

**TRANSPORT WORKERS UNION OF
AMERICA, AFL-CIO**

AIR TRANSPORT DIVISION



**LICENSE
PROTECTION
PROGRAM**

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License Protection Program

This brochure, published by the TWU Air Transport Division, is designed to inform TWU members holding a Federal Aviation Administration license of their rights in case an investigation has begun or action is taken against them for any violation of FAA rules or regulations.

This brochure is also designed to reassure our certificated members that the Union is prepared to defend anyone so charged throughout the process, including appeals (where appropriate).

As noted, the TWU Air Transport Division will provide an attorney, at the International Union's expense, to defend any member charged with violations of the Federal Aviation Regulations (FAR's).

In recent years, the FAA has increasingly focused on airline employees, especially (but not limited to) certificated personnel, as being the cause for accidents or other incidents involving air safety.

That is why this program is so important to protect our members from unfair accusations or punitive action that might result in the loss or suspension of their license.

You are urged to familiarize yourself with this information in the event that the FAA instigates an investigation or action against you.



Introduction

As an example; a mechanic faced with an FAA investigation of his/her work, and the possibility of a license suspension or revocation or a civil penalty, may face a number of difficult problems in framing a response. Most investigations relate to routine work performed weeks or even months earlier, which the mechanic has no reason to remember. The mechanic will then be asked to explain the relationship between accidents, incidents, equipment damage, or paperwork discrepancies and work he may have performed. Indeed, the FAA initiates an investigation in virtually every case in which the paperwork indicates the possibility of failure to comply with the maintenance manual as well as federal aviation regulations. The mechanic's explanation will normally be called for as a response to a "**Letter of Investigation**" (LOI) from the FAA Flight Standards District Office (FSDO).

In these circumstances **it is important that the mechanic not engage in speculation**, not ignore the LOI and not respond without help. The member should contact the union and prepare a written response that explains that there was no violation and why or explains why a problem occurred and should provide it to the union's designated representative who will forward it to our attorney for review and editing.

There shall be a TWU representative designated by every Local to handle FAA inquiries. Anytime a mechanic, dispatcher, or other employee performing safety sensitive work receives a Letter of Investigation he/she should contact the designated representative to assist him/her in examining the relevant paperwork, and setting out the facts as they actually recall them.

Normally, an individual is given only ten days to respond to the FAA's letter. Therefore, there should be no delay in seeking assistance. The initial response to a letter of investigation is carefully examined by the FAA and may be used to back up a subsequent certificate or civil penalty action.

The FAA's response to its investigation can take a number of forms:

1. Dismissal based on the mechanics the agency's investigation;
2. Administrative Action (warning letter or letter of correction);
3. License Suspension or Revocation (Notice of Proposed Certificate Action);
4. Civil Penalty.

In our experience, FAA inspectors will close out an investigation only if the mechanic's response clearly establishes compliance with the maintenance manual or, in the case of an accident or incident, if the response verifies the mechanic's lack of involvement. The best thing a member can do to head off an investigation is to file an ASAP report. The filing of a timely report will trigger a timely NASA report which can result in waiver of a penalty if a violation is later found. If you are not covered by an ASAP program you should be sure to file your own report with NASA.



Administrative Action

The FAA may also limit itself to administrative action, rather than legal action. Administrative action is taken in those cases where a technical regulatory violation may have occurred, but there was no violation of the FARS and did not result in an unsafe condition. The FAA's own handbook sets forth the following criteria for issuance of administrative, rather than legal, action:

1. No significant unsafe condition existed;
2. Lack of competency or qualification was not involved;
3. The violation was not deliberate;
4. The alleged violator has a constructive attitude towards complying with the regulations and has not been involved in previous similar violations.

If the above criteria are met the FAA will simply issue a letter warning the mechanic, dispatcher, airman, or other safety sensitive employee not to commit the same violation or request that he accomplish certain corrective actions. An administrative action is not considered to be a finding that the mechanic, dispatcher, or other airman was guilty of the alleged violation. The FAA letter is, however, part of the airman's record for two years.



