in the interest of national defense.

[CGFR 51-9, 16 FR 1829, Feb. 27, 1951, as amended by CGFR 59-4a, 24 FR 3055, Apr. 21, 1959]

CROSS REFERENCE: See 49 CFR 7.93 for the fee for this record.

§ 19.15 Permits for commercial vessels handling explosives at military installations.

Pursuant to the request of the Secretary of Defense in a letter dated October 19, 1955, made under the provisions of section 1 of the act of December 27, 1950 (64 Stat. 1120; 46 U.S.C., note prec. 1), I hereby waive in the interest of national defense compliance with the provisions of R.S. 4472, as amended (46 U.S.C. 170), and the regulations promulgated thereunder in part 146 of this chapter to the extent that no quantitative restrictions, based on considerations of isolation and remoteness, shall be required by the Coast Guard for commercial vessels loading

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or unloading explosives at the Department of Defense waterfront installations. This waiver shall not relieve a commercial vessel loading or unloading explosives at the Department of Defense waterfront installations from the requirement of securing a permit from the Coast Guard for such operations with respect to quantitative or other restrictions imposed by the Coast Guard on the basis of each vessel's ability to meet prescribed stowage and handling requirements.

[CGFR 55-49, 20 FR 8638, Nov. 23, 1955]

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AUTHORITY: 33 U.S.C. 1321; 42 U.S.C. 9609; 49 CFR 1.46.

SOURCE: CGD 91-228, 59 FR 15022, Mar. 30, 1994, unless otherwise noted.

Subpart A—General

§ 20.101 Scope.

(a) Except as specifically noted, these rules of practice and procedure apply to the following civil penalty proceedings before the United States Coast Guard:

(1) Class II civil penalties assessed under section 311(b) of the Federal Water Pollution Control Act, (33 U.S.C. 1321(b)(6)).

(2) Class II civil penalties assessed under section 109 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9609(b)).

(b) In the absence of a specific provision in this part, the Federal Rules of Civil Procedure will be generally followed.

§ 20.102 Definitions.

Administrative Law Judge means any person designated by the Commandant under the Administrative Procedure Act (5 U.S.C. 556(b)) for the purpose of conducting hearings arising under 33 U.S.C. 1321(b) and 42 U.S.C. 9609(b).

Chief Administrative Law Judge means the Administrative Law Judge appointed as the Chief Administrative Law Judge of the U.S. Coast Guard by the Commandant.

Civil penalty proceeding means a trial-type proceeding for the assessment of a civil penalty that offers an opportunity for an oral, fact-finding hearing before an Administrative Law Judge.

Coast Guard Representative means a Coast Guard official who has been designated to prosecute a class II civil penalty.

Commandant means the Commandant of the U.S. Coast Guard. The term Commandant includes the Vice-Commandant of the Coast Guard acting on behalf of the Commandant in any proceeding.

Complaint means a document issued by a Coast Guard Representative alleging a violation for which a penalty may be administratively assessed under 33 U.S.C. 1321(b) or 42 U.S.C. 9609(b).

Hearing Docket Clerk means an employee of the Office of the Chief Administrative Law Judge who is responsible for receiving documents, determining their completeness and legibility, and

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distributing them to the Administrative Law Judge and others, as required by this part.

Interested person means a person who, as provided in §20.404, files written comments on a proposed class II civil penalty assessment or files written notice of intent to present evidence in any hearing held on the proposed class II civil penalty assessment.

Mail includes U.S. first-class mail, U.S. certified mail, U.S. registered mail, or an express courier service.

Motion means a request for an order or ruling from an Administrative Law Judge.

Party means a respondent or the Coast Guard.

Person includes an individual, partnership, corporation, association, public or private organization, or a government agency.

Personal delivery includes hand delivery or use of a contract or express courier service. "Personal delivery" does not include the use of government interoffice mail service.

Pleading means a complaint, an answer, any document and any amendment to a document permitted under this part.

Respondent means a person charged with a violation in a complaint issued under this part.

[CGD 91-228, 59 FR 15022, Mar. 30, 1994, as amended by CGD 96-026, 61 FR 33662, June 28, 1996]

§20.103 Construction and waiver of rules.

(a) These rules will be construed to secure a just, speedy, and inexpensive determination in every class II civil penalty proceeding.

(b) Except to the extent that a waiver would be contrary to law, the Commandant, the Chief Administrative Law Judge or a presiding Administrative Law Judge may, after notice, waive any of these rules to prevent undue hardship or manifest injustice, or if the expeditious conduct of a case so requires.

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Subpart B—Administrative Law Judges

§20.201 Assignment.

An Administrative Law Judge, assigned by the Chief Administrative Law Judge following receipt of the complaint, shall preside over each class II civil penalty proceeding.

§20.202 Powers.

The Administrative Law Judge shall have all powers necessary to the conduct of fair, expeditious, and impartial hearings, including the power to—

- (a) Administer oaths and affirmations;
- (b) Issue subpoenas authorized by law;
- (c) Rule on motions;
- (d) Order discovery as provided in this part;
- (e) Hold hearing or settlement conferences;
- (f) Regulate the course of hearings;
- (g) Call and question witnesses;
- (h) Issue decisions;
- (i) Exclude any person from a hearing or conference for disrespect, disorderly or rebellious conduct; and
- (j) Take any other action consistent with law and Coast Guard policy authorized by the Chief Administrative Law Judge.

[CGD 91-228, 59 FR 15022, Mar. 30, 1994; 59 FR 45757, Sept. 2, 1994]

§20.203 Unavailability.

(a) In the event that an Administrative Law Judge is unable to perform the duties described in §20.202 or otherwise becomes unavailable, the Chief Administrative Law Judge shall designate a successor.

(b) If a hearing has been commenced and an Administrative Law Judge is unable to proceed, a successor Administrative Law Judge may proceed with a hearing in a case. The successor Administrative Law Judge may, at the request of a party, recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor Administrative Law Judge may,

within his or her discretion, recall any other witness.

[CGD 91-228, 59 FR 15022, Mar. 30, 1994; 59 FR 45757, Sept. 2, 1994]

§20.204 Withdrawal or disqualification.

(a) An Administrative Law Judge may at any time disqualify herself or himself.

(b) Prior to the filing of the Administrative Law Judge's decision, either party may move that the Administrative Law Judge disqualify herself or himself on the ground of personal bias or other disqualification, by filing with the Administrative Law Judge promptly upon discovery of the alleged facts an affidavit setting forth in detail the matters alleged to constitute grounds for disqualification.

(1) The Administrative Law Judge shall rule upon the motion, stating the grounds for the ruling. If the Administrative Law Judge concludes that the motion is timely and has merit, the Administrative Law Judge shall disqualify herself or himself and withdraw from the proceeding. If the Administrative Law Judge does not disqualify herself or himself and withdraw from the proceeding, the Administrative Law Judge shall proceed with the proceeding, or if a hearing has been concluded, proceed with the issuance of a decision.

