**The “Typical" Enforcement Action Case**

The steps involved in enforcement actions vary on the party or entity under investigation and the remedy sought by the FAA. The typical certificate action against a pilot for an alleged violation of the FARs involves the steps below. Comments following the FAA’s typical actions include suggested responses by the pilot under investigation.

Keep in mind that the sample scenario below is meant to illustrate a typical FAA enforcement action against a pilot and is not intended to be legal advice. Depending on the nature and/or severity of the event it may be advisable to seek aviation legal counsel that is intimately familiar with the enforcement action procedure prior to taking any action. An enforcement action typically involves the following actions:

1. **NOTIFICATION**. The pilot is notified by an air traffic control facility (enroute, terminal radar approach control, or tower) of a possible incident that could lead to an enforcement action. The phraseology controllers use is “possible pilot deviation, advise you contact (FAA Facility Name) at 234-555-1212." Regardless of the exact phraseology used, you will know if you are the subject of a potential enforcement action if an air traffic controller gives you a number to call when reaching the destination airport.
2. **PILOT ANALYSIS**. The pilot should immediately review National Transportation Safety Board (NTSB) Part 830 to determine if they were involved in an “Incident" or “Accident." Optimally you should do this before contacting the FAA facility.

a. If you are involved in an incident: File a **NASA ASRS Form 277**, in a timely manner, if appropriate.

b. If you are involved in an accident: Seek legal assistance prior to giving any substantive interview to the FAA or NTSB. While NTSB Part 830.5 requires that you contact an NTSB field office “…immediately, and by the most expeditious means available" do not file an NTSB Form 6020.1, NASA ASRS Form 277, or divulge detailed information reference Part 830.6 (h) (regarding the nature of the accident) prior to consulting with a qualified aviation attorney. In the event of an accident or intentional disregard for the FAR’s the data in NASA Form 277 will not be confidential.

1. **FAA INVESTIGATION**. Receipt of a Letter of Investigation (LOI).

a. Once the FAA begins an investigation, the FAA FSDO inspector will send out a form letter, such as that shown in the author’s textbook, notifying the pilot that if he or she does not respond within 10 days the FAA’s report will be processed without the benefit of the recipient’s comments.

1. **FAA ACTION**.

a. **Enforcement Actions** (stay on the airman’s record for at least 5 years). Clear violations of the FARs will almost certainly lead to an initial determination that an enforcement action is necessary.

i. Notice of Proposed Certificate Action or Civil Penalty Assessment. Once a pilot receives this several options exist:

1. Request an “Informal Conference."
2. Write a letter of explanation.
3. Turn in you certificate.
4. Pay the civil fine.

b. **Administrative Actions** (stay on the airman’s record for 2 years). In the form of a warning letter or letter of correction (likely following remedial training) if the matter is minor and not intentional. Considering the other possibilities this is by far the best outcome.

c. **Reexamination**. This is not an enforcement action and the FAA can take this action anytime they have “reasonable cause." An airman must comply or they may have their privileges revoked. Pilots are required to pay for this. Successfully passing the reexamination does not mean that the FAA will not assert an enforcement action. Therefore, the pilot should not discuss the facts or circumstances regarding the incident leading to the reexamination during the reexamination itself.

**5. FAA ORDER OF SUSPENSION, REVOCATION OR CIVIL PENALTY ASSESSMENT.**

a. These are effective immediately unless a timely appeal is filed. Filing a timely appeal stays non-emergency orders allowing pilots to continue flying pending the appeal process.

i. Emergency Orders must be appealed within 48 hours.

1. **APPEAL**. Appeal of the FAA’s Initial Determination in the case of an enforcement action.

a. The FAA files a “Complaint" after an appeal is filed. Usually this Complaint is a cover letter stating that the Notice serves as the Complaint.

b. The pilot/appellant must file an Answer in a timely manner.

1. **HEARING BEFORE AN NTSB JUDGE**.

a. Occurs before an NTSB ALJ.

b. This is the only step in the process where the pilot gets to present his case through evidence and witnesses before a judge. There is no jury.

1. **APPEAL TO THE FULL NTSB**.

a. If either party is not satisfied with the ALJ’s determination the next level of appeal is to the entire NTSB.

b. In almost all cases the appeal only involves the hearing judge’s application of the law to the facts.

c. There is not another opportunity for the parties to present evidence or witnesses (deemed a “de novo" review). The full board’s determination is made after considering the written legal positions (called “briefs") of the parties.

d. The full board will not overrule the ALJ’s decision unless the full board finds as a matter of law that the ALJ’s decision was arbitrary or capricious.

1. **JUDICIAL REVIEW**.

a. If either party is not satisfied with the full board’s determination the next level of appeal is to the U.S. Court of Appeals.

b. The parties brief the Court. There is no opportunity to present witnesses or evidence. Oral argument may be asked for, yet it is discretionary by the Court.

c. The Court must find as a matter of law that the NTSB’s decision on appeal was arbitrary or capricious in order to overrule the NTSB’s decision. As a practical matter this is very difficult to obtain. Therefore, the great majority of NTSB decisions are not overturned on appeal.

Each of the scenarios above, depending on the specific party and type of enforcement action, is explored in the author’s text “Aviation Law." If you determine legal counsel is necessary make sure you retain an aviation lawyer with personal working knowledge of the FAA as well as the enforcement action process.

**Additional Resources**

www.ntsb.gov www.faa.gov