



## FAA's Compliance Program: Representing Airmen

### Featured Presenters



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## Today's Compliance Program Discussion

- Overview / Is it working?
- Metrics and real-world examples
- NASA ASRS
- Other certificate holders: CFI
- Known issues / room for improvement
- Other investigation outcomes:  
709 Reexaminations, Administrative Actions, Legal Enforcement
- Recommendations for attorneys representing airmen in CP investigations

## Remedial Training and Administration Actions

	FY15	FY16	FY17	FY18	FY19*
<b>Legal Enforcement</b>	1,771	750	747	670	416
<b>Administrative</b>	3,197	786	570	568	285
<b>Informal</b>	886	-	-	-	
<b>Compliance Action</b>	-	5,450	6,926	6,866	4,302



\* FY19 data spans from 10/1/18 – 6/30/19

Source: Jon Prater, Detail to the Office of the Director for Safety Standards, Compliance Program Focus Team

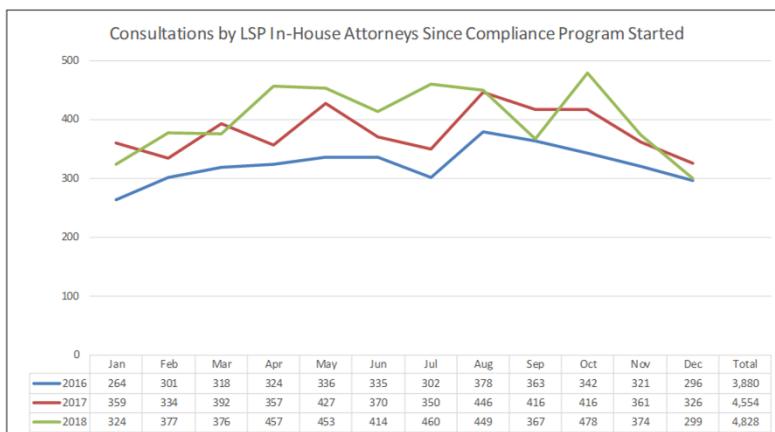
## Flight Standards Metrics for FY18

- The average time to complete a compliance action was around four weeks.
- In FY18, over 80% of regulatory issues were resolved without enforcement.
- Enforcement actions initiated since the inception of the Compliance Program are being adjudicated faster compared to previous years.
- Voluntary reporting has continued to rise since the implementation of the Compliance Program.
- Recidivism rates for individuals, considering the same type of deviation, is less than 1% following a Compliance or Enforcement action.



Source: Jon Prater, Detail to the Office of the Director for Safety Standards, Compliance Program Focus Team

## LSP Metrics between 2016 - 2018



**66,000+ Plan Participants**

**4,827 new matters in 2018**

- 19% Pilot Deviation Calls
- 17% Transactional Calls
- 12% Accident/Incident Calls

## Where did the Compliance Program Come From?

06/26/15

8000.373

e. The 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 or training programs for regulated entities, which are documented and verified to ensure effectiveness. However, reluctance or failure in adopting these methods to remediate deviations or instances of repeated deviations might result in enforcement.

f. The FAA views those intentional or reckless deviations from regulatory standards, as defined in the Agency's safety oversight guidance, or deviations from regulatory standards that otherwise present an unacceptable risk to safety, as posing the highest risk to safe operation of the NAS, and thus requiring strong enforcement.

g. Matters involving competence or qualification of certificate, license or permit holders will be addressed with appropriate remedial measures, which might include retraining or enforcement.

h. Regulatory violations involving law enforcement-related activities may be addressed with enforcement. In addition, legal enforcement will be taken when required by law.

  
Michael P. Huerta

## What types of matters are covered?

Compliance Actions are used to resolve unintentional deviations or noncompliance that "arise from factors such as flawed procedures, simple mistakes, lack of understanding, or diminished skills."