(2) An Administrative Law Judge's denial of a motion for disqualification may be appealed to the Commandant at the conclusion of the hearing according to the procedures in subpart J of this part. When the appeal is made, the Administrative Law Judge forwards the motion and supporting affidavits or sworn statements with the ruling to the Commandant.

§20.205 Ex parte communications.

Ex parte communications are governed by section 557(d) of the Administrative Procedure Act (5 U.S.C. 557(d)).

§20.206 Separation of functions.

(a) An Administrative Law Judge may not be responsible to or subject the supervision or direction of an officer, employee, or agent engaged in the performance of investigating or prosecuting functions for the Coast Guard.

(b) No officer, employee, or agent of the Coast Guard engaged in the performance of investigations or prosecutorial functions in connection with any class II civil penalty proceeding shall, in that proceeding or one that is factually related, participate or advise in the decision of the Administrative Law Judge or the Commandant on appeal, except as a witness or counsel in the proceeding or appellate review.

[CGD 91-228, 59 FR 15022, Mar. 30, 1994; 59 FR 45757, Sept. 2, 1994]

Subpart C—Pleadings and Motions

§20.301 Representation.

(a) A party may appear either without counsel or other representatives, by an attorney, or by other duly authorized representative. An attorney or other duly authorized representative shall file a notice of appearance. The notice must indicate—

(1) The name of the case, including docket number if assigned;

(2) The person on whose behalf the appearance is made; and

(3) The person's and representative's mailing addresses and telephone numbers.

(b) Notice, including the items listed in paragraph (a) of this section, must also be given for any withdrawal of appearance.

(c) An attorney shall be a member in good standing of the bar of the highest court of a State, the District of Columbia, or any territory or commonwealth of the United States. A personal representation of membership is sufficient proof, unless otherwise ordered by the Administrative Law Judge.

(d) Any person who is not an attorney shall file a statement setting forth the basis of his or her authority to act as a duly authorized representative. The Administrative Law Judge may deny appearance as a representative to any person whom the Administrative Law Judge finds does not possess the requisite qualifications to represent others or is lacking in character, integrity, or proper personal conduct.

§ 20.302 Filing of documents and other materials.

(a) All documents and material relating to a class II civil penalty proceeding must be filed at the following address: Chief Administrative Law Judge, Commandant (G-CJ), U.S. Coast Guard, 2100 Second St., SW., Washington, DC 20593-0001. Attention: Hearing Docket Clerk. Phone: (202) 267-2940, Fax: (202) 267-4753.

(b) An executed original and one copy of each document (including exhibits and supporting affidavits) must be filed with the Hearing Docket Clerk. One additional copy of each filed document must be filed with the assigned Administrative Law Judge. Copies need not be signed, but the name of the person signing the original must be shown on each copy.

(c) In the absence of the assignment of a case to an Administrative Law Judge, the Administrative Law Judge's copy will be filed with the Chief Administrative Law Judge.

(d) Filing may be made by mail or personal delivery. Other methods, such as facsimile transmission or other electronic means, may be permitted at the discretion of the Hearing Docket Clerk or the Administrative Law Judge.

(e) When the Hearing Docket Clerk determines that a document, or other material, offered for filing does not comply with requirements of this part, the Hearing Docket Clerk may decline to accept the document, or other material, for filing, and return it unfiled. Alternatively, the Hearing Docket Clerk may accept it, advise the person offering it of the deficiency, and require the deficiency to be corrected.

§ 20.303 Form and content of filed documents.

(a) A filed document must identify clearly—

- (1) The title of the proceeding;
- (2) The docket number of the case if one has been assigned;
- (3) A designation of the type of filing (e.g., petition, notice, motion to dismiss, etc.);
- (4) The name and designation of the filing party; and
- (5) The filer's address, telephone number, and facsimile transmission number (if any) and, if represented, the

name, address, telephone number, and facsimile transmission number (if any) of the filer's representative.

(b) All filed documents must be—

(1) 8½ by 11 inches in size except, when necessary, tables, charts, and other attachments may be larger if folded to the size of the filed documents to which they are physically attached;

(2) Printed on one side of the page and be clearly typewritten, printed, or otherwise reproduced by a process that produces permanent and plainly legible copies;

(3) Double-spaced except for footnotes and long quotations, which may be single-spaced;

(4) Have a left margin of at least 1½ inches and other margins of at least 1 inch; and

(5) Bound on the left side, if bound.

(c) All documents must be in the English language or, if in a foreign language, accompanied by a certified translation.

(d) The original of every filed document must be signed by the submitting person or his or her attorney or representative. Except as otherwise provided, filed documents need not be verified or accompanied by an affidavit. The signature constitutes a certification by the signing person that he or she has read the filed document, that to the best of his or her knowledge, information, and belief the statements made in it are true, and that it is not intended to cause delay.

§ 20.304 Service of documents.

(a) A copy of each document issued by the Administrative Law Judge in the proceeding is served upon each party. The Administrative Law Judge shall serve a copy of notices of hearings upon each interested person, as determined under § 20.404. Unless otherwise provided in this part, a copy of each document filed with or issued by the Administrative Law Judge in the proceeding shall be provided to an interested person upon request by the interested person to the Administrative Law Judge.

(b) Unless otherwise ordered by the Administrative Law Judge, one copy of all documents filed with the Hearing

Docket Clerk must be served upon each party by the persons filing them.

(c) Every document filed with the Hearing Docket Clerk and required to be served upon all parties must be accompanied by a certificate of service signed by or on behalf of the party or person making the service, stating that service has been made. Certificates of service should be in substantially the following form:

I hereby certify that I have this day served the foregoing document(s) upon the following parties (or designated representatives) in this proceeding at the address indicated by (specify the method):

- (1) [name/address] _____
- (2) [name/address] _____

Dated at _____, this ____ day of _____, 19__.

[Signature]
For _____
Capacity. _____

(d) Service may be made by mail or personal delivery. Other methods of service, such as facsimile transmission or other electronic means, may be used, other than for service of the complaint and answer, at the discretion of the Administrative Law Judge. The Hearing Docket Clerk may place limitations on the times of and circumstances for service by facsimile transmission or other electronic means.

(e) Unless otherwise ordered by the Administrative Law Judge, all documents filed in accordance with §20.302 must be served upon counsel and representatives or, if not represented, the persons themselves. Service upon counsel or representative will constitute service upon the person to be served.

(f) Service must be made at the address of the counsel or representative, or, if not represented, at the last known address of the residence or principal place of business of the person to be served.

(g) If service is made by personal delivery, delivery is complete when the document is handed to the person to be served or delivered to the person's office during business hours or, if the person to be served has no office, is delivered to the person's residence and deposited in a conspicuous location. If service is by mail, facsimile transmission, or other electronic means,

service is complete upon deposit in the mail or completion of the electronic transmission.

(h) A document that was properly addressed, was sent in accordance with this subpart, and returned, showing that it was not claimed, or was refused, is deemed to have been served in accordance with this subpart. The service will be considered valid as of the date and the time that the document was deposited with a contract or express messenger, the document was mailed, or personal delivery of the document was refused.

