

Chapter 2: FAA Enforcement

FAA Investigations

Most FAA investigations begin because of:

- Accidents
- Routine Inspections (Commercial Carriers, Air Taxis, Ramp Checks)
- ATC reports of FAA violations
- Reports by the general public
 - Buzzing or other annoying activity

Note: The FAA is required by the Congress to investigate ALL reports of FAR violations!

FAA's Dual Nature or Dr. Jekyll & Mr. Hyde

Dr. Jekyll (the nice guy)

FAA education, counseling, etc.

Mr. Hyde (The jerk)

FAA prosecutions of FAR violations

How can the FAA both promote aviation as well as enforce the law? Hmmm....

FAR's are **Administrative Law** - NOT **Criminal Law**!

Criminal Law: "Miranda warning" required before questioning

Administrative Law: No "Miranda Warning" required

You **ALWAYS** have the right to remain silent & have an attorney when being questioned -

However - You **DO NOT** have to be informed of these rights by the FAA for administrative actions!

Required Documents

IAW FAR Part 61.3 and Part 61.51i

Certificated Pilots:

Pilot Certificate

Medical Certificate

Photo ID

Student Pilots:

Student Pilot Certificate

Medical Certificate

Log book w/Endorsement

Aircraft: (ARROW)

Airworthiness Certificate

Registration

Radio License (Intern. flights)

Operating Manual

Weight & Balance

In accordance with Part 61.51i:

Persons must present their pilot certificate, medical certificate, logbook, or any other record required by this part for inspection upon reasonable request by-

- The Administrator
- An authorized representative of the NTSB
- Any Federal, State, or local law enforcement officer

You must "present" these documents - you are not required to "surrender" these documents!

Dr. Stan's rule: Never argue with people with guns.

If the cops ask for documents that you do not think they have any right to request...

Politely explain your position

If the cops insist - comply and argue your point in court - not on the street

Aircraft Inspections (Ramp Checks)

Private Pilots are required to show the documents mentioned above

Private Pilots do NOT have to allow an FAA inspector in their aircraft (Part 121 and 135 rules differ)

FAA inspectors may examine the exterior of any aircraft at any time

If there is a disagreement between the pilot and the FAA inspector concerning the airworthiness of their aircraft, refer to a qualified A&P mechanic for their opinion.

If the FAA inspector still claims that the air craft is not airworthy “force them” to issue a written “Aircraft Condition Notice” (FAA Form 8620-1)

This forces the FAA guy to actually write up the paperwork or shut up and go away

NASA Aviation Safety Reporting System Reports

According to the NASA ASRS web page (<http://asrs.arc.nasa.gov/>):

The ASRS collects, analyzes, and responds to voluntarily submitted aviation safety incident reports in order to lessen the likelihood of aviation accidents.

ASRS data are used to:

- Identify deficiencies and discrepancies in the National Aviation System (NAS) so that these can be remedied by appropriate authorities.
- Support policy formulation and planning for, and improvements to, the NAS.
- Strengthen the foundation of aviation human factors safety research. This is particularly important since it is generally conceded that over two-thirds of all aviation accidents and incidents have their roots in human performance errors. (From: http://asrs.arc.nasa.gov/overview_nf.htm#1)

Reasons why you should file an ASRS report:

1. You could identify a hazard and help save somebody’s life!
2. You will you receive “immunity from sanction” if prosecuted for an FAR violation if:
 - You mail the report within 10 days of the incident
 - The incident was not deliberate
 - The incident did not involve a crime
 - The incident did not result in an accident
 - The incident does not indicate any lack of qualification or competency
3. You have NOTHING TO LOSE!!!
If all of the above are true then...
The FAA cannot use ASRS information against you in any enforcement action

Note: If you are flying in a multi-place aircraft or with multiple pilots...

EVERY certificated crewmember should file a NASA report in order to receive immunity!

Remember - FAR's are **administrative** law not **criminal** law - Therefore...

FAA Inspectors are:

Not required to identify themselves

Not required to advise suspects of their legal rights

However! Everything a suspect may say **CAN** be used against them!

