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NASA Reports: File Early and File Often

Many pilots have heard of the Aviation Safety Reporting System (or ASRS for short). More affectionately, most just call it the “NASA Report”. Even for those who have filed one, the procedures and scope of protection for this report are often unclear.

What is a NASA Report?

In the early 1970s, there was no way for a pilot to report an unsafe event to the FAA without fear that that submission could be used against the reporter. So, NASA was designated as an independent third-party to collect safety data and protect the confidentiality of the submission.

What are the Benefits of Filing?

As specified in Advisory Circular 00-46E, the FAA considers the filer of an ASRS Report “*to be indicative of a constructive attitude... which will tend to prevent further violations*”. As such, if the Report is filed and meets certain criteria (specified below), the FAA will not normally seek to enforce the penalty for most violations. The penalty itself doesn’t go away, but the enforcement action (i.e., a 30-day suspension) won’t be enforced.

Timing is Everything

To have any protection at all, an ASRS Report must be timely filed. The filer has a short 10-day period to file from the date the filer knew (or should have known) about the event. The first is simple: if ATC says: “*Possible pilot deviation...when you land, call this number*”, your clock starts ticking that day. Let’s say instead that you taxied across a runway hold line without a clearance, ATC never told you, and the first you learn about this is a Letter of Investigation in the mail from your local FSDO. In this case, the date you received the letter starts your 10-day clock. While you could file out a form and mail it to NASA, the most reliable submission method is online¹. At the end of the process you will receive an electronic confirmation to store as proof of submission.

When does an ASRS Report Not Help?

There are many restrictions on using an ASRS Report to avoid a penalty. They include:

- 1) The violation must not be a criminal offense;
- 2) The event must not be an “accident” (but can be an “incident”)²;

- 3) The violation must not be an action related to pilot qualifications (such as the lack of a BFR or valid medical);
- 4) The violation must have been “inadvertent and not deliberate”;
- 5) The filer must not have any violations within the preceding 5 years.

Is an ASRS Report Confidential?

So long as there is no criminal or accident investigation, then yes, the contents of the report are not released to the FAA. Criminal matters are referred to the Department of Justice, and accidents are referred to the NTSB, and in those cases the full contents of the report may be disclosed.

What exactly do “Inadvertent” and “Not Deliberate” Mean?

It is rare for the FAA to allege that a violation of an FAR was “deliberate”. An example of deliberate would be knowing full well that your plane was out of annual but you kept flying it anyway. For years, the FAA asserted the position that most violations were not “inadvertent” because the pilot knew or should have known that what they were doing was wrong³. This standard was (thankfully) changed in the pilot’s favor in a recent landmark case⁴. The case centered on whether an aircraft did or did not have the appropriate certification to fly RVSM⁵ authorization, and more importantly, whether the pilot was supposed to know better. An NTSB Administrative Law Judge found a violation and issued a 60-day suspension, which was upheld by the full NTSB. In reversing, the Boeta court held that while the violation still occurred, the NTSB had been “arbitrary and capricious” in denying the pilot the sanctions protection of a timely file ASRS Report.

Does this Mean I can only File Every 5 Years?

Absolutely not. This is a common misconception about ASRS Reports. You can file a Report after each and every flight you wish. So long as you are not filing about criminal offenses or accidents: file early, and file often.

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¹ <https://asrs.arc.nasa.gov/report/caveat.html?formType=general>

² See NTSB form 6120.1 for the distinction between an “accident” and merely an “incident”

³ Ferguson v. NTSB, 678 F. 2d 821 (9th Cir. 1982).

⁴ Boeta v FAA, 831 F.3d 636 (5th Cir. 2016)

⁵ Reduced Vertical Separation Minimum, which allows aircraft to fly above FL280 in U.S. airspace.