Altitude Deviations . . .

"NOVEMBER 1234, say altitude," can be a wake-up call. Altitude deviations are still too common, in spite of, or perhaps because of, ever-increasing cockpit automation.

How far off of assigned altitude can you be before the FAA considers it a violation? In theory, any deviation from an assigned altitude would qualify. In practice, violations begin at 300 feet above or below assigned altitude. ATC considers a Mode C altitude readout valid as long as it varies less than 300 feet from pilot-reported altitude, so it would be difficult to prosecute smaller deviations.

What regulation does an altitude bust violate? FAA enforcement against altitude deviations typically cite FAR Part 91.123, “Compliance With ATC Clearances and Instructions” and Part 91.13, “Careless or Reckless Operation.” The FAA Sanction Guidance Table lists 30- to 60-day certificate suspension as the sanction range for failure to maintain altitude, although the agency has settled “minor” deviations for a week or less. Inexperienced private pilots may be able to escape a suspension through a remedial training letter of correction, but FAA policy does not make these meritorious resolutions available to professional crews.

In the past, FAA policy dictated that when a computer detected an altitude deviation of 500 feet or less, no near-midair collision occurred, the situation should normally be addressed by means of administrative action. However, that was not the case if a prior altitude deviation occurred within the previous two years, or if some other aggravating circumstances required initiation of legal enforcement action. It is difficult to determine from a review of the case law whether or not the FAA is still following this eminently reasonable policy.

Do NASA Aviation Safety Reporting System (ASRS) forms work for altitude busts? Yes, with a few interesting exceptions. The ASRS program was created for the purpose of gathering information on deficiencies in aviation operations, and offers anonymity and a kind of immunity to pilots who promptly report the circumstances surrounding an “event.” NASA was chosen as a third party to collect and analyze the data in order to ensure complete confidentiality of the reporting pilots’ identities.

The NASA form is not a complete “get out of jail free” card. It’s a get out of jail (or a fine) with a record card. A pilot who violates an FAR and uses a NASA form for “immunity” does not have to turn in his or certificate for any period of time. However, that pilot’s record will show the violation and the length of the suspension that would have been imposed. In order to take advantage of this limited immunity, a pilot needs to meet four conditions:

1. File a form with NASA within 10 days. File online at http://asrs.arc.nasa.gov/report/electronic.html and you will receive a verification code to show that you filed the report on time.

2. No violation for five years prior to the event.

3. The event cannot involve a criminal offense, accident or show such a serious lack of qualifications that the pilot ought to have his/her certificate revoked.

4. The violation must be inadvertent and not deliberate.

The NTSB rules on pilot appeals from FAA suspension orders. There have been altitude deviations that the NTSB ruled were not inadvertent, and therefore NASA forms were of no use to the crews. The “inconvenient truth” is that you cannot turn down an early descent in order to conserve fuel (and preserve your range).

Last year, a Citation pilot refused a descent due to “operational necessity.” That vague response prompted the controller to ask for more specificity about the necessity, and the pilot volunteered, “Flight planning with fuel.” Upon hearing that, the controller quickly retorted: “OK, you’ll have to land somewhere else, I’ve got traffic.” Despite that, the pilot continued to argue against any descent or turn because “that wasn’t part of our flight plan.” He eventually descended, and received a 60-day suspension, which the NTSB insisted that he serve, despite his timely filed NASA form, because his deviation was so obviously intentional. The NTSB has stated in a number of cases that, “Instructions from ATC are not matters subject to negotiation or bargaining.”

Are there any valid defenses? Yes. Part 91.123 specifically allows a pilot to deviate from a clearance if an emergency exists or if the deviation is in response to a TCAS traffic alert. The rule also requires that the pilot notify ATC of a deviation due to emergency or TCAS resolution advisory “as soon as possible.” Informing ATC that you are unable to accept a turn due to a thunderstorm cell or that you cannot make a dramatic descent within a short distance because it is physically impossible does not mean that you are improperly “negotiating” with ATC in violation of Part 91.123. On the other hand, the NTSB seldom accepts an “emergency” defense if the pilot never mentioned the emergency on frequency. The cases vary somewhat when the defense is that the autopilot or FMS is to blame. The NTSB typically holds the crew responsible for vigilantly monitoring this equipment.

Even if a pilot deviates from a clearance, he or she may not have to serve a suspension if the controller never informed the pilot of the deviation. The FAA order governing controllers states that: “When it appears that the actions of a pilot constitute a pilot deviation, notify the pilot, workload permitting.” Based on this requirement, the NTSB has developed case law, referred to as the Brasher doctrine, that allows sanction to be waived under these circumstances. This produces the same result as a properly filed NASA form: A pilot will have record of violation, but will not have to turn in his or her certificate to serve a suspension.

In most of the reported cases, altitude deviations occurred following misunderstood or forgotten changes in altitude assignment. Crews need to be consistent in verifying a new altitude assignment with a read-back and verifying that the altitude is properly entered into the equipment.

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... the most common bust