When the FAA has reason to suspect that a violation has occurred they have several options:

1. **Administrative Disposition:** Minor infraction but too big to ignore

a. **Warning Notice:** Like a warning notice from a police officer

NOTE: Violation goes into your FAA record for two years

Outlines the facts

May have been a violation of the FAR's

But the FAA has decided not to file formal charges

b. **Letter of Correction:** Minor violation that has already been corrected

NOTE: Violation goes into your FAA record for two years

Outlines the facts

May have been a violation of the FAR's

In light of corrective action already taken no charges will be filed

i. **Remedial Training:** Not a reexamination - NO TEST - just training with a CFI of your choice

NOTE: Violation does NOT go into your FAA record

Pilot or mechanic may be offered Remedial Training in lieu of certificate suspension or a fine if:

a. Not in connection with a flight for hire

b. You have a "constructive attitude"

c. No indication of an underlying basic lack of qualification

d. Don't have a bad record of previous violations

e. Violation was not deliberate, grossly negligent, or a criminal offense

2. **Certificate Action:** Violation of an operational nature (not just record keeping errors)

Suspension or Revocation of certificates based on several factors:

a. Precedent: Similar cases in the past that have stood on appeal will provide guidance

b. Current FAA Enforcement Priorities: Hot topics - may result in stiffer penalties

c. Individual considerations:

i. Degree of hazard created by the alleged violation

ii. Nature of the violation (inadvertent or deliberate)

iii. Violator's previous record

iv. Violator's level of experience (more = less slack)

v. Violator's attitude

vi. Nature of the activity (private, public, commercial = low to high penalty)

vii. Ability to absorb sanction

viii. Does violation indicate an underlying lack of qualifications

d. The Horror Factor

3. **Civil Penalties (fines):** FAA may take certificate action or impose a fine but usually not **both**

FAA usually uses certificate action against **individuals** and civil penalties against **companies**

Companies: FAA may use per day or per violation fines or certificate action if violation is bad enough

4. **Summary Seizure of Aircraft:** If the FAA thinks you may not be able to pay a fine they may seize your aircraft

5. **Reexamination:** FAA questions your competency as a pilot

FAA may require a written, oral, flight or other practical test

YOU HAVE NO RIGHT OF APPEAL!

Must conduct reexamination at your own expense!

Ignoring reexamination order is an FAR violation!

FAA may then suspend or revoke your certificate

Certificate Action Flow

Note: You may or may not receive a Letter of Investigation from the FAA.

This letter will outline the situation and invite you to give your side of the story.

You are NOT required to respond to this letter.

If you do respond the FAA can use anything you say in the letter against you.

1. Notice of Proposed Certificate Action

You receive a letter in the mail which explains:

- a. Which FAR's the FAA thinks you violated
- b. What sanction the FAA seeks (e.g. 30 day suspension or revocation)

2. Informal Conference - A settlement conference

You meet with the FAA Attorney and FAA Inspector

You can explain yourself *without attribution* (i.e. *this testimony CANNOT be used against you*)

(Exception: testimony can be used to impeach your other testimony)

Conference may result in the FAA:

- a. Dropping all charges (not likely!)
- b. Reduced sanction (reduced suspension period)
- c. Issue a fine (civil penalty) instead of suspension
- d. Remedial training

If no settlement is reached.... the FAA will issue a...

3. Order of Suspension or Revocation

Order does not take effect immediately (unless an EMERGENCY Order) if you appeal the order

Must appeal with 20 days of receipt of the letter

If you do not appeal the Order becomes final

Make sure the FAA has the correct address! Once the letter is signed for the clock starts!

If appealed the appeal goes to the NTSB...

4. NTSB Appeal

NTSB receives Order of Suspension or Revocation from the FAA

Your attorney must file an answer with the board

The letter must state which violations you admit to and which you deny

The case is assigned to an NTSB Administrative Law Judge (ALJ)

5. Discovery

Upon the request of your attorney the FAA must provide:

List of witnesses

List of exhibits

Copies of all previous testimony and statements from witnesses

You must reciprocate if the FAA requests your information

6. Hearing

You have a hearing - a trial - before the NTSB Administrative Law Judge

This is the ONLY opportunity you (and the FAA) will have to PROVE your case!!!

