



# Aviation Group Client Update

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## FAA PUBLISHES GUIDANCE ON PILOT'S BILL OF RIGHTS

Earlier this month, FAA published guidance on written notification – required under the Pilot's Bill of Rights (PBR), which became effective Aug. 3, 2012 – to be provided to individuals subject to an investigation related to the approval, denial, suspension, modification, or revocation of an airman certificate.

Except when notification would threaten the integrity of the investigation, written notification is required when a Letter of Investigation (LOI) is issued for airman certificate actions, when an LOI is not issued and an Enforcement Investigative Report (EIR) has not been opened, or for certain formal remedial training.

When an LOI is not issued and EIR not open, written notification is required under the following circumstances: 1) at the time an individual submits an application for an airman certificate rating, or inspection authorization; 2) in a letter requesting reexamination of an airman's qualifications to hold an airman certificate, rating, or inspection authorization; 3) potential violations by an airman involving air traffic data, for which an EIR has not been opened; and 4) other contacts with an airman that result in an investigation related to the airman's certificate, rating, or inspection authorization.

In general, the PBR requires written notification of the following:

- The nature of the investigation;
- That oral or written response to a LOI from the Administrator is not required;
- That no action or adverse inference can be taken against the individual for declining to respond to an LOI from the Administrator;
- That any response to a LOI from the Administrator or to an inquiry made by a representative of the Administrator by the individual may be used as evidence against the individual;
- That the releasable portions of the Administrator's investigative report will be available to the individual at an appropriate time; and
- That the individual is entitled to access or otherwise obtain air traffic data in the possession of FAA that would facilitate the individual's ability to productively participate in a proceeding related to the investigation, including relevant air traffic communication tapes, radar information, air traffic controller statements, flight data, and releasable portions of investigative reports

Exceptions to the notification requirement include when providing notification presents a risk of destruction or concealment of evidence or when delay caused by the notification presents a risk of death, serious bodily injury, or destruction of property. In addition, circumstances may exist where there is not enough time to give written notification. If so, oral notification may be sufficient. Last, if an airman elects to voluntarily surrender the airman's certificate for cancellation and the FAA accepts the surrender, an inspector is not required to provide notification.

Further to the required notification, FAA may not issue a non-emergency order suspending, modifying, or revoking an airman certificate until 30 days have passed since the date the Administrator made air traffic data available to the airman. Accordingly, the Administrator will advise an airman in the notice proposing certificate action that air traffic data is available. Inspectors must request that the Air Traffic Organization (ATO) and any other FAA organization maintain all air traffic data relating to the investigation of an apparent operational violation. Even if such air traffic data will not be included as an item of proof in the EIR, inspectors must still request that the relevant air traffic data associated with an apparent operational violation under investigation be preserved while the investigation and any subsequent enforcement action are pending.

The guidance also clarifies the policy related to letters requesting reexamination under 49 U.S.C. § 44709, which involve FAA investigations of an individual's qualifications to continue to hold an airman certificate, rating, or inspection authorization. Because reexaminations of an individual's qualifications are not investigations for the purpose of determining whether a violation exists, only some of the written notifications under the PBR apply in these cases. The letter will provide required notification for situations where the airman places its certificate on temporary deposit pending reexamination.

For situations involving formal remedial training, the guidance further clarifies the contents of the required letter for any investigation for which there is an EIR opened where formal remedial training is offered but might also result in suspension, revocation, or modification of an airman certificate, including any ratings or inspection authorizations. Modification includes suspension or revocation of a rating, or imposition of a limitation on an airman certificate.

Notice 8900.195 became effective **August 8, 2012**, and guidance will be incorporated into FAA Order 8900.1 (FSIMS) before the notice expires on August 8, 2013.

If you have any questions regarding the PBR or requirements for written notification, please contact our office.

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