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AVIATION SAFETY

FAA's Use of Emergency Orders to Revoke or Suspend Operating Certificates

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Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to testify about the Federal Aviation Administration's (FAA) use of emergency orders to suspend or revoke aviation operating certificates.¹ As you know, FAA is responsible for examining and testing the qualifications of airmen, such as pilots, mechanics, and flight engineers, as well as of aviation entities, such as airlines, airports, and repair stations, that seek a certificate to operate. FAA also periodically conducts inspections of airmen and aviation entities to monitor their compliance with the Federal Aviation Regulations (FAR). When FAA detects violations of the FAR by such certificate holders, it has a range of actions it can take to enforce compliance with the regulations. These options range from administrative actions, such as warning letters, to "certificate actions" to suspend or revoke an individual's or entity's operating certificate.² FAA may take certificate actions on a nonemergency basis, in which case the certificate holder may continue to operate until the matter is adjudicated. However, if FAA determines that the public interest and safety require the immediate suspension or revocation of an operator's certificate, the agency can issue an emergency order, a type of certificate action which takes effect immediately on issuance.

Since the fatal crashes of ValuJet Flight 592 in May 1996 and TWA Flight 800 in July 1996, FAA's oversight of the aviation community and the agency's enforcement actions in response to violations have come under increased scrutiny. While some have criticized FAA for not responding swiftly or forcefully enough to safety violations, others have questioned its haste in using emergency orders to suspend or revoke the certificates that pilots, airlines, and others need to operate.

At the request of Senator James M. Inhofe, we recently completed a review of FAA's use of emergency orders during fiscal years 1990 through 1997.³ Our report provided information on (1) the extent to which FAA used emergency orders, (2) the ways in which changes in FAA's policies might

¹FAA's use of emergency revocation orders is the subject of proposed legislation that would provide the certificate holder with the right to appeal the emergency nature of a revocation order before the National Transportation Safety Board (NTSB). This legislation adds a requirement for FAA to show just cause for bringing an emergency revocation action against a certificate holder. (See S. 842, introduced on June 5, 1997, and H.R. 1846, introduced on June 10, 1997.)

²A certificate suspension may be for a definite period (e.g., 30 days) or it may be indefinite (e.g., until the holder demonstrates qualifications to hold the certificate). When a certificate has been revoked, the former holder loses any right to use the certificate.

³Aviation Safety: FAA's Use of Emergency Orders to Revoke or Suspend Operating Certificates (GAO/RCED-98-199, July 23, 1998).

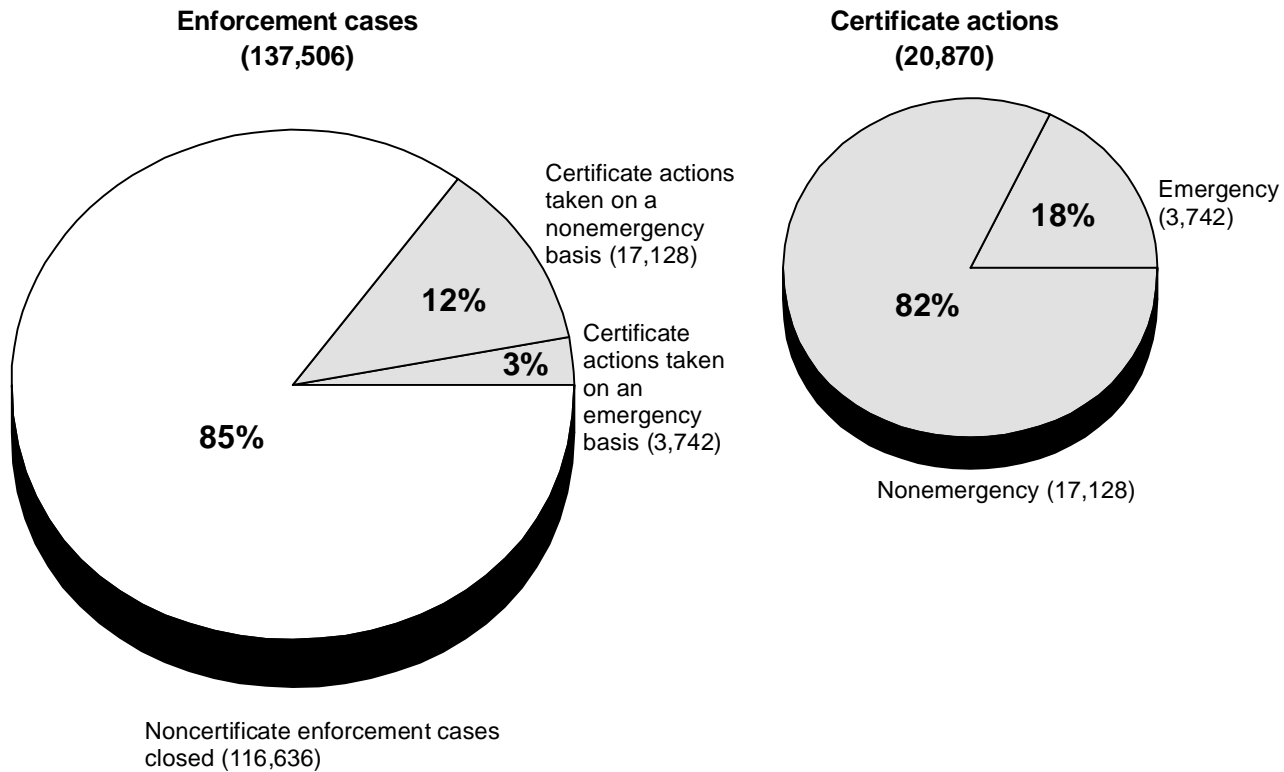
have affected the agency's use of emergency orders, and (3) the time needed for FAA to investigate alleged violations and issue emergency orders.