FAA personnel must, or in some cases may, refer certain matters for enforcement action:

1. Intentional or reckless deviations
2. Airman is unwilling or unable to comply
3. Enforcement required by statute or regulation
4. Matters involving lack of qualification
5. Repeated noncompliance
6. Failure to complete corrective action
7. Criminal activity

## What is a Compliance Action?

- Counseling
- On-the-spot Correction
  - “A quick fix of a simple mistake or other apparent deviation which does not require additional follow-up.”
- Additional Training
  - Training through WINGS, employer, or Remedial Training
- Remedial Training through FAA Safety Team process
  - Flight Instruction, Ground Instruction, WINGS courses, etc.
- Improvements to systems, procedures, operational practices, or training programs for regulated entities
- “Any other action that would correct the noncompliance and address the underlying safety concern”

## NASA Aviation Safety Reporting Program

- Waiver of sanction not applicable without enforcement action (waiver of sanction will be discussed in more detail in the next module)
- Inadherence: something in common
  - Required by NASA Aviation Safety Reporting System for waiver of sanction
  - Required by FAA to be within the scope of the Compliance Program
- “The FAA considers the filing of a report with NASA concerning an incident or occurrence involving a violation of 49 U.S.C. subtitle VII or the 14 C.F.R. to be indicative of a constructive attitude. Such an attitude will tend to prevent future violations.”

## CFIs and the Compliance Program

### CFI's Build the Foundation for Compliance

- Provide Regulatory Knowledge & Understanding
  - Regulations as risk controls
- Explain that **Compliance** is the pilot's responsibility
- Instill a '**Just Safety Culture**'
- Promote Safety Management principles

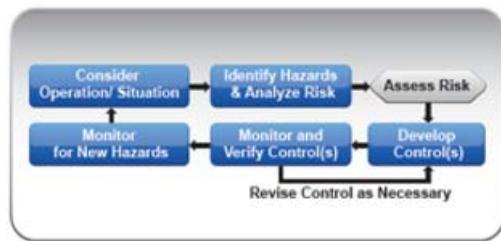


Source: Jon Prater, Detail to the Office of the Director for Safety Standards, Compliance Program Focus Team

## Safety Management

### Things that aviators can do to utilize safety management:

- Utilize procedures that ensure adherence to safety standards
  - Example: Checklists, Acronyms, Computer Programs, Personal Minimums
- Remain engaged with updates for general aviation
- Seek regular training above the minimums



Simplified model that can be used when thinking about safety management

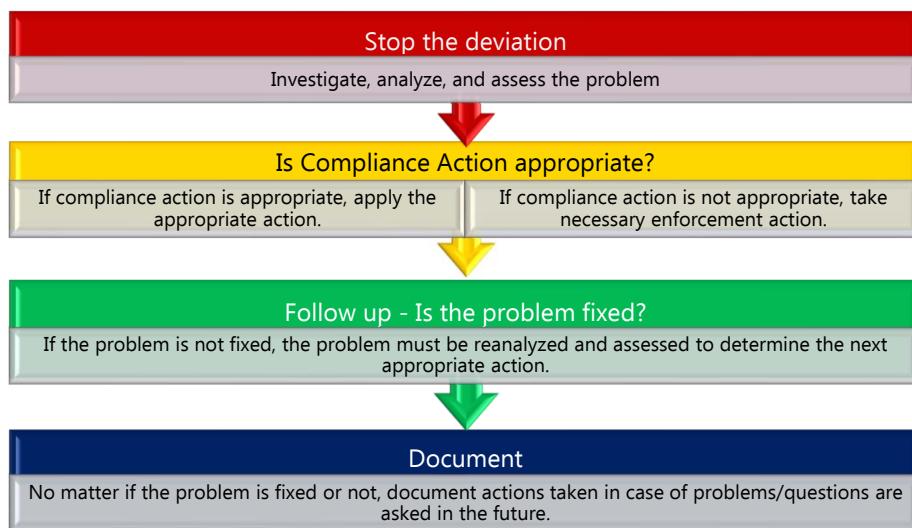


Source: Jon Prater, Detail to the Office of the Director for Safety Standards, Compliance Program Focus Team

## Special Considerations When Representing a CFI

- Request for meeting with FSDO  
For example, if recommended applicants have a failure rate >30% over 2 years
- Request for CFI Surveillance  
For example, if a solo student has a runway excursion
- Importance of recordkeeping per FAR 61.189
  - CFI must sign student's logbook for ground or flight training given
  - CFI must retain records of endorsements for solo flight, as well as endorsements for knowledge and practical tests (including results), for 3 years

