ORDER

2150.3A

Incorporated Changes
1 thru 19
Reprinted 8/97

COMPLIANCE AND ENFORCEMENT PROGRAM

December 14, 1988

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

Distribution: A-W-1;A-W(AT/PS/SM)-2;A-W(PP/AS/AM/SF/GC/FS/IA/VS)-3;A-XYZ-1;A-Z(AT/AF/CS)-2;A-X(AS/AM/GC/FS)-3;A-Y(AM/AR/GC)-3;A-Z(AM/AN/GC)-3;A-FAS/FAC/FSS/FCS-0(ALL);A-FAF/FAT/FIA-0(LTD);ZFS-325

Initiated By: AGC-320

CHANGE

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

2150.3A CHG 19

11/28/94

SUBJ: COMPLIANCE AND ENFORCEMENT PROGRAM

1. PURPOSE: This change transmits Compliance and Enforcement Bulletin No. 94-1, Streamlined Enforcement Test and Evaluation Program.

2. EXPLANATION OF CHANGES: This change transmits Compliance and Enforcement Bulletin No. 94-1, which sets forth implementing guidance for the Federal Aviation Administration's Streamlined Enforcement Test and Evaluation Program, which was recommended by the Vice President's National Performance Review. This program emphasizes shorter timeframes for processing certain civil penalty cases involving individuals presenting deadly or dangerous weapons for screening at airport checkpoints or in checked baggage ("weapons cases").

The program will be tested at two FAA regions--Great Lakes and Southwest--for a period of 1 year beginning December 1, 1994.

3. DISPOSITION OF TRANSMITTAL: After filing the attached pages, this transmittal should be retained.

PAGE CONTROL CHART

Remove Pages	Dated	Insert Pages	Dated
i x	6/17/91	ix	6/17/91
x	2/4/93	x	11/28/94
		157 thru 181	11/28/94

David R. Hinson
Administrator

Distribution: A-W-l;A-W(AT/PS/SM)-2;A-W(PP/AS/AM/SF/GC/FS/IA/VS-3;A-XYZ;A-X(AT/AF/CS)-2;A-X(AS/AM/GC/FS)-3;A-Y(AM/AR/GC)-3;A-Z(AM/AN/GC)-3;A-FAS/FAC/FCS-0;A-FAF/FAT/FIA-0(LTD);ZFS-325

Initiated By: AGC-320

CHANGE

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

2150.3A CHG 18

4/20/94

SUBJ: **COMPLIANCE AND ENFORCEMENT PROGRAM**

1. PURPOSE. This change transmits revised Chapter 2, Compliance and Enforcement Policy and Objectives.

2. EXPLANATION OF CHANGES. This change retitles Chapter 2, Enforcement Objectives and Policy, as Compliance and Enforcement Policy and Objectives. The revised chapter emphasizes voluntary compliance and an increased flexibility in the exercise of discretion and judgment by investigating personnel to choose enforcement remedies that would best promote future regulatory compliance. The revision includes new criteria for determining when administrative action may be taken and an expanded discussion of the various enforcement remedies available to the FAA to promote compliance.

3. DISPOSITION OF TRANSMITTAL. After filing the attached pages, this transmittal should be retained.

PAGE CONTROL CHART

Remove Pages	Dated	Insert Pages	Dated
i	12/14/88	i	12/14/88
ii	12/14/88	ii	04/20/94
11 thru 18	12/14/88	11 thru 34-1 (and 34-2)	04/20/94
19 thru 22-1	2/21/92		
23 thru 30 (thru 34)	12/14/88		

David R. Hinson
Administrator

Distribution: A-W-1;A-W(AT/PS/SM)-2;A-W(PP/AS/M/SF/GC/FS/IA/VS-3;A-XYZ;A-X(AT/AF/CS)-2;A-X(AS/AM/GC/FS)-3;A-Y(AM/AR/GC)-3;A-Z(AM/AN/GC)-3;A-FAS/FAC/FCS-0;A-FAF/FAT/FIA-0(LTD);ZFS-325

Initiated By: AGC-320

CHANGE

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

2150.3A CHG 17

2/4/93

SUBJ: COMPLIANCE AND ENFORCEMENT PROGRAM

1. PURPOSE. This change transmits Compliance/Enforcement Bulletin No. **93-1** that pertains to the policy and procedures **for** the collection of administratively assessed civil penalties. The guidance contained in this bulletin supersedes paragraph m. and figures 6 and 11 of Compliance/Enforcement Bulletin No. 90-10.

2. EXPLANATION OF CHANGES. This change provides new guidance and procedures to be followed by Federal Aviation Administration (FAA) personnel for the collection of administratively assessed civil penalties. In effect, the new procedures shift primary responsibility for the administrative collection of civil penalties from the Assistant Chief Counsel's offices to the FAA accounting offices. This change also amends sample enforcement documents to reflect language required by the Federal Debt Collection Act and the Federal Claims Collection Act, and implementing regulations, and the Federal Claims Collection Standards. The new guidance also reflects changes brought about by the FAA Civil Penalty Administrative Assessment Act of 1992.

3. DISTRIBUTION OF TRANSMITTAL. After filing attached pages, this transmittal should be retained.

PAGE CONTROL CHART

Remove Pages	Dated	Insert Pages	Dated
i x	**6/17/91**	**x**	**6/17/91**
x	**7/21/92**	**Appendix 1**	**2/4/93**
		121 thru 155	**2/4/93**

John H. Cassady
Acting Chief Counsel

Distribution: A-W-l;A-W(AT/PS/SM)-2;A-W(PP/AS/M/SF/GC/FS/IA/ **Initiated By: AGC-320**
VS-3;A-XYZ-1;A-X(AT/AF/CS)-2;A-X(AS/AM/GC/FS)-3;A-Y(AM/AR/GC)-3 A-Z(AM/AN/GC)-3;
A-FAS/FAC/FSS/FCS-0)(All);A-FAF/FAT/FIA-0(LTD);ZFS325

CHANGE

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

2150.3A CHG 16

12/18/92

SUBJ: COMPLIANCE AND ENFORCEMENT PROGRAM

1. PURPOSE. This change transmits revised pages to Appendix 4, Sanction Guidance Table.

2. EXPLANATION OF CHANGES. This change provides new guidance to FAA personnel on the imposition of sanctions for security violations by Individuals. It reflects the FAA's new policy of allowing administrative action to be taken In non-aggravated cases when such action will constitute an adequate deterrent, but retaining higher sanction amounts for those cases where there are aggravating circumstances and punitive action is required.

3. DISTRIBUTION OF TRANSMITTAL. After filing attached pages, this transmittal should be retained.

PAGE CONTROL CHART

Remove Pages	Dated	Insert Pages	Dated
Appendix 4 Pages 20 & 21	12/14/88	Appendix 4 Pages 20 thru 21-3	12/18/92

Thomas C. Richards
Administrator

Distribution: A-W-1;A-2(AT/PS/SM)-2;A-2(PP/AS/AM/SF/GC/FS/IA VS-3;A-XYZ-1;A-X(AT/AF/CS)-2;A-X(AS/AM/GC/FS)-3;A-Y(AM/AR/GC)-3);A-z(AM/AN/GC)-3; A-FAS/FAC/FSS/FCS-0-(All);A-FAF/FAT/FIA-0(Ltd);ZFS325

Initiated By: AGC-320

CHANGE

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

2150.3A CHG 15

9/1/92

SUBJ: COMPLIANCE AND ENFORCEMENT PROGRAM

1. PURPOSE. This change amends Chapter 5, paragraph 501 by deleting 501f.

2. EXPLANATION OF CHANGES. Paragraph 501f requires determination of the identity of a military pilot who violates the Federal Aviation Regulations when an investigation reveals that the pilot is a holder of an FAA certificate and there is reason to question the qualification of the alleged violator. The paragraph has been misinterpreted in the past as requiring identification of military pilots in all circumstances. Deletion of this section has no significant effect on enforcement of regulations because if the military pilot holds an FAA certificate and the investigation reveals a reason to question the qualifications of the alleged violator, paragraph 501e requires a full investigation to be conducted in accordance with Chapter 4 and 9 of this order. Identifying an alleged violator is an integral part of conducting a full investigation under Chapter 4.

3. DISPOSITION OF TRANSMITTAL. After filing the attached pages, the transmittal should be retained.

PAGE CONTROL CHART

Remove Pages	Dated	Insert Pages	Dated
70 and 71	12/14/88	70 and 71	9/1/92

Kenneth P. Quinn
Chief Counsel

Distribution: A-W-1;A-2(AT/PS/SM)-2:A-2(PP/AS/AM/SF/GC/FS/IA/ VS-3;A-XYZ-1;A-X(AT/AF/CS)-2;A-X(AS/AM/GC/FS)-3;A-Y(AM/AR/GC)-3;A-Z(AM/AN/GC)-3; A-FAS/FAC/FSS/FCS-0-(All);A-FAF/FAT/FIA-0(LTD);ZFS325

Initiated By: AGC-260

CHANGE

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

2150.3A CHG 14

7/29/92

SUBJ: COMPLIANCE AND ENFORCEMENT PROGRAM

1. PURPOSE: This change transmits revised pages to Appendix 1, Compliance/ Enforcement Bulletin 90-8.

2. EXPLANATION OF CHANGES: This change provides new guidance to FAA personnel on the administration of the FAA's corrective action through remedial training program. It appears that some general aviation airmen may be under the impression that an admission of violation is a condition for participation in this program. The new guidance makes it clear that while an airman must cooperate with the FAA during the investigation, an admission is not required and that the letter of correction that follows successful completion of the training and closes out the incident constitutes neither an admission nor an adjudication of a violation.

3. DISTRIBUTION OF TRANSMITTAL. After filing the attached pages, this transmittal should be retained.

PAGE CONTROL CHART

Remove Pages	Dated	Insert Pages	Dated
47 thru 54	5/18/90	47 thru 54	7/29/92

Kenneth P. Quinn
Chief Counsel

Distribution: A-W-1;A-W(AT/PS/SM)-2;A-W(PP/AS/AM/SF/GC/FS/IA/ VS-3;A-XYZ-1;A-X(AT/AF/CS)-2;A-X(AS/AM/GC/FS)-3;A-Y(AM/AR/GC)-3 A-Z(AM/AN/GC)-3; A-FAS/FAC/FSS/FCS-0)(All);A-FAF/FAT/FIA-0(LTD);ZFS325

Initiated By: AGC-260

CHANGE

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

2150.3A CHG 13

7/21/92

SUBJ COMPLIANCE AND ENFORCEMENT PROGRAM

1. PURPOSE. This change transmits new pages to Appendix 1, Compliance/Enforcement Bulletin 92-3.

2. EXPLANATION OF CHANGES. This change transmits Compliance/Enforcement Bulletin 92-3, guidance on enforcement action in cases involving detection of simulated weapons during Federal Aviation Administration screening evaluations. It provides new policies for enforcement actions on the failure of air carriers to detect simulated weapons, explosive devices, and other test objects during screening evaluations conducted by FAA Civil Aviation Security special agents.

3. DISTRIBUTION OF TRANSMITTAL. After filing the attached pages, this transmittal should be retained.

PAGE CORTROL CHART

Remove Pages	Dated	Insert Pages	Dated
ix and x	6/17/91	ix	6/17/91
		x	7/21/92
		Appendix 1	
		115 thru 119	7/21/92

Thomas C. Richards
Administrator

Distribution: A-W-1;A-2(AT/PS/SM)-2;A-2(PP/AS/AM/SF/GC/FS/IA/ VS-3;A-XYZ-1;A-X(AT/AF/CS)-2;A-X(AS/AM/GC/FS)-3;A-Y(AM/AR/GC)-3; A-Z(AM/AN/GC)-3;A-FAS/FAC/FSS/FCS-0)(All);A-FAF/FAT/FIA-0(LTD);ZFS325

Initiated By: AGC-320

CHANGE

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

2150.3A CHG 12

3/20/92

SUBJ: COMPLIANCE AND ENFORCEMENT PROGRAM

PURPOSE: This change transmits Compliance/Enforcement Bulletin No. 92-2, which provides implementing guidance for a reporting and correction policy for holders of production approvals.

PAGE CONTROL CHART

Remove Pages	Dated	Insert Pages	Dated
ix and x	6/17/91	ix	6/17/91
		x	3/20/92
		Appendix 1	
		109 - 113	3/20/92

Barry Lambert Harris
Acting Administrator

Distribution: A-W-1;A-W(AT/PS/SM)-2;A-W(PP/AS/AM/SF/GC/FS/IA/VS)-3;A-XYZ-1;A-X(AT/AF/CS)-2;A-x(AS/AM/GC/FS)-3;A-Y(AM/AR/GC)-3;A-Z(AM/AN/GC)-3;A-FAS/FAC/FSS/FCS-0)(All);A-FAF/FAT/FIA-0(LTD);ZFS325

Initiated By: AGC-260

CHANGE

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

2150.3A CHG 11

2/21/92

SUBJ: COMPLIANCE AND ENFORCEMENT **PROGRAM**

1. **PURPOSE.** This change transmits revised pages to Chapter 2, Enforcement Objectives and Policy, and to Chapter 12. Legal Enforcement Action.

2. **EXPLANATION OF CHANGES.** This change provides guidance to FAA personnel on when revocation or suspension action shouid be taken on an emergency basis. Generally when it is determined that the certificate holder lacks qualifications and the certificate holder is reasonably able to exercise the privileges of the certificate, emergency action to revoke the certificate should be taken in the interest of safety. Similarly, when there is a reasonable basis to question the certificate holder's qualifications and the certificate holder is reasonably able to exercise the privileges of the certificate, emergency action to suspend the certificate generally should be taken **in the** interest of **safety**.

3. **DISPOSITION OF TRANSMITTAL** After filing the attached pages, the transmittal should be retained:

PAGE **CONTROL** CHART

Remove Pages	Dated	Insert Pages	Dated
19 thru 22	**12/14/88**	**19** thru **22-1** (and 22-2)	**2/21/92**
144 and 145	**12/14/88**	144 and 145	**2/21/92**
		145-1 (and 145-2)	**12/14/88**

Barry **Lambert** Harris
Acting Administrator

Distribution: A-W-1: **A-W(AT/PS/SM)-2; A-W(PP/AS/AM/SF/GC/FS IA/VS)-3; A-XYZ-1; A-X(AT/AF/CS)-2; A-X(AS/AM/GC/FS)-3; A-Y(AM/AR/GC)-3; A-Z(AM/AN/GC)-3;** A-FAS/FAUFSS/FCS-0)(All); **A-FAF/FAT/FIA-O(LTD); ZFS325**

initiated By: AGC-260

CHANGE

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

2150.3A CHG 10

1/16/92

SUBJ: COMPLIANCE AND ENFORCEMENT PROGRAM

1. PURPOSE. This change transmits new pages to Appendix 1. Compliance/Enforcement Bulletin.

2. **EXPLANATION OF CHANGES.** This change transmits Compliance/ Enforcement Bulletin No. 92-l. Proportional Civil Penalties. These guidelines **are** a means of placing a relatively equivalent deterrent **effect** on each air carrier that violates the same Federal Aviation Regulation, by considering the size of the carrier in determining an appropriate civil penalty amount. This change is made in response to a recommendation from the General Aviation System Safety and Efficiency Review.

3. **DISTRIBUTION OF TRANSMITTAL.** After filing the attached **pages, this** transmittal should be retained.

PAGE CONTROL CHART

Remove Pages	Dated	Insert Pages	Dated
ix and x	6/17/91	ix	6/17/91
		x	1/16/92
		Appendix 1	
		103 thru 107 (and 108)	1/16/92

Barry Lambert Harris
Acting Administrator

Distribution: A-W-1; A-W(AT/PS/SM)-2; A-W(PP/AS/AM/SF/GC/FS/IA/VS)-3; A-XYZ-1; A-X(AT/AF/CS)-2; A-X(AS/AM/GC/FS)-3; A-Y(AM/AF/GC)-3; A-Z(AM/AN/GC)-3; A-FAS/FAC/FFS/FCS-0) (All); A-FAF/FAT/FIA-0(LTD); ZFS325

Initiated By: AGC-260

CHANGE

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

2150.36 CHG 9

11/25/91

SUBJ: COMPLIANCE AND ENFORCEMENT PROGRAM

1. PURPOSE. This change transmits revised pages to Chapter 12, Legal Enforcement Action.

2. RACKGROUND. Chapter 2, Enforcement Objective and Policy, describes how the appropriate enforcement action is to be determined. An important objective in conducting the enforcement program is to achieve uniformity of action throughout FAA. To accomplish this, it sometimes is important for the Washington headquarters to quickly be aware of actions taken by the regions. For these reasons, in some cases coordination with the Washington headquarters is required before initiating an enforcement action, and in other cases information must be sent to the Washington headquarters at the same time the action is taken.

3. EXPLANATION OF CHANGES. This change amends the requirement for coordinating significant enforcement actions with the Washington headquarters. The determination of the type of legal enforcement action and sanction is the joint responsibility of the appropriate regional division and legal counsel. The policies, procedures, and guidelines set forth in this order shall be adhered to by all personnel.

4. DISPOSITION OF TRANSMITTAL. After filing the attached pages, this transmittal should be retained.

PAGE CONTROL CHART

Remove Pages	Dated	Insert Pages	Da ted
138 and 139	12/14/88	138-l thru 138-4 (and 138-6)	11/25/91
		138-5 (and 138-6)	12/14/88

James B. Busey
Administrator

Distribution: A-W-1; A-W(AT/PS/SM)-2; A-W(PP/AS/AM/SF/GC/FS/IA/VS)-3; A-XYZ-1; A-Z(AT/AF/CS)-2; A-X(AS/AM/GC/FS)-3; A-Y(AM/AR/GC)-3; A-Z(AM/AN/GC)-3; A-FAS/FAC/FSS/FCS-0(A11); A-FAF/FAT/FIA-0(LTD); ZFS-325

Initiated By: AGC-200

CHANGE

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

3A C

6/17/91

SUBJ: COMPLIANCE AND ENFORCEMENT PROGRAM

PURPOSE: This change transmits Compliance/Enforcement Bulletin No. 91-1 regarding enforcement action in cases involving drug convictions which do not involve falsification.

PAGE CONTROL CHART

Remove Pages	Dated	Insert Pages	Dated
ix - x	11/26/90	ix - x Appendix 1 Pages 100-101	6/17/91

Kenneth P. Quinn
Chief Counsel

Distribution: A-W-1;A-W(AT/PS/SM)-2;A-W(PP/AS/AM/SF/GC/FS IA/VS)-3; A-XYZ-1; A-X(AT/AF/CS)-2; A-X(AS/AM/GC/FS) -3; A-Y(AM/AR/GC)-3 A-Z(AM/AN/GC)-3; A-FAS/FAC/FSS/FCS-0(All); A-FAF/FAT/FIA-0(LTD); ZFS325

Initiated By: AGC-200

CHANGE

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

2150.3A CHG 7

11/26/90

SUBJ: COMPLIANCE AND ENFORCEMENT PROGRAM

PURPOSE: This change transmits Compliance/Enforcement Bulletin No. 90-11 implements the System Safety and Efficiency Review (SSER) recommendations relating tcinformal commmication between inspectors and attorneys and special emphasis programs.

PAGE CONTROL CHART

Remove Pages	Dated	Insert Pages	Dated
ix	8/17/90	ix - x	11/26/90
		Appendix 1 Pages 96-99	11/26/90

Gregory S. Walden
Chief Counsel

Distribution: A-W-1: A-W@T/PS/SM)-2; A-W(PP/AS/AM/SF/GC/FS IA/VS)-3; A-XYZ-1; A-X(AT/AF/CS)-2; A-X(AS/AM/GC/FS)-3; A-Y(AM/AR/AY/GC)-3 A-Z(AM/AN/GC)-3; A-FAS/FAC/FFS/FCS-0(All); A-FAF/FAT/FIA-0(LTD); ZFS325

Initiated By: AC-200

CHANGE

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

2150.3A CHG 6
8/17/90

SUBJ: COMPLIANCE AND ENFORCEMENT PROGRAM

PURPOSE: This change transmits Compliance/Enforcement Bulletin No. 90-10 which pertains to civil penalty assessment authority. The rules of practice implementing the FAA's authority to assess civil penalties were revised. This change also amends the data element in Field 22 to add code 29, ACIEP/Voluntary Disclosure, to Appendix 3.

PAGE CONTROL CHART

Remove Pages	Dated	Insert Pages	Dated
ix	6/26/90	ix	8/17/90
		Appendix 1 63-95	8/17/90
Appendix 3 3-4	10/20/89	Appendix 3 3-4	8/17/90

Gregory S. Walden
Chief Counsel

Distribution: A-W-1; A-W(AT/PS/SM)-2; A-W(PP/AS/AM/SF/GC/FS/IA/VS)-3; A-XYZ-1; A-X(AT/AF/CS)-2; A-X(AS/AM/GC/FS)-3; A-Y(AM/AR/AY/GC)-3 A-Z(AM/AN/GC)-3; A-FAS/FAC/FFS/FCS-0(All); A-FAF/FAT/FIA-0(LTD); ZFS325

Initiated By: AGC-200

CHANGE

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

2150.3A CHG 5

6/26/90

SUBJ: COMPLIANCE AND ENFORCEMENT PROGRAM

PURPOSE: This change transmits Compliance/Enforcement Bulletin No. 90-9 which pertains to SSER recommendations relating to analysis of a violation; determination of appropriate sanction; and coordination within the Office of the Chief Counsel.

PAGE CONTROL CHART

Remove Page	Dated	Insert Pages	Dated
ix	5/18/90	ix	6/26/90
		Appendix 1 Pages 59-62	6/26/90

Gregory S. Walden
Chief Counsel

Distribution: A-W-1; A-W(AT/PS/SM)-2; A-W(PP/AS/AM/SF/GC/FS/IA/VS)-3; A-XYZ-1; A-X(AT/AF/CS2; A-X(AS/AM/GC/FS)-3; A-Y(AM/AR/AY/GC)-3; A-Z(AM/AN/Gc-3; A-FAS/FAC/FFS/FCS-0(All); A-FAF/FAT/FIA-0(LTD); ZFS325

Initiated By: AGC-200

CHANGE

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

2150.3A CHG 4

3/18/90

SUBJ: COMPLIANCE AND ENFORCEMENT PROGRAM

PURPOSE: This change transmits Compliance/Enforcement Bulletins Nos. 90-5, 90-6, 90-7, and 90-8. No. 90-5 pertains to the policy and procedures for suspected violations of the FAA's alcohol- and drug-related prohibitions related to operation of aircraft. No. 90-6 pertains to reporting and correction policy and implementing guidance. No. 90-7 describes the revised Enforcement Investigative Report (EIR) format in Chapter 9A to be used in all Civil Aviation Security cases and does not change the guidance set forth in the existing Chapter 9 for the preparation of EIRs by any office other than Civil Aviation Security. No. 90-8 describes the agency's program of affording certificated pilot and non-pilot airmen who violate certain provisions of the Federal Aviation Regulations (FAR) remedial training in lieu of legalenforcemmt action.

PAGE CONTROL CHART

Remove Pages	Dated	Insert Pages	Dated
ix	3/5/90	ix	5/18/90
		Appendix 1 Pages 17-58	5/18/90

Gregory S. Walden
Chief Counsel

Distribution: A-W-1; A-W(AT/PS/SM) -2; A-W(PP/AS/AM/SF/ GC/FS/ IA/VS)-3; A-XYZ-1; A-X(AT/AF/CS2; A-X(AS/AM/GC/FS)-3; A-Y(AM/AR/AY/GC)-3; A-Z(AM/AN/GC-3; A-FAS/FAC/FFS/FCS-0(All); A-FAF/FAT/FIA-0(LTD); ZFS325

Initiated By: AGC-200

CHANGE

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

2150.3A CHG 3

3/5/90

SUBJ: COMPLIANCE AND ENFORCEMENT PROGRAM

PURPOSE: This change transmits Compliance/Enforcement Bulletins No. 90-3 and 90-4. Compliance/Enforcement Bulletin No. 90-3 pertains to unauthorized operations within Terminal Control Areas (TCA's). Compliance/Enforcement Bulletin No. 90-4 pertains to Coordination of enforcement actions against airmen (except air carrier personnel) in nonsignificant cases.

PAGE CONTROL CHART

Remove Pages	Dated	Insert Pages	Dated
i x	2/16/90	ix Appendix 1 Pages 14-16	3/5/90

Gregory S. Walden
Chief Counsel

Distribution: A-W-l; A-W (AT/PS/SM)-2; A-W (PP/AS/AM/SF/GC/FS/IA/VS)-3 A-XYZ-1; A-X (AT/AF/CS)-2; A-X (AS/AM/GC/FS)-3; A-Y (AM/AR/AY/GC)-3; A-Z (AM/AN/GC-3; A-FAS/FAC/FFS/FCS-0 (All); A-FAF/FAT/FIA-0 (LTD); ZFS325

Initiated By: AGC-200

CHANGE

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

2150.3A CHG 2

2/16/90

SUBJ: COMPLIANCE AND ENFORCEMENT PROGRAM

PURPOSE: This change transmits Compliance/Enforcement Bulletins No. 90-1 and 90-2. Compliance/E Bulletin No. 90-l pertains to unauthorized operations within newly established Terminal Control Areas (TCA's). Compliance/ Enforcement Bulletin No. 90-2 pertains to enforcement action for cases referred by the Inspector General of the Department of Transportation involving drug convictions and falsification of applications for airman medical certificates regarding drug- and alcohol-related convictions ("IG Match" cases), and other similar cases.

PAGE CONTROL CHART

Remove Pages	Dated	Insert Pages	Dated
ix	12/14/88	ix	2/16/90
		Appendix 1 Pages 7-13	2/16/90

Gregory S. Walden
Chief Counsel

Distribution: A-W-1; A-W(AT/PS/SM)-2; A-W(PP/AS/AM/SF/GC/FS/IA/VS)-3;A-XYZ-1;A-X(AT/AF/CS)-2; A-X(AS/AM/GC/FS)-3;A-Y(AM/AR/AY/GC)-3; A-Z (AM/AN/GC-3; A-FAS/FAC/FFS/FCS-0 (All); A-FAF/FAT/FIA-0 (LTD); ZFS325

Initiated By: AGC-200

CHANGE

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

2150.3A CHG 1

10/20/89

SUBJ: COMPLIANCE AND ENFORCEMENT PROGRAM

PURPOSE: This change adds the following to Fields 20 and 22, Appendix 3:

28 IG Match
31 Airman - Alcohol
32 Airman - Drug
33 Airman - Falsification
34 Alcohol/Flight Crew
35 Drugs/Flight Crew
36 Falsification/Flight Crew

PAGE CONTROL CHART

REMOVE PAGES	DATED	INSERT PAGES	DATED
Appendix 3 Pages 1 thru 4	12/14/88	Appendix 3 Pages 1 thru 4	10/20/89

for John H. Cassody
Gregory S. Walden
Chief Counsel

Distribution: A-W-1; A-W(AT/PS/SM - ; A-W(PP/AS/AM/SF/GC/FS/IA/VS)-3; A-XYZ-1; A-X(AT/AF/CS)-2; A-X(AS/AM/GC/FS)-3; A-Y(AM/AR/AY/GC)-3 A-Z(AM/AN/GC) -3; A-FAS/FAC/FFS/FCS-0(All); A-FAF/FAT/FIA-0(LTD); ZFS325

Initiated By: AGC-200

FOREWORD

This order has been prepared to provide compliance and enforcement program and procedural guidance for all agency personnel. The order, which updates and revises material previously contained in Order 2150.3, is designed as a ready reference for use at all levels of the agency in the investigation, reporting, and legal processing of enforcement cases. Any FAA employee involved in the compliance and enforcement program must read and become familiar with applicable provisions of this order.

T. Allan McArtor
Administrator

TABLE OF CONTENTS

Page No.

CHAPTER 1. INTRODUCTION

100. Purpose 1
101. Distribution 1
102. Cancellations 1
103. Explanation of Changes 1
104. Forms and Reports 2
105. Changes to This Order 2
106. Supplemental Enforcement Instructions 2
107. Compliance/Enforcement Bulletins 3
108. Definitions 3
109.-199. Reserved 3

*

CHAPTER 2. COMPLIANCE AND ENFORCEMENT POLICY AND OBJECTIVES 11

200. Purpose 11
201. The Need for a Compliance and Enforcement Program 11
202. Compliance and Enforcement Philosophy 12
203. Guidelines for Processing Enforcement Actions 15
204. Procedures for Selecting Compliance and Enforcement Action 18
205. Administrative Action 21
206. Determining the Type of Legal Enforcement Action 24
207. Determining the Sanction Amount 30
208. Investigating and Processing Enforcement Cases Under the Geographical Concept 31
209. Complex or Controversial Enforcement Cases 34
210.-299. Reserved 34-1 •

CHAPTER 3. ENFORCEMENT RESPONSIBILITIES 35

300. Purpose 35
301. Cooperation and Communication Within FM 35
302. Headquarters 35
303. Regions 35
304. Aeronautical Center 36
305. Field Offices 36
306. Air Traffic Service 36
307. All Agency Employees 36
308. Office of Inspector General 36
309.-399. Reserved 37

CHAPTER 4. INVESTIGATION OF VIOLATIONS 41

400. Purpose 41
401. Role of the Inspector in an Investigation 41
402. Planning and Initiating the Investigation 41
403. Letters of Investigation 42

Page No.

404. Obtaining Violation History and Other Information. 44
405. Evidence of Violations. 44
406. Interviews. 45
407. Photographs. 48
408. Charts, Maps, and Diagrams. 48
409. Documents and Records. 48
410. Physical Evidence. 52
411. Submission of Additional Evidence/Material.' 53
412. Coordinating the Investigation. 53
413. Voluntary Surrender of Certificate 54
414.-499. RESERVED. 54
Figure 4-1. Sample Notice of Aircraft Condition 59
Figure 4-2. Sample Letter of Investigation - Flight Operations 60
Figure 4-3. Sample Letter of Investigation - Operations 61
Figure 4-4. Sample Letter of Investigation - Maintenance 62
Figure 4-5. Sample Letter of Investigation - Airport Security 63
Figure 4-6. Sample Letter of Investigation - Airport Operations 64
Figure 4-7. Sample Letter of Investigation - Manufacturing 65
Figure 4-8. Sample Letter of Notification -'Closing of Investigation 67
Figure 4-9. Privacy Act Notice 68
Figure 4-10. Certificate of Authenticity 69

CHAPTER 5. SPECIAL INVESTIGATIVE PROCEDURES.

500. Purpose. 70
501. Violations by Members of the U.S. Armed Forces 70
502. Violations of Foreign Aviation Regulations. 71
503. Violations of U.S. Regulations By Foreign Persons or Companies. 72
504. Violations by Agency Employees and Agency-Operated Repair Stations. 72
505. Violations of the Hazardous Materials Regulations. 73
506. Violations By Individuals of FAR Sections 107.21 or 108.11. 74
507. Violations By Individuals of FAR Section 91.8, Prohibiting Interference With Crewmembers. 74

Page

508. Exclusive Rights and Unjust Discrimination at Airports. 74
509. Cases Involving Submission to Alcohol Testing. 75
510.-599. RESERVED. 79
Figure 5-l. Sample Authorization For the Release of Test Results to the Federal Aviation Administration. 83
Figure 5-2. Sample Letter Requesting Release of Alcohol Test Results. 04
Figure 5-3. Privacy Act Notice For Submission to Alcohol Tests. 86

CHAPTER 6. CRIMINAL, INVESTIGATIONS.

600. Purpose. 87
601. Coordination of Possible Criminal Violations. 87
602. Criminal Violations Investigated By the FAA. 87
603. Criminal Violations Investigated By Other Departments or Agencies. 88
604. concurrent Criminal and Civil Violations. 89
605. Stolen Aircraft. 90
606.-699. RESERVED. 90

CHAPTER 7. FORMAL FACT-FINDING INVESTIGATIONS.

700. Purpose. 93
701. Authority. 93
702. Use of the Formal Fact-Finding Investigation. 93
703. Requests for Formal Fact-Finding Investigations. 93
704. Initiating the Formal Fact-Finding Investigation. 93
705. Conduct of the Formal Fact-Finding Investigation. 93
706. Use of Administrative Subpoenas. 94
707. Judicial Enforcement. 96
708.-799. RESERVED. 96
Figure 7-l. Sample Order of Investigation. 99

CHAPTER 8. **REEXAMINATION AND REINSPECTION UNDER SECTION 609 OF THE FEDERAL AVIATION ACT.**

800. Authority. 101
801. Procedures. 101

Page No.

8C2.-899. RESERVED. 103
Figure 8-l. Sample Letter Requesting Reexamination Under Section 609 of the Federal Aviation Act 106
Figure 8-2. Sample Letter Requesting Additional Medical Information 107

CHAPTER 9. PREPARATION OF ENFORCEMENT INVESTIGATIVE REPORTS.

900. General. 109
901. Report Preparation. 109
902. Report Assembly. 109
903. Section A - Preparation of FAA Form 2150-5. 110
904. Section B - Summary of Facts. 114
905. Section C - Items of Proof. 114
906. Section D - Facts and Analysis. 114
907. Protection and Release of EIR's. 115
908. Emergency Enforcement Actions. 115
909. Regional Copies. 116
910. Downgrading of EIR's. 116
911.- 999. RESERVED. 116
Figure 9-1. Sample FAA Form 2150-5. 119

CHAPTER 10. PROCESSING OF ENFORCEMENT INVESTIGATIVE REPORTS.

1000. Purpose. 120
1001. Processing of EIR's for Administrative Action. 120
1002. Processing of EIR's for Legal Enforcement Action. 120
1003. Reports Requiring Special Processing. 123
1004.-1099. RESERVED. 124
Figure 10-l. Sample Military Referral. 125

CHAPTER 11. ADMINISTRATIVE ENFORCEMENT ACTION.

1100. Purpose. 126
1101. General. 126
1102. Types of Administrative Action. 126
1103. Warning Notice. 126
1104. Letter of Correction. 127
1105. Records of Administrative Action Against Individuals. 127
1106.-1199. Reserved. 127
Figure 11-l. Sample Warning Notice - Flight Operations. 131
Figure 11-2. Privacy Act Notice for Warning Notice. 132

Page No.

Figure 11-3. Sample Letter of Correction - Maintenance. 133
Figure 11-4. Sample Letter of Correction - Security. 134
Figure 11-5. Sample Letter of Correction - Airports. 135
Figure 11-6. Form Letter of Correction - Airport Certification. 136
Figure 11-7. Sample Letter Acknowledging Completion-of Corrective Action - Manufacturing: QASAR. 137

CHAPTER 12. LEGAL ENFORCEMENT ACTION.

1200. Purpose. 138
1201. Consultation With Headquarters. 138
1202. Certificate Action Under the Federal Aviation Act (Section 609). 139
1203. Certificate Action in Airman Medical Cases Under the Federal Aviation Act (Section 609) 146
1204. Civil Penalty Action Under the Federal Aviation Act Involving an Amount In Controversy In Excess of $50,000. 147
1205. Civil Penalty Action Under the Federal Aviation Act Involving An Amount In Controversy Not Exceeding $50,000. 150
1206. Civil Penalty Actions Under the Hazardous Materials Transportation Act (Section 110(a)). 154
1207. Informal Conferences. 157
1208. Seizure of Aircraft Under the Federal Aviation Act (Section 903(b)) 158
1209. Orders of Compliance, Cease and Desist Orders, Orders of Denial, and Other Orders Under the Federal Aviation Act and the Airport and Airway Development Act. 162
1210. Injunction Actions Under the Federal Aviation Act (Section 1007) 162
1211. Orders of Compliance Under the Hazardous Materials Transportation Act (Section 109) 163
1212. Orders of Immediate Compliance Under the Hazardous Materials Transportation Act. 164
1213. Injunctions Under the Hazardous Materials Transportation Act (Section 111) 164
1214. Legal Action involving Criminal Violations (All Cases). 165

Page No.

1215.-1299. RESERVED. 166
Figure 12-l. Sample Notice of Proposed Certificate Action (Federal Aviation Act). 170
Figure 12-2. Sample Information Sheet To Accompany Notice of Proposed Certificate Action. 172
Figure 12-3. Sample Certificate Holder Reply. 175
Figure 12-4. Sample Receipt For Certificate and Waiver of Appeal Rights. 176
Figure 12-5. Sample Order of Suspension (Federal Aviation Act). 177
Figure 12-6. Sample Language for Order of Suspension With Waiver of Penalty. 179
Figure 12-7. Sample Emergency Order (Federal Aviation Act). 180
Figure 12-8. Sample Civil Penalty Letter (Federal Aviation Act). 183
Figure 12-9. Sample Information Sheet To Accompany a Civil Penalty Letter (Federal Aviation Act). 184
Figure 12-10. Sample Reply to Civil Penalty Letter (Federal Aviation Act). 186
Figure 12-11. Sample Form of Receipt For Civil Penalties (Federal Aviation Act). 187
Figure 12-12. Sample Complaint for Referrals To U.S. Attorneys (Federal Aviation Act). 188
Figure 12-13. Sample Language For Notice of Proposed Civil Penalty (Federal Aviation Act). 190
Figure 12-14. Sample Information Sheet To Accompany Notice of Proposed Civil Penalty (Federal Aviation Act. 191
Figure 12-15. Sample Reply To Notice of Proposed Civil Penalty (Federal Aviation Act). 194
Figure 12-16. Sample Order of Civil Penalty (Federal Aviation Act). 195
Figure 12-17. Sample Order Assessing Civil Penalty (Federal Aviation Act). 197
Figure 12-18. Sample Notice of Proposed Civil Penalty (Hazardous Materials Transportation Act). 199
Figure 12-19. Sample Information Sheet (Hazardous Materials Transportation Act). 201
Figure 12-20. Sample Reply To Notice of Proposed Civil Penalty (Hazardous Materials Transportation Act). 204
Figure 12-21. Sample Order of Civil Penalty (Hazardous Materials Transportation Act). 205

Page No.

Figure 12-22. Sample Order Assessing Civil Penalty (Hazardous Materials Transportation Act). 207
Figure 12-23. Sample Order of Seizure. 209
Figure 12-24. Sample Notice of Seizure. 210
Figure 12-25. Sample Letter To U.S. Attorney. 212

CHAPTER 13. ENFORCEMENT RELATED ITEMS.

1300. Purpose. 213
1301. Release and Publicizing of Enforcement Actions. 213
1302. Immunity For Persons Who Provide Information About Violations. 216
1303. Enforcement Associated With the Aviation Safety Reporting Program (Advisory Circular No. 00-46C). 219
1304. Noncompliance With Exemptions. 221
1305. Legal Handling of Airman Medical Denial Cases (Section 602 of the FA Act). 221
1306. Legal Handling of Airman Certificate Denial Cases Other Than Airman Medical Certificates (Section 602 of the FA Act). 222
1307. Applications For Airman Certificates By Persons Whose Certificates Have Been Revoked Under Section 609(c). 222
1308. Illegal Commercial Operations and Unlawful Common Carriage. 223
1309. Enforcement of Compensation Or Hire Prohibition in FAR 91.39(b) Regarding Restricted Category Aircraft. 224
1310. Liability of FAA Employees. 225
1311.-1399. RESERVED 226
Figure 13-l. Request For Authorization To Grant Special Enforcement Consideration. 230
Figure 13-2. Form Agreement To Grant Special Enforcement Consideration. 233

CHAPTER 14. ENFORCEMENT INFORMATION SYSTEM AND DISTRIBUTION REQUIREMENTS.

1400. Purpose. 235
1401. Enforcment Information System Overview. 235
1402. Roles and Responsibilities. 235
1403. Operations. 239
1404. EIS Data Bases. 241
1405. Distribution. 241
1406. System Support. 243
1407.-1499. RESERVED. 244
Figure 14-1. EIS Data Flows. 247

Page No.

APPENDIX 1. COMPLIANCE/ENFORCEMENT BULLETINS

No. 84-1.	Procedures for notifying military authorities when the FAA has issued an order suspending or revoking and air carrier operating certificate.	1
No. 86-1.	Computer-detected altitude deviation of 500 feet or less.	2
No. 86-2.	Sanctions for unauthorized operations within Terminal Control Areas.	3
No. 88-2.	Enforcement actions for Minimum Equipment List (MEL) violations that occurred prior to March 15, 1988.	4
No. 88-5.	Sanctions for persons who board or attempt to board an air carrier aircraft with concealed deadly or dangerous weapons in their possession.	5
No. 90-1	Unauthorized operations within newly established Terminal Control Areas (TCA's).	7
No. 90-2.	Enforcement actions for cases referred by the Inspector General of the Department of Transportation involving drug convictions and falsification of applications for airman medical certificates regarding drug- and alcohol-related convictions ("IG Match" cases), and other similar cases.	9
No. 90-3.	Unauthorized operations within Terminal Control Areas (TCA's).	14
No. 90-4.	Coordination of enforcement actions against airmen (except air carrier personnel) in nonsignificant cases.	16
No. 90-5.	Policy and procedures for suspected violations of the FAA's alcohol- and drug-related prohibitions related to operation of aircraft.	17
No. 90-6.	Reporting and correction policy and implementing guidance.	22
No. 90-7.	Revised Enforcement Investigative Report (EIR) format to be used in all Civil Aviation Security cases.	28

	No. 90-9.	SSER recommendations relating to analysis of a violation; determination of appropriate sanction; and coordination within the Office of the Chief Counsel.	59
	No. 90-10.	Civil penalty assessment authority.	63
	No. 90-11.	SSER recommendations relating to informal communication between inspectors and attorneys and special emphasis programs.	96
	No. 91-1.	Enforcement actions in cases involving drug convictions which do not involve falsification.	100
	No. 92-1.	Proportional civil penalties.	103
	No. 92-2.	Reporting and correction policy and implementing guidance for holders of production approvals.	109
	No. 92-3.	Guidance on enforcement action in cases involving detection of simulated weapons during Federal Aviation Administration (FAA) screening evaluations.	115
	No. 93-1.	Policy and procedures for the collection of administratively assessed civil penalties.	121
*	No. 94-1.	Streamlined Enforcement Test and Evaluation.	157 *
APPENDIX 2.		STATUTORY AUTHORITY, RESPONSIBILITIES, AND DELEGATIONS	1
APPENDIX 3.		FAA FORM 2150.3, STATISTICAL CODE LISTING.	1
APPENDIX 4.		ENFORCEMENT SANCTION GUIDANCE TABLE.	1
APPENDIX 5.		SELECTED CIVIL AND CRIMINAL STATUTES.	1

CHAPTER 1. INTRODUCTION

100. PURPOSE. This order describes the authority; responsibilities, policies, guidelines, procedures, objectives, and legal aspects of the Federal Aviation Administration's Compliance and Enforcement Program. It is intended to be an aid in the exercise of discretion of the various FAA elements involved. It is recognized that this handbook does not cover every situation, and there will be cases where deviation from the guidance is warranted. It is expected that FAA personnel will use their judgement and experience in each case to carry out the policies of‘the FAA.

101. DISTRIBUTION. This order is distributed as follows:

a. To the executive director level in Washington, D.C., the regional administrator level, and center director level.

b. To the branch level in the offices of the Associate Administrator of Regulation and Certification, the Associate Administrator for Aviation Standards, the Associate Administrator for Airport System development, and the Director of the Office of International Aviation.

c. To the division level in the regional Air Traffic'and Airway Facilities Divisions.

d. To the branch level in the regional Airports, Aviation Medical, Civil Aviation Security, and Flight Standards Divisions.

e. To the branch level in the Civil Aeromedical Institute, Airmen and Aircraft Registry, FAA Academy, and Investigations and Security Divisions at the Aeronautical Center.

f. To the branch level in the Medical Staff, Aviation Facilities Division, and Center Counsel at the FAA Technical Center.

g. A maximum distribution to all Airports Field Offices, Flight Standards Field Offices, and Civil Aviation Security Field Offices, and the offices of the Assistant Chief Counsel for regions and centers.

h. A limited distribution to all Airway Facilities Field Offices, Air Traffic Field Offices, and International Aviation Field Offices.

102. CANCELLATIONS. Order 2150.3, Compliance and Enforcement Program, May 16, 1980, and Order 1000.9E (Enforcement Policy), dated April 4, 1988, are cancelled.

103. EXPLANATIONOFCHANGES. This Order substantially edits Order 2150.3. The following major changes are included in the revised Order:

a. Added policy on choosing the type and amount of sanction.

b. Incorporated policies previously issued by memoranda and in Order 1009.E, Enforcement Policy.

c. Removed prior policy which is no longer current agency policy.

d. Revised in light of straightlining of FAA, including straightlining of FAA's legal functions.

e. Added guidance for cases involving submission to alcohol testing.

f. Added guidance for inspectors in preparing an enforcement investigative report.

g. Incorporated requirements where counsel for the regions and centers must consult the Chief Counsel's office on matters of enforcement.

h. Added guidance on handling enforcement actions under the Civil Penalty Demonstration Program.

i. Added guidance on publicizing enforcement actions.

j. Incorporated policy on providing immunity from enforcement action to persons who provide information about violations.

k. Added guidance on FAA employee liability.

104. **FORMS AND REPORTS.** The following forms are stocked in the FAA Depot and are available through normal supply channels:

a. FAA Form 2150-2, Violation Report Data - Certificate Actions, Reprimands, Referrals (7-79), unit of issue: SE (4), NSN: 0052-00-072-2001. This form, or FAA Forms 2150-3 or 2150-4, paragraphs b and c below, will be prepared, as appropriate, by legal counsel to record final action on all legal enforcement cases.

b. FAA Form 2150-3, Violation Report Data - Civil Penalties, Criminal, Miscellaneous (4-74), unit of issue: SE (4), NSN: 0052-00-606-3001.

c. FAA Form 2150-4, Violation Report Data - Hazardous Materials (7-78), unit of issue: SE (4), NSN: 0052-00-871-0000.

d. FAA Form 2150-5, Enforcement Investigative Report, unit of issue:. Sheet, NSN: 0052-00-875-8000. The form will be used by all elements of the FAA for the reporting of enforcement investigations. An illustrated sample of FAA Form 2150-5 is shown in Figure 9-l.

e. FAA Form 2150-6, Enforcement Investigative Report Log, unit of issue: Pad, NSN: 0052-00-876-1000. The form shall be maintained by each responsible regional division and distributed in accordance with instructions in paragraph 1402.

f. FAA Form 5280-6, Letter of Correction, unit of issue: 5-page set, NSN: 0652-00-881-2000. This form is used by FAA airport certification elements to report and obtain correction of violations of FAR Part 139.

105. CHANGES TO THIS ORDER. Changes to this order may be issued by the Chief Counsel except that changes to Chapter 1, Introduction, Chapter 2, Enforcement Objectives and Policy, and Chapter 3, Enforcement Responsibilities, which involve policy, a delegationof authority, or an assignment of responsibility, are reserved for the Administrator. This authority may not be redelegated.

a. Any FAA employee, field office, or region may submit proposed changes to the Assistant Chief Counsel for a region, center, or the Regulations and Enforcement Division. Recommended changes should be evaluated by the Assistant Chief Counsel. If counsel concurs with all or part of the recommended changes, they shall be submitted in letter form with suggested wording to the Chief Counsel (AGC-1). If counsel does not concur, the field recommendations shall be forwarded, in all cases, along with a letter stating counsel's position.

b. AGC-1 shall refer the recommendations to appropriate headquarters offices for review, development of a recommended revision, or nonconcurrence. Any recommended revision shall be coordinated by AGC-1 with all other offices that have enforcement responsibility.

c. Following coordination, the Office of the Chief Counsel shall publish the revision and be responsible for the maintenance of the master document.

d. Revisions requiring immediate action shall be published as Compliance/Enforcement Bulletins (see paragraph 106).

106. SUPPLEMENTAL ENFORCEMENT INSTRUCTIONS. To assure uniformity in policy and instructions, headquarters offices and the regions shall, before issuance, provide ACC-1 with two copies of all enforcement order supplements or instructions for headquarters coordination and concurrence.

107. COMPLIANCE/ENFORCEMENT BULLETINS. Short term or urgent directives to field personnel may be issued, pursuant to paragraph 104d, in the form of Compliance/Enforcement Bulletins which shall be published under Appendix 1, Compliance/Enforcement Bulletins. Bulletins shall take precedence over instructions in this order when it is so stated and cites the sections involved. Bulletins may also serve to inform field and regional personnel of enforcement activities requiring emphasis, or provide improved guidance to assure national uniformity.

108. DEFINITIONS. As used in this Order, the following definitions and abbreviations are applicable unless the context clearly requires otherwise:

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

"ASAS" means Aviation Safety Analysis System (see paragraph 1401).

"ASRP" means Aviation Safety **Report** Program.

"Assistant Chief Counsel" means an Assistant Chief Counsel for a Region, a Center, or **the** Regulations and Enforcement Division.

"EIR" means an Enforcement Investigative Report.

"EIS" means Enforcement Information System.

"FA Act" means the Federal Aviation Act of 1958, **as amended,** 49 U.S.C. 1301 et seq.

"HMT Act" means the Hazardous Materials Transportation Act.

"NTSB" means the National Transportation Safety Board.

109.-199. RESERVED.

*

CHAPTER 2. COMPLIANCE AND ENFORCEMENT POLICY AND OBJECTIVES

200. PURPOSE. This chapter sets forth the general policies and objectives of the FAA's compliance and enforcement program.

201. THE NEED FOR A COMPLIANCE AND ENFORCEMENT PROGRAM.

a. A central mission of the agency is to promote aviation safety and security in civil aeronautics. To achieve this, the agency establishes regulatory standards and requirements, found in the Federal Aviation Regulations (FAR), under the following statutory direction:

(1) The Federal Aviation Act of 1958, as amended, (FAAct), places a duty on the Administrator to prescribe reasonable rules and regulations and minimum standards in the public interest.

(2) Section 103 of the FAAct requires that the Administrator consider the following, among other things, as being in the public interest:

(a) The regulation of air commerce in such a manner as to best promote its development and safety; and

(b) The promotion, encouragement, and development of civil aeronautics.

(3) Section 316(a)(1) of the FAAct requires that the Administrator prescribe rules and regulations "requiring practices, methods, and procedures . . . necessary to protect persons and property aboard aircraft operating in air transportation . . . against acts of criminal violence and aircraft piracy."

(4) Section 601(b) of the FAAct requires FAA to give full consideration to the duty resting upon air carriers "to perform their services with the highest possible degree of safety in the public interest."

(5) The amendments made to the FAAct by the Airline Deregulation Act of 1978 demonstrate Congress' intent that the implementation of the FAAct must result in no decrease of the high standards of safety in air transportation attained in the United States. Section 102(a)(2) of the FAAct specifically provides that one of the considerations the Administrator must make as being in the public interest and in accordance with

*

*
public convenience and necessity is the prevention of any deterioration in established safety procedures, recognizing the clear intent, encouragement, and dedication of the Congress to the furtherance of the highest degree of safety in air transportation and air commerce, and the maintenance of the safety vigilance that has evolved within air transportation and air commerce and has come to be expected by the traveling and shipping public.

b. The FAA's compliance and enforcement program is designed to promote compliance with both the statutory and the regulatory requirements. The program ranges from educational and remedial efforts, including administrative action, to punitive legal enforcement remedies, including criminal sanctions in the most serious cases.

c. This program is applicable to all activities regulated by the agency for which legal enforcement penalties are prescribed. When violations occur, whether they involve the operation of an airport, the production of aircraft, the performance of aircraft maintenance, the operation of aircraft, or the carrying out of civil aviation security programs, FAA personnel must take the action most appropriate to achieve future compliance.

202. COMPLIANCE AND ENFORCEMENT PHILOSOPHY.

a. Voluntary compliance. Civil aviation safety and security depend primarily on voluntary adherence to legal requirements. Thus, one of our foremost efforts to achieve compliance should be directed toward programs to promote a clear awareness and understanding of the governing regulations.

b. Education. Education must be an ongoing component for a compliance program to be successful. Consequently, FAA personnel should take advantage of opportunities during their surveillance and inspection activities to enhance a certificate holder's understanding of the regulatory requirements. In addition, education can be fostered through public awareness programs and other special aviation educational efforts.

c. Surveillance and detection. An important element of an effective compliance program is the prompt discovery of instances of noncompliance. While the agency has programs to encourage self-disclosure, surveillance remains the primary method of detecting violations. Consistent with the agency's statutory mandates, there must be a particularly high level of surveillance of air carrier operations.