§20.305 Amendment or supplementation of filed documents.

(a) A party or interested person shall amend or supplement a previously filed pleading or document if the person learns of a material change that may affect the outcome of the class II civil penalty proceeding. However, no amendment will be allowed that would broaden the issues without an opportunity for the parties to reply to the amendment and to allow preparation for the broadened issues.

(b) The Administrative Law Judge may approve other amendments or supplements to filed documents.

(c) Parties shall notify the Hearing Docket Clerk, Administrative Law Judge, and all other parties or their representatives of any change of address.

§20.306 Computation of time.

(a) In computing any period of time prescribed in this part, the day on which the designated period begins to run is not included. The last day of the period so computed is included unless it is a Saturday, Sunday, or Federal holiday. When the period of time prescribed is 7 days or less, intermediate Saturdays, Sundays, and Federal holidays are excluded in the computation.

(b) If service or filing is by domestic mail, 3 days will be added to the designated period for response.

(c) If service or filing is by mail to a foreign country, 20 days will be added to the designated period for response.

(d) An Administrative Law Judge, for cause shown, may at any time in his or her discretion—

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(1) With or without motion or notice, order a time period extended if request for extension is made before the end of the original time period, or as extended by a previous order; or

(2) Upon motion made after the expiration of the time period, permit the act to be done where the failure to act was excusable.

§ 20.307 Complaint.

(a) The complaint must set forth—

(1) The statute or regulation allegedly violated;

(2) The pertinent facts involved; and

(3) The amount of the requested class II civil penalty.

(b) The Coast Guard Representative should request the place of hearing when filing the complaint.

(c) The complaint must conform with the filing and service requirements of this subpart.

§ 20.308 Answer.

(a) The respondent shall file a written answer to the complaint not later than 20 days after service of the complaint. The answer must conform with the filing and service requirements of this subpart.

(b) The person filing an answer shall indicate whether he or she agrees with the place of hearing proposed in the complaint and, if necessary, shall request another location for the hearing when filing the answer.

(c) An answer must state whether or not the respondent intends to contest any of the violations set forth in the complaint. The answer must include any affirmative defenses that the respondent intends to assert at the hearing.

(1) The answer must admit or deny each numbered paragraph of the complaint. A statement that the person is without sufficient knowledge or information to admit or deny will have the effect of a denial. Except as provided in this paragraph, any allegation in the complaint that is not specifically denied in the answer is deemed admitted.

(2) A general denial of the complaint is deemed a failure to file an answer.

(d) A respondent's failure to file an answer without good cause will be deemed an admission of the truth of

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each allegation contained in the complaint.

§ 20.309 Motions.

(a) A person applying for an order or ruling not specifically provided in this subpart shall do so by motion. All written motions must comply with the form, filing, and service requirements of this subpart. All motions must state clearly and concisely—

(1) The purpose of and the relief sought by the motion;

(2) The statutory or regulatory authority relied upon; and

(3) The facts alleged to constitute the grounds requiring the relief requested.

(b) A proposed order may be attached to a motion.

(c) Motions must be in writing, except that a motion made at a hearing will be sufficient if stated orally upon the record unless the Administrative Law Judge directs that it be reduced to writing.

(d) Except as otherwise provided in this part, a party must file any response to a motion within 10 days following service of a written motion. When a motion is made during a hearing, an oral response may be made at the hearing or in writing, within a reasonable time, as determined by the Administrative Law Judge.

(e) Unless otherwise ordered by the Administrative Law Judge, the filing of a motion does not stay a proceeding.

(f) Rulings will be made on the record either orally or in writing. The Administrative Law Judge may summarily deny dilatory, repetitive, or frivolous motions.

§ 20.310 Default by respondent.

(a) A respondent may be found to be in default upon failure to file a timely answer to the complaint or, after motion, upon failure to appear at a conference or hearing without good cause being shown.

(b) Any motion for default must conform to the rules of form, service, and filing of this subpart and must include a proposed decision. The respondent alleged to be in default has 20 days from service to file a reply to the motion.

(c) Default by respondent constitutes, for purposes of the pending action only, an admission of all facts alleged in the complaint and a waiver of respondent's right to a hearing on such factual allegations.

(d) Upon finding that a default has occurred, the Administrative Law Judge shall issue a decision against the defaulting party.

(e) For good cause shown, the Administrative Law Judge may set aside a finding of a default.

§ 20.311 Withdrawal or dismissal.

(a) A class II civil penalty proceeding may be withdrawn without any action by an Administrative Law Judge in the following manner:

(1) By the filing of a stipulation by all parties who have appeared in the class II civil penalty proceeding;

(2) By the filing of a notice of withdrawal by the Coast Guard Representative at any time before the respondent has served a responsive pleading; or

(3) With respect to a complaint filed under section 311(b)(6) of the Federal Water Pollution Control Act (33 U.S.C. 1321(b)(6)), by the filing of a notice of withdrawal by the Coast Guard Representative at any time after the respondent has served a responsive pleading and prior to the issuance of an order of the Commandant assessing or denying a class II civil penalty, together with a certification by the Representative that the withdrawal is made in response to a request by the Attorney General that the Coast Guard refrain from administrative action, as provided in section 10(d) of Executive Order 12777 (56 FR 54757, 3 CFR 1991 Comp., p. 351).

(b) Unless otherwise stated in the stipulation or notice of withdrawal, a withdrawal under paragraph (a) of this section is without prejudice.

(c) Except as provided in paragraph (a) of this section, a class II civil penalty proceeding may not be withdrawn except by an Administrative Law Judge upon such terms and conditions as the Administrative Law Judge deems proper.

(d) Any party may move to dismiss the complaint, including a request for relief, for—

(1) Failure of another party to comply with the requirements of this part or with any order of the Administrative Law Judge;

(2) Failure to prosecute the civil penalty proceeding; or

(3) Failure to show a right to relief based upon the facts or law.

(e) A dismissal is the decision of the Administrative Law Judge.

[CGD 91-228, 59 FR 15022, Mar. 30, 1994; 59 FR 45757, Sept. 2, 1994]

Subpart D—Proceedings

§ 20.401 Initiation of class II civil penalty proceedings.

A class II civil penalty proceeding is initiated when the complaint is filed with the Hearing Docket Clerk and served on the respondent.

§ 20.402 Public notice.

Upon the filing of a complaint, the Coast Guard provides notice of the proposed issuance of an order assessing a class II civil penalty which is responsive to the complaint. The notice will be published in the FEDERAL REGISTER.

§ 20.403 Consolidation or severance of class II civil penalty proceedings.

(a) An Administrative Law Judge may for good cause, with the approval of the Chief Administrative Law Judge and with notice and opportunity to object provided to all parties, consolidate any or all matters at issue in two or more class II civil penalty proceedings docketed under this part. Good cause includes cases where there are common parties or questions of fact and where such consolidation would expedite the cases, and the interests of justice would be served. Consolidation will not be granted if it will prejudice any rights available under this part or if it will affect the right of any party to raise issues that could have been raised if consolidation had not occurred.