## Compliance Action Decision Process

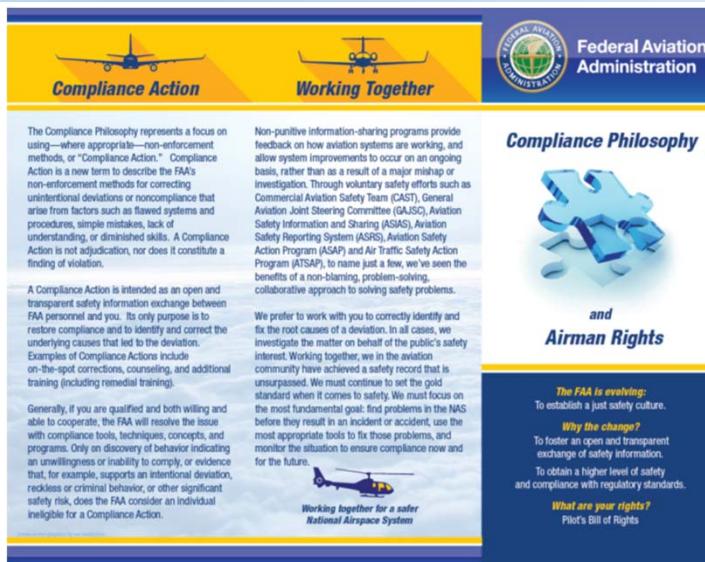


Source: Jon Prater, Detail to the Office of the Director for Safety Standards, Compliance Program Focus Team

## Investigation: Initial Contact with Airman and Pilot's Bill of Rights

- FAA inspector must “determine if the airman/organization is proactive, cooperative, and capable of participating in effective corrective or preventative action.”
- FAA Order 8900.1, Vol. 14, Ch. 1, Sec. 3, typically requires inspector to provide “Compliance Philosophy and Airman Rights” Brochure (next slide) prior to discussing matter
- Airman is typically requested to provide narrative statement and, for pilot deviations, provided a questionnaire-type form to complete concerning airman qualifications and the possible deviation
- Majority of LSP cases: FAA inspector initiates contact by telephone

## Compliance Program Brochure



The brochure is titled "Compliance Program Brochure" and features the Federal Aviation Administration logo. It is divided into several sections: "Compliance Action" (with an airplane icon), "Working Together" (with a helicopter icon), "Federal Aviation Administration" (with the agency's name and logo), "Compliance Philosophy" (with a 3D puzzle piece graphic), "and Airman Rights" (with a helicopter icon and the text "Working together for a safer National Airspace System"). The text in the sections discusses the philosophy of non-punitive information sharing, the purpose of Compliance Action, and the evolution of the FAA.

**Compliance Action**

The Compliance Philosophy represents a focus on using—where appropriate—non-enforcement methods, or “Compliance Action.” Compliance Action is a new term to describe the FAA’s non-enforcement methods for correcting unintentional deviations or noncompliance that arise from factors such as flawed systems and procedures, simple mistakes, lack of understanding, or diminished skills. A Compliance Action is not adjudication, nor does it constitute a finding of violation.

A Compliance Action is intended as an open and transparent safety information exchange between FAA personnel and you. Its only purpose is to restore compliance and to identify and correct the underlying causes that led to the deviation. Examples of Compliance Actions include on-the-spot corrections, counseling, and additional training (including remedial training).

Generally, if you are qualified and both willing and able to cooperate, the FAA will resolve the issue with compliance tools, techniques, concepts, and programs. Only on discovery of behavior indicating an unwillingness or inability to comply, or evidence that, for example, supports an intentional deviation, reckless or criminal behavior, or other significant safety risk, does the FAA consider an individual ineligible for a Compliance Action.

**Working Together**

Non-punitive information-sharing programs provide feedback on how aviation systems are working, and allow system improvements to occur on an ongoing basis, rather than as a result of a major mishap or investigation. Through voluntary safety efforts such as Commercial Aviation Safety Team (CAST), General Aviation Joint Steering Committee (GAJSC), Aviation Safety Information and Sharing (ASIAS), Aviation Safety Reporting System (ASRS), Aviation Safety Action Program (ASAP) and Air Traffic Safety Action Program (ATASP), to name just a few, we’ve seen the benefits of a non-blaming, problem-solving, collaborative approach to solving safety problems.

We prefer to work with you to correctly identify and fix the root causes of a deviation. In all cases, we investigate the matter on behalf of the public’s safety interest. Working together, we in the aviation community have achieved a safety record that is unsurpassed. We must continue to set the gold standard when it comes to safety. We must focus on the most fundamental goal: find problems in the NAS before they result in an incident or accident, use the most appropriate tools to fix those problems, and monitor the situation to ensure compliance now and for the future.

