

§ 5.713 Appeals to the National Transportation Safety Board.

(a) The rules of procedure for appeals to the National Transportation Safety Board from decisions of the Commandant, U.S. Coast Guard, affirming orders of suspension or revocation of licenses, certificates, or documents are in 49 CFR part 825. These rules give the party adversely affected by the Commandant's decision 10 days after service upon him or his attorney of the Commandant's decision to file a notice of appeal with the Board.

(b) In all cases under this part which are appealed to the National Transportation Safety Board under 49 CFR part 825, the Chief Counsel of the Coast Guard is designated as the representative of the Commandant for service of notices and appearances. Communications should be addressed to Commandant (G-L), U.S. Coast Guard, 2100 2nd St. SW., Washington, DC 20593.

(c) In cases before the National Transportation Safety Board the Chief Counsel of the Coast Guard may be represented by others designated *of counsel*.

§ 5.715 Stay of effect of Decision of the Commandant on Appeal: Temporary document and/or license pending appeal to National Transportation Safety Board.

(a) A Decision of the Commandant on Appeal affirming an order of revocation, except a revocation resulting from an offense enumerated under § 5.59 or suspension that is not placed entirely on probation, which is appealed to the National Transportation Safety Board, may be stayed if, in the Commandant's opinion, the service of the appellant on board a vessel at that time or for the indefinite future would be compatible with the requirements of safety at sea and consistent with applicable laws. If one of the offenses enumerated in § 5.61(a) has been found proved, the continued service of the appellant will be presumed not compatible with safety at sea, subject to rebuttal by the appellant; in cases of offenses under § 5.61(a), a temporary document or license may be denied for that reason alone.

(b) A stay of the effect of the Decision of the Commandant on Appeal

may be granted by the Commandant upon application by the respondent filed with the notice served on the Commandant under 49 CFR 825.5(b).

(c) An Officer in Charge, Marine Inspection, on presentation of an original stay order, issues a temporary document and/or license as specified in the stay order. This document is effective for not more than six months, renewable until such time as the National Transportation Safety Board has completed its review.

Subpart K—Review of Administrative Law Judge's Decisions in Cases Where Charges Have Been Found Proved

§ 5.801 Commandant's review.

Any decision of an Administrative Law Judge, in which there has been a finding of *proved*, may be called up for review by the Commandant without procedural formality.

§ 5.803 Record for decision on review.

The transcript of the hearing, together with all papers and exhibits filed, shall constitute the record for consideration and review.

[CGD 82-002, 50 FR 32184, Aug. 9, 1985, as amended by USCG-2004-18884, 69 FR 58342, Sept. 30, 2004]

§ 5.805 Action on review.

(a) The Commandant may adopt, in whole or in part, the findings, conclusions, and basis therefor stated by the Administrative Law Judge, may make entirely new findings on the record, or may remand the case to the Administrative Law Judge for further proceedings.

(b) In no case will the review by the Commandant be followed by any order increasing the severity of the Administrative Law Judge's original order.

(c) The Decision of the Commandant on Review, shall be the final agency action in the absence of a remand.

[CGD 82-002, 50 FR 32184, Aug. 9, 1985, as amended by USCG-2004-18884, 69 FR 58342, Sept. 30, 2004]