*

*

d. Notifying persons of violations. In any situation where FAA personnel identify a potential violation, they should take appropriate steps to notify immediately a responsible person who can take appropriate action to prevent it. FAA personnel may use such means as counseling, an agreement to take immediate corrective action by the aircraft operator, or the use of the provisions of section 605(b) of the FAAct with respect to air carrier aircraft that are not in condition for safe operation. In addition, the procedures of Compliance and Enforcement Bulletin 90-5 must be followed in the case of suspected violations of the FAA's alcohol and drug-related prohibitions. In cases involving the detection of simulated weapons during FAA screening evaluations, the procedures of Compliance and Enforcement Bulletin 92-3 must be followed.

e. Investigation and reporting. When an investigation is warranted, it should be conducted promptly. There must be an unbiased gathering of all facts, focused investigation, and accurate reporting. Poor investigation weakens the effectiveness of the enforcement program. A violation report without all of the facts only leads to delays that compromise the objectives of fair and responsive enforcement. Such reports also can mislead reviewing authorities and result in incorrect or inappropriate actions.

f. FM response to violations. Every apparent or alleged violation must be investigated and appropriately addressed.

(1) Firmness. The agency has a wide range of options available for addressing violations. They range from simple counseling and administrative action to formal legal enforcement action. Statutory methods for enforcing the requirements of the FAAct and the regulations governing the safe operation of aircraft include the following: amendment, suspension, and revocation of certificates (FAAct, sections 501 and 609); civil and criminal penalties (FAAct, sections 901, 902); aircraft seizures (FAAct, section 903); judicially enforceable orders (FAAct, section 1007); and special investigations and other acts deemed necessary to carry out the provisions of the Act (FAAct, section 313). Regulations governing the transportation of hazardous materials by air are enforceable by means of civil and criminal penalties, orders directing compliance, and equitable judicial relief (Hazardous Materials Transportation Act (HMT Act), sections 109, 110, and 111).

*

*

(2) Compliance and enforcement action is undertaken to--

(a) Prevent future actions that would violate the regulations (e.g., immediate corrective action after counseling or a letter of correction or warning notice; cease and desist orders; injunctions);

(b) Impose punitive sanctions to deter violations (e.g., punitive certificate actions or civil penalties); and

(c) Achieve remedial purposes (e.g., administrative remedial training; voluntary remedial action under the reporting and correction policy; certificate suspension pending demonstration of qualifications; revocation for lack of qualification or competency; or a remedial civil penalty).

g. Fairness. To be effective, the agency's compliance and enforcement program must be fair and reasonable in fact, 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 alleged 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 alleged violator's position and take it into account, as well as to apprise the alleged violator of the agency's position in a timely manner.

h. Timeliness. The agency's discovery of and response to violations also should be timely. Delays in investigation or processing of violation reports can impact the effectiveness of the agency's compliance and enforcement program in several ways. Delays may permit an unsafe condition to continue if prompt corrective action is not taken. Delays also de-emphasize the seriousness of a given violation and diminish 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 realized if investigations are diligently and promptly conducted, and the appropriate sanction is administered within a reasonable time period. By the same token, 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 complexities involved in each case. Certain cases, because of their effect on safety, including the need for emergency action, will demand immediate involvement of the entire investigative/legal team to resolve regulatory noncompliance quickly, sometimes in only a matter of hours or a few days.

203. GUIDELINES FOR PROCESSING ENFORCEMENT ACTIONS.

a. Selection of enforcement action. Responsible FAA personnel must review the evidence compiled during an investigation to determine whether a violation of the regulations has been committed. If the evidence fails to support a violation or demonstrate a lack of qualifications or competency of a certificate holder, then neither administrative nor legal enforcement action is appropriate. In determining the appropriate enforcement action that should be taken for regulatory noncompliance, FM investigative personnel must consider the administrative remedies set forth in paragraphs 203b(1) through 203b(4). The sanction guidance policy should be used only in those cases where a determination has been made that legal enforcement action is warranted.

b. Enforcement remedies.

(1) Reinspection and reexamination. When FAA personnel discover facts that indicate a certificate holder may not be qualified or lacks competency to hold a certificate, the reexamination or reinspection authority of section 609 of the FAAct should be used. Reexamination or reinspection of a certificate holder does not preclude taking punitive enforcement action when appropriate. When a certificate holder fails to comply with a request for reinspection or reexamination, FM personnel should follow the procedures of Chapter 8, Reexamination and Reinspection Under Section 609 of the FAAct.

(2) Remedial training (with administrative action). In evaluating evidence of a violation by a certificate holder, appropriate FM personnel must determine whether remedial training is appropriate in lieu of legal enforcement action. If a determination is made that remedial training is appropriate, a certificate holder must be afforded an opportunity for training in place of the imposition of punitive action. The corrective action taken must be documented. FAA personnel should follow the procedures in Compliance and Enforcement Bulletin 90-8 when remedial training is determined to be appropriate.

*

*

(3) Reporting and correction. FM personnel must determine whether reporting and correction policies are applicable with respect to violations by air carriers, production approval holders, and other categories of certificate holders to which these policies may be applied. If a certificate holder promptly discloses a violation to FAA voluntarily and otherwise meets all of the requirements of the reporting and correction policies, then a letter of correction should be issued.

(4) Administrative action. When FAA personnel conclude that none of the policies set forth in paragraphs 203b(1) through 203b(3) apply, then they must determine whether administrative action is appropriate by evaluating the facts surrounding a violation against the criteria set forth in paragraph 205.

(5) Legal enforcement action. When FAA personnel determine that legal enforcement action should be pursued for a violation, they must determine the type and amount of legal enforcement sanction by consulting the sanction guidance policy. FAA personnel must strictly observe limitations periods imposed by statute or regulation for the initiation of legal enforcement actions.

c. Periodic Program Review of Legal Enforcement Processing.

(1) Each Assistant Chief Counsel should meet at least quarterly with the respective program divisions to review the status of cases referred for legal enforcement action. The purpose for this review is a joint counsel-program assessment of the case load management, with an emphasis on the timeliness and effectiveness of case selection, investigation, initiation, and processing. In addition, the review should include an analysis of: trends; inconsistent case handling; lack of uniform sanctions; repetitious conduct; and any other significant evaluative factors. At this review, the need to reprioritize and process cases warranting the greatest urgency must be considered.

(2) If an assessment indicates that more cases are being submitted for legal handling than legal counsel can reasonably be expected to initiate and process, without incurring a substantial or undue backlog, the following actions must be considered:

*

*

(a) redistribute cases for processing by other regions or headquarters staff with greater available enforcement resources; and,

(b) reevaluate the cases that are being unduly 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, that resolve is most evident when both corrective and deterrent actions are taken in a timely manner. For example, sometimes an administrative closure action, taken immediately after a violation occurs, can serve as a more effective deterrent than an unresponsive or unduly delayed legal action, taken later. There is a wide range of effective tools available to investigative personnel and prosecuting attorneys, and all of them should be considered in light of the circumstances of each individual case. The tool selected should be the one that most effectively and timely serves to correct the noncompliance and deter future violations.

(4) When case reports are returned to investigating field program offices, the field offices will carefully reevaluate and quickly respond to each returned legal enforcement case in light of the explanation provided by the program division manager. Specific attention will be given to 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 office determines that the recommended legal enforcement action should be taken, it will coordinate this decision with the respective program division manager.

(5) It is the goal of the FM generally to initiate cases referred for legal enforcement action within 180 days of the time the violation occurred. Cases involving delayed discovery of a violation must be expedited. It is understood that this objective may not always be met because of: lack of resources; case complexity; investigative delays due to noncooperation of witnesses, or difficulty in obtaining evidence; or other higher agency safety priorities. But generally, 180 days is the expected agency norm within which the investigation will be completed and the case will be initiated by counsel. Meeting this norm requires the closest cooperation, communication, and teamwork between investigative and prosecuting enforcement personnel. Failure to meet the

*

*
norm in any individual case will not be the sole cause for dismissing that case. *Where*, however, caseloads regularly fail to meet this norm, there should be a reassessment of office procedures and case management, under the provisions in paragraphs 203(c)(1) through 203(c)(4). Subparagraph 203(c)(5) does not apply when limitations periods are imposed by statute or regulation for the initiation of FAA legal enforcement actions. In such cases, those time limits must be strictly observed.

(6) In cases where reviews indicate that delay is not a factor, there still may be a need to make other adjustments in case handling such as: the consolidation of related cases involving the same airman or operator; the need to take emergency action where a reporting office has overlooked that need; or the need to reevaluate a case technically. These or other similar adjustments should be considered during these periodic program meetings.

204. PROCEDURES FOR SELECTING COMPLIANCE AND ENFORCEMENT ACTION.

a. Program office responsibilities.

(1) The initial priorities of FAA personnel must be to correct any ongoing noncompliance and to take appropriate action when they determine that a certificate holder lacks the requisite qualifications or competency.

(2) Once the underlying noncompliance is corrected, responsibility for selection of the enforcement remedy that best fits the circumstances begins with FAA personnel who investigated the case. In most cases, they are in the best position to evaluate various factors, such as the alleged violator's compliance attitude and whether an alternative to legal enforcement action may be sufficient to achieve compliance. Authorizing investigative personnel to make these determinations should also result in prompt action.

(3) FAA investigative personnel are expected to exercise sound discretion and professional judgment in making these determinations in accordance with agency policies and guidance. The selection of administrative action or legal action must be made in accordance with the guidance and standards contained in this order.

(4) FAA personnel should consider whether application of progressive discipline will achieve the desired compliance. In some circumstances, for example, it may be appropriate to address a first-time violation with a letter of

*

*
correction. The letter, with its associated corrective action, may be adequate to achieve sustained compliance. Should that approach prove to fail, it may be necessary to impose a punitive legal enforcement sanction, i.e., a civil penalty or certificate suspension, to produce an adequate deterrent to future violations. Repetitive violations by a certificate holder may even demonstrate a lack of qualification warranting certificate revocation. This progressive discipline approach is, however, totally inappropriate in certain aggravated circumstances, such as flying while intoxicated, intentional falsification, and reckless or grossly careless operation of an aircraft.

(5) The agency's response to noncompliance, particularly the use of legal enforcement action, is intended to deter not only the violator but others as well. FAA personnel should consider this factor in deciding what action is most appropriate.

(6) Agency management will periodically review the determinations of investigative personnel in enforcement cases. The managers will look at whether they have adequately considered all relevant facts and circumstances in a case and have explained their choice of enforcement action. This evaluation will help to ensure reasonable consistency in the manner in which violations are handled and that investigative personnel are properly exercising their discretion.

(7) The agency will periodically review data to determine whether the agency's response to violations is having the desired effect of bringing about compliance. If it is not, actions such as special emphasis programs to target particular violations can be initiated.

b. Review of recommendations of FAA investigative personnel. In those cases where an enforcement investigative report (EIR) is prepared, it will be reviewed by appropriate investigative and legal personnel to ensure consistency in the application of agency compliance and enforcement policies. In this review, due deference must be afforded the reporting investigative employee's considerations in determining the appropriate action. FAA personnel at all levels, however, are expected to exercise sound judgment and discretion to propose, modify, and substitute alternative remedies within existing guidance to correct regulatory noncompliance. Deliberations by investigative personnel regarding sanction determinations, as well as communications between investigative personnel and legal counsel, are privileged.

*

*

c. Responsibility for deciding the type of enforcement remedy. FAA investigative personnel, appropriate to the violation involved, will decide, subject to the criteria in this order, whether compliance may best be obtained through administrative or legal enforcement action. In making this determination, the supervisor will afford due deference to the investigating inspector's recommendation if it is substantiated.

d. Responsibility for determining legal enforcement sanction. If legal enforcement action is selected (e.g., certificate action or civil penalty action), the amount of sanction should be determined in accordance with the guidance contained in the sanction guidance policy. FM personnel should give due deference to sanction recommendations of subordinate and client offices if they are properly justified and explained. The amount of sanction sought in a legal enforcement action is the product of a joint determination by the program office and legal counsel. FAA personnel, at all levels, however, are expected to exercise sound judgment and discretion to propose, modify, and substitute alternative remedies to correct regulatory noncompliance, within applicable policy guidance.

e. Prosecutorial discretion. Agency attorneys exercise broad prosecutorial discretion in the handling of legal enforcement actions. This discretion extends from the initial determination of whether legal enforcement action is warranted for an alleged violation through settlement of a case. FAA personnel also exercise discretion in selecting an appropriate amount of sanction for a particular violation, within the parameters of the sanction guidance policy. Through application of the standards and criteria set forth in the sanction guidance policy, FAA personnel select the appropriate penalty within the sanction ranges in the table of sanctions based on the relevant facts and circumstances surrounding a violation. In cases where policy permits, agency attorneys, in consultation with program offices, may determine that an amount or type of sanction outside the ranges is appropriate. In this regard, agency attorneys are expected to use sound, rational, prosecutorial judgment to make decisions that further the agency's safety mission and the public interest. Subsequent to the initiation of a case, agency attorneys, in consultation with the concerned program office, may settle cases, when, in their judgment, the settlement is warranted by the facts and law, other litigation risks, and would prevent unnecessary litigation.

*

*

f. Informal communications with agency attorneys. 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 investigating program office personnel and regional and headquarters attorneys. Open and informal communication between the investigative and legal staffs will improve the effectiveness of and promote consistency in the enforcement program.

205. ADMINISTRATIVE ACTION. Where legal enforcement action is not appropriate, a warning notice or letter of correction may be issued as provided in section 13.11 of the Federal Aviation Regulations (FAR) and Chapter 11, Administrative Enforcement Action. Administrative action is not to be taken solely as a matter of convenience or where evidence to support a finding of a violation is lacking. The operational field office of Flight Standards, Aircraft Certification, Airports, or Civil Aviation Security, appropriate to the violation involved, will decide whether compliance may be obtained best through administrative action or through legal enforcement action, subject to the criteria in this paragraph or other guidance in this order. A decision to take administrative actions ordinarily does not need to be coordinated above the cognizant field office level.

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 are not required.

b. General requirements. Administrative enforcement action may be taken in lieu of legal enforcement action when all of the following elements are present:

(1) Applicable law does not require legal enforcement action;

(2) Lack of qualification or competency was not involved;

(3) The violation was inadvertent and not deliberate;

*

*

(4) The violation was not the result of a substantial disregard for safety or security and the circumstances of the violation are not aggravated. "Substantial disregard" means:

(a) 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.

(b) In case the violator is not a certificate holder, 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 alleged violator has a constructive attitude toward complying with the regulations;

(6) The alleged violator has not been involved previously in similar violations; and

(7) After consideration of elements in paragraphs 205b(1) through 205b(6), a determination is made that administrative action will serve as an adequate deterrent.

c. Evidence of constructive attitude. In making a judgment concerning whether a violator has a constructive attitude, documentation showing the violator's completion of any of the following (including recency of the attendance) may also be considered:

(1) The FM Accident Prevention Program as volunteer counselor or program assistant;

(2) The Pilot Proficiency Award Program (WINGS);

(3) The Pilot and Aircraft Courtesy Evaluation (PACE) Program;

(4) FAA-sponsored Accident Prevention Program safety seminars on the subject(s) implicated in the alleged violation;

(5) FAA-sponsored, industry-conducted safety seminars on the subject(s) implicated in the alleged violation;

*

*

(6) Operation Raincheck (Air Traffic Service) programs or other visits to air traffic facilities for familiarization and educational purposes; and

(7) Other similar safety- or security-related programs, acceptable to the FAA.

d. Remedial training. A letter of correction will be issued to an individual certificate holder when the following conditions are met:

(1) The inspector determines that administrative action is appropriate under the criteria set forth in paragraph 205bt

(2) The inspector determines that remedial training is appropriate corrective action; and

(3) The individual successfully completes a remedial training program developed under the guidance in Order 8740.1B, General Aviation Accident Prevention Program, Appendix 7.

e. Reporting and correction. A letter of correction will be issued to an air carrier, production approval holder, or other category of certificate holder to which the reporting and correction policy applies, when the following criteria are met:

(1) The inspector determines that administrative action is appropriate under the criteria set forth in paragraph 205b;

(2) The inspector determines that the certificate holder voluntarily and promptly disclosed the noncompliance to appropriate FM personnel before the agency learned of it (the initial notification may be made informally, but written notification must be made before administrative action can be considered. Holders who fail to comply with FAR 21.3, Reporting of failures, malfunctions, and defects, will not be considered to have promptly disclosed the noncompliance.);

(3) The certificate holder or production approval holder, upon discovery of the failure, has taken or has begun to take immediate action to correct it; and

*

*

(4) The certificate holder or production approval holder has taken, or has agreed to take, remedial action satisfactory to the FAA as may be necessary to preclude recurrence of such failure. Any action agreed to be taken must be in writing and completed to the satisfaction of the FM.

f. Public interest. In unusual circumstances, administrative enforcement action may be taken notwithstanding the fact that the case does not meet all of the criteria above for administrative action. Administrative action may be taken in those cases only upon a written explanation included in the enforcement file by the division manager of the investigating office of why legal enforcement action would serve no useful purpose and that use of an administrative enforcement action is otherwise in the public interest.

206. DETERMINING THE TYPE OF LEGAL ENFORCEMENT ACTION.

a. Sanctions for punitive and deterrent purposes: suspension action and civil penalty action.

(1) General. In general, the primary legal enforcement tool the FAA uses to enforce its regulations against a certificate holder is certificate action. Where the FM, in its discretion, however, determines that there is a substantial adverse impact on the public interest from disrupted service, and that this impact is not outweighed by safety considerations, it is appropriate to take civil penalty action. For example, the FAA may take certificate action against individual certificate holders and civil penalty action against air carriers, as warranted.

Where there is a need to prevent continuing violations or other egregious conduct, the FAA will take remedial action as needed, regardless of the impact on the certificate holder. In no case will civil penalty action alone be taken where remedial legal action is necessary or appropriate.

(2) Use of both certificate action and civil penalty action for the same violations. Civil penalty action and punitive certificate action generally should not be instituted against a certificate holder for the same offense. If legal counsel is of the opinion that unusual circumstances in any case justify deviation from this policy, legal counsel must first consult with the Enforcement Division (AGC-300).

(3) Change in type of proposed sanction. The initial enforcement action should reflect the agency's best assessment of the appropriate sanction for the violations

*

*
alleged. Each EIR should include all available information bearing on sanction. After the initial action is issued, the type of sanction ordinarily should not be changed unless additional relevant facts or circumstances are presented to the FAA, upon which, in its discretion, determines that the initial proposal was inappropriate. If the action is a significant action for which coordination is required under paragraph 1201a, any change in the type of sanction must be coordinated with AGC-300.

b. Legal sanctions for remedial purposes: certificate action - suspension. Suspension action is appropriate where there is a need temporarily to suspend the privileges of the certificate pending demonstration of qualification. Remedial suspension should ordinarily be used only when the individual does not voluntarily surrender his or her certificate pending reexamination (see Chapter 8).

c. Legal sanctions for remedial purposes: certificate action - revocation. Revocation of a certificate is used as a remedial measure when the certificate holder lacks the necessary qualifications to hold the certificate. The continued exercise of the privileges of the certificate in such circumstances would be contrary to safety in air commerce or air transportation.

(1) Revocation is appropriate whenever the certificate holder's conduct demonstrates a lack of the degree of care, judgment, or responsibility required of the holder of such a certificate.

(2) Revocation is never used as a means to circumvent dismissal of charges under applicable procedural rules.

(3) In cases involving individuals, revocation of a certificate or a rating should be sought whenever there is a lack of willingness or ability to comply consistently with the FAR. A lack of such willingness or ability to comply may be demonstrated, for example, by repeated or deliberate violations of the FAR or by violations that involve grossly careless or reckless conduct. Also, revocation is ordinarily appropriate in egregious cases such as those involving falsification of records.

(4) In cases involving businesses, revocation should be sought whenever there is a demonstration of a lack of qualifications. Revocation would normally be appropriate, for
*

*
example, in cases involving deliberate or flagrant violations or the falsification of records. Revocation also would generally be appropriate in cases in which the certificate holder has committed the same or similar violations in the recent past, or where 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 the FAAct or FAR.

(5) Section 609(c) of the FAAct mandates certificate revocation when an airman has been convicted of violating certain Federal or state statutes relating to a controlled substance and (a) an airplane was used in the commission of the offense and (b) such person 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. The FAAct also requires the revocation of 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.

(6) Given the relationship between a lack of qualification and the public safety, a decision to revoke ordinarily warrants invoking the agency's emergency authority (see paragraph 206d).

d. Emergency suspension or revocation of certificates.

(1) Whenever it is determined that the public interest and safety in air transportation or air commerce require the immediate effectiveness of a suspension or revocation, an emergency order should be issued. The authority to issue such orders is contained in sections 609 and 1005 of the FAAct.

(2) The emergency authority will not be used for punitive purposes; i.e., to order fixed periods of suspension.

(3) Emergency action should be taken only:

(a) When the certificate holder lacks qualification, or there is a reasonable question as to whether the holder is qualified; and

(b) When the holder is reasonably able as a practical matter to exercise the privileges of the certificate.

*

*

1 If it is known that a certificate holder is unable to exercise the privileges of the certificate, a notice proposing certificate action should be issued.

2 If, after a notice has been issued, the certificate holder again becomes able to exercise the privileges of the certificate and an issue of qualification remains, the case should be converted to an emergency case.

(4) Emergency action should be 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. If a significant delay has occurred, however, circumstances justifying revocation or immediate action may have changed, and consideration should be given to reevaluating the case, including, as appropriate, reinspection or reexamination of the certificate holder. For example, by the time action is ready to be initiated, the unqualified or culpable management personnel may have changed and it may be determined that revocation is no longer required. In such a case, another enforcement action may be used to address the previously discovered violations.

(5) 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 should be considered.

(6) Oral orders. Ordinarily, orders of suspension and revocation must be in writing, as provided in Chapter 12, Legal Enforcement Action. If necessary, however, 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 Assistant Chief Counsel may issue an emergency order orally 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 or air transportation. An oral order must be reduced to writing and served upon the certificate holder as soon as practicable.

(7) Early agency coordination. When an investigating field office becomes aware of a case that might be appropriate for emergency action, that office should immediately notify its regional office representative who, in

*

*
turn, should immediately notify the Assistant Chief Counsel for the region. With the earliest possible notification, these officials can then work together to expedite processing of the case.

(8) Pre-emergency action notification and briefing. In the case of institutional certificate holders, such as air carriers and repair stations, consideration may be given to notifying the holder in advance that emergency action is considered likely and to briefing the holder on the bases for such action. No certificate holder, however, is entitled to this notification or briefing. A decision on whether to provide this notification and briefing should be made on a case-by-case basis, taking into consideration safety, public interest, and other relevant factors. The agency may notify an air carrier that emergency action is under consideration where, for example, that carrier's management personnel have not been involved in the alleged violations, and the carrier is capable of making immediate personnel or other changes that would bring it into compliance and satisfy all safety requirements. In such case, the matter might be resolvable by consent order, deferred suspension, or some other means short of revocation.

e. Other recommended action. In addition to the recommendation for legal enforcement action, the field office should determine the possible need for any additional or special enforcement action and, when appropriate, submit such recommendations to the regional office. This may include recommendations for any of the following:

(1) Seizure of aircraft. Under certain conditions described in paragraph 1208, when an aircraft is involved in a violation of the FAR and the violation is by the aircraft owner or person in command, the aircraft may be seized. Seizure action, when appropriate, may be recommended regardless of the status of the investigation or legal processing of any prior violation(s).

(2) Cease and desist orders, orders of compliance, and injunctions. Whenever the inspector determines that a condition requiring immediate action exists, in respect of safety in air commerce or air transportation, the field office should bring the matter to the attention of the regional office 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 (see paragraphs 1209, 1210, 1211, 1212, and 1213).

*

*

(3) Criminal prosecution. If the inspector's investigation discloses any evidence of willful conduct that could constitute violations of any criminal provisions of the FAAct, the HMT Act, or of any other Federal criminal statute, the field office should bring this information to the attention of the regional office. See, Chapter 6. An inspector should not delay a safety investigation, even though an alleged violation may involve possible criminal violations and result in a criminal investigation. Where the specific conduct being investigated may also be in violation of Federal criminal statutes, the investigative file should indicate whether or not criminal investigation or prosecution has been initiated, as well as the office or agency responsible for such action. In addition, the principles of double jeopardy may preclude punitive civil penalty action when criminal prosecution has already occurred for the same conduct. See, U.S. v. Halper, 490 U.S. 435 (1989).

(4) Procedure. When it is determined that aircraft seizure, an order of compliance, a cease and desist order, or an injunction action, or criminal prosecution, is appropriate, the field office should immediately inform the regional office of the facts and circumstances. The inspector should complete and process an EIR as expeditiously as possible.

(5) Consent orders. The investigating program office and legal counsel may agree to resolve certain legal enforcement actions with a consent order. A consent order ordinarily will include an agreement that the violator will take corrective and remedial action as a condition for the suspension or forgiveness of a portion of the sanction or, in some cases, a modification of the proposed sanction. 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 this 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 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.

*

*

207. DETERMINING THE SANCTION AMOUNT.

a. FAA Legal Enforcement Actions; Sanction Guidance Policy. After determining that legal enforcement action is necessary, FAA personnel must consult the guidance set forth in the sanction guidance policy.

b. Special emphasis enforcement programs. It is the policy of the FAA generally to avoid instituting mandatory sanction programs. At times, special situations arise, however, that dictate the need for more effective enforcement through increased sanctions or other measures to bring about compliance in certain areas where existing methods are insufficiently effective. In such circumstances, a special emphasis enforcement program, designed to focus on a particular area of noncompliance, may be instituted on a national or local geographical basis. The following procedures will apply:

(1) Special emphasis should be used only when other methods of obtaining compliance have not been sufficiently effective. Normally, such a program would be established with a fixed expiration.

(2) A national program will be instituted by a joint determination of the appropriate office or service (e.g., Flight Standards Service, Office of Civil Aviation Security Operations) and the Office of the Chief Counsel. A recommendation for a regional special emphasis program will be made jointly by the appropriate regional division (e.g., Flight Standards, Civil Aviation Security) and Assistant Chief Counsel, after coordination with the Regional Administrator. A regional program may be implemented only with the concurrence of the Chief Counsel and the director of the appropriate office or service.

(3) Before instituting a special emphasis program, consideration should be given to what public notice, if any, is needed. In some cases, publicity may not be appropriate; e.g., where only increased surveillance is needed. In other cases, letters to airmen, pilot forums, and even press releases may be appropriate. Before the FAA institutes a special emphasis enforcement program of general applicability, the public should be informed by a notice in the Federal Register. Also, a tracking method should be maintained to evaluate the effectiveness of the special emphasis program on an ongoing basis until termination of the program.

*

*

208. INVESTIGATING AND PROCESSING ENFORCEMENT CASES UNDER THE GEOGRAPHICAL CONCEPT.

a. The investigation and processing of enforcement cases are the responsibilities of the region where the violation is discovered. Under this geographic concept of enforcement:

(1) The field office responsible for the geographical area in which the violation is discovered must conduct the investigation and process the EIR, through its parent region, consistent with the instructions and procedures of this order, except when this responsibility is transferred as provided in paragraph 208d; and

(2) The parent region, upon receipt of any EIR's from its field offices, must process those enforcement cases, except when this responsibility is transferred as provided in paragraph 208e.

b. Violations frequently involve the responsibilities of offices other than the investigating office such as, in the case of air carriers, the certificate-holding field office and the offices of the several principal inspectors. These offices not only have a vital interest in the conduct and outcome of the investigation, but frequently are prime sources of the information and expertise needed to resolve the matter. For the purposes of this order, these offices will be referred to as supporting field offices or regions. Investigating field offices must ensure that timely and complete coordination is maintained with these supporting regions or field offices throughout the investigation and reporting process. It is the responsibility of the supporting offices to provide the information and assistance required by the investigating office. Similar coordination and support must be maintained between respective regional offices during the processing of the case. Investigating field offices/personnel must contact the supporting field office manager and the principal inspector(s) at the beginning of the investigation to ensure "need to know" requirements are met and to develop a quality investigation applicable to the air carrier involved. The investigating field office also must ensure that timely and complete coordination is maintained with the supporting field office throughout the investigation and reporting process, including the certificate-holding principal's participation in determining the recommended sanction. Cooperation between the reporting field office and supporting field office/principal

*

*
inspector is important and must continue throughout the investigation and litigation stages until final resolution of the case.

c. While the investigating field office and its parent region have complete authority and responsibility for the investigation and processing of violations, appropriate consideration must be given to any comments, recommendations, or requests, including requests for transfer by supporting offices. The investigating field office must advise a supporting office if there are recommendations or requests made by that supporting office that cannot be accepted, along with the reasons therefore. If the matter cannot be resolved to the satisfaction of the supporting office, it may request interregional review by appropriate levels of authority. The parent region will be responsible for resolving issues during this review. Similarly, the parent regional office, when processing violations, must consider and resolve the recommendations and requests of supporting regional offices.

d. The investigating field office may transfer responsibility for investigation, coordination, and reporting to another field office, under mutual agreement, in cases where a transfer would be in the best interest of the Government. For example, a transfer may be considered when:

(1) The bulk of 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 evident that an investigation should be combined with investigations being conducted by another field office. When a transfer is made, the new investigating field office assumes full responsibility for investigation, coordination, and reporting, and the parent region assumes full responsibility for processing. The transferring field office and its parent region assume the role of supporting offices.

e. A region may transfer responsibility for the processing of enforcement cases, or related corrective action, to another region when it is mutually agreed that such transfer is in the best interest of the Government.

*

*

(1) The Assistant Chief Counsel responsible for processing the legal enforcement case may transfer the case to another Assistant Chief Counsel by mutual agreement that a transfer is in the best interest of the Government.

(a) The decision to transfer a case should be made on the basis of the need to facilitate the efficient and timely processing of legal action due to considerations such as the location of scheduled conferences, discovery proceedings, hearings, court actions, the availability of witnesses or participants, or other compelling reasons.

(b) Consideration should be given to the fact that transferring the case to another region, such as for the purpose of holding an informal conference, often results in duplicative efforts by the respective regions, thereby eroding governmental efficiency, when the case must later be retransferred for trial. Special care should be given not to transfer a case involving an air carrier or its personnel simply to accommodate the requester or his counsel, since air carrier personnel and their counsel generally have company-provided access to the necessary air transportation to reach the originating office. This advantage is generally not available to general aviation airmen who may be genuinely inconvenienced by having to travel outside their geographic area.

(c) In the event that a case is transferred, the receiving office will have full authority to dispose of the case in accordance with current agency policy and procedure. There may be special circumstances, however, when a transferring office requests to be consulted before final disposition of the case. For example, this may occur where the experience of the reporting inspector is necessary for a complete understanding of the case.

(2) Field office responsibility for corrective action may be transferred 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.

f. Offices responsible for the final closing of enforcement cases, both administrative and legal, should ensure that all investigating and supporting offices are apprised of final disposition.

*

*

209. COMPLEX OR CONTROVERSIAL ENFORCEMENT CASES. For purposes of this paragraph, "complex or controversial" cases are those requiring or warranting substantial coordination among FAA elements or extensive preparation for potential enforcement litigation.

a. The following are examples of potentially complex or controversial cases:

(1) Alleged violations warranting initiation of a formal investigation in accordance with FAR Part 13.

(2) Cases requiring extensive interregional coordination.

(3) Cases involving extensive violations by, or significantly *severe* penalties against, major institutional respondents (such as air carriers and aircraft manufacturers).

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

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

b. To ensure the effectiveness of the enforcement program in complex or controversial cases, it is essential that these cases be identified at the earliest possible stage. In all cases, it is the FAA investigative employee's responsibility initially to determine the investigative effort to be undertaken. These cases can best be identified in terms of the nature and scope of this effort. FAA investigative personnel should 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. Typical considerations include:

(1) *Whether* the case substantially involves responsibilities of other FAA offices. Interregional coordination is often required, for example, in the case of complex or controversial air carrier maintenance violations that may involve engineering analysis and other type certification issues.

*

*

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

(3) Whether the case involves controversial regulations; e.g., the use of flight data recorder tapes.

(4) Whether there are allegations of FM "complicity."

(5) Whether potential criminal violations exist. If so, appropriate coordination with the Department of Justice or the Office of Inspector General is required.

c. FM investigative personnel, through their office managers, should alert the appropriate division in the regional office, whenever a complex or controversial case is under investigation. For complex or controversial Flight Standards cases, the regional office should then alert the Flight Standards National Field Office (AFS-500). This will enable timely planning of the investigative effort to be undertaken. The Division Manager, in turn, must consult with the appropriate Assistant Chief 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, counsel should notify AGC-300 whenever it appears that a complex or controversial case is under investigation with the potential for national significance.

d. Experience in complex or controversial cases has demonstrated the importance of legal counsel's participation at the investigative stage. Rather than awaiting completion of the report of investigation, the Assistant Chief Counsel should take the initiative early to ensure that investigative personnel are counseled properly in evidentiary matters and that only legally provable violations are pursued. Counsel should personally observe the investigative effort whenever necessary for proper development of the complex case. In cases likely to lead to civil penalty or other litigation in the United States courts, the Assistant Chief Counsel should advise the U.S. Attorney or the Department of Justice, as appropriate, as early as practicable.

e. As in all enforcement cases, success in prosecuting violations in a complex or controversial case depends upon the quality of the investigation supporting it. Early involvement by counsel may reduce the need to supplement an investigation after review by counsel.

210. - 299. RESERVED.

*

CHAPTER 3. ENFORCEMENT RESPONSIBILITIES

300. PURPOSE. This chapter describes the responsibilities of various FAA elements in carrying out the FAA's compliance and enforcement program.

301. COOPERATION AND COMMUNICATION WITHIN FAA.

a. All offices and services, including those which do not have primary responsibility in the enforcement program, shall assist in the execution of the program.

b. To assure the highest possible degree of coordination and consistency in carrying out the enforcement program, elements of the agency engaged in investigation or prosecution of enforcement cases shall maintain communication with other elements whose responsibilities are or may be affected by such cases.

302. HEADQUARTERS. Within FAA headquarters, the Chief Counsel and the Executive Director for Regulations and Compliance have the overall responsibility for carrying out the enforcement policies established by the Administrator. These offices establish procedures and guidance for implementation of the agency's enforcement program, and monitor and evaluate regional enforcement activities to ensure effectiveness and uniformity. They also handle special investigations and enforcement actions as directed by the Administrator. They will advise the Administrator of any deficiencies or discrepancies and will undertake any special investigative or enforcement action that may be directed. The Chief Counsel 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 will, when appropriate, review enforcement actions taken by the regions.

303. REGIONS.

a. Program divisions. The appropriate regional divisions implement and manage the FAA Enforcement Program within their respective areas of responsibility as prescribed in this order. All actions taken by field personnel shall be reviewed by appropriate regional division managers or their designees to ensure fair and equal treatment and provide assurance that action taken will serve to promote safety and protect the public interest. The regional division manager shall ensure that their enforcement program, as well as any individual enforcement action, is handled in accordance with the Order and will periodically provide the investigating office with the status of enforcement actions investigated by that office. Regional offices shall advise their counterparts in Washington of significant enforcement activities.

b. Assistant Chief Counsel. The Assistant Chief Counsel process all violation reports requiring legal enforcement action or referral, and provide legal guidance and counsel on enforcement matters, except those violation reports identified in paragraph 1002.

304. AERONAUTICAL CENTER. The Assistant Chief Counsel for the Aeronautical Center is responsible, pursuant to Title 5 of the FA Act and FAR Part 13, for suspending or revoking an aircraft registration certificate for any cause that renders such aircraft ineligible for registration.

305. FIELD OFFICES. Field offices conduct surveillance inspections of persons, aircraft, or operations subject to the regulations to determine compliance with the regulations and any lack of qualifications, and investigate, coordinate, and report violations of all regulations which are discovered within the geographical area and for which they have enforcement responsibility.

306. AIR TRAFFIC SERVICE. Air traffic control personnel at centers, towers, and flight service stations are in a unique position to observe apparent violations or lack of qualification of airmen. Each Air Traffic Service facility is responsible for promptly notifying the appropriate FAA field office of any incident or complaint which may involve violations of Federal regulations for which the FAA is responsible. Each facility shall provide the appropriate FAA element with factual information concerning such incidents, including tapes, transcripts, etc., as soon as permitted by their air traffic control responsibilities but, in any event, not later than 24 hours after becoming aware of an incident or after a request from an FAA inspector.

307. ALL AGENCY EMPLOYEES. Any agency employee who becomes aware of an apparent violation by, or apparent lack of qualification of, any person subject to the Federal Aviation Regulations, shall report such information to an appropriate FAA office. Employees shall cooperate with any further investigation and provide testimony or other information as required. All agency employees involved in the enforcement process should be alert to their responsibility to identify problems involving regulations or enforcement procedures which need correction. For example, when a regulation has proven too vague for effective enforcement, or a current procedure unnecessarily cumberscxne, the matter should promptly be brought to the attention of the regional division. The regional division shall forward the recommended changes to the Assistant Chief Counsel for Regulations and Enforcement (AGC-200), through the Assistant. Chief Counsel for the region. AGC-200 will acknowledge receipt of the recommendation, and coordinate an evaluation of the recommendation with the headquarters office(s) of primary responsibility for the regulation or procedure. The individual making the recommendation will be advised as to any decision or action taken on the recommendation.

308. OFFICE OF INSPECTOR GENERAL. The Inspector General Act of 1978 (5 USC Appendix 1) 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.

a. In setting these responsibilities, the Office of Inspector General --

(1) Provides leadership and coordination, and recommends policies designed to promote economy, efficiency, and effectiveness of audits and internal investigations to prevent and detect fraud and abuse in Department programs and operations: and

(2) Provides 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.

b. The Inspector General does not have any responsibility or authority for enforcing compliance with aviation safety regulations under the jurisdiction of the FAA.

309.-399. RESERVED.

CHAPTER 4. INVESTIGATION OF VIOLATIONS

400. PURPOSE. This chapter furnishes the inspector with general guidelines for an investigation. The guidelines are not all inclusive and are not a substitute for common sense and good judgment. The investigation will vary with the type of violation. If in doubt, call legal counsel.

401. ROLE OF THE INSPECTOR IN AN INVESTIGATION. The inspector's role in an investigation is to gather facts, evidence, and documents, to analyze that information, and to make recommendations concerning enforcement actions. The inspector should recognize that Enforcement Investigative Reports (EIR's) may be reviewed by several levels of the district office, the region, and legal counsel before an agency determination is made as to whether agency enforcement will be taken and if action is taken, what sanction will be imposed. As a result, if the inspector discusses with the alleged violator the likelihood of enforcement, or possible sanctions, there is a likelihood of misleading the alleged violator or making statements which may later prejudice prosecution of the case. The inspector should, therefore, avoid discussing with the alleged violator or others whether action will be taken and possible sanctions.

402. PLANNING AND INITIATING THE INVESTIGATION.

a. Upon receipt of information indicating a possible violation, the inspector should determine whether there is any basis for an investigation.

b. Before initiating an investigation, an inspector should consider the circumstances and the nature of the violation, and develop an investigative plan of action. As the investigation progresses, reevaluate the plan and revise as necessary. Coordinate the plan with supervisors, supporting offices, and legal counsel, if necessary. Consider the following:

(1) What section of the Act or regulation is involved in the case? Read the regulation. Determine which elements of the regulation are necessary to establish a violation. Use the elements to form an investigative plan.

(2) What evidence is needed? Where is it located? How will it be obtained?

(3) What records should be checked? Will they be furnished voluntarily?

(4) Which witnesses, including the alleged violator, need to be interviewed? At what stage of the investigation should they be interviewed? Are written statements needed? (Note: in all cases a signed statement should be obtained from each witness, if possible.)

(5) Will there be a need for the Administrator's power under Section 1004 of the Act to subpoena witnesses and records?

(6) Is there a possible criminal violation?

(7) Is there a need for immediate action? Consider an emergency action or other immediate action in situations where delay for routine handling may jeopardize public safety. For instance, an airworthiness inspector who finds an air carrier aircraft about to be used in air transportation, that is not in condition for safe operation, shall notify the air carrier of that condition in accordance with Section 605(b) of the FA Act. (See, Figure 4-1) .

(8) The plan should ensure the evidence gathered will establish who did or did not do what, where, when, why, and how.

(9) Reevaluate the plan.

c. In all investigations, an EIR report number (case code number) will be assigned for logging and processing within the ADP system. It provides future reference to all matters relating to the case (see Chapter 14). When formal fact finding investigations are conducted by a specially designated team, the team should assure that a field office or region is designated to assign a case code number for the investigation. The special team should coordinate with the field office, and prepare an EIR.

d. Where the alleged violation involves an air carrier operating certificate, a production certificate, a type certificate, an air agency certificate, or a standard security program, the investigating office should alert and coordinate with the appropriate supporting office prior to issuing the letter of investigation. Telephone notification is encouraged. The team should provide the supporting office copies of all letters of investigation.

e. 6-month rule. Where the alleged violation occurred more than 6 months prior to the issuance of the Notice of Proposed Certificate Action, suspension other than for a lack of qualifications may be barred by the NTSB "Stale Complaint" rule (49 CFR 821.33), except where: (1) the FAA was not aware of the violation until well after its occurrence and would not, through diligent effort have known of the violation at an earlier date, in which case the action may be brought with a "reasonable time" after the FAA became aware of the violation, or (2) in those cases where "good cause" is shown for proceeding notwithstanding the delay. To avoid being unable to take suspension action where appropriate, all cases must be investigated expeditiously to afford legal counsel sufficient time to issue the Notice before action is barred. Doubtful cases should be coordinated with legal counsel as early as possible.

403. LETTERS OF INVESTIGATION.

a. Although not required, an alleged violator normally is notified in writing of an agency investigation. The letter should state that an agency investigation is being conducted, and should invite comments from the alleged violator on the circumstances of the incident. A copy of the letter should be included in the file. Where additional violations are discovered during the investigation, the inspector should use judgment as to whether another letter of investigation should be sent. Evidence should show that a violation may exist before a letter of investigation is issued. Failure to send a letter shall not obstruct the ongoing investigation.

b. In cases involving companies with complex organizational structure, care should be taken to assure that the letter is addressed to the responsible official. The investigating inspector may obtain advice on such matters from the supporting office.

c. In the preparation of the letter of investigation, the following guidelines should be observed (see sample letters of investigation, Figures 4-2 through 4-7):

(1) Although the letter is not intended to be a statement of charges, it should inform the alleged violator of the activities being investigated. Specific sections of the Federal Aviation Regulations should not be cited unless specific regulatory reference is needed to accurately identify the incident. If the facts and circumstances are adequately presented, the letter of investigation need only state that there may have been a violation of the Federal Aviation Regulations.

(2) Specify a time limit for reply. Normally 10 days is sufficient. Additional time may be necessary in foreign cases. Any reply received after such deadline should be considered. If the file has been forwarded to the regional office, the reply should be forwarded with an analysis, including a discussion as to whether the reply changes the inspectors conclusions.

(3) Request that specific relevant documents be retained or made available.

(4) If the alleged violator is an individual, include the Privacy Act Statement. See Figure 4-9.

d. The letter of investigation generally is sent by certified mail with return receipt requested, so as to establish a record of notice to the party under investigation. If personally delivered, document the delivery in the file.

e. Distribution of the letter of investigation.

(1) The original letter of investigation is directed to the alleged violator.

(2) Send a copy to supporting FAA offices.

f. If at the conclusion of the investigation there is insufficient evidence to pursue the matter, the inspector may write the alleged violator a letter advising that the evidence is insufficient to support the violation and that the matter is not being pursued. In cases in which there is a reasonable question whether evidence supports a violation, the inspector should consult regional divisions prior to advising the alleged violator. See Sample Letter of Notification, Figure 4-8.

404. OBTAINING VIOLATION HISTORY AND OTHER INFORMATION.

a. Violation history and other information needed for the investigation should be obtained at the beginning of the investigation. Violation and accident information may be directly retrieved from several automated information systems, as follows:

(1) Violation history and/or accident history may be obtained from the AID/EIS Display and Profile program under EIS. Thisprogram provides access to essential data taken from several separate data files of the Accident/Incident Data System (AIDS) and the Enforcement Information System (EIS). Problems or questions should be addressed to the local EIS system manager or the ASAS hot line.

(2) EIS records containing an airman rebuttal statement, under the provisions of the Privacy Act, are available only from AVN-120. Requests for release of this information should be referred to the National Data Safety Branch, AVN-120.

(3) In addition to retrieving the information above by direct access to the appropriate system, the user may obtain such information through the commercial timeshare vendor. This service can provide more complex interrogations than the simple available query under the AIDS/EIS Display and Profile. Contact the National Safety Data Branch or your local Management Systems Division for information on timeshare access and usage.

(4) Requests may be submitted to National Safety Data Branch, AVN-120 for a written reply.

b. Other information may be obtained as follows:

(1) Airman certificate and aircraft registration data may be obtained from the National Data Base Interface (NDBI) application which provides access to the Airmen and Aircraft Registry files located on equipment at the Mike Monroney Aeronautical Center's Data Services Division (AAC-300). Questions regarding the information should be addressed to the Aircraft Registry (AAC-250) or Airmen Registry (AAC-260) Branches at the Aeronautical Center. Problems or questions concerning system access should be directed to the ASAS hot line.

(2) Criminal history and background information should be sought through the regional Civil Aviation Security Division.

(3) Airmen medical records may be obtained from Aeromedical Certification Branch, Mike Monroney Aeronautical Center, Oklahoma City.

405. EVIDENCE OF VIOLATIONS.

a. 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 established or disproven. It is the means by which

we prove or establish the facts set forth in FAA legal notices. If there is doubt as to the relevance of a particular piece of evidence, it should be secure.1 and preserved from the outset.

b. Evidence may be obtained from any place or source where it is legally available. An investigation at the scene of a violation often will assist the inspector in the collection and analysis of evidence. There is no substitute for the inspector's personal observations, which should be placed in writing as soon as possible. The inspector must not only accurately obtain the facts and circumstances, but must prepare a report which clearly conveys such facts and circumstances.

c. Hearsay evidence, in many circumstances, may be used to prove violations. Inspectors should not hesitate to report any information that could possibly be used as evidence. Hearsay evidence can be very helpful to the investigator in that it often leads to persons who do have direct knowledge of the incident, or knowledge of important documents. Furthermore, it may be helpful to the attorney in cross-examination of a hostile witness or the person involved. For these reasons, the inspector should report all evidence that could be pertinent to the case.

d. The types of evidence used to document the investigative report include witness statements, photographs, charts, maps, and diagrams; documents and records: and physical evidence.

406. **INTERVIEWS.**

a. Generally, all knowledgeable witnesses of an alleged violation should be interviewed and the information reported. Where there is more than one person who witnessed an incident, the number of those witnesses to be interviewed will depend largely upon the nature of the case, the proof required, and, to some extent, witness availability. Duplicative or repetitive testimony is desirable because it gives weight to the evidence and insures the availability of witness testimony in the event that one or more key witnesses later are unavailable. Selection of the particular witnesses should be based on the likelihood of their knowledge about the incident and their competence to relate the information sought. Some common sources for the identity of possible witnesses are:

(1) Passenger manifests.

(2) Air traffic controllers.

(3) Records and personnel of organizations, such as air carriers, air taxis, etc.

(4) Airport personnel.

(5) Local restaurants or bars that may have served the person.

(6) Pilots and mechanics who may have pertinent information.

(7) Persons who work or reside in the area of the incident.

(8) Health personnel who may have examined the person involved.

(9) State and local police.

b. If the inspector witnesses a violation, the inspector should prepare and sign a statement covering all of the pertinent facts of which the inspector has personal knowledge.

c. Every effort should be made to interview witnesses face to face or by telephone. The technique used will vary depending on circumstances, but the following general guidelines may be of assistance.

(1) Plan the interview to assure that the interviewer is thoroughly prepared and that the best environment in which to hold the interview is selected.

(2) Put the person interviewed 'at ease.

(3) Maintain control of the interview.

(4) Assure from the outset that the witness understands that any information furnished may be used as evidence in subsequent enforcement proceedings. No promises of confidentiality can be given without prior consultation with FAA legal counsel. However, if a witness requests immunity in exchange for information regarding safety, the inspector shall imediately proceed in accordance with paragraph 1302 of this Order.

(5) Do not discuss with witnesses any possible enforcement action or sanctions, or grants of immunity. Do not divulge sources of information! except where necessary.

(6) Request a signed statement.

(7) Plan questions which will accomplish the objective. The broad or general question often is effective to open up areas of discussion. Specific searching questions are good for getting specific information, clarification, and conclusions.

(8) Be attentive and listen.

(9) 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 when the interview took place.

(10) Summarize the interview with the witness to verify the interviewer's understanding and recollection of all pertinent points. Give the witness an opportunity to make any additional comments.

(11) Prepare a separate report of the interview, including the inspector's own observations and evaluations. Note that this should be a separate item of proof in the EIR, not simply part of Section D.

(12) When an essential witness refuses to cooperate, the Administrator's authority under Section 1004 of the FA Act may be used. See Chapter 7, Formal Fact-Finding Investigations.

d. In many cases the most important witness to be interviewed is the person making the allegation. Frequently in FAA investigations, the source of an allegation against a company is an employee or agent of that company. The investigation should be planned and conducted to assure that 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, every effort should be made to verify the allegation through interview 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, great care must be exercised to provide reasonable protection to the source.

e. Where possible, a written statement should be obtained from each witness. The written statement should contain a precise and complete account of those facts pertinent to the violation. It should include 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' complete name, address, telephone number, occupation, and aeronautical experience. Any opinions should be shown as such.

'(1) A written and signed statement is especially important under the following circumstances:

A. When the information is complex, involves data, or is controversial.

B. When the witnessed incident involves injury or death or a significant aviation incident, such as an aircraft accident or hijacking.

(2) The best statement is one prepared by the witness. When necessary, however, the inspector may assist the witness in drafting and framing a statement. In doing so, the inspector should take care not to dictate the statement and should make an effort to assure that the statement is complete, concise, and to the point.

(3) If the person interviewed refuses to give a signed statement, the inspector should prepare a statement based on information furnished by the witness. The witness should then be asked if he agrees to the substance. If he does agree, but continues to refuse to sign, the inspector should make a notation to that effect and date and sign it along with any witnesses.

f. Normally, the alleged violator will be interviewed, even though he or she may have furnished written information. If the interview is not possible or necessary, indicate the reasons why it was not accomplished.

(1) The alleged violators are interviewed primarily in order to give such persons an opportunity to tell their side of the story, and to help to establish all pertinent facts and circumstances.

(2) The time for interviewing the alleged violator can be a critical decision. At times it is best to accumulate solid evidence with which to interview the alleged violator. At other times, an early interview will develop investigative leads. Good judgment dictates when the interview should be conducted.

g. If the alleged violator or'other witnesses are located in another field office area, it may be necessary to obtain assistance for the interviews. Make the request to the manager of that office. Give full details of the assistance and information required. If delays are encountered, the office requesting the information should be notified immediately. Cooperation is stressed between offices, and the appropriate regional division should be alerted to any problems encountered in obtaining assistance or information. When the manager has assigned an inspector(s) to comply with the request, direct contact is authorized between the investigating and supporting inspectors.

407. PHOTOGRAPHS. A camera loaded with fast, color film often is an inspector's best friend. When photographs are obtained, have the names and addresses of the photographers and the date and time the pictures were taken written on the back of the prints. Further, record the technical data of the film, shutter speeds, lens opening. List the custodian of the prints and information on the custody of the negative. When photographs are used in lieu of physical evidence, pertinent information as to the location and security of the physical evidence should be documented.