Legal Enforcement Action

Unfortunately, some investigations are not being closed out or handled administratively. Instead, the FAA has taken a harder line and FAA inspectors are transferring their cases to FAA lawyers for legal actions. For this reason, it is important that every licensed airman understand the legal steps associated with FAA enforcement.

Any FAA action suspending or revoking, an airman's license is initiated by a **"Notice of Proposed Certificate Action"**. The letter will restate the allegations made in the Letter of Investigation and may reference certain statements made in the written response, particularly if admissions have been made. The letter will then advise the mechanic or other airman of the length of the proposed suspension or if full revocation is sought.

Each Notice of Proposed Certificate Action will provide the mechanic or airman with the following alternatives:

1. Surrender your certificate on or before a given date. In this event the Order proposed in the Notice will be issued at once effective the date your certificate is surrendered or mailed to the FAA office listed in the order.
2. Indicate your desire to have an Order issued as proposed in the Notice of Proposed Certificate Action so that you can appeal to the National Transportation Safety Board (NTSB). This could be done by checking Item No. 2 on the reply form or by not responding to the Notice.
3. Answer the charges in writing. With such answer you may furnish additional information, including statements by you or your representative or others, or other documentary evidence as you may wish to have considered.
4. Request that you or your representative be accorded a conference with an attorney at an FAA Regional Office. **At this conference you may state why the proposed action should not be taken, and you may**

present evidence and information on your behalf. The TWU always recommends this option.

5. If you filed an Aviation Safety Report with the National Aeronautics and Space Administration (NASA) concerning the incident set forth in the Notice of Proposed Certificate Action you may be entitled to a waiver, and you must present evidence satisfactory to the Administrator that you filed a report with NASA within ten (10) days of the incident. If you fail to provide this evidence to the Administrator within ten (10) days after receipt of the letter you will not be entitled to the waiver of penalty. You will only be entitled to waiver if it is found:
 - a) **That the alleged violation was inadvertent and not deliberate;**
 - b) **That the violation did not involve a criminal offense, or accident, or discloses a lack of competence or qualification to the holder of a certificate; and**
 - c) **You have not been found in any prior FAA enforcement action to have committed a violation of the Federal Aviation Act or any regulations promulgated under that act for a period of 5 years prior to the date of the occurrence.**

In the event that you prove your entitlement to the waiver of penalty, an order may be issued finding you in violation but imposing no civil penalty or certificate suspension. You will, however, have the right to appeal the order to the National Transportation Safety Board (NTSB) pursuant to Section 609 of the Federal Aviation Act.

TWU Will Provide an Attorney

TWU advises that you should always request an informal conference. Upon request, the TWU Air Transport Division will provide the assistance of an attorney for each informal conference. The attorney will work with the member and will make the initial statement in the conference.

Except in cases involving an emergency suspension, where the administrator finds that safety in air transportation requires immediate suspension or revocation, the penalty described in the Notice is stayed until all administrative procedures have been exhausted.

The purpose of an informal conference is to bring out facts and circumstances not accounted for in the Notice of Proposed Certificate Action. The FAA will frequently reduce the penalty based on this conference and engage in settlement discussion. Occasionally they will entirely rescind the action. The fundamental purpose of the conference is to make the FAA attorney aware of mitigating or exonerating evidence and to attempt to achieve a satisfactory resolution to the investigation.

Because of the difficulty in overturning a penalty sought by the FAA, it is in the airman's interest that we do all we can to resolve the matter at the informal conference when there is no defense to the charge of violation of the FARs.



Appeals

If the informal conference does not result in a settlement satisfactory to the airman, the FAA will file a complaint and proposed order with the National Transportation Safety Board, and the airman has the right to appeal the matter to a National Transportation Safety Board Administrative Law Judge (ALJ).

The ALJ must conduct a formal hearing giving both sides the right to present evidence and cross-examine witnesses. TWU's Air Transport Division will provide an attorney for such proceedings.

