

Your Rights When the FAA Comes Knocking

By Paul A. Lange

Editor's note: This is part two of a two-part article on dealing with FAA inspections. Part one appeared in the 3rd quarter edition of *Aviation Business Journal*.

Practical Advice

What can you do to help yourself during an FAA investigation? Some suggestions follow.

Sign-in Sheet

First, have a sign-in sheet that visitors to your premises are required to sign, including the date and time of their visit as well as the time that the visitor leaves your premises. In other words, use the same type of sign-in sheet that you're required to sign when you visit an FAA facility. Use it for all visitors, FAA included. This allows you to keep track of which FAA inspector is on your premises, how often, and for how long.

Designated Management Representatives

Next, it's rather clear that if you don't speak to an inspector who comes knocking, you're virtually guaranteed trouble. This is notwithstanding that there's no specific requirement in the FARs for you to speak to such an inspector. The way to address inspector inquiries, however, is to have a designated management representative and/or counsel available to answer inspectors' questions on behalf of the company and to be present during interviews of employees. This allows you to provide correct and consistent responses.

Designated Administrative Representative, Stamp Your Documents As Confidential, and Most Importantly, Keep Copies

You should also have an administrative person assigned and available to be responsive to all the inspectors' needs while on site—most especially to gather documents requested and to make copies of what is requested. That person should also be charged with making a copy for the company of anything that the inspectors take away with them. All documents that leave the premises should be

marked with a rubber or digital stamp, or an adhesive backed label, created in advance stating the following: "Privileged and Confidential: Not to be disclosed to anyone other than FAA personnel without written permission of XYZ Company." What if the inspectors bring their own scanners? Keep track of everything that they are looking at and everything that they are scanning. Keep a log. Send a letter immediately following the inspection confirming what they scanned when they were at your premises. Specifically identify each document and ask if they scanned anything in addition to what you identify. Remind them that you view these documents as privileged and confidential, and that they should not be disclosed to anyone outside the FAA without the company's express written permission.

Video and Audio Recording

Can you record an FAA inspection using video, audio, or both? There's nothing in the FARs precluding it. Should you? That's a more difficult question. And the answer is, it depends. "On what," you say? First, let's start with video recording of your premises generally. Many states have laws governing employer's conduct when it comes to video recording. As a general matter, these laws preclude video recording of private areas such as bathrooms, locker rooms, and designated employee break areas. While video surveillance in public areas is generally permissible, notice is typically required in the form of signs or a signed acknowledgement from everyone on the premises that they are aware surveillance is taking place. Repair stations that perform a mix of military and civilian work often have surveillance systems on site and use them as a matter of course for security purposes. FAA inspectors routinely show up for inspections of these facilities, are recorded on video, and the surveillance is typically not an issue in those circumstances.

What happens, however, if your premises are not

as secure as a military contractor and you have no day-to-day need for video surveillance? Can you follow the inspectors around with a video camera and also record everything that they discuss? That's a tricky one. Engaging in such activity is not going to endear you to anyone at the FAA—neither the folks performing the inspection on site nor FAA management. If you choose this course, you need to have a very good reason for doing so. You must also make the conscious decision that having video and audio evidence of inspectors' conduct outweighs the risk of antagonizing the FAA. If you antagonize the FAA, you risk that they will exercise their discretion in a manner that is wholly contrary to your interests.

Should you decide that it's worth the risk, you're likely already experiencing problems and expecting more problems in short order. In that case, be prepared and have your counsel briefed and available—preferably in person, on site—but at the very least available by phone during the inspection. When gearing up for this battle, expect that the FAA inspectors will be consulting their own lawyers and using everything in their arsenal to stop you from recording their activities. There are no hard and fast rules here, but expect that the inspectors will tell you that you're impeding and interfering with their investigation. And if you don't stop, they will have no choice but to consider your business in noncompliance with the FARs until you can demonstrate that it is. Depending on the circumstances, the FAA might figuratively blink and allow their activities to be recorded. If not, you should expect an emergency suspension or revocation of the company's certificate within the next few days. In that case, plan for your business to be shut down completely and immediately whenever the emergency order is delivered.

There are cases where following the inspector around with a video camera may well be warranted notwithstanding these risks. When you encounter the FAA's latest rogue inspector and he or she has made the destruction of you and your company their sole mission in life, behaving badly and unprofessionally in the process, that's a good reason to seriously consider video and audio recording of the inspection. Before doing so, however, and if time permits, you should consider raising the issue in an appropriate fashion with FAA management, possibly through the FAA's Customer Service Initiative (CSI). Though time consuming and often without timely feedback from FAA management, CSI has the benefit of alerting FAA management to their rogue employee prior to you starting a war. Having said that, there have been circumstances

where video surveillance of an inspector's improper and unprofessional behavior has actually accelerated the pace of resolving the problem—and in fact provided FAA management the evidence that they needed to properly discipline the inspector.

Conclusion

Whether you're a pilot who is the recipient of a random ramp check or a large air carrier or a repair station facing what you believe to be the next Spanish Inquisition, there are some basic rules to keep in mind during any FAA inspection. Be eminently polite. Be truthful and honest. Be concise in your answers. Don't volunteer information. And by all means, protect the integrity of your data by knowing exactly what the FAA is taking away with them and stamping each of those records as confidential to make your privacy interests known. 

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