**Compliance Philosophy**

**and**

**Airman Rights**

**The FAA is evolving:**  
To establish a just safety culture.

**Why the change?**  
To foster an open and transparent exchange of safety information.

To obtain a higher level of safety and compliance with regulatory standards.

**What are your rights?**  
Pilot's Bill of Rights

## Compliance Program Brochure (cont'd)



**Compliance Philosophy**

In 2015, the FAA in an effort to embrace a "just culture" implemented a new Compliance Philosophy. A "just culture" is one that has both an expectation of, and an appreciation for, self-disclosure of errors. A "just culture" allows for due consideration of honest mistakes, especially in a complex system like the NAS. But even unintentional errors can have a serious adverse impact on safety, and so we must ensure that the underlying safety concern is fixed in all cases.

Our objective is to identify safety issues that underlie deviations from standards and correct them as effectively, quickly, and efficiently as possible. Our view of compliance stresses a problem-solving approach (i.e., engagement, root-cause analysis, transparency, and information exchange) where the goal is to enhance the safety performance of individual and organizational certificate holders. An open and transparent exchange of information requires mutual cooperation and trust that can be challenging to achieve in a traditional, enforcement-focused regulatory model.

**Airman Rights**

This philosophical evolution towards a "just culture" is not intended to mislead or deny you of your rights. You are free to exercise your Airman Rights without repercussions. Refusal to speak or correspond with FAA personnel, or obtaining legal counsel immediately after an event, does not rule out Compliance Action.

Under the compliance philosophy, we hope to work with you to resolve any noncompliance with the regulations (14 CFR) without the need for a legal enforcement action. While legal enforcement action is generally not anticipated, the Pilot's Bill of Rights (Public Law 112-153) requires that you receive this information:

The nature of this investigation is to identify safety issues that underlie the apparent regulatory noncompliance in connection with:

\_\_\_\_\_

If we confirm your noncompliance with FAA regulations, we will use the information gathered in this investigation to determine the most efficient and effective means to return you to full compliance and to prevent recurrence.

Any response you make to an inquiry by a representative of the FAA Administrator in connection with this investigation may be used as evidence if legal enforcement action becomes necessary.

**Airman Rights (cont'd)**

You are entitled to access or otherwise obtain air traffic data in the possession of the FAA that would facilitate your ability to productively participate in a proceeding relating to this investigation.

You are also entitled to obtain air traffic data in the possession of a government contractor providing operational services for the FAA (e.g., contract control tower and flight service station), provided that you submit a request to the FAA that describes the facility at which such information is located and you identify the date on which such information was generated.

Anytime during this investigation, you may submit your request to access or obtain air traffic data by contacting the FAA personnel working with you to resolve the deviation. Because air traffic data is routinely destroyed or disposed of in the ordinary course of business, it is important that you submit your request for such data as soon as possible.

If this investigation results in a legal enforcement action against your airman certificate, rating, or inspection authorization, the releasable portions of the Administrator's investigative report will be made available to you upon your written request addressed to the FAA's legal counsel handling the enforcement action.

## FAA's "Investigation, Analysis, and Assessment of Problem"

- Refusal to speak with the FAA, or obtaining legal counsel, does not automatically rule out Compliance Action
- "However, if FAA personnel cannot adequately determine the facts of the case, or cannot identify appropriate remediation(s) that are consented to and successfully accomplished..., FAA personnel must still use due diligence on behalf of the public's safety interest."
- "Such due diligence may include reexamination or suspension pending compliance to determine that the certificated entity is qualified, competent, and proficient."

## Compliance Action Considerations

- The individual must be “willing”
  - Acknowledging responsibility and sharing information vs. remaining silent
  - Promptly implements corrective action
- The individual must be “able”
  - Possess time and resources to correct the deviation
  - Has the ability to meet standards after taking corrective action
- The FAA will typically consider proactive corrective actions already taken by the airman
- A Compliance Action does not constitute a finding of violation
- Average case is completed in four weeks

## Typical Investigation Questions (Alleged Runway Incursion)

1. How many total flight hours do you now have?
2. How many flight hours do you have in Cessna 172s?
3. How many flight hours do you have in the last 90 days?
4. **How many flight hours do you have in the last 90 days in a Cessna 172?**
5. How much flight time did you log in the last 24 hours prior to the pilot deviation?
6. Are you instrument current?
7. Was the flight in question your first flight of the day?
8. How did you receive training on surface movement operations
9. Did your surface movement training include airport signage?
10. Did your surface movement training include surface markings?
11. Were you able to see the airport signs?
12. Were you able to see the pavement markings?
13. Did you review the airport diagram before taxiing?
14. Were you using a surface moving map with aircraft position at the time of the pilot deviation?
15. Were you wearing a headset at the time of the pilot deviation?
16. Was the frequency congested at the time of the pilot deviation?
17. Did you write down your taxi instruction?
18. Did ATC change your expected departure runway?
19. Do you believe that fatigue was a factor in what happened?
20. **Approximately how many hours of rest did you have in the 24 hours prior to the event?**
21. How many hours had passed from the time you woke up until the time the event occurred?
22. Were you feeling rushed at the time?

