

safety, for the immediate effectiveness of an action against a certificate before the certificate holder's appeal is adjudicated.

In keeping with this *de facto* shift in the burden of going forward with a supporting rationale, the final rule will dispense with the requirement, in § 821.54(b), that the petition "enumerate the specific grounds on which the certificate holder challenges the Administrator's determination that an emergency exists." Instead, the rule, though not requiring the certificate holder to do anything more than contest the emergency determination by filing a petition, will permit the certificate holder to assert only such reasons as that individual or entity may have for believing that the effectiveness of the certificate order should be stayed pending the future adjudication of the Administrator's allegations. If a petition contains reasons for the certificate holder's challenge to the emergency determination, the Administrator may file a reply, which must be limited to matters of rebuttal.

Miscellany (see §§ 821.53(b) and 821.54(b)). Dropped from the final rule is the requirement, in § 821.53(b), that an appeal from an emergency or other immediately effective order be accompanied by a copy of the order itself. While it is essential for a copy of the order to be included with a petition seeking review of an emergency determination—especially under § 821.54(b) and (c), as amended by these final rules—because the law judge must, within a short timeframe, evaluate whether the emergency determination was warranted, based on the acts and omissions alleged by the Administrator in the order, there is no such practical necessity where the Administrator's emergency determination is not challenged, and immediate identification of the specific allegations of the order is, therefore, not vital. In such instances, it is sufficient for the certificate holder to merely indicate in the appeal that the appeal is from an emergency or other immediately effective order, so that the Board is aware that subpart I is applicable.

Related Matters

Since part 821 was last amended with the publication of the interim rules governing our review of the Administrator's emergency determinations, we have reexamined our procedural rules in their entirety with an eye toward updating and modernizing them by correcting terminology errors that have developed over time, eliminating dated, unnecessary, redundant or confusing

language, and having certain provisions of the rules more closely reflect actual practice. These housekeeping measures have resulted in the adoption of a significant number of amendments, and we have, for purposes of clarity, decided to revise part 821 *in toto*, rather than publish such changes in piecemeal fashion. While the Board considers these changes to be essentially procedural in nature, one revision that may be viewed as substantive and, thus, bears special note, is an amendment to § 821.61, which makes the prohibition on *ex parte* communications applicable from the time a petition for review of a certificate denial or an appeal from a certificate action of the Administrator is filed, or the time the communicator has knowledge that a petition or appeal will be filed. Under that rule prior to amendment, the prohibition did not apply until the matter was noticed for hearing, or the communicator had knowledge that it would be. This revision, by making the prohibition apply from the time the Board's jurisdiction attaches, rather than a later time, more closely reflects the ethical considerations involved and clarifies the Board's intolerance for communications of an *ex parte* nature throughout its involvement in the adjudication of air safety matters.

List of Subjects in 49 CFR Part 821

Administrative practice and procedure, Airmen, Aviation safety.

■ For the reasons set forth in the preamble, part 821 of title 49 of the Code of Federal Regulations is revised to read as follows:

PART 821—RULES OF PRACTICE IN AIR SAFETY PROCEEDINGS

Subpart A—General Provisions

Sec.

- 821.1 Definitions.
- 821.2 Applicability and description of part.
- 821.3 Description of docket numbering system.

Subpart B—General Rules Applicable to Petitions for Review, Appeals to the Board, and Appeals from Law Judges' Initial Decisions and Appealable Orders

- 821.6 Appearances and rights of witnesses.
- 821.7 Filing of documents with the Board.
- 821.8 Service of documents.
- 821.9 Intervention and amicus appearance.
- 821.10 Computation of time.
- 821.11 Extensions of time.
- 821.12 Amendment and withdrawal of pleadings.
- 821.13 Waivers.
- 821.14 Motions.
- 821.15 Motion to disqualify a Board Member.
- 821.16 Interlocutory appeals from law judges' rulings on motions.

- 821.17 Motions to dismiss, for judgment on the pleadings and for summary judgment.
- 821.18 Motion for a more definite statement.
- 821.19 Depositions and other discovery.
- 821.20 Subpoenas, witness fees, and appearances of Board Members, officers and employees.
- 821.21 Official notice.

Subpart C—Special Rules Applicable to Proceedings Under 49 U.S.C. 44703

- 821.24 Initiation of proceeding.
- 821.25 Burden of proof.
- 821.26 Motion to dismiss petition for review for lack of standing.

Subpart D—Special Rules Applicable to Proceedings Under 49 U.S.C. 44709

- 821.30 Initiation of proceeding.
- 821.31 Complaint procedure.
- 821.32 Burden of proof.
- 821.33 Motion to dismiss stale complaint.

Subpart E—Law Judges

- 821.35 Assignment, duties and powers.

Subpart F—Hearing

- 821.37 Notice of hearing.
- 821.38 Evidence.
- 821.39 Argument and submissions.
- 821.40 Record.

Subpart G—Initial Decision

- 821.42 Initial decision by law judge.
- 821.43 Effect of law judge's initial decision or appealable order and appeal therefrom.

Subpart H—Appeal from Initial Decision

- 821.47 Notice of appeal.
- 821.48 Briefs and oral argument.
- 821.49 Issues on appeal.
- 821.50 Petition for rehearing, reargument, reconsideration or modification of an order of the Board.

Subpart I—Special Rules Applicable to Proceedings Involving Emergency and Other Immediately Effective Orders

- 821.52 General.
- 821.53 Appeal.
- 821.54 Petition for review of Administrator's determination of emergency.
- 821.55 Complaint, answer to complaint, motions and discovery.
- 821.56 Hearing and initial decision or appealable order of law judge.
- 821.57 Procedure on appeal.

Subpart J—Ex Parte Communications

- 821.60 Definitions.
- 821.61 Prohibited *ex parte* communications.
- 821.62 Procedures for handling *ex parte* communications.
- 821.63 Requirement to show cause and imposition of sanction.

Subpart K—Judicial Review of Board Orders

- 821.64 Judicial review.

Authority: 49 U.S.C. 1101–1155, 44701–44723, 46301; unless otherwise noted.