

A PRIMER ON THE PILOT'S BILL OF RIGHTS

By: Alan Armstrong

The Pilot's Bill of Rights Public Law 112-153 (the "PBR" or "Act") signed into law on August 3, 2012, adopted by an order promulgated by NTSB Chief Judge Montaño on August 7, 2012, and implemented by FAA Notice N8900.195 executed by FAA Director of Flight Standards John Allen on August 8, 2012, has the following requirements:

- Before passage of the Act, even though the FAA was required to carry the burden of proof in an aviation enforcement action under Rule 32 of the NTSB's Rules of Practice (49 C.F.R. §821.32), the NTSB was required by law to defer to the FAA's validly adopted and publicly available interpretations of its regulations. The Act has eliminated the deference provisions and **restored a level playing field** in the adjudication of airman enforcement actions before the NTSB.
- Before passage of the Act, there was no requirement that judges of the NTSB, in trying airman enforcement actions, follow or apply either the Federal Rules of Evidence or the Federal Rules of Civil Procedure. With the passage of the Act, the **Federal Rules of Evidence and Federal Rules of Procedure are to be followed "to the extent practicable."**
- Prior to passage of the Act, following an appeal to the five members of the NTSB, an airman's only remedy was to appeal to a United States Court of Appeals, a costly and time consuming undertaking. With the passage of the Act, **an airman may appeal from a final order of the NTSB to a United States District Court** which is to give "full independent review of a denial, suspension, or revocation ordered by the Administrator, including substantive independent and expedited review of any decision by the Administrator to make such order effective immediately." If the airman elects not to file an appeal with the United States District Court, he may still appeal to a United States Court of Appeals.
- The Act requires that the FAA in giving notice to an airman of an investigation relating to the approval, denial, suspension, modification, or revocation of an airman certificate shall: (i) inform the airman of the nature of the investigation; (ii) inform the airman no oral or written response is required; (iii) inform the airman that if he elects not to respond, no adverse inference will be taken; (iv) inform the airman that if he does respond, his response may be used as evidence against him; (v) inform the airman that the releasable portions of the FAA enforcement investigative report ("EIR") will be made available to the airman; and (vi) inform the airman that he is entitled to access the air traffic data, including: (a) ATC communication tapes; (b) radar data; (c) air traffic controller statements; (d) flight data; (e) investigative reports; and (f) any other air traffic or flight data in the FAA's possession that would facilitate the individual's ability to productively participate in the proceeding.

- The Act authorizes airmen **to obtain government contractor air traffic data.**
- The Act requires, within 180 days from its enactment, that the FAA begin a Notice to Airmen Improvement Program to improve the system of providing airmen with pertinent and timely information concerning the national airspace system.
- The Act requires the Comptroller General of the United States initiate an **assessment of the FAA's medical certification process and the associated medical standards and forms** and, following the assessment, to submit a report to Congress to provide clarity with respect to the process to applicants, to align medical policies with present-day medical judgment and practices and to promote the public's understanding of the medical requirements. One year after the report is issued, the FAA is to take appropriate actions to respond to the report.
- The FAA shall **establish a panel** composed of general aviation pilot groups, aviation medical examiners and qualified experts to advise the FAA in carrying out the goals of the Act **concerning medical certification.**