There is never any jury - only the ALJ

Burden of proof:

The FAA must prove its case by a *preponderance of the evidence* (51%) - Administrative & Civil law

The FAA DOES NOT HAVE TO prove its case *beyond a reasonable doubt* Criminal Law

After all testimony (evidence, witness testimony, cross examination) the ALJ will rule

The ALJ may:

1. Affirm all of the FAA's charges - Order of Suspension or Revocation stands

2. Affirm some/Reject other charges - Order of Suspension or Revocation modified
(e.g. reduce the suspension period)

3. Change the sanction or penalty from suspension or revocation to a fine (civil penalty)

4. Dismiss all charges and suspend the Order of Suspension or Revocation

NOTE: the ALJ MAY NOT impose a harsher penalty than that sought by the FAA

Either side may appeal the decision of the Administrative Law Judge to the full NTSB board

7. Appeal to full NTSB Board

This appeal is a "paper appeal"

There is no new trial

No new evidence is presented

Each side must explain their view of the governing law and why the law was misapplied

The issues to be taken up by the full board

1. Did the ALJ afford both sides a fair hearing

2. Did the ALJ correctly apply the law according to the facts proved during the case?

About a year later you receive the results in the mail...

Either party may appeal to the U.S. Court of Appeals

8. U.S. Court of Appeals (A three judge panel)

Another "paper appeal" (Again - NO NEW EVIDENCE)

Lawyers may be permitted to argue the case orally before the court

NOTE: This appeal does NOT automatically prevent the FAA Order of Suspension or Revocation from taking effect! Your attorney must file a motion to keep your certificate during the appeal. Such motions are usually granted.
Process usually takes about two years

This is the end of your appeal rights!

You have no RIGHT to appeal to the U.S. Supreme Court!

You may only petition the court for a *Writ of Certiorari*

The Supreme Court has NEVER accepted an FAA enforcement case!

9. Give it Up!

When you lose your appeal or stop appealing you must physically SURRENDER your certificates
The suspension ordered by the FAA does not begin until you surrender your certificates
If you do not surrender your certificates the FAA will have the U.S. Attorney obtain an order from a District Judge requiring you to appear in court to explain yourself.
If you do not appear in court you can be held in contempt of court and go to jail

10. Emergency Order of Suspension or Revocation

You MUST surrender your certificates immediately
Process is speeded up in lieu of the emergency nature of the order
(~60 days v. 2 years)

11. After the Sanction is Over

After the SUSPENSION period the FAA will mail your certificates back to you
After REVOCATION typically cannot reapply for new certificates for 1 year
You must re-take ALL written, oral and practical tests for each certificate revoked
Your hours and experience still count
However:

If an ATP certificate is revoked for falsification recertification may be very difficult
FAR's require ATP's to be "of good moral character"

12. Civil Penalties

FAA prefers to use certificate actions against individual pilots for operational violations
FAA prefers to fine air carriers and other business operators
However - if they do fine people..
Individuals - \$1,000/violation
Businesses - \$10,000/violation
Falsification - up to \$250,000!
FAA will seek certificate action against a carrier when they refuse to follow the law

Civil penalties process about the same unless the fine is greater than \$50,000
Then the process must go through the U.S. Attorney

13. False Statements

False statements:

1. On ANY federal form
2. In your log book
3. On any other document required to show compliance is..

Both an FAR violation but also a Federal FELONY!

FAA will revoke ALL of your certificates - usually by emergency order!!!

Feds will file felony charges

Fines of up to 5 years in jail and/or a \$250,000 fine!

14. Clearing Your Record

Administrative dispositions - remain for 2 years (Warning Letters, Letter of Correction)

Cases without enforcement action are cleared after 90 days

Suspension remains for 5 years

Revocations are forever