In summary,

- Of the 137,506 enforcement cases closed in fiscal years 1990 through 1997, FAA initiated 3 percent (3,742) using emergency orders.⁴ (See fig. 1.) FAA's nine regions differed in how frequently they issued emergency orders partly as a result of their different enforcement practices. Most of the emergency orders were issued to pilots for either their operating certificates or their certificates of their medical fitness to fly. Seventy-seven percent of the enforcement cases initiated as emergency actions resulted ultimately in the suspension or revocation of the certificate holder's operating certificate. Five percent resulted in FAA's dropping the case because it determined that no violation was committed or that it had insufficient evidence to prove a violation. One percent were overturned on appeal. The outcomes were not specified for six percent of the cases, and the remainder involved a variety of other outcomes.

⁴We restricted our analysis to enforcement cases that FAA closed in fiscal years 1990 through 1997. The enforcement cases that FAA initiates using an emergency order to revoke or suspend an operating certificate may ultimately be resolved in a variety of ways, including the revocation or suspension of a certificate, the imposition of a civil penalty (fine), or the expiration of the certificate. (See table II.3.)

Figure 1: FAA's Use of Emergency Orders to Initiate Enforcement Cases Closed in Fiscal Years 1990-97



Source: GAO's analysis of data from FAA's Enforcement Information System.

- In 1990, FAA decided that, for those cases in which revocations are based on a demonstrated lack of qualification to hold the relevant certificate, the certificate generally should be revoked immediately and not after the lengthy appeal process that nonemergency certificate actions can be subject to. FAA informally implemented this policy change in 1990 and 1991 before formally incorporating it into its compliance and enforcement guidance in 1992.⁵ This shift in policy is reflected in the increase in the numbers of emergency actions we observed: FAA initiated 184 revocations using emergency orders in fiscal year 1990. In subsequent years, over 320 emergency revocations were issued, on average, each year.

⁵FAA Order 2150.3A.

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- Although the use of emergency orders is intended to expedite the handling of serious enforcement cases, the time needed for FAA to investigate violations and issue emergency orders varied widely, frequently taking several months or longer. For half of the enforcement cases in fiscal years 1990 through 1997, FAA issued the emergency order within about 4 months after learning of the violation. For the remainder, the time needed to investigate and issue the order ranged from just over 4 months to over 2 years. During this time, the certificate holder could continue to operate, that is, to fly or repair aircraft and possibly pose a safety risk. While it is necessary for FAA to act swiftly in cases that present an immediate threat to safety or a demonstrated lack of qualifications, some aviation attorneys in the private sector have questioned whether it is appropriate or necessary for FAA to handle some cases as emergencies, especially if the violations occurred years before.

