

The FAA Enforcement Process and Philosophy: Version 2.0

Navigating the Storms

The Aviation Symposium Series

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Presenters



Mark Dombroff



Allan Horowitz



The Enforcement Process

- Letter of Investigation
- Response
- Notice of Proposed Civil Penalty
- Enforcement Investigation Report (EIR)
- Informal Conference
- Civil Penalty
- Administrative Hearing
- Referral to United States Attorney General or his/her Delegate



FAA Enforcement Structure

■ The Past

- Chief Counsel's office (Assistant Chief Counsel for Enforcement)
- FAA Regional Counsel

■ The Present and the Future

- Deputy Chief Counsel Enforcement and Regulations
- Assistant Chief Counsel for Enforcement
- Deputy Assistant Chief Counsel for Enforcement
- Five Enforcement Regions
 - Five Team Managers
 - Enforcement attorneys



The Enforcement Philosophy

- FAA Order 8000.373, June 2015
 - “... When deviations from regulatory standards do occur, the FAA’s goal is to use the most effective means to return an individual or entity ... to full compliance and to prevent recurrence.
 - ... FAA recognizes that some deviations arise from factors such as flawed procedures, simple mistakes, lack of understanding, or diminished skills. The agency believes that deviations of this nature can most effectively be corrected through root cause analysis and training, education or other appropriate improvements to procedures.....”



The Enforcement Philosophy (cont'd)

- Traditional enforcement is not the first choice to ensure regulatory compliance
- FAA Order 8900.323
 - “... the Aircraft Flight Standards approach to oversight and compliance is evolving to stress an engaged, solution-oriented, outcomes-based approach. The goal is to identify deviations from standards and correct them as effectively, quickly, and efficiently as possible ... This approach will more effectively address inadvertent deviations and conserve FAA enforcement for intentional, reckless, criminal, and uncooperative behavior ... Accordingly, AFS leaders, managers, and supervisors will support inspectors when they use critical thinking to exercise sound professional judgment and take actions in accordance with this notice.”



Working with the Compliance Philosophy

- Culture of compliance
- SMS programs



FAA's Enforcement Process

- Ordinarily commenced through issuance of a Letter of Investigation (LOI)
- For alleged aviation safety violations, FAA evaluates Respondent's response and determines whether to:
 - Close with no action
 - Take Compliance Action
 - Take Administrative Action
 - Pursue Legal Enforcement Action
- For alleged hazmat violations by non-certificated persons, FAA evaluates Respondent's response and determines whether to:
 - Close with no action
 - Take Informal Action
 - Take Administrative Action
 - Pursue Legal Enforcement Action



FAA's Enforcement Process (cont'd)

- Initiation of legal enforcement for aviation safety violations
 - For individuals and small business entities:
 - Proposed civil penalties of \$50,000 or less are administratively adjudicated
 - Proposed civil penalties greater than \$50,000 are the exclusive jurisdiction of the U.S. district courts
 - For large business entities
 - Proposed civil penalties of \$400,000 or less are administratively adjudicated
 - Proposed civil penalties greater than \$400,000 are the exclusive jurisdiction of the U.S. districts courts
 - For Hazmat violations proposed civil penalties of any amount are administratively adjudicated



FAA's Enforcement Process (cont'd)

- Initiation of administratively adjudicated civil penalties
 - Aviation safety cases with penalty amounts \$50,000 or less against individuals, penalty amounts of \$400,000 or less against large business entities, and civil penalties of any amount for hazmat
 - Initiated through issuance of a Notice of Proposed Civil Penalty (NPCP)
- Initiation of civil penalties in the exclusive jurisdiction of the U.S. district courts
- Aviation safety cases with penalty amounts greater than \$50,000 against individuals and small business entities, and penalty amounts greater than \$400,000 against large business entities
 - Initiated through issuance of a civil penalty letter



FAA's Enforcement Process (cont'd)

- Informal procedures apply to all legal enforcement actions
 - Pay amount of the proposed civil penalty
 - Submit a written response
 - Submit a written response requesting reduction of the proposed civil penalty
 - Request an informal conference
 - Request a hearing
- For administratively adjudicated cases FAA issues a Final Notice of Proposed Civil Penalty (FNPCP), from which the Respondent can file a request for hearing
- For cases that are the exclusive jurisdiction of the U.S. district courts, the FAA refers the case to the U.S. Attorney General or a delegate of the U.S. Attorney General



FAA's Enforcement Process (cont'd)

- Once the FNPCP is issued in an administratively adjudicated civil penalty case, the Respondent, no later than 15 days from receipt of the FNPCP, may
 - Pay the proposed civil penalty
 - Pay an amount other than the amount proposed as long as both parties agree---with or without agreed to corrective actions
 - File a written request with the hearing docket clerk, requesting a hearing
- For cases within the exclusive jurisdiction of the U.S. district courts that cannot be resolved
 - FAA refers the case to the U.S. Attorney General or a delegate of the U.S. Attorney General to file a complaint



Notice of Delegation of Authority April 26, 2016

- October 29, 1992 – Delegation to Chief Counsel and Assistant Chief Counsel, Litigation, to advise Administrator regarding appeals from initial decisions in civil penalty actions
- March 28, 2016 – Updated delegation of authority to Chief Counsel and the Director of the Office of Adjudication to manage appeals in civil penalty actions
- What is the Office of Adjudication?