The ALJ will decide the case based on the record before the ALJ, he may reverse or modify the FAA's penalty. If the ALJ finds there was a violation the ALJ will overturn or reduce a penalty that is authorized by the FAA table of penalties only if we show that the penalty is arbitrary, capricious or contrary to law. Either side may appeal the ALJ's decision to the full National Transportation Safety Board. This is done through the filing of briefs. The NTSB does not conduct a new trial after there has been a hearing before the ALJ.

After the NTSB has made its decision concerning the FAA's Order, if the Order has not been reversed, it goes into effect. The mechanic may still appeal the decision to Federal court, but the appeal does not normally delay the penalty.

Federal courts have limited discretion to overturn NTSB decisions and such appeals are seldom useful. TWU does not generally provide representation in judicial appeals.

The following is the normal sequence of an appeal in a certificate action:

- LOI
- INFORMAL CONFERENCE
- NTSB ALJ HEARING
- APPEAL TO NTSB
- FEDERAL COURT

In assessing the proper course of action to take in response to a certificate action, the mechanic, dispatcher, or other airman should keep in mind that suspension of a certificate is not necessarily, or even normally grounds for discipline.

That is an independent decision made by the Company which can be challenged by the Union under the "just cause" provisions of the TWU contract. Further, suspension or revocation of a license does not normally require that a licensed airman cease doing all work functions. But it suspends or prevents him from performing work or making decisions which require an FAA license.

Civil Penalty

In 1988 the U.S. Congress passed, on an experimental basis, a program to allow the FAA to fine carriers and airmen for regulatory violations, rather than suspend licenses. This program was re-enacted in 1990. The hearing and appeal alternatives provided a mechanic, dispatcher, or other airman who faces a fine are similar to those involved in certificate actions. In particular, the airman is provided the opportunity for an informal conference with an FAA attorney. In recent years the FAA has been less inclined to impose civil penalties instead of certificate actions.

The NASA Program

NASA has developed an Aviation Safety Reporting System (ASRS) in which it encourages aviation employees to report problems or deficiencies in aviation operations. In the event an airman becomes aware that he is involved in an accident or incident, or may have committed a regulatory violation, he can fill out a NASA report. **The report is confidential and cannot be used in an enforcement action.**

Further, the FAA under certain circumstances cannot take enforcement action based on the violation reported to NASA. When a timely report is filed that complies with the program requirements, any penalty is waived even if there was a violation. NASA's report will immunize the mechanic from enforcement action under the following limited circumstances:

1. The violation was inadvertent and not deliberate.
2. The violation did not involve a criminal offense, or accident, or action under Section 609 of the Act which discloses a lack of qualification or competency.
3. The person has not been found in any prior FAA enforcement action to have committed a violation of the Federal Aviation Act or of any regulation promulgated under the Act for a period of five (5) years prior to the date of the occurrence; and
4. The person proves that, within ten (10) days after the violation, that person completed and delivered and mailed a written report of the incident or occurrence to NASA under ASRP (FAA Advisory Circular No. 00-46C, 2-4-85).

While the NASA program provides some protection, it is less applicable to mechanics.

In many instances the mechanic will not realize he has made a mistake and may not become aware of it until many months after the work is completed and the problem is reported by a pilot or another mechanic. So there may be a question as to whether the report has been filed within 10 days. Under this circumstance, the NASA program may not provide protection.

Conclusion

The most skilled, experienced certificated airline worker, whether he or she is an Aircraft Mechanic, Flight Dispatcher or Pilot, or holds a position in numerous other safety sensitive classifications, is open to investigation by the Federal Aviation Administration at any time for a wide variety of alleged violations.

TWU is prepared to defend our members to the fullest, including providing an attorney at the International Union's expense.

Your union has the experience and expertise to represent you so that your job and license are protected against unfair charges.

Just remember, if you are ever charged by the FAA for any violation, contact your TWU Local union **immediately**. Your Union is your best protection against any charge or discipline.



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