



**U.S. DEPARTMENT OF TRANSPORTATION**  
**FEDERAL AVIATION ADMINISTRATION**  
National Policy

**ORDER**  
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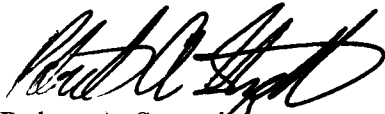
**SUBJ: FAA Compliance and Enforcement Program**

This order contains policies, procedures, and guidelines for the Federal Aviation Administration's compliance and enforcement program. The order also articulates the FAA's philosophy for using various remedies, including education, corrective action, informal action, remedial training, administrative action, and legal enforcement action, to address noncompliance with statutory and regulatory requirements enforced by the FAA. It provides for the public a written statement of the Administrator's policy guidance for imposing sanctions for violations of such requirements.

The order is used at all levels by agency personnel who are engaged in the investigation, reporting, and processing of enforcement actions. It applies to all offices with regulatory responsibilities.

This revision of the order comprehensively updates policies, procedures, guidance, and assignments of responsibility. It reorganizes the order in a manner more useful for agency personnel and is available electronically to agency personnel and the public. The revision amends agency sanction guidance to conform to statutory changes resulting from Vision 100 Century of Aviation Reauthorization Act and incorporates guidance into the agency's compliance and enforcement program order on policies and programs that have developed since the last comprehensive order revision in 1988. Those include policies relating to the FAA's exercise of its authority to administratively assess civil penalties and guidance on the agency's voluntary safety programs.

A workgroup of agency personnel from the field and headquarters with extensive experience in statutory and regulatory enforcement reviewed the agency's policies and programs in this area to produce this comprehensive revision of the agency order on its compliance and enforcement program.



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Acting Administrator

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## Chapter 1. Introduction

**1. Purpose of this Order.** This order describes the authority, responsibilities, policies, guidelines, procedures, objectives, and legal aspects of the Federal Aviation Administration's compliance and enforcement program. The policies and procedures described in this order explain how the FAA generally intends to exercise its discretion in carrying out statutory and regulatory enforcement responsibilities.

### **2. Whom This Order Affects.**

**a.** This order applies to the compliance and enforcement programs and activities of all FAA offices that have regulatory responsibilities. These offices include the Flight Standards Service, Aircraft Certification Service, Office of Aerospace Medicine, Office of Airports, Office of Security and Hazardous Materials, and Office of Commercial Space Transportation.

**b.** This order is a staff manual. It guides FAA enforcement personnel in the exercise of their discretion in handling compliance and enforcement matters. However, it does not cover every situation, and there will be situations where deviation is warranted, and FAA personnel are expected to use their experience and sound judgment in carrying out their compliance and enforcement responsibilities.

**c.** This order does not create any right or benefit, substantive or procedural, enforceable at law by any party against the FAA, its officers, or its employees.

### **3. Distribution.** The FAA distributes this order as follows:

**a.** To the associate administrator and assistant administrator level in Washington, D.C., the regional administrator level, the center director level, and the Chief Operations Officer of the Air Traffic Organization.

**b.** To the director level in the offices of the Associate Administrator for Aviation Safety; the Associate Administrator for Airports; the Assistant Administrator for Security and Hazardous Materials; the Assistant Administrator for Aviation Policy, Planning, and Environment; and the Assistant Administrator for International Aviation, and the Vice President level in the Office of the COO, Air Traffic Organization.

**c.** To the division level in the regional Air Traffic Organization offices and the field offices of the ATO.

**d.** To the branch level in the regional Airports, Aerospace Medicine, Security and Hazardous Materials, and Flight Standards Divisions, and Aircraft Certification Directorates.

**e.** To the branch level at the Civil Aerospace Medical Institute, Airmen and Aircraft Registry, FAA Academy, and in the Security and Investigations Division at the Aeronautical Center.

**f.** A maximum distribution to all Airports field offices, Flight Standards field offices, Manufacturing Inspection District offices, Security and Hazardous Materials field offices, and the Offices of the Regional and Center Counsel.

**g.** A limited distribution to all field offices of the Air Traffic Organization and International Field Offices.

**4. Where can I find this order?** You can find this order at [https://employees.faa.gov/tools\\_resources/orders\\_notices](https://employees.faa.gov/tools_resources/orders_notices). This order is available to the public on the internet at <http://rgl.faa.gov>. Interested persons may obtain copies by contacting the Office of the Chief Counsel, Enforcement Division, AGC-300, 800 Independence Avenue, SW., Washington, DC 20591.

**5. Cancellations.** This order cancels all parts of FAA Order 2150.3A, Compliance and Enforcement Program, December 14, 1988, except Appendix 4 and any other guidance about determining sanction amounts.

**6. Explanation of Changes.** This order substantially edits FAA Order 2150.3A. The following major changes have been made:

**a.** Sanction guidance has been revised to conform to new statutory maximum civil penalty amounts under Vision 100—Century of Aviation Reauthorization Act.

**b.** Policies previously issued by memorandums have been incorporated into FAA Order 2150.3B.

**c.** Expired policies have been removed from the order.

**d.** Programs, policies, or procedures that applied only to security matters and responsibilities transferred to the Transportation Security Administration have been removed.

**e.** Guidance has been added about the aviation safety action programs and the flight operational quality assurance programs.

**f.** Policies about the voluntary surrender of certificates have been added.

**g.** The policy on publicizing enforcement actions has been revised.

**h.** The responsibilities of agency personnel relating to the determination of sanctions have been revised.

**7. Forms.** The FAA uses the forms identified in chapter 1, subparagraphs 7.a.-c. in the agency's compliance and enforcement program. Form 2150-5 is available electronically on the Enforcement Information System. Forms 5280-6 and 1600-70 are available at the FAA Depot at the Mike Monroney Aeronautical Center, Oklahoma City, Oklahoma.

a. FAA Form 2150-5, Enforcement Investigative Report, unit of issue: Sheet, NSN: 0052-00-875-8000. All FAA program offices use this form for reporting enforcement investigations.

b. FAA Form 5280-6, Letter of Correction, unit of issue: 5-page set, NSN: 0052-00-881-2000. FAA airport certification offices use this form to report and gain correction of violations of part 139 of the FAA's regulations.

c. FAA Form 1600-70 (1-90), Chain of Custody Form. FAA investigative personnel use this form to track the chain of custody of physical evidence in enforcement cases.

## **8. Changes to This Order.**

a. **Authority to Approve Changes.** The Administrator approves changes to Chapter 1, Introduction; Chapter 2, Enforcement Objectives and Policy; and Chapter 3, Enforcement Responsibilities, that involve policy, a delegation of the Administrator's authority, or an assignment of responsibility. The Chief Counsel approves all other changes to the order. The Administrator's and Chief Counsel's authorities to approve changes may not be delegated.

b. **Submission of Comments and Proposed Changes.** Any FAA employee may send proposed changes to, or provide comments on, this order by electronic mail (e-mail) to the Assistant Chief Counsel for Enforcement (AGC-300). AGC-300 considers any proposed changes or comments when reviewing and revalidating this order.

**9. Supplemental Compliance and Enforcement Documents.** To assure uniformity in policy and instructions, headquarters offices and the regions must, before issuance, provide AGC-300 for coordination and concurrence a copy by e-mail of all compliance and enforcement guidance, instructions, or other documents that are intended to supplement this order.

**10. Compliance and Enforcement Bulletins.** The FAA may issue short-term or urgent directives of fixed duration or special emphasis programs as Compliance and Enforcement Bulletins (C&E Bulletins). Appendix H of this order contains any current C&E Bulletins. C&E Bulletins will state when they supersede sections of this order.

**11. Definitions.** The following abbreviations, acronyms, or identifiers and associated definitions are applicable to this order unless otherwise indicated:

“AC” means Advisory Circular.

“ADP” means Automatic Data Processing.

“AGC-1” means Chief Counsel of the Federal Aviation Administration.

“AGC-300” means Assistant Chief Counsel for Enforcement.

“AIDS” means Accident/Incident Data System.

“ALJ” means Administrative Law Judge.

“ASAP” means Aviation Safety Action Program.

“ASAS” means Aviation Safety Analysis System.

“ASRP” means Aviation Safety Reporting Program.

“ASRS” means Aviation Safety Reporting System.

“ATO” means Air Traffic Organization.

“AVS” means the Office of Aviation Safety

“CHDO” means Certificate Holding District Office.

“CMO” means Certificate Management Office.

“CVR” means Cockpit Voice Recorder.

“DFDR” means Digital Flight Data Recorder.

“DOD” means Department of Defense.

“DOJ” means Department of Justice.

“DOT” means Department of Transportation.

“EIR” means Enforcement Investigative Report.

“EIS” means Enforcement Information System.

“FAA Decisionmaker” means for commercial space civil penalty actions, the Associate Administrator for Commercial Space Transportation and for all other civil penalty assessment cases, the Administrator.

“FAA enforcement personnel” means legal counsel and inspectors, special agents, aviation safety technicians, and any other FAA personnel who carry out enforcement activities for the FAA.

“FAA investigative personnel” means inspectors, special agents, aviation safety technicians, and any other FAA personnel who conduct regulatory enforcement investigations.

“FBI” means Federal Bureau of Investigation.

“FDR” means Flight Data Recorder.

“FLEA” means Federal Law Enforcement Agency.

“FMS” means Department of Treasury Financial Management Services.

“FOIA” means Freedom of Information Act.

“FOQA” means Flight Operational Quality Assurance.

“FSDO” means Flight Standards District Office.

“Hazmat” means hazardous materials.

“HMR” means Hazardous Materials Regulations.

“IOP” means Item of Proof.

“LEA” means law enforcement agency.

“LOI” means Letter of Investigation.

“NASA” means National Aeronautics and Space Administration.

“NAS” means National Airspace System.

“NTSB” means National Transportation Safety Board.

“OIG” means Office of Inspector General.

“OST” means Office of the Secretary of Transportation.

“PAH” means Production Approval Holder.

“PMA” means Parts Manufacturer Approval.

“Program Office” means the Flight Standards Service, the Aircraft Certification Service, the Office of Aerospace Medicine, the Office of Security and Hazardous Materials, the Office of Airports, or the Office of Commercial Space Transportation.

“Regional Counsel” means Regional Counsel and Aeronautical Center Counsel.

“Regions” means all regions and the Aeronautical Center.

“SNAAP” means Streamlined No Action and Administrative Action Process.

“SPAS” means Safety Performance Analysis System.

“TSOA” means Technical Standard Order authorization.

“TSA” means Transportation Security Administration.

## Chapter 2. Compliance and Enforcement Policy and Objectives

**1. Purpose.** This chapter states the general policies and objectives of the FAA's compliance and enforcement program.

**2. The Reason for a Compliance and Enforcement Program.**

**a. FAA's Mission and Authority.** The FAA's central mission is to promote safety in civil aeronautics. To achieve this, the agency establishes regulatory standards and requirements, found in 14 C.F.R. parts 1-199 under the statutory authority in 49 U.S.C. subtitle VII. Under 49 U.S.C. § 40113, the FAA Administrator has broad authority to take action the Administrator considers necessary to carry out his or her statutory responsibilities and powers relating to safety in air commerce, including conducting investigations; prescribing regulations, standards, and procedures; and issuing orders. The FAA also establishes regulatory standards and requirements governing commercial space transportation, found in 14 C.F.R. chapter III under the statutory authority in 49 U.S.C. subtitle IX, which the Secretary of Transportation has delegated to the FAA. In addition, the Administrator has delegated authority to investigate violations and enforce the Department of Transportation Hazardous Materials rules, 49 C.F.R. parts 100-185.

**b. Objective of Compliance and Enforcement Program.** The FAA's compliance and enforcement program is designed to promote compliance with statutory and regulatory requirements. The program provides a wide range of options for addressing noncompliance. These options include educational and remedial training efforts, administrative action in the form of either a warning notice or letter of correction, certificate suspensions for a fixed period of time, civil penalties, indefinite certificate suspensions pending compliance or demonstration of qualifications, certificate revocations, injunctions, and referrals for criminal prosecution. When violations occur, whether they involve operating an airport; producing aircraft, products, or parts; performing aircraft maintenance; operating aircraft; or shipping hazardous materials, FAA enforcement personnel must take that action most appropriate to promote safety and compliance with the regulations. The initial priority of FAA investigative personnel is to correct any ongoing noncompliance. FAA personnel then determine what action to take by evaluating, among other things, the seriousness and safety risk imposed by the noncompliance. Elements of the FAA's compliance and enforcement program also seek to promote safety and greater compliance by encouraging regulated persons to disclose their own violations and the circumstances surrounding those violations. Based on information provided through such disclosures, the agency's compliance and enforcement program fosters the implementation of permanent corrective measures to improve overall safety.

**c. Applicability.** The compliance and enforcement program is applicable to all activities regulated or enforced by the FAA.

### 3. Compliance and Enforcement Philosophy.

**a. Voluntary Compliance.** Civil aviation safety depends on voluntary adherence to legal requirements. Therefore, the FAA administers programs to promote a clear awareness and understanding of the governing statute and regulations.

**b. Education.** FAA investigative personnel should take advantage of opportunities during their surveillance and inspection activities to strengthen a regulated person's understanding of the statutory and regulatory requirements. The FAA also promotes education through public awareness programs and other special aviation educational efforts.

**c. Surveillance and Detection.** An important element of an effective compliance and enforcement program is the prompt discovery of noncompliance. Although the agency has programs to encourage self-disclosure, surveillance remains the primary method of detecting violations. Consistent with its statutory mandate, the FAA maintains a high level of surveillance of air carrier operations and manufacturing facilities.

**d. Notifying Persons of Potential Violations.** In any situation where FAA enforcement personnel identify a potential violation, they take appropriate steps immediately to notify a responsible person who can take appropriate action to prevent it. For example, FAA investigative personnel may counsel a regulated party and ensure that it takes immediate action to prevent a violation from happening, or ground aircraft under 49 U.S.C. § 44713(c) when air carrier aircraft are not in condition for safe operation. Any FAA employee who receives information about a crewmember's operation of an aircraft in violation of the FAA's alcohol and drug regulations must immediately contact and pass on that information to a flight standards inspector. If the crewmember is an air carrier employee, the inspector quickly notifies the air carrier's management of all relevant information about the matter so the air carrier can take appropriate action. The inspector requests the air carrier to help the FAA in its investigation, and if appropriate, to take action to ensure the crewmember does not serve on a flight.

**e. Investigation and Reporting.** FAA investigative personnel must conduct investigations promptly. They must gather, and accurately and completely report all facts, and conduct their investigations in an unbiased and focused manner. A violation report without all the facts only leads to delays that compromise the objectives of fair and responsive enforcement. An incomplete or inaccurate enforcement investigative report can mislead reviewing officials and FAA legal counsel and result in wrong or inappropriate actions being taken.

**f. FAA Responses to Violations and Purposes for Compliance and Enforcement Actions.** FAA enforcement personnel must investigate and appropriately address every apparent or alleged violation.

(1) Responses. The agency has a wide range of options available for addressing apparent violations, such as oral or written counseling; administrative action, including remedial training; legal enforcement action; and referral for criminal prosecution. Under 14 C.F.R. § 13.11, FAA investigative personnel issue an administrative action in the form of either a warning notice or a letter of correction for an apparent violation. FAA legal counsel amends, suspends, modifies, or revokes certificates under 49 U.S.C. §§ 44105, 44106, 44709, 44710, 44726, 44924, and 46111;



seeks civil penalties primarily under 49 U.S.C. § 46301; seizes aircraft under 49 U.S.C. § 46304; and issues judicially enforceable orders under 49 U.S.C. § 40113. FAA enforcement personnel also refer apparent violations to foreign governments or to the Department of Defense (DOD) for appropriate handling, and in cases where there is possible criminal conduct, to the Office of Inspector General (OIG) for criminal investigation. Generally, under 49 U.S.C. § 40113, FAA enforcement personnel take actions believed necessary to carry out the Administrator's statutory safety duties and responsibilities. Regulations governing the transportation of hazardous materials are enforceable by civil and criminal penalties, orders directing compliance, and equitable judicial relief (49 U.S.C. §§ 5121, 5122, 5123, and 5124). Regulations governing commercial space transportation are enforceable by civil penalties and licensing actions (49 U.S.C. §§ 70107, 70115).

(2) Purposes. FAA enforcement personnel take compliance and enforcement action to prevent future actions that would violate the regulations (for example, immediate corrective action after counseling or a letter of correction; cease and desist orders; injunctions). They also take enforcement actions for remedial purposes (for example, administrative remedial training; immediate corrective action and comprehensive fixes under the voluntary disclosure reporting programs; certificate suspension pending demonstration of qualifications; or revocation for lack of qualification or competency). They also take enforcement actions to deter future violations by the subject of the enforcement action and those similarly situated (for example, punitive certificate actions or civil penalties).

**g. Fairness.** To be effective, the agency's compliance and enforcement program must be fair and reasonable and should be perceived as fair by those subject to regulation. This does not and should not imply an unwillingness to apply the full force of statutory sanctions where warranted. It does encompass the right of an apparent violator to be given objective, evenhanded consideration of all circumstances surrounding the allegations before final action is taken. It also requires good faith efforts to understand the apparent violator's position and take it into account, as well as to apprise the apparent violator of the agency's position in a timely manner.

**h. Timeliness.**

(1) The agency's discovery of, and response to, violations should be timely. Delays in investigation or processing of enforcement investigative reports can adversely affect the effectiveness of the agency's compliance and enforcement program in several ways. Delays may let an unsafe condition continue if prompt corrective action is not taken. Delays also may de-emphasize the seriousness of a given violation and lessen the deterrent value of any enforcement action taken. The deterrent quality of enforcement action, and effective linking of the enforcement sanction to objective change in compliance behavior, can be best realized if the FAA investigates diligently and promptly and administers the appropriate sanction within a reasonable time period. If the allegations of violation are not sustained, any unwarranted delay in processing the case may impose an unjustified hardship. The time needed for investigation and processing will vary depending on the complexity of each case. Certain cases, because of their effect on safety, including the need for emergency action, will sometimes demand immediate involvement of the entire investigative and legal team to effect timely agency action, sometimes in only a matter of hours or a few days.

(2) To promote the prompt and diligent processing of enforcement cases, the FAA has timeliness goals for completing investigations and associated EIRs and processing legal enforcement actions. The timeliness goals for completing investigations and EIRs are in chapter 4, subparagraph 4.e. The timeliness goals for processing legal enforcement actions are in chapter 6, paragraph 25.

**i. Recommendations of Inspectors, Special Agents, Field Offices, and Regional Offices.** FAA investigative personnel recommend initially the appropriate type of response to address an apparent violation. Often, they are in the best position to evaluate various subjective considerations, such as the apparent violator's compliance attitude and whether an alternative to legal enforcement action may be sufficient to achieve compliance. If FAA investigative personnel prepare an enforcement investigative report (EIR), program office management reviews it to determine consistency with agency compliance and enforcement policy. In this review, field and regional program office personnel consider the recommendations of FAA investigative personnel, if they properly justify and explain their recommendations. FAA legal counsel who reviews the EIR considers the recommendations of the program office.

**j. FAA Legal Enforcement Actions; Sanction Guidance Policy.** After determining that legal enforcement action is necessary, FAA enforcement personnel consult the sanction guidance policies in chapter 7 and tables of sanctions in Appendix B or C to determine the appropriate sanction. FAA enforcement personnel must fully explain and justify in the EIR deviations from the sanction guidance policy.

#### **4. Responsibility for Determining Legal Enforcement Action.**

**a. General.** If FAA enforcement personnel select legal enforcement action (for example, certificate action or civil penalty action), they determine the type and amount of sanction under agency sanction guidance policy. The program office and legal counsel jointly determine the type and amount of sanction sought in a legal enforcement action. The roles of the various enforcement personnel with regard to sanction determination are outlined below. Disagreements within a program office or between legal counsel and the program office are generally resolved following discussion among, as appropriate, the inspector or other investigative personnel; field office, regional, or Washington headquarters program office personnel; and legal counsel.

##### **b. Responsibilities of FAA Investigative Personnel.**

(1) In all legal enforcement actions except those recommended by the security and hazardous materials program office, FAA investigative personnel recommend only the type of legal enforcement action (for example, civil penalty action, fixed-period suspension (for example, 30-day suspension)), indefinite suspension, revocation) that should be taken. Except in security or hazardous materials EIRs, FAA investigative personnel do not recommend a specific amount of sanction (that is, specific number of dollars or days) or a range of sanction in cases that warrant either civil penalty action or a fixed-period certificate suspension. For security and hazardous materials EIRs, FAA special agents recommend a range of sanction and a specific amount of sanction in cases that warrant legal enforcement action.

(2) All FAA investigative personnel include a written analysis supporting the type of legal enforcement action, and in security and hazardous materials EIRs the sanction range and specific amount of sanction, they recommend in section B of the EIR. In the written analysis, FAA investigative personnel explain the reasons why they recommend a type of legal enforcement action and for each violation address the factors described in chapter 7, paragraph 4, or Appendix C that are relevant to that alleged violation. FAA investigative personnel explain how each of the relevant factors applies to each alleged violation and why it may warrant mitigation or aggravation of the sanction amount for the case.

(3) To determine the type of legal enforcement action, FAA inspectors first consult the sanction guidance table in Appendix B. The table provides the type of legal enforcement action that usually is taken for an alleged violation. (If a particular violation is not listed in the table, FAA investigative personnel refer to an analogous or similar violation for guidance.) FAA special agents follow the guidance in Appendix C to recommend a specific amount of sanction for a hazardous materials case or Appendix B for their other cases. FAA investigative personnel document their recommendation and the reasons for it in section B of the EIR.

**c. Responsibilities of Regional and Washington Headquarters Program Office Personnel.**

(1) For civil penalty actions and fixed-period certificate suspensions in cases other than those opened by the Office of Security and Hazardous Materials, regional or Washington headquarters program office personnel recommend a specific amount of sanction, that is, the number of days or dollars the FAA will seek for a case. Regional or Washington headquarters program office personnel base this recommendation on FAA investigative personnel's analysis of the relevant factors and elements affecting sanction and their recommendation. Regional or Washington headquarters program office personnel apply the agency's sanction guidance policy in determining a specific sanction amount for the case. For cases involving multiple violations, regional or Washington headquarters program office personnel follow the guidance in chapter 7, paragraphs 6 and 7 in determining the specific amount of sanction for the case. When the regional program office division manager and the Regional Counsel, or the Washington headquarters program office division manager and the Assistant Chief Counsel for Enforcement, agree, program office personnel and legal counsel may collaborate in determining the specific amounts of sanction for cases before the program office forwards the EIR to legal counsel for processing. Program office personnel document in the EIR when they determine a specific sanction recommendation collaboratively with legal counsel.

(2) If the EIR does not contain a sufficient sanction analysis for regional or Washington headquarters program office personnel to recommend a specific sanction amount, then those personnel may return the EIR to FAA investigative personnel for further sanction analysis. Regional and Washington headquarters program office personnel document their recommended specific sanction amount or the amount determined collaboratively with legal counsel, and the reasons for that amount, in section B of the EIR. If that sanction recommendation differs from

the recommendation of FAA investigative personnel, then regional or Washington headquarters program office personnel and legal counsel, if appropriate, discuss the difference with FAA investigative personnel. Regional or Washington headquarters program office personnel must document the reasons for the difference in section B of the EIR.

**d. Responsibilities of Legal Counsel.**

(1) If legal counsel and the program office do not collaborate on determining a specific sanction amount before receipt of that case by the legal office, then legal counsel reviews the sanction recommendation of regional or Washington headquarters program office personnel. If legal counsel believes the sanction sought should differ from the regional or Washington headquarters program office recommendation, then legal counsel discusses the proposed change to the sanction type or amount with appropriate program office personnel, including FAA investigative personnel, if practicable. If legal counsel seeks a sanction type or amount different from the recommendation of regional or Washington headquarters program office personnel, then legal counsel documents in the EIR the reasons why legal counsel sought that sanction.

(2) After legal enforcement action is initiated, legal counsel consults with appropriate regional or Washington headquarters program office personnel before proposing any changes to the sanction sought. If such a change also differs from the type of sanction recommended by FAA investigative personnel, then regional or headquarters program office personnel consults, if practicable, with FAA investigative personnel before legal counsel changes the sanction sought. Legal counsel documents in the EIR the reasons for any changes to the sanction sought.

**e. Sanction Determinations in Significant Cases.** Significant cases defined in paragraph 3 of chapter 6 require coordination with Washington headquarters through AGC-300. FAA enforcement personnel determine the type of sanction and specific sanction amount for such cases in accordance with the guidance in chapter 2, subparagraphs 4.a.-d. If Washington headquarters personnel involved in coordinating a significant case have a different opinion about the sanction the FAA should seek in that case, then they convene a meeting or teleconference with FAA investigative personnel, regional and Washington headquarters personnel, and regional and Washington headquarters legal counsel. The purpose of the meeting or teleconference is to discuss the case and to resolve any differences that exist among FAA enforcement personnel about the type and amount of sanction that should be sought.

**5. Voluntary Safety Programs.**

**a. Background.** The threat to regulated persons of incurring punitive legal enforcement actions is a traditional and often effective incentive to promote compliance. While these actions have deterrent value, they do not necessarily improve a person's ability to assure future compliance. The public interest in aviation safety is served in appropriate circumstances by positive incentives to promote and achieve compliance. To this end, the FAA has established several programs to improve compliance and increase safety by offering incentives to regulated persons to disclose their own violations, other safety discrepancies, and general safety information to the FAA and take corrective action to preclude future safety problems, if appropriate. These programs include the voluntary disclosure reporting programs, the aviation

safety action program, the flight operational quality assurance programs, and the aviation safety reporting program.

**b. Voluntary Disclosure Reporting Programs.**

(1) General. The voluntary disclosure reporting program is intended to improve safety compliance by forgoing a civil penalty when a regulated entity has promptly disclosed to the FAA an apparent violation and has taken prompt action satisfactory to the FAA to correct the violation and preclude its recurrence. The FAA regulates entities' performance through setting regulatory standards, issuing guidance, and monitoring compliance through periodic inspections. Regulated entities, which have the ultimate responsibility for compliance, have a superior vantage point for monitoring their own performance. Therefore, voluntary disclosure reporting programs can serve an important role in achieving compliance and improving aviation safety.

(2) Information about the programs. Further information about the programs is in chapter 5. Advisory Circular 00-58, as amended, provides guidance for disclosing certain violations of the Federal Aviation Regulations. (AC 00-58, as amended may be found online at <http://rgl.faa.gov>). Advisory Circular 121-37 provides guidance for disclosing certain violations of the hazardous material regulations found in 49 C.F.R. part 175.

**c. Flight Operational Quality Assurance (FOQA) Programs.**

(1) General. FOQA is a voluntary safety program for the routine collection and analysis of digital flight data generated during normal line operations. FOQA programs provide information about, and insight into, the total flight operations environment. FOQA data can provide objective information that is not available through other methods. FOQA's primary purpose is to identify adverse safety trends, and to proactively initiate corrective action before such trends can lead to accidents. Its purpose is also to enhance safety by improving training effectiveness, operational procedures, maintenance and engineering procedures, and air traffic control procedures.

(2) Applicability. FOQA programs mostly are developed by air carriers that operate under 14 C.F.R. parts 121 or 135, but operators under other parts of the regulations may also develop FOQA programs.

(3) Development of a FOQA program. The development of a FOQA program occurs in stages. During the planning stage, the policy and direction for the FOQA effort are developed and necessary resources are committed to implement the program. The policies, procedures, resources, and operational processes for collecting, managing and using FOQA data are laid out in the implementation and operations (I&O) plan as the program blueprint, which an air carrier submits to the FAA for approval. Once the FAA has approved the FOQA I&O plan, the air carrier implements the program for analyzing, validating, and taking corrective actions based on FOQA data. It is the responsibility of the air carrier to set up procedures for identifying operational deficiencies and taking corrective action.

(4) Limitation on use of FOQA data. Under 14 C.F.R. § 13.401(e), except for criminal and deliberate acts, the FAA may not use an operator's FOQA data in an enforcement action

against that operator or its employees when that data is obtained from an FAA-approved FOQA program.

(5) Collection of data. In a FOQA program, the air carrier collects data from the aircraft using either special acquisition devices, such as quick access recorders (QAR) or directly from the flight data recorder (FDR). Using one of several available transmission methods, the air carrier periodically retrieves the data and sends it to the air carrier's FOQA office for analysis. Data collected can then be used in trend identification, determination of corrective actions, and monitoring of effectiveness of those actions.

(6) Regulatory requirements. Regulatory requirements applicable to FOQA programs are found in 14 C.F.R. § 13.401.

(7) Guidance for FOQA participation. Guidance about FOQA programs is contained in Advisory Circular No. AC 120-82. (AC 120-82 may be found online at <http://rgl.faa.gov>).

**d. Aviation Safety Action Program (ASAP).**

(1) General. The objective of the ASAP is to encourage air carrier and repair station employees to voluntarily report safety information that may be critical to identifying potential precursors to accidents. An air carrier or repair station takes part in the ASAP by entering into a memorandum of understanding with the FAA and usually the labor organization for the participating employee group. Under an ASAP, participating employees can report safety issues to management, the FAA, and the employee union for resolution without fear the FAA will use reports accepted under the program to take legal enforcement action against them, or that companies will use such information to take disciplinary action, provided program criteria are met.

(2) Applicability. Air carriers that operate under 14 C.F.R. part 121 and major domestic repair stations certificated under 14 C.F.R. part 145 may participate in the ASAP.

(3) Guidance for ASAP participation. Guidance about participating in the ASAP is contained in Advisory Circular AC 120-66, as amended. (AC 120-66, as amended, may be found online at <http://rgl.faa.gov>).

**e. NASA Aviation Safety Reporting Program (ASRP).**

(1) General. The FAA established the ASRP to encourage individuals to report any information they believe discloses an unsafe condition in the national airspace system (NAS). Under the ASRP, the FAA waives the imposition of a sanction for a violation if an individual other than a passenger files a timely report and meets the other criteria in chapter 2, subparagraph 5.e.(3). FAA investigative personnel do not query the National Aeronautics and Space Administration (NASA) and do not ask an alleged violator if he or she filed a report under the ASRP, at any time during an investigation of an alleged violation. Under 14 C.F.R. § 91.25, the FAA does not use the aviation safety reporting system (ASRS) reporting form, that is, both

the identification strip and the body of the report, in any enforcement action, except information concerning accidents or criminal offenses which are excluded from the ASRP.

(2) Guidance for ASRP participation. Guidance about the ASRP is contained in Advisory Circular AC 00-46, as amended. (AC 00-46, as amended, may be found online at <http://rgl.faa.gov>).

(3) Criteria for waiver of imposition of sanction. An individual in a legal enforcement action receives a waiver of imposition of sanction under the ASRP provided --

- The violation was inadvertent and not deliberate;
- The violation did not involve a criminal offense, or accident, or a lack of qualification or competency to hold a certificate;
- The individual has not been found in any prior FAA enforcement action to have committed a violation of 49 USC subtitle VII, or of any regulation promulgated under that statute for a period of 5 years prior to the date of the occurrence; and
- The individual proves that, within 10 days after the violation, he or she completed and delivered or mailed a written report of the incident or occurrence to the NASA ASRS.

(4) Legal enforcement actions under ASRP. When FAA legal counsel determines that an individual qualifies for a waiver of imposition of sanction under the ASRP, the FAA issues an order of suspension or order of civil penalty, as appropriate, that includes the factual findings, the findings of any regulatory violations supported by the evidence, the sanction, a statement that the sanction associated with the finding of violations is waived under ASRP, and appropriate appeal rights.

## **6. Enforcement Priorities.**

**a. General.** Enforcement case priorities focus agency enforcement efforts on those violations that have the greatest safety impact. The agency's highest priorities among enforcement cases are emergency actions, and generally those that involve certificate holder qualifications. Following those cases, the agency's priority enforcement actions are those types of cases identified by program offices as warranting aggressive, swift prosecution.

### **b. Legal Enforcement Case Reviews.**

(1) Each Regional Counsel and the Assistant Chief Counsel for Enforcement meet at least quarterly with the respective lines of business to review the status of cases referred for legal enforcement action. This review is a joint legal counsel-program office assessment of caseload management, with an emphasis on the timeliness and effectiveness of case selection, investigation, initiation, and processing. In addition, the review includes an analysis of: trends; inconsistent case handling; lack of uniform sanctions; repeat violations; and any other significant evaluative factors. At this review, legal counsel and program office personnel consider the need to reprioritize and process cases warranting the greatest urgency.

(2) If an assessment shows that the program offices are submitting more cases for legal handling than legal counsel can reasonably be expected to initiate and process, without incurring

a backlog, legal counsel and program office personnel redistribute cases for processing by other regions or headquarters staff with greater available enforcement resources or reevaluate the cases that are backlogged and determine if any alternative enforcement action would be appropriate and warranted.

(3) The reconsideration or reassessment of a given sanction is not to be considered a weakening or lack of enforcement resolve. On the contrary, enforcement resolve is most evident when FAA enforcement personnel take corrective and deterrent actions in a timely manner. For example, sometimes an administrative action, taken immediately after a violation occurs, can serve as a more effective deterrent than a long-delayed legal action. There is a wide range of effective tools available to FAA legal counsel and program office personnel, and they consider all of them in light of the circumstances of each individual case. Legal counsel and program office personnel select the tool that most effectively and timely serves to correct the noncompliance and deter future violations.

(4) When EIRs are returned to investigating field offices, the field offices carefully reevaluate and quickly respond to each returned legal enforcement case in light of the explanation provided by the program office division manager. Field office personnel consider the nature of the violation and other relevant mitigating and aggravating factors and elements, and whether safety and the public interest continue to require that legal enforcement action be taken. If the investigating field office determines that the recommended legal enforcement action should be taken, then it coordinates this decision with the respective program office division manager and legal counsel.

**c. Special Emphasis Enforcement Programs.** The FAA generally avoids creating mandatory sanction programs. At times, special situations arise, however, that dictate the need for increased sanctions or other measures stricter or more focused than existing methods to bring about compliance in certain areas. In such circumstances, the FAA may set up a special emphasis enforcement program, designed to focus on a particular area of noncompliance, on a national or local geographical basis and the following procedures apply.

(1) Generally, a special emphasis enforcement program is used only when other methods of gaining compliance have not been sufficiently effective. Normally, such a program is established with a fixed expiration.

(2) The appropriate program office and the Office of the Chief Counsel jointly determine whether to institute a national special emphasis enforcement program. The appropriate regional program office division and the Regional Counsel jointly recommend a regional special emphasis enforcement program. A regional program is set up only with the concurrence of the Chief Counsel and the director of the appropriate program office. The regional program office division manager advises the Regional Administrator about the implementation of a regional special emphasis enforcement program.

(3) Before instituting a special emphasis enforcement program, FAA legal counsel and the program office determine what public notice, if any, is needed. Sometimes, publicity may not be appropriate; for example, where only increased surveillance is needed. In other cases,



letters to airmen, pilot forums, and even press releases may be appropriate. The program office maintains a tracking method to evaluate the effectiveness of the special emphasis enforcement program on a continuing basis until termination of the program.

## **7. Formal Complaints.**

**a. Authority To Investigate Violations of 49 U.S.C. Subtitle VII, Part A.** Under 49 U.S.C. § 46101(a)(1), a person may file a written complaint with the Administrator about violations of 49 U.S.C. subtitle VII, part A, or a requirement prescribed under part A. Under 49 U.S.C. § 46101(a)(2), the Administrator, on his or her initiative, may investigate, if the Administrator determines that reasonable grounds exist regarding a person's violation. If the Administrator determines the complaint does not state facts that warrant an investigation or further action, the Administrator may dismiss the complaint without a hearing (49 U.S.C. § 46101(a)(3)). The Administrator, after notice and opportunity for hearing, must issue an order to compel compliance with part A if he or she finds, after the investigation, that a person is violating part A (49 U.S.C. § 46101(4)).

**b. Procedures.** 14 C.F.R. § 13.5 prescribes procedures for persons filing formal complaints. Under that section, any person may file a complaint with the Administrator about anything done or not done by any person in contravention of any provision of any statute, or regulation or order issued under it about matters within the jurisdiction of the Administrator. 14 C.F.R. § 13.5, however, does not apply to complaints against the Administrator or any employee of the FAA acting within the scope of his or her employment.

**c. Contents of the Formal Complaint.** Formal complaints are sent to the FAA, Office of the Chief Counsel, Attention: Enforcement Docket (AGC-10), 800 Independence Avenue, SW, Washington D.C. 20591. The Assistant Chief Counsel for Enforcement or his or her delegate determines whether the complaint meets the criteria for being docketed as a formal complaint. Complaints that do not meet the criteria set forth below are not docketed as a formal complaint. Rather, the FAA treats them as reports under 14 C.F.R. § 13.1. Complaints that meet the criteria set forth below are docketed, and a copy is mailed to each person named in the complaint. Each formal complaint must:

(1) Be submitted in writing and identified as a complaint filed for the purpose of seeking an appropriate order or other enforcement action.

(2) Set forth the name and address, if known, of each person who is the subject of the complaint and, for each person, the specific terms of the statute, regulation, or order the person violated.

(3) Contain a concise statement of the facts relied on to substantiate each allegation.

(4) State the name, address, and telephone number of the person filing the complaint. That person or a duly authorized representative signs the complaint.

**d. Response to the Complaint.** Within 20 days after service of the complaint, the person named in the complaint must file an answer.

**e. Disposition of the Formal Complaint.** After the complaint has been answered or the period to respond has expired, the steps in paragraphs 7.e.(1)-(5) occur.

(1) The Assistant Chief Counsel for Enforcement or his or her delegate sends a copy of the complaint and answer to the appropriate program office with a request that the program office determine whether the complaint states facts that warrant further investigation or other action.

(2) If the program office determines that no further action is warranted, the program office dismisses the complaint without a hearing and prepares a record of decision that informs the person who filed the complaint and the person named in the complaint of the reasons for the dismissal.

(3) If the program office determines that reasonable grounds for investigating the complaint exist, an informal investigation may be initiated by the program office or an order of investigation may be issued under 14 C.F.R. part 13, subpart F. The Assistant Chief Counsel for Enforcement or his or her delegate informs each person named in the complaint of the name of the FAA official who is conducting the investigation.

(4) If the investigation substantiates the allegations set forth in the complaint, the FAA may issue a notice of proposed order or may proceed with other enforcement action under 14 C.F.R. § 13.5(j).

(5) The complaint, other pleadings, and official FAA records involving the disposition of the complaint are maintained in the Enforcement Docket (AGC-10), Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591. Interested persons may examine any docketed material at that office, during business hours, at any time after the docket is established, except material that is ordered withheld from the public under applicable law or regulation. Interested persons may obtain a copy of the docketed material upon paying for the cost of photocopying.

**f. Complaints against Members of the U.S. Armed Forces.** Under 49 U.S.C. § 46101(b) and 14 C.F.R. § 13.21, the FAA refers complaints against a member of the U.S. Armed Forces acting in the performance of official duties to the Secretary of the appropriate department in the Department of Defense for action. The appropriate military authority concerned, within 90 days of receipt of the complaint, is required to inform the Administrator of the action taken on the complaint, including any corrective or disciplinary action.

**8. Public Disclosure of Enforcement Action Documents.** The public has a legitimate interest in the FAA's enforcement program and a general right to obtain records of the FAA's enforcement actions, subject to established privileges and exceptions from required disclosure under the Freedom of Information Act (FOIA) and the Privacy Act.

**a. Actions against Individuals.** The voluntary or unsolicited disclosure of any enforcement action (initial or final) against an individual is prohibited under the Privacy Act. These records may be released only in response to a written request under the FOIA, in

accordance with a routine use under the Privacy Act, or as required by the Pilot Records Improvement Act (PRIA).

(1) FOIA and routine uses. The FAA may disclose enforcement records in response to a FOIA request or under a routine use published in the *Federal Register* pertaining to DOT/FAA System of Records 847, *Aviation Records on Individuals*. Where disclosure is sought under FOIA, the agency releases information only when the public interest in disclosure outweighs the privacy interest involved. Disclosure under the routine-use provision as it is currently published requires a written request and is treated the same as a FOIA request.

(2) PRIA. In response to written requests by air carriers under 49 U.S.C. § 44703(h), the FAA discloses summaries for the past five years of legal enforcement actions resulting in the Administrator's finding of violation that was not subsequently overturned against an applicant seeking employment as a pilot.

**b. Actions against Entities.** An initial or final enforcement action document is sometimes made available within a reasonable time after issuance regardless of whether there has been a request for it. This is particularly true when the case involves air carriers or major aircraft and aircraft engine manufacturers because of the public interest in such actions. Otherwise, except for the release of other information of a public nature, such as the scheduling of a public hearing, the FAA releases information on the action in response to a request for the information, subject to established privileges and exemptions from required disclosure under the FOIA.

**c. Release to Alleged Violator or Counsel.** Once FAA legal counsel initiates an enforcement action, FAA legal counsel may release documents pertaining to the enforcement action to an alleged violator or counsel representing the alleged violator without requiring a request under the FOIA. Privileged documents, for example, those involving deliberative process or attorney work product, are withheld.

**d. Information Generally Not Released.** Before releasing any enforcement records, FAA personnel carefully review them and withhold documents from release, or redact portions of documents that are privileged. The FAA normally does not release records or portions of records that are deliberative in nature. In a typical enforcement case, information usually withheld includes:

- (1) Recommendations about sanction and violations to be alleged;
- (2) Analysis of the case; and
- (3) Attorney work product.

**e. Copies of Initial Enforcement Action Documents.** Copies of initial enforcement action documents (for example, notices of proposed certificate action, civil penalty letters, notices of proposed civil penalty) are not made available to the public before the alleged violator has had an adequate opportunity to review the document. This should generally not be longer than one to three days after receipt. Where emergency certificate action is taken, the documents may be made available the same day the action is taken, but only after the alleged violator has been notified of the action.

**f. Protection of Voluntarily Submitted Information.** Certain information, which might otherwise be disclosed, is prohibited from disclosure if it is protected by an order issued under 14 C.F.R. part 193. FAA Order 8000.81 designates information provided to the FAA from an approved FOQA program as protected under 14 C.F.R. part 193. FAA Order 8000.82 designates information provided to the FAA from an Aviation Safety Action Program as protected under 14 C.F.R. part 193. FAA Order 8000.89 designates information provided to the FAA from a Voluntary Disclosure Reporting Program as protected under 14 C.F.R. part 193.

## **9. Publicizing Enforcement Actions.**

### **a. General.**

(1) Publicizing enforcement actions serves many interests. The public has a right to know how the FAA is conducting its responsibilities on the public's behalf. In addition, enforcement information about a regulated party may be useful in making consumer choices. Publicizing enforcement actions also serves the government's strong interest in ensuring, through deterrence, compliance with the FAA's regulations. Often the adverse publicity and concomitant public reaction to regulatory violations serve more effectively to deter future violations by an entity than the loss of funds caused by a civil penalty. And while an unpublicized civil penalty or certificate action operates to deter future violations by the entity subjected to the enforcement action, publicizing the action acts as a deterrent for others similarly situated. The FAA does not publicize the identity of individuals against whom it takes enforcement actions.

(2) Because any publicity of an enforcement action alleging or finding statutory or regulatory violations has the potential to affect significantly the public's confidence in an entity's ability and commitment to comply with safety regulations, the FAA takes care in ensuring the accuracy and fairness of the publicity it gives such actions. Such care is especially important when the publicity concerns enforcement actions that are not final determinations made by the FAA or adjudicative bodies.

**b. Monthly Reports.** The Office of Communications posts a monthly report on its web site about civil penalty cases against entities in which the proposed penalty is \$50,000 or more, and certificate suspensions or revocations involving businesses other than *housekeeping actions* (that is, certificate actions against certificate holders that have effectively ceased doing business). The report contains an introduction in news release form highlighting such items of interest as the number of cases and total of the proposed civil penalties.

**c. News Releases.** The Office of Communications issues news releases on cases against entities that it finds would be of particular interest to the public or otherwise promote the government's interest in deterring violations. A news release should:

(1) Be factual and objective.

(2) Avoid comparisons of a particular alleged violator or enforcement case with other alleged violators or enforcement cases. Such comparisons often are subjective, and might give the appearance that the FAA harbors a bias or favors a particular entity. However, the release

may contain statements concerning any precedent that is set or unique circumstances, as long as they are factual.

(3) Provide the current status of the enforcement action and state whether the subject of the action disputes the allegations or has filed an appeal, if either is known.

(4) Be consistent with requirements of the FOIA and the Privacy Act.

**d. Advance Notice of a News Release.** A copy of the release is not provided to the alleged violator or its contents disclosed before it is disseminated to the public.

**e. Releasing Information before Issuance of Release.** FAA offices do not disseminate any information regarding the subject of a news release until that news release has been issued, except in special circumstances directed by the Office of Communications in consultation with legal counsel.

**f. Negotiating a News Release.** The FAA does not negotiate the contents of a news release or whether it will issue one.

**g. Providing Information to the Office of Communications.** The legal office initiating an action provides to its regional Office of Communications upon issuance a copy of any civil penalty letter or notice of proposed civil penalty that involves a penalty of \$50,000 or more, and any emergency order of suspension or revocation or notice proposing certificate action against an entity except in housekeeping actions. The regional Office of Communications drafts a news release and sends it and the enforcement document to AOC-2A. If the FAA does not issue a news release, it uses the information in the draft news release for the monthly report.

**h. Coordinating News Releases and Monthly Reports.** Before issuance of any news release or monthly report, AOC-2A obtains the concurrence of AGC-300, the affected Associate or Assistant Administrator, and any other concerned agency officials, including, where appropriate, the Administrator.

**i. Quarterly Reports.** At the end of each quarter, AGC-300 posts on the web site of the Office of the Chief Counsel, a compilation of all enforcement actions taken against aviation entities that the FAA closed during that period. The report may be found online at <http://www.faa.gov/agc/enforcement/index.htm>.

## **10. Expunction Policy.**

**a. General.** The FAA has a policy for expunging certain records of enforcement actions against individuals. (*See* FAA Enforcement Records; Expunction Policy, 56 Fed. Reg. 55788 (October 29, 1991)).

**b. Expunction Periods for Certain Enforcement Actions.** In general, the FAA expunges records of certain enforcement actions in accordance with the time periods in chapter 2,

subparagraphs 10.b.(1)-(5). A record is eligible for expunction once no further action is required in the enforcement case and the appropriate FAA office has closed the case.

(1) Fixed-period certificate suspensions. Records of legal enforcement actions involving fixed-period suspensions of airman certificates against individuals are expunged five years after the following dates, unless at the time they are due to be expunged, one or more other legal enforcement actions are pending against the same individual:

- The date the airman surrenders his or her airman certificate;
- The date the airman submits an affidavit of certificate loss; or
- The date of the order of suspension with waiver of sanction.

(2) Civil penalties. In civil penalty cases against individuals, where an order assessing a civil penalty or a civil penalty letter has been issued, the records are expunged five years after the following dates, unless at the time they are due to be expunged, one or more other legal enforcement actions are pending against the same individual:

- The date the civil penalty has been paid; or
- The date of the civil penalty letter that provides for a waiver of sanction.

Where a civil penalty is determined to be *uncollectible*, the record is not expunged.

(3) Indefinite certificate suspensions. Indefinite suspensions of airman certificates for reexamination or proof of qualification are expunged one month after the airman successfully completes a reexamination or demonstrates qualifications, unless at the time it is due to be expunged, one or more other legal enforcement actions are pending against the same individual.

(4) Administrative actions. Administrative actions against individuals for apparent violations committed in their individual capacities are expunged two years following the issuance of the administrative action.

(5) No action cases. Cases closed with no enforcement action are expunged within 90 days. In *no action* cases, if an investigation results in the termination of the case without enforcement action, the record is expunged within 90 days after the termination. If legal enforcement action has been initiated and is subsequently withdrawn, the record is expunged within 90 days after the withdrawal, unless an administrative action is subsequently issued in which case the record is expunged in the same manner as other administrative action records.

**c. Certificate Revocation Actions.** The EIS records of enforcement actions resulting in revocation of certificates are not expunged.

**d. Applicability.** The expunction policy applies to all enforcement actions closed with *no action* and to legal enforcement actions referenced in chapter 2, subparagraph 10.b., and administrative actions against individuals whose apparent violations were committed in their

individual capacities. The expunction policy applies to individuals who hold airman certificates, as well as to those who do not, such as passengers. The expunction policy does not apply to:

- (1) Records concerning enforcement actions against businesses or other entities;
- (2) Information contained in airman applications;
- (3) Denials of airman medical certificates;
- (4) Airman medical records;
- (5) Records generated or maintained by entities other than the FAA, such as orders and decisions issued by the NTSB and any federal courts;
- (6) Records maintained by the FAA Hearing Docket or DOT's Document Management System which are the repositories for public records pertaining to the administrative adjudication of cases brought under the FAA's civil penalty assessment authority; or
- (7) An application for an airman certificate or rating, FAA Form 8710-1, completed by an airman as part of a reexamination.

**e. Expunction from EIS.** When a record is expunged from the EIS, any information that identifies the individual is removed from the EIS record, including the individual's name, address, date of birth, and FAA certificate number. The EIR number is not removed, nor is the rest of the information, such as the regulations or statutory provisions violated and the final action. This information is kept so the FAA is able to conduct statistical research of the data, for which the identity of the individual involved is not needed.

**f. Expunction of Records of Individuals Not Located.** In certificate action cases where legal enforcement action has been initiated and the airman cannot be located, the record is not expunged, unless the airman is located. Then, the case may be reevaluated and appropriate action taken. After that, records of the enforcement action are expunged in accordance with chapter 2, subparagraph 10.b. In civil penalty cases where the individual cannot be located, the FAA maintains the record indefinitely until the individual is located. At that time, the case may be reevaluated and appropriate action taken. After that, records of the enforcement action are expunged in accordance with this policy.

**g. Effect of Subsequent Enforcement Actions.** If at the time a record of a legal enforcement action is due to be expunged, an EIR has been opened for a possible subsequent enforcement action, the eligible legal enforcement action is not expunged unless the subsequent enforcement action is completed. If the subsequent enforcement action is resolved by administrative action or *no action*, then, at that time, the eligible legal enforcement action record is expunged in accordance with chapter 2, subparagraph 10.b. If the subsequent enforcement action is resolved through civil penalty or certificate action, the eligible legal enforcement action record regarding the first action will be expunged when the subsequent enforcement action is expunged.

**h. Expunction of Combined Enforcement Actions.** In any case where different types of enforcement action have been combined in one EIR, the record is expunged in accordance with the expunction period in chapter 2, subparagraph 10.b. for the type of enforcement action included in that record that retains the record for the longest period.

**i. Requests to Expunge Records.** If an individual becomes aware of any enforcement record pertaining to him or her that may be eligible for expunction but has not been expunged, then he or she may request amendment of the record under the Privacy Act, 5 U.S.C. § 552a(d). An individual makes a request to amend his or her enforcement record in writing to the appropriate systems manager in accordance with the procedures in 49 C.F.R. part 10 and FAA Order 1280.1A.

**j. Negotiations.** FAA enforcement personnel do not negotiate deviations from the expunction policy.

**11. Enforcement Document Destruction Requirements.** The time periods for keeping enforcement records and for their retirement to a federal records center and destruction are found in FAA Order 1350.15C, Records Organization, Transfer, and Destruction Standards.

**12. Release of Investigative Material.** The FAA handles a request for release of the EIR or investigative information in accordance with FAA Order 1270.1, Freedom of Information Act Program.



## Chapter 3. Enforcement Responsibilities of FAA Offices

**1. Purpose and Authorities.** This chapter describes the authorities and responsibilities of various FAA offices in carrying out the FAA's compliance and enforcement program.

**a. Statutory Authorities.**

(1) Authority to inspect for safety compliance. 49 U.S.C. § 40113 authorizes the Administrator to conduct investigations that he or she considers necessary to carry out the Administrator's statutory powers and duties. The Administrator may investigate, if reasonable grounds exist, a possible violation of 49 U.S.C. subtitle VII, part A, or a regulation or order issued under that part, or about any question that may arise under this statutory part. 49 U.S.C. § 46101(a)(2). 49 U.S.C. § 44709 authorizes the Administrator to reinspect any civil aircraft, aircraft engine, propeller, appliance, air navigation facility, or air agency and to reexamine any civil airman.

(2) Authority to take certificate action or civil penalty action or issue orders for aviation safety violations. The Administrator has authority to issue an order amending, modifying, suspending, or revoking any type certificate, production certificate, airworthiness certificate, airman certificate, medical certificate, air carrier operating certificate, air navigation facility certificate (including airport operating certificates), or air agency certificates, if the Administrator determines that safety in air commerce or air transportation and the public interest requires such action. *See* 49 U.S.C. § 44709. 49 U.S.C. § 44105 authorizes the Administrator to suspend or revoke a certificate of registration when an aircraft no longer meets registration requirements. Under 49 U.S.C. §§ 46301 and 5123, among others, the Administrator has the authority to impose or compromise civil penalties depending on the amount of such penalties against persons who violate FAA statutory or regulatory requirements. 49 U.S.C. § 40113 authorizes the Administrator to issue orders he or she considers necessary to carry out his or her statutory powers and duties.

(3) Statutorily-required certificate action. Under 49 U.S.C. § 44710, the Administrator is required to revoke an airman certificate of any individual who is convicted, or knowingly carried out an activity punishable under a state or federal law by death or imprisonment for more than one year, relating to controlled substances (except simple possession), and served as an airman or was on an aircraft used in the commission of the offense. Under 49 U.S.C. § 44106, the Administrator is required to revoke the certificate of registration for an aircraft used for an offense described in 49 U.S.C. § 44710, if the owner of the aircraft permits such use. Under 49 U.S.C. § 44726, the Administrator is required to revoke a certificate, if the holder of the certificate, or an individual who has a controlling or ownership interest in the holder, was convicted of, or knowingly, and with the intent to defraud, carried out or facilitated an activity punishable under a federal law relating to the installation, production, repair, or sale of a counterfeit or fraudulently-represented aviation part or material. Under 49 U.S.C. § 46111, the Administrator is required to revoke any part of a certificate, if the Administrator is notified by the Department of Homeland Security (DHS) that the holder of the certificate poses, or is suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety.

Under 49 U.S.C. § 44924, upon notification by the DHS that a foreign repair station does not maintain or carry out effective security measures, the Administrator suspends the repair station's certificate until the DHS determines the repair station is maintaining effective security measures. Under the same provision, the Administrator is required to revoke the certificate of a foreign repair station upon notification by the DHS that the repair station poses an immediate security risk.

(4) Authority to obtain evidence in aviation safety investigations or hearings. In conducting a hearing or investigation, the Administrator may subpoena witnesses and records, administer oaths, receive evidence, examine witnesses, take depositions, and seek to enforce subpoenas. *See* 49 U.S.C. § 46104.

(5) Authority for hazardous materials investigations and proceedings. Under 49 U.S.C. § 5121, the Secretary of Transportation is authorized to conduct investigations, make reports, issue subpoenas, conduct hearings, require the production of records and property, and take depositions to carry out his or her statutory responsibilities relating to the transportation of hazardous materials. The Secretary is further authorized, after notice and an opportunity for a hearing, to issue orders directing compliance with 49 U.S.C. subtitle III, chapter 51 or 49 C.F.R. parts 100-185, and to impose civil penalties for violations of these provisions. The Secretary may authorize an officer, employee, or agent to inspect, at a reasonable time and in a reasonable way, records and property relating to the manufacture, fabrication, marking, maintenance, reconditioning, repair, testing, or distribution of packages or containers for use by a person in the transportation of hazardous materials in commerce; or the transportation of hazardous materials in commerce. Under 49 C.F.R. § 1.47, the Secretary has delegated this authority to the Administrator.

(6) Authority for commercial space investigations and proceedings. The Commercial Space Launch Act of 1984, as codified and amended at 49 U.S.C. subtitle IX--Commercial Space Transportation, ch. 701, Commercial Space Launch Activities, 49 U.S.C. §§ 70101-70121 (the Act), authorizes the Secretary of Transportation to oversee, license and regulate commercial launch and reentry activities and the operation of launch and reentry sites as carried out by U.S. citizens or within the United States. The Secretary has delegated this authority to the Administrator, who in turn has delegated the authority to the Associate Administrator for Commercial Space Transportation. 49 U.S.C. §§ 70104 and 70105. Under 49 U.S.C. § 70115(c), the FAA may impose civil penalties if a person is found to have violated a requirement of the Act, a regulation issued under the Act, or any term or condition of a license issued or transferred under the Act. The FAA implemented the authority to impose civil penalties and other enforcement measures such as license suspension or revocation in 14 C.F.R. parts 405 and 406. The Act and implementing regulations require a licensee to permit federal officers to monitor all activities that the Associate Administrator considers reasonable and necessary to determine compliance with the license or the Associate Administrator's payload responsibilities. 49 USC § 70106(a) and 14 C.F.R. § 405.1. The Act and implementing regulations also permit the FAA to modify, suspend, or revoke a license, with notification of such an action to a licensee in writing. *See* 49 U.S.C. § 70107 and 14 C.F.R. § 405.3. Such actions are effective immediately and continue through any review proceedings. *See* 49 U.S.C. § 70107(d) and 14 C.F.R. § 405.3(c).

**b. Delegations of Authority.** The Administrator has delegated his or her authorities to investigate and take enforcement action to various FAA officials. Those delegations are generally found in 14 C.F.R. part 13.

## **2. Coordination and Delegation within FAA.**

**a. Cooperation and Communication within FAA.** All FAA offices and employees, including those that do not have primary responsibility in the compliance and enforcement program, assist in executing the program. To assure the highest possible degree of coordination and consistency in carrying out the compliance and enforcement program, FAA offices that investigate or prosecute enforcement cases maintain communication with other FAA offices whose responsibilities are or may be affected by such cases.

**b. Early Agency Coordination in Emergency Actions.** When an investigating field office becomes aware of a case that might be appropriate for emergency action, that office immediately notifies its regional office representative who, in turn, immediately notifies legal counsel. With the earliest possible notification, these officials can work together to expedite processing of the case.

**c. Coordination of an Investigation.** The Flight Standards Service, Aircraft Certification Service, Office of Aerospace Medicine, Office of Security and Hazardous Materials, Office of Airports, or Office of Commercial Space Transportation has primary responsibility for investigations of alleged violations within the jurisdiction of the FAA. When one of these offices encounters a possible statutory or regulatory violation within the jurisdiction of another office, it must coordinate with that office. In those cases, all responsible FAA offices pursue the investigation and enforcement for all possible violations in a coordinated effort. Investigating offices also maintain coordination with other field offices that have an interest in the investigation, especially certificate holding offices. Coordination provides other field offices the opportunity to furnish any information that may be relevant to the investigation and may provide the investigating field office with access to information that is known or available to the FAA but might not be included as part of the investigation and EIR.

## **3. Investigating and Processing Enforcement Cases under the Geographic Concept.**

**a. Explanation of Geographic Concept.** The investigation and processing of enforcement cases are the responsibilities of the region where the violation is discovered. Under this geographic concept of enforcement, the field office responsible for the geographical area in which the violation is discovered conducts the investigation and processes the EIR, through its parent region, consistent with the instructions and procedures of this order, except when this responsibility is transferred as provided in chapter 3, subparagraph 3.c. The parent region processes EIRs received from its field offices, except when this responsibility is transferred as provided in chapter 3, subparagraph 3.d.

**b. Supporting Field Offices and Regions.**

(1) Violations often involve the responsibilities of offices other than the investigating office. For example, for air carriers, the CHDO might be involved. These offices not only have a vital interest in the conduct and outcome of the investigation, but also often are prime sources of the information and expertise needed to resolve the matter. For the purposes of this order, these offices are referred to as supporting field offices or regions. Investigating field offices maintain timely and complete coordination with these supporting field offices or regions throughout the investigation and reporting process. Supporting offices provide the information and assistance needed by the investigating office. The respective regional offices maintain similar coordination and support during the processing of the case. Investigating field offices and their personnel contact the supporting field office manager and the principal inspectors at the beginning of the investigation to ensure they are informed and to get information that might be helpful to the investigating office. The investigating field office also maintains timely and complete coordination with the supporting field office throughout the investigation and reporting process. This includes seeking the certificate-holding principal inspector's participation in determining the recommended sanction. Cooperation between the investigating field office and supporting field office and principal inspector, if applicable, is important and continues throughout the investigation and litigation stages until final resolution of the case.

(2) While the investigating field office and its parent region have authority and responsibility for investigating and processing violations, they consider any comments, recommendations, or requests, including requests for transfer by supporting field offices. The investigating field office advises a supporting field office if its recommendations or requests cannot be accepted and the reasons why. If the matter cannot be resolved to the satisfaction of the supporting field office, it may request interregional review by appropriate levels of authority. The parent region is responsible for resolving issues during this review. Similarly, the parent regional office, when processing violations, considers and resolves the recommendations and requests of supporting regional offices.

**c. Transfer of Cases by Investigating Field Office.** The investigating field office may transfer responsibility for investigation, coordination, and reporting to another field office, when the offices mutually agree that a transfer would be in the best interest of the government. For example, a transfer may be considered when:

(1) Most of the investigative effort or expertise will necessarily be provided by another field office;

(2) The violation occurred within the jurisdiction of another field office; or

(3) It becomes obvious that an investigation should be combined with investigations being conducted by another field office.

When a transfer is made, the field office receiving the case assumes full responsibility for investigation, coordination, and reporting, and its parent region assumes full responsibility for processing. The transferring field office and its parent region assume the role of a supporting office and region. A field office may transfer responsibility for corrective action to another field office when a transfer would facilitate the effective and timely implementation of the required corrective action. The field office receiving the case has complete control over the disposition of the case.

**d. Transfer of Cases by Regional Office.** A region may transfer responsibility for processing enforcement cases, or related corrective action, to another region when they mutually agree that a transfer is in the best interest of the government.

**e. Notification of Case Closure.** The FAA office responsible for the final closing of an enforcement case appries all investigating and supporting offices of the final disposition of the case.

#### **4. Complex or Controversial Enforcement Cases.**

**a. General.** Complex or controversial cases are those requiring or warranting substantial coordination among FAA offices or extensive preparation for potential enforcement litigation. Examples of cases that might be complex or controversial are those:

(1) Involving alleged violations warranting initiation of a formal investigation under 14 C.F.R. part 13.

(2) Requiring extensive interregional coordination.

(3) Involving extensive violations by, or significantly severe penalties against, major regulated entities, for example, air carriers and aircraft manufacturers.

(4) That, because of the allegations or parties involved, will have national impact.

(5) Involving, or that may involve, seizure of aircraft or the need for specialized enforcement action such as injunction.

**b. How to Identify a Complex or Controversial Case.** FAA investigative personnel must identify complex or controversial cases at the earliest possible stage for enforcement efforts to be most effective. FAA investigative personnel initially determine the investigative effort to be undertaken. Complex or controversial cases can best be identified by the nature and scope of the investigative effort needed. FAA investigative personnel anticipate, to the extent possible, the likelihood that a case will involve complex and substantial issues of fact or will otherwise require a special investigative effort, or will receive unusual publicity. FAA investigative personnel consider:

(1) Whether the case substantially involves responsibilities of other FAA offices; for example, interregional coordination is often required for complex or controversial air

carrier maintenance violations that may involve engineering analysis and other type certification issues.

(2) Whether the action considered is consistent with action being taken in other regions and with national policy.

(3) Whether the case involves controversial regulations.

(4) Whether there are allegations of FAA complicity.

(5) Whether potential criminal violations exist. If so, appropriate coordination with the affected program office, Office of Security and Hazardous Materials (Security), and legal counsel and referral to the Office of Inspector General is required.

**c. Notification of Complex or Controversial Case.** FAA investigative personnel, through their office managers, alert the proper division in the regional office, whenever a complex or controversial case is under investigation. This enables timely planning of the investigative effort to be undertaken. The division manager, in turn, consults with FAA legal counsel to determine, for example, whether an order of investigation is appropriate and what types of records or other evidence should be sought. To the extent practicable, Regional Counsel notifies AGC-300 whenever it appears that a complex or controversial case with the potential for national significance is under investigation.

**d. Participation by FAA Legal Counsel.** Experience with complex or controversial cases has demonstrated the importance of legal counsel's participation at the investigative stage. Rather than awaiting completion of the EIR, FAA legal counsel takes the initiative early to counsel investigative personnel in evidentiary matters and about pursuing only legally provable violations. FAA legal counsel advises a U.S. attorney or the Department of Justice, as appropriate about cases likely to lead to civil penalty or other litigation in the U.S. courts, as early as practicable. Success in prosecuting violations in a complex or controversial case depends on the quality of the investigation supporting it. Early involvement of legal counsel may reduce or eliminate the need to supplement an investigation after the program office has forwarded the EIR to legal counsel, and legal counsel has reviewed it.

## **5. Specific FAA Office and FAA Employee Responsibilities.**

**a. Compliance and Enforcement Responsibilities of All FAA Employees.** Any FAA employee who becomes aware of an apparent violation by, or apparent lack of qualification of, any regulated person must report such information to an appropriate FAA office. FAA employees must cooperate with any further investigation and provide testimony or other information. All FAA enforcement personnel are responsible for identifying problems involving regulations or enforcement procedures that need correction. For example, when FAA enforcement personnel find a regulation too vague for effective enforcement or a current procedure unnecessarily cumbersome, they promptly bring it to the attention of the regional division. The regional division forwards the recommended changes to AGC-300 through the Regional Counsel. AGC-300 acknowledges receipt of the recommendation, and coordinates an evaluation of the recommendation with the headquarters office of primary responsibility for the

regulation or procedure. The individual making the recommendation is advised of any decision or action taken on the recommendation.

**b. Headquarters Offices.** Within FAA headquarters, the Chief Counsel, the Associate Administrator for Aviation Safety, the Assistant Administrator for Security and Hazardous Materials, the Associate Administrator for Airports, and the Associate Administrator for Commercial Space have the overall responsibility for carrying out the Administrator's compliance and enforcement policies. In addition, the Assistant Administrator for Policy, Planning, and Environment is consulted about enforcement of noise-related requirements. Their offices establish procedures and guidance for implementation of the agency's compliance and enforcement program, and oversee and evaluate regional enforcement activities for effectiveness and uniformity. These offices also handle special investigations and enforcement actions as directed by the Administrator and advise the Administrator of any deficiencies or discrepancies in the agency's compliance and enforcement program policies and procedures. The Chief Counsel, Deputy Chief Counsel for Operations, or Assistant Chief Counsel for Enforcement may determine that the handling of legal enforcement action in a case of national importance be coordinated with or transferred to headquarters. The Office of the Chief Counsel, when appropriate, reviews enforcement actions taken by the regions.

**c. Regional Offices.**

(1) Program Office Regional Divisions. The appropriate regional divisions carry out and manage the FAA's compliance and enforcement program within their respective areas of responsibility. Appropriate regional division managers or their designees review all actions taken by field personnel to determine that action taken will serve to promote safety and protect the public interest and that alleged violators are being afforded fair and equal treatment. The regional division managers carry out the compliance and enforcement program, as well as handle any enforcement action, in accordance with this order and provide the investigating office with the status of enforcement actions investigated by that office. Regional Program Offices advise their counterparts in Headquarters of significant compliance and enforcement activities.

(2) Regional Counsel. The Regional Counsel provide legal guidance and counsel on compliance and enforcement matters and process EIRs requiring legal enforcement action or referral. Regional Offices refer the following cases through Regional Counsel to the Assistant Chief Counsel for Enforcement, AGC-300, for legal handling:

- Cases the Administrator expressly designates.
- Cases that AGC-300 expressly designates.
- Cases in which the Under Secretary for Border and Transportation Security, Department of Homeland Security makes an initial or final determination that a certificate holder poses, or is suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety.
- Cases involving violations of the FAA's antidrug and alcohol misuse regulations, 14 C.F.R. part 121 Appendixes I and J and 49 C.F.R. part 40.

Regional Counsel transfers to AGC-300 cases appealed to the full NTSB (except appeals in emergency actions), the FAA decisionmaker, and the U.S. courts of appeals, except as otherwise agreed.

**d. Drug Abatement Division Branches and Centers.**

(1) The appropriate Compliance and Enforcement Centers and branch implement and manage the FAA's compliance and enforcement program within their respective areas of responsibility. All actions taken by center or branch personnel are reviewed by appropriate center or branch managers or their designees to determine that action taken will serve to promote safety and protect the public interest and that alleged violators are being afforded fair and equal treatment. The center or branch managers carry out the compliance and enforcement program, as well as handle any enforcement action, in accordance with this order and provide the investigating office with the status of enforcement actions investigated by that office. Center offices advise their counterparts in Headquarters of significant compliance and enforcement activities.

(2) Washington Headquarters and regional counsel. The Office of the Chief Counsel in Washington headquarters provides legal guidance and counsel on compliance and enforcement matters and processes EIRs requiring legal enforcement action or referral. Some legal enforcement cases may be referred to regional counsel for processing.

(3) Any reference in this document to regional and headquarters personnel includes the Drug Abatement personnel.

**e. Field Offices.** Field offices conduct surveillance inspections of persons, aircraft, manufacturers of aircraft and parts, or operations to determine compliance with statutory and regulatory requirements and issues related to qualifications of persons or aircraft certificated or approved by the FAA. Field office enforcement personnel investigate, coordinate, and report violations of all statutory and regulatory requirements that are discovered within the geographical area for their office and for which they have enforcement responsibility.

**f. Air Traffic Organization (ATO).** ATO personnel are in a unique position to observe apparent violations or lack of qualification of airmen. Each ATO facility is responsible for promptly notifying the appropriate FAA field office of any incident or complaint that may involve violations of federal statutory or regulatory requirements for which the FAA is responsible. Each facility provides the appropriate FAA office with factual information about such incidents, including tapes, data, transcripts, and personnel statements, as soon as practicable, but no later than 24 hours after becoming aware of an incident or after a request from FAA investigative personnel.

**6. Coordination with Other Agencies outside the FAA.**

**a. General.** Some matters within the investigatory jurisdiction of the FAA may also involve violations of statutes or regulations that are within the investigatory jurisdiction of another government agency. In such a case, FAA investigative personnel:



(1) Immediately report the matter to the appropriate FAA program office. The program office, in consultation with legal counsel, reports the matter to the appropriate government agency. When the situation requires immediate action, FAA investigative personnel may also directly contact the appropriate governmental agency.

(2) Request the other government agency to provide any information it has that may be relevant to the FAA investigation.

(3) Handle possible criminal violations in accordance with the guidance in chapter 4, paragraph 18.

**b. DOT Office of Inspector General.**

(1) The Inspector General Act of 1978, as amended, (5 U.S.C. Appendix 3) established the Office of Inspector General in the Department of Transportation as an independent and objective unit:

- To conduct and supervise audits and investigations relating to programs and operations of the Department;
- To provide leadership and coordination, and recommend policies designed to promote economy, efficiency, and effectiveness of audits and internal investigations, and to prevent and detect fraud and abuse in Department programs and operations; and
- To provide a means for keeping the Secretary and the Congress fully and currently informed about problems and deficiencies relating to the administration of Department programs and operations, including the necessity for, and progress of, corrective action.

(2) The Inspector General does not have any responsibility or authority for conducting safety investigations of persons or property subject to FAA regulation, nor does the OIG have the authority to take civil enforcement actions, such as certificate actions or civil penalty action against persons who violate FAA statutory or regulatory requirements. The DOT OIG, however, has the statutory authority to conduct, under federal criminal statutes, investigations of allegations that a person or entity has engaged in fraudulent or other criminal activity relating to the programs and operations of the Department or its operating administrations.

**c. Department of Labor—Whistleblower Protection Program.**

(1) Since April 5, 2000, the Whistleblower Protection Program (49 U.S.C. § 42121) has protected the employees of air carriers and their contractors and subcontractors from discrimination for various actions that identify an alleged violation of any order, regulation, or standard of the FAA or an alleged violation of any other federal law related to air carrier safety. The Department of Labor is responsible for evaluating and ruling on employee complaints that discrimination has occurred in violation of 49 U.S.C. § 42121.

(2) In carrying out their responsibilities, Department of Labor personnel might seek from the FAA technical guidance on FAA orders, regulations, or standards and on matters of air carrier safety. FAA employees assist the Department of Labor in understanding the FAA's

orders, regulations, and standards, as well as the technical aspects of air carrier safety. Whenever the Department of Labor asks an FAA employee to testify or to provide evidence for use at a Department of Labor hearing, the FAA employee coordinates any response to such a request with legal counsel.

(3) If the Department of Labor issues a final order finding a violation of 49 U.S.C. § 42121, the employer is subject to a civil penalty under 49 U.S.C. § 46301. The FAA is responsible for initiating such civil penalty actions.

**d. Investigation of Stolen Aircraft.** The FBI or an appropriate local law enforcement agency is responsible for investigating stolen aircraft or avionics. FAA personnel, however, are uniquely qualified to assist in their location and eventual recovery. FAA Order 1600.29 prescribes the procedures for FAA participation.

**e. Notification to DOD and OST when Air Carrier Operating Certificate is Suspended or Revoked.** The DOD sometimes uses U.S. air carriers, through long-term contracts or short-term charters, to transport passengers and freight domestically and internationally. The DOD wants to be informed when air carrier certificates are suspended or revoked so that it can arrange for substitute air transportation or other modes of transportation on a timely basis with minimal interruption and inconvenience to its personnel. The Assistant Chief Counsel for Enforcement or appropriate Regional Counsel advises the military authorities when an air carrier operating certificate is suspended or revoked. Legal counsel contacts AEP-20 in the Office of the Assistant Administrator for Aviation Policy, Planning and Environment to determine whether an air carrier whose certificate has been suspended or revoked is being used by the DOD. The Assistant Chief Counsel for Enforcement or appropriate Regional Counsel also advises the Assistant General Counsel for Aviation Enforcement and Proceedings (C-70) in the OST Office of the General Counsel when an air carrier operating certificate is suspended or revoked.

## **7. Liability of FAA Employees.**

**a. Background.** 28 U.S.C. § 2679(b)(1) provides government employees with immunity from personal liability for common law torts (for example, negligence, trespass, wrongful death) committed within the scope of their employment. This statutory provision provides that the exclusive remedy for common law torts is against the United States under the Federal Tort Claims Act, 28 U.S.C. § 2671 *et seq.* The net effect of the law is that when a suit is filed against an agency employee for a common law tort committed within the scope of employment, the United States will normally be substituted as the defendant, and any liability that is found will be assessed against the government.

**b. Constitutional Torts.** Suits against agency employees can be classified as either common law or constitutional torts (for example, failure to give due process, unreasonable search or seizure). While 28 U.S.C. § 2679(b) (1) does not apply to constitutional torts that does not mean that agency employees are completely without protection in that area. First, if the conduct complained of was committed within the course and scope of employment, the employee can normally expect representation by the Department of Justice. Second, federal

employees may be entitled to absolute or qualified immunity from liability for constitutional torts. The doctrine of absolute immunity is quite limited. Adjudicative and prosecutorial activities have been found to be situations where absolute immunity applies, but it does not apply to the prosecutor's administrative or investigative functions. Qualified immunity applies where the conduct involved the exercise of discretion and did not violate clearly established constitutional rights. Third, if an adverse judgment is entered against the United States, federal law bars the entry of judgment against an employee of the government for the same conduct giving rise to the judgment against the government. 28 U.S.C. § 2676.

**c. Indemnification of Agency Employees.** The Administrator has the authority to indemnify agency employees against any claim or judgment that arises out of acts committed within the course and scope of their employment. The indemnification authority applies to both constitutional and common law torts. The FAA employee indemnification policy and procedures are found in FAA Order 2300.2A.

**d. Scope of Employment.** The common thread that runs through all of these protections is the requirement that the employee's conduct must have been within the course and scope of employment. The protection from liability for common law torts, the indemnification protection that applies in either a common law or a constitutional tort situation, and even the availability of legal representation by the Department of Justice, all depend on a finding that the employee's conduct was within the course and scope of his or her employment. In the immunity situation, and in all cases where an employee requests representation by the Department of Justice, the certification that the employee qualifies must be made by the Attorney General upon the recommendation of the Administrator.

