

§ 821.53 Appeal.

(a) *Time within which to file appeal.* An appeal from an emergency or other immediately effective order of the Administrator must be filed within 10 days after the date on which the Administrator's order was served on the respondent. The respondent shall simultaneously serve a copy of the appeal on the Administrator.

(b) *Form and content of appeal.* The appeal may be in letter form. It shall identify the certificate or certificates affected and indicate that an emergency or other immediately effective order of the Administrator is being appealed.

§ 821.54 Petition for review of Administrator's determination of emergency.

(a) *Time within which to file petition.* A respondent may, within 2 days after the date of receipt of an emergency or other immediately effective order of the Administrator, file with the Board a petition for review of the Administrator's determination that an emergency, requiring the order to be effective immediately, exists. This 2-day time limit is statutory and the Board has no authority to extend it. If the respondent has not previously filed an appeal from the Administrator's emergency or other immediately effective order, the petition shall also be considered a simultaneously filed appeal from the order under § 821.53.

(b) *Form, content and service of petition.* The petition may be in letter form. A copy of the Administrator's order, from which review of the emergency determination is sought, must be attached to the petition. If a copy of the order is not attached, the petition will be dismissed. While the petition need only request that the Board review the Administrator's determination as to the existence of an emergency requiring the order be effective immediately, it may also enumerate the respondent's reasons for believing that the Administrator's emergency determination is not warranted in the interest of aviation safety. The petition must be filed with the Board by overnight delivery service or facsimile and simultaneously served on the Administrator by the same means.

(c) *Reply to petition.* If the petition enumerates the respondent's reasons for believing that the Administrator's emergency determination is unwarranted, the Administrator may, within 2 days after the date of service of the petition, file a reply, which shall be strictly limited to matters of rebuttal. Such reply must be filed with the Board by overnight delivery service or facsimile and simultaneously served on the respondent by the same means. No submissions other than the respondent's petition and the Administrator's 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,