Issues/Problems

- Relationship with FSDOs: Good and Bad
- No history with new philosophy
- Reorganization: Change for the sake of change?



TSA Enforcement Authority

- Aviation and Transportation Security ACT (ATSA) established TSA to oversee aviation security. Under ATSA, TSA
 - Is responsible for security in all modes of transportation (49 U.S.C. §114(d))
 - Has authority to issue and rescind regulations (49 U.S.C. §114(l))
 - Has authority to enforce security related regulations and requirements (49 U.S.C. §114(f)(7))
 - Has authority to inspect, maintain, and test security facilities, equipment and systems (49 U.S.C. §114(f)(9))
 - Has authority to impose civil penalties (49 U.S.C. §46301)



TSA's Compliance and Enforcement Tools

- Ordinarily commenced through issuance of a Letter of Investigation (LOI)
- For alleged aviation security violations, TSA evaluates Respondent's response and determines whether to:
 - Close with no action
 - Take Administrative Action
 - Pursue Legal Enforcement Action
 - Withdraw Security Program



TSA Compliance and Enforcement Tools (cont'd)

- Outreach
- On-the-spot counseling
 - Used when
 - The noncompliance is minor
 - The regulated entity can instantly correct the violation
- Administrative action
 - Types of administrative action
 - Warning Notice
 - Letter of Correction
 - Notice of Noncompliance (Applies only to a public transportation agency)
 - Used when
 - It's a first time violation
 - Aggravating factor are not present
 - The violation is not egregious or intentional



TSA Compliance and Enforcement Tools (cont'd)

- Civil penalty action
 - Ordinarily used when TSA previously used On-the-Spot Counseling or Administrative Action for the same or similar violation
 - Ordinarily used for first time violations involving egregious or intentional conduct
- Civil penalty maximums differ per type of regulated entity
 - Aircraft operators (air transportation for compensation) - \$27,500
 - Airports, Indirect Air Carriers (cargo), small business entities, and individuals - \$11,000
 - Surface transportation - \$10,000
 - Transportation Worker Identification Credential - \$10,000



TSA Compliance and Enforcement Tools (cont'd)

- Withdrawal of security program
 - Used for the most egregious violations
 - Determination that continued operation is contrary to security and the public interest



TSA Compliance and Enforcement Tools (cont'd)

- Initiation of legal enforcement for security violations
 - For individuals and small business entities
 - Proposed civil penalties of \$50,000 or less are administratively adjudicated
 - Proposed civil penalties greater than \$50,000 are the exclusive jurisdiction of the U.S. district courts
- For aircraft operators in air transportation for compensation
 - Proposed civil penalties of \$400,000 or less are administratively adjudicated
 - Proposed civil penalties greater than \$400,000 are the exclusive jurisdiction of the U.S. district courts



TSA Compliance and Enforcement Tools (cont'd)

- How legal enforcement for security violations are initiated
 - For individuals and small business entities when the proposed civil penalty is \$50,000 or less, and aircraft operators in air transportation for compensation when the proposed civil penalty is \$400,000 or less
 - Issue NPCP
 - For violations against individuals who present a weapon, explosive, or incendiary for screening at an airport or in checked baggage, when the proposed penalty is less than \$5,000
 - Issue Notice of Violation (Streamlined civil penalty procedure)
 - For individuals and small business entities when the proposed civil penalty is greater than \$50,000, and aircraft operators in air transportation for compensation
 - Issue civil penalty letter



TSA's Enforcement Process

- Informal procedures apply to all legal enforcement actions, except the streamlined civil penalty procedure
 - Pay amount of the proposed civil penalty
 - Submit a written response
 - Submit a written response requesting reduction of the proposed civil penalty
 - Request an informal conference
 - Request a hearing
 - For administratively adjudicated cases TSA issues a Final Notice of Proposed Civil Penalty (FNPCP), from which the Respondent can file a request for hearing
 - For cases that are the exclusive jurisdiction of the U.S. district courts, the TSA refers the case to the Attorney General or a delegate of the U.S. Attorney General



TSA's Enforcement Process (cont'd)

- Once the FNPCP is issued in an administratively adjudicated civil penalty case, the Respondent may
 - Pay the proposed civil penalty
 - Pay an amount other than the amount proposed as long as both parties agree---with or without agreed to corrective actions
 - File a written request with the hearing docket clerk, requesting a hearing
- For cases in the exclusive jurisdiction of the U.S. district courts that cannot be resolved
 - TSA refers the case to the U.S. Attorney General or a delegate of the U.S. Attorney General to file a complaint



TSA's Enforcement Process (cont'd)

- Commencing withdrawal of approval of a security program
 - TSA serves a Notice of Proposed Withdrawal of Approval (NPWA) on the holder of the security program
 - The holder of the security program may respond, in writing, to the TSA designated official no later than 15 days of receipt of the NPWA
- Administrative review process
 - The TSA designated official, upon considering all of the available information, will issue
 - A Withdrawal of Approval of Security Program, or
 - Rescind the NPWA
- If TSA issues a Withdrawal of Approval of Security Program, it becomes effective upon receipt of the holder of the security program, or 15 calendar days after service, whichever occurs first