**e. Notification to Counsel.** If an employee is sued in connection with his or her official duties, he or she should immediately contact FAA legal counsel.

## Chapter 4. Investigation of Violations

**1. Purpose.** This chapter provides general guidelines for conducting an investigation. These guidelines are not all inclusive and are not a substitute for common sense and good judgment. Each investigation is tailored to the specific apparent or potential violation. If FAA investigative personnel have legal questions or concerns relating to an investigation, they consult FAA legal counsel.

### **2. Role of FAA Investigative Personnel.**

#### **a. Enforcement Investigations.**

(1) FAA investigative personnel's role in an investigation is to gather *all* material, relevant evidence that either proves or disproves the potential violation that precipitated the investigation. The various types of evidence are discussed in this chapter. After FAA investigative personnel gather all the evidence, they analyze it using the guidance in this order and decide whether the evidence proves a violation. If the evidence is inadequate to establish a violation, FAA investigative personnel recommend to appropriate program office management that the investigation be closed *no action*. If the evidence is sufficient to support a violation, FAA investigative personnel recommend informal action, administrative action, legal enforcement action, or other action, as appropriate, in accordance with the policy and guidance in this order. Enforcement Investigative Reports (EIR) recommending legal enforcement action are reviewed by several FAA management levels at the field office and the regional office, and by FAA legal counsel before the final agency decision is made about whether FAA legal counsel will initiate a legal enforcement action and, if initiated, the appropriate violations to allege and the proposed sanction.

(2) The Privacy Act prohibits FAA investigative personnel from disclosing information contained in an EIR about an individual to third parties without prior written authorization from that individual or without the disclosure being made pursuant to a FOIA request. Release under FOIA occurs only after an analysis balancing privacy concerns with the public's need for disclosure. FAA investigative personnel may discuss with the apparent violator specific factual information contained in the EIR; FAA investigative personnel do not discuss their recommendations with the apparent violator or other non-FAA employees, including potential witnesses. To do so may mislead the apparent violator or compromise the subsequent prosecution of the case.

#### **b. Aircraft Accident Investigations.**

(1) General. The FSDO with geographic responsibility for the location of an accident is responsible for investigating and reporting an accident, as assigned by the regional Flight Standards division manager. FAA investigative personnel report to the FAA investigator in charge during an aircraft accident investigation. If an accident involves an air carrier, FAA investigative personnel coordinate with the CHDO for the carrier. The investigative personnel investigate in accordance with the guidance in Order 8020.11B, Aircraft Accident and Incident

Notification, Investigation, and Reporting and other applicable FAA orders. The FAA's nine responsibilities in an accident investigation are to determine whether performance of FAA facilities or functions was a factor; performance of non-FAA owned and operated air traffic control (ATC) facilities or navigation aids was a factor; airworthiness of FAA-certificated aircraft was a factor; competency of FAA-certificated airmen, air agencies, commercial operators or air carriers was involved; Federal Aviation Regulations were adequate; airport certification safety standards or operations were involved; airman medical qualifications were involved; there was a violation of the Federal Aviation Regulations; and, aviation safety was a factor. Based on information that becomes available during an accident investigation, it may be appropriate to open an EIR in connection with possible statutory and violations. Except as discussed in chapter 4, paragraphs 2.b.(2) and (3) with respect to NTSB investigations, FAA investigative personnel conducting an accident investigation also conduct the enforcement investigation and prepare the EIR investigation. FAA investigative personnel coordinate an aircraft accident investigation involving an air carrier through the CHDO for the carrier.

(2) NTSB-conducted accident investigation. If the NTSB is on the scene for an accident investigation and the FAA agrees to participate in the NTSB's investigation, participating FAA investigative personnel report to the FAA investigator in charge for a group assignment. They participate in the investigation as a group member directed by the NTSB group chairperson. They remain with the group until that phase of the investigation is complete or until the NTSB investigator in charge and the FAA investigator in charge release them. At the outset, the FAA may have investigators separate and independent from the NTSB investigation who determine whether any of the FAA's nine responsibilities in accident investigations as described in chapter 4, subparagraph 2.b.(1) were involved in the accident. Such investigators may conduct enforcement investigations. If there is no independent FAA investigator, the FAA participants in the NTSB investigation determine whether any of the FAA's nine responsibilities in accident investigations were involved in the accident and report any observed deficiencies to the FAA investigator in charge as soon as possible. The FAA investigator in charge follows up to ensure that FAA personnel address those issues. For example, the investigator in charge may advise the FSDO that an independent FAA investigation needs to be conducted for possible enforcement purposes.

(3) FAA Participation in Special Segment of Investigation. FAA investigative personnel may participate in a particular segment of an accident investigation, for example, an engine teardown. When FAA investigative personnel participate in a segment of an investigation, it must be established in advance whether they are participating as part of an NTSB team or the FAA. If they are part of an NTSB team, they will request an independent FAA investigation if it may be appropriate to open an EIR. If they are not part of an NTSB team, the investigative personnel participating in the accident investigation may also conduct the enforcement.

(4) Testimony relating to aircraft accident investigation. FAA investigative personnel may testify in FAA enforcement proceedings before the NTSB and the DOT Office of Administrative Law Judges related to FAA EIRs generated during an accident investigation. FAA investigative personnel generally may testify about facts and information they learned, and

evidence they gathered, while participating in an accident investigation. Under 49 C.F.R. § 821.20(c), the NTSB generally prohibits in an enforcement proceeding any testimony from NTSB accident investigators and other NTSB personnel and any documentary evidence gathered or prepared by them during the course of an NTSB accident investigation.

### **3. Authority to Conduct Inspections or Investigations on Private Property.**

**a. General.** Under Title 49 U.S.C. § 44709, the Administrator may reinspect at any time a civil aircraft, aircraft engine, propeller, appliance, air navigation facility, or air agency, or reexamine any airman holding a certificate issued under 49 U.S.C. § 44703. The Administrator also has broad authority under 49 U.S.C. § 40113 to conduct investigations necessary to carry out his or her duties and powers under the statute. When investigating a potential violation, FAA investigative personnel may be required to enter private property to gather information, or, to determine compliance with statutory and regulatory requirements.

**b. Constitutional Protections for Inspections or Investigations on Private Property.** Although administrative inspections and investigations are not criminal in nature, administrative inspections and investigations conducted on private property are subject to the constitutional limitations of the Fourth Amendment, and owners of private property enjoy a constitutionally protected right of privacy. Private property may include a personal residence, commercial business, private airstrip or landing area, hangar or other facility. When an owner of private property refuses to consent to an administrative inspection or investigation, FAA investigative personnel must first obtain a warrant from a judicial authority, unless the exception in chapter 4, subparagraph 3.c. applies.

**c. Open Fields Exception.** A private airstrip, whether or not it is open to the public, or an open field, is generally excluded from the protections of the Fourth Amendment because the property owner has no reasonable expectation of privacy. Therefore, neither consent of the owner nor a warrant would be required prior to entry for the purpose of conducting official government business. This is known as the *open fields* exception to the Fourth Amendment, because the inspection is conducted in an open area of the airport or field, not in a hangar or building. However, FAA investigative personnel must exercise good judgment in conducting inspections. Even if they have a legal right to be on property, if they are advised by the property owner to get off the property, they should do so and then consult with FAA legal counsel. *See* chapter 4, subparagraph 3.f.

**d. Non-Public Commercial Premises.** The Fourth Amendment prohibition against unreasonable searches also protects property owners against warrantless intrusions onto portions of commercial premises that are not open to the public.

**e. Regulatory Requirements to Permit Inspection.** The FAA's right to enter private property to conduct inspections may also be based on regulations. Many of the regulations specifically provide authority for the agency to conduct inspections (for example, 14 C.F.R. § 119.59).

**f. Remedies if Access Denied.** Sometimes a property owner may refuse FAA investigative personnel entry onto his or her property or property may be posted *no trespass*. While it may appear to FAA investigative personnel that the property owner has no *reasonable expectation of privacy* on the property, each situation is different. If FAA investigative personnel are uncertain whether property is public or private, they must consult FAA legal counsel before proceeding with the inspection or investigation or making entry onto the private property. Force or other self-help remedies must never be used to gain entry if the owner or manager of the property denies FAA investigative personnel access to an aircraft or entry to an airport or other facility. Whenever access onto private property is denied or restricted, FAA investigative personnel must consult FAA legal counsel for assistance in seeking alternative solutions, such as an administrative inspection warrant, or suspension or revocation of certificates.

**g. Administrative Inspection Warrant.** Probable cause for justifying the issuance of an administrative inspection warrant may be based on either specific evidence to support a reasonable belief that a violation has been or is being committed, or a showing that reasonable legislative or administrative standards for conducting an inspection are satisfied for an establishment. *See Marshall v. Barlow's*, 436 U.S. 307 (1978). Such probable cause may be established through affidavits from FAA investigative personnel. FAA legal counsel consults with AGC-300 before seeking an administrative inspection warrant.

#### **4. Planning and Coordinating the Investigation.**

**a. Planning the Investigation.** On receiving information indicating a possible violation, FAA investigative personnel determine whether there is any basis for an investigation. Before initiating an investigation, FAA investigative personnel consider the circumstances and the nature of the violation, and develop an investigative plan of action. FAA investigative personnel coordinate the plan with supervisors, supporting offices, and legal counsel, if necessary, and reevaluate the plan and revise as necessary as the investigation progresses. In preparation for an investigation, FAA investigative personnel consider the following:

(1) What statutory or regulatory requirements are involved in the case? What are the elements of the statutory or regulatory provision violated?

(2) What evidence is needed to prove those elements? Where is it located? How will it be obtained?

(3) What records should be inspected? Will they be provided voluntarily? Will an administrative subpoena be needed?

(4) Which witnesses, including the apparent violator, need to be interviewed? At what stage of the investigation should they be interviewed?

(5) Is there possible criminal activity?

(6) Is there a need for immediate action? Will routine handling jeopardize public safety?

(7) Does the evidence gathered establish who did or did not do what, where, when, why, and how?

**b. EIR Number.** In all investigations, an EIR number (case code number) is assigned for logging and processing purposes. It provides a future reference for all matters relating to the case (*See* chapter 8). When a specially-designated team conducts formal fact-finding investigations, the team designates a field office or region to assign a case code number for the investigation. The team coordinates with the field office and prepares an EIR.

**c. Coordination with Supporting Offices.** Where the apparent violation involves an air carrier operating certificate, a production certificate, a type certificate, or an air agency certificate, the investigating office alerts by telephone or e-mail and coordinates with the appropriate supporting office before issuing the letter of investigation. The investigating office provides the supporting office copies of all letters of investigation.

**d. Communications with Counsel.** FAA investigative personnel share information and communicate as needed with legal counsel during an investigation and the processing of enforcement cases. For example, FAA investigative personnel may need to discuss with legal counsel the sufficiency of evidence in a case or interpretations of regulations. Supervisors and managers of headquarters, regional, or field personnel involved in compliance and enforcement should encourage open dialogue and sharing of information and opinions between those personnel and legal counsel. Open and informal communication between investigative personnel and counsel improves the effectiveness of, and promotes consistency in, the enforcement program.

**e. Timeliness Goals.** On average, FAA investigative personnel in field offices strive to complete an investigation and the associated EIR within 75 days of the date they know of the apparent violation, and regional program office personnel strive to complete their review of an EIR within 15 days.

**5. Time Limitations in Cases Involving Certificate Suspensions or Revocations.** Cases involving the suspension or revocation of airman, type, production, airworthiness, air carrier operating, airport operating, air agency and air navigation facility certificates are reviewed by the NTSB. Section 821.33 of the NTSB's Rules of Practice in Air Safety Proceedings (49 C.F.R. part 821), known as the stale complaint rule, provides that an FAA complaint (order) may generally be dismissed if the offenses alleged occurred more than six months prior to the Administrator's *advising a respondent* of the reasons for the proposed action. *Advising the respondent* refers to the respondent's receipt of the legal document sent by FAA legal counsel proposing the certificate action.

**a. Exceptions to Stale Complaint Rule.**

(1) The first exception involves cases in which the FAA's complaint alleges the certificate holder lacks qualifications to hold the certificate (for example, revocation cases). In these cases, the 6-month rule does not apply. The FAA does not use revocation as a means to avoid dismissal of charges under the stale complaint rule. Although the 6-month stale complaint



rule does not apply to qualifications cases, the FAA expedites such cases because they generally involve significant safety issues.

(2) The second exception to the 6-month stale complaint rule involves cases in which the FAA can show that it had *good cause* for not meeting the 6-month deadline. The most common good cause circumstance is found in *late-discovery* cases, in which the FAA discovers the violation after the date of violation. In these cases, however, the FAA does not have an extra six months from the date of late discovery to issue its notice. Rather, the FAA must put its investigation of these cases on a *fast track*, and must document priority handling at all stages of the investigation and review. Contemporaneously created documents and notes tracking what the investigating office did during the investigation are persuasive in showing that the FAA gave a case priority handling.

(3) The third exception to dismissal under the stale complaint rule is when the imposition of a sanction is in the public interest despite the delay. This situation is rarely, if ever, found by the NTSB.

#### **b. Definitions.**

(1) Date of violation. The date the respondent violated the regulation. This date starts the 6-month stale complaint period.

(2) Date known to FAA. The date the FAA knew or reasonably should have known of the likelihood of a violation. This date is not the date FAA investigating personnel determined there was a violation; rather, it is the date preliminary information was received that triggered or should have triggered an investigation.

(3) Priority handling. Priority handling means the FAA investigative office must process this case before all other non-emergency matters. This may mean that cases must be reassigned within an office, because, generally, it is not diligent handling if case processing is delayed because an employee is in training or on leave.

#### **c. Examples.**

(1) An FAA air traffic controller observes a violation on January 1. FAA investigative personnel receive the pilot deviation report on May 1. This case goes stale on July 1. FAA investigative personnel and FAA legal counsel must process this case with priority handling so the alleged violator receives the notice before July 1.

(2) A mechanic performs poor maintenance on February 1 but the violation is not discovered until July 15 following an accident. The case goes stale on August 1. However, the investigation is complex and cannot be finished before August 1. Therefore, the investigation must be given priority handling so that the agency can show good cause for the delay.

(3) A mechanic performs a 100-hour inspection and approves the aircraft for return to service on January 1. The following January, another mechanic inspects the aircraft and the owner reports to the FAA that an airworthiness directive was due and not complied with at the time of the previous inspection. The FAA could go forward with a notice of proposed certificate action only if the investigative office can document that it processed the case expeditiously as a priority matter.

(4) A mechanic commits a maintenance violation on January 1. An FAA inspector discovers the violation on April 1 and starts an investigation. On May 30, the inspector goes to Oklahoma City, Oklahoma for six weeks of training. During his or her absence, the office does not reassign the case and does not do any work to further the investigation. On the inspector's return to the office in mid-July, the case is stale and the case cannot go forward because the office cannot show priority handling.

## **6. Time Limitations in Cases Involving Civil Penalties.**

### **a. Civil Penalty Cases against Persons Acting as Pilots, Flight Engineers, Mechanics, and Repairmen.**

(1) \$50,000 or less. The NTSB reviews these cases and the stale complaint rule in 49 C.F.R. § 821.33 applies. This rule is discussed in chapter 4, paragraph 5.

(2) Over \$50,000. 28 U.S.C. § 2462 establishes a 5-year statute of limitations for such actions. The 5-year period begins on the date the violation occurred. An action cannot be brought after that 5-year period, if, within that same period, the offender or property is found within the United States in order that proper service may be made.

### **b. Civil Penalties against a Person (Except an Individual Acting as a Pilot, Flight Engineer, Mechanic, or Repairman) for Violations Occurring *before* December 12, 2003.**

(1) \$50,000 or less, or any amount for violations involving the transportation of hazardous materials. 49 U.S.C. § 46301(d) (7) (c) and the procedural rules applicable to such cases in 14 C.F.R. § 13.208(d) of the FAA's Rules of Practice in FAA civil penalty actions (14 C.F.R. part 13), provide that an FAA complaint may generally be dismissed if the violations alleged occurred more than two years before the date legal counsel issues a notice of proposed civil penalty to the respondent. Similar to the NTSB rules, there is an exception to this rule where the agency can show good cause for the delay in issuing the notice of proposed civil penalty (for example, in *late-discovery* cases).

(2) Over \$50,000 (except for violations involving transportation of hazardous materials), and those other cases listed in 49 U.S.C. §§ 46301(d)(4)(B), (C), and (D). 28 U.S.C. § 2462 establishes a 5-year statute of limitations for such actions. The 5-year period begins on the date the violation occurred. An action cannot be brought after that 5-year period, if, within that same period, the offender or property is found within the United States in order that proper service may be made.

**c. Civil Penalties against a Person (Except an Individual Acting as a Pilot, Flight Engineer, Mechanic, or Repairman) for Violations Occurring on or after December 12, 2003.** The criteria for determining the applicable time limitations within which FAA legal counsel must initiate a civil penalty action against an alleged violator are based on the type of alleged violator as well as the amount of the civil penalty. The time limit applicable to persons other than individuals depends on whether the entity is a *small business concern* as defined in section 3 of the Small Business Act, 15 U.S.C. § 632, and applying the standards identified in 13 C.F.R. § 121.201. *See* Appendix B for a definition of *small business concern*. The applicable rules are varied and complicated by exceptions. Specific guidance may be obtained from legal counsel.

(1) Small business concern. The time limitation applicable to small business concerns for all hazardous materials cases in any amount is two years. For all other civil penalty cases, the time limitation is two years for proposed civil penalties of \$50,000 or less, or five years for proposed civil penalties over \$50,000.

(2) Persons other than individuals or small business concerns. The time limitation applicable to persons other than individuals or small business concerns for all hazardous materials cases in any amount is two years. For all other civil penalty cases, the time limitation is two years for proposed civil penalties of \$400,000 or less, or five years for proposed civil penalties over \$400,000.

(3) Individuals. The time limitation applicable to individuals for all hazardous materials cases in any amount is two years. For all other civil penalty cases, the time limitation applicable to individuals is two years for proposed civil penalties of \$50,000 or less and five years for proposed civil penalties over \$50,000.

**d. Action Required to Comply with 5-Year Statute of Limitations.** FAA legal counsel initiates cases subject to the 5-year limitation through a civil penalty letter proposing an offer in compromise. If a compromise settlement is not reached, however, U.S. Attorneys prosecute these high-penalty cases in U.S. district court. Under 28 U.S.C. § 2462, a U.S. Attorney must file the complaint in district court within a 5-year period from the time when the claim *first accrued*. Most courts consider claims to have *accrued* on the date of the violation.

## **7. Practical Considerations Relating to Time Limitations for FAA Investigative Personnel.**

**a. Special Requirement for NTSB Cases.** Under the NTSB stale complaint rule, an alleged violator must receive notice of the proposed action within the 6-month period. In scheduling the completion of their investigation, FAA investigative personnel need to factor in this requirement as well as the time needed for program office review and processing by FAA legal counsel.

**b. Diligence and Documentation.** In those cases where FAA investigative personnel believe that an investigation may take longer than the 6-month or 2-year time period, as applicable, they must exercise diligence in processing the case, and document their activities and explain any delay in conducting the investigation. The most common situation requiring this

diligence involves the late discovery of a violation. When the date of discovery is later than the date of violation, the law does not allow 6 months or 2 years from the date of discovery for issuing a notice proposing an enforcement action.

**FIGURE 4.1 TIME LIMITATIONS APPLICABLE TO ALL LEGAL ENFORCEMENT ACTIONS FOR VIOLATIONS ON OR AFTER DECEMBER 12, 2003.**

Type of Respondent	Type of Action	Forum	Stale Date <sup>1</sup>					
			Certificate Actions	Unlimited civil penalty amount	Civil penalty <= 50,000	Civil penalty > 50,000	Civil penalty <= 400,000	Civil penalty > 400,000
Persons holding certificates	Certificate Suspension (except Pending Demonstration of Qual.)	NTSB	6 Months					
Persons holding certificates	Certificate Revocation or Suspension Pending Demonstration of Qual..	NTSB	None					
Individuals <b>not</b> acting as: Pilots Flt. Engs. Mechanics Repairmen	Civil Penalties <sup>2</sup>	DOT ALJ or court			2 years (DOT ALJ)	5 years (court)		
Individuals acting as: Pilots Flt. Engs. Mechanics Repairmen	Civil Penalties	NTSB or court			6 Months (NTSB)	5 years (court)		
Small Business	Civil Penalties	DOT ALJ or court			2 years (DOT ALJ)	5 years (court)		
Large Business <sup>3</sup>	Civil Penalties	DOT ALJ or court					2 years (DOT ALJ)	5 years (court)
Hazardous Materials Violations	Civil Penalties	DOT ALJ		2 years				

<sup>1</sup> Stale dates are from the date of the violation, not from the date known to the FAA.

<sup>2</sup> Good cause may be shown for delay in bringing cases before the NTSB or FAA decisionmaker. There is no good cause exception for cases filed in a U.S. district court.

<sup>3</sup> For violations that occurred before December 12, 2003, the statute of limitations for any case involving a penalty of more than \$50,000 is 5 years.

## 8. Principles for Applying Investigative Findings to Regulations Believed Violated.

**a. Enforceable Regulations.** An enforceable regulation generally contains either mandatory language, that is, *shall* or *must* or prohibitory language, for example, *no person may* or *a person may not*. Regulations that contain words such as *no person may, except* or *no person may, unless* are enforceable only in instances that are not covered by exceptions. If the situation covered by the exception exists, the requirement or prohibition does not apply. For example, the minimum safe altitudes in 14 C.F.R. § 91.119, apply "except when necessary for takeoff or landing." Some regulations written in the question and answer format under plain language principles may be enforceable even though they do not contain mandatory language. For example, 14 C.F.R. § 39.7 provides that a person is in violation of the regulations if they do not meet the requirements of an airworthiness directive (AD). Although the regulation does not use the word *must*, it places a requirement on persons to comply with ADs by explicitly stating that they are *in violation* if they operate a product that does not meet AD requirements.

**b. Elements of Regulations.** Regulations consist of multiple *elements*. To prove a violation of a regulation, there must be evidence to prove each of the individual elements. This makes the ability to identify the individual elements of a regulation a critical investigative skill. Appendix E contains an example of how FAA enforcement personnel establish a violation by proving each element of a regulation.

**c. Burden and Standard of Proof.** In prosecuting both certificate actions and civil penalty actions, the FAA has the burden of proof, by a preponderance of the reliable, probative, and substantial evidence, to establish all facts necessary to satisfy each element of a statutory or regulatory violation. The preponderance of evidence standard requires that the FAA's evidence shows that it is more likely than not the respondent committed the violation. When a respondent asserts an affirmative defense at a hearing, the respondent has the burden of proof and must establish the elements of the defense by a preponderance of the reliable, probative, and substantial evidence.

**d. Relevance and Materiality.** *Relevant evidence* means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Under the 5 U.S.C. § 556(d), the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. Material evidence is evidence that has a natural tendency to influence or is capable of influencing a question at issue in the legal dispute.

## 9. Letter of Investigation and Response.

### a. General.

(1) A letter of investigation (LOI) serves the dual purposes of notifying an apparent violator that he or she is under investigation for a possible violation and providing an opportunity for the apparent violator to tell his or her side of the story. While an LOI is not required, FAA investigative personnel should issue an LOI in most cases. Learning the *other side of the story* early in the investigation is to everyone's advantage. Inviting input also helps to demonstrate the FAA is conducting the investigation fairly and impartially. FAA investigative personnel do not

issue an LOI unless evidence shows that a violation may exist. If FAA investigative personnel issue an LOI, they put a copy of it in the EIR. See sample letter of investigation in Figure A-1 of Appendix A.

(2) An LOI usually identifies the activity being investigated, such as *the departure of N12345 from Anywhere, USA, at some given time and date, or maintenance performed on N12345, at some given time and date*, as opposed to citing specific sections of the regulations. During the investigation, it is usually premature to cite specific regulations. The critical objective of the LOI is to advise the apparent violator of the subject matter of the investigation sufficiently so the recipient of the letter may respond to the facts giving rise to an investigation of an apparent violation.

(3) An LOI also may include a request for inspection of records. Some regulations specifically require certificate holders to allow the inspection of certain types of records. Examples include 14 C.F.R. § 61.51(i) for pilot logbooks and 14 C.F.R. § 91.417(c) for maintenance logs. An LOI request for such documents includes a specific time limit for response to provide a firm basis for enforcement action if there is noncompliance.

(4) FAA investigative personnel usually send an LOI even if they have previously discussed the activity with the apparent violator, and he or she has offered an explanation. In these instances, an LOI serves to formalize and document the process.

(5) In emergency cases, an LOI response may be the only opportunity for the agency to learn of contradictory information or affirmative defenses the apparent violator may present at trial (since there is no informal conference and little time for discovery in emergency proceedings). Therefore, LOIs generally are sent in emergency cases and are specific and detailed in outlining the issues being investigated.

(6) Where FAA investigative personnel discover additional violations during the investigation after they send the LOI, FAA investigative personnel use judgment as to whether they should send another letter of investigation. An investigation continues whether or not an LOI is sent. In cases involving companies with complex organizational structures, FAA investigative personnel exercise care to address the LOI to the responsible official. FAA investigative personnel may obtain advice on such matters from the supporting office.

**b. Preparation of the LOI.** FAA investigative personnel use the following guidelines in preparing a letter of investigation:

(1) The LOI is not a statement of charges. It informs the apparent violator of the activities being investigated. The LOI contains enough factual details so that the apparent violator can provide a response that addresses the facts the FAA believes are relevant. FAA investigative personnel do not cite specific statutory or regulatory provisions they believe have been violated, unless specific regulatory reference is needed to accurately identify the incident. The LOI only states there may have been a violation.

(2) The LOI specifies a time for reply. This time normally is 10 days. Additional time may be necessary in cases involving apparent violators who reside or have their principal place of business in foreign countries. Although FAA investigative personnel consider any reply received after the 10 days, the investigation continues even without a reply. If FAA investigative personnel have forwarded the EIR to the regional office, they forward the reply with an analysis, including a discussion of how the reply affects the analysis or changes their conclusions. FAA investigative personnel include the LOI and any response to the LOI in section C of an EIR as items of proof.

(3) The LOI requests that specific relevant documents be retained or made available for inspection and copying.

(4) If the apparent violator is an individual, FAA investigative personnel include a Privacy Act statement with the LOI. *See* sample Privacy Act notice in Figure A-2 of Appendix A.

**c. Sending the LOI to the Apparent Violator.** FAA investigative personnel send the LOI by regular mail and either certified mail, return-receipt requested, or registered mail. to establish a record of notice to the party under investigation. If the party is a certificate holder, FAA investigative personnel send the document to the current address of record. If the regular mail is returned or the certified letter or registered letter is returned as undeliverable (because it is addressed incorrectly or the party has moved and left no forwarding address), then FAA investigative personnel correct the address or obtain a new address and resend the LOI to the correct address by regular mail and either certified mail, return-receipt requested, or registered mail. If the certified letter or registered letter is refused or returned unclaimed but the regular mail is not returned, then there is a presumption of service and FAA investigative personnel do not resend the LOI. If FAA investigative personnel deliver the letter in person, they document the delivery in the file.

**d. Distribution of LOI.** FAA investigative personnel send the original letter of investigation to the apparent violator and copies of the LOI to supporting FAA offices.

## **10. Evidence.**

**a. General.** The object of the investigation is to obtain evidence to establish whether a violation occurred. Evidence includes all the means by which any alleged fact tends to be proved or disproved. It is the means by which FAA legal counsel proves the facts alleged in a complaint. If FAA investigative personnel are unsure about the relevance of a piece of evidence, they secure and preserve the evidence and consult legal counsel. FAA investigative personnel obtain evidence from any place or source where it is legally available. Conducting an investigation at the scene of a violation often will help FAA investigative personnel in the collection of evidence. It affords FAA investigative personnel the best opportunity to obtain physical evidence and interview and obtain statements from eyewitnesses. FAA investigative personnel also prepare a written statement of their personal observations as soon as possible, because such observations are in most cases key evidence. FAA investigative personnel obtain

evidence that proves each element of the apparent violation and prepare a report that clearly conveys such facts and circumstances.

**b. Hearsay Evidence.** Hearsay evidence is evidence offered by a witness to prove a fact about which the witness has no personal knowledge. For example, an inspector's testimony that a first officer stated the pilot in command appeared intoxicated would be hearsay evidence if offered to prove the pilot was intoxicated. In administrative hearings, such as those before the NTSB or DOT ALJs, hearsay evidence may be used to prove violations. FAA investigative personnel report any information that could be relevant to the case and could possibly be used as evidence, including information that might be hearsay evidence. Hearsay evidence can be helpful to FAA investigative personnel, because it often leads to persons who have direct knowledge of the incident, or knowledge of important documents. Hearsay evidence may also be helpful to legal counsel in cross-examination of a hostile witness or the alleged violator. Despite the usefulness of hearsay evidence, FAA investigative personnel should obtain direct evidence if it is available because ALJs generally accord greater weight to it.

**c. Types of Evidence.** FAA investigative personnel gather and prepare various types of evidence, including witness statements, photographs, charts, maps, diagrams, records, and physical evidence, to substantiate a violation.

(1) Violation history and accident/incident records. FAA investigative personnel obtain the violation history of the subject of the investigation from several automated information systems. They obtain violation history and accident history from the AID/EIS Display and Profile program under EIS. This program provides access to essential data taken from several separate data files of the Accident/Incident Data System (AIDS) and the Enforcement Information System (EIS). FAA investigative personnel address problems or questions to the local EIS system manager or AVS Support Central at 405-954-7272. EIS records containing a subject's rebuttal statement, under the provisions of the Privacy Act, are available only from AFS-620. Requests for release of this information should be referred to the Aviation Data Systems Branch, AFS-620.

(2) Witness interviews. Generally, FAA investigative personnel interview all witnesses knowledgeable about an apparent violation and report the information gathered during the interview. Multiple witness statements may help in proving a case. FAA investigative personnel may tape-record an interview, if they request and receive permission from the interviewee for the recording. FAA investigative personnel must record the interviewee's permission on tape at the beginning of the taping of the interview. A tape recording is a valuable investigative means of securing evidence. FAA investigative personnel select witnesses based on the likelihood of their knowledge about the incident and their competence to relate the information sought. FAA investigative personnel find, or learn of, possible witnesses from sources such as:

- Passenger manifests.
- Air traffic controllers.
- Records and personnel of organizations, such as air carriers, air taxis, and repair stations.
- Local restaurants or bars that may have served the apparent violator.



- Pilots and mechanics who may have pertinent information.
- Persons who work or reside in the area of the incident.
- Health personnel who may have examined the apparent violator. (May be obtained by subpoena or a signed release.)
- Federal, state, or local law enforcement personnel.

(3) Conducting the Interview. FAA investigative personnel interview witnesses in person or by telephone. FAA investigative personnel may use the record of interview job aid in Figure A-3 of Appendix A to document information obtained during the interview. They may use other formats to document the interview, however, and should not feel constrained to follow the job aid in Appendix A. FAA investigative personnel state on the record of interview form the name, address, and telephone number of the person interviewed. If two or more FAA investigative personnel are present during the conversation, each prepares a record of interview for inclusion in section C of the EIR. The interviewing techniques of FAA investigative personnel will vary depending on circumstances. The following general guidelines will facilitate an interview:

- Plan the interview to assure the interviewer is thoroughly prepared and that the best environment in which to hold the interview is selected.
  - Put the person to be interviewed at ease.
  - Maintain control of the interview.
  - Assure from the outset the witness understands that any information provided may be used as evidence in subsequent enforcement proceedings. No promises of confidentiality may be given without prior consultation with FAA legal counsel. However, if a witness requests immunity in exchange for information regarding safety, FAA investigative personnel must immediately proceed under the policy on special enforcement consideration.
    - Do not discuss with witnesses any possible sanctions and do not raise the issue of immunity. Do not disclose sources of information, except where necessary.
    - Request a signed and dated statement.
    - Plan questions that will accomplish the objective. The broad or general question often is effective to open areas of discussion. Specific searching questions are good for getting specific information, clarification, and conclusions.
      - Be attentive and listen.
      - Take notes if practical to do so. This will vary with circumstances, but if notes are not taken at the interview, make notes immediately after the interview and document the time and date the interview took place.
    - Summarize the interview with the witness to verify the interviewer's understanding and recollection of all relevant points. Give the witness an opportunity to make any additional comments.
      - Prepare a separate report of the interview, including the interviewer's own factual observations. This report of interview is a separate item of proof in the EIR. The report of interview must not contain personal opinions of the interviewer.
      - Ask witness to prepare written statement.
      - When an essential witness refuses to cooperate, contact FAA legal counsel for an administrative subpoena.

(4) Interview of company employees. Often in FAA investigations, the source of an allegation against a company is an employee or agent of that company. FAA investigative personnel plan and conduct the investigation to assure these allegations are verified from other sources if possible before company officials are consulted. For example, if a certificate holder's mechanic reports a violation, FAA investigative personnel verify the allegation through interviews of the reporting mechanic and other mechanics, personal observations, and inspection of company records before contacting company management to discuss the issue. When interviewing company officials, FAA investigative personnel exercise care not to reveal the identity of the source.

(5) Content of witness statements. Where possible, FAA investigative personnel obtain a written statement from each witness. The written statement contains a precise and complete account of those facts pertinent to the violation. It includes what the person said, did, or perceived by his or her senses and the how, when, what, why, and where of that perception. It should also include the witness's complete name, address, telephone number, occupation, and aeronautical experience. Any opinions are designated as such. A written, signed, and dated statement is especially important when the information is complex, involves data, or is controversial, or when a significant aviation incident or an aircraft accident is involved.

(6) Preparation of witness statements. The best statement is one prepared by the witness. When necessary, however, FAA investigative personnel help the witness in drafting and framing a statement. FAA investigative personnel do not dictate the content of the statement. They advise the witness to make an accurate and complete statement. If the interviewee refuses to give a signed statement, FAA investigative personnel prepare a statement based on information provided by the witness and ask the witness to review the statement and indicate if he or she agrees to the substance. If the witness agrees, but continues to refuse to sign, FAA investigative personnel make a note of that on the statement and date and sign it along with any witnesses. FAA investigative personnel provide their contact information to a witness. In addition, they ask the witness to keep them informed of any changes in the witness's' address or telephone number. FAA investigative personnel may use the witness statement job aid in Figure A-4 of Appendix A.

(7) Written statements of FAA investigative personnel. If FAA investigative personnel witness a violation, they prepare, sign, and date a written statement covering all the relevant facts of which they have personal knowledge. Such statements are factual; opinions, conclusions and analysis are reserved for section B of the EIR.

(8) Interviews and written statements of apparent violators. Normally, FAA investigative personnel interview the apparent violator, even though he or she may have provided written information. If the interview is not possible or necessary, FAA investigative personnel indicate the reasons why it was not accomplished. Apparent violators are interviewed mainly to give them an opportunity to tell their side of the story and to help establish all pertinent facts and circumstances. The time for interviewing the apparent violator can be a critical decision. At times, it is best first to gather solid evidence with which to interview the apparent violator. At other times, an early interview will develop investigative leads. Good judgment dictates when the interview should be conducted.

(9) Assistance with interviews in other geographic areas. If the apparent violator or other witnesses are located in another field office area, FAA investigative personnel obtain assistance for the interviews from those field offices. FAA investigative personnel make the request to the manager of that office and give full details of the assistance and information required. If the assisting field office encounters delays, it immediately notifies those FAA investigative personnel seeking assistance. Cooperation is stressed between offices; FAA investigative personnel alert the appropriate regional division to any problems faced in obtaining assistance or information. When the manager of the assisting field office has assigned FAA investigative personnel to comply with the request, the investigative personnel of the requesting and assisting offices communicate directly.

(10) Records and other documents. Records and other documents are perhaps the most common type of evidence gathered by FAA investigative personnel. They not only serve as evidence but also as an investigative tool to use for cross-reference, and confirmation of oral and written witness statements. FAA investigative personnel promptly review and obtain necessary records and other documents before they are lost, destroyed, or modified. FAA investigative personnel gather and obtain all documents that are relevant to matters that are being investigated. For example, in cases involving maintenance violations they get copies of all relevant maintenance records. In addition, where the witness statement contains information about a record, they get a copy of that record. Records and other documents that might provide evidence in an FAA enforcement action include National Weather Service reports, load manifests, manual pages, communication logs, and aircraft logs. This type of evidence may be essential to prove the case or may provide backup or background information. If it is clear that documentary evidence will not be provided voluntarily, FAA investigative personnel consult with FAA legal counsel to arrange for an administrative subpoena. FAA investigative personnel specifically identify, account for, and protect from loss, damage, or alteration all documentary evidence. If they have doubt about the relevance of particular records or other documents, FAA investigative personnel first secure and preserve the records or other documents and then consult FAA legal counsel.

(11) Retention of records. FAA investigative personnel make appropriate arrangements for retention of records when necessary. They promptly notify the organization or person holding the records that specified records are to be held for inspection. Notice may be written or oral, followed up by writing. If the records might not be retained as requested, FAA investigative personnel make immediate arrangements, in coordination with legal counsel, for their preservation.

(12) Copying of records and authenticity of records. Any record, regardless of form, containing information, is admissible evidence if relevant, material, unprivileged, and properly authenticated. Authentication generally only requires a witness to testify as to what the record is or represents and how it was obtained or prepared. If the record is a copy of the original, the witness must also testify that the copy is a true/correct/accurate copy of the original. FAA investigative personnel indicate at the time the document is obtained when, where, and from whom the document was obtained, and who from the FAA obtained it. This may be done with a stamp or other statement placed on the reverse side of the document so that it does not obscure or alter any part of the material on the document relevant to the case. The content of the statement

will vary according to the circumstances; some examples can be found in Figure A-5 of Appendix A. FAA investigative personnel secure one copy of a document from the source and then can reproduce additional copies with the appropriate certification statement. When documents such as company manuals, FAA-approved aircraft flight manuals, or manufacturer's service bulletins contain information necessary to a case, FAA investigative personnel reproduce relevant portions of those documents and include those copies in the EIR. FAA investigative personnel exercise care to assure that documentary evidence obtained is current and applicable to the time of the violations in question and that prior or later versions of documentary evidence that may be important to a case are also included in the EIR.

(13) Company records. FAA investigative personnel make requests for records of organizations, such as an air carrier, air taxi, manufacturer, or airport operator, to the official custodian of the record or a company officer.

(14) Airmen and aircraft information. FAA investigative personnel obtain airman certificate information from the Multi System Access Tool-A on the Aviation Information website (AV-INFO) at <http://av-info.avr.faa.gov>, click on Airman Search MSAT-A. FAA investigative personnel obtain aircraft information from the Multi System Access Tool-B on the Aviation Information website (AV-INFO) at <http://av-info.avr.faa.gov>, click on Aircraft Search MSAT-B. Questions should be directed to the Airmen Certification Branch, AFS-760 or the Aircraft Registration Branch, AFS-750 at the Mike Monroney Aeronautical Center in Oklahoma City, Oklahoma. Problems or questions about system access should be directed to AVS Support Central at 405-954-7272.

(15) Criminal-related information. FAA investigative personnel obtain criminal history or other criminal-related information through the regional Security and Hazardous Materials Division or the Security and Investigations Division at the Aeronautical Center.

(16) Airman medical records. FAA investigative personnel obtain airmen medical records from the Aerospace Medical Certification Division, Mike Monroney Aeronautical Center, Oklahoma City, Oklahoma.

(17) Logbooks. There are aircraft logbooks and airman logbooks. Typically an aircraft logbook contains the more recent maintenance records applicable to the aircraft including an AD compliance record. Depending on the age of the aircraft, there may be additional historical aircraft maintenance records kept at a separate location. Taken together, these records contain the history of the aircraft, including inspection, maintenance, and AD compliance records. Airmen logbooks typically contain their flight time, including the hours flown, the type and registration number of the aircraft flown, and the flight conditions in which the time was flown. Depending on the alleged violation, these logbooks may provide valuable documentary evidence to prove or disprove a violation.

(18) Flight and maintenance publications. Aircraft flight manuals and aircraft maintenance manuals or instructions for continued airworthiness exist for most types of aircraft. Typically, the aircraft flight manual contains any information necessary for safe operation because of its design or handling characteristics, including operating limitations, loading

information, performance data, and emergency procedures. Typically, maintenance manuals or instructions for continued airworthiness contain airworthiness limitations, maintenance instructions, troubleshooting information, instructions on parts replacements, and other general instructions. Also, there may be various structural, overhaul, repair, or other manuals that provide insight into an apparent violation.

(19) Diagrams. Depending on the complexity of the case, a diagram prepared by FAA investigative personnel or an eyewitness may be helpful to those who review an EIR. A diagram may be hand drawn. It only needs to be clear, legible, and reflect the relevant details as they were on the date of the violation. It is not required to be drawn to scale but, if it is not, that fact should be stated on the diagram. The cardinal compass headings should be marked on geographic diagrams, and the diagrams should be oriented generally so the top of the diagram is "North." All relevant features should be pointed out on the diagram and marked clearly. It should contain a descriptive heading of the depicted scene. Approximate or measured distances may be helpful. The preparer should sign and date the diagram. All information on a diagram prepared by FAA investigative personnel must be consistent with the other evidence in the EIR with any differences explained.

(20) Charts and maps. FAA investigative personnel obtain charts, maps, and other similar documents that are current on the date of the violation, to show features, such as airports, terrain, congestion, flight paths, and obstructions. They may be useful when interviewing witnesses. With the document, FAA investigative personnel document in the EIR its source and the name and contact information for any individual who made any notations on the document (such as a depiction of a flight path on a chart). FAA investigative personnel include a copy of the document current as of the date of the violation in the EIR, including the front page of the document showing its effective date. FAA investigative personnel explain in section B of the EIR how the documents help to prove the violation.

(21) Digital and nondigital photographs. Photographs relevant to the investigation are persuasive evidence, but inspectors often overlook taking them during the investigation, resulting in the need for extensive testimony at trial to describe what a photograph could easily depict. When either digital or nondigital photographs are obtained during an investigation, FAA investigative personnel must be prepared to demonstrate the photo is a fair and accurate depiction of the object or scene at the relevant time. Any person who can testify about the fairness and accuracy of the photograph can authenticate the photograph. When photographs have been enhanced, changed, or *touched up*, or additional information added to the photograph, FAA investigative personnel keep and preserve the original file or photograph, complete with all surrounding shots, and explain in the EIR why the enhancement or change was necessary. FAA investigative personnel include in the EIR both photographic prints, and negatives or digital files of those prints. When photographs are used instead of physical evidence, FAA investigative personnel document information as to the location and security of the physical evidence, if known.

(22) Air traffic recorded data and Air Traffic Organization records. Air Traffic Organization (ATO) facilities are responsible for prompt notification to the Washington Operations Center (WOC) through the Regional Operations Center (ROC) of any aircraft

accident, aircraft incident, or air traffic incident. The purpose for this initial contact is to convey to the WOC and ROC the essential facts as they are known at the time, and from which a decision may be made about the need for further investigation. Without a further investigation, ATO recorded data is kept for only 15 days for analog data or 45 days for digitally stored data. If the determination has been made that an aircraft accident, aircraft incident, or air traffic incident has occurred, the air traffic facility keeps all data about the accident or incident in accordance with FAA orders. This includes keeping air traffic control voice tapes, transcripts, radar data and other relevant air traffic records. When requesting records or data on an air traffic incident, reference to the incident number located on the FAA incident form (for example, FAA Forms 8020-11, 8020-17, 8020-21, 8020-24) is preferred by air traffic facilities; however, the incident can be referred to by the aircraft call sign and date of incident as well. If there is no associated accident or incident number, then FAA investigative personnel should request data from the facility by providing the following: facts of the occurrence, time, place, date, call sign and transponder code if known.

(23) Air traffic control voice tapes and transcripts. FAA air traffic quality assurance personnel located in the facility or area where the accident or incident occurred identify the pertinent portion of all tapes that are relevant to the accident or incident under investigation and make a cassette rerecording of those portions of the tapes. If the voice data is stored on an analog tape and the investigation involves a formal aircraft accident file, then the entire tape reel is preserved. The air traffic facility ordinarily does not make a transcription of the pertinent portion of the tape until FAA legal counsel needs a transcript for use in processing a legal enforcement action. A determination will need to be made about whether the transcript needed will be a partial or a full transcript. A partial transcript involves communication between air traffic and the subject aircraft and a full transcript involves all recorded communications regardless of the source. Requests for transcripts are made through the appropriate ATO area or headquarters office.

(24) Radar data. Radar data provides altitude, speed, heading, transponder codes, airspace boundaries, airport locations, intersections and latitudes and longitudes of aircraft being tracked by radar. The use of this data can provide valuable information for enforcement purposes. This information may be used to corroborate other available evidence or to resolve conflicting evidence present in a given case. When the determination has been made that an aircraft accident, aircraft incident, or an air traffic incident has occurred, the facility personnel retain the appropriate data. There are several different types of radar data. A table of the types of data can be found at Figure 4-2.

(25) Other ATO records. FAA quality assurance personnel may keep other records about the accident or incident including: personnel statements from facility personnel who have direct knowledge about the accident or incident, flight progress strips from the facilities that use paper flight progress strips, daily logs, position logs, near midair collision reports (NMACs) and other related air traffic charts and maps.

(26) Weather records. FAA investigative personnel carefully analyze the case to determine the extent to which weather is involved and obtain certified copies of relevant data from the National Weather Service. Weather data may also be available from Air Traffic,

eyewitnesses, or other sources. The EIR should contain appropriate weather analysis. FAA investigative personnel identify a person who can provide witness testimony to authenticate the weather records. FAA legal counsel may request authenticated copies of the records for use in the legal proceeding.

(27) Aircraft flight data recorder tapes. Provided an air carrier has not identified flight data collected under the regulations for inclusion in its approved FOQA program, the FAA may use such flight recorder data in any FAA enforcement action because the regulations that require flight recorders in aircraft do not specifically limit or prohibit such use. Even if flight data collected under the regulations is identified for inclusion in a FOQA program, the data may be used in any enforcement action if the basis for the enforcement action involves deliberate or criminal acts. If a decision is made to use the flight recorder material in enforcement proceedings, FAA investigative personnel must obtain a certified readout of the tape. To request a readout, FAA investigative personnel obtain a release for the tape from the owner or that owner's designated representative, obtain the calibration tape, pack the flight recorder and calibration tapes to prevent damage, and ship them to the Flight Standards Service in headquarters. FAA investigative personnel send a transmittal letter with the recorder and calibration tapes. The transmittal letter identifies the FAA representative and includes the flight data recorder owner's full name and address, make and model of aircraft involved, aircraft registration number, place and date of occurrence, a brief description of the occurrence or incident and the reasons for the readout request, and the name of the FAA person or office to whom the tape is to be returned. FAA investigative personnel ship the package by certified mail, return-receipt requested. FAA investigative personnel request that an FAA representative be present during the readout to observe the readout and be able to testify about its authenticity.

(28) Medical records. Medical records by a doctor, hospital, or other health care provider about treatment or tests of a person involved usually are privileged and generally cannot be obtained without the consent of the individual. Where possible, FAA investigative personnel obtain a written consent for release from the person whose medical records are sought. FAA investigative personnel use FAA Form 8500-21 (5-76), *Authorization for the Release of Medical Information to the FAA*, for this purpose. Release of medical records in the custody of government agencies, such as the Veterans Administration or Department of Defense, is subject to the terms of the Privacy Act and the Freedom of Information Act. If consent is not given, FAA investigative personnel consult FAA legal counsel to discuss issuance of a subpoena.

**FIGURE 4-2. AIR TRAFFIC DATA**

<b>Air Traffic Option</b>	<b>Air Traffic Data</b>	<b>Description of Data</b>
<u>Flight Service (FSS)</u>	Certified Rerecording  Event Reconstruction (EVR)	Cassette recording of the voice communications *  Alphanumeric data that was available to the briefer for the briefing given to the subject aircraft
<u>Terminal:</u> FAA Contract Tower Tower Terminal Radar Approach Control (TRACON)	Certified Rerecording  Digital Audiotape (DAT)  Continuous Data Recording (CDR)  RAPTOR	Cassette recording of the voice communications *  Digitally reproduced voice communications between air traffic and the subject aircraft  Printout of radar data that includes aircraft track, ground speed, heading, altitude, transponder code, and latitude and longitude position  Computer program that allows play back of select radar positions and targets
<u>En Route</u> <u>Air Route Traffic Control Center (ARTCC)</u>	Certified Rerecording  Analog reel  National Track Analysis Printout (NTAP)  Data Analysis and Reduction Tool (DART)  Systematic Air Traffic Operations Research Initiative (SATORI)	Cassette recording of the voice communications *  Magnetic tapes held on reels used to record AT operational communications  Printout of radar data that includes aircraft track, ground speed, heading, altitude, and latitude and longitude position  Printout of air traffic control display data that includes keystroke entries from controller positions and information contained in the aircraft data blocks  Computer program that allows play back of select radar positions and targets

\*Length of the cassette rerecording will generally be from 5 minutes before first contact with the subject aircraft to 5 minutes after last contact with the subject aircraft.



(29) Electronic evidence. As with other types of evidence, electronic evidence is admissible as long as it is properly authenticated. Electronic evidence consists of photographs, documents, mail messages, internet pages, and signatures that are created, stored, or maintained on electronic media. Portions of the electronic evidence relevant to the investigation are printed out on discovery and included in the EIR. As with other forms of evidence, electronic evidence must be authenticated to be admissible at a hearing. FAA investigative personnel may find guidance for authentication of the various forms of electronic evidence in chapter 4, subparagraphs 10.c.(30)-(33).

(30) Electronic documents. For electronic documents, FAA investigative personnel identify a witness who can testify the printout is a correct reflection of the information contained in the electronic format and obtain a signed statement from that witness to include in the EIR as an item of proof.

(31) Electronic mail messages. For e-mail messages, FAA investigative personnel identify as a possible witness the recipient of the e-mail and include in the EIR as an item of proof a signed statement from that witness stating the circumstances under which the e-mail message was received. When putting in an e-mail message as an item of proof, FAA investigative personnel obtain the entire e-mail, including the original message and all replies, as well as the routing information.

(32) Internet webpage documents. For documents obtained from an internet webpage, FAA investigative personnel must be prepared to testify the printout is an accurate depiction of what appeared on the webpage on a certain date.

(33) Electronic signatures. During an investigation, FAA investigative personnel may need to gather evidence to prove the authenticity of an electronic signature. The most common enforcement action that might involve an electronic signature is falsification of an application for a certificate. In these cases, FAA investigative personnel include as items of proof a printed copy of the application with the electronic signature, as well as written statements from all witnesses who had a role in processing the application (for example, recommending flight instructor, designated examiner). FAA investigative personnel also identify as a possible witness a representative from the office responsible for the electronic application system to explain the process and the security of the system. FAA investigative personnel obtain a written statement from this representative and include it in the EIR as an item of proof.

(34) Other government records. A state, local, or federal law enforcement agency may have information that would be useful to the FAA investigation. Such information might include the names of witnesses whom FAA investigative personnel should interview. If there has been any court proceeding, FAA investigative personnel obtain a certified copy of relevant court records. They also may obtain copies of foreign court records through the Department of State. When a violation of a foreign law or regulation is being reported, FAA investigative personnel include in the EIR a copy of the law or regulation that was in effect at the time of the violation.

(35) Physical evidence. Physical evidence consists of objects or items relevant to the violation, such as a cracked propeller, defective spar, or worn engine parts or cables. FAA

investigative personnel exercise care in handling physical evidence. They must be able to explain any damage, loss, or alteration to the object that has occurred since they obtained it during their investigation. FAA investigative personnel establish a chain of custody for each piece of physical evidence. The purpose for a chain of custody is to show who has had custody of the evidence and that it has not been changed or altered. The best procedure for ensuring chain of custody is for FAA investigative personnel to lock up the evidence in a safe place until the time of hearing. FAA investigative personnel may use FAA Form 1600-70 (1-90), chain of custody form for purposes of recording the chain of custody of physical evidence. If the physical evidence is not in FAA possession, FAA investigative personnel determine and record in the EIR the names of individual who have taken possession of the piece of evidence and its location. FAA investigative personnel keep the physical evidence at a secure location in the investigating field office. They should include photographs of the physical evidence in the EIR.

(36) Evidence about size of business. To determine whether an apparent violator is a *small business concern*, FAA investigative personnel obtain, and include in the EIR, information about annual revenue or the number of employees of the business at the time of the violation. For certificated aviation entities, information on the number of employees is generally available in SPAS. For noncertificated entities, this information might be available on company web pages, Security and Exchange Commission filings, or other public sources. If this information is not readily available from a public source, FAA investigative personnel may request this information through the LOI. If these efforts are unsuccessful, they consult with FAA legal counsel about alternatives to obtain the information, including issuing an administrative subpoena.

(37) Evidence of apparent violator's attitude. FAA investigative personnel obtain, and include in the EIR, any evidence of an apparent violator's attitude. Evidence of a constructive attitude might include documentation showing an apparent violator's completion of any of the following (including recency of the attendance):

- The FAA accident prevention program as volunteer counselor or program assistant;
- The pilot proficiency award program (WINGS);
- The pilot and aircraft courtesy evaluation (PACE) program;
- FAA-sponsored accident prevention program safety seminars on the subject(s) implicated in the apparent violation;
- FAA-sponsored, industry-conducted safety seminars on the subject(s) implicated in the apparent violation;
- Operation Raincheck (Air Traffic Organization) programs or other visits to air traffic facilities for familiarization and educational purposes; and
- Other similar programs, acceptable to the FAA.

**d. Evidence that *Cannot* be Used in an Enforcement Action.**

(1) Cockpit voice recorder. The use of a cockpit voice recorder record as evidence in any civil penalty or certificate action is prohibited by 14 C.F.R. §§ 121.359 and 135.151.

(2) ASRP reports. Under 14 C.F.R. § 91.25, the FAA does not use the aviation safety reporting system (ASRS) reporting form, that is, both the identification strip and the body of the report, in any enforcement action, except information concerning accidents or criminal offenses which are excluded from the ASRP.

(3) Digital flight data obtained from an FAA-approved FOQA program. Digital flight data may be part of an operator's FOQA data or aggregate FOQA data. In such circumstances, except for criminal or deliberate acts, the digital flight data will not be used by the Administrator in an enforcement action against that operator or its employees when it is part of such FOQA data or aggregate FOQA data and is obtained from a FOQA program that is approved by the Administrator.

(4) Written ASAP reports and their contents. Neither a written ASAP report nor the content of that report will be used as evidence for any purpose in an FAA enforcement action unless the event reported appears to involve possible criminal activity, substance abuse, controlled substances, alcohol, or intentional falsification.

**e. Submission of Additional Evidence before Final Disposition of Enforcement Action.**

The responsibility to report the facts and provide evidence that either proves or disproves the apparent violation does not end with the submission of an EIR to FAA legal counsel. It is a continuing requirement to forward relevant evidence that comes to the attention of FAA investigative personnel. To have a fair enforcement program, all relevant material must be considered, no matter how late it may come to the FAA's attention. Therefore, FAA investigative personnel immediately forward to legal counsel any information or evidence acquired, with an evaluation and recommendations about the material even after an EIR has already been forwarded to legal counsel for processing. Legal counsel may also request additional investigation. The distribution for any supplemental material is the same as for material initially included in the EIR.

**11. Analysis of Careless or Reckless Operations.** In a case in which FAA investigative personnel believe a violation of 14 C.F.R. § 91.13 has occurred, they document the factors on which that determination is based in the statement of case portion of section B of the EIR. FAA investigative personnel provide a brief explanation of why the conduct was careless or reckless, and the potential or actual danger involved. For instance, the NTSB has held that potential or inherent danger occurs when a pilot deviates from an assigned altitude, even in clear weather with no other aircraft shown to be close by. Such an operation is found to be potentially dangerous, in that actual danger might have developed in the ordinary course of events. A finding of actual danger may be appropriate if the altitude deviation caused the aircraft to be operated so close to another aircraft as to cause a collision hazard.

**12. Special Enforcement Consideration--Immunity for Persons Who Provide Information about Violations.**

**a. General.** This paragraph describes the FAA's policy and procedures on providing immunity from enforcement action, in some cases, to individuals who provide information about violations.

**b. Background.** In relation to enforcement matters, individuals occasionally offer information about regulatory violations to FAA investigative personnel or legal counsel with a request that, in exchange for the information, the FAA grant *immunity from prosecution* to the individual making the offer for his or her participation in the violations. Because the phrase *immunity from prosecution* normally refers only to criminal matters, the individual in effect is usually seeking an assurance the FAA will not take civil enforcement action against him or her for admitted violations in exchange for information about violations by his or her employer or other members of the aviation community. The term *special enforcement consideration* is used to describe this assurance instead of the term *immunity from FAA civil enforcement action*. Special enforcement consideration covers mitigation of sanction as well as a determination that no enforcement action will be taken.

**c. Policy.** Persons subject to statutory and regulatory requirements are expected to comply with those rules, even in the face of economic or similar pressures to disregard them. Employer pressure is not an excuse for an employee's failure to comply. At the same time, there is a strong public interest in discovering violations that result from such pressures or that otherwise have been encouraged, condoned, or accepted within a company that holds an FAA certificate. It is the FAA's general policy to encourage individuals to disclose information regarding safety violations or other circumstances affecting aviation safety. Therefore, the agency may, under certain circumstances, grant special enforcement consideration to individuals who, incident to their report of another's violations, voluntarily disclose their own participation in the same or related violations. Such special enforcement consideration may range from a mitigation of sanction to a determination that no enforcement action will be taken. The FAA generally does not invite or suggest special enforcement consideration, unless it is apparent the informant would not provide the information or testimony without such consideration. A primary objective of the FAA is to achieve statutory and regulatory compliance to promote safety in civil aviation and air commerce. Because a grant of special enforcement consideration is, in essence, an agreement to forbear, at least to some extent, enforcement for statutory or regulatory violations, the FAA reserves use of such grants for cases where the testimony or information offered concerns the commission of safety violations or is essential to take remedial action in cases where a certificate holder lacks qualifications or to achieve effective compliance and deterrence. The public interest benefits obtained by granting special enforcement consideration must outweigh the public interest benefits to be derived from prosecution of the informant to the fullest extent.

**d. Factors to be Considered.** The extent of special enforcement consideration to be given in a particular case will depend on a weighing of public interest factors. The FAA considers the following factors in any such determination:

- (1) Whether the FAA could reasonably be expected to discover or prove the violations without the informant's cooperation.
- (2) The seriousness of the violations disclosed by the informant and the importance of the enforcement action against his or her employer or other members of the aviation community.
- (3) The informant's relative culpability and violation history.

(4) The informant's credibility.

(5) Whether the informant's testimony or information may reasonably be expected to contribute significantly to either an investigation of, or enforcement action against, an employer or other action in the interest of safety.

**e. Criminal Violations.** Violations of some regulatory requirements (for example, falsification of records) may also involve violations of criminal laws. Immunity from criminal prosecution can be granted only on approval of the Attorney General of the United States under 18 U.S.C. § 6004. In general, the FAA seeks such approval only where testimony or other information from an individual may be necessary to the public interest and such individual has refused or is likely to refuse to testify or provide information on the basis of his or her privilege against self-incrimination. The immunity sought in such cases is limited by law to *use immunity*; that is, an assurance that testimony or information so provided by an individual will not be used against him or her in a criminal prosecution.

**f. Receipt of Request for Special Enforcement Consideration or Immunity.** When any FAA employee receives a request for special enforcement consideration or immunity, he or she tries to determine the following:

- (1) The identity of the informant;
- (2) The position the informant holds in the organization, if any;
- (3) The degree of involvement of the informant in the violations;
- (4) The reliability of the informant;
- (5) The informant's violation history;
- (6) The identity of the individual or organization about whom or which the informant has offered information on the violations;
- (7) The nature of apparent violations, including type, dates, period of occurrence, seriousness, whether continuing, and safety implications; and
- (8) The FAA's ability to discover or prove the apparent violations without the informant's testimony or assistance.

The FAA employee promptly advises his or her supervisor of the request for special enforcement consideration and the basis for such request. The supervisor advises the Assistant Chief Counsel for Enforcement or the appropriate Regional Counsel.

**g. Role of Headquarters or Regional Division Office.** The regional or headquarters division promptly evaluates the request and supporting information. If the division determines the individual seeking special enforcement consideration will provide testimony or information

about the commission of serious violations by his or her employer or other members of the aviation community, and, based on a weighing of the factors in chapter 4, subparagraph 12.d., the public interest appears to be served by granting special enforcement consideration, the division refers the matter to the Assistant Chief Counsel for Enforcement or appropriate Regional Counsel with its evaluation and recommendation. If the division determines that special enforcement consideration is not warranted, the division documents that determination in a memorandum to the file, with a copy to the Assistant Chief Counsel for Enforcement or appropriate Regional Counsel.

**h. Role of Legal Counsel.** The Assistant Chief Counsel for Enforcement or appropriate Regional Counsel evaluates the request for special enforcement consideration in accordance with the factors in chapter 4, subparagraph 12.d. If the request appears to warrant special enforcement consideration, the Assistant Chief Counsel for Enforcement or appropriate Regional Counsel or his or her designee, and a representative of the involved division (if the division manager so desires) meet with the informant or his or her attorney or other representative, if appropriate. If the request appears not to warrant special enforcement consideration, the Assistant Chief Counsel for Enforcement or appropriate Regional Counsel either seeks further information or denies the request.

**i. Preparation of Request for Special Enforcement Consideration.** Each request for special enforcement consideration must be addressed on a priority basis. The Assistant Chief Counsel for Enforcement or the appropriate Regional Counsel (through AGC-300) promptly submits to the Chief Counsel a request for authorization to grant special enforcement consideration by preparing a document entitled *Request for Authorization to Grant Special Enforcement Consideration*. See sample request for authorization to grant special enforcement consideration in Figure A-6 of Appendix A. A record of the Chief Counsel's approval or disapproval is transmitted to the Assistant Chief Counsel for Enforcement or appropriate Regional Counsel. The terms and scope of agreement to grant special enforcement consideration must be in writing and executed by the parties in a manner consistent with the form agreement to grant special enforcement consideration. The Office of the Chief Counsel executes a memorandum of record setting forth the reasons for the grant or denial of a request for special enforcement consideration to be made part of the case file.

### **13. Investigation of Crewmembers for Operating Under the Influence of Alcohol or Drugs.**

**a. General.** When an FAA employee receives seemingly reliable and credible information that a crewmember may operate a civil aircraft in violation of the alcohol- and drug-related regulations contained in 14 C.F.R. § 91.17, he or she immediately contacts a Flight Standards Service inspector and transmits that information. The Flight Standards Service investigates these allegations to the fullest extent possible with the highest priority as prevention of these violations is critical to flight safety. FAA enforcement personnel use all available FAA resources to prevent any person from acting as a crewmember while that person is under the influence of alcohol or drugs. Accomplishing this fundamental objective sometimes requires ingenuity and quick thinking, especially when time is short. For air carrier crewmembers, prompt notification of Flight Standards Service management and the air carrier, using the resources of the FAA

communications center, usually is the best way to get quickly the assistance needed to prevent operation of an aircraft in violation of the FAA's regulations. To the extent possible, FAA investigative personnel fully coordinate all actions with FAA legal counsel in advance. In addition, they advise the Regional Administrator through program office management of such actions.

**b. Applicable regulations.**

(1) 14 C.F.R. § 91.17(a) prohibits a person from acting or attempting to act as a crewmember of a civil aircraft –

- Within 8 hours after the consumption of any alcoholic beverage (14 C.F.R. § 91.17(a) (1));
- While under the influence of alcohol (14 C.F.R. § 91.17(a)(2));
- While using any drug that affects the persons faculties in any way contrary to safety (14 C.F.R. § 91.17(a) (3)); or
- While having an alcohol concentration of 0.04 percent or greater in a blood or breath specimen. (14 C.F.R. § 91.17(a)(4)).

The violation of any one or any combination of these is grounds for legal enforcement action.

(2) Under 14 C.F.R. § 91.17(c)(1), a crewmember of a civil aircraft must, in certain circumstances, submit to testing to indicate the alcohol concentration in the blood or breath. The regulation does not authorize FAA investigative personnel to require a crewmember to submit to an alcohol test. A law enforcement officer who is authorized under state or local law governing the same or substantially similar conduct as is prohibited by the FAA alcohol rules must make the request. Not all states have enacted statutes prohibiting flying under the influence of alcohol or drugs or authorizing state or local law enforcement officers to request alcohol tests of crewmembers. The law enforcement officer conducting or obtaining the test is acting under his or her own state or local authority. Although the officer is not enforcing FAA rules, the FAA may use the test results in an enforcement proceeding against the crewmember. There must be a reasonable basis to believe that a crewmember may have unlawfully used alcohol in connection with his or her duties. The crewmember must comply with the request. Failure to submit to the test could result in suspension or revocation of an airman certificate, and denial of an application for any new certificate, or rating issued under 14 C.F.R. §§ 61.16 or 63.12a for a period of up to 1 year after the date of that refusal. Flight attendants or other crewmembers who do not hold airman certificates are subject to civil penalty action. A blood or breath alcohol test is necessary to prove a violation of the 0.04 percent rule. It is not necessary to prove a violation of the 8-hour rule or the under-the-influence rule. As in the past, any alcohol test or other evidence (such as observations of crewmembers), which indicates a violation, may be used to prove those violations.

**c. Notifications.** FAA investigative personnel use the most expeditious means available to communicate with FAA personnel and air carrier management. This is normally accomplished through the FAA Operations Center in the field. If necessary, FAA investigative personnel

contact the Washington Headquarters Operations Center (202) 267-3333. FAA investigative personnel notify the persons indicated in chapter 4, subparagraphs 13.c.(1)-(4).

(1) Notification to air carrier officials. If the crewmember is an employee of an air carrier, FAA investigative personnel at once notify an appropriate management official of the air carrier who is immediately accessible by telephone of all relevant information to enable an air carrier to conduct its own investigation and of the steps that FAA investigative personnel intend to pursue based on the information. FAA investigative personnel also notify the air carrier's Drug Program Manager, who will then be able to direct proper testing of the crewmember. FAA investigative personnel give the air carrier all available information, protecting any confidential source who has requested anonymity, to enable the air carrier to take appropriate action. They urge the air carrier to assist the FAA in its investigation and, if appropriate, to take action to ensure the flight crewmember does not serve on the flight. FAA investigative personnel remind the air carrier official of the provisions of 14 C.F.R. § 91.17(a) and the authority of the FAA to prohibit, where warranted, the operation of the aircraft if the air carrier fails to take action on its own. FAA investigative personnel also advise the air carrier official of 18 U.S.C. § 342, a criminal statute that provides for imprisonment of, and fines against, "whoever operates or directs the operation of a common carrier while under the influence of alcohol or drugs . . . ."

(2) Notification to FAA personnel. FAA investigative personnel also immediately notify their supervisor and, for an air carrier crewmember, the certificate holding district office or the certificate management unit that holds the air carrier's operating certificate, of the information and the action they intend to pursue. FAA investigative personnel also notify the Drug Abatement Division in Headquarters (AAM-800), the Airman Medical Certification Division (AAM-300), and the appropriate Regional Flight Surgeon of the information. These officials contact appropriate program office headquarters officials in their chain of command, as time allows.

(3) Notification to Flight Standards Service and FAA Legal Counsel. If FAA investigative personnel do not receive a response from the air carrier that resolves satisfactorily FAA safety concerns, FAA investigative personnel immediately notify Flight Standards Service management, who in turn notify the Regional Counsel in the region. Notification is elevated to the highest FAA management official (up to and including the Administrator) necessary to contact air carrier management to eliminate the FAA's concern for flight safety.

(4) Notification to state or local law enforcement. Whether the crewmember is an employee of an air carrier or is conducting either commercial or general aviation operations, FAA investigative personnel as soon as possible notify state or local law enforcement personnel, when appropriate, and request their assistance in the investigation or other appropriate action.

**d. Conducting the Investigation on the Scene.** If FAA investigative personnel encounter a crewmember who they have reasonable grounds to believe (such as by personal observation or credible witnesses) is violating or has violated the alcohol or drug rules, FAA investigative personnel follow the procedures in chapter 4, subparagraphs 13.d. (1)-(6).



(1) Request identification. Request the crewmember present his or her FAA airman certificate and medical certificate. If the crewmember does not have either of these certificates, request another form of official identification, for example, a state driver's license. Advise the individual not to fly or perform crewmember duties in violation of the alcohol or drug rules. If the individual refuses to present identification, try to identify the individual by contacting the local fixed base operator or other airport personnel and determine the name and address of the registered owner of the aircraft to help in identifying the individual.

(2) Contact local law enforcement. Contact the local law enforcement office with jurisdiction where the incident took place. Ask the officer whether he or she has authority to conduct alcohol or drug tests or have tests conducted for violations of state or local law concerning the operation of an airplane while under the influence of alcohol or drugs, and inform the officer of the FAA rules. If the officer says that he or she has authority to obtain the test, suggest that he or she investigate the incident and obtain the test. If the officer does not have authority to obtain the test, request that he or she investigate the incident and provide a statement about his or her observations regarding the crewmember. In either event, FAA investigative personnel conduct a full investigation and collect all relevant evidence about the violation.

(3) The law enforcement officer's investigation might involve a field sobriety test, which might be followed by a confirmation breath test or blood test. The confirmation test might be conducted at a hospital or police station.

(4) If the crewmember is taken to a hospital or other medical facility for a blood test, the law enforcement officer will have the test conducted under state or local law. FAA investigative personnel can obtain the results from the appropriate local law enforcement office, or request the crewmember to provide the test results under the authority of 14 C.F.R. § 91.17(c)(2). FAA investigative personnel ask the individual to sign a release form to assist in obtaining results. *See* sample release form in Figure A-7 of Appendix A. This may be done by letter. *See* sample release letter in Figure A-8 of Appendix A. The Privacy Act notice for alcohol tests must be attached. *See* Privacy Act notice in Figure A-9 of Appendix A. The FAA can require the crewmember to give all alcohol test results taken within 4 hours after acting or attempting to act as a pilot in command or crewmember under 14 C.F.R. § 91.17(c)(2). If FAA investigative personnel are unsuccessful in obtaining the test results from the police, they send a letter to the crewmember with a release form, requesting that the crewmember provide the test results or authorize the release of the test results to the FAA, or enforcement action may be taken. This letter is sent by regular mail and either certified mail, return-receipt requested, registered mail, or by hand delivery. If the crewmember fails to comply, FAA investigative personnel initiate enforcement action for violation of 14 C.F.R. § 91.17(c) (2). The letter includes a request for release of drug test results under 14 C.F.R. § 91.17(d), because generally FAA investigative personnel will not know whether the questioned behavior is due to alcohol or drugs or both.

(5) If an individual refuses to consent to the alcohol test when asked by the law enforcement officer, FAA investigative personnel initiate emergency or normal enforcement action depending on the circumstances and severity of the incident. The action might be based on a violation of 14 C.F.R. § 91.17(c) (1) for failure to take the test, and if the evidence warrants,

14 C.F.R. § 91.17(a) (1) or (2). Generally, emergency action is appropriate in cases where the airman may exercise the privileges of the certificate.

(6) If the individual tries to leave the scene, FAA investigative personnel do not try to physically detain him or her. They call airport security or local law enforcement to take action under their authority and provide a description of the individual and any vehicle used, including license plate identification. If on a controlled airport, FAA investigative personnel notify air traffic control so they can attempt radar tracking if the individual takes off in the aircraft.

**e. Conducting the Investigation Not on Scene.** An FAA office may receive a telephone notification or other complaint of someone operating or attempting to operate under the influence. If FAA investigative personnel are unable to go to the scene, they call the law enforcement office nearest to the scene for assistance. If the test is conducted, the evidence is obtained as in chapter 4, subparagraph 13.d above. It is important to determine if the individual consumed any more alcohol between the flying and the test.

**f. Gathering Evidence.** FAA investigative personnel gather and preserve all evidence, regardless of whether an alcohol or drug test was conducted. Such evidence may include statements of witnesses, the records of conversation with witnesses, police reports, hospital records, and test results. This list does not identify all evidence that may be appropriate for an EIR, nor would the omission of one or more of these items necessarily preclude enforcement action. FAA investigative personnel include the following evidence in the EIR:

- (1) The time and date the crewmember acted or attempted to act as a crewmember.
- (2) The identity of each person (FAA investigative personnel, controller, police, other witness) who observed the crewmember's behavior, including both those whose observations do and those whose observations do not support a finding that the crewmember violated the regulations. FAA investigative personnel interview each person who observed the questioned behavior and obtain a witness statement from each.
- (3) The reasons why the person believed the crewmember was under the influence of alcohol or drugs, for example, observed the drinking, stumbling gait, slurred speech, odor, difficulty dealing with ATC, or believed the crewmember was not under the influence of alcohol or drugs.
- (4) The time and date when the belief was formed.
- (5) Any action taken by the witness.
- (6) The details of any police investigation, for example, field sobriety test, confirmation test.
- (7) The time any alcohol or drug test was done.
- (8) Information whether the crewmember had an opportunity to drink between the apparent violation and the time the alcohol test was taken.

(9) The qualifications of the person who conducted the test, for example, verbal statement from the police officer that he or she had been trained.

**g. Making Evaluations and Recommendations.**

(1) In all cases, the investigating office consults a program office regional specialist and FAA legal counsel as soon after the incident as possible, in case emergency action is necessary, and to assist in identifying what evidence should be obtained.

(2) FAA investigative personnel evaluate whether to recommend that violations of 14 C.F.R. §§ 91.17(a), (b), or (d), or a combination, should be charged. If the evidence does not prove an alcohol concentration of .04 percent or more, it may still support a charge of violating (a) or (b). If the crewmember has refused to take a test, FAA investigative personnel evaluate whether to recommend charging a violation of 14 C.F.R. § 91.17(c) (1).

(3) If an individual operated or directed the operation of an air carrier while under the influence of alcohol or drugs, FAA investigative personnel consult with the program office regional office and legal counsel to determine whether to refer the case for criminal action under 18 U.S.C. § 342.

**h. Privacy Act Considerations.** Because of the sensitivity of the alcohol or drug test results, it is important the results not be released without careful review of Privacy Act requirements. Requests for release of information must be handled under FAA Order 1200.23A, Public Availability of Information. FAA legal counsel is available to advise program offices on FOIA and Privacy Act issues.

**14. Violations by Unruly Passengers.**

**a. General.** Unruly passengers are those who engage in any of the following conduct:

- Assault, threaten, intimidate or interfere with crewmembers in the performance of the crewmembers' duties while an aircraft is being operated;
- Physically assault, threaten to physically assault any individual on board an aircraft (including any crewmember); or
- Otherwise act in a manner that poses an imminent threat to the safety of the aircraft or to others on board the aircraft.

(1) Unruly passengers may present a serious risk to aviation safety. Consistent with the FAA's mission to promote air safety in transportation, FAA regulations, 14 C.F.R. §§ 91.11, 121.580, 125.328, 135.120, have long proscribed the unruly passenger conduct described in the first bullet above, specifically directed at crewmembers.

(2) As part of the Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century, Pub. L. No. 106-181, § 511, 114 Stat. 61 (2000) (codified at 49 U.S.C.

§ 46318), Congress increased the FAA's civil penalty assessment authority to a maximum of \$25,000, for the more egregious forms of unruly passenger conduct described in the second and third bullets above. The civil penalty authority under 49 U.S.C. § 46318 became effective for violations occurring on or after April 6, 2000. The FAA still retains its civil penalty authority under the interference regulations, that is, 14 C.F.R. §§ 91.11, 121.580, 125.328, 135.120.