(b) Unless directed otherwise by the Chief Administrative Law Judge, the presiding Administrative Law Judge may in response to a motion or on his or her own motion, for good cause shown, order any class II civil penalty proceeding severed with respect to some or all parties, claims, and issues.

§ 20.404 Interested persons.

(a) A person not a party to a class II civil penalty proceeding under this part, who wishes to be an interested person in the proceeding, must file with the Hearing Docket Clerk within 30 days after publication in the FEDERAL REGISTER of the public notice required by § 20.402 either—

(1) Written comments on the proceeding; or

(2) Written notice of intent to present evidence at any hearing to be held in the proceeding.

(b) For good cause shown, the Administrative Law Judge may accept late comments or late notice of intent to present evidence.

(c) An interested person shall be given notice of any hearing to be held in the proceeding and of the decision in the proceeding. In any hearing the interested person shall have a reasonable opportunity to be heard and to present evidence

(d) For the purposes of paragraph (c) of this section, a reasonable opportunity to be heard and to present evidence does not include—

(1) Subpoena requests for witnesses;

(2) Cross-examination of witnesses; or

(3) Appearance at settlement conference(s).

Subpart E—Conferences and Settlement

§ 20.501 Conferences.

(a) The Administrative Law Judge may direct the parties to attend one or more conferences prior to or during the course of the hearing. Parties may request a conference by motion.

(b) The Administrative Law Judge may provide notice of a conference, other than a settlement conference, to interested persons, as the Administrative Law Judge deems appropriate.

(c) Reasonable notice of the time and place of the conference will be given to the parties. A conference may be held in person, by telephone conference, or by other appropriate means.

(d) Parties and interested persons when participating, shall be fully prepared for a useful discussion of all issues involved in the conference, both procedural and substantive, and au-

thorized to make commitments with respect to the proceedings.

(e) Unless excused by the Administrative Law Judge, failure of a party to attend or participate in a conference, after being served with reasonable notice of the time and place, will constitute a waiver of all objections to the agreements reached in the conference and to any order or ruling that results.

(f) The Administrative Law Judge may order that any or all of the following be addressed or furnished before, during, or after, the conference:

(1) Motions for discovery.

(2) Motions for consolidation or severance of parties or issues in the civil penalty proceeding.

(3) Method of service and filing.

(4) Identification, simplification, and clarification of the issues.

(5) Requests for amendment of the pleadings.

(6) Stipulations and admissions of fact and of the content and authenticity of documents.

(7) A discussion of the desirability of limiting and grouping witnesses, so as to avoid duplication.

(8) Requests for official notice and particular matters to be resolved by reliance upon the agency's substantive standards, regulations, and rules.

(9) Offers of settlement.

(10) Proposed date, time, and place of the hearing.

(11) Other matters that may aid in the disposition of the civil penalty proceeding.

(g) A conference is not to be stenographically reported or otherwise recorded unless authorized by the Administrative Law Judge.

(h) During a conference, the Administrative Law Judge may dispose of any procedural matters on which he or she is authorized to rule.

(i) Actions taken as a result of a conference may be recorded in—

(1) A written report;

(2) A stenographic transcript if ordered by the Administrative Law Judge; or

(3) A statement by the Administrative Law Judge on the record at the hearing summarizing the actions taken.

§ 20.502 Settlement.

(a) The parties shall have the opportunity to submit a proposed settlement to the Administrative Law Judge.

(b) A settlement must be in the form of a proposed decision and a motion for its entry. It must also include the reasons why it should be accepted, and it must be signed by the parties or their representatives.

(c) A proposed settlement must contain—

(1) An admission of all jurisdictional facts;

(2) An express waiver of further procedural steps before the Administrative Law Judge, of any right to challenge or contest the validity of the decision entered into in accordance with the settlement, and of all rights to seek judicial review or otherwise to contest the validity of the decision;

(3) A statement that the decision will have the same force and effect as a decision made after at a full hearing; and

(4) A statement that matters in the pleading, if any, required to be adjudicated have been resolved by the proposed decision.

§ 20.503 Alternative dispute resolution.

The Administrative Law Judge may appoint a settlement adjudicator or order alternative dispute resolution proceeding with the consent of all parties.

Subpart F—Discovery**§ 20.601 General.**

(a) Unless otherwise ordered by the Administrative Law Judge, each party and interested person who has filed written notice of intent to present evidence under § 20.404 shall make available to all other parties, to the Administrative Law Judge and, upon request, to interested persons—

(1) The names of any expert and other witnesses intended to be called, together with a brief narrative summary of their expected testimony or written testimony; and

(2) Copies of all documents and exhibits which are to be introduced into evidence.

(b) The Administrative Law Judge may direct the exchange of witness

lists and documents during a prehearing conference ordered under § 20.501 or may direct the exchange be accomplished by correspondence.

(c) The Administrative Law Judge may establish a schedule for conducting discovery in the proceedings and shall serve a copy of the schedule on each party.

(1) The schedule may include dates by which exchanges of witness lists and exhibits, requests for discovery, and any objections to discovery requests are to be filed.

(2) Unless otherwise ordered by the Administrative Law Judge, exchange of witness lists and documents shall be completed no less than 15 days prior to hearing, and final exchanges of proposed exhibits should be made in accordance with § 20.807.

(d) Further discovery shall be permitted only by order upon determination by the Administrative Law Judge—

(1) That such discovery will not in any way unreasonably delay the proceeding;

(2) That the information to be obtained is not otherwise obtainable;

(3) That such information has significant probative value;

(4) That the information requested is not cumulative or repetitious; and

(5) That the method or scope of discovery requested by the party is not unduly burdensome or expensive and is the least burdensome method available.

(e) A motion for discovery shall set forth—

(1) The circumstances warranting the taking of the discovery;

(2) The nature of the information expected to be discovered; and

(3) The proposed method of discovery and the time and place where it will be taken.

(f) If the Administrative Law Judge determines that the motion should be granted, the Administrative Law Judge shall issue an order for the taking of discovery together with conditions and terms.

§ 20.602 Additional response.

(a) A party or an interested person shall amend or supplement in a timely fashion—

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(1) The documents and exhibits that the party or interested person intends to introduce into evidence;

(2) The identity of each person expected to be called as a witness, the subject matter on which the person is expected to testify, and a summary of the testimony; and

(3) Any information previously provided if—

(i) The party or interested person knows the information was incorrect or incomplete when made; or

(ii) The party or interested person knows that the information, though correct when made, is no longer accurate and the circumstances are such that a failure to amend or supplement the response is, in substance, a knowing concealment.

(b) An additional duty to amend or supplement may be imposed by order of the Administrative Law Judge.

§ 20.603 Interrogatories.

(a) Any party requesting interrogatories shall make a motion to the Administrative Law Judge. The motion must include—

(1) A statement of the purpose and general scope of the interrogatories; and

(2) The proposed interrogatories.

