

Aviation Group Client Update

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NTSB ISSUES INTERIM FINAL RULES OF PRACTICE

Last week, the National Transportation Safety Board (NTSB) issued an interim final rule amending the Rules of Practice in Air Safety Proceedings (49 CFR Part 821), which include the rules of procedure for the NTSB's review of certificate actions taken by the FAA.

On February 9, 2012, the NTSB issued a notice of proposed rulemaking (NPRM) concerning 49 CFR parts 821 and 826. Prior to the NTSB's issuance of a final rule concerning parts 821 and 826, Congress enacted the Pilot's Bill of Rights on August 3, 2012, which implemented statutory changes for, among other things: (1) The FAA to disclose its enforcement investigative report (EIR) to each respondent in an aviation certificate enforcement case; (2) the NTSB to apply the Federal Rules of Civil Procedure and Federal Rules of Evidence to each case; and (3) litigants now to have the option of appealing the Board's orders to either a Federal district court or a Federal court of appeals.

The Board issued an interim final rule in response to these legislative changes:

- The Federal Rules of Evidence and Federal Rules of Civil Procedure, to the extent practicable, are applicable to all NTSB proceedings conducted under 49 CFR part 821, subparts C, D, and F.
- The FAA must inform the individual he or she need not respond to an FAA letter of investigation and will not be adversely affected if he or she elects not to respond.
- FAA must make available the releasable portions of the EIR to each individual, and provide certain air traffic data. (The Administrator may delay this notification if FAA determines the notification would threaten the integrity of the investigation.
- Language stating the Board is bound by FAA policy guidance concerning sanctions for violations is deleted.
- Provides individuals with the option of appealing a Board order to a Federal district court or a Federal court of appeals. Previously, only the Federal courts of appeals had jurisdiction to review appeals of Board orders on certificate actions.

This rule is effective October 16, 2012. Comments must be received **on or before December 17, 2012**. Please contact our office for additional information or for assistance with the preparation or submission of comments.

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