

Aviation Group Client Update

Date: February 29, 2012

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NTSB ISSUES PROPOSED CHANGES TO RULES OF PRACTICE

Earlier this month, the National Transportation Safety Board (NTSB) issued a [notice of proposed rulemaking \(NPRM\)](#) recommending changes to the Rules of Practice in Air Safety Proceedings (49 CFR Part 821) and the Equal Access to Justice Act of 1980 (EAJA).

On December 22, 2010, the NTSB published an advance notice of proposed rulemaking (ANPRM) inviting public comment on the procedural rules for review of certificate actions taken by the FAA pursuant to 49 CFR Part 821 and Part 826. Based on comments to the ANPRM and further review, the NTSB has published the NPRM and seeks to amend the standard of review for emergency determinations, improve the discovery process and the exchange of information between parties, and implement electronic filing of documents in air safety enforcement cases.

In emergency certificate action cases, the NTSB proposed to include explicit language in the rules to permit the respondent to present evidence challenging the emergency nature of the proceedings by submitting affidavits or other records helpful in resolving the issue of whether the FAA's decision to take immediate effective action was appropriate (as opposed to evidence that goes to the merits of the underlying certificate action). Also, the NTSB proposed a requirement on the FAA to provide the certificate holder with certain reasonable information (the releasable portion of the Enforcement Investigative Report (EIR) in most cases) necessary for the certificate holder to obtain a full understanding of the basis for the certificate action and/or an emergency determination. The proposed changes would allow electronic filing of documents with the NTSB, as well as allow the parties to receive electronic service of documents. The proposed rule also allows parties in an emergency action to electronically submit their briefs.

Last, the NTSB proposed an amendment to the rules implementing EAJA, which would provide for the award of attorney's fees and expenses to eligible individuals within five (5) days of the NTSB's service of its final decision granting an award of fees and expenses. The Administrator will be required to provide instructions for the applicant on how on how the applicant may obtain the reward.

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