**b. The Scope of the Interference Regulations vs. the Scope of the Statute.**

(1) The regulations. 14 C.F.R. § 91.11 provides that “[n]o person may assault, threaten, intimidate, or interfere with a crewmember in the performance of the crewmember’s duties aboard an aircraft being operated.” The analogous provisions in 14 C.F.R. §§ 121.580, 125.328 and 135.120 are identical to Section 91.11 except that these other provisions specify the conduct must occur “aboard an aircraft being operated under this part.” The terms *assault*, *threat*, *intimidation*, and *interference* are words of common understanding given the particular context within which the particular conduct occurs. The conduct proscribed by the regulations runs the whole gamut of unruly behavior, from questioning the authority of a crewmember to physically assaulting a crewmember. *Crewmember* is defined in 14 C.F.R. § 1.1 as “a person assigned to perform duty in an aircraft during flight time.” *Operate* is defined in 14 C.F.R. § 1.1 as “use, cause to use, or authorize to use aircraft, for the purpose (except as provided in § 91.13 of this chapter) of air navigation, including the piloting of aircraft . . . .”

(2) The statute. 49 U.S.C. § 46318 provides that “[a]n individual who physically assaults or threatens to physically assault a member of the flight crew or cabin crew of a civil aircraft or any other individual on the aircraft, or takes any action that poses an imminent threat to the safety of the aircraft or other individuals on the aircraft is liable to the U.S. Government for a civil penalty of not more than \$25,000.” The statutory language is broader than the regulations in some respects, in that the proscribed conduct need only occur *on the aircraft* regardless of its operating status and includes conduct directed at any individual on the aircraft, not just the crewmembers. In other respects, the statutory language is narrower, in that *interference* or *intimidation* of a crewmember by itself is not chargeable under the statute unless it rises to the level of a physical assault, threatened physical assault or an act posing an imminent threat to the safety of the aircraft or other individuals on the aircraft.

**c. When to Charge a Violation Under the Provisions of the Interference Regulations and 49 U.S.C. § 46318.** When an unruly passenger’s conduct violates both one of the interference regulations and 49 U.S.C. § 46318, the FAA charges the unruly passenger with having violated both the regulation and the statute. When the unruly passenger’s conduct only violates the regulation (for example, where the passenger’s *interference* or *intimidation* of a crewmember does not rise to the level of a physical assault or threatened physical assault), the FAA charges only the regulatory violation. If the unruly passenger’s conduct violates only the statute, 49 U.S.C. § 46318 (*e.g.*, where the passenger physically assaults or threatens to physically assault another passenger), then the FAA charges only the statutory violation.

## 15. Special Considerations for Investigation of Hazardous Materials Violations.

**a. Written Hazardous Materials Incident Reports.** 49 C.F.R. § 171.16 requires the air carrier to file a written report of each of the incidents listed in chapter 4, subparagraphs 15.a. (1)-(3).

- (1) An incident required to be reported under 49 C.F.R. § 171.15, immediate notice of certain hazardous materials incidents.
- (2) An unintentional release of hazardous materials from a package.
- (3) A discharge of any quantity of hazardous waste during transportation.

The written report must be on DOT Form 5800.1, hazardous materials incident report and filed in duplicate within 30 days. When the apparent violation involves one of the incidences described in chapter 4, subparagraphs 15.a. (1)-(3), FAA investigative personnel include a copy of the DOT Form 5800.1 in the EIR. If an air carrier fails to file the required report within 30 days, FAA investigative personnel open an EIR against the carrier.

**b. Violation by an Operator under a DOT Exemption.** For certain types of hazmat, the FAA special agent determines whether the apparent violator was operating under an exemption issued by the DOT. If so, the special agent determines whether there was a violation of the terms of the exemption. If the special agent determines the violator has not complied with the terms of the exemption, he or she notifies the regional Security and Hazardous Materials division manager, who will consult with the DOT. The special agent also places a copy of the exemption and information regarding noncompliance as items of proof in the EIR.

**c. Violations Involving Air Transportation outside the U.S.** The FAA discovers violations of chapter 51 or the HMR by persons offering shipments for transportation from the U.S. to foreign countries (and vice versa), and by persons transporting such shipments.

(1) 49 C.F.R. § 171.11 allows an offeror to comply with the International Civil Aviation Organization (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO TI) instead of 49 C.F.R. parts 172 and 173. 49 C.F.R. § 171.11 incorporates the ICAO TI by reference. For the latest version incorporated by reference, *see* 49 C.F.R. § 171.7.

(2) Failure by an offeror to comply with the ICAO TI generally constitutes a violation of 49 C.F.R. § 171.11. However, if the offeror violates a provision of the ICAO TI for which there is no parallel requirement in 49 U.S.C. or 49 C.F.R., no enforcement action may be taken.

(3) If there is a parallel violation in Title 49, the special agent lists the sections in 49 C.F.R. parts 172 and 173 in the EIR.

## **16. Formal Fact-Finding Using Order of Investigation.**

**a. Purpose.** This section provides guidance on orders of investigation that may be used to assist the agency in finding facts material to the exercise of its functions.

**b. Authority.** Under 49 U.S.C. §§ 40113 and 46101, and 5 U.S.C. § 555, the FAA may conduct formal fact-finding investigations. Such investigations are conducted pursuant to an order of investigation issued under 14 C.F.R. part 13, subpart F.

**c. Use of the Formal Fact-Finding Investigation.** A formal fact-finding investigation involves the use of legal process as an investigative aid. For example, the FAA may order an investigatory hearing, using the Administrator's authority under 49 U.S.C. § 46104, to obtain evidence of possible violations. Formal fact-finding procedures make it possible to compel testimony and to obtain documents that would not be given or made available voluntarily. Also, formal fact-finding procedures can facilitate the gathering or preservation of evidence and the coordinated conduct of an interregional investigation, such as in a case that may result in revocation of the type certificate for an aircraft with widespread air carrier use, or a case involving the manufacture and nationwide distribution of unapproved parts.

**d. Requests for Formal Fact-Finding Investigations.** When planning an investigation, or during an investigation, FAA investigative personnel may find that formal fact-finding procedures are needed to conduct a complete investigation. In such situations, the program office field office may request, through the program office regional division, that legal counsel issue an order of investigation.

### **e. Initiating the Formal Fact-Finding Investigation and Issuance of Order of Investigation.**

(1) Within the FAA, the Administrator's powers to issue subpoenas, administer oaths, examine witnesses, receive evidence, require the production of records, take depositions, and seek enforcement of these processes in the conduct of formal fact-finding investigations have been delegated to legal counsel. When the appropriate program office and legal counsel determine that a formal fact-finding investigation is necessary, the Assistant Chief Counsel for Enforcement or a Regional Counsel issues an order of investigation under 14 C.F.R. part 13.

(2) The Administrator's authority under 49 U.S.C. § 46104 may be exercised, in appropriate cases, without ordering a formal fact-finding investigation.

**f. Investigative Procedures and Conduct of the Formal Fact-Finding Investigation.** The presiding officer, as designated by the order of investigation, conducts the investigation under the procedures in 14 C.F.R. part 13, subpart F. He or she may designate additional persons to assist in the investigation, such as FAA investigative personnel from the investigating program office field office. The presiding officer prepares a written report of the investigation. The purpose of the formal fact-finding investigation is to develop facts. It is not adjudicatory in nature. The investigating program office, based on evidence developed in the formal fact-finding investigation and any other information in its possession, recommends appropriate

enforcement action, if any. If the presiding officer determines that evidence compiled during the formal fact-finding investigation supports a finding that air transportation or air commerce and the public interest warrant initiation of emergency action, an EIR is prepared and an emergency order issued instead of the written report.

## **17. Administrative Subpoenas.**

**a. Use of Administrative Subpoenas.** An administrative subpoena requires the person on whom it is served to provide either records or testimony on matters that are under investigation. Generally, administrative subpoenas are not required in an investigation, but when there are no other practicable means to get records or testimony, and the custodian of the record or the individual whose testimony is sought refuses to produce it, FAA investigative personnel may obtain an administrative subpoena to compel production of the information. The Chief Counsel, a Deputy Chief Counsel, each Assistant Chief Counsel, and each Regional Counsel, may issue an administrative subpoena. It is important that FAA investigative personnel closely coordinate with FAA legal counsel on the use of administrative subpoenas and seek advice on whether they will be of help and how they are to be used. Subpoenas can be an effective tool in the investigatory process when other investigatory means have proven unsuccessful. An order of investigation is not a prerequisite to issuance of an administrative subpoena. Administrative subpoenas may be judicially enforced under 49 U.S.C. § 46104(b).

**b. General Guidelines for the Use of Administrative Subpoenas.** This is general guidance for the use of administrative subpoenas. It is not intended to restrict their use under other valid circumstances.

(1) Administrative subpoenas are used for valid investigative purposes to obtain information or evidence that reasonably relates to the matter under investigation.

(2) Administrative subpoenas may be served on the subject of an investigation or on other individuals who have information relevant to the investigation.

(3) Other investigative means generally are used before an administrative subpoena, unless there is reason to believe the other means would not be effective. Normally, FAA investigative personnel request the information before asking legal counsel to issue an administrative subpoena. If FAA investigative personnel believe that evidence will be destroyed if a simple request for the evidence is made, then they may request that an administrative subpoena be issued and served as the first request for the information.

(4) Some individuals or corporations are reluctant to provide information without an administrative subpoena to protect themselves from action by the subject of the investigations. They may be willing to produce the information once an administrative subpoena has been issued.

**c. Requesting an Administrative Subpoena.** FAA investigative personnel make a request for an administrative subpoena to FAA legal counsel. They generally provide legal counsel with

written answers to the following questions so a determination can be made whether to issue an administrative subpoena:

- (1) Why is a subpoena needed? This includes an explanation of why normal investigative techniques have not produced, or may not produce, the evidence sought.
- (2) What is requested? FAA investigative personnel provide an accurate description of the records or testimony to be subpoenaed. The items requested should be reasonable in both their scope and duration.
- (3) Where are the records or the person to give testimony located?
- (4) Who is the custodian of the records?
- (5) Where do the documents or evidence need to be produced? FAA investigative personnel consider whether the documents need to be produced at an FAA office or at the place of business of their custodian, or whether they may be produced by mail.
- (6) On what date should the items be produced? A reasonable time should be provided to allow for the documents to be produced. If FAA investigative personnel believe that records may be destroyed, then they consider whether the items should be produced immediately. Under appropriate circumstances, documents may be produced by mail.

**d. Service of an Administrative Subpoena.** Once an administrative subpoena has been issued, generally FAA investigative personnel serve it personally on the individual or entity to whom it is issued. FAA investigative personnel fully complete the *return of service* indicating, when, where, how, and to whom service of the subpoena was made. If there is no *return of service*, then FAA investigative personnel prepare a memorandum specifically listing all the details of how the subpoena was served.

**e. Information Required to be Produced.** If the statute or regulations require that an airman or operator maintain and present to the FAA the information being sought, then the airman's or operator's failure to produce such information to the FAA may be grounds for emergency suspension or revocation of a certificate.

**f. Judicial Enforcement.** If a person refuses to comply with an administrative subpoena, then legal counsel may refer the matter to a U.S. attorney for judicial enforcement under 49 U.S.C. § 46104(b).

**18. Criminal Investigations.** This section provides guidance and procedures for the referral and coordination of cases involving possible criminal violations.

**a. Coordination of Possible Criminal Violations.**

(1) FAA coordination and referral to OIG. When FAA investigative personnel believe there may be a violation of any federal criminal statute in a matter involving aviation, he or she



coordinates with his or her supervisor, the affected program office, Office of Security and Hazardous Materials (Security), and FAA legal counsel. After coordination, if it is agreed that criminal conduct has possibly occurred, Security will refer the matter to the DOT/OIG. Potential criminal violations of state or local laws are referred to Security for referral to the OIG in accordance with FAA Order 1600.38, as amended. This does not prevent FAA investigative personnel from seeking assistance from state or local law enforcement personnel for an aviation safety matter requiring immediate action, for example, situations involving suspected intoxicated pilots.

(2) Remedial safety action. Regardless of whether a matter is referred for criminal investigation, FAA enforcement personnel immediately take whatever remedial action is required for safety in air commerce, particularly when the underlying conduct evidences a lack of qualification by a certificate holder. Remedial action may include emergency revocation of a certificate or seeking an injunction in U.S. district court.

(3) Securing evidence and communication with violator in criminal case. As in all cases, FAA investigative personnel identify possible witnesses and preserve other sources of evidence in a case involving possible criminal violations. To avoid compromising the criminal investigation, FAA investigative personnel should not speak to the apparent violator about the criminal investigation or violation.

#### **b. Concurrent Civil and Criminal Investigations.**

(1) General. At times, a suspected statutory or regulatory violation within the investigative responsibility of the FAA also leads to investigation by a federal, state, or local law enforcement agency (LEA). Unless otherwise advised by Regional Counsel or the Assistant Chief Counsel for Enforcement, FAA investigative personnel proceed with the FAA investigation in accordance with this order, maintaining close coordination with the responsible LEA.

(2) Prioritization of investigations. Generally, DOT/OIG or other criminal investigations are given priority over FAA investigations. Therefore, unless the matter under investigation requires or may require immediate remedial action to prevent further adverse impact on safety, FAA investigations are generally held in abeyance when so requested by the DOT/OIG, a U.S. attorney's office, or other federal law enforcement agency (FLEA). When a FLEA requests that FAA investigative personnel hold their investigation in abeyance, FAA investigative personnel must notify and coordinate the request with their program office and legal counsel. FAA investigative personnel ask that such a request be made in writing. Legal counsel should document terms of agreements between the FAA and the FLEA to defer FAA investigation or enforcement action in favor of criminal action. After concurrence, FAA investigative personnel must maintain contact with the FLEA to ensure the FAA's case is not compromised by delay. When it appears that aviation safety and the public interest require immediate certificate action or other enforcement action, FAA investigative personnel, in coordination with program office management and legal counsel, complete the FAA investigation and forward the EIR for initiation of appropriate remedial enforcement action.

FAA enforcement personnel maintain close coordination with the DOT/OIG, U.S. attorney's office, or other FLEA.

(3) FAA assistance to law enforcement agency. Frequently, an LEA requests technical assistance from FAA investigative personnel to help in investigating or prosecuting a criminal case. Such requests may come at any time, even during an ongoing FAA investigation. All requests for assistance, including those relating to suspected unapproved parts investigations, must be coordinated immediately with program office management, the Office of Security and Hazardous Materials, and the Regional Counsel or the Assistant Chief Counsel for Enforcement, to avoid compromising either the criminal or FAA enforcement actions. In particular, immediate coordination with program office management and the Regional Counsel or the Assistant Chief Counsel for Enforcement will enable FAA legal counsel to ensure the secrecy pertaining to matters occurring before a grand jury under Rule 6(e) (2) of the Federal Rules of Criminal Procedure does not hamper the FAA's ability to take regulatory enforcement action for any matter related to the criminal case. Rule 6(e)(2) prohibits grand jurors, interpreters, court reporters, operators of recording devices, persons who transcribe recorded testimony, government attorneys, and government personnel who assist government attorneys in enforcing federal criminal law from disclosing *matters occurring before the grand jury* except as otherwise provided for in the Federal Rules of Criminal Procedure.

(4) Preparation of an EIR. When the FAA investigation proceeds concurrently with a criminal investigation, coordination with Regional Counsel or the Assistant Chief Counsel for Enforcement and the LEA must include a determination of whether the investigations are to be joint or independent. If the investigations are independent, FAA investigative personnel investigate the apparent violation using evidence developed or discovered solely through the FAA's investigations. If the investigations are jointly done, evidence developed or discovered by both FAA investigative personnel and the LEA may be used by both the FAA and the LEA to prove a violation.

**c. Examples of Criminal Violations.** The following acts are among those subject to criminal penalties:

- (1) Interference with flight crewmembers or flight attendants (49 U.S.C. § 46504).
- (2) Carrying weapons or explosives aboard aircraft (49 U.S.C. § 46505).
- (3) Certain crimes aboard aircraft in flight (49 U.S.C. § 46506).
- (4) False information and threats (regarding certain criminal acts) (49 U.S.C. § 46507).
- (5) Acting as an airman without an airman certificate (49 U.S.C. § 46306(b)(7)).
- (6) Unlawful transportation of hazardous materials (49 U.S.C. §§ 46312 and 5124).
- (7) Willfully making false statements or representations in any matter within the jurisdiction of any department or agency of the United States (18 U.S.C. § 1001).

(8) Willfully damaging any civil aircraft or part of a civil aircraft used in air commerce; any air navigation facility, hangar, terminal, other building, landing area, ramp, machine, apparatus, or other property used in connection with the operation, loading, or unloading of any such aircraft; willfully incapacitating any member of the crew of any such aircraft or willfully attempting to do any of these acts (18 U.S.C. § 32).

(9) The willful or malicious reporting of false information, such as bomb threats or destruction of an aircraft (18 U.S.C. § 35).

(10) The operation of a common carrier while under the influence of alcohol or drugs (18 U.S.C. §§ 341 - 343). In this case, generally emergency revocation of the airman's pilot certificate is taken immediately.

(11) Improper use of seals of any department or agency – falsely making, forging, counterfeiting, mutilating, or altering a seal - knowingly using a seal; or possessing a seal with fraudulent intent (18 U.S.C. § 506).

(12) False certificates or other writings made or given by public officers or other authorized persons (18 U.S.C. § 1018).

(13) False and related activity in connection with identification documents (18 U.S.C. § 1028).

(14) Obstruction of pending proceedings before agencies (including witness tampering) (18 U.S.C. § 1505).

## **19. Public Aircraft Operations.**

**a. Analysis for Determining Public Aircraft or Civil Aircraft Status.** Generally, the FAA has oversight authority over only civil aircraft operations. The status of an aircraft as public or civil depends on its use in government service and the type of operation the aircraft is conducting at the time, rather than the nature of the entity operating the aircraft. Operations are viewed on a flight-by-flight basis to determine if a particular operation is public or civil, and, if civil in nature, then subject to all civil aircraft requirements.

**b. Definition of a Public Aircraft Operation.** An aircraft may be operated as a public aircraft only when it is used exclusively in the service of the U.S. Government, or owned and operated, or exclusively leased for at least 90 continuous days, by a state or local government. An aircraft operated by a government for purposes related to crew training, equipment development, or demonstration can be considered a public aircraft operation.

**c. Circumstances when a Government-Owned Aircraft is subject to Civil Aircraft Requirements.** A government-owned aircraft is subject to all the regulations applicable to civil aircraft when it is operated for commercial purposes, or when it is used to transport either passengers other than crewmembers or persons who are not required to perform, or who are not associated with the performance, of a governmental function. For this purpose, the term

*governmental function* includes firefighting, search and rescue, law enforcement, aeronautical research, or biological or geological resources management. The transport of government officials for administrative purposes such as to attend meetings is not a governmental function. An aircraft operated by one government, or agency of a government, on behalf of another government, or agency, under a cost reimbursement agreement is not viewed as being operated for commercial purposes under the following circumstances: the government on whose behalf the operation is conducted must certify to the Administrator that the operation is necessary to respond to a significant and imminent threat to life or property, including natural resources, and that no service by a private operator is reasonably available to meet the threat.

**d. Enforcement Actions against Airmen for matters involving Public Aircraft Operations.** Some rules in 14 C.F.R. part 91, specifically sections pertaining to flight rules, apply to public aircraft operations as well as civil aircraft operations. Other provisions in 14 C.F.R. part 91 are limited to civil aircraft. Furthermore, part 43 violations may be charged against persons provided the aircraft has a U.S. airworthiness certificate. The Administrator may revoke the certificate of an airman who violates the regulations while operating an aircraft in public status where the airman's actions demonstrate a lack of qualifications to hold a certificate. In all other instances, civil penalty action ordinarily is appropriate when the FAA determines that legal enforcement action should be taken against an airman for violations involving an aircraft operated in public status.

**e. Evidence of Civil Aircraft Status.** FAA investigative personnel must obtain sufficient evidence to establish that a government-owned aircraft is being operated in civil status if they believe that such an aircraft has violated a requirement applicable only to civil aircraft.

**f. Additional Guidance on Public Aircraft.** Advisory Circular AC 00-1.1, Government Aircraft Operations, contains additional guidance on government aircraft operations. (AC 00-1.1 may be found online at <http://rgl.faa.gov>).

## **20. Investigations for Referral to the Military.**

**a. General.** Under 49 U.S.C. § 46101(b), when a member of the armed forces, while in the performance of official duties, appears to have committed a violation, the FAA compiles all information in its possession and forwards it as a complaint to the Secretary of the Department concerned. The military authorities are required to conduct an independent investigation and advise the Administrator or his or her designee of the action taken.

**b. Investigation of Violation involving Member of Military.** Except as provided in chapter 4, subparagraph 19.d., FAA investigative personnel do not conduct the full investigation needed to satisfy an FAA enforcement action. FAA investigative personnel complete the investigation to the point that legal counsel can determine there is adequate information to support referral of the complaint to the military. In such cases, FAA investigative personnel:

(1) Gather all evidence and other information known to the FAA (for example, controller statements, tapes, transcripts);

(2) Obtain statements or other evidence from sources outside the FAA only to the extent necessary to validate the complaint;

(3) Prepare a factual statement of the complaint, including all information available to identify the incident and all facts and circumstances known to the FAA; and

(4) Prepare an FAA Form 2150-5 from available information.

**c. Processing of EIR for Referral.** The program office field office forwards a completed FAA Form 2150-5, any statements from FAA investigative personnel, and all other evidence to the regional office for processing as soon as practicable following the incident. The Regional Counsel or the Assistant Chief Counsel for Enforcement refers the matter to the appropriate military department under 49 U.S.C. § 46101(b).

**d. Incidents Requiring Complete Investigation.** FAA investigative personnel fully investigate and report violations by members of the U.S. armed forces for enforcement action when:

(1) The apparent violator was not acting in the performance of official military duties; or

(2) The apparent violator, whether or not acting in the performance of official military duties, holds an FAA certificate and there is reason to question the qualifications of the apparent violator or the apparent violator has demonstrated a lack of qualifications.

## **21. Investigations of Violations of Foreign Aviation Regulations.**

**a. General.** Violations of foreign aviation regulations by FAA certificate holders, U.S. citizens, or U.S. companies may come to the attention of the FAA in the form of a complaint addressed to a U.S. Foreign Service Post, or by other means, such as in letters or telegrams from foreign aviation authorities addressed to FAA headquarters, regional or field offices. Such communications are referred to the regional offices having geographical responsibility for the country filing the complaint. In all cases, the region having geographical responsibility for the country filing a complaint investigates, reports, and processes the violation.

### **b. Conducting an Investigation.**

(1) Regardless of the manner in which the FAA learns of a violation of foreign regulations by FAA certificate holders, U.S. citizens or U.S. companies, the region having jurisdiction for the country filing the complaint is responsible for the investigation and finally reporting to the foreign aviation authority that originated the complaint through, if appropriate, the U.S. Foreign Service Post. In instances of particular significance, FAA headquarters may issue instructions for special handling to the responsible region.

(2) FAA investigative personnel conduct any FAA investigation in a foreign country with the concurrence of the appropriate foreign aviation authorities and coordinate with the U.S. Foreign Service Post in that country.

(3) When additional information is needed from the foreign authorities submitting the complaint, such as copies of appropriate foreign regulations or arrangements necessary to pursue the investigation within the reporting country, the investigating FAA office directs the request to the foreign aviation authorities that submitted the original complaint. The investigating FAA office provides information copies of such communications to the appropriate U.S. Foreign Service Post.

**22. Investigations of Violations of FAA Regulations by Persons Residing in Foreign Countries.** FAA investigative personnel fully investigate and report violations of FAA regulations by persons residing in foreign countries in accordance with this chapter. When it is necessary to obtain evidence through a foreign government, the investigating FAA office consults with, and, if appropriate, obtains the assistance of the regional office having international responsibility for that geographical area. That region may, in turn, obtain the needed evidence through the appropriate U.S. Foreign Service Post. The investigating FAA office forwards the completed EIR to its parent regional office for processing.

**23. Investigations of Drug Positive Test Results and Alcohol Violations.** AAM-800 conducts investigations of airmen who have a medical certificate under 14 C.F.R. part 67 and have a positive drug test result or alcohol violation on a test administered under DOT/FAA regulations. AAM-800 forwards the EIR for such an investigation to the Assistant Chief Counsel for Enforcement or the appropriate Regional Counsel office for appropriate legal enforcement action against the airman's pilot and medical certificates. Flight Standards Service principal operations inspectors provide assistance to AAM-800 on these cases, if needed. Flight Standards Service principal operations inspectors conduct investigations on non-DOT drug or alcohol tests (for example, law enforcement tests). AAM-800 provides assistance to the Flight Standards Service for such investigations, if needed. For tracking purposes, principal operations inspectors provide to AAM-830 copies of the letters of investigations in these cases at the time they are issued.

## 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.



**4. Criteria for Administrative Action.** When FAA investigative personnel determine that legal enforcement action is not necessary, the FAA may issue a warning notice or letter of correction as provided in 14 C.F.R. § 13.11. FAA investigative personnel do not take administrative action solely as a matter of convenience or when evidence to support a finding of a violation is lacking, or in cases that are stale for which administrative action would not be appropriate. (Cases are stale when the regulatory or statutory time limitation for initiating legal enforcement action has lapsed.). The appropriate program office decides whether compliance may be obtained best through administrative action or through legal enforcement action, subject to the criteria in this section and other guidance in this order. Field personnel must exercise sound judgment and reasonable discretion in issuing administrative actions to ensure the policy objectives of the FAA and their respective program offices within the FAA are being met. The field office ordinarily does not coordinate its decision to take administrative action with the regional office or other higher levels in the FAA's organization.

**a. Legal Effect.** Administrative actions are not adjudications. Neither a letter of correction nor a warning notice constitutes a finding of violation and, therefore, the opportunity for notice and hearing is not required. Prior administrative actions may be considered in deciding on the type of enforcement action appropriate for the latest apparent violation.

**b. General Requirements.** In accordance with the guidance in Appendix F, FAA investigative personnel may take administrative action, instead of legal enforcement action, when the criteria in chapter 5, subparagraphs 4.b. (1)-(6) are satisfied. Even though such criteria are satisfied, FAA investigative personnel may still elect to take legal enforcement action to address an apparent violation.

(1) Where legal enforcement action is not required by law, and administrative action would serve as an adequate deterrent to future violations, a warning notice or letter of correction may be issued as provided in 14 C.F.R. § 13.11.

(2) The nature of the violation does not indicate that a certificate holder lacks qualification to hold a certificate;

(3) The violation was inadvertent, that is it was not the result of purposeful conduct;

(4) The violation was not a substantial disregard for safety or security and the circumstances of the violation are not aggravated. *Substantial disregard* means in the case of a certificate holder, that the act or failure to 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 case the violator is not a certificate holder, *substantial disregard* means the act or failure to act was a substantial deviation from the degree of care and diligence expected of a reasonable person in those circumstances.

(5) The apparent violator has a constructive attitude toward complying with the regulations, that is, an apparent violator that commits a significant number of unrelated

violations, particularly of the same part of the FAA's regulations (for example, 14 C.F.R. part 121) over a relatively short period of time would ordinarily be regarded as having a poor compliance disposition; and

(6) The apparent violation does not indicate a trend of noncompliance with, or a disregard for, regulations in a particular part of the FAA's regulations because of a previous instance(s) of noncompliance with that part of the FAA's regulations. (For apparent violations of the anti-drug and alcohol misuse prevention programs, reference to a *particular part* means those regulations in 14 C.F.R. parts 121 and 135 pertaining to such programs and Appendixes I and J of 14 C.F.R. part 121.) This determination must be based reasonably on the circumstances in each case, considering various factors, including whether the apparent violator is an individual or entity, and the size and scope of the apparent violator's operations.

**c. Additional Guidance for Evaluating Trends of Noncompliance.**

(1) With regard to an individual or a small company (for example, a local repair station with two or three employees) that has one previous apparent violation or finding of violation of a particular part of the FAA regulations, a subsequent apparent violation of that part might not indicate a disregard for the regulations or trend of noncompliance if they occurred for different reasons. In this case, administrative action may be appropriate for the subsequent apparent violation, provided all other criteria are met. On the other hand, if the apparent violations resulted from the same conduct by an individual or by the same part of a small entity's organization, then the subsequent apparent violation might suggest a disregard for the regulations and the beginning of a trend of noncompliance. In this case, administrative action would not be appropriate.

(2) For entities conducting larger operations (for example, air carriers or aircraft manufacturers), a single, previous apparent violation or finding of violation by one part of the entity's organization would not likely preclude administrative action for a subsequent apparent violation committed by another part of the organization. In a large organization, two isolated apparent violations or findings of violation of the same part of the FAA regulations by different divisions within that organization would not necessarily indicate a trend of noncompliance with, or indicate a disregard for, the regulations in a particular part of the FAA's regulations by the entity's management. Administrative action, however, would not be appropriate where a review of the apparent violator's compliance background reveals a pattern of several, similar apparent violations or findings of violation of the same part of the FAA's regulations throughout the entity's organization that have gone undeterred by the use of administrative or legal enforcement action.

**d. Public Interest Exception.** In unusual circumstances, FAA investigative personnel may take administrative action even if the case does not meet all the criteria in chapter 5, subparagraphs 4.b.(1)-(6). Administrative action may be taken in those cases only when the division manager with authority over the investigating office provides a written explanation for why legal enforcement action would serve no useful purpose and that use of an administrative

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

to the need for reexamination, the details of the accident are described and any supporting evidence compiled. The EIR contains an analysis explaining why the facts indicate the certificate holder may not be qualified. For example, the EIR specifies what it was about the accident that caused the FAA to question the competence of the certificate holder with respect to the certificate or rating. If an accident or incident did not give rise to the necessity for the reexamination, then the EIR should document the circumstances that form the basis for the reexamination. For example, if the reexamination is necessary because there is doubt that the certificate holder met the eligibility requirements to apply for the certificate or that the certificate holder was adequately examined by the examiner, then the EIR should document those circumstances. The EIR also generally contains documentation showing that the FAA requested the certificate holder to submit to reexamination or reinspection and that the certificate holder has not done so. If circumstances require the immediate suspension of a certificate or rating without first requesting reexamination or reinspection, such circumstances may be identified and explained instead of this documentation.

(3) Legal counsel initiates certificate action in accordance with the provisions of chapter 5 when the evidence is sufficient to establish that the certificate holder refused to be reexamined and that the certificate holder may lack the qualifications to hold the certificate or rating, requiring the suspension of the certificate pending satisfactory completion of reexamination. Likewise, legal counsel issues a suspension order when a reinspection cannot be accomplished because of a certificate holder's or product owner's lack of cooperation.

(4) The certificate action orders or proposes the suspension of the certificate or rating until the certificate holder submits to reexamination or the reinspection is accomplished and qualification to hold a certificate is established.

(5) If the certificate holder is found qualified while any appeal of the order of suspension pending reexamination or reinspection is pending before the NTSB, the FAA investigative personnel or the office with medical responsibility that conducts the reexamination or reinspection notifies legal counsel so the order can be terminated..

(6) If the certificate holder satisfactorily establishes qualifications to continue to hold the certificate, FAA investigative personnel or office with medical responsibility issues a letter advising the certificate holder of that finding, with a copy to the legal counsel who issued the order. Legal counsel takes appropriate steps to terminate the order, release the certificate stop order, and update the EIS.

(7) If a certificate holder whose certificate is suspended fails to submit to a reexamination or reinspection, the certificate or rating remains suspended indefinitely pending the certificate holder's successful reexamination. Legal counsel changes the status of such cases in the EIS from *open* status to *pending* status after the time to appeal the suspension order has passed. The certificate stop order remains in effect until the reexamination is successfully completed.

**d. Unsuccessful Reexamination or Reinspection.** If the certificate holder submits to reexamination or reinspection and does not establish qualifications, and does not voluntarily surrender that certificate or rating for cancellation, FAA enforcement personnel follow the procedures in chapter 5, subparagraph 6.d.(1)-(3).

(1) The FAA investigative personnel or office with medical responsibility prepares an EIR, recommending revocation of the certificate or rating. This generally is on an emergency basis, unless an order suspending the certificate or rating is already in effect and the FAA holds the certificate.

(2) The EIR is assigned a new report number. Any companion report number that was assigned to an earlier EIR in connection with certificate suspension is stated in the *related number* block. If revocation action is taken against only part of the certificate, such as a single rating, for example, the appropriate FAA investigative personnel or office with medical responsibility issues the necessary temporary certificate or new certificate with the remaining privileges. FAA investigative personnel include evidence of the failure to demonstrate qualifications as an item of proof in the EIR. For airman medical cases only, the EIR prepared by the office with medical responsibility need only consist of section A (FAA Form 2150-5) and supporting documentation listed in chapter 5, subparagraph 6.c.(2).

(3) The FAA does not allow an airman who has not demonstrated qualifications to try repeatedly to prove qualification. Generally, if the airman has twice submitted to reexamination and has twice failed, the certificate or rating is revoked. The opportunity for a second reexamination is allowed when the airman voluntarily places his or her certificate on deposit with the FAA following the first failure while the certificate holder prepares for the second attempt.

## **7. Voluntary Disclosure Reporting Program for Certain Violations of the Federal Aviation Regulations.**

**a. General.** The voluntary disclosure reporting program is intended to improve safety compliance by forgoing a civil penalty when a regulated entity has promptly disclosed to the FAA an apparent violation and has taken prompt action satisfactory to the FAA to correct the violation and preclude its recurrence. The FAA regulates entities' performance through setting regulatory standards, issuing guidance, and monitoring compliance through periodic inspections. Regulated entities, which have the ultimate responsibility for compliance, have a superior vantage point for monitoring their own performance. Therefore, voluntary disclosure programs can serve an important role in achieving compliance and improving aviation safety.

**b. Internal Evaluation Procedures.** Because a regulated entity is in the best position to identify deficiencies and promptly correct them, it should have in place a procedure whereby internal compliance audits are performed and top management is informed of its company's operations, compliance, and safety record. Such internal audits improve a regulated entity's ability to identify and correct any safety problems before, rather than after, FAA inspections. Public safety is enhanced significantly if deficiencies are identified and corrected when they are

discovered by a regulated entity, instead of when the FAA discovers the deficiencies, sometimes much later, during an inspection or in the wake of an accident or incident. The voluntary disclosure reporting program is intended to serve as an incentive to set up and maintain a system of internal evaluation.

**c. Applicability of Voluntary Disclosure Reporting Program.** The voluntary disclosure reporting program applies to certificate-holding entities, production approval holders, and other entities subject to regulation under 14 C.F.R. parts 21, 119, 121, 125, 129, 133, 135, 137, 141, 142, 145, and 147 and, for qualified fractional ownership programs operating under part 91, subpart K, those portions of part 91 pertaining directly to the duties and responsibilities of the program manager, as defined in part 91, subpart K or management specifications (MSpecs).

**d. Guidance for Program Participation.** Guidance about the voluntary disclosure reporting program is contained in Advisory Circular AC 00-58, as amended. (AC 00-58, as amended may be found online at <http://rgl.faa.gov>).

**e. Criteria for Acceptance of Voluntary Disclosure.** The FAA may accept a voluntary disclosure of an apparent violation under the voluntary disclosure reporting program only if the criteria in chapter 5, subparagraphs 7.e. (1)-(6) are met.

(1) The regulated entity has notified the FAA of the apparent violation immediately after detecting it and before the agency has learned of it by other means;

(2) The regulated entity does not disclose the apparent violation to the FAA during, or in anticipation of, an FAA investigation or inspection or in association with an accident or incident;

(3) The apparent violation was inadvertent;

(4) The apparent violation does not indicate a lack, or reasonable question of a lack, of qualification of the regulated entity;

(5) Immediate action, satisfactory to the FAA, was taken upon discovery to terminate the conduct that resulted in the apparent violation; and

(6) The regulated entity has developed or is developing a comprehensive fix and schedule of implementation satisfactory to the FAA. The comprehensive fix includes a follow-up self-audit to ensure the action taken corrects the noncompliance.

**f. Investigation of Voluntary Disclosure.** FAA investigative personnel thoroughly investigate, analyze, review, and report the facts and circumstances surrounding all self-disclosed apparent violations. They determine whether the apparent violation disclosed meets the criteria in chapter 5, subparagraphs 7.e.(1)-(6) for acceptance under the program. FAA investigative personnel contact the CHDO, MIDO, or other oversight office, as appropriate, to determine, and gather written information that indicates if and when the regulated entity disclosed the apparent violation and when it became known to the regulated entity. In addition, FAA investigative

personnel consult with the CHDO, MIDO, or other oversight office as appropriate about the effectiveness of the regulated entity's proposed action to preclude recurrence of the apparent violation.

**g. EIR for a Voluntary Disclosure.** The EIR for a voluntary disclosure includes any evidence of how, when, and where the apparent violation was detected and by whom. It also includes evidence of whether and when the regulated entity disclosed the apparent violation to the CHDO, MIDO, or other oversight office, as appropriate, when it became known to the regulated entity and when the regulated entity took action to correct the apparent violation; that is, to stop any conduct that did or might constitute a violation. The EIR also includes evidence of whether a regulated entity has taken, or has agreed to take, corrective action acceptable to the FAA to preclude recurrence of the apparent violation, including an analysis of the nature and likely effectiveness of the action and the time within which the regulated entity must implement the corrective action. FAA investigative personnel also include in the EIR an EIS printout or equivalent summary listing similar violations by that regulated entity to evaluate what corrective action, if any, may be necessary to preclude recurrence of the apparent violation.

**h. Letter of Correction under Voluntary Disclosure Reporting Program.** When the FAA determines under this program that it will not seek a civil penalty, it advises the regulated entity by a letter of correction issued under 14 C.F.R. § 13.11(b) (2). The letter of correction does not constitute a formal adjudication of the matter. The letter of correction contains all relevant facts, including how, where, and by whom the apparent violation was detected; when the regulated entity disclosed it to the FAA; the nature and extent of any actions taken to correct it and to preclude its recurrence; and any mitigating circumstances the FAA considered relevant. Following issuance of the letter of correction, FAA investigative personnel closes the case subject to reopening if the regulated entity does not complete the agreed-upon comprehensive fix on time. The CHDO, MIDO, or other oversight office, as appropriate, monitors the completion of the agreed-upon comprehensive fix. The FAA may take civil penalty action for the apparent violations that were disclosed if the regulated entity does not fully implement the agreed-upon comprehensive fix. Closed cases are kept in accordance with the agency's records retention order.

## **8. Voluntary Disclosure Reporting Program for Certain Violations of the Hazardous Materials Regulations.**

**a. General.** FAA believes that aviation safety is enhanced by incentives to encourage regulated entities to discover their own instances of noncompliance, immediately correct such noncompliance, and implement comprehensive corrective action to prevent future recurrence of the noncompliance. The FAA issues a letter of correction, instead of a civil penalty action, to certificate holders or foreign air carriers who voluntarily disclose covered instances of noncompliance under the terms of Advisory Circular No. 121-37.

**b. Applicability.** Holders of certificates under 14 C.F.R. parts 119 and 125 and foreign air carriers issued operations specifications under 14 C.F.R. part 129 who accept hazardous



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.

**b. Certificate Actions.**

(1) 49 U.S.C. § 44709(b) authorizes the Administrator to amend, modify, suspend or revoke any part of a certificate issued under 49 U.S.C. chapter 447 if the Administrator decides that safety in air commerce or air transportation and the public interest require that action. 49 U.S.C. §§ 44106, 44710, 44724, 44726, 44924, and 46111 require the revocation of a certificate under circumstances described in those sections. Holders of certificates issued under 49 U.S.C. chapter 447 may appeal actions taken against their certificates to the NTSB. When the certificate holder files such an appeal, the certificate holder may continue to exercise the privileges of that certificate pending the outcome of the appeal, unless the certificate action is made immediately effective.

(2) A suspension of a certificate means the certificate temporarily ceases to be effective. The time the certificate is not effective is specified in the order of suspension, and once the required time period has passed, the certificate is automatically reinstated. The time period is defined by either a specific amount of time, usually a number of days, or until certain conditions are met, for example until a reexamination under 49 U.S.C. § 44709(a) is successfully completed.

(3) A revocation of a certificate means the certificate is no longer valid, and the holder may not exercise any of its privileges. Unlike a suspension, a certificate that has been revoked cannot be reinstated. A certificate holder whose certificate has been revoked may reapply for a new certificate, but an individual applying for an airman certificate must meet all the qualifications for the new certificate, including retaking all tests, whether written, oral, or practical. Any experience requirements for the new certificate may be met with experience obtained before the revocation of the original certificate. If an airman certificate has been revoked for less than one year, the FAA generally denies any application by that airman for a new certificate, and the airman has no appeal from that denial.

**c. Deferred Suspension of Certificates.** A deferred suspension of a certificate is issued when the violation does not qualify for administrative action, but FAA investigative personnel wish to encourage the certificate holder to take appropriate corrective action, for example, receiving additional training. The suspension of the certificate is proposed, but the certificate holder is advised that the imposition of the suspension may be avoided if the certificate holder takes acceptable corrective action within a specified period of time. If the certificate holder completes the corrective action within the time period, the certificate holder does not lose the privileges of the certificate, although an order of suspension making a finding of violation is issued and entered into the EIS records. The certificate holder may appeal a deferred suspension to the NTSB.

**d. Suspension or Revocation of Airman Medical Certificates.** An appropriate FAA medical officer, for example, the Federal Air Surgeon, Manager, Aerospace Medical Certification Division (AAM-300), or a Regional Flight Surgeon, may recommend that an airman medical certificate be suspended or revoked. Such action is recommended when an

airman does not meet the medical certification standards or there is a reasonable basis to question his or her qualifications, or when an airman fails to provide requested medical information or provides intentionally false or incorrect information in support of medical certification. The regional Security and Hazardous Materials offices and the Security and Investigations Division of the Aeronautical Center sometimes recommend suspension or revocation of medical certificates after discovering that an airman made incorrect or intentionally false entries on an application for medical certification.

**e. Emergency Certificate Action.** 49 U.S.C. § 44709(e) authorizes the Administrator to make certificate actions immediately effective if the Administrator finds that an emergency exists and safety in air commerce or air transportation require the order to be effective immediately. An emergency certificate action immediately deprives the certificate holder of the right to exercise the privileges of that certificate. The certificate holder may appeal the action to the NTSB and challenge the agency's use of its emergency authority. The certificate holder may not continue to exercise the privileges of that certificate while the appeal is pending unless the NTSB reverses the emergency nature of the order. Certificate actions are taken as emergency actions when necessary to protect the safety of the public. Emergency certificate actions are generally taken when the FAA believes the certificate holder lacks the qualifications to hold the certificate and the certificate holder is capable of exercising the privileges of the certificate. When FAA investigative personnel believe an emergency certificate action is appropriate, they immediately notify their supervisor, who notifies the regional office, and the Regional Counsel or Assistant Chief Counsel for Enforcement. The investigation and report of an emergency certificate action is generally given priority over all other work. The NTSB must hear and decide an appeal of an emergency certificate action within 60 days after the FAA files its complaint with the NTSB. Because appeals of emergency cases receive accelerated handling, FAA investigative personnel must be ready to assist legal counsel in preparing to try the case within several days of the issuance of the emergency order, including confirmation of the location of witnesses and other evidence.

**f. Civil Penalties.** 49 U.S.C. § 46301 makes a person liable to the U.S. Government for a civil penalty for violations of certain provisions of 49 U.S.C. subtitle VII and regulations prescribed or orders issued under those provisions. 49 U.S.C. § 5123 authorizes civil penalties for violations of the federal hazardous materials transportation law and regulations prescribed or orders issued under that law. 49 U.S.C. § 70115 authorizes civil penalties for the violation of the commercial space transportation law, regulations prescribed under that law, and the terms of any license issued under that law. A civil penalty is a payment of money. The maximum civil penalty that may be imposed for each violation depends on which statutory or regulatory provisions are violated and who is charged with the violation. *See* appropriate sanction guidance table in Appendix B or C for assistance in determining the maximum civil penalty per violation. Each day that a violation continues may be considered a separate violation. For violations covered by 49 U.S.C. § 46301, each flight that involves a violation also may be considered a separate violation. Civil penalties may be appealed. The forum for the appeal of a civil penalty depends on the amount of the proposed civil penalty and who is charged with the violation. Large civil penalties (for violations on or after December 12, 2003, over \$50,000 for individuals

and small businesses and \$400,000 for large businesses and other persons), except hazardous materials and commercial space transportation cases, are tried in U.S. district courts.

**g. Informal Conferences.** After FAA legal counsel issues the notice of proposed action, informal conferences between FAA legal counsel and alleged violators, including their representatives, are offered in civil penalty and certificate action cases, except emergency certificate actions. FAA investigative personnel representing the program office are asked to participate in the informal conference when possible. The purpose of the informal conference is to hear any information the alleged violator wishes to present, and to consider whether this information should affect the proposed action. The proposed sanction is not raised above the amount originally proposed. Any violations charged that are disproved by the information presented at this conference are withdrawn. If the proposed sanction is determined to be excessive, it is reduced. Normally the proposed penalty is not changed unless information is presented that was not taken into consideration when the notice was issued.

**h. Liens on Aircraft.** 49 U.S.C. § 46304(a) makes aircraft subject to a lien for civil penalties when the aircraft is involved in violations under 49 U.S.C. § 46301 and the violation is by the aircraft owner or an individual commanding that aircraft. A lien gives the federal government a financial interest in that aircraft. The amount of the lien is the amount of the civil penalty for the violation

**i. Seizures of Aircraft.** 49 U.S.C. § 46304(b) authorizes seizure of an aircraft that is subject to a lien. Seizure is the taking of physical possession of an aircraft by the FAA. Only aircraft that were involved in the violation may be seized. Seizure of an aircraft ordinarily is considered only when the violation is particularly serious, for example, when an aircraft is being used in a continuing violation and all other efforts to stop it have failed. Seizure of an aircraft may be appropriate when the owner of an aircraft that was involved in the violation has a probable intent to move the aircraft out of FAA jurisdiction. When seizure action is appropriate, it may be recommended even if the EIR has not been opened or completed as long as there is credible evidence of the violation. Seizure action also may be recommended whether or not a lien has been perfected or a civil penalty has been proposed. FAA legal counsel issues written notice of seizure to the registered owner of the aircraft. The seizure of the aircraft may be made by a state or federal law enforcement officer or by an FAA safety inspector, if authorized to do so in an order of seizure issued by the Administrator, the Chief Counsel, or a Regional Administrator. The aircraft is taken to the nearest available adequate storage facility and physically restrained from moving. The equipment is photographed and the condition of the aircraft is carefully inventoried. When the aircraft is returned to its owner, it must be in the same physical condition as when it was seized. The aircraft may be released to its owner when the owner pays the civil penalty and costs of seizure, storage and maintenance, or posts a bond for that amount. Detailed procedures and guidance for the seizure of aircraft are found in chapter 6, paragraph 20.

**j. Injunctions.** Injunctions are court orders that may require a person to do something (mandatory) or not to do something (prohibitory). Failure to comply with an injunction may be punishable as contempt of court, which may result in fines or jail time. 49 U.S.C. § 46106 authorizes the FAA Administrator to bring a civil action against a person in U.S. district court to

enforce provisions of 49 U.S.C. subtitle VII or regulations prescribed under those provisions. For example, when an airman knowingly continues to operate an aircraft without the appropriate certificate, FAA may bring such an action to request the court to issue an injunction. 49 U.S.C. § 5122 provides for civil judicial actions, including injunctions, to address imminent hazards involving hazardous materials.

**k. Cease and Desist Orders, Orders of Compliance, and Other Orders.** Whenever FAA investigative personnel determine that a continuing violation exists, the field office immediately brings it to the attention of the regional office for possible referral to FAA legal counsel. Certain statutory provisions, for example, 49 U.S.C. § 40113, provide authority for legal counsel to take action under appropriate circumstances to stop such conduct, sometimes on an emergency basis.

**l. Airman Medical Certificate Denials.** Aviation medical examiners have the authority to examine applicants for airman medical certificates and to issue or initially deny those certificates. When an aviation medical examiner denies issuance of a medical certificate, the airman may apply in writing within 30 days after the date of denial to the Federal Air Surgeon for reconsideration of the denial. Final denial by the Federal Air Surgeon or, in certain cases, by other FAA medical officers, gives the applicant the right to appeal the denial to the NTSB.

**m. Other Airman Certificate Denials.** When an application for an airman certificate is denied by the FAA under 49 U.S.C. § 44703, the applicant has a right to appeal that denial to the NTSB. The person applying for the certificate must prove that he or she has the qualifications to hold the certificate. If the NTSB finds that the applicant does have these qualifications, it will order the FAA to issue the certificate to the applicant.



## Chapter 6. Legal Enforcement Actions and Legal Counsel Responsibilities

**1. Purpose.** This chapter prescribes policies and procedures for handling legal enforcement actions.

**2. Prosecutorial Discretion.** FAA legal counsel exercises broad prosecutorial discretion in the handling of legal enforcement actions. This discretion extends from the initial determination of whether legal enforcement action is supportable through closure of a case. Legal counsel, in coordination with the program office, exercises discretion in selecting an appropriate sanction for a particular violation, within the parameters of the agency's compliance and enforcement program. This discretion is guided by the sanction guidance policies in this order based on the relevant facts and circumstances surrounding a violation. Legal counsel uses sound prosecutorial judgment to make decisions that further the agency's safety mission and the public interest. After initiating a case, legal counsel in consultation with the concerned program office when practicable, may settle cases, when in their judgment, the settlement is warranted.

### **3. Coordination with Headquarters through Enforcement Alerts.**

**a. General.** The determination of the type of legal enforcement action and sanction amount is the joint responsibility of the appropriate program office and legal counsel. An important objective in conducting the compliance and enforcement program is to achieve consistency of action throughout the FAA. Further, it is important for headquarters to be aware of significant legal enforcement actions, especially when they are taken on an expedited basis. For these reasons, the regions coordinate certain cases with headquarters before initiating a legal enforcement action, and in other cases provide information to headquarters at the same time the action is taken.

**b. Coordination of Initial Legal Enforcement Actions with Headquarters.** All significant enforcement actions are coordinated with headquarters to promote consistency in sanctions and application of national policy. The coordination of significant legal enforcement actions is an internal FAA policy and is not intended to limit FAA attorneys from taking timely and appropriate action. Although coordination and clearance ordinarily are accomplished before the initiation of a significant legal enforcement action, special circumstances may warrant that coordination be contemporaneous with issuance of the action. When coordination and clearance are accomplished before issuance of the enforcement action, FAA legal counsel prepares an enforcement alert in accordance with the guidance set forth below, and sends it to AGC-300 and the appropriate program office in headquarters. The actions listed in chapter 6, subparagraphs 3.b. (1)-(4) are considered *significant*.

(1) Special circumstances. Legal enforcement actions involving major aviation safety issues or other special circumstances that are likely to draw broad public attention or congressional interest, such as those involving public figures, unusual or broadly publicized events, or air carrier pilots flying under the influence of drugs or alcohol.

(2) Certificate actions. All emergency and initial certificate actions against the holders of certificates issued under 14 C.F.R. parts 119, 125, 137, 139 141, 142, and 145 of the FAA's regulations and the holders of production certificates issued under 14 C.F.R. part 21, except *housekeeping* actions against certificate holders that have effectively stopped doing business.

(3) Civil penalty actions. All proposed civil penalty actions in which the proposed civil penalty is \$100,000 or greater and all proposed civil penalty actions under \$100,000 that are significantly less than the minimum penalty that could be calculated under the enforcement policies contained in this order.

(4) Extraordinary actions. All extraordinary actions, such as orders of compliance, cease and desist orders, aircraft seizures, injunctive relief, and criminal referrals.

**c. How to Coordinate a Significant Initial Legal Enforcement Action.** Coordination of significant initial enforcement actions with headquarters is accomplished through the enforcement alert process. Each enforcement alert includes general information on the alleged violator, an explanation of the alleged violations, a summary of the alleged violator's explanation for the violations or defense, a discussion of the alleged violator's compliance disposition, including a summary of the enforcement history, and an analysis of the recommended sanction. A copy of the proposed legal action document, for example, emergency order of suspension or revocation, notice of proposed civil penalty, or civil penalty letter, is provided with the alert.

**4. Coordination of Appeals.** Regional attorneys coordinate with AGC-300 on appeals of initial decisions by NTSB and DOT ALJs in accordance with the guidance in chapter 6, subparagraphs 4.a.-c.

**a. Contacting AGC-300.** Regional attorneys contact AGC-300 by e-mail following all NTSB or DOT ALJ initial decisions unfavorable to the FAA or when the respondent appeals. In the e-mail message, regional attorneys provide a description of the facts of the case as developed at the hearing, a summary of the ALJ's decision, and an overview of any potential issues on appeal.

**b. FAA Appeals.** A regional attorney in consultation with his or her regional counsel, immediately assesses the efficacy of appealing. Regional attorneys consider whether there are adverse consequences from the ruling that are particular to the case or that may implicate other cases; whether the ALJ's ruling is consistent with precedent; whether the ALJ's ruling is arbitrary or capricious; whether the ALJ failed to defer to an interpretation of the regulations or other validly adopted interpretation that was advanced at the hearing; whether the ALJ misinterpreted or disregarded the evidence presented at the hearing; whether the ALJ made erroneous credibility findings; whether the ALJ's decision is novel or controversial; and whether the ALJ made erroneous pretrial or evidentiary rulings that affected the outcome of the case. AGC-300 assists regional attorneys in determining whether an appeal should be filed and whether they should transfer the case to AGC-300 to prepare the appeal brief.

**c. Handling of Appeal.** The following issues are relevant in determining whether AGC-300 or the regional attorney prepares the brief: the complexity of the issues; the policy implications of the issues; the likelihood of a judicial appeal; the likelihood of adverse precedent resulting from the administrative appeal; the procedural posture of the case; and the availability of resources.

(1) If AGC-300 and the regional attorney determine that an appeal is appropriate, then the regional attorney immediately files a notice of appeal.

(2) For all appeals, the regional attorney ensures the case file contains copies of all exhibits as marked at the hearing and all pleadings, arranged in reverse chronological order.

(3) In cases in which AGC-300 agrees to handle the appeal, the regional attorney promptly sends the complete file, including all exhibits, pleadings, the initial decision, and other relevant documents to AGC-300. In addition, the regional attorney ensures the case is transferred to AGC-300 in EIS.

(4) In cases in which AGC-300 has agreed that the regional attorney should prepare the appeal brief, the regional attorney contacts AGC-300 if unanticipated issues arise in preparing the brief.

(5) Whenever an interlocutory appeal is filed by the respondent or contemplated by the regional attorney, the regional attorney notifies AGC-300 by e-mail, briefly providing a description of the facts of the case and the potential issues for the interlocutory appeal.

(6) When a petition for review is filed with a U.S. court of appeals or U.S. district court, the regional attorney immediately notifies AGC-300 by e-mail.

(7) AGC-300 handles all cases in which a petition for judicial review has been filed. The regional attorney promptly sends the complete file, including all exhibits, pleadings, the initial decision, and other relevant documents to AGC-300. In addition, the regional attorney ensures the case is transferred in EIS to AGC-300.

(8) AGC-300 immediately transfers all case files back to the originating Regional Counsel's office once the order becomes final, with an explanation of the case status. The Regional Counsel's office is responsible for pursuing surrender of certificates and collection of civil penalties.

## **5. Informal Conferences.**

### **a. Purpose and Policy.**

(1) The informal conference provides an alleged violator with an opportunity to be heard as required by 49 U.S.C. §§ 44106, 44709, 44710, 44726, and 46301 and 14 C.F.R. §§ 13.16(d) and 13.19(c). Except in emergency cases, the FAA must provide an opportunity for an

informal conference before issuing an order of suspension or revocation, or an order of assessment or a final notice of proposed civil penalty.

(2) The alleged violator has an opportunity at the informal conference to speak to an FAA attorney to present evidence or information in response to the proposed enforcement action. The FAA attorney evaluates any new information obtained at the informal conference in accordance with this order.

(3) The FAA does not use the informal conference to gather additional evidence or admissions to prove the charges in the enforcement action. However, the FAA may use any information revealed by the alleged violator for impeachment purposes if the alleged violator makes a contrary statement about a material fact later in the proceeding.

**b. Procedure.**

(1) The FAA tries to hold informal conferences within 60 days of receiving the request for informal conference. Informal conferences in cases arising under 49 U.S.C. §§ 44106, 44710, and 44726 generally are held within 30 days of receiving the request for the informal conference. FAA legal counsel schedules and holds the informal conference. Legal counsel asks the program office that processed the EIR to assign a representative to attend the conference, if practicable. Legal counsel conducts the conference even if a program office representative is not present.

(2) At the conclusion of the informal conference, legal counsel prepares a detailed summary, which is included in the case file.

(3) Ordinarily, the FAA holds the informal conference either by telephone or in person at one of the following locations: an FAA regional office; the Great Lakes Region Branch Office in Cincinnati, Ohio; the FAA Aeronautical Center in Oklahoma City; the Office of the Assistant Chief Counsel for Europe, Africa, and the Middle East in Brussels, Belgium; or FAA Headquarters, Washington, DC.

(4) In limited circumstances, legal counsel, in the exercise of discretion, may schedule an in-person informal conference at a location other than those listed in chapter 6, subparagraph 4.b.(3) at the request, or with the agreement, of the alleged violator. Legal counsel may exercise such discretion when because of unusual circumstances, the public interest is better served by holding an in-person informal conference at a location other than those listed in chapter 6, subparagraph 5.b.(3). Legal counsel also may exercise such discretion when an in-person informal conference can be scheduled to coincide with other previously scheduled business and can be held within approximately 60 days from the date the alleged violator requests the informal conference.

(5) When, at the alleged violator's request, legal counsel schedules an informal conference at a location other than those listed in chapter 6, subparagraph 5.b. (3), legal counsel advises the alleged violator that if the alleged violator fails to attend the informal conference, a

rescheduled conference, if any, will be available only at one of the offices listed in chapter 6, subparagraph 5.b.(3) or by telephone.

(6) An alleged violator may request that an in-person informal conference be held at an office designated in chapter 6, subparagraph 5.b.(3) other than the initiating office, that is, the one that issued the notice proposing the enforcement action. When this occurs, the initiating office ordinarily transfers the case to the office requested by the alleged violator for full disposition and handling in accordance with the guidance in this chapter. The initiating office that transfers the case may specify the transfer is only for purposes of the informal conference or that the office receiving the case consults and coordinates with the initiating office before settling or otherwise disposing of the case. In those cases transferred to another office for purposes of the informal conference only, the receiving office returns the file, with a detailed summary of the informal conference, to the initiating office as soon as practicable.

**6. Consolidating Civil Penalty Actions.** Legal counsel may initiate separate EIRs in one legal enforcement action provided consolidating these EIRs does not change the jurisdictional forum of any one of the EIRs. For example, if there are three separate EIRs regarding unrelated inspections proposing to assess civil penalties of \$30,000 each against a small business concern, legal counsel cannot combine them into a single civil penalty action because that would change the forum from the DOT Office of Hearings to a U.S. district court. Once complaints have been filed, legal counsel may move to consolidate the cases for litigation purposes.

## **7. Closing Cases.**

**a. Closing Cases before Initiation of Legal Action.** If legal counsel reviews an EIR and determines there is insufficient evidence to support a violation, then legal counsel returns the EIR to the program office for further investigation or closure, as appropriate. Legal counsel prepares a memorandum for the file that provides the reasons the case is being returned to the program office. Legal counsel transfers the case in the EIS to the program office.

**b. Closing Cases after Initiation of Legal Action.** If after the initiation of legal action, legal counsel determines a case should be closed *no action* because of legal insufficiency, legal counsel withdraws the enforcement action, issues a letter to the alleged violator, and notifies the program office about the closing of the case. Legal counsel keeps the EIR and closes the case in EIS.

**c. Downgrading from Legal Enforcement Action to Administrative Action.** If, at any time after receipt of a case, legal counsel in consultation with the program office determines that administrative action rather than legal enforcement action is appropriate in that case, legal counsel returns the case to the program office with a memorandum recommending that administrative action be taken. Legal counsel transfers the case in the EIS to the program office and makes appropriate entries in the remarks section of the EIS reflecting the joint determination.

## 8. Certificate Actions Reviewable by the NTSB.

**a. General.** The NTSB has jurisdiction to review actions taken by the FAA that pertain to certificates listed in 49 U.S.C. § 44702(a) as outlined in chapter 6, subparagraphs 8.a. (1)-(3). The NTSB's Rules of Practice in Air Safety Proceedings, 49 C.F.R. part 821, contain the procedures for processing appeals before the NTSB.

(1) 49 U.S.C. § 44703. Any person whose application for an airman certificate is denied under 49 U.S.C. § 44703 may appeal that denial to the NTSB, except if the certificate is suspended at the time of the denial or if it was revoked within one year of the denial.

(2) 49 U.S.C. § 44709. Any person who is affected by an order amending, suspending, modifying, or revoking a certificate under 49 U.S.C. § 44709 may appeal to the NTSB. The NTSB may amend, modify, or reverse the FAA order if it finds that safety in air commerce or air transportation and the public interest do not require affirmation of the order. The NTSB may modify a suspension or revocation to imposition of a civil penalty. Except in a case involving an emergency order, the filing of an appeal stays the effectiveness of the FAA order until the final disposition of the appeal by the NTSB. A person affected by the immediate effectiveness of an order issued under 49 U.S.C. § 44709 may petition the NTSB for review of the FAA's determination that an emergency exists that justifies the immediate effectiveness.

(3) 49 U.S.C. §§ 44106, 44710, and 44726. Any person substantially affected by an order of revocation issued under 49 U.S.C. §§ 44106, 44710, or 44726 may appeal to the NTSB, and the NTSB may affirm or reverse the revocation. The NTSB does not have authority to review a determination by the FAA that an order is immediately effective; any review of that determination is in a U.S. court of appeals.

**b. Hearings before NTSB Administrative Law Judges.** When an order is appealed to the NTSB, the FAA legal office that issued the order generally is responsible for representing the FAA at the evidentiary hearing before an NTSB administrative law judge. In certain cases, where one region issues the order, but the NTSB schedules the hearing in another region, legal counsel may, by mutual agreement, transfer the case to the region where the hearing is to be held, when the transfer would be in the best interest of the government. When appropriate, legal counsel may request a bifurcated hearing.

**c. Appeals of Initial Decisions.** Under the NTSB Rules of Practice in Air Safety Proceedings, either party may appeal from the initial decision of an NTSB administrative law judge to the NTSB. The NTSB's review in all such appeals is limited to a consideration of whether a finding of material fact is erroneous; a necessary legal conclusion is without governing precedent or is a departure from or contrary to law, NTSB rules, or precedent; a substantial and important question of law, policy, or discretion is involved; or a prejudicial error has occurred. FAA legal counsel carefully considers whether to file an appeal and only files where one of the issues specified in the NTSB's rules clearly is present.

**d. Time Limitations in NTSB Cases.** Discussion of the time limitations applicable to certificate action cases before the NTSB is found in chapter 4, paragraph 5.

#### e. NTSB Deference to FAA.

(1) In its adjudication of certificate action and civil penalty cases, unless the NTSB finds the FAA interpretations to be “arbitrary, capricious, or otherwise not according to law,” it is bound by (must defer to) all validly adopted interpretations of:

- Laws and regulations the FAA carries out, and,
- Written FAA policy guidance available to the public related to sanctions to be imposed.

(2) An example of NTSB deference to FAA regulatory interpretations is found where the FAA issued a written interpretation of 14 C.F.R. § 91.123, stating that this regulation obligates pilots to listen, hear and comply with all ATC instructions and clearances except in an emergency, and stating that pilot inattention, carelessness or unexplained misunderstandings do not excuse deviations from clearly transmitted clearances and instructions. 64 Fed. Reg. 15912 (1999). The NTSB is required to defer to this regulatory interpretation in its adjudication of air safety cases where the FAA interpretation is found to be a reasonable, nonarbitrary, and lawful construction of the regulatory language. *Garvey v. NTSB*, 190 F.3d 571 (D.C. Cir, 1999), *Administrator v. Merrell*, NTSB Order No. EA-4814 (2000).

(3) For NTSB deference to FAA sanction guidance, the sanction guidance table in Appendix B of FAA Order 2150.3B has been made available to the public and thus the NTSB must give similar deference to the FAA policies and sanction ranges set forth in it when requested to do so by agency counsel. For example, in *Administrator v. Vogel*, NTSB Order No. EA-5008 (2003), the FAA sanction guidance table specified a sanction range of a 30-60 day suspension for a gear-up landing, yet the NTSB administrative law judge imposed only a 15-day suspension (without adequately explaining his decision). On the appeal of the Administrator, the NTSB imposed a 60-day suspension, finding that it must defer to the FAA sanction guidance.

### 9. Emergency Suspension or Revocation of Certificates.

**a. Authority and Coordination.** Whenever the Administrator, through delegated authority to the Chief Counsel, a Deputy Chief Counsel, Assistant Chief Counsel for Enforcement, or Regional Counsel, determines that the public interest and safety in air transportation or air commerce require the immediate effectiveness of a suspension or revocation, an emergency order is issued. The authority to issue such orders is contained in 49 U.S.C. § 46105(c). Emergency orders are coordinated by email with AGC-300.

**b. Limitation.** The emergency authority is not used for punitive purposes; that is, to order fixed periods of suspension. If a punitive suspension is appropriate in addition to an emergency suspension, the punitive suspension is issued in a separate notice from the emergency order. For example, it is appropriate to suspend an airman certificate on an emergency basis because of an airman’s refusal to submit to a reexamination following an accident or incident that calls into question his or her qualification to hold the certificate. It is also appropriate to issue a notice of proposed certificate action based on the airman’s having committed several regulatory violations during the course of the accident or incident.

**c. Form and Content of Emergency Order.** An emergency order contains all the allegations and findings necessary to any other order and, in addition, contains a statement that "the Administrator finds that an emergency exists and safety in air transportation or air commerce require the immediate effectiveness of this order." An emergency order is immediately effective, and informs the certificate holder that an appeal to the NTSB does not stay the effectiveness of the order. The emergency order contains citations to 49 U.S.C. §§ 44709 and 46105.

**d. Criteria for Emergency Action.**

(1) Emergency action is taken only:

- When the certificate holder lacks qualification, or there is a reasonable basis to question whether the holder is qualified to hold the certificate; and
- When the certificate holder is reasonably able as a practical matter to exercise the privileges of the certificate.

(2) If it is known that a certificate holder is unable to exercise the privileges of the certificate, a notice proposing certificate action is issued. For example, a notice proposing certificate action is used if the certificate holder is confined to prison or is known to be physically unable to exercise the privileges of the certificate. Similarly, a notice proposing certificate action is issued when a certificate holder, who is required to hold an airman medical certificate, does not hold a currently valid airman medical certificate. In those circumstances, FAA legal counsel notifies AAM-300 to flag the certificate holder's medical certification file so FAA legal counsel can be advised if a new medical certificate is issued to the airman. If a medical certificate has been issued to the airman, an emergency order is generally issued. Sometimes when the certificate holder does not hold a currently valid airman medical certificate, it nevertheless is appropriate to take emergency certificate action if it is known the certificate holder has operated an aircraft despite the lack of a currently valid airman medical certificate.

(3) FAA legal counsel initiates a case under 49 U.S.C. §§ 44106, 44710, or 44726 by issuing a notice proposing certificate action. Following an informal conference, which generally is held within 30 days of the receipt of the request for an informal conference, FAA legal counsel issues an order that may be made immediately effective if the circumstances of the case warrant that action. Usually, based on the nature of the underlying circumstances and the nexus of those circumstances to safety in air transportation or air commerce, FAA legal counsel issues the order as an immediately effective order. The order need not be made immediately effective when the certificate holder is confined to prison or is known to be physically unable to exercise the privileges of the certificate. When there is an issue of whether the order should be made immediately effective, the case is coordinated with AGC-300.

(4) FAA legal counsel initiates a case under 14 C.F.R. § 61.15(a) by issuing a notice proposing certificate action. Following an informal conference, which generally is held within 30 days of the receipt of the request for an informal conference, FAA legal counsel issues an order ordinarily on a nonemergency basis. However, FAA legal counsel may issue an emergency order if the circumstances of the case warrant that action. An emergency order likely



is issued if the underlying conduct is egregious (for example, drug kingpin activity) or if there is evidence of present or recent involvement in the same type of conduct. When there is an issue of whether the order should be issued as an emergency, the case is coordinated with AGC-300.

**e. Timeliness of Emergency Action.** Emergency action is taken as soon as possible when the need for such action is recognized. Failure to take prompt action does not preclude the issuance of an emergency order when it is appropriate; public safety should not be jeopardized because of FAA delay. If a significant delay has occurred, however, circumstances justifying the emergency action may have changed, and consideration is given to reevaluating the case, including, as appropriate, reinspection or reexamination of the certificate holder. For example, when the FAA is ready to initiate action, the unqualified or culpable management personnel may have changed and the FAA may determine that revocation is no longer required. In such a case, the FAA may use another enforcement action to address the previously discovered violations. Issues regarding the timeliness of declaring an emergency are resolved in coordination with AGC-300.

**f. Emergency Suspension Pending Reexamination.** If there is a reasonable basis to question whether the certificate holder is qualified and the holder might reasonably be able to exercise the privileges of the certificate, emergency suspension action pending successful reexamination is considered.

**g. Prohibition against Combination of Emergency and Nonemergency Actions.** In those circumstances in which the FAA determines that an emergency suspension or revocation is appropriate and that a punitive suspension is also warranted, the emergency and nonemergency actions are pursued through two separate EIRs and enforcement actions. Emergency and nonemergency actions are not combined in a single order. A separate notice proposing the punitive suspension is issued. For example, the holder of a commercial pilot certificate and flight instructor certificate violates several statutory or regulatory requirements. The FAA determines the incident raises questions about the person's qualifications to hold the flight instructor certificate, and the certificate holder should be reexamined on his qualifications to hold the flight instructor certificate, but he refuses to be reexamined. It is also determined that a 90-day suspension of both certificates is warranted for the violations of the statutory or regulatory requirements. The emergency order suspends only the flight instructor certificate until reexamination is accomplished and qualifications are established. A separate notice proposing the 90-day suspension is also issued.

**h. Petition for Review of Emergency Determination.** Petitions for review to the NTSB of the Administrator's emergency determination are coordinated by e-mail with AGC-300. Under 49 U.S.C. § 44709(e) (3) and the NTSB's rules of practice, 49 C.F.R. § 821.54, a respondent must file a petition for review within two business days of receipt of the emergency order. The FAA has two business days from the date the petition is filed to file a response if a response is warranted under 49 C.F.R. § 821.54(c). The NTSB ALJ assigned to the case or the Chief ALJ if no ALJ has been assigned, disposes of the petition within five business days of the NTSB's receipt of the petition.

**i. Petition for Review of Immediately Effective Orders.** While 49 U.S.C. §§ 44106(d), 44710(d), and 44726(d) provide for the NTSB to review the merits of an appeal from an FAA

order issued under those statutes, the statute does not provide for the NTSB's review of the Administrator's determination that an order should be immediately effective. A certificate holder challenging the immediate effectiveness of an order issued under either 49 U.S.C. § 44106, 44710, or 49 U.S.C. § 44726, therefore, must seek direct review of the Administrator's decision to make the order immediately effective in a U.S. court of appeals under 49 U.S.C. § 46110. FAA legal counsel advises AGC-300 immediately if a certificate holder petitions a court for review of an immediately effective order issued under 49 U.S.C. §§ 44106, 44710 or 44726.

**j. Hearings before NTSB in Cases Involving Emergency and other Immediately Effective Orders.** An accelerated appeal process is provided for in 49 U.S.C. §§ 44709(e), 44106, 44710, and 44726 and 49 C.F.R. subpart I for cases involving emergency and other immediately effective orders. Because of the accelerated processing of emergency cases, FAA legal counsel should be prepared to try the case within several days after issuing the emergency order. Expedited discovery in the case works best when it is filed around the time that legal counsel files the complaint.

**k. Appeal on the Merits to the NTSB.** Because of the accelerated processing of emergency cases, legal counsel who represented the FAA at the hearing generally prepares any briefs in the case on appeal to the NTSB. Such appeals are coordinated by e-mail with AGC-300.

**l. Judicial Appeals.** Within 60 days after the NTSB issues a final decision and order, the respondent may petition the appropriate U.S. court of appeals for judicial review of the order as provided in 49 U.S.C. § 46110. The Department of Justice or AGC-300, when delegated by the DOJ, handles such cases before the U.S. court of appeals. The regional attorney promptly sends the complete file, including all trial exhibits, pleadings, the initial decision, and other relevant documents to AGC-300. In addition, the regional attorney ensures the case is transferred in EIS to AGC-300.

**10. Nonemergency Certificate Actions.** When it is determined that nonemergency certificate suspension or revocation is the appropriate enforcement action, FAA legal counsel follow the guidance in this paragraph.

**a. Notice of Proposed Certificate Action.** Under 49 U.S.C. § 44709, the Administrator, before ordering the suspension or revocation of a certificate, must give the certificate holder notice proposing such action and provide such person with an opportunity to answer and be heard, except when an emergency order is issued. When it is determined that certificate action on a nonemergency basis is appropriate, FAA legal counsel prepares a notice of proposed certificate action. The notice sets forth the facts alleged, the regulation(s) violated, and the action proposed. Legal counsel pleads the facts in sufficient detail that the certificate holder has notice of the charges. A specific proposed sanction is stated in the notice. When legal counsel proposes that only a rating be suspended, the notice informs the airman that during the suspension period a temporary certificate will be issued to permit the exercise of those privileges not under suspension.

**b. Attachments to the Notice.** An information sheet and a certificate holder reply form are sent with the notice. In the information sheet, which may be a printed form, the alleged violator is advised of the alternatives available in response to the notice. The alleged violator is given the opportunity to elect from the alternatives listed on the certificate holder reply form.

**c. Alternatives for Responding to Notice.** In cases brought under 49 U.S.C. § 44709, 14 C.F.R. § 13.19(c) provides an alleged violator with the options to respond to the notice listed in chapter 6, subparagraphs 10.c.(1)-(4).

- (1) Admit the charges and surrender the certificate as proposed;
- (2) Answer the charges in writing;
- (3) Request an informal conference with FAA legal counsel; or
- (4) Request that an order be issued so the alleged violator may appeal to the NTSB.

**d. Notice of Proposed Certificate Action in Deferred Suspension Cases.** When the appropriate program office manager and legal counsel decide that a deferred suspension is the appropriate type of enforcement action in a particular case, legal counsel issues a notice of proposed certificate action that:

- (1) Specifies the factual circumstances and regulations allegedly violated;
- (2) States the proposed period of suspension;
- (3) Advises the certificate holder of the corrective action that may be taken within a specified period, to avoid the proposed sanction;
- (4) Requires that the certificate holder inform the FAA, within 10 days after receipt of the notice, if the holder elects to take the suggested corrective action to avoid the proposed suspension; and,
- (5) Advises the certificate holder of the right to proceed in accordance with the enclosed information sheet.

If the certificate holder does not timely elect to take the deferred suspension option, legal counsel processes the case for a certificate suspension under regular procedures. If the certificate holder timely elects to proceed with the deferred suspension option, legal counsel, on receiving satisfactory evidence the certificate holder has completed the corrective action described in the notice within the specified period, issues an order of suspension that makes findings of the appropriate violation but waives the imposition of any certificate suspension. If satisfactory evidence of completion of the corrective action is not timely received, legal counsel immediately issues an order of suspension that suspends the certificate for the period stated in the notice.

**e. Reevaluating the Case.** When the certificate holder submits evidence or other considerations in writing, or in person at an informal conference, new matters submitted are considered and evidence on which the notice was based is reevaluated. Allegations that are disproved are withdrawn. If the sanction proposed is determined to be excessive, it is reduced. Legal counsel does not increase the sanction proposed in the notice as a result of the informal procedures. Unless matters not considered in issuing the notice are brought to legal counsel's attention, the order normally imposes the sanction proposed in the notice.

**f. Orders of Suspension or Revocation.** The order is issued by authorized legal counsel.

(1) When the certificate holder surrenders the certificate pursuant to the notice of proposed certificate action, legal counsel issues the order immediately. The effective date of the surrender is the date on which the certificate is surrendered to the FAA, such as the postmark date of mailing or the date of personal delivery. Surrendering the certificate in response to the notice constitutes a waiver of the airman's appeal rights, when the certificate holder has been informed of his rights in the information sheet.

