

Federal Aviation Regulations (FAR), 14 C.F.R. § 61.15(a).² The Administrator has filed a brief in reply, urging the Board to affirm the law judge's order. Respondent's appeal is denied.

There is no dispute that on February 26, 1991, respondent pleaded guilty to a charge of conspiracy to distribute marijuana, a violation of 21 U.S.C. § 846. According to the indictment that was attached to the Administrator's motion for summary judgment, from 1986 until 1990, respondent's part in the conspiracy involved his organizing the cultivating, harvesting, packaging, and distributing of over 1,000 marijuana plants per year. The Administrator issued an emergency revocation order on May 20, 1996.

Respondent, who represents himself in this appeal, asserts that the law judge erred in granting summary judgment to the Administrator, and that the law judge should have instead granted respondent's motion to dismiss the complaint as stale.³ These issues have been raised before the Board before, and they have

(..continued)

²FAR § 61.15(a) provides, in pertinent part, as follows:

"§ 61.15 Offenses involving alcohol or drugs.

(a) A conviction for the violation of any Federal... statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of marihuana is grounds for....

(2) Suspension or revocation of any certificate or rating issued under this part."

³Respondent's reliance on 28 U.S.C. § 1658 is misplaced. That statute provides a statute of limitations for certain civil actions in federal court. The Board's stale complaint rule is contained in our Rules of Practice and Procedure, 49 C.F.R. Part 821.

been decided. A conviction for participation in a criminal drug enterprise for economic gain warrants revocation under FAR § 61.15(a), as it demonstrates that the airman lacks the necessary care, judgment, and responsibility a certificate holder must possess. Administrator v. Piro, NTSB Order No. EA-4049 (1993).⁴ Summary judgment is, therefore, appropriate, since there is no issue of material fact to be determined by the law judge. Administrator v. Poole, NTSB Order No. EA-4425 (1996). Finally, Board precedent is clear that the stale complaint rule, 49 C.F.R. 821.33, does not apply to cases where, as in this case, the allegations in the complaint present a legitimate issue of lack of qualification.⁵ Administrator v. Manning, NTSB Order No. EA-4363 (1995). See also Administrator v. Adler, NTSB Order No. EA-4048 (1993).

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The law judge's order granting summary judgment and the Administrator's emergency order revoking respondent's private pilot certificate, are affirmed.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

⁴The Administrator's revocation action is based on FAR § 61.15 as it existed at the time of respondent's criminal conduct. His *ex post facto* argument concerning subsequent amendments to the Federal Aviation Act are not relevant to this decision.

⁵Respondent's assertion that the Administrator was required to show good cause for the delay in issuing the complaint against him erroneously relies on 49 C.F.R. § 821.33(a)(1), which does not apply to those cases where the complaint alleges a lack of qualification, such as this case.