Background

FAA detects violations during safety and security inspections and also from such outside sources as public complaints or police reports. When FAA finds that certificate holders have violated aviation regulations, it has the statutory authority to take appropriate action. FAA's options for responding to violations range from administrative actions to legal actions, such as fines or certificate actions. The option chosen depends on such factors as the seriousness of the violation and the violator's prior enforcement history and willingness to comply with regulations. Both FAA's inspections and the processing of its enforcement cases are generally carried out by its regional offices.

An emergency order revoking an operating certificate is the most severe enforcement action that FAA can take against a certificate holder. An emergency order is generally used when a certificate holder is not qualified and may make use of the certificate⁶ or demonstrates a lack of care, judgment, and responsibility by, for example, operating an aircraft while under the influence of drugs or alcohol. An emergency order takes effect immediately on issuance. The certificate holder does not have an opportunity to contest the order before it is issued, and, unlike nonemergency certificate actions, the emergency order remains in effect while the certificate holder appeals. Emergency orders can be appealed to the National Transportation Safety Board (NTSB) and the U.S. Court of Appeals. (See app. I for more information on the appeals process.)

⁶If a pilot is in prison or in the hospital, for example, an emergency order would not be needed because the pilot would be unable to use the certificate.

FAA's Use of Emergency Orders

FAA used emergency orders in a small percentage of its enforcement cases. Of the 137,506 enforcement cases closed in fiscal years 1990 through 1997, FAA initiated 3 percent using emergency orders. The actual number of emergency orders ranged from a low of 322 in fiscal year 1990 to a high of 573 in fiscal year 1996. On average, FAA closed 468 cases annually in which it had initiated enforcement action using emergency orders. (See table II.1.)

Regional Use of Certificate Actions and Emergency Orders Varied

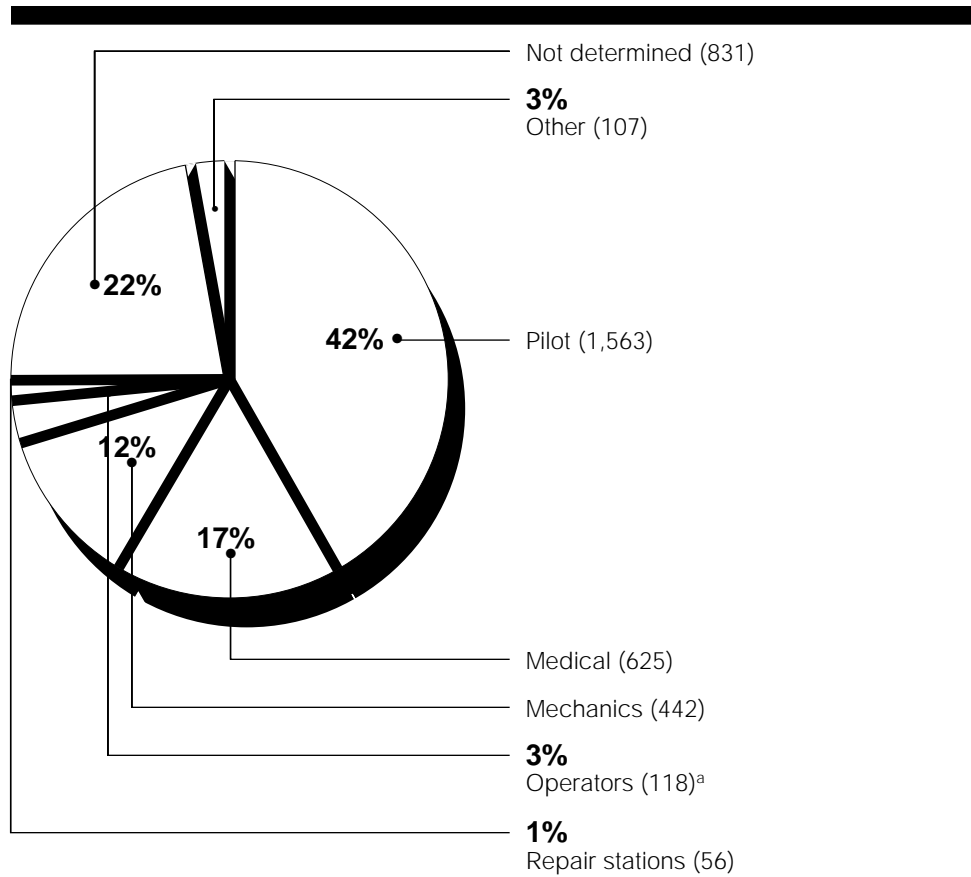
FAA regions varied in their use of emergency orders to initiate certificate actions; these differences appear to result in part from differences in enforcement practices. FAA used emergency orders to initiate 18 percent of its certificate action cases, on average, for fiscal years 1990 through 1997, but three regions initiated from 28 to 38 percent of their certificate actions using emergency orders. (See table II.2.) These differences among the regions reflect, in part, unusually high numbers of emergency orders to suspend or revoke medical certificates in the Eastern, Western-Pacific, and Southwest regions.