(2) Orders allege the violations that constitute the basis for the action, state accurately the action taken, state the reasons that "safety in air commerce or air transportation and the public interest" require certificate action, state the effective date, and inform the certificate holder of appeal rights and procedures. Each order with an appeal section states that if the certificate holder appeals the order to the NTSB, a copy of the order is filed with the NTSB and serves as the Administrator's complaint. If an ASRP report has been accepted, the order states that the imposition of the penalty is waived.

(3) Preparation of airman stop order. On issuance of an order suspending or revoking an airman certificate, legal counsel prepares and electronically transmits an airman stop order, FAA Form 8060-8, to the Airman Certification Branch, AFS-760. A printed copy of the stop order is kept in the case file. It is important that a stop order be created and transmitted at the time an order of suspension or order of revocation is issued to preclude the issuance of a duplicate certificate or the processing of a new application involving the airman. Legal counsel includes on the stop order form specific data about the termination or release of the stop order. Stop orders are timely updated to reflect relevant events such as the surrender of the airman certificate that is the subject of the stop order.

**g. Service of the Notice or Order.** Legal counsel sends the alleged violator the notice or order by regular mail and either certified mail, return-receipt requested, or registered mail. For certificate holders, legal counsel sends the notice or order to the current address of record. If the regular mail is returned or the certified letter or registered letter is returned as undeliverable (because it is addressed incorrectly or the party has moved and left no forwarding address), then legal counsel corrects the address or obtains a new address and resends the notice or order to the correct address by regular mail and either certified mail, return-receipt requested, or registered mail. If the certified letter or registered letter is refused or returned unclaimed but the regular mail is not returned, then there is a presumption of service and legal counsel does not resend the notice or order. If legal counsel delivers the notice or order in person, then he or she documents the delivery in the file.

#### **h. Voluntary Surrender of Certificate Pending the Appeal of an Order of Suspension.**

(1) Legal counsel may accept the voluntary surrender of a certificate in response to an order of suspension despite an appeal of the order only if the respondent agrees to stipulate at the hearing to the period of suspension stated in the order and appeals only the findings of violations set forth in the order.

(2) Such a voluntary surrender must be documented through a formal written agreement, which must make clear the respondent waives the postponement of the effective date of the order pending appeal, limits his or her appeal only to the findings of violation, and agrees to the period of suspension stated in the order. Under such an agreement, legal counsel credits the period of voluntary surrender as service of the suspension if the FAA prevails in the pending litigation.

(3) If legal counsel allows the voluntary surrender of an FAA certificate pending the appeal of the findings in the order of suspension, legal counsel ensures the entire suspension period is continuously served; legal counsel does not allow for the division of a suspension period.

(4) Legal counsel may elect to refuse the voluntary surrender of an FAA certificate during pending litigation. In such a circumstance, if the FAA prevails in the pending litigation, the certificate holder will be required to surrender the subject certificate at the conclusion of the litigation.

(5) This policy does not apply to revocation actions.

#### **11. Airman Medical Certificate Denials Process.**

**a. General.** As provided in 14 C.F.R. §§ 67.407 and 183.21, aviation medical examiners have been delegated the authority to examine applicants for airman medical certificates and to issue or initially deny such certificates after determining whether the applicants meet the standards prescribed in 14 C.F.R. part 67. When an aviation medical examiner denies issuance of a medical certificate, the airman may, within 30 days after the date of denial, apply in writing to the Federal Air Surgeon for reconsideration of the denial. Final denial by the Federal Air Surgeon or, in certain cases, by other FAA medical officers, is a denial of the Administrator under 49 U.S.C. § 44703, from which the airman may appeal to the NTSB.

#### **b. Appeals to the NTSB.**

(1) Initiation of cases. The NTSB's Office of Administrative Law Judges serves petitions for review under 49 U.S.C. § 44703 on AGC-300.

(2) Legal processing. On receiving an appeal and, if appropriate, after consultation with the Federal Air Surgeon's staff, AGC-300 normally files an answer or other appropriate initial pleading. AGC-300 handles the medical certificate denial cases.

**12. Airman Certificate Denials (Other Than Medical).** Besides the denial of an airman medical certificate, the FAA may also deny other airman certificates. Under 49 U.S.C. § 44703, an applicant may appeal the denial to the NTSB. The NTSB docket these appeals with a number designated CD.

**a. Legal Processing.** Ordinarily, legal counsel in a region handles airman certificate denial cases before the NTSB. However, after consultation between the appropriate Regional Counsel and AGC-300, AGC-300 might handle a case.

**b. NTSB Appeals and Judicial Review of NTSB Decisions.** Appeals to the NTSB and judicial review of any NTSB decision are handled as described in chapter 6, paragraph 4.

### **13. Suspension or Revocation of Airman Medical Certificates.**

**a. Responsibility.** The Assistant Chief Counsel for Enforcement or a Regional Counsel, as appropriate, is responsible for taking certificate action under 49 U.S.C. § 44709 when a request is received from the Regional Flight Surgeon, the Aerospace Medical Certification Division (AAM-300), or the Federal Air Surgeon to suspend or revoke an airman's medical certificate. When further investigation is needed, a Security and Hazardous Materials office may be asked to obtain the information.

**b. Refusal to Submit to Reexamination.** Under 49 U.S.C. § 44709, an airman may be requested to submit to medical reexamination if there is a reasonable basis to believe the airman may not be qualified under the airman medical certification standards. An appropriate FAA medical officer requests a reexamination by letter. If the airman refuses or fails, within a reasonable time, to submit to the reexamination, emergency action, using procedures set out in chapter 6, paragraph 9 is generally taken to suspend the airman medical certificate pending reexamination and a determination the airman is medically qualified.

**c. Failure to Provide Medical Information.** 14 C.F.R. § 67.413 provides that any person who applies for or holds an airman medical certificate may be asked to provide additional medical information or history or to authorize clinics, hospitals, doctors, or other persons to release any available information or records concerning a medical history. Refusal or failure to provide the requested information or to authorize its release may be a basis for denying, suspending, or revoking an airman medical certificate. Suspension or revocation is generally taken on an emergency basis.

**d. Medical Disqualification.** If the FAA has evidence that shows that an airman has become medically disqualified, legal counsel issues an order revoking the medical certificate.

**e. Intentional Falsification of Application or Certificate.** 14 C.F.R. § 67.403(a) provides for the suspension or revocation of any airman certificate, ground instructor certificate, or medical certificate held by any person who:

- Makes a fraudulent or intentionally false statement on an application for an airman medical certificate;

- Reproduces a medical certificate for fraudulent purposes;
- Alters a medical certificate; or
- Makes a fraudulent or intentionally false entry in any document required to be kept in connection with a medical certificate.

In reviewing cases involving medical certification, legal counsel should be alert to the possibility of falsification and, if falsification is discovered, initiate legal enforcement action, as appropriate. Even though action is taken under 14 C.F.R. § 67.403, any person who willfully commits any of the above acts may also be subject to criminal prosecution under 18 U.S.C.

§ 1001. Therefore, the investigation of such cases is carefully conducted to ensure that no action is taken that could prejudice any possible criminal prosecution.

**f. Incorrect Statement on Application.** 14 C.F.R. § 67.403(c) provides for the denial, suspension, or revocation of an airman medical certificate when an applicant makes an incorrect statement on which the FAA relied on an application for medical certification.

#### **14. Civil Penalty Action Under 49 U.S.C. § 46301(d)(5) Involving an Amount in Controversy Not Exceeding \$50,000 against an Individual Acting as a Pilot, Flight Engineer, Mechanic, or Repairman.**

**a. General.** 49 U.S.C. § 46301(d) (5) and 14 C.F.R. § 13.18 govern civil penalty actions against individuals acting as pilots, flight engineers, mechanics, or repairmen for violations of statutory or regulatory requirements. The FAA may not administratively assess a civil penalty against these airmen if the proposed amount of penalty exceeds \$50,000.

##### **b. Initiation of Civil Penalty Action.**

(1) Notice of proposed assessment. FAA legal counsel initiates a civil penalty action under 49 U.S.C. § 46301(d) (5) by issuing a notice of proposed assessment. The procedures in 14 C.F.R. § 13.18 apply. The notice of proposed assessment sets forth the facts alleged, the regulation(s) allegedly violated, and the civil penalty proposed. The facts are set forth in numbered paragraphs and in sufficient detail so the alleged violator has notice of the charges. The notice proposes to assess a civil penalty in a specific amount.

(2) Attachments to the notice. An information sheet and a reply form are sent with the notice. Specific reference to each of these attachments is included at the end of the notice. The information sheet advises the alleged violator of the alternatives available for responding to the notice. The alleged violator may elect from the alternatives listed, as appropriate.

**c. Time for the Alleged Violator to Respond to a Notice.** 14 C.F.R. § 13.18(g) requires the alleged violator to respond to a notice not later than 15 days after receiving the notice. For purposes of this regulation, a response is deemed to have been made when it is either placed in the mail or personally delivered. Therefore, a response is timely if the respondent places it in the mail on the 15th day after receiving the notice.

**d. Alternatives for Responding to Notice.** In cases brought under 49 U.S.C. § 46301(d)(5), 14 C.F.R. § 13.18(d) provides an alleged violator with the options to respond to the notice listed in chapter 6, subparagraphs 14.d.(1)-(4).

- (1) Submit the proposed civil penalty or an agreed-on amount;
- (2) Answer the charges in writing;
- (3) Submit a written request for an informal conference with FAA legal counsel and submit relevant information or documents; or
- (4) Request that an order of assessment be issued so the alleged violator may appeal to the NTSB.

**e. Reevaluating the Case.** When the alleged violator submits evidence, information, or views in writing or in person at an informal conference, legal counsel considers the new evidence or information and reevaluates the notice. Legal counsel makes a new determination regarding the alleged violations in consultation with the regional program office. Allegations that are disproved are withdrawn. If the sanction proposed is determined to be excessive, it is reduced appropriately. Legal counsel does not increase the sanction proposed in the notice as a result of the informal procedures. Unless matters not considered in issuing the notice are brought to legal counsel's attention, the order normally imposes the sanction proposed in the notice.

**f. Compromise Order.** Under 14 C.F.R. § 13.18(k), FAA legal counsel has discretion to compromise a civil penalty by accepting the payment of a civil penalty without making a finding of violation. When this happens, a compromise order is issued. The compromise order states the alleged violator agrees to pay a civil penalty, the FAA makes no finding of violation, and the FAA will not use the order as evidence of a prior violation in any subsequent civil penalty proceeding or certificate action proceeding.

**g. Order of Assessment.** For pilots, flight engineers, mechanics, and repairmen, the order that assesses a civil penalty is called an order of assessment. An order of assessment differs from an order assessing civil penalty in that the order of assessment is issued *before* the alleged violator has been afforded a hearing on the record. This order offers the options of either paying the proposed civil penalty or an agreed amount or requesting a hearing. FAA legal counsel issues an order of assessment in the circumstances listed in chapter 6, subparagraphs 14.g.(1)-(4).

(1) The alleged violator submits, or agrees to submit, the proposed civil penalty or an amount agreed on during informal procedures. The order of assessment acknowledges receipt of that amount, if appropriate.

(2) The alleged violator does not respond within 15 days from receipt of the notice of proposed assessment.



(3) The alleged violator requests that an order be issued so the alleged violator may appeal directly to the NTSB.

(4) The alleged violator and the FAA do not resolve the case during informal procedures and an order is issued that allows an appeal to the NTSB.

**h. Service of the Notice or Order.** Legal counsel sends the alleged violator the notice or order by regular mail and either certified mail, return-receipt requested, or registered mail. For certificate holders, legal counsel sends the notice or order to the current address of record. If the regular mail is returned or the certified letter or registered letter is returned as undeliverable (because it is addressed incorrectly or the party has moved and left no forwarding address), then legal counsel corrects the address or obtains a new address and resends the notice or order to the correct address by regular mail and either certified mail, return-receipt requested, or registered mail. If the certified letter or registered letter is refused or returned unclaimed but the regular mail is not returned, then there is a presumption of service and legal counsel does not resend the notice or order. If legal counsel delivers the notice or order in person, then he or she documents the delivery in the file.

**i. Appeals to the National Transportation Safety Board.** 49 U.S.C. § 46301(d)(5)(B) provides that an individual acting as a pilot, flight engineer, mechanic, or repairman may appeal an order imposing a civil penalty under that subsection to the NTSB. The NTSB, after notice and hearing, affirms, modifies, or reverses the order and may change a civil penalty to a suspension or revocation of a certificate. The NTSB's Rules of Practice, 49 C.F.R. part 821, contain the procedures for processing these appeals.

**j. Judicial Review.** Within 60 days after the NTSB issues its final decision and order in a civil penalty case against an individual acting as a pilot, flight engineer, mechanic, or repairman, the alleged violator may obtain judicial review of the order under 49 U.S.C. § 46110. The Administrator also may obtain judicial review when the Administrator determines that an order of the NTSB under 49 U.S.C. § 46301(d)(5) will have a significant adverse impact on the FAA's ability to carry out part A of subtitle VII. The Department of Justice or AGC-300, when delegated by the DOJ, handles such cases before the U.S. court of appeals. AGC-300 handles all cases in which a petition for judicial review has been filed. The regional attorney promptly sends the complete file, including all trial exhibits, pleadings, the initial decision, and other relevant documents to AGC-300. In addition, the regional attorney ensures the case is transferred in the EIS to AGC-300.

## **15. Aircraft Registration Violations.**

**a. General.** Generally, an aircraft is eligible for U.S. registration only if a "citizen of the United States" owns it and it is not on a foreign registry (49 U.S.C. §§ 40102(a)(15) and 44102). Until it is registered under 49 U.S.C. § 44103, an eligible civil aircraft may not be operated (49 U.S.C. § 44101).

**b. Pink Slip.** While an application for aircraft registration of a U.S. civil aircraft is being processed, the owner is granted a 90-day period, which may be extended, of operating authority

represented by the *pink slip* (14 C.F.R. § 47.31). An aircraft operating under the authority of a *pink slip* may not be operated outside the U.S.

**c. Effectivity of Registration Certificate.** Once the aircraft is registered, the effective registration certificate must be carried aboard the aircraft (14 C.F.R. § 91.203(a) (2).) A certificate of aircraft registration is no longer effective when one or more of the events specified in 14 C.F.R. § 47.41 occur or the certificate is determined to be invalid under 14 C.F.R. § 47.43. Further operation of that aircraft with an invalid or ineffective certificate is a violation of 14 C.F.R. § 91.203(a) (2).

**d. Requirements.** A person must, when appropriate: submit a registration application before operating using a *pink slip* (14 C.F.R. § 47.31(a)); return an ineffective aircraft registration certificate (14 C.F.R. § 47.41); return an invalid aircraft registration certificate (14 C.F.R. § 47.43); submit a change of address (14 C.F.R. § 47.45); submit a triennial registration report (14 C.F.R. § 47.51); and provide new aircraft owner information when ownership changes (14 C.F.R. § 47.41). Failure to do so is grounds for enforcement action.

**e. Certificate Action.** The FAA may suspend or revoke a dealer's certificate of registration (49 U.S.C. § 44104) and a certificate of registration (49 U.S.C. § 44105).

**f. Enforcement Responsibilities.** The Office of Security and Hazardous Materials Regions and Centers are the points of contact for EIR processing. Field personnel generally conduct investigations. The Aeronautical Center Counsel normally takes legal enforcement action, although Regional Counsel may also take legal enforcement action.

**g. Appeals.** An FAA hearing officer hears initial appeals of aircraft certificate suspensions or revocations rather than the NTSB (14 C.F.R. § 13.19(2) (5) and subpart D).

## **16. Civil Penalty Actions under 49 U.S.C. § 46301 Reviewable by the FAA Decisionmaker.**

**a. General.** In most cases in which the penalty sought by the FAA does not exceed the applicable jurisdictional limit, the case is processed under 49 U.S.C. § 46301(d) (7) and 14 C.F.R. § 13.16. For violations occurring on or after December 12, 2003, the jurisdictional limits are \$50,000 for cases involving individuals and small business concerns, and \$400,000 for cases involving other persons. For violations that occurred before December 12, 2003, the jurisdictional limit is \$50,000 for all cases. The FAA may assess civil penalties after affording the alleged violator notice and an opportunity for a hearing on the record before an administrative law judge.

**b. Separation of Functions.** Under 14 C.F.R. § 13.203, FAA personnel engaged in investigating or prosecuting a case must not, in that case or a factually-related case, participate or give advice in a decision to the administrative law judge or to the FAA decisionmaker on appeal, except as counsel or a witness in the public proceeding. No FAA employee is permitted to advise an administrative law judge. The employees who advise the FAA decisionmaker on any appeal of an initial decision to the FAA decisionmaker (*bubbled employees*) are the Chief Counsel, Deputy Chief Counsel for Policy and Adjudication, the Assistant Chief Counsel for

Litigation, and attorneys on the staff of the Assistant Chief Counsel for Litigation. All FAA employees are required strictly to comply with this separation of functions.

**c. Notice of Proposed Civil Penalty.**

(1) A civil penalty action is initiated by issuing a notice of proposed civil penalty under the procedures in 14 C.F.R. § 13.16. The notice is issued by an official authorized in 14 C.F.R. § 13.16(c), or by legal counsel who has an appropriate delegation and is signing with a by-line under the name and title of this official.

(2) The notice sets forth the facts alleged, the regulations violated, and the civil penalty proposed.

(3) The facts are set forth in numbered paragraphs and in sufficient detail that the alleged violator has notice of the charges.

(4) The notice proposes to assess a civil penalty in a specific amount.

**d. Attachments to the Notice.** An information sheet and a reply form are sent with the notice. The notice provides a website address where the respondent may obtain a copy of 14 C.F.R. § 13.16 and part 13, subpart G. In the information sheet, the alleged violator is advised of the alternatives available in response to the notice.

**e. Time for Submission of a Response by the Respondent.** 14 C.F.R. § 13.16(d) requires the respondent to submit a response to a notice not later than 30 days after receipt of the notice. Adequate submission of a response occurs when the response is either put in the mail or personally delivered. Therefore, if on the 30th day after receipt of the notice the respondent places the response in the mail, the response is timely.

**f. Alternatives for Responding to Notice.** In cases brought under the civil penalty assessment authority, 14 C.F.R. § 13.16(d) provides an alleged violator with the options to respond to the notice listed in chapter 6, subparagraphs 16.f (1)-(5).

(1) Submit the proposed civil penalty or an agreed-on amount;

(2) Submit to FAA legal counsel written information demonstrating that a violation of the regulations did not occur or that the proposed penalty is not warranted;

(3) Request a reduction of the proposed civil penalty and submit supporting materials;

(4) Request an informal conference with FAA legal counsel; or

(5) Request a hearing.

**g. Reevaluating the Case.** When the respondent submits evidence, information, or views in writing or in person at an informal conference, legal counsel considers the new evidence or

information and reexamines the notice. Allegations that are disproved are withdrawn. If the sanction proposed is determined to be excessive, it is reduced appropriately. Legal counsel does not increase the sanction proposed in the notice as a result of the informal procedures.

**h. Compromise Order.** Under 14 C.F.R. § 13.16(l) (1), FAA legal counsel has the authority to compromise a civil penalty by accepting the payment of a civil penalty without making a finding of violation. In such a case, legal counsel issues a compromise order. The compromise order states the respondent agrees to pay a civil penalty, the FAA makes no finding of violation, and the order is not used by the FAA as evidence of a prior violation in any subsequent civil penalty proceeding or certificate action proceeding.

**i. Final Notice of Proposed Civil Penalty.** If a respondent does not timely respond to a notice of proposed civil penalty, or if during informal procedures no agreement is reached for resolving a case and no timely written request for a hearing has been received, legal counsel issues a final notice of proposed civil penalty. This gives the respondent one last opportunity to request a hearing.

(1) Contents. The final notice sets forth the facts alleged, the regulations violated, and the penalty proposed. The allegations or proposed penalty may be modified based on information received during informal procedures. The final notice offers the following options: pay the amount of penalty proposed in the final notice, pay an agreed-upon amount, or request a hearing.

(2) Service. The final notice is mailed to the individual respondent, or to the president of a corporate or company respondent, or to the person the respondent has designated to receive documents in that civil penalty action.

**j. Order Assessing Civil Penalty.**

(1) Issuance by legal counsel. An order assessing civil penalty imposes a specified penalty regardless of whether payment of such penalty has been received by the FAA. The order sets forth the findings of fact, the findings of regulations violated, and the amount of the penalty assessed. Legal counsel issues an order assessing civil penalty in the following situations:

- When the person charged with the violation submits, or agrees to submit, the proposed civil penalty or an agreed-upon amount. (If the FAA has received payment, receipt of the amount is acknowledged in the order.)
- When the person charged with a violation does not request a hearing within 15 days from receipt of the final notice of proposed civil penalty.

(2) Final agency action. If an administrative law judge finds that a violation occurred and determines that a civil penalty is warranted, in an amount found appropriate by the judge, and that decision is not timely appealed, the initial decision becomes an order assessing civil penalty. Similarly, if on appeal the FAA decisionmaker issues a final decision finding that a violation occurred and a civil penalty is warranted, and timely petition for judicial review is not filed, the Administrator's decision is considered an order assessing civil penalty.

**k. Service of the Notice, Final Notice, or Order.** Legal counsel sends the alleged violator the notice, final notice, or order by regular mail and either certified mail, return-receipt requested, or registered mail. For certificate holders, legal counsel sends the notice, final notice, or order to the current address of record. If the regular mail is returned or the certified letter or registered letter is returned as undeliverable (because it is addressed incorrectly or the party has moved and left no forwarding address), then legal counsel corrects the address or obtains a new address and resends the notice, final notice, or order to the correct address by regular mail and either certified mail, return-receipt requested, or registered mail. If the certified letter or registered letter is refused or returned unclaimed but the regular mail is not returned, then there is a presumption of service and legal counsel does not resend the notice, final notice, or order. If legal counsel delivers the notice, final notice, or order in person, then he or she documents the delivery in the file.

**l. Hearings.** When a hearing is requested, legal counsel files a complaint with the hearing docket clerk not later than 20 days after receipt of the request. The complaint sets forth the agency's allegations of facts and violations, and the civil penalty sought. Legal counsel suggests a location for the hearing when he or she files the complaint. Any hearing is held in accordance with the Rules of Practice in FAA Civil Penalty Actions in subpart G of 14 C.F.R. part 13. The administrative law judge issues an initial decision. The legal office that issued the complaint generally is responsible for representing the FAA at the evidentiary hearing before an administrative law judge. Where the complaint was issued in one region but the hearing is scheduled to be held in another region, the case may be transferred to the region where the hearing is to be held, if the affected regional counsel agrees.

**m. Appeals to the FAA Decisionmaker.** Either party may appeal an initial decision issued by an administrative law judge to the FAA decisionmaker, by filing a notice of appeal within 10 days after an oral decision is entered on the record or a written decision is served on the parties. Each party has an opportunity to submit a brief. The appeals are handled in accordance with chapter 6, paragraph 4. The FAA decisionmaker's decision and order is the final FAA order in the case.

**n. Judicial Review of Decisions of the FAA Decisionmaker.** Within 60 days after the decisionmaker issues a final decision and order in a case under the civil penalty assessment authority, the respondent may petition the appropriate U.S. court of appeals for judicial review of the order as provided in 49 U.S.C. § 46110. The Department of Justice or AGC-300, when delegated by the DOJ, handles such cases before the U.S. court of appeals. The regional attorney promptly sends the complete file, including all exhibits, pleadings, the initial decision, and other relevant documents to AGC-300. In addition, the regional attorney ensures the case is transferred in EIS to AGC-300.

## **17. Legal Enforcement Actions under the Commercial Space Launch Act of 1984 (49 U.S.C. §§ 70101, *et seq.*).**

**a. General.** The Commercial Space Launch Act of 1984, as codified and amended at 49 U.S.C. Subtitle IX--Commercial Space Transportation, ch. 701, Commercial Space Launch Activities, 49 U.S.C. §§ 70101-70121 (the Act), authorizes the Secretary of Transportation to

oversee, license and regulate commercial launch and reentry activities and the operation of launch and reentry sites as carried out by U.S. citizens or within the United States. The Act provides for the FAA to impose civil penalties if a person is found to have violated a requirement of the Act, a regulation issued under the Act, or any term or condition of a license issued or transferred under the Act. The Secretary's authority has been delegated to the Administrator, who has further delegated that authority to the Associate Administrator for Commercial Space Transportation. 14 C.F.R. parts 405 and 406 govern the FAA's authority to conduct investigations; suspend, modify, or revoke licenses; and impose civil penalties.

**b. License Actions.** The Act and implementing regulations permit the FAA to modify, suspend, or revoke a license, with notification of such an action to a licensee in writing. 49 U.S.C. § 70107 and 14 C.F.R. § 405.3. Unless otherwise specified, such actions are effective immediately and continue through any review proceedings. 49 U.S.C. § 70107(d). and 14 C.F.R. § 405.3(c). Part 406 implements 49 U.S.C. § 70110(a), which entitles an applicant for a license, a payload owner, and a licensee in a license or payload action to a determination on the record after an opportunity for a hearing under 5 U.S.C. § 554. Part 406 provides that the hearing is before a Department of Transportation ALJ. Part 406 provides for an appeal of the ALJ's initial decision to the Associate Administrator, who issues a final decision on the matter within 30 days of the ALJ's decision. 49 U.S.C. § 70110(b) provides for judicial review of the Associate Administrator's decision, which is in a U.S. district court.

**c. Civil Penalty Actions.** A person found by the FAA to have violated a requirement of the Act, a regulation issued under the Act, or any term or condition of a license issued or transferred under the Act, is liable to the U.S. for a civil penalty of not more than \$100,000, as adjusted for inflation. A separate violation occurs for each day the violation continues.

(1) Separation of functions. Under 14 C.F.R. § 406.105, FAA personnel engaged in investigative or prosecutorial functions must not, in that case or a factually related case, participate or give advice in a decision to the administrative law judge or to the FAA decisionmaker on appeal, except as counsel or a witness in the public proceeding. The employees who advise the FAA decisionmaker on any appeal of an initial decision to the FAA decisionmaker (*bubbled employees*) are the Chief Counsel, Deputy Chief Counsel for Policy and Adjudications, the Assistant Chief Counsel for Litigation, and attorneys on the staff of the Assistant Chief Counsel for Litigation. All FAA employees are required strictly to comply with this separation of functions. The Associate Administrator may initially determine whether a civil penalty should be initiated, but does not otherwise participate in the case until the respondent appeals from an ALJ's decision.

(2) Notice of proposed civil penalty. A civil penalty action is initiated by issuing a notice of proposed civil penalty under the procedures in 14 C.F.R. § 406.9. The notice is issued by an official authorized in 14 C.F.R. § 406.9, or by legal counsel who has an appropriate delegation and is signing with a by-line under the name and title of this official. The notice sets forth the facts alleged, the regulations violated, and the civil penalty proposed. The facts are set forth in numbered paragraphs and in sufficient detail that the alleged violator has notice of the charges. The notice proposes to assess a civil penalty in a specific amount.

(3) Attachments to the notice. An information sheet and a reply form are sent with the notice. The notice provides a website address where the respondent may obtain a copy of 14 C.F.R. § 406.9 and part 406, subpart B. In the information sheet, the alleged violator is advised of the alternatives available in response to the notice.

(4) Time for submission of a response by the respondent. 14 C.F.R. § 406(c) requires the respondent to submit a response to a notice not later than 30 days after receipt of the notice. Adequate submission of a response occurs when the response is either put in the mail or personally delivered. Therefore, if on the 30th day after receipt of the notice the respondent places the response in the mail, the response is timely.

(5) Alternatives for responding to notice. 14 C.F.R. § 406.9(c) provides an alleged violator with the options to respond to the notice listed in this subparagraph.

- Pay the proposed civil penalty or an agreed-on amount;
- Submit to FAA legal counsel written information demonstrating that a violation of the regulations did not occur or that the proposed penalty is not warranted;
- Request a reduction of the proposed civil penalty and submit supporting materials;
- Request an informal conference with FAA legal counsel; or
- Request that a final notice be issued so the respondent may request a hearing.

(6) Reevaluating the case. When the respondent submits evidence, information, or views in writing or in person at an informal conference, legal counsel considers the new evidence or information and reexamines the notice. Allegations that are disproved are withdrawn. If the sanction proposed is determined to be excessive, it is reduced appropriately. Legal counsel does not increase the sanction proposed in the notice as a result of the informal procedures.

(7) Compromise order. Under 14 C.F.R. § 406.9(f), legal counsel has the authority to compromise a civil penalty by accepting the payment of a civil penalty without making a finding of violation. In such a case, FAA legal counsel issues a compromise order. The compromise order states that the respondent agrees to pay a civil penalty, the FAA makes no finding of violation, and the order is not used by the FAA as evidence of a prior violation in any subsequent civil penalty proceeding or certificate action proceeding.

(8) Final notice of proposed civil penalty. If a respondent does not timely respond to a notice of proposed civil penalty, or if during informal procedures no agreement is reached for resolving a case and no timely written request for a hearing has been received, legal counsel issues a final notice of proposed civil penalty. This gives the respondent one last opportunity to request a hearing. The final notice sets forth the facts alleged, the regulations violated, and the action proposed. The allegations or proposed penalty may be modified based on information received during informal procedures. The final notice offers the following options: pay the amount of penalty proposed in the final notice, pay an agreed-upon amount, or request a hearing.

(9) Order assessing civil penalty. An order assessing civil penalty imposes a specified penalty regardless of whether payment of the penalty has been received by the FAA. The order

sets forth the findings of fact, the findings of regulations violated, and the amount of the penalty assessed. Legal counsel issues an order assessing civil penalty in the following situations:

- When the person charged with the violation submits, or agrees to submit, the proposed civil penalty or an agreed-upon amount. (If the FAA has received payment, receipt of the amount is acknowledged in the order.)
- When the person charged with a violation does not request a hearing within 15 days from receipt of the final notice of proposed civil penalty.

If an administrative law judge finds that a violation occurred and determines that a civil penalty is warranted, in an amount found appropriate by the judge, and that decision is not timely appealed, the initial decision becomes an order assessing civil penalty. Similarly, if on appeal the FAA decisionmaker issues a final decision finding that a violation occurred and a civil penalty is warranted, and timely petition for judicial review is not filed, the Associate Administrator's decision is considered an order assessing civil penalty.

(10) Service of the Notice, Final Notice, or Order. Legal counsel sends the alleged violator the notice, final notice, or order by regular mail and either certified mail, return-receipt requested, or registered mail. For licensees, legal counsel sends the notice, final notice, or order to the current address of record. If the regular mail is returned or the certified letter or registered letter is returned as undeliverable (because it is addressed incorrectly or the party has moved and left no forwarding address), then legal counsel corrects the address or obtains a new address and resends the notice, final notice, or order to the correct address by regular mail and either certified mail, return-receipt requested, or registered mail. If the certified letter or registered letter is refused or returned unclaimed but the regular mail is not returned, then there is a presumption of service and legal counsel does not resend the notice, final notice, or order. If legal counsel delivers the notice, final notice, or order in person, then he or she documents the delivery in the file.

(11) Hearings. When a hearing is requested, legal counsel files a complaint with the hearing docket clerk not later than 20 days after receipt of the request. The complaint sets forth the agency's allegations of facts and violations, and the civil penalty sought. Legal counsel suggests a location for the hearing when he or she files the complaint. Any hearing is held in accordance with the Rules of Practice in FAA Space Transportation Adjudications in subpart B of 14 C.F.R. part 406. The administrative law judge issues an initial decision. The legal office that issued the complaint generally is responsible for representing the FAA at the evidentiary hearing before an administrative law judge.

(12) Appeals to the FAA decisionmaker. Either party may appeal an initial decision issued by an administrative law judge to the FAA decisionmaker, by filing a notice of appeal within 10 days after an oral decision is entered on the record or a written decision is served on the parties. Each party has an opportunity to submit a brief. The appeals are handled in accordance with chapter 6, paragraph 4. The FAA decisionmaker's decision and order is the final FAA order in the case.



(13) Judicial review of decisions of the FAA decisionmaker. A respondent may seek judicial review of the FAA decisionmaker's final decision and order in the appropriate U.S. district court under 49 U.S.C. § 70110(b). The Department of Justice or AGC-300, when delegated by the DOJ, handles such cases before the U.S. district court. The regional attorney promptly sends the complete file, including all trial exhibits, pleadings, the initial decision, and other relevant documents to AGC-300. In addition, the regional attorney ensures the case is transferred in EIS to AGC-300.

## **18. Civil Penalty Actions under the Federal Hazardous Materials Transportation Law (49 U.S.C. §§ 5101, *et seq.*).**

**a. General.** The federal hazardous materials transportation law was originally enacted in 1974 as the Hazardous Materials Transportation Act (49 App. U.S.C. § 1801 *et seq.*). After the Congress determined that effective enforcement of the law necessitated higher civil penalty amounts, the law was amended by the Hazardous Materials Transportation Uniform Safety Act of 1990 (Public Law 101-615), to raise the maximum civil penalty for a violation of the federal hazardous materials law or a regulation prescribed or order issued under that law and to mandate a minimum \$250 civil penalty for such a violation. The hazardous materials transportation law is now codified in 49 C.F.R. chapter 51. The Department of Transportation Hazardous Materials Regulations (HMR) are codified in 49 C.F.R. parts 100 through 185.

### **b. Civil Penalty Guidelines.**

(1) 49 U.S.C. § 5123(a) authorizes the Secretary of Transportation to assess a civil penalty, after notice and an opportunity for a hearing has been given to the alleged violator.

(2) Maximum civil penalty. The maximum civil penalty for each hazmat violation is \$50,000, and may be as much as \$100,000; these limits were imposed by SAFETEA-LU. The minimum civil penalty for most violations is now \$250, with a \$450 minimum for training violations.

(3) 49 C.F.R. § 1.47 delegates to the Administrator of the FAA, in general, the Secretary's investigation, inspection, and enforcement responsibilities involving the transportation of hazmat with particular emphasis on the shipment and transportation of hazmat by air. Each Regional Counsel, the Assistant Chief Counsel for the Europe, Africa & Middle East Area Office, and the Assistant Chief Counsel for Enforcement handle legal enforcement actions for violations of chapter 51 or the HMR.

(4) Under 49 U.S.C. § 5123(a), each person who *knowingly violates* chapter 51 or the HMR is liable to the United States for a civil penalty. A person "acts knowingly when [that] person has actual knowledge of the facts giving rise to the violation, or a reasonable person, acting in the circumstances and exercising reasonable care, would have that knowledge." Under this standard, the FAA is not required to establish that the alleged violator knew his actions constituted a violation of the HMR. On the contrary, *knowingly* refers to having knowledge of the relevant facts.

(5) When a person transports, or causes to be transported, a hazardous material and commits a violation, a separate violation occurs for each day the violation continues.

(6) Violation of hazardous material regulations. The FAA has promulgated regulations related to the transportation of hazardous materials, for example, Special Federal Aviation Regulation No. 99, Paragraph 6 (Training Requirements: Handling and Carriage of Hazardous Materials under Part 121) and Paragraph 7 (Training Requirements: Handling and Carriage of Hazardous Materials under Part 135). The FAA may assess a civil penalty for a violation of such regulations under its authority in 49 U.S.C. § 46301. However, if an act violates both the hazardous materials regulations and the FAA's regulations, the case usually is processed as a violation of the hazmat regulations. This is because the federal hazardous materials transportation law and the FAA's statute provide for different civil penalty amounts. An example of a case where either or both authorities could be used is a training violation under 49 C.F.R. § 175.20 and 14 C.F.R. § 121.433(a).

**c. Criminal Actions.** 49 U.S.C. § 5124 provides for a criminal penalty when there is a willful or reckless violation of chapter 51 or the HMR. A person commits a *willful* violation if that person has knowledge of the facts giving rise to the violation and knowledge that the conduct was unlawful. A person commits a *reckless* violation if that person displays a deliberate indifference or conscious disregard to the consequences of their conduct. When the case also involves possible criminal violations, legal counsel coordinates issuance of a civil penalty enforcement action with the Environmental Crimes Section of the Department of Justice after consultation with the DOT OIG.

**d. Investigation and Reporting of Possible Violations; Processing of EIRs.** Except for sanction recommendations, the FAA handles the investigation and reporting of violations of chapter 51 or the HMR, and the processing of the respective EIRs, in the same manner as it does for other violations. If a hazmat case involves violations of titles 49 and 14 of the C.F.R., and it is decided to pursue both, FAA investigative personnel initiate one EIR for the title 49 violations and one for the title 14 violations.

**e. Sanction Guidance.** Appendix C contains guidance for calculating a civil penalty in a hazmat enforcement case. 49 U.S.C. § 5123(c) specifically states that, in determining the amount of a civil penalty, the FAA must consider:

- (1) The nature, circumstances, extent, and gravity of the violation;
- (2) With respect to the violator, the degree of culpability, the history of prior violations, if any, the ability to pay, and the effect, if any, on the ability to continue to do business; and
- (3) Other matters that justice requires.

**f. For Commercial Purposes.** 49 U.S.C. § 5101 describes the purpose of the hazmat law as providing “. . . adequate protection against the risks to life and property inherent in the transportation of hazardous material in commerce. . . .” 49 U.S.C. § 5103(b) states that the

Secretary of Transportation prescribes regulations “. . . for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce.” The regulations apply to a person “. . . transporting hazardous material in commerce . . . [or] causing hazardous material to be transported in commerce. . . .” *Commerce* means trade or transportation in the jurisdiction of the U.S. that is interstate or that affects interstate trade or transportation. Notwithstanding traditional notions of operating *in air commerce*, an operation comes within the hazmat jurisdiction of the FAA only when the operation involves (or would involve) air transportation of the hazmat, or the flight is (or would be) for another commercial purpose. For example, an air carrier conducting a nonrevenue flight and carrying hazardous materials for the repair of its airplane brings itself within the FAA’s jurisdiction. Conversely, a private pilot flying with paint aboard only for the purpose of transporting it to his or her resident state to paint his or her house does not, without more, come within the FAA’s hazmat enforcement jurisdiction.

**g. Determining the Type of Enforcement Action and Sanction Required.** Legal counsel reviews the EIR to determine whether sufficient evidence exists to prove the violations alleged and, in consultation with the program office, determines whether referral for criminal prosecution, civil penalty action, or the issuance of an order of compliance is the appropriate action.

(1) If the evidence warrants referral for criminal prosecution, the referral takes priority over any other form of enforcement action, except one to address immediately an imminent hazard. If it appears that criminal prosecution may be warranted, legal counsel coordinates with AGC-300.

(2) Notice of proposed civil penalty. FAA legal counsel initiates a civil penalty action against a person who knowingly offered or accepted or transported a hazardous material in violation of the HMR by issuing a notice of proposed civil penalty under 14 C.F.R. § 13.16. The attachments to the notice are similar to those for other civil penalty assessment cases; however, the aviation safety reporting program does not apply.

(3) Time for Submission of a Response by the Alleged Violator. 14 C.F.R. § 13.16(d) requires the alleged violator to submit a response to a notice not later than 30 days after receipt of the notice. Adequate submission of a response occurs when the response is either put in the mail or personally delivered. Therefore, if on the 30th day after receipt of the notice the alleged violator places the response in the mail, the response is timely.

(4) Alternatives for Responding to Notice. In hazardous materials cases, an alleged violator has the same options to respond to the notice as listed in chapter 6, subparagraphs 16.f.(1)-(4).

(5) Reevaluating the Case. When an alleged violator submits evidence, information, or views in writing or in person at an informal conference, legal counsel considers the new evidence or information and reexamines the notice. Allegations that are disproved are withdrawn. If the sanction proposed is determined to be excessive, it is reduced appropriately. Legal counsel does not increase the sanction proposed in the notice as a result of the informal procedures.

(6) Final Notice of Proposed Civil Penalty. If an alleged violator does not timely respond to a notice of proposed civil penalty, or if during informal procedures no agreement is reached for resolving a case and no timely written request for a hearing has been received, legal counsel issues a final notice of proposed civil penalty. This gives an alleged violator one last opportunity to request a hearing. The final notice sets forth the facts alleged, the regulations violated, and the action proposed. The allegations or proposed penalty may be modified based on information received during informal procedures. The final notice offers the following options: pay the amount of penalty proposed in the final notice, pay an agreed-upon amount, or request a hearing.

(7) Order Assessing Civil Penalty. An order assessing civil penalty imposes a specified penalty regardless of whether payment of such penalty has been received by the FAA. The order sets forth the findings of fact, the findings of regulations violated, and the amount of the penalty assessed. Legal counsel issues an order assessing civil penalty in the following situations:

- When the person charged with the violation submits, or agrees to submit, the proposed civil penalty or an agreed-upon amount. (If the FAA has received payment, receipt of the amount is acknowledged in the order.)
- When the person charged with a violation does not request a hearing within 15 days from receipt of the final notice of proposed civil penalty.

If an administrative law judge finds that a violation occurred and determines that a civil penalty is warranted, in an amount found appropriate by the judge, and that decision is not timely appealed, the initial decision becomes an order assessing civil penalty. Similarly, if on appeal the FAA decisionmaker issues a final decision finding that a violation occurred and a civil penalty is warranted, and timely petition for judicial review is not filed, the Administrator's decision is considered an order assessing civil penalty.

(8) Service of the Notice, Final Notice, or Order. Legal counsel mails the notice, final notice, or order to the individual violator or to the president if the alleged violator is a corporation or company. After that, the corporation or company may, in writing, designate another person to accept service of documents in that civil penalty action. Legal counsel sends the notice, final notice, or order by regular mail and by either certified mail, return-receipt requested, or registered mail. For certificate holders, legal counsel sends the notice, final notice, or order to the current address of record. If the regular mail is returned or the certified letter or registered letter is returned as undeliverable (because it is addressed incorrectly or the party has moved and left no forwarding address), then legal counsel corrects the address or obtains a new address and resends the notice, final notice, or order to the correct address by regular mail and either certified mail, return-receipt requested or registered mail. If the certified letter or registered letter is refused or returned unclaimed but the regular mail is not returned, then there is a presumption of service and legal counsel does not resend the notice, final notice, or order. If legal counsel delivers the notice, final notice, or order in person, then he or she documents the delivery in the file.

(9) Hearings. When a hearing is requested, legal counsel files a complaint with the hearing docket clerk not later than 20 days after receipt of the request. The complaint sets forth

the agency's allegations of facts and violations, and the civil penalty sought. Legal counsel suggests a location for the hearing when he or she files the complaint. Any hearing is held in accordance with the Rules of Practice in FAA Civil Penalty Actions in subpart G of 14 C.F.R. part 13. The administrative law judge issues an initial decision. The legal office that issued the complaint generally is responsible for representing the FAA at the evidentiary hearing before an administrative law judge. Where the complaint was issued in one region but the hearing is scheduled to be held in another region, the case may be transferred to the region where the hearing is to be held, if the affected regional counsel agrees.

(10) Appeals to the FAA decisionmaker. Either party may appeal an initial decision issued by an administrative law judge to the FAA decisionmaker, by filing a notice of appeal within 10 days after an oral decision is entered on the record or a written decision is served on the parties. Each party has an opportunity to submit a brief. The appeals are handled in accordance with chapter 6, paragraph 4. The FAA decisionmaker's decision and order is the final FAA order in the case.

(11) A respondent may seek judicial review of an FAA decisionmaker's decision and order under 5 U.S.C. § 704 and 28 U.S.C. § 1331 in an appropriate U.S. Court of Appeals. AGC-300 handles the appeal.

#### **19. Civil Penalties in Excess of Assessment Authority Limits of \$50,000 or \$400,000.**

**a. General.** When the amount in controversy in a case exceeds the applicable assessment authority limit, FAA legal counsel processes the case under 49 U.S.C. § 46301(d) (4) and 14 C.F.R. § 13.15 regardless of whether the case may eventually be compromised for less than these amounts. (There are no assessment authority limitations for hazardous material and commercial space transportation cases.) For violations occurring on or after December 12, 2003, the jurisdictional limits are \$50,000 for cases involving individuals and small business concerns, and \$400,000 for cases involving other persons. For violations that occurred before December 12, 2003, the jurisdictional limit is \$50,000 for all cases. In cases that exceed these limits, the FAA has no authority to assess a civil penalty. Under 49 U.S.C. § 46301(d) (4) and 14 C.F.R. § 13.15, the FAA proposes to the alleged violator an amount which the FAA would accept to settle the case. If no settlement agreement is reached, the FAA refers the matter to a U.S. attorney for prosecution in U.S. district court. The alleged violator has a right to a jury trial.

#### **b. Initial Civil Penalty Action.**

(1) General. Except when a case is referred directly to a U.S. attorney, FAA legal counsel initiates a civil penalty by issuance of a letter advising the alleged violator of the facts and regulations involved in the incident. The letter contains a statement of the charges and the statutory or regulatory sections alleged to be violated.

(2) Language. Because the Administrator has no authority to assess a civil penalty over the assessment authority limits, but only to settle or refer the matter to a U.S. attorney, all civil penalty letters and other correspondence or documents referring to the FAA's action in such

cases are phrased to read that the FAA *would accept (a specified amount) in settlement* rather than *impose* or *assess* a civil penalty.

(3) Attachments to letter. An information sheet and a reply form are sent with the civil penalty letter. In the information sheet, the alleged violator is advised of the alternatives that may be taken in response to the letter. On the reply form, the alleged violator may elect from the alternatives. Alternative 1 is to pay the civil penalty. Alternative 2 is to submit information or material in answer to the charges. Alternative 3 is to request an informal conference with legal counsel. Alternative 4 is to request that the matter be decided by a U.S. district court. Alternative 5 is to prove entitlement to waiver of penalty under the aviation safety reporting program.

**c. Alternatives for Responding to Civil Penalty Letter.** Following receipt of a civil penalty letter, an alleged violator may answer the charges to FAA legal counsel, orally or in writing, to explain, mitigate, or deny the violation, or show extenuating circumstances. An oral presentation is generally in the form of an informal conference.

**d. Settlement.**

(1) When the amount suggested in the civil penalty letter, or a lesser amount believed acceptable on consideration of additional facts is submitted, the alleged violator is informed in writing that the FAA accepts the offer in full settlement.

(2) Unless otherwise provided in a settlement agreement, the civil penalty settlement letter acknowledges that the settlement does not constitute an admission or finding of any violation.

(3) If the alleged violator wants to submit the suggested offer, arrangements may be made, if necessary, to pay the amount in reasonable installments. The alleged violator signs a promissory note for the amount of the settlement.

**e. Referral to U.S. Attorney.**

(1) FAA legal counsel refers civil penalty cases to the appropriate U.S. attorney when unable to settle them, and the cases should not otherwise be closed. When required for aviation safety, FAA legal counsel may refer the case directly to a U.S. attorney without seeking settlement.

(2) In the letter of referral, legal counsel sets out a summary of the facts, an analysis of the violations involved, a summary of action taken before referral, a statement of the amount that would be acceptable to the FAA in settlement, and any additional information necessary to give the U.S. attorney full information about the case. Legal counsel forwards, with the letter, a copy of the case file, including the violation report and any other available evidence. Legal counsel prepares and includes a draft of a complaint. In the letter of referral, legal counsel also offers assistance to the U.S. attorney in the preparation or trial of the action.

(3) Amount sought in complaint. When a case is referred to a U.S. attorney, it is necessary for all regulations believed violated to be cited in any complaint. The dollar amount sought in the complaint need not be limited to the amount sought in the civil penalty letter. Following initial referral of a civil penalty case to a U.S. attorney, legal counsel conducts periodic follow-up inquiries to obtain current information on the status of the case and to remind a U.S. attorney of our continuing interest in the matter. FAA legal counsel requests copies of all pleadings filed by the parties. In those cases where a U.S. attorney is unable to settle the case, and files a complaint, legal counsel volunteers assistance in preparation for trial.

(4) In those instances in which a U.S. attorney declines to file suit, legal counsel will usually be given a statement of the reasons. If legal counsel disagrees, legal counsel consults further with the U.S. attorney's office. If legal counsel ultimately is unable to persuade the U.S. attorney's office to take action and believes the decision to be erroneous, the matter is referred to the Assistant Chief Counsel for Enforcement for discussions with the Department of Justice.

## **20. Other Enforcement Actions Reviewable by U.S. Courts of Appeals.**

**a. Authority.** In carrying out duties and responsibilities under 49 U.S.C. subtitle VII, the Administrator has the authority to issue orders other than those prescribed by 49 U.S.C. § 44709. *See* 49 U.S.C. § 40113. These include orders of compliance, cease and desist orders, and orders of denial of FAA certificates (other than airman certificates). These orders may be judicially enforced under 49 U.S.C. § 46106. When appropriate, the Administrator's emergency authority under 49 U.S.C. § 46105 may be used in issuing such orders.

**b. Procedures.** Such orders may be issued by the Chief Counsel, a Deputy Chief Counsel, an Assistant Chief Counsel, or a Regional Counsel under the procedures set forth in 14 C.F.R. § 13.20. These procedures provide for notice to the person subject to the proposed order and opportunity for a formal hearing before a hearing officer under 14 C.F.R. subpart D before the issuance of an order, except in emergency cases. In addition, these procedures provide for an appeal of orders issued by a hearing officer to the Administrator, who, after review, may issue a final FAA order.

**c. Cease and Desist Orders, Orders of Compliance, and Injunctions.** Whenever FAA investigative personnel determine that a regulated person is continuing to violate the statute or regulations despite advice to come into compliance, they bring the matter to the attention of program office management and legal counsel to consider the appropriateness of issuing a cease and desist order, an order of compliance, or initiating action in U.S. district court for injunctive relief. Before such action is taken, legal counsel coordinates the action with AGC-300.

### **d. Injunctions.**

(1) General. 49 U.S.C. § 46106 authorizes the Administrator to bring a civil action in a U.S. district court to enforce any provision in 49 U.S.C. subtitle VII, part A, or any rule, regulation, requirement, or order issued under that law or any term, condition, or limitation of any certificate or permit issued under the 49 U.S.C. subtitle VII, part A, by the issuance of an

injunction or other process, restraining the violator from further violations. 49 U.S.C. § 46107 authorizes any U.S. attorney, on the request of the Administrator, to file such a civil action.

(2) Responsibility of legal counsel. In carrying out the Administrator's enforcement program, legal counsel has the responsibility for using available legal procedures that may be required for aviation safety and the public interest. The FAA may request an injunction, for example, in situations in which an airman knowingly continues to operate an aircraft without the proper certificate, in violation of the FAA's regulations. In such cases, where FAA legal enforcement actions have failed to deter violations, legal counsel may make appropriate referrals for initiation of injunction proceedings.

(3) Referral procedures. The Assistant Chief Counsel for Enforcement and Regional Counsel refer requests for injunctions to the U.S. attorney in the proper judicial district. A request for a civil penalty ordinarily accompanies a request for an injunction involving the same conduct. Cases not involving civil penalty proceedings are referred with a statement of the specific reasons for seeking an injunction. While the U.S. attorneys have been authorized to accept injunction requests directly from the Regional Counsel, rather than through the Department of Justice, they have not been delegated authority to obtain injunctions without prior approval by the Civil Division, Department of Justice, when the case does not involve a civil penalty under 49 U.S.C. § 46301. In such cases, a copy of legal counsel's referral letter to the U.S. attorney, including a copy of any attachments, is sent to the Assistant Attorney General, Civil Division, Department of Justice, Washington, D.C. 20530, who will decide whether to authorize the U.S. attorney to seek an injunction. FAA legal counsel offers to assist in the preparation and trial of the case.

#### **e. Seizure of Aircraft.**

(1) General. An aircraft may only be seized under 49 U.S.C. § 46304 if the aircraft was involved in the violation for which the civil penalty is incurred. Seizure action, when appropriate, may be taken regardless of the status of the investigation or legal processing of the violation. Because it is such an extraordinary remedy, seizure of an aircraft ordinarily occurs where the violation is particularly egregious, for example, use of the aircraft in a continuing violation.

(2) Issuance of civil penalty action. An aircraft may be seized after a civil penalty action is issued or when the issuance of such an action is contemplated. In the latter case, if immediate action is essential, it is not necessary that a civil penalty action be issued before seizure, because the written notice of seizure to the registered owner of the aircraft serves to advise the owner of the violations alleged and the associated liabilities. However, FAA legal counsel issues a civil penalty action as soon as practicable. If the aircraft is seized after a civil penalty has been administratively or judicially assessed, another civil penalty action need not be issued.

(3) Coordination. Legal counsel coordinates with AGC-300 before an order of seizure is issued.



(4) Order of seizure. An order of seizure may be issued by the Administrator, the Chief Counsel, or a Regional Administrator. The order of seizure is directed to the person ordered to seize the aircraft. Seizure may be made by a state or federal law enforcement officer or by an FAA aviation safety inspector. The order must:

- Include the finding that the aircraft has been involved in one or more violations;
- Properly identify the aircraft by type and registration number;
- Identify the registered owner of the aircraft by name and address; and
- State that the aircraft is subject to a lien because of the violations described.

(5) The order directs the seizing official to seize and place the aircraft in the nearest available public storage facility within the judicial district in which seizure is made. If the aircraft is seized after a civil penalty has been administratively or judicially assessed, the order reflects that a judgment was issued against the owner or person in command for a violation in which the aircraft was involved. The order must designate the person seizing the aircraft, or other appropriate person, as its custodian.

(6) Procedure. On receiving an order of seizure, the person directed to seize an aircraft proceeds as in chapter 6, subparagraphs 20.e. (7)-(16). These procedures are guidance for FAA personnel in seizing aircraft. They are not intended to be all-inclusive or applicable to every situation. In each instance, legal counsel should be consulted for guidance.

(7) Take appropriate steps to locate the aircraft. This is done discreetly so as not to alert the owner of the impending seizure to avoid movement of the aircraft from the jurisdiction of the court or to avoid hostile or violent acts by the owner of the aircraft when it is seized.

(8) Take possession of the aircraft as soon as possible and place it in the nearest public storage facility in the judicial district where it was seized. The logistics office provides advice and assistance in obtaining public storage.

(9) If the aircraft is known to be in a hangar, arrangements are made for access to the hangar. If it appears that access cannot be gained voluntarily, legal counsel is consulted on authorization to enter the hangar.

(10) Once access to the aircraft is gained, an inventory of all equipment, including avionics, and other property on board, is made immediately. Any damage is specifically documented. If possible, detailed color photographs are taken.

(11) Once the aircraft has been seized and the aircraft placed in storage, copies of the notice of seizure are placed on the aircraft on or near each door and elsewhere so they are visible from all sides. Additionally, the aircraft is physically restrained from moving. This may be done by wrapping a locked chain in a figure 8 around the propeller, if any, or by locking the chain from the airplane to a tie down. If the airplane is in a single hangar, the door is padlocked and a notice of seizure placed on the hangar door.

(12) Appropriate arrangements are made for preserving the aircraft.

(13) Immediately after seizing the aircraft, the individual who seized it notifies the Regional Counsel by telephone.

(14) Appropriate arrangements are made to permit the owner or operator to dispose of cargo on the aircraft.

(15) When an aircraft is released from seizure, the owner is asked to inspect the aircraft and sign a release. Any damage the owner claims occurred during the period of seizure is documented.

(16) Immediately upon release of the aircraft, the Regional Counsel is notified. The release signed by the owner is mailed to the Regional Counsel by certified mail, return-receipt requested, or registered mail.

(17) Concurrently with issuing the order of seizure, or immediately after that, a written notice of seizure and a copy of 14 C.F.R. § 13.17 are sent by regular mail and either certified mail, return-receipt requested, or registered mail, to the registered owner of the seized aircraft, and to each person shown by FAA records to have an interest in the seized aircraft. The notice states the time, date, and place of seizure; the name and address of the custodian of the aircraft; the reasons for the seizure, including the violations believed or judicially determined to have been committed; and the amount that may be tendered as a compromise of a civil penalty or payment of a civil penalty administratively or judicially assessed. The amount includes the costs of seizure, storage, and maintenance. If the aircraft was seized after a civil penalty had been assessed, the notice of seizure to the registered owner reflects the assessment and a copy of the judgment or order is attached.

**f. Judicial Proceedings.** Concurrently with issuing the order of seizure, legal counsel reports by telephone to the U.S. attorney for the district in which the aircraft is being seized and after that sends a written report requesting the initiation of proceedings to enforce a lien against the seized aircraft. A copy of the notice of seizure is included in the report to the U.S. attorney. If the aircraft is being seized before the institution of an action to collect a civil penalty, a draft libel is also sent to the U.S. attorney.

**g. Release of Seized Aircraft.**

(1) An order releasing a seized aircraft is issued by the person who ordered the aircraft seized, whenever:

- The registered owner or other violator pays a civil penalty compromise or assessment and the costs of seizure, storage, and maintenance of the aircraft;
- the aircraft is seized under an order of a federal district court in proceedings *in rem* to enforce a lien against the aircraft;
- The U.S. attorney notifies the FAA of a refusal to institute such proceedings; or
- A bond in the amount and with the sureties prescribed by the FAA and the district court having jurisdiction of the action is deposited, conditioned on

payment of the civil penalty or the compromise amount, and the costs of seizure, storage, and maintenance of the aircraft.

(2) Copies of the order of release are sent to all those to whom notice of seizure was given and to the U.S. attorney.

(3) Release is carried out by the FAA employee who seized the aircraft, or who is responsible for storing it, or another appropriate person.

## **21. Orders of Compliance, Consent Orders of Compliance, Civil Actions to Require Compliance as Authorized under the Federal Hazardous Materials Law.**

**a. Authority.** 49 U.S.C. § 5121(a) provides the Secretary of Transportation, in performing duties and responsibilities under the federal hazardous materials law, with the general authority to investigate, make reports, issue subpoenas, conduct hearings, require the production of records and property, take depositions, and conduct research, development, demonstration, and training activities. Besides civil penalties issued under 49 U.S.C. § 5123, actions may include orders of compliance and consent orders of compliance, which are necessary to carry out the provisions of 49 U.S.C. § 5101 through 49 U.S.C. § 5127. 49 U.S.C. § 5121(a) contains the authority for conducting proceedings related to the issuance of most orders; 49 U.S.C. § 5122(a)-(b) provide the authority for the Secretary to act in an emergency. Under 49 C.F.R. § 1.47(j), the Administrator has been delegated the authority to carry out the functions vested in the Secretary by 49 U.S.C. §§ 5121(a), (b), and (c), 5122, 5123, and 5124 relating to investigations, records, inspections, penalties, and specific relief, with particular emphasis on the transportation or shipment of hazardous materials by air, including the manufacture, fabrication, marking, maintenance, reconditioning, repair or test of containers which are represented, marked, certified, or sold for use in the bulk transportation of hazardous materials.

**b. Responsibility of Legal Counsel.** In carrying out the Administrator's hazardous materials enforcement program, legal counsel uses all available legal procedures as necessary. FAA civil action in the appropriate U.S. district court for injunctive relief or to suspend or restrict the transportation of the hazardous material responsible for an imminent hazard, or to eliminate or ameliorate the hazard is not used often. Such actions may be pursued only where there is a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury, or endangerment.

**c. Procedures for Filing a Civil Action.** Legal counsel advises AGC-300 before requesting the Environmental Enforcement Section, Environmental and Natural Resources Division of the Department of Justice, or a U.S. attorney to bring a civil action seeking injunctive relief or to suspend or restrict the transportation of the hazardous material responsible for the hazard, or to eliminate or ameliorate the hazard. When requesting the filing of a civil action, FAA legal counsel offers to assist in the preparation and trial of the case.

**d. Order of Compliance Involving Other than Imminent Hazard.** 49 U.S.C. § 5121(a) allows the Administrator, after notice and opportunity for hearing, to issue an order to compel

compliance if the Administrator finds that a person is violating chapter 51 or a regulation issued under that chapter. Proceedings for issuance of an order of compliance are described in 14 C.F.R. part 13, subpart E. An order of compliance contains findings regarding the nature and the extent of the violation, and directs the remedial action to be taken to achieve compliance. It may be used alone in circumstances where a person is not in compliance with regulatory requirements, but civil penalty action would be premature or otherwise inappropriate. It may also be appropriate with a civil penalty when there is a continuing violation. Orders of compliance may allow for a period of time within which a person must come into compliance; however, this does not excuse violations that occur in this interim period. Civil penalty action may be appropriate for those interim violations.

(1) Delegation. The authority to issue orders under 14 C.F.R. § 13.71 is generally exercised by the Chief Counsel; Deputy Chief Counsel for Operations; Assistant Chief Counsel for Enforcement; Assistant Chief Counsel for Europe, Africa, and the Middle East Area Office; and each Regional Counsel.

(2) Notice and opportunity for a hearing. Notice must be provided to an individual before issuance of an order. The opportunity to reply in writing or request a hearing before a hearing officer under the provisions of 14 C.F.R. part 13, subpart D must be provided to the individual before an order is issued. In addition, 14 C.F.R. § 13.83(a) provides for an appeal to the Administrator from orders issued by a hearing officer. 14 C.F.R. §§ 13.71 through 13.75, 13.79, and 13.83 through 13.87 prescribe procedures for issuance of the order of compliance.

(3) Judicial review. A person disclosing a substantial interest in a final administrative order issued by the Administrator may seek judicial review of that order in the appropriate U.S. district court, under 5 U.S.C § 704 and 28 U.S.C. § 1331.

(4) Consent order of compliance. Under 14 C.F.R. § 13.77, the FAA may issue a consent order of compliance to dispose of a case that has been initiated by a notice of proposed order of compliance. Before the issuance of an order of compliance, the official who issued the notice and the alleged violator may agree to dispose of the case by issuance of a consent order of compliance. The alleged violator's proposal for a consent order of compliance must include: a proposed order of compliance; an admission of all jurisdictional facts; an express waiver of the right to further procedural steps and of all right to judicial review; and an incorporation by reference of the notice and an acknowledgment the notice may be used to construe the terms of the order of compliance. In cases in which a request for a hearing has been made, the consent order requires the request for a hearing be withdrawn from the hearing docket and the case be dismissed.

(5) Judicial enforcement. 49 U.S.C. § 5122 provides for the enforcement of the federal hazardous material law and regulations or orders issued under that statute. At the request of the Administrator, the Attorney General may bring a civil action in an appropriate U.S. district court to enforce 49 U.S.C. subtitle III, chapter 51 or a regulation prescribed or order issued under that chapter. The U.S. district courts may award any relief that is necessary or appropriate, including mandatory or prohibitive injunctive relief, and punitive damages.

### **e. Imminent Hazard.**

(1) Authority. The Administrator has delegated authority under 49 U.S.C. § 5122, to bring an action in U.S. district court if he or she has reason to believe that an *imminent hazard* exists.

- An *imminent hazard* exists, "if there is substantial likelihood that death, serious illness or serious personal injury will result from the transportation by air of the hazardous material before an order of compliance proceeding, or other administrative hearing or other formal proceeding to abate the risk of the harm, can be completed." (*See* 14 C.F.R. § 13.25(b)).

- The action may suspend or restrict the transportation of the hazmat responsible for the hazard, or eliminate or ameliorate the hazard.

(2) Delegation. The Administrator has the delegated authority under 49 U.S.C. § 5122(b)(1) to bring the action, or he or she may request the Attorney General to bring the emergency action under 49 U.S.C. § 5122(b)(2). The authority to bring the action or request the Attorney General to do so is delegated to the Chief Counsel; Deputy Chief Counsel for Operations; Assistant Chief Counsel for Enforcement; Assistant Chief Counsel for the Europe, Africa and Middle East Area Office; and each Regional Counsel.

(3) Procedures for filing a civil action. The action may be brought in the judicial district in which the person does business or the imminent hazard exists. The Regional Counsel advises AGC-300 before requesting the Environmental Enforcement Section, Environmental and Natural Resources Division of the Department of Justice, or a U.S. attorney to bring a civil action seeking injunctive relief or to suspend or restrict the transportation of the hazardous material responsible for the hazard, or to eliminate or ameliorate the hazard. In such a case, a copy of legal counsel's referral letter to the U.S. Attorney, including all attachments, is sent to the Assistant Attorney General, Civil Division, Department of Justice, Washington, DC 20530, who will decide whether to authorize the U.S. attorney to seek an injunction or proceed against the imminent hazard. The Regional Counsel offers to assist in the preparation and trial of the case. No FAA person initiates an action in a U.S. district court without the express approval of the Chief Counsel, coordinated through AGC-300, and after regional coordination with the U.S. attorney's office or U.S. Attorney General's office, as appropriate.

## **22. Criminal Penalties for Hazardous Materials Violations.**

**a. Handling of Criminal Cases.** In reviewing an EIR, FAA legal counsel may determine there is evidence of a criminal violation. In such a case, legal counsel refers the investigative file, including all available evidence, to the FAA's Office of Internal Security and Investigations, AIN-1, which will contact the DOT OIG. Security and the OIG will determine whether the case should be referred to the Department of Justice with a recommendation for criminal prosecution. The Department of Justice, through its Environmental Crimes Section and U.S. attorneys, has responsibility for prosecution of all criminal violations involving the transportation of hazardous materials. FAA legal counsel may assist the Department of Justice in handling the cases.

**b. Parallel Civil Case.** Sometimes an investigative file may contain evidence of regulatory violations that warrant FAA legal enforcement action (for example, civil penalty, certificate action, order of compliance), as well as evidence of a criminal violation. When FAA legal counsel determines that issuing an order of compliance or other remedial action is required for aviation safety, such action is coordinated with AIN-1, OIG, and the Department of Justice. However, remedial action ordinarily is not delayed because of the criminal prosecution. FAA civil penalty actions may be delayed, when requested by the Department of Justice, but FAA legal counsel requests that the U.S. attorney expedite the handling of the criminal case.

**23. Certificate Actions in Response to a Security Threat.** 49 U.S.C. § 46111 requires the FAA to issue an order amending, modifying, suspending, or revoking any FAA-issued certificate if the Administrator is notified by the Under Secretary of Border and Transportation Security of the Department of Homeland Security (DHS) that the certificate holder poses, or is suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety. AIN-1 will be notified upon receipt of a request by the Under Secretary of Border and Transportation Security to issue an order amending, modifying, suspending, or revoking a certificate issued by the FAA. A citizen who receives such an order may appeal from the order to a panel of the Transportation Security Oversight Board following a hearing before a DHS administrative law judge.

**24. Oral or Written Emergency Orders in Alcohol and Drug Cases.** If necessary to protect the safety of the traveling public and in furtherance of the public interest, the Administrator, the Chief Counsel, the Deputy Chief Counsel, the Assistant Chief Counsel for Enforcement, and each Regional Counsel may issue an emergency order, either orally or in writing, to prohibit an air carrier from operating a particular flight with a particular crewmember or crewmembers or to suspend an airman certificate to ensure the safety of flight of civil aircraft in air commerce. The Regional Counsel advises the Regional Administrator where practicable. Any order is in writing, if time permits. The inspector may communicate orally the contents of a written order to the crewmember, the air carrier, or both. FAA legal counsel may issue an order orally, which is communicated by the inspector, if necessary to prevent operations detrimental to aviation safety, but the order is reduced to writing as soon as possible. Each oral or written order states the grounds for issuing the order, and notifies the respondents of any right of appeal. Any order, whether written or oral, is served on the crewmember, the air carrier, or both, named in the order at the earliest possible time.

**25. Timeliness Goals.** For the processing of legal enforcement actions, FAA legal counsel's goal is to initiate a legal enforcement action on average within 60 days of receipt of the EIR. If an alleged violator requests an informal conference in response to a proposed enforcement action, legal counsel's goal is to hold that informal conference on average within 60 days of receipt of the request and to issue either a final notice of proposed civil penalty or order on average within 60 days of the date of the informal conference. If an alleged violator submits additional information in response to a proposed enforcement action, legal counsel's goal is to consider that information and issue either a final notice of proposed civil penalty or order on average within 120 days of the date the legal enforcement action is initiated. If an alleged violator fails to respond to a proposed enforcement action, legal counsel expects to issue a final notice of proposed civil penalty or order on average within 60 days of the date the legal enforcement action is initiated.

## 26. Procedures for Bankrupt Respondents.

**a. Purpose.** This paragraph discusses the procedures for handling of bankruptcy matters by FAA legal counsel.

**b. General.** The filing of a petition under chapters 7 (Liquidation) and 11 (Reorganization), 12 (Farmers with Regular Annual Income), and 13 (Individuals with Regular Incomes) of the Bankruptcy Code sets in motion a system that is designed to resolve the financial affairs of the debtor. The purpose of the bankruptcy petition is to establish for a U.S. bankruptcy court, creditors, and trustee that the debtor is qualified to be a debtor under the particular Bankruptcy Code chapter proceeding commenced and that the proceeding has been filed in the district with proper venue. The jurisdiction of the U.S. bankruptcy courts is very broad and applies to FAA legal enforcement actions seeking payment of civil penalties.

**c. Automatic Stay.** Once a bankruptcy proceeding is commenced through the filing of a petition, under 11 U.S.C. § 362(a), all creditor activity to collect debts, obtain judgments, or obtain property of a debtor to satisfy a debt is stopped. Under 11 U.S.C. § 362(b) (4), however, the filing of the petition does not operate as a stay of "... an action or proceeding by a governmental unit ... to enforce such governmental unit's police or regulatory power." The purpose of the automatic stay, which is designed to stabilize the status of the debtor's assets, is to facilitate the orderly administration of the debtor's estate. Thus, legal counsel can proceed with the processing of a civil penalty to enforce safety regulations as long as legal counsel clearly informs the debtor that such action is not a demand for payment. FAA actions concerning the debtor's certificate status or other compliance or safety-related actions on the part of the debtor are excepted from the automatic stay. All civil penalty actions that arise from conduct occurring before the filing of the bankruptcy petition are covered by the automatic stay and must be included in the FAA's proof of claim.

**d. Pre-Petition Claims.** Pre-petition bankruptcy claims are claims arising on or before the date the alleged violator files a petition in bankruptcy. Thus, pre-petition claims include all violations (whether or not the civil penalty action document has been issued) that occurred on or before the date the petition in bankruptcy was filed. For example, if an air carrier filed a petition in bankruptcy on April 5, 2004, pre-petition claims would include any violations that occurred on or before April 5, 2004.

(1) The FAA files a single proof of claim specifying all pre-petition claims, which can be amended, with the appropriate bankruptcy court. The Regional Counsel in the region holding the certificate of the debtor is responsible for preparing and filing the proof of claim. If the debtor is a certificated pilot or noncertificated individual, the region in which he or she resides is responsible for preparing and filing the proof of claim. If the debtor is a noncertificated business entity, the region in which its principal place of business is located is responsible for preparing and filing the proof of claim.

(2) The Regional Counsel's office responsible for filing the proof of claim determines what civil penalty actions, initiated and uninitiated, exist to ensure the proof of claim that is filed represents all outstanding claims of the FAA. The responsible Regional Counsel notifies all

Regional Counsel that a particular bankruptcy petition has been filed. Some cases may be in the investigative stage and, therefore, have not yet reached legal counsel but are documented in the EIS. Regional Counsel, other than the Regional Counsel responsible for filing the proof of claim, notify the responsible Regional Counsel if they have any civil penalty actions or any other claims pending against the debtor. Before filing the proof of claim with the appropriate bankruptcy court, the responsible Regional Counsel requests the Department of Justice (DOJ) Commercial Litigation Section attorney or the assigned U.S. attorney to review the proof of claim. Once the review has been coordinated, and unless otherwise instructed by DOJ, the responsible Regional Counsel files the proof of claim and forwards a copy to AGC-300.

(3) The Regional Counsel responsible for preparing and filing the proof of claim provides AGC-300 with the following information:

- Name of the bankruptcy petitioner;
- The date the bankruptcy petition was filed and the bankruptcy court in which it was filed;
- Bar date set by the bankruptcy court for filing the proof of claim;
- Copy of the notification given to all Regional Counsel that a bankruptcy petition has been filed;
- Name of the legal counsel handling the matter;
- Amount of the claim;
- A copy of the proof of claim that was filed;
- A contact point for the bankruptcy matter.

(4) All open civil penalty actions, initiated and uninitiated, where the violations occurred before filing the bankruptcy petition, are consolidated into a single proof of claim, which contains the total amount owed under the FAA's claim. The bankruptcy court sets the date for filing the proof of claim. Generally, the bar date for governmental entities is 180 days after the bankruptcy petition is filed. *See* 11 U.S.C. § 502(b) (9). However, DOJ counsel may want the FAA to file its proof of claim by the general bar date for strategic purposes or to ensure the bankruptcy process proceeds rapidly. Regional Counsel follows DOJ's lead in such cases. The bankruptcy court ordinarily provides a specific proof of claim form for a particular bankruptcy case and DOJ ordinarily forwards the appropriate form to the FAA. However, the forms are always available through the bankruptcy court.

(5) The proof of claim may be amended if all necessary information is not readily available at the time the proof of claim is filed. For initiated cases, civil penalty action documents (that is, civil penalty letters and notices of proposed civil penalty) are filed as attachments to the proof of claim. If legal counsel cannot initiate a civil penalty case before the bar date set by the bankruptcy court, Regional Counsel prepares documentation for each such case that includes the EIR number, case type (for example, flight standards, drug abatement, hazmat), a short summary of the facts, the regulations violated, and the recommended amount of civil penalty, which is filed as an attachment to the proof of claim. As soon as possible after the proof of claim is filed, the Regional Counsel issues civil penalty action documents for the previously uninitiated cases. It may be necessary to amend the proof of claim to include these civil penalty action documents.



(6) Setoff rights are preserved in proofs of claims by attaching the following paragraph to the proof of claim:

This claim reflects the known liability of the debtor to this agency of the United States. The United States reserves the right to amend this claim to assert subsequently discovered liabilities. This agency holds subject to setoff against this claim a debt owed to the debtor in the amount of \$\_\_\_\_. The identification of any sums held subject to setoff is without prejudice to any other right under 11 U.S.C. § 553 to setoff against this claim, debts owed to debtors by this or any other federal agency.

(7) The Judicial Conference of the United States adopted a privacy policy designed to protect individuals. In accordance with that policy, amendments were made to the Federal Rules of Bankruptcy Procedure and official forms, effective December 1, 2003. The new privacy amendments concern the use of the debtor's social security number on documents. If the debtor's social security number is used on a proof of claim, an "X" is used in place of the first five numbers and only the last four digits are used.

**e. Post-Petition Administrative Claims.** Post-petition bankruptcy claims concern violations that occur after the bankruptcy petition was filed, but before the bar date for filing administrative claims. Such claims ordinarily qualify as administrative claims, and administrative claims generally are paid in full. Post-petition claims are sometimes filed on a specific form provided by the bankruptcy court. However, Regional Counsel consults the Department of Justice's Civil Division Commercial Litigation Corporate Financial Unit or the local U.S. attorney's office handling the case on how such claims should be filed. Civil penalty actions may be pursued throughout the period the debtor is in bankruptcy. To the extent a post-petition claim has not been fully recovered, legal counsel can file an administrative claim.

**f. The Role of the Enforcement Division, AGC-300.** AGC-300 is the central clearinghouse for bankruptcy matters and maintains a point of contact in each Regional Counsel Office. Often, DOJ contacts AGC-300 and needs an immediate response regarding a particular bankruptcy case. As a result, it is critical for the responsible Regional Counsel to send copies of all proofs of claim to AGC-300 for its central file. Once a bankruptcy petition is filed with a bankruptcy court, a DOJ attorney often contacts AGC-300 and provides information about the bankruptcy. Such information includes the date the respondent declared bankruptcy, any affiliates of the debtor that are included in the bankruptcy, the bankruptcy court handling the bankruptcy, and the bar date. Sometimes a U.S. attorney will contact a Regional Counsel. All air carrier bankruptcies are coordinated with DOJ or the U.S. attorney's office handling the case. FAA legal counsel may receive a bankruptcy notice about an air carrier before any contact with DOJ. In such cases, the attorney receiving the notice should contact AGC-300 and DOJ immediately.