(b) The Administrative Law Judge will review the proposed interrogatories and may enter an order approving the service of some or all of the proposed interrogatories or may deny the motion.

(c) A party shall serve on the party named in the interrogatories the approved written interrogatories.

(d) Each interrogatory must be answered separately and fully in writing under oath or affirmation, unless it is objected to, in which event the reasons for the objection shall be stated instead of a response. A party, the party's attorney, or the party's representative shall sign the party's responses to interrogatories.

(e) Responses or objections must be filed within 30 days after the service of the interrogatories.

(f) If the response to an interrogatory may be derived or ascertained from the records of the party upon whom the interrogatory has been served, from an examination, audit, or inspection of

such records, or from a compilation, abstract, or summary based thereon, and the burden of deriving or ascertaining the response is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient response to specify the records from which the answer may be derived or ascertained. The party serving the interrogatory shall be afforded reasonable opportunity to examine, audit, or inspect the records and to make copies, compilations, abstracts, or summaries. The specification must include sufficient detail to permit the interrogating party to locate and identify the individual records from which the answer may be ascertained.

§ 20.604 Requests for production of documents or things for inspection or other purposes.

(a) Any party requesting production of documents or things for inspection or other purposes shall make a motion to the Administrative Law Judge. The motion must state with particularity—

(1) The purpose and scope of the request; and

(2) The documents and materials which are requested to be produced.

(b) The Administrative Law Judge will review the motion and may enter an order approving or denying the motion in whole or in part.

(c) A party shall serve on the party in possession, custody or control of the documents the order to produce, or to permit inspection and copying of documents.

(d) A party may, after approval of an appropriate motion by the Administrative Law Judge, inspect and copy, test, or sample any tangible things that contain or may lead to relevant information and that are in the possession, custody, or control of the party upon whom the request is served.

(e) A party may, after approval of an appropriate motion by the Administrative Law Judge, serve on another party a request to permit entry upon designated property in the possession or control of the party upon whom the request is served for the purpose of inspecting, measuring, surveying, photographing, testing, or sampling the property or any designated object

or area. A request to permit entry upon property must set forth with reasonable particularity the item to be inspected and must specify a reasonable time, place, and manner for making the inspection and performing the related acts.

(f) The party upon whom the request is served shall respond within 30 days after the service of the request. Inspection and related activities will be permitted as requested, unless there are objections, in which case the reasons for each objection must be stated.

§ 20.605 Depositions.

(a) The Administrative Law Judge shall order depositions only upon a showing of good cause and upon a finding that—

(1) The information sought cannot be obtained more readily by alternative methods; or

(2) There is a substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

(b) Testimony may be taken by deposition upon approval of the Administrative Law Judge of a motion made by any party.

(1) The motion must state—

(i) The purpose and scope of the deposition;

(ii) The time and place it is to be taken;

(iii) The name and address of the person before whom the deposition is to be taken;

(iv) The name and address of each witness from whom a deposition is to be taken;

(v) The documents and materials which the witness is requested to produce; and

(vi) Whether it is intended that the deposition be used at a hearing instead of live testimony.

(2) The motion must state if the deposition is to be by oral examination, by written interrogatories, or a combination of the two. The deposition may be taken before any disinterested person authorized to administer oaths in the place where the deposition is to be taken.

(c) Upon a showing of good cause the Administrative Law Judge may enter

and serve upon the parties an order to obtain the testimony of the witness.

(d) If the deposition of a public or private corporation, partnership, association, or governmental agency is ordered, the organization named must designate one or more officers, directors, or agents to testify on its behalf, and may set forth, for each person designated, the matters on which he or she will testify. Subject to the provisions of 49 CFR part 9 with respect to Coast Guard witnesses, the designated persons shall testify as to matters reasonably known to them.

(e) Each witness deposed shall be placed under oath or affirmation, and the other parties shall have the right to cross-examine.

(f) The witness being deposed may have counsel or another representative present during the deposition.

(g) Except as provided in paragraph (n) of this section, depositions shall be stenographically recorded and transcribed at the expense of the party requesting the deposition. Unless waived by the deponent, the transcription must be read by or read to the deponent, subscribed by the deponent, and certified by the person before whom the deposition was taken.

(h) Subject to objections to the questions and responses as were noted at the time of taking of the deposition and which would have been sustained if the witness were personally present and testifying, a deposition may be offered into evidence by the party taking it against any party who was present or represented at the taking of the deposition or who had notice of the deposition.

(i) The party requesting the deposition shall make appropriate arrangements for necessary facilities and personnel.

(j) During the taking of a deposition, a party or the witness may request suspension of the deposition on the grounds of bad faith in the conduct of the examination, oppression of the witness or party, or improper questioning or conduct. Upon request for suspension, the deposition will be adjourned. The objecting party or witness must immediately move the Administrative Law Judge for a ruling on the objection(s). The Administrative Law Judge

may then limit the scope or manner of taking the deposition.

(k) When a deposition is taken in a foreign country, it may be taken before a person having power to administer oaths in that location, or before a secretary of an embassy or legation, consul general, consul, vice consul or consular agent of the United States, or before such other person or officer as may be agreed upon by the parties by written stipulation filed with the Administrative Law Judge.

(l) Objection to taking a deposition because of the disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could have been discovered with reasonable diligence.

(m) A deposition may be taken by telephone conference call upon such terms, conditions, and arrangements as are prescribed in the order of the Administrative Law Judge.

(n) The testimony at a deposition hearing may be recorded on videotape, upon such terms, conditions and arrangements as are prescribed in the order of the Administrative Law Judge, at the expense of the party requesting the recording. The video recording may be in conjunction with an oral examination by telephone conference held pursuant to paragraph (m) of this section. After the deposition has been taken, and copies of the video recording are provided to parties requesting them, the person recording the deposition shall immediately place the videotape in a sealed envelope or a sealed videotape container, attaching to it a statement identifying the proceeding and the deponent and certifying as to the authenticity of the video recording, and return the videotape by accountable means to the Administrative Law Judge. The deposition becomes a part of the record of the proceedings in the same manner as a transcribed deposition. The videotape, if admitted into evidence, will be played during the hearing and transcribed into the record by the reporter.

§20.606 Protective order.

(a) In considering a motion for an order of discovery, or a motion by a

party or the person from whom discovery is sought to reconsider or amend an order of discovery, the Administrative Law Judge may make any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including—

(1) That the discovery may be had only on specified terms and conditions, including a designation of the time and place;

(2) That the discovery may be had only by a method of discovery other than that selected by the seeking party;

(3) That particular matters may not be inquired into, or that the scope of the discovery shall be limited to particular matters;

(4) That discovery shall be conducted with no one present except persons designated by the Administrative Law Judge;

(5) That a trade secret or other proprietary information may not be disclosed, may be disclosed only in a designated way, or may be disclosed only to designated persons; or

(6) That the party or the other person from whom discovery is sought file specified documents or information under seal to be opened as directed by the Administrative Law Judge.