## Initial Contact and Investigation: LSP Observations

- Inconsistent provision of PBR Notifications
- Access to Air Traffic Data/Investigative Reports (example next slide)
- Response time imposed upon airmen varies
- Inconsistent formats for “Pilot Questionnaire”
- Stale Complaint
- Handling of alleged violations of 14 C.F.R. § 61.15, *Offenses involving alcohol or drugs.*
- Use of Compliance Action vs. 49 U.S.C. § 44709 reexamination

## Access to Air Traffic Data/Investigative Reports Reference to deprecated request system

### August 2018 Example – FAA letter excerpt:

“You are entitled to access or otherwise obtain air traffic data that would facilitate your ability to productively participate in a proceeding relating to this investigation. With regard to such air traffic data in the possession of a government contractor providing operational services to the FAA (e.g., contract control towers and flight service stations), **go to the FAA's website** at [www.faa.gov](http://www.faa.gov) and click on “Pilot’s Bill of Rights,” which will prompt you to **provide the following information:**

- i. the facility at which such information is located; and**
- ii. the date on which such information was generated.”**

### Updated process: Pilot’s Bill of Rights <https://www.faa.gov/pilots/rights/>

“Due to process changes, effective February 17, 2015, you will no longer be able to use this webpage and the email address AirmenDataRequest@faa.gov to submit requests for air traffic data under the Pilot’s Bill of Rights. Under the new process, **individuals entitled to access or otherwise obtain air traffic data under the Pilot’s Bill of Rights should direct such requests to the FAA investigator that provided them with the written notification of investigation.”**

## Remedial Training

- Remedial Training Initial Offer Letter
- RT Curriculum and Agreement
  - Pilot Proficiency Program (WINGS) online courses
  - Ground training: min. 1 hour, max. 10 hours
  - Flight training: min. 1 hour, max. 8 hours
- Acknowledgment that failure to comply may result in legal action and/or 709 reexamination
- All costs related to the RT are borne by the airman
- Completion in no more than 30 days
- "If you continue to conduct operations in the areas identified in this RT agreement and have a similar deviation, this may be deemed as unwillingness to comply and would result in RT being withdrawn."
- "I agree to waive all rights concerning the Stale Complaint Rule 49 C.F.R. § 821.33"

## LSP Practices with Positive Results

### Consider advising airmen to:

- Continue to file reports with NASA Aviation Safety Reporting System (ASRS)
- Promptly take any proactive measures to demonstrate safety conscious attitude
  - WINGS courses, AOPA Air Safety Institute, flight or ground instruction, etc.
- Upon initial contact, request questions in writing via email along with PBR Notification and Air Traffic Data
- Ensure pilot and aircraft meet applicable regulatory requirements, such as:
  - Current and appropriate medical certificate, or BasicMed
  - Currency (Flight Review, General Experience, Night takeoff and landing, Instrument)
  - Aircraft Maintenance Records, annual inspection, AD compliance, etc.
  - Correct registration N-number on airworthiness certificate

## Resources

- FAA Order 8000.373, FAA Compliance Program
- FAA Order 8900.1, Volume 14, Chapter 1, Sections 1-3: Flight Standards Service Compliance Philosophy
- FAA Order 8900.1, Volume 14, Chapter 3, Section 2: Additional Training Supplemental Information
- FAA Advisory Circular 00-46E, Aviation Safety Reporting Program
- FAA Order 8900.1, Volume 6, Chapter 1, Section 5: Surveillance of a Certificated Flight Instructor
- FAA Order 8900.1, Volume 15, Chapter 6, Section 1: FFASTeam Program Manager/Regional FFASTeam Point of Contact Duties and Roles to Facilitate Remedial Training
- FAA Order 2150.3C - FAA Compliance and Enforcement Program

# Questions?



## Contact Us!



### AOPA

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