**g. Bankruptcy Impact on Active Civil Penalty Cases.** Active enforcement cases are affected as soon as a debtor files a bankruptcy petition. If a civil penalty letter or notice of proposed civil penalty has not been issued, legal counsel issues the letter or notice before the bar

date, if possible. However, legal counsel includes the following language in all civil penalty action documents where the violations occurred before the date the bankruptcy petition was filed:

Since you have filed a chapter 11 bankruptcy petition, this is not a demand for payment to the extent prohibited by the Bankruptcy Code.

After the civil penalty action document has been issued, if further action is pursued, legal counsel continues to advise the debtor that a debt is not owed until the bankruptcy court resolves the matter.

**h. Settlement of Pre-Petition Claims.** Because the FAA is an unsecured creditor, it is paid only after secured creditors. Any remaining assets are split among the other unsecured creditors. It is important for FAA to resolve its bankruptcy claims. The amount paid on a specific claim is less significant than the finding of violation, which becomes part of the debtor's violation history. FAA does not ordinarily use compromise orders to resolve bankruptcy claims because there is no finding of violation. All settlements are coordinated with DOJ counsel or the assistant U.S. attorney assigned to the case.

**i. Setoff Funds Owning to Debtors.** No funds owed to a debtor should be released to a debtor after a bankruptcy petition is filed without obtaining approval from DOJ. FAA claims can be satisfied with funds due the debtor by other government agencies.

**j. Bankruptcy Petitions Filed by Foreign Persons.** If a foreign person commits a violation of the FAA's regulations or the DOT hazmat regulations before filing a bankruptcy petition in the bankruptcy court located in the foreign person's country, the Regional Counsel in the region in which the violation occurred is responsible for obtaining the proof of claim and preparing and filing the proof of claim with the foreign country's bankruptcy court. Regional Counsel follows the coordination procedures discussed above on preparing and filing proof of claim in U.S. bankruptcy courts. The DOJ's Office of Foreign Litigation advises, however, that pursuit of such action may be fruitless because foreign bankruptcy courts often do not extend extraterritorial recognition to confiscatory claims.

**k. Debtor's Emergence from Bankruptcy.** When a debtor emerges from bankruptcy, Regional Counsel consult the Regional Counsel responsible for filing the proof of claim or AGC-300 before proceeding with a civil penalty case. In some situations, a debtor may have paid the amount set by the bankruptcy court for the claim or participated in a settlement agreement with the FAA for the claims. If a violation is not a pre- or post-petition claim, the attorney may proceed as usual with the case.

**27. Consent Orders.** A program office and legal counsel may agree to resolve certain legal enforcement actions with a consent order. A consent order ordinarily includes an agreement that the alleged 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. A consent order, for example, may be an appropriate means for resolving several pending enforcement actions that demonstrate similar, systemic deficiencies in an air carrier's practices and procedures. In such a case, the carrier, with the agency's approval, might agree to

take prompt corrective action to cure the systemic deficiencies by making improvements to or updating procedures regarding its operations and maintenance practices. This agreement would be set forth in the consent order. A consent order may or may not contain findings of violation. A carrier's failure to fulfill the agreement within the terms set forth in the consent order ordinarily would result in imposition of the entire sanction amount.

**28. Documenting Changes in Proposed Sanctions.** Reductions in a proposed sanction occur for various reasons, for example, because an alleged violator demonstrates an inability to pay, for settlement purposes, when mitigating circumstances are presented, and when allegations are dropped. Legal counsel document in the case file any changes in a proposed sanction and the reasons that justify the change.

**29. Application of Servicemembers Civil Relief Act.** The Servicemembers Civil Relief Act (50 U.S.C. App. 501 *et seq.*) applies to FAA administrative proceedings before the NTSB and the DOT ALJs and the FAA Decisionmaker. Among other relief, this statute tolls any limitation period for the bringing of any action or proceeding in a court or before any board, bureau, commission, department, or other agency of the U.S. by or against a service member. *See* 50 U.S.C. App. 526. FAA legal counsel determines the applicability of the Servicemembers Civil Relief Act in any legal enforcement action brought against a service member.

**30. Waiver of Mandatory 49 U.S.C. § 44710 and 49 U.S.C. § 44726 Certificate Revocations or 49 U.S.C. 44703(f) and 49 U.S.C. 44726(a) Certificate Denials**

**a. Authority.**

(1) 49 U.S.C. § 44703(f) allows the FAA to reissue a certificate to an individual whose certificate has been revoked under 49 U.S.C. § 44710(b) for a drug-related offense, when the Administrator decides that issuing the certificate will facilitate law enforcement efforts. Issuance of a certificate is also permitted when the individual has been acquitted of the charges on which a prior revocation was based or when the conviction on which it was based has been reversed. 49 U.S.C. § 44710(f), allows the Administrator to waive the requirement to revoke an individual's certificate under 49 U.S.C. § 44710(b), if a law enforcement official of the U.S. or a state government so requests, and the Administrator decides that the waiver will facilitate law enforcement efforts.

(2) 49 U.S.C. § 44726(a)(2) allows the FAA to issue a certificate to a person convicted of a counterfeit parts crime or whose certificate has been revoked under 49 U.S.C. § 44726(b) or that is subject to a controlling or ownership interest of an individual convicted of a counterfeit parts crime or whose certificate has been revoked under 49 U.S.C. § 44726(b) if the issuance of the certificate will facilitate law enforcement efforts. 49 U.S.C. § 44726(f) allows the Administrator to waive the requirement to revoke a certificate under 49 U.S.C. § 44726(b) if a law enforcement official of the U.S. government requests a waiver and the waiver will facilitate law enforcement efforts.

**b. Processing a Request for a Waiver of Revocation or Denial.** When a program office or Regional Counsel's office receives a request for a waiver of revocation or denial from a law enforcement official, it follows the procedures in chapter 6, subparagraphs 30.b. (1)-(7).

- (1) The program office or Regional Counsel's office forwards the request to AGC-300.
- (2) AGC-300 reviews the request for legal sufficiency. If AGC-300 determines the request is not legally sufficient (for example, the request was submitted by a local law enforcement official), then AGC-300 advises the requester that the statutory requirements for processing a waiver request have not been met and closes the matter. If AGC-300 determines the request is legally sufficient, then it transfers the request for waiver to the National Security Coordinator Staff, ASH-60. ASH-60 contacts the headquarters office of the federal or state agency for whom the requesting official works. ASH-60 asks the headquarters office of the requester's agency to confirm, in writing, that it supports the request for waiver, and obtains further supporting information, if any, from the agency. If the headquarters office of the requesting agency does not support the request for waiver, ASH-60 asks the agency to withdraw it in writing.
- (3) If the headquarters office of the requester's agency withdraws the request, ASH-60 returns the request to AGC-300, which advises the requester that the waiver request is denied because the law enforcement agency has withdrawn its request.
- (4) If the headquarters office of the requester's agency supports the request, ASH-60 forwards the request for waiver, with all supporting information, to AVS. ASH-60 may also forward an advisory opinion for AVS and the Administrator on whether granting the waiver request would facilitate law enforcement efforts and a recommendation on whether the waiver request should be granted.
- (5) AVS evaluates the request and the supporting information. AVS may include an advisory opinion to the Administrator regarding whether it believes the certificate should be reissued or the revocation waived based on the information provided by the requesting agency. AVS forwards the waiver request and its advisory opinion, if any, to AGC-300.
- (6) AGC-300 transmits the waiver request and all accompanying documentation to AGC-1. AGC-300 includes two draft letters from the Administrator to the requesting law enforcement official; one letter provides that the waiver is granted and the other provides that the request is denied. AGC-1 forwards the waiver request and all accompanying documentation to the Administrator.
- (7) The Administrator returns the documentation to AGC-1. AGC-300 advises the office that submitted the request initially so that appropriate action is taken to effectuate the Administrator's decision.

### **31. Procedures for Recovering Certificates and Related Enforcement Action.**

**a. Issuance of a Demand Letter.** If a person does not surrender a suspended or revoked certificate, authorization, or other approval within 15 days of the date an emergency order is issued or within 30 days of the date a nonemergency order is issued, legal counsel issues a letter to the certificate holder demanding the immediate surrender of the suspended or revoked certificate, authorization, or other approval. In the demand letter, legal counsel advises the holder that failure to do so will result in civil penalty action for failure to surrender.

**b. Civil Penalty Action for Failure to Surrender.** If the holder of a certificate, authorization, or other approval fails to surrender a suspended or revoked certificate, authorization, or other approval within 15 days of the date of a demand letter is issued, legal counsel ordinarily initiates a civil penalty action against the holder for failing to surrender. Legal counsel opens a separate EIR for the civil penalty action and makes appropriate entries in the EIS. The holder is subject to a civil penalty for each day the holder failed to surrender the certificate, authorization, or other approval. If the holder was acting as a pilot, mechanic, flight engineer, or repairman when he or she committed the violations that resulted in the suspension or revocation, then the civil penalty action for failing to surrender would be within the jurisdiction of the NTSB. A civil penalty action against any other holder for failing to surrender would be within the jurisdiction of the DOT ALJs and the FAA Decisionmaker. In addition, in appropriate circumstances, revocation of certificates may be taken. An alternative to taking administrative civil penalty action is for a U.S. attorney to seek injunctive relief.

**c. Continued Failure to Surrender.** If the holder fails to surrender a certificate, authorization, or other approval after the FAA has taken civil penalty action under chapter 6, subparagraph 31.b., then FAA legal counsel refers the failure to surrender to the appropriate U.S. attorney's office and requests judicial enforcement of the FAA order of suspension or revocation and injunctive relief, if appropriate.

### **32. Procedures for the Collection of Administratively Assessed Civil Penalties.**

**a. Applicability.** This guidance applies only to the collection of civil penalties the FAA administratively assesses. The collection of judgments rendered for the FAA in federal district courts is governed by the United States Attorneys Manual and other Department of Justice policies.

#### **b. Procedures for Cases where Hearing is Not Requested.**

(1) An order assessing civil penalty and a final order of assessment (that is, after the time periods for appealing have expired) are legally collectible debts. FAA personnel immediately take steps to collect the assessed amounts once an order assessing civil penalty has been issued or the period for appealing an order of assessment has expired. To expedite the collection of civil penalties, these orders contain language that satisfies the requirements of an initial demand letter under 49 C.F.R. part 89. An initial demand letter must inform the debtor of: the amount of, and the basis for, the indebtedness and whatever rights the debtor may have to seek review within the agency; the applicable standards for assessing interest, penalties, and administrative

costs; the date by which payment is to be made, which normally should be not more than 30 days from the date the initial demand letter was mailed or hand-delivered; the possibility of referral of the debt to commercial credit bureaus and consumer reporting agencies; the possibility the debt will be forwarded to a collection agency, the General Accountability Office, the Department of Justice, or private counsel contracting with the Department of Justice for collection; and that domestic and overseas payments in excess of ten thousand dollars or more must be made by wire transfer through the Federal Reserve communications (Fedwire), to the account of the U.S. Treasury in accordance with the instructions in the demand letter. Legal counsel exercises care to ensure that orders imposing civil penalties, which are initial demand letters, are mailed or hand-delivered on the same day that they are dated.

(2) In the order assessing civil penalty or order of assessment, legal counsel advises the violator to send payment of the civil penalty to the accounting office servicing headquarters or the region where the order originated.

(3) The order assessing civil penalty or the order of assessment includes the appropriate interest rate (the published Treasury Current Value of Funds Rate, or CVF rate) in effect on the date the order is issued. The CVF rate can be obtained by accessing the website of the Department of Treasury Financial Management Service at [www.fms.treas.gov](http://www.fms.treas.gov). The order also includes the amount of the accounting office's administrative charge. 49 C.F.R. part 89 allows interest, collection charges, or late penalty charges to be waived if certain findings are made (*See* 49 C.F.R. § 89.23(e)).

**c. Procedures for Cases where Hearing is Requested.**

(1) If either an NTSB or DOT ALJ orders a respondent to pay a civil penalty, then legal counsel issues to the respondent the initial letter demanding payment after the time period for filing a notice of appeal of the ALJ's decision has expired. If the ALJ's decision is appealed to the full Board or the FAA Decisionmaker and a decision ordering payment of a civil penalty is issued in favor of the FAA, then legal counsel issues to the respondent the initial demand letter demanding payment after the 60-day period for seeking judicial review has expired.

(2) The letter demanding payment of the civil penalty must contain language that satisfies the requirements of an initial demand letter under 49 C.F.R. part 89. The letter must inform the debtor of: the amount of, and the basis for, the indebtedness and whatever rights the debtor may have to seek review within the agency; the applicable standards for assessing interest, penalties, and administrative costs; the date by which payment is to be made, which normally should be not more than 30 days from the date the initial demand letter was mailed or hand-delivered; the possibility of referral of the debt to commercial credit bureaus and consumer reporting agencies; the possibility the debt will be forwarded to a collection agency, the Government Accountability Office, the Department of Justice, or private counsel contracting with the Department of Justice for collection; and that domestic and overseas payments in excess of ten thousand dollars or more must be made by wire transfer through the Federal Reserve communications (Fedwire), to the account of the U.S. Treasury in accordance with the instructions in the demand letter. Legal counsel exercises care to ensure that the demand letter is mailed or hand-delivered on the same day that it is dated.

(3) In the letter, legal counsel advises the debtor to which accounting office the debtor must send payment of the civil penalty.

(4) The letter includes the appropriate interest rate (the published Treasury Current Value of Funds Rate, or CVF" rate) in effect on the date the ALJ's, full Board's, or FAA Decisionmaker's order became effective. The CVF rate can be obtained by accessing the website of the Department of Treasury Financial Management Service at [www.fms.treas.gov](http://www.fms.treas.gov). The letter also includes the amount of the accounting office's administrative charge. 49 C.F.R. part 89 allows interest, collection charges, or late penalty charges to be waived if certain findings are made (*See* 49 C.F.R. § 89.23(e)).

#### **d. Opening an Account Receivable.**

(1) Legal counsel immediately sends a copy of the order to the accounting office servicing their office so it can open an account receivable. The Office of Accounting through an automated system sends to the debtor the second and third demand letters required by 49 C.F.R. part 89. Through this system, the Office of Accounting notifies the debtor of the administrative charges as well as any penalties added to the debt because of delinquency.

(2) When legal counsel issues an order of assessment, he or she tracks the time frame the respondent has to request a hearing. Once a respondent's appeal rights have been exhausted, legal counsel immediately sends a copy of the order to the accounting office servicing their office so it can open an account receivable. The accounting office handles the order of assessment the same way it handles an order assessing civil penalty for purposes of debt collection. The date interest begins to run is the date the respondent's right to request a hearing expires or, if the case is appealed, once a decision is final. However, if the civil penalty is paid within 30 days from the date the respondent's right to request a hearing expires or a decision on appeal is final, no interest is assessed.

(3) If the debtor's social security number or other taxpayer identification number is available, legal counsel provides it to the accounting office in case it becomes necessary to refer a delinquent debt to a credit reporting or collection agency or the Department of Treasury Financial Management Services for cross-servicing. For certificated airmen, this information may be contained in the Comprehensive Airman Information System.

**e. Compromise Orders.** Legal counsel issues compromise orders under 14 C.F.R. § 13.16(l) only after receipt of payment or on receipt of a signed promissory note providing for installment payments. If legal counsel receives payment, he or she sends the payment and the compromise order to the accounting office immediately so it can open and close an account receivable. If the debtor executes a promissory note, legal counsel sends the note and compromise order to the accounting office immediately so it can open an account receivable. The accounting office tracks proper payment of the note and sends out any delinquency notices. Legal counsel does not delay issuance of a compromise order until all payments are received. If an installment payment plan is agreed upon, it is reflected in a promissory note, and a compromise order is issued immediately. Legal counsel sends the compromise order with the payment or promissory note so the accounting office will have a case number to use when opening the account receivable.

**f. Installment Payments.** Sometimes, the respondent may agree to pay a civil penalty, and negotiate an installment payment schedule with the attorney handling the case. In that instance, the installment payment schedule must be memorialized in a promissory note. The order assessing civil penalty, compromise order, or the order of assessment is issued immediately and sent with the promissory note that outlines the installment agreement to the accounting office. The accounting office uses the information in the promissory note to open an account receivable and notifies the debtor if the debtor becomes delinquent during the repayment period. Legal counsel does not delay issuing an order assessing civil penalty, a compromise order, or an order of assessment until payments are received; payments are to be sent to the accounting office that services the legal office that issued the order.

**g. Handling of Debt after an Account Receivable is Opened.** After the accounting office has opened an account receivable, it handles all further administrative collection efforts on the debt. Accounting personnel forward any telephonic or written inquiries they receive questioning either the amount or validity of an order to FAA legal counsel who issued the order. FAA legal counsel may compromise a debt under 31 U.S.C. § 3711(a)(2), if warranted. If a claim is compromised under 31 U.S.C. § 3711(a)(2), legal counsel notifies the accounting office and directs the debtor to send payment to the accounting office.

**h. Actions to Collect Debts.** Federal debt collection law requires all agencies to take aggressive collection action. This includes: using debt collection centers and collection agencies; reporting to credit bureaus; tax refund offset; federal salary offset; litigation; and if all else fails, reporting to the IRS, as income to the debtor, the amount of any civil penalty the agency writes off as a bad debt. FAA accounting offices may transfer to the Department of Treasury Financial Management Service any debt for collection. Any debt that has been delinquent for 180 days or more must be transferred to the FMS, unless it is a debt that is in litigation or foreclosure, will be disposed of under an approved asset sale program, has been referred to a private collection contractor for a period of time acceptable to the Secretary of the Treasury, is at a debt collection center for a period of time acceptable to the Secretary, will be collected under internal offset procedures within three years after the debt first became delinquent, or is exempt from this requirement based on a determination by the Secretary that exemption for a certain class of debt is in the best interest of the United States. The accounting office notifies the Assistant Chief Counsel for Enforcement or Regional Counsel when a debt has been collected or of any other final action it takes in collecting the debt or closing the account.

**i. Referrals to the Department of Justice.** An accounting office may request the Assistant Chief Counsel for Enforcement or a Regional Counsel that issued an order assessing civil penalty or an order of assessment to refer a debt to the Department of Justice for litigation. Legal counsel must not refer a debt less than \$2,500, exclusive of interest, penalties, and administrative costs, unless litigation to collect a smaller amount is important to ensure compliance with the FAA policies or programs; the debt is referred solely for the purpose of securing a judgment against the debtor, which will be filed as a lien against the debtor's property under 28 U.S.C. § 3201 and returned to the FAA for enforcement; or the debtor has the clear ability to pay the debt and the Government effectively can enforce payment, with due regard for the exemptions available to the debtor under state and federal law and the judicial remedies



available to the Government. Legal counsel consults the Financial Litigation Staff of the Executive Office for the United States Attorneys in the Department of Justice before referring debts less than \$2,500. To refer matters to the Justice Department, the FAA must fill out and send a Claims Collection Litigation Report and a signed Certificate of Indebtedness.

**j. Payments received by Legal Counsel.** If debtors send checks to legal counsel's office rather than the accounting office, legal counsel sends the checks to the accounting office immediately. The Assistant Chief Counsel for Enforcement and each Regional Counsel appoints one individual to be the principal contact responsible for collecting any checks sent to the legal office and for transmitting those checks to the appropriate accounting office.

**33. Violations of Foreign Regulations by U.S. Citizens or Companies.** Legal counsel for the region with geographical responsibility for the country filing the complaint processes a legal enforcement case for a violation of a foreign regulation by a U.S. citizen or company. After the completion of the case, legal counsel advises the foreign aviation authority through the Department of State of the action taken, except in the case of Canada, the contact is made directly with Transport Canada. If the program office does not refer the case to the legal office for handling, the program office advises the foreign aviation authority.

**34. Violations of FAA Regulations by Foreign Persons.**

**a. General.** Legal counsel for the region with geographic responsibility for the investigation processes a case against a foreign person who violates the Federal Aviation Regulations. Legal counsel takes legal enforcement action against an airman who commits a violation while exercising the privileges of his or her FAA airman certificate, a foreign individual who commits a passenger violation, a foreign repair station that commits a violations while exercising the privileges of a repair station certificate issued under 14 C.F.R. part 145 or a foreign air carrier operating under 14 C.F.R. part 129. All other violations committed by foreign persons, except Canadian persons, are referred to the appropriate foreign aviation authority through the Department of State. Violations committed by Canadian persons, for whom legal enforcement action is not taken, are referred directly to Transport Canada.

**b. Preparation of Referral to Foreign Authority.** To refer a case to another foreign aviation authority, FAA legal counsel prepares a letter that includes a brief factual summary of the violation, a statement of the regulations violated, and a request that Transport Canada or other foreign aviation authority advise the FAA of any action that it takes regarding the matter. FAA legal counsel sends a copy of the EIR with the referral letter.

**c. Notification of Legal Enforcement Action Taken.** FAA legal counsel advises Transport Canada directly or other foreign aviation authority through the U.S. Foreign Service Post, if appropriate, of the final action taken in a legal enforcement case against a foreign person for violating the Federal Aviation Regulations.

## Chapter 7. Sanction Guidance Policies

**1. Purpose.** This chapter provides the FAA's policies for determining an appropriate sanction once FAA enforcement personnel decide that legal enforcement action is appropriate. This chapter contains the general policy the FAA intends to apply in selecting the types of sanctions, ranges of sanctions within those types, and specific sanction amounts to impose in legal enforcement actions for typical violations of the FAA's statute and regulations. This guidance covers the parameters both for selecting sanctions and for modifying sanctions during the informal procedures. The guidance in this chapter is applied in adjudications under 49 U.S.C. §§ 44106, 44709, 44710, 44726, 44924, 46111, 46301, and 70115. Hazardous materials sanction guidance and policies are addressed in Appendix C.

### **2. General Guidelines.**

#### **a. Certificate Suspension Action and Civil Penalty Action: Sanctions for Punitive and Deterrent Purposes.**

(1) General. If a certificate holder improperly exercises the privileges of a certificate, a natural consequence of that act is to lose the privileges for a period of time commensurate with the violation. Balanced against this principle, however, the FAA considers the adverse impact that a certificate suspension could have on the public. Thus, the agency generally suspends the certificates of individual certificate holders for violations. However, the FAA usually takes civil penalty action against air carriers and airports because such actions do not disrupt service, which may adversely affect the public. Nevertheless, when the FAA determines that safety considerations warrant it, the agency will suspend the certificate of any type of certificate holder. In no case will the FAA take civil penalty action alone when remedial legal action is necessary or appropriate.

(2) Use of both punitive certificate action and civil penalty action for the same violations. The FAA generally does not take civil penalty action and punitive certificate action (that is, certificate suspension for a fixed period of time) against a certificate holder for the same conduct. If unusual circumstances warrant deviation from this practice, legal counsel consult with the Assistant Chief Counsel for Enforcement (AGC-300) before initiating the actions.

(3) Change in type of proposed sanction. The initial enforcement action reflects the agency's best assessment of the appropriate sanction for the violations alleged. After initiating the action, legal counsel ordinarily does not change the type of sanction unless additional facts or circumstances are presented to the FAA that warrant a change. If the action was coordinated under chapter 6, paragraph 3, with AGC-300 before initiation, then legal counsel coordinates any change in the type of sanction with AGC-300 before making the change.

#### **b. Legal Sanctions for Remedial Purposes.**

(1) Indefinite certificate suspension pending compliance or demonstration of qualification. Suspension action is appropriate where there is a need temporarily to

suspend the privileges of the certificate or rating pending demonstration of qualification or compliance with statutory or regulatory requirements. FAA generally uses remedial suspension when an individual does not voluntarily surrender his or her certificate pending reexamination. *See* chapter 5.

(2) Certificate revocation - general. The FAA revokes a certificate when a certificate holder lacks the qualifications to hold the certificate. The certificate holder's continued exercise of the privileges of the certificate in such circumstances would be contrary to safety in air commerce or air transportation and the public interest. Revocation is appropriate whenever a certificate holder's conduct demonstrates a lack of the technical proficiency or a lack of the degree of care, judgment, or responsibility, required of the holder of such a certificate. Orders of revocation are issued on an emergency basis when the certificate holder lacks qualification and is reasonably able as a practical matter to exercise the privileges of the certificate. Legal counsel does not allege a lack of qualifications to avoid dismissal of charges under 49 C.F.R. § 821.33, the NTSB's stale complaint rule.

(3) Certificate revocation - individuals. The FAA generally revokes an individual's certificate or rating whenever he or she demonstrates a lack of willingness or ability to comply consistently with statutory or regulatory requirements. A lack of willingness or ability to comply may be demonstrated by such things as repeated or deliberate violations or by violations that involve grossly careless or reckless conduct. Even a single violation may be sufficient to warrant a conclusion an individual lacks qualifications. The FAA ordinarily revokes all certificates of a person who commits a violation involving intentional falsification.

(4) Certificate revocation - entities. Revocation is normally appropriate when a certificate-holding entity deliberately or flagrantly violates the statute or regulations or falsifies records. Revocation also is generally appropriate when the certificate holder has committed the same or similar violations in the recent past demonstrating a lack of qualification, or when the certificate holder no longer has, and does not obtain in a reasonable time, the personnel or equipment to conduct its operation in full compliance with statutory and regulatory requirements.

(5) Mandatory certificate revocation. Under 49 U.S.C. § 44710, the FAA is required to revoke the certificates of any airman who has been convicted of violating certain federal or state statutes relating to a controlled substance when an airplane was used in the commission of the offense and the airman served as an airman, or was aboard the aircraft, in connection with commission of the offense or the facilitation of the commission of the offense. Even when there has been no conviction, revocation is required when an airman has knowingly carried out an activity punishable under these criminal statutes. The Administrator may waive the revocation if a law enforcement officer requests the waiver and the Administrator decides the waiver will facilitate law enforcement purposes. *See* 49 U.S.C. § 44710(f). Under 49 U.S.C. § 44106, the FAA also must revoke the registration certificate of any airplane used in the commission of such an offense when the use was permitted by the owner of the aircraft with knowledge that it would be used for such purpose. Under 49 U.S.C. § 44726, the FAA must revoke the certificates of any certificate holder or an individual who has a controlling or ownership interest in the holder who was convicted of a violation of federal law relating to the installation, production, repair, or sale of a counterfeit or fraudulently-represented aviation part or material or knowingly, and with the

intent to defraud, carried out or facilitated an activity punishable under such a law. The Administrator may waive that sanction to facilitate law enforcement purposes or amend, rather than revoke, a certificate under certain circumstances. *See* 49 U.S.C. §§ 44726(f) and (g).

(6) Mandatory certificate action for security concerns. Under 49 U.S.C. § 46111, the Administrator is required to issue an order amending, modifying, suspending, or revoking any FAA-issued certificate if the Administrator is notified by the Under Secretary of Border and Transportation Security (BTS) of the Department of Homeland Security (DHS) that the certificate holder poses, or is suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety. Under 49 U.S.C. § 44924, the Administrator is required, at the request of the Under Secretary of BTS, to suspend or revoke foreign repair station certificates in connection with security audits.

**3. Applicability and Exclusions.** The sanction guidance table (table) in Appendix B provides types of sanctions and general ranges of sanction amounts for violations of 49 U.S.C. subtitle VII and 14 C.F.R. parts 1-199 and 49 U.S.C. subtitle IX, chapter 701 and 14 C.F.R. chapter III. Once the agency has determined that legal enforcement action is warranted for a violation, FAA enforcement personnel use the table and paragraph 4 of this chapter, as well as any other sanction guidance in this order, to determine a proposed sanction. The matters described in chapter 7, subparagraphs 3a.-d. are some types of agency action that fall outside the scope of paragraph 3 and the table.

**a. Decisions to Take Administrative Action (Warning Notices or Letters of Correction).** An administrative action does not constitute either a formal adjudication of the incident or a finding of violation. For that reason, FAA investigative personnel do not propose a sanction using the table.

**b. The FAA's Exercise of Prosecutorial Discretion.** The decision whether to prosecute a particular case is based on a review of the evidence and relevant policy and litigation considerations. The agency exercises broad discretion in both the initial decision to bring a legal enforcement action, and in any later determination to compromise or settle a case based on various considerations. The FAA's discretion in these areas is absolute and presumed to be immune from review. *Heckler v. Cheney*, 470 U.S. 821, 831 (1985).

**c. Hazardous Materials Violations.** Actions involving violations of the federal hazardous materials transportation law, 49 U.S.C. chapter 51, or the Department of Transportation's Hazardous Materials Regulations, 49 C.F.R. parts 106 through 185. Enforcement sanction guidance for these violations is found in Appendix C.

**d. Violations by Members of the U.S. Armed Forces.** The FAA is required to forward reports of these violations to the Secretary of the department concerned under 49 U.S.C. § 46101(b), whenever the violator is acting in the performance of official duties. The FAA, however, takes remedial action in addition to referring a report when the violator, whether or not

acting in the performance of official military duties, holds an FAA certificate, and the violator's qualifications are at issue. The FAA may take punitive action against a member of the U.S. Armed Forces for a violation committed when the member is not performing official duties.

**4. Mitigating or Aggravating Factors and Elements.** The factors in chapter 7, subparagraphs 4.a. through m. have been developed over years of policy making and case adjudication. They have proven useful and appropriate for determining the seriousness of a violation and for selecting an appropriate sanction. Elements for evaluating and weighing each factor are also described. These factors and elements provide a framework for determining sanctions for violations specifically listed in the table as well as those not specifically listed. All the factors and elements, however, may not apply to each violation. Only those factors and elements that are relevant to a violation are considered in determining a sanction for the violation. This list of factors and elements is not intended to be exhaustive; other factors may be relevant as well.

**a. Nature of the Violation.** Three elements define the nature of a violation: first, whether the violation was operational or non-operational; second, whether the violation involved careless or reckless conduct; and third, whether the violation involved any special aggravating or mitigating factors.

(1) Individuals. When an individual who holds a certificate improperly exercises the privileges of that certificate, the natural consequence of that act should be loss of privileges for a period of time commensurate with the violation. The FAA, therefore, primarily uses certificate actions to enforce operational regulations against individuals who hold certificates. The potential adverse impact that certificate action may have on an individual's livelihood does not alter this principle. Non-operational violations may warrant a different type of sanction.

(2) Entities. The FAA ordinarily takes civil penalty action against a certificate-holding entity (for example, an air carrier) when it determines there would be a substantial adverse impact on the public interest from disrupted service by that certificate holder and the impact is not outweighed by safety considerations. Even when a substantial adverse impact would occur, when there is a need to prevent continuing violations or other egregious conduct by any certificate holder, when any certificate holder lacks qualification, or there is a reasonable basis to question the qualifications of any certificate holder, the FAA takes remedial action, for example, revocation or indefinite suspension, as necessary.

(3) Careless or reckless conduct. Violations that involve careless or reckless conduct in violation of 14 C.F.R. § 91.13 may warrant more severe sanctions. Carelessness connotes conduct that falls below the standard of care or prudence expected of a reasonable person, or holder of the relevant certificate, acting under the same or similar circumstances. Recklessness connotes conduct that demonstrates a gross, or even callous or flagrant, disregard for safety. Aircraft operations that do not otherwise result in a violation of a specific regulation should be evaluated in light of these standards to determine whether they constitute careless or reckless operations in violation of 14 C.F.R. § 91.13. When a person operates an aircraft in violation of a specific regulation other than 14 C.F.R. § 91.13, however, that violation constitutes a careless or reckless operation in and of itself. In these cases, the misconduct may also result in a violation of 14 C.F.R. § 91.13 if it actually or potentially endangers the lives or property of others.

When calculating the amount of sanction based on this factor, a distinction generally is drawn between instances where 14 C.F.R. § 91.13 is an independent violation and those where it is residual to another violation. When a 14 C.F.R. § 91.13 violation is residual only, a higher sanction generally is not warranted unless the conduct is also reckless.

**b. Whether the Violation was Inadvertent and Not Deliberate.** If a violation is deliberate or not inadvertent, a sanction at the upper end of the range or exceeding the range for that type of violation generally is appropriate. A deliberate violation generally warrants a sanction that is more severe than one that is just not inadvertent.

(1) Not deliberate. This element means a lack of the degree of deliberation found in intentional misconduct. Deliberate or intentional misconduct is an aggravating circumstance and includes deliberate conduct that leads to a violation as well as circumstances indicating intent to commit a violation.

(2) Inadvertence. An act is inadvertent when it is the result of both inattention and lack of purposeful choice. For example, an inadvertent act occurs when a pilot flies at an incorrect altitude because he or she misread the aircraft's instruments; however, it is not an inadvertent act when a pilot flies at an incorrect altitude as a result of choosing not to consult the aircraft's instruments or choosing not to use other available means to verify altitude. The test to be applied is whether the conduct, not the factual or legal consequences, is inadvertent and unintended. *Ferguson v. National Transportation Safety Board*, 678 F.2d 821, 828-829 (9th Cir. 1982).

**c. Certificate Holder's Level of Experience.**

(1) Level of experience refers primarily to the type of certificate and ratings held (for example, student, private, commercial, airline transport pilot, or certified flight instructor), and the number of hours flown, by the certificate holder. Certificate holders with greater levels of experience may be held to a higher standard. Thus, for example, commercial pilots may be held to a higher standard than private pilots and airline transport pilots may be held to an even higher standard than commercial pilots.

(2) In determining an appropriate sanction, the FAA may consider the extent to which the certificate holder's action deviated from the degree of care and diligence normally expected of a person with the certificate holder's level of experience. A significant deviation from the degree of care and diligence expected of the holder of that certificate may warrant a more aggravated sanction.

**d. Attitude of the Violator.**

(1) A good compliance attitude is the norm and does not warrant a reduction in sanction. A prior violation history may suggest that a person has a poor compliance disposition, which is an aggravating factor. Furthermore, a person who commits an act or omission contrary to statutory or regulatory requirements after receiving notice through a prior administrative action or counseling that such conduct is in violation of those requirements might well be regarded as having a poor compliance disposition. In evaluating compliance disposition, the FAA does not

view an alleged violator as having a poor attitude because the alleged violator fails to respond to a letter of investigation, chooses to be represented by counsel, or contests the violation.

(2) In assessing the attitude of an alleged violator, the FAA may consider the declaration of an emergency to air traffic control. When an emergency is genuine and not of the person's own making, the emergency is exculpatory under 14 C.F.R. § 91.3(b). However, this situation is distinct from the situation where a declaration of emergency is not exculpatory but is a factor that might be appropriate to consider in determining sanction. In emergency situations, the FAA views declaring an emergency to air traffic control as a sign of good judgment and a constructive attitude. When an emergency is of a person's own making, that person's declaration of an emergency may be considered mitigating in determining the sanction to be imposed for any violations committed, in much the same way it is considered mitigating if a person voluntarily reports a violation.

**e. Degree of Hazard.**

(1) The degree of hazard may be increased as a result of the interplay of the operational environment (for example, weather conditions, congested vs. sparsely populated areas) and the nature of the threat to safety (to the life or property of another, including those in the aircraft being operated, to other aircraft, or to persons or property on the surface) that the misconduct presents. The safety threat is based on the reasonably foreseeable consequences of the misconduct. For example, operating 500 feet below the minimum altitude poses a greater hazard than operating 100 feet below. Similarly, if an aircraft operator fails to comply with an airworthiness directive by operating 10 hours past a required inspection, the degree of hazard is probably not as great as when the aircraft is operated 100 hours beyond the required. And it is not mitigating when a violation does not result in actual harm; that is simply fortuitous.

(2) The sanction ranges reflect the degree of danger normally inherent in an average violation of a regulation, without aggravating circumstances. As discussed in chapter 7, subparagraph 5.b., an increase in the degree of hazard may form the basis for exceeding the sanction ranges. For example, the range for an unauthorized low flight does not assume extreme departures from required altitudes, for example, flying an airplane over a crowded assembly of persons at 50 feet

**f. Action Taken by Employer or Other Authority.** This factor ordinarily involves the following elements: whether the alleged violator's employer has taken disciplinary action and whether criminal prosecution is involved.

(1) Employment discipline. Where the violation would normally call for a certain type of enforcement action, the FAA takes that action regardless of any action taken by the violator's employer. Generally, the FAA does not credit an employer's disciplinary action toward a period of suspension the FAA imposes against the violator's certificate because of the different purposes of government-ordered, as contrasted with employer-ordered, actions.

(2) Criminal prosecution. When arising out of the same conduct, local, state, or federal prosecution does not preclude the FAA from taking appropriate remedial enforcement action; nor

does it preclude the FAA from taking appropriate punitive enforcement action. For cases where federal, state, or local authorities prosecute criminally, the FAA generally does take remedial enforcement action if that is warranted despite the criminal prosecution. However, the FAA does not generally take punitive legal enforcement action for the same conduct, unless it believes the criminal sanctions are not sufficient to provide an adequate deterrent for future violations by the violator and others similarly situated, or when the FAA wants to establish a violation history record. If the FAA decides to proceed with a punitive civil enforcement action in addition to the criminal prosecution, it generally considers the criminal penalties incurred in those proceedings in determining the appropriate amount of sanction to be sought in the FAA's punitive enforcement action.

**g. Use of a Certificate.** This factor relates to the nature or kind of activity or operation involved at the time the violation was committed. Whether the certificate holder was engaged in student, private, commercial, or airline activity bears on the severity of the sanction. Air carriers are held to the highest standard of care. Likewise, personnel engaged in air transportation are held to the highest safety standard.

**h. Violation History.**

(1) A violation-free history is the expected norm, not the exception and, therefore, is not a mitigating factor. Sanction ranges in the table generally represent the normal range of sanction for a single, first-time, inadvertent violation. Given the expected norm, a prior violation record can be evidence of a poor compliance disposition or of a pattern of disregard for the FAA's regulations, which are aggravating factors. As a result, a violation history can justify imposing a sanction at the higher end of the normal range or a sanction beyond the normal range. It might also justify revocation rather than suspension if the pattern of violation reflects a lack of qualification. In addition, a violation history might justify a certificate suspension if previously issued civil penalties have not produced the desired deterrent effect. In deciding whether a violation history justifies aggravating the sanction or changing the usual type of sanction, the FAA considers the length of time that has elapsed between violations, whether the violations involved the same or similar regulations, and whether the violations are factually similar.

(2) The following actions constitute violation history when they involve regulatory violations and become final: orders of amendment, modification, suspension, or revocation of an FAA certificate; orders assessing a civil penalty; findings of violation contained in a consent order, order of compliance or denial; and findings of violation made by a federal court. In addition, a party may agree as part of a settlement that the FAA may consider alleged violations as findings of violation for future sanction determinations.

**i. Decisional Law.** Decisions of the FAA decisionmaker represent the FAA Administrator's position on issues arising in civil penalty assessment actions, including issues regarding sanctions. The policy in this order also represents the Administrator's position on sanctions in legal enforcement actions. To the extent that this document conflicts with FAA decisionmaker decisions published before this document's issuance, the sanction guidance policy in this order supersedes those decisions. However, FAA decisionmaker decisions published after



the issuance of this document that conflict with the policy in this order supersede this document and are controlling.

**j. Ability to Absorb Sanction.** Sanctions should be deterrent. While punitive sanctions should not be unduly harsh, they should be substantial enough to prevent violators from profiting from their violations, that is, the sanction should be high enough to remove any profit incentive for violations. Penalties should never be permitted to be a cost of doing business. Air carriers, in particular, are required by law to have the financial wherewithal to operate according to established safety standards. While the FAA does not allow financial circumstances to excuse any violation, it does consider a carrier's size and financial strength in choosing the appropriate sanction amount. The difference in the penalties fixed in the law for large and small business concerns recognizes this fact. A civil penalty that may be a mere *cost of doing business* to a major air carrier might compel a small air carrier to go out of business. Therefore, the FAA uses air carrier size as one means of ensuring a relatively equivalent deterrent effect on each air carrier that violates the same FAA regulation. The resulting classification of air carriers by size and ranges of civil penalties are set forth in part one of the table. For all entities and individuals, the FAA considers ability to pay a civil penalty and the effect a civil penalty will have on a person's ability to continue in business to the extent it knows such information.

**k. Consistency of Sanction.** One of the agency's goals is to achieve relative consistency in imposing similar sanctions for similar violations. The FAA pursues this objective to assure fairness and so the sanction's impact has an equivalent degree of deterrent or disciplinary value to others similarly situated. This goal may not always be achieved, however, because of the inherently subjective nature of the exercise of judgment in setting sanctions.

**l. Whether the Violation was Reported Voluntarily.**

(1) The FAA has programs that allow persons to report voluntarily apparent violations and receive lesser enforcement action provided certain criteria are met. These programs include the aviation safety reporting program, the voluntary disclosure reporting program, and the aviation safety action program. Besides these programs, the FAA may grant special enforcement consideration under certain circumstances to a person who, incident to his or her report of another's violations, voluntarily discloses his or her own participation in the same or related violations. This special enforcement consideration may range from mitigating the sanction to determining that no enforcement action is required.

(2) If a person is not covered under one of these programs but nonetheless voluntarily reports an apparent violation to the FAA before the FAA discovers it, takes immediate action to correct the noncompliance, and works with the FAA on steps to preclude recurrence of the apparent violation, the FAA may consider such actions in mitigating the sanction for the violation.

**m. Corrective Action.** The FAA considers corrective action a mitigating factor in determining sanction provided the corrective action exceeds the minimum regulatory or statutory requirements. The amount of credit given in setting a sanction depends on the extent and timing of the corrective action, that is, how extensive was the corrective action and how quickly was it taken. Implementing new procedures that are above those required under the FAA's regulations

to prevent future violations ordinarily is considered a mitigating factor in determining an appropriate sanction. Corrective action taken after the alleged violator first becomes aware of a deficiency but before FAA discovery of the violation ordinarily warrants greater mitigation than corrective action that is taken only after the alleged violator receives notice of the FAA's enforcement action. Corrective action taken by an alleged violator that simply brings that person into compliance with the statutory or regulatory requirements is not considered in mitigation of sanction. To mitigate a sanction based on such corrective action would put at an economic disadvantage competitors who have expended the resources necessary to maintain compliance.

## **5. Use of the Table of Sanctions.**

**a. General.** Sanction determinations are not accomplished through a strict mathematical formula; rather, sanction determinations result from a judgment of where a case lies along a spectrum of gravity. Ultimately, the circumstances of each case are evaluated in terms of the needs of safety and the public interest.

### **b. Single, First-time, Inadvertent Violations.**

(1) Part II of the table specifies both the normal types of sanction (certificate action, civil penalty action, or other type) and the normal ranges within those types the FAA ordinarily seeks to impose in a legal enforcement action for a single, first-time violation that is generally inadvertent (the table includes ranges of sanctions for several violations that usually are intentional, for example, interference with a crewmember, smoking on an aircraft). In addition, the table generally reflects a presumption that the alleged violator wants to comply with the law and to remedy any noncompliance and that the alleged violator, therefore, has a constructive attitude.

(2) For factors b, d, or h of paragraph 4 (that is, inadvertent and not deliberate conduct, attitude, and violation history), the FAA does not normally deviate from the ranges listed in the table solely based on the inadvertence of the violation or on the alleged violator's good reputation, past public service, violation-free history, or constructive attitude. Any mitigating circumstances are to be found in the facts and circumstances of the violation itself.

(3) Applying ranges within a sanction type. In determining where, within each range, a sanction should be imposed, the FAA generally considers factors a, c, e, f, g, i, j, k, and m of paragraph 4 (that is, nature of the violation, level of experience, degree of hazard, action by employer or other authority, use of certificate, decisional law, ability to absorb sanction, consistency of the sanction with similar cases, corrective action), to the extent they are applicable or relevant. When determining a specific sanction amount within a range, FAA enforcement personnel begin with an amount in the middle of the range and increase that amount toward the higher end of the range for aggravating factors or decrease that amount toward the lower end of the range for mitigating factors.

(4) Deviating from ranges within a sanction type. The FAA might impose sanctions below the normal ranges based on justifiable mitigation under factors j, l, and m of paragraph 4 (that is, the ability to absorb the sanction, voluntary reporting, corrective action). The FAA may

impose sanctions above the normal ranges when the following circumstances, relating to factors b, d, e, and h of paragraph 4 are present: the violation is other than inadvertent<sup>4</sup>, the violator has a violation history, the violation involves a significant degree of hazard, or the violator has a poor compliance disposition. The ranges also may be exceeded when the case involves multiple violations. (*See* chapter 7, paragraphs 6 and 7).

### **c. Types of Sanction.**

(1) General. The FAA ordinarily does not initiate punitive civil penalty and punitive certificate actions (that is, fixed-period certificate suspensions) against a certificate holder for the same offense. While electing to impose one sanction is not a legal bar to a concurrent proceeding to impose another, pursuing both actions solely for punitive purposes usually is not necessary. The FAA takes remedial and punitive actions in the same case, however, when warranted.

(2) Selecting types of sanctions. Except in exceptional circumstances, the FAA uses the type of sanction recommended in the table. The FAA must impose any sanction mandated by statute (for example, revocation under 49 U.S.C. §§ 44106(b), 44710(b), and 44726(b) unless waived by the Administrator).

## **6. General Guidance on Multiple Acts or Multiple Violations.**

**a. Description of Multiple Violations.** Enforcement actions often involve multiple violations: multiple violations of a single regulation; a single violation of multiple regulations; or multiple violations of multiple regulations. In addition, under 49 U.S.C. § 46301(a)(2), if a violation is a continuing one, each day the violation continues, or each flight for which the violation was committed, constitutes a separate offense.

**b. General Sanction Guidance.** Multiple violations ordinarily result in high sanction amounts. Such sanction amounts ordinarily are not determined by simply adding up the individual penalties for multiple violations set forth in the table, however. Simply adding up the individual penalties for each violation could result in compounding a sanction in a disproportionately harsh manner for the conduct involved. Conversely, multiple violations may be so serious in their consequences for safety and the public interest as to require a penalty greater than the sum of the recommended amount of penalty provided for in the table for each violation.

**c. Single Act of Noncompliance Resulting in Multiple Violations.** When a single instance of noncompliance results in multiple violations of general and specific regulations involving the same or similar conduct, the FAA ordinarily does not compound the sanction to reflect the amount of sanction recommended in the table for each regulatory violation. In calculating the amount of sanction for multiple violations, FAA enforcement personnel consider

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<sup>4</sup> When the violation is one that is generally inherently deliberate (*e.g.*, interference with crewmember or smoking violations), factor b. is not considered in determining whether the sanction should be above the range in the table. The ranges in the table for such violations already have taken into consideration the inherently deliberate nature of the violation.

the totality of circumstances relating to the multiple violations, including the alleged violator's degree of culpability, and whether the alleged violator had taken steps, although unsuccessful, to prevent the violations.

**d. Type of Legal Enforcement Action.** Where this guidance designates the type of legal enforcement action for a single violation, the FAA ordinarily selects the same type of sanction for multiple violations of a similar nature. The seriousness of multiple violations, however, may require changing what is normally a civil penalty action to a certificate action or, sometimes, a punitive certificate suspension to a remedial revocation action.

**7. Special Considerations for Numerous Multiple Violations Resulting From an Initial Act or Omission.** To determine penalties for numerous multiple violations that result from an initial act or omission, the FAA applies the special considerations and guidance in chapter 7, subparagraphs 7.a. through e. These cases involve such a high number of multiple violations that if FAA enforcement personnel were simply to add the recommended amounts of penalty for each flight or day that constitutes a separate violation, the resulting sanction amount could be disproportionately harsh for the misconduct involved, in an average case.

**a. Determining Proposed Penalty.** To determine an appropriate civil penalty in a case involving numerous multiple violations resulting from an initial act or omission (for example, an aircraft operated on a dozen or more flights after being improperly returned to service), FAA enforcement personnel:

(1) Identify each initial act or omission that caused or resulted in the multiple violations (for example, improper maintenance plus improper return to service; failure to maintain a quality control system).

(2) Consult the table in Appendix B and the general guidance in chapter 7, paragraph 4, on aggravating and mitigating factors to determine the amount of penalty appropriate for each initial act or omission that caused or resulted in the multiple violations (for example, in airworthiness cases, a penalty for the act of improper maintenance or inspection; in manufacturing cases, a penalty for the act of failing to maintain a quality control system).

(3) Determine the amount of penalty for the numerous multiple violations by applying the guidance in chapter 7, subparagraphs 7.b. through d. Of particular importance in determining an appropriate sanction for numerous multiple violations is the degree of the alleged violator's culpability for the multiple violations. A lower degree of culpability is present when the alleged violator neither knew nor was likely to discover the continuing violations. For example, once improper maintenance was done there were no signs of it from such things as discrepancies reported by the crew, and no inspections that would have led to its discovery were scheduled. A more significant degree of culpability is present when factors such as the following are present:

- the initial act or omission was entered in records that should have led to immediate detection and correction;
- the initial act or omission remained undetected and continued through required inspections or checks designed to reveal such discrepancies;

- the alleged violator was not following maintenance or inspection procedures the FAA had approved or accepted;
- the level of the alleged violator's organization that was aware of, or involved in the noncompliance included management (for example, management implemented policies that contributed to the violations), although an alleged violator's culpability does not require management involvement;
- the alleged violator has a history of similar violations or a history of systemic deficiencies.

Knowing and willful violations connote the highest degree of culpability.

(4) Add the penalties arrived at for the initial violation to the penalty for the multiple violations.

**b. Limitations on Total Civil Penalty Amounts for Numerous Multiple Violations.**

(1) In an average case involving numerous inadvertent, multiple violations resulting from a single act or omission, that is, not one that is covered by chapter 7, subparagraphs 7.c. or 7.d., the total civil penalty for the multiple violations ordinarily falls within the ranges provided in either Figure 7-1 or 7-2. The group classifications are defined in part I of Appendix B.

(2) The term *isolated* in Figures 7-1 and 7-2 typically describes a single instance of an employee's failure to follow a statutory or regulatory requirement, contrary to the company's own practice or procedure. A case may involve a number of isolated and unrelated violations. Each group of the multiple violations resulting from each isolated violation ordinarily is subject to the isolated, inadvertent ranges in Figures 7-1 or 7-2.

(3) Inadvertent failures are considered *systemic* if they are repetitive or otherwise demonstrate an underlying deficiency in the alleged violator's system, practices, or procedures. Systemic failures generally warrant more substantial penalties and indicate a need for corrective action.

(4) The aggravating or mitigating factors and elements in chapter 7, paragraph 4. are considered to determine an appropriate civil penalty within the applicable range in Figure 7-1 or 7-2, for the multiple violations resulting from the initial act or omission. Of particular importance is an evaluation of the seriousness of the potential hazard caused by the violation and the degree of culpability of the alleged violator for the multiple violations.

**Figure 7-1. Ranges of Penalties for Air Carriers, Commercial Operators, Part 125 Operators**

Type of Violations	Group I Large Business	Group I Small Business	Group II or Part 125 Large Business	Group II or Part 125 Small Business	Group III	Group IV
Inadvertent, Isolated Violations	\$200,000-\$400,000	\$100,000-\$300,000	\$150,000-\$300,000	\$100,000-\$200,000	\$75,000-\$150,000	\$50,000-\$100,000
Inadvertent, Systemic Violations	\$300,000-\$500,000	\$200,000-\$400,000	\$250,000-\$400,000	\$150,000-\$300,000	\$100,000-\$200,000	\$75,000-\$150,000

**Figure 7-2. Ranges of Penalties for Air Agencies, Airports, Manufacturers**

Type of Violations	Air Agency Large Business	Air Agency Small Business	Airport Operator Large Business	Airport Operator Small Business	Manufacturing Large Business	Manufacturing Small Business	Individual
Inadvertent, Isolated Violations	\$150,000-\$300,000	\$100,000-\$200,000	\$200,000-\$400,000	\$100,000-\$300,000	\$200,000-\$400,000	\$100,000-\$300,000	\$50,000-\$100,000
Inadvertent, Systemic Violations	\$250,000-\$400,000	\$150,000-\$300,000	\$300,000-\$500,000	\$200,000-\$400,000	\$300,000-\$500,000	\$200,000-\$400,000	\$75,000-\$150,000

**c. Penalties Outside the Ranges.**

(1) Penalties lower than the ranges. It may be appropriate to select a civil penalty amount below the ranges in Figures 7-1 or 7-2 if the degree of culpability is minimal, the degree of potential hazard is extremely low, and there are no other aggravating circumstances.

(2) Penalties higher than the ranges. It may be appropriate to select a civil penalty higher than the ranges, up to the statutory maximums:

- If the alleged violator was significantly culpable in permitting the initial act or omission;
  - If the violations involve significant safety risks;
  - If there was an absence of corrective action by the alleged violator over an extended period of time;
  - Where it is necessary to provide an economic disincentive for regulatory noncompliance;
- or.
- If the alleged violator has a poor compliance disposition or history.

**d. Intentional Violations.** When there is substantial and reliable evidence that the alleged violator knew of the violations resulting from the initial act or omission and allowed them to

occur, the ranges set forth in Figures 7-1 and 7-2 do not apply. For example, operation of an aircraft when there is evidence the operator knew the aircraft or flight was not in compliance with statutory or regulatory requirements, yet deliberately operated it anyway, is most serious, and apart from civil penalties, requires consideration of remedial certificate action. For multiple violations in these circumstances, any civil penalties sought may be up to the statutory maximum penalty for each violation, regardless of the number of violations.

**e. Civil Complaints.** The guidance in chapter 7, paragraph 7 does not limit the amount of civil penalties that may be sought in a civil complaint filed in U.S. district court.

## **8. Modification.**

**a. Type of Sanction.** Except when the FAA exercises its prosecutorial discretion to settle an enforcement action, the FAA generally does not modify orders suspending or revoking a certificate to provide for a civil penalty. The FAA also generally does not modify orders assessing a civil penalty to provide for a certificate action. The FAA modifies the type of sanction only in those cases involving extraordinary circumstances (beyond the normal aggravating or mitigating factors and elements listed in chapter 7, paragraph 4). New facts discovered after the original order has been issued may provide a basis for modifying the amount of sanction, but would not ordinarily provide a basis for modifying the type of sanction. However, if newly discovered facts raise new issues, such as the alleged violator's qualifications to hold a certificate, or if they implicate a statutorily-mandated penalty, the FAA modifies the type of sanction.

**b. Amount of Sanction.** The FAA does not apply the factors listed in chapter 7, paragraph 4. in a manner that would double their effect. Once the FAA has fairly considered the relevant mitigating and aggravating circumstances, it generally does not modify the amount of sanction. The FAA modifies the amount of sanction normally only when new information indicates the factors or elements were not fairly applied, or when other clear and compelling reasons are articulated.

**9. Special Emphasis Enforcement Programs.** At times special situations arise that dictate the need for more effective enforcement action through increased sanctions or other measures in a particular regulated area or segment of industry. When these circumstances arise, the FAA may set up a special emphasis enforcement program, designed to focus on a particular area of noncompliance on a national or local geographical basis.

## **10. Small Entities.**

### **a. General.**

(1) Under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), the FAA is required to have a policy or program to provide for the reduction, and under appropriate circumstances waiver, of civil penalties for statutory or regulatory violations by small entities. Under the law, such a policy is to contain certain conditions. Those suggested by Congress are: requiring the small entity to correct the violation within a reasonable correction period; limiting the applicability to violations discovered through participation in a compliance

assistance or audit program operated or supported by the agency; excluding small entities that have been subject to multiple enforcement actions by the agency; excluding violations involving willful or criminal conduct; excluding violations that pose serious health, safety or environmental threats; and requiring a good faith effort to comply with the law. The SBREFA also provides that under appropriate circumstances, the FAA may consider ability to pay in determining the penalty to assess a small entity.

(2) Congress intended that agencies have the discretion to develop the limits of their enforcement policies for small entities and the specific circumstances under which penalty reductions or waivers would be granted. Because the statute requires an agency, subject to the requirements and limitations of other statutes, to place conditions or exclusions on its enforcement policy under SBREFA, it does not appear Congress intended agencies to reduce or waive penalties solely because an alleged violator is a small entity. Rather, the statute contemplates that certain criteria be met before an agency reduces or waives a penalty against a small entity. Although the SBREFA imposes a requirement on agencies to establish penalty reduction and waiver programs for small entities, Congress recognized that some agencies already have formal or informal policies or programs that would meet this requirement.

**b. FAA's Policy under the SBREFA.**

(1) The FAA's compliance and enforcement program includes several policies that meet the requirements of, and are consistent with the intent of, SBREFA. Taken together, these policies constitute the FAA's policy mandated by SBREFA.

(2) Under the FAA's compliance and enforcement program, for example, FAA investigative personnel have the discretion to address alleged violations by any person, including small entities, with lesser enforcement action than a civil penalty, that is, administrative action, provided the criteria in chapter 5 are met. There are two forms of administrative action: a warning notice and a letter of correction. A warning notice brings to the attention of the regulated person or entity the facts and circumstances that indicate that a violation has occurred, identifies the regulatory provision at issue, and requests future compliance. A letter of correction is similar but is intended for use when there is an agreement with the regulated party that corrective action acceptable to the FAA has, or within a reasonable period will be, taken. Administrative actions are less onerous than a waiver of penalty in that they neither carry a sanction nor result in a finding of violation.

(3) Under the agency's voluntary disclosure reporting program, the FAA takes administrative action instead of civil penalty action against most regulated entities, including small entities that voluntarily report certain apparent violations to the FAA, complete corrective action satisfactory to the FAA to prevent their recurrence, and meet certain other criteria.

(4) The FAA's sanction policies have historically provided for reductions of civil penalties in appropriate cases based on the mitigating factors listed in chapter 7, subparagraph 4., which include ability to pay and whether a penalty would prevent the entity from continuing in business.



(5) For air carriers and commercial operators, the FAA also takes company size into consideration in determining the appropriate amount of civil penalty. The sanction ranges in Part I. Definitions and Abbreviations of the table for single, inadvertent, first-time violations by U.S. air carriers and U.S. commercial operators differentiate among various sizes of such entities as a means of providing a relatively equivalent deterrent for the same violation against each air carrier and commercial operator. While the FAA has not specified such sanction ranges for other certificate holding entities, it is the FAA's policy to seek penalties generally relative to the size and revenue of the operation for repair stations, manufacturers, airports, and other entities holding certificates.

(6) Although the FAA does not reduce or waive the penalty of an alleged violator solely because it is a small entity, the FAA appropriately reduces a civil penalty, or elects to take administrative action rather than legal enforcement action, against a small entity if appropriate under the policies described in chapter 7, subparagraphs 10.b.(1)-(5).

### **c. The Small Business Ombudsman.**

(1) The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates the enforcement activities and rates each agency's responsiveness to small business.

(2) Each FAA employee who conducts an inspection of a small business concern that is regulated by the FAA provides the small business concern with an information sheet. The information sheet informs that entity that it may submit complaints or comments regarding unfair FAA regulatory enforcement to the National Ombudsman. The information sheet contains the following language:

Our objective is to ensure a fair regulatory enforcement environment. If you feel that you have been treated unfairly or unprofessionally, you may contact the FAA by calling the FAA's Office of Rulemaking at (202)-267-3404 or by mailing your comments or complaints to the Federal Aviation Administration, Office of Rulemaking, 800 Independence Avenue, S.W., Room 808, Washington, D.C., 20591. You also have a right to contact the Small Business Administration's National Ombudsman at 1- 888-REG-FAIR (1-888-734-3247), or [www.sba.gov/ombudsman](http://www.sba.gov/ombudsman) regarding the fairness of the compliance and enforcement activity of the FAA. The FAA strictly forbids retaliatory acts by its employees. As such, you should feel confident that you will not be penalized for expressing your concerns about the FAA's compliance and enforcement activities.

## **11. Remedial Sanction Guidance Policy.**

### **a. General.**

(1) The FAA statute requires the Administrator to promote "safe flight of civil aircraft in air commerce . . ." 49 U.S.C. § 44701(e). As one means of achieving this goal, the statute specifically authorizes the Administrator to issue various certificates. These certificates include

airman certificates, type certificates, production certificates, airworthiness certificates, air carrier operating certificates, airport operating certificates, air agency certificates, and air navigation facility certificates. 49 U.S.C. § 44702(a). For most of these certificates, the statute requires the Administrator to investigate and make appropriate findings regarding qualifications to hold the certificate applied for before the certificate is issued. For example, the Administrator is required to investigate and make findings that persons applying for airman certificates are *qualified* to hold those certificates; that aircraft and aircraft engine parts are properly designed and manufactured, perform properly, and meet the regulations and minimum standards prescribed before issuing a type certificate, and so forth. 49 U.S.C. §§ 44702-44706. Once the Administrator finds the applicant is qualified for the certificate applied for, the Administrator is required to issue the certificate in question.

(2) Because the Administrator's responsibility to promote safety in air commerce and air transportation is constant, the Administrator must also take appropriate action when the Administrator finds, or has reason to believe, the certificate holder no longer possesses the qualifications required to hold a certificate. Thus, the statute provides that the Administrator "may reinspect at any time a civil aircraft, aircraft engine, propeller, appliance, air navigation facility, or air agency or reexamine an airman holding a certificate issued under section 44703 of this title," and that the Administrator "may issue an order amending, modifying, suspending or revoking . . . any part of a certificate issued under [chapter 447 of the statute] if . . . the Administrator decides after conducting a reinspection, reexamination, or other investigation that safety in air commerce or air transportation requires that action." 49 U.S.C. §§ 44709(a) and (b) (1) (A).

(3) Revocation is the appropriate remedy for conduct that demonstrates that a certificate holder lacks either the technical proficiency or the degree of care, judgment, and responsibility, required for the certificate and ratings held. The proper standard for revocation is not whether specific violations demonstrate a failure to exercise the necessary qualifications of a certificate holder, but rather whether the violations demonstrate that the holder has never possessed or no longer possesses such qualifications. Similarly, suspension until demonstration of qualification is appropriate when the agency has reason to believe the certificate holder may lack the required competence to hold a certificate and generally when the certificate holder fails or refuses to be reexamined. In either case, using the factors normally applied to select a sanction in punitive suspension cases is neither required nor appropriate.

#### **b. Misconduct Generally Warranting Revocation.**

(1) The FAA has concluded that by their nature, some acts of misconduct are so egregious as to demonstrate the certificate holder never possessed or no longer possesses the qualifications required to hold any airman certificate and other certificates. Therefore, such acts of misconduct warrant revocation of all airman certificates and other certificates held by the certificate holder. Such acts include: making a fraudulent or intentionally false statement; operating an aircraft while under the influence of alcohol or drugs, or with an alcohol concentration of .04 percent or above, or within 8 hours of consuming alcohol, in violation of 14 C.F.R. § 91.17(a); operating a civil aircraft within the United States with knowledge that narcotic drugs, marijuana, and depressant or stimulant drugs or substances as defined in federal

or state statutes are carried in the aircraft, in violation of 14 C.F.R. § 91.19(a); refusing to submit to a drug or alcohol test; and conviction for the violation of any federal or state statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marijuana, depressant or stimulant drugs or substances involving the use of an aircraft, the exercise of the privileges of the alleged violator's airman certificate to further the prohibited conduct, or more than one drug conviction of any kind within the scope of 14 C.F.R. §§ 61.15(a), 63.12(a), or 65.12(a).<sup>5</sup>

(2) Except for cases under 49 U.S.C. §§ 44106, 44710, 44726, and 46111, there may be unique circumstances for which a sanction other than revocation is warranted. Because of the serious implications for aviation safety raised by these cases, however, FAA legal counsel coordinates any decision to seek a sanction other than revocation with the Assistant Chief Counsel for Enforcement. In addition, legal counsel documents the basis for that decision in the case file.

### **c. Intentionally False or Fraudulent Statements.**

(1) In general, the FAA considers the making of intentionally false or fraudulent statements so serious an offense that it results in revocation of all certificates held by the certificate holder. *See, for example, Administrator v. Twomey*, 5 NTSB 1258 (1986), *aff'd* 821 F.2d 63 (1st Cir. 1987) (violation of 14 C.F.R. § 67.20(a)). Falsification has a serious effect on the integrity of the records on which the FAA's safety oversight depends. If the reliability of these records is undermined, the FAA's ability to promote aviation safety is compromised.

(2) The FAA has handled differently one area of intentional falsification - omitting information related to alcohol- or drug-related convictions, and other similar convictions, from applications for airman medical certification. In FAA Order 2150.3A, Compliance and Enforcement (C & E) Bulletin No. 90-2, issued on February 6, 1990, the agency's policy called for the following sanctions: revoking the alleged violator's current medical certificate, if any, and suspending any airman or ground instructor certificates for 60 days when the falsification involved omitting from the application for medical certification information on a single driving while intoxicated or driving under the influence (DUI) conviction; revoking any current medical certificate and suspending any airman or ground instructor certificates for 180 days when the falsification involved omitting information on a single drug conviction for simple possession from the application for medical certification; and revoking any current medical *and* any airman or ground instructor certificates when the falsification involved omitting information on more than one DUI conviction, or a conviction for more than simple possession, or more than two drug convictions of any type.

(3) The FAA has reevaluated the sanction guidance contained in C & E Bulletin

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<sup>5</sup> A drug conviction within the scope of 14 C.F.R. §§ 61.15(a), 63.12(a), or 65.12(a) that does not involve the use of an aircraft or the exercise of the privileges of the alleged violator's certificate also can warrant revocation in some circumstances. Revocation is appropriate where the totality of the circumstances underlying the conviction indicates that the alleged violator lacks the judgment, responsibility, and compliance attitude required of an airman. This determination must be made on a case-by-case basis.

No. 90-2, and has concluded that the sanction guidance for fraudulent or intentional falsification should be the same regardless of the type of case involved. The FAA has determined that falsification in the cases described in C & E Bulletin No. 90-2 has the same potentially adverse consequences for aviation safety as does falsification of any other record. In essence, a person who fraudulently or intentionally falsifies these records demonstrates the same lack of care, judgment, and responsibility as a person who falsifies any other aviation safety-related records. To correct the anomaly created by C & E Bulletin No. 90-2, the FAA rescinds the sanction guidance regarding intentionally false or fraudulent statements in that bulletin and withdraws the Notice of Enforcement Policy found at 54 Fed. Reg. 15144 (1989).

## **12. General Guidance for Using the Sanction Guidance Table for Unruly Passenger Conduct Under 49 U.S.C. § 46318.**

### **a. General Purpose and Policy.**

(1) The table at Appendix B, part II, Figure B-3-p provides the suggested sanction ranges for a single act of unruly conduct by a passenger subject to the provisions of 49 U.S.C. § 46318. *See also* Crew Interference (Unruly Passengers), chapter 4, paragraph 14. They provide general guidance only about how to apply the agency's civil penalty authority under 49 U.S.C. § 46318. The sanction guidance tables do not supplant the agency's judgment or its prosecutorial discretion in evaluating a particular case for enforcement action.

(2) Whether a particular passenger's unruly act warrants a sanction within or outside the sanction range, or in the exercise of prosecutorial discretion a decision not to proceed with enforcement action depends on the totality of the circumstances in a particular case. Where the mitigating and aggravating factors described in chapter 7, paragraph 4 are also present in a 49 U.S.C. § 46318 case, FAA enforcement personnel applying the sanction ranges at Appendix B, part II, Figure B-3-p consider those factors in selecting an appropriate sanction within or outside the range. The variety of conduct subject to 49 U.S.C. § 46318 and the varied facts and circumstances within which unruly conduct may occur, may also warrant consideration of other mitigating and aggravating factors unique to unruly passenger conduct. Some of these additional factors are set forth in chapter 7, subparagraphs 12.b. and c.

**b. Additional Aggravating Factors to Consider.** In addition to the factors described in chapter 7, paragraph 4, FAA enforcement personnel consider other potentially aggravating factors in chapter 7, subparagraphs 12.b.(1)-(7) in the selection of an appropriate sanction within or outside the sanction range.

(1) The severity of the unruly conduct. The severity of the conduct may be indicated by several factors, including:

- The physical characteristics of the individual committing the unruly conduct contrasted with those of the victim.
- The nature of the conduct itself.
- The extent of any injury inflicted.

(2) Whether the unruly conduct occurred when the aircraft was in flight or while passengers were boarding or deplaning. Certain unruly conduct that occurs during flight or on a crowded boarded flight may be more aggravating than the same conduct that occurs while passengers are deplaning.

(3) Whether the unruly conduct was directed at a crewmember or a passenger. Because a crewmember has safety duties to perform on a flight, unruly conduct against a crewmember may be more aggravating than the same unruly conduct directed at an individual who does not have any safety duties to perform on the flight.

(4) Whether the unruly passenger provoked the situation that resulted in the unruly conduct. For instance, a passenger who instigates a confrontation, or a passenger who mixes alcohol with prescribed or over-the-counter drugs that the passenger claims precipitated the unruly conduct.

(5) Whether the unruly conduct necessitated that the flight be diverted from its intended destination.

(6) Whether the unruly conduct necessitated that the flight crew call ahead for law enforcement to meet the flight on arrival.

(7) Whether the unruly conduct was inflicted with malice or in anger.

**c. Additional Mitigating Factors to Consider.** The factors listed in chapter 7, subparagraphs 12.c.(1)-(3) may justify a sanction below the sanction range, or in the agency's prosecutorial discretion, may justify a decision not to prosecute a passenger's unruly conduct.

(1) Whether the unruly passenger has already served a criminal sentence for the same conduct or has already made monetary restitution in the context of a criminal prosecution for the same conduct.

(2) Whether the passenger's unruly conduct was caused by a diagnosed medical or mental condition for which the passenger was receiving medical treatment.

(3) Whether the unruly conduct was a reasonable response to a provocation by another. However, a passenger's use of unreasonable force in response to a provocation by another individual on the aircraft would not constitute a mitigating factor.

**d. When to Apply the Sanction Range for Acts Posing an "Imminent Threat" to Safety of the Aircraft or Others on Board the Aircraft.**

(1) The sanction range at Appendix B, part II, Figure B-3-p for an act that poses an imminent threat to safety of aircraft or other individuals on the aircraft applies when there is an *imminent* threat to the safety of the aircraft or to the *collective* safety of others on board the aircraft. For example, a passenger attempting to open an emergency exit door would be an imminent threat to the safety of the aircraft. If the imminent threat to safety is directed to

specific individuals on the aircraft, then the sanction range for physical assault or threatened physical at Appendix B, part II, Figure B-3-p applies.

(2) In selecting an appropriate sanction within or outside the sanction range for an act posing an imminent safety threat, FAA enforcement personnel consider whether the resultant imminent threat was the unintended consequence of the passenger's careless or reckless act or whether the passenger intended the consequences. The former would justify a sanction toward the low end of the range, while the latter would justify a sanction toward the maximum range.

**e. Applicable Sanction Ranges for Security Officers or Others Assigned a Law Enforcement Function on a Flight (for example, Federal Air Marshals Assigned to the Flight).** FAA enforcement personnel apply the sanction range applicable to physical assaults or threatened physical assaults on crewmembers (Appendix B, part II, Figure B-3-p).

**f. Applying Unruly Passenger Sanction Guidance Tables to Multiple Acts.** When applying the table to multiple acts by an unruly passenger, FAA enforcement personnel consider not only the individual unruly acts committed, but also the collective consequences of all the unruly behavior. FAA enforcement personnel do not approach the sanction determination for multiple acts as a mechanical exercise of multiplying the number of separate acts of unruly behavior by a sanction amount in the range for a single act. Instead, they use the guidance in the table and exercise their judgment as to the seriousness of the conduct, given the totality of circumstances, to determine an appropriate sanction amount that will deter future violations by the unruly passenger and others similarly situated.

## Chapter 8. Enforcement Investigative Report (EIR)

**1. Purpose for EIR.** The Enforcement Investigative Report (EIR) is the means for documenting, assembling, organizing, and presenting all evidence and other relevant information obtained during an investigation. Because it is the record from which determinations of violations and sanctions are made, the report must be well prepared, factual, and provide the proof required to substantiate the enforcement actions contemplated.

**2. EIR Recommendations.** If during an investigation, FAA investigative personnel determine that no violation occurred, they terminate the investigation and complete the appropriate sections of the EIR. If a letter of investigation was issued, FAA investigative personnel notify the recipient that the matter has been closed. If FAA investigative personnel determine after evaluation of all the evidence obtained in the investigation that a violation appears to have occurred, then they recommend either administrative action or legal enforcement action in accordance with the guidance in chapter 5. FAA investigative personnel must exercise caution to ensure that neither the alleged violator nor any other unauthorized person is informed of their recommendations.

**3. Organization of an EIR.** An EIR contains three sections labeled A, B, and C. The information contained in each section is described in chapter 8, subparagraphs 3.a., b., and c. FAA investigative personnel prepare an EIR in accordance with the guidance in this chapter.

**a. Section A. FAA Form 2150-5.** Section A of the EIR contains a completed Form 2150-5. FAA investigative personnel complete the information blocks on Form 2150-5 in accordance with the guidelines in chapter 8, paragraph 4. They enter information required on Form 2150-5 into the Enforcement Information System (EIS) using an interactive terminal that displays information as it is keyed. As a data element is completed, the EIS performs edit and validation routines to ensure the accuracy of each data element. The EIS edits user tables, performs range checks, and conducts omission detection and date validation to prevent erroneous information from reaching the EIS database. When an error is discovered, the terminal displays a descriptive error message and sounds an alarm. Two types of errors can be indicated by the system: fatal, which users must correct before they can continue, and warning, which is displayed to alert users to a potential error situation. After completion of all required fields on Form 2150-5, FAA investigative personnel print it for inclusion in the EIR.

**b. Section B. Statement of Case and Factors Affecting Sanction.** The statement of case and factors affecting sanction is section B, the second part of the EIR, and is assembled as a separate item behind section A. In section B, FAA investigative personnel also provide any opinions and feelings they have about the case, evaluate the reliability of the evidence, and discuss any conflicting evidence in the case. They also state in this section their recommendations on sanction.

(1) Statement of case. The statement of case is a concise statement of the facts and alleged statutory or regulatory violations found during the investigation and a discussion of how those facts establish the alleged violations. The statement of case identifies *who did what, when, where, why, and how*. FAA investigative personnel provide an orderly and logical statement of

the facts necessary to establish each element of each regulation believed violated and the related investigative action that established that fact. If the alleged violations involved one or a few flights, then each flight should be specifically identified with the aircraft, the origin, destination, place of landing, the name of the pilot in command, and the reasons why the FAA believes that individual was the pilot in command. If the flight involved an unairworthy aircraft, then each discrepancy needs to be stated. If the violation involved the failure to do something required or the doing of something prohibited, then the specific omission or commission is specifically stated. It is usually helpful to the reader if the summary of case is organized in chronological fashion. FAA investigative personnel support each factual statement by referring to an item of proof. The reference to the item of proof appears directly after the statement it supports, unless the item of proof supports an entire paragraph. If an item of proof supports an entire paragraph, FAA investigative personnel reference the item of proof at the end of the paragraph. FAA investigative personnel may briefly describe the origin or the basis of the investigation. They have latitude to go into as much detail as necessary given the complexity and nature of the particular case to assure an understanding of the investigation and apparent violations. When the investigation fails to establish a violation, FAA investigative personnel state this conclusion with an explanation of how the investigation led to this conclusion.

(2) Factors affecting sanction. FAA investigative personnel analyze whether each of the factors in chapter 7, paragraph 4 or Appendix C is relevant and applies to the case. The factors in chapter 7, paragraph 4 are the nature of the violation, including how safety was affected; whether the violation was inadvertent and not deliberate; the certificate holder's level of experience; attitude of the violator; degree of hazard; action taken by employer or other authority; the use of the certificate; violation history; decisional law; ability to absorb sanction; consistency of sanction; whether the violation was reported voluntarily; and corrective action. The factors in Appendix C, which apply to hazardous materials cases, are found in paragraph 2 and subparagraph 6.d of that appendix. FAA investigative personnel address each factor in section B. If a factor is relevant to the case, FAA investigative personnel explain in section B of the EIR how the facts and circumstances support the applicability of that factor to the alleged violations. Using the guidance in chapter 7 or Appendix C, FAA investigative personnel explain whether the factor has a mitigating or aggravating effect on the amount of sanction for the apparent violations. FAA investigative personnel may support their analysis of the factors affecting sanction with reference to items of proof as appropriate. If a factor does not apply to the case, then FAA investigative personnel state in section B that the factor is not applicable. In each case, FAA investigative personnel summarize violation history information contained in EIS records. Printouts of violation history from the EIS or a program office-specific database, such as the Program Tracking and Reporting Subsystem (PTRS), are not included as items of proof in section C.