(b) The Administrative Law Judge may permit a party or a person from whom discovery is sought and who is seeking a protective order to make all or part of the showing of good cause *in camera*. A record of the *in camera* proceedings must be made. If the Administrative Law Judge enters a protective order, any *in camera* record of the showing must be sealed and only released as required by law.

(c) The Administrative Law Judge may upon motion by a party or by a person from whom discovery is sought—

(1) Restrict or defer disclosure by a party of the name of a witness or, in the case of an agency witness, any prior statement of the witness; and

(2) Prescribe other appropriate measures to protect a witness.

(d) Any party affected by any such order shall have an adequate opportunity, once learning of the name of the witness and obtaining a narrative

summary of expected testimony, or in the case of a Coast Guard witness, any prior statement or statements, to prepare for cross-examination and for the presentation of the party's case.

§20.607 Sanctions for failure to comply.

If a party fails to provide or permit discovery, the Administrative Law Judge may take such action as is just, including but not limited to the following:

(a) Infer that the testimony, document, or other evidence would have been adverse to the party.

(b) Order that, for the purposes of the class II civil penalty proceeding, designated facts will be considered to be established.

(c) Order that the party withholding discovery not introduce into evidence or otherwise rely, in support of any claim or defense, upon documents or other evidence withheld.

(d) Order that the party withholding discovery not introduce into evidence, or otherwise use in the hearing, information obtained in discovery.

(e) Order that the party withholding discovery not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence would have shown.

§20.608 Subpoenas.

(a) The Administrative Law Judge may issue subpoenas for the attendance and the giving of testimony or for the production of books, papers, documents, or any other relevant evidence. Parties shall request the issuance of subpoenas by motion.

(b) Upon application and for good cause shown, the Administrative Law Judge shall apply to the United States District Court to issue an order compelling the appearance and testimony of witnesses or for the production of evidence.

(c) The person making service shall prepare a written statement setting forth the date, time and manner of service or setting forth the reasons the subpoena was not served. The statement shall be under oath or affirmed under the penalties of perjury. The statement shall be attached to a copy

of the subpoena and returned to the Administrative Law Judge who issued the subpoena.

§20.609 Motions to quash or modify.

(a) The person to whom a subpoena is directed may, by motion with notice to the party requesting the subpoena, petition the Administrative Law Judge to quash or modify the subpoena.

(b) Except when made at a hearing, the motion must be filed within 10 days after service of a subpoena for attendance of a witness or a subpoena for production of evidence, but in any event at or before the time specified in the subpoena for compliance.

(c) If served at the hearing, the person to whom the subpoena is directed may, by oral application at the hearing, or within a reasonable time fixed by the Administrative Law Judge, petition the Administrative Law Judge to quash or modify the subpoena.

(d) The Administrative Law Judge may quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue or may deny the request.

Subpart G—Hearings

§20.701 Standard of proof.

The party with the burden of proof shall prove the party's case or affirmative defense by a preponderance of the evidence.

§20.702 Burden of proof.

(a) Except in the case of an affirmative defense, or as provided in paragraph (b) of this section, the burden of proof is on the Coast Guard.

(b) Except as otherwise provided by statute or rule, the proponent of a motion, request, or order has the burden of proof.

§20.703 Presumptions.

In all class II civil penalty proceedings, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but a presumption does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the hearing upon the

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party on whom it was originally placed.

§ 20.704 Scheduling and notice of hearing.

(a) The Administrative Law Judge shall be responsible for scheduling the hearing. With due regard for the convenience of the parties, their representatives, or witnesses, the Administrative Law Judge, as early as possible, shall fix the time, place, and date for the hearing and shall notify all parties and interested persons.

(b) A request for a change in the time, place, or date of a hearing may be granted by the Administrative Law Judge.

(c) At any time after commencement of a proceeding, any party may move to expedite the scheduling of a proceeding. A party moving to expedite a proceeding shall—

(1) Describe the circumstances justifying the motion to expedite; and

(2) Incorporate in the motion affidavits to support any representations of fact.

(d) Following timely receipt of the motion and any responses, the Administrative Law Judge may expedite pleading schedules, prehearing conferences, and the hearing, as appropriate.

§ 20.705 Failure to appear.

A default under § 20.310 may be entered against a respondent failing to appear at a hearing unless—

(a) Prior to the time for the hearing, the respondent shows good cause as to why neither the respondent nor the respondent's representative can appear; or

(b) Within 30 days of an order to show good cause, the respondent shows good cause for failure to appear.

§ 20.706 Witnesses.

(a) Witnesses shall testify under oath or affirmation.

(b) If a witness fails or refuses to testify, the failure or refusal to answer any question found by the Administrative Law Judge to be proper shall be grounds for striking all or part of the testimony which may have been given by the witness, or for any other action

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deemed appropriate by the Administrative Law Judge.

§ 20.707 Telephone testimony.

(a) The Administrative Law Judge may order that testimony of a witness be taken by telephone conference call. A person presenting evidence may request by motion to have testimony taken by telephone conference call. The telephone conference call will be arranged so that all participants can listen to and speak to each other in the hearing of the Administrative Law Judge. The Administrative Law Judge shall ensure that all participants in the telephone conference are properly identified to allow a proper record to be made by the reporter. Telephone conferences are governed by this part.

(b) A witness may be subpoenaed to testify by telephone conference call. The subpoena in such instances is issued under the procedures in § 20.608.

§ 20.708 Witness fees.

(a) Witnesses summoned in a class II civil penalty proceeding shall receive the same fees and mileage as witnesses in the courts of the United States.

(b) The party or interested person who calls a witness is responsible for any fees and mileage to be received by the witness under paragraph (a) of this section.

§ 20.709 Closing of the record.

At the conclusion of the hearing, the record of the proceeding, as described in § 20.903, will be closed unless the Administrative Law Judge directs otherwise. Once the record is closed, it may be reopened at the discretion of the Administrative Law Judge. The Administrative Law Judge may correct the transcript of the hearing by appropriate order.

§ 20.710 Proposed findings, closing arguments, and briefs.

Before the Administrative Law Judge's decision and upon terms which the Administrative Law Judge may find reasonable, any party shall be entitled to file a brief, a proposed findings of fact and conclusions of law, or both. Before the close of the hearing, the Administrative Law Judge may hear oral argument to the extent the

Administrative Law Judge deems appropriate. Any brief, proposed findings of fact and conclusions of law, and oral argument must be included as part of the record of the proceeding.

Subpart H—Evidence

§ 20.801 General.

A party is entitled to present its case or defense by oral, documentary, or demonstrative evidence; to submit rebuttal evidence; and to conduct any cross-examination that may be required for a full and true disclosure of the facts.

§ 20.802 Admissibility of evidence.

(a) The Administrative Law Judge may admit any relevant oral, documentary, or physical evidence, unless privileged.

(b) Relevant evidence is evidence having any tendency to make the existence of any material fact more probable or less probable than it would be without the evidence.

