

such subpoena shall make a written statement setting forth the reasons the subpoena was not served. The statement should be placed on the subpoena or attached to it and returned to the investigating office or Administrative Law Judge who issued the subpoena.

(b) When service of a subpoena is made by certified mail with return receipt to be signed by the addressee only, the person mailing the subpoena shall make a written statement on a copy of the subpoena or attached to it, setting forth the date, time and location of the post office where mailed, the post office number assigned thereto. If delivered, the receipt requested shall be returned, by the person receiving the receipt, to the investigating officer or Administrative Law Judge who issued the subpoena. In case the subpoena is not delivered, any information reported by the post office regarding non-delivery shall be given to the investigating officer or Administrative Law Judge who issued the subpoena.

Subpart G—Witness Fees

§ 5.401 Payment of witness fees and allowances.

(a) Duly subpoenaed witnesses, other than Federal government employees, may apply for payment of their attendance as witnesses at an investigation or hearing conducted pursuant to this part by submitting a request for payment (Standard Form 1157) accompanied by any necessary receipts.

(b) Fees and allowances will be paid as provided by 28 U.S.C. 1821, except that a person called to testify as an expert witness may be paid a higher fee to be fixed by the District Commander.

[CGD 82-002, 50 FR 32184, Aug. 9, 1985; 50 FR 35228, Aug. 30, 1985]

Subpart H—Hearings

§ 5.501 General.

A hearing concerning the suspension or revocation of a merchant mariner's credential or endorsement is a formal adjudication under the Administrative Procedure Act (APA) (5 U.S.C. 551, *et seq.*). It is presided over by, and conducted under the exclusive control of, an ALJ in accordance with applicable

requirements in the APA, the rules in this part, and the rules of administrative practice at 33 CFR part 20. The ALJ shall regulate and conduct the hearing so as to bring out all the relevant and material facts and to ensure a fair and impartial hearing.

[USCG-1998-3472, 64 FR 28075, May 24, 1999, as amended by USCG-2006-24371, 74 FR 11215, Mar. 16, 2009]

§ 5.521 Verification of credential or endorsement.

(a) The Administrative Law Judge shall require the respondent to produce and present at the opening of the hearing, and on each day the hearing is in session thereafter, all valid credentials issued by the Coast Guard to the respondent. In the event that the respondent alleges that credential has been lost, misplaced, stolen, destroyed, or is otherwise beyond his ability to produce, the respondent shall execute a lost document affidavit (Form CG-4363). The Administrative Law Judge shall warn the respondent that a willful misstatement of any material item in such affidavit is punishable as a violation of a Federal criminal statute. (See 18 U.S.C. 1001).

(b) When a hearing is continued or delayed, the Administrative Law Judge returns the credential to the respondent: unless a *prima facie* case has been established that the respondent committed an act or offense which shows that the respondent's service on a vessel would constitute a definite danger to public health, interest or safety at sea.

[CGD82-002, 50 FR 32184, Aug. 9, 1985, as amended by CGD 97-057, 62 FR 51042, Sept. 30, 1997; USCG-2006-24371, 74 FR 11215, Mar. 16, 2009]

§ 5.567 Order.

(a) The Administrative Law Judge enters an order which recites the disposition of the case. When the finding is *not proved*, the Administrative Law Judge issues an order *dismissing* the proceeding with or without prejudice to refile. When the finding is *proved*, the Administrative Law Judge may order an *admonition*, *suspension* with or without probation, or *revocation*.

(b) The order is directed against all credentials or endorsements, except