While most regions issued no more than a handful (one to five) of emergency orders to revoke or suspend medical certificates annually during this period, the Southwest region averaged nearly a dozen annually, and the Eastern and Western-Pacific regions averaged almost 25. Officials at these offices and at FAA headquarters were unsure why these regions initiated so many more emergency orders for medical certificates than did the other regions. However, they speculated that differences in enforcement practices in FAA's regional offices apparently affect whether emergency orders are used to revoke or suspend a medical certificate. One regional counsel suggested that some regions may handle medical certificate cases as nonemergency certificate actions. Another regional counsel suggested that the staff in her region were simply efficient in processing these cases, while in other regions, the certificates of pilots that do not meet requirements may simply be allowed to expire. (Medical certificates must be renewed every 6 months to 3 years, depending on the type of pilot.)

Emergency Orders Most Often Issued to Pilots

Nearly 60 percent of the emergency orders issued in the period we reviewed affected pilots: 1,563 pilot certificates and 625 medical certificates were revoked or suspended. (See fig. 2.) Pilot certificates represent the largest category of certificates FAA issues.

Figure 2: Types of Certificate Holders Affected by Emergency Orders, Fiscal Years 1990-97



^aOperators include, for example, airport operators, agricultural operators, scheduled and on-demand air carriers, and scheduled cargo carriers.

Source: GAO's analysis of data from FAA's Enforcement Information System.

Most Certificate Actions Initiated Using Emergency Orders Resulted in Revocations or Suspensions

A high percentage of the certificate actions initiated using emergency orders ultimately resulted in revocations or suspensions. Of the 3,742 cases that were initiated using emergency orders and that were closed in fiscal years 1990 through 1997, 77 percent of these resulted in the individual's or entity's losing the certificate. Five percent of the cases initiated as emergency actions ultimately resulted in the case being dropped with no enforcement action being taken, while 1 percent were overturned on appeal. (See table II.3.) FAA's database did not specify an outcome for six percent of the cases. The majority of the remaining cases were resolved by allowing the certificate to expire, by having operators successfully complete a reexamination of their qualifications, or by the imposition of a fine.

According to FAA officials we interviewed, the high numbers of emergency orders that were upheld for suspension and revocation reflects the fact that the agency takes emergency orders, particularly revocations, very seriously and is reluctant to initiate them without clear and convincing evidence. They strongly agreed that emergency revocations were used in cases in which individuals or entities lacked the qualifications for the certificate or demonstrated a lack of care, judgment, and responsibility by, for example, falsifying material aviation records or operating aircraft while under the influence of drugs or alcohol. We were told that requests to initiate emergency revocations against individuals are scrutinized at the local and division levels within Flight Standards before being referred to legal staff for action, while cases against air carriers and repair stations undergo additional review at FAA headquarters.

Redefinition of Emergency Has Affected FAA's Use of Emergency Revocations

A change to FAA's policy broadened the circumstances in which the agency uses emergency orders. Although the policy change applied to both emergency revocations and emergency suspensions, FAA officials focused on the rule's impact on the agency's use of revocations. According to FAA officials we interviewed, prior to 1990, many revocation actions had been taken on a nonemergency basis. In 1990, FAA concluded that an emergency order is appropriate when a revocation is warranted in the interest of public safety because the certificate holder lacks qualifications. Under these conditions, the revocation should generally be taken immediately. If the revocation is not taken immediately, the certificate holder could continue to operate for months or even years until the appeal process is completed. FAA informally implemented this policy change in 1990 and 1991 before formally incorporating it into FAA Order 2150.3A in February 1992. As a result, FAA increased the use of emergency orders to

initiate revocations from 184 in fiscal year 1990 to 327 in fiscal year 1992. In fiscal years 1993 through 1997, 303 emergency revocations were issued, on average, each year. (See table II.4.)