(c) The Administrative Law Judge may exclude evidence if its probative value is substantially outweighed by the danger of unfair prejudice, by confusion of the issues, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

§ 20.803 Hearsay evidence.

Hearsay evidence is admissible in proceedings governed by this part. The fact that evidence is hearsay may be considered by the Administrative Law Judge when determining the probative weight of the evidence.

§ 20.804 Objections and offers of proof.

(a) A party shall state briefly the grounds for objection to the admission or exclusion of evidence. Rulings on all objections must appear in the record. Only objections made before the Administrative Law Judge may be raised on appeal.

(b) Whenever evidence is excluded, the party offering such evidence may make an offer of proof, which must be included in the record.

§ 20.805 Proprietary information.

(a) Without limiting the discretion of the Administrative Law Judge to give effect to applicable privileges, the Administrative Law Judge may limit introduction of evidence or issue such protective or other orders that in his or her judgment may be consistent with the objective of preventing undue disclosure of proprietary matters, including, but not limited to, matters of a business nature.

(b) Where the Administrative Law Judge determines that information in documents containing proprietary matters should be made available to another party, the Administrative Law Judge may direct the party having possession of the documents to prepare a non-proprietary summary or extract of the original. The summary or extract may be admitted as evidence in the record.

(c) If the Administrative Law Judge determines that this procedure is inadequate and that proprietary matters must form part of the record in order to avoid prejudice to a party, the Administrative Law Judge may advise the parties and provide opportunity for arrangements to permit a party or representative to have access to the evidence.

[CGD 91-228, 59 FR 15022, Mar. 30, 1994; 59 FR 45757, Sept. 2, 1994]

§ 20.806 Official notice.

The Administrative Law Judge may take official notice of such matters as might be judicially noticed by the courts or of other facts within the specialized knowledge of the Coast Guard as an expert body. Where a decision or part of a decision rests on the official notice of a material fact not appearing in the evidence in the record, the fact of official notice must be stated in the decision, and any party, upon timely request, shall be afforded an opportunity to show the contrary.

§ 20.807 Exhibits and documents.

(a) All exhibits must be numbered and marked with a designation identifying the party or interested person introducing the exhibit. The original of each exhibit offered in evidence or marked for identification must be filed

and retained in the record of the proceeding, unless the Administrative Law Judge permits the substitution of copies for the original document. Copies of each exhibit must be supplied by the party or interested person introducing the exhibit to the Administrative Law Judge and to every party to the proceeding.

(b) Unless otherwise directed by the Administrative Law Judge, proposed exhibits to be offered upon direct examination should be exchanged or made available for inspection 5 days prior to the hearing. The authenticity of all exhibits submitted prior to the hearing will be deemed admitted unless written objection is filed and served on all parties, or unless good cause is shown for failure to file a written objection.

§ 20.808 Written testimony.

The Administrative Law Judge may enter into the record written statements of witnesses that are sworn or affirmed under penalties of perjury. Witnesses whose testimony is presented by written statement shall be or have been available for oral cross-examination.

§ 20.809 Stipulations.

The parties and interested persons may stipulate, in writing, at any stage of the proceeding or orally at the hearing, to any pertinent facts or other matters fairly susceptible of stipulation. Stipulations are binding on the parties to the stipulation.

Subpart I—Decisions

§ 20.901 Summary decision.

(a) Any party may, after commencement of the proceeding and at least 15 days before the date fixed for the hearing, with or without supporting affidavits, move for a summary decision in the party's favor in all or any part of the proceeding on the grounds that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law. Any other party may, within 10 days after service of the motion, serve opposing affidavits or countermove for summary decision. The Administrative Law Judge may set the matter for ar-

gument and call for the submission of briefs.

(b) The Administrative Law Judge may grant the motion if the filed documents, affidavits, material obtained by discovery or otherwise, or matters officially noted show that there is no genuine issue as to any material fact and that a party is entitled to a summary decision as a matter of law.

(c) Affidavits must set forth such matters as would be admissible in evidence and must show affirmatively that the affiant is competent to testify to the matters stated in the affidavit. When a motion for summary decision is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denials of facts contained in the opposing party's pleadings. The response to the motion, by affidavits or as otherwise provided in this section, must provide a specific basis to show that there is a genuine issue of fact for the hearing.

(d) Should it appear from the affidavits of a party opposing the motion that the opposing party cannot, for reasons stated, present by affidavit matters essential to justify the party's opposition, the Administrative Law Judge may deny the motion for summary decision, may order a continuance to permit information to be obtained, or may make such other order as is just.

(e) The denial of all or any part of a motion for summary decision shall not be subject to interlocutory appeal.

§ 20.902 Decision of the Administrative Law Judge.

(a) After the closing of the record of the proceeding, the Administrative Law Judge shall prepare a decision containing—

- (1) Findings on all material issues of fact and conclusions of law, and the basis for each;
- (2) The disposition of the case, including the assessment of a class II civil penalty, as appropriate;
- (3) The date upon which the decision will become effective;
- (4) A statement of further right to appeal; and

(5) If no hearing was held, a statement of the right of any interested person to petition the Commandant to set aside the decision.

(b) The decision of the Administrative Law Judge must be based upon a consideration of the whole record of the proceedings.

§20.903 Record of proceedings.

(a) The record of testimony at the hearing, all exhibits received into evidence, any items marked as exhibits and not received into evidence, all motions, all applications, all requests, and all rulings will constitute the official record of a proceeding. Any proceedings regarding the disqualification of an Administrative Law Judge will be included in the record.

(b) Any person may examine the record of a proceeding at the Hearing Docket Office, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001. Any person may secure a copy of part or all of the record after payment of reasonable costs for duplication in accordance with 49 CFR part 7.

[CGD 91-228, 59 FR 15022, Mar. 30, 1994; 59 FR 45757, Sept. 2, 1994]

§20.904 Reopening.

(a) To the extent permitted by law, the Administrative Law Judge, for good cause shown in accordance with paragraph (c) of this section, may reopen the record of a proceeding for the purpose of taking additional evidence.

(b) Any party may file a motion to reopen the record within 30 days of the closing of the record of a proceeding.

(1) Any motion to reopen the record must clearly set forth the facts sought to be proven and the reasons claimed to constitute grounds for reopening the record.

(2) A party who does not file a response to any motion to reopen the record will be deemed to have waived any objection to the motion.

(c) If the Administrative Law Judge has reason to believe that reopening the record of a proceeding is warranted by any changes in conditions of fact or of law or by the public interest, the record of the proceeding may be reopened by the Administrative Law Judge before the Administrative Law

Judge's decision becomes an order of the Commandant assessing or denying a class II civil penalty.

(d) The filing of a motion to reopen the record does not affect the appeals periods specified in subpart J of this part, except that a motion to reopen the record tolls any time remaining in the appeals periods from the date of filing the motion until the Administrative Law Judge acts on the motion or the motion is withdrawn.

Subpart J—Appeals

§20.1001 General.