(3) Other information. In section B, FAA investigative personnel also evaluate the reliability of the evidence and discuss any conflicting evidence in the case. If appropriate, they reference specific supporting items of proof. FAA investigative personnel fully analyze in section B any explanation provided by the apparent violator about the incident. Such explanation may appear in a record of interview of the apparent violator or a response to the letter of investigation. FAA investigative personnel set forth in section B any other mitigating, extenuating, or aggravating factors about the apparent violations. If FAA investigative



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.

(11) Block 11. Owner. Enter the name of the owner of the aircraft involved in the apparent violation.

(12) Block 12. Owner address. Enter the address of record of the owner listed in block 11.

(13) Block 13. Date occurred. Enter, in numerals, the date(s) on which the apparent violation occurred, in an eight-digit year-month-day format without hyphens (for example, 2005 03 30). Enter the earliest violation date if there are multiple violation dates or the violation continued over a period of time.

(14) Block 14. Time. Enter the local time at which the apparent violation occurred using a 24-hour clock (*e.g.*, 1105 for 11:05 a.m.; 1435 for 02:35 p.m.). Leave blank if a specific time of occurrence is not appropriate.

(15) Block 15. Date known to FAA. Enter, in numerals, the date on which anyone in the FAA first learned of the incident that later was determined to be a violation in an eight-digit year-month-day format without hyphens (for example, 2004 04 22). For example, if a pilot deviates from an air traffic control clearance issued by an FAA facility, the date known to the FAA is the date of the violation, and not the date the air traffic employee referred the apparent violation to the Flight Standards field office for investigation. Another example is: the date a written complaint is received by the FAA is the date known to the FAA, and not the date FAA investigative personnel determine a violation occurred.

(16) Block 16. Region of discovery. Enter the two-character identifier of the region in which the apparent violation was first discovered. (*Note:* This may not be the region of occurrence.)

(17) Block 17. Location. Enter the name of the geographic location where the violation is alleged to have occurred. Use the airport identifier and name (if appropriate), the city and state, and any information needed to describe the location relative to a specific airport or city. The airport identifier standardizes the airport information.

(18) Block 18. Regulations or statutes believed violated. Enter all violations believed substantiated by the facts and technical analysis. Be specific in identifying the violation by section and subsection as appropriate. For example, if the rule believed violated is 14 C.F.R. § 43.13(a) (formatted as 04313A in EIS), enter it as such, do not enter it more generally as 14 C.F.R. § 43.13. (formatted as 04313 in EIS). In those cases where the regulation cited fails to identify adequately the act or aggravated circumstance involved, and FAA investigative personnel believes that clarification is necessary, a clear text statement of not more than 150 characters may be inserted in this block following citation of the rule believed violated. In medical cases, enter the appropriate section or subsection of the rule believed violated (for example, 14 C.F.R. § 67.403(a) (4) (formatted as 067403A4 in EIS) or, in cases involving medical disqualification, the specific section or subsection that pertains to the medical qualification at issue (for example, 14 C.F.R. § 67.107(a) (2) (ii) (formatted as 067107A2II in EIS)).

(19) Block 19. Type. Enter the two-digit code that best describes the type of activity the apparent violator was engaged in at the time of the apparent violation. *See* Appendix G for code listing.

(20) Block 20. Sub-type. Enter the two digit code that best describes the sub-type of activity in which the apparent violator was engaged. *See* Appendix G for code listing.

(21) Block 21. Category. Enter the two digit code that best describes the category of the apparent violation. *See* Appendix G for code listing.

(22) Block 22. Source. Enter the two digit code that best describes the source of the initial information about the apparent violation. *See* Appendix G for code listing.

(23) Block 23. Accident associated. Enter code 00 if an accident was not associated with the apparent violation or code 01 if an accident was involved. If the apparent violation caused the accident, enter code 02. The NTSB definition of an accident is controlling. *See* Appendix G for code listing.

(24) Block 24. Security program. This section is only applicable for Security offices. *See* Appendix G for code listing.

(25) Block 25. Type action recommended or taken. Enter the type action, which include administrative action, civil penalty, suspension, and no action.

(26) Block 26. Recommended sanction. Enter the sanction type, which include warning notice, letter of correction, dollars, and days. Except in security or hazardous materials EIRs, FAA investigative personnel do not enter a specific amount of sanction (that is, specific number of dollars or days). For security and hazardous materials EIRs, FAA special agents enter a specific amount of sanction (for example, a specific number of dollars) in cases that warrant legal enforcement action.

(27) Block 27. Date. Enter the date signed by the field office manager (for example, 2005 03 07).

(28) Block 28. Investigating office. Enter the appropriate region or field office identifier (for example, NM05; CE42).

(29) Block 29. Regulations or statutes believed violated. Same as instructions for block 18 on the 2150-5; only this reflects the opinion of the regional division personnel reviewing the EIR. If the investigating field office entered an incorrect regulation or statutory provision in block 18, the correct regulation or statutory provision is cited. This is left blank for cases closed with no action.

(30) Block 30. Recommended type action. Same as instructions for block 25.

(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

and offices are advised of the final disposition: each person or organization to whom a letter of investigation was sent; each supporting FAA office; and any agency, person, or organization that provided the complaint or information that was the basis for opening the investigation. The field office keeps a complete investigation file, including a copy of the EIR, until final action has been completed on the case.

(2) Regional division. On receiving the EIR, the regional division reviews the file to determine the adequacy of the investigation; that the correct regulations are cited; and that the type of enforcement action and sanction recommended by the field office are appropriate. If the regional division concurs with the field office, it may forward the EIR to the Assistant Chief Counsel for Enforcement or Regional Counsel without comment. If the regional division determines the investigation was not adequately completed, it returns the file to the field office with specific instructions for further investigation. If the regional division questions the sufficiency of the evidence for legal enforcement action, it contacts legal counsel to discuss the issue before closing the case. If the regional division determines that legal enforcement action is not appropriate, it returns the file to the field office with specific reasons for taking administrative action or, when no action is required, for closing the case without action. If the regional division determines that legal enforcement action is appropriate, but disagrees with the field office about the regulations violated or the sanction recommended, it prepares a technical analysis and evaluation, including an independent technical analysis of the facts, safety impacts, and violations; a recommendation for the type of legal enforcement action required for aviation safety and the public interest; and a recommendation for a specific sanction. The EIR, with the regional division's technical analysis and recommendations, is transmitted to the Assistant Chief Counsel for Enforcement or Regional Counsel, as appropriate. *See* chapter 8, paragraph 8 for reports requiring special processing. The determination of the type of legal enforcement action and specific sanction amount is a joint responsibility of the appropriate program office regional division and legal counsel. After completion of the enforcement action, the regional division promptly informs the investigating field office of the final disposition.

(3) Legal counsel. On receiving the EIR, legal counsel reviews the file for the sufficiency of the evidence to support the type of action recommended by the program office. If the evidence is insufficient, legal counsel coordinates the additional information needed through the appropriate division. Legal counsel makes an independent determination of the appropriate sanction type and amount, giving due consideration to the sanction recommended by the regional division. If legal counsel's assessment of the appropriate sanction differs with that of the program office, legal counsel and the program office confer in an effort to reach an agreement. If they cannot agree, they elevate the issue to the appropriate headquarters offices. When legal counsel determines that sufficient evidence exists to support the recommended legal enforcement action, and a sanction has been determined, legal counsel initiates legal enforcement action as provided in chapter 6. Once legal enforcement action has been initiated, legal counsel has the final authority to change the type of action or sanction, or enter into a settlement agreement. When feasible, however, legal counsel coordinates significant changes with appropriate FAA investigative personnel. Legal counsel informs the appropriate program office regional division and FAA investigative personnel of the final disposition in all cases. The legal enforcement file held by legal counsel is the official FAA record copy and is retained, transferred, and disposed of in accordance with FAA Order 1350.15C.

## **8. Reports Requiring Special Processing.**

### **a. Violations Involving Members of the U.S. Armed Forces.**

(1) The program office regional division, on receiving an EIR from a field office, reviews the file in accordance with chapter 5 and forwards it to legal counsel for further processing. Legal counsel refers a complaint to the appropriate military department when counsel determines the EIR contains sufficient information to support such referral under 49 U.S.C. § 46101(b). The complaint includes a letter of referral and a copy of the EIR.

(2) If the military department, within 90 days after the date of referral, has not informed the FAA of the disposition of the complaint (including any corrective or disciplinary action taken), as required by 49 U.S.C. § 46101(b), legal counsel sends a follow-up letter to the military department.

(3) In cases where a military referral is made, but there is reason to question the qualifications of the alleged violator to exercise the privileges of an FAA certificate held, legal counsel also initiates appropriate legal enforcement action in accordance with the guidance in chapter 6.

(4) Any EIR relating to violations when the person was not acting in the performance of official military duties, or where there is a question of qualifications, is reviewed and processed by the program office regional division in accordance with paragraph 20 of chapter 4.

**b. Requests for Emergency Action Based on Partial EIR.** The appropriate handling of a violation requiring emergency certificate suspension or revocation may involve initiation of such action by legal counsel before completion of the EIR. In these situations, FAA investigative personnel prepare and forward an advance or partial EIR to legal counsel and provide legal counsel copies of all evidence that supports the alleged violation. FAA investigative personnel complete the full EIR and forward it to legal counsel as quickly as possible.

**c. Processing of EIRs for Noise Violations.** Each Flight Standards field office that recommends legal enforcement action for a violation of the noise regulations in 14 C.F.R. part 91, subpart I, prepares an EIR and forwards it to the regional Flight Standards division office in the same manner as all other EIRs. The regional Flight Standards division office reviews the EIR. If the regional Flight Standards division office concurs that legal enforcement action is appropriate, then it forwards the EIR to the Office of Environment and Energy, attention Noise Division, AEE-100 in Washington, DC headquarters. The Office of Environment and Energy reviews the EIR and recommended sanction. If it concurs that legal enforcement action is appropriate, the Office of Environment and Energy forwards the EIR to AGC-300 for initiation of the case. The Office of Environment and Energy may forward the EIR to AGC-300 with a recommendation to modify the sanction recommended by Flight Standards.

**9. Use of For Official Use Only Designation.** In accordance with FAA Order 1600.75, For Official Use Only (FOUO) is the primary designation for sensitive unclassified information,



which consists of information that could adversely affect the national interest, the conduct of federal programs, or the privacy of individuals, if released to unauthorized individuals. The purpose for placing a designation on information is to protect it from uncontrolled release outside the FAA and indiscriminate dissemination within the FAA. *See* FAA Order 1600.75, chapter 1, paragraph 5. Documents contained in EIRs could adversely affect the FAA's compliance and enforcement program, if they are inappropriately released to the public. In addition, for EIRs on individuals, an inappropriate release of information outside the FAA or within the FAA could have an adverse effect on the privacy of the individual. Accordingly, FAA investigative personnel mark documents in an EIR with a FOUO designation in accordance with FAA Order 1600.75, Appendix D. When documents in an EIR no longer need protection, FAA personnel may cancel their sensitive unclassified status under FAA Order 1600.75, chapter 3, paragraph 19. FAA personnel redact the FOUO marking from documents no longer needing such designation before releasing them outside the FAA or disseminating them within the FAA.

## Chapter 9. Enforcement Information System (EIS) and Distribution Requirements

**1. Purpose.** This chapter provides general information concerning use of the FAA's Enforcement Information System (EIS) and instructions for distributing electronic records, reports, letters, notices, orders, and associated documents.

### **2. Enforcement Information System Overview.**

**a. General.** The EIS is an automated management information system that tracks the FAA's enforcement actions on a nationwide basis. The EIS is the FAA's primary database for tracking information about enforcement actions for statutory or regulatory violations. All FAA offices that have regulatory responsibilities must track their enforcement actions in the EIS. It is a part of the FAA Automated Data System, which is a coordinated system of safety-related management information subsystems.

**b. EIS Capabilities.** The EIS is a national database designed to provide data input and retrieval capabilities at the field, regional, and headquarters levels. It maintains electronic records of enforcement actions that authorized FAA personnel can access.

**c. Data Entry.** Data entry to the EIS is decentralized and occurs at the level of the office conducting the investigation or undertaking the next action. For example, a Regional Counsel's office enters data into the EIS for a legal enforcement action that is taken as a result of an investigation.

**d. Access to Data.** All FAA organizations have access to EIS information for querying, printing, or reporting purposes. Authorized FAA personnel can access EIS records at the field, regional, and headquarters levels as needed. The national database also provides access to other Automated Safety Analysis System (ASAS) information systems.

**e. Security.** All EIS users are required to have assigned user names and passwords. User names are associated with all EIS functions so only those functions that are authorized to a specific user are available to that user. The Aviation Data Systems Branch, AFS-620, in Oklahoma City, Oklahoma issues user IDs.

**f. Annual EIS Database Review and Reconciliation.** Each FAA program office and legal office reviews annually the EIS records for its offices and reconciles those records with the corresponding EIRs. FAA enforcement personnel make corrections and updates to the EIS records, including closing EIS records or changing the record owner for cases, to ensure the EIS record accurately reflects the status of a case.

### **3. EIS Entries.**

**a. Initiating EIS Records.** The office conducting the investigation obtains an Enforcement Investigative Report (EIR) number. In most instances the investigating office is a field office; however, a regional or headquarters office may also conduct an investigation, in which case that

office obtains the EIR number. The EIS record is opened within 72 hours from the date the violation became known, or as soon as practicable. Once issued, the EIR number tracks that case and does not change. EIR numbers are assigned according to the following twelve-character format:

- (1) Year. The four digits of the fiscal year (date of violation determines FY).
- (2) Region. The two-letter identifier of the field office's parent region (for example, WP for Western-Pacific Region).
- (3) Field office. The two-digit permanent identifier assigned by the parent region to the field office. Permanent field office identifiers conform to the following range of numbers:

<u>Identifier</u>	<u>Type of Field Office</u>
00 – 39	Flight Standards
40 – 59	Aircraft Certification
60 – 69	Reserved
70 – 79	Hazardous Materials and Other Security Cases
80 – 89	Airport Regional Office
90 – 99	Aerospace Medicine

*Note.* The identifiers 00, 40, 60, and 80, as appropriate, are to be used to identify EIRs for which the investigation and reporting was conducted by a headquarters or regional division manager. The identifier 70 is used for EIRs opened by Security and Hazardous Materials (ASH-700). The identifier 90 is used for EIRs opened by Regional Flight Surgeons, the Aerospace Certification Branch (AAM-300), or the Federal Air Surgeon.

- (4) Sequential number. The four-digit number assigned sequentially by the investigating office during a fiscal year to identify a specific investigation and EIR.

**b. Data Entry.** Data entry to the EIS is decentralized and occurs at the level of the office conducting the investigation or taking later action, including legal enforcement action. The office having ownership of the EIS record has responsibility to make all data entries relating to events it takes in the case. Data entries to an existing EIS record must be made within 48 hours of the occurrence of the event.

- (1) Form 2150-5. FAA investigative personnel can open an EIR record in the EIS by entering the EIR number, the investigation start date, and the company or individual identifier name on Form 2150-5 and completing the field “business concern” on the violator information screen, at a minimum. After assigning an EIR number, the investigating office makes data entries in the EIS for blocks 1 through 28 of Form 2150-5. The regional program office makes the EIS entries for Form 2150-5 blocks 29 through 33. Codes used for the completion of blocks 19 through 24 of Form 2150-5 are contained in Appendix G.

(2) Recording EIR ownership. The originating program office of an EIR retains ownership of the record unless responsibility for it is formally transferred to another program office, such as when a case is transferred to a different region. When a case is transferred by a program office, the transferring program office is responsible for changing ownership in the EIS to the receiving program office. The transferring program office adds a notation to the *remarks* section indicating the program office receiving the case and the date the case was transferred. When a program office forwards an EIR to a Regional Counsel or the Assistant Chief Counsel for Enforcement, the Regional Counsel or the Assistant Chief Counsel for Enforcement changes the record owner of the EIR to his or her legal counsel office (for example, GLRC for Great Lakes Regional Counsel). If a Regional Counsel or the Assistant Chief Counsel returns an EIR to a program office, then the legal office must change the EIRs record owner in the EIS to the program office that is receiving the case.

(3) Quality control. The FAA office required to enter the data has primary responsibility for the EIS data quality control.

**c. Pending Status.** FAA legal counsel places in *pending* status in the EIS:

(1) cases in which the FAA does not expect taking further legal action, but in which the respondent has yet to comply with the agency's order (for example, has not paid a civil penalty or all installments of a civil penalty, has not come into compliance as required by order of suspension of indefinite duration).

(2) cases involving a respondent that has filed a petition for bankruptcy if no further activity is planned, that is, usually after a case that is the subject of a proof of claim has been initiated to prevent it from going stale.

**d. Closing an EIS Record.**

(1) If an EIR results in termination of the case without action, or with administrative action, the determining office makes the entry of the final disposition and closes the EIS record.

(2) If an EIR results in legal enforcement action, legal counsel enters the final legal action data into the EIS. Legal counsel closes an EIS record only when no further events are expected to occur, including events within the control of non-FAA entities (for example, collection of a civil penalty by the Department of Treasury). Legal counsel closes a civil penalty case when the entire amount due has been collected or all options for collecting the debt have been exhausted and authorized agency officials have determined the debt is uncollectible.

**4. Operations.**

**a. System Design.** All EIS processes, programs, and functions are selected using menus that display and describe the available options. The EIS includes various functions to simplify and speed up the data entry process, to check for data entry errors, to provide help to users while on line, and to assist in producing management reports.

**b. Code Tables.** Many EIS record fields rely on tables of codes that speed up the entry of data. Users enter a coded value (for example, the standard abbreviation for an airport name) and the name or description of that data item is generated for the record. The table will also reject the entry of incorrect codes. The use of table codes facilitates data entry and improves the reliability of the EIS.

**c. Error Checking.** The EIS uses various editing methods, such as tables, range checks, omission detection, and date validation, to prevent the entry of incorrect data into the database. These functions assist in editing and validating data to ensure the data entered conforms to the expected values and formats. The EIS does not allow the entry of certain definite errors (*fatal* errors). If a user enters data that results in an error, he or she corrects the data before continuing. The EIS highlights other types of likely errors (*warning* errors) that allow the user to determine whether the data entered is correct before continuing.

**d. Online Help.** Each interactive EIS program includes a *Help* function that allows the user to receive instructions, error message descriptions, and general information on line. Users can access *Help* by entering a ? in the field where they need assistance. The system responds with information about the expected user input. When a table is used for editing a field, the user can enter a second ? that will prompt the system to display the contents of the table. The *Help* function also permits the use of partial code values followed by a ? to review the selection of codes containing those values. EIS users can get help with nearly all interactive EIS functions. There is also an online tutorial available to all users.

**e. Standard Reports.** Several standard reports are available on the EIS. These reports are designed to meet identified administrative management needs. Most of these reports let the user specify certain parameters, such as the period for which data should be reported, and to sort the results by either field, region, or headquarters offices. The EIS standard reports available include:

- (1) Code Table Listing (all tables used in the EIS data entry process).
- (2) Regional Tracking System (RTS) Calendar report (events associated with an investigation).
- (3) Cases Referred to Legal Counsel.
- (4) Uninitiated Aged cases (open legal enforcement cases in which no legal action has been taken).
- (5) Legal Activity Logs.
- (6) RTS Suspense Report (overdue cases).
- (7) RTS Daily Activity Report (case events).
- (8) Workload Statistics Report.

(9) Legal Events Report.

(10) Legal with No Activity.

(11) Fiscal Year Closed Cases.

**f. Ad Hoc Reports.** The EIS also can produce ad hoc reports that are tailored to the specific needs of the user. The EIS has an interactive function, the Ad Hoc Command File Generator, that lets the user specify the conditions under which a report will be generated, the specific data elements that will be printed, and additional header lines. The system establishes a specification file or library for each ad hoc report so the same report can be regenerated.

## 5. EIS Database.

**a. General.** The EIS database is resident on a mainframe computer in Kansas City, Kansas and is maintained by AMI-300/AMI-200B with direction from AVR-11D, Information Technology Operations Section, and AFS-620, Aviation Data Systems Branch in Oklahoma City, Oklahoma.

**b. Functions.** Users may perform data entry, data retrieval, and print the 2150-5 form, code tables, ad hoc reports and standard reports. The fields used for read or display only are Airmen and Aircraft Registry files located on the Air Registry databases (AFS-700), which are also on the mainframe computer in Kansas City, Kansas. The National Vital Information System (NVIS) is also read for display and reporting.

**c. Regional Tracking System.** The Regional Tracking System (RTS) is an EIS function that maintains a computerized database of memos, appointments, and other informal records about a violation record. RTS entries, which are referred to as *tracking events*, are attached to the violation record without altering the basic violation information. The RTS can work as a tickler file to remind users of suspense dates and appointment times. It lets users establish their own sets of coded values that have specific meanings within their particular organizational area. For example, legal counsel can track the scheduling of informal conferences or partial payment histories.

**d. Assistance for Statistical Analysis.** The EIS database is replicated to the AFS-600 datamart for reporting and analysis purposes. Users may only conduct data retrieval and statistical analysis of the EIS data. AFS-600 helps users with special requirements for statistical analysis and comparison of data.

## 6. Distribution of Enforcement Documents.

**a. General.** The distribution of Enforcement Investigative Reports, letters, notices, orders, and associated documents varies with the type of enforcement action recommended and the FAA function involved. FAA enforcement personnel do not routinely distribute paper copies of records that can be accessed electronically in EIS, except as stated in chapter 9, subparagraphs 6.b. through d.

**b. Administrative Enforcement Actions.**

(1) The investigating field office sends the original of the warning notice or letter of correction to the alleged violator. In cases involving companies with complex organizational structures, the investigating field office exercises care to assure it addresses the letter to the responsible official. FAA investigative personnel may obtain advice on such matters from the supporting office.

(2) When the investigating field office completes its portion of a case, it forwards all applicable information to the regional office by mail, in accordance with this order and its program office's policies and procedures.

(3) The investigating field office sends a copy of the warning notice or letter of correction to the supporting office(s).

**c. Legal Enforcement Actions or Referrals.**

(1) The investigating field office sends the original EIR, with the original of all exhibits, to the appropriate regional office.

(2) The investigating field office sends a copy of section B of the EIR to the supporting office(s) through the investigating field office's parent regional office. The supporting office can electronically access section A (Form 2150-5) through the EIS.

(3) The regional office, after review and evaluation, transmits the EIR, or military or foreign referral, to the Assistant Chief Counsel for Enforcement or the Regional Counsel for legal handling.

(4) The Assistant Chief Counsel for Enforcement or Regional Counsel processes legal enforcement cases and complaint referrals in accordance with chapters 2 and 6.

**d. Legal Enforcement Documents.** Legal counsel distributes either electronic or hard copies of letters, notices, orders, and associated documents related to the legal handling of enforcement cases as follows:

(1) Copies of FAA civil penalty letters, notices, and orders are sent to the regional offices and the investigating field office. Copies of final orders imposing a civil penalty are also sent to the accounting office.

(2) Copies of FAA notices, orders, and civil penalty letters and NTSB decisions involving airman certificate holders are sent to AFS-760.

(3) Copies of FAA referrals to a U.S. attorney are sent to regional offices and investigating field offices.

(4) Copies of appeals to the NTSB and the FAA decisionmaker are sent to the regional office and the investigating field office.

(5) AGC-300 distributes copies of NTSB, FAA Decisionmaker, and court decisions and orders to all Regional Counsel, who in turn inform regional offices and field offices of such final decisions.

## 7. System Support.

**a. EIS System Manager.** The EIS System Manager is in AFS-620. The System Manager is responsible for day-to-day management of the EIS, including establishing procedures, responding to special user requirements, and supervising routine system maintenance.

**b. AVS Support Central.** AVS Support Central is available to help users who cannot find assistance for their problems through the EIS on-line *Help* capabilities or the tutorial. If the user suspects a hardware or telecommunications problem, the hotline directs the user to the responsible organization.

**c. User Comments.** The Flight Standards Service is always interested in hearing suggestions and recommendations from users on how to improve the performance or usefulness of the system. Users should direct their comments to:

EIS System Manager  
Aviation Data Systems Branch (AFS-620)  
P.O. Box 25082  
Oklahoma City, OK 73125



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## Appendix A. Sample Documents

### Figure A-1. Letter of Investigation.

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

[Date] EIR Number

ABC Airlines, Incorporated  
River City Municipal Airport  
River City, Iowa 51649

Attention: Mr. John F. Johnson  
Vice President, Engineering and Maintenance

Dear Mr. Johnson:

During a recent spot check of ABC Airlines, Inc.'s maintenance facilities, the Federal Aviation Administration discovered irregularities concerning ABC Airlines, Inc.'s maintenance procedures and records. Specifically, the FAA found that ABC Airlines' B-727 aircraft, N-89760, was operated beyond a Number 2 check (165-hour periodic inspection) by zero hours and 41 minutes. The FAA also discovered that ABC Airlines' L-1049H aircraft, N-59231, exceeded a Number 2 check by 11 hours and 3 minutes.

This is to inform you that the FAA is investigating this matter. We wish to offer you an opportunity to discuss the incident in person or submit a written statement within 10 days following receipt of this letter. Your statement should contain all pertinent facts and any mitigating circumstances you believe may have a bearing on the incident. If we do not hear from you within the specified time, we will process this matter without the benefit of your statement.

**[Insert the following paragraph if information is needed to determine whether an alleged violator that is a business is a “small business concern:”]**

As part of our investigation, we must determine whether [Name of Alleged Violator] is a small business concern under applicable law. To assist us in making this determination, please advise us of **[insert the appropriate language based on the guidance in Appendix B, subparagraph 3.b. “the number of employees at” or “the annual receipts of”]** [Name of Alleged Violator].

Sincerely,

[Name]

Aviation Safety Inspector

For letter to individual, ATTCH: PRIVACY ACT NOTICE - Figure A-2.

**Figure A-2. Privacy Act Notice--Letter of Investigation.****Privacy Act Notice**

This Notice is provided in accordance with Section (e)(3) of the Privacy Act, 5 U.S.C. Section 552a(e)(3), and concerns the information requested in the letter or form with which this Notice is enclosed.

A. Authority: This information is solicited pursuant to 49 U.S.C. § 40113(a) and the regulations issued under that statutory provision codified in 14 C.F.R. part 13. Submission of information is voluntary.

B. Principal Purposes:

1. The request for information is intended to provide you with an opportunity to participate in the investigation.
2. The requested information will be used to help determine whether or not there has been a violation of the Federal Aviation Regulations, and if so, what, if any, enforcement action should be taken.

C. Routine uses: Records from this system of records may be disclosed in accordance with the following routine uses that appear in the System of Records No. DOT/FAA 847, General Air Transportation Records on Individuals, DOT/FAA:

1. To provide basic airman certificate and qualification information to the public upon request.
2. To disclose information to the National Transportation Safety Board (NTSB) in connection with its investigation responsibilities.
3. To provide information about airmen to Federal, state, and local law enforcement agencies when engaged in the investigation and apprehension of drug law violators.
4. To provide information about enforcement actions arising out of violations of the Federal Aviation Regulations to government agencies, the aviation industry, and the public upon request.
5. To disclose information to another Federal agency, or to a court or an administrative tribunal, when the Government or one of its agencies is a party to a judicial proceeding before the court or involved in administrative proceedings before the tribunal.

D. Effect of failure to respond: The FAA cannot impose any penalties upon you if you fail to respond to this letter of investigation. If you fail to supply the requested information, however, the FAA will make determinations about possible enforcement action for this matter without the benefit of your comments on this matter.

**Figure A-3. Record of Interview Job Aid.**

<b>RECORD OF INTERVIEW</b>		
<b>RECORD OF INTERVIEW</b>		
<b>Date and time of Interview</b>	<b>Place of Interview</b>	
<b>Name/address of person interviewed</b>	<b>Name/address of person conducting interview</b>	
Phone: <input type="checkbox"/> Home: <input type="checkbox"/> Work: <input type="checkbox"/> Mobile:	Phone: <input type="checkbox"/> Home: <input type="checkbox"/> Work: <input type="checkbox"/> Mobile:	
<b>Reason for Interview</b>		
<b>Other persons present</b>		
<b>Name:</b>	<b>Address:</b>	<b>Phone:</b>
<b>Name:</b>	<b>Address:</b>	<b>Phone:</b>
Did witness identify any additional witnesses that should be interviewed? If so, specify names and phone numbers.		
Did witness identify any documents or other evidence that may be pertinent to this case? If so, where is it located?		

Does person interviewed have any specialized knowledge pertinent to the subject of the interview ?

Remarks:

Interviewer Signature	FAA Office	File Number	Date

SAMPLE

--

Use additional sheets as necessary

Page \_\_\_\_\_ of \_\_\_\_\_

SAMPLE

**Figure A-4. Witness Statement Job Aid.**

<b>WITNESS STATEMENT</b>			
<b>Name</b>		<b>Address</b>	
		<b>Zip:</b>	
<b>PHONE:</b>	<i>Home:</i>	<i>Work:</i>	<i>Mobile:</i>

SAMPLE

Narrative Statement:

SAMPLE

Use reverse side and blank sheets to continue:

Printed Name:

Signature:

Date:

Time:



**Figure A-5. Examples of Certification Language.**

## SAMPLE DOCUMENT AUTHENTICATION STATEMENTS

## 1. Documents copied from originals held by individuals or companies

I certify that this is a true and accurate copy of the original {insert description of document} held by {insert name of source}.

\_\_\_\_\_  
{Name of FAA Investigative Personnel}

## 2. Documents secured by FAA Investigative Personnel from sources outside the FAA upon request:

I certify that this copy of {insert description of document} was provided to me upon request by {insert name of source}.

\_\_\_\_\_  
{Name of FAA Investigative Personnel}

## 3. Photographs either taken or secured by FAA Investigative Personnel:

I certify that this photograph fairly and accurately depicts {describe the image of the photograph} on {insert date and time it was taken}.

\_\_\_\_\_  
{Name of FAA Investigative Personnel}



- 13) Relative Culpability of Informant Compared to Subject(s) or Respondent(s):
- 14) Reasons why Special Enforcement Consideration is in the Public Interest:
- 15) Basis for Belief that Informant will testify if Special Enforcement Consideration is Granted:
- 16) Pending Federal or Local Criminal Charges against Informant:  
 Yes  No If yes, give details.
- 17) Federal and State Offenses by Informant that His Testimony or Information Could Disclose:
- 18) Should DOJ/AUSA be notified?  
 Yes  No
- 19) Successful Enforcement Action against Informant Possible on Evidence Other than His Own Testimony or Information?  
 Yes  No If yes, give details.
- 20) Violations (Statutes, Regulations, & Descriptions) by Subject(s) or Respondent(s):
- 21) Informant Previously Received Special Enforcement Consideration?  
 Yes  No If yes, give details.
- 22) Other Persons for Whom Special Enforcement Consideration has been Authorized Concerning the Subject Matter of the Information Provided:
- 23) Date Investigation Began:
- 24) Identity of Informant:  
Birthdate:  
Social Security Number:  
Address:

---

Signature of Requestor

**Figure A-7. Sample Authorization for the Release of Test Results to the Federal Aviation Administration.**

AUTHORIZATION FOR THE RELEASE OF TEST RESULTS TO  
THE FEDERAL AVIATION ADMINISTRATION

TO WHOM IT MAY CONCERN:

I, \_\_\_\_\_, born on \_\_\_\_\_  
(Name) (Date)

at \_\_\_\_\_, presently residing at  
(City) (State or Country)

\_\_\_\_\_  
(Street address)

authorize any clinic, hospital, doctor, or other person to release to the  
Administrator of the Federal Aviation Administration, or his duly authorized  
representative, the results of each test made on a sample taken on

\_\_\_\_\_  
(Date)

between \_\_\_\_\_:\_\_\_\_\_ am/pm and \_\_\_\_\_:\_\_\_\_\_ am/pm,  
(Time) (Time)

that indicates the alcohol concentration in my blood or breath or the presence of any drugs in my  
body. This authorization is given pursuant to 14 C.F.R. §§ 91.17(c)(2) and 91.17(d) to  
investigate a possible violation of 14 C.F.R. §§ 91.17(a)(1), (a)(2), (a)(3), or (a)(4).

Reproduction of this authorization shall be deemed as effective as the original.

\_\_\_\_\_  
(Date) (Signature)

Attachment: Privacy Act Notice

**Figure A-8 Sample Letter Requesting Release of Alcohol Test Results.**CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. John Jones  
43 Main Street  
Hometown, OH 22222

Dear Mr. Jones:

The Federal Aviation Administration is investigating an incident that occurred on May 22, 2004 1987, from about 12:00 p.m. to about 12:30 p.m., where you may have operated an aircraft in violation of 14 C.F.R. §§ 91.17(a)(1), (a)(2), (a)(3), or (a)(4). These sections provide:

- (a) No person may act or attempt to act as a crewmember of a civil aircraft -
  - (1) Within 8 hours after the consumption of any alcoholic beverage;
  - (2) While under the influence of alcohol;
  - (3) While using any drug that affects the person's faculties in any way contrary to safety; or
  - (4) While having an alcohol concentration of .04 percent or greater in a blood or breath specimen.

Pursuant to 14 C.F.R. §§ 91.17(c)(2) and (d), you are requested to furnish to the undersigned the results of each test taken within 4 hours of the above time that indicates the concentration of alcohol in your blood or breath or the presence of drugs in your body, or to authorize any clinic, hospital, doctor, or other person to release to the undersigned such test results. Enclosed is a release form which you may complete and sign to authorize the release of such test results. Our investigation indicates that such a test was conducted on May 22, 2004, at about 2:00 p.m., at Hometown General Hospital, Hometown, Ohio.

Your failure to furnish the test results or signed release form within 7 days of service of this letter may result in the suspension or revocation of your pilot certificate for violation of 14 C.F.R. §§ 91.11(c)(2) or (d), or both.

Sincerely,

Mary Smith  
Aviation Safety Inspector

Enclosure

Attachment: Privacy Act Notice

**Figure A-9. Privacy Act Notice for Alcohol Tests.****Privacy Act Notice**

This Notice is provided in accordance with Section (e)(3) of the Privacy Act, 5 U.S.C. Section 552a(e)(3), and concerns the information requested in the letter or form with which this Notice is enclosed.

- A. Authority: This information is solicited pursuant to 49 U.S.C. § 40113(a) and 14 C.F.R. §§ 91.17(c)(2) and (d). Submission of information is required.
- B. Principal purpose: The requested information will be used to help determine whether or not there has been a violation of the Federal Aviation Regulations, and if so, what, if any, enforcement action should be taken.
- C. Routine uses: Records from this system of records may be disclosed in accordance with the following routine uses that appear in System of Records No. DOT/FAA 847, General Air Transportation Records on Individuals, DOT/FAA:
1. To provide basic airman certificate and qualification information to the public upon request.
  2. To disclose information to the National Transportation Safety Board (NTSB) in connection with its investigation responsibilities.
  3. To provide information about airmen to Federal, state, and local law enforcement agencies when engaged in the investigation and apprehension of drug and alcohol law violators.
  4. To provide information about enforcement actions arising out of violations of the Federal Aviation Regulations to government agencies, the aviation industry, and the public upon request.
  5. To disclose information to another Federal agency, or to a court or an administrative tribunal, when the Government or one of its agencies is a party to a judicial proceeding before the court or involved in administrative proceedings before the tribunal.
- D. Effect of failure to respond: If you fail to provide the information requested, the FAA may take enforcement action.

**Figure A-10. Sample Warning Notice.**

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

[Date]

EIR Number

Mr. Fred Smith  
1075 Victory Boulevard  
Los Angeles, California 90009

Dear Mr. Smith:

On May 26, 2004, you were the pilot in command of a Beech Baron N13697 that landed at the City Airport. At the time of your flight, it appears that you did not have in your personal possession a pilot certificate or photo identification in your possession or readily accessible to you in the aircraft. This conduct is allegedly in violation of 14 C.F.R. § 61.3(a).

After a discussion with you concerning this matter, we have concluded that the matter does not warrant legal enforcement action. In lieu of such action, we are issuing this letter which will be made a matter of record for a period of two years, after which, the record of this matter will be expunged.

If you wish to add any information in explanation or mitigation, please write me at the above address. We expect your future compliance with the regulations.

Sincerely,

Aviation Safety Inspector

Attachment: Privacy Act Notice

**Figure A-11. Sample Letter of Correction.**

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

[Date]

ABC Repair Station Company  
Attention: Mr. J. A. Jones, President  
1200 International Way  
Newark, New Jersey 22180

Dear Mr. Jones:

From June 14-18, 2004, the Federal Aviation Administration inspected your repair station's organization, systems, facilities, and procedures for compliance with 14 C.F.R. part 145. At the end of that inspection, we advised you of the following findings:

**[State Findings].**

This is to confirm our discussion with you on June 18, 2004, at which time immediate corrective action was begun. **[State corrective action taken].**

We have considered all available facts and concluded that this matter does not warrant legal enforcement action. In lieu of such action, we are issuing this letter of correction which will be made a matter of record.

Sincerely,

Aviation Safety Inspector



**Figure A-12. Sample Letter of Correction—Airports.**

## CERTIFIED MAIL-RETURN RECEIPT REQUESTED

[Date]

[Name]  
Manager, [Airport]  
[Address]

Dear [Name]:

On [Name], I conducted a certification inspection of the [Airport] to determine compliance with 14 C.F.R. part 139, the Airport Certification Manual, and the Airport Operating Certificate which became effective [Date]. Based on this inspection, it appears that [Airport] is not in compliance with all of the requirements.

During the investigation, I discovered that the certification manual (or certification specifications) is approximately 3 months out of date and does not reflect current conditions at the airport. The FAA acknowledges that you are now revising the entire manual. You should give first priority to the emergency plan section. You mentioned that the county is currently developing a disaster plan. The airport should participate in that process.

You agreed at the exit interview to revise the manual according to the following schedule:

Correction Date for Emergency Plan: (date)

Correction Date, Entire Manual Draft: (date)

Correction Date for Completed Manual: (date)

We have given consideration to all available facts and concluded that this matter does not warrant legal enforcement action. In lieu of such action, we are issuing this letter which will be made a matter of record. We expect your future compliance with the regulations. Please advise in writing when the manual has been revised.

Sincerely,

Airport Safety Inspector

**Figure A-13. Sample Letter Acknowledging Completion of Corrective Action.**CERTIFIED MAIL-RETURN RECEIPT REQUESTED

[Date]

[EIR Number]

Future Aircraft, Inc.  
Attn: Mr. M. Smith, Division Manager, Q.A.  
1234 South Candy Dr.  
Santa Monica, CA 90460

Dear Mr. Smith:

This is in response to your letters of June 23, 2004, and June 30, 2004, concerning the Federal Aviation Administration (FAA) Aircraft Certification Systems Evaluation Program (ACSEP) conducted at Future Aircraft, Inc., on June 2, 2004, and the findings stated in our letter of June 7, 2004.

The corrective action discussed in your letters has been evaluated, on-site, by the FAA principal inspector and has been found to be satisfactory.

In closing this case, we have given consideration to all available facts and concluded that the matter does not warrant legal enforcement action. In lieu of such action, we are issuing this letter which will be made a matter of record.

Sincerely,

MIDO Manager

**Figure A-14. Privacy Act Notice for Warning Notice.****Privacy Act Notice**

This notice is provided in accordance with Section (e)(3) of the Privacy Act, 5 U.S.C. § 552a(e)(3).

A. Authority: This information is solicited pursuant to 49 U.S.C. § 40113(a) and the regulations issued under that statutory provision codified in 14 C.F.R. part 13. Submission of information is voluntary.

B. Principal Purposes:

1. To make a record of the circumstances that are the subject of this warning notice or letter of correction.

2. The information is requested to give you the opportunity to add any information in explanation or mitigation to the alleged violation(s) stated in the warning notice.

C. Routine uses: Records from this system of records may be disclosed in accordance with the following routine uses that appear in the System of Records No. DOT/FAA 847, General Air Transportation Records on Individuals, DOT/FAA:

1. To provide basic airman certificate and qualification information to the public upon request.

2. To disclose information to the National Transportation Safety Board (NTSB) in connection with its investigation responsibilities.

3. To provide information about airmen to Federal, state, and local law enforcement agencies when engaged in the investigation and apprehension of drug law violators.

4. To provide information about enforcement actions arising out of violations of the Federal Aviation Regulations to government agencies, the aviation industry, and the public upon request.

5. To disclose information to another Federal agency, or to a court or an administrative tribunal, when the Government or one of its agencies is a party to a judicial proceeding before the court or involved in administrative proceedings before the tribunal.

D. Effect of failure to respond: The FAA cannot impose any penalties upon you if you fail to respond to this warning notice.

**Figure A-15. Sample Letter Requesting Reexamination under 49 U.S.C. § 44709.**

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear \_\_\_\_\_:

The FAA has conducted an investigation of an accident/incident that occurred at \_\_\_\_\_ on \_\_\_\_\_. Based on that investigation, the FAA has reason to believe that your competence as a certificated airman is in question, and that reexamination of your qualification to be the holder of an airman certificate is necessary in the interest of safety. Therefore, under the authority in 49 U.S.C. § 44709, the FAA requests that you call or appear at this office or a Flights Standards District Office more conveniently located to you no later than, \_\_\_\_\_, to make an appointment for a reexamination. The reexamination will consist of \_\_\_\_\_ and include the knowledge and skill necessary to be the holder of \_\_\_\_\_ with emphasis on \_\_\_\_\_.

If you make an appointment with a Flight Standards District office in another area, please advise this office.

If you do not accept the opportunity for reexamination by the date set forth above, we will begin proceedings to suspend your airman certificate until such time as you demonstrate your competence to exercise its privileges. If, for reasons beyond your control, you are unable to be reexamined at this time, please contact me prior to \_\_\_\_\_ so that the FAA can determine whether to grant an extension of time to you.

Please note that the incident that occurred on \_\_\_\_\_ is still under investigation to determine whether other enforcement action is appropriate. If additional enforcement action is to be taken, you will be advised in a separate letter.

We will be pleased to discuss this matter with you and provide any further information that may assist you. Our office is open from \_\_\_\_\_ to \_\_\_\_\_, and our telephone number is \_\_\_\_\_.

Your cooperation in this matter will be appreciated.

Sincerely,

**Figure A-16. Sample Letter of Investigation—Remedial Training.**

January 5, 2007

**CERTIFIED MAIL—RETURN RECEIPT REQUESTED****File No. [EIR NUMBER]**

[NAME]

[ADDRESS]

[CITY, STATE ZIPCODE]

Dear [TITLE &amp; LAST NAME]:

We are investigating [describe accident/incident/occurrence] that occurred on [date and time] at [location]. The [accident/incident/occurrence] involved operation of a [make/model] aircraft. These types of operations are contrary to FAA's regulations.

Please send us any evidence or statements you might care to make about this matter within 10 days of receiving this letter. We will consider any information you provide in our investigation. If we do not hear from you within this time, we will complete our report without the benefit of your statement.

Also, we may allow you to take part in FAA's *corrective action through remedial training program*, rather than taking enforcement action against you. Remedial training may be appropriate if we find that:

- a. The apparent violation was not deliberate or grossly careless;
- b. The apparent violation did not involve apparent criminal conduct or disclose a lack of qualifications to hold an airman certificate;
- c. You fully disclosed the facts and circumstances of this incident during our investigation; and
- d. Our review shows you have a good record of compliance with our regulations.

For us to allow you to participate in the *corrective action through remedial training program*, you must respond to this letter within 10 days of receiving it and express your interest in pursuing a course of remedial education. However, the decision to use remedial training is within our discretion, and your interest in the program does not guarantee that we will allow you to take remedial training instead of being subject to legal enforcement action.

If you want to receive remedial training, and the FAA inspector believes it may be appropriate, you will meet with the inspector, who will confirm whether we will allow you to take part in the training program. The inspector will propose a training course for you, at your expense. If you agree to the proposed program, you and the FAA will sign an agreement describing its terms and conditions. When you complete the training satisfactorily, within the time specified, we will issue you a Letter of Correction and will close the matter. If you fail to carry out any of the terms of the agreement, we will terminate your participation in the program and may take legal

enforcement action against you. We may use the information you give the FAA, including the response to this letter, in determining whether remedial training is appropriate. We may use our decision to not offer you remedial training, or your failure to complete the program satisfactorily, in any later legal enforcement action we take.

You can get more information on our *corrective action through remedial training program* by calling [FAA staff name and number].

Sincerely,

Sincerely,

John L. Doe  
Aviation Safety Inspector

Attachment: Privacy Act Notice

SAMPLE

## PRIVACY ACT NOTICE

This Notice is provided in accordance with Section (e)(3) of the Privacy Act, 5 U.S.C. Section 552a(e)(3), and concerns the information requested in the letter or form with which this Notice is enclosed.

A. Authority: This information is solicited pursuant to 49 U.S.C. § 40113(a) and the regulations issued under that statutory provision codified in 14 C.F.R. part 13. Submission of information is voluntary.

B. Principal Purposes:

1. The request for information is intended to provide you with an opportunity to participate in the investigation.

2. The requested information will be used to help determine whether or not there has been a violation of the Federal Aviation Regulations, and if so, what, if any, enforcement action should be taken.

C. Routine uses: Records from this system of records may be disclosed in accordance with the following routine uses that appear in the System of Records No. DOT/FAA 847, General Air Transportation Records on Individuals, DOT/FAA:

1. To provide basic airman certificate and qualification information to the public upon request.

2. To disclose information to the National Transportation Safety Board (NTSB) in connection with its investigation responsibilities.

3. To provide information about airmen to Federal, state, and local law enforcement agencies when engaged in the investigation and apprehension of drug law violators.

4. To provide information about enforcement actions arising out of violations of the Federal Aviation Regulations to government agencies, the aviation industry, and the public upon request.

5. To disclose information to another Federal agency, or to a court or an administrative tribunal, when the Government or one of its agencies is a party to a judicial proceeding before the court or involved in administrative proceedings before the tribunal.

D. Effect of failure to respond: The FAA cannot impose any penalties upon you if you fail to respond to this letter of investigation. If you fail to supply the requested information, however, the FAA will make determinations about possible enforcement action for this matter without the benefit of your comments on this matter.

**Figure A-17. Sample Remedial Training Agreement.**

[Date]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

September 23, 2005

FILE NO. 2006SW190079

Mr. John D. Smith  
1711 Colorado Avenue  
Shreveport, LA 71629

Dear Mr. Smith:

On September 12, 2005, you were advised that the Federal Aviation Administration was investigating an incident that occurred on September 5, 2005 in the vicinity of Fort Worth, Texas, and involved your operation of a Cirrus SR-22, N57785.

You have been advised that such an operation is contrary to Section 91.123 (a) of the Federal Aviation Regulations. Therefore, you have agreed to enter into this training agreement.

In consideration of all available facts and circumstances, we have determined that remedial training as a substitute for legal enforcement action is appropriate. Accordingly, your signature on this letter signifies your agreement to complete the prescribed course of remedial training within the assigned period of time. To complete this remedial training program successfully you must do the following:

- a. You must obtain the required training from an approved source. Approval can be obtained verbally from this Flight Standards District Office, upon obtaining the services of a certified flight instructor.
- b. Once training begins, you are required to make periodic progress reports to this office.
- c. You are required to complete all elements of the remedial training syllabus and meet acceptable completion standards within 21 days of accepting this training agreement.
- d. You are required to provide this office with written documentation indicating satisfactory completion of the prescribed remedial training. You must provide the original of a written certification signed by the certified flight instructor who conducts the remedial training. The written certification must describe each element of the syllabus for which instruction was given and the level of proficiency you have achieved.
- e. All expenses incurred for the prescribed training must be borne by you.



**REMEDIAL TRAINING SYLLABUS**

Syllabus Objective: To improve the student's knowledge and pilot proficiency concerning proper use of the SR-22 flight director, navigation and autopilot avionics systems specific to N57785.

Syllabus Content:

- a. A minimum of two hours of ground instruction on the following subjects:
  1. Compliance with ATC clearances
  2. Programming and use of the GNS 430 navigation system for IFR operations
  3. Use of the autopilot for IFR operations
  
- b. A minimum of one hour of flight instruction in IFR procedures to include:
  1. Compliance with IFR clearances
  2. Use of the GNS 430 navigation system and the autopilot for IFR departures and arrivals
  3. Timely response to undesired autopilot commands

Completion standards: The training will have been successfully completed when the assigned instructor, by oral testing and practical demonstration, certifies that the student has completed instruction in the above-mentioned subjects in accordance with the remedial training syllabus.

---

John L. Doe  
Aviation Safety Inspector

---

Date

I agree to comply with the terms and conditions specified in this letter. I understand that failure to complete any element of this agreement within the prescribed period of time may result in my removal from the *corrective action through remedial training program* and may result in appropriate *legal enforcement action*. If such legal enforcement action is taken, I waive my right under section 821.33 of the National Transportation Safety Board’s Rules of Practice (49 C.F.R. 821.33), to move to dismiss the FAA’s complaint as stale.

\_\_\_\_\_  
John D. Smith

\_\_\_\_\_  
Date

TO: John L. Doe  
 Federal Aviation Administration  
 Flight Standards District Office  
 2600 Meacham Blvd.  
 Fort Worth, TX 76193

FROM: \_\_\_\_\_  
 Instructor's Name (print)

\_\_\_\_\_  
 Address

\_\_\_\_\_  
 City State ZIP

This is to certify that Mr. John D. Smith has satisfactorily completed the entire training program shown below, as required by the prescribed remedial training syllabus and achieved the level of proficiency described below:

Syllabus Objective: To improve the student's knowledge and pilot proficiency concerning proper use of the SR-22 navigation and autopilot avionics systems specific to N57785

Syllabus Content:

- a. A minimum of two hours of ground instruction on the following subjects:
  - 1. Compliance with ATC clearances
  - 2. Programming and use of the GNS 430 navigation system for IFR operations
  - 3. Use of the autopilot for IFR operations
- b. A minimum of one hour flight instruction in:
  - 1. Compliance with IFR clearances
  - 2. Use of the GNS 430 navigation system and the autopilot for IFR departures and arrivals.
  - 3. Timely response to undesired autopilot commands

Level of Proficiency Achieved: \_\_\_\_\_

Signature: \_\_\_\_\_

CFI Certificate no.: \_\_\_\_\_ Expires:

\_\_\_\_\_

Date signed: \_\_\_\_\_

**Figure A-18. Sample Letter of Correction for Remedial Training.**

October 16, 2005

File Number: 2006SW190079

Mr. John D. Smith:

This letter is in regard to your operation as pilot in command of a Cirrus aircraft, N57785, on September 5, 2005.

The aircraft was observed and identified as a Cirrus SR-22 aircraft, N57785, operating contrary to an air traffic clearance while under IFR in Class D airspace in the vicinity of the Fort Worth Meacham International Airport. You have been advised that, in the view of the FAA, such operation is contrary to 14 C.F.R. § 91.131(a)(1).

As a result of our discussion with you on September 23, 2005, you agreed to complete a program of remedial training as a substitute for legal enforcement action. You have submitted evidence showing satisfactory completion of two hours of ground instruction in: compliance with ATC clearances, programming and use of the GNS 430 navigation system for IFR operations, and use of the autopilot for IFR operations. In addition, you also completed one hour of flight instruction in compliance with IFR clearances, use of the GNS 430 navigation system and autopilot for IFR departures and arrivals, and timely response to undesired autopilot commands.

In closing this case, we have considered all available facts and concluded that, based on your satisfactory completion of the remedial training program, legal enforcement action will not be pursued. In place of such action, we are issuing this letter that will be made a matter of record for a period of two years, after which the record of this matter will be expunged. This letter constitutes neither an admission nor an adjudication of a violation.

We appreciate your cooperation in this matter and expect your full compliance with the regulations in the future.

Sincerely,

John L. Doe  
Aviation Safety Inspector

**Figure A-19. Sample Letter of Termination.**

October 16, 2005

File Number: 2006SW190079

Mr. John D. Smith  
1711 Colorado Avenue  
River City, Iowa 51649

Dear Mr. Smith:

This is to inform you that we find you have not complied with the remedial training agreement executed on September 23, 2005, requiring that you complete specified remedial training. Specifically, your designated flight instructor, Mr. George Smith, advises that you did not complete the flight training segment for use of the GNS 430 navigation system and autopilot for IFR departures and arrivals by October 15, 2005. You have not contacted this office to request modification of any of the terms of the remedial training agreement.

In view of your failure to comply with the terms and conditions of the training program agreement, we have terminated your participation in the remedial training program effective this date. In addition, we have referred your case, involving the operation of Cirrus N57785 on September 5, 2005, to the Regional Counsel for the Southwest Region for appropriate legal enforcement action.

Sincerely,

John L. Doe  
Aviation Safety inspector

**Figure A-20. Corrective Action through Remedial Training Case Study (Operations).**

On September 5, 2005, at 1515 CDT, the pilot of a Cirrus SR-22 failed to follow an ATC clearance after departure from runway 34R at Fort Worth Meacham Field on a private flight. VFR conditions prevailed and an IFR flight plan was filed to Shreveport, LA. The commercial pilot was cleared to Shreveport via the Hubbard Five departure, Longview transition, direct, fly runway heading, and maintain 3,000.

At 2,000 MSL, the pilot (who had the departure loaded into the Garmin 430 navigation system before takeoff) turned the autopilot on and mistakenly selected the navigation mode for GPS steering (GPSS) instead of remaining in heading mode. When selected, the autopilot initiated an immediate turn to the east and, while the pilot was attempting to resolve this error, separation was lost with another aircraft northeast of the airport entering downwind for runway 34R.

The investigating inspector found the pilot to be forthcoming and cooperative and to have a constructive and compliant attitude. A search of FAA's databases did not disclose any violation, accident or incident history. In addition, the pilot had satisfactorily completed technically advanced aircraft training and an IFR flight check with the aircraft manufacturer in the recent past.

After completion of the investigation the inspector completed the Enforcement Decision Tool and selected the following:

Individual conduct: Careless

Basis for selection of careless conduct: The action of the pilot to mistakenly select the GPSS navigation mode of the autopilot was a slip, lapse, or mistake that was not intentional or reckless.

Risk Statement: Deviation from an ATC clearance can result in loss of separation and has the potential for a collision with other aircraft.

Severity: Catastrophic

Factors considered in determining severity: Failure to comply with an ATC departure clearance could result in a midair collision.

Likelihood: Occasional

Factors and circumstances in determining likelihood:

VFR conditions prevailed, multiple aircraft were established in the traffic pattern on the downwind leg of the departure runway, the airport was experiencing a high volume of VFR and

IFR traffic, the pilots inexperience with the navigation equipment, and the SR-22's high rate of climb.

“Occasional” was selected when considering the question: If the exact same event with the same facts and circumstances were to occur, every day for a year, what would be the likelihood of a catastrophic outcome?

Safety risk: High (from the Risk Assessment Matrix)

Type of Action: Remedial Training considering the complexity of the SR-22 navigation system, the relative inexperience of the airman in the use of this new equipment, and his cooperative attitude and excellent safety record.

Final Remedial Training Program:

The airman satisfactorily completed remedial ground and flight training and evaluation on his use of specific Cirrus SR-22 avionics system components and compliance with ATC clearances.

Closure: An FAA Letter of Correction

**Figure A-21. Voluntary Surrender of Certificate Form.**

UNITED STATES OF AMERICA  
 FEDERAL AVIATION ADMINISTRATION  
 \_\_\_\_\_  
 [Insert Name of FAA Office]  
 \_\_\_\_\_  
 [Insert Address]

**VOLUNTARY SURRENDER OF CERTIFICATE**

I, \_\_\_\_\_ [Name of Certificate holder] \_\_\_\_\_, the holder of a \_\_\_\_\_ [Note 1] \_\_\_\_\_ certificate, No. \_\_\_\_\_ [Certificate Number] \_\_\_\_\_, issued by the Federal Aviation Administration (FAA), request that the FAA accept the voluntary surrender of that certificate for \_\_\_\_\_ [Note 2] \_\_\_\_\_. This request is made voluntarily and I acknowledge that my \_\_\_\_\_ [Note 3] \_\_\_\_\_ may not be reissued unless I again meet the requirements prescribed for its issuance.

\_\_\_\_\_  
 [Name of certificate holder]

\_\_\_\_\_  
 Date

**ACKNOWLEDGMENT OF ACCEPTANCE AND COORDINATION**

I, \_\_\_\_\_ [Name of FAA employee accepting the surrender] \_\_\_\_\_, an \_\_\_\_\_ [Title of FAA employee] \_\_\_\_\_, accept the specified certificate and acknowledge that \_\_\_\_\_ [Name of certificate holder] \_\_\_\_\_ freely and voluntarily surrendered the specified FAA certificate to the FAA on \_\_\_\_\_ Insert Date \_\_\_\_\_. I further acknowledge that this certificate holder's request for this voluntary surrender has been coordinated and concurred with, by other FAA offices, as appropriate.

\_\_\_\_\_  
 [Name of FAA employee]

\_\_\_\_\_  
 Date

**Notes:**

1. Enter the type of certificate surrendered, for example Private Pilot, Commercial Pilot, Type Certificate, etc.
2. Briefly describe the reason for the surrender, such as: cancellation / issue of a certificate of lower grade / issue of a certificate with specific ratings deleted.
3. Briefly describe specifically what is being surrendered.



- If the certificate is being surrendered for cancellation, enter the type of certificate.
- If the certificate is surrendered for issuance of a certificate of lower grade, enter the privileges surrendered.
- If the certificate is surrendered for issuance of another certificate with specific rating(s) deleted, enter the rating(s) deleted.

SAMPLE

## Appendix B

### Table of Sanctions

#### All Enforcement Programs Except Hazardous Materials

##### Part One - Abbreviations and Definitions

1. Applicability. This table of sanctions applies to violations that occurred on or after October 1, 2007. For violations occurring before October 1, 2007, FAA enforcement personnel apply the sanction guidance principles in FAA Order 2150.3A using up to the statutory maximum sanction amount in effect at the time of the violation.

2. Abbreviations. The following abbreviations are used in this Table:

*APIS* means approved production inspection system

*A/W* means airworthiness

*AWC* means airworthiness certificate

*BTS* means Under Secretary for Border and Transportation Security

*IA* means inspection authorization

*LE* means law enforcement

*PC* means production certificate

*STC* means supplemental type certificate

*TC* means type certificate

*TFR* means Temporary Flight Restriction

*TSA* means Transportation Security Administration

3. Definitions:

a. A *continuing violation* arises when a specific violation occurs over more than one day or over more than one flight. It also may involve a violation that is ongoing, *for example*, an ongoing refusal to provide required records to the FAA for inspection. Punitive sanctions are appropriate for continuing violations that are not currently ongoing. Sanction guidance for these violations is set forth in paragraphs 6 and 7 (*multiple acts or multiple violations*) of chapter 7. A combination of punitive and remedial sanctions is appropriate when continuing violations are ongoing.

b. Violation committed by a *small business concern*. Section 503 of Vision 100---Century of Aviation Reauthorization Act (CARA) amended 49 U.S.C. § 46301 to change the civil penalty amounts the FAA may seek for violations that occur on or after December 12, 2003; the law sets different limits on the civil penalties the FAA may seek for violations by *small business concerns*, as opposed to violations by other entities. Vision 100 CARA gives *small business concern* the same meaning as in the Small Business Act (15 U.S.C. § 632). Section 632 defines *small business concern* as an enterprise “which is independently owned and operated and which is not dominant in its field of operation.” The Small Business Administration regulations implement the Small Business Act and define *business concern* as

“a business entity organized for profit, with a place of business located in the U.S., and which operates primarily within the U.S. or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.” 13 C.F.R. § 121.105. The SBA regulations further define *small business concern* in tables, describing each kind of entity by its economic activity or industry, and listing the limit for *small* by annual receipts or, more commonly, number of employees. (The size limits generally are established under the North American Industry Classification System (NAICS).) For the complete list, see 13 C.F.R. § 121.201 or the SBA’s website at [www.sba.gov](http://www.sba.gov). Thus, if a person meets the definition of *business concern* and has annual receipts or the number of employees within the applicable SBA limit, it is a *small business concern*, and the FAA will determine the civil penalty using the applicable range. Limits for common aviation entities follow (in numbers of employees, unless otherwise noted).

#### Manufacturing

- Aircraft – 1,500 employees
- Aircraft engine and part – 1,000 employees
- Other aircraft part and equipment – 1,000 employees

#### Air transportation

- Scheduled passenger – 1,500 employees
- Scheduled freight – 1,500 employees
- Nonscheduled passenger – 1,500 employees
- Nonscheduled offshore marine passenger - \$25.5 million annual receipts
- Nonscheduled freight – 1,500 employees
- Nonscheduled offshore marine freight - \$25.5 million annual receipts
- Other nonscheduled - \$6.5 million annual receipts
- Support activities - \$6.5 million annual receipts

Flight Training - \$23.5 million annual receipts

#### Airport operations

- Airport operator, organized for profit – \$6.5 million annual receipts
- Other operations, excluding air traffic control - \$6.5 million annual receipts

Note that the following guidance uses *large business concern* for some civil penalty ranges. That is not a statutory or regulatory term for purposes of FAA enforcement. It includes each business concern that exceeds the maximum limit for small business concern, as well as any other entity that does not meet the definition of “small business concern.”

c. Civil Penalty Ranges. For the purpose of this table, when civil penalty action is recommended and described as *Minimum*, *Moderate*, or *Maximum*, the penalty ranges are defined in subparagraphs (1) through (9) of this paragraph. Note that the middle of each recommended sanction range would be for a single violation without aggravating or mitigating factors.

(1) VIOLATION COMMITTED BY U.S. AIR CARRIERS OR U.S. COMMERCIAL OPERATOR.CLASSIFICATION OF AIR CARRIER AND OPERATOR

GROUP I - Each air carrier operating under part 121 or part 135, with an annual operating revenue of \$100,000,000 or more. Operating revenue is determined by reference to DOT's "Air Carrier Industry Scheduled Service Traffic Statistics Quarterly." See <http://ostpxweb.dot.gov/aviation/index.html>, and click on "Airline Financial Review."

GROUP II - Each air carrier or commercial operator operating under part 121 with an annual operating revenue of less than \$100,000,000, or under part 135 with an annual operating revenue of less than \$100,000,000, if the 135 operator has 50 or more pilots and 25 or more aircraft on its operations specifications. Operating revenue is determined by reference to DOT's "Air Carrier Industry Scheduled Service Traffic Statistics Quarterly."

GROUP III - Each air carrier or commercial operator operating under part 135 with 6 to 49 pilots or 6 to 24 aircraft.

GROUP IV - Each air carrier or commercial operator operating under part 135 with no more than 5 pilots and no more than 5 aircraft.

GROUP I - *large* business concern

Maximum	\$18,750-\$25,000
Moderate	\$10,000-\$18,749
Minimum	\$2,000-\$9,999

## GROUP I - small business concern (for violations covered under 49 U.S.C. § 46301(a)(5)(A)):

Maximum	\$8,250-\$11,000
Moderate	\$4,400-\$8,249
Minimum	\$1,100-\$4,399

## GROUP I - small business concern (for violations covered under 49 U.S.C. § 46301(a)(1)(A) or (B) but not under 49 U.S.C. § 46301(a)(5)(A)):

Maximum	\$850-\$1,100
Moderate	\$650-\$849
Minimum	\$500-\$649

GROUP II – *large* business concern:

Maximum	\$16,250-\$25,000
Moderate	\$8,750-\$16,249
Minimum	\$1,850-\$8,749

GROUP II - small business concern (for violations covered under 49 U.S.C. § 46301(a)(5)(A)):

Maximum	\$8,250-\$11,000
Moderate	\$3,850-\$8,249
Minimum	\$935-\$3,849

GROUP II - small business concern (for violations covered under 49 U.S.C. § 46301(a)(1)(A) or (B) but not under 49 U.S.C. § 46301(a)(5)(A)):

Maximum	\$750-\$1,100
Moderate	\$450-\$ 749
Minimum	\$250 \$ 449

GROUP III -for violations covered under 49 U.S.C. § 46301(a)(5)(A):

Maximum	\$7,150-\$11,000
Moderate	\$3,300-\$7,149
Minimum	\$825-\$3,299

GROUP III - for violations covered under 49 U.S.C. § 46301(a)(1)(A) or (B) but not under 49 U.S.C. § 46301(a)(5)(A):

Maximum	\$650-\$1,100
Moderate	\$400-\$ 649
Minimum	\$150-\$ 399

GROUP IV -for violations covered under 49 U.S.C. § 46301(a)(5)(A):

Maximum	\$4,400-\$11,000
Moderate	\$2,200-\$4,399
Minimum	\$550-\$2,199

GROUP IV - for violations covered under 49 U.S.C. § 46301(a)(1)(A) or (B) but not under 49 U.S.C. § 46301(a)(5)(A):

Maximum	\$500-\$1,100
Moderate	\$300-\$499

Minimum	\$100-\$299
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(2) VIOLATION COMMITTED BY PART 129 OPERATOR

Maximum	\$18,750-\$25,000
Moderate	\$10,000-\$18,749
Minimum	\$2,000-\$9,999

(3) VIOLATION COMMITTED BY PART 125 OPERATOR.

Large Business Concern:

Maximum	\$16,250-\$25,000
Moderate	\$8,750-\$16,249
Minimum	\$1,850-\$8,749

Small Business Concern (for violations covered under 49 U.S.C. § 46301(a)(5)(A)):

Maximum	\$8,250-\$11,000
Moderate	\$3,850-\$8,249
Minimum	\$935-\$3,849

Small Business Concern (for violations covered under 49 U.S.C. § 46301(a)(1)(A) or (B) but not under 49 U.S.C. § 46301(a)(5)(A)):

Maximum	\$750-\$1,100
Moderate	\$450-\$749
Minimum	\$250-\$449

(4) VIOLATION COMMITTED BY AIR AGENCY (INCLUDING REPAIR STATION).

Large Business Concern:

Maximum	\$16,250-\$25,000
Moderate	\$8,750-\$16,249
Minimum	\$1,850-\$8,749

Small Business Concern (for violations covered under 49 U.S.C. § 46301(a)(5)(A)):

Maximum	\$7,150-\$11,000
Moderate	\$3,850-\$7,149
Minimum	\$935-\$3,849

Small Business Concern (for violations covered under 49 U.S.C. § 46301(a)(1)(A) or (B) but not under 49 U.S.C. § 46301(a)(5)(A)):

Maximum	\$750-\$1,100
Moderate	\$450-\$749
Minimum	\$250-\$449

(5) VIOLATION COMMITTED BY AIRPORT OPERATOR.

Large Business Concern:

Maximum	\$18,750-\$25,000
Moderate	\$10,000-\$18,749
Minimum	\$2,000-\$9,999

Small Business Concern (for violations covered under 49 U.S.C. § 46301(a)(5)(A)):

Maximum	\$8,250-\$11,000
Moderate	\$4,400-\$8,249
Minimum	\$1,100-\$4,399

Small Business Concern (for violations covered under 49 U.S.C. § 46301(a)(1)(A) or (B) but not under 49 U.S.C. § 46301(a)(5)(A)):

Maximum	\$850-\$1,100
Moderate	\$650-\$849
Minimum	\$500-\$649

(6) LARGE BUSINESS CONCERN -- DOES NOT HOLD CERTIFICATE

Maximum	\$18,750-\$25,000
Moderate	\$10,000-\$18,749
Minimum	\$2,000-\$9,999

(7) SMALL BUSINESS CONCERN – DOES NOT HOLD CERTIFICATE

For violations covered under 49 U.S.C. § 46301(a)(5)(A):

Maximum	\$4,400-\$11,000
Moderate	\$2,200-\$4,399
Minimum	\$550-\$2,199

For violations covered under 49 U.S.C. § 46301(a)(1)(A) or (B) but not under 49 U.S.C. § 46301(a)(5)(A):

Maximum	\$500-\$1,100
Moderate	\$300-\$499
Minimum	\$100-\$299

(8) VIOLATION RELATING TO THE TRANSPORTATION OF A HAZARDOUS MATERIAL (14 CFR), THE REGISTRATION OR RECORDATION OF AN AIRCRAFT NOT USED TO PROVIDE AIR TRANSPORTATION, THE LIMITATION ON THE CONSTRUCTION OR ESTABLISHMENT OF A LANDFILL, OR THE SAFE DISPOSAL OF A LIFE-LIMITED AIRCRAFT PART.

Large Business Concern (if entity is not within a more specific category, for example, Group I Air Carrier or Operator):

Maximum	\$16,250-\$25,000
Moderate	\$8,750-\$16,249
Minimum	\$1,850-\$8,749

Air Small Business Concern (if not within a more specific category for example, Group II Carrier or Operator) or Individual:

For violations covered under 49 U.S.C. § 46301(a)(5)(A):

Maximum	\$4,400-\$11,000
Moderate	\$2,200-\$4,399
Minimum	\$550-\$2,199

For violations covered under 49 U.S.C. § 46301(a)(1)(A) or (B) but not under 49 U.S.C. § 46301(a)(5)(A):

Maximum	\$500-\$1,100
Moderate	\$300-\$499
Minimum	\$100-\$299

(9) OTHER VIOLATION COMMITTED BY AN INDIVIDUAL.

AIRMAN SERVING AS AN AIRMAN - INDIVIDUAL SERVING IN CAPACITY OF AN AIRMAN. ALL VIOLATIONS EXCEPT THOSE LISTED IN (8).

Maximum	\$850-\$1,100
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Moderate	\$650-\$849
Minimum	\$500-\$649

OTHER INDIVIDUAL - NOT SERVING IN CAPACITY OF AIRMAN.

For violations covered under 49 U.S.C. § 46301(a)(5)(A):

Maximum	\$4,400-\$11,000
Moderate	\$2,200-\$4,399
Minimum	\$550-\$2,199

For violations covered under 49 U.S.C. § 46301(a)(1)(A) or (B) but not under 49 U.S.C. § 46301(a)(5)(A):

Maximum	\$500-\$1,100
Moderate	\$300-\$499
Minimum	\$100-\$299

(10) ENGINEERING AND MANUFACTURING VIOLATIONS.

Large Business Concern:

Maximum	\$18,750-\$25,000
Moderate	\$10,000-\$18,749
Minimum	\$2,000-\$9,999

Small Business Concern or Individual (for violations covered under 49 U.S.C. § 46301(a)(5)(A):

Maximum	\$8,250-\$11,000
Moderate	\$4,400-\$8,249
Minimum	\$1,100-\$4,399

Small Business Concern or Individual (for violations covered under 49 U.S.C. § 46301(a)(1)(A) or (B) but not under 49 U.S.C. § 46301(a)(5)(A):

Maximum	\$850-\$1,100
Moderate	\$650-\$849
Minimum	\$500 \$649

d. Pending compliance or corrective action; injunctive relief. For many kinds of violations, there may be circumstances where the FAA should not allow the offending entity to continue to operate or to continue in business. Examples include a certificate holder that does not allow an FAA inspector to inspect the holder's operation or facilities, or an unapproved manufacturer that produces aircraft parts in violation of 14 C.F.R. § 21.303. In that circumstance, suspension of an entity's certificate or other approval, pending compliance or corrective action, or injunctive relief against an entity that does not hold an FAA approval, would be appropriate. In egregious circumstances revocation of the entity's certificate or other approval may be warranted. Such action or relief may be considered in addition to the assessment of a civil penalty as recommended in the following tables.

Furthermore, amendment or modification of a certificate or approval may be appropriate in the circumstance where a definitive part of the offending entity's operation can be safely excluded from the operational approval. An example is an approved aircraft parts manufacturer that makes multiple kinds of parts, but has quality control problems for only one kind of part. Such action may be considered in addition to the assessment of a civil penalty as recommended in the following tables.

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#### 1. U.S. AIR CARRIERS, U.S. COMMERCIAL OPERATORS, PART 125 OPERATORS, AND PART 129 OPERATORS.

