

National Transportation Safety Board

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reply in rebuttal will be accepted, except in accordance with paragraph (d) of this section.

(d) *Hearing.* No hearing shall be held on a petition for review of an emergency determination. However, the law judge may, on his or her own initiative, and strictly in keeping with the prohibition on ex parte communications set forth in § 821.61, solicit from the parties additional information to supplement that previously provided by the parties.

(e) *Disposition.* Within 5 days after the Board's receipt of the petition, the chief law judge (or, if the case has been assigned to a law judge, the law judge to whom the case is assigned) shall dispose of the petition by written order, and, in so doing, shall consider whether, based on the acts and omissions alleged in the Administrator's order, and assuming the truth of such factual allegations, the Administrator's emergency determination was appropriate under the circumstances, in that it supports a finding that aviation safety would likely be compromised by a stay of the effectiveness of the order during the pendency of the respondent's appeal.

(f) *Effect of law judge's ruling.* If the law judge grants the petition, the effectiveness of the Administrator's order shall be stayed until final disposition of the respondent's appeal by a law judge or by the Board. In such cases, the remaining provisions of this subpart (§§ 821.55–821.57) shall continue to apply, unless the respondent, with the Administrator's consent, waives their applicability. If the petition is denied, the Administrator's order shall remain in effect, and the remaining provisions of this subpart shall continue to apply, unless their applicability is waived by the respondent. The law judge's ruling on the petition shall be final, and is not appealable to the Board. However, in the event of an appeal to the Board from a law judge's decision on the merits of the emergency or other immediately effective order, the Board may, at its discretion, note, in its order disposing of the appeal, its views on the law judge's ruling on the petition, and such views shall serve as binding precedent in all future cases.

§ 821.55 Complaint, answer to complaint, motions and discovery.

(a) *Complaint.* In proceedings governed by this subpart, the Administrator's complaint shall be filed by overnight delivery service or facsimile, and simultaneously served on the respondent by the same means, within 3 days after the date on which the Administrator received the respondent's appeal, or within 3 days after the date of service of an order disposing of a petition for review of an emergency determination, whichever is later.

(b) *Answer to complaint.* The respondent shall file with the Board an answer to the complaint within 5 days after the date on which the complaint was served by the Administrator, and shall simultaneously serve a copy of the answer on the Administrator. Failure by the respondent to deny the truth of any allegation or allegations in the complaint may be deemed an admission of the truth of the allegation or allegations not answered. The answer shall also identify any affirmative defenses that the respondent intends to raise at the hearing.

(c) *Motion to dismiss and motion for more definite statement.* In proceedings governed by this subpart, no motion to dismiss the complaint or for a more definite statement of the complaint's allegations shall be made, but the substance thereof may be stated in the respondent's answer. The law judge may permit or require a more definite statement or other amendment to any pleading at the hearing, upon good cause shown and upon just and reasonable terms.

(d) *Discovery.* Discovery is authorized in proceedings governed by this subpart. Given the short time available for discovery, the parties shall cooperate to ensure timely completion of the discovery process prior to the hearing. Discovery requests shall be served by the parties as soon as possible. A motion to compel discovery should be expeditiously filed where any dispute arises, and the law judge shall promptly rule on such a motion. Time limits for compliance with discovery requests shall be set by the parties so as to accommodate, and not conflict with, the accelerated adjudication schedule set forth in this subpart. The provisions of

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§ 821.19 shall apply, modified as necessary to meet the exigencies of this subpart's accelerated timeframes.

§ 821.56 Hearing and initial decision or appealable order of law judge.

(a) *Notice of hearing.* Within 3 days after the date on which the Board receives the Administrator's complaint, or immediately upon the issuance of a law judge's order disposing of a petition for review of the Administrator's emergency determination, if later, the parties shall be served with a written notice of hearing, setting forth the date, time and place of the hearing. The hearing shall be set for a date no later than 30 days after the date on which the respondent's appeal was received and docketed. To the extent that they are not inconsistent with this section, the provisions of § 821.37(a) shall also apply.

(b) *Conduct of hearing.* The provisions of §§ 821.38, 821.39 and 821.40, concerning the taking of evidence, argument and submissions by the parties, and the composition of the hearing record, shall apply to proceedings governed by this subpart.

(c) *Initial decision and effect of initial decision or appealable order.* The law judge's initial decision shall be made orally on the record at the termination of the hearing. The provisions of § 821.42, concerning the content of the initial decision, the furnishing of copies of the initial decision to the parties and the issuance date of the initial decision, and the provisions of § 821.43, concerning the effect of the law judge's initial decision or appealable order and any appeal therefrom, shall apply to proceedings governed by this subpart.

§ 821.57 Procedure on appeal.

(a) *Time within which to file notice of appeal.* A party may appeal from a law judge's initial decision or appealable order by filing with the Board, and simultaneously serving on the other parties, a notice of appeal, within 2 days after the date on which the initial decision was orally rendered or the appealable order was served. The time limitations for the filing of documents respecting appeals governed by this subpart will not be extended by reason of

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the unavailability of the hearing transcript.

(b) *Briefs and oral argument.* Each appeal in proceedings governed by this subpart must be perfected, within 5 days after the date on which the notice of appeal was filed, by the filing, and simultaneous service on the other parties, of a brief in support of the appeal. Any other party to the proceeding may file a brief in reply to the appeal brief within 7 days after the date on which the appeal brief was served on that party. A copy of the reply brief shall simultaneously be served on the appealing party and any other parties to the proceeding. Unless otherwise authorized by the Board, all briefs in connection with appeals governed by this subpart must be filed and served by overnight delivery service, or by facsimile confirmed by personal or first-class mail delivery of the original. Aside from the time limits and methods of filing and service specifically mandated by this paragraph, the provisions of § 821.48 shall apply.

(c) *Issues on appeal.* The provisions of § 821.49(a) shall apply in proceedings governed by this subpart.

(d) *Petition for rehearing, reargument, reconsideration or modification of order.* The only petitions for rehearing, reargument, reconsideration or modification of an order which the Board will entertain in proceedings governed by this subpart are those based on the ground that new matter has been discovered. Such petitions must:

- (1) Set forth the new matter;
- (2) Contain affidavits of prospective witnesses, authenticated documents, or both, or an explanation of why such substantiation is unavailable; and
- (3) Contain a statement explaining why such new matter could not have been discovered in the exercise of due diligence prior to the date on which the evidentiary record closed.

Subpart J—Ex Parte Communications

AUTHORITY: Sec. 4, Pub. L. 94-409, 5 U.S.C. 556(d) and 557; 49 U.S.C. 1101-1155, 44701-44723, 46301.

§ 821.60 Definitions.

As used in this subpart: