

CHANGE**U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION****ORDER
2150.3B
CHG 1**Effective Date:
10/23/09

National Policy

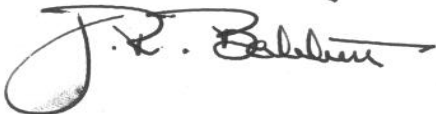
SUBJ: Enforcement Decision Process

- 1. Purpose.** This change to FAA Order 2150.3B modifies the Enforcement Decision Tool (EDT), which agency enforcement personnel use to determine the appropriate action (legal, administrative, informal) to take for noncompliance with regulatory requirements. The change simplifies the enforcement decision process, eliminates redundancies, and provides flexibility to allow program offices to develop specific worksheets and guidance for their organizations.
- 2. Who this change affects.** The change affects all agency personnel who investigate, report, or process enforcement actions.
- 3. Disposition of Transmittal Paragraph.** Retain this transmittal sheet until the directive is cancelled by a new directive.

PAGE CHANGE CONTROL CHART

Remove Pages	Dated	Insert Pages	Dated
5-1 (and 5-2)	10/01/07	5-1 (and 5-2)	10/23/09
5-5 (and 5-6)	10/01/07	5-5 (and 5-6)	10/23/09
5-11 (and 5-12)	10/01/07	5-11 (and 5-12)	10/23/09
5-14 (and 5-13)	10/01/07	5-14 (and 5-13)	10/23/09
8-3 (and 8-4)	10/01/07	8-3 (and 8-4)	10/23/09
8-7 (and 8-8)	10/01/07	8-7 (and 8-8)	10/23/09
Appendix F, F-1 thru F-15	10/01/07	Appendix F, F-1 thru F-10	10/23/09

- 4. Administrative Information.** This Order change is distributed to divisions and branches in Washington headquarters, regions, and centers and to all field offices and facilities.



J. Randolph Babbitt
Administrator

Chapter 5. Compliance and Enforcement Actions and Responsibilities of the FAA Program Offices

1. Purpose. This chapter provides guidance for the FAA program offices on compliance and enforcement actions and other matters within their area of responsibility.

2. Selection of Enforcement Action. FAA investigative personnel review the evidence compiled during an investigation to determine whether a violation of the regulations has been committed. If FAA investigative personnel determine there is insufficient evidence to support a violation, to establish a lack of qualification of a certificate holder, or to raise a question concerning the qualification of a certificate holder, then neither informal action, administrative action, nor legal enforcement action is appropriate. In determining the type of enforcement action to be taken when evidence of statutory or regulatory noncompliance exists, FAA investigative personnel apply the guidance in Appendix F, Enforcement Decision Process, and the range of actions set forth in chapter 2, subparagraph 3.f.(1). FAA investigative personnel use the applicable sanction guidance policy only in those cases where they determine that legal enforcement action is warranted.

3. Administrative Action. FAA investigative personnel determine whether administrative action is appropriate by applying the guidance in Appendix F, Enforcement Decision Process, which includes evaluating the facts of a violation against the criteria in this section

a. General. The purpose for administrative enforcement action is to provide FAA investigative personnel with an administrative means for addressing violations when, in the judgment of FAA investigative personnel, legal enforcement action is not necessary. While the FAA takes administrative enforcement action only in cases where there is evidence to prove a violation, the action does not charge the person involved with a violation. Administrative action brings the incident to the attention of the person involved, documents corrective action if appropriate, encourages future compliance with the regulations, and provides a source of information for the FAA's use. Section 13.11 of Title 14 Code of Federal Regulations authorizes two types of administrative actions--warning notices and letters of correction.

b. Warning Notice. A warning notice is a letter or form addressed to the apparent violator that brings to that person's attention the facts and circumstances of the incident. The warning notice advises that, based on available information, the apparent violator's action or inaction appears to be contrary to the regulations, but does not warrant legal enforcement action. It also requests future compliance with statutory and regulatory requirements. *See* sample warning notice in Figure A-10 of Appendix A.

c. Letter of Correction.

(1) A letter of correction serves the same purposes as a warning notice, but is used by FAA investigative personnel when there is agreement with the company, organization, or airman that corrective action acceptable to the FAA has been taken, or will be taken within a reasonable

time. *See* sample letter of correction in Figure A-11 of Appendix A. A letter of correction usually confirms a discussion with the apparent violator in which the apparent violator agrees to take appropriate corrective action to remedy the noncompliance. FAA investigative personnel determine whether corrective action must be immediate or may be taken within a reasonable period of time.

(2) A letter of correction may also cover discrepancies or areas of needed improvement, but FAA investigative personnel should not use a letter of correction solely to forward suggestions and recommendations by themselves. The primary purpose of a letter of correction is to bring apparent noncompliance to the attention of an apparent violator and document action that has or will be taken to correct conditions that are in apparent violation of statutory or regulatory requirements. In a letter of correction, FAA investigative personnel may reference an attachment containing recommendations and suggestions that are appropriately set apart and identified to prevent a recommendation or suggestion from being misinterpreted as reflecting an apparent violation requiring corrective action.

d. Airport Certification Letters of Correction. For airport certification program purposes, an airport inspector uses either the sample letter of correction or the letter of correction form. An airport inspector uses the form when a single page provides enough space but not when a continuation form or sheet would be needed. *See* sample letter of correction in Figure A-12.

e. Completion of Corrective Action. When corrective action has not been completed at the time the letter of correction is issued, FAA investigative personnel perform a timely follow-up inspection. When the corrective action is completed, FAA investigative personnel send a letter acknowledging that fact and closing the case. *See* sample letter acknowledging completion of corrective action in Figure A-13 of Appendix A. FAA enforcement personnel take more severe enforcement action for any continued noncompliance following receipt of the letter of correction. If the apparent violator fails to complete the corrective action within the agreed-upon timeframe, FAA enforcement personnel open a new EIR and initiate legal enforcement action against the apparent violator for both the past and any current violations.

f. Letters of Investigation in Administrative Action. When FAA investigative personnel have not previously issued a letter of investigation, they include the following language in a warning notice: “If you wish to add any information in explanation or mitigation, please write to me at the above address.” FAA investigative personnel do not include this language in letters of correction, because apparent violators accept letters of correction. If the apparent violator provides any information in response to the warning notice, FAA investigative personnel evaluate it to determine whether the warning notice continues to be appropriate. If FAA investigative personnel determine the warning notice is not appropriate, they withdraw it. If FAA investigative personnel insert this language in a warning notice to an individual, then they also include a privacy act notice with the warning notice. *See* sample privacy act notice for warning notice in Figure A-14 of Appendix A.

action is otherwise in the public interest. The division manager's written explanation is included in the EIR.

e. Streamlined No Action and Administrative Action Process (SNAAP). FAA inspectors for the Flight Standards Service may use a streamlined process for taking administrative action (letter of correction or warning notice) for apparent violations that do not require extensive investigation. FAA inspectors may not use the SNAAP for remedial training, voluntary disclosures under the Voluntary Disclosure and Reporting Program, or cases where further corrective action must be taken.

5. Informal Action. Informal action is either oral counseling or written counseling. Under the guidance in Appendix F, a program office may address an apparent violation with informal action, provided the criteria in chapter 5, subparagraphs 4.b.(1)-(6) are satisfied and the apparent violation is a low safety risk. The FAA takes informal action only in cases where there is evidence to prove a violation; however, an informal action does not charge the person involved with a violation. Each program office has specific guidance on the form and manner its investigative personnel use to issue oral or written counseling. FAA investigative personnel record data on informal actions in the appropriate program office database as provided in subparagraph 7.c. of Appendix F.

6. Reinspection and Reexamination.

a. General.

(1) Reinspection. FAA investigative personnel under 49 U.S.C. § 44709 may reinspect at any time a civil aircraft, aircraft engine, propeller, appliance, air navigation facility, or air agency. This authority includes, but is not limited to, such activities as conducting surveillance, ramp checks, and routine inspections.

(2) Reexamination. FAA investigative personnel use the reexamination authority of 49 U.S.C. § 44709 when there is a reasonable question whether an airman is qualified to hold a certificate. The purpose of a reexamination is to determine whether an airman remains qualified to hold his or her certificate. If the facts of a particular situation demonstrate that the certificate holder is not qualified, then reexamination is not appropriate and certificate action is taken to revoke that certificate based on the demonstrated lack of qualification.

(3) Reexamination and reinspection are not punitive measures, and they do not preclude initiating concurrent punitive enforcement action when appropriate. When a certificate holder fails to comply with a request for reexamination or reinspection, FAA enforcement personnel suspend the certificate under 49 U.S.C. § 44709. This action removes a person that may not be qualified from the system and encourages the person to comply with the reexamination or reinspection.

b. Procedures for Reexamination. Under NTSB case law, reexamination may be required when FAA investigative personnel or an office with medical responsibility has a reasonable basis to believe that a certificate holder may not be qualified to exercise the privileges of a certificate or rating.

(1) FAA investigative personnel or the FAA office with medical responsibility generally notifies the certificate holder by letter sent regular mail and either by either certified mail, return-receipt requested, or registered mail, that a reexamination is necessary. *See* sample reexamination letter in Figure A-15 of Appendix A. In some instances, instead of a letter, investigative personnel may notify the certificate holder of the necessity for the reexamination through the issuance of an administrative subpoena. Generally, the certificate holder is permitted a reasonable period of time in which to accomplish the reexamination. The certificate holder is advised in the letter that failure to submit to reexamination will result in referral of the matter to legal counsel for possible suspension of the certificate pending reexamination. In some circumstances, immediate action to suspend the certificate in advance of the reexamination in accordance with chapter 5, subparagraph 6.c. may be appropriate. For example, immediate action may be necessary in advance of the reexamination when an airman is believed to have a medical condition that is incompatible with aviation safety and safety considerations will not allow for the usual procedures to be followed.

(2) Generally the letter requests that within 10 days of the date of the letter the certificate holder contact the FAA to schedule the time and place of the reexamination. Reasonable consideration is given to the convenience of the airman. The letter also states the factual basis on which the reexamination is requested and the scope of the reexamination. For reexamination requests, FAA investigative personnel point out precisely the certificate or rating that will be reexamined. For medical certificates, the office of medical responsibility identifies the specific information or history needed to determine whether the holder of an airman medical certificate meets the applicable medical standards.

(3) In cases in which punitive enforcement action may be taken in addition to reexamination, FAA investigative personnel take care not to suggest that reexamination is the only action to be taken. Where appropriate, the letter states that the FAA may take enforcement action in addition to the requested reexamination.

c. Failure to Submit to Reexamination or Reinspection. If the certificate holder fails to submit to reexamination within a reasonable time or to cooperate with a reinspection, FAA investigative personnel follow the procedures in chapter 5, subparagraphs 6.c.(1)-(7).

(1) FAA investigative personnel or the FAA office with medical responsibility prepares an EIR recommending suspension of the certificate or rating until the holder submits to and passes the reexamination or is reinspected and found to be qualified. Emergency certificate action generally is appropriate.

(2) The EIR contains the facts and evidence that support the need for reexamination or the facts surrounding the attempted reinspection. For example, if an aircraft accident gave rise

materials for transport by air may voluntarily disclose to the FAA apparent violations of 49 C.F.R. part 175.

c. Guidance for Program Participation. Guidance about the voluntary disclosure reporting program for hazardous materials violations is contained in Advisory Circular AC No. 121-37.

d. Criteria for Acceptance of Voluntary Disclosure. The FAA may accept a voluntary disclosure of an apparent violation under the voluntary disclosure reporting program for certain hazardous materials violations only if the conditions in chapter 5, subparagraphs 8.d. (1)-(5) are met.

(1) The certificate holder or foreign air carrier has notified the HAZMAT branch manager of the apparent violation within 24 hours after detecting it and before the FAA has learned of it by other means.

(2) The apparent violation was inadvertent.

(3) The apparent violation does not indicate a lack, or reasonable question of a lack, of qualification of the certificate holder to hold a certificate, or, in the case of a foreign air carrier, operations specifications.

(4) The certificate holder or the foreign air carrier took immediate action to terminate the conduct that resulted in the apparent violation.

(5) The certificate holder or the foreign air carrier has developed or is developing a comprehensive fix satisfactory to the FAA that includes a follow-up self-audit to ensure the corrective action taken prevents a recurrence or noncompliance.

9. Remedial Training.

a. General. Using the Enforcement Decision Process in Appendix F, a Flight Standards inspector determines whether remedial training is the appropriate action to take for a violation by an airman. If so, the inspector offers the airman an opportunity for training. The inspector documents the corrective action.

b. Applicability. This program applies to individual airman certificate holders not using their certificate in air transportation at the time of the apparent violation.

c. Procedures. When an apparent statutory or regulatory violation becomes known to the FAA, appropriate Flight Standards management assigns an investigating inspector who initiates a full investigation in accordance with current FAA orders and policy. If, during the investigation, the investigating inspector believes that based on the outcome of the Enforcement Decision Process in Appendix F and the factors in chapter 5, subparagraph 9.d., remedial training is appropriate, the inspector follows the procedures in chapter 5, subparagraphs 9.e. through m.

d. Factors for Participation in Remedial Training. The inspector considers the factors in chapter 5, subparagraphs 9.d.(1)-(5) in determining whether remedial training is appropriate.

(1) Whether future compliance can reasonably be ensured through remedial training alone.

(2) Whether the airman displays a constructive attitude that would lead the inspector to believe the airman has a willingness to comply, so noncompliance is less likely in the future.

(3) Whether the conduct discloses a lack of, or reasonable basis to question, the airman's qualifications. Remedial training is not an appropriate response in these circumstances. If these circumstances are present, the inspector follows the guidance in chapter 5, paragraph 5 for reexamination or chapter 5, subparagraph 10.b. for certificate revocation.

(4) Whether the airman has a record of enforcement actions. Remedial training will generally be appropriate for airmen with no record of violations, but a record of violation does not automatically make remedial training inappropriate. For this program, administrative actions and legal enforcement actions, including a civil penalty compromise or a compromise order, or a waiver of imposition of a certificate or civil penalty action in accordance with the aviation safety reporting system, may be considered.

(5) Whether the conduct is deliberate, grossly negligent, or constitutes a criminal offense.

e. Letter of Investigation. The inspector sends the airman a letter of investigation (LOI) that advises the airman that he or she may be allowed to participate in the corrective action through remedial training program. The LOI also advises that failure to respond to the LOI in the time specified in the LOI will preclude participation in the program, and that the airman in the response must express an interest in pursuing a prescribed course of remedial education and must cooperate with the investigation. *See* sample letter of investigation—remedial training in Figure A-16 of Appendix A.

f. Completion of Investigation. In all cases, the inspector completes the investigation and the EIR.

g. Communication with Airman. The inspector schedules a meeting with the airman in person (or by teleconference if the inspector determines a meeting is impractical and not necessary). During the meeting or teleconference, the inspector confirms whether remedial training is appropriate, proposes a course of study, and then develops a remedial training program.

h. Development of Training Program. Before the meeting or teleconference, the inspector develops a suitable course of remedial study that clearly states a training objective. The inspector coordinates development of each training program with other inspectors and the office's FAA Safety Team program manager (FPM), as appropriate, if more expertise is needed.

(1) In determining whether the airman has a constructive attitude toward compliance, the inspector considers the timeliness and nature of the response to the LOI, including the airman's participation in a meeting with the inspector and the manner in which the airman has met all regulatory responsibilities.

(2) The inspector describes a proposed course of study, including training objectives and expected completion date, to the airman. In developing the training regimen, the inspector considers the nature of the apparent violation and, if relevant, the airman's enforcement record, if any. The inspector considers the specific needs of the candidate, and the availability of qualified instructors, simulators, or other training equipment or materials in the airman's geographic area of operation. The inspector requests and considers the airman's views on the proposed course before developing a final remedial training program. *See* sample remedial training agreement in Figure A-17 of Appendix A.

i. Explanation to Airman. The meeting or teleconference between the inspector and the airman is limited to a discussion of an appropriate remedial training program to help the airman to comply with safety regulations in the future and the time it should take to accomplish it. The merits of the underlying incident or investigation are not otherwise discussed. The inspector advises that because participation in a remedial training program is a substitute for legal enforcement action, the airman may not both legally challenge the apparent violation and participate in the program. If at any time the airman elects to contest the matter in litigation, the inspector advises that the remedial training agreement becomes null and void, the remedial training process terminates, and appropriate legal enforcement action is taken. Under these circumstances, no further efforts to undertake remedial training are pursued.

j. Letter of Agreement. When an agreement on training has been reached, the inspector and the airman sign and date a letter of agreement specifying the terms and conditions of the remedial training program. One condition of participating in the program is the airman's express agreement to waive voluntarily the applicability of the time limitations period in 49 C.F.R. § 821.33 to any legal enforcement action arising from the conduct for which the remedial training is imposed. The waiver is documented in the letter of agreement. The remedial training agreement clearly states the objective of the prescribed remedial training course, includes a completion date and the method by which the airman documents satisfactory completion of the training.

k. Verification of Completion of Training. The inspector verifies that the training objectives have been met. Within the time specified in the training agreement, the airman provides the required evidence that training has been completed, including an original record of training, signed by each instructor or authorized official of the training establishment, certifying the areas of training and that the training program has been satisfactorily completed. For internet online courses, a computer-generated completion certificate is acceptable. This certification and other documentary evidence, such as logbook entries and aircraft rental invoices, are placed in the EIR as required by the remedial training agreement. A discussion with the instructor who provided the training may also be appropriate, in which case a record of that discussion is included in the EIR.

l. Issuance of Letter of Correction. When the inspector is satisfied that the terms and conditions of the remedial training course and objective have been met, he or she closes the enforcement action with a letter of correction. *See* sample letter of correction for remedial training in Figure A-18 of Appendix A. Issuance of the letter of correction, which contains a statement that the required remedial training has been satisfactorily accomplished, closes the case.

m. Failure to Complete Training. If the airman fails to meet any term or condition of the program or the agreement, the inspector notifies the airman by letter, sent by regular mail and either certified mail, return-receipt requested, or registered mail, that participation in the training program has been terminated, and that appropriate legal enforcement action will be taken. *See* sample letter of termination in Figure A-19 of Appendix A.

n. Remedial Training Case Study. A remedial training case study is found in Figure A-20 of Appendix A.

10. Voluntary Surrender of Certificate.

a. Purpose. This section provides guidelines for handling a certificate holder's voluntary surrender of a certificate.

b. Surrender of FAA Certificate for Cancellation. The FAA's regulations provide for the voluntary surrender of FAA-issued certificates for cancellation. *See*, for example, 14 C.F.R. §§ 61.27(a), 63.15(c), and 65.15, 119.61(a) (1), 145.55(a) and (b). FAA investigative personnel, however, refuse the voluntary surrender of a certificate if it appears the surrender is being attempted to avoid certificate action. FAA investigative personnel should be alert for indications that a certificate holder is attempting to avoid a certificate action through the voluntary surrender of a certificate, including whether the certificate holder is the subject of an enforcement investigation or enforcement action. Consequently, before determining whether to accept a certificate holder's voluntary surrender of a certificate, FAA investigative personnel review actions in the EIS and other databases showing investigative or enforcement activity. If the EIS or any other database reveals that the certificate holder is the subject of an enforcement investigation or enforcement action, FAA investigative personnel refuse the certificate holder's attempt to voluntarily surrender a certificate and continue with an investigation and recommend enforcement action, if appropriate. *See* sample voluntary surrender of certificate form in Figure A-21 of Appendix A.

11. Legal Enforcement Actions.

a. General. This section describes enforcement actions that FAA investigative personnel may determine are necessary or appropriate for violations once they determine that legal enforcement action is appropriate based on the guidance in Appendix F, Enforcement Decision Process, and the guidance in this chapter.

personnel have any opinions or feelings about the case, they state them in section B and label them as opinions. FAA investigative personnel state a conclusion, a recommendation about sanction, as appropriate, and set out the reasons justifying their enforcement action recommendations and sanction recommendations. If FAA investigative personnel receive any information after they forward the EIR to the next reviewing official, they prepare an analysis and an amendment to the EIR and forward them with the information to that reviewing official. Their analysis indicates whether, based on the information, they have changed their conclusions or recommendations about the facts, the alleged statutory or regulatory violations, or sanction.

(4) Enforcement Decision Process Worksheet. FAA investigative personnel include in section B of the EIR the Enforcement Decision Process Worksheet prepared in accordance with the guidance in Appendix F of this order.

(5) Regional Program Office Sanction Recommendations. Regional program office personnel making a sanction recommendation about the amount of sanction, that is number of days or dollars, that should be sought in a case, prepare a separate written statement for such recommendation. In this written statement, Regional program office personnel state their specific sanction recommendation and the reasons supporting it. The written statement is included in section B of the EIR.

c. Section C. Items of Proof. Section C consists of the items of proof and a numerical index of those items. The items of proof consist of originals or certified copies of each piece of evidence gathered to prove the apparent violations. When the size or nature of physical evidence precludes including it in the EIR, FAA investigative personnel include appropriate photographs of such evidence in the EIR and an explanation of where the physical evidence is located. The numerical index of the items of proof provides a brief statement of each item's content. Each item of proof is numbered consecutively. The items of proof are listed in a logical order to facilitate review. Each piece of documentary evidence referenced in section B of the EIR is included as an item of proof. The items of proof might include records of interview, witness statements, relevant portions of maintenance manuals or operations manuals pertinent to the violation, aeronautical charts current on the date of the violation, copies of logbooks, and photographs. Printed material about violation history from the EIS or a program office-specific database, such as the Program Tracking and Reporting Subsystem (PTRS) is not included as an item of proof in section C. FAA investigative personnel summarize relevant information from such database records and include it in section B of the EIR.

4. Preparation of Form 2150-5.

a. EIR Number. FAA investigative personnel enter the report number, which identifies a specific EIR, in the appropriate block on Form 2150-5. The report number is a 12-digit code consisting of the year, the region, the field office, and a sequential number as explained in chapter 9 (for example, 2005WP010001). The block identified as *related number* refers to the report number for another EIR associated with the underlying incident. FAA investigative personnel enter the report number for the related EIR in the same code form. If there is more than one related case, FAA investigative personnel select a case to be the *lead* case and enter that case as the related EIR case number for all related cases.

b. Instructions for Completing Blocks 1-33 on Form 2150-5.

(1) Block 1. Name. Enter the name of the apparent violator. The entry shows an individual by last, first, and middle name. (for example, Smith, Ralph Duane). The name of a legal entity should be entered in full with no punctuation (for example, All American Airlines Inc, County Airport Authority). A legal entity's name should be the standard in use for the organization, such as the air carrier designator, the name in the airport table, or other standard source. Enter the aircraft's civil registration number for actions against that aircraft's airworthiness certificate. Enter the military call sign for cases against military pilots flying military operations.

(2) Block 2. Address and telephone number. Enter the current complete address of record for a certificate holder. If the mailing address is a post office box, include a street address in the remarks section if one is available. Enter a complete telephone number with area code, if available.

(3) Block 3. Date of birth. Enter, in numerals, the date of birth of an individual apparent violator, in an eight-digit year-month-day without hyphens (YYYY MM DD) format (for example, 1941 12 15; 1954 05 23). This block must be completed for an individual so that the case will expunge.

(4) Block 4. Sex. Enter male (M) or female (F).

(5) Block 5. FAA certificate number. Enter the number of the FAA certificate held by the apparent violator, if related to the incident under investigation or the regulation believed violated. Leave blank if no certificate is held.

(6) Block 6. FAA certificate type. Enter the type of certificate referenced in block 5 (for example, commercial pilot; air carrier; airport operator). If no certificate is held, use "98-none." *Note:* If multiple certificates and certificate numbers are involved, enter each additional certificate number and type in the remarks section.

(7) Block 7. Aviation employer. Enter the apparent violator's employer if the apparent violation is related to that employment. *See* chapter 8, paragraph 5 for guidance on completing the field "business concern."

(8) Block 8. Make. Enter the name or trade name of the manufacturer when an aircraft, aircraft engine, propeller, aircraft component, or appliance is involved in or related to the apparent violation. Blocks (8) through (12) may be left blank if not applicable.

(9) Block 9. Model. Enter the model of the aircraft, aircraft engine, propeller, appliance, or aircraft component, as appropriate.

(10) Block 10. Identification number. For an aircraft, enter the civil registration number. For an aircraft, aircraft engine, propeller, appliance, or aircraft component, enter the serial number when available.

(31) Block 31. Recommended sanction. Same as instructions for block 26, except, for all EIRs, the regional office enters a specific amount of sanction (that is, specific number of dollars or days).

(32) Block 32. Date. Enter the date signed by the regional division (for example, 2005 03 07).

(33) Block 33. Region. Enter two-letter identifier for the reporting region (for example, GL, NM, SO).

5. Entry of Information in the EIS to Track Enforcement Actions Against Small Business Concerns. FAA enforcement personnel complete the field “business concern” on the violator information screen in the EIS to track enforcement actions against small business concerns. FAA enforcement personnel use one of the following codes to complete the “business concern” field: 1=small business concern, 2=large business concern, 3=individual, or 4=other concern. If an alleged violator is a business concern, then FAA investigative personnel gather evidence, such as website information and financial reports, to determine the apparent violator’s number of employees or annual receipts. FAA investigative personnel compare that information to the guidelines in Appendix B to decide whether the apparent violator is a small or large business concern.

6. Sections of EIR Required for Types of Action.

a. Legal Enforcement Action. For legal enforcement action, FAA investigative personnel complete all sections of the EIR, that is, sections A, B, and C.

b. Administrative Action.

(1) General. When administrative enforcement action is taken, FAA investigative personnel complete section A of the EIR, that is, Form 2150-5. FAA investigative personnel also include the completed Enforcement Decision Process worksheet and a copy of the warning notice or letter of correction in the EIR. The program office field or regional office may decide to prepare or have prepared a complete EIR in cases involving complex or sensitive investigations even if administrative action is recommended.

(2) Streamlined No Action and Administrative Action Process (SNAAP). FAA inspectors for the Flight Standards Service may use a streamlined process for taking administrative action (letter of correction or warning notice) for apparent violations that do not require extensive investigation, satisfy the criteria for administrative action, and do not otherwise warrant legal enforcement action. FAA inspectors may not use the SNAAP for remedial training, voluntary disclosures under the Voluntary Disclosure Reporting Program, or cases where further corrective action must be taken.

c. No Action Cases.

(1) General. When FAA investigative personnel close an EIR with no action, they complete only section A and the statement of case portion of section B. (*See* chapter 8, subparagraph 3.b.(1)).

(2) Streamlined No Action and Administrative Action Process (SNAAP). FAA inspectors for the Flight Standards Service use a streamlined process for closing an EIR with no action.

d. Cases Referred for Criminal Investigation. For cases referred for possible criminal investigation, FAA investigative personnel complete all sections of the EIR, that is, sections A, B, and C, and transmit the EIR through their management personnel to the Office of Security and Hazardous Materials and the Assistant Chief Counsel for Enforcement or the appropriate Regional Counsel for review. The Office of Security and Hazardous Materials refers the EIR to the DOT OIG.

7. Processing an EIR.

a. Administrative Action EIRs.

(1) Field office. The field office is authorized to issue warning notices and letters of correction. The field office prepares the letters as prescribed in chapter 5. The EIR number originally assigned at the time the field office started the investigation is used to identify the EIR. A copy of the EIR, which includes copies of FAA Form 2150-5 and the warning notice or letter of correction, is kept by the field office for one year after the year in which it closes the case in the EIS. The Form 2150-5 (or complete EIR, if required) is distributed in accordance with the instructions in chapter 9.

(2) Regional office. The appropriate regional division may review an administrative action for internal purposes. If the investigating field office entered an incorrect regulation in block 18 on the Form 2150-5, the regional division office cites the correct regulation in the regional division review section. No other changes should be made.

(3) Downgraded legal enforcement EIRs. Sometimes, legal counsel may return EIRs in which the field office or regional division recommends legal enforcement action, for downgrading to administrative action or no action. In this case, the investigating office prepares and processes an EIR for administrative action or no action using the same EIR number shown on the original, and with the note at the top of the form, *Downgraded*.

b. Legal Enforcement Action EIRs.

(1) Field office. The EIR number assigned at the time the investigation was opened is used to identify the EIR. The field office forwards the EIR to the regional division. After enforcement action has been completed, the investigating office assures the following persons

Appendix F. Enforcement Decision Process

1. Introduction

a. Purpose. The Enforcement Decision Process (EDP) is used by FAA enforcement personnel to assist them in carrying out the FAA's exercise of prosecutorial discretion. The EDP uses systems safety risk management principles to allocate limited agency investigative and legal resources to the most important cases, for a more timely and effective compliance and enforcement system. By using the EDP, FAA enforcement personnel achieve greater consistency and standardization in determining the most appropriate type of enforcement action to take considering all the facts and circumstances of each case.

b. EDP Worksheet. Each program office has developed and approved a specific EDP worksheet for use by the enforcement investigative personnel in its organization. The EDP worksheet for each program office conforms to the guidelines in subparagraph 7.b. of this appendix and is located in the appropriate order or other guidance document for the program office listed in subparagraph 1(c) of this appendix.

c. Reference Materials. Program office-specific guidance for using the EDP is found in the following directives or other guidance:

- (1) FAA Order 9120.1A, Drug Abatement Inspector Handbook
- (2) FAA Order 8900.1, Flight Standards Information Management System
- (3) FAA Order 5280.5C, Airport Certification Program Handbook
- (4) AIR-002-035-W1, Aircraft Certificate Service Enforcement Decision Process (EDP) and Enforcement Decision Process Worksheet (EDPW)
- (5) FAA Order 1650.9A, Transportation of Hazardous Materials
- (6) FAA Order 1600.38F, FAA Investigations Program.

2. Applicability. The FAA uses the EDP to determine the type of enforcement action to take (informal, administrative, or legal) in all enforcement cases, except for those that are categorically excluded as referenced in subparagraph 6.a.

3. Definitions. The following definitions apply to the EDP:

Act is an overt action and includes the failure to take an action.

Adequate deterrent means that the FAA action is reasonably likely to discourage the alleged violator and others similarly situated from committing the same or very similar conduct for the foreseeable future.

Administrative action means a letter of correction or a warning notice.

Constructive attitude means that the alleged violator acts in a positive manner toward regulatory requirements, cooperates willingly with FAA investigative personnel to achieve compliance, and willingly takes actions necessary to come into and maintain compliance.

Inadvertent means an act is the result of both inattention and lack of purposeful choice. A violation is inadvertent when it does not result from an alleged violator's conscious decision to take or not take any action that could have prevented the violation.

Informal action means oral or written counseling of individuals or entities for regulatory noncompliance, documented in a program office database.

Hazard means a condition that could lead to injury or property damage.

Lack of qualification means a certificate holder lacks the skills and competency, or care, judgment, and responsibility necessary to hold that certificate.

Likelihood means the probability (frequent, occasional, or remote) of the worst type of injury or damage realistically occurring, considering the specific facts of the case.

Legal action means enforcement action other than administrative action or informal action.

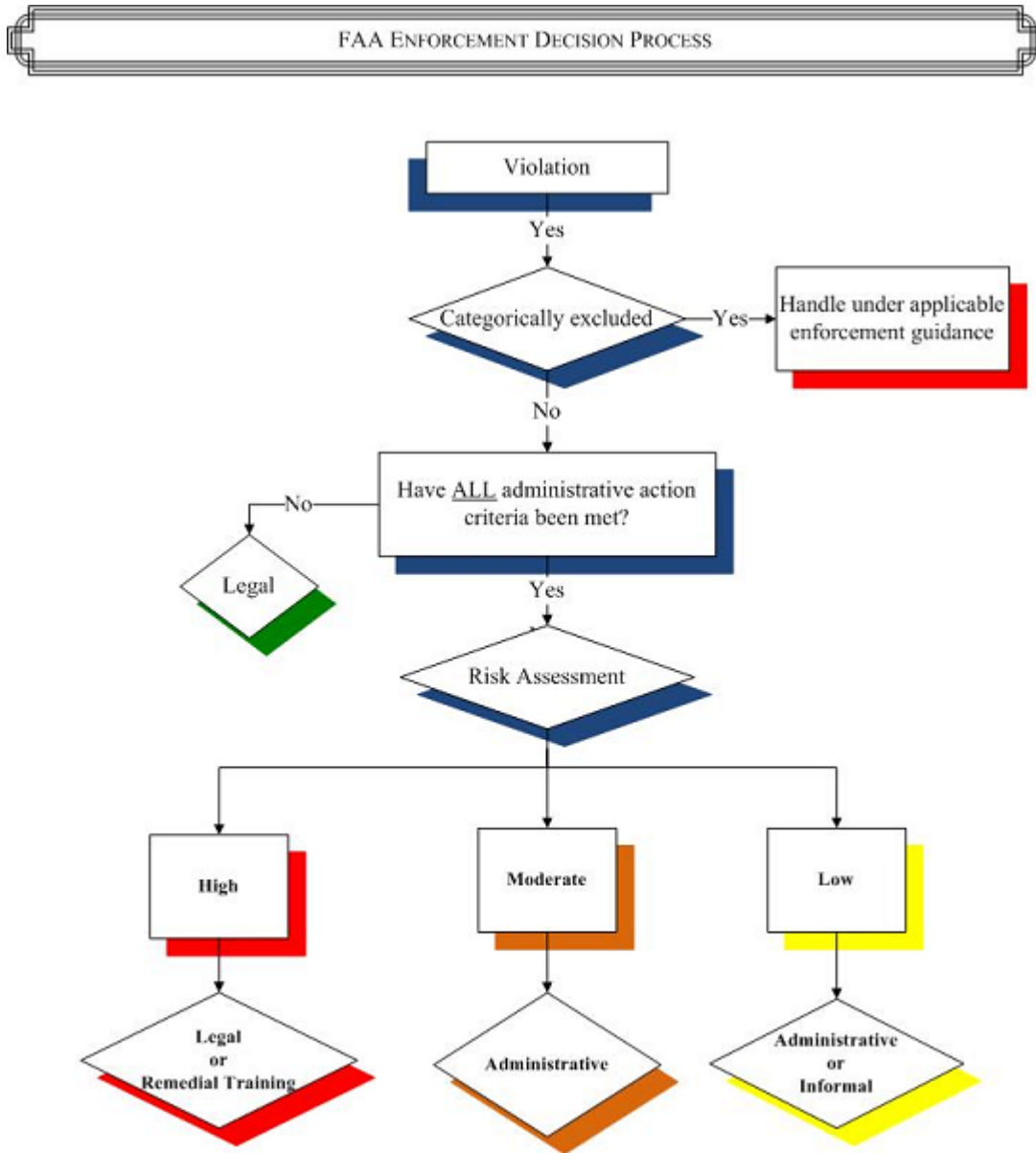
Safety risk means the level (high, moderate, or low) of potential injury or property damage from a hazard created by an act, considering the hazard severity and the likelihood that the severity will be realized.

Severity means the worst type of injury or damage (catastrophic, critical, marginal, or negligible) that could realistically occur from a generic violation of the type involved in the subject violation. A generic violation refers to the basic act or failure to act absent any specific facts or circumstances.

Substantial disregard for safety or security means in the case of a certificate holder, that the act was a substantial deviation from the degree of care, judgment, and responsibility normally expected of a person holding that certificate with that type, quality, and level of experience, knowledge, and proficiency. In the case of a violator who is not a certificate holder, substantial disregard means the act was a substantial deviation from the degree of care and diligence expected of a reasonable person in those circumstances.

4. Applying the EDP. FAA investigative personnel apply the EDP after they have gathered sufficient evidence and other relevant information to analyze the facts and circumstances of the apparent violation under the administrative action criteria and, if necessary, categorize its safety risk. To apply the EDP, all FAA enforcement personnel

take the steps indicated in the flowchart below and analyze in each step the facts and circumstances indicated by the enforcement investigation or inspection results. FAA enforcement personnel document their application of the EDP on the appropriate program office EDP worksheet.



Note: FAA investigative personnel may determine if a case warrants a deviation from the enforcement action indicated by the Enforcement Decision Process. FAA investigative personnel follow the guidance in section 6.d. of this appendix to seek a deviation.

5. Multiple Violations. When FAA investigative personnel find during a single investigation or inspection, multiple apparent violations by the same person, they prepare only one Enforcement Investigative Report and one EDP worksheet for all apparent violations committed by that person. In the EIR and on the EDP worksheet, FAA investigative personnel recommend one type of enforcement action to address all such violations. If the investigation or inspection reveals violations by multiple violators, then FAA investigative personnel prepare one EIR and one EDP worksheet for each violator. To determine the appropriate enforcement action that will be taken for multiple apparent violations discovered and addressed in an EIR, FAA enforcement personnel analyze under the EDP the apparent violation they determine is the most egregious among all the violations found. All apparent violations reported in the EIR will be addressed in one enforcement action with the type of enforcement action determined appropriate for the most egregious of the multiple violations.

6. Steps of the EDP.

a. Determine Applicability--Is the case categorically excluded from the EDP?

FAA investigative personnel determine if the apparent violation involves any of the matters described in subparagraphs (1) through (7) below. If the apparent violation involves any of these matters, the case is categorically excluded from the EDP. If the excluded case warrants legal enforcement action, then FAA investigative personnel prepare an EDP worksheet or other documentation for the EIR indicating that the apparent violation is categorically excluded from the EDP.

(1) Voluntary Disclosure Reporting Program (VDRP). Apparent violations that are disclosed under, and meet the criteria of, the VDRP are handled under the guidance for that program.

(2) An issue involving lack of qualification, or question of qualification. For example:

(a) Drug and alcohol positives

(b) Failing to successfully complete a reexamination

(c) Failing to possess the skills and competency required for the certificate held

(d) Refusing to permit and/or submit to an inspection, reexamination, or drug/alcohol test

(e) Intentionally falsifying a record or application

(f) Cheating on a written examination

(3) Criminal activity, such as narcotics convictions.

(4) Special emphasis enforcement programs.

(5) Person operating without having been issued a required certificate, rating or other required authorization.

(6) Military referral.

(7) Foreign airman referral.

b. Apply Administrative Action or Informal Action Criteria--Have all criteria for taking Administrative Action or Informal Action been met? If a case is not categorically excluded from the EDP, then FAA investigative personnel determine whether the apparent violation(s) meets the criteria for taking administrative action or informal action. These criteria are found in chapter 5, subparagraph 4.b. To take administrative action or informal action for an apparent violation(s), FAA investigative personnel must determine that all the criteria are met. If FAA investigative personnel determine an apparent violation(s) does not meet all the criteria, then they must recommend the appropriate legal enforcement action for the apparent violation(s), unless program office management approves and justifies a deviation in accordance with subparagraph 6.d. of this appendix. FAA investigative personnel indicate on the EDP worksheet for their program office whether all criteria for taking administrative action or informal action have been met. If any of the criteria have not been met, FAA investigative personnel indicate which criteria were not met on the EDP worksheet and explain why. Below is an abbreviated listing of the criteria for taking administrative action or informal action; a complete discussion of these criteria is found in chapter 5, subparagraph 4.b. Each program office may have additional guidance that explains the applicability of these criteria to apparent violations discovered by its organization.

Criteria for Administrative Action or Informal Action:

- (1) Legal enforcement action is not required by law.
- (2) Administrative action would be an adequate deterrent to future violations.
- (3) Lack of qualification is not indicated.
- (4) The apparent violation was inadvertent, i.e., not the result of purposeful conduct.
- (5) A substantial disregard for safety or security was not involved
- (6) The circumstances of the apparent violation were not aggravated
- (7) The alleged violator has a constructive attitude toward compliance.
- (8) A trend of noncompliance is not indicated

c. Analyzing Risk. FAA investigative personnel analyze the risk of an apparent violation(s), only if all criteria for administrative action or informal action have been met. To determine the level of risk, FAA investigative personnel categorize the severity and likelihood of the hazard, that is, the dangerous condition, created by the apparent violation(s). They then apply the Risk Assessment and Enforcement Action Matrix (“the Matrix”) to determine the level of risk for an apparent violation(s) and the corresponding enforcement action that should be taken.

(1) Determining Severity. Severity is the worst type of injury or damage that could realistically occur from a generic violation of this type. A generic violation refers to the basic act or failure to act without considering any specific facts or circumstances.¹ To determine severity, FAA enforcement personnel *do not consider the specific facts of the case*; the specific facts of the case are considered only when determining likelihood. Severity and likelihood are determined separately. Severity must be determined without considering the likelihood of that severity being realized. For example, if a plausible argument can be made that a hazard could under some circumstances result in death or severe damage, the severity is catastrophic, in spite of the fact that such an outcome from the hazard might be extremely rare. The most common error in determining severity is prematurely considering likelihood. Likelihood must be considered and determined after the severity is determined. Severity can be one of the following:

- Catastrophic (death or severe damage).
- Critical (severe injury or substantial damage).
- Marginal (moderate injury or damage).
- Negligible (minor or no injury or damage).

In assessing the severity of an act as one part of determining safety risk, the FAA considers the potential outcome, not the actual outcome that resulted from the act. The potential severity can be catastrophic, critical, marginal, or negligible regardless of whether actual injury or property damage occurred or nearly occurred. For example, a 1,000-foot altitude deviation from an ATC clearance has the same potential outcome regardless of whether there was actually another aircraft that came into conflict or not. Similarly, a fuel exhaustion occurrence has the same potential outcome irrespective of whether an actual accident resulted. In these examples, the absence of another aircraft coming into conflict or the existence of suitable forced landing sites are fortuitous (by chance) circumstances not considered in the determination of severity, since other aircraft could have been in conflict (by chance) or there could have been a lack of suitable forced

¹ For example, for an altitude deviation violation, FAA enforcement personnel must consider what is the worst type of injury or damage that could realistically happen if an aircraft deviates from its assigned altitude, without considering the weather, other traffic in the area, the time of day, or other similar types of facts.

landing sites (by chance). In determining the severity, the existence of fortuitous circumstances is not considered.

(2) Determining Likelihood. Likelihood is the probability of the worst type of injury or damage realistically occurring, *considering the specific facts of the case*. In other words, FAA investigative personnel determine how likely it is that the severity level would actually be realized, given the facts and circumstances involved. Likelihood can be one of the following:

- (a) Frequent (likely to occur often).
- (b) Occasional (likely to occur sometimes).
- (c) Remote (unlikely to occur, or would seldom occur or, for purposes of the EDP, so unlikely, one can assume the severity level would not occur).

(3) Determine the Safety Risk and the Appropriate Enforcement Action. FAA enforcement personnel determine the safety risk (high, moderate, or low) and the appropriate enforcement action using the following matrix:

RISK ASSESSMENT and ENFORCEMENT ACTION MATRIX

(This matrix is applied only if all criteria for administrative action or informal action have been met.)

	SEVERITY			
LIKELIHOOD	Catastrophic	Critical	Marginal	Negligible
Frequent	High – Legal or Remedial Training	High – Legal or Remedial Training	Moderate - Administrative	Moderate - Administrative
Occasional	High – Legal or Remedial Training	Moderate - Administrative	Moderate - Administrative	Low - Admin or Informal
Remote	Moderate - Administrative	Moderate - Administrative	Low - Admin or Informal	Low - Admin or Informal

d. Remedial Training. FAA investigative personnel for the Flight Standards Service address an apparent violation by an airman with remedial training, provided all criteria for taking administrative action or informal action are met, the apparent violation presents a high safety risk, and all criteria for offering remedial training are met. The criteria for offering remedial training are:

- (1) Future compliance can be reasonably ensured through remedial training alone;
- (2) The airman exhibits a constructive attitude that would lead the inspector to believe the airman has a willingness to comply, so noncompliance is less likely in the future.

(3) The conduct does not disclose a lack of, or reasonable basis to question, the airman's qualifications.

(4) The airman's record of enforcement actions does not indicate that remedial training would be inappropriate.

(5) The conduct is not deliberate, grossly negligent, or criminal in nature.

e. Deviation from the Matrix (if applicable). FAA investigative personnel may determine a case warrants a deviation from the enforcement action indicated by the Risk Assessment and Enforcement Action Matrix ("the Matrix"). If FAA investigative personnel select a type of action other than that indicated by the Matrix, then they must provide a justification and have approval of the division manager or equivalent. See chapter 5, subparagraph 4.d for more information on using administrative action when associated criteria are not met. The following are examples of where a deviation from the type of action indicated by the Matrix *might* be justified:

(1) In certain cases, where a business commits an apparent violation that meets the criteria for administrative or informal action but presents a high safety risk, administrative action in the form of a letter of correction may be more appropriate to improve the operator's system for system safety benefits, even though the Matrix directs legal action. For these cases, the potential safety benefits of a structured corrective action process that incorporates a corrective action plan might be preferable to respond to the high safety risk.

(2) In certain cases, where the criteria for administrative or informal action are not met because an individual's apparent violation was not inadvertent, but there is negligible safety risk involved. For example, an apparent violation by a pilot who operates an aircraft without a pilot certificate in his or her possession but is qualified and current to operate aircraft, may be more appropriately addressed with a warning notice.

7. Documentation.

a. EDP Worksheet. FAA enforcement personnel complete the EDP Worksheet developed and approved by their program office, for every enforcement action, except those where they take on-the-spot administrative action or informal action.

b. Guidelines for EDP Worksheet. Each program office EDP Worksheet includes the following items:

(1) EIR or File number and Case Name.

(2) Analysis of Administrative Action or Informal Action Criteria, including an explanation why any criterion is not met.

(3) Analysis of safety risk for apparent violations that meet the criteria for administrative action or informal action. The analysis of safety risk must include an analysis of the severity and likelihood of the hazard created by the apparent violation(s). The EDP Worksheet includes statements explaining why the severity category and the likelihood category were chosen by FAA investigative personnel.

(4) Explanation of a Deviation Request.

(5) Signatures of FAA preparer and reviewer of EDP Worksheet and date signed.

(6) Attorney signature with concurrence or explanation for nonconcurrence and date signed.

c. EDP Worksheet in EIR. FAA investigative personnel include the completed worksheet in the EIR for administrative and legal actions. For informal actions, FAA investigative personnel retain the worksheet in the investigating office files for informal actions. EDP Worksheets are maintained in accordance with established retention periods for EIRs and other enforcement records.

d. Entry in Tracking Systems. Legal and administrative actions are recorded in EIS. Informal actions do not require the preparation of an EIR, but must be documented in a program office database to support national, regional, and local systems safety analysis, and to identify trends. FAA investigative personnel record the following data on informal actions in the appropriate program office database:

(1) Name of the individual or business

(2) Certificate type and number of the individual or business (as applicable)

(3) Regulations involved (include section, paragraph and subparagraph)

(4) Date of counseling

(5) Type of counseling (oral or written)

(6) For businesses, name and title of person counseled

(7) Brief description of the apparent noncompliance

8. Review of EDP Application.

a. Program Office Review and Required Signatures on EDP Worksheet.

Program office regional and field management are responsible for reviewing each EDP worksheet and determining that it is completed in accordance with this order and program office policies and procedures. Each EDP worksheet will be signed by the preparer and

each reviewer in the program office. A signature will indicate that the signatory concurs in the appropriateness of the action recommended and believes the EDP worksheet is prepared in accordance with all applicable policies.

b. Legal Concurrence. Before initiating legal enforcement action, legal counsel determines whether the recommendation for legal enforcement action is appropriate under the EDP. If legal counsel concurs with the program office's recommendation and analysis, legal counsel signs the EDP worksheet and initiates the case. If legal counsel disagrees that legal enforcement action is appropriate or disagrees with how the EDP was applied in a case, then legal counsel and the appropriate program office discuss and attempt to resolve those disagreements before the legal action is initiated. If legal counsel still disagrees with taking legal enforcement action after discussion with the program office, then legal counsel explains the reasons for such disagreement on the EDP worksheet, signs it, and returns the EIR to the program office after review by the Regional Counsel or designate. If legal counsel disagrees with the program office's analysis under the EDP but agrees with the recommended action, legal counsel does not return the EIR to the program office. Rather, legal counsel explains the reasons for the disagreement on the EDP worksheet, signs it, and initiates the case.