For Half of the Cases, Months Elapsed Between FAA's Learning of the Violation and Issuing the Emergency Order

The use of emergency orders is intended to expedite the handling of serious certificate actions. For half of the emergency actions we analyzed, however, more than 4 months elapsed between the time FAA learned of the violation and the time it issued the emergency order.⁷ During this period, FAA inspection staff investigated the violation, reached a preliminary determination that an emergency suspension or revocation was warranted, and then transferred the case to legal staff for the review and preparation of the case and the issuance of the emergency order. According to an FAA official, the use of an emergency order is not necessarily envisioned when FAA first learns of a violation and initiates its investigation. Although FAA has established no specific time frames for completing investigations and issuing emergency orders, these were completed within 10 days for 4 percent of the cases and within a month for 11 percent of the cases. Half of the cases, however, required more than 4 months (132 days) from the date of violation until FAA issued the emergency order. (See table II.5.) The majority of this time was spent on investigation, rather than preparation of the emergency order by FAA's legal staff.

We discussed these time frames and FAA's use of emergency orders with officials from FAA and NTSB, as well as with a number of aviation attorneys from the private sector. They provided a variety of opinions that reflected the tension between FAA's responsibility to act prudently in investigating thoroughly before revoking or suspending a certificate and its responsibility to act swiftly in cases that present an immediate threat to safety or a demonstrated lack of qualifications. The scope of our review of FAA's use of emergency orders did not permit the kind of case analysis that would determine how much time FAA expended on each investigation, particularly in more complex cases, or whether FAA had struck the appropriate balance between these competing responsibilities.

FAA officials offered several reasons why some cases can take months to investigate and prepare. For example, both inspectors and legal staff have

⁷Our analysis focused on the time between when FAA learned of the violation and the time of issuance of the emergency order, rather than on the length of time between the actual occurrence of the violation and the last legal action taken to close out the case. We chose this time frame because the agency has a fair amount of control over the time needed for investigation, case preparation, and the issuance of the emergency order. In contrast, FAA has less control over the time between when a violation occurs and when it learns of the violation, or the amount of time that it must wait before all appeals are completed so that the case is resolved and can be closed out.

many other responsibilities besides investigations and the preparation of emergency orders, such as accident investigations. In addition, certain types of cases may take longer because they are complex, involve the falsification of maintenance or training records, or require extensive checking of these records. The fact remains, however, that months often elapse between the occurrence of a violation, the time FAA learns of that violation, and the date the agency issues an emergency order of suspension or revocation. During this time, a certificate holder who could lack qualifications or who could represent a threat to safety could continue to operate.

In contrast, the private sector attorneys we interviewed questioned whether it is appropriate for FAA to use emergency orders for some violations that are years old or for cases that have required months to investigate and issue. While they acknowledged the need for an enforcement tool that allows FAA to act swiftly when aviation safety is a concern, they raised questions about whether some violations represented an immediate safety threat.

Mr. Chairman, this concludes our statement. We would be pleased to respond to any questions at this time.

