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FACSIMILE TRANSMITTAL SHEET

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To:  
 NTSB Office of General Counsel  
 202-314-6090

<b>From:</b> John Hoff	<b>Date:</b> January 27, 2011
<b>Fax Number:</b>	<b>Total No. of Pages Including Cover:</b> 3
<b>Phone Number:</b>	<b>Sender's Reference Number:</b>
<b>Re:</b> Comment - NPRM Docket on NTSB Emergency Enforcement Procedures	<b>Your Reference Number:</b>

URGENT     FOR REVIEW     PLEASE COMMENT     PLEASE REPLY     PLEASE RECYCLE

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**NOTES/COMMENTS:**

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January 27, 2011

VIA FACSIMILE # 202-314-6090

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NTSB OFFICE OF  
GENERAL COUNSEL  
JAN 27 P 3:40

RE: COMMENT - NPRM DOCKET ON NTSB "EMERGENCY"  
ENFORCEMENT PROCEDURES

To Whom It May Concern:

The NTSB has invited parties to comment to its NPRM docket concerning the issue of whether the language in Section 821.54(e) that provides that the "law judge should assume that the acts and omissions alleged in the FAA's emergency order are true" should be removed.

The undersigned is in full support of removing the aforementioned unfair language. In addition, I suggest a full review of the FAA Emergency Procedures.

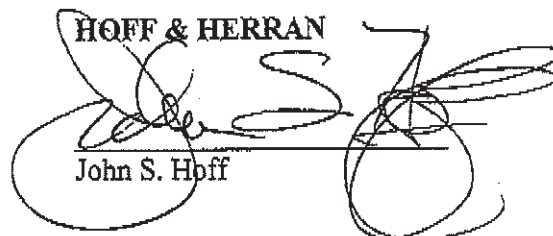
In addition to appearing before the D.O.T. ALJ in FAA Civil Penalty Enforcement matters, our firm also practices regularly before the Board in Aviation Safety Procedures. The FAA has now changed what used to be the exceptional procedure of proceeding via an Emergency Action to where it routinely uses Emergency Procedures in cases that simply do not merit such a summary and extraordinary procedure. We do not believe that this was the intended purpose of this rule. This is resulting in an unfair denial of basic due process rights to many airmen. It amounts to "drumhead justice" and violates one of the most basic due process rights - that of audi alteram partem (hear the other side), or "no man shall be condemned unheard." Even worse, this procedure permits the FAA to revoke certificates without the requirements of full discovery and a proper prior due process hearing. It divests a person of vested right in their certificate without a prior fair hearing. That properly should be only done in drastic cases that justify it - not routine matters.

Moreover, the FAA is not truly utilizing this procedure in the interests of "air safety," but is instead relying on these procedures as a procedural or tactical tool to gain an unfair advantage in litigation. The FAA will often sit on a case for months before finally pursuing the matter using what should only be reserved as a true "Emergency." And, in the interim, they refuse to produce documentation under FOIA pursuant to the "under investigation" exception until they issue the Emergency Order despite months of delay in pursuing the matter. We were recently provided critical evidence the very morning of our Hearing that the FAA had withheld until the last moment, and the NTSB ALJ allowed it to be used in evidence against the airman. It is outrageous and patently unfair.

Regardless, if the Board is inclined to continue with this inherently unfair dubious procedure, in total violation of due process, or what the British characterize as a "violation of natural justice," then significant changes and safeguards need to be made. First, when the FAA issues its Emergency Order, the FAA should be required to produce at the same time all of the releasable portions of the Enforcement Investigation Report (EIR). This would help to alleviate some of the Discovery burden and fair notice process in proceeding with an appeal on an Emergency basis. Furthermore, when the Administrator's Emergency determination is appealed, nothing should be assumed or presumed as per se true. The Administrative Law Judge should have the discretion or even be required to make an express threshold analysis and evaluation of the evidence in the EIR and any counter-evidence provided by the Respondent to first determine the appropriateness and necessity of proceeding via Emergency Proceedings. Further, the FAA should be required to prove by clear and convincing evidence that aviation safety would be likely compromised by proceeding in the normal procedure with the due process safeguards left in play during the pendency of the respondent's appeal.

This inherent unfairness and uneven playing field that the FAA has found in its advantage and now routinely applies needs to be set right and all normal due process rights to be fairly imposed. Thank you very much for your consideration of this matter and the above comments.

Very truly yours,

**HOFF & HERRAN**  
  
John S. Hoff

JSH/jfc