

Aviation Group Client Update

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NTSB ISSUES FINAL RULE AMENDING RULES OF PRACTICE

Last week, the National Transportation Safety Board (NTSB) amended its regulations setting forth rules of procedure for the NTSB's review of certificate actions taken by the FAA, as well as its regulations setting forth rules of procedure concerning applications for fees and expenses under the Equal Access to Justice Act of 1980 (EAJA).

On February 9, 2012, the NTSB issued a notice of proposed rulemaking (NPRM) concerning 49 CFR parts 821 and 826. The final rule amends those portions of 49 CFR parts 821 and 826 not affected by the Pilot's Bill of Rights. The NTSB also published an interim final rule concerning those portions of NPRM affected by enactment of the Pilot's Bill of Rights.

The Board adopts the following changes in the final rule:

- **Section 821.54** (Disposition of Petitions for Review of Emergency Determinations of the FAA): Retains "assuming the truth" standard of review and change stating the Administrative Law Judge (ALJ) "shall" consider evidence a respondent submits in challenging FAA's decision to proceed with a case as an emergency.
- **Electronic Filing of Documents:** Permitted in emergency cases as well as cases that proceed on the normal case disposition timeline. A listing of procedures for electronic filing will be available on the NTSB website before the effective date of the final rule. (These changes involve deleting references to expedited filing in §§821.54(b) and (c), and 821.57(b), as well as a new subsection within §821.52) In §821.8(d)(3), the electronic filing procedures will include additional clarifications regarding the timeliness of electronically submitted documents.
- **Rules Concerning EAJA:** Changes to the language proposed in §821.12(b) adding the word "shall" to require ALJs to consider parties' arguments concerning whether to dismiss a case with prejudice and changes to the language of §821.12(b) to require dismissals based on withdrawals of complaints to occur only on oral or written motion.
- **Miscellaneous Technical Amendments:** Amendments to §821.64(b) to ensure the language regarding motions for stays is party-neutral. In addition, a party may file a motion for stay within 15 days of the date of service of the Board's order and the non-moving party may reply to the motion within 5 days of the date of service of the motion for stay.

The final rule is effective November 15, 2012. If you have any questions regarding the amendments to the NTSB Rules of Practice in Air Safety Proceedings, please contact our office.

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