FAA's Process for Appealing Emergency Certificate Actions

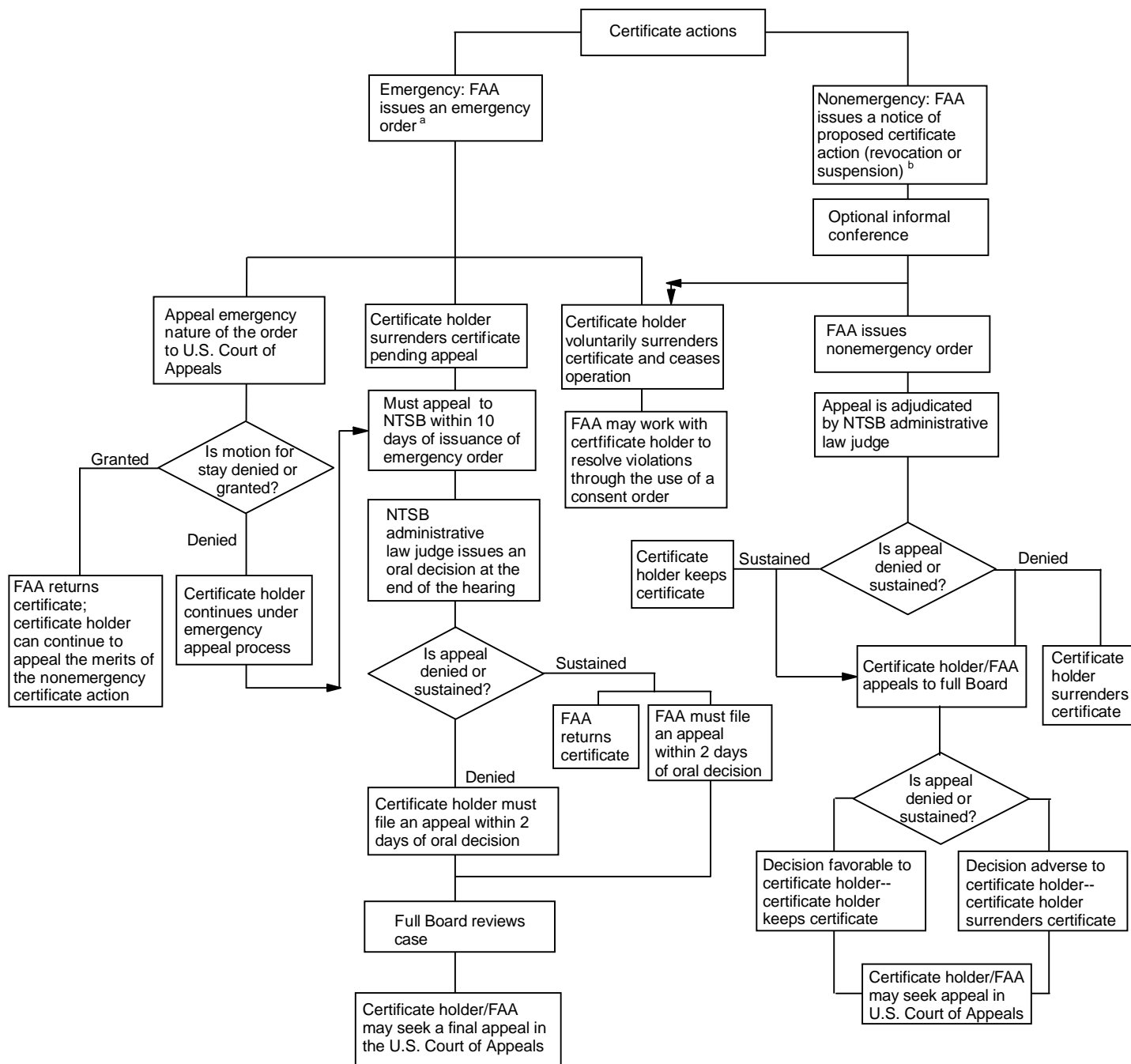
When faced with an emergency order, a certificate holder has several appeal options. First, the certificate holder can appeal the emergency nature of the order. The certificate holder may seek a direct review of FAA's emergency determination by a federal court of appeals.¹ In such cases, the certificate holder petitions the court for a review of the emergency order and seeks a stay of the order. According to the Assistant Chief Counsel in FAA's Enforcement Division, such cases are generally decided by the federal court of appeals within 5 to 7 working days.

The certificate holder may also appeal the underlying merits of the emergency order to the National Transportation Safety Board (NTSB), where the case is adjudicated by an administrative law judge. The certificate holder must appeal within 10 days after receiving the emergency order from FAA. The presiding administrative law judge's initial decision is made orally at the end of the hearing and is final unless appealed. Any appeal by the certificate holder or FAA of the initial decision must be filed with NTSB within 2 days of the hearing, and the entire matter must be resolved within 60 days of the date on which the FAA Administrator advised NTSB of the emergency nature of the order. Further appeals are available to both FAA and the certificate holder in the federal courts of appeals. Figure I.1 shows the steps in initiating and appealing an emergency order.

¹49 U.S.C. section 46110.

**Appendix I
FAA's Process for Appealing Emergency
Certificate Actions**

Figure I.1: Steps for Initiating and Appealing Emergency Orders



Appendix I
FAA's Process for Appealing Emergency
Certificate Actions

Source: FAA Order 2150.3A.