<b>Fig. B-1-a. Maintenance Manual</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Failure to maintain current manual	Minimum	Up to 7-day suspension
(2) Failure to provide adequate instructions and procedures in manual	Moderate to Maximum	
(3) Failure to distribute manual to appropriate personnel	Minimum to Moderate	
(4) Release of aircraft without required equipment	Moderate to Maximum	Up to 7-day suspension

<b>Fig. B-1-b. A/W Directive</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Failure to comply	Moderate to Maximum	

<b>Fig. B-1-c. Operations Specifications</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Exceed inspection or overhaul time limitation	Moderate	Up to 7-day suspension
(2) Operation contrary to ops specs – technical noncompliance	Minimum	
(3) Operation contrary to ops specs – likely potential or actual adverse effect on safe operation	Moderate to Maximum	

<b>Fig. B-1-d. Facilities and Equipment</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Failure to provide adequately for proper servicing, maintenance, repair, or inspection of facilities and equipment	Maximum	Indefinite Suspension until proper servicing, maintenance, repair and inspection of facilities and equipment is provided to Revocation

<b>Fig. B-1-e. Maintenance and Inspection Organization</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Failure to provide or maintain a maintenance and inspection organization	Maximum	Indefinite Suspension until an appropriate maintenance and inspection organization is provided to Revocation
<b>Fig. B-1-f. Training Program</b>		
<b>Fig. B-1-f. Training Program</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Failure to have training program	Maximum	Indefinite Suspension until compliance to Revocation
(2) Failure to maintain training program	Moderate to Maximum	
(3) Failure to train personnel adequately	Moderate to Maximum	
<b>Fig. B-1-g. Maintenance or Aircraft Paperwork</b>		
<b>Fig. B-1-g. Maintenance or Aircraft Paperwork</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Incomplete or unsigned release	Minimum to Maximum	
(2) Failure to revise a/c data after repair	Moderate to Maximum	
<b>Fig. B-1-h. Performance of Maintenance</b>		
<b>Fig. B-1-h. Performance of Maintenance</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) By unauthorized person	Maximum	
(2) Failure to perform or improper maintenance	Moderate to Maximum	
<b>Fig. B-1-i. SFAR 36</b>		
<b>Fig. B-1-i. SFAR 36</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Failure to comply – second offense	Maximum	
<b>Fig. B-1-j. Records and Reports</b>		
<b>Fig. B-1-j. Records and Reports</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Deliberate violation		
(a) Intentionally false or fraudulent entry, reproduction, or alteration in record or report		Revocation
(b) Other		180-day Suspension to Revocation

<b>Fig. B-1-j. Records &amp; Reports cont.</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(2) Failure to make accurate mechanical interruption summary report	Moderate to Maximum	
(3) Failure to make available report of major alteration or repair	Moderate to Maximum	Indefinite Suspension to Revocation
(4) Failure to make accurate mechanical reliability report	Moderate to Maximum	
(5) Failure to make required entry in aircraft log	Minimum to Maximum	
(6) Failure to make available pilot record	Moderate to Maximum	Indefinite Suspension to Revocation
(7) Failure to make available load manifest	Moderate to Maximum	Indefinite Suspension to Revocation
(8) Failure to monitor and record enroute radio communication	Moderate to Maximum	

<b>Fig. B-1-k. Dispatch and Flight Release Rules</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Any violation of subpart U of 14 CFR part 121	Moderate to Maximum	

<b>Fig. B-1-l. Operation of unairworthy aircraft</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Technical non-conformity to TC; no likely effect on safe operation	Minimum	
(2) Non-conformity to TC that may have, or has, adverse effect on safe operation	Moderate to Maximum	
(3) Release of aircraft without required equipment	Moderate to Maximum	Up to 7-day suspension

<b>Fig. B-1-m. Provisions specific to passenger-carrying</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Boarding, or serving alcoholic beverage to, a person who appears to be intoxicated	Maximum	
(2) Failure to brief passengers	Moderate to Maximum	
(3) Failure to ensure seat and belt for each passenger	Maximum	
(4) Operation w/o operable public address system	Maximum	
(5) Failure to store baggage properly	Moderate	

<b>Fig. B-1-n. Provisions specific to flight deck crew</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Use of crewmember with expired medical certificate	Minimum to Moderate	
(2) Failure to make flight deck seat available to authorized enroute inspector	Maximum	

<b>Fig. B-1-n. Provisions specific to flight deck crew cont.</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(3) Use of unqualified crewmember	Maximum	
(4) Flight and Duty Time violation	Moderate	

<b>Fig. B-1-o. Other provisions</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Improperly Returning Aircraft to service	Maximum	
(2) Illegal carriage of controlled substance with knowledge of carrier, that is, knowledge of, or involvement in, conduct by top management personnel		Revocation
(3) Use of unqualified personnel other than flight deck crewmember	Maximum	

<b>Fig. B-1-p. Operations at airports requiring slots</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Operation without a reservation from ATC	Moderate	
(2) Operation with a reservation, but at the wrong time	Moderate	
(3) Use of international slot for domestic flight	Moderate	
(4) Use of aircraft not meeting criteria in 14 C.F.R. § 93.123(c)(2) in commuter slot	Moderate	

## **2. PERSONNEL OF AIR CARRIERS, COMMERCIAL OPERATORS, AND PART 125 OPERATORS.**

<b>Fig. B-2-a. Maintenance, including inspection</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Performing maintenance without certificate, rating, or authorization	Maximum	
(2) Performing maintenance that exceeds limitations		30- to 45-day Suspension
(3) Failure to perform maintenance properly		30- to 120-day Suspension

<b>Fig. B-2-b. Inspection</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Failure to make required inspection		30- to 60-day Suspension
(2) Making improper inspection		30- to 120-day Suspension
(3) Improper release of aircraft to service		30 to 60-day Suspension
(4) Releasing aircraft for service without required equipment		30 to 60-day Suspension



<b>Fig. B-2-c. Records and Reports</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Failure to make entry in aircraft log		15- to 60-day Suspension
(2) Failure to make entry in worksheet		15- to 30-day Suspension
(3) Failure to make entry in other maintenance record		15- to 30-day Suspension
(4) Failure to sign-off work or inspection performed		15- to 30-day Suspension
(5) Failure to complete and sign maintenance release		15- to 30-day Suspension
(6) Intentionally false or fraudulent entry, reproduction, or alteration		Revocation

<b>Fig. B-2-d. Flight operations</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Preflight		
(a) Failure to use, or improper use of, checklist		30- to 60-day Suspension
(b) Failure to check aircraft log, flight manifest, weather, etc.		30- to 90-day Suspension
(c) Failure to make required inspection		30- to 60-day Suspension
(d) Failure to inspect, or improper inspection of, aircraft		15- to 30-day Suspension
(e) Failure to ensure seat and belt available for each passenger		30- to 60-day Suspension
(2) Taxiing		
(a) Failure to adhere to clearance to instruction		30- to 60-day Suspension
(b) Collision		30- to 180-day Suspension
(c) Jet blast		30- to 120-day Suspension
(d) Taxiing with standing passenger		30- to 60-day Suspension
(e) Taxiing off runway, taxiway or ramp		30- to 90-day Suspension
(3) Takeoff		
(a) Contrary to, or without, clearance		60- to 120-day Suspension
(b) Below weather minimums		60- to 120-day Suspension

<b>Fig. B-2-d. Flight operations cont.</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(c) In excess of maximum gross weight		60- to 120-day Suspension
<b>(4) Enroute</b>		
(a) Deviating from clearance or instruction		30- to 90-day Suspension
(b) Operating VFR in clouds		90-day Suspension to Revocation
(c) Operating unairworthy aircraft		30- to 180-day suspension
(d) Unauthorized departure from flight deck		15- to 30-day Suspension
(e) Operating within restricted or prohibited area (including a TFR) or Class A airspace		30- to 90-day Suspension
(f) Operating contrary to a NOTAM		30- to 90-day suspension
(g) Operating without required equipment		15- to 120-day Suspension
(h) Fuel mismanagement or exhaustion		30- to 150-day Suspension
(i) Unauthorized manipulation of controls		30- to 90-day Suspension
<b>(5) Approach to landing</b>		
(a) Deviating from clearance or instruction		30- to 90-day Suspension
(b) Approach below weather minimums		60- to 120-day Suspension
(c) Exceeding speed limit in Class D airspace		30- to 60-day Suspension
<b>(6) Landing</b>		
(a) At or approaching wrong airport		90- to 180-day Suspension
(b) Deviating from instrument approach procedure		30- to 90-day Suspension
(c) Overweight aircraft		30- to 90-day Suspension
(d) Hard		15- to 60-day Suspension

<b>Fig. B-2-d. Flight operations cont.</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(e) Short or long		30- to 180-day Suspension
(f) Wheels-up		15- to 90-day Suspension
(g) Failure to comply with preferential runway system		15-day Suspension
(h) Deviating from clearance or instruction		30- to 90-day Suspension

<b>Fig. B-2-e. Other provisions applicable to individual certificate holders</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Crime; security risk; falsification		
(a) Controlled substance violation under 49 U.S.C. § 44710(b)		Mandatory Revocation
(b) Counterfeit parts violation under 49 U.S.C. § 44726(b)		Mandatory Revocation
(c) Security risk under 49 U.S.C. § 46111(a)		Mandatory Suspension or Revocation, as requested by BTS
(d) Intentionally false or fraudulent entry, reproduction, or alteration on an application or a certificate or rating		Revocation of certificates authorized under applicable part of 14 CFR
(e) Making and incorrect statement on an application for a medical certificate		Indefinite Suspension (pending correction of application and determination of qualification) or Revocation of medical certificate
(f) Carriage of illegal drugs (controlled substances) on aircraft		Revocation

<b>Fig. B-2-e. Other provisions applicable to individual certificate holders cont.</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(2) Violation of noise or sonic boom standard or regulation under 49 U.S.C. § 44709(b)(1)(B)		Suspension to Revocation
(3) Violation of Section 13(a) of Fish & Wildlife Act of 1956 under 49 U.S.C. § 44709(b)(2)		Suspension to Revocation
(4) Flight deck crew operations		
(a) Allowing unauthorized manipulation of controls by uncertificated individual attempting to set record under 49 U.S.C. § 44724(a)		Revocation
(b) Acting or attempting to act as a crewmember under the influence of drugs or alcohol; consumption of alcohol before operating an aircraft		
(i) Consuming alcohol within 8 hours before operating aircraft		Revocation
(ii) Under the influence of alcohol		Revocation
(iii) While using any drug that affects the crewmembers faculties in any way contrary to safety		Revocation
(iv) Alcohol concentration .04 percent or above		Revocation
(v) Refusal of proper request from LE official to submit to alcohol test		Revocation
(c) Violation of sterile cockpit rule		30- to 90-day Suspension
(d) Unauthorized admission to flight deck		30- to 90-day Suspension
(e) Failure to close and lock flight deck door		30-day Suspension
(f) Failure to make flight deck seat available to authorized enroute inspector		30- to 60-day Suspension
(g) Failure to keep manual current		15-day Suspension
(5) Flight and Duty Time violation		15- to 90-day Suspension
(6) Aircraft certification		
(a) Operation without valid airworthiness certificate in aircraft		15- to 30-day Suspension
(b) Operation when no airworthiness certificate issued for aircraft		30- to 90-day Suspension
(7) Crew certification and qualification		30- to 90-day Suspension
(a) Operating when a valid medical certificate had not been issued		30- to 90-day Suspension

<b>Fig. B-2-e. Other provisions applicable to individual certificate holders cont.</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(b) Lack of type rating		180-day Suspension to Revocation
(c) Missed proficiency check or line check		30- to 90-day Suspension
(d) Lack of current experience		30- to 90-day Suspension
(e) Failure to have current airman or medical certificate in possession	Minimum to Moderate	
(f) Lack of initial or recurrent training		30- to 90-day Suspension
(g) Operation with known disqualifying disability		Revocation
(i) Operating without valid medical certificate when not medically qualified or application for medical certificate deferred		Revocation

<b>Fig. B-2-f. Other Air Carrier Personnel</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Failure to keep manual current	Minimum	30- to 90-day Suspension

### **3. INDIVIDUALS AND GENERAL AVIATION - OWNERS, PILOTS, REPAIR STATIONS, PILOT SCHOOLS, MAINTENANCE PERSONNEL.**

<b>Fig. B-3-a. Owners and Operators Other Than Required Crewmembers</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Failure to comply with airworthiness directive	Moderate to Maximum	
(2) Failure to perform or improper performance of maintenance, including required maintenance	Moderate to Maximum	
(3) Failure to make proper entry in aircraft log	Minimum to Moderate	
(4) Operation of aircraft beyond annual, 100-hour, or progressive inspection	Minimum to Moderate	
(5) Operation of unairworthy aircraft	Moderate to Maximum	
(6) Intentionally false or fraudulent entry, reproduction, or alteration in any record or report	Maximum	Revocation

<b>Fig. B-3-b. Repair Stations</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Failure to provide required facilities for proper servicing, maintenance, repair, or inspection	Moderate to Maximum	Indefinite Suspension until compliance to Revocation

<b>Fig. B-3-b. Repair Stations cont.</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(2) Failure to provide qualified personnel who can perform, supervise, and inspect work for which the station is rated	Maximum	Indefinite Suspension until compliance to Revocation
(3) Failure to maintain record of supervisory or inspection personnel	Moderate to Maximum	
(4) Failure to maintain record	Moderate to Maximum	
(5) Failure to ensure that correct calibration of all inspection and test equipment is accomplished at prescribed intervals	Minimum to Maximum	
(6) Failure to adequately describe work performed	Minimum to Moderate	
(7) Failure of mechanic to make log entry, record, or report	Moderate to Maximum	
(8) Failure to sign or complete maintenance release	Minimum to Moderate	
(9) Inspection of work performed, or approval for return to service, by other than a qualified inspector	Maximum	Up to 30-day Suspension
(10) Failure to have an adequate inspection system that produces satisfactory quality control	Moderate to Maximum	Up to 30-day Suspension
(11) Maintaining or altering an article for which it is rated, without using required technical data, equipment or facilities	Maximum	Up to 30-day Suspension
(12) Failure to perform or properly perform maintenance, repair, alteration, or required inspection for an air carrier or commercial operator	Moderate to Maximum	Up to 30-day Suspension
(13) Maintaining or altering an airframe, powerplant, propeller, instrument, radio, or accessory for which the repair station is not rated	Maximum	Suspension or Revocation
(14) Failure to report defect or unairworthy condition to FAA in a timely manner	Moderate to Maximum	
(15) Failure to satisfy housing and facility requirement	Moderate	
(16) Change of location, housing or facilities without written approval	Moderate	
(17) Operating as a certificated repair station without a repair station certificate	Maximum	
(18) Failure to permit FAA to inspect	Maximum	Indefinite Suspension until Compliance
(19) Failure to perform inspection properly on part 125 aircraft	Moderate	
(20) Failure to comply with SFAR 36 – Second offense	Maximum	
(21) Failure to maintain and carry out BTS-required security measures under 49 U.S.C. § 44924(c)(1)		Mandatory Suspension pending BTS finding of compliance

<b>Fig. B-3-b. Repair Stations cont.</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(22) Posing an immediate security risk as determined by BTS under 49 U.S.C. § 44924(c)(2)		Mandatory Revocation

<b>Fig. B-3-c. ID Plate Violations</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) 14 C.F.R. 45.13(b), Improper removal, changing, or placing of identification information on a product		
(a) Inadvertent	Minimum	
(b) Intentional misrepresenting identity of product	Maximum	Revocation
(2) 14 CFR 45.23(c), Improper removal or installation of identification plate		
(a) Inadvertent	Minimum	
(b) Intentional misrepresenting identity of product	Maximum	Revocation

<b>Fig. B-3-d. Part 141 Pilot Schools</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Knowingly permitting school aircraft to be used for unlawful carriage of controlled substances		Revocation
(2) Refusal to permit inspection of facilities, equipment, personnel, records, or certificate	Maximum	Indefinite Suspension until Compliance to Revocation
(3) False advertising	Maximum	
(4) Failure to carry checklist or operator's handbook	Minimum	
(5) Improper crediting to, or graduation of, student		
(a) Inadvertent	Moderate to Maximum	
(b) Intentional		Revocation
(6) Refusal to permit FAA test, check, or examination of student	Maximum	Indefinite Suspension until Compliance to Revocation
(7) Unqualified or unauthorized instruction	Moderate to Maximum	
(8) Failure to establish or maintain training record	Moderate to Maximum	

<b>Fig. B-3-e. General Aviation Maintenance Personnel</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Failure to revise aircraft data after major repair or alteration		30- to 60-day Suspension
(2) Failure to perform or improper performance of maintenance		30- to 120-day Suspension

<b>Fig. B-3-e. General Aviation Maintenance Personnel cont.</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(3) Failure of mechanic to accomplish inspection properly		30- to 60-day Suspension
(4) Failure of mechanic to record inspection		15- to 30-day Suspension
(5) Failure of IA holder to accomplish inspection properly		60-day Suspension to Revocation of IA
(6) Failure of IA holder to record inspection		15- to 30-day Suspension of IA
(7) Maintenance performed by person without a certificate	Moderate to Maximum	
(8) Maintenance performed by person who exceeded certificate limitations		15- to 60-day Suspension
(9) Improper approval for return to service		30- to 120-day Suspension
(10) Failure to make maintenance record entry		30- to 60-day Suspension
(11) Failure to set forth adequate description of work performed		15- to 30-day Suspension
(12) Intentionally false or fraudulent entry, reproduction, or alteration in maintenance record		Revocation

<b>Fig. B-3-f. Student Operations</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Carrying passenger		Revocation
(2) Solo flight without required endorsement		45- to 90-day Suspension
(3) Operation on international flight		60- to 90-day Suspension
(4) Use of aircraft in business		30- to 120-day Suspension
(5) Operation for compensation or hire		Revocation

<b>Fig. B-3-g. Flight Instructors</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) False endorsement of any student pilot record		Revocation
(2) Exceeding flight time limitation		30- to 90-day Suspension
(3) Instruction in aircraft for which he/she is not rated		60- to 180-day Suspension



<b>Fig. B-3-h. Other Flight Violations</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Certification and qualification		
(a) Operation when a valid pilot certificate had not been issued	Maximum	
(b) Operation while pilot certificate is suspended		Revocation
(c) Operation without pilot or medical certificate in personal possession (certificates valid)	Minimum	
(d) Operation without a current medical certificate when medically qualified		30-180 day suspension
(e) Operation without a valid medical certificate when not medically qualified or when application for medical certificate deferred		Revocation
(f) Operation with known medical deficiency		90-day Suspension to Revocation
(g) Operation for compensation or hire when a valid commercial pilot certificate had not been issued		90-day Suspension to Revocation
(h) Operation without type or class rating		60- to 120-day Suspension
(2) Operation when a valid airworthiness certificate had not been issued		30- to 90-day Suspension
(3) Failure to close flight plan or file arrival notice	Minimum	
(4) Failure to obtain pre-flight information		30- to 90-day Suspension
(5) Deviation from ATC instruction or clearance		30- to 90-day Suspension
(6) Taxiing, takeoff, or landing without a clearance, where ATC tower is in operation		30- to 90-day Suspension
(7) Failure to maintain radio communications in Class D airspace		30- to 60-day Suspension
(8) Failure to comply with airport traffic pattern		30- to 60-day Suspension
(9) Operation in Class B airspace without or contrary to a clearance		30- to 60-day Suspension
(10) Operation in Class C airspace without maintaining contact with ATC		30- to 60-day Suspension
(11) Operation contrary to a NOTAM		30- to 90-day suspension
(12) Failure to maintain altitude		30- to 60-day Suspension
(13) Exceeding speed limitation		30- to 60-day Suspension

<b>Fig. B-3-h. Other Flight Violations cont.</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(15) Failure to comply with Airworthiness Directive		30- to 180-day Suspension
(16) Operation without required instrument and/or equipment		30- to 90-day Suspension
(17) Failure to comply with operating limitation		30- to 90-day Suspension
(18) Unauthorized operation within Class A airspace		30- to 90-day Suspension
(19) Failure to adhere to right of way rule		15- to 90-day Suspension
(20) Failure to comply with VFR cruising altitude		30- to 90-day Suspension
(21) Failure to maintain required minimum altitude over structure, person, or vehicle –congested area		60- to 180-day Suspension
(22) Failure to maintain required minimum altitudes over structure, person, or vehicle – sparsely populated area		30- to 120-day Suspension
(23) Failure to maintain radio watch while under IFR		30- to 60-day Suspension
(24) Failure to report compulsory reporting point under IFR		30- to 60-day Suspension
(25) Failure to display position light		30- to 60-day Suspension
(26) Failure to maintain proper altimeter setting		30- to 60-day Suspension
(27) Operating within restricted or prohibited area (including a TFR) or Class A airspace		30- to 90-day Suspension
(28) Unauthorized dropping of object from aircraft		30- to 60-day Suspension
(29) Unauthorized towing		30- to 60-day Suspension
(30) Acrobatic flight on airway, over congested area, below minimum altitude, etc.		90- to 180-day Suspension
(31) Taking off with insufficient fuel		30- to 150-day Suspension
(32) Fuel mismanagement or exhaustion		30- to 150-day Suspension
(33) Operating so as to cause a collision hazard		60- to 180-day Suspension

<b>Fig. B-3-i. Weather Operations</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Failure to comply with visibility minimum in controlled airspace		60- to 180-day Suspension
(2) Failure to comply with visibility minimum outside controlled airspace		30- to 120-day Suspension
(3) Failure to comply with distance from clouds requirement in controlled airspace		60- to 180-day Suspension
(4) Failure to comply with distance from clouds requirement outside of controlled airspace		30- to 120-day Suspension
(5) Operating VFR under 1,000 foot ceiling within Class D airspace		30- to 120-day Suspension
(6) Failure to comply with IFR landing minimum		45- to 180-day Suspension
(7) Failure to comply with instrument approach procedure		45- to 180-day Suspension

<b>Fig. B-3-j. 14 C.F.R. 91.13(a), Careless or reckless operation so as to endanger (independent violation)</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Wheels up landing		15- to 30-day Suspension
(2) Short or long landing		30- to 90-day Suspension
(3) Landing on, or taking off from, closed runway		30- to 60-day Suspension
(4) Landing on, or taking off from, ramp or other improper area		30- to 120-day Suspension
(5) Taxiing collision		30- to 90-day Suspension
(6) Leaving aircraft unattended with engine running		30- to 90-day Suspension
(7) Taxiing aircraft off runway, taxiway, or ramp		30- to 90-day Suspension

<b>Fig. B-3-k. Passenger operations</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Carrying passenger who is under the influence of drugs or alcohol		30- to 120-day Suspension

<b>Fig. B-3-k. Passenger operations cont.</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(2) Performing acrobatics when not all passengers are equipped with approved parachutes		60- to 90-day Suspension
(3) Use of unapproved parachute		30- to 60-day Suspension
(4) Permitting unauthorized parachute jumping		30- to 90-day Suspension
(5) Carrying passenger without required recent flight experience		30- to 120-day Suspension
(6) Operation without an approved seat or berth and approved safety belt for each person on board the aircraft required to have them during takeoff, en route flight, and landing		30- to 60-day Suspension

<b>Fig. B-3-l. Acting or attempting to act as a crewmember under the influence of drugs or alcohol; consumption of alcohol before operating an aircraft</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Consuming alcohol within 8 hours before operating aircraft		Revocation
(2) Under the influence of alcohol		Revocation
(3) While using any drug that affects the crewmembers faculties in any way contrary to safety		Revocation
(4) Alcohol concentration .04 percent or above		Revocation
(5) Refusal of proper request from LE official to submit to alcohol test		Revocation

<b>Fig. B-3-m. Crime; security risk; falsification</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Controlled substance violation under 49 U.S.C. § 44710(b)		Mandatory Revocation
(2) Counterfeit parts violation under 49 U.S.C. § 44726(b)		Mandatory Revocation
(3) Security risk under 49 U.S.C. § 46111(b)		Mandatory Suspension or Revocation, as requested by BTS
(4) Intentionally false or fraudulent entry, reproduction, or alteration on an application or a certificate or rating		Revocation of certificates authorized under applicable part of 14 CFR

<b>Fig. B-3-n. Miscellaneous</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Allowing unauthorized manipulation of controls by uncertificated individual attempting to set record under 49 U.S.C. § 44724(a)		Mandatory Revocation
(2) Carriage of illegal drugs (controlled substances) on aircraft		Revocation
(3) Conducting operation without required operating certificate		60- to 120-day Suspension
(4) Misuse of an airport-approved identification medium	Moderate to Maximum	
(5) Making an incorrect statement on an application for a medical certificate		Indefinite Suspension (pending correction of application and determination of qualification) or Revocation of medical certificate
(6) Refusal to produce pilot certificate, log or records		30-day Suspension, and until produced to Revocation

<b>Fig. B-3-o. Operations at Airports Requiring Slots</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Operation without a reservation from ATC	Minimum to Moderate	
(2) Operation with a reservation from ATC, but at the wrong time	Minimum to Moderate	

<b>Fig. B-3-p. Unruly passengers</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Interference with crewmember (14 C.F.R. 91.11, 121.580, 125.328, 135.120)	Maximum	
(2) Physical assault of flight or cabin crewmember under 49 U.S.C. § 46318	\$1,100 – \$8,000	
(3) Physical assault of individual other than a crewmember under 49 U.S.C. § 46318	\$500 – \$5,000	
(4) Threaten to physically assault flight or cabin crewmember under 49 U.S.C. § 46318	\$1,100 – \$5,000	
(5) Threaten to physically assault individual other than flight or cabin crewmember under 49 U.S.C. § 46318	\$500 – \$5,000	

<b>Fig. B-3-p. Unruly passengers cont.</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(6) Acts in a manner that poses imminent threat to safety of aircraft or other individuals on aircraft under 49 U.S.C. § 46318	\$5,000 – \$25,000 (\$5,000 - \$27,500 for violations after 6/15/2006)	

<b>Fig. B-3-q. Other Violations by Passengers</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Smoking while No Smoking sign is lighted	Maximum	
(2) Smoking in aircraft lavatory	Maximum	
(3) Tampering with smoke detector under 49 U.S.C. § 46301(b)	\$1,800 to \$2,200	
(4) Failure to fasten seat belt while seat belt sign is lighted	Minimum to Moderate	
(5) Failure to occupy an approved seat or berth with a safety belt, and, if installed, shoulder harness properly secured during movement on the surface, takeoff, or landing	Minimum to Moderate	
(6) Operating a portable electronic device	Maximum	
(7) Drinking alcoholic beverage not served by carrier	Maximum	

#### **4. DUI/DWI PROGRAM, FALSIFICATION OF DRUG CONVICTIONS AND AIRMAN MEDICAL CERTIFICATE VIOLATIONS**

<b>Fig. B-4-a. Sanctions related to DUI/DWI Program</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Intentionally false or fraudulent entry on medical certificate application regarding a DUI conviction or administrative action under 14 C.F.R. § 67.403(a)(1)		Revocation of all airman and medical certificates
(2) Making an incorrect statement on a medical certificate application regarding a DUI conviction or administrative action under 14 C.F.R. § 67.403(c)(1)		Indefinite Suspension (pending correction of application and determination of qualification) or Revocation of medical certificate
(3) Failure to report a motor vehicle action (MVA) under 14 C.F.R. § 61.15(e)		15- to 45-day Suspension of all part 61 certificates
(4) Two MVAs arising from separate incidents within 3 years, and reported both under 14 C.F.R. § 61.15(d)		90- to 120-day Suspension of all part 61 certificates

<b>Fig. B-4-a. Sanctions related to DUI/DWI Program cont.</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(5) Three MVAs arising from separate incidents within 3 years under 14 C.F.R. § 61.15(d)		Revocation of all part 61 certificates

<b>Fig. B-4-b. Airman Medical Certificate Violations</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Intentionally false or fraudulent statement on an application for a medical certificate or on a request for any special issuance or SODA under 14 C.F.R. § 67.403(a)(1)		Revocation of all airman and medical certificates
(2) Intentionally false or fraudulent entry in a record that is kept, made or used to show compliance under 14 C.F.R. § 67.403(a)(2)		Revocation of all airman and medical certificates
(3) Reproduction of a medical certificate for fraudulent purpose under 14 C.F.R. § 67.403(a)(3)		Revocation of all airman and medical certificates
(4) Alteration of medical certificate under 14 C.F.R. § 67.403(a)(4)		Revocation of all airman and medical certificates
(5) Making an incorrect statement on a medical certificate application under 14 C.F.R. § 67.403(c)(1)		Indefinite Suspension (pending correction of application and determination of qualification) or Revocation of medical certificate

<b>Fig. B-4-c. Drug convictions - no falsification involved.</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Single conviction for simple possession*		45- to 120-day Suspension of all part 61, 63, or 65 certificates

<b>Fig. B-4-c. Drug convictions - no falsification involved cont.</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(2) Multiple convictions for simple possession*		120-day Suspension to Revocation of all part 61, 63, or 65 certificates
(3) Conviction(s) for other than simple possession*		Revocation of all part 61, 63, or 65 certificates

\*It may be appropriate, in the exercise of prosecutorial discretion, not to take enforcement action when a conviction is several years old when discovered by the FAA and there is evidence that the certificate holder has been rehabilitated such that the individual can be expected to conform his or her conduct to safety requirements.

#### **5. DRUG AND ALCOHOL TESTING VIOLATIONS.**

<b>Fig. B-5-a. Drug and Alcohol Testing Violations</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Failure of an air carrier operating under part 121 or part 135 operator to obtain an operations specification	Moderate	
(2) Failure of a part 145 operator (that opts to have its own drug program and AMPP) to obtain an operations specification	Moderate	
(3) Failure of a Section 135.1(c) or non-FAA air traffic control facility to submit a registration to the FAA	Moderate	
(4) Failure of a contractor (that opts to have its own drug and alcohol programs) to submit a registration to the FAA	Moderate	
(5) Failure to implement or maintain continuous coverage in an FAA antidrug program and/or AMPP in accordance with Appendices I and/or J	Maximum	Indefinite Suspension pending compliance or Revocation

<b>Fig. B-5-b. Coverage</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Failure to include a safety-sensitive employee in FAA mandated drug and alcohol testing programs	Maximum	
(2) Permitting a contractor employee to perform a function listed in Appendix I or J who is not covered under an FAA-mandated antidrug and/or alcohol misuse prevention program	Maximum	



<b>Fig. B-5-c. Pre-employment drug testing</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Failure to advise each individual applying to perform a safety-sensitive function of the pre-employment testing requirement	Minimum	
(2) Failure to pre-employment drug test an individual and/or receive a negative drug test result prior to hiring or transferring that individual for a safety-sensitive function	Maximum	
(3) Failure to pre-employment drug test before hiring or transferring an individual into a safety-sensitive position if more than 180 days elapse between a pre-employment test and placing the individual into a safety-sensitive function	Moderate	

<b>Fig. B-5-d. Random drug and alcohol testing</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Failure to conduct random drug and/or alcohol testing	Maximum	
(2) Failure to meet the minimum annual percentage rate for random drug and/or alcohol testing	Moderate	
(3) Failure to use a scientifically valid method of random selection	Moderate	
(4) Failure to ensure that random drug and/or alcohol tests are unannounced	Moderate	
(5) Failure to ensure the dates for administering random tests are spread reasonably throughout the calendar year	Minimum	
(6) Failure to ensure that an employee who is notified to report for random drug and/or alcohol testing proceeds immediately to the testing site	Moderate	
(7) Failure to conduct alcohol testing just before the employee is to perform a safety-sensitive function, during or just after the employee has ceased performing a safety-sensitive function	Minimum	

<b>Fig. B-5-e. Post-accident drug and alcohol testing</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Failure to drug and/or alcohol test each employee who performs a safety-sensitive function, if that employee's performance either contributed to an accident or cannot be completely discounted as a contributing factor to the accident.	Maximum	
(2) Failure to post-accident drug test an employee within 32 hours after the accident.	Maximum	
(3) Failure to conduct post-accident alcohol testing on an employee within 8 hours after the accident	Maximum	
(4) Failure to prepare and maintain on file required records stating the reasons the post-accident alcohol test was not administered within 2 hours and/or 8 hours.	Minimum	

<b>Fig. B-5-f. Reasonable cause drug and reasonable suspicion alcohol testing</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Failure to drug and/or alcohol test each employee who performs a safety-sensitive function and who is reasonably suspected of using a prohibited drug and/or misusing alcohol	Maximum	

<b>Fig. B-5-f. Reasonable cause drug and reasonable suspicion alcohol testing cont.</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(2) Reasonable cause drug testing of individuals without a reasonable and articulable belief that the employee is using a prohibited drug on the basis of specific, contemporaneous physical, behavioral, or performance indicators of probable drug use	Moderate	
(3) Reasonable suspicion alcohol testing of individuals when reasonable suspicion of alcohol misuse has not been determined by a trained supervisor based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odor of the employee	Moderate	
(4) Failure to prepare and maintain on file a record stating the reasons the reasonable suspicion alcohol test was not administered within 2 hours and/or 8 hours	Moderate	
(5) Failure to remove a safety-sensitive employee who is under the influence of or impaired by alcohol	Maximum	

<b>Fig. B-5-g. Return to duty drug and alcohol testing</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Failure to conduct a return-to-duty drug test before an individual is returned to perform a safety-sensitive function after the individual refused to submit to a required drug test or received a verified positive drug test result	Maximum	
(2) Failure to receive a verified negative return to duty drug test result for an individual prior to the individual's return to a safety-sensitive function	Maximum	
(3) Failure to administer a return-to-duty alcohol test on an individual who engaged in prohibited conduct prior to returning him or her to a safety-sensitive function.	Maximum	
(4) Failure to ensure that the employee has received an alcohol test result with an alcohol concentration of less than 0.02 on a return-to-duty test prior to resuming the performance of safety-sensitive duties	Maximum	

<b>Fig. B-5-h. Follow-up drug and alcohol testing</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Failure to implement a reasonable program of unannounced testing for each individual who has been hired to perform or who has been returned to the performance of a safety-sensitive function after refusing to submit to a test, receiving a verified positive drug test result, or engaging in prohibited alcohol conduct	Maximum	
(2) Failure to administer at least six follow-up tests in the first 12 months following the return to duty of an employee	Maximum	
(3) Failure to discontinue follow-up testing after 60 months from the date the individual returned to a covered function	Moderate	
(4) Failure of a substance abuse professional to determine the number and frequency of follow-up tests	Maximum	

<b>Fig. B-5-h. Follow-up drug and alcohol testing cont.</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(5) Failure to ensure that follow-up alcohol testing of a covered employee only occurs just before the employee is to perform safety-sensitive functions, during, or just after the employee has ceased covered functions	Minimum	

<b>Fig. B-5-i. Retesting covered employees</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Failure to retest a covered employee with an alcohol concentration of greater than .02 and less than .04 when the employer has chosen to permit the employee to perform a safety-sensitive function within 8 hours of alcohol use	Maximum	
(2) Permitting an individual with an alcohol concentration of .02 or above to return to duty performing safety-sensitive functions unless 8 hours has elapsed or the individual is retested and tests below .02	Maximum	

<b>Fig. B-5-j. Inappropriate testing</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Inappropriate testing using DOT or FAA Authority	Moderate	

<b>Fig. B-5-k. Administrative and other matters</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Failure to permit the Administrator or the Administrator's representative to examine records	Maximum	Indefinite Suspension pending compliance to Revocation
(2) Failure to conduct drug and alcohol records check required under 49 C.F.R. § 40.25	Moderate	
(3) Failure to provide drug and alcohol testing records requested under 49 C.F.R. § 40.25	Moderate	
(4) Using an employee to perform safety-sensitive functions after obtaining information that the employee violated DOT drug and alcohol regulations, without obtaining information that the employee complied with return-to-duty requirements	Moderate	
(5) Failure to notify the FAA of a medical certificate holder (issued under part 67), who tested positive on a DOT drug test, within twelve working days of the date of the verified positive result	Moderate	
(6) Failure to notify the FAA of a medical certificate holder (issued under part 67), who engaged in prohibited alcohol conduct, within two working days of the violation date	Moderate	
(7) Failure to notify the FAA of the refusal to submit to testing by a part 61, part 63, or part 65 certificate holder within five working days of the refusal to test	Moderate	

<b>Fig. B-5-k. Administrative and other matters cont.</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(8) Knowingly using any person to perform any safety-sensitive function after being permanently precluded from performing that safety-sensitive function	Maximum	Indefinite Suspension pending compliance to Revocation
(9) Failure to submit an annual drug and alcohol (MIS) report in accordance with Appendices I and J	Minimum	
(10). Failure to maintain records of an employee's drug rehabilitation, the drug test collection process, training, and/or negative drug test results for the required timeframe	Moderate	
(11) Releasing drug or alcohol testing information without the appropriate consent	Maximum	
(12) Failure to maintain records in a secure location with controlled access	Maximum	
(13) Failure to maintain records of employee alcohol test results of 0.02 or greater for the required timeframe	Moderate	
(14) Failure to maintain records related to violations of sections 65.46a, 121.458, or 135.253 for the required timeframe	Moderate	
(15) Failure to maintain documentation of refusals, calibration documentation, employee evaluations and referrals, and copies of annual reports (MIS) for the required timeframe	Moderate	
(16) Failure to maintain records related to all test results below 0.02 for the required timeframe	Minimum	
(17) Failure to submit an annual report (MIS) in the form and manner prescribed by the Administrator	Minimum	
(18) Failure to submit an annual report (MIS) by March 15 <sup>th</sup>	Minimum	
(19) Releasing alcohol testing information without the appropriate consent	Maximum	

<b>Fig. B-5-l. Medical Review Officer (MRO)</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Failure to use a qualified individual to perform MRO services	Maximum	
(2) Failure of MRO to verify and/or maintain records of negative test results	Minimum	
(3) Failure of MRO to review, interpret, and verify positive test results	Maximum	
(4) Failure of MRO to interview an employee or applicant who has had a confirmed positive drug test result	Maximum	
(5) Failure of MRO to transmit the results to employer	Maximum	
(6) Failure of MRO to process employee requests for testing of split specimens	Maximum	
(7) Failure of MRO to ensure all records maintained by the former MRO are forwarded to the new MRO within the appropriate time frame	Moderate	

<b>Fig. B-5-l. Medical Review Officer (MRO) cont.</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(8) Failure of MRO to maintain records in confidence and release only in accordance with the provisions of 14 C.F.R. part 121, Appendix I and 49 C.F.R. part 40	Maximum	
(9) Failure of MRO to maintain records concerning drug tests confirmed positive by the laboratory for the required timeframe	Maximum	
(10) Failure of MRO to inquire whether an individual holds an airman medical certificate issued under part 67, or would be required to hold such certificate in order to perform the duties of the position for which the applicant is applying	Maximum	
(11) Failure of MRO to verify the primary test result pending the result of the split specimen	Maximum	

<b>Fig. B-5-m. Substance Abuse Professional (SAP) referral and evaluation</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Failure to use a qualified individual to perform SAP services	Maximum	
(2) Failure to advise an employee of the resources available to him or her in evaluating and resolving problems associated with the misuse of alcohol	Minimum	
(3) Failure of a SAP to conduct a face-to-face evaluation of the employee and recommend education and/or treatment	Moderate	
(4) Failure of a SAP to ensure that each employee who has committed a DOT drug and/or alcohol regulation violation, has successfully complied with the SAP's recommendations for education and/or treatment prior to establishing a follow-up testing plan	Moderate	

<b>Fig. B-5-n. Employee Assistance Program</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Failure to display and distribute informational materials, a community service hotline telephone number and the employer's policy regarding drug use in the work place	Moderate	
(2) Failure to conduct initial employee training	Minimum	
(3) Failure to conduct initial and recurrent supervisory training	Maximum	
(4) Failure to document initial employee and supervisory training on drug use	Moderate	

<b>Fig. B-5-o. Alcohol misuse information, training, and referral</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Failure to promulgate a policy on the misuse of alcohol	Moderate	
(2) Failure to conduct supervisory training regarding alcohol use	Minimum	
(3) Failure to distribute and/or document the distribution of alcohol informational materials to employees	Minimum	

<b>Fig. B-5-p. Violations of the drug and alcohol prohibitions</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Failure to remove an individual from safety-sensitive functions for on-duty use, pre-duty use, use following an accident, refusal to submit to a test, and/or a drug positive and/or an alcohol concentration of .04 or greater	Maximum	
(2) Allowing a covered employee who used alcohol within 8 hours of an accident to perform or continue performing safety-sensitive functions	Maximum	
(3) Failure to notify the Federal Air Surgeon of a part 67 medical certificate holder who received a positive drug test result and/or received an alcohol concentration of .04 or greater on an alcohol test	Maximum	
(4) Allowing a part 67 medical certificate holder to perform safety-sensitive duties for an employer following an alcohol violation and/or drug positive	Maximum	
(5) Failure to notify the FAA of a part 61, 63, and/or 65 certificate holder who refused to submit to testing	Maximum	

<b>Fig. B-5-q. Employees located outside the Territory of the U.S.</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Subjecting an employee located outside the territory of the United States to a DOT drug or alcohol test	Maximum	

<b>Fig. B-5-r. Specimen collection</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Failure to use urine collection personnel who meet the requirements of 49 C.F.R. part 40, subpart C	Moderate	
(2) Failure to use collection sites, forms, equipment and supplies for DOT urine collections that meet the requirements in 49 C.F.R. part 40, subpart D	Moderate	
(3) Failure to conduct specimen collections in accordance with 49 C.F.R. part 40, subpart E	Moderate	
(4) Failure to process split specimen tests in accordance with 49 C.F.R. part 40, subpart H	Moderate	
(5) Failure to address problems with drug tests in accordance with 49 C.F.R. part 40, subpart I	Moderate	

<b>Fig. B-5-s. Laboratory issues</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Failure to use drug testing laboratories that meet the requirements in 49 C.F.R. part 40, subpart F	Maximum	

<b>Fig. B-5-t. Alcohol testing</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Failure to use alcohol testing personnel that meet the requirements of 49 C.F.R. part 40, subpart J	Moderate	
(2) Failure to use collection sites, forms, equipment and supplies for DOT alcohol testing that meet the requirements in 49 C.F.R. part 40, subpart K	Moderate	
(3) Failure to conduct alcohol screening tests in accordance with 49 C.F.R. part 40, subpart L	Moderate	
(4) Failure to conduct alcohol confirmation tests in accordance with 49 C.F.R. part 40, subpart M	Moderate	
(5) Failure to address problems with drug tests in accordance with 49 C.F.R. part 40, subpart N.	Moderate	

<b>Fig. B-5-u. Consequences to the uncertificated individual</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Refusal to submit to a drug or alcohol test	Maximum	
(2) Positive drug test result or alcohol test result .04 or above on any drug or alcohol test.	Maximum	
(3) Performs a safety-sensitive function for an employer after receiving a verified positive test result without following appropriate return to duty procedures	Maximum	
(4) Performs a safety-sensitive function for an employer while having an alcohol concentration of 0.04 or greater	Maximum	
(5) Performs a safety-sensitive function for an employer while using prohibited drugs or alcohol on duty	Maximum	
(6) Performs a safety-sensitive function for an employer within 8 hours after consuming any alcoholic beverage	Maximum	
(7) Performs a safety-sensitive function for an employer within 4 hours after consuming any alcoholic beverage	Maximum	
(8) Has actual knowledge of an accident involving an aircraft for which he or she performed a safety sensitive function at or near the time of the accident, and uses alcohol within the 8 hours following the accident	Maximum	

<b>Fig. B-5-v. Consequences to the certificated individual</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Refusal by the holder of a certificate issued under parts 61, 63, or 65 to submit to a drug or alcohol test		Revocation
(2) Positive drug test result or alcohol test result .04 or above by the holder of a certificate issued under parts 61, 63, or 65 on any drug or alcohol test.		Revocation

<b>Fig. B-5-v. Consequences to the certificated individual cont.</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(3) Failure of an individual to disclose to the MRO that he or she holds an airman medical certificate issued under part 67, or would be required to hold such certificate, in order to perform the duties of the position for which he or she is applying		Revocation
(4) Performs a safety-sensitive function for an employer after receiving a verified positive test result without following appropriate return to duty procedures		Revocation
(5) Performs a safety-sensitive function for an employer while having an alcohol concentration of 0.04 or greater		Revocation
(6) Performs a safety-sensitive function for an employer while using prohibited drugs or alcohol on duty		Revocation
(7) Performs a safety-sensitive function (flight crewmember, flight attendant, air traffic control) for an employer within 8 hours after consuming any alcoholic beverage		Revocation
(8) Performs a safety-sensitive function (flight instruction, aircraft dispatcher, maintenance, or preventive maintenance, ground security coordinator, aviation screening) for an employer within 4 hours after consuming any alcoholic beverage		Revocation
(9) Has actual knowledge of an accident involving an aircraft for which he or she performed a safety sensitive function at or near the time of the accident, and uses alcohol within the 8 hours following the accident		Revocation

## **6. AIRPORT OPERATORS.**

<b>Fig. B-6-a. Certification</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Operation without a part 139 certificate	Maximum; Injunctive relief	
(2) Operation in violation of a part 139 certificate	Moderate to Maximum	
(3) Failure to permit FAA inspector to conduct inspection	Maximum	Indefinite Suspension until Compliance to Revocation

<b>Fig. B-6-b. Certification Manual</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Failure to comply with an approved airport certification manual	Moderate to Maximum	
(2) Failure to include all required information in the airport certification manual	Minimum to Moderate	



<b>Fig. B-6-b. Certification Manual cont.</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(3) Failure to maintain current airport certification manual on the airport	Moderate to Maximum	
(4) Failure to make current airport certification manual available to the FAA for inspection	Moderate to Maximum	Indefinite Suspension until Compliance to Revocation

<b>Fig. B-6-c. Operations</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Failure to maintain sufficient qualified personnel to comply with requirements of the airport certification manual and FAA regulations	Moderate to Maximum	
(2) Failure to maintain and repair the pavement of each runway, taxiway, loading ramp, and parking area on the airport	Moderate to Maximum	
(3) Failure to maintain and repair each gravel, turf, or other unpaved runway, taxiway, or loading ramp and parking area on the airport	Moderate to Maximum	
(4) Failure to provide and maintain an airport safety area	Moderate to Maximum	
(5) Failure to provide and maintain the required marking and signing systems for air carrier operations	Maximum	
(6) Failure to provide and maintain lighting systems for air carrier operations when the airport is open during hours of darkness or during conditions below VFR minimums	Moderate to Maximum	
(7) Failure to provide and maintain required rescue and firefighting capability and equipment during air carrier operations	Maximum	
(8) Failure to maintain rescue and firefighting vehicles	Maximum	
(9) Failure to respond to an emergency during air carrier operations or demonstrate compliance with response requirements	Maximum	
(10) Failure to respond within the required performance response times	Maximum	
(11) Failure to ensure that rescue and firefighting personnel are equipped in an acceptable manner	Moderate to Maximum	
(12) Failure to ensure that rescue and firefighting personnel are properly trained	Moderate to Maximum	
(13) Failure to ensure that sufficient rescue and firefighting personnel are available during all air carrier operations	Moderate	
(14) Failure to ensure that procedures are established and equipment is maintained for alerting rescue and firefighting personnel to any existing or impending emergency	Moderate to Maximum	
(15) Failure to establish and maintain standards for protecting against fire and explosions in storing, dispensing, and otherwise handling fuel, lubricants, and oxygen on the airport	Moderate to Maximum	

<b>Fig. B-6-c. Operations cont.</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(16) Failure to perform surveillance of a fueling activity by fueling agent on the airport	Moderate to Maximum	
(17) Failure to ensure and maintain a record of the inspection of the physical facilities of each airport tenant fueling agent	Minimum to Moderate	
(18) Failure to ensure that a fueling agent and its employees are properly trained	Moderate to Maximum	
(19) Failure to require a tenant fueling agent to take corrective action for noncompliance with a fueling standard	Moderate to Maximum	
(20) Failure to ensure that the airport emergency plan is reviewed with all parties under the plan and that all information in the plan is current	Minimum to Moderate	
(21) Failure to establish and maintain procedures for the protection of persons and property on the airport during the handling and storing of hazardous materials	Moderate to Maximum	
(22) Failure to provide traffic and wind direction indicators	Moderate	
(23) Failure to develop and maintain an airport emergency plan	Maximum	
(24) Failure to conduct self-inspections of the airport as required	Maximum	
(25) Failure to provide equipment and procedures for carrying out an inspection program for a reporting system to ensure correction of conditions noted during the inspections	Moderate to Maximum	
(26) Failure to prepare, keep, and make available a record of self-inspections	Moderate to Maximum	
(27) Failure to limit access by ground vehicles to movement areas and safety areas	Moderate	
(28) Failure to establish and implement procedures for access to and operation on, the movement area and safety areas by ground vehicles	Moderate	
(29) Failure to ensure that ground vehicles operating on the movement area are controlled by two-way radio communication or other acceptable means	Moderate	
(30) Failure to ensure that each person operating a ground vehicle with access to the movement area is familiar with airport procedures for operation of ground vehicles	Minimum to Moderate	
(31) Failure to ensure that obstructions are removed, marked, or lighted	Moderate to Maximum	
(32) Failure to prevent the construction of facilities on the airport that would derogate the operation of an electronic or visual navaid and air traffic control facilities on the airport	Moderate to Maximum	
(33) Failure to take immediate measures to alleviate wildlife hazards	Moderate to Maximum	
(34) Failure to prevent the inadvertent entry to the movement area by unauthorized persons or vehicles	Moderate	

<b>Fig. B-6-c. Operations cont.</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(35) Failure to provide for the collection and dissemination of airport condition information to air carriers	Moderate to Maximum	
(36) Failure to mark and, if appropriate, light construction areas and unserviceable areas, construction equipment, and each construction roadway	Moderate to Maximum	
(37) Failure to provide procedures for avoiding damage to existing utilities, cables, wires, conduits, pipelines, or other underground facilities	Minimum to Moderate	
(38) Failure to restrict air carrier operations to safe portions of the airport	Maximum	
(39) Failure to take action to conduct a wildlife assessment	Moderate to Maximum	
(40) Failure to implement wildlife assessment or the FAA-approved wildlife Hazard Management Plan	Moderate to Maximum	

## **7. VIOLATIONS OF NOISE PROVISIONS.**

<b>Fig. B-7-a. Aircraft Noise (14 C.F.R. part 91, subpart I)</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Prohibition on operating without complying with Stage 3 noise levels under 49 U.S.C. § 47528	Moderate to Maximum	
(2) Nonaddition Rule under 49 U.S.C. § 47529	Moderate to Maximum	
(3) Imported aircraft operated to provide air transportation in the 48 contiguous states without complying with Stage 3 noise levels under 49 U.S.C. § 47530	Moderate to Maximum	
(4) Recordkeeping or notification violation	Minimum	

## **8. VIOLATIONS OF PILOT RECORDS IMPROVEMENT ACT (PRIA).**

<b>Fig. B-8-a. PRIA</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Permitting a person to begin service as a pilot prior to requesting, receiving, and evaluating records pursuant to the provisions of PRIA	Maximum	
(2) Failing to obtain from the subject of a PRIA request a written consent for release of records requested under PRIA		
(a) Inadvertent error	Moderate	
(b) Egregious/no consent given	Maximum	
(3) Furnishing records, pursuant to request under PRIA, that have been maintained for more than 5 years before the date of request when record does not relate to revocation or suspension of airman certificate or motor vehicle license that was in effect at time of request	Moderate	
(4) Failing to maintain records described in 49 U.S.C. §§ 44703(h)(1)(A) and (B) for five years	Moderate to Maximum	

<b>Fig. B-8-a. PRIA cont.</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(5) Furnishing records pursuant to a request under PRIA before receiving a copy of the written consent of the individual who is the subject of the request		
(a) Inadvertent error	Moderate	
(b) Egregious/no consent given	Maximum	
(6) Failing to provide a copy of all records pursuant to a request under PRIA within 30 days of the date the request is received		
(a) Inadvertent error	Moderate	
(b) Egregious/intentional	Maximum	
(7) Failing to provide to the individual who is the subject of request under PRIA, on or before the 20 <sup>th</sup> day following the date of the receipt of such a request, written notice of the request and of the individual's right to receive a copy of such records	Maximum	
(8) Failing, upon a request from an individual who is the subject of request under PRIA, to provide a copy of records to the individual	Maximum	
(9) Failing to permit the subject of a request for records under PRIA to submit written comments to correct any inaccuracies in those records before making a final hiring decision	Maximum	
(10) Failing, upon a written request from a pilot who is or has been employed by an air carrier, to make available for review within 30 days, records referred to in 49 U.S.C. §§ 44703(h)(1)(B)(i) or (ii) pertaining to the employment of that pilot		
(a) Making records available but untimely	Minimum to Moderate	
(b) Not making the records available	Maximum	
(11) Use of records received pursuant to PRIA for reasons other than assessing the qualifications of individual in deciding whether to hire the individual as pilot	Maximum	
(12) Failing to protect the privacy of a pilot and the confidentiality of records received	Maximum	
(13) Divulging contents of records received pursuant to PRIA to individual not directly involved in hiring process		
(a) Minor	Minimum	
(b) Intent to cause harm	Maximum	
(14) For air carriers that operate aircraft with a maximum load capacity of 7,500 pounds or less, or a helicopter, on a flight that is not a scheduled operation –		
(a) Permitting a pilot to continue in service longer than 90 days without requesting, receiving and evaluating records identified in 49 U.S.C. § 44703(f)(1)	Maximum	

<b>Fig. B-8-a. PRIA cont.</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(b) Failing to provide contractual notification to the individual that continuation of employment after the 90-day period is subject to a satisfactory evaluation of records identified in 49 U.S.C. § 44703(f)(1)	Moderate	

**9. ENGINEERING AND MANUFACTURING VIOLATIONS.** Note that the following actions taken in cases of violations by FAA designees only include legal enforcement actions under 14 C.F.R. part 13. Whenever FAA enforcement action personnel determine that the holder of a designation, or the holder of a design or production approval that is not a certificate, is no longer qualified to hold that designation or approval, remedial action should be initiated. In addition, remedial action should be considered whenever the holder refuses to allow inspection, or otherwise continues to fail to comply with an applicable requirement. Suspensions and terminations of designations are handled in accordance with FAA Orders No. 8100.8B, *Designee Management Handbook*, Chapter 11; No. 8100.9, *DAS, DOA, and SFAR 36 Authorization Procedures*, Chapter 8; and No. 8110.37C, *Designated Engineering Representative (DER) Guidance Handbook*, Chapter 7

<b>Fig. B-9-a. APIS Holders, including production under type certificate</b>	<b>14 C.F.R.</b>	<b>49 U.S.C.</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Failure to maintain the approved production inspection system (APIS) to ensure product conformity and to ensure product is in condition for safe operation	21.123(c), 21.125, 21.127, 21.128, 21.129, 21.130		Moderate to Maximum	Discontinue issuance of a/w certificates pending compliance
(2) Failure to maintain technical data or drawing at the place of manufacture	21.123(b)		Moderate to Maximum	Discontinue issuance of a/w certificates pending compliance
(3) Failure to maintain inspection record	21.123(c), 21.125 (b)(10)		Moderate to Maximum	
(4) Failure to properly flight test aircraft	21.127		Moderate to Maximum	
(5) Failure to properly conduct required test run on a production engine	21.128		Moderate to Maximum	
(6) Failure to properly conduct required function test on a production propeller	21.129		Moderate to Maximum	

<b>Fig. B-9-b. Production Certificate Holders</b>	<b>14 C.F.R.</b>	<b>49 U.S.C.</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Refusal to allow FAA to make any inspections and tests necessary to determine compliance with regulations	21.157		Moderate to Maximum	Indefinite Suspension pending compliance to Revocation
(2) Failure to make information regarding a delegation of authority to subsidiary manufacturer or supplier	21.143(b)		Moderate to Maximum	
(3) Failure to immediately notify FAA, in writing, of quality control system changes that affect the inspection, conformity, or airworthiness of the product	21.147		Moderate to Maximum	
(4) Failure to surrender a PC for cancellation upon transfer of ownership or upon change in location of the manufacturing facility	21.155, 21.159		Moderate	Revocation
(5) Failure to maintain the approved quality control system	21.165(a)		Moderate to Maximum	
(6) Failure to determine that each completed product submitted for a/w certification or approval is in conformity with the type design and in condition for safe operation	21.165(b)		Moderate to Maximum	

<b>Fig. B-9-c. Designees</b>	<b>14 C.F.R.</b>	<b>49 U.S.C.</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Delegation Option Authorization (DOA)				
(a) Refusal to permit authorized FAA employee to inspect the manufacturer's organization, facilities, product, record, technical data file, or service difficulty file	21.249		Maximum	
(b) Failure to submit a report or information necessary for the issuance of an AD	21.277		Moderate to Maximum	Indefinite Suspension of TC or AWCs, pending compliance to Revocation
(c) Failure to place the required technical data and type inspection report in the technical data file required by 21.293(a)(1)(i)			Minimum to Moderate	

<b>Fig. B-9-c. Designees cont.</b>	<b>14 C.F.R.</b>	<b>49 U.S.C.</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(d) Failure to determine that the PC requirements of subpart G are met prior to certifying that the determination has been made	21.267(b)		Moderate to Maximum	
(e) Failure to place the manufacturing and quality control data required by 21.143 with the data required by 21.293(a)(1)(ii) prior to certifying that this has been done	21.267(d)		Moderate to Maximum	
(f) Failure to notify the FAA within 48 hours of any change that could affect the ability of the DOA to meet the requirements in Subpart J	21.245		Moderate to Maximum	
(g) Failure to obtain FAA concurrence on the application of any equivalent safety provision applied under 21.21	21.261		Minimum to Moderate	Indefinite Suspension of TC or AWC, pending compliance to Revocation
(h) DOA issues new or amended TC, or STC, AWC, or A/W approval beyond the scope of its authorization	21.251			Revocation of certificate
(2) Designated Alteration Station (DAS)				
(a) Exercising any authority under subpart M without submitting and obtaining approval of procedures manual	21.441(a)		Maximum	
(b) Performing any DAS function affected by change in facilities or staff necessary to meet the requirements of § 21.439, or affected by any change in the procedures approved under § 21.441(a) without obtaining approval from the FAA for those changes	21.441(b)		Moderate to Maximum	
(c) Failure to notify the FAA within 48 hours of any change that could affect the ability of the DAS to meet subpart M	21.445		Moderate to Maximum	
(d) Failure, upon reasonable request, to let the FAA inspect the DAS facility, product, or record	21.449		Maximum	

<b>Fig. B-9-c. Designees cont.</b>	<b>14 C.F.R.</b>	<b>49 U.S.C.</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(e) DAS issues STC or AWC beyond the scope of its authorization	21.451		Maximum	Revocation of STC or AWC
(f) Issuing an STC involving exhaust emissions change requirements of part 34 or acoustical change requirements of part 36 before the FAA finds those requirements are met	21.451(d)		Maximum	Indefinite Suspension of STC pending compliance to Revocation
(g) For each STC issued under subpart M, failure to follow the procedures manual approved under § 21.441 or failure to submit statement describing the requirements in § 21.463(a)(1)	21.463(a)(1)		Moderate to Maximum	Indefinite Suspension of STC pending compliance to Revocation
(h) Issuing an STC without finding that each applicable airworthiness requirement is met	21.463(a)(2)		Moderate to Maximum	Indefinite Suspension of STC pending compliance to Revocation
(i) Issuing an STC without finding that the type of product, as modified by the STC data, is of proper design for safe operation	21.463(a)(3)		Moderate to Maximum	Indefinite Suspension of STC pending compliance to Revocation
(j) For each STC issued under subpart M, failure to submit the copies of the STC or the other required data	21.463(b)		Moderate	
(k) For each amendment to an airworthiness certificate under subpart M, failure to follow the procedures manual approved under § 21.441 or failure to follow § 21.473(a)-(c)	21.473		Moderate to Maximum	
(l) Issuing an experimental AWC without obtaining from the FAA a necessary limitation or condition	21.475		Minimum to Moderate	
(m) Failure to conduct an investigation or report the results of the investigation or taken or proposed action	21.477(a)		Moderate to Maximum	



<b>Fig. B-9-c. Designees cont.</b>	<b>14 C.F.R.</b>	<b>49 U.S.C.</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(n) Failure to submit the information necessary for the issue of an airworthiness directive	21.477(b)		Moderate to Maximum	Indefinite Suspension of STC or AWC, pending compliance to Revocation
(o) Failure to maintain, at the DAS facility, the required current records	21.493(a)		Moderate to Maximum	
(p) Failure to provide requested records to the FAA; failure to send data file when DAS no longer operates under subpart M	21.493(b)		Moderate to Maximum	

<b>Fig. B-9-d. Technical Standard Order Authorization (TSOA), Letter of Design Approval, and Letter of Acceptance Manufacturers</b>	<b>14 C.F.R.</b>	<b>49 U.S.C.</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Unauthorized display of TSO marking	21.603(a)		Maximum	
(2) Failure of holder of Letter of Acceptance to comply with 21.603(b)	21.603(b)		Maximum	
(3) Failure to manufacture article in accordance with the approved technical and quality control data and the TSO	21.607(a)		Moderate to Maximum	
(4) Failure to properly conduct a required test or inspection	21.607(b)		Moderate to Maximum	
(5) Failure to maintain the Q/C system to ensure each article meets 21.607(a) and is in a condition for safe operation	21.607(b)		Moderate to Maximum	
(6) Failure to prepare and maintain a current file of complete technical data and inspection records	21.607(c)		Moderate to Maximum	
(7) Failure to permanently and legibly mark each article produced under the TSOA or Letter of Design Approval	21.607(d)		Minimum to Moderate	
(8) Failure to forward information on a minor design change to the appropriate Aircraft Certification Office	21.611(a)		Minimum to Moderate	

<b>Fig. B-9-d. Technical Standard Order Authorization (TSOA), Letter of Design Approval, and Letter of Acceptance Manufacturers cont.</b>	<b>14 C.F.R.</b>	<b>49 U.S.C.</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(9) Before making a major change, failure to to assign a new type or model designation to the article and apply for an authorization under 14 CFR § 21.605	21.611(b)		Moderate to Maximum	
(10) Failure to retain technical data	21.613		Moderate to Maximum	
(11) Refusal to permit an authorized FAA representative to inspect an article, Q/C inspection or test, or the manufacturing facilities or technical data file	21.615		Moderate to Maximum	

<b>Fig. B-9-e. Replacement or Modification Parts Manufacturers</b>	<b>14 C.F.R.</b>	<b>49 U.S.C.</b>	<b>Civil Penalty</b>	<b>Certificate or Other Action</b>
(1) Production without PMA or other authority	21.303(a)		Maximum	Injunctive relief
(2) Failure to maintain the fabrication inspection system to ensure each completed part conforms with its approved design and is safe for installation on applicable TC product	21.303(h)		Moderate to Maximum	
(3) Failure to ensure that incoming materials used in the finished part are as specified in the design data	21.303(h)(1)		Moderate to Maximum	
(4) Failure to ensure that incoming materials are properly identified if their physical and chemical properties cannot otherwise be readily and accurately determined	21.303(h)(2)		Moderate to Maximum	
(5) Failure to ensure that materials are suitably stored and adequately protected	21.303(h)(3)		Moderate to Maximum	
(6) Failure to accomplish all processing affecting quality and safety of the part in accordance with acceptable specifications	21.303(h)(4)		Moderate to Maximum	
(7) Failure to inspect parts process for conformity with the design data at points in production where accurate determinations can be made	21.303(h)(5)		Moderate to Maximum	

<b>Fig. B-9-e. Replacement or Modification Parts Manufacturers cont.</b>	<b>14 C.F.R.</b>	<b>49 U.S.C.</b>	<b>Civil Penalty</b>	<b>Certificate or Other Action</b>
(8) Failure to make a current design drawing readily available to manufacturing and inspection personnel or to use such a drawing when necessary	21.303 (h)(6)		Moderate to Maximum	
(9) Failure to adequately control a major design change or to obtain FAA approval of a major design change before it is incorporated into the finished part	21.303 (h)(7)		Moderate to Maximum	
(10) Failure to segregate and identify rejected materials and components in such a manner as to preclude their use in a finished product	21.303 (h)(8)		Moderate to Maximum	
(11) Failure to maintain and identify an inspection record with a completed part, or to retain the record for at least 2 years	21.303 (h)(9)		Moderate to Maximum	
(12) Failure to notify the FAA, in writing, within 10 days after relocating or expansion of manufacturing facilities	21.303(j)		Moderate to Maximum	
(13) Failure to determine that each completed part conforms to the design data and is safe for installation on TC product	21.303(k)		Moderate to Maximum	

<b>Fig. B-9-f. All Production Approval Holders</b>	<b>14 C.F.R.</b>	<b>49 U.S.C.</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Failure to report each malfunction or defect specified in section 21.3(c) within the time specified in 21.3(e)			Moderate to Maximum	

<b>Fig. B-9-g. TC or STC Holder; Manufacturers and Alteration Entities</b>	<b>14 C.F.R.</b>	<b>49 U.S.C.</b>	<b>Civil Penalty</b>	<b>Certificate or Other Action</b>
(1) Failure to submit the data necessary for the issuance of A/W directive containing the appropriate corrective action	21.99		Maximum	Indefinite Suspension of TC or AWCs, pending corrective action to Revocation

<b>Fig. B-9-h. All persons, including designees</b>	<b>14 C.F.R.</b>	<b>49 U.S.C.</b>	<b>Civil Penalty</b>	<b>Certificate or Other Action</b>
(1) Falsification of application, report, or record	21.2(a)(1), (2), (3), or (4)		Maximum	Revocation of certificate(s)

<b>Fig. B-9-h. All persons, including designees cont.</b>	<b>14 C.F.R.</b>	<b>49 U.S.C.</b>	<b>Civil Penalty</b>	<b>Certificate or Other Action</b>
(2) Failure to provide written evidence of permission to use an STC		44704 (a)(2)	Minimum	
(3) Failure to provide written evidence of permission to use a TC		44704 (a)(3)	Minimum	
(4) Changing a product based on an STC without being the holder or having the permission of the STC holder		44704 (a)(2)	Maximum	
(5) Manufacturing a product based on a TC without being the holder or having permission of the TC holder		44704 (a)(3)	Maximum	

### **10. AIRCRAFT OWNER/OPERATOR REGISTRATION VIOLATIONS**

<b>Fig. B-10. Registration.</b>	<b>14 C.F.R.</b>	<b>49 U.S.C.</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(1) Operation of an unregistered aircraft	91.203 (a)(2)	44101	Maximum*	30-90 day Suspension of pilot certificate
(2) Operation of an aircraft without an effective (14 C.F.R. 47.41), valid (14 C.F.R. § 47.43) certificate on board	91.203 (a)(2)		Minimum to Maximum*	30-90 day Suspension of pilot certificate
(3) Operation outside U.S. on pink copy	91.203 (a)(2)	44101	Minimum to Maximum*	30-90 day Suspension of pilot certificate
(4) Operation in U.S. on pink copy without compliance with 14 C.F.R. 47.31(b)	91.203 (a)(2)		Moderate to Maximum*	30-90 days suspension of pilot certificate
(5) Failure to return an ineffective or invalid aircraft registration certificate	47.41(b) 47.43(b)		Minimum	Revoke aircraft registration certificate
(6) Failure to submit triennial report	46.51(d)	44105		Suspension or revocation of registration certificate
(7) Failure to submit required flight information	47.9(f)		Minimum to Moderate*	
(8) Failure to submit change of address	47.45	44105	Minimum	
(9) Failure to submit required dealer information	47.71		Minimum to Moderate	

<b>Fig. B-10. Registration cont.</b>	<b>14 C.F.R.</b>	<b>49 U.S.C.</b>	<b>Civil Penalty</b>	<b>Certificate Action</b>
(10) Use of registered aircraft to carry out or facilitate unlawful drug activities		44106 (b), 44710		Mandatory revocation of aircraft registration certificate and of all other certificates of aircraft registration issued to its owner, and revocation of all airman certificates

\* Civil penalty action applies only if owner/operator is different from pilot.

**11. ALL INDIVIDUALS AND ENTITIES. Failure to surrender suspended or revoked certificate, authorization, or other approval**

<b>Fig. B-11.</b>	<b>Civil Penalty</b>
(1) Individual	Moderate c.p. per day, with the total c.p. generally \$5,000 to \$11,000
(2) Entity	Moderate c.p. per day, with the total calculated under the Multiple Act policy

## **Appendix C. Sanction Guidance Hazardous Materials Enforcement**

### **1. Background.**

**a. Legislation.** Congress determined that the unregulated transportation of hazardous materials constitutes a threat to public safety in all forms of transportation. Congress addressed that threat in 1974 by enacting the Hazardous Materials Transportation Act (HMTA). By 1990, Congress determined that effective enforcement of the HMTA required more severe action, and enacted the Hazardous Materials Transportation Uniform Safety Act of 1990, Public Law No. 101-615, 1990 U.S. Code Congress. & Admin. News 104 Stat. 4605. The primary effect of this 1990 revision of the HMTA was to raise the maximum civil penalty for violation of any regulation enacted under the HMTA to \$25,000, and, for the first time, to require a \$250 minimum penalty for any such violation. The HMTA was recodified in 1994 and is now referred to as the “Federal hazardous material transportation law,” 1994 U.S. Code Congress. & Admin. News 108 Stat. 759, codified at 49 U.S.C. §§ 5101-5127. In the 1994 recodification, Congress specifically stated that the recodification created no substantive change to the earlier form of the statute. In 2005, the Congress enacted and the President signed the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA – LU), Public Law 109-59, August 10, 2005. That legislation, among other things, modified the limitations on civil penalties that may be assessed for violations of the hazardous materials statute and regulations.

**b. Civil Penalties.** The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 (note), as amended by the Debt Collection Improvement Act of 1996, Public Law 104-134, April 26, 1996, provides a mechanism for adjustments for monetary civil penalties for inflation in order to maintain the deterrent effect of monetary civil penalties and promote compliance with the law. Under the statute, the adjusted civil penalty maximums cannot be applied unless they are implemented by regulation. The adjusted civil penalties are listed in part 13 of Title 14 of the CFR, subpart H.

Pursuant to SAFETEA – LU, the maximum civil penalty that may be assessed for a violation of the Federal hazardous material law or a hazardous material regulation is now \$50,000; the minimum civil penalty is now \$250. There are two exceptions to those limits. A maximum civil penalty of \$100,000 may be assessed if the violation results in death, serious illness, or severe injury to any person, or substantial destruction of property. The minimum civil penalty that may be assessed for a training violation is \$450.

**c. Enforcement Responsibility.** Within the Department of Transportation, the Pipeline & Hazardous Materials Safety Programs Administration (PHMSA), created by the Norman Y. Mineta Research and Special Programs Improvement Act in 2004, adopts the Hazardous Materials Regulations (HMR), which govern the transportation of hazardous materials (hazmat). The FAA, under delegated authority, enforces the Federal hazardous material transportation law and the HMR, with particular emphasis on shipment of hazmat by air. 49 C.F.R. § 1.47(j).

**d. Violation of the HMRs.** The HMR set forth regulations for the transportation of hazmat. A knowing violation of the statute or of the HMR can support the assessment of a civil penalty between \$250 and \$100,000. A person acts knowingly when the person has actual knowledge of the facts giving rise to the violation; or a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge. 49 U.S.C. § 5123(a)(1)(A). The civil penalties authorized under the statute apply to each violation of any regulation set forth in the HMR; they also apply to the violation of an order, special permit, or approval issued by the Department. Moreover, under the statute, each continuing violation of the HMR can constitute a separate violation for each day a violation continues. In section 5124 of the statute, Congress prescribed criminal penalties for a willful violation of the Federal hazardous material transportation law or the HMR; willful violations require evidence of both knowledge of the laws and regulations and intent to violate them.

**e. Investigative and Enforcement Procedures.** Part 13 of the Federal Aviation Regulations - Investigative and Enforcement Procedures (14 C.F.R. part 13) governs the procedures applicable to enforcement of the HMR by the FAA. Hazmat violations occurring on or after August 2, 1990, may be dismissed by an administrative law judge (ALJ) if a notice of proposed civil penalty has not been issued within 2 years of the violation, unless good cause for delay has been shown. 14 C.F.R. § 13.208(d).

**2. Consideration of Statutory Criteria.** As a general matter, a sanction should be imposed that is sufficiently deterrent but not excessive, in order to comply with the underlying purposes of the Federal hazardous material transportation law and HMR. In determining the sanction to be assessed, penalty criteria set forth in 49 U.S.C. § 5123 must be considered. These criteria are the nature, circumstances, extent, and gravity of the violation; the degree of culpability of the violator; the history of past violations (if any); the ability to pay; the effect on the ability to continue to do business; and other matters as justice requires. Some of these considerations already are factored to some extent into the categories in the Hazardous Material Sanction Guidance Matrix. The statutory factors are further considered under the weighting analysis that is performed to indicate the amount of the civil penalty within the appropriate range, *i.e.*, at the minimum, moderate, or maximum portion of the sanction range. The Matrix recognizes that an even higher penalty could be warranted for a significantly aggravated case, consistent with the increased maximum penalty of \$50,000 imposed by SAFETEA-LU. In addition, the Matrix reflects the potential \$100,000 penalty, also imposed by SAFETEA-LU, for a violation that results in death, serious illness, or severe injury to any person, or substantial destruction of property.

**3. Consistency of Penalty Sanctions.** The Hazardous Materials Sanction Guidance is designed to promote better consistency so that similar penalties are imposed in similar cases. The specified Matrix ranges (e.g., \$250-\$550, or \$15,000-\$32,500) are intended to reflect the nature, circumstances, extent, and gravity of the case as compared with other types of cases. Each case, however, must be evaluated on its own facts. A sanction may differ from the specified Matrix ranges when the facts and circumstances of a case support either a greater or lesser penalty. When a special agent believes that a penalty should exceed the specified Matrix ranges, the agent should consult with legal counsel before further processing of the Enforcement Investigative Report (EIR). This consultation is not necessary in the case of a recommended penalty that is

less than that provided in the Matrix. In either situation, the basis for the decision to go outside the ranges should be explained in detail.

**4. Part 175 Violations.** Violations of part 175 of the HMR, which establish particular requirements for air carriers and other aircraft operators, are contained in a separate matrix. However, such operators often offer hazardous materials for air transportation, as well as accept and transport them. For this reason, such operators may be liable for violations both as a business entity within the Hazardous Materials Sanction Guidance Matrix, as well as for specific air carrier violations.

**5. Violation Committed by Small Business Entity.** To meet statistics-gathering requirements, the investigating special agent must determine whether the alleged violator qualifies as a small business concern under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). For an extensive discussion of how to make that determination, see Part One – Abbreviations and Definitions, in Appendix B of this order. If investigating special agents are unable to obtain independently information to determine whether an alleged violator is a small business concern, they request such information in the letter of investigation. See sample letter of investigation in Figure A-1 of Appendix A. Because violations of Title 49 of the U.S. Code and the HMR may be committed by entities in addition to those normally regulated by the FAA, the investigating agent may need to refer to the SBA's complete table of size standards to find the correct size limit for an alleged violator.

**a. Enforcement Policy under SBREFA.** Chapter 7, Paragraph 10, of this order generally outlines the FAA's enforcement policy under SBREFA. In determining whether and how to provide for the reduction or waiver of civil penalties for statutory or regulatory violations by small entities, the FAA's policy may contain certain conditions. Those conditions may allow for excluding from such a reduction or waiver: a small entity that has been subject to multiple enforcement actions by the agency, a violation involving willful or criminal conduct, a violation that results when there has not been a good faith attempt to comply with the requirements, and a violation that poses a serious health, safety or environmental threat. With respect to air carriers and other aircraft operators, the FAA takes into consideration company size in determining the appropriate amount of civil penalty. *See* the Matrix, Figure C-1, below.

**b. Information Sheet for Complaints by Small Business Concerns.** Each FAA employee who conducts an inspection of a small business concern that is regulated by the FAA provides the small business concern with an information sheet. The information sheet informs that entity that it may submit complaints or comments regarding unfair FAA regulatory enforcement to the National Ombudsman. FAA special agents may obtain a copy of the information sheet for hazardous materials inspections and additional guidance for distributing it from the ASH regional offices.

**c. Reduction or Waiver of Penalty.** The FAA does not reduce or waive the penalty of an alleged violator solely because it is a small business entity. This is because a violation of the hazmat statutes or HMR typically poses a serious health, safety, or environmental threat (and may involve one of the other reasons for exclusion). Accordingly, the FAA will usually reduce



or waive a penalty only if the small business entity provides evidence to demonstrate its inability to pay or that the proposed penalty would prevent the entity from continuing in business.

**d. Enforcement Actions Other than Civil Penalties.** The FAA may, in limited circumstances, announce policies to provide for hazmat enforcement actions less onerous than civil penalties, *that is*, administrative actions. Such policies may apply to small business entities or to others, and will be announced as Compliance and Enforcement Bulletins in this order.

**6. Use of the Sanction Guidance.** This guidance provides agency personnel with a systematic way to evaluate a case and arrive at an appropriate penalty, considering all the relevant statutory criteria including mitigating and aggravating circumstances, if any. Statutory considerations have been factored into the various ranges within the Sanction Guidance Matrix. Determination of where a sanction lies within these ranges is aided by a series of weighting questions that probe the various aggravating and mitigating factors that may exist in a case.

**a. Weight Analysis.** First, the weighting analysis is performed. Agency personnel respond to a series of questions to determine the aggregate weight of the case. The aggregate weight of the case helps determine the sanction amount for each violation group within the established ranges of the Matrix.

**b. Determination of Sanction.** It is important to note that determination of where the sanction lies within the Matrix is not the result of a mathematical computation. Evaluation of the case is based on the totality of the facts and circumstances. Generally, if the answer to a particular question represents a more significant aspect of a case, greater consideration should be given to that answer. For example, violations involving an extremely dangerous substance, even in minute quantities, might warrant a penalty at the maximum end of the range or even a penalty exceeding the Matrix ranges (if not already at the statutory maximum).

**c. Determination of Category.** Under the Sanction Guidance Matrix, agency personnel determine the category of violator the person falls within (*for example*, business entity that regularly offers, accepts, or transports hazmat) and the offense category (*for example*, undeclared shipment within hazmat quantity limitations). The sanction ranges under the various violator categories take into account the relative culpability of the violator. Similarly, the offense categories address the nature, circumstances, and gravity of the particular offense. After determining the appropriate categories and intersecting box of the Matrix, agency personnel then determine which subcategories of offenses (*for example*, shipping papers) are alleged to have been violated. Based on the weighting analysis performed in subparagraphs 8.a.-e., an appropriate penalty is assigned for each of the applicable violation groups. The penalty amount for each relevant violation group is added together to reach the recommended sanction.

**d. Other Relevant Sanction Factors.** Under subparagraph 8.g., the special agent then considers other relevant factors, including evidence of corrective action. A recommended sanction may be reduced prior to the issuance of a notice of proposed civil penalty when there is adequate reliable information concerning the corrective actions taken by a respondent. Corrective actions that justify reduction of the recommended penalty must exceed the minimum

legal requirements. The special agent also attempts to provide information concerning the alleged violator's size, financial condition, and ability to pay a recommended sanction.

**7. FAA Legal Counsel Review.** When an EIR is forwarded to legal counsel for enforcement action, counsel will give appropriate consideration to the recommended sanction. FAA legal counsel will also review the factors, analysis, and determinations under the Hazardous Materials Sanction Guidance. The basis for deviating from the recommended sanction, if any, should be explained to, and discussed with, the investigating special agent. Final determination of the sanction amount proposed in the notice of proposed civil penalty is ordinarily a product of joint decisionmaking and approval of the investigating agent and the legal office.

**8. Federal Aviation Administration Hazardous Materials Sanction Guidance.** This Sanction Guidance is divided into three sections: case analysis; utilization of the Sanction Guidance Matrix (Matrix); and consideration of other statutory factors. The Sanction Guidance Matrix is contained in Figure C-1 and the Risk Categories are contained in Figure C-2.