(a) A party may appeal the Administrative Law Judge's decision by filing a notice of appeal with the Commandant. A party shall file the notice of appeal with the Commandant (G-CJ), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, Attention: Hearing Docket Clerk. A party shall file the notice of appeal not later than 30 days after issuance of the Administrative Law Judge's decision, and shall serve a copy of the notice of appeal on the other party and each interested person.

(b) A party may appeal only the following issues:

(1) Whether each finding of fact is supported by substantial evidence.

(2) Whether each conclusion of law is made in accordance with applicable law, precedent, and public policy.

(3) Whether there were any abuses of discretion by the Administrative Law Judge.

(4) The Administrative Law Judge's denial of a motion for disqualification.

(c) An interested person may appeal a summary decision but only on the issue that a hearing was not held and that evidence to be presented by the interested person was not considered in the issuance of the decision by the Administrative Law Judge. The appeal shall be made in accordance with the procedural requirements of this subpart.

§20.1002 Record on appeal.

(a) The record of the proceeding will constitute the record for decision on appeal.

(b) If the respondent requests a copy of the transcript of the hearing in the

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notice of appeal and the hearing was recorded or transcribed at government expense, the transcript will be provided upon payment of the fees prescribed in 49 CFR 7.95. If the services of a government contractor were utilized, the transcript must be obtained under the provisions of 49 CFR 7.99.

§ 20.1003 Procedures for appeal.

(a) A party seeking appeal shall file an appeal brief with the Commandant and shall serve a copy of the appeal brief on each other party.

(1) The appeal brief must set forth the party's specific objections to the initial decision or rulings. The appeal brief must set forth, in detail—

- (i) The basis for the appeal;
- (ii) The reasons supporting the appeal; and
- (iii) The relief requested in the appeal.

(2) When the party relies on material contained in the record for the appeal, the appeal brief must specifically refer to the pertinent portions of the record.

(3) The appeal brief must be submitted to the Commandant within 60 days after service of the Administrative Law Judge's decision. After this time has elapsed, additional filings will not be considered as a part of the record of the appeal, unless an extension of time has been granted in writing by the Commandant or the Commandant's designee and the extended time limit has been met.

(b) Any party may file a reply brief with the Commandant no later than 35 days after being served with the appeal brief. The party filing a reply brief will serve a copy on all parties. If the party filing a reply brief relies on evidence contained in the record for the appeal, the party shall specifically refer to the pertinent evidence contained in the transcript of the hearing in the reply brief.

(c) A party may not file more than one appeal brief or reply brief, unless the party has petitioned the Commandant in writing, and the Commandant or the Commandant's designee has granted leave to file an additional brief. The Commandant will allow a reasonable time for the party to file the additional brief.

(d) The Commandant has sole discretion to permit oral argument on the appeal. On the Commandant's own initiative or upon written petition by any party, the Commandant may find that oral argument will contribute substantially to the development of the issues on appeal and may grant the parties an opportunity for oral argument.

(e) The Commandant may allow any person to file an amicus curiae brief in an appeal of an Administrative Law Judge's decision.

[CGD 91-228, 59 FR 15022, Mar. 30, 1994; 59 FR 45757, Sept. 2, 1994]

§ 20.1004 Civil penalty appeal decisions.

(a) The Commandant shall review the record on appeal to determine if the Administrative Law Judge committed prejudicial error in the proceedings or if the Administrative Law Judge's decision should be affirmed, modified, or reversed. The Commandant may affirm, modify, or reverse the Administrative Law Judge's decision or may remand the case for further proceedings.

(b) The Commandant shall issue a decision on an appeal in writing and shall serve a copy of the decision on each party and interested person.

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

§ 20.1101 Finality.

(a) Unless appealed pursuant to subpart J of this part, a decision by the Administrative Law Judge becomes an order assessing or denying a class II civil penalty 30 days after the date of the issuance of Administrative Law Judges's decision.

(b) If the Commandant issues a decision under subpart J of this part, the decision of the Commandant constitutes an order assessing or denying a class II civil penalty on the date issued.

(c) The order assessing or denying a class II civil penalty is the order of the Commandant.

§ 20.1102 Petitions to set aside a decision and provide a hearing.

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

(b) If the Commandant decides that evidence presented by the interested person in support of the petition is material and was not considered in the issuance of the decision, the Commandant sets aside the decision and directs that a hearing be held in accordance with the requirements of this part.

(c) If the Commandant denies a hearing requested under this section, the Commandant provides to the interested person, and publishes in the FEDERAL REGISTER, notice of and the reasons for the denial.

§ 20.1103 Availability of decisions.

(a) Copies of decisions made in the adjudication of class II civil penalties are available for inspection and copying at—

(1) The document inspection facility at any Coast Guard District office; or

(2) The Coast Guard Headquarters Hearing Docket Office Public Reading Room.

(b) Requests for a copy of a decision may be made to the Hearing Docket Clerk. The person requesting a copy will be billed for the copying costs in accordance with 49 CFR 7.93.

PART 23—DISTINCTIVE MARKINGS FOR COAST GUARD VESSELS AND AIRCRAFT

Sec.

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AUTHORITY: Secs. 638, 639, 63 Stat. 546; 14 U.S.C. 638, 639, E.O. 10707, 3 CFR, 1954-1958 Comp., p. 364.

§ 23.01 Basis and purpose.

(a) This subpart establishes instructions for the display of distinctive markings of Coast Guard vessels and aircraft, including Coast Guard ensign and commission pennant and Coast Guard emblem.

(b) Coast Guard vessels and aircraft are distinguished from other vessels and aircraft by an ensign; a personal flag, command pennant, or commissioned pennant, if so authorized; or other identifying insignia or marking.

[CGFR 57-35, 22 FR 6765, Aug. 22, 1957, as amended by CGFR 66-67, 31 FR 15239, Dec. 6, 1966]

§ 23.05 Where and when displayed.

(a) The Coast Guard Ensign is a mark of authority and is required to be displayed whenever a Coast Guard vessel takes active measures in connection with boarding, examining, seizing, stopping or heaving to of a vessel for the purposes of enforcing the laws of the United States. The distinctive markings of Coast Guard aircraft serve the same purpose.

(b) The Coast Guard Commission pennant indicates a Coast Guard cutter under the command of a commissioned officer or commissioned warrant officer.

(c) When applicable, these distinctive marks shall be displayed, the Coast Guard Ensign at the masthead of the foremast, and the commission pennant at the after masthead. On ships having but one mast the Coast Guard Ensign and commission pennant shall be at the masthead on the same halyard. In mastless ships they shall be displayed from the most conspicuous hoist.

[CGFR 67-26, 32 FR 6576, Apr. 28, 1967]

§ 23.10 Coast Guard emblem.

(a) The distinctive emblem of the Coast Guard shall be as follows:

On a disc the shield of the Coat of Arms of the United States circumscribed by an annulet edged and inscribed "UNITED STATES COAST GUARD 1790" all in front of two crossed anchors.

(b) The emblem in full color is described as follows:

White anchors and white ring all outlined in medium blue (Coast Guard blue), letters