Tables Related to FAA's Use of Emergency Orders

Table II.1: Enforcement Cases Closed, Fiscal Years 1990-97

Fiscal year	Number of enforcement cases closed	Number of certificate actions closed	Certificate actions as a percentage of enforcement cases closed	Number of closed cases initiated using emergency orders	Emergency orders as a percentage of certificate actions closed
1990	13,218	3,126	24	322	10
1991	15,341	2,598	17	482	19
1992	16,462	2,873	17	532	19
1993	23,535	3,136	13	487	16
1994	19,034	2,543	13	383	15
1995	17,987	2,185	12	503	23
1996	16,180	2,200	14	573	26
1997	15,749	2,209	14	460	21
Total	137,506	20,870	15	3,742	18

Source: GAO's analysis of data from FAA's Enforcement Information System.

Table II.2: Regional Use of Emergency Orders, Fiscal Years 1990-97

Region	Number of certificate actions	Number of closed cases initiated using emergency orders	Number of emergency orders as a percentage of certificate actions
Southwest	2,175	820	38
Eastern	2,000	596	30
Western-Pacific	2,477	703	28
New England	587	147	25
Alaskan	633	142	22
Great Lakes	1,656	326	20
Southern	3,986	560	14
Central	1,303	182	14
Northwest	1,501	221	15
Other ^a	4,552	45	1
Total	20,870	3,742	18

^aIncludes enforcement actions opened by FAA's Aeronautical Center, European region, and headquarters, as well as those enforcement actions based on violations voluntarily self-disclosed to FAA by aviation entities.

Source: GAO's analysis of data from FAA's Enforcement Information System.

Appendix II
Tables Related to FAA's Use of Emergency
Orders

**Table II.3: Recommended Type of
Emergency Action Compared With
Final Action Taken, Fiscal Years
1990-97**

Final action taken	Emergency action initially recommended		
	Revocation	Suspension	Total
Certificate revoked	1,656	35	1,691
Certificate suspended	322	887	1,209
No action	83	87	170
FAA action reversed	43	9	52
Other			
Certificate expired	29	103	132
Successful reexamination	25	163	188
Civil penalty (fine)	21	6	27
Unable to locate certificate holder	11	11	22
Consent order ^a	6	0	6
Waiver of penalty under the Aviation Safety Reporting Program ^b	2	0	2
U.S. attorney declines to prosecute	2	0	2
Referred to U.S. attorney	1	0	1
Cease-and-desist order ^c	1	0	1
Unspecified	109	131	240
Administrative	0	1	1
Total	2,311	1,433	3,742

^aA consent order ordinarily includes an agreement that the violator will take corrective and remedial action as a condition for the suspension or forgiveness of a portion of the sanction or, in some cases, a modification of the proposed sanction.

^bThe Aviation Safety Reporting Program is a voluntary self-disclosure program for pilots established in April 1975. In exchange for self-disclosure of information on pilot errors, which are reported in a database administered by the National Aeronautics and Space Administration, FAA generally agrees not to take legal action in response to reported unintentional violations.

^cA cease-and-desist order is an order of an administrative agency or court prohibiting a person or business from continuing a particular course of conduct.

Source: GAO's analysis of data from FAA's Enforcement Information System.

**Appendix II
Tables Related to FAA's Use of Emergency
Orders**

Table II.4: FAA's Use of Emergency Revocations, Fiscal Years 1990-97

Fiscal year	Revocations	Total emergency orders^a
1990	184	322
1991	284	482
1992	327	532
1993	291	487
1994	281	383
1995	264	503
1996	382	573
1997	298	460
Total	2,311	3,742

^aIncludes emergency suspensions and emergency revocations.

Source: GAO's analysis of data from FAA's Enforcement Information System.

Table II.5: Number of Days Between the Date FAA Learned About the Violation and the Date It Issued the Emergency Order, by Percent of Cases, Fiscal Years 1990-97

Amount of time elapsed^a	Percent of cases
10 days or less	4
30 days or less	11
180 days or less	65
365 days or less	86

^aThe median time elapsed was 132 days. (The median is the number representing the point dividing the upper half of the cases from the lower half of the cases in terms of elapsed days.)

Source: GAO's analysis of data from FAA's Enforcement Information System.

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