**a. Case Analysis (Evaluation of Statutory Assessment Factors).**

(1) This section contains a series of questions to assist a special agent in evaluating a case and recommending a sanction. It also assists an attorney in evaluating a case file prior to initiation, and after additional information is received in response to a notice of proposed civil penalty. The questions review factors involving the nature, circumstances, extent and gravity of the violation, the violator's degree of culpability, and the violator's history of prior violations. Some of these factors are already considered to some extent within the various categories of the Sanction Guidance Matrix. The questions in this section provide additional consideration of the statutory factors and examine the existence of aggravating and mitigating factors in a case.

(2) The agent answers each question in *Section I* and determines if a relative weight of minimum, moderate, or maximum should be assigned based on the response to the question. With the exception of *Question (1)(a)*, not all questions will necessarily apply to a given fact situation. *Question (1)(a)* addresses the nature of the hazardous material(s) involved, and the evidence will indicate the risk category and, therefore, the weight. The aggravating or mitigating factors addressed in the other questions only apply to the case when the question receives a *yes* response. Questions receiving a *no* response do not affect the weighting of the case and are not considered. For example, that the violation did not result in injury or damage is *not* a mitigating factor, and should not result in penalty mitigation. In many instances, the answers to most or all of the questions will be *no* and the only relevant weighting factor in this section will be the risk category of the material identified in *Question (1)(a)*.

(3) In determining the final aggregate weight of the case, the responses to each of the questions do not have to be equally considered. Determination of whether the overall case should have a minimum, moderate, or maximum weight cannot be determined with mathematical certainty. Generally, if the answer to a question demonstrates that the factor at issue represents a more significant aspect of the case, greater consideration is given to that factor. The final aggregate weight is based on the totality of the facts and circumstances of the case. Once

determined, the final aggregate weight is then utilized to arrive at the recommended sanction for each applicable violation group on the Sanction Guidance Matrix (*See*, Figure C-1).

**b. The Nature, Circumstances, Extent, and Gravity of the Violation (Factors Concerning the Shipment):**

(1) What material(s) was offered, transported, or accepted for air transportation? Figure C-2 divides hazardous materials of particular classes, divisions, and packing groups into three risk categories: Category A, Category B, and Category C. Find the material offered, transported, or accepted, in Figure C-2 and answer the questions below.

- If the material(s) is in *Category A*, assign a *Maximum* weight.
- If the material(s) is in *Category B*, assign a *Moderate* weight.
- If the material(s) is in *Category C*, assign a *Minimum* weight.

*Guidance Note: The categories in Figure C-2 represent the inherent risk of danger to air transportation posed by the material. If there is more than one type of hazardous material involved in the shipment, use the hazardous material in the highest risk category.*

(2) What quantity of the material(s) was offered, transported, or accepted for air transportation?

- Did the package(s) exceed the authorized quantity limitations by a *significant* amount? If *yes*, consider a *Moderate* or *Maximum* weight depending on the degree to which the limitation was exceeded.

*Guidance Example: The quantity limitation for gasoline on a passenger plane is 5 liters per package. If a violator offers 30 liters in a single package on a passenger plane, assign a maximum weight for this factor.*

- Did the package contain a forbidden material? If *yes*, assign a *Maximum* weight.
- Were there multiple packages in the shipment? If *yes*, consider a *Moderate* or *Maximum* weight, depending on the number of packages and total amount of hazardous material being transported in violation.

*Guidance Note: A package means a packaging plus its contents. There may be multiple packages in one shipment or overpack. Multiple packages often represent multiple violations. Under the Sanction Guidance, this fact is considered an aggravating circumstance rather than a direct multiplier of the sanction for each violation. Each case, however, must be evaluated on its particular facts. A very large number of packages may result in such an egregious case that the overall weight of the case is so high that a penalty beyond the maximum point in the range is warranted.*

*An investigation will occasionally reveal sufficient evidence of several shipments from the same offeror over a period of several days, all of which involve violations of the HMR. These independent acts of offering usually are consolidated into one EIR and addressed in one notice*

*of proposed civil penalty. However, for purposes of determining the appropriate sanction, each separate shipment with separate air waybill or shipping papers, separate destination, and/or other evidence establishing it as a separate shipment, is ordinarily considered as a separate incident for purposes of applying the sanction guidance analysis. It is suggested that the separate shipments be treated as individual counts in the EIR and the notice of proposed civil penalty, with each count having its own sanction derived from application of this guidance.*

(3) Did the shipment cause some damage or harm to persons or property or interfere with commerce? If yes, consider a *Moderate* or *Maximum* weight.

*Guidance Note: The fact that no damage occurred as a result of the shipment is not a mitigating factor. However, damage or harm may aggravate the nature, circumstances, extent, and gravity of the violation. Depending on the degree of damage caused by the shipment and/or the existence of other aggravating factors, departure from the ranges may be justified. It is important to note that death, serious illness, or severe injury to any person, or substantial destruction of property, warrants additional consideration of aggravation of the total penalty.*

**c. Violator's Degree of Culpability.** The Matrix, Figure C-1, considers the relative culpability of the violator. This section of the analysis further evaluates the degree of culpability of the violator.

(1) Is the violator the manufacturer of the hazardous material? If yes, consider a *Maximum* weight.

*Guidance Note: A manufacturer of a hazardous material is expected to have complete knowledge of the nature of the hazardous material it manufactures or uses; thus, a high degree of culpability will ordinarily be imputed to it.*

(2) Did someone other than the violator prepare the shipment for transportation? If yes, consider a *Minimum* or *Moderate* weight.

*Guidance Note: Facts supporting an affirmative answer to this question may be cause to mitigate culpability and/or pursue a separate enforcement action against other responsible parties who handled the shipment. A shipper that reships materials received from another person in the same packaging is independently responsible for ensuring the shipment complies with the HMR. Nevertheless, the reshipper is generally considered to have a lesser degree of culpability for compliance of the package as received. However, if the reshipper unpacks and/or repackages the shipment, the reshipper remains as culpable as the original shipper and generally is not accorded mitigation under this weighting factor. (For purposes of this section, a "reshipper" refers to a person, other than the original offeror, who offers a shipment of hazardous material for transportation.)*

(3) Did the violator reasonably rely on incorrect information from another source? If yes, consider a *Minimum* weight.

*Guidance Note: Detrimental, reasonable reliance on another party may be a mitigating factor when considering the violator's degree of culpability. For example, reliance on an inaccurate Material Safety Data Sheet (MSDS) would be mitigating.*

(4) Does the violator have a history of previous HMR violations? If yes, consider a *Moderate* or *Maximum* weight.

*Guidance Note: To establish a violation history, a prior violation must be an actual finding of violation pursuant to a legal enforcement action. Special agents should attempt to determine the corporate structure of the violator and whether other business entities or names are or have been used by the entity in order to obtain a complete violation history. The number and age of violations should be considered. Ordinarily, findings of violation more than 5 years old carry less weight, unless a continuing pattern of violation exists.*

#### **d. Other Factors.**

(1) Each case must be evaluated on its particular facts. As such, many cases may present unique scenarios and aggravating or mitigating factors that are not routinely seen. If an aggravating or mitigating circumstance exists that is not adequately addressed elsewhere in the sanction guidance, it may be included and assigned a weight under this section. The factor should be clearly identified and explained in the analysis portion of the EIR and carefully scrutinized by legal counsel.

*Guidance Note: For example, a shipment of a single package containing several different hazardous materials may present an aggravating factor. The degree of seriousness of this factor will increase if the hazardous materials are incompatible with each other and, therefore, create an increased risk.*

*Mitigating factors may also exist that have not been adequately considered. For example, a shipment containing a de minimis quantity of material or an amount that would have qualified under the small quantity exception of 49 C.F.R. § 173.4 may present a mitigating factor if as a result there was a reduced risk to safety in transportation. That the material could have been shipped as a consumer commodity can also be a mitigating factor.*

#### **e. Determine the Final Aggregate Weight of the Case.**

(1) All the responses/weights are evaluated to determine a final aggregate weight for the case (***Minimum, Moderate, and Maximum.***). Questions receiving a *no* response will not be included in this evaluation. To determine the final aggregate weight, the agent or attorney must exercise his or her discretion in light of the statutory factors and knowledge of the particular facts of the case. The facts of the particular case will dictate the relative importance of each of the weighting factors in reaching the final aggregate weight. The final aggregate weight should be decided as a result of careful analysis, not a mathematical averaging. It is possible that a single weighting factor may outweigh all others. The agent or attorney's analysis should always be explained in this regard.

*Guidance Example: A case involving a hazardous material in the lowest risk category may be evaluated to have a maximum weight because of the large quantity shipped or the damage resulting from the shipment.*

**f. Utilize the Matrix (Figure C-1).**

(1) The sanction ranges under the offeror and offense categories of the Sanction Guidance Matrix reflect the relative culpability of the violator and the nature, circumstances, extent, and gravity of cases for the majority of violations. Consideration of these particular statutory factors under the Federal hazardous material transportation law is built into the Matrix. Further analysis of the statutory factors is required to determine the appropriate sanction within the ranges established under the Matrix. This analysis is performed in subparagraphs 8.a.-e. After determining the final aggregate weight of the case under subparagraphs 8.a.-e., that weight is applied to the appropriate Matrix range to identify the recommended sanction amount for each of the relevant violation groups and for the case as a whole. Although the notice of proposed civil penalty may cite numerous violations of a particular part or subpart of the HMR, unless upward departure is justified, a single penalty amount for each violation group is ordinarily used to reach the full sanction.

(2) Instructions.

- Identify the appropriate category for the type of entity and the nature of the offense involved in the case. Refer to the Definitions Section that follows the Matrix in Figure C-1 for guidance. Go to the intersecting box and identify the applicable sanction range for each violation group.
- Apply the conclusion reached in the subparagraphs 8.a.-e. weighting analysis to assign a sanction amount within the minimum, moderate, or maximum portion of the sanction range for each relevant violation group. The recommended civil penalty at this stage is the sum of the sanctions for each of the applicable violation groups. A sanction should not be assessed for a violation group if there have been no violations of that part or subpart of the HMR. The sanction amount for each violation group need not be identical but ordinarily is within the portion of the particular sanction range that represents the overall weight of the case.

(3) Departure from the Matrix ranges. The ranges of penalties specified in the Matrix (e.g., \$250-\$550) are intended to cover the majority of cases involving violations of the HMR. The facts and circumstances of a particular case, however, may justify either an upward or downward departure from the specified Matrix ranges. This sanction guidance anticipates departure from the specified Matrix ranges when justified. A case involving violations in which the nature, circumstances, extent, and gravity of the incident are particularly severe or egregious, may justify upward departure from the specified ranges. If the investigating agent believes, based upon the facts of a case, that a penalty should exceed the specified Matrix ranges, the agent should consult with legal counsel before further processing of the EIR. (However, in no case may the civil penalty per violation exceed the maximum allowed by law.) Conversely, the investigating agent may believe that mitigating factors justify a downward departure from the

Matrix range. Consultation with legal counsel is not necessary in the case of a recommended penalty that is less than that provided in the Matrix. (However, in no case may the civil penalty per violation be less than the minimum allowed by law.) In either situation, however, the agent is to provide a detailed explanation of the basis for the decision to go outside the ranges.

(4) Violations of part 175 regulations, which establish particular requirements for air carriers and other aircraft operators, are contained in a separate matrix. However, such operators often *offer* hazmat for air transportation as well as accept and transport it. As such, the operator may be liable for violations as a business entity within the main Matrix as well as for the specific part 175 violations.

**g. Impact of Other Statutory Factors.** The Federal hazardous material transportation law also requires consideration of a violator's ability to pay a civil penalty, the impact of the civil penalty on the violator's ability to continue to do business, and other matters that justice requires. Consideration of these factors may result in adjustment of the recommended civil penalty calculated in subparagraph 8.f. In situations where the agent or attorney is in possession of mitigating information, such an inability to pay the recommended civil penalty or corrective action taken, reduction of the recommended penalty may be appropriate. Mitigating information should be sufficiently reliable, uncontroverted, and documented in order to support reduction of the recommended civil penalty prior to issuing the notice of proposed civil penalty.

(1) Ability to pay or continue in business. Historically, the FAA has considered these factors after the issuance of the notice of proposed civil penalty due to the absence of reliable financial information on which to base a reduction prior to the issuance of a notice. This Sanction Guidance recommends that the special agent make efforts to obtain reliable information regarding the violator's size and financial condition for review prior to the issuance of a notice. This information will be transmitted to the legal office for consideration. It is recognized that it may not always be possible for the special agent and/or attorney to obtain reliable financial information on a particular respondent, that financial circumstances change, and that information may be provided after the issuance of the notice that may warrant further consideration of a respondent's ability to pay.

- The investigating agent will attempt to include financial information as an exhibit in the EIR. It is anticipated that this information, if available, will be obtained from reliable financial data bases. Financial documentation should include, but need not be limited to, information concerning the violator's corporate structure, business address, officers, number of employees, and gross revenues.

- The investigating agent provides a statement or comment with respect to the financial information obtained but ordinarily does not evaluate the financial condition of a respondent with respect to its ability to pay a proposed civil penalty. The investigating agent's statement should encompass areas like the number of employees, gross revenues, and nature of business of the violator.

- FAA legal counsel reviews the financial information provided in the EIR and evaluates its sufficiency and relevance to the recommended civil penalty. Legal counsel may

determine if more current information exists concerning the financial condition of a respondent and if that information substantially differs from the information available at the time of preparation of the EIR. If there is a basis for determining that the recommended sanction is inappropriate based upon the financial information provided in the EIR, the recommended sanction is adjusted prior to issuance of the notice of proposed civil penalty. This is a preliminary consideration of a company's ability to pay. As such, pre-notice adjustment of a recommended civil penalty does not preclude further consideration of a respondent's financial claims after issuance of the notice.

(2) Corrective Action.

- The most common *other matter* that the FAA takes into consideration is corrective action. Corrective action that results in mitigation is remedial action that exceeds the minimum legal requirements. The primary factors in determining the appropriate amount of penalty reduction are the extent and timing of the corrective action. In other words, mitigation is determined on the basis of how much corrective action was taken and how quickly the action was taken. Systemic change intended to prevent future violations should be given greater consideration. Similarly, corrective action that commences upon the violator's first learning of the violations ordinarily is given greater credit than corrective action that commences only after the violator receives the letter of investigation or the notice of proposed civil penalty.

Mitigation of a recommended civil penalty based upon corrective action should be referenced in the Notice of Proposed Civil Penalty so that the respondent is on notice that credit already has been given for such action.

(2) Status of violator as a *small business entity or concern*. See subparagraphs 5.a.-b. above.



**MATRIX & DEFINITIONS**  
**(Figure C-1)**

OFFENSE CATEGORIES	A. Individual*	B. Business Entity	C. Business Entity that uses or handles hazmat in the course of business	D. Business Entity that regularly offers, accepts, or transports hazmat
<b><u>I. Declared Shipment</u></b>				
1. Shipping Papers	250-550	250-1,100	500-2,200	1,000-5,500
2. Labels	250-550	250-1,100	500-2,200	1,000-5,500
3. Markings	250-550	250-1,100	500-2,200	1,000-5,500
4. Packaging	250-550	250-1,100	500-2,200	1,000-5,500
5. Training	-----	450-1,100	500-2,200	1,000-5,500
6. Emerg. Response	250-550	250-1,100	500-2,200	1,000-5,500
7. Release into Environ.	250-550	250-1,100	500-2,200	1,000-5,500
8. Other	250-550	250-1,100	500-2,200	1,000-5,500
<b><u>II. Undeclared Shipment Within Hazmat Quantity Limitations</u></b>				
1. Shipping Papers	250-1,100	1,500-8,200	2,500-11,000	5,000-13,000
2. Labels	250-1,100	1,500-8,200	2,500-11,000	5,000-13,000
3. Markings	250-1,100	1,500-8,200	2,500-11,000	5,000-13,000
4. Packaging	250-1,100	1,500-8,200	2,500-11,000	5,000-13,000
5. Training	-----	1,500-8,200	2,500-11,000	5,000-13,000
6. Emerg. Response	250-1,100	1,500-8,200	2,500-11,000	5,000-13,000
7. Release into Environ.	250-1,100	1,500-8,200	2,500-11,000	5,000-13,000
8. Other	250-1,100	1,500-8,200	2,500-11,000	5,000-13,000
<b><u>III. Undeclared Shipment Hazmat Forbidden on, or exceeds qty limits for, Passenger Aircraft</u></b>				
1. Shipping Papers	500-5,500	5,000-16,200	7,500-22,000	10,000-32,500
2. Labels	500-5,500	5,000-16,200	7,500-22,000	10,000-32,500
3. Markings	500-5,500	5,000-16,200	7,500-22,000	10,000-32,500
4. Packaging	-----	5,000-16,200	7,500-22,000	10,000-32,500
5. Training	500-5,500	5,000-16,200	7,500-22,000	10,000-32,500
6. Emerg. Response	500-5,500	5,000-16,200	7,500-22,000	10,000-32,500
7. Release into Environ.	500-5,500	5,000-16,200	7,500-22,000	10,000-32,500
8. Other				
<b><u>IV. Undeclared Shipment Forbidden on, or exceeds qty limits for, All Aircraft</u></b>				
1. Shipping Papers	500-32,500	7,500-32,500	10,000-32,500	15,000-32,500
2. Labels	500-32,500	7,500-32,500	10,000-32,500	15,000-32,500
3. Markings	-----	7,500-32,500	10,000-32,500	15,000-32,500
4. Packaging	500-32,500	7,500-32,500	10,000-32,500	15,000-32,500
5. Training	500-32,500	7,500-32,500	10,000-32,500	15,000-32,500
6. Emerg. Response	500-32,500	7,500-32,500	10,000-32,500	15,000-32,500
7. Release into Environ.				
8. Other				
<b><u>V. Intentional or</u></b>				
	CONSULT	CONSULT	CONSULT	CONSULT

<b><u>Deliberate Violation, or other significant aggravation</u></b>	LEGAL - Up to 50,000 per offense category may be assessed	LEGAL - Up to 50,000 per offense category may be assessed	LEGAL - Up to 50,000 per offense category may be assessed	LEGAL - Up to 50,000 per offense category may be assessed
<b><u>VI. Violation results in death, serious illness, severe injury, or substantial destruction of property</u></b>	CONSULT LEGAL - Up to 100,000 per offense category may be assessed	CONSULT LEGAL - Up to 100,000 per offense category may be assessed	CONSULT LEGAL - Up to 100,000 per offense category may be assessed	CONSULT LEGAL - Up to 100,000 may be assessed

**h. \*Sanctions applicable to air carrier and commercial operator passengers and crewmembers.** The range for the total civil penalty to be assessed, absent mitigating or aggravating factors, is \$250 (the statutory minimum) to \$1,000.

<b>AIR CARRIER AND OTHER AIRCRAFT OPERATOR VIOLATIONS</b>	<b>E. Group I &amp; II Air Carriers and Other Aircraft Operators</b>	<b>F. Group III &amp; IV Air Carriers and Other Aircraft Operators</b>
Failure to comply with Parts 171, 172, or 173 requirements of the HMR as an offeror of hazmat.	Use main Matrix.	Use main Matrix.
Improper acceptance of hazmat for air transportation. (i.e., quantity, labeling, marking, packaging, and shipping papers) See 49 C.F.R. §§ 175.30(a)(1) – (4)	5,000-32,500	2,500-16,200
Failure to inspect hazmat shipment properly. See 49 C.F.R. §§ 175.30(b), (c), (d), (e)	10,000-32,500	5,000-16,200
Improper storage/securing of hazmat aboard aircraft.	10,000-32,500	5,000-16,200
Failure to provide hazmat training, maintain records of training, or meet minimum requirements for hazmat training (49 C.F.R.).	10,000-32,500	5,000-16,200
Using untrained/improperly trained hazmat personnel, failure to retain hazmat training records (49 C.F.R.)	10,000-32,500	5,000-16,200
Failure to notify FAA properly of incident/discrepancies in hazmat shipment.	5,000-16,200	1,000-5,500
Failure to provide notice to the pilot-in-command.	5,000-16,200	1,000-5,500
Other Part 175 violations.	5,000-16,200	1,000-5,500
Intentional, deliberate, or other significantly aggravated violation.	CONSULT LEGAL - Up to 50,000 per offense category may be assessed	CONSULT LEGAL - Up to 50,000 per offense category may be assessed
Violation results in death, serious illness, severe injury, or substantial destruction of property.	CONSULT LEGAL - Up to 100,000 per offense category may be assessed	CONSULT LEGAL - Up to 100,000 per offense category may be assessed

**9. Definitions:** Note that these definitions are only for the purpose of applying the sanction guidance in this appendix.

**a. Air Carrier and Other Aircraft Operator Groups (I, II, III, IV)** – Air carriers and other aircraft operators are divided into two categories for purposes of determining an appropriate sanction. These categories track the air carrier groups established in Appendix B this order. For purposes of hazmat sanction guidance, the FAA also includes other aircraft operators operating *in commerce* that are of similar size, *e.g.*, part 129 Foreign Air Carriers, part 125 Operators, and part 91 Operators.

(1) Group I is comprised of air carriers with annual operating revenue of \$100,000,000 or more. Other aircraft operators with annual operating revenue of \$100,000,000 or more are included in Group I for hazmat sanction guidance purposes.

(2) Group II is comprised of air carriers and other commercial operators that have an annual operating revenue of less than \$100,000,000, and have 50 or more pilots and operate 25 or more aircraft. Other aircraft operators of the same size are included in Group II for hazmat sanction guidance purposes.

(3) Group III is comprised of air carriers and other aircraft operators that do not meet the criteria for Group II, that is, they have only 6 to 49 pilots, or only 6 to 24 aircraft. Other aircraft operators of the same size are included in Group III for hazmat sanction guidance purposes.

(4) Group IV is comprised of all other air carriers and commercial operators not meeting the criteria for Groups I, II, or III. Other aircraft operators of the same size are included in Group IV for hazmat sanction guidance purposes.

**b. Business Entity.** A business, corporation, partnership, Sub-S Corporation, sole proprietor, association, or any type of commercial entity. An individual who offers a hazmat shipment in air transportation in the course of his or her self-owned business falls into this category. It includes a non-profit organization and all other entities defined under the HMR's definition of *person* (49 C.F.R. § 171.8), with the exception of an individual (as defined below).

**c. Business Entity that Regularly Offers, Accepts, or Transports Hazardous Materials in the Course of Its Business.** A business entity that offers hazmat with some anticipated frequency, or purports to do so, *regularly* offers hazmat. For example, a catalogue company that offers hazardous material to its customers would fall into this category, even though its actual sale or transportation of the hazmat is infrequent or limited. This category includes manufacturer or distributor of hazmat and a freight forwarder.

**d. Business Entity that Uses, Handles Hazmat in the Course of Its Business.** This category encompasses the business that utilizes hazmat in its business but does *not* offer it for transportation on a regular basis, as described above. For example, a manufacturer of a non-hazmat product that uses hazmat in the manufacturing process could fall into this category. It must be established that the company ordinarily does not offer the hazmat it utilizes for transportation, and the shipment in this instance represents an isolated incident. This type of business is held to a higher standard than the business entity that has no regular involvement

with hazmat. The described business entity receives the subject hazardous material in transportation and uses it in its business; thus, it is clearly on notice of the hazardous nature of the material and the regulatory requirements to which the hazmat is subject.

**e. Declared Shipment.** For purposes of this sanction guidance, a declared shipment has at least one of the following communicative indicia---markings, labels, and/or shipping papers that meet the communicative requirements of the HMR. A package that has shipping papers that declare the contents as hazardous material, but is otherwise not marked or labeled, falls into this category. For purposes of this definition, a shipping paper is any document to which handlers refer in the normal course of transportation and that complies with one or more of the communicative requirements in the HMR for shipping papers. Similarly, a properly marked and labeled package that lacks shipping papers also falls into this category. An example of a shipment that would not meet this definition is one where the offeror states that the shipment contains hazmat, but only in paperwork to which the handlers do not refer in the normal course of transportation.

**f. Hazmat** – A *hazardous material*, as defined in 49 C.F.R. § 171.8, includes and is interchangeable with the term *dangerous goods*, as used in the International Civil Aviation Organization (ICAO) Technical Instructions.

**g. Individual** – A human who offers a shipment of hazardous material in his or her personal capacity, without any business purpose and not as part of a commercial enterprise.

**h. Intentional or Deliberate Violation** – A violation falls into this category when the offeror, acceptor, air carrier, or aircraft operator has knowledge of the requirements of the HMR, and willfully circumvents or attempts to circumvent those requirements. For example, an offeror who places a properly marked and labeled hazmat shipment along with properly completed shipping papers, into an overpack marked as *printed material*, has committed an intentional or deliberate violation.

**i. Undeclared Shipment** – If a shipment does not meet the definition of *declared shipment*, it is an undeclared shipment.

**j. Undeclared Shipment Hazmat Exceeds Quantity Limits for All Aircraft** – An undeclared shipment that is offered for transportation on or transported on any aircraft and the quantity of hazardous material exceeds the limit, per package, for transportation on cargo aircraft, as established in the 49 C.F.R. § 172.101 Table.

**k. Undeclared Shipment Hazmat Exceeds Quantity Limits for Passenger Aircraft** – An undeclared shipment that is offered for transportation on **or** transported on a passenger aircraft, and the quantity of hazardous material exceeds the limitation, per package, for transportation on passenger aircraft (but not for transportation on cargo aircraft), as established in the 49 C.F.R. § 172.101 Table.

**l. Undeclared Shipment Hazmat Forbidden on All Aircraft** – An undeclared shipment that is offered for transportation on or transported on any aircraft and the hazardous material is forbidden in air transportation on cargo aircraft, as established in the 49 C.F.R. § 172.101 Table.

**m. Undeclared Shipment Hazmat Forbidden on Passenger Aircraft** – An undeclared shipment that is offered for transportation on **or** transported on a passenger aircraft, and the hazardous material is forbidden in air transportation on passenger aircraft (but not in air transportation on cargo aircraft), as established in the 49 C.F.R. § 172.101 Table.

**n. Undeclared Shipment Within Hazmat Quantity Limitations.**

(1) If the undeclared shipment is offered for transportation on **or** transported on a **passenger** aircraft, the quantity of hazardous material must be within the limitation, per package, for transportation on **passenger** aircraft, as established in the 49 C.F.R. § 172.101 Table.

(2) If the undeclared shipment is offered for transportation on a **cargo** aircraft, **but not** transported, the quantity of hazardous material must be within the limitation, per package, for transportation on **passenger** aircraft, as established in the 49 C.F.R. § 172.101 Table.

(3) If the undeclared shipment is offered for transportation on **and** transported on a **cargo** aircraft, the quantity of hazardous material must be within the limitation, per package, for transportation on **cargo** aircraft, as established in the 49 C.F.R. § 172.101 Table.

All other undeclared shipments fit within the definitions for *Undeclared Shipment Hazmat Exceeds Quantity Limits for...Aircraft, or Undeclared Shipment Hazmat Forbidden on...Aircraft, see above.*

## RISK CATEGORIES (Figure C-2)

### **CATEGORY “A”** **{Maximum Weight}**

Category “A” materials are materials that when released in the confines of an aircraft can potentially have a catastrophic effect on an aircraft’s ability to continue safe flight, resulting in a crash or emergency landing causing injury or death to passengers and flightcrew, as well as persons on the ground.

- Class 1** Explosives: Division 1.1, 1.2, 1.3,
  - Class 2** Compressed Gases All 2.1, 2.2 with Subsidiary Risk 5.1 and All 2.3 PIH Zones A-D
  - Class 3** Flammable Liquids PG I, II, and (PIH)
  - Class 4** Division 4.1 Flammable Solids PG I, & (Matches)  
Division 4.2 Spontaneously Combustible Materials PG I (Pyrophoric)  
Division 4.3 Dangerous When Wet PG I
  - Class 5** Division 5.1 Oxidizing Liquids and Solids PG I, II, e.g., “Chemical Oxygen Generators”  
Division 5.2 Organic Peroxides PG II (Type A,B,C,D)
  - Class 6** Division 6.1 Toxic/Poisonous Materials PG I (PIH)
  - Class 7** Cargo Aircraft Only Quantities on Passenger Aircraft
  - Class 8** Corrosive Material Liquid PG I and (PIH)
- Forbidden Materials (See 49 C.F.R. § 173.21 & ICAO Technical Instructions)  
Forbidden Hazmat listed in Dangerous Goods Table 49 C.F.R. § 172.101

### **CATEGORY “B”** **{Moderate Weight}**

The materials listed in Category “B” are materials that may not pose an immediate threat to the safety of a flight, but can cause death or injury to persons due to unintended releases in aircraft cabin areas, and potential damage to aircraft structures over a longer period of time due to undiscovered releases on aircraft structural components.

- Class 1** Division 1.4, 1.5, 1.6, All Compatibility Groups
- Class 3** PG III Flammable Liquids
- Class 4** Division 4.1 Flammable Solids PG II, III  
Division 4.2 Spontaneously Combustible Materials PG II, III  
Division 4.3 Dangerous When Wet PG II, III
- Class 5** Division 5.1 Oxidizing Liquids or Solids PG III  
Division 5.2 Organic Peroxides (Type E,F,G)
- Class 6** Division 6.1 Toxic/Poisonous Materials PG I, II (NON- PIH )  
Division 6.2 Infectious Substances
- Class 7** Radioactive Materials, yellow label II, white label I
- Class 8** Liquids PG II, III Solids PG I, II, III

### **Category “C”** **{Minimum Weight}**

The materials listed in Category “C” are materials that present the least amount of risk to the transportation system.

- Class 2** 2.2 Nonflammable Gas
- Class 6** Division 6.1 Toxic/Poisonous Materials PG III
- Class 7** All other RAM (LSA, LTD QTY, Instruments, and Articles)
- Class 9** Miscellaneous Dangerous Goods {ORM-D and Consumer Commodity}

**NOTE:** This guidance is not intended to replace the experienced judgment of a special agent who is convinced, based on the evidence and facts of a case, that the failure of an air carrier, shipper, freight forwarder, or passenger to follow established regulations has posed a risk to aviation safety.

## Appendix D. Selected Statutes

### 1. 49 U.S.C. Subtitle VII, Part A—Air Commerce and Safety.

**a. General Authority.** 49 U.S.C. § 40113(a) provides that the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator may take action the Administrator considers necessary to carry out 49 U.S.C. subtitle VII, part A, including conducting investigations, prescribing regulations, standards, and procedures, and issuing orders.

**b. Whistleblower Protection Program.** 49 U.S.C. § 42121(a) provides that no air carrier or contractor or subcontractor of an air carrier may discharge an employee or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee--(1) provided, caused to be provided, or is about to provide (with any knowledge of the employer) or cause to be provided to the employer or federal government information relating to any violation or alleged violation of any order, regulation, or standard of the FAA or any other provision of federal law relating to air carrier safety under 49 U.S.C. subtitle VII or any other federal law; (2) has filed, caused to be filed, or is about to file (with any knowledge of the employer) or cause to be filed a proceeding relating to any violation or alleged violation of any order, regulation, or standards of the FAA or any other provision of federal law relating to air carrier safety under 49 U.S.C. subtitle VII or any other federal law; (3) testified or is about to testify in such a proceeding; or (4) assisted or participated or is about to assist or participate in such a proceeding.

### **c. Registration and Recordation of Aircraft.**

(1) Operation of aircraft. 49 U.S.C. § 44101(a) provides that except as provided in 49 U.S.C. § 44101(b) a person may operate an aircraft only when the aircraft is registered under 49 U.S.C. § 44103. 49 U.S.C. § 44101(b) provides that a person may operate an aircraft in the United States that is not registered when authorized under 49 U.S.C. § 40103(d) or 49 U.S.C. § 41703, when it is an aircraft of the national defense forces of the United States and is identified in a way satisfactory to the Administrator of the Federal Aviation Administration, and for a reasonable period of time after a transfer of ownership, under regulations prescribed by the Administrator.

(2) Registration requirements. 49 U.S.C. § 44102(a) provides that an aircraft may be registered under 49 U.S.C. § 44103 only when the aircraft is: 1) not registered under the laws of a foreign country and is owned by a citizen of the United States; an individual citizen of a foreign country lawfully admitted for permanent residence in the United States; or a corporation not a citizen of the United States when the corporation is organized and doing business under the laws of the United States or a State, and the aircraft is based and primarily used in the United States; or 2) an aircraft of the United States Government; or a State, the District of Columbia, a territory or possession of the United States, or a political subdivision of a State, territory, or possession.

(3) Registration of aircraft. 49 U.S.C. § 44103(a)(1) provides that on application of the owner of an aircraft that meets the requirements of 49 U.S.C. § 44102, the FAA Administrator shall register the aircraft and issue a certificate of registration to its owner.

(4) Effect of controlled substance violation on issuance. 49 U.S.C. § 44103(b) provides that the Administrator may not issue an owner's certificate of registration to a person whose certificate is revoked under 49 U.S.C. § 44106 during the 5-year period beginning on the date of the revocation, except as provided in 49 U.S.C. § 44106(e)(2) or that the Administrator may issue the certificate to the person after the one-year period beginning on the date of the revocation if the Administrator decides that the aircraft otherwise meets the requirements of 49 U.S.C. § 44102 and that the denial of a certificate for the 5-year period would be excessive considering the nature of the offense or the act committed and the burden the denial places on the person or would not be in the public interest.

(5) Suspension or revocation of aircraft certificates. 49 U.S.C. § 44105 provides that the FAA Administrator may suspend or revoke a certificate of registration issued under 49 U.S.C. § 44103 when the aircraft no longer meets the requirements of 49 U.S.C. § 44102.

(6) Revocation of aircraft certificate for controlled substance violations. 49 U.S.C. § 44106(b)(1) provides that the FAA Administrator shall issue an order revoking the certificate of registration for an aircraft issued to an owner under 49 U.S.C. § 44103 and any other certificate of registration that the owner of the aircraft holds under 49 U.S.C. § 44103, if the Administrator finds that -- the aircraft was used to carry out, or facilitate, an activity that is punishable by death or imprisonment for more than one year under a federal or state law related to a controlled substance (except a law related to simple possession of a controlled substance); and the owner of the aircraft permitted the use of the aircraft knowing that the aircraft was to be used for such activity. 49 U.S.C. § 44106(b)(2) provides that an aircraft owner that is not an individual is deemed to have permitted the use of the aircraft knowing that the aircraft was to be used for the activity described in 49 U.S.C. § 44106(b)(1)(A) only if a majority of the individuals who control the owner of the aircraft or who are involved in forming the major policy of the owner permitted the use of the aircraft knowing that the aircraft was to be used for such activity.

#### **d. Airman Certificates.**

(1) 49 U.S.C. § 44703(d) provides that an individual whose application for the issuance or renewal of an airman certificate has been denied by appeal the denial to the NTSB, except if the individual holds a certificate that is suspended at the time of denial or was revoked within one year from the date of the denial.

(2) 49 U.S.C. § 44703(f) provides that the FAA Administrator may not issue an airman certificate to an individual whose certificate is revoked under 49 U.S.C. § 44710, except when the Administrator decides that issuing the certificate will facilitate law enforcement efforts and as provided in 49 U.S.C. § 44710(e) (2).



**e. Amendments, Modifications, Suspensions, and Revocations of Certificates.**

(1) Reinspection or reexamination authority. 49 U.S.C. § 44709(a) provides that the FAA Administrator may reinspect at any time a civil aircraft, aircraft engine, propeller, appliance, air navigation facility, or air agency, or reexamine an airman holding a certificate issued under 49 U.S.C. § 44703.

(2) Authority to amend, modify, suspend, or revoke certificates. 49 U.S.C. § 44709(b) (1) (A) provides that the FAA Administrator may issue an order amending, modifying, suspending, or revoking any part of a certificate issued under 49 U.S.C. subtitle VII, part A, chapter 447 if the Administrator decides after conducting a reinspection, reexamination, or other investigation that safety in air commerce or air transportation and the public interest require that action.

**f. Revocations for Controlled Substances Violations.**

(1) 49 U.S.C. § 44710(b)(1) provides that the FAA Administrator shall issue an order revoking an airman certificate issued an individual under 49 U.S.C. § 44703 after the individual is convicted of a federal or state law relating to a controlled substance (except a law related to simple possession) punishable by death or imprisonment for more than one year if the Administrator finds that an aircraft was used to commit, or facilitate the commission of, the offense; and the individual served as an airman, or was on the aircraft, in connection with committing, or facilitating the commission of, the offense.

(2) 49 U.S.C. § 44710(b)(2) provides that the FAA Administrator shall issue an order revoking an airman certificate issued an individual under 49 U.S.C. § 44703 if the Administrator finds that the individual knowingly carried out an activity punishable under a federal or state law related to a controlled substance (except a law related to simple possession of a controlled substance) by death or imprisonment for more than one year, an aircraft was used to carry out or facilitate the activity, and the individual served as an airman, or was on the aircraft, in connection with carrying out, or facilitating the carrying out of, the activity.

**g. Prohibition of Manipulation of Flight Controls.** 49 U.S.C. § 44724(a) provides that no pilot in command of an aircraft may allow an individual who does not hold a valid private pilot certificate and the appropriate medical certificate to manipulate the controls of an aircraft if the pilot knows or should have known that the individual is attempting to set a record or engage in an aeronautical competition or aeronautical feat, as defined by the Administrator. Under 49 U.S.C. § 44724(b), the Administrator shall issue an order revoking a certificate issued to an airman under 49 U.S.C. § 44703, if the Administrator finds that while acting as a pilot in command of an aircraft, the airman has permitted another individual to manipulate the controls of the aircraft in violation of 49 U.S.C. § 44724(a).

**h. Unsafe Aircraft, Engines, Propellers, and Appliances.** 49 U.S.C. § 44713(c) provides that when an inspector decides that an aircraft, aircraft engine, propeller, or appliance is not in condition for safe operation, the inspector shall notify the air carrier in the form and way

prescribed by the FAA Administrator. For 5 days after the carrier is notified, the aircraft, engine, propeller, or appliance may not be used in air transportation or in a way that endangers air transportation unless the Administrator or the inspector decides the aircraft, engine, propeller, or appliance is in condition for safe operation.

**i. Denial and Revocation of Certificate for Counterfeit Parts Violation.**

(1) 49 U.S.C. § 44726(a)(1) provides that except as provided in 49 U.S.C. §§44726(a)(2) and 44726(e)(2), the FAA Administrator may not issue a certificate under 49 U.S.C. subtitle VII, part A, chapter 447 to any person convicted in a court of law of a violation of a federal law relating to the installation, production, repair, or sale of a counterfeit or fraudulently-represented aviation part or material; whose certificate is revoked under 49 U.S.C. § 4726(b); or subject to a controlling or ownership interest of an individual described in 49 U.S.C. §§ 44726(a)(1)(A) or (B).

(2) 49 U.S.C. § 44726(a)(2) provides that notwithstanding 49 U.S.C. § 44726(a)(1), the Administrator may issue a certificate under 49 U.S.C. subtitle VII, part A, chapter 447 to a person described in 49 U.S.C. § 44726(a)(1) if issuance of the certificate will facilitate law enforcement efforts.

(3) 49 U.S.C. § 44726(b)(1) provides that except as provided in 49 U.S.C. §§ 44726(f) and (g), the Administrator shall issue an order revoking a certificate issued under 49 U.S.C. subtitle VII, part A, chapter 447 if the Administrator finds that the holder of the certificate or an individual who has a controlling or ownership interest in the holder was convicted in a court of law of a federal law relating to the installation, production, repair, or sale of a counterfeit or fraudulently-represented aviation part or material or knowingly, and with the intent to defraud, carried out or facilitated an activity punishable under a law described in 49 U.S.C. § 44726(b)(1)(A).

(4) 49 U.S.C. § 44726(e) provides that the Administrator may not revoke, and the National Transportation Safety Board may not affirm a revocation of, a certificate under 49 U.S.C. § 44726(b)(1)(B) if the holder of the certificate or the individual referred to in 49 U.S.C. § 44726(b)(1) is acquitted of all charges directly related to the violation. The Administrator may reissue a certificate revoked under 49 U.S.C. § 44726(b) to the former holder if the former holder otherwise satisfies the requirements of 49 U.S.C. subtitle VII, part A, chapter 447 for the certificate and the former holder or the individual referred to in 49 U.S.C. § 44726(b)(1) is acquitted of all charges related to the violation on which the revocation was based or the conviction of the former holder or such individual of the violation on which the revocation was based is reversed.

(5) 49 U.S.C. § 44726(f) provides that the Administrator may waive the revocation of a certificate under 49 U.S.C. § 44726(b) if a federal law enforcement official requests a waiver and the waiver will facilitate law enforcement efforts.

(6) 49 U.S.C. § 44726(g) provides that if the holder of a certificate issued under 49 U.S.C. subtitle VII, part A, chapter 447 is other than an individual and the Administrator finds that –an individual who had a controlling or ownership interest in the holder committed a violation of a law for which a certificate may be revoked under 49 U.S.C. § 44726, or knowingly, and with the intent to defraud, carried out or facilitated an activity punishable under such a law; and the holder satisfies the requirements for the certificate without regard to that individual, then the Administrator may amend the certificate to impose a limitation that the certificate will not be valid if that individual has a controlling or ownership interest in the holder. A decision by the Administrator under this subsection is not reviewable by the Board.

**j. Repair Station Security.**

(1) 49 U.S.C. § 44924(b) provides that the Under Secretary for Border and Transportation Security shall require a foreign repair station to address the security issues and vulnerabilities identified in a security audit conducted under 49 U.S.C. § 44924(a) within 90 days of providing notice to the repair station of the security issues and vulnerabilities so identified and shall notify the Administrator that a deficiency was identified in the security audit.

(2) 49 U.S.C. § 44924(c)(1) provides that if, after the 90<sup>th</sup> day on which a notice is provided to a foreign repair station under 49 U.S.C. § 44924(b), the Under Secretary determines that the foreign repair station does not maintain and carry out effective security measures, the Under Secretary shall notify the Administrator of the determination. Upon receipt of the determination, the Administrator shall suspend the certification of the repair station until such time as the Under Secretary determines that the repair station maintains and carries out effective security measures and transmits the determination to the Administrator.

(3) 49 U.S.C. § 44924(c) provides that if the Under Secretary determines that a foreign repair station poses an immediate security risk, the Under Secretary shall notify the Administrator of the determination. Upon receipt of the determination, the Administrator shall revoke the certification of the repair station.

**k. Complaints and Investigations-General.**

(1) 49 U.S.C. § 46101(a)(1) provides that a person may file a complaint in writing with the FAA Administrator with respect to aviation safety duties and powers designated to be carried out by the Administrator about a person violating 49 U.S.C. subtitle VII, part A or a requirement described under that part. Except as provided in 49 U.S.C. § 46101(b), the Administrator shall investigate the complaint if a reasonable ground appears to the Administrator for the investigation.

(2) 49 U.S.C. § 46101(a)(2) provides that on the initiative of the Administrator, as appropriate, the Administrator may conduct an investigation, if a reasonable ground appears to the Administrator for the investigation, about a person violating 49 U.S.C. subtitle VII, part A or a requirement prescribed under this part or any question that may arise under this part.

(3) 49 U.S.C. § 46101(a) (3) provides that the Administrator may dismiss a complaint without a hearing when the Administrator is of the opinion that the complaint does not state facts that warrant an investigation or action.

(4) 49 U.S.C. § 46101(a)(4) provides that after notice and an opportunity for a hearing and subject to 49 U.S.C. § 40105(b), the Administrator shall issue an order to compel compliance with 49 U.S.C. subtitle VII, part A if the Administrator finds in an investigation under this subsection that a person is violating that part.

**l. Complaints against Members of the Armed Forces.** 49 U.S.C. § 46101(b) provides that the Administrator shall refer a complaint against a member of the armed forces of the United States performing official duties to the Secretary of the department concerned for action. Not later than 90 days after receiving the complaint, the Secretary of the department shall inform the Administrator of the action taken on the complaint, including any corrective or disciplinary action taken.

**m. Evidence.** 49 U.S.C. § 46104(a) provides that in conducting a hearing or investigation under 49 U.S.C. subtitle VII, part A, the FAA Administrator with respect to aviation safety duties and powers designated to be carried out by the Administrator may: (1) subpoena witnesses and records related to a matter involved in the hearing or investigation from any place in the United States to the designated place of the hearing or investigation; (2) administer oaths; (3) examine witnesses; and receive evidence at a place in the United States the Administrator designates. 49 U.S.C. § 46104(b) provides that if a person disobeys a subpoena, the Administrator or a party to a proceeding before the Administrator may petition a court of the United States to enforce the subpoena. A judicial proceeding to enforce a subpoena under this subsection may be brought in the jurisdiction in which the proceeding or investigation is conducted. The court may punish a failure to obey an order of the court to comply with the subpoena as a contempt of court.

**n. Effectiveness of Regulations and Orders.**

(1) 49 U.S.C. § 46105(a) provides that, except as provided in 49 U.S.C. subtitle VII, part A, a regulation prescribed or order issued by the FAA Administrator with respect to aviation safety duties or powers designated to be carried out by the Administrator takes effect within a reasonable time prescribed by the Administrator. The regulation or order remains in effect under its own terms or until superseded. Except as provided in 49 U.S.C. subtitle VII, part A, the Administrator may amend, modify, or suspend an order in the way, and by giving notice, the Administrator decides.

(2) 49 U.S.C. § 46105(c) provides that when the Administrator is of the opinion that an emergency exists related to safety in air commerce and requires immediate action, the Administrator, on the initiative of the Administrator or on complaint, may prescribe regulations and issue orders immediately to meet the emergency, with or without notice and without regard to 49 U.S.C. subtitle VII, part A and subchapter II of chapter 5 of title 5. The Administrator shall begin a proceeding immediately about an emergency under this subsection and give preference, when practicable, to the proceeding.

**o. Enforcement in U.S. District Court.** 49 U.S.C. § 46106 provides that the FAA Administrator with respect to aviation safety duties and powers designated to be carried out by the Administrator may bring a civil action against a person in a district court of the United States to enforce 49 U.S.C. subtitle VII, part A or a requirement or regulation prescribed, or an order or any term of a certificate or permit issued, under this part. The action may be brought in the judicial district in which the person does business or the violation occurred.

**p. Enforcement by the Attorney General.** 49 U.S.C. § 46107(b) provides that on the request of the FAA Administrator with respect to aviation safety duties and powers designated to be carried out by the Administrator, the Attorney General may bring a civil action in an appropriate court to enforce 49 U.S.C. subtitle VII, part A or a requirement or regulation prescribed, or an order or any term of certificate or permit issued, under this part; and to prosecute a person violating this part or a requirement or regulation prescribed, or an order or any term of a certificate or permit issued, under this part.

**q. Judicial Review.** 49 U.S.C. § 46110 provides that, except for an order related to a foreign air carrier subject to disapproval by the President under 49 U.S.C. § 41307 or 49 U.S.C. § 41509(f), a person disclosing a substantial interest in an order issued by the FAA Administrator with respect to aviation safety duties and powers designated to be carried out by the Administrator under 49 U.S.C. subtitle VII, part A may apply for review of the order by filing a petition for review in the United States Court of Appeals for the District of Columbia or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business. The petition must be filed not later than 60 days after the order is issued. The court may allow the petition to be filed after the 60<sup>th</sup> day only if there are reasonable grounds for not filing by the 60<sup>th</sup> day.

**r. Certificate Actions in Response to a Security Threat.** 49 U.S.C. § 46111 provides that the FAA Administrator shall issue an order amending, modifying, suspending, or revoking any part of a certificate issued under title 49 of the United States Code if the Administrator is notified by the Under Secretary for Border and Transportation Security of the Department of Homeland Security that the holder of the certificate poses, or is suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety. If requested by the Under Secretary, the order shall be effective immediately.

**s. Civil Penalties.**

(1) 49 U.S.C. § 46301(a)(1) provides that a person is liable to the United States for a civil penalty of not more than \$25,000 (or \$1,100 if the person is an individual or small business concern) for violating: (A) chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117), chapter 411, chapter 413 (except sections 41307 and 41310(b)-(f)), chapter 415 (except sections 41502, 41505, and 41507-41509), chapter 417 (except sections 41703, 41704, 41710, 41713, and 41714), chapter 419, subchapter II or III of chapter 421, chapter 441 (except section 44109), section 44502(b) or (c), chapter 447 (except sections 44717 and 44719-44723), chapter 449 (except sections 44902, 44903(d), 44904, 44907(a)-(d)(1)(A) and (d)(1)(C)-(F), and 44908), section 47107(b) (including any assurance made under such section) or section 47133 of title 49

of the United States Code; (B) a regulation prescribed or order issued under any provision to which clause (A) of this paragraph applies; (C) any term of a certificate or permit issued under section 41102, 41103, or 41302 of title 49 of the United States Code; or (D) a regulation of the United States Postal Service under 49 U.S.C. subtitle VII, part A.

(2) 49 U.S.C. § 46301(a) (2) provides that a separate violation occurs under this subsection for each the violation (other than a violation of 49 U.S.C. § 41719) continues or, if applicable, for each flight involving the violation (other than a violation of 49 U.S.C. § 41719).

(3) 49 U.S.C. § 46301(a)(5)(A) provides that an individual (except an airman serving as an airman) or small business concern is liable to the Government for a civil penalty of not more than \$10,000 for violating (i) chapter 401 (except sections 40103(a) and (d), 40105, 40106(b), 40116, and 40117), section 44502(b) or ( c ), chapter 447 (except sections 44717-44723), or chapter 449 (except sections 449902, 44903(d), 44904, and 44907-44909) of title 49 of the United States Code or (ii) a regulation prescribed or order issued under any provision to which clause (i) applies.

(4) 49 U.S.C. § 46301(a)(5)(B) provides that a civil penalty of not more than \$10,000 may be imposed for each violation under 49 U.S.C. § 46301(a)(1) committed by an individual or small business concern related to: (i) the transportation of hazardous material; (ii) the registration or recordation under 49 U.S.C. chapter 441 of an aircraft not used to provide air transportation; (iii) a violation of 49 U.S.C. § 44718(d), relating to the limitation on construction or establishment of landfills; (iv) a violation of 49 U.S.C. § 44725, relating to the safe disposal of life-limited aircraft parts; or (iv) a violation of 49 U.S.C. §§ 40127 or 41705, relating to discrimination against handicapped individuals.

(5) 49 U.S.C. § 46301(b) (1) provides that a passenger may not tamper with, disable, or destroy a smoke alarm device located in a lavatory on an aircraft providing air transportation or intrastate air transportation. 49 U.S.C. § 46301(b) (2) provides that an individual violating 49 U.S.C. § 46301(b) (1) is liable to the Government for a civil penalty of not more than \$2,000.

(6) 49 U.S.C. § 46301(d)(8) provides that the maximum civil penalty the Administrator may impose under this subsection is: (A) \$50,000 if the violation was committed by any person before the date of the enactment of the Vision 100-Century of Aviation Reauthorization Act; (B) \$400,000 if the violation was committed by a person other than an individual or small business concern on or after that date; or (C) \$50,000 if the violation was committed by an individual or small business concern on or after that date.

(7) 49 U.S.C. § 46301(h) provides that 49 U.S.C. § 46301 does not apply to a member of the armed forces of the United States or a civilian employee of the Department of Defense subject to the Uniform Code of Military Justice when performing official duties. The appropriate military authority is responsible for taking necessary disciplinary action and submitting to the Administrator with respect to aviation safety duties and powers designated to be carried out by the Administrator, a timely report on action taken.

**t. Liens on Aircraft and Seizure.**

(1) 49 U.S.C. § 46304(a) provides that when an aircraft is involved in a violation referred to in 49 U.S.C. §§ 46301(a)(1)(A)-(C), (2), or (3) and the violation is by the owner of, or individual commanding, the aircraft, the aircraft is subject to a lien for the civil penalty.

(2) 49 U.S.C. § 46304(b) provides that an aircraft subject to a lien under 49 U.S.C. § 46301 may be seized summarily and placed in the custody of a person authorized to take custody of it under regulations of the FAA Administrator with respect to aviation safety duties and powers designated to be carried out by the Administrator. A report on the seizure shall be submitted to the Attorney General. The Attorney General promptly shall bring a civil action in rem to enforce the lien or notify the Administrator that the action will not be brought.

(3) 49 U.S.C. § 46304(c) provides that an aircraft seized under 49 U.S.C. § 46304(b) shall be released from custody when the civil penalty is paid; a compromise amount agreed upon is paid; the aircraft is seized under a civil action in rem to enforce the lien; the Attorney General gives notice that a civil action will not be brought under 49 U.S.C. § 46304(b); or a bond (in an amount and with a surety the Administrator prescribes), conditioned on payment of the penalty or compromise, is deposited with the Administrator.

**u. Interference with Cabin or Flight Crew.** 49 U.S.C. § 46318 provides that an individual who physically assaults or threatens to physically assault a member of the flight crew or cabin crew of a civil aircraft or any other individual on the aircraft, or takes any action that poses an imminent threat to the safety of the aircraft or other individuals on the aircraft is liable to the United States Government for a civil penalty of not more than \$25,000.

**2. 49 U.S.C. Subtitle III, Chapter 51—Transportation of Hazardous Material.**

**a. Purpose.** 49 U.S.C. § 5101 provides that the purpose of 49 U.S.C. subtitle III, chapter 51 is to provide adequate protection against the risks to life and property inherent in the transportation of hazardous material in commerce by improving the regulatory and enforcement authority of the Secretary of Transportation.

**b. General Authority.**

(1) 49 U.S.C. § 5121(a) provides that to carry out 49 U.S.C. subtitle III, chapter 51, the Secretary of Transportation may investigate, make reports, issue subpoenas, conduct hearings, require the production of records and property, take depositions, and conduct research, development, demonstration, and training activities. After notice and an opportunity for a hearing, the Secretary may issue an order requiring compliance with 49 U.S.C. subtitle III, chapter 51 or a regulation prescribed under it.

(2) 49 U.S.C. § 5121(b) provides that a person subject to 49 U.S.C. subtitle III, chapter 51 shall maintain records, make reports, and provide information the Secretary by regulation or order requires and make the records, reports and information available when the Secretary requests.

(3) 49 U.S.C. § 5121(c) (1) provides that the Secretary may authorize an officer, employee, or agent to inspect, at a reasonable time and in a reasonable way, records and property related to manufacturing, fabricating, marking, maintaining, reconditioning, repairing, testing, or distributing a packaging or a container for use by a person in transporting hazardous material in commerce or the transportation of hazardous material in commerce. 49 U.S.C. § 5121(c) (2) provides that an officer, employee, or agent under this subsection shall display proper credentials when requested.

**c. Enforcement.**

(1) 49 U.S.C. § 5122(a) provides that, at the request of the Secretary of Transportation, the Attorney General may bring a civil action in an appropriate district court of the United States to enforce 49 U.S.C. subtitle III, chapter 51 or a regulation prescribed or order issued under it. The court may award appropriate relief, including punitive damages.

(2) 49 U.S.C. § 5122(b)(1) provides that if the Secretary has reason to believe that an imminent hazard exists, the Secretary may bring a civil action in an appropriate district court of the United States to suspend or restrict the transportation of the hazardous material responsible for the hazard or to eliminate or ameliorate the hazard. 49 U.S.C. § 5122(b) (2) provides that, on request of the Secretary, the Attorney General shall bring an action under 49 U.S.C. § 5122(b) (1).

**d. Civil Penalty.**

(1) 49 U.S.C. § 5123(a)(1) provides that a person that knowingly violates 49 U.S.C. subtitle III, chapter 51 or a regulation prescribed or order issued under it is liable to the United States Government for a civil penalty of at least \$250 but not more than \$25,000 for each violation. A person acts knowingly when the person has actual knowledge of the facts giving rise to the violation or a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge.

(2) 49 U.S.C. § 5123(a)(2) provides that a separate violation occurs for each day the violation, committed by a person that transports or causes to be transported hazardous material, continues.

(3) 49 U.S.C. § 5123(c) provides that, in determining the amount of a civil penalty under 49 U.S.C. § 5123, the Secretary shall consider the nature, circumstances, extent, and gravity of the violation; with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue to do business; and other matters that justice requires.

**e. Criminal Penalty.** 49 U.S.C. § 5124 provides that a person knowingly violating 49 U.S.C. § 5104(b) or willfully violating 49 U.S.C. subtitle III, chapter 51 or a regulation prescribed or order issued under it shall be fined under title 18, imprisoned for not more than 5 years, or both.



### 3. 49 U.S.C. Subtitle IX, Chapter 701—Commercial Space Launch Activities.

#### a. Restrictions on Launches, Operations, and Reentries.

(1) 49 U.S.C. § 70104(b) provides that the holder of a license under 49 U.S.C. subtitle IX, chapter 701 may launch or reenter a payload only if the payload complies with all requirements of the laws of the United States related to launching or reentering a payload.

(2) 49 U.S.C. § 70104(c) provides that the Secretary of Transportation shall establish whether all required licenses, authorizations, and permits required for a payload have been obtained. If no license, authorization, or permit is required, the Secretary may prevent the launch or reentry if the Secretary decides the launch or reentry would jeopardize the public health and safety, safety of property, or national security or foreign policy interest of the United States.

**b. Monitoring.** 49 U.S.C. § 70106(a) provides that a licensee under 49 U.S.C. subtitle IX, chapter 701 must allow the Secretary of Transportation to place an officer or employee of the United States Government or another individual as an observer at a launch site or reentry site the licensee uses, at a production facility or assembly site a contractor of the licensee uses to produce or assemble a launch vehicle or reentry vehicle, or at a site at which a payload is integrated with a launch vehicle or reentry vehicle. The observer will monitor the activity of the licensee or contractor at the time and to the extent the Secretary considers reasonable to ensure compliance with the license or to carry out the duties of the Secretary under 49 U.S.C. § 70104(c). A licensee must cooperate with an observer carrying out this subsection.

#### c. License actions.

(1) 49 U.S.C. § 70107(a) provides that the Secretary of Transportation shall specify the period for which a license issued or transferred under 49 U.S.C. subtitle IX, chapter 701 is in effect.

(2) 49 U.S.C. § 70107(b) provides that on the initiative of the Secretary or on application of the licensee, the Secretary may modify a license issued or transferred under 49 U.S.C. subtitle IX, chapter 701 if the Secretary decides the modification will comply with such chapter.

(3) 49 U.S.C. § 70107(c) provides that the Secretary may suspend or revoke a license if the Secretary decides that the licensee has not complied substantially with a requirement of 49 U.S.C. subtitle IX, chapter 701 or a regulation prescribed under it or the suspension or revocation is necessary to protect the public health and safety, the safety of property, or a national security or foreign policy interest of the United States.

(4) 49 U.S.C. § 70107(d) provides that unless the Secretary specifies otherwise, a modification, suspension, or revocation under 49 U.S.C. § 70107 takes effect immediately and remains in effect during a review under 49 U.S.C. § 70110.

(5) 49 U.S.C. § 70107(e) provides that the Secretary shall notify the licensee in writing of the decision of the Secretary under 49 U.S.C. § 70107 and any action the Secretary takes or proposes to take based on the decision.

**d. Enforcement and penalty.**

(1) 49 U.S.C. § 70115(a) provides that a person may not violate 49 U.S.C. subtitle IX, chapter 701, a regulation prescribed under it, or any term of a license issued or transferred under 49 U.S.C. subtitle IX, chapter 701.

(2) 49 U.S.C. § 70115(b)(1) provides that in carrying out 49 U.S.C. subtitle IX, chapter 701, the Secretary of Transportation may conduct investigations and inquiries; administer oaths; take affidavits; and under lawful process enter at a reasonable time a launch site, reentry site, production facility, assembly site of a launch vehicle or reentry vehicle, or site at which a payload is integrated with a launch vehicle or reentry vehicle to inspect an object to which 49 U.S.C. subtitle IX, chapter 701 applies or a record or report the Secretary requires be made or kept under 49 U.S.C. subtitle IX, chapter 701; and seize the object, record, or report when there is probable cause to believe the object, record, or report was used, is being used, or likely will be used in violation of 49 U.S.C. subtitle IX, chapter 701.

(3) 49 U.S.C. § 70115(b)(2) provides that the Secretary may delegate a duty or power under 49 U.S.C. subtitle IX, chapter 701 related to enforcement to an officer or employee of another executive agency with the consent of the head of the agency.

(4) 49 U.S.C. § 70115(c)(1) provides that after notice and an opportunity for a hearing on the record, a person the Secretary finds to have violated 49 U.S.C. § 70115(a) is liable to the United States Government for a civil penalty of not more than \$100,000. A separate violation occurs for each day the violation continues.

(5) 49 U.S.C. § 70115(c) (2) provides that in conducting a hearing under 49 U.S.C. § 70115(c) (1), the Secretary may subpoena witnesses and records; and enforce a subpoena in an appropriate district court of the United States.

(6) 49 U.S.C. § 70115(c) (3) provides that the Secretary shall impose the civil penalty by written notice. The Secretary may compromise or remit a penalty imposed, or that may be imposed, under 49 U.S.C. § 70115.

(7) 49 U.S.C. § 70115(c) (4) provides that the Secretary shall recover a civil penalty not paid after the penalty is final or after a court enters a final judgment for the Secretary.

## Appendix E. Examples

**1. Elements of Regulations.** A frequently-cited regulation is 14 C.F.R. § 91.13, Careless or Reckless Operation. This seemingly simple regulation has numerous elements. The actual wording is:

### *CARELESS OR RECKLESS OPERATION*

*(a) Aircraft operations for the purpose of air navigation. No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.*

*(b) Aircraft operations other than for the purpose of air navigation. No person may operate an aircraft, other than for the purpose of air navigation, on any part of the surface of an airport used by aircraft for air commerce (including areas used by those aircraft for receiving or discharging persons or cargo), in a careless or reckless manner so as to endanger the life or property of another.*

**a. Subparagraphs of 14 C.F.R. § 91.13.** The regulation has two subparagraphs. Subparagraph (a) covers "Aircraft operations for the purpose of air navigation". Subparagraph (b) covers "Aircraft operations other than for the purpose of air navigation". Because the two subparagraphs cover two different conditions, *i.e.*, for the purpose of air navigation vs. other than for the purpose of air navigation, there must be an item of proof (IOP) that provides evidence to identify one or the other as appropriate. If evidence shows that an aircraft was being taxied from the hanger to the line, subparagraph (b) would be appropriate. But if evidence shows an aircraft to have been on a take-off roll, then subparagraph (a) would be appropriate. There must be evidence to support the choice. Assume, for example, that the operation was for the purpose of air navigation and sub-paragraph (a) applies. The elements that must be included as an IOP are:

- (1)A person.
- (2)Operate (for purpose of air navigation).
- (3)An aircraft.
- (4)Careless or reckless.
- (5)Endangerment.
- (6)Life or property of another.

**b. First Element.** The first element is identifying the *person*, putting them in the aircraft, and proving that this person was an operator of the aircraft. Identifying the person and showing his or her operation of the aircraft may be done through witness statements, a response to the letter of investigation, documents such as logbooks, or training records, or Air Traffic reports. The form of the evidence can vary, but who the *person* is must be documented. For certificated airman, such as pilots and mechanics, ISIS data on qualifications will be an additional IOP.

**c. Second Element.** The second element to prove is that the aircraft was being *operated for purposes of air navigation*. For an aircraft that is airborne, or taxiing in from a flight, this is

easy. For an aircraft that is on the ramp, or a taxiway, you will need some evidence to establish whether subparagraph (a) or (b) is the appropriate choice.

**d. Third Element.** The third element to prove is that an *aircraft* was involved. A definition of aircraft is found in 14 C.F.R. § 1.1, General Definitions. *Aircraft* means a device that is used or intended to be used for flight in the air. The specific form of the evidence can vary, but a specific *aircraft* must be identified through IOPs. A supporting IOP will be a copy of aircraft registration data from the Integrated Safety Information System (ISIS). [*Note:* Ultralights are not aircraft, they are vehicles, with their own definition under 14 CFR part 103.]

**e. Fourth Element.** The fourth element is selecting between careless or reckless and providing evidence to support the decision. *Careless* indicates a lack of care, an act a reasonably prudent *person* would not commit if mindful of the potential consequences. *Reckless* can be alleged when there is evidence that a person intended to do what they did. It is not necessary to prove, or even allege, that they knew that their action was a violation of any regulation. For either choice, the careless/reckless element must be supported by evidence in one or more IOPs.

(1) Example of reckless IOP. *For example*, during the investigation of a gear-up landing incident, the evidence may include a statement from the aircraft owner who had personally advised the pilot the gear system was inoperative or a statement from a passenger who was told by the pilot that the normal gear system was inoperative. This evidence may indicate that a charge of reckless is appropriate.

(2) Example of careless IOP. On the other hand, the evidence may include a picture of the aircraft on the runway with the gear-handle up, a statement from a mechanic saying the gear operated normally when tested, or a statement from the pilot saying he was preoccupied with other traffic. This evidence may indicate that a charge of careless is appropriate.

(3) Evidence indicating no violation. If the evidence included a mechanic's statement and repair order stating that the gear malfunctioned because of a broken part, then there may be no violation of 14 C.F.R. § 91.13.

**f. Fifth Element.** The fifth element in this regulation is *endanger*. An IOP in a gear-up landing might consist of evidence documenting the aircraft damage that *endangered* the property of another. It is not necessary to show actual endangerment, evidence of potential endangerment is sufficient. Appropriate evidence in a low flying case might include pictures of a school playground that was flown over, statements from teachers describing children in the playground at the time, and the altitude of the aircraft relative to terrain features. Potential endangerment can often be best explained in the section B analysis.

**g. Sixth Element.** The sixth and final element in this example requires evidence that the endangerment was to the *life or property of another*. If the above gear-up landing example is in a rented aircraft, the evidence to prove this element could be an ISIS report showing that the owner is *another*. Evidence of a passenger in the aircraft would also support this element, as the passenger is *another*. If an aircraft flown solo was entirely owned by the violator, and if there is no nearby property or persons to be endangered, there very well may be no violation.

**2. Summary.** To summarize, all enforceable regulations include some number of elements and evidence to support each of the elements must be included in an EIR to support a violation.

## 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.

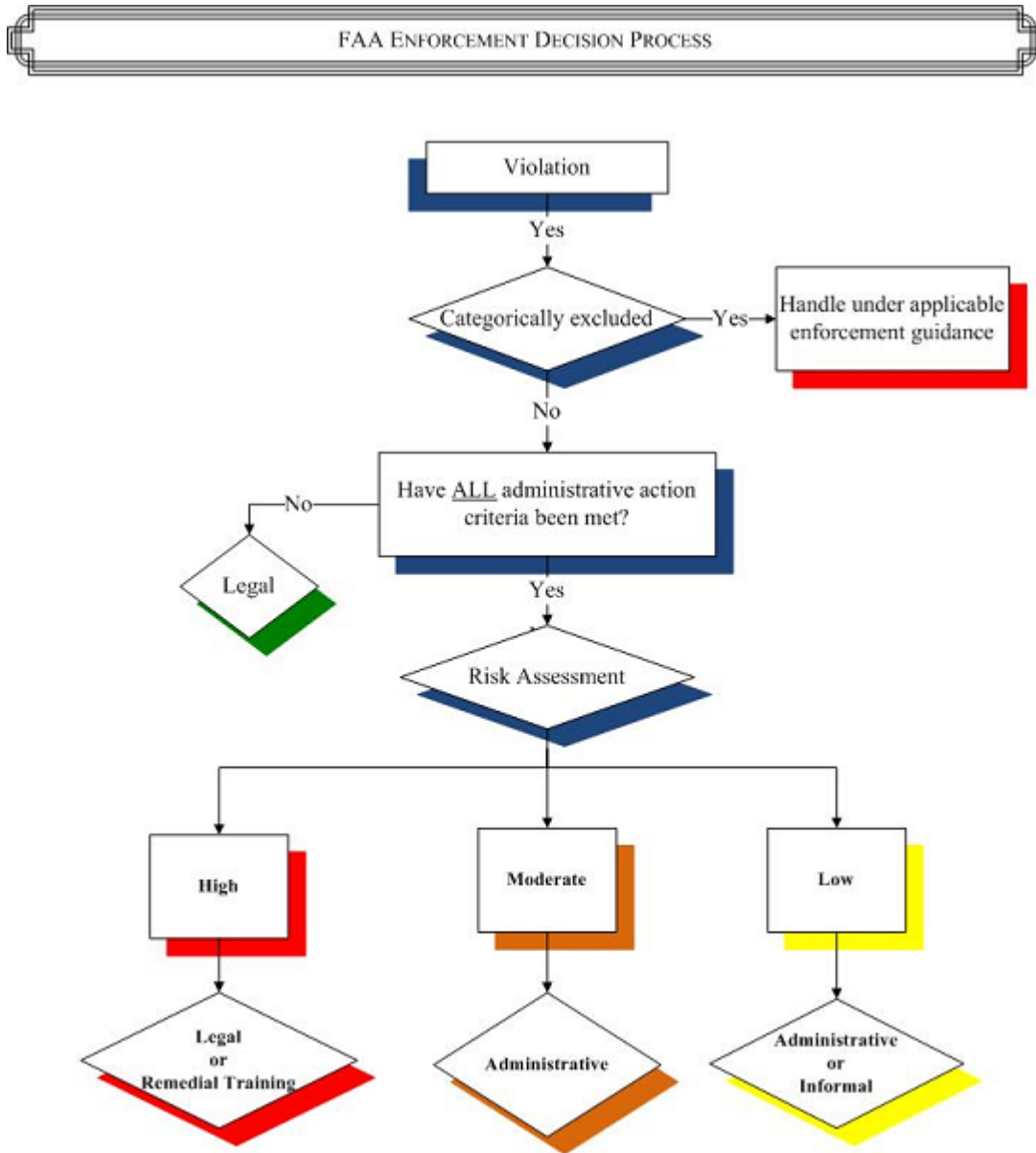
*Safety risk* means the level (high, moderate, or low) of potential injury or property damage from a hazard created by an act, considering the hazard severity and the likelihood that the severity will be realized.

*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.<sup>1</sup> 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

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<sup>1</sup> 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.)**

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

**Appendix G. FAA Form 2150-5  
Codes for Blocks 19-24**

<b><u>BLOCK</u></b>	<b><u>TITLE</u></b>	<b><u>CODE</u></b>	<b><u>DESCRIPTION</u></b>
19	Type of Operation	01	Air Carrier 121
		02	Foreign Air Car
		03	Commercial Operator & Part 125
		04	Scheduled Air Carrier 135
		05	Air Carrier on Demand
		06	Air Travel Club
		07	Personal/Business Transport
		08	Utility/Industrial
		09	Military
		10	Airport
		11	Manufacturer
		12	Shipper
		13	Certificated School
		14	Uncertificated School
		15	Repair Station
		16	Uncertificated Repair Facility
		17	Passenger
		18	Non-passenger
		19	Parachute Jumper
20	Indirect Air Carrier		
21	Light Sport Aircraft		
99	Other		
20	Sub Type of Operation	01	Scheduled Passenger
		02	Scheduled Cargo
		03	On Demand Passenger
		04	On Demand Cargo
		05	Helicopter
		06	Corporate/Executive
		07	Business
		08	Public Aircraft
		09	Private
		10	Sport/Recreation
		11	Demonstration/Competition
		12	Criminal Activity
		13	Aerial Application
		14	External Load
		15	Aerial Surveillance
		16	Foreign Airman



<u>BLOCK</u>	<u>FIELD</u>	<u>CODE</u>	<u>DESCRIPTION</u>
		17	U.S. Army
		18	U.S. Navy/Marine
		19	U.S. Air Force
		20	U.S. Coast Guard
		21	Certificated Airport-Part 139
		22	Noncertificated Airport
		23	Aircraft
		24	Engine
		25	Propeller
		26	Product Parts/Apliance
		27	Pilot-Schools
		28	Mechanic-Schools
		29	Flight Engineer-Schools
		30	Reexamination/Reinspection
		31	Airman-Alcohol
		32	Airman-Drug
		33	Airman-Falsification
		34	Flight Crew-Alcohol
		35	Flight Crew-Drug
		36	Flight Crew-Falsification
		98	None
		99	Other
21	Category	01	Flight Operations
		02	Maintenance
		03	Records and Reports
		04	Training-Flight Crew
		05	Training-Other
		06	Hazardous Materials
		07	Airport Surfaces/Safety Areas
		08	Obstructions/Lighting
		09	Crash/Fire/Rescue
		10	Airport Operations/Self Inspection
		11	Quality Control
		12	Type Design Data
		13	Technical Standard Order
		14	Aircraft Alteration
		15	Near Mid-Air
		16	Hazard to Air Navigation
		17	Hazard to Persons/Property on Surface

<b><u>BLOCK</u></b>	<b><u>TITLE</u></b>	<b><u>CODE</u></b>	<b><u>DESCRIPTION</u></b>
21 (cont.)	Category	18	Interference w/ Crewmember
		19	Noise
		20	Security
		21	Medical
		22	Drug Testing
		23	Cargo Security
		24	DOT Alcohol Testing
		25	Security Risk-AGC Only
		26	Security-related Airspace
		99	Other
22	Source	01	Air Traffic Service
		02	Other FAA Source
		03	U.S. Military
		04	Other U.S. Government Agency
		05	Foreign Referrals
		06	Local/State Government
		07	Public Complaint
		08	Accident Investigation
		09	Surveillance
		10	Enroute Inspection
		11	Incident Investigation
		12	Facility Inspection
		13	Record/Log Inspection
		14	Certification, Reinspection, or Reexamination
		15	Ramp/Aircraft Spot Inspection
		16	Mechanical Reliability Report
		17	Mechanical Interruption Summary
		18	Malfunction or Defect Report
		19	Special Surveillance or Inspection
		20	Hazardous Materials Report
		21	Other Reports Required by Hazardous Materials Regulations or Federal Aviation Regulations

<u>BLOCK</u>	<u>TITLE</u>	<u>CODE</u>	<u>DESCRIPTION</u>
		22	Aeronautical Center, AAM-130
		23	Aviation Medical Examiner
		24	GASA Inspection –Segment 4
		25	NASIP Inspection
		26	Region Generated Special Surveillance
		27	National Headquarters-Generated Special Surveillance or Inspection
		28	Inspector General Match
		29	Self Disclosure-Flight Standards
		30	Prison Match (Federal)
		31	Not In Use
		32	DUI/DWI Match
		33	Drug Abatement Program
		34	Prison Match (State)
		35	Self Disclosure-Manufacturing
		36	Self Disclosure-Security
		37	Self Disclosure-Medical
		38	Self Disclosure-Denial
		39	Federal or State Prob/Parole Match
		40	Undeliverable Triennials
		41	Insurance Companies
		42	Salvaged-Security Only
		43	Aviation Industry
		44	ASAP Disclosure
		45	Whistleblower Protection Program
		99	Other
23	Accident Associated	00	No Accident
		01	Accident Occurred-Not Associated
		02	Accident Occurred-Associated

<b><u>BLOCK</u></b>	<b><u>TITLE</u></b>	<b><u>CODE</u></b>	<b><u>DESCRIPTION</u></b>
24	Security Program	D100	Drug Investigations Violations- General
		D210	Safety related
		D220	Non-safety – Imprisoned
		D999	Drug Investigations Violations-Other
		H100	Hazmat Violations-General
		H200	Hazmat-Shipping Papers
		H300	Hazmat-Marking
		H400	Hazmat-Labeling
		H500	Hazmat-Undeclared
		H600	Hazmat-Package
		H700	Hazmat-Spill or Leak
		H999	Hazmat Violations-Other
		P100	DUI/DWI Program-General
		P999	DUI/DWI Program-Other
		R100	Aircraft Registration Violation-General
		R110	Aircraft Registration Certificate Not On Board
		R120	Aircraft Registration Certificate Not On Board Inbound US
		R130	Invalid Corporation
		R140	Citizenship
		R150	Fraudulent Certificate
		R160	Fraudulent Aircraft Registration Number
		R200	Airman Certificate-General
		R210	Airman Certificate- Fraudulent
		R999	Aircraft Registration Violations Other

**CHANGE**

**U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION**

ORDER 2150.3B CHG 1
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Effective Date:  
10/23/09

National Policy

**SUBJ:** Enforcement Decision Process


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- 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**

<b>Remove Pages</b>	<b>Dated</b>	<b>Insert Pages</b>	<b>Dated</b>
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