408. CHARTS, MAPS, AND DIAGRAMS. Charts, maps, diagrams, and photographs should be obtained, as appropriate, to show physical features, such as airports, terrain, congestion, flight paths, obstructions, aircraft parts, etc. They may be useful when interviewing witnesses. They should be clearly labeled showing the source of the document, including the person who made any notations on the document (such as a depiction of a flight path on a chart). Copies of charts or an actual chart should be included in the report and the chart should be current as of the date of the violation. If a copy of the chart is used, the front page with the effective date of that chart should also be included. The inspector should make notes of the intended purpose of such exhibits for use when assembling the report.

409. DOCUMENTS AND RECORDS. Documents and records consist of National Weather Service reports, load manifests, manual pages, communication logs, aircraft logs, etc. This type of evidence may be essential to prove the case or may provide backup or background information. Too often a witness statement is obtained without supporting documentary evidence. Thereafter, the witness may forget, flee, lie, or die and a case may fail for lack of evidence. Do not overlook the importance of this type of evidence.

a. Obtaining documents and records.

(1) Documentary evidence perhaps is the most common type of evidence used by the inspector. Its value frequently is overlooked not only as evidence but as an investigative tool to use for cross-reference, verification of oral statements, and interviews.

(2) The investigating inspector should take prompt action to review and obtain necessary records. Too often, vital records are lost, destroyed, or modified when prompt action is not taken. If it is apparent that the documents or records will not be provided voluntarily, the inspector should consult with legal counsel to arrange for legal subpoena (see Chapter 7). Dccumentsry evidence should be specifically identified, accounted for, and protected from loss, damage, or alteration. If there is doubt about the relevance of particular records, they should be secured and preserved from the outset.

(3) Where necessary, appropriate arrangements should be made for retention of records. Promptly notify the organizationpr person holding the records that specified records are to be held for inspection. If the records may not be retained as requested, make immediate arrangements, in coordination with legal counsel, for their preservation. Notice may be written or oral.

(4) The inspector should always indicate when, where, and from whom the document was obtained, and who from the FAA obtained it. This may be done with a stamp on the reverse side such as in Figure 4-10.

(5) For non-FAA persons or organizations, request only one copy of each document. The investigating FAA office is responsible for reproducing additional copies needed.

(6) When documents such as company manuals, FAA-approved airplane flight manuals, or manufacturer's service bulletins contain information necessary to a case, pertinent portions should be reproduced and made a part of the report.

(7) Making copies of documents. When copies of documents are made, care should be taken to insure that all copies are legible and are accurate. Use a stamp substantially in accordance with that shown in Figure 4-10 to document that you have reviewed each page of a copy of a document and compared it with the original. The stamp should be placed on copies of documents in a manner that does not obscure any of the information contained in the document, such as by placing it on the reverse side. Wherever possible, documents or copies thereof should be preserved in their original state. Wherever possible, avoid making marks on the face of documents. If marks or explanations are necessary for explanation or clarification, where possible, make them in an overlay, or include another copy of the document with marks on the copy.

(8) Care should be exercised to assure that the documentary evidence obtained was current and applicable at the time of the incident in question. On the other hand, revisions to a manual, subsequent to an incident, may be important to some cases.

b. Air Traffic Service records.

(1) Air Traffic Service facilities are responsible for prompt notification to the appropriate field office of any incident or complaint involving a civil or public aircraft which may involve a violation of Federal Aviation Regulations. Such notification normally will be communicated by personal contact or telephone, during regular working hours, to the field office having jurisdiction. After regular working hours, or on weekends or holidays, initial notification will be made through regional communication channels or the assigned field office accident standby inspector.

(2) The purpose for this initial contact is to convey to the field office the essential facts as they are known at the time, and from which a decision may be made as to the need for further investigation. If the field office decides that further investigation is or most probably will be warranted, the field office representative should, in all cases, request that the Air Traffic Service facility retain the originals of all records related to the incident or cunplaint, such as recording tapes, flight progress strips, computer data, briefing logo, etc. This requirement is essential in view of the 15-day storage limit which is applied to the retaining of such records in the absence of a special request.

(3) Thereafter, within 5 working days, the field office should advise the facility(ies) that it is either proceeding with the investigation, or the matter does not warrant further investigation and the hold on records and statements is released. If a decision is made to proceed, the field office should ask the Air Traffic Service facility to forward an Incident Report, FAA Form 8020-11, with Air Traffic Service records and other data, as evidence, in accordance with the following procedures:

A. Air Traffic Control tapes. The inspector should identify the pertinent portion of all tapes that are relevant to the incident under investigation and, with respect-to each such tape, request the facility to (1) make a cassette recording of that portion of the tape, and (2) cut and preserve that portion of the original tape. When a violation report is prepared, the cassette recording should be included as an exhibit. The facility should not be required ordinarily to make a transcription of the pertinent portion of the tape until a transcript is needed by legal counsel for use in processing a legal enforcement action.

B. Automated Radar Terminal System (ARTS) Data Recording and Analysis. The ARTS equipment has the capability to provide an altitude, speed, and heading readout. The use of the ARTS Data Reduction and Analysis (DR&A) information can provide valuable data for enforcement purposes.

(i) This information may be used to corroborate other available evidence or to resolve conflicting evidence present in a given case.

(ii) When the inspector determines, pursuant to the above policy, that ARTS data is needed, the field office manager should request the required DR&A from the manager of the appropriate Air Traffic facility.

(iii) Before a request is made, the facts, time, place, date of occurrence, and a valid need for this information should be provided by the requesting office.

c. Other Air Traffic Service records, such as flight plans and flight progress strips which the inspector determines to be pertinent to the investigation, should be requested from the appropriate facility.

D. When obtaining one of the above records from an Air Traffic facility, the inspector should also request written statements from facility personnel who have direct knowledge pertaining to the incident.

C. National Weather Service records. The inspector should carefully analyze the case to determine the extent weather is involved and obtain certified copies of sufficient data from the National Weather Service Office involved to permit an intelligent weather analysis appropriate to the case. Legal counsel may request authenticated copies of the records for use in the legal proceeding .

d. Company records. Requests or subpoenas for records of organizations, such as an air carrier, air taxi, manufacturer, or airport operator, should be made to the official custodian or a company officer. If an accident is involved and company records are needed, coordinate with the NTSB before the records are requested.

e. Aircraft flight recorder tapes. Under Section 13.7 of the Federal Aviation Regulations, the FAA is authorized to obtain and use flight recorder data in any investigation conducted by FAA since it involves a record required by the Federal Aviation Regulations to be maintained. The regulation further authorizes the use of flight recorder data in FAA enforcement actions since the regulations that require flight recorders in aircraft do not specifically limit or prohibit such use. If the decision is made to use the flight recorder material in enforcement proceedings, a certified readout of the tape will be required. Requests for a readout should be made as follows:

(1) Obtain a release for the tape from the owner or that owner's designated representative.

(2) Obtain the calibration tape.

(3) Pack the flight recorder and calibration tapes so as to prevent damage, and ship to the Office of Aviation Safety, Washington, D.C., Attention:. ASF-100.

(4) Send a letter of transmittal with the following information (Note: The FAA Representative should be identified in the forwarding documentation):

A. Owner's full name and address.

B. Make and model of aircraft involved.

c. Aircraft registration number.

D. Place and date of occurrence.

E. A brief description of the occurrence or incident and the reasons for the readout request.

F. The name of the FAA person or office to whom the tape should be returned.

(5) Ship the package by certified mail, return receipt requested.

(6) During the readout, have an FAA representative present. The representative will observe the readout and be able to testify as to its authenticity.

f. Cockpit voice recorder. The use of a cockpit voice recorder record as evidence in any civil penalty or certificate action is prohibited by the Federal Aviation Regulations (see FAR 121.359 and FAR 135.151).

g. Other government records. If a Federal or local law enforcement agency has investigated the incident, it may have valuable information. Such records often include the names of witnesses who should be interviewed by the investigating inspector. If there is any type of court proceeding, the certified copy of the court order should be obtained along with any other record of court proceedings as necessary. When violation of a foreign law or regulation is being reported, a copy of such law or regulation, in effect at the time of the violation, should be included in the investigative report.

h. Medical records. Medical records by a physician or hospital regarding treatment or tests of a person involved usually are privileged and generally cannot be obtained without the consent of the individual. If consent is not given, a subpoena may be obtained pursuant to Section 1004 of the FA Act. Release of medical records in the custody of government agencies, such as the Veterans Administration or Department of Defense, may be subject to the provisions of the Privacy Act and the Freedom of Information Act. Where required, every effort should be made to obtain from the person involved a written consent in order to obtain such records. The person involved should be presented with an FAA Form 8500-21 (5-76), "Authorization for the Release of Medical Information to the FAA," for this purpose.

410. PHYSICAL EVIDENCE. Physical evidence consists of objects or items, such as a cracked propeller, defective spar, or worn engine parts or cables, pertinent to the violation. Care must be taken so that the handling of physical evidence does not result in damage, loss, or alteration. The inspector must be prepared to testify to this fact. A chain of custody should be established. The purpose is to show who has had custody of it and that the evidence has not been changed or altered. The best procedure is to lock up the evidence in a safe place until time of hearing. If this is not possible, the inspector should know and record the name(s) of any person who has taken possession of the piece of evidence. In any event, the report should specify the location of physical evidence. (Use FAA Form 8020-2, as appropriate.)

411. SUBMISSION OF ADDITIONAL EVIDENCE/MATERIAL. The responsibility to report the facts does not end with the submission of the Enforcement Investigative Report. To have a fair enforcement program, all relevant material must be considered, no matter how late it may come to our attention. Therefore, any data which subsequently comes to the inspector's attention should be immediately forwarded, along with the inspector's evaluation and recommendations concerning the material. Additional investigation may also be requested by legal counsel. The distribution for the supplemental material will be the same as for the initial report.

412. COORDINATING THE INVESTIGATION.

a. Other FAA offices having investigatory responsibility. Investigations under the jurisdiction of the FAA are the responsibility of the Offices of Flight Standards, Aircraft Certification Service, Civil Aviation Security, Airport System Development, and Office of Airport Safety and Standards, for appropriate investigations of alleged violations. Therefore, when it appears that violations of the regulations within the jurisdiction of other offices may be involved, it is essential that appropriate coordination be maintained. In such cases, investigation and enforcement should be pursued against all regulations believed violated, in a coordinated effort.

b. Other field offices. Consistent with the geographical concept of investigation and processing of enforcement cases, as discussed in paragraph 207, it is essential that coordination be maintained with other field offices which have an interest in the investigation, especially in the case of other certificate holding offices. Coordination serves to ensure that --

(1) Other field offices are provided the opportunity to furnish any information which may be pertinent to the investigation: and

(2) The investigating field office has access to information which is known or available to the FAA and which might not otherwise be included as part of the investigation and report.

c. Other government investigatory agencies. Sane matters within the investigatory jurisdiction of FAA may also involve violations of statutes or regulations that are within the investigatory jurisdiction of another government agency. In such a case, the inspector shall proceed as follows:

(1) Immediately report the matter to the FAA regional office. However, when the situation requires immediate action, the inspector may contact the appropriate governmental agency directly.

(2) Request that agency to furnish any information it has which may be pertinent to the FAA investigation.

(3) Handle possible criminal violations within the jurisdiction of the Department of Justice or other agencies according to Chapter 6.

413. **VOLUNTARY SURRENDER OF CERTIFICATE.** At any time after the filing of a violation report, a certificate holder involved may surrender that certificate to an inspector. Where legal action may be involved, the Assistant Chief Counsel should be consulted regarding terms of the surrender. Procedures for voluntary surrender are contained in FAA Order 8710.4, **Certification:** Pilots **and** Flight Instructors, paragraph 13.

414.-499. RESERVED.

FIGURE 4-1. SAMPLE NOTICE OF AIRCRAFT CONDITION
UNDER SECTION 605(b) OF THE FA ACT

November 26, 1988

Mr. Frank Brown
Senior Vice President, Engineering and Maintenance
XYZ Airlines
P.O. Box 1234
Calabash, Indiana 54321

Dear Mr. Brown:

On November 25, XYZ Airlines operated and continued to operate B-727, N123X, on a series of revenue flights when that aircraft did not meet applicable airworthiness requirements. Specifically, this aircraft's main left forward cabin door (emergency exit) did not function normally because of mechanical defects. In the event of an emergency it was apparent to the Federal Aviation Administration (FAA) that a flight attendant could not readily operate this door because of the door defect.

Instead of using methods, techniques, and practices acceptable to the Administrator to repair the door, XYZ Airlines elected to defer the repair and placed a certificated mechanic aboard this aircraft. His duties were to operate the door on a series of flights on this date.

Under the provisions of Section 605(b) of the Federal Aviation Act of 1958, as amended, XYZ Airlines was verbally notified on November 26, 1988, at 0040 A.M., through Acting General Foreman Fred Hank, that XYZ Airlines B-727, N123Y, was not in condition for safe operation and should not be used in air transportation.

This letter constitutes written confirmation of that verbal notification, which will remain in effect for a period of five (5) days commencing at the time of verbal notification. If the condition cited above is corrected prior to the five (5) day interval and inspected and found satisfactory by a FAA Inspector, the FAA will advise you in writing that the aircraft may then be operated in air transportation.

Notify GL-FSDO-34 when corrective action has been completed.

Sincerely,

EDWARD T. DEMERIT
Principal Maintenance Inspector

FIGURE 4-2. SAMPLE LETTER OF INVESTIGATION
FLIGHT OPERATIONS

July 5, 1987

File Number: 87CE040235

Mr. John D. Smith
1711 Colorado Avenue
River City, Iowa 51649

Dear Mr. Smith:

Personnel of this office are investigating an incident occurring on July 4, 1987, which involved the operation of Cessna aircraft N57785 in the vicinity of City Park at approximately 3:15 p.m.

The aircraft was observed and identified as Cessna N57785 diving on picnickers and bathers from 3:15 to 3:35 p.m. We were informed that Cessna N57785, piloted by you, landed at the airport at 3:45 p.m. Operation of this type is contrary to the Federal Aviation Regulations.

This letter is to inform you that this matter is' under investigation by the Federal Aviation Administration. We'would appreciate receiving any evidence or statements you might care to make regarding this matter within 10 days of receipt of this letter. Any discussion or written statements furnished by you will be given consideration in our investigation. If we do not hear from you within the specified time, our report will be processed without the benefit of your statement.

Sincerely,

JOHN L. DOE
Aviation Safety Inspector

ATTCH: PRIVACY ACT NOTICE - Figure 4-9.

FIGURE 4-3. SAMPLE LETTER OF INVESTIGATION
OPERATIONS

June 5, 1987

File Number: 87GL331004

Captain John Doe
27 Oak Street
Uptown, Ohio 44482

Dear Captain Doe:

This letter is in reference to Acme Airlines' Flight 5 of June 2, 1987, which touched down approximately 400 feet short of Runway 18 when landing at Metropolitan Airport. During a preflight inspection of the aircraft involved (Boeing 727 N3765), conducted prior to a turnaround departure of Flight 5, it was found that the landing gear had been damaged and the structural integrity of the airframe affected. Further investigation disclosed that the airport boundary fence located on the approach end of Runway 18 had been damaged. A section of an aircraft landing gear retract strut was found in this area that appears to be the one missing from the subject aircraft.

A check of the aircraft maintenance log failed to disclose an entry pertaining to this mechanical irregularity.

The landing short of the runway with subsequent damage to the boundary fence and the aircraft may also have endangered the lives of the other occupants of the aircraft.

This letter is to inform you that this incident is under investigation by the Federal Aviation Administration. Since you were the pilot in command, we wish to offer you an opportunity to discuss it personally and submit a written statement. If you desire to do either, this should be accomplished within 10 days following receipt of this letter. Your statement should contain all pertinent facts and mitigating circumstances which you feel may have a bearing on the incident. If we do not hear from you within the specified time, our report will be processed without the benefit of your statement.

Sincerely,

JOHNJONES
Inspector

ATTCH: PRIVACY ACT NOTICE - Figure 4-9.

FIGURE 4-4. SAMPLE LETTER OF INVESTIGATION
MAINTENANCE

July 1, 1987

File Number: 87CE350185

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 your maintenance facilities, irregularities were noted concerning maintenance procedures and records. Specifically, a record inspection conducted on June 21, 1987, revealed 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. It was also observed that ABC Airlines' L-1049H aircraft, N-59231, also exceeded a Number 2 check by 11 hours and 3 minutes.

We invite your attention to ABC Airlines' Maintenance Manual, Part III, pages 5 through 7, and the Federal Aviation Regulations.

This is to inform you that this matter is under investigation by the Federal Aviation Administration. We wish to offer you an opportunity to discuss the incident personally and submit a written statement. If you desire to do either, this should be accomplished within 10 days following receipt of this letter. Your statement should contain all pertinent facts and any mitigating circumstances which you believe may have a bearing on the incident. If we do not hear from you within the specified time, our report will be processed without the benefit of your statement.

Sincerely,

J. V. LOOKE
Aviation Safety Inspector

For letter to individual, ATTCH: PRIVACY ACT NOTICE - Figure 4-9.

FIGURE 4-5. SAMPLE LETTER OF INVESTIGATION
AIRPORT SECURITY

CIVIL AVIATION SECURITY FIELD OFFICE
International Airport
Crystal City, Washington 12345

May 25, 1987

File Number: 87NM710456

Mr. Bob Barns
Director of Aviation
Frod Air Terminal
Frod, Washington 12345

Dear Mr. Barns:

Lt. A. R. Wright, Commander, Patrol Division, Police Department, Frod, Washington, has advised us that on May 22, 1987, at approximately 1520 hours, XYZ Airlines Supervisor, Harry Honer, contacted Officer Dave Dipple and told him that a number of unbadged personnel had entered the Frod air operations area via the CAP baggage gate. Wright understood that these personnel were let onto the air operations area by an airport employee, however, after entering, they were unescorted.

This letter is to inform you that this office is investigating the circumstances surrounding the alleged failure to implement Section VI.B. of the Frod Airport Security Program, in violation of the Federal Aviation Regulations. We would appreciate receiving any evidence or statement you might care to make regarding this matter within ten (10) days following receipt of this letter. Your statement should contain all pertinent facts and any extenuating or mitigating circumstances which you feel may have a bearing on the incident. If we do not hear from you within the specified time, our report will proceed without the benefit of your statement.

Sincerely,

GARY G. GROUPER
Manager, CYS CASFO

For letter to individual, ATTCH: PRIVACY ACT NOTICE - Figure 4-9.

FIGURE 4-6. SAMPLE LETTER OF INVESTIGATION
AIRPORT OPERATIONS

December 2, 1987

File Number: 87GL810001

Airport Manager
ARC Airport
Frankly, Ohio

Dear Sir:

This letter is in reference to an accident which involved a Cox Airlines DC-10 aircraft which landed on Runway 10 at your airport November 26, 1987. The aircraft apparently struck a snowbank which sheared off the right main gear. Information reported to us indicates that this snowbank, exceeding the height limitations of Part 139 of the Federal Aviation Regulations, was located adjacent to the edge of Runway 10, approximately 4,000' from the approach end of that runway and that the appropriate notification had not been issued through the Notice to Airman System.

This letter is to inform you that this incident is under investigation by the Federal Aviation Administration. We wish to offer you an opportunity to discuss this matter in person or submit a written statement on this matter. If you desire to do either of these, the action should be accomplished within 10 days following receipt of this letter. Your statement should contain all pertinent facts and any extenuating or mitigating circumstances which you feel may have a bearing on this accident from an airport-related viewpoint.

If we do not hear from you within the specified time, our report on this matter will be processed for action without the benefit of your statement.

Sincerely,

JOHNPAULJONES
Airport Certification Safety Inspector

For letter to individual, ATTCH: PRIVACY ACT NOTICE - Figure 4-9.

FIGURE 4-7. SAMPLE LETTER OF INVESTIGATION
MANUFACTURING
Manufacturer Quality Assurance System Breakdown
Product Shipped
(FAR Section 21.165 (a) and (b))

CERTIFIED MAIL

September 5, 19XX

File Number 84NM220010

Aircraft Builders, Inc
Attention: Mr. J. Smith
Acting Director, Quality Assurance
1234 Dish Street
Lizard Flats, Arizona 85000

Dear Mr. Smith

Aircraft Builders, Inc., the holder of Production Certificate No. 399NM, presented Aircraft Model ABI-1234-1, Serial No. 1234, for airworthiness certification on September 1, 19XX. This aircraft did not conform to type design and was not in a condition for safe operation.

Findings are as follows:

1. Passenger door P9 left did not open when attempting an escape slide deployment operation (reference QCM Section 9-1, Assembly Test Procedure No. 234).

2. When attempting an escape slide deployment on passenger door P9 right, the door opened but the actual slide inflation sequence was disrupted when the slide did not immediately separate from the slide packboard. When the slide did inflation, it was noted that the swedge had pulled off one of the release cables that extracted the soft cover retainer pins.

3. After slide/raft deployment of passenger door P4 right, a cut of approximately 3/8 inches was found in the raft, allowing air leakage. The cut was located at the lower forward end of the raft and approximately one inch from the lower end of the battery pack for the slide lights.

4. Right passenger compartment emergency oxygen doors failed to open when manual release in cockpit was actuated. Door locations as follows: 2S, 3G, P5R, 266GF, and 29GF. This condition does not meet the requirements of functional test procedure K6S82 Change AB, dated May 25, 19XX.

FIGURE 4-7, page 2.

5. Lavatory waste receptacle enclosure doors in all five (5) lavatories are not sealed for the containment of possible trash fires, as required per drawing 233267 dated April 1, 19XX, (reference Airworthiness directive 83-08-00, dated March 15, 19XX).

The Federal Aviation Regulations require that the holder of a production certificate shall maintain the Quality Control System in conformity with the data and procedures approved for the production certificate and shall make a determination that each completed product submitted for airworthiness certification or approval conforms to the type design and is in a condition for safe operation.

This letter is to inform you that this matter is under investigation by the Federal Aviation Administration. We would appreciate receiving any evidence or statements you might care to make concerning this matter within ten (10) working days of receipt of this letter. This evidence or statements should be in sufficient detail to establish quantity and location of any affected part. Any discussions or written statements will be given consideration in the final conclusion of our investigation. However, if we do not hear fran you within the specified time, our report will be processed without the benefit of your statement.

Sincerely,

J.A. Magnum
Manager

For letter to individual, ATTCH: PRIVACY ACT NOTICE - Figure 4-9.

FIGURE 4-8. SAMPLE LETTER OF NOTIFICATION CLOSING OF INVESTIGATION

August 15, 1987

File Number: 87 CE040235

John D. Smith
1711 Colorado Ave
River City, Iowa 51649

Dear Mr. Smith:

On July 5, 1987, you were advised that the Federal Aviation Administration was investigating an incident which reportedly occurred on July 4, 1987, in the vicinity of City Park, and involved your operation of Cessna N57785.

This letter is to inform you that our investigation has not established a violation of the Federal Aviation Regulations, and you may consider the matter closed.

Sincerely,

JOHN L. DOE
Aviation Safety Inspector

FIGURE 4-9. 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 the Federal Aviation Act of 1958, 49 U.S.C. Section 1301, et seq., and regulations issued thereunder codified in Part 13 of Title 14 of the Code of Federal Regulations. Submission of information is voluntary. The request for information is intended to provide you with an opportunity to participate in the investigation.

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 routine uses as they appear in System of Records No. DOT/FAA 847 as published from time to time in the Federal Register.

D. Effect of failure to respond: The FAA cannot impose any penalties upon you in the event that you fail to respond to this enforcement investigation letter. Failure to supply the requested information, however, will result in enforcement determinations without the benefit of your comments on the alleged incident.

FIGURE 4-10. CERTIFICATE OF AUTHENTICITY

CERIFICATE

I, _____
_____,
certify that this is a true and canplete copy
or duplicate of: _____
_____
located at: _____
_____
_____
Date: _____

Signature: _____
Office: _____

CHAPTER 5. SPECIAL INVESTIGATIVE PROCEDURES.

500. PURPOSE. While the guidance provided in Chapters 4 and 9 generally apply to the investigating and reporting of all violations, certain enforcement cases may require special handling. This chapter provides guidance for handling some special cases.

501. VIOLATIONS BY MEMBERS OF THE U.S. ARMED FORCES.

a. In accordance with section 1002(a) of the FA Act, when a member of the Armed Forces; while in the performance of official duties, is involved in a violation of the FAR, 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 designee of the action taken.

b. Except as provided in subparagraph e., below, the inspector need not conduct the full investigation needed to satisfy an FAA enforcement action. However, the investigation must be sufficiently complete to enable the Assistant Chief Counsel to determine that there is adequate information to support referral of the complaint to the military. In such cases, the inspector shall --

(1) Gather all evidence and other information known to the FAA (e.g., controller statements, tapes, transcripts);

(2) Obtain statements or other evidence from sources outside of 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) For statistical purposes, prepare an FAA Form 2150-5 from available information.

C. The field office forwards a transmittal letter along with the Form 2150-5, the inspector's statement, and all evidence, to the regional office for processing as soon as practicable following the incident.

d. The Assistant Chief Counsel refers the matter to the appropriate military department pursuant to Section 1002 of the FA Act (see paragraph 1003a).

'e. Violations by members of the U.S. Armed Forces should be fully investigated and reported in accordance with instructions in Chapters 4 and 9 when --

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

(2) The alleged 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 alleged violator.

502. VIOLATIONS OF FOREIGN'AVIATION REGULATIONS.

a. General.

(1) 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 should be referred to the regional offices having geographical responsibility for the country filing the complaint.

(2) In all cases, the region having geographical responsibility for the country filing a complaint should investigate, report, and process the violation.

b. 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 ultimately reporting back 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) Any FAA investigation in a foreign country shall be conducted with the concurrence of the appropriate foreign aviation authorities and coordinated with the U.S. Foreign Service Post in that country.

(3) When additional vital 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 office should direct the request to the foreign aviation authorities that submitted the original complaint. Information copies of such communications should be provided to the appropriate U.S. Foreign Service Post. (See paragraph 1003b. regarding processing of EIR).

503. VIOLATIONS OF U.S. REGULATIONS BY FOREIGN PERSONS OR COMPANIES. These violations are investigated and reported in accordance with Chapters 4 and 9. Since an enforcement file may be referred to a foreign government, it is very important that a thorough, comprehensive, factual investigation be conducted. The EIR must be accurate and conclusively prove the violations. When it is necessary to obtain investigatory evidence through a foreign government, the investigating office should consult with, and, if appropriate, obtain 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 office will forward the completed EIR to its parent regional office for processing in accordance with paragraph 1003c.

504. VIOLATIONS BY AGENCY EMPLOYEES AND AGENCY-OPERATED REPAIR STATIONS.

a. When FAA employees or certificated repair stations operated by the FAA are involved in violations of the Federal Aviation Regulations, they are subject to FAA enforcement action in the same manner as violations involving industry or private persons.

b. When the violation is committed by an employee below the regional division manager level, the investigation and report will be conducted and processed by the regional division responsible for the geographical area in which the violation is discovered. Any required legal enforcement action will be processed by Assistant Chief Counsel for the region.

c. When the violation is committed by a regional division chief or above, investigation and processing is the responsibility of the appropriate Executive Director and the Chief Counsel.

d. The investigating office should coordinate closely with the employing region, whenever different, to assure that proper consideration is given to any personnel or administrative corrective actions taken in the matter by the employing region.

e. When the violation involves an agency-operated repair facilty, the case will be forwarded by the regional division manager directly to the director of the facility listed below for corrective action.

(1) Headquarters Aircraft Management - to Office of Aviation Standards, AVS-1.

(2) Aeronautical Center - to Director, Aeronautical Center, AAC-1.

(3) FAA Technical Center - Director, FAA Technical Center, ACT-1.

(4) Other locations - to the office manager having repair station certificate responsibility.

505. VIOLATIONS OF THE HAZARDOUS MATERIALS REGULATIONS.

a. Under Section 110 of the Hazardous Materials Transportation Act, any person who violates a Hazardous Materials Regulation is subject to a civil penalty of not more than $10,000 for each such violation. See paragraph 1207.

b. The investigation and reporting of violations of the Hazardous Materials Regulations are conducted in the same manner as violations of the Federal Aviation Regulations.

c. Section 110 of the Hazardous Materials Transportation Act further prescribes criminal penalties for willful violations. Should the investigation disclose evidence of possible willful violation of the Hazardous Materials Regulations, the matter should be handled in accordance with criminal violation procedures. See Chapter 6.

d. When a violation involves an incident that requires the submission of a Hazardous Materials Incident Report, DOT Form 5800.1, by the air carrier pursuant to 49 CFR 175.45(c), a copy of the DOT Form 5800.1 should be included in the file as an item of proof. This report is part of the documentation that may be used to verify a violation. The report must be made whenever, as a direct result of hazardous materials, any circumstances set forth in 49 CFR 175,45(c) occur, or there has been unintentional release of hazardous materials from a package. If no incident report was submitted, as required by 49 CFR 175.45(c), a violation report should be filed against the offending air carrier for this omission.

e. The investigating inspector should determine whether the alleged violator is operating under an exemption issued by the Office of Hazardous Materials Transportation (OHMT) and, in such case, advise the Civil Aviation Security Division, ACS-100, immediately. (ACS-100 will advise OHMT, as appropriate.) This information and action should be reported in the EIR.'

506. VIOLATIONS BY INDIVIDUALS OF FAR SECTIONS 107.21 OR 108.11.

a. FAR Section 107.21.

(1). Sanction. Incidents which constitute an apparent violation of this section should be pursued through legal enforcement action. These incidents may also be criminal violations under section 902(i) of the FA Act and subject to investigation by the FBI and prosecution by a U.S. Attorney. Persons involved in such incidents may also be in violation of a state statute or local ordinance dealing with the carriage of weapons. For those cases where Federal or local authorities prosecute, the penalties incurred in such a proceeding may be considered in determining the appropriate sanction to be sought by the FAA.

(2) Procedure. Where witness statements will be needed to support a violation, such statements should be obtained as soon as the investigator is aware a violation has occurred. Individuals should be sent a standard letter of investigation. When a written response to the letter of investigation is not received, or upon receipt determined to be a denial of the allegation, a vigorous attempt to interview and obtain a signed statement from the individual.

b. FAR Section 108.11. During the conduct of an investigation of an air carrier for failure to prevent the carriage of a weapon aboard an aircraft, an attempt to interview the individual who carried the weapon should be made. When conducting the interview, the investigator must inform the individual'that although the point of the the interview is to establish the facts relevant to the air carrier's actions, the individual may also be subject to enforcement actions for violation of 108.11 and 107.21, or criminal prosecution by other appropriate authority. Consult with legal counsel. In those instances where the information indicates the likelihood of such violations by the passenger, a separate EIR involving the passenger, to include all regulations alleged violated by the passenger, should be prepared.

507. VIOLATIONS BY INDIVIDUALS OF FAR SECTIONS 91.8, PROHIBITING INTERFERENCE WITH CREWMEMBERS. Incidents involving assault, intimidation, or threats against flight crewmembers or flight attendants may be criminal violations of Section 902(j) of the FA Act as well as violations-of Section 91.8 of the FAR. These incidents are subject to investigation by the FBI for possible criminal prosecution by a U.S. Attorney, and they constitute an area of concern to the agency. Interference with crewmembers may seriously jeopardize aviation safety, preventing flight attendants from performing their functions, and often requiring flight crewmembers to leave their cockpit duty stations. An investigation shall be initiated in each instance, and coordinated in accordance with the procedures in Chapter 6. For those cases where Federal or local authorities prosecute, the penalties incurred in such a proceeding may be considered in determining the appropriate sanction to be sought by the FAA.

588. EXCLUSIVE RIGHTS AND UNJUST DISCRIMINATION AT AIRPORTS. Section 308(a) of the FA Act prohibits the granting of an exclusive right for the use of a landing area or air navigation facility upon which Federal funds have been

expended. Under assurances required by the airport grant program, an airport receiving Federal grants is prohibited from unjustly discriminating against users of an airport.

a. Agency regulations, policies, and procedures pertaining to exclusive rights and unjust discrimination at airports are set forth in FAR Parts 151 and 152, Agency Order 5190.6, Airports Compliance Requirements.

b. Agency personnel administering the airports compliance program are responsible for initial investigation of canplaints alleging exclusive rights or unjust discrimination. Such complaints may require formal investigations or adjudications in accordance with FAR Part 13. In order to determine the applicability of FAR Part 13 and to assure that its applicable provisions are complied with, Airports field and division offices administering the airports compliance program should consult with the Assistant Chief Counsel when responding to such complaints.

509. CASFS INVOLVING SUBMISSION TO ALCOHOL TESTING.

a. Background. Section 91.11(a) of the FAR prohibits acting or attempting to act as a crewmember of a civil aircraft --

(1) Within 8 hours after the consumption of any alcoholic beverage (91.11(a)(1));

(2) While under the influence of alcohol (91.11(a)(2)): or

(3) While having 0.04 percent by weight or more alcohol in the blood (91.11(a) (4)).

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

In addition, a crewmember of a civil aircraft is required, in certain circumstances, to submit to testing to indicate the percentage by weight of alcohol in the blood (91.11(c)(1) and 61.16). The request must be made by 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. The officer will not be enforcing FAA rules, however, the test results may be used by the FAA in an enforcement proceeding against a crewmember. There must be a reasonable basis to believe that a crewmember may have unlawfully used alcohol in connection with his or her duties. Compliance with the request is required of the crewmember. Failure to submit to the test could result in suspension or revocation of an airman certificate, and denial of a new certificate or rating. Offending flight attendants or other crewmembers who do not hold airman certificates are subject to civil penalty action. The law enforcement officer conducting or obtaining the test will be acting under his or her own state or local authority.

An alcohol test is necessary to prove a violation of FAR 91.11(a)(4) (the .04 rule), but it is not necessary to prove a violation of 91.11(a) (11 (the 8-hour

rule) or 91.11(a)(2) (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.

b. Individual situations. If any inspector has an indication that a person has served or attempted to serve as a crewmember in violation of the alcohol rules, he or she should investigate to the full extent practicable. The following are examples of how an investigation might be conducted. In this discussion, "inspector" is used broadly to refer to all FAA personnel who have authority to conduct investigations, e.g., Aviation Safety Inspectors and Civil Aviation Security Special Agents.

(1) Inspector on the scene. If an inspector encounters a crewmember whom he or she has reasonable grounds.to believe (such as by personal observation or credible witnesses) is violating or has violated the alcohol rules, the inspector should investigate as follows:

A. Request identification. FAA pilot certificate and medical certificate is preferred: if none, request other form of official identification. Advise the individual not to fly or perform crewmember duties in violation of the alcohol rules. If the individual refuses to present identification --

(.I) Attempt to identify the individual by contacting the local fixed base operator or other airport personnel: and

(ii) Determine name and address of the registered owner of the aircraft to assist in identifying the individual.

B. 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 tests or have tests conducted, and inform the officer of the FAA rules. If the officer indicates 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 as to his or her observations regarding the crewmember. In either event, the inspector should conduct a full investigation and collect all relevant evidence regarding the violation.

c. 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.

D. If the crewmember is taken to a hospital or other medical facility for a blood test, the law officer will have the test conducted pursuant to state or local law. The inspector can obtain the results from the appropriate local law enforcement office, or request the crewmember to provide the test results under the authority of Section 91.11(c)(2) of the FAR. The inspector should ask the individual to sign a release form, such as

Figure 5-1, to assist in obtaining results. This may be done by letter, such as Figure 5-2. The Privacy Act Notice for submission to alcohol tests must be attached. See Figure 5-3.

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 Section 91.11(c) (2). If the investigator is unsuccessful in obtaining the test results from the police, a letter (certified, express, or hand delivered) should be sent to the crewmember with a 'release form, requesting that the crewmember furnish the test results or authorize the release of the test results to the FAA, or enforcement action may be taken. See Figure 5-2. If the crewmember fails to comply with the letter, the inspector should initiate enforcement action for violation of Section 91.11(c) (2). Tne draft letter includes a request for release of drug test results under Section 91.11(d), because generally the inspector will not knw whether the questioned behavior is due to alcohol or drugs or both.

E. If an individual refuses to consent to the alcohol test when requested by the law enforcement officer, the inspector should initiate emergency or normal enforcement action depending on the circumstances and severity of the incident. The action might be based on a violation of Section 91.11(c)(a) for failure to take the test, and if the evidence warrants, Section 91.11(a)(1) and/or (2). Generally, if it appears the airman may exercise the privileges of the certificate, emergency action is appropriate.

F. If the individual tries to leave the scene, do not attempt to physically detain. Airport security or local law enforcement office should be called to take action under their authority. A description of the individual and any vehicle used, including license plate identification, should be noted for use in identifying the individual. If on a controlled airport, the inspector should notify air traffic control to attempt radar tracking in the event the individual takes off in the aircraft.

(2) Complaint. The district office may receive telephone notification or other complaint of operating or attempting to operate under the influence. If an inspector is unable to go to the scene, the law enforcement office nearest to the scene should be called for assistance. If the test is' conducted, the evidence may be obtained as in (1), above. It is important to determine if the individual consumed any additional alcohol between the flying and the test.

c. Evidence and recommended action.

(1) The inspector should make sure that all evidence is preserved, regardless of whether an alcohol test was conducted. Such evidence may include statements of witnesses, the inspector's records of conversation with witnesses, police reports, hospital records, and test results. The inspector should attempt to show in the report the following evidence. This list does not identify all evidence which may be appropriate for an individual EIR, nor would the omission of one or more of these items necessarily preclude enforcement action.

A. when (time and date) the crewmemher acted or attempted to act as a crewmember.

B. Identify each person (inspector, controller, police, other witness) who observed the questioned behavior, including both those whose observations do and do not support a finding that the crewmember violated the regulations.

c. Why the person in B developed the belief that the crewmember was under the influence of alcohol (observed the drinking, stumbling gait, slurred speech, odor, difficulty dealing with ATC, etc.) or was not under the influence, as the case may be.

D. When the belief in B was formed.

E. What action was taken by the witness.

F. The details of the police investigation (e.g. field sobriety test, confirmation test).

G. The time any alcohol test was done.

H. Whether the crewmember had an opportunity to drink between the alleged violation and the time the alcohol test was taken.

I. Indication of the qualifications of the person who conducted the test (e.g. verbal statement from the police officer that he had been trained).

(2) In all cases, the district office should consult a regional specialist and 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.

(3) The inspector should evaluate whether violations of 91.11(a), (b), or (d), or a combination, should be charged. If the evidence does not establish an alcohol level of .04 or more it may still support a charge of violating (a) or (b). If the crewmember has refused to take a test, charging a violation of Section 91.11(c) (2) should be evaluated.

(4) If an individual operated or directed the operation of an air carrier while under the influence of alcohol, the inspector should consult with his or her regional office and legal counsel to determine whether to refer the case for criminal action under 49 U.S.C. 342.

d. Privacy Act. Due to the sensitivity of the alcohol test results, it is very important that the results not be released without careful review of Privacy Act requirements. As in any enforcement investigation, all evidence must be confidential. Request for release of information shall be handled in accordance with FAA Order 1200.23, Public Availability of Information. An enforcement report or any part of a report can only be released by legal counsel.

510.-599. RESERVED.

FIGURE 5-1. 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)

hereby 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 level of alcohol in my blood or the presence of any drugs in my body. This authorization is given pursuant to Sections 91.11(c)(2) and 91.11(d) of the Federal Aviation Regulations to investigate a possible violation of Sections 91.11(a)(1), (a)(2), (a)(3), or (a)(4) of the Federal Aviation Regulations.

Reproduction of this authorization shall be deemed as effective as the original.

_____ _____
Date (Signature)

ATTCH: PRIVACY ACT STATEMENT - Figure 5-3

FIGURE 5-2, page 1. SAMPLE LETTER REQUESTING
RELEASE OF ALCOHOL TEST RESULTS

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

John Jones
43 Main Street
Hometown, OH 22222

Dear Mr. Jones:

An investigation by the Federal Aviation Administration indicates that on July 1, 1987, from about 12:00 p.m. to about 12:30 p.m., you may have operated an aircraft in violation of Sections 91.11(a)(1), (a)(2), (a)(3), or (a) (4) of the Federal Aviation Regulations. 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 facilities in any way contrary to safety; or

(4) While having .04 percent by weight or more alcohol in the blood.

Pursuant to Section 91.11(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 level of alcohol in your blood 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 ccxnplete and sign in order to authorize the release of such test results. Our investigation indicates that such a test was conducted on July 1, 1987, at about 2:00 p.m., at Hometown General Hospital, Hometown, Ohio.

Your failure to furnish the test results or signedrelease form within 7 days of service of this letter may result in the suspension or revocation of your pilot certificate for violation of Section 91.11(c)(2) or (d), or both.

Sincerely,

Mary Smith
Aviation Safety Inspector

Enclosure

ATTCH: PRIVACY ACT STATEMENT - Figure 5-3

FIGURE 5-2, page 2.

AUTHORIZATION FOR THE RELEASE OF TEST RESULTS TO
TEE FEDERAL AVIATION ADMINISTRATION

TO WHOM IT MAY CONCERN:

I, John Jones (Name), born on _____ (Date)

at _____ (City) _____ (State or Country), presently residing at

43 Main Street, Hometown, OR 22222
(Street address)

hereby 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 July 1, 1987 (Date)

between 12 : 00 (Time) am/pm and 4 : 00 (Time) am/pm,

that indicates the level of alcohol in my blood or the presence of any drugs in my body. This authorization is given pursuant to Sections 91.11(c)(2) and 91.11(d) of the Federal Aviation Regulations to investigate a possible violation of Sections 91.11(a)(1), (a)(2), (a)(3), or (a)(4) of the Federal Aviation Regulations.

Reproduction of this authorization shall be deemed as effective as the original.

_____ Date _____ (Signature)

ATTCH: PRIVACY ACT STATEMENT - Figure 5-3

FIGURE 5-3. PRIVACY ACT NOTICE FOR SUBMISSION TO ALCOHOL TESTS.

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 the Federal Aviation Act of 1958, 49 U.S.C. Section 1301, et seq., and regulations issued thereunder codified in Part 13 of Title 14 of the Code of Federal Regulations, including Section 91.11(c) (2) and (d) of the Federal Aviation Regulations (14 C.F.R. 91.11(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 routine uses as they appear in System of Records No. DOT/FAA 847 as published fran time to time in the Federal Register.

D. Effect of failure to respond: If you fail to provide the information requested, the FAA may take enforcement action.

CHAPTER 6. CRIMINAL INVESTIGATIONS

600. PURPOSE. The Federal Aviation Administration has responsibility for the investigation of certain criminal acts under the Federal Aviation Act of 1958, as amended (FA Act), and other criminal statutes. This chapter provides guidance for the investigation and processing of knowing and willful violations of criminal statutes within the investigatory jurisdiction of the FAA, and procedures for the referral and coordination of cases involving other criminal statutes. The statutes are paraphrased below for quick reference. The full texts of the statutes cited appear in Appendix 5, Selected Civil and Criminal Statutes.

601. COORDINATION OF POSSIBLE CRIMINAL VIOLATIONS.

a. When it appears to an FAA employee that there may be a violation of any criminal statute, in a matter involving aviation, that person shall immediately bring the matter to the attention of the regional office. The regional manager shall immediately coordinate with the Civil Aviation Security (CAS) Division and the Assistant Chief Counsel in accordance with Order 1600.38B, for referral to the appropriate office or agency for investigation, or to the U.S. Attorney for prosecution.

b. In any event, if safety requires, FAA personnel should take immediate action as necessary. Such action may include emergency revocation of a certificate or seeking an injunction in U. S. district court.

c. As in all cases, FAA personnel should identify possible witnesses and preserve other sources of evidence, but unless safety requires, agency personnel ordinarily should not speak to the alleged violator about the alleged violation once the possible criminal activity is identified.

602. CRIMINAL VIOLATIONS INVESTIGATED BY THE FAA. The Civil Aviation Security (CAS) Divisions in the regions should promptly investigate and report, under the provisions of FAA Order 1600.38B, all alleged or suspected criminal violations under the jurisdiction of the FAA, as follows:

a. Sections 902(a), (b), (c), (e), (f), and (g) of the PA Act (49 U.S.C. 1472 (a), (b), (c), (e), (f), and (g)):

(1) General (criminal penalties) (902(a));

(2) Forgery of certificates and false marking of aircraft (902 (b));

(3) Interference with air navigation (902(c)):

(4) Failure to file reports: falsification of records (902(e)):

(5) Divulging information (902(f)); and

(6) Refusal to testify (902(g)).

b. Willfully serving in any capacity as an airman, without proper airman certificate, in connection with the felonious transportation by aircraft of a controlled substance (Section 902(q) of the FA Act (49 U.S.C. 1472(q)).

c. Violations involving the security control of air traffic (Section 1203 of the FA Act (49 U.S.C. 1523)).

d. "Hazardous Materials" (Section 902(h) of the FA Act (49 U.S.C. 1472 (h)), and willful violations of the Hazardous Materials Regulations (Section 110(b) of the Hazardous Materials Transportation Act (49 U.S.C. 1809(b)).

e. Section 517 of the Airport and Airway Improvement Act of 1982 (49 U.S.C. 2216), False Statements: Relates to the making of a false statement, false representation, or false report to the Secretary by an individual or entity (an agent of the United States or otherwise) in conjunction with the submission of reports or documents required under that Act.

603. CRIMINAL VIOLATIONS INVESTIGATED BY OTHER DEPARTMENTS OR AGENCIES.

a. Violations under the Federal Aviation Act. Congress amended the FA Act of 1958 to add, in Section 902(i) through (n), and (r), certain criminal penalties, and expressly provided that they be investigated by the FBI. A field office becoming aware of these acts shall, in the case of air piracy, immediately notify the regional communication center, and in all other cases the CAS Division, who will advise the FBI. These acts include --

(1) Aircraft piracy;

(2) Interference with flight crewmembers or flight attendants:

(3) Certain crimes aboard aircraft in flight:

(4) Carrying weapons or explosives aboard aircraft:

(5) False information and threats (regarding certain criminal acts) ;

(6) Aircraft piracy outside special aircraft jurisdiction of the United States: and

(7) Certain crimes regarding secured areas of airports.

b. Violations of other criminal statutes. The following are examples of provisions of Title 18, United States Code, for which FAA personnel may discover possible violations. Possible violations of these provisions should be handled in accordance with paragraph 601, above.

(1) 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).

(2) 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).

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

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

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

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

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

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

604. CONCURRENT CRIMINAL AND CIVIL VIOLATIONS. At times an incident requiring investigation by the FBI (or other Federal, state, or local law enforcement agency) may also be a violation of the FAR or involve some other related violation which falls within the investigative responsibility of the FAA. FAA personnel should proceed in accordance with paragraph 601. The required investigation of such an incident by the FAA must be closely coordinated with the FBI or other responsible law enforcement agency.

a. An example of joint responsibility is a case involving a passenger who carries a weapon aboard an aircraft and also drinks from his own liquor supply. Such a passenger could be in violation of Section 902(l) of the FA Act (an FBI responsibility) as well as FAR Sections 107.21, 108.11, 108.21, or 121.575. In such a case, the violations of the FAR should be investigated by the FAA in accordance with the procedures set forth in this Order.

b. Generally, FBI or other criminal investigations will be given priority and any FAA investigations will be held in abeyance when so required by the FBI, U.S. attorney or local authority. However, when it appears that aviation safety and the public interest require immediate certificate action or other enforcement action, the inspector, in coordination with legal counsel, shall complete the investigation (see paragraph 1215). In any case, close coordination shall be maintained with the FBI or other investigative or prosecuting agency.

c. When the FAA agrees to hold its investigation in abeyance, the FAA shall offer assistance to the FBI and/or other agency, and request to be informed when the investigation has been completed.

d. Upon notification that the FBI (or other agency) investigation has been completed, the inspector shall consult with that agency to determine --

(1) Whether any evidence was procured which establishes a violation of the regulations:

(2) What, if any, criminal action is contemplated by the U.S. Attorney or other prosecuting attorney: and

(3) Whether additional investigation by the FAA is needed and whether it would jeopardize or otherwise interfere with any planned prosecutive action. In the event that no conflict would arise and further investigation is required, the inspector should promptly complete the FAA investigation.

e. When the FAA is requested to hold its Investigation in abeyance for good cause until after the completion of the criminal action, the inspector shall notify the regional office and obtain guidance regarding the request.

f. The inspector should prepare a violation report, when sufficient evidence is available, either through FAA, FBI, or local agency investigations, to establish a violation of any FAR, even though criminal action is taken or contemplated by the Department of Justice or a local prosecutor.

g. Copies of official reports prepared by the FBI, or local agency, in connection with its investigation should not be included in the EIR. However, information from such reports may be used to obtain leads for the FAA inspector to seek evidence. In addition, to avoid unnecessary repetition in the FAA investigation, any evidence or other pertinent information made available to the inspector as a result of a FBI or local agency investigation should be incorporated in the EIR.

605. **STOLEN AIRCRAFT.** The investigation of stolen aircraft or avionics is a responsibility of the FBI or appropriate local law enforcement agency. However, FAA personnel and facilities are uniquely qualified to assist in the location and eventual recovery of such aircraft. FAA Order 1600.29B prescribes the procedures for FAA participation.

606.699. **RESERVED.**

CHAPTER 7. FORMAL FACT-FINDING INVESTIGATIONS

700. PURPOSE. The purpose of this chapter is to provide guidance on the use of formal fact-finding investigations which may be instituted to assist the agency in finding facts material to the exercise of its functions.

701. AUTHORITY. Under Sections 313, 1002(b), and 1004 of the Federal Aviation Act of 1958, as amended (FA Act), Section 6(b) of the Administrative Procedures Act, and Section 109 of the Hazardous Material Transportation Act (HMT Act), the agency may conduct formal fact-finding investigations. Such investigations are conducted pursuant to an order of investigation issued under Part 13 of the Federal Aviation Regulations.

702. USE OF THE FORMAL FACT-FINDING INVESTIGATION. The fact-finding investigation involves the use of legal process as an investigative aid. For example, the FAA may order an investigatory hearing, utilizing the Administrator's authority under Section 1004 of the FA Act, to obtain evidence of possible violations. The fact-finding investigation procedure makes it possible to compel testimony and to obtain documents which 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 which 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 bogus parts.

703. REQUESTS FOR FORMAL FACT-FINDING INVFSTIGATIONS. When planning an investigation, or at any time during an investigation, the inspector may find that the formal fact-finding procedure is needed to conduct a full and complete investigation. For example, an inspector may be unable to obtain a statement from a key witness, or obtain essential records for FAA inspection. In such situations, the field office should request, through the regional division, the issuance of an order of investigation by legal counsel.

704. INITIATING THE FORMAL FACT-FINDING INVESTIGATION.

a. Within the FAA, the Administrator's powers to issue subpoenas, administer oaths, examine witnesses, receive evidence, require the production of records, take depositions, and enforce compliance with these processes in the conduct of formal fact-finding investigations have been delegated to legal counsel. When it is determined that a formal fact-finding investigation is necessary, legal counsel will issue an order of investigation pursuant to Part 13. See Figure 7-l.

b. It should be noted that the Administrator's authority under Section 1004 of the FA Act may be exercised pursuant to Part.13, in appropriate cases, without ordering a formal fact-finding investigation.

705. CONDUCT OF THE FORMAL FACT-FINDING INVESTIGATION. The presiding officer, as designated by the order of investigation, will conduct the investigation in accordance with procedures in Subpart F of Part 13. He or she may designate additional persons to assist in the investigation, such as inspectors from the investigating field offices. A written report of the

investigation will be prepared by the presiding officer The purpose of the formal fact-finding investigation is to develop facts. It is not adjudiciatory in nature. The investigating office, on the basis of evidence developed in the formal fact-finding investigation and any other information in its possession, shall recommend appropriate enforcement action. In the event that 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, the Emergency Order and the enforcement investigative report will be substituted in lieu of the written report.

706. USE OF ADMINISTRATIVE SUBPOENAS; In an investigation circumstances may arise under which the use of an Administrative Subpoena may be of assistance. A subpoena requires the person on whom it is served to provide either evidence or testimony on matters that are under investigation. Generally subpoenas are not required in an investigation, but where an attempt has been made to acquire evidence or information, and the holder of the information has refused refused to produce it, a subpoena may be used to compel production of the information. Subpoenas may be issued only by the Chief Counsel, the Deputy Chief Counsel, or an Assistant Chief Counsel. While most administrative subpoenas are issued to obtain records, documents or other physical evidence, they may also be used to obtain testimony.

a. A formal Order of Investigation is not a prerequisite to issuance of a subpoena. Subpoenas may be enforced under Section 1007 of the FA Act.

b. The following is general guidance for the use of subpoenas. It is not intended to restrict the use of subpoenas under other valid circumstances.

(1) Subpoenas should be used for valid investigative purposes to provide information or evidence that reasonably relates to the matter under investigation.

(2) Subpoenas may be served on the subject of an investigation or on other individuals who have information but are not the subject of the investigation.

(3) Other investigative means generally should be used prior to using a subpoena, unless there is reason-to believe that the other means would not be effective. Normally a request should be made for items or information before requesting and serving a subpoena. If, however, there is reason to believe that evidence will be destroyed if a simple request for the evidence is made a subpoena may be issued and served as the first request for information.

(4) Many individuals or corporations, while willing to provide information, are reluctant to do so without a subpoena to protect themselves from action by the subject of the investigations. Under these circumstances they may be perfectly willing to produce the information when a subpoena has been issued.

b. In order to obtain a subpoena a request must be made to the Office of the Chief Counsel or to an Assistant Chief Counsel. The inspector provide the following information to counsel so that a determination can be made on the issuance of a subpoena:

(1) why is a subpoena needed? This should include an explanation of why normal investigative techniques have not produced, or may not produce, the evidence sought.

(2) What is requested? If documents or evidence are requested, there should be an accurate description of the documents to be subpoenaed. The items requested should be reasonable in both their scope and duration. It should be recognized that response to a subpoena will be a burden on the person on whom it is served. Therefore, while all of the information'or documents that needed should be requested, the subpoena should cover no more than it is reasonably expected may be needed to complete the investigation.

(3) Where are the documents or evidence located?

(4) Who is the custodian of the documents or evidence?

(5) Where do the documents or evidence need to be produced? Consideration should be given as to 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? Under normal circumstances a reasonable time should be provided to allow for the documents to be produced. If there are reasons to believe that documents, records or evidence may be destroyed, consideration should be given to whether the items should be produced immediately. Under appropriate circumstances documents may be produced by mail.

c. Once a subpoena has been issued, generally it is served personally upon the individual or corporation. If the subpoena contains a "return of service" it is important that it be fully completed indicating to whom, when, where, and how service of the subpoena was made. If there is no return of service then a memorandum should be prepared specifically listing all of the details of how the document was served.

d. It is important that the investigator closely coordinate with counsel on the use of subpoenas and seek advice as to whether subpoenas will be of help and how they are to be used. Subpoenas can be a very effective tool in the investigatory process when other investigatory means have proven unsuccessful.

e. If the information or evidence sought is something that an airman or operator is required by statute or regulation to maintain and present to the agency, a failure to produce such information to the agency may be grounds for emergency suspension or revocation of a certificate, rather than using a subpoena to require production of the item or information.

707. **JUDICIAL ENFORCEMENT.** If a person refuses to comply with a subpoena or other order issued by the presiding officer or by legal counsel under Section 1004 of the FA Act, legal counsel may refer the matter to a United States Attorney for judicial enforcement.

708.-799. RESERVED.

FIGURE 7-1. SAMPLEORDEROF INVESTIGATION

FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D.C.

In the Matter of the Investigation of ARC Airways, Inc., Holder of Air Taxi Commercial Operator Certificate No. 14-EA-69 to determine the compliance of it and its personnel with applicable portions of the Federal Aviation Act of 1958, as amended, and the Federal Aviation Regulations.	)

ORDER OF INVESTIGATION

Information has been received by the Federal Aviation Administration indicating that ARC Airways, Inc., and certain of its personnel may have violated certain portions of the Federal Aviation Act of 1958, as amended, and the Federal Aviation Regulations (FAR).

In order to determine to what extent, if any, ARC Airways, Inc., and its personnel have violated the Act, Section 43.13 of the FAR, and Parts 91 (Subpart C) and 135 (Subpart J) of the FAR, and to determine further if safety in air commerce or air transportation is jeopardized, the Administrator of the Federal Aviation Administration, acting by and through his Assistant Chief Counsel for Regulations and Enforcement, hereby orders that:

1. Pursuant to the authority in Sections 313, 609, and 1004 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354, 1429, and 1484), and Part 13 of the Federal Aviation Regulations (14 CFR Part 13), an investigation be conducted into the possible violations of the Federal Aviation Act of 1958, as amended, and the Federal Aviation Regulations by ARC Airways, Inc., and its present and past personnel.

2. Mr. John E. Doe hereby is designated to serve as presiding officer and is delegated the authority to conduct said investigation. He may be assisted by persons he designates, and he shall have the authority pursuant to Sections 313 and 1004 of the Federal Aviation Act of 1958, as amended, to take testimony, issue subpoenas, take depositions, administer oaths, examine witnesses, and such other authority as is contained in Section 1004 of the Federal Aviation Act of 1958, as amended.

3. The investigation shall be conducted pursuant to procedures in Subpart F of FAR Part 13. At any hearing convened by Mr. Doe pursuant to this Order, he shall have full authority as presiding officer and he may be assisted by such persons as he designates. A verbatim record of any hearings or depositions will be kept, and questioning of all witnesses at such hearings or depositions shall be by Mr. Doe or his designee. Documents produced at such hearings or depositions pursuant to a subpoena issued by Mr. Doe shall be made a part of the record of such hearings or depositions only when so ordered by Mr. Doe.

Dated: August 18, 1987

RICHARD B. ROE
Assistant Chief Counsel
Regulations and Enforcement
Division

CHAPTER 8. REEXAMINATION AND REINSPECTION UNDER SECTION 609 OF THE FEDERAL AVIATION ACT

800. AUTHORITY. Under Section 609 of the Federal Aviation Act of 1958, as amended (FA Act), the Administrator is authorized to reinspect any aircraft, aircraft engine, propeller, appliance, air navigation facility or air agency, and to reexamine any airman. Reexamination or reinspection does not preclude the taking of punitive enforcement action when appropriate. When any certificate holder fails to comply with a request for reinspection or reexamination, Section 609 provides legal procedures to require that the certificate holder be reinspected or reexamined. The 609 reexamination or reinspection authority should be used when facts reasonably indicate that a certificate holder may not be qualified to hold a certificate. If the facts demonstrate that the certificate holder is not qualified, then reexamination is not appropriate and certificate action shall be taken to revoke the certificate based on a demonstrated lack of qualification.

801. PROCEDURES. When an inspector, a Regional Flight Surgeon, the Aeromedical Certification Branch (AAC-130), or the Federal Air Surgeon have reason to believe, either through reliable reports, personal knowledge, or on the basis of evidence obtained through investigation, that a certificate holder may not be qualified to exercise the privileges of a particular certificate or rating, a reexamination or reinspection may be required.

a. The investigating inspector, or office of medical responsibility, shall notify the certificate holder by certified mail that a reinspection or reexamination is necessary. See Figures 8-l and 8-2. Generally, the certificate holder should be given a reasonable period of time in which to accomplish the reexamination or reinspection, but in some cases immediate action to suspend the certificate in accordance with paragraph e, below, may be appropriate.

b. The letter should specify the time, place, and subject of the reinspection or reexamination, giving reasonable consideration to the convenience of the certificate holder.

c. The inspector shall be careful to point out exactly the rating(s) on which the inspector wishes to conduct the reinspection or reexamination. The office of medical responsibility shall identify the specific information or history needed to determine whether the holder of an airman medical certificate meets appropriate medical standards, and class of medical certification which the FAA wishes to reexamine.

d. Where appropriate, the letter should state that enforcement action may be taken in addition to the reexamination.

e. If the certificate holder, within a reasonable time, fails to submit to reexamination or to comply with a request for reinspection, the following procedures should be followed:

(1) The field office, or office of medical responsibility, should prepare an EIR recommending emergency suspension of the certificate until such time as the holder submits to and passes a reinspection or reexamination. If the situation warrants, legal counsel should be notified immediately and requested to begin action prior to receipt of the full EIR. Counsel may require that essentiai evidence be forwarded without the EIR in order to initiate the emergency action.

(2) The EIR should contain the following:

A. The facts and supporting evidence that gave rise to the need for reexamination. For example, if an accident was the event that gave rise to the need for reexamination, the details of the accident should be described, with supporting evidence.

B. There should be an analysis explaining why the facts indicate that the certificate holder may not be qualified. For example, the file should specifically explain what it was about the accident that caused the inspector to question the competency of the airman.

c. There should be documentation. in the file to prove that the certificate holder was requested to submit to a reexamination or reinspection and to prove that the certificate holder has not submitted to the reexamination or reinspection, unless it is determined that due to special circumstances the certificate should be suspended immediately without first requesting submission to the reinspection or reexamination.

(3) In cases where there may be enforcement action taken in addition to reexamination, the inspector should be careful not to mislead the airmen or operator into believing that the reexamination is the only action being taken. See Figure 8-l.

(4) Counsel shall initiate certificate action in accordance with the provisions of Chapter 12 when the evidence submitted is sufficient to establish that the certificate holder may not be qualified to hold the certificate or that safety in air commerce or air transportation and the public interest requires the suspension of the certificate pending satisfactory completion of reexamination or reinspection. Emergency certificate action generally is appropriate. There may, however, be circumstances where, in the discretion of counsel, it is more appropriate to proceed by notice rather than by emergency action.

(5). The action taken shall either order or propose the suspension of the certificate until such time as the holder submits to reinspection or reexamination and satisfactorily establishes qualifications to continue to hold the certificate and to exercise the privileges of such certificate.

(6) If the certificate holder appeals the Order suspending his certificate pending reexamination and such appeal is pending before the National Transportation Safety Board, reexamination should not be given to the airman until the airman withdraws his appeal.

(7) If the certificate holder satisfactorily establishes qualifications to continue to hold and use the certificate, the field office or office of medical responsibility shall issue a letter advising the certificate holder of that finding, with a copy to the legal counsel who issued the order. Legal counsel shall take appropriate steps to terminate the order, release the certificate stop order, and update the EIS.

(8) If a certificate holder whose certificate is suspended under this paragraph fails to submit to a reexamination or reinspection within a reasonable period of time, the certificate or rating should be revoked. The certificate should not be under suspension indefinitely pending the certificate holder submitting to a reinspection or reexamination. In this case, because the certificate already is suspended, emergency action generally will not be necessary.

f. If the certificate holder has submitted to a reinspection or reexamination and has not established qualifications, the following procedures should be followed:

(1) The investigating office or office of medical responsibility should prepare an EIR, recommending revocation of the certificate or rating. This generally should be on an emergency basis, unless and order suspending the certificate or rating is in effect.

(2) The EIR should be given a new report number. Any companion report number, which was assigned to an earlier EIR in connection with certificate suspension, should be shown in the "related number" block. If revocation action is taken against only part of the certificate, such as an airman rating, the appropriate field office or officer of medical responsibility should issue the necessary temporary certificate or new certificate with the remaining privileges. Evidence of the failure to demonstrate qualification should be included as an item of proof. For airman medical cases only, the EIR prepared by the office of medical responsibility need only consist of Section A (FAA Form 2150-S) and supporting documentation as shown in paragraph 801e(2).

(3) In some cases, it may be appropriate to suspend the certificate for a reasonable time pending proof of requalification. However, a certificate holder should not be permitted indefinitely to hold a certificate in order to have additional opportunities to prove qualification. Generally, if the certificate holder has twice submitted to a reinspection or reexamination, and has twice failed, the certificate should be revoked.

802.-899. RESERVED.

FIGURE 8-l. SAMPLE LETTER REQUESTING REEXAMINATION
UNDER SECTION 609 OF THE FEDERAL AVIATION ACT

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

_____
_____
_____

Dear Mr.. _____

Investigation of the accident/incident which occurred at _____ on _____, gives reason to believe that your competence as a certificated airman is in question and that reexamination of your qualification to be the holder of _____ is necessary in the interest of safety. Therefore, pursuant to the Authority contained in Section 609 of the Federal Aviation Act of 1958, as amended, you are requested to 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, it will be necessary for us to start proceeding in suspend your airman certificate until such time as you demonstrate your competence to exercise is privileges. If, for reasons beyond your control, you are unable to be reexamined at this time, please contact the undersigned prior to _____ in order that a determination can be made whether a time extension may be granted.

Please note that the incident which 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 which may assist you. Our office is open from _____ to _____, and our telephone number is _____.

Your cooperation in this matter will be appreciated.

Sincerely,

FIGURE 8-2. SAMPLE LETTER REQUESTING ADDITIONAL MEDICAL INFORMATION

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

_____

_____

_____

Dear _____

You hold airman medical certificate class, issued

Information provided this office indicates that you may not meet the requirements to hold your medical certificate. Accordingly, we are reexamining whether you meet the medical standards prescribed in Part 67 of the Federal Aviation Regulations.

This office has been advised that you have a history of , which could render you ineligible for continued airman medical certification.

Under the authority of Section 67.25(a) and 67.31 of the Federal Aviation Regulations, the Federal Aviation Administration is hereby reexamining your qualifications in order to determine your eligibility for continued airman medical certification.

It-is necessary that within 30 days you provide this office with information pertaining to your medical history, to include dates of treatment, findings, symptoms, diagnosis, prognosis, and treatment (both past and present). We will require copies of all pertinent hospital records to include admission and discharge summaries and the results of all studies done.

In addition to the above, we will require that within 10 days you provide this office with the following:*

a. A list of all physicians or other health care professionals you have consulted within the past 5 years to include addresses and reasons for consultations.

b. A list of all periods of hospitalization to include names and addresses of hospitals and causes for admissions.

c. An accurate list of all traffic and other convictions you have had, to include dates, locations and dispositions.

d. Please execute and promptly return to this office the enclosed authorization for release of information (FAA Form 8500-21).

*The information should be structured to the specific circumstances.

Pending determination of your eligibility for continued airman medical certification, you may wish to voluntarily surrender to this office any current airman medical certification in'your possession. Your failure to provide the requested data within the time specified will necessitate our referral of your case to our FAA legal counsel.

You are reminded that your operation of an aircraft as pilot in command, or in any other capacity as a required pilot flight crewmember, while having a known medical deficiency, or after experiencing any adverse change in medical condition that would make you unable. to meet the requirements for your medical certificate, would be a violation of Section 61.53 of the Federal Aviation Regulations.

Sincerely,

Anthony Ziegler, Jr., M.D.
Regional Flight Surgeon

Enclosures

CHAPTER 9. PREPARATION OF ENFORCEMENT INVESTIGATIVE REPORTS

900. GENERAL.

a. The Enforcement Investigative Report (EIR) is the means for documenting, assembling, organizing, and presenting all evidence and other pertinent information obtained during an investigation. Since it is the document 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.

b. If at any time during the investigation the inspector determines that no violation occurred, the inspector should terminate the investigation, and complete the applicable section of the EIR. If a letter of investigation was issued, all recipients should be notified that the matter has been closed.

c. If it is determined after evaluation of all the evidence obtained in the investigation that a violation did occur, either administrative action or legal enforcement action, as appropriate, should be recommended.

d. Extreme caution should be exercised in order to ensure that neither the alleged violator nor any other unauthorized person, is informed of the inspector's recommendations.

901. REPORT PREPARATION. All enforcement investigations shall be reported in accordance with instructions in this Chapter.

a. Administrative action or no action cases. When administrative enforcement action is taken, only Section A of FAA Form 2150-5 (Section A of the EIR) need be prepared in accordance with the guidelines obtained in paragraph 903. See Figure 9-l. For "no action" cases, only Sections A and B of the EIR need be prepared. See paragraphs 903 and 904. The field office or region may elect to prepare or have prepared a complete EIR in cases involving complex or sensitive investigations notwithstanding the fact that administrative enforcement action is recommended.

b. Legal enforcement action. For legal enforcement action, the entire EIR (Sections A, B, C, and D) should be completed. Form 2150-S (Section A of the EIR) should be prepared in accordance with the guidelines in paragraph 903.

c. Criminal enforcement action. For criminal enforcement actions, the entire EIR (Section A, B, C, and D) should be completed and transmitted to the appropriate Assistant Chief Counsel for review and referral to the Department of Justice.

902. REPORT ASSEMBLY.

a. The Enforcement Investigative Report consists of four main sections:

(1) Section A, FAA Form 2150-S.

(2) Section B, Summary of Facts.

(3) Section C, Items of Proof.

(4) Section D, Facts and Analysis.

b. Section dividers with preprinted tabs A through D may be used to separate the four main sections of the report. In addition, dividers may be used to separate the Item of Proof exhibits in Section C. While use of dividers is not mandatory, it is strongly recommended. These dividers are available as "Guide Cards, 508-929," fran AAC-482, under stock number: 7530-00-475-1049.

903. SECTION A - PREPARATION OF FAA FORM 2150-S. Information blocks on Form 2150-S should be completed in accordance with the guidelines in paragraph b below. The report number, which identifies a specific EIR, should be entered as a lo-digit code consisting of the year, the region, the field office, and a sequential number as outlined in Chapter 14 (example: 88WP010001). Related enforcement investigative reports should be entered, in the same code form, for any other EIR's associated with the same incident.

a. Information required on Form 2150-5 should be entered into EIS using an interactive terminal which displays information as it is keyed. This form may then be printed out for use in the EIR. General information about EIS data entry is provided in paragraph b below. The pertinent information to be entered into EIS follows the guidelines in paragraph c below.

b. Information is entered into EIS using an interactive terminal which displays information as it is keyed. As a specific item (data element) is completed, the system will perform edit and validation routines to ensure the accuracy of each data element. The system edits use tables, range checks, omission detection and date validation to prevent erroneous information from reaching the EIS database. When an error is discovered, the terminal will display a descriptive error message and sound an alarm. Two types of errors can be indicated by the system: Fatal, which must be corrected before the user can continue: and Warning, which is displayed to alert the user to a potential error situation. Refer to the EIS User's Manual for additional guidance on data entry edits.

c. Instructions for completing Form 2150-S.

(1) Name. Enter the name of the alleged violator. The entry should show an individual by last, first and middle name. (e.g., Smith, Ralph Duane). The name of a legal entity should be shown in full (e.g., All American Airlines, Inc.: Ralph Duane Smith d/b/a All American Airlines: Tri-County Airport Authority: etc.). 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.

(2) Address/Telephone Number. Enter the current mailing address, including ZIP code, of the individual or legal entity. When practicable, the field office should verify this data. If the mailing address is a post office box, a street address to which over-night deliveries may be made should be

included in the remarks section. The telephone number is not a field in the EIS, but a complete telephone number, with area code, should be written on the print-out Form 2150-S.

(3) Date of Birth. Enter, in numerals, the date of birth of the individual alleged violator, in a six digit year-month-day (YY-MM-DD) format (e.g., 41-12-15 ; 54-05-23) . Leave blank if not appropriate.

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

(5) FAA certificate number. Enter the number of the FAA certificate held by the alleged violator, if related to the incident under investigation or the regulation believed violated. Use the code for NONE is no certificate is held.

(6) FAA certificate type. Enter the type of certificate referenced in Item (5) (e.g., commercial pilot; air carrier: airport operator; etc.). Leave blank if not appropriate.

(7) Aviation employer. Enter 'the alleged violator's employer if the alleged violation is related to that employment, and the employment involves a segment of aviation or aviation-related activity. In cases involving passenger violations, or passenger/nonpassenger screening/sterile-area violations, the name of the responsible air carrier(s) should be entered.

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

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

(10) Identification No. For an aircraft, enter the identification number. For an aircraft engine, propeller, appliance, or aircraft component, enter the serial number when available.

(11) Owner. Enter the name of the owner of the aircraft or the aeronautical product involved in the alleged violation.

(12) Owner address. Enter the current mailing address of the owner listed in Item (11).

(13) Date occurred. Enter, in numerals, the date(s) , on which the alleged violation occurred, in a six digit year-month-day format (e.g., 88-03-30).

(14) Time. Enter the local time at which the alleged violation occurred using military time (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) Date known to FAA. Enter, in numerals, the date on which anyone in the FAA first learned of the incident which later was determined to be a violation, in a six digit year-month-day format (e.g. 88-04-02).

(16) Region of discovery. Enter the two-character identifier of the region in which the altered violation was first discovered (e.g., NM). (Note: This may not be the region of occurrence.)

(17) location. Enter the name of the geographic location where the violation is all-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 (reference FAA Order ATC 7350.5T) standardizes the airport information.

(18) Regulations believed violated. Enter all regulations violations believed substantiated by the evaluation and technical analysis. Be specific in identifying the regulations by section and subsection a's appropriate. For example, if the rule believed violated is Section 91.169(a)(1), enter it as such: do not enter 91.169. In those cases where the regulation cited fails to adequately identify the act or aggravated circumstance involved, and the investigating inspector 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 regulation believed violated (e.g., 67.20(a)'(4)) or, in cases involving medical disqualification, the specific section or subsection which establishes the medical qualification in question (e.g., 67.15(e)(1)(i)).

(19) Type. Enter the two-digit code (see Appendix 3 for code listing) which best describes the type of activity the alleged violator was engaged in at the time of the alleged violation.

(20) Sub-type. Enter the two-digit code (see Appendix 3 for code listing) which best describes the sub-type of activity in which the alleged violator was engaged.

(21) Category. Enter the two-digit code (see Appendix 3 for code listing) which best describes the category of the alleged violation.

(22) Source. Enter the two-digit code (see Appendix 3 for code listing) for the source of the initial information relating to the alleged violation.

(23) Accident associated. Enter code 00 if an accident was not associated with the alleged violation, or code 01 if an accident was involved. If the alleged violation caused the accident, enter code 02. The NTSB definition of an accident is controlling.

(24) Security program. This section of the form is for use in security violations only. From one to eight individual two-digit codes may be entered in sequential order (see Appendix 3 for code listing).

(25) Type action recommended or taken. Enter one of the following actions (items 25 thru 28 need not be completed in airman medical cases):

A. Administrative action

B. Civil penalty

c. Suspension

D. Emergency suspension

E. Revocation .

F. Emergency revocation

G. Referral to DOD

H. Referral to foreign government

I. Criminal action

J. Other recommended action should also be entered in addition to one of the above, when appropriate (e.g., aircraft seizure; cease and desist order: injunctive action: order of compliance).

K. No action

(26) Recommended sanction. Enter one of the following sanctions:

(a) Warning Notice

(b) Letter of Correction

(c) The dollar amount for recornmended civil penalty.

(d) The recommended duration for period of suspension (e.g., 180 days: pending compliance).

(e) No sanction need be entered when the recommended type action is other than administrative action, civil penalty, or suspension.

(27) Date. Enter the date signed by the field office chief.

(28) Investigating office. Enter the appropriate region or field office identifier (e.g., NW05; CE42). (See Chapter 14.)

(29) Regulations believed violated. Same as instructions for Item (18). If the investigating field office entered an incorrect regulation in item (18), the correct regulation should be cited. (See paragraph 1001b.) May be left blank for administrative actions.

(30) Recommended type action. Same as instructions for Item (25). (See paragraph 1001b.) May be left blank for administrative actions.

(31) Recommended Sanction. Same as instructions for Item (26). (See paragraph 1001b.) May be left blank for administrative actions.

(32) Date. Enter the date signed by regional division.

(33) Region. Enter two-letter identifier for the reporting region (e.g., GL, NM, SC).

904. SECTION B - SUMMARY OF FACTS. The Summary of Facts is the second element of the EIR package and is assembled as a separate item behind Form 2150-S. The Summary is a concise statement of those facts, established through the investigation, that are essential to proving the violation of each of the listed regulations. Where the rule lends itself, the wording of the Summary should tie directly to the wording of the particular regulation. The Summary need only briefly identify the "who did what, when, where, why and how" to assure clarity and understanding, since the details of the investigation and a complete statement of the facts and circumstances will be set out in the Facts and Analysis Section of the EIR. When the investigation fails to prove the allegation, the Summary should so state.

905. **SECTION C - ITEMS OF PROOF.** The items of proof are the third element of the EIR, and should contain the originals of each exhibit submitted. When the size or nature of physical evidence precludes enclosing it with the report, appropriate photographs of such evidence should be included.

a. Section C should contain a numerical index of the items of proof, with a brief statement of each item's content. Each item of proof should be numbered consecutively as an exhibit.

b Tne item of proof exhibits should be listed in a logical order to facilitate review.

C. Each item of documentary evidence referenced in the Facts and Analysis (Section D of the report) should be included as an exhibit.

d. The proof should include summaries of each conversation the inspector had with the airman, the witnesses, or anyone having any connection with the case. Bach summary should include the name, address and telephone number of each person the inspector interviewed. If more than one inspector was present during the conversation, each inspector should prepare a summary of the conversation. See paragraph 406 for guidance.

906. **SECTION D - FACTS AND ANALYSIS.** This section contains, first, a complete factual statement of the investigation of the alleged violation and, second, the inspector's evaluation and analysis of the results of the investigation and all pertinent safety and enforcement factors.

a. Facts. Describe all the pertinent facts and circumstances. There should be an orderly and logical statement of each significant fact and related investigative action, with a reference to specific supporting exhibits. It may be appropriate to briefly describe the origin or the basis of the investigation, and it is usually helpful to the reader if the statement

is organized in chronological fashion. The inspector has latitude to go into as much detail as necessary to assure an understanding of the investigation and violation. He should provide the depth of detail to suit the complexity and nature of the particular case.

Note that this is not the place to introduce additional evidence, such as information learned in conversations with the alleged violator or witnesses. All evidence of the violation should be fully supported in Section C by witness statements, ramp inspection reports by the inspector, etc.

b. Analysis. Set out an analysis as to how safety was or was not affected, the violator's attitude, enforcement history, and economic and livelihood considerations. The reliability of evidence should be evaluated and conflicting evidence discussed. It may be necessary to again reference specific supporting exhibits. The inspector should fully analyze the alleged violator's explanation regarding the incident, such as appears in the interview record or the person's response to the letter of investigation. Mitigating, extenuating, and aggravating factors should be set out. The inspector's opinions, feelings and conjectures should be included where appropriate but care should be taken to label them as such. The inspector should provide a conclusion and set out the reasons justifying the recommended enforcement action and sanction. For a list of items to be included in the analysis, refer to paragraph 207.

If any information is received after the EIR is forwarded to the region, the inspector should prepare an analysis and forward it to the region with the information. This analysis should indicate whether, based on the information, the inspector has changed his or her conclusions or recommendations regarding the facts, the regulations violated, or proposed sanction.

907. PROTECTION AND RELEASE OF EIR'S.

a. Protective markings. Enforcement investigative reports normally qualify for the designation of "FOR OFFICIAL USE ONLY" (FOUO) and should be so marked unless the report contains national security information requiring a security classification. (See Order 1600.15D, Control and Protection of FOUO Information).

b. Release of investigations. Request for release of the EIR or investigative information should be handled in accordance with FAA Order 1200.23, Public Availability of Information. An EIR or any part of an EIR should be released only with the concurrence of the Assistant Chief Counsel. Information of a security nature may be released only by the Director, Office of Civil Aviation Security, ACS-1, in accordance with FAR Part 191.

908. EMERGENCY ENFORCEMENT ACTIONS. The appropriate handling of a violation requiring emergency certificate suspension or revocation frequently will involve initiation of such action, through the Assistant Chief Counsel, prior to actual completion of the EIR. An advance or partial EIR should be prepared and forwarded, and legal counsel should be provided copies of all evidence that supports the alleged violation. The canplete EIR package should be completed as expeditiously as possible.

909. REGIONAL COPIES. The distribution requirements of paragraph **1405** do not provide for a regional division copy of the EIR package. If an additional copy of the report is desired, divisions may either make copies or request that the field offices provide an additional copy.

910. **DOWNGRADING** OF **EIR's.** EIR'S initiated by the field office or regional division for legal enforcement may, in **some** cases, be returned for downgrading to administrative **action** or no action (paragraph **1002b(5)).** In this case, the investigating office should prepare and process an appropriate EIR using the same EIR number shown on the original, and with the annotation at the top of the form, **"DOWNGRADED."**

911. - 999. RESERVED.

FIGURE 9-l.

RIS: FO 2150-1

ENFORCEMENT INVESTIGATIVE REPORT
(Read Order 2150.3 for instructions)

REPORT
NUMBER | RELATED NUMBER

ALLEGED VIOLATOR IDENTIFICATION

1. NAME
2. ADDRESS (Include zip code)
TELEPHONE NUMBER (Include area code)
3. DATE OF BIRTH
4. SEX ☐ MALE ☐ FEMALE
5. FAA CERTIFICATE NUMBER
6. FAA CERTIFICATE TYPE
7. AVIATION EMPLOYER

AIRCRAFT, ENGINE, PROPELLER, COMPONENT OR APPLIANCE INVOLVED

8. MAKE
9. MODEL
10. IDENTIFICATION NUMBER
11. OWNER
12. ADDRESS (Include zip code)

ALLEGED VIOLATION

13. DATE OCCURRED
14. TIME
15. DATE KNOWN TO FAA
16. REGION OF DISCOVERY
17. LOCATION
18. REGULATIONS BELIEVED VIOLATED

RELATED DATA

19. TYPE ☐ ☐
20. SUB TYPE ☐ ☐
21. CATEGORY ☐ ☐
22. SOURCE ☐ ☐
23. ACCIDENT ASSOCIATED ☐ ☐
24. SECURITY PROGRAM ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐

INVESTIGATING FIELD OFFICE RECOMMENDATION

25. TYPE ACTION
26. SANCTION
REPORTING INSPECTOR (Typed name)
27. DATE
28. INVESTIGATING OFFICE
CHIEF (Typed name and signature)

REGIONAL DIVISION REVIEW

29. REGULATIONS BELIEVED VIOLATED
30. RECOMMENDED TYPE ACTION
31. RECOMMENDED SANCTION
32. DATE
33. REGION
TYPED NAME/TITLE/SIGNATURE OF APPROVING OFFICIAL

FAA Form 2150-5 (4-90) SUPERSEDES FAA FORMS 1650-5, 5200-5, 8030-1 AND 8030-2

FOR OFFICIAL USE ONLY

CHAPTER 10. PROCESSING OF ENFORCEMENT INVESTIGATIVE REPORTS

1000. PURPOSE. This chapter provides guidance and general information concerning the processing of all Enforcement Investigative Reports (EIR's) prepared pursuant to this order. Procedures for distribution of EIR's and other documents are contained in Chapter 14.

1001. PROCESSING OF EIR'S FOR ADMINISTRATIVE ACTION.

a. Field office. The field office is authorized to issue warning 'notices and letters of correction. The letters are developed as prescribed in Chapter 11. The EIR number (case code number) originally assigned at the time the investigation was initiated shall be used to identify the EIR. An investigation file, including copies of FAA Form 2150-5 and the warning letter or letter of correction, shall be retained by the field office for no less than 6 months. The Form 2150-5 (or complete EIR, if required) shall be distributed in accordance with Chapter 14 instructions.

b. Regional office. The appropriate regional division shall review the administrative enforcement action for internal purposes. If the investigating field office entered an incorrect regulation in Item 18 on the Form 2150-5, the correct regulation should be cited in the regional division review section. No other changes should be made.

1002. PROCESSING OF EIR'S FOR LEGAL ENFORCEMENT ACTION.

a. Field office.

(1) The EIR number (case code number) assigned at the time the investigation was initiated shall be used to identify the EIR.

(2) The field office shall forward the EIR to the regional division.

(3) After enforcement action has been completed, the investigating office should assure that the following persons and offices are advised of the final disposition:

A. Each person or organization to whom a letter of investigation was sent.

B. Each supporting FAA office.

C. Any agency, person, or organization which provided the Complaint or information that was the basis for initiating the investigation.

(4) The field office shall retain a complete investigation file, including a copy of the EIR, until final action has been completed on the case.

b. Regional division.

(1) Upon receipt of the EIR, the regional division shall review the file to determine --

A. The adequacy of the investigation:

B. That the correct regulations are cited: and

c. That the type of enforcement action and sanction recommended by the field office are appropriate.

(2) If the regional division concurs with the field office, it may forward the EIR to the Assistant Chief Counsel without comment.

(3) If the regional division determines that the investigation was not adequately completed, it should return the file to the field office with specific instructions for further investigation.

(4) If the regionai division questions the sufficiency of the evidence for legal enfocement action, it should contact legal counsel to discuss the issue before closing the case.

(5) If the regional division determines that legal enforcement action is not appropriate, it shall return the file to the field office with specific reasons for taking administrative enforcement action or, when no action is required, for closing the case without action.

(6) If the regional division determines that legal enforcement action is appropriate, but disagrees with the field office as to the regulations violated or the sanction, it shall prepare a technical analysis and evaluation, including --

A. An independent technical analysis of the facts, safety impacts, and violations;

B. A recommendation for the type of legal enforcement action required for aviation safety and the public interest: and

C. A recommendation for a specific sanction.

(7) The EIR, along with the regional division's technical analysis and recommendations, is transmitted to the Assistant Chief Counsel. See paragraph 1003 for reports requiring special processing.

(8) The determination of the type of legal enforcement action and sanction is a joint responsibility of the appropriate regional division (Flight Standards, Airports, or Civil Aviation Security) and legal counsel.

(9) After completion of the enforcement action the regional division pranptly shall inform the investigating field office of the final disposition.

c. Assistant Chief Counsel.

(1) Upon receipt of the EIR, the Assistant Chief Counsel reviews the file for the sufficiency of the evidence to support the type of action recommended by the regional division. If the evidence is insufficient, the additional information needed should be coordinated through the appropriate division.

(2) The Assistant Chief Counsel shall make an independent determination of the appropriate santion type and amount, giving due consideration to the sanction recommended by the regional division. If the Assistant Chief Counsel's assessment of the appropriate sanction differs from that of the division, counsel and the division shall confer in an effort to reach an agreement. If no agreement can be reached, the issue shall be elevated to the appropiate headquarters offices.

(3) When the Assistant Chief Counsel determines that sufficient evidence exists to support the recommended legal enforcement action, and a sanction has been determined, legal enforcement action shall be initiated as provided in Chapter 12. Once legal enforcement action has been initiated, counsel has the final authority to change the type of action or sanction, or enter into a settlement agreement. When feasible, however, significant changes should be coordinated with the appropriate division and the reporting inspector.

(4) The Assistant Chief Counsel shall inform the appropriate regional division of the final disposition in all cases.

(5) The legal enforcement file held by the Assistant Chief Counsel is the official FAA record copy, and shall be retained, transferred, and disposed of in accordance with Order 1350.15B.

d. Office of the Chief Counsel. The following cases shall be referred through the Assistant Chief Counsel for a Region or Center to the Assistant Chief Counsel, Regulations and Enforcement Division, AGC-200, for legal handling:

(1) Cases which the Administrator expressly designates.

(2) Cases involving violations of prohibited areas established over Presidential residences.

(3) Cases involving violations of U.S. regulations by foreign persons and companies within U.S. air commerce: except that those cases against persons living in the U.S., holding U.S. airmen certificates, may be handled by counsel in the region when the violation is not connected with that person's service with a foreign company or air carrier.

(4) Cases under the Hazardous Materials Transportation Act within FAA jurisdiction.

(5) All other cases designated by the Office of the Chief Counsel.

1003. REPORTS REQUIRING SPECIAL PROCESSING.

a. Violations involving members of the U.S. Armed Forces.

(1) The regional division, upon receipt of the EIR from a field office (see paragraph 501), shall review the file in accordance with paragraph 1002b(1) and forward it to the Assistant Chief Counsel for further processing.

(2) Any EIR prepared pursuant to paragraph 501e, relating to violations when the person was not acting in the performance of official military duties, or where there is a question of qualifications, shall be reviewed and processed by the regional division in accordance with subparagraph 1002b.

(3) In all cases other than those under paragraph 501e, the Assistant Chief Counsel shall refer a complaint to the appropriate military department when counsel determines that the EIR contains sufficient information to support such referral pursuant to Section 1002(a) of the FA Act. The complaint should include a letter of referral and a copy of the EIR. See Figure 10-l. It shall be transmitted to the appropriate official listed below:

Air Force (include National Guard)	The Inspector General Department of the Air Force Washington, D.C. 20030
Navy/Marine Corps	Deputy Chief of Naval Operations (Air) Navy Department Washington, D.C. 20360
Coast Guard	Commandant United States Coast Guard Washington, D.C. 20591
Army (include National Guard)	Director USAATCA-ASO Cameron Station Alexandria, Virginia 22314

(4) If the military department, within 90 days after the date of referral, has not informed FAA of the disposition of the complaint (including any corrective or disciplinary action taken), as required by Section 1002a of the FA Act, the Assistant Chief Counsel should send a follow-up letter to the military department.

(5) 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, the Assistant Chief Counsel shall also initiate appropriate legal enforcement action pursuant to Chapter 12.

b. Violations of foreign aviation regulations.

(1) Enforcement cases against FAA certificate holders, U.S. citizens, or U.S. canpanies involved in violations of foreign aviation regulations are processed as outlined in paragraph 1001 or 1002.

(2) Upon completion of FAA enforcement action the regional office having geographical responsibility for the country filing the canplaint shall advise the Office of the Chief Counsel, AGC-200, of the final action taken. AGC-200 will, in turn, advise the foreign aviation authority through, if appropriate, the U.S. Foreign Service Post. In the case of Canada, AGC-200 should provide such advise directly to Transport Canada.

c. Violations of U.S. regulations by foreign persons and companies.

(1) After field office completion of the investigation, the EIR shall be forwarded to the appropriate regicnal division (see paragraph 503).

(2) The region reviews and processes the EIR as outlined in paragraph 1002 and, if required by paragraph 1002d(3), forwards the EIR to the Assistant Chief Counsel. Cases against foreign individuals living in the U.S., holding U.S. airmen certificates, may be handled by counsel in the region when the violation is not connected with that person's service with a foreign company, or air carrier. Otherwise, the region forwards the EIR to the Office of the Chief Counsel, AGC-200.

(3) AGC-200 determines, in consultation with the appropriate Office under the Associate Administrator for Aviation Standards and the Office of International Affairs, whether legal enforcement action directly against the alleged violator or referral of a complaint to the foreign government is appropriate.

A. When a complaint is to be made to a foreign government, AGC-200 prepares a letter to the Department of State requesting that the violation be brought to the attention of the foreign government. A copy of the letter shall be sent to the Office of International Aviation Affairs. The letter to the Department of State should include a brief summary of the facts, the regulations violated, and a request that FAA be advised of any action taken by the foreign government. A copy of the EIR shall accompany the referral letter.

B. When direct legal enforcement action is appropriate, procedures outlined in Chapter 12 shall be used.

1004.-1099. RESERVED.

FIGURE 10-1. SAMPLE MILITARY REFERRAL

October 27, 1988

Deputy Chief of Naval Operations (Air)
Navy Department
Washington, D.C. 20360

Dear Sir:

Pursuant to Section 1002(a) of the Federal Aviation Act of 1958, as amended, we are referring to you a complaint and our Enforcement Investigative Report relating to the alleged violation of the Federal Aviation Regulations by Commander John Doe, United States Navy, Whidbey Island Naval Air Station, Washington.

Available evidence indicates that on October 13, 1988, Commander Doe, while in command of a Navy A3D aircraft identified as Homebrew 22, operated this aircraft into the Hanford Restricted Area R-6715 without prior permission from appropriate authority, contrary to and in violation of Section 91.95(a) of the Federal Aviation Regulations.

This complaint and our report are referred to you for further investigation and such corrective or disciplinary action as you may deem appropriate. We would appreciate being informed within 90 days, as required by Section 1002(a) of the Act, of any action taken in this matter.

Sincerely,

Assistant Chief Counsel

2 Enclosures

CHAPTER 11. ADMINISTRATIVE ENFORCEMENT ACTION

1100. PURPOSE. The purpose for administrative enforcement action is to provide the field inspector with administrative means for disposing of minor types of violations which do not require the use of legal enforcement sanctions.

1101. GENERAL. While administrative enforcement action may be taken only in cases where there is conclusive evidence of a violation, the action does not charge the person involved with a violation. It is intended to bring the incident to the attention of the person involved, document corrective action, encourage future compliance with the regulations, and provide a source of information for agency use.

1102. TYPES OF ADMINISTRATIVE ACTION. For statistical purposes, Section A of the Enforcement Investigative Report (EIR), FAA Form 2150-5, should be used as the means for reporting the issuance of administrative enforcement action. Two types of administrative action are authorized: warning notices and letters of correction.

1103. WARNING NOTICE.

a. The warning is a letter or form addressed to the alleged violator which --

(1) Brings to the attention of the alleged violator the facts and circumstances of the incident:

(2) Advises that, on the basis of available information, such operations or practices are contrary to the regulations;

(3) States that the matter has been corrected and/or does not warrant legal enforcement action: and

(4) Requests future compliance with the regulations.

See Figure 11-l.

b. When a letter of investigation has not previously been issued, the following language should be included in all warning notices:

> If you wish to add any information in explanation or mitigation please write to me at the above address.

This language need not be included in letters of correction because letters of correction must be accepted by the alleged violator. If the alleged violator provides any information, it should be evaluated to determine whether the warning notice continues to be appropriate. If not, the warning notice shall be withdrawn. If this language is inserted and the violator is an individual, a Privacy Act Notice shall be included with the warning notice. See Figure 11-2.

1104. **LETTER OF CORRECTION.** The letter of correction serves the same purposes as the warning notice, but is intended for use when there is agreement with the company, organization, or airmen that corrective action acceptable to the FAA has been taken, or will be taken, within a reasonable time. See Figures 11-3 to 11-6.

a. The letter of correction usually confirms a discussion with the person involved in which a violation(s) is/are acknowledged and appropriate corrective action initiated. It may also cover discrepancies and/or areas of needed improvement.

b. Consideration should be given whether corrective action must be immediate or may be taken within a reasonable period of time.

c. A letter of correction should not be used to forward suggestions and recommendations by themselves: its sole purpose is to correct conditions which are in violation of the FAR. Reference may be made to an attachment containing recommendations and suggestions, provided each item is appropriately segregated and identified to prevent a recommendation or suggestion from being misinterpreted as requiring corrective action under the Federal Aviation Regulations.

d. For Airport Certification Program purposes, either the sample or the form letter of correction (Figure 11-5 or 11-6) should be selected. If the sample letter is used, the language should contain the pertinent elements in Figure 11-5. The form letter is recommended when the single page provides adequate space. The form letter should not be used when a continuation form or sheet would be needed.

e. When corrective action has not been completed at the time the letter of correction is issued, the inspector shall assure that timely follow-up inspection is completed. When the action is completed, the inspector shall send a letter acknowledging that fact and closing the case (see Sample Letter Acknowledging Completion of Corrective Action, Figure 11-7).

f. Any continued noncompliance following receipt of the letter of correction shall be followed by more severe enforcement action.

1105. RECORDS OF ADMINISTRATIVE ACTION AGAINST INDIVIDUALS. Administrative actions are made a matter of record. To avoid undue burden to individual airmen, administrative actions arising against persons acting in their capacities as individual certificated airmen will be expunged after a period of two years following the issuance of the administrative action. The following statement shall be included in all such actions against certificated airmen:

> . ..we are issuing this letter which will be a matter of official record for a period of two years, after which, the record of this matter will be expunged.

1106.-1199. RESERVED.

FIGURE 11-l. SAMPLE WARNING NOTICE
FLIGHT OPERATIONS

November 20, 1988 Case No. 88WM010000

Mr. Fred Smith
1075 Victory Boulevard
Los Angeles, California 90009

Dear Mr. Smith:

On October 20, 1988, you were the pilot in command of a Beech Baron N13697 that landed at the City Airport. At the time of your flight, you did not have in your personal possession a pilot certificate, although you do hold a valid commercial pilot certificate. This is contrary to the Federal Aviation Regulations.

After a discussion with you concerning this flight and your inadvertent failure to have your pilot certificate with you, 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 ormitigation please write me at the above address. We will expect your future compliance with the regulations.

Sincerely,

JOHN J. FRANK
Chief, Van Nuys GADO

Attached: Privacy Act Notice

FIGURE 11-2. PRIVACY ACT NOTICE FOR WARNING 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 warning notice to which this Notice is enclosed.

A. Authority: This information is solicited pursuant to the Federal Aviation Act of 1958, 49 U.S.C. Section 1301, et seq., and regulations issued thereunder codified in Part 13 of Title 14 of the Code of Federal Regulations. Submission of information is voluntary. The request for information is intended to provide you with an opportunity to provide information which may relate to this matter.

B. Principal purpose: The information is requested to give you the opportunity to add any information in explanation or mitigation to the violations set forth in the warning notice.

C. Routine uses: Records from this system of records may be disclosed in accordance with the routine uses as they appear in System of Records No. DOT/FAA 847 as published from time to time in the Federal Register.

D. Effect of failure to respond: The FAA cannot impose any penalties upon you in the event that you fail to respond to this enforcement investigation letter.

FIGURE 11-3. SAMPLE LETTER OF CORRECTION
MAINTENANCE

April 30, 1988

The Aerospace Company
Attention: Mr. J. A. Jones, President
1200 International Way
Newark, New Jersey 22180

Dear Sir:

Your repair station's organization, systems, facilities, and procedures were examined for ccanpliance with applicable Federal Aviation Regulations (FAR) during the period April l-10, 1988. At the end of that examination, you were advised of our findings as follows:

The summary of employment of each person whose name appears on the roster of supervisory and inspection personnel was not available for three of the employees, as required by Section 145.43(b) of the FAR.

This is to confirm our discussion with you on April 8, 1988, at which time immediate corrective action was begun. You submitted the required summary of employment for FAA inspection on April 10, 1988.

As a result of our discussion of this incident, you have revised your procedures for maintaining the required summaries of employment.

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,

JOHN L. DOE
District Office Chief

FIGURE 11-4. SAMPLE LETTER OF CORRECTION
SECURITY

May 27, 1988

Mr. J. A. Smith
Director of Security
XYZ Airlines
1605 Fifth Avenue
New York, NY 12023

Dear Mr. Smith:

On May 1, 1988, during a routine inspection of the XYZ Airlines station at Chatsworth International Airport, it was noted that none of the employees at the XYZ Airlines checkpoint were wearing dosimeters. You were notified by letter dated May 4, 1988, that an investigation into this apparent violation of Section IV E. 6. of the XYZ Standard Security Program had been initiated and was being conducted by this office.

Investigation of the matter revealed that the room containing the employees' dosimeters is locked during nonoperational hours and on May 1, 1988, the only individual with the key to the room, Burnmart Supervisor John Apelan, was not at work. As a result of this incident, XYZ Airlines Station Manager David Lynch has instituted a policy whereby additional keys to the equipment roan are available from three locations.

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,

PAT ROSS
Chief, DIW CASFO

cc: David Lynch
Station Manager, XYZ Airlines

FIGURE 11-5. SAMPLE LETTER OF CORRECTION
AIRPORTS

(date)

(name)
Manager, (airport)
(address)

Dear (name):

On (date), (inspector) conducted a certification inspection of the (airport) to determine canpliance with Part 139 of the Federal Aviation Regulations, the Airport Certification Manual, and the Airport Operating Certificate which became effective (date). The inspection revealed that the airport was not in compliance with all of the requirements.

During the investigation it was found that the certification manual (or certification specifications) is approximately 3 months out of date and does not reflect current conditions at the airport. It is recognized 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 will expect your future compliance with the regulations. Please advise in writing when the manual has been revised.

Sincerely,

(name and title)

FIGURE 11-6. FORM LETTER OF CORRECTION AIRPORT CERTIFICATION

U.S. Department of Transportation
Federal Aviation Administration

LETTER OF CORRECTION

1. Airport Manager *(Name)*		4. FAA Airport Certification Inspector *(Name)*	
2. Airport Name	Site Number	5. FAA Office	Region
3. Address *(Street or P.O. No., City, State, Zip Code)*		6. Address *(Street or P.O. No., City, State, Zip Code)*	
7. Type of Operating Certificate ☐ Airport Operating Certificate ☐ Limited Airport Operating Certificate			8. Certificate Date
9. Type of Airport Certification Safety Inspection ☐ Annual ☐ Surveillance			10. Inspection Date
11. FAA Contact			12. EIR Number

Inspection of the above named airport has revealed that it is not in compliance with all of the requirements of FAR Part 139, the Airport Operations Manual, and the Airport Operating Certificate.

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 will expect your future compliance with the regulations. Please advise, by return of this form, when the discrepancies are corrected.

The individual identified in item 11 must be notified if corrections are not completed by the agreed upon date.

13. FAR Part 139 Violations Noted			14. Discrepancies Corrected *(To Be Completed by Airport Personnel)*	
a. FAR 139 Reference	*b.* Discrepancy	*c.* Correction Date	*a.* Date	*b.* By *(Initials)*

☐ Check if Comments/Recommendations attached – comments and recommendations concerning aviation safety which are not required by FAR Part 139 are noted on attached sheet.

By signature below, assurance is given that violations noted above will be corrected by the dates in item 13c and a copy of this letter returned within 15 calendar days following completion of all discrepancy corrections.

Date	Signature of Authorized Airport Official	Signature of FAA Airport Certification Safety Inspector

FAA FORM 5280-8 (9-81) Copy 1 AIRPORT MANAGER – RETURN TO FAA

FIGURE 11-7. SAMPLE LETTER ACKNOWLEDGING COMPLETION OF CORRECTIVE ACTION MANUFACTURING: QASAR

CERTIFIED MAIL

June 9, 1988

File Number 88NW000000

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 May 17, 1988, and June 3, 1988, concerning the Federal Aviation Administration (FAA) Quality Assurance System Analysis Review (QASAR) conducted at future Aircraft, Inc., on May 1, 1988, and the findings provided in our letter of May 5, 1988.

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,

T.J. Grath
Manager

CHAPTER 12. LEGAL ENFORCEMENT ACTION

1200. PURPOSE. This chapter prescribes procedures for the handling of legal actions to be used by all FAA legal counsel.

* 1201. CONSULTATION WITH HEADQUARTERS. The determination of the type of legal enforcement action and sanction is the joint responsibility of the appropriate regional division or directorate office and legal counsel. Chapter 2 describes in some detail how the appropriate enforcement action is to be determined. An important objective in conducting the enforcement program is to achieve uniformity of action throughout the FAA. Further, it sometimes is important for headquarters to be aware of actions taken by the regions quickly. For these reasons, in some cases coordination with headquarters is required before initiating an enforcement action, and in other cases information must be sent to headquarters at the same time the action is taken. The policies, procedures, and guidelines set forth in this order shall be adhered to by all personnel.

a. Adherence to Sanction Guidance Table and other written guidance. The sanctions specified in the Enforcement Sanction Guidance Table (appendix 4 to this order), together with other written guidance such as that appearing in chapter 2 and Compliance/Enforcement Bulletins, generally shall be followed. Whenever a proposed sanction is outside the normal range of penalties indicated in the guidance, it need not be coordinated with headquarters except as described in this paragraph. However, prior to the issuance of the initial enforcement action document, the reasons for the decision to deviate from the Table must be documented and the Assistant Chief Counsel for the Region, or his or her designee, must concur in the issuance in writing. The justification and concurrence in each case shall be retained in the file. A decision to take administrative action need not be coordinated above the field office level.

b. Coordination with headquarters. Coordination with headquarters (Attn: AGC-260) is required for the cases identified below. The coordination is either before the initial action is issued or contemporaneous with the action. The coordination of enforcement actions required herein is strictly an internal FM process for promoting consistency in actions and consistency with national policy. It does not alter the full authority and primary responsibility of each Assistant Chief Counsel for action in regional cases. *

* When coordination and clearance prior to issuance of the action is required under this guidance, a full Enforcement Alert prepared in accordance with current guidance shall be sent to AGC-260 and to the program office in headquarters.

(1) Special circumstances. Notwithstanding any other provision in this paragraph, coordination and clearance prior to issuance is required for all legal enforcement actions involving major aviation safety issues or other unusual or special circumstances which are likely to draw broad public attention or congressional interest, such as those involving public figures, unusual or broadly publicized events, and flying under the influence of drugs or alcohol.

(2) Certificate actions. This subparagraph applies to all emergency and initial certificate actions against holders of certificates issued under FAR Parts 121, 125, 135, 139, and 145, or against manufacturers and to any certificate action against an airman or other certificate holder where the action involves special circumstances as described in paragraph 1201b(4).

A. All certificate actions. Coordination and clearance prior to issuance is required for all emergency and initial certificate actions, except "housekeeping" actions against certificate holders which have effectively ceased doing business. If safety requires in emergency actions, immediate action may be taken prior to coordination. The Chief Counsel, the program office, and AGC-260 shall be advised as soon as practicable.

B. 48-hour alerts in emergency cases. Within 48 hours after the Assistant Chief Counsel receives an EIR from a program office in which the program office recommends emergency certificate action, or in which the Assistant Chief Counsel considers that emergency certificate action may be appropriate, notification should be sent to the Chief Counsel and the program office, with a copy to AGC-260. The notification should include the identity of the respondent, EIR number(s), the general nature of the violations, the recommended sanction, the approximate dates the violations were discovered, and an estimate of when the full enforcement alert may be forwarded. A separate 48-hour alert need not be sent if the full alert is sent within the 48-hour time frame.

c. Housekeeping actions. Information copies of housekeeping actions against certificate holders which have effectively ceased doing business should be sent to AGC-260 as soon as practicable. *

* (3) Civil penalty actions.

A. Coordination and clearance prior to issuance is required for all proposed civil penalties of $100,000 or more.

B. If the proposed civil penalty is under $100,000, it should be coordinated with headquarters prior to issuance if, in the opinion of the Assistant Chief Counsel, it is significantly less than the minimum penalty which could be computed under the policies in this order. Note that if the proposed penalty is $50,000 or less, it will be under the civil penalty assessment authority and, therefore, is subject to the separation of functions provisions of that program; i.e., it is "bubbled." Accordingly, the alert may not be communicated to the Administrator, the Chief Counsel, or AGC-400.

C. If the proposed civil penalty is over $50,000 but under $100,000, a copy of the civil penalty letter shall be faxed to the Chief Counsel, the program office, and AGC-260 on the same day it is issued, TO ARRIVE BEFORE THE RESPONDENT RECEIVES THE LETTER (unless it has been coordinated under B, above).

D. For every civil penalty the case file shall contain a written description as to how the sanction was chosen, considering the sanction guidance in this Order and all relevant facts and circumstances of the case.

(4) Referrals to U.S. Attorneys.

A. Civil penalty compromise cases. When a civil penalty compromise case for $100,000 or more is referred to the U.S. Attorney for prosecution, notification shall be sent to AGC-260. The notification shall include a copy of the civil penalty letter, an indication of the respondent's response, and the amount which the Assistant Chief Counsel recommends the U.S. Attorney seek in the District Court. Unless advised otherwise by AGC-260, the case may be sent to the U.S. Attorney 48 hours after AGC-260 receives the notification (receipt must be confirmed by the Assistant Chief Counsel).

B. Surrender of suspended or revoked certificates. When a case is referred to the U.S. Attorney to obtain surrender of a certificate, which has been suspended or revoked, and associated relief such as a civil penalty or injunctive relief, contemporaneous notification shall be sent to AGC-260. The notification shall include a copy of the Order *

*of Suspension or Revocation, an indication of the violator's response and the outcome of any appeal to the NTSB, and a description of the efforts made to obtain surrender before referring the case to the U.S. Attorney. This notification to AGC-260 may be in the form of copies of the letters and other documents sent to the U.S. Attorney if they contain the required information.

(5) Extraordinary actions. Coordination and clearance prior to initiation is required for all extraordinary actions, such as consent orders, cease and desist orders, aircraft seizures, injunctive relief, and criminal referrals.

(6) Final actions. Coordination and clearance prior to final disposition is required for legal enforcement actions which initially required coordination with headquarters under the above guidance, if the final action substantially differs from the initial proposed action. The justification for any reduction in the initially proposed sanction shall be reflected in the case file and provided to AGC-260. This includes, but is not limited to, the following:

A. Changing a proposed certificate revocation to a suspension.

B. Reducing a proposed period of suspension by more than one third.

C. Changing a proposed suspension to a civil penalty.

D. Reducing a proposed civil penalty of $10,000 or more by more than one third. AGC-260 should be advised, after settlement, of reductions between 15 and 33 percent.

1202. CERTIFICATE ACTION UNDER THE FEDERAL AVIATION ACT (SECTION 609). When it is determined that certificate suspension or revocation is the appropriate enforcement action, considering the policy set out in Chapter 2 and Appendix 4, the following guidance should be used by legal counsel in processing the case. *

a. Initial certificate action.

(1) Notice of Proposed Certificate Action. Under Section 609 of the Federal Aviation Act (FA Act), the Administrator, before ordering the suspension or revocation of a certificate, must give the certificate holder notice of such intention and provide such person with an opportunity to answer and be heard, except when an emergency order is issued. See paragraph 1202h. When it is determined that action under Section 609 is necessary, the initiating legal office prepares a Notice of Proposed Certificate Action. See Figure 12-1. The Notice shall be issued by an official authorized in FAR 13.19, or by an attorney who has appropriate delegation and is signing with a by-line under the name and title of such official. If the Notice is to be signed by an attorney other than an official designated in FAR 13.19, a written delegation authorizing the attorney to sign Notices should be sent to AGC-200.

A. The Notice should set forth the facts alleged, the regulation(s) violated, and the action proposed. The Notice should contain a statement showing how the facts constituted a violation of the cited regulation(s).

B. The facts should be set forth in sufficient detail so that the certificate holder can know and understand the charges.

C. The sanction proposed must be stated specifically. It may not be stated in the alternative. Where it is proposed that only a rating be suspended, the Notice should inform the airman that during the suspension period a temporary certificate will be issued in order to permit the exercise of those privileges not under suspension.

(2) Attachments to the Notice. An information sheet and a certificate holder reply form should be sent with the Notice. In the information sheet, which may be a printed form, the alleged violator is advised of the alternatives to be taker, in response to the notice. See Figure 12-2. The alleged violator is given the opportunity to elect one of the alternatives listed. On the "Certificate Holder Reply" form the alleged violator may indicate that election. See Figure 12-3. Alternative 1 is to surrender certificate. Alternative 2 is to request issuance of the order to permit immediate appeal to the NTSB. Alternative 3 is the submission of the alleged violator's answer in writing. Alternative 4 is an informal conference with an FAA attorney. Alternative 5 is to prove entitlement to waiver of penalty under the Aviation Safety Reporting Program.

(3) Notice of Proposed Certificate Action in deferred suspension cases.

A. When the appropriate regional division and legal counsel decide that a deferred suspension is the appropriate type of enforcement action in a particular case, legal counsel should issue a Notice of Proposed Certificate Action which --

(i) Specifies the factual circumstances and regulations involved in the alleged violation:

(ii) States the period of suspension that is being proposed:

(iii) Advises the certificate holder of the corrective action that may be taken within a specified period, to avoid the proposed sanction:

(iv) 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

(v) Advises the certificate holder of the right to proceed in accordance with the enclosed information with respect to the Notice

of Proposed Certificate Action (enclose the standard information sheet) if no timely election is made to take the suggested corrective action.

B. If the certificate holder does not timely elect to take the deferred suspension option, legal counsel should process the case for a certificate suspension pursuant to regular procedures.

C. If the certificate holder timely elects to proceed with the deferred suspension option, legal counsel should --

(i) Upon receipt of satisfactory evidence that the certificate holder has completed the corrective action described in the Notice, within the specified period, issue an Order of Suspension that makes findings of the appropriate violation(s) but waives the imposition of any certificate suspension: and

(ii) If such satisfactory evidence is not timely received, an Order of Suspension which suspends the certificate for the period stated in the Notice should be issued immediately.

b. Voluntary surrender and waiver of right to appeal to the NTSB. One of the alternatives available to an alleged violator is to surrender the certificate in response to the Notice of Proposed Certificate Action or following an agreement reached at an informal conference. In either case, surrender constitutes a waiver of the certificate holder's right to appeal. See Figure 12-2, paragraph 1. If the certificate is surrendered at an informal conference, a waiver such as Figure 12-4 may be used.

c. Informal conference. In certificate action cases, the informal conference provides the certificate holder an opportunity to be heard as required by Section 609(a) of the FA Act. The provisions in paragraph 1208 apply.

d. Coordination of change of sanction. If the case is a significant case requiring coordination with AGC-200 under paragraph 1201b, any proposed change in sanction shall be coordinated with AGC-200 (Attn: AGC-260), to the extent provided in that paragraph.

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 must be considered and evidence on which the Notice was based must be reexamined. A new determination regarding the alleged violations must be made by legal counsel, and the program office should be consulted. Allegations which are disproved must be withdrawn. If the sanction proposed is determined to be excessive, it must be reduced. Legal counsel may not increase the sanction proposed in the Notice as a result of the informal conference. Unless matters not taken into consideration in issuing the Notice are brought to legal counsel's attention, the order normally should impose the sanction proposed in the Notice.

f. Orders of Suspension or Revocation.

(1) Issuance of Order. The Order representing the final FAA certificate action is issued by an official authorized in FAR 13.19 or by an attorney, with appropriate delegation, who is signing with a by-line under the name and title of an authorized official. If the Order is issued over the signature of an attorney other than an official authorized in FAR 13.19, a written delegation authorizing the attorney to sign orders should be sent to AGC-200. See Figure 12-5.

A. When the certificate holder surrenders the certificate pursuant to the Notice of Proposed Certificate Action, the order should be issued immediately. The effective date of the surrender will be that date on which the certificate is surrendered to an FAA employee, such as the postmark date of mailing or the date of hand delivery. The appeal provisions shall be included, unless the certificate holder has waived his appeal rights. Surrendering the certificate in response to the Notice consititutes a waiver of the airman's appeal rights, when the certificate holder has been so informed of his rights in the Information Sheet (See Figure 12-2, paragraph 1 and 12-4).

B. Orders should allege the violations which 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. If matters asserted by the certificate holder in the informal conference or by correspondence make it advisable that the FAA explain, in detail, its reasons for not accepting the position presented, this may be done in a transmittal letter, to accompany the Order, but not in the order itself. The appeal section of each Order shall state that in the event of an appeal to the NTSB (see paragraph 1202g), a copy of the Order will be filed with the NTSB and will serve as the Administrator's Complaint. (See, Sample Order of Suspension, Figure 12-S). If an ASRP report has been accepted, the Order shall indicate that the penalty is waived (see Figure 12-6).

(2) Preparation of Airman Stop Order. Upon issuance of an order suspending or revoking an airman certificate, legal counsel shall prepare and transmit to the Airman Certification Branch, AAC-260, an Airman Stop Order, FAA Form 8060-8. It is important that a stop order be 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 shall include, on the stop order form, specific data as to the termination or release of the stop order.

g. Appeals to the National Transportation Safety Board.

(1) General. Section 609 of the FA Act provides that any person whose certificate is affected by an order issued under that section may appeal to the National Transportation Safety Board (NTSB) which, after notice and hearing, 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. Procedures for processing appeals before the NTSB are contained in the NTSB Rules of Practice in Air Safety Proceedings (49 C.F.R. Part 821). Except in a case involving an emergency order, the filing of an appeal will stay the effectiveness of the FAA order until the final disposition of the appeal by the NTSB.

(2) Hearings before NTSB administrative law judges. When an order issued under Section 609 of the FA Act is appeal& to the NTSB, the legal office (Chief Counsel or Assistant Chief Counsel) that issued the order generally will be responsible for representing the FAA at the evidentiary hearing before an NTSB administrative law judge. Normally, legal counsel who prepared the case will represent the FAA at the hearing in order to avoid duplicative preparation by other counsel. In certain cases, where the order was issued in one region but the NTSB hearing is scheduled to be held in another region, legal counsel may, by mutual agreement, transfer the case to the region where the hearing is to be held, when such transfer would be in the best interest of the Government. Where cases are transferred to another area for a formal hearing, testimony of witnesses located in the originating area or at other locations outside the location of the hearing may be obtained through depositions. When appropriate, split hearings may be requested.

(3) Appeals from initial decisions to the full Board. Under the NTSB Rules of Practice in Air Safety Proceedings, either party may appeal from the initial decision of the NTSB's Administrative Law Judge to the full Board. The Board's review in all such appeals expressly 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 procedural error has occurred. Appeals, therefore, should be carefully considered and only filed where one of the issues specified in the NTSB's rules clearly is present. Special consideration should be given to appealing every case in which the administrative law judge, after having found all of the violations alleged in the FAA complaint, reduces the sanction without adequate justification. In paragraph 217(b) of Order 1100.5B, FAA Organization - Regions and Centers, and paragraph 1613 of Order 1100.2B, FAA Organization - FAA Headquarters, the Administrator has reserved to the FAA Office of Chief Counsel the authority to handle enforcement cases appealed to the full Board or to the U.S. court of appeals. To implement this reservation of authority, the following procedures shall be followed in such cases:

A. When an Assistant Chief Counsel wishes to obtain full Board review of an initial decision, except in emergency cases, legal counsel shall, WITHIN 5 DAYS AFTER SERVICE OF THE INITIAL DECISION, recommend to the Manager, Enforcement Proceedings Branch, AGC-250, or, in Equal Access to Justice Act cases, to the Manager, Enforcement Policy Branch, AGC-260, that an appeal be filed with the full Board. If it is determined that an appeal should be filed, the Assistant Chief Counsel will then file a notice of appeal. Normally, the handling of the appeal will be the responsibility of the Regulations and Enforcement Division. After filing the notice of appeal,

the Assistant Chief Counsel shall immediately forward the case file to the Manager, Enforcement Proceedings Branch, AGC-250, or, in Equal Access to Justice Act cases, to the Manager, Enforcement Policy Branch, AGC-260. The Assistant Chief Counsel may also submit a draft or an outline of the issues believed to constitute the grounds for appealing the decision. When agreed to, the Assistant Chief Counsel recommending appeal may be authorized to handle the case on appeal.

B. If the respondent files an appeal, the FAA's reply brief normally will be prepared and filed by the Regulations and Enforcement Division, unless good cause exists for the preparation of the brief by the Assistant Chief Counsel. If the pertinent files, documents, records, etc., are in the possession of the Assistant Chief Counsel when the respondent files a notice of appeal, they shall be immediately transmitted to AGC-250 or AGC-260, as appropriate, for use in the filing of a reply brief or other required pleading, unless the Assistant Chief Counsel for a region or center received authorization to handle the appeal. Upon completion of the case, the files will be returned to the originating region.

h. Emergency orders of suspension or revocation.

(1) Basis for issuance.

* A. Emergency suspension or revocation of a certificate should be used only as an emergency safety measure and to provide immediate protection to the public. Therefore, emergency actions should be taken as soon as possible after the need for such action becomes apparent. However, if there is a delay, that fact does not render that emergency action inappropriate. See, paragraph 206.c.(5). *

B. An emergency suspension or revocation should never be used for punitive reasons. When receiving a recommendation for emergency action, legal counsel should ensure that there is sufficient evidence of an emergency requiring immediate effectiveness of an order of suspension or revocation, as described in paragraph 206c of this Order.

C. In those circumstances in which it is determined that an emergency suspension or revocation is appropriate and that a punitive suspension is also warranted, the emergency order shall address only the former certificate action. A separate notice proposing the punitive suspension shall be issued. For example, the holder of a commercial pilot certificate and flight instructor certificate violates several FAR. It is determined that circumstances of the incident raise questions as to the person's

qualifications to hold the flight instructor certificate, and therefore the certificate holder should be reexamined as to 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 FAR. The emergency order should only suspend the flight instructor certificate until reexamination is accomplished and qualifications are established. A separate Notice proposing the 90-day suspension should also be issued.

(2) Procedure. An emergency order should contain all of the allegations and findings necessary to any other order and, in addition, contain 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 shall, therefore, be immediately effective, and the certificate holder shall be informed that an appeal to the NTSB will not stay the effectiveness of the order. Both Sections 609 and 1005(a) of the FA Act should be cited. See Figure 12-7.

(3) Appeal hearings before NTSB. If the certificate holder appeals to the NTSB, the accelerated appeal provisions of Section 609 of the FA Act and of the NTSB's Rules of Practice in Air Safety Proceedings are applicable. Section 609 provides: "The filing of an appeal with the Board shall stay the effectiveness of the Administrator's order unless the Administrator advises the Board that an emergency exists and safety in air commerce or air transportation requires the immediate effectiveness of his order, in which event the order shall remain effective and the Board shall finally dispose of the appeal within 60 days after being so advised by the Administrator." Note that the 60-day period begins to run ON THE DATE THE NTSB IS ADVISED BY THE ADMINISTRATOR of the emergency nature of the order.

A. In order to follow the statutory procedure, when a certificate holder appeals from an emergency order, legal counsel should forward the complaint to the NTSB, together with a cover letter advising the NTSB that an emergency exists, using the exact language of the statute. Language in the complaint should not be relied upon as notice to the NTSB that an emergency exists; in every instance, a cover letter should be sent.

B. Because of the accelerated handling of emergency cases provided in the NTSB's rules, it must always be borne in mind that a prompt hearing in such cases will be held and a reduced time period provided for every step in the proceeding. Legal counsel should plan to have the case prepared for hearing within several days after the issuance of the emergency order.

(4) Appeal of emergency nature of the order. It has been held that a certificate holder may seek direct review of the Administrator's emergency determination by United States courts of appeals pursuant to Section 1006 of the FA Act. Nevada Airlines v. Bond, 622 F.2d 1017 (9th Cir. 1980). Regional attorneys shall advise AGC-250 immediately if a certificate holder petitions a court for review of the emergency order or seeks a stay of the order. AGC-250 will coordinate the handling of the case with the Justice Department. If the Justice Department assigns the case to the FAA, AGC-250 will handle the case unless AGC-200 and the Assistant Chief Counsel decide that the case should be handled by the region.

(5) Appeals to full Board. In cases involving emergency orders, where accelerated processing is required by the NTSB's Rules of Practice in Air Safety Proceedings, the handling of the appeal to the full Board will be the responsibility of legal counsel who presented the case before the NTSB's administrative law judge. Time will not normally permit a transfer of such

case for handling by the Regulations and Enforcement Division. In the rare case where cause exists for a transfer of the responsibility, the case will be handled by the AGC-250, after consultation with the region involved,

i. Judicial review of NTSB decisions. Within 60 days after the Board issues its final decision and order in an FAA certificate action case, the certificate holder may petition the appropriate U.S. court of appeals for judicial review of the order as provided in Section 1006 of the FA Act. The Department of Justice, in coordination with NTSB and FAA, or the FAA when so delegated, handles Section 609 enforcement cases before the U.S. court of appeals. FAA participation in the handling of such cases is the responsibility of AGC-250 or AGC-260, unless AGC-200 and the Assistant Chief Counsel determine that the case should be handled by the region.

1203. CERTIFICATE ACTION IN AIRMAN MEDICAL CASES UNDER THE FEDERAL AVIATION ACT (SECTION 609).

a. Responsibility. The Assistant Chief Counsel, or the Office of the Chief Counsel, as appropriate, is responsible for taking certificate action under Section 609 of the FA Act when a request is received from the Regional Flight Surgeon, the Aeromedical Certification Branch (AAC-130), or the Federal Air Surgeon to suspend or revoke an airman's medical certificate. When further investigation is needed, such as obtaining medical records and other documents that are not in the FAA's medical file, the regional Civil Aviation Security Division may be requested to obtain the necessary information.

b. Refusal to submit to reexamination. Under Section 609 of the FA Act, an airman may be requested to submit to medical reexamination if there is a reasonable basis to believe that the airman may not be qualified under the airman medical regulations. Reexamination should be requested by letter from the Regional Flight Surgeon. If the airman refuses or fails, within a reasonable time, to submit to the reexamination, emergency action, using procedures set out in paragraph 1202h, should be taken to suspend the airman medical certificate pending reexamination and a determination that the airman is medically qualified.

c. Failure to release medical information. Section 67.31 of the FAR provides that any person who applies for or holds an airman medical certificate may be requested to furnish 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 the airman medical certificate by emergency action.

d. Medical disqualification. When FAA has evidence which shows that an airman has become medically incapacitated or otherwise disqualified, legal counsel shall issue an order revoking the medical certificate of the person involved. Emergency orders should be used in the usual case. However, if conditions permit normal procedures, the proceeding may be initiated by notice.

e. Falsification of application or certificate.

(1) Section 67.20 of the FAR provides for the suspension or revocation of any airman certificate, ground instructor certificate, or medical certificate held by any person who --

A. Makes a fraudulent or intentionally false statement on an application for an airman medical certificate:

B. Reproduces a medical certificate for fraudulent purposes:

C. Alters a medical certificate: or

D. Makes a fraudulent or intentionally false entry in any document required to be kept in connection with a medical certificate.

(2) In reviewing cases involving medical certification, legal counsel should be alert to the possibility of falsification and, if falsification is discovered, should initiate legal enforcement action, as appropriate.

(3) Even though action is taken under Section 67.20 of the FAR, any person who willfuly commits any of the above acts may also be subject to criminal prosecution under 18 USC 1001, or Section 902(a) of the FA Act. Therefore, the investigation of such cases should be carefully conducted to assure that no action is taken which could prejudice any possible criminal prosecution. The civil aviation security division and legal counsel should be contacted for guidance.

1204. CMLPENALTY ACTION UNDER THE FEDERALAVIATIONACI INVOLVING AN AMOUNT , IN CONTROVERSY IN EXCESS OF $50,000.

a. General. In cases in which the amount in controversy is in excess of $50,000, the case is processed in accordance with Section 901 of the FA Act and section 13.15 of the FAR regardless of whether the case may ultimately be compromised for less than $50,000. In these cases the FAA has no authority to assess a 'civil penalty. Under this procedure, 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 the 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) Civil penalty letter. Except when referred directly to a U.S. Attorney, a civil penalty is initiated 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. The FAR sections alleged to be violated should be cited in the letter, as well as a statement showing how the facts constitute a violation of the cited regulations. Civil penalty letters shall be issued over the name of the Chief Counsel or the Assistant Chief

Counsel, and signed by that person, or in that name with a "by-line" for the attorney signing the letter (see FAR 13.15). If the letter is to be signed by any attorney other than one of the officials specified herein, a written delegation should made authorizing that attorney to sign civil penalty letters as specified above, and a copy of the delegation should be sent to AGC-200. See Figure 12-8.

(2) Language. Because the Administrator has no authority to assess a civil penalty in excess of $50,000, but only to either accept settlement or refer the matter to a U.S. Attorney (except in hazardous materials cases), all civil penalty letters and other correspondence or documents referring to the FAA's action in such cases should be phrased to indicate that the FAA "would accept (a specified amount) in settlement" rather than "impose" or "assess" a civil penalty.

(3) Attachments to the Notice. An information sheet and a certificate holder reply form should be sent with the civil penalty letter. In the information sheet, which may be a printed form, the alleged violator is advised of the alternatives to be taken in response to the letter. See Figure 12-9. The alleged violator is given the opportunity to elect one of the alternatives listed. On the reply form the alleged violator may indicate that election. See Figure 12-10. 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 to request that the matter be decided by the U.S. district court. Alternative 5 is to prove entitlement to waiver of penalty under the Aviation Safety Report Program.

c. Informal conference. The FA Act does not obligate the FAA to provide an alleged violator the opportunity to be heard in civil penalty cases in excess of $50,000. As a matter of policy, informal conferences are encouraged. At the conference the parties may discuss the case prior to settlement or referral to the U.S. Attorney. The provisions in paragraph 1208 apply.

d. Settlement.

(1) When the amount suggested in the civil penalty letter, or a lesser amount deemed acceptable upon consideration of additional facts, is submitted, the alleged violator shall be informed in writing that the offer is accepted in full settlement. See Figure 12-11.

(2) The letter of receipt should acknowledge the fact that the settlement does not constitute an admission of any violation.

(3) If the alleged violator desires to submit the suggested offer, arrangements may be made, if necessary, to pay the amount in reasonable installments, but a close followup should be maintained to assure prompt submission of payment. The period of payment should be kept to a minimum. The alleged violator shall be asked.to sign an agreement to pay the amount of the settlement.

e. Coordination of change of sanction. If the case is a significant case requiring coordination with AGC-200 under paragraph 1201b, any proposed change in sanction shall be coordinated with AGC-200 (Attn: AGC-260), to the extent provided in that paragraph.

f. Referral to U.S. Attorney.

(1) Civil penalty cases should be referred to the appropriate U.S. Attorney when legal counsel is unable to effect settlement, and the matter should not otherwise be closed. When required in the interest of aviation safety, the case may be referred directly to the U.S. Attorney without seeking settlement. In significant or complex cases, legal counsel shall coordinate with the Office of Chief Counsel prior to referral to a U.S. Attorney.

(2) In the letter of referral, counsel should refer to the United States Attorney Manual, Title 9, Section g-76.100, in which the Department of Justice has issued instructions to U.S. Attorneys for the handling of FA Act civil penalty cases. In this reference, the Department authorized the FAA, including the Assistant Chief Counsel, to refer directly to the appropriate U.S. Attorneys to institute suit for the collection of civil penalties or to effect settlement of such matters in those instances where the amount of the settlement is acceptable to the FAA. The transmittal letter should also set out a summary of the facts, an analysis of the violations involved, a summary of action taken prior to referral, a statement of the amount which would be acceptable to the FAA in settlement, and any additional information necessary to give the U.S. Attorney full information with respect to the case. Counsel should forward, with the letter, a copy of the file on the case, including the violation report and any other available evidence. Counsel should prepare and include a draft of a complaint. See Figure 12-12. In the letter of referral, counsel should also offer 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 the 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. If the amount sought in the complaint is significantly greater than the amount sought in the civil penalty letter, coordinate with AGC-200 (Attn: AGC-260).

(4) Following initial referral of a civil penalty case to a U.S. Attorney, counsel should conduct periodic followup inquiries for the purpose of obtaining current information on the status of the case and to remind the U.S. Attorney of our continuing interest in the matter. Copies of all pleadings filed by the parties should be requested.

(5) In those cases where the U.S. Attorney is unable to effect a settlement, and a complaint has been filed, counsel should again volunteer assistance in preparation for trial. Experience has shown that U.S. Attorneys are generally grateful to receive such assistance in view of the burden of their other duties and their unfamiliarity with the FAR and the technical aspects of aviation matters. In view of the fact that relatively few civil

penalty cases are litigated in the Federal courts, it is essential that they are handled properly, in order to avoid unfortunate precedent-making decisions resulting from a misunderstanding of a case on the part of the court or the U.S. Attorney handling the case.

(6) In those instances in which a U.S. Attorney declines to institute suit, legal counsel will ordinarily be given a statement of the reasons. If counsel disagrees, counsel should consult further with the U.S. Attorney, either in writing or by personal conference. If counsel ultimately is unable to persuade the U.S. Attorney to take action and believes the decision to be erroneous, the matter should then be referred to the Office of the Chief Counsel for discussions with the Department of Justice.

(7) Cases may arise in which the U.S. Attorney either fails to proceed with the case on a timely basis or indicates a general unwillingness to handle the case without formally declining to prosecute. The Civil Division of the Justice Department has agreed to a procedure for handling such cases, as well as cases where prosecution is formally declined. If the Assistant Chief Counsel determines that it is necessary to institute suit in such cases, he or she shall promptly advise the Chief Counsel (Attn.: AGC-200) of the merits of the case, the need for prosecution, and the nature of the problem encountered with the U.S. Attorney's office. The Office of the Chief Counsel will then obtain from the Civil Division an authorization to institute suit. A copy of this authorization will be telexed to the U.S. Attorney by the Civil Division, whereupon the Assistant Chief Counsel may file the complaint directly with the clerk of the appropriate district court. This procedure should also be followed in cases where it is necessary to simultaneously file complaints in several jurisdictions. Where time is critical, all of the above actions should be accomplished by telephone. Before initiating this procedure, the appropriate U.S. Attorney's office should be advised of the action being taken.

1205. CIVIL PENALTY ACTION UNDER THE FEDERAL AVIATION ACT INVOLVING AN AMOUNT IN CONTROVERSY NOT EXCEEDING $50,000.

a. General. In most cases in which the amount in controversy does not exceed $50,000, the case is processed in accordance with the Civil Penalty Assessment Demonstration Program, Section 905 of the FA Act, as amended, and Section 13.16 of the FAR. Under this program the FAA may assess civil penalties after affording the alleged violator notice and an opportunity to be heard. The opportunity to be heard is provided by an opportunity for a hearing before an administrative law judge. After the civil penalty is assessed under this program, if necessary, the penalty may be collected through proceedings in the appropriate U.S. District Court.

b. Initial civil penalty action.

(1) Notice of Proposed Civil Penalty. A civil penalty action is initiated by issuing a Notice of Proposed Civil Penalty pursuant to the procedures in Section 13.16 of the FAR. See Figure 12-13. The Notice shall be issued by an official authorized in FAR 13.19, or by an attorney who has

appropriate delegation and is signing with a by-line under the name and title of such official. If the Notice is to be signed by an attorney other than an official designated in FAR 13.19, a written delegation authorizing the attorney to sign Notices should be sent to AGC-200.

A. The Notice should set forth the facts alleged, the regulation(s) violated, and the action proposed. The Notice should contain a statement showing how the facts constituted a violation of the cited regulation(s).

B. The facts should be set forth in sufficient detail so that the alleged violator can know and understand the charges.

C. The penalty proposed must be stated specifically. It may not be stated in the alternative.

(2) Attachments to the Notice. An information sheet, a reply form, and FAR 13.16 and Part 13, Subpart G, should be sent with the Notice. In the information sheet, which may be a printed form, the alleged violator is advised of the alternatives to be taken in response to the Notice. See Figure 12-14. The alleged violator is given the opportunity to elect one of the alternatives listed. On the reply form the alleged violator may indicate that election. See Figure 12-15. Alternative 1 is to pay the proposed civil penalty. Alternative 2 is' to submit information or material in answer to the charges. Alternative 3 is to propose to reduce the civil penalty for specified reasons. Alternative 4 is to request an informal conference with legal counsel. Alternative 5 is to claim entitlement to waiver of penalty under the ASRP. Alternative 6 is to request a hearing.

(3) Language. It should be noted that the Notice proposes to assess a civil penalty in a specific amount, rather than suggest a comprcnnise offer.

(4) Service. The Notice should be sent by certified mail, return receipt requested, or by personal delivery.

c. Informal procedures. In cases under the Civil Penalty Demonstration Program, FAR 13.16(f) provides an opportunity for a J&on to participate in informal procedures, by submitting additional information, participating in an informal conference with an FAA attorney, or both. The provisions in paragraph 1208 apply.

After any information in defense or mitigation of charges in a Notice has been submitted to the FAA, the alleged violator shall be informed of the FAA decision as to whether any change in the proposed charges or sanction set out in the Notice will be made as a result of such information. Any information submitted by the alleged violator is evaluated for possible dismissal of proposed charges or reduction of proposed sanction, rather than for a compromise settlement. This interim reply to the alleged violator must be made prior to the issuance of an order. The alleged violator has 10 days after receipt of such reply to submit additional information or to request a hearing. (See, FAR 13.16(g)).

If additional information is submitted in response to the interim reply, counsel shall evaluate it to determine whether any change in the proposed findings of fact or of violations is warranted. If civil penalty action continues to be appropriate, a second interim reply shall be sent informing the alleged violator of this determination, and stating that the alleged violator has 10 days after receipt of the reply to request a hearing. No additional opportunity ordinarily need be given for submission of additional information.

d. Coordination of change of sanction. If the case is a significant case requiring coordination with AGC-200 under paragraph 1201b, any proposed change in sanction shall be coordinated with AGC-200 (Attn: AGC-260), to the extent provided in that paragraph.

e. Order of Civil Penalty. When a person who has received a Notice of Proposed Civil Penalty submits a written request for a hearing to the FAA attorney, the attorney shall issue an Order of Civil Penalty to the alleged violater. See Figure 12-16.

f. Order Assessing Civil Penalty.

(1) The Order Assessing Civil Penalty orders the payment of the specified penalty regardless of whether payment of such penalty has been received by the FAA. An Order Assessing Civil Penalty is issued in five situations (see Figure 12-17):

A. When the person charged with the violation submits the proposed civil penalty. Receipt of the amount shall be acknowledged in the Order,

B. when the person charged with a violation does not respond within 30 days from their receipt of the Notice of Proposed Civil Penalty.

C. When the person charged with a violation does not respond within 10 days from the receipt of an interim reply (including a second interim reply) from legal counsel or within 10 days of the informal conference if no agreement is reached at an informal conference.

D. When the person charged with a violation does not comply with any agreement reached between the parties during the informal conference.

E. When the person charged with a violation does not file an Answer to the Order of Civil Penalty or a motion pursuant to FAR 13.218(f)(1-4) within 30 days after service of the Order.

(2) After a hearing, if the administrative law judge affirms or modifies the Order of Civil Penalty, it becomes an Order Assessing Civil Penalty. See FAR 13.232(d).

g. Appeals.

(1) Hearings. When a hearing is requested, legal counsel shall file a copy of the Order of Civil Penalty, which will serve as the Complaint, on the hearing docket clerk not later than 20 days after receipt of the request. A copy of the request for hearing and a suggested location for the hearing must be attached to the Complaint. Any hearing will be held in accordance with the Rules of Practice in FAA Civil Penalty Actions in Subpart G of FAR Part 13. The administrative law judge will issue an initial decision and may affirm, modify, or reverse the Order of Civil Penalty.

(2) Appeals to the FAA decisionmaker. An initial decision issued by an administrative law judge may be appealed to the FAA decisionmaker, by either party, 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 an appeal brief, or reply brief, as appropriate. The FAA decisionmaker's decision and order is the final FAA order in the case. This decision may be appealed by the violator to the U.S. courts of appeals in accordance with Section 1006 of the FA Act.

h. Collection of assessed civil penalties. When an assessed civil penalty is not paid within 60 days after service of the order assessing it, Section 903 of the FA Act authorizes the FAA to refer the case to the Attorney General for action in U.S. district court to collect the penalty. A civil penalty has been assessed for these purposes when (1) an Order Assessing Civil Penalty is issued, (2) when, after a hearing, the ALJ's decision affirms or modifies the Order of Civil Penalty (see FAR 13.232(d)), or (3) when the FAA decisionmaker affirms or modifies the Order Assessing Civil Penalty.

(1) Referrals should be made directly to the appropriate U.S. Attorney.

(2) Pursuant to Section 905 of the FA Act, an action in U.S. district court to collect a civil penalty does not involve a de novo hearing on the issue of liability or amount of a civil penalty. The penalty has already been assessed by adjudicatory process before the FAA, pursuant to statutory procedures, which included either a formal evidentiary hearing or the opportunity for such hearing. Therefore, the U.S. Attorney should be requested to file an action for a judgment based on the order which assessed a civil penalty.

i. Settlement of civil penalties. The FAA attorney may settle any civil penalty which has been assessed any time before referring the Order Assessing Civil Penalty to the U.S. Attorney for collection. Since findings Of violations of the FA Act must be made in the Order, any settlement involves only the amount of the penalty and does not affect the finding of violations.

1206. CIVIL PENALTY ACTIONS UNDER THE HAZARDOUS MATERIALS TRANSPORTATION ACT (SECTION 110(a)).

a. General.

(1) Section 110(a) of the Hazardous Materials Transportation Act (49 U.S.C. 1809) (HMT Act) provides for civil penalties of not more than $10,000 for each violation of the HMT Act or the Hazardous Materials Regulations (HMR). The civil penalty provision applies only to a person who has "knowingly" committed an act which is a violation. Under Section 110(a), the FAA is not required to establish that the alleged violator knew his actions constituted a violation of the HMR. On the contrary, the term "knowingly" refers to "knowingly commits an act". Therefore, knowledge of the contents of the shipment and the fact that such contents are hazardous are all that is required. Section 110(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) Section 110(b) of the HMT Act provides for criminal penalties when willful violations of the HMT Act or the HMR are involved (see paragraph 1212, Legal Action Involving Criminal Violations). Under Section 110(b), a violation will be considered to be "willful" if an alleged violator, who has knowledge of the contents of the shipment and knows the requirements of the HMT, intentionally fails to comply.

(3) The Secretary's enforcement responsibilities involving the transportation of hazardous materials by air have been delegated to the Administrator of the FAA (see Appendix 2). Legal enforcement actions for violations of the Hazardous Materials Regulations are handled, within the FAA, by the Office of the Chief Counsel, Regulations and Enforcement Division, AGC-200.

b. Determining the type of enforcement action and sanction required. Upon receipt of an Enforcement Investigative Report, counsel should review the file to determine the sufficiency of evidence to establish the violations alleged and, after considering recommendations of the regional division, determine whether criminal prosecution, civil penalty action, or the issuance of an order of compliance is the appropriate action.

(1) If the evidence warrants criminal prosecution, such action should take priority over any other form of enforcement action, except one involving an order of immediate compliance, or other action to immediately address a safety problem.

(2) AGC-200 has the final authority to determine the amount of a civil penalty to be proposed in a particular case, and the amount of the penalty finally assessed (except when a formal hearing is held), after considering any comments and recommendations of the appropriate regional division with reference to such sanction.

c. Initial civil penalty action.

(1) Notice of Proposed Civil Penalty. A civil penalty action against a person who knowingly offered or accepted a hazardous material for transportation by air in violation of the HMR is initiated by issuing a Notice of Proposed Civil Penalty pursuant to the procedures in FAR 13.16. (See, Sample Notice of Proposed Civil Penalty, Figure 12-18).

(2) Attachments to the Notice. An information sheet, a reply form, and FAR 13.16 and Part 13, Subpart G, should be sent with the Notice. In the information sheet, which may be a printed form, the alleged violator is advised of the alternatives to be taken in response to the Notice. See Figure 12-19. The alleged violator is given the opportunity to elect one of the alternatives listed. On the reply form the alleged violator may indicate that election. See Figure 12-20. Alternative 1 is to pay the proposed civil penalty. Alternative 2 is to submit information or material in answer to the charges. Alternative 3 is to propose to reduce the civil penalty for specified reasons. Alternative 4 is to request an informal conference with legal counsel. Alternative 5 is to request a hearing.

(3) Language. It should be noted that the notice proposes to assess a civil penalty in a specific amount, rather than suggest a compromise offer.

(4) Service. The Notice should be sent by certified mail, return receipt requested, or by personal delivery.

d. Informal procedures. In these cases, section 13.16 (f) provides an opportunity for a person to participate in informal procedures, by submitting additional information, requesting to participate in an informal conference with an FAA attorney, or both. The provisions in paragraph 1208 apply.

After an informal conference has been held, or after any information in defense or mitigation of charges in a Notice has been submitted to FAA, the alleged violator shall be informed of the FAA decision as to whether any change in the proposed charges or sanction set out in the notice will be made as a result of such information. (Any information submitted by the alleged violator is evaluated for possible dismissal of proposed charges or reduction of proposed sanction, rather than for a compromise settlement.) This interim reply to the alleged violator must be made prior to the issuance of an order. The alleged violator has 10 days after receipt of such reply to submit additional information or to request a hearing. See FAR 13.16(g).

If additional information is submitted in response to the interim reply, counsel shall evaluate it to determine whether any change in the proposed . findings of fact or of violations is warranted. If civil penalty action continues to be appropriate, a second interim reply shall be sent informing the alleged violator of this determination. The alleged violator will has 10 days after receipt of the reply to request a hearing. No additional opportunity ordinarily need be given for submission of additional information.

e. Order of Civil Penalty. When a person who has received a Notice of Proposed Civil Penalty submits a written request for a hearing to the FAA attorney, the attorney shall issue an Order of Civil Penalty to the alleged violater. See Figure 12-21.

f. Orders Assessing Civil Penalty.

(1) The Order Assessing Civil Penalty shall order the payment of the specified penalty regardless of whether payment of such penalty has been received by the FAA. An Order Assessing Civil Penalty is issued in five situations (see Figure 12-22):

A. When the person charged with the violation submits the proposed civil penalty. Receipt of the amount shall be acknowledged in the order.

B. When the person charged with a violation does not respond within 30 days from their receipt of the Notice of Proposed Civil Penalty.

c. When the person charged with a violation does not respond within 10 days from the receipt of an interim reply (including a second interim reply) from legal counsel or within 10 days of the informal conference if no agreement is reached at an informal conference.

D. When the person charged with a violation does not comply with any agreement reached between the parties during the informal conference.

E. When the person charged with a violation does not file an Answer to the Order of Civil Penalty or a motion pursuant to Section 13.218(f)(1-4) within 30 days after service of the Order.

(2) After a hearing, if the administrative law judge affirms or modifies the Order, it beccnnes an Order Assessing Civil Penalty. See, FAR 13.232(d).

g. Appeals.

(1) Hearings. When a hearing is requested, legal counsel shall file a copy of the Order of Civil Penalty, which will serve as the complaint, on the hearing docket clerk not later than 20 days after receipt of the request. A copy of the request for hearing to the complaint and a suggested location for the hearing must be attached. Any hearing will be held in accordance with the Rules of Practice in FAA Civil Penalty Actions in Subpart G of FAR Part 13.

(2) Appeals to the FAA decisionmaker. An initial decision issued by an administrative law judge may be appealed to the FAA decisionmaker by either party, 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 an appeal brief, or reply brief, as appropriate. The FAA decisionmaker's decision and order is the final FAA order in the case,' and may be appealed to the U.S. courts of appeal under Section 1006 of the FA Act.

h. Collection of assessed civil penalties. When an assessed civil penalty is not paid within 60 days after service of the order assessing it, Section.903 of the FA Act authorizes the FAA to refer the case to the Attorney General for action in U.S. district court to collect the penalty. A civil penalty has been assessed for this prupose when an Order Assessing Civil Penalty is issued, when after a hearing, the ALJ's decision affirms or modifies the Order of Civil Penalty (see FAR 13.232(d)), or when the FAA decisionmaker affirms or modifies the Order Assessing Civil Penalty.

(1) Referrals should be made directly to the appropriate U.S. Attorney.

(2) It is the FAA position that action in U.S. district court to collect a civil penalty does not involve a de novo hearing because the penalty has already been assessed by adjudicatory process before the FAA, pursuant to statutory procedures, which included either a formal evidentiary hearing or the opportunity for such hearing. Therefore, the U.S. Attorney should be requested to file an action for a judgment based on the FAA order which assessed a civil penalty.

i. Settlement of civil penalties. Section 110(a) of the HMT Act provides that a civil penalty assessed under that section may be settled prior to referral to the Attorney General for collection. Therefore, any settlement is negotiated only after an order assessing a civil penalty has been issued and the penalty appears 'to be uncollectable. Also, since findings of violations of the HMR were made in the order, any settlement involves only the amount of the penalty and does not absolve liability for the violations.

1207. INFORMAL CONFERENCES.

a. Purpose and policy.

(1) The informal conference provides the alleged violator with the opportunity to be heard, which is required in certificate action cases (FA Act section 609).

(2) The conference provides an opportunity for full and open discussion of the case. The informal conference adds flexibility to the enforcement program and should lead to a better understanding by the alleged violator of the purposes and objectives of the program. Full discussion of the incident may result in the violator accepting a sanction without further appeal, thus avoiding time and expense. In many instances, the informal conference process will disclose facts not revealed in the violation report, which may mitigate the sanction or cause withdrawal of the charges.

(3) The conference provides an opportunity to evaluate the attitude of the alleged violator. At such a conference, the FAA attorney handling the case has an opportunity to gauge the sincerity, responsibility, and other intangible characteristics of the violator which often are not revealed by the violation report, but are material to a proper disposition of the case.

(4) The informal conference should not be used as a means to gather additional evidence or admissions to prove the charges in the enforcement action. However, any additional information obtained may be used for impeachment purposes if the alleged violator changes his story with regard to a material fact in subsequent proceedings.

(5) The sanction generally should not be changed as a result of the informal conference or information provided in writing by the alleged violator unless facts, not known at the time the initial action was taken, are brought out which the FAA did not take into consideration in setting the original sanction. If such additional information does come to the attention of legal counsel, action shall be taken to modify the sanction as appropriate.

b. Procedure.

(1) If an alleged violator desires an informal conference, it shall be scheduled and presided at by legal counsel. The regional division that processed the EIR shall be asked to assign an inspector to attend the conference. However, if an inspector is not present, counsel may proceed with the conference.

(2) Informal conferences are held at such location as legal counsel decides to be the most appropriate, considering convenience to the alleged violator as well as the public interest.

(3) Whenever an informal conference is held, a report of the conference shall be prepared for the file. This shall include a discussion as to why the information presented did or did not lead to a change in the sanction or withdrawal of charges.

1208. SEIZURE OF AIRCRAFT UNDER THE FEDERAL AVIATION ACT (SECTION 903(b)).

a. Seizure to collect civil penalty. Section 903(b) of the FA Act and FAR 13.17 provide for seizure of an aircraft involved in a violation when the violation is by the owner or person in command and such violator is known to have insufficient assets, other than the aircraft concerned to compromise the civil penalty or to satisfy a court judgment assessing the civil penalty (See paragraph 206d(1)). Because the constitutionality of these statutory and regulatory provisions have been interpreted differently by different courts, seizure of an aircraft should be done only in instances where the violation is particularly gregious, e.g., use of the aircraft in a continuing violation. Rote that in rem actions are excluded from the Civil Penalty Demonstration Program under Section 905(c) (2) and (3) of the FA Act.

b. Issuance of civil penalty letter. An aircraft may be seized after a civil penalty letter is issued or when the issuance of such letter is contemplated. In the latter case, if immediate action is essential, it is not absolutely necessary that a civil penalty letter be issued since the written notice of seizure to the registered owner of the aircraft serves to advise the owner of the violations committed and the liabilities incurred. If the aircraft is seized after a district court assesses a civil penalty, a civil penalty letter need not be issued.

c. Coordination. Coordination with headquarters is required before an Assistant Chief Counsel issues an Order of Seizure, see paragraph 1201b(3).

d. Person seizing aircraft. Seizure under section 903(b) or the FA Act 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, or by the Chief Counsel, or an Assistant Chief Counsel.

e. Order of Seizure.

(1) An Order of Seizure may be issued by the Administrator, the Chief Counsel, or an Assistant Chief Counsel. See Figure 12-23.

(2) The Order of Seizure shall be directed to the person ordered to seize the aircraft. It shall be signed by a person identified in (1). The order shall --

A. Include the finding that the aircraft has been involved in one or more violations of the FAR;

B. Properly identify the aircraft by type and number:

C. Identify the registered owner of the aircraft by name and address; and

D. State that the aircraft is subject to a lien by reason of the violations described.

(3) The Order shall order that the aircraft be seized and placed in the nearest available public storage facility within the judicial district in which seizure is made.

(4) If the aircraft is seized after a district court assesses a civil penalty, the form of the order of seizure shall reflect the fact that a judgment was issued against the owner or person in command for a violation in which the aircraft was involved. (An aircraft may not be seized under Section 903(b) of the FA Act unless it was itself involved in the violation for which the civil penalty is incurred.)

(5) The order shall designate the person seizing the aircraft, or other appropriate person, as its custodian.

f. Procedure. These procedures are for guidance of FAA personnel in seizing aircraft. They are not intended to be all inclusive or applicable to each situation. In each instance, legal counsel should be consulted for guidance. Upon receipt of an Order of Seizure, the person directed to seize an aircraft should proceed as follows:

(1) Take appropriate steps to locate the aircraft. This should be done discretely so as not to alert the owner of the impending seizure in order 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 seizure is undertaken.

(2) 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. Logistics will provide necessary advice and assistance in obtaining such public storage.

(3) If the aircraft is known to be in a hangar, arrangements should be made for access to the hangar. If it appears that access cannot be obtained voluntarily, legal counsel should be consulted regarding authorization to enter the hangar.

(4) Once access is made to the aircraft an inventory immediately should be made of all equipment, including avionics, and other property on board. Any damage should be specifically documented. If possible, detailed color photographs should be taken. (Due to difficulty in reproducing the pictures, Polaroid or similar cameras should not be used if practicable.)

(5) Once the aircraft has been seized and the aircraft placed in storage, copies of the Notice of Seizure (see paragraph 1209 f) should be placed on the aircraft on or near each door and elsewhere so they are visible from all sides. Additionally, the aircraft should be 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 should be padlocked and a Notice of Seizure placed on the hangar door.

(6) Appropriate arrangements should be made for the preservation of the aircraft.

(7) Immediately upon seizing the aircraft, notify the Assistant Chief Counsel by telephone.

(8) Appropriate arrangements should be made to permit the owner or operator to dispose of cargo on the aircraft.

(9) When an aircraft is released from seizure, the owner should be requested to inspect the aircraft and sign a release. Any damage he claims occurred during the period of seizure should be documented.

(10) Immediately upon release of the aircraft, the Assistant Chief Counsel should be notified. The release signed by the owner should be mailed to the Assistant Chief Counsel by certified mail.

g. Notice to the registered owner.

(1) Concurrently with the issuance of the order of seizure, or immediately thereafter, a written Notice of Seizure (see Figure 12-24) and a copy of Section 13.17 of the FAR, shall be sent by certified 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.

(2) The Notice shall state --

A. The time, date, and place of seizure:

B. The name and address of the custodian of the aircraft:

C. The reasons for the seizure, including the violations believed or judicially determined to have been committed: and

D. The amount that may be tendered as a compromise of a civil penalty or payment of a civil penalty assessed by a district court.

(3) The amount shall include the costs of seizure, storage, and maintenance.

(4) If the aircraft was seized after a district court had assessed a civil penalty, the form of the notice of seizure to the registered owner shall be changed appropriately and a copy of the judgment shall be attached to it.

h. Judicial proceedings. Concurrently with the issuance of the Order of Seizure, legal counsel should report by telephone to the U.S. Attorney for the district in which the aircraft is being seized and shall thereafter send a written report requesting the initiation of proceedings to enforce a lien against the seized aircraft. A copy of the Notice of Seizure should be included in the report to the U.S. Attorney. See Figure 12-25. If the aircraft is being seized prior to the institution of an action to collect a civil penalty, a draft libel should also be sent to the U.S. Attorney.

i. Release of seized aircraft.

(1) An order releasing a seized aircraft shall be issued by the person who ordered the aircraft seized, whenever --

A. The registered owner or other violator pays a civil penalty compromise or assessment and the costs of seizure, storage, and maintenance of the aircraft;

B. The aircraft is seized under an order of a Federal district court in proceedings in rem to enforce a lien against the aircraft:

C. The U.S. Attorney notifies the FAA of a refusal to institute such proceedings; or

D. 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 shall be sent to all those to whom Notice of Seizure was given and to the U.S. Attorney.

(3) Release should be carried out by the FAA employee who seized the aircraft, or who is responsible for storing it, or other appropriate person.

j. Assistance by Office of the Chief Counsel. Whenever a situation arises in connection with the seizure of an aircraft not covered by the foregoing provisions, the Assistant Chief Counsel shall consult with the Assistant Chief Counsel for the Regulations and Enforcement Division.

1209. ORDERS OF COMPLIANCE, CEASE AND DESIST ORDERS, ORDERS OF DENIAL, AND -ORDERS UNDER THE FEDERAL AVIATION ACT AND THE AIRPORT AND AIRWAY DEVELOPMENT ACT.

a. Authority. In performing duties and responsibilities under the FA Act, the Administrator has the authority to issue orders other than those prescribed by Sections 602 and 609. See Section 313a of FA Act. These include orders of compliance, cease and desist orders, orders of denial of FAA certificates (other than airman certificates), other orders issued pursuant to Title III, and orders authorized by the Airport and Airway Development Act of 1970. These orders may be judicially enforced under Section 1007 of the FA Act. When appropriate, the Administrator's emergency authority under Section 1005(a) may be used in the issuance of such orders.

b. Procedures. Such orders may be issued by the Chief Counsel, the Deputy Chief Counsel, and each Assistant Chief Counsel pursuant to the procedures set forth in Section 13.20 of the FAR. These procedures provide for notice to the person subject to the proposed order and the opportunity for a formal hearing under Subpart D of FAR Part 13 prior to the issuance of an order, except in emergency cases. In addition, these procedures provide for an appeal to the Administrator of orders issued by a hearing officer who, after review may issue a final FAA order.

1210. INJUNCTION ACTIONS UNDER THE FEDERAL AVIATION ACT (SECTION 1007).

a. General. Section 1007 of the FA Act grants jurisdiction to the district courts of the United States to enforce obedience to any provision of the FA Act, or any rule, regulation, requirement, or order promulgated thereunder, or any term, 'condition, or limitation of any certificate or permit issued under the FA Act, by the issuance of injunction or other process, mandatory or otherwise, restraining the violator from further violations. Section 1007 further authorizes any U.S. Attorney, upon the request of the Administrator, to institute in the'proper court, proceedings for the enforcement of such provisions, terms, conditions, or limitations and for the punishment of all violations thereof.

b. Responsibility of legal counsel. In carrying out the Administrator's enforcement program, legal counsel has the responsibility for using all available legal procedures which may be required for aviation safety and the public interest. FAA requests for injunction actions, for example, may be made in situations where an airman knowingly continues to operate an aircraft without the appropriate certificate, in violation of the FAR. In

such cases, where FAA legal enforcement actions have failed to deter violations, legal counsel should make appropriate referrals for initiation of injunction proceedings.

c. Referral procedures. The Assistant Chief Counsel should refer requests for injunctions to the U.S. Attorney in the proper judicial district. In appropriate cases, requests for injunctions may accompany a referral to the U.S. Attorney for judicial action to collect civil penalties. Cases not involving civil penalty proceedings should be 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 Assistant Chief 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 Section 901 of the FA Act. In such cases, a copy of legal counsel's referral letter to the U.S. Attorney, including a copy of any attachments, should be transmitted 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. The Assistant Chief Counsel should offer to assist in the preparation and trial of the case.

1211. ORDERS OF COMPLIANCE UNDER THE HAZARDOUS MATERIALS TRANSPORTATION ACT (SECTION 109).

a. General. Section 109 of the HMT Act authorizes the Secretary to issue orders, after notice and an opportunity for a hearing, directing compliance with the HMT Act or the Hazardous Materials Regulations (HMR). Subpart E of FAR Part 13 prescribes procedures for issuance of orders of compliance.

b. Issuance of order. The Assistant Chief Counsel should, in appropriate situations, proceed in accordance with FAR Part 13, which prescribes procedures for the following:

(1) Issuing notice of proposed order of compliance.

(2) Conducting formal hearings, when requested (see Subpart D of FAR Part 13).

(3) Issuance of order of compliance, without formal hearing and after formal hearing.

(4) Issuance of consent order of compliance.

(5) Appeals to the Administrator from an order of cunpliance issued after formal hearing.

1212. ORDERS OF IMMEDIATE COMPLIANCE UNDER THE HAZARDOUS MATERIALS TRANSPORTATIONACT.

a. General. The Assistant Chief Counsel, with appropriate delegation of authority (see FAR 13.81), may issue an order of immediate compliance when it is determined that --

(1) There is strong probability that a violation is occurring or is about to occur:

(2) The violation poses a substantial risk to health or to safety of life ok property: and

(3) The public interest requires the avoidance or amelioration of that risk through immediate compliance and waiver of the procedures afforded under FAR 13.73 through 13.79.

b. Issuance of order.

(1) An order of immediate compliance, when appropriate, should be issued pursuant to procedures in FAR 13.81.

(2) The order is effective immediately upon issuance.

(3) While a formal hearing, upon request, may be held in accordance with Subpart D of FAR Part 13 (on an expedited basis), the filing of a request for hearing does not stay the effectiveness of the order of immediate compliance.

(4) The order issued by a hearing officer may be appealed to the Administrator as provided in FAR 13.83.

(5) The official who issued the order of immediate compliance may request the U.S. Attorney to bring action to enforce the order.

(6) When the case also involves possible criminal violations, issuance of the order should be coordinated with the U.S. Attorney who would handle the criminal case (see paragraph 1215).

1213. INJUNCTIONS UNDER THE HAZARDOUS MATERIALS TRANSPORTATION ACT (SECTION 111).

a. General. Section 111 of the HMT Act authorizes the Attorney General, at the request of the Secretary, to bring actions in U.S. district court for equitable relief, including mandatory or prohibitive injunctions where violations of the HMT Act or Hazardous Materials Regulations are involved.

(1) When the Secretary has reason to believe that an "imminent hazard" involving the transportation of a hazardous material exists, the Secretary may petition (or may request the Attorney General to petition) the

U.S. district court for an order to restrict such transportation or to eliminate the imminent hazard.

(2) An imminent hazard exists, "if there is substantial likelihood that serious harm will occur prior to the completion of an administrative hearing or other formal proceeding initiated to abate the risk of such harm."

b. Responsibility and procedure for injunctive action. When it is determined that there is a basis for injunctive action, legal counsel, authorized by FAR 13.25, should request the U.S. Attorney to bring an action in U.S. district court for appropriate relief.

(1) If an imminent hazard is involved, legal counsel may bring, or request the U.S. Attorney to bring, an action in U.S. district court for an order to restrict such transportation of a hazardous material by air or to eliminate the hazard.

(2) When a request is made to a U.S. Attorney for court action, legal counsel should inform the U.S. Attorney of all pertinent informatlon available to the FAA.

(3) A copy of the referral letter to the U.S. Attorney, including a copy of any attachments, shall be transmitted to the Assistant Attorney General, Civil Division, Department of Justice, Washington, D.C. 20530. Legal counsel should offer to assist in the preparation and trial of the case.

1214. LEGAL ACTION INVOLVING CRIMINAL VIOLATIONS (ALL CASES).

a. General. Chapter 6 (Criminal Investigations) lists, or refers to, criminal statutes, including those in the Federal Aviation Act, the Hazardous Materials Transportaton Act, and the Airport and Airway Development Act, that are within the investigatory jurisdiction of the FAA or other Federal department or agency. The Department of Justice, through its U.S. Attorneys, has the responsibility for prosecution of all such cases.

b. Action by FAA counsel. It is the responsibility of legal counsel to participate in the handling of criminal cases being investigated or processed by FAA as follows:

(1) During FAA investigation. In cases investigated by the FAA, the investigator may need legal guidance and counseling to avoid any action that could prejudice criminal prosecution of the case. The investigator may need advice of legal counsel as to whether a particular matter should be referred, for further investigation, to another agency having the primary investigatory jurisdiction for the criminal statute involved.

(2) After completion of an investigation. Upon receipt of a criminal investigation report, counsel shall review it to determine whether there is sufficient evidence of a criminal violation to warrant referral of the case for prosecution.

A. When counsel determines that no further investigation is needed and that the evidence indicates a possible criminal violation, counsel shall refer the investigation report, including all of the available evidence, to the appropriate U.S. Attorney with a recommendation for criminal prosecution. The referral letter should advise the U.S. Attorney of any impact the violation could have on the performance of FAA functions and the extent to which a criminal prosecution would be important to FAA in carrying out its programs. Counsel shall offer to assist in the preparation and trial of the case.

B. When an investigation report contains evidence of violations that warrant FAA enforcement action (civil penalty, certificate action, order of compliance, etc.), in addition to evidence of a criminal violation, counsel shall, when referring the case for criminal prosecution, ask the U.S. attorney whether FAA may proceed with its enforcement action without prejudice to the criminal case.

(i) When the issuance of an emergency order (under the FA Act) or an order of immediate compliance (under the HMT Act) is required for aviation safety, such action shall be coordinated with the U.S. Attorney handling the criminal case.

(ii) In other types of cases, FAA enforcement action should be delayed, when requested by the U.S. Attorney, but the U.S. Attorney should be asked to expedite handling of the criminal case.

1215.-1299. RESERVED.

FIGURE 12-1. SAMPLE NOTICE OF PROPOSED CERTIFICATE ACTION
(Federal Aviation Act)

April 5, 1988 88GL140000

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Captain Jonathan V. Doaks
25 Duval Drive
East Miami, Illinois

NOTICE OF PROPOSED CERTIFICATE ACTION

Take notice that upon consideration of the report of investigation, including a statement of February 8, 1988, made on your behalf by Mr. D. R. Roe, Senior Vice President, Flight Operations, Jones Airlines, it appears that you violated the Federal Aviation Regulations by reason of the following circumstances:

1. You are now, and at all times mentioned herein were, the holder of Airline Transport Pilot Certificate No. 1000000.

2. On or about January 15, 1988, you acted as pilot in command of a Jones Airlines Boeing 720 aircraft operating on instrument flight rules in air transportation as scheduled Flight 13 from O'Hare International Airport, Chicago, Illinois, to Willow Run Airport, Ypsilanti, Michigan.

3. During the above-described flight, Flight 13 was instructed by air traffic control (ATC) to maintain an altitude of 8,000 feet.

4. Notwithstanding said instruction, Flight 13 descended to an altitude of about 7,400 feet, 600 feet below the assigned altitude.

5. Your operation of Flight 13, in the manner and under the circumstances described above, was careless so as to endanger the life and property'of another.

By reason of the foregoing facts and circumstances, you violated the following Federal Aviation Regulations:

1. Section 91.75(b), in that, in an area in which air traffic control is exercised, you operated ah aircraft contrary to an ATC instruction without obtaining an amended instruction: and

2. Section 91.9, in that you operated an aircraft in a careless or reckless manner so as to endanger the life or property of another.

Please take notice that by reason of the foregoing facts and circumstances and pursuant to the authority vested in the Administrator by Section 609 of the Federal Aviation Act of 1958, as amended, we propose to suspend your airline transport pilot certificate for a period of 30 days.

Unless we receive, in writing, your choice of the alternatives provided and set forth on the enclosed information form, on or before (date), ah order of suspension will be issued as proposed.

Assistant Chief Counsel

By: _____
Attorney

Enclosures

FIGURE 12-2. SAMPLE INFORMATION SHEET TO ACCOMPANY NOTICE OF PROPOSED CERTIFICATE ACTION

INFORMATION WITH RESPECT TO NOTICE OF PROPOSED CERTIFICATE ACTION

You may elect to proceed in one of the five ways set forth below. You should use the enclosed form for replying to the notice of proposed certificate action to indicate how you elect to proceed. You may proceed as follows:

1. Surrender your certificate on or before the above date. In this event, the order proposed in the notice will be issued at once, effective the date your certificate is surrendered or mailed to the office listed below. By surrendering your certificate, you will waive your right to appeal to the National Transportation Safety Board, as described in 2 below.

2. Indicate your desire to have an order issued as proposed in the notice of proposed certificate action so that you may appeal to the National Transportation Safety Board (NTSB), as provided in Section 609 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1429) and the NTSB's Rules of Practice (49 C.F.R. Part 821). This may be done by checking item no. 2 on the enclosed reply form or by not responding to the notice. You may proceed in accordance with 3, 4, or 5, below, without waiving your right to appeal to the NTSB.

If you appeal to the NTSB, an administrative law judge will be appointed to decide the case. The judge may hold a formal hearing at which the FAA will present witnesses and other evidence, and you will have the opportunity to present witnesses and other evidence. The FAA will have the burden of proof. An appeal from the judge's decision to the full Board is available, and from there to the U.S. courts of appeal.

3. Answer the charges in writing. With such answer, you may furnish such additional information, including statements by you or your representative or others, or other documentary evidence as you may wish to have considered. This will not affect your right to appeal to the NTSB.

4. Request that you and/or your representative be accorded a conference with an FAA attorney at the regional office of the FAA or at _____. At this conference, you may state why the proposed action should not be taken and you may present evidence and information on your behalf. This will not affect your right to appeal to the NTSB.

5. If you have filed an Aviation Safety Report with the National Aeronautics and Space Administration (NASA) concerning the incident set forth in the attached notice of proposed certificate action, you may be entitled to waiver of any penalty.

You will only be entitled to waiver if it is found --

a. That this violation was inadvertent and not deliberate:

b. That this violation did not involve a criminal offense, or accident, or disclose a lack of competence or qualification to be the holder of a certificate: and

c. You have not paid a civil penalty pursuant to Section 901 of the Federal Aviation Act or been found in any prior FAA enforcement action to have committed a violation of the Federal Aviation Act, or any regulation under the Federal Aviation Act, for a period of 5 years prior to the date of the occurances.

d. You prove that within 10 days after the violation, you completed and delivered or mailed a written report of the incident or occurrence to NASA under the Aviation Safety Report Program.

In the event that you prove your entitlement to this waiver of penalty, an order will be issued finding you in violation but imposing no certificate suspension. Your claim of entitlement to waiver of penalty shall constitute your agreement that this order may be issued without further notice. You will, however, have the right to appeal the order to the National Transportation Safety Board (NTSB) pursuant to Section 609 of the Federal Aviation Act.

Following issuance of an order, you will have the right to appeal such order to the NTSB under the provisions of Section 609 of the Federal Aviation Act.

Address all communications in this matter to:

Assistant Chief Counsel
Federal Aviation Administration
Address

If the certificate holder is an individual:

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 the Federal Aviation Act of 1958, 49 U.S.C. Section 1301, et seq., and regulations issued thereunder codified in Part 13 of Title 14 of the Code of Federal Regulations. Submission of the telephone number is voluntary. The request for information is intended to provide you with an opportunity to participate in the investigation.

B. Principal purpose. The requested information is intended to assist us in contacting you regarding this enforcement case.

C. Routine uses. Records from this system of records may be disclosed in accordance with the routine uses as they appear in System of Records No. DOT/FAA847 as published from time to time in the Federal Register.

D. Effect of failure to respond: If you do not provide the requested information, there may be delay in contacting you regarding this enforcement case.

FIGURE 12-3. **SAMPLE CERTIFICATE HOLDER REPLY**

Date: _____

To: Assistant Chief Counsel
Address

Subject: Notice of Proposed Certificate Action

In reply to your notice of proposed certificate action and the accompanying information sheet, I elect to proceed as indicated below:

1. / / I hereby transmit my certificate with the understanding that an order will be issued as proposed, effective the date of mailing of this reply, and with the understanding that I waive my right to appeal the order to the National Transportation Safety Board.

2. / / I request that the order be issued so that I may appeal directly to the National Transportation Safety Board.

3. / / I hereby submit my answer to your notice and request that my answer and any information attached thereto be considered in connection with the allegations set forth in your notice.

4. / / I hereby request to discuss this matter at an informal conference with an attorney from your office at _____
_____

5. / / I hereby claim entitlement to waiver of penalty under the Aviation Safety Report Program and enclose evidence that a timely report was filed with NASA.

Certificate holder:	My attorney/representative:
Signature: _____	Name : _____
Address: _____	Address: _____
_____	_____
Telephone: _____	Telephone: _____

FIGURE 12-4. SAMPLE RECEIPT FOR CERTIFICATE AND WAIVER OF APPEAL RIGHTS.

Certificate holder: _____

Case no.: _____

I, _____, hereby surrender my _____ certificate to the undersigned attorney for the FAA, for a period of _____ days/for cancellation. I understand that an order of suspension/revocation will be issued as proposed in the Notice of Proposed Certificate Action issued in this case on _____, except as follows: _____

_____

I hereby waive my right to appeal the order to the National Transportation Safety Board.

_____
Certificate holder date

_____
FAA Attorney date

FIGURE 12-5. SAMPLE ORDER OF SUSPENSION
(Federal Aviation Act)

May 16, 1988 88GL140000

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Captain Jonathan V. Doaks
25 Duval Drive
East Miami, Illinois

ORDER OF SUSPENSION

On April 5, 1988, you were advised by mail through a notice of proposed certificate action of the reasons why we proposed to suspend your airline transport pilot certificate, No. 1000000, for a period of 30 days.

After a consideration of all the evidence presently a part of this proceeding, including the information you presented at the informal conference held in the Office of the Assistant Chief Counsel, Kansas City, Missouri, on May 9, 1988, it has been determined that you violated the Federal Aviation Regulations because of the following circumstances:

1. You are nw, and at all times mentioned herein, the holder of Airline Transport Pilot Certificate No. 1000000.

2. On or about January 15, 1988, you acted as pilot in command of a Jones Airlines Boeing 720 aircraft operating on instrument flight rules in air transportation as scheduled Flight 13 from O'Hare International Airport, Chicago, Illinois, to Willow Run Airport, Ypsilanti, Michigan.

3. During the above-described flight, Flight 13 was instructed by air traffic control (ATC) to maintain an altitude of 8,000 feet.

4. Notwithstanding said instruction, Flight 13 descended to an altitude of 7,400 feet, 600 feet below the assigned altitude.

5. Your operation of Flight 13, in the manner and under the circumstances described above, was careless so as to endanger the life and property of another..

By reason of the foregoing facts and circumstances, you violated the follwing Federal Aviation Regulations:

1. Section 91.75(b), in that, in an area in which air traffice control is exercised, you operated an aircraft contrary to an ATC instruction without obtaining an amended instruction: and

2. Section 91.9, in that you operated an aircraft in a careless or reckless manner so as to endanger the lives and property of another.

By reason of the foregoing, the Administrator has determined that safety in air commerce or air transportation and the public interest require the suspension of your airline transport pilot certificate.

NOW, THEREFORE, IT IS ORDERED, pursuant to the authority vested in the Administrator by Section 609 of the Federal Aviation Act of 1958, as amended, that your airline transport pilot certificate, No. 1000000, be suspended, effective May 23, 1988, said suspension to continue in force for a period of 30 days thereafter. In the event you fail to surrender your certificate to the Office of the Assistant Chief Counsel, Federal Aviation Administration, Address, on or before May 23, 1988, said suspension shall continue in effect until 30 days subsequent to the actual surrender thereof.

Assistant Chief Counsel

By: _____
Trial Attorney

APPEAL

You may appeal from this order within 20 days from the date it is served by filing a Notice of Appeal with the Office of Administrative Law Judges, National Transportation Safety Board, Room 822, 800 Independence Ave., S.W., Washington, D.C. 20594.

Part 821 of the Board's Rules of Practice (49 C.F.R. Part 821) applies to such an appeal. An original and three (3) copies of your appeal must be filed with the National Transportation Safety Board (NTSB). In the event you appeal, a copy of your notice must also be furnished to the Office of Chief Counsel/Office of Assistant Chief Counsel at the address noted in the foregoing Order.

The filing of a timely appeal will stay the effectiveness of this Order during the pendency of that appeal before the NTSB. If you appeal to the NTSB, a copy of this Order will be filed with the NTSB and will serve as the Administrator's complaint in this proceeding.

CERIFICATE OF SERVICE

I hereby certify that this Order has been mailed this date by certified mail, addressed to:

_____
Legal Clerk date

FIGURE 12-6. SAMPLE LANGUAGE FOR ORDER OF SUSPENSION WITH WAIVER OF PENALTY.

NOW, THEREFORE, IT IS ORDERED, persuant to Section 609(a) of the Federal Aviation Act of 1958, as amended, that any pilot certificate held by you, including airline transport pilot certificate no. XXX, be and hereby is suspended for XX days.

Assistant Chief Counsel

By: _____
Trial Attorney

WAIVER OF PENALTY

The Administrator has determined that you are entitled to a waiver of penalty under the Aviation Safety Report Program, by reason of your having filed a timely report of the incident which is the subject of this case under that program, and otherwise meeting all of the requirements for such waiver. Accordingly, the suspension of your airman certificate ordered herein, although remaining a matter of record, will not actually be imposed. You will not be required to surrender your airman certificate, and may continue to use your certificate without interruption.

[include appeal rights]

FIGURE 12-7. SAMPLE EMERGENCY ORDER
(Federal Aviation Act)

December 1, 1988

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Failure Pilot School, Inc.
410 Forest Drive
San Angelo, Texas

EMERGENCY ORDER OF REVOCATION

Take notice that this office is in receipt of an investigative report fran which it appears that Failure Pilot School, Inc. (Failure) violated the Federal Aviation Regulations by reason of the following circumstances:

1. Failure nw holds, and at all times material herein held, Air Agency Certificate Number AA-001-10, with approval to operate as a Pilot School, with Mr. Les Passem as President and Mr. Will Testem as Chief Flight Instructor.

2. On or about October 5, 17, 28, and 30, 1988, Failure gave dual flight instruction to a student using Mr. Passem as an instructor,

3. At the time of the above-described instruction, Mr. Passem was not qualified to give flight instruction in that he had not been briefed in regard to the objectives and standards of that course by the chief flight instructor.

4. On or about November 1, 2, 4, and 5, 1988, Failure gave dual flight instruction to three students using Mr. Woody Flunkem as the instructor.

5. At the time of the above-described instruction, Mr. Flunkem was not qualified to give flight instruction in that he had not been briefed in regard to the objectives and standards of that course by the chief flight instructor.

6. During the period of May 25, through July 22, 1988, Failure gave Joe Student multiengine flight training.

7. At the time of the above-described training, Failure did not meet the requirements for approval of a multiengine training course in that it did not have a qualified chief flight instructor for the multiengine course.

8. By letter dated July 9, 1988, Failure was notified by the Administrator that its multiengine course certification was suspended due to the lack of a qualified chief flight instructor.

9. Subsequent to the above-described notification, Failure continued to give multiengine course instruction when it did not have a qualified chief flight instructor for the course.

By reason of the foregoing facts and circumstances, Failure violated the follwing Federal Aviation Regulations:

1. Section 141.3, which prohibits a person from operating a certificated pilot school in violation of a pilot school certificate.

2. Section 141.89(b), which prohibits the holder of a pilot school certificate fran giving instruction or training to a student who is enrolled in an approved course of training unless each instructor or chief instructor meets the qualifications specified in the holder's approved course of training and the appropriate requirements of Part 141.

3. Section 141.81(c), which prohibits an instructor from being used in an approved course of training until he has been briefed in regard to the objectives and standards of that course by the designated chief instructor or his assistant.

By reason of the circumstances set forth in the foregoing paragraphs, the Administrator has determined that Failure lacks the degree of care, judgment, and responsibility required of the holder of an Air Agency Certificate. Therefore, the Administrator finds that safety in air commerce or air transportation and the public interest require the revocation of Air Agency Certificate issued to Failure. Furthermore, the Administrator finds that an emergency exists and safety in air commerce or air transportation requires the immediate effectiveness of this order.

NOW THEREFORE, IT IS ORDERED, pursuant to the authority vested in the Administrator by Sections 609 and 1005(a) of the Federal Aviation Act of 1958, as amended, that:

1. Air Agency Certificate No. AA-0001-10 issued to Failure Airline; Inc., is revoked on an emergency basis.

2. Such revocation shall become effective as of the date of this order.

3. Failure's certificate must be surrendered at once by mail or delivery to the Assistant Chief Counsel, address.

Assistant Chief Counsel

By: _____
Trial Attorney

APPEAL

You may appeal from this order within 10 days from the date it is served by filing a notice of appeal with the National Transportation Safety Board, Room 822, 800 Independence Ave., S.W., Washington, D.C. 20594. Due to the fact that your certificate has been revoked on an emergency basis, the Emergency Order of Revocation will remain in effect during the pendency of any proceedings before the National Transportation Safety Board (NTSB). Part 821 of the Board's Rules of Practice in Air Safety Proceedings applies to such an appeal. An original and three (3) copies of your appeal must be filed with the NTSB. In the event you appeal, a copy of your Notice of Appeal must be furnished to the Office of Chief Counsel/Office of Assistant Chief Counsel at the address noted in the Emergency Order.

Whether or not you choose to appeal from this Emergency Order, you must surrender Air Agency Certificate No. AA-0001-10 to the Chief Counsel/Assistant Chief Counsel, address.

In the event of an appeal to the NTSB, a copy of this order will be filed with the NTSB and will serve as the Administrator's complaint.

FIGURE 12-8. SAMPLE CIVIL PENALTY LETTER
(Federal Aviation Act)

September 31, 1988 Case No. 88SW234567

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Whimsicality Airways, Inc.
Vieux Carre
New Orleans, Louisiana

Attention: Ms. Karen Gibbs
President

Dear Ms. Gibbs:

We have received a report of investigation from which it appears that during the period January 21 through January 22, 1988, Whimsicality Airways, Inc, (WAI), the holder of Air Carrier Operating Certificate No. GRAS-OOOM, operated two Lockheed L-1011 aircraft, N12U and N34R, on a total of fifteen (15) flights after it had removed the Auxiliary Power Unit (APU) generator from said aircraft. WAI's Minimum Equipment List (MEL) for said aircraft authorizes operation of said aircraft with an inoperative APU generator system, but WAI's MEL does not authorize operations with the APU generator removed from the aircraft. The removal of the APU generators rendered civil aircraft N12U and N34R unairworthy.

WAI performed maintenance on said aircraft utilizing unacceptable methods, techniques, and practices and further performed said maintenance in a manner so the aircraft was not equal to its original or properly altered condition.

Based on this information, it appears that WAI violated Sections 121.153(a) (2) ; 121.105; 43.13(a) ; and 43.13(b) of the Federal Aviation Regulations; Under Section 901(a) of the Federal Aviation Act of 1958, as amended, WAI is subject to a civil penalty not to exceed $10,000 for each of the violations noted. After careful consideration of all available information, we are willing to accept $75,000 in settlement of this matter. An explanation of the settlement procedures is enclosed.

We will take no further action for a period of 14 days after WAI's receipt of this letter in order to afford WAI an opportunity to submit the suggested amount in settlement.

Sincerely,

Assistant Chief Counsel

By: _____
Trial Attorney

Enclosure

FIGURE 12-9. SAMPLE INFORMATION SHEET TO ACCOMPANY
A CIVIL PENALTY LETTER (Federal Aviation Act)

INFORMATION REGARDING CIVIL PENALTIES
UNDER SECTION 901 OF THE FEDERAL AVIATION ACT OF 1958

Section 901(a) of the Federal Aviation Act of 1958 provides that any person who violates pertinent provisions of the Act, or any rule, regulation, or order issued thereunder, shall be subject to a civil penalty for each violation. The maximum civil penalty for each violation is also prescribed by law, as specified in the letter to which this is attached. The Act authorizes the Administrator to compromise penalties. The attached letter states the sum which we would accept in full settlement of the alleged violation or violations described therein.

You are, of course, not required to make an offer of settlement. If you do not wish to make such an offer, the matter will be presented to a U.S. attorney, who may bring a civil action, seeking the full amount of the civil penalty prescribed by law. The U.S. district court will decide all issues of fact and law, following a trial at which you will have the right to present evidence on your behalf and cross-examine the Administrator's witnesses. If you prefer to settle this matter as suggested in the attached letter, such a settlement will not constitute an admission of violation.

You may, therefore, within 14 days from the receipt of this letter, proceed in one of the following ways:

1. You may submit the amount suggested in the attached letter, by certified check or money order payable to the Federal Aviation Administration, to the Assistant Chief Counsel, address.

2. You may submit additional information which you believe will either explain, excuse, or disprove the alleged violations. You may do so in writing or in person by requesting an informal conference at the Office of the Assistant Chief Counsel or the nearest FAA regional office. Any additional information submitted by you will be given our careful consideration. Since the attached letter may become a part of the publicly available records, you. may wish to submit a letter which would be included in these records.

3. You may wish to have the issues of fact and law in this matter decided by the U.S. district court. If so, please advise us inunediately.

4. If you have filed an Aviation Safety Report with the National Aeronautics and Space Administration (NASA) concerning the incident set forth in the attached civil penalty letter, you may be entitled to waiver of any penalty. If you claim entitlement to this waiver, you must present evidence satisfactory to the Administrator that you filed a report with NASA within 10 days of the incident concerning that incident. You will only be entitled to waiver if you filed such a report and it is found --

a. That this alleged violation was inadvertent and not deliberate:

b. That this violation did not involve a criminal offense, or accident, or action under Section 609 of the Act which discloses a lack of competence or qualification to be the holder of a certificate:

c. You have not paid a civil penalty pursuant to Section 901 of the Federal Aviation Act or been found in any prior FAA enforcement action to have committed a violation of the Federal Aviation Act or any regulation of the Federal Aviation Act for a period of 5 years'prior to the date of the occurrence: and

d. You prove that within 10 days after the violation, you completed and delivered or mailed a written report of the incident or occurrence to NASA under the Aviation Safety Report Program.

In the event that you establish you entitlement to this waiver of penalty, a letter will be issued stating that you are in violation but waiving imposition of a civil penalty. Your claim of entitlement to waiver of penalty shall constitute your agreement that this letter may be issued without further notice.

Al.1 correspondence in this matter should be addressed to following address:

Office of the Assistant Chief Counsel
Address

If the certificate holder is an individual:

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 the Federal Aviation Act of 1958, 49 U.S.C. Section 1301, et seq., and regulations issued thereunder codified in Part 13 of Title 14 of the Code of Federal Regulations. Submission of the telephone number is voluntary. The request for information is intended to provide you with an opportunity to participate in the investigation.

B. Principal purpose. The requested information is intended to assist us in contacting you regarding this enforcement case.

C. Routine uses. Records from this system of records may be disclosed in accordance with the routine uses as they appear in System of Records No-m/FAA 847 as published from time to time in the Federal Register.

D. Effect of failure to respond: If you do not provide the requested information, there may be delay in contacting you regarding this enforcement case.

FIGURE 12-10. SAMPLE REPLY TO CIVIL PENALTY LETTER
(Federal Aviation Act)

Date: _____

TO: Assistant Chief Counsel
Address

Subject: Civil Penalty Letter

In reply to your letter proposing to settle this matter and the accompanying information sheet, I elect to proceed as indicated below:

1. /__/ I hereby submit the amount proposed in settlement of this matter.

2. /__/ I hereby submit my response to your letter and request that my response and any information attached thereby be considered in connection with the allegations set forth in your letter.

3. /__/ I hereby request to discuss this matter at an informal conference with an attorney from your office at _____.

4. /__/ I wish to have this matter decided by the U.S. district court.

5. /__/ I hereby claim entitlement to waiver of penalty under the Aviation Safety Report Program and enclose evidence that a timely report was filed with NASA.

Certificate holder:	My attorney/representative:
Signature: _____	Name : _____
Address: _____	Address: _____
_____	_____
Telephone: _____	Telephone: _____

FIGURE 12-11. **SAMPLE FORM OF RECEIPT FOR CIVIL PENALTIES**
(Federal Aviation Act)

November 15, 1988

Whimsicality Airways, Inc.
Vieux Carre
New Orleans, Louisiana

Attention: Ms. Karen Gibbs
President

Re: Case No. 88SW234567

Dear Ms. Gibbs:

Receipt is acknowledged of your check (money order) of November 1, 1988, in the amount of $75,000 submitted as an offer in settlement of your alleged violations of the Federal Aviation Regulations.

This amount is hereby accepted in full settlement of any civil penalty incurred under Section 901(a) of the Federal Aviation Act of 1958, as amended, by reason of Whimsicality Airways' alleged violation of the Federal Aviation Regulations, as described in our letter of September 31, 1988. It is understood that this settlement does not constitute an admission of any violation.

You may consider this matter closed.

Sincerely,

Assistant Chief Counsel

FIGURE 12-12. **SAMPLE COMPLAINT FOR REFERRAL TO U.S. ATTORNEYS**
(Federal Aviation Act)

UNITEDSTATESOFAMERICA

_____ DISTRICT OF _____

UNITED STATES OF AMERICA, Plaintiff	)
v.	)
RICH AIR, Defendant.	)

COMPLAINT

The United States of America for its canplaint against the defendant, Rich Air, alleges:

I

This action is being brought by the United States of America to recover a civil penalty in the sum of $60,000 fran the defendant, Rich Air, under Section 901(a)(1) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1471(a)). Jurisdiction is conferred upon this court by Section 1007(b) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1487(b)), and by 28 U.S.C. 1345.

II

The defendant, Rich Air, is a resident of and conducts business in the City of Chicago, County of Cook, State of Texas, and is the holder of Federal Aviation Administration Air Carrier Operating Certificate No. 00001 and operatims specifications issued therunder to engage in various operations in air transportation under Part 121 of the Federal Aviation Regulations.

III

Rich Airlines has adopted and is responsible for carrying out an Air Carrier Security Program in accordance with the provisions of Part 108 of the Federal Aviation Regulations.

IV

During the period of January 29 to 31, 1988, Federal Aviation Administration security inspectors conducted an inspection of air carrier security operations at El Paso International Airport, El Paso, Texas.

V

During the course of the inspection, the inspectors determined that practical testing on test objects, including a capsulated weapon, dynamite bomb, hand grenade, pipe bomb, and toy pistol were not being conducted under realistic conditions as required by Section XIII(B)(2)(c) of the Company's Security Program, in that the test objects were passed through the screening system in a test period of 30-45 minutes rather than at random, over an extended period of time, as required, to simulate realistic conditions.

VI

The following persons had been given practical tests as part of their initial training under other than realistic conditions as described above, and subsequently sent to perform passenger screening functions requiring independent determinations: Fred Flintstone, Barney Rubble, Dino Dog, Cat Mandoo, Archie Bunker, and Mike Stivek.

VII

By reason of the foregoing, the defendant, Rich Air, violated the provisions of Section 108.5(a) of the Federal Aviation Regulations in that it failed to provide initial training under realistic conditions as required by Section XIII(B) (2) (c) of its Air Carrier Security Program.

VIII

By virtue of Section 901(a) of the Federal Aviation Act of 1958, as amended, 49 U.S.C. 1471(a), the defendant is subject to a civil penalty not to exceed $10,000 for each of the foregoing violations of the Federal Aviation Regulations

WHEREFORE, plaintiff demands judgment against defendant in the sum of $60,000 together with its costs therein.

Respectfully Submitted this _____ day of _____, 19__.

_____
UNITED STATES OF AMERICA
UNITED STATES ATTORNEY

_____
ASSISTANT UNITED STATES ATTORNEY

Figure 12-13. **SAMPLE LANGUAGE FOR NOTICE OF PROPOSED CIVIL PENALTY**
(Federal Aviation Act)

Under Section 901(a) of the Federal Aviation Act, as amended, you are subject to a civil penalty not to exceed $1,000 for each of the violations noted. By reason of the foregoing facts and circumstances, we propose to assess a civil penalty in the amount of $4,000.

Unless we receive, in writing, your choice of the alternatives provided and set forth on the enclosed information form, on or before 30 days after you receive this Notice, we will issue an Order Assessing Civil Penalty as proposed, and you will have no further right to appeal the order.

Assistant Chief Counsel

By: _____
Attorney

Enclosures

FIGURE 12-14. SAMPLE INFORMATION SHEET TO ACCOMPANY
NOTICE OF PROPOSED CIVIL PENALTY (Federal Aviation Act)

INFORMATION REGARDING CIVIL PENALTIES
UNDER SECTIONS 901 AND 905 OF THE
THE FEDERAL AVIATION ACT OF 1958, AS AMENDED

Section 901 of the Federal Aviation Act of 1958, as amended, provides that any person who violates pertinent provisions of the Act, or any rule, regulation, or order issued under the Act, is subject to a civil penalty for each violation. The maximum assessment for each violation is also prescribed by law, as specified in the notice to which this is attached. The notice also states the sum which would be assessed for the alleged violation(s).

Within thirty (30) days after your receipt of the notice, you may elect to proceed in one of the following ways by appropriately marking the corresponding box on the attached election sheet and returning it to the address provided below.

1. Submit the amount of the civil penalty specified in the notice by certified check or money order payable to the "Federal Aviation Administration." Your submission constitutes your agreement that an Order Assessing Civil Penalty in that amount may be issued without further notice, and that you waive your right to a hearing in this matter.

2. You may submit in writing information and evidence demonstrating that a violation of the regulations was not committed or that, if it were, the facts and circumstances do not warrant the proposed civil penalty. Information provided will be considered in determining whether a civil penalty should be imposed and the amount of any such civil penalty. This information may be submitted in conjunction with a request for informal conference under paragraph 4. This will not affect your right to a hearing if you do not elect paragraph 1 or 3.

If you also elect paragraph 1 or 3, your offer will be considered and will constitute your agreement that an Order Assessing Civil Penalty in the amount you specified may be issued without further notice.

3. Request that a civil penalty be assessed in a specific amount other than that proposed in the notice or that no civil penalty be assessed and submit the reasons for the reduction below the proposed amount together with any additional information in writing (with appropriate supporting documentation) which you believe will explain, excuse, or disprove the alleged violations. Information provided will be considered in determining whether your specified amount of a civil penalty should be assessed.

If the FAA does not accept your offer, this will not affect your right to a hearing. If the FAA accepts your offer, your request constitutes your agreement that the Order Assessing Civil Penalty in that amount may be issued without further notice, and that you waive your right to a hearing.

4. Request to discuss the matter informally and in person at a conference with an FAA attorney at the Office of the Chief Counsel/Office of the Assistant Chief Counsel in _____ or at the Flight Standards District Office convenient to you (a list of those offices in the _____ Region is attached). If you reside outside the _____ Region, you may request the transfer of the case to your area for the conference to be held. This will not affect your right to a hearing. **IMPORTANT** - The purpose of the conference is to provide the opportunity for you to present your reasons and any supporting basis why the action should not be taken as proposed, including any information you wish to have considered before the FAA decides whether to further proceed with the proposed action.

5. If you have filed an Aviation Safety Report with the National Aeronautics and Space Administration (NASA) concerning the incident set forth in the attached Notice of Proposed Civil Penalty, you may be entitled to waiver of any penalty. You will only be entitled to waiver if it is found:

a. That this violation was inadvertent and not deliberate:

b. That this violation did not involve a criminal offense, or accident, or discloses a lack of competence or qualification to be the holder of a certificate: and

c. YOU have not paid a civil penalty pursuant to Section 901 of the Federal Aviation Act or been found in any prior FAA enforcement action to have committed a violation of the Federal Aviation Act, or , any regulation under the Federal Aviation Act, for a period of 5 years prior to the date of the occurances.

d. You prove that within 10 days after the violation, you completed and delivered or mailed a written report of the incident or occurrence to NASA under the Aviation Safety Report Program.

In the event you establish your entitlement to a waiver of penalty, an order will be issued finding you in violation but imposing no payment of civil penalty or certificate suspension. The order will be a matter of record. As to the findings of fact and violations, you may either waive your right to a hearing (in which case an Order Assessing Civil Penalty will be issued), or you may request a formal hearing on the allegations of fact and violations (in which case an Order of Civil Penalty will be issued).

6. Reguest to have a formal hearing in accordance with Section 13.16 of the Federal Aviation Regulations with the understanding that an Order of Civil Penalty will be issued and filed as the complaint. Subsequent to your request, a formal evidentiary hearing of the matter will be conducted under Part 13 at the conclusion of which all issues of fact and law will be decided and a decision rendered whether and in what amount a civil penalty is assessed. At the hearing you will have the opportunity to present evidence on your behalf, to examine the Administrator's evidence, to call witnesses, and to cross-examine the Administrator's witnesses, in accordance with established rules and procedures.

VERY IMPORTANT - If you fail to communicate your election of how you wish to proceed within the time specified, an Order Assessing Civil Penalty as proposed in the Notice will be issued without further notice based on the evidence and information available to the FAA. If this order is issued, you will have no further right to a hearing on the allegations made in this Notice.

Please address all communications in this matter to the FAA attorney who signed the Notice at the following address:

Office of Assistant Chief Counsel
Federal Aviation Administration
_____ Region
Address

It may be delivered personally to the Office of the Assistant Chief Counsel for the _____ Region at the above address during normal business hours.

Telephone: _____(Collect calls cannot be accepted).

If the certificate holder is an individual:

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 the Federal Aviation Act of 1958, 49 U.S.C. Section 1301, et seq., and regulations issued thereunder codified in Part 13 of Title 14 of the Code of Federal Regulations. Submission of the telephone number is voluntary. The request for information is intended to provide you with an opportunity to participate in the investigation.

B. Principal purpose. The requested information is intended to assist us in contacting you regarding this enforcement case.

C. Routine uses. Records from this system of records may be disclosed in accordance with the routine uses as they appear in System of Records No. DOT/FAA 847 as published from time to time in the Federal Register.

D. Effect of failure to respond: If you do not provide the requested information, there may be delay in contacting you regarding this enforcement case.

FIGURE 12-15. SAMPLE REPLY TO NOTICE OF PROPOSED CIVIL PENALTY
(Federal Aviation Act)

Date_____

Assistant Chief Counsel for the _____ Region
Federal Aviation Administration
P.O. Box 55555
Your City, Your State 00000

Subject: Notice of Proposed Civil Penalty

In reply to your Notice of Proposed Civil Penalty, I elect to proceed as indicated by my check mark beside the numbered paragraphs below:

1. / / I hereby submit the amount of the proposed civil penalty with the understanding that an order assessing a civil penalty will be issued in that amount without further notice, and that I waive my right to a hearing.

2. / / I hereby submit evidence and information, demonstrating that a violation of the regulations did not occur or that the amount of the penalty is not warranted by the circumstances.

3. / / I hereby request that the proposed civil penalty be assessed in the amount of $_____ and I submit the reasons for the reduction of the proposed amount. My proposal shall constitute my agreement that an order assessing civil penalty in the amount I submitted may be issued without further notice, and that I waive my right to a hearing.

4. / / I hereby request an informal conference (which will be held at the Office of the Assistant Chief Counsel in _____ or at a mutually convenient location) in order to discuss this matter with an FAA attorney and to present evidence and information in my behalf.

5. / / I hereby claim entitlement to waiver of penalty under the Aviation Safety Report Program and enclose evidence that a timely report was filed. As to the allegations of fact and violations --
/ / I request that an Order Assessing Civil Penalty be issued and waive my right to a formal hearing.
/ / I request a formal hearing in this matter in accordance with paragraph 6.

6. / / I hereby request a formal hearing in accordance with $13.16 of the Federal Aviation Regulations with the understanding that an Order of Civil Penalty will be issued and filed as the complaint. I request that the hearing be held in _____.

Certificate holder:

Signature: _____
Address: _____

Telephone: _____

My attorney/representative:

Name : _____
Address: _____

Telephone: _____

FIGURE 12-16. SAMPLE ORDER OF CIVIL PENALTY
(Federal Aviation Act)

September 6, 1988

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Adele Transport, Inc.
3 Coffee Run
Carson City, Nevada

Re: Case No. 88WP456789

ORDEROFCMLPENALTY

On July 31, 1988, Adele Transport, Inc. (ATI) was advised through a Notice of Proposed Civil Penalty that the FAA proposed to assess a civil penalty in the amount of $30,000

After consideration of all of the available information, it has been determined that:

1. Adele Transport, Inc. (ATI) is now, and at all times mentioned herein was, the holder of Air Carrier Operating Certificate No. WP-BCR-69S.

2. Between February 15, 1988, and February 30, 1988, AT1 operated the following aircraft in scheduled passenger-carrying revenue flights when the inspection times had not been accomplished as required by Part D of its approved operations specifications, as follows:

Item	Due	Hours Flown Between Checks	Overdue
Aircraft N24U - 7 flights			
"L" Service Check	Every 50 hours	60	10 hours
Aircraft N44ME - 5 flights			
"M" Service Check	Every 75 hours	90	15 hours

3. ATI's failure to acccnnplish the above-described service checks rendered civil aircraft N24U and N44ME unairworthy.

By reason of the foregoing facts and circumstances, AT1 violated the following Federal Aviation Regulations:

1. Section 121.3(a), in that AT1 engaged in operations contrary to and in violation of its approved operations specifications: and

2. Section 121.153(a) (2), in that AT1 operated aircraft when the aircraft were not in an airworthy condition.

NOW, THEREFORE, IT IS ORDERED, pursuant to Section 901(a)(l) of the Federal Aviation Act of 1958, as amended (49 U.S.C.App. §1471), that AT1 be and hereby is subject to a civil penalty in the amount of $30,000.

Assistant Chief Counsel

By: _____
Trial Attorney

ANSWER

You must answer this Order, which serves as the Complaint in this proceeding, not later than 30 days from the time it is served on you in accordance with Section 13.209 of the Rules of Practice for FAA Civil Penalty Actions (14 C.F.R. $13.209(f)). Failure to file an answer within 30 days will be deemed an admission of the truth of the allegations set forth in this Order and an Order Assessing Civil Penalty will be issued.

FIGURE 12-17. SAMPLE ORDER ASSESSING CIVIL PENALTY
(Federal Aviation Act)

June 31, 1988

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Al T. Tude
747 Boeing Circle
Deviation, LO

Re: Case No. 88WP678910

ORDER ASSESSING CIVIL PENALTY

On February 31, 1988, you were advised through a Notice of Proposed Civil Penalty that the FAA proposed to assess a civil penalty in the amount of $1,200.

After consideration of all of the available information, including the information you presented at the March 15, 1988, informal conference, it has been determined that:

1. You are now, and at all times material herein were, the registered owner of civil aircraft N4U, a Cessna Model 310.

2. On or about December 31, 1987, N4U was operated on a passenger-carrying flight from Los Angeles, California, to Reno, Nevada.

3. Incident to said flight, at approximately 1659:02 GMT, N4U was issued and acknowledged a clearance from the Reno Air Traffic Control Tower (ATC) to descend to and maintain a flight level of 9,000.

4. Incident to said flight, at approximately 1702:12 GMT, Reno ATC observed N4U descend through 9,000 feet to 5,000 feet.

5. At no time mentioned herein did Reno ATC issue and nor did N4U receive a clearance to descend to a flight level of 5,800 feet.

6. As owner of N4U, you operated N4U on the above flight.

7. By reason of the facts and circumstances described above, you operated civil aircraft N4U in a careless manner so as to endanger the life or property of another.

By reason of the foregoing facts and circumstances, you violated the following Federal Aviation Regulations:

1. Section 91.75(a), in that you as operator of N4U deviated from an ATC clearance without having obtained an amended clearance when no emergency existed: and

2. Section 91.9, in that you as operator of N4U operated an aircraft in a careless manner so as to endanger the life or property of another.

NOW, THEREFORE, IT IS ORDERED, pursuant to Section 901(a)(l) of the Federal Aviation Act, as amended (49 U.S.C.App §1471), that you be and hereby are assessed a civil penalty in the amount of $1,200.

[include one of the following]

You are hereby ordered to pay, immediately, the assessed amount by mailing or delivering a check or money order in the amount of $1,200, payable to the Federal Aviation Administration, to Trial Attorney, Office of the Chief Counsel/Office of the Assistant Chief Counsel, address.

or

We hereby acknowledge receipt of your check in the amount of $1,200 which we accept in full settlement of this matter. You may consider the matter closed.

Assistant Chief Counsel

By: _____
Trial Attorney

FIGURE 12-18. SAMPLE NOTICE OF PROPOSED CIVIL PENALTY
(Hazardous Materials Transportation Act)

January 22, 1988

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

ABC Airlines, Inc.
P.O. Box 5200
Jonesboro, Arkansas 72401

Re: Case No. 88WP123456; Docket No. 79-00 (HM)

NOTICE OF PROPOSED CIVIL PENALTY

Based on a report of investigation, it appears that:

1. On or about May 15, 16, and 17, 1987, ABC, Inc. (ABC) accepted and transported aboard a passenger-carrying flight a shipment of approximately 30 pounds of special fireworks and approximately 200 pounds of propellant explosive from Los Angeles, California, to Las Vegas, Nevada.

2. Special fireworks is classified as a hazardous material under Section 172.101 of the Hazardous Materials Regulations (HMR) (49 C.F.R. 172.101).

3. The proper shipping name for this material is "Fireworks, special" which is in the Class B explosive hazard class.

4. Propellant explosive is classified as a hazardous material under Section 172.101 of the HMR.

5. The proper shipping name for this material is "Propellant explosive" which is in the Class A explosive hazard class.

6. At all times mentioned herein, Fireworks, special and Propellant explosive are forbidden aboard passenger-carrying aircraft.

By reason of the above, ARC violated the following Department of Transportation Hazardous Materials Regulations:

1. Section 175.30(a)(1) (49 C.F.R. 175.30(a)(1)), in that ARC accepted a hazardous material for transportation aboard an aircraft when the material was not authorized and was not within the quantity limitations specified for carriage aboard aircraft according to Section 172.101 (49 C.F.R. 172.101).

2. Section 175.75(a)(l) (49 C.F.R. 175.75(a)(1)), in that ABC carried on an aircraft a hazardous material contrary to the provisions of Part 172 (49 C.F.R. Part 172).

3. Section 175.20 (49 C.F.R. 175.20), in that ABC, as operator, failed to thoroughly instruct its employees in relation to the applicable Hazardous Materials Regulations.

In accordance with Section 110 (a) (1) of the Hazardous Materials Transportation Act (49 U.S.C. 1809(a)(l)), ABC is liable for a civil penalty not to exceed $10,000 for each violation of the regulations. After reviewing our investigative file, including your letter of September 22, 1987, we propose to issue an order assessing a civil Penalty in the amount of $20,000 for these violations.

An Order assessing a civil penalty will be issued as proposed unless, not later than thirty days after the receipt of this notice, ABC elects to proceed in accordance with the alternatives listed on the enclosed election and information forms. A copy of 14 C.F.R. Part 13 is also enclosed for your reference.

Please address all communications to _____, Regulations and Enforcement Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591:

Assistant Chief Counsel

By: _____

Enclosure

FIGURE 12-19. SAMPLE INFORMATION SHEET
(Hazardous Materials Transportation Act)

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

INFORMATION REGARDING CIVIL PENALTIES
UNDER THE HAZARDOUS MATERIALS TRANSPORTATION ACT

Section 110(a)(l) of the Hazardous Materials Transportation Act (Act) provides that any person who violates pertinent provisions of the Act, or any rule, regulation, or order issued under the Act, is subject to a civil penalty for each violation. The maximum assessment for each violation is also prescribed by law, as specified in the notice to which this is attached. The notice also states the sum which would be assessed for the alleged violation(s).

Within thirty (30) days after your receipt of the notice, you may elect to proceed in one of the following ways by appropriately marking the corresponding box on the attached election sheet and returning it to the address provided below.

1. Submit the amount of the civil penalty specified in the notice by certified check or money order payable to the "Federal Aviation Administration." Your submission constitutes your agreement that an Order Assessing Civil Penalty in that amount may be issued without further notice, and that you waive your right to a hearing in this matter.

2. You may submit in writing information and evidence demonstrating that a violation of the regulations was not committed or that, if it were, the facts and circumstances do not warrant the proposed civil penalty. Information provided will be considered in determining whether a civil penalty should be imposed and the amount of any such civil penalty. This information may be submitted in conjunction with a request for informal conference under paragraph 4. This will not affect your right to a hearing if you do not elect paragraph 1 or 3.

If you also elect paragraph 1 or 3, your offer will be considered and will constitute your agreement that an Order Assessing Civil Penalty in the amount you specified may be issued without further notice.

3. Request that a civil penalty be assessed in a specific amount other than that proposed in the notice or that no civil penalty be assessed and submit the reasons for the reduction below the proposed amount together with any additional information in writing (with appropriate supporting documentation) which you believe will explain, excuse, or disprove the alleged violations. Information provided will be considered in determining whether Your specified amount of a civil penalty should be assessed.

If the FAA does not accept your offer, this will not affect your right to a hearing. If the FAA accepts your offer, your request constitutes your

agreement that the Order Assessing Civil Penalty in that amount may be issued without further notice, and that you waive your right to a hearing.

4. Request to discuss the matter informally and in person at a conference with an FAA attorney at the Office of the Chief Counsel in Washinton, D.C. or the nearest FAA regional office. If you reside outside the Washington, D.C. or regional office areas, you may request that the conference be held in'a mutually convenient major city; This will not affect you right to a hearing. IMPORTANT - The purpose of the conference is to provide the opportunity for you to present your reasons and any supporting basis why the action should not be taken as proposed, including any information you wish to have considered before the FAA decides whether to further proceed with the proposed action.

5. Request to have a formal hearing in accordance with Section 13.16 of the Federal Aviation Regulations with the understanding that an Order of Civil Penalty will be issued and filed as the complaint. Subsequent to your' request, a formal evidentiary hearing of the matter will be conducted under Part 13 at the conclusion of which all issues of fact and law will be decided and a decision rendered whether and in what amount a civil penalty is assessed. At the hearing you will have the opportunity to present evidence on your behalf, to examine the Administrator's evidence, to call witnesses, and to cross-examine the Administrator's witnesses, in accordance with established rules and procedures.

VERY IMPORTANT - If you fail to communicate your election of how you wish to proceed within the time specified, an Order Assessing Civil Penalty as proposed in the Notice will be issued without further notice based on the evidence and information available to the FAA. If this order is issued, you will have no further right to a hearing on the allegations made in this Notice.

Please address all communications in this matter to the FAA attorney specified in the Notice at the following address:

Office of the Chief Counsel
Address

It may be delivered personally to the Office of Chief Counsel at the above address during normal business hours.

Telephone: _____ (Collect calls cannot be accepted).

If the certificate holder is an individual:

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 the Federal Aviation Act of 1958, 49 U.S.C. Section 1301, et seq., and regulations issued

thereunder codified in Part 13 of Title 14 of the Code of Federal Regulations. Submission of the telephone number is voluntary. The request for information is intended to provide you with an opportunity to participate in the investigation.

B. Principal purpose. The requested information is intended to assist us in contacting you regarding this enforcement case.

C. Routine uses. Records from this system of records may be disclosed in accordance with the routine uses as they appear in System of Records No. DOT/FAA 847 as published fran time to time in the Federal Register.

D. Effect of failure to respond: If you do not provide the requested information, there may be delay in contacting you regarding this enforcement case.

FIGURE 12-20. SAMPLE REPLY TO NOTICE OF PROPOSED CIVIL PENALTY
(Hazardous Materials Transportation Act)

Date_____

Office of the Chief Counsel
Federal Aviation Administration

Subject: _____ (HM)

Notice of Proposed Civil Penalty

In reply to your Notice of Proposed Civil Penalty, I elect to proceed as indicated by my check mark beside the numbered paragraph(s) below:

1. / / I hereby submit the amount of the proposed civil penalty with the understanding that an order assessing a civil penalty will be issued in that amount without further notice, and that I waive my right to a hearing.

2. / / I hereby submit evidence and information, demonstrating that a violation of the regulations did not occur or that the amount of the penalty is not warranted by the circumstances.

3. / / I hereby request that the proposed civil penalty be assessed in a specified amount less than the proposed amount, and I submit the reasons for the reduction of the proposed amount. My proposal shall constitute my agreement that an order assessing civil penalty in the amount I submitted may be issued without further notice, and that I waive my right to a hearing.

4. / / I hereby request an informal conference (which will be held at the Office of the Chief Counsel in Washington, D.C. or at a mutually convenient location) in order to discuss this matter with the attorney in charge of this case and to present evidence and information in my behalf.

5. / / I hereby request a formal hearing in accordance with $13.16 of the Federal Aviation Regulations with the understanding that an Order of Civil Penalty will be issued and filed as the complaint. I request that the hearing be held in _____.

Certificate holder:	My attorney/representative:
Signature: _____	Name: _____
Address: _____	Address: _____
_____	_____
Telephone: _____	Telephone: _____

FIGURE 12-21. SAME'LEORDEROFCIVILPENALTY
(Hazardous Materials Transportation Act)

July 22, 1988

CERTIFIEDMAIL - RETURN RECEIPT REQUESTED

ABC Airlines, Inc.
P.O. Box 5200
Jonesboro, Arkansas 72401

Re: Case No. 87WP123456; Docket No. 87-00 (HM)

ORBEROFCMLPENALTY

On January 22, 1988, ABC was advised through a Notice of Proposed Civil Penalty that the FAA proposed to assess a civil penalty in the amount of $20,000.

After consideration of all of the available information, it has been determined that:

1. On or about May 15, 16, and 17, 1988, ABC, Inc. (ABC) accepted and transported aboard a passenger-carrying flight a shipnent of approximately 30 pounds of special fireworks and approximately 200 pounds of propellant explosive from Los Angeles, California, to Las Vegas, Nevada.

2. Special fireworks is classified as a hazardous material under Section 172.101 of the Hazardous Materials Regulations (HMR) (49 C.F.R. 172.101).

3. The proper shipping name'for this material is "Fireworks, special" which is in the Class B explosive hazard class.

4. Propellant explosive is classified as a hazardous material under Section 172.101 of the HMR.

5. The proper shipping name for this material is "Propellant explosive" which is in the Class A explosive hazard class.

6. At all times mentioned herein, Fireworks, special and Propellant explosive are forbidden aboard passenger-carrying aircraft.

By reason of the above, ABC violated the following Department of Transportation Hazardous Materials Regulations:

1. Section 175.30(a)(l) (49 C.F.R. 175.30(a)(1)), in that ABC accepted a hazardous material for transportation aboard an aircraft when the material was not authorized and was not within the quantity limitations specified for carriage aboard aircraft according to Section 172.101 (49 C.F.R. 172.101).

2. Section 175.75(a) (1) (49 C.F.R. 175.75(a)(1)), in that ARC carried on an aircraft a hazardous material contrary to the provisions of Part 172 (49 C.F.R. Part 172).

3. Section 175.20 (49 C.F.R. 175.20), in that ARC, as operator, failed to thoroughly instruct its employees in relation to the applicable Hazardous Materials Regulations.

NOW, THEREFORE, IT IS ORDERED, pursuant to Section 110(a) (1) of the Hazardous Materials Transportation Act (49 U.S.C. 1809(a) (1)), and Section 901(a)(l) of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1471(a)(l)), that ARC be and hereby is subject to a civil penalty in the amount of $20,000.

Assistant Chief Counsel

By: _____

ANSWER

You must answer this Order, which serves as the Canplaint in this proceeding, not later than 30 days from the time it is served on you in accordance with Section 13.209 of the Rules of Practice for FAA Civil Penalty Actions (14 C.F.R. §13.209(f)). Failure to file an answer within 30 days will be deemed an admission of the truth of the allegations set forth in this Order and an Order Assessing Civil Penalty shall be issued.

FIGURE 12-22. ORDER ASSESSING CIVIL PENALTY
(Hazardous Materials Transportation Act)

July 22, 1988

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

ABC Airlines, Inc.
P.O. Box 5200
Jonesboro, Arkansas 72401

Re: Case No. 87WP123456; Docket No. 87-00 (HM)

ORDER ASSESSING CIVIL PENALTY

On January 22, 1988, ABC was advised through a Notice of Proposed Civil Penalty that the FAA proposed to assess a civil penalty in the amount of $20,000.

After consideration of all of the available information, it has been determined that:

1. On or about May 15, 16, and 17, 1987, ABC, Inc. (ABC) accepted and transported aboard a passenger-carrying flight a shipment of approximately 30 pounds of special fireworks and approximately 200 pounds of propellant explosive from Los Angeles, California, to Las Vegas, Nevada.

2. Special fireworks is classified as a hazardous material under Section 172.101 of the Hazardous Materials Regulations (HMR) (49 C.F.R. 172.101).

3. The proper shipping name for this material is "Fireworks, special" which is in the Class B explosive hazard class.

4. Propellant explosive is classified as a hazardous material under Section 172.101 of the BMR.

5. The proper shipping name for this material is "Propellant explosive" which is in the Class A explosive hazard class.

6. At all times mentioned herein, Fireworks, special and Propellant explosive are forbidden aboard passenger-carrying aircraft.

By reason of the above, ABC violated the following Department of Transportation Hazardous Materials Regulations:

1. Section 175.30(a)(1) (49 C.F.R. 175.30(a)(1)), in that ABC accepted a hazardous material for transportation aboard an aircraft when the material was not authorized and was not within the quantity limitations specified for carriage aboard aircraft according to Section 172.101 (49 C.F.R. 172.101).

2. Section 175.75(a)(l) (49 C.F.R. 175.75(a) (l)), in that ARC carried on an aircraft a hazardous material contrary to the provisions of Part 172 (49 C.F.R. Part 172).

3. Section 175.20 (49 C.F.R. 175.201, in that ARC, as operator, failed to thoroughly instruct its employees in relation to the applicable Hazardous Materials Regulations.

NOW, THEREFORE, IT IS ORDERED, pursuant to Section 110(a)(1) of the Hazardous Materials Transportation Act (49 U.S.C. 1809(a)(l)), and Section 901(a)(l) of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1471(a)(l)), that ARC be and hereby is assessed a civil penalty in the amount of $20,000.

[include one of the following]

You are hereby ordered to pay, immediately, the assessed amount by mailing or delivering a check or money order in the amount of $1,200, payable to the Federal Aviation Administration, to Trial Attorney, Office of the Chief Counsel/Office of the Assistant Chief Counsel, address.

or

We hereby acknowledge receipt of your check in the amount of $1,200 which we accept in full settlement of this matter. You may consider the matter closed.

Assistant Chief Counsel

By: _____

FIGURE 12-23. SAMPLE ORDER OF SEIZURE

Bate:

Mr. John B. Quick
Aviation Safety Inspector
Federal Aviation Administration
P.O. Box 48 - MIA
Miami, Florida

ORDER OF SEIZURE

Take notice that upon consideration of a report of investigation, I find that a DC-8 aircraft, bearing Registration No. N8989, of which the P & Q Corporation, 1865 Jefferson Street, Hollywood, Florida, is the presently registered owner, has been involved in various violations of the Federal Aviation Regulations.

By reason of such violations, aircraft N8989 is subject to a lien. Therefore, I have determined that the public interest requires the immediate seizure of the above-described aircraft.

NOW, THEREFORE, IT IS ORDERED that-pursuant to Sections 901(b) and 903(b) of the Federal Aviation Act of 1958, as amended, and Section 13.17 of the Federal Aviation Regulations, you or a person designated by you, seize the DC-8 aircraft bearing registration N8989 and detain the same in your custody by placing it in the nearest available public storage facility within the judicial district in which the seizure is made, until such time as I or my representatives or a court of competent jurisdiction shall otherwise direct. You are designated as custodian of said aircraft.

Assistant Chief Counsel

FIGURE 12-24. SAMPLE NOTICE OF SEIZURE

Bate:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

P & Q Corporation
1865 Jefferson Street
Hollywood, Florida

NOTICE OF SEIZURE

Take notice that pursuant to the authority contained in Sections 901(b) and 903(b) of the Federal Aviation Act of 1958, as amended, and Section 13.17 of the Federal Aviation Regulations, the Assistant Chief Counsel for the _____ Region, of the Federal Aviation Administration, has issued an order of seizure dated _____, directing the seizure of a DC-8 aircraft, Registration No. N8989, of which the P & Q Corporation is presently the registered Owner.

Pursuant to the aforesaid order, Aviation Safety Inspector John B. Quick, Federal Aviation Administration, or an individual designated by him, did, at 2:45 p.m., March 9, 1979, at Broward County International Airport, Fort Lauderdale, Florida, seize and impound the above-described aircraft. Mr. Quick has been designated as custodian of said aircraft and his address is as follows:

Aviation Safety Inspector
Federal Aviation Administration
P.O. Box 48 - MIA
Miami, Florida

Aircraft N8989 was seized and detained because, under the provisions of Section 901(b) of the Federal Aviation Act of 1958, it is subject to a lien, having been involved in the following violations of the Federal Aviation Regulations for which civil penalties may be imposed pursuant to Section 901(a) of the Act:

1. On or about April 17, 1979, and again on or about April 18, 1979, said aircraft, which is an aircraft of more than 12,500 pounds maximum certificated tskeoff weight, was operated from Fort Lauderdaile, Florida, to San Juan, Puerto Rico, with various intermediate stops. Said flights were commercial operations during which the aircraft was engaged in the carriage in air commerce of passengers for compensation or hire. These operations were caused to be performed by the owner of the aircraft or by its agents or employees acting in accordance with the directions or consent of the owner. A total of approximately 40 passengers were carried on these flights, each of which constitutes a violation of Section 121.3(f) of the Federal Aviation Regulations.

2. Each of the foregoing flights was conducted without the presence of a second pilot on board the aircraft. Use of said aircraft in commercial operations without a second pilot constitutes a violation on each flight of Section 121.385(c) (3) of the Federal Aviation Regulations.

Pursuant to Section 901(a) of the Federal Aviation Act of 1958, the P & Q Corporation, the present registered owner, is subject to a civil penalty not to exceed $1,000 for each said violation. The P & Q Corporation, as owner of the aircraft, is informed that, upon tender and payment of an offer in compromise of the civil penalty for which it is liable in the amount of $4,000, to the Federal Aviation Administration, together with the costs incurred in connection with the seizure, storage, and maintenance of the aircraft, said aircraft will be released from further seizure and detention.

Assistant Chief Counsel

FIGURE 12-25. SAMPLE LETTER TO U.S. ATTORNEY
(Aircraft Seizure)

June 10, 1988

Edward F. Boone, Esq.
United States Attorney
Southern District of Florida
Miami, Florida

Dear Mr. Noone:

This is with further reference to our telephone conversation of June 9, 1988, pertaining to the seizure of a Douglas DC-8 aircraft, Registration No. N8989, from the P & Q Corporation.

pursuant to the requirement contained in Title 49 U.S.C. Section 1473(b)(2), we wish to report that such aircraft was seized by Inspector John B. Quick, Federal Aviation Administration, Miami, Florida, at Broward County International Airport, Fort Lauderdale, Florida, at 2:45 p.m. on June 8, 1988.

Inasmuch as the seizure of this aircraft took place within the Southern District of Florida, pursuant to the above statute, we request that you institute appropriate proceedings for the enforcement of the liens to which this aircraft is subject.

In order to facilitate your commencement of the lien proceedings, we have enclosed a draft of a libel of information. The violations of the Federal Aviation Act of 1958, as amended, and of the Federal Aviation Regulations, upon which this seizure is based, are fully set forth in the draft libel of information.

We realize that these proceedings will require considerable additional information, as well as cooperation by this office. Therefore, please do not hesitate to contact us at any time.

Sincerely yours,

Assistant Chief Counsel

Enclosure

CHAPTER 13. ENFORCEMENT-RELATED ITEMS

1300. PURPOSE. One purpose of this chapter is to provide general information on items that may not directly involve the investigation and processing of enforcement cases, but which require related consideration or-action by the inspector or legal counsel.

1301. RELEASE AND PUBLICIZING OF ENFORCEMENT ACTIONS. This section applies equally to individuals, air carriers, and major engine and aircraft manufacturers, unless otherwise specifically noted.

a. Actions against air carriers and manufacturers. This section is adapted from and supersedes the March 30, 1987, memorandum from Chief Counsel Ted Ellett to Regional Directors, entitled "Guidance on Publicizing Enforcement Actions."

Because the FAA is a government agency, the public has a legitimate interest in FAA's enforcement program. The public therefore has 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 and Privacy Act.

Publicizing enforcement actions also serves the government's strong interest in ensuring, through deterrence, compliance with the Federal Aviation Regulations. Often the adverse publicity and concomitant public reaction to a violation of the FAR serve more effectively to deter future violations than the loss of funds to the carrier occasioned by a civil penalty. Responsible carriers are more likely to conform their conduct to the FAR in order to avoid adverse publicity rather than to avoid civil monetary liability. And whereas an unpublicized civil penalty or certificate action operates to deter only the carrier subjected to the enforcement action, publicizing the action operates as a deterrent for all similarly situated carriers.

Because any publicity of an enforcement action alleging or finding violations of the FAR has the potential to affect significantly the public's confidence in a particular carrier's ability and commitment to comply with safety or security regulations, the FAA must take care in ensuring the accuracy and fairness of the publicity it gives such actions. Even greater caution should be exercised concerning enforcement actions that are not final determinations made by the FAA or the courts. The guidelines which follow are designed to satisfy the public's right to know, to promote the government's interest in deterrence, and to ensure the fairness and accuracy of the information the FAA provides the public.

b. 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 only be released in response to a written request under the Freedom of Information Act (FOIA). Disclosure may be made in response to an FOIA request or under a routine use published in the Federal Register pertaining to DOT/FAA System of Records 847, General Air Transportation Records on Individuals. Where disclosure is sought under FOIA, disclosure must be based on a judgment (which should be concurred

in by the Assistant Administrator for Public Affairs and the Chief Counsel or their designees) that 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 should be treated the same as a FOIA request.

c. Initial enforcement actions.

(1) Copies of initial enforcement action documents (e.g., notices of proposed certificate action, initial civil penalty letters, notices of proposed civil penalty) should not be made available to the public before the alleged violator has had an adequate'opportunity to review the document. Accordingly, no initial enforcement action document relating to any type of certificate holder should be made available to the public after a request for it until the Assistant Administrator for Public Affairs has approved its release.

The Assistant Administrator for Public Affairs is responsible for coordinating the matter with appropriate headquarters offices, including the Office of the Chief Counsel, before approving the release of the document. The Assistant Administrator for Public Affairs, in consultation with the Chief Counsel, will determine what constitutes such a reasonable period of time considering the public's need to know and the alleged violator's need to have adequate time to review the document before it is made generally available. This should generally not be longer than one to three days after its 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.

(2) Except for closed cases, before any release of an initial enforcement action document, the Assistant Chief Counsel's office should inform the alleged violator the FAA plans to make such a release.

(3) Because of the greater public interest in enforcement actions against Part 121 operators and Part 135 operators, and major aircraft and aircraft engine manufacturers, initial enforcement action documents involving those operators and manufacturers should be made available to the media and the interested public within a reasonable period of time from the date of issuance regardless of whether there has been a request for such a document. In significant cases, as determined by the Assistant Administrator of Public Affairs, a short news release should be prepared and disseminated along with the initial enforcement document.

(4) Other than making the initial enforcement action document available to the public in accordance with the foregoing guidance, the FAA may voluntarily provide other information of a public nature, such as the scheduling of a public hearing, but the FAA shall not voluntarily provide any other information to the public regarding the matter until final enforcement action has been taken, except as may be required in response to a request under the Freedom of Information Act. Whether information is of such a public nature is to be determined by the appropriate Assistant Chief Counsel after consultation with the Office of Public Affairs .

d. Final enforcement actions.

(1) The guidelines concerning initial enforcement documents contained in subsection (c) above also apply to final enforcement action documents.

(2) News releases. It is agency policy to publicize by news release significant legal enforcement actions against carriers and manufacturers which are final (e.g., orders of revocation or suspension, orders assessing civil penalty, civil penalty settlements), whenever such action is likely to be of interest to the public or otherwise promotes the government's interest in deterrence.

(3) News releases should:

A. Be factual and objective.

B. Avoid comparisons of this particular alleged violator or enforcement case with other alleged violators or enforcement cases. Such comparisons often are highly subjective, and may give the appearance that the FAA harbors a bias or favors a particular certificate holder. However, the release may contain statements concerning any precedent that is set or unique circumstances, so long as they are factual and are not reasonably susceptible to varying interpretations.

C. Provide the current status of the enforcement action and state whether the alleged violator disputes the allegations or has filed an appeal, if either is known.

D. Be consistent with requirements of the Freedom of Information Act and the Privacy Act.

E. Be disseminated only by the Office of Public Affairs, only after coordination with headquarters legal and public affairs staff. The Office of Public Affairs will be responsible for ensuring that AGC-200 concurs in the release. The Office of Public Affairs shall obtain the concurrence of all other concerned agency officials, including, where appropriate, the Administrator.

(4) Before a news release is issued, the Assistant Chief Counsel's Office should inform the alleged violator that the FAA intends to issue a news release. However, the draft release shall under no circumstances be offered or shown to the alleged violator, nor the contents of the release disclosed, before dissemination.

(5) FAA offices may not disseminate any information regarding the subject of a news release until that news release has in fact been issued, except in special circumstances directed by the Office of Public Affairs in consultation with the Office of Chief Counsel.

e. The release of any document containing security information which may be subject to withholding under Part 191 of the FAR shall first be coordinated with the Office of Civil Aviation Security.

1302. 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 persons who provide information about violations.

b. Background. In relation to enforcement matters, information regarding regulatory violations occasionally is offered to an FAA inspector or attorney along with a request that, in exchange for the information, the person making the offer be granted "immunity from prosecution" for his participation in the violations. The phrase "immunity from prosecution" ordinarily refers only to criminal matters. The individual usually is seeking an assurance that limited or no FAA civil enforcement action will be taken against him for admitted violations in exchange for information concerning violations by his employer or other members of the aviation community. The term "special enforcement consideration" is used in this Bulletin instead of the term "immunity from FAA civil enforcement action" and covers mitigation of sanction as well as a determination that no enforcement action is warranted.

c. Policy. Persons subject to the FAR 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 which result from such pressures or which otherwise have been encouraged, condoned, or accepted within a company which holds an FAA certificate.

It is the FAA's general policy to encourage persons to disclose information regarding safety violations or other circumstances affecting aviation safety. Accordingly, the agency may, under certain circumstances, grant special enforcement consideration to persons 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 is warranted.

It should be emphasized that --

(1) Special enforcement consideration generally should not be solicited or suggested by FAA, unless it is apparent that the informant would not provide the information or testimony in the absence of such consideration:

(2) A primary objective of the FAA is to achieve compliance with the FAR 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 of the FAR, the FAA should reserve use of such grants for cases where the testimony or information offered concerns the commission of safety violations or is essential to achieve effective compliance and/or deterrence. In other words, 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: and

(3) An agreement completely to forego enforcement action ordinarily will not be appropriate in cases where the informant's qualifications to hold a certificate under Parts 61, 63, or 65 are at issue.

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 following factors shall be taken into account in any such determination:

(1) whether the FAA could reasonably be expected to discover and/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 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 against an employer or other action in the interest of safety.

e. Criminal violations. Violations of some FAR (e.g., 'falsification of records) may also involve violations of criminal laws. Immunity from criminal prosecution can be granted only upon approval of the Attorney General of the United States, pursuant to 18 USC 6004. In general, such approval is sough' by FAA 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 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. Action. The following guidelines shall be followed whenever a person requests immunity or special enforcement consideration in exchange for information involving an alleged violation of the FAR:

(1) When any FAA employee receives such a request, he or she should attempt to determine the following:

A. Identity of the informant, including --

(i) The position the informant holds in the organization, if any:

(ii) The degree of involvement of the informant in the violations:

(iii) The reliability of the informant; and

(iv) The informant's violation history.

B. Identity of the individual or organization about whom or which the informant has offered information on the violations.

C. Nature of alleged violations, including type, dates, period of occurrence, seriousness, whether ongoing, and safety implications.

D. The FAA's ability to discover or prove the alleged violations without the informant's testimony or assistance.

(2) The FAA employee shall pranptly advise his supervisor of the request for special enforcement consideration and the basis for such request. The supervisor shall advise the appropriate Assistant Chief Counsel.

(3) The regional or headquarters division shall pranptly evaluate the request and supporting information. If the division determines that the person requesting special enforcement consideration will provide testimony or information regarding the commission of serious violations by his employer or other members of the aviation camnunity, and, based on a weighing of the: "Factors to be considered" set forth in d of this paragraph, the public interest would appear to be served by granting special enforcement consideration, the matter shall be referred to the appropriate Assistant Chief Counsel with the regional or headquarters division's evaluation and recommendation. If the division determines that special enforcement consideration is not warranted, the division shall document that deternrination in a memorandum to the file, with a copy to the appropriate Assistant Chief Counsel.

(4) The Assistant Chief Counsel will evaluate the request for special enforcement consideration in accordance with the 'Factors to be considered" set forth in d of this paragraph.

A. If such request appears to warrant special enforcement consideration, the Assistant Chief Counsel or his designee, along with a representative of the involved division (if the division manager so desires) will meet with the informant and/or his attorney or other representative, if appropriate.

B. If such request appears not to warrant special errforcement consideration, the Assistant Chief Counsel will either seek further information or notify the Chief Counsel.

(5) The Assistant Chief Counsel shall promptly submit to the Chief Counsel a request for authorization to grant special enforcement consideration by preparing the form entitled "Request for Authorization to Grant Special Enforcement Consideration," Figure 13-1. A record of the Office of the Chief Counsel's approval or disapproval will be transmitted to the appropriate Assistant Chief Counsel.

(6) If the information presented indicates a violation of criminal law, the appropriate Assistant Chief Counsel, after consultation with the Chief Counsel, shall advise the appropriate office of the Department of Justice (DOJ). In appropriate cases, the FAA may seek favorable consideration by the DOJ prosecutor, including but not limited to, a declination to prosecute.

(7) If the DOJ, United States Attorney or other federal law enforcement agency asks the Assistant Chief Counsel to grant special enforcement consideration, the Assistant Chief Counsel shall promptly consult with the Chief Counsel.

(8) The terms and scope of agreement to grant special enforcement consideration shall be in writing and executed by the parties in a manner consistent with Figure 13-2.

(9) The Office of the Chief Counsel shall execute a memorandum of record setting forth the reasons for the grant or denial of such requests to be made part of the case file.

(10) Each request for special enforcement consideration shall be addressed on a priority basis.

1303. ENFORCEMENT ASSOCIATED WITH THE AVIATION SAFETY REPORTING PROGRAM (ADVISORY CIRCULAR NO. 00-46C).

a. The Administrator established this program to encourage the reporting of any information which a person believes discloses an unsafe condition in the national aviation system.

b. When a violation of the FAR comes to the attention of the FAA from any source other than a report filed with the National Aeronautics and Space Administration (NASA) under the Aviation Safety Reporting Program (ASRP), the matter should be investigated, reported, and processed in accordance with Chapters 4, 9, and 10.

c. The inspector shall not query NASA, and the inspector should not ask the alleged violator if a report was filed under the ASRP, at any time during the enforcement process.

d. If the investigating field office determines that administrative enforcement action is appropriate, a warning notice or a letter of correction should be issued pursuant to Chapter 11. Administrative enforcement action is not affected by ASRP.

e. If the EIR is referred to legal counsel for legal enforcement action, counsel shall --

(1) Review the EIR and take action as provided in Chapter 12; and

(2) Advise the alleged violator that the proposed sanction may be waived pursuant to ASRP (see Figure 12-2).

f. A respondent shall receive a waiver of sanction under ASRP provided that --

(1) The violation was inadvertent and not deliberate;

(2) The violation did not involve a criminal offense, or accident, or action under Section 609 of the FA Act which discloses a lack of qualification or canpetency, which are wholly excluded from this policy:

(3) The person has not been found in any prior FAA enforcement action to have committed a violation of the FA Act, or of any regulation pranulgated under that Act for a period of 5 years prior to the date of the occurrence: and

(4) The person 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 NASA under ASRP.

g. When legal counsel determines that a person who has been issued a civil penalty letter, a notice of proposed civil penalty, or a notice of proposed certificate action, qualifies for waiver of sanction under subparagraph f, counsel shall:

(1) In the case of a notice of proposed certificate action or a notice of proposed civil penalty under the Civil Penalty Demonstration Program, issue an order (see Figure 12-6) which includes a statement of --

A. The factual findings:

B. The findings of violation as supported by the evidence;

C. The acceptance of the NASA report which absolves the sanction associated with the finding of violation.

D. The violator's appeal rights to the NTSB or under Part 13, as appropriate.

(2) In the case of a civil penalty letter (i.e., not an action issued under the Civil Penalty Demonstration Program), issue a letter which includes a statement of --

A. The factual allegations:

B. The allegations of violation as supported by the evidence:

C. The acceptance of the NASA report which absolves the sanction associated with the allegations of violation.

(3) The waiver is not available for violations of the Hazardous Materials Regulations.

1304. NONCOMPLIANCE WITH EXEMPTIONS. When the holder of an exemption does not comply with its terms, the requirements of the exempted regulation apply and there may be a basis for investigating the incident and the preparation of an EIR for appropriate enforcement action. Further, whenever instances of noncompliance with the provisions of an exemption are discovered, field personnel should immediately notify the division in FAA headquarters that issued the exemption, gather all pertinent information relating to the situation, and forward it to that FAA headquarters division for review and withdrawal of the exemption if appropriate. In certain situations where an exemption can be construed to be an extension or integral part of an operating certificate, amendment or withdrawal of the exemption may require action under Section 609 of the FA Act.

1305. LEGAL HANDLING OF AIRMAN MEDICAL DENIAL CASES (SECTION 602 OF THE FA ACT).

a. General. As provided in Sections 67.25 and 183.21 of the FAR, 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 FAR 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 the denial of the Administrator under Section 602 of the FA Act, from which the airman may petition the NTSB for review.

b. Petitions for review by the NTSB.

(1) Initiation of cases. Petitions under Section 602 of the FA Act initially are filed with the NTSB in Washington. Upon receipt of a petition for review, the docket section of the Board immediately serves a copy upon the Administrator through the Enforcement Proceedings Branch, Regulations and Enforcement Division (AGC-250).

(2) Legal processing. Authority to process airman medical denial cases before the NTSB is reserved to the Chief Counsel by the FAA Organization - FAA Headquarters Handbook 1100.2. Upon receipt of a petition for review and, if appropriate, after consultation with the Federal Air Surgeon's Staff, AGC-250 normally files the answer or other appropriate initial pleading. Thereafter, the cases is handled by AGC-250. However, after consultation with the appropriate Assistant Chief Counsel for a region, a case may be transmitted to the region for handling before the NTSB.

(3) Transmittal to region. When it is decided between AGC-250 and the region that a case is to be handled by counsel in that region, copies of the entire case file should be delivered to counsel by overnight service as soon as practicable after the decision to transmit has been made.

(4) NTSB appeals and judicial review of NTSB decisions. Appeals to the full Board and judicial review of any NTSB decision will be handled as described in paragraphs 1202g and 1202i of this Order.

c. Special issuance of an airman medical certificate. An airman who has been denied issuance of a medical certificate has a statutory right under Section 601(c) of the FA Act to petition the Administrator for an exemption from applicable medical standards. The formal exemption process has been replaced by an informal process which allows the Federal Air Surgeon, under Section 67.19 of the Federal Aviation Regulations, to grant the special issuance of a medical certificate to an airman who does not meet the applicable medical standards.

d. Concurrent requests for special issuance. Since an airman, who has been denied the issuance of a medical certificate under the medical standards of Section 67.13, 67,15, and 67.17 of the FAR has a right to petition the NTSB for a review of the denial action and to request the special issuance of a medical certificate under FAR Section 67.19, airmen sometimes take both actions simultaneously. In such cases, the policy of the Administrator is to afford airmen every opportunity to have requests for special issuances promptly considered. However, when a petition for review is also pending before the NTSB, concurrent actions may cause unnecessary expense to the airman and the Government. In such cases, if the airman wishes the Federal Air Surgeon to consider the request for special issuance prior to disposition of the petition for review, he should request the NTSB to hold the latter in abeyance. See Section 821.24(c) of the Board's Rules of Practice, 49 C.F.R. Section 821.24(c).

1306. LEGAL HANDLING OF AIRMAN CERTIFICATE DENIAL CASES OTHER THAN AIRMAN MEDICAL CERTIFICATES (SECTION 602 OF THE FA ACT).

a. General. In addition to the denial of an airman medical certificate, the FAA may also deny other airman certificates. Under Section 602 of the FA Act, the applicant may petition the NTSB for review of the denial. The NTSB dockets these petitions for review with a number designated CD-___.

b. Legal processing. Ordinarily counsel in a region will handle airman certificate denial cases before the NTSB. However, after consultation between the appropriate Assistant Chief Counsel for a region and AGC-200, a case may be handled by AGC-200.

c. NTSB appeals and judicial review of NTSB decisions. Appeals to the full Board and judicial review of any NTSB decision will be handled as described in paragraphs 1202g and 1202i of this Order.

1307. APPLICATIONS FOR AIRMAN CERTIFICATES BY PERSONS WHOSE CERTIFICATES HAVE BEEN REVOKED UNDER SECTION 609(c).

a. General. In 1988, Congress amended Sections 602 and 609 of the FA Act.in the Aviation Drug Trafficking Control Act. To paraphrase the Act, the amended Section 609(c) provides that the Administrator shall issue an Order revoking the airman certificate of any person who was either (1) convicted of a state or Federal felony statute related to a controlled substance (other than simple possession), or (2) found to have knowingly engaged in an activity

punishable as a felony under state or Federal law relating to a controlled substance (other than simple possession). In each case an aircraft must have been used in order to facilitate the crime or activity, and the person involved either served as an airman or was aboard the aircraft in connection with the crime or activity.

Section 602(b)(2) provides that a person whose certificate was revoked pursuant to Section 609(c) shall not be issued an airman certificate, except that a certificate may be issued if the Administrator determines that issuance of such certificate will facilitate law enforcement efforts.

b. Application and review. Whenever it appears that issuance of a certificate to a person who was revoked under Section 609 (c) may be appropriate, the Assistant Chief Counsel shall be consulted, and he or she shall consult with AGC-200.

1308. ILLEGAL COMMERCIAL OPERATORS AND UNLAWFUL COMMON CARRIAGE.

a. In general, if a person or operator receives something of value in return for transporting persons or property by air, the transportation is for compensation or hire. An operator of an aircraft must hold an appropriate operating certificate to transport persons or property for compensation or hire, unless the operation is within one of the exceptions in FAR 91.181 or the applicability sections of the various certification rules (e.g. FAR Part 121 or 135). Note that operations conducted under one of these exceptions are still for compensation or hire for purposes of pilot certification requirements except as provided in FAR 61.118(a)(d).

b. Common carriage. This is a common law term. A person becomes a common carrier by "holding out" to the general public, or a segment of the general public, a willingness to furnish transportation for ccxnpensation, within the limits of its capability, to any person who wants it. The "holding out" may be accomplished in a variety of ways including merely having a reputation for accanmodating all who request service. A private carrier may not "hold out" and must limit the number of customers it serves. In addition, its customers may not themselves be common carriers. For example, a private carrier may not fly planeloada of passengers for even a single customer if those passengers are solicited from the general public. Adaptation of a carrier's facilities to accommodate a customer's special requirements may be a factor in establishing private carriage, but it is not necessarily conclusive. Finally, while it is theoretically possible for one person to be both a common carrier and a private carrier in two distinct fields, the practical difficulties in achieving the required absolute separation are probably insurmountable.

c. Since such operations frequently involve complex factual circumstances and legal issues which make effective enforcement action difficult, policy and guidance for handling such cases should be obtained from legal counsel as early in the investigation as possible.

1309. ENFORCEMENT OF COMPENSATION OR HIRE PROHIBITION IN FAR 91.39(b), REGARDING RESTRICTED CATEGORY AIRCRAFT.

a. Discussion. Advisory Circular No. AC 21-17 describes the carriage of cargo as a restricted category special purpose under FAR 21.25(b)(7). Public comments received on the AC as published in the Federal Register, as well as questions from FAA field offices, indicate concern with respect to determining whether or not a cargo operation is in compliance with FAR 91.39(b). The following guidance is provided. The term "restricted category aircraft" means one that has been type certificated for the special purpose of carriage of cargo.

b. Guidance. Under the prohibition against operation for compensation or hire, a person (including a corporation) engaged in carriage by air as a major enterprise for profit may not conduct such operations in restricted category aircraft. This prohibition does not preclude operation of such aircraft by a person incident to and in furtherance of his or her own business as long as the business is not carriage by air. However, it does 'preclude operation in circumstances in which the primary business of the "operator" (see "operate", FAR 1.1) is actually carriage by air. While ownership of the goods being carried may help determine which of the foregoing situations exists in a particular case, such ownership by the operator of an aircraft does not necessarily legitimize the operation, particularly where, for example, a temporary or limited "ownership" is undertaken to conceal either the true operator or his primary business of carriage by air. In applying these terms to an individual case, it is imperative to identify the true operator, the nature of the true operator's business, and whether the operation is incident to and in furtherance of the operator's business. The following examples are intended to illustrate possible situations, and whether or not the operations would be prohibited. (The example "meat packing company" would include a private person or corporation in circumstances similar to those indicated.)

(1) A meat packing canpany buys or dry leases a restricted category aircraft, obtains its own flight crew, and then uses the aircraft to carry its own meat and meat products in furtherance of its meat packing business. Under FAR 1.1, the meat packing company is the true operator of the aircraft and its business is not carriage by air. Under these circumstances, the operation would not normally be construed in violation of the regulations in FAR 91.39 against operation for compensation or hire. It should be emphasized that, as the operator of the aircraft, the meat packing company would be held responsible by the FAA for compliance with all airworthiness, operating, and maintenance rules applicable to the aircraft and the operation.

(2) A meat packing company leases a restricted category aircraft from an aircraft charter canpany, who also provides all services relative to operation of the aircraft - in effect a "wet" lease. The charter company then uses the aircraft to haul the meat pecker's products. Under FAR 1.1, the operator of the aircraft under such "wet" lease arrangements is normally considered to be the charter company, which is not in the meat packing business but is engaged in carriage by air as a major enterprise for profit. This operation would not be in compliance with FAR 91.39(b).

(3) An aircraft charter company buys, leases, or otherwise obtains temporary ownership of a commodity or general cargo at one or more points of origin and uses a restricted category aircraft to carry the commodity or general cargo to a destination where temporary ownership is divested. In such circumstances, the operator of the aircraft (the charter company) is normally considered to be operating aircraft for compensation or hire. In all cases in which the operator purports to be carrying its own goods, all circumstances of its acquisition and disposition of the goods will be examined to determine whether the operator's "ownership" is merely incidental to', and in furtherance of, its primary'business of operating aircraft.

C. Action.

(1) When a certificated operator is found to be using a restricted category aircraft in an operation for compensation or hire, an Enforcement Investigative Report should be prepared regarding violation of FAR 91.39(b).

(2) When an uncertificated operator is found to be using a restricted category aircraft in operations for compensation or hire, an Enforcement Investigative Report should be prepared regarding violation of 91.39(b) and 121.3, 125.5 or 155.5, as appropriate.

1310. LIABILITY OF FAA EMPLOYEES.

a. On November 18, 1988, the President signed the Federal Employees Liability Reform and Tort Compensation Act of 1988 (P.L. 100-694), thereby providing government employees with immunity from personnel liability for common law torts committed within the scope of their employment. This new statute, which applies to all pending cases as well as to those cases filed in the future, provides that the exclusive remedy for common law torts shall be against the United States under the Federal Tort Claim Act, 28 U.S.C. 2671 et seq. The net effect of the new law is that where 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 which is found will be assessed against the government itself.

b. Suits against agency employees can arise out of either negligent or intentional conduct, and they can be classified as either common law or constitutional torts. While the Federal Employees Liability Reform and Tort Compensation Act of 1988 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 qiiite limited. Adjudicative and prosecutorial activities have been found to be situations where absoute 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. 2876. Finally, as of December 30, 1987, by an amendment to the Airport and Airway Safety and Capacity Act of 1987 (P.L. 100-223), the Administrator has the authority to indemnify agency employees against any claim or judgment which arises out of acts committed within the course and scope of their employment. Thus far, there has been no occasion where the exercise of this authority has been necessary.

c. 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 which 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 upon a finding that the employee's conduct was within the course and scope of his/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.

d. When an employee is sued in his/her personal capacity for money damages as a result of actions taken or not taken within the course and scope of employment, allegedly done in violation of the Constitution, the employee is ordinarily defended by the Justice Department. The Justice Department will provide representation upon request of the employee and upon recommendation of the agency, if the conduct giving rise to the lawsuit was taken within the scope of employment and that it is in the interest of the United States to provide representation.

e. Indemnification will ordinarily be available only after a finding, award, or judgment of liability has been made or entered. To be entitled to indemnification, the Adminstrator must find that the employee was acting within the course and scope of employment, and that indemnification is in the interest of the United States.

1311.-1399. RESERVED.

FIGURE 13-1. REQUEST FOR AUTHORIZATION TO GRANT SPECIAL ENFORCEMENT CONSIDERATION

FEDERAL AVIATION ADMINISTRATION

TO: Office of the Chief Counsel
c/o AGC-200

1) Name of Informant:

2) Nature of Proceeding:
( ) Hearing
( ) Investigation
( ) Other (Specify)

3) Region:

4) Name of Anticipated Respondent(s):

5) Date Testimony and/or Other Information was Offered or Provided:

6) Proffer of Anticipated Testimony:
( ) None Obtained
( ) Pursuant to Plea Agreement with DOJ/AUSA
( ) Proffer by Counsel
( ) Proffer by Witness
( ) Proffer by Representative Other than Counsel

7) Basis Other than Proffer for Summary of Anticipated Testimony:

8) Summary of Case or Proceeding:

9) Informant's Background and Role in Case or Matter and Summary of Anticipated Testimony or Information:

10) Informant's Relationship to the Subject(s) of the Pending or Potential Enforcement Case:

11) Recommended Special Enforcement Consideration for Informant:

12) Means Other Than Special Enforcement Consideration To Obtain This Testimony or Information:

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 Whan 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 13-2. FORM AGREEMENT TO GRANT SPECIAL ENFORCEMENT CONSIDERATION

WHEREAS, _____ possesses information concerning violations of the Federal Aviation Regulations by _____;

WHEREAS, _____ represents that he/she will provide all such information to the Federal Aviation Administration (FAA) and cooperate fully in any resulting investigation or proceeding in exchange for the FAA's assurance that limited/no FAA enforcement action [delete inapplicable] will be taken against him/her for admitted participation in the same or related violations.

NOW, THEREFORE, the FAA, by and through its undersigned counsel/representative [delete inapplicable], and _____, with the advice and approval of his counsel/representative [delete inapplicable], _____, hereby agree as follows:

1. _____ will cooperate fully with agents of the FAA, particularly in its current investigation of _____'s maintenance practices as well as other possible violations of the FAR. Said cooperation shall include:

(a) Supplying fully, truthfully, and in specific detail, all information known by _____ or which may become known by _____ which relates directly or indirectly to (i) the type and scope of improper maintenance practices, (ii) the names of management officials who caused or directed such improper maintenance practices to occur; (iii) operation of unairworthy aircraft: and (iv) any other violations of the FAR.

(b) Testifying fully and truthfully at any hearing in connection with any matter involving _____'s noncompliant maintenance practices, operation of unairworthy aircraft, or other violations of the FAR, of which _____ may have knowledge or which may be discovered as a result of information provided by _____ pursuant to this agreement.

2. The FAA shall not use, either directly or indirectly, testimony or information provided by _____ pursuant to this agreement in any enforcement proceeding against _____, subject to the following exceptions and limitations:

(a) In the event _____ provides false, misleading, or perjurious testimony or information, said information or testimony may result in a prosecution of _____ for false statement, perjury, or obstruction of an investigation.

(b) Should any testimony or information provided by _____ prove to be false, misleading, or incomplete, the FAA may pursue enforcement action regarding any and all violations of the FAR which may have been canmitted by _____.

3. If the testimony or information provided by _____ pursuant to this agreement proves to be truthful and complete, the Assistant Chief Counsel for the _____ Region will exercise his/her prosectorial discretion [not to issue an order'suspending or revoking _____'s airman and/or mechanic certificate/to issue an order with a mitigated period of suspension/to issue an order assessing a civil penalty (delete inapplicable)] for any violations involving _____ which may have been committed by _____ during the time period of _____ through_____.

4. It is understood that FAA's decision not to pursue enforcement action is not binding in any manner on the United States Department of Justice or any United States Attorney with respect to any criminal prosecution of _____arising out of the same or related events.

Dated: _____

_____ _____

Assistant Chief Counsel Informant and/or Attorney/ Representative

CHAPTER 14. ENFORCEMENT INFORMATION SYSTEM AND DISTRIBUTION REQUIREMENTS

1400. PURPOSE. This chapter provides general information concerning use of the FAA's Enforcement Information System (EIS) and instructions for the distribution of electronic records, reports, letters, notices, orders, and associated documents.

1401. ENFORCEMENT INFORMATION SYSTEM OVERVIEW.

a. The automated EIS (which will subsequently be referred to without the adjective "automated") meets the agency's long-standing need for an accurate and timely management information system to support the FAA Compliance and Enforcement Program. It is a part of a larger FAA automated data system, the Aviation Safety Analysis System WAS). The ASAS is a coordinated system of safety-related management information subsystems.

b. The EIS is designed to provide data input and retrieval capabilities at the field office, region, and headquarters levels. It improves the accuracy and timeliness of information required for enforcement activities by maintaining electronic records that can be readily accessed by authorized FAA personnel.

c. Data entry to the EIS is decentralized and occurs at the level of the office conducting the investigation or undertaking a subsequent action. The EIS maintains a current data base in each region on the regional computer. The information on the regional computer is entered by that region. For example, Southwest Region's data bank includes only cases from Arkansas, Louisiana, New Mexico, Oklahoma, and Texas, plus cases transfered to Southwest Region from other regions.

d. The EIS also is maintained on a national data base. Records in the national data base are electronically transmitted and automatically updated from the regional data bases. Updates to regional data bases are also made from the national data base.

e. EIS records can be accessed at the field, regional, and headquarters levels as needed. Information in the different regional computers can be accessed fran any region through the national data base using the AIDS/EIS Display and Profile. Transfers of records from other regions are processed through the national data base. The national data base also provides access to other ASAS information systems.

f. A diagram of the EIS data flow is shown in Figure 14-1.

1402. ROLES AND RESPONSIBILITIES.

a. Initial data entry. The FAA investigating office is responsible for originating an EIS record once a decision has been made to proceed with an investigation. Although in most instances the investigating office is a field office, depending on the nature of an alleged violation, an investigation may also be conducted at the regional or headquarters level.

b. EIR number. The office conducting the investigation assigns the Enforcement Investigative Report (FIR) number (also known as the case code number) at the time that it creates a new EIS record. The date on- which this initial data entry occurs determines the calendar year of the report. Report numbers are assigned to all enforcement investigations according to the following ten digit format:

(1) Year. The last two digits of the calendar year (e.g. 88 for 1988).

(2) Region. The two-letter identifier of the field office's parent region (e.g., 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 shall conform to the following range of numbers:

Identifier	Type of Field Office
00 - 39	Flight Standards
40 - 59	Aircraft Certification
60 - 69	Reserved
70 - 79	Civil Aviation Security
80 - 89	Airport District Office
90 - 99	Flight Surgeon

Note: The identifiers 00, 40, 60, 70, and 80, as appropriate, are be used to identify EIRs for which the investigation and reporting was conducted by a region71 division manager, or under the auspices of the Executive Director for Regulations and Compliance or the Executive Director for System Development. The identifier 90 will be used for EIR's initiated by Regional Flight Surgeons, the Aeromedical Certification Branch (AAC-130), or the Federal Air Surgeon.

(4) Sequential number. The four-digit number, assigned sequentially by the field office during a calendar year, which identifies a specific investigation and EIR.

c. Data entry. Data entry to EIS is performed in accordance with the instructions contained in Chapter 9. Entry codes used for completion of items (19), (20), (21), (22), and (24) of the FAA Form 2150-5 are contained in Appendix 3.

d. Transfer case. In those instances where responsibility for investigation and processing of an alleged violation is transferred to another field office or region after a report number has been assigned, the original report number is retained on the automated EIS record and all reports relating to that case.

e. 2150-5A. When the investigating office completes entry of the minimum required fields into the regional data base, the system generates an FAA form 2150-5A. This computer-generated form can be used as the official

record (in lieu of the preprinted Form 2150-5), and must be signed by the investigating office's manager and retained in the FAA files. On a daily basis, the EIS national data base is automatically updated from each of the regional data bases.

f. Investigating office. The investigating office has primary responsibility for EIS data quality control. It must check and edit data when it is initially entered into the system. The system contains many automated edits which check data and issue a warning on the screen at the point of data entry. (See paragraphs 903b and 1403.)

g. EIS record revision. As an investigation proceeds and significant additional or revised information becomes available, the investigating office is responsible for routinely updating the EIS record as events occur. When an investigation is completed, the investigating office is responsible for entering all remaining information into the EIS. An updated record is again transmitted to the national data base.

h. 2150-5. In all enforcement actions, including emergency actions, investigating offices are responsible for entering Form 2150-5 data.

i. Regional division. The regional division is responsible for both data entry and data quality control functions for information that pertains to its review of the EIS record. The reviewing division enters the information pertaining to its review on the EIS record. This updated record is then be automatically transmitted to the national data base.

j. EIS record completion - "closed" case.

(1) If an investigation results in termination of the case without action, the investigating office is responsible for adding the information pertaining to the final disposition of the case to the EIS record. The record is then closed.

(2) If an investigation results in.an administrative action, the regional division is responsible for adding the information pertaining to the final disposition of the case to the EIS record. The record is then closed.

(3) If an investigation results in legal enforcement action, then the Assistant Chief Counsel is responsible for adding the appropriate information to the EIS record. Cases requiring legal action shall be updated routinely as events occur. Each time additional data is entered into the system, the updated EIS record is transmitted to the national data base. Once final disposition occurs, the final legal action data is entered into EIS and the record is then closed. Enter the code for "closed" only when no further legal events are expected to occur, including events within the control of non-FAA entities. All other cases in which legal action has been initiated will remain in the "pending" category until closed. This includes many cases in which no further action by FAA is possible or appropriate. Specific status

of such 'pending" cases can be ascertained only by inquiring of the Legal Counsel Events Table. The following are examples of when cases may be closed:

A. Certificate revocation or suspension.

(i) When the certificate is surrendered.

(ii) When the FAA has been reversed by the NTSB, and no further appeal will be made.

(iii) If the violator has not surrendered the certificate, the case may be closed after two followup letters have been sent to the address of record and any known current address. When the case is closed for this reason, legal counsel should suggest that the regional division initiate an action to revoke the certificate or to seek a civil penalty for failure to surrender, as appropriate.

If the letters have been returned undelivered, counsel should consider seeking assistance from Security in locating the violator. If this is done, the case should remain open until Security reports its findings, or in six months after the matter has been referred to Security.

If the violator has continued to exercise the privileges of the revoked or suspended certificate, injunctive or other remedial action should be initiated.

B. Assessed civil penalty (after it becomes final by court order and exaustion of appeal rights, or the issuance of an Order Assessing Civil Penalty).

(i) When the entire amount due has been received, or agreed to in a written agreement.

(ii) When a decision is made that the amount due is uncollectable, after consideration of all available options.

C. Referral to U.S. Attorney. When followup letters have been sent at 3, 6, and 9 months, and no action has been initiated by the U.S. Attorney 12 months after referral. In this case, counsel should determine whether to request authority to pursue the case from the Department of Justice in accordance with paragraph 1205f(6) and (7).

k. Quality control. Primary responsibility for EIS data quality control belongs with the organization that is required to enter the data.

1. Updates. When changes are made to the national data base, such as revisions to edit tables which update the national EIS records, the regional EIS records will automatically be updated.

m. Record control and security. EIS records are "owned" by the originating office, that is, the office that entered the initial data. The originating office retains ownership of the record unless responsibility for it is formally transferred to another office, such as when a case is shifted to a different region.

n. Transfer. Regional ownership transfers are normally initiated by the regional division or legal counsel. Certain types of cases are routinely transferred because of the nature of the violation. For example, responsibility for hazardous materials violations are transferred to the Office of Chief Counsel in Washington, D.C. When a case is transferred, it is the responsibility of the transferring office to change the owner to correspond to the receiving office. A notation should be added to the remarks section for either regional division or legal counsel to show the office receiving the case.

0. Legal counsel. EIS record ownership does not need to be transferred when responsibility for an investigation is transferred to legal counsel in the same region. Legal counsel may add legal event information or make corrections to EIR information to any report in the regional data base that has not been administratively closed, except that legal counsel may not change field office recommended sanctions on the data base.

p. All FAA organizations have access to regional EIS information for guerying, printing, or reporting purposes.

q. Security. All EIS users are required to have assigned user names. User names are associated with all EIS functions so only those functions that are authorized to a specific user are available to that user.

1403. **OPERATIONS.**

a. System design. The EIS is designed to be user friendly. All processes, programs, and functions are selected using menus that display and describe the available options. The EIS includes a variety of 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 useful management reports.

b. Code tables. Many EIS record fields rely on tables of codes that speed up the entry of data. A coded value can be entered (for example, the standard abbreviation for an airport name) and the name or description of that data item will be generated for the record. The table will also reject the entry of incorrect codes.

c. Error checking. The EIS employs various editing methods, such as tables, range checks, omission detection, and date validation to prevent the entry of incorrect data into the data base. These functions assist in editing and validating data to ensure that the data being entered conforms to the expected values and formats. The EIS does not permit the entry of certain definite errors ("fatal" errors) and the data entry must be corrected before the user can proceed. It highlights other types of likely errors ("warning" errors), which permits the user to determine whether the'data entered is correct before proceeding.

d. On-line help. Each interactive EIS program includes a HELP function that allows the user to receive instructions, error message descriptions, and general information on line. EIS users can obtain assistance with nearly all interactive EIS functions without being required to reference the users manual.

e. HELP can be accessed by entering a "?" in the field where the assistance is required. The system will respond with information abut the expected user input. When a table is used for editing a field, a second "?" 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.

f. Reporting. There are several standard reports that are available on EIS. These reports are designed to meet identified administrative management needs. Most of these reports permit the user to specify certain parameters, such as defining the period for which data should be reported. The EIS standard reports available on each regional computer include -

(1) AVN 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) Missing Documents Listing:

(5) Suspense with No Action (open legal enforcement cases without a pending action);

(6) Assistant Chief Counsel Log;

(7) RTS Suspense Report (overdue cases);

(8) RTS Daily Activity Report (case events), and

(9) Workload Statistics Report.

g. The EIS also has the capability of producing 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, which permits the user to specify the conditions under which a report will be generated, the specific data elements that will be printed, and additional header lines. The system will establish a specification file for each ad-hoc report so that the same report can be regenerated.

h. In addition to the reporting capabilities of the regional computers, there are standard EIS reports available from the timeshare computer. For a current list of standard EIS reports, contact AVW-124, at FTS 747-4173.

1404. EIS DATA BASES.

a. The regional EIS data bases are located on each region's computer. The EIS national data base is maintained on the National Safety Data Branch (AVN-120) computer, which twice weekly updates the EIS data base that is also maintained on a commercial timeshare computer system. Users can directly access both their regional data base and thenational data base from their local micro-computer work stations: other data bases can be accessed through the national data base interface. Users can also directly access the timeshare system from their local work stations. There is a fee for use of the timeshare.

b. Only data retrieval and limited statistical analysis of the EIS data base is possible on the regional/headquarters computers. Users must access the timeshare system to undertake field comparisons and other sophisticated data analysis. AVN-120 can assist users with special requirements for statistical analysis and comparison of data. An additional cormnunications interface has been developed to permit field and regional access to the Airmen and Aircraft *Registry* files located on the Data Services Division, AAC-300 ccinputers.

c. The Regional Tracking System (RTS) is an EIS function that maintains a computerized data base of memos, appointments, and other informal records pertaining to a violation record. RTS entries, which are referred to as "tracking events," are appended to the violation record without altering the basic violation information. The RTS can function as a tickler file to remind users of suspense dates, appointment times, etc. It permits users to establish their own sets of coded values that have specific meanings within their particular organizational area.

1405. DISTRIBUTION.

a. General. The distribution of Enforcement Investigative Reports, letters, notices, orders, and associated documents will vary with the type of enforcement action recommended and the FAA function involved. It is no longer necessary to routinely distribute paper copies of records that can be accessed electronically in EIS, except as follows:

b. Administrative enforcement actions.

(1) The investigating field office shall send the original of the warning notice or letter of correction to the violator. In cases involving companies with complex organizational structures, care should be taken to assure that the letter is addressed to the responsible official. The investigating inspector may obtain advice on such matters from the supporting office.

(2) A copy of the warning notice or letter of correction should be sent to the violator's employer when it is determined that such notification would be in the best interest of aviation safety.

(3) When the investigative office's portion of a case has been completed, all applicable information should be forwarded to the regional office by mail.

(4) A copy of the warning notice, or letter of correction, should be sent the supporting office(s).'

c. Legal enforcement actions or referrals.

(1) Investigating field office.

A. The field office.should send the original EIR, with the original of all exhibits, to the appropriate regional division.

B. A copy of Form 2150-S should accompany the EIR package.

C. A copy of Sections B and D of the EIR should be sent to the supporting office(s) through the investigating field office's parent regional division. Section A (Form 2150-S) may be omitted, as it can be electronically accessed through the EIS.

D. Reports or EIRs prepared for military or foreign referrals should be distributed as in A and B above. See Chapter 5 for special procedures.

(2) Regional division. The regional division, after review and etaluation, transmits the EIR, or military or foreign referral, to the 'Assistant Chief Counsel for legal handling.

(3) Assistant Chief Counsel.

A. The Assistant Chief Counsel processes legal enforcement cases and complaint referrals in accordance with Chapters 10 and 12.

B. The following cases shall be forwarded by the Assistant Chief Counsel for a region to AGC-200 for legal handling:

(i) Cases expressly designated by the Administrator.

(ii) Cases involving violations of prohibited areas established over Presidential residences.

(iii) Cases involving violations by foreign persons or companies within United States air commerce, except as provided in paragraph 1002(d) (3).

(iv) Cases under the Hazardous Materials Transportation Act, within FAA jurisdiction.

(v) Other cases designated by the Office of Chief Counsel.

C. Cases appealed to the full NTSB (except appeals in emergency actions) and/or the U.S. court of appeals should be transferred to AGC-200, except those cases which AGC-200 specifically authorizes the Assistant Chief Counsel for a region to handle.

d. Legal enforcement documents. Copies of letters, notices, orders and associated documents related to the legal handling of enforcement cases by the Assistant Chief Counsel should be distributed as follows:

(1) FAA civil penalty letters, regional transfers, Notices, and Orders:

A. Violator.

B. Regional division(s).

C. AVN-260.

D. Investigating field office.

(2) FAA referrals to the U.S. attorney:

A. Regional division(s).

B. Investigating field office.

(3) Appeals to the NTSB and the FAA decisionmaker:

A. Violator (FAA appeals).

B. Regional division(s).

C. AVN-260.

D. Investigating field office.

(4) FAA pleadings and briefs:

A. Violator.

(5) NTSB and court decisions and orders: AGC-200 will distribute copies of these documents to all Assistant Chief Counsel, who in turn should inform regional divisions and field offices of such final decisions.

1406. SYSTEM SUPPORT.

a. The EIS System Manager is located in AVN-120. The System Manager is responsible for day-to-day management of the EIS, such as establishing procedures, responding to special user requirements, supervising routine system maintenance, etc.

b. The ASAS Regional Program Managers (previously known as "focal points") are responsible for overseeing all ASAS-related activities in each region. They coordinate with the ASAS program office (Aviation Standards Data Division, APR-300).

c. The ASAS hotline is available to assist users who cannot find assistance for their problems through the EIS on-line HELP capabilities, by referring to the users manual, or from other local users. If the user suspects a hardware or telecommunications problem, the hotline will direct the user to the responsible organization.

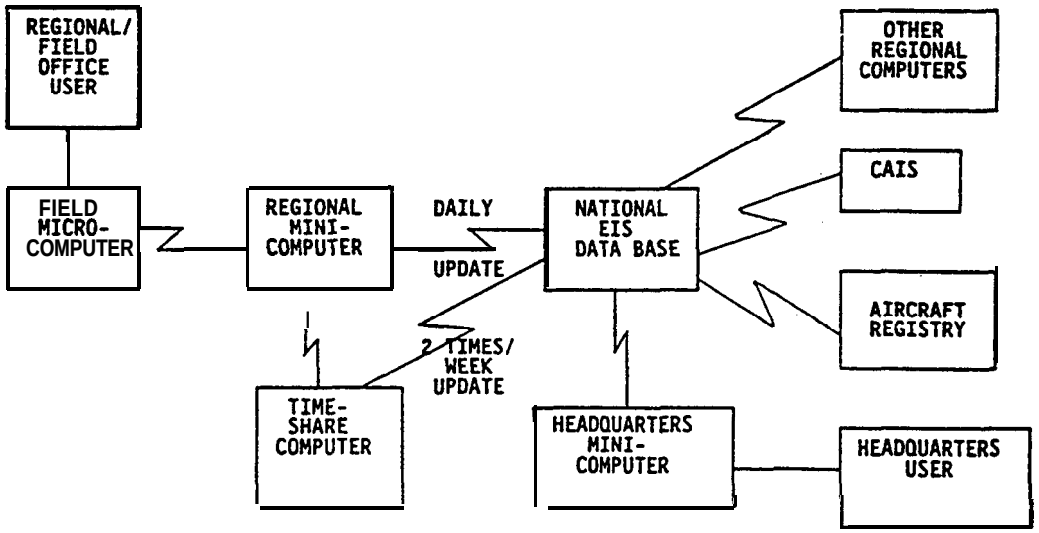
d. The AVN organization is always interested in hearing suggestions and recommendations from users on how to improve the performance or usefulness of the system. User comments should be directed to:

EIS System Manager
National Safety Data Branch (AVN-120)
P.O. Box 25082
Oklahoma City, OK 73125

1407.-1499. RESERVED.

FIGURE 14-1.

EIS DATA FLOWS



APPENDIX 1. COMPLIANCE/ENFORCEMENT BULLETINS

COMPLIANCE/ENFORCEMENT-BULLETIN No. 84-1

SUBJECT: Procedures for notifying military authorities when the FAA has issued an order suspending or revoking an air carrier operating certificate.

DISCUSSION: The Department of Defense (DOD) uses United States certified air carriers, through long-term contracts or short-term charters, to transport passengers and freight domestically and internationally. The issuance of such an enforcement order may adversely impact on military personnel (and families) who are in the process of a permanent change of station transfer. DOD wants to be informed of the issuance of any orders of suspension or revocation, in order to make arrangements for substitute air transportation or other modes of transportation on a timely basis and with minimum interruption and inconvenience to its personnel.

ACTION: Assistant Chief Counsel, upon issuance of an order of suspension or revocation of an air carrier operating certificate, will advise by telephone, the following military authorities of the action:

1. During Duty Hours:

(a) Military Traffic Management Command Chief, Passenger Service Division
(202) 756-1670

(b) Military Airlift Connnand
Mr. R. W. Kloeckner
Director, Contract Airlift Division
(618) 256-5426

2. During After Duty Hours:

(a) Military Traffic Manager Command Staff Duty Officer
(202) 756-1125

(b) Military Airlift Connnand
R. W. Kloeckner
Director, Contract Airlift Division
(618) 248-5289

COMPLIANCE/ENFORCEMENT BULLETIN NO. 86-1

SUBJECT: Computer-detected altitude deviation of 500 feet or less.

DISCUSSION: The Air Traffic Quality Assurance Program (ATQAP) was designed to compile information concerning the safety and efficiency of the evolving National Airspace System in order to provide improvements to the overall air traffic system. It was not devised or intended to be used as a means for discovering altitude deviations. However, the Office of Flight Standards cannot ignore computer detected rules violations.

ACTION: Until further notice, a computer detected altitude deviation of 500 feet or less, where no near midair collision resulted, should normally be addressed by means of administrative action, unless a prior altitude deviation occurred within 2 years of the date of the subject altitude deviation or other aggravating circumstances require initiation of legal enforcement action. In determining whether a violation is "aggravated," all circumstances surrounding the incident (e.g., whether the deviation was deliberate or inadvertant, the hazard to safety, etc.) shall be considered.

GUIDANCE: The following checklist will be helpful in determining whether administrative or legal enforcement action is appropriate.

1. Review the individual's enforcement history to determine if a prior altitude deviation violation occurred within 2 years of the date of the subject altitude deviation. If such a previous violation has occurred within the specified period, legal enforcement action should be taken.

2. Analyze the facts and circumstances surrounding the violation to determine whether aggravated circumstances exist. If aggravated circumstances exist, legal enforcement action should be taken.

COMPLIANCE/ENFORCEMENT BULLETIN NO. 86-2

SUBJECT: Sanctions for unauthorized operations within Terminal Control Areas (TCA's).

DISCUSSION: In light of recent incidents of unauthorized operations within TCA's, the Chief Counsel's Office has analyzed sanctions previously imposed for violations of Of the pertinent regulation, FAR Section 91.90. Based on this analysis and information available to the FAA regarding incidents of unauthorized operations within TCA's, the Administrator has determined that the agency's current sanction policy has not provided an effective deterrent for such violations. For this reason, the Administrator has determined that safety in air commerce and air transportation and the public interest requires a change in sanction policy in this area and an increase in the severity of sanctions in order to promote vigilance and deter violations.

ACTION: Until further notice, the following guidance should be followed in cases involving the enforcement of Section 91.90.

1. Administrative action should not be used.

2. Suspension of airman certificates should not be less than 60 days (higher if there are aggravating factors).

3. Civil penalty action should be used only where suspension is precluded (e.g. by the NTSB "stale complaint" rule) or in limited instances where a civil penalty is more of a deterrent sanction. The maximum statutory penalty ($1,000) shall be sought.

COMPLIANCE/ENFORCEMENT BULLETIN NO. 88-2

SUBJECT: Enforcement action for Minimum Equipment List (MEL) violations that occurred prior to March 15, 1988.

DISCUSSION: The Administrator issued a policy statement, effective March 15, 1988, which clarified the agency's interpretation of MEL provisions governing the periods within which MEL items must be repaired or replaced. While, even prior to the issuance of this clarification, it was clear that an MEL did not allow carrying an open item indefinitely, it would not be fair to hold operators to the precise 3-, 5-, and 10-day limits articulated in the new policy statement. The Administrator has determined that, for violations which occurred prior to March 15, 1988, no legal enforcement action should be taken unless the item was deferred for more than 60 days.

For example, a violation involving an MEL item open for 50 days in the absence of aggravating circumstances would not normally be a candidate for civil penalty action, but should be dealt with administratively. Similarly, an item open for 75 days would be a candidate for civil penalty action for each flight taken during the last 15 days.

ACTION: The following guidance should be followed in cases involving MEL violations which occurred prior to March 15, 1988.

> When the evidence establishes that an aircraft was operated with an open discrepancy which had been deferred in accordance with the approved MEL, and the discrepancy remained open for more than 60 days, appropriate civil penalty enforcement action shall be pursued.

COMPLIANCE/ENFORCEMENT BULLETIN NO. 88-5

SUBJECT: Sanctions for persons who board or attempt to board an air carrier aircraft with concealed deadly or dangerous weapons in their possession.

DISCUSSION: Data recently compiled by the FAA reflects a continuing upward trend in the detection of weapons being carried by persons who failed to declare and check them before attempting to enter a sterile area of an airport. The typical passenger appears to be one‘who simply forgets to declare his/her weapon and presumably has no intention of hijacking or sabotaging an aircraft, or committing any other crime of violence. In a majority of cases, the weapon is loaded.

The recently adopted Enforcement Sanction Guidance Table, Order 2150.3, Appendix 4, recommends the maximum range of civil penalty ($7,500 to $10,000) for an offense of this nature. The Office of the Chief Counsel and the Office of Civil Aviation Security have analyzed both the appropriateness of the.existing sanction guidance and the reasons underlying the increase in this type of violation. Based on this analysis the Administrator has determined that: (1) In the average case, it is neither necessary nor realistic to collect a maximum range penalty to ensure future compliance by an air traveller who is a first time offender and has no criminal purpose in carrying the weapon: (2) The maximum civil penalty and criminal sanctions should apply only where there is evidence of intent to preclude detection, to dangerously display the weapon, or where the object is a bomb or other incendiary device: and (3) A civil penalty of several hundred dollars is too easily absorbed, does not serve as a sufficient reflection of the potential seriousness of the offense, and may not comport with Congress' intent in changing the statutory maximum penalty from $1,000 to $10,000.

For these reasons, the Administrator has determined that safety in air commerce and air transportation and the public interest requires a change in sanction policy in this area in order to promote vigilance and deter future violations.

ACTION: Until further notice, the following guidance should be followed in cases involving .the concealment of a deadly or dangerous weapon which would be accessible in flight in air transportation: i.e., enforcement of violations of Section 901(d) of the FAAct:

1. Administrative action should not be used.

2. If the firearm is unloaded and the ammunition is not accessible, the amount of civil penalty should be $1,000.

3. If the firearm is unloaded and the ammunition is accessible, the amount of civil penalty should be $2,000.

4. If the firearm is loaded, the amount of civil penalty should be $2,500.

5. If the firearm is artfully concealed or there is other intent to use or dangerously display the firearm, the amount of civil penalty should range from $5,000 to $10,000, and the case should be referred to the appropriate United States Attorney for criminal prosecution.

6. If an incendiary or explosive device is used, the amount of civil penalty should be $10,000, and the case should be referred to the appropriate United States Attorney for criminal prosecution.

The Enforcement Sanction Guidance Table is being revised to reflect this change in sanction policy.

COMPLIANCE/ENFORCEMENT BULLETIN 90-l

SUBJECT: unauthorized operations within newly established Terminal control Areas (TCA's).

DISCUSSION: The Air Traffic Operations Service has recently initiated a program of establishing new TCA's at eligible locations. While TCA's are based on a standard model, each new TCA has a configuration unique to local terrain, approach and departure routes for the TCA primary airport, and other air traffic considerations. The implementation of a TCA involves a major change in air'traffic procedures and the routes a pilot may use for uncontrolled VFR flight in the vicinity of the TCA. While the boundaries of the TCA are, to the extent practical, developed with consideration for prominent local ground references and electronic navigation aids, location of the new TCA airspace may be difficult for some pilots until they have had the opportunity to become familiar with the new routes and procedures.

The Air Traffic Operations Service has observed a high number of TCA intrusions in the first few days and weeks after implementation of each recently established TCA. The intrusions appear to be inadvertent, resulting from pilots' unfamiliarity with the new airspace configuration and procedures, rather than deliberate. Sectional charts depicting the TCA are normally distributed only one to two weeks in advance of the effective date of the TCA.

compliance/Enforcement Bulletin No. 86-2 provides that, for violations of Section 91.90, administrative action should not be used and suspersion of airman certificates should not be less than 60 days.

In consideration of the complexity of TCA airspace, and the time necessary for operators to become familiar with the new TCA boundaries and special procedures before implementation of a TCA, the general policy of Bulletin 86-2 is not a necessary or appropriate deterrent to inadvertent violations of newly established TCA airspace. Therefore, the use of administrative action in lieu of legal enforcement should ordinarily be used in such circumstances for a violation of FAR $91.90 occurring within a period of up to 60 days following the effective date of the TCA in which the violation occurred.

This policy represents a limited exception to Bulletin 86-2 and Paragraph 205.a. of FAA Order 2150.3A, and does not otherwise change those documents. Nor does this Bulletin affect enforcement policy for deliberate unauthorized operations in TCA airspace. This policy applies -to cases already initiated if the violation occurrred within 60 days following the effective date of the TCA in which the violation occurred.

ACTION: Until further notice, the following guidance should be followed in cases involving violations of FAR 591.90 at locations at which a TCA has been established within the preceding 60 days.

1. Notwithstanding the policies set forth in Bulletin 86-2, administrative action should be initiated in the instance of a first-time, inadvertent violation of FAR §91.90 that occurs within 60 days of the date the TCA becomes effective. A previous violation of 591.90 at other TCA locations should not be considered, for purposes of this Bulletin, in determining whether an incident is a first-time violation.

2. A violation of §91.90 will be presumed to be inadvertent unless there is evidence demonstrating the contrary. In the latter case, the guidance in Bulletin 86-2 will apply.

COMPLIANCE AND ENFORCEMENT BULLETIN NO. 90-2

SUBJEC': Enforcement action for cases referred by the Inspector General of the Department of, Transportation involving drug convictions and falsification of applications for airman medical certificates regarding drug- and alcohol-related convictions ("IG Match" cases), and other similar cases.

DISCUSSION: On April 11, 1989, the Administrator issued a notice of enforcement policy regarding the handling of more than 6,000 cases referred to'the FAA by the Office of the Inspector General of the Department of Transportation, involving airmen with drug- or alcohol-related convictions who apparently failed to disclose such convictions on his or her application for an airman medical certificate. Notice of Enforcement Policy, 54 Fed. Reg. 15144 (April 14, 1989). The Administrator announced that in those "IG Match. cases involving driving while intoxicated (DWI) or driving under the influence (DUI) convictions and in cases involving most drug convictions, certificate action will ordinarily be initiated only when those convictions occurred after February 17, 1984. Notwithstanding this "lookback" period, the FAA reserved the prerogative to take certificate action in any case it considers aggravated even if the conviction falls outside the "lookback" period.

Questions have arisen concerning what cases should be considered aggravated and how the agency should handle referrals which involve various combinations of convictions, some of which are not related to drugs and alcohol. A question has also arisen regarding the appropriate action to take when the person who apparently falsified no longer holds a current aitman certificate. The following guidance is provided for Security and legal personnel who are handling these cases.

Drug- and alcohol-related convictions.

Ordinarily, alleged regulatory violations stemming from convictions outside the "lookback" period should not be pursued. However, those convictions which appear aggravated should be investigated by Security and referred to the Assistant Chief Counsel for the Region, if deemed appropriate for enforcement action by Security. Examples of cases which might be considered for treatment as aggravated include flying while intcxicated, drug trafficking involving the use of an aircraft, cases in which the Department of Justice has deemed criminal prosecution appropriate, and cases involving multiple (e.g., four or five) DWI/DUI convictions.

Generally, when an airman has some drug- or alcohol-related convictions which fall both inside and outside the "lookback" period, only those within the "lookback" period will be pursued. For example, if an airman had one DWI in 1986 and one or two DWIs in 1982, the case should be treated as a single DWI case.

convictions not related to drugs or alcohol.

In some cases, persons against whom action will be taken because of unreported drug- or alcohol-related convictions also have other types of convictions that were omitted from their applications. If these convictions fall within the "lookback" period, Security should investigate if an Assistant chief counsel determines that it would be appropriate to include these convictions in the enforcement action. An Assistant Chief counsel may decide that inclusion of these additional allegations would support the allegation of falsification regarding the drug- or alcohol-related conviction or further substantiate the sanction ordered. An Assistant chief Counsel might also determine after appropriate consultation with Security, that falsification with regard to these convictions warrants a greater sanction. Such decisions are within the discretion of the Assistant Chief Counsel, and should be based on such factors as the number and nature of the other convictions, whether additional investigation would delay unreasonably the enforcement action or whether either the investigation or prosecution would consume a disproportionate amount of agency resources. If an increased sanction is deemed appropriate, that increased sanction could range, depending on the number and nature of the additional convictions, from several days' additional suspension to revocation of the airman certificates. Close coordination with Headquarters will be necessary to ensure uniformity among the regions. Accordingly, in any such cases, a copy of the notice of proposed certificate action and an explanation of the basis for the proposed action should be sent to AGC-250 before the notice is issued.

If the other conviction falls outside the "lookback" period and is not a felony, it ordinarily would not be included as part of the enforcement action and, therefore, would not warrant investigation by Security.

If a case is not going to be brought on the basis of a drug- or alcohol-related conviction, an airman's intentional falsification of some other type of conviction within the 'lookback" period may warrant enforcement action. For example, when an airman falsifies with regard to a serious traffic conviction (e.g., reckless driving) or some other serious conviction (e.g., a felony), enforcement action. may be taken. In such cases, Security personnel should consult with the Assistant Chief Counsel; if it appears that enforcement action

in the case might be taken, Security should conduct an investigation. Cases involving falsification of less serious offenses (e.g., speeding convictions) may not result in enforcement action. In such cases, Security should not investigate if, after consultation with the Assistant Chief Counsel, it is determined that enforcement action will not be taken.

If the other type of conviction is outside the "lookback" period, ordinarily no enforcement action would be expected unless the conviction is of 'a felony. In felony cases, Security should investigate if, after consultation with the Assistant Chief Counsel, it is determined that enforcement action would be likely.

ACTION: persons who no longer hold airman certificates.

In some cases, the person who apparently falsified a medical certificate application and who would meet the criteria for taking certificate action will hold no current airman certificate. The most common case would involve a person who held a student pilot/third-class medical certificate which has expired. consequently, no certificate action would be appropriate. In such cases, the person should be notified of the FAA's finding of apparent falsification and advised of the need to complete truthfully any future applications. A sample letter is appended to this bulletin. Security may have closed this type of case without investigation. Therefore, there would probably be insufficient information available to write to former certificate holders. security need not reopen its investigation of these cases.

ACTION: The following sanction guidance with respect to drug- and alcohol-related convictions should be followed. The guidance set forth in the Discussion section should be followed with respect to aggravated drug and alcohol cases and convictions which are not drug- or alcohol-related.

A. Falsification of Convictions for Driving While Intoxicated or Driving Under the Influence (hereinafter DUI). (While the vast majority of DUIs involve alcohol, they might also involve driving under the influence of another drug.)

1. For a single DUI conviction, revocation of any current medical certificates and suspension of the pilot certificate for 60 days. (Suspension of the pilot certificate will be ordered even if the pilot holds no current medical certificate.)

The 60-day suspension period applies only in a case which involves falsification of a single DUI conviction alone. Thus, if some other information has also been omitted,

(e.g., treatment for alcoholism), another, more severe sanction may be imposed. Even in cases involving a single DUI conviction alone, the FAA reserves the prerogative to impose a sanction more severe than a 60-day suspension if there are aggravating circumstances which warrant it.

2. For multiple DUIs, revocation of any current medical certificate and, except in extraordinary circumstances, any airman or ground instructor certificates.

B. Falsification of Drug Convictions (Cases Involving Sections 67.20 and 61.15 and/or 609(c)).

1. For a single conviction for simple possession, revocation of any current medical certificates and suspension of the pilot or flight instructor certificates for 180 days. (Suspension of the pilot certificate will be ordered even if the pilot holds no current medical certificate.)

The 180-day suspension period applies only in a case which involves falsification of a single conviction for possession alone. Thus, if some other information has also been omitted, (e.g., treatment for drug dependence), another, more severe sanction may be imposed. Even in cases involving a single possession conviction alone, the FAA reserves the prerogative to impose a sanction more severe than a 180-day suspension if there are aggravating circumstances which warrant it.

2. For one conviction for more than simple possession, revocation of any current medical certificates and, except in extraordinary circumstances, any airman or ground instructor certificates.

3. For two or more drug convictions of any type, revocation of any current medical certificate and, except in extraordinary circumstances, any airman-or ground instructor certificates.

C. Drug Convictions Which Do Not Involve Falsification (Cases under Sections 61.15 and/or 609(c)).

1. For single conviction for simple possession, suspension of any pilot or flight instructor certificates for 120 days.

2. For more than simple possession, except in extraordinary circumstances, revocation of any pilot or flight instructor certificates.

3. For two or more convictions, except in extraordinary circumstances, revocation of any pilot or flight instructor certificates.

EXPIRED STUDENT PILOT CERTIFICATES

February 15, 1990

A. George Smith
21-F Tentmill Lane 8980790003
Arlington,. Virginia 22202 .

Dear Mr. Smith:

On or about August 27, 1985, you applied for and were issued a Combination Student Pilot/Third class Medical Certificate.

In response to Item 21.v. (Record of traffic convictions) of the application for the certificate, you answered "no" when in fact on April 15, 1989, you were convicted in Arlington, Virginia of Driving Under the Influence (DUI) and Speeding.

Accordingly, it appears that you made a fraudulent or intentionally false statement on your application for a certificate, contrary to Section 67.20(a)(1) of the Federal Aviation Regulations.

This conduct would ordinarily subject you to suspension or revocation of all airman pilot and airman medical certificates you hold. Our records reveal that the August 27, 1989, airman medical certificate has expired and that you hold no other certificate.

Be advised, therefore, that if you apply in the future for a student pilot or medical certificate, we will carefully review whether you have fully and truthfully responded to all items on the application. Failure to respond fully and truthfully will result in denial or revocation of all airman and airman medical certificates, and may also subject you to criminal prosecution pursuant to 18 U.S.C. § 1001.

Sincerely,

Assistant Chief counsel

COMPLIANCE/ENFORCEMENT BULLETIN 98-3

SUBJECT: Unauthorized operations within Terminal Control Areas (TCA's).

DISCUSSION: Compliance/Enforcement Bulletin No. 86-2 provides that, for violations of Section 91.90, administrative action should not be used; suspension of airman certificates should not be less than 60 days: and civil penalty action should be used only where suspension is not possible or a civil penalty would be more of a deterrent than certificate action. The Sanction Guidance Table, which was incorporated as Appendix 4 in FAA Order 2150.3A after the issuance of Bulletin 86-2, provides that the normal range of sanctions for TCA intrusions is certificate suspension for 60 to 90 days.

While unauthorized intrusions into TCA airspace continue to be considered serious violations of FAA safety rules, it is not necessary that the special emphasis enforcement policy implemented in 1986 be retained permanently. Accordingly, it is the position of the Administrator that Bulletin 86-2 should be rescinded and that henceforth TCA violations should be handled in the same manner as similar violations of other airspace regulations.

Bulletin 86-2 had two primary effects on sanction determination. First, Bulletin 86-2 set a minimum sanction level that is higher than that indicated for similar violations. For example, the standard sanction range for violations of air traffic requirements in an Airport Radar Service Area (ARSA) or an airport traffic area is a suspension of 30 to 60 days. Second, Bulletin 86-2 limited discretion to reduce a proposed penalty below the minimum suspension specified in the Sanction Guidance Table. FAA Order 2150.314 provides, in appropriate cases, for the application of sanctions outside the normal range and for the use of administrative action. The rescission of Bulletin 86-2 permits the use of a broader range of sanctions for TCA violations where the appropriate circumstances exist.

This Bulletin rescinds Bulletin 86-2, effective immediately, and amends the Sanction Guidance Table to provide for a normal range sanction for TCA violations of a certificate suspension of 30 to 60 days. The policy will be applied not only to violations occurring after the effective date of the Bulletin, but also to cases in which an Order has not been issued as of the date of the Bulletin without regard to the date of the violation. In open cases in which an Order has been issued but in which the NTSB has not issued a final decision, the Assistant Chief Counsel, in consultation with the Manager, Flight Standards Division, will review the sanction proposed in each case for potential modification in line with the amendment to order 2150.3~.

ACTION: Effective immediately, and until further notice, the following guidance should be followed in any case involving a violation of FAR §91.90 in which an or'der has not been issued as of tho effective date of this Bulletin:

1. Compliance/Enforcement Bulletin No. 86-2 is rescinded in its entirety.

2. paragraph III.F.16 of the Sanction Guidance Table, Appendix 4 to FAA Order 2150.3A, is amended to read:

16. operation in TCA without or contrary to a clearance.	30 to 60 day sus.

3. In each open case in which an Order has been issued but in which the NTSB has not issued a final Opinion and Order, the Assistant chief Counsel, in consultation with the Manager, Flight Standards Division, will review the sanction proposed for consistency with the provisions of Order 2150.3A, as amended. The Assistant Chief Counsel, in consultation with the Manager, Flight Standards Division, may take affirmative action to either settle the case or unilaterally modify the sanction sought, as appropriate.

4. The policy set forth in Enforcement Bulletin 90-1, which provides that administrative action should be initiated in the instance of a first-time, inadvertent violation of a newly established TCA, remains in effect.

COMPLIANCE/ENFORCEMENT BULLETIN 90-4

SUBJECT: Coordination of enforcement actions against airmen (except air carrier personnel) in nonsignificant cases.

DISCUSSION: The System Safety and Efficiency Review recently completed by the FAA included a recommendation to eliminate pre-issuance headquarters coordination of nonsignificant actions in general aviation airmen cases. The recommendation was in furtherance of the general objective of increasing the discretion of regional compliance and enforcement personnel to consider mitigating and aggravating factors in each case, and to adjust the sanction accordingly.

The elimination of the requirement for coordination will facilitate the efficient handling of these cases and promote the determination of appropriate sanctions in all such cases. However, it is important to ensure that there is deviation from the Sanctions Guidance Table only where appropriate, and that consistency be maintained through.post-issuance review of individual cases and periodic evaluation of regional offices. Accordingly, after a' case is referred to the Assistant Chief Counsel, a decision to deviate from the Sanction Guidance Table in actions against airmen in nonsignificant, general aviation cases will not require coordination with AGC-200; however, the reasons for the decision to deviate must be documented, and the Assistant Chief counsel for the Region or his/her designee must concur in the decision in writing. A decision by field office personnel to take administrative action does not require coordination above the field office level.

ACTION: Effective immediately, and until further notice, the following guidance should be followed in non-significant actions against airmen in general aviation cases:

1. Notwithstanding the policies set forth in FAA Order 2150.3A, 11201.b and in the note at the end of the preamble to the sanction Guidance Table, a decision to issue an enforcement action with a sanction outside the normal range of penalties indicated in the Sanction Guidance Table does not need to .be coordinated with AGC-200.

2. An enforcement document proposing a legal enforcement penalty outside the normal range of penalties indicated in the Sanction Guidance Table shall not be issued until (1) the reasons for the decision to deviate from the Table have been documented, and (2) the Assistant Chief Counsel for the Region, or his or her designee, has concurred in the issuance in writing. The documentation of justification and the record of concurrence in each case shall be retained. A decision to take administrative action need not be coordinated above the field office level.

COMPLIANCE/ENFORCEMENT BULLETIN 90-5

SUBJECT: policy and procedures for suspected violations of the FAA's alcohol- and drug-related prohibitions related to operation of aircraft.

DISCUSSION: This bulletin is a "quick reference guide' to summarize the authority of FAA personnel and provide guidance regarding the procedures to be followed in cases where an FAA employee suspects that a crewmember is violating or may violate the FAA's alcohol- or drug-related regulations contained in 991.11 of the Federal Aviation Regulations (FAR). This guidance applies to any crewmember of a civil aircraft, whether employed by an air carrier or conducting commercial or general aviation operations. This guidance supplements existing guidance in FAA Order 2150.3A, paragraph 509, and incorporates the guidance contained in the March 14, 1990, memorandum from the Administrator to all Flight Standards inspectors.

Pursuant to the Federal Aviation Act of 1958, as amended (the Act), an air carrier is under a duty to perform its services with the highest possible degree of safety in the public interest. 49 U.S.C. APP. 1421. An air carrier and a'crewmember of an aircraft primarily are responsible for conducting their operations safely and ensuring compliance with the FAR. Allegations that a crewmember has violated, or may violate, FAA alcohol or drug regulations must be investigated with the highest priority. Prevention of these violations is critical to flight safety.

Authority to prescribe' rules. Under section 601 of the Act, it is the Administrator's duty to prescribe regulations to promote the safety of flight of civil aircraft in air commerce 49 U.S.C. App. 1421. Pursuant to that duty, the Administrator has promuigated §91.11(a), which prohibits any person from acting or attempting 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 0.04 percent by weight or more alcohol in the blood.

Authority to suspend or revoke certificates of airmen or air carriers. Under section 609 of the Act, the Administrator may issue an order amending, modifying, suspending, or revoking, in whole or in part, any certificate issued by the agency if, as a result of a reexamination or any other investigation, the

Administrator determines that Safety in air commerce or air transportation and the public interest require issuance of the order. Prior to issuing such an order, the FAA must advise the certificate holder of the charges or reasons for the proposed action and, except in the case of an emergency requiring immediate action, provide the certificate holder with an opportunity to respond. 49 U.S.C. App. 1429.

Authority to prohibit the operation of aircraft by crewmember in violation of 491.11(a). The Administrator has full authority over the safety certification of air carrier operations. 49 U.S.C. App. 1424. The Administrator' also may issue orders., orally or in writing, as he deems necessary to carry out his powers and duties under the Act. 49 U.S.C. App. 1354. This includes the authority to make such orders immediately effective, without notice, to meet any emergency requiring immediate action in the interest of safety in air commerce. 49 U.S.C. App. 1485.

Authority to require crewmember to submit, to alcohol test. As provided in §91.11(c), a crewmember must submit to a test to indicate the percentage by weight of alcohol in the blood where the following two conditions are met: (1) when requested by a law enforcement officer authorized under State or local law to conduct a blood alcohol test or to have a blood alcohol test conducted and (2) the law enforcement officer requests the test to investigate a suspected violation of State or local law that prohibits operation of an aircraft after consumption of alcohol, while under the influence of alcohol, or while having a certain blood alcohol concentration,

Flight Standards inspectors are not authorized under the regulations to require a crewmember to submit to an alcohol test. Also, 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 blood alcohol tests of crewmembers. Each district office manager should work with counsel to become familiar with the laws of each state in which they work, and provide such guidance in writing to all inspectors in the office for ready reference. This should include specific guidance as to when, and under what circumstances, an inspector should involve State or local law enforcement officials.

Flight Standards personnel must recognize the fundamental objective of the guidance provided below: to 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 task sometimes requires ingenuity and quick thinking, especially when time is short. Prompt notification of Flight Standards

management and the air carrier, using the resources of the FAA communications centers, usually is the best way to obtain promptly the assistance needed to prevent operation of an aircraft in violation of the FAA's alcohol and drug regulations.

ACTION: Effective immediately, all employees of the Flight Standards Service and the Office of the Chief Counsel will use the procedures outlined in this bulletin to take appropriate action regarding violations of the alcohol- or drug-related prohibitions in the FAR. Any FAA employee who receives information regarding a crewmember's operation of an aircraft in violation of the FAA'S alcohol or drug regulations immediately must contact a Flight Standards inspector and transmit the information to the inspector.

GUIDANCE: Specific procedures regarding violations of the FAA's alcohol- or drug-related regulations are set forth in FAA Order 2150.3A, paragraph 509. The following summary of procedures, in addition to the procedures in paragraph 509, should be used to determine the appropriate action to be taken by an inspector and counsel where FAA personnel receive apparently reliable and credible information that a crewmember may operate a civil aircraft in violation of §91.11(a). TO the extent possible, full coordination with the Regional Administrator and counsel of all actions herein should take place in advance of the action. If the circumstances and time do not permit prior coordination, information should be provided as soon as possible to the Regional Administrator, through the appropriate channels, on all actions taken to address the situation.

1. Notification to carrier officials. If the crewmember is an employee of an air carrier, the inspector promptly shall share with an appropriate management official of the air carrier who is immediately accessible by telephone (1) all pertinent information to enable an air carrier to conduct its own investigation and (2) the steps that the inspector intends to pursue based on the information. The inspector shall give the air carrier all available information, protecting any confidential source who has requested anonymity, to enable the air carrier to take appropriate action. The inspector shall urge the air carrier to assist the FAA in its investigation and, if appropriate, to take action to ensure that the flight crewmember does not serve on the flight. The inspector should remind the air carrier official of the provisions of §91.11(a) and the authority of the FAA to prohibit, where warranted, the operation of the aircraft in the event the carrier fails to take action on its own. The inspector also should advise the air carrier official of 18 U.S.C. section 342, a criminal statute that provides for imprisonment and fines against 'whoever operates or directs the operation of [an air] common carrier while under the influence of alcohol or drugs...."

2. Notification to FAA personnel. The inspector also immediately should notify his or her supervisor and, in the case of 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 the inspector intends to pursue. These officials are encouraged to contact appropriate Washington headquarters officials in their chain of command, as time permits.

3. Notification to flight standards and counsel. If the inspector does not receive a response from the air carrier that resolves satisfactorily the inspector's safety concerns, the inspector immediately shall notify Flight Standards management in his or her chain of command, who in turn shall notify the Office of Assistant Chief counsel in the region. Notification shall be elevated to the highest FAA management official (up to and including the Administrator) necessary to contact air carrier management so as to eliminate the agency's concern for flight safety.

4. Means of notification. The inspector shall use the most expeditious means available to communicate with FAA personnel and air carrier management, normally through the FAA Operations Center in the field. If necessary, the inspector may contact the Washington headquarters operations Center [(202) 863-5100].

5. 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, the inspector as soon as possible shall notify State or local law enforcement personnel, when appropriate, and request their assistance in the investigation or other appropriate action in accordance with paragraph 509 of FAA Order 2150.3A.

6. Legal enforcement action. 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 Regulations and Enforcement, and each regional Assistant Chief counsel (pursuant to the Administrator's authority delegated under section 313(a) of the Federal Aviation Act, 14 CFR 13.20(1)) 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 Assistant Chief Counsel for the region shall consult with the Regional Administrator where possible if consultation will not delay action necessary to protect aviation safety.

Any order shall be in writing, if time permits. The contents of a written order may be communicated orally by the inspector to the crewmember, the air carrier, or both. An order may be issued orally by counsel, and communicated by the inspector, if necessary to prevent operations detrimental to aviation safety, but the order must be reduced to writing as soon as possible. Each oral or written order must state the grounds for issuing the order, and must notify the respondent(s) of any right of appeal. Any order, whether written or oral, shall be served on the crewmember, the air carrier, or both, named in the order at the earliest possible tjme.

COMPLIANCE/ENFORCEMENT BULLETIN No. 99-6

SUBJECT: Reporting and correction policy and implementing guidance.

SUMMARY: The reporting and correction policy announced herein is intended to improve safety compliance by foregoing a civil penalty where a certificate holder 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. Notwithstanding a certificate holder's failure to report a violation, this policy also provides that the nature and extent of a certificate holder's voluntary remedial action may be considered in mitigation of any civil penalty otherwise appropriate. The policy applies to all holders of FAR Part 121 and 135 certificates issued in accordance with Title VI of the Federal Aviation Act of 1958. This policy may be extended to other categories of certificate holders by separate guidance in the future.

BACKGROUND: In recent years the FAA has imposed a number of large civil penalties on air carriers. These penalties have resulted largely from FAA inspections, such as those conducted under the National Aviation Safety Inspection Program (NASIP), its predecessors and other programs in other disciplines. Most of the violations detected have involved a certificate holder's failure to monitor adequately compliance with requirements of its approved aircraft maintenance program, operations programs, or similar approved operations requirements.

The recent incidence of large civil penalty cases discloses one clear lesson: air carriers and other certificate holders could do more to monitor their own regulatory compliance. Indeed, in many instances, noncompliance has been revealed in FAA'S audits of a certificate holder's own records. Although Safety in air transportation is a responsibility shared between certificate holders and the FAA, the ways in which this responsibility is discharged differ. While the FAA monitors the certificate holder's compliance through periodic inspections, the certificate holders clearly have a superior vantage point in monitoring their own performance, and have far greater resources to do so than FAA could ever acquire. Although the FAA regulates certificate holder's performance through standards and guidance and promotes compliance through enforcement actions, it is the certificate holders upon whom rests the primary and ultimate responsibility for safe operation and maintenance.

Because the certificate holder 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 will improve the certificate holder's ability to identify and correct regularly 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 the certificate holder, instead of when the FAA discovers the deficiencies, sometimes much later on, in the course of an inspection or in the wake of an accident or incident. The policy announced in this bulletin is intended to serve as an incentive to institute and maintain a system of internal evaluation.

The FAA's enforcement program is not an end, but is rather a means to achieve compliance with the Federal Aviation Regulations through remedial and punitive measures. The purpose of civil penalties is not to collect money for the U.S. Treasury, but rather to help assure, through deterrence, compliance with safety requirements. The threat to a certificate holder of incurring substantial civil penalties is a traditional and often effective incentive to ensure compliance.

However, the negative incentive of deterrence, which civil penalties serve, is not always effective. While civil penalties have deterrent value, their payment does not necessarily improve a certificate holder's ability to assure future compliance. Moreover, given the current prospect of' being heavily penalized even for inadvertent violations that did not adversely affect safety, there now is not much incentive to disclose such incidents to FAA when the certificate holders themselves discover them. Such disclosure would allow the agency to share appropriate safety alerts with other certificate holders.

The public interest in aviation safety is served also by positive incentives to promote and achieve compliance. Indeed, the FAA believes that aviation safety is best served by incentives to certificate holders to identify and correct their own instances of noncompliance and invest more resources in efforts to preclude their recurrence, rather than paying penalties. Prompt and meaningful remedial action to prevent the same or similar sort of violation from happening again more directly and substantially improves the safety of our national transportation system than the recovery of thousands of dollars in civil penalties.

The FAA has always considered the certificate holder's actions following the discovery of a violation relevant in determining the type and amount of sanction. But the amount of mitigation in such circumstances has been neither consistent nor substantial enough to serve as a positive incentive to achieve compliance. The following policy to encourage voluntary disclosure and prompt remedial action is hereby adopted.

Policy: In evaluating enforcement action for a certificate holder's actual 'or apparent failure to comply with FAA regulations, where all of the following circumstances are present, the FAA will not seek a. civil penalty.

(1) The certificate holder voluntarily and promptly discloses to FAA, by written report to the certificate holding district office (CHDO) or principal security inspector (PSI), as appropriate, the failure before the agency learns of it.

(2) The failure is not deliberate or intentional.

(3) The failure does not indicate a lack, or reasonable question, of basic qualification of the certificate holder.

(4) The certificate holder, upon discovery of the failure, has taken or has begun to take immediate action to correct it (i.e., to cease any continuing or repeated violation).

(5) The certificate holder has taken, or has agreed to take, remedial action satisfactory to FAA as may be necessary to preclude recurrence of such failure. Any action agreed to be taken must be completed.

Notwithstanding a certificate holder's failure to report an apparent violation, this policy also provides that the nature and extent of a certificate holder's voluntary remedial action may be considered in mitigation of any civil penalty otherwise appropriate.

However, where the certificate holder fails promptly to disclose and correct violations of which it was aware or should have been aware (for example, because the situation was obvious or because the company, through its auditing or evaluation program or other means, should have discovered the violation), substantial civil penalties, including the maximum allowed under the 'law, are warranted and may be sought.

In a separate action against an airman arising out of an incident reported by the airman's employing certificate holder to the FAA under this policy, where the airman made the first report of the apparent violation to the employing certificate holder, the guidance of this policy should be applied in the determination whether to initiate legal enforcement action.

It is the responsibility of the Chief Counsel and the Associate Administrators for Regulation and Certification and for Aviation standards to implement this policy. The policy is effective immediately, until further notice, and applies to all future enforcement cases as well as all pending cases in which a civil penalty letter or Notice of Proposed Civil Penalty has not yet been sent.

Action: In order to ensure that all elements of the policy are present, the following interim guidance should be followed.

(1) The appropriate Flight Standards or Civil Aviation Security division shall ensure that the facts and circumstances surrounding all'apparent violations are thoroughly investigated, analyzed, reviewed and reported as outlined below.

(a) The inspector's investigative analysis should ascertain:

(1) whether the failure to comply was deliberate:

(2) whether the apparent violation was inadvertent (i.e., the result of simple failure to exercise reasonable care) or was the result of reckless disregard of safety requirements.

(3) whether management officials in the company were aware of or involved in the violation, and, if so, to what extent.

(b) The investigating inspector should contact the CHDO or PSI as appropriate to determine, and gather written information which indicates, if and when the certificate holder discussed the apparent violation and when it became known to the certificate holder. In addition, the investigating inspector or special agent should consult with the CHDO or PSI, and the CHDO or PSI should determine the effectiveness of the certificate holder's action to preclude recurrence of the apparent violation.

(2) The Letter of Investigation (LO11 should solicit evidence which establishes *whether the certificate holder has satisfied the criteria of this policy. Each LO1 should include the following language:

> your response should contain all pertinent facts, including but not limited to: how, where, and by whom the apparent violation was detected: when the certificate holder disclosed it to the FAA; the nature and extent of any action taken to correct it and preclude its recurrence: and any mitigating circumstances which you believe may be relevant.

(3) The inspector's investigative report should include:

(a) Any evidence, including but not limited to-the inspector's statement, of how, when, and where the apparent violation was detected and by whom.

(b) Evidence of whether and when the certificate holder disclosed the apparent violation to the CBDO or PSI, as appropriate, and when it became known to the certificate holder.

(c) The inspector's statement and/or evidence of whether and when the certificate holder took action to correct the apparent violation: i.e., to cease any conduct which did or might constitute a violation.

(d) The inspector's statement and/or evidence of whether the certificate holder has taken, or has agreed to take, remedial action acceptable to FAA to preclude recurrence of the apparent violation, including an analysis of the nature and likely effectiveness of such action.

(e) The EIS printout or equivalent summary listing similar violations by that certificate holder, in order to evaluate what remedial action, if any, may be necessary to preclude recurrence of the apparent violation.

(4) Whenever it is determined under this policy that no civil penalty will be sought, the certificate holder should be so advised by a Letter of correction issued in accordance with Section 13.11(b)(2) of the Federal Aviation Regulations. As provided in that Section, such a letter does not constitute a formal adjudication of the matter: however, civil penalty action may be taken in the event that the agreed corrective action is not fully completed. The CHDO or PSI, as appropriate, should monitor the completion of the agreed-ugon remedial action.

(5) The Letter of Correction should contain all pertinent facts, including but not limited to: how, where, and by whom the apparent violation was detected: when the certificate holder 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 which were considered to be relevant.

(6) Following issuance of the Letter of Correction, the case should be closed, subject to reopening in the event that agreed action is not completed. Until further notice, the file of each closed case should be forwarded to the appropriate Assistant Chief Counsel.

(7) Regional personnel should direct inquiries regarding the application or interpretation of the policy contained in this bulletin, through channels, to the appropriate Assistant Chief counsel.

COMPLIANCE/ENFORCEMENT BULLETIN NO. 90-7

SUBJECT: Revised Enforcement Investigative Report (EIR) format to be used'in all Civil Aviation Security cases.

DISCUSSION: The Office of Civil Aviation Security desires to implement a single report format. that can be used to document criminal and internal investigations as well as regulatory enforcement cases. Previously two report formats were used. Recently, the Office of Civil Aviation Security has experienced substantial growth in the programs involving criminal investigations and enforcement actions for drug related aviation activity. A single format that can be employed by all Civil Aviation Security special agents in all cases will greatly facilitate these new program efforts.

The features reflected in this new report format represent improvements that may,, at some future date, be integrated into enforcement investigative reports agency-wide.

ACTION: This Compliance/Enforcement Bulletin is a revision of Chapter 9, Preparation of Enforcement Investigative Reports, to apply onlv to **EIRs** prepared by Civil Aviation Security. This Compliance/Enforcement Bulletin sets forth guidance in a revised Chapter **9A,** Preparation of Enforcement Investigative Reports for the Office of Civil Aviation Security. It does not change the guidance set forth in the existing Chapter 9 for the preparation of **EIRs** by any office other than Civil Aviation Security.

All elements of Civil Aviation Security shall prepare **EIRs** in accordance with the guidance contained in Chapter **9A,** Preparation of Enforcement Investigative Reports for Civil Aviation Security, which is attached to this Compliance/Enforcement Bulletin. This bulletin establishes a 12 month trial period during which the effectiveness of the new EIR format shall be reviewed. Quarterly critiques shall be forwarded by regional Civil Aviation Security Divisions and Offices of Assistant Chief Counsel. ACS-310 shall be the collection point for critiques and shall provide copies to AGC-260. An official determination will be made regarding the revised format after the completion of the trial period.

Following the effective date of this bulletin all Civil Aviation Security elements shall have 30 days to familiarize themselves with the new format. The new format shall be used for all **EIRs** prepared more than 30 days after the date of this bulletin.

FORMS Forms to be utilized are FAA Form 1600-75, Enforcement Investigations Report; NSN 0052-00-903-5000, unit of issue is a package (PK-50 forms to a PK), and FAA Form 1600-75.1, NSN: 0052-00-903-6000, unit of issue is a package (PK-50 forms to a PK). Both are available through normal supplies.

Gregory S. Walden
Chief Counsel

Raymond A. Salazar
Director of Civil Aviation Security

Attachment

CHAPTER 9A. PREPARATION OF ENFORCEMENT INVESTIGATIVE REPORTS FOR CIVIL AVIATION SECURITY

900A. GENERAL.

a. The Enforcement Investigative Report (EIR) is the means for documenting, assembling, organizing, and presenting all evidence and other pertinent information obtained during an investigation. Since it is the document 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.

b. If at any time during the investigation the special agent determines that no violation occurred, the agent should terminate the investigation, and complete the applicable section of the EIR. If a letter of investigation was issued, all recipients should be notified that the matter has been closed.

c. If it is determined after evaluation of all the evidence obtained in the investigation that a violation did occur, the agent should recommend either administrative action or legal enforcement action, as appropriate.

d. Exercise extreme caution to ensure that no unauthorized person including the alleged violator, is informed of the agent's recommendations.

901A. REPORT PREPARATION. The Office of Civil Aviation Security (ACS) enforcement investigative reports shall be reported in accordance with instructions in this Chapter.

a. Administrative action or no action cases. When administrative enforcement action is taken, only FAA Form 2150-5 need be prepared in accordance with the guidelines obtained in paragraph 903A. See Figure 9-l. For "no action" cases, only the FAA Form 2150-5 and the Summary of Findings paragraph need be prepared. See paragraph 904A. The field office or region may elect to prepare or have prepared a complete EIR in cases involving complex or sensitive investigations notwithstanding the fact 'that administrative enforcement action is recommended.

b. Legal enforcement action. For legal enforcement action, the entire EIR should be completed. Prepare FAA Form 2150-5 in accordance with the guidelines in paragraph 903A.

c. Criminal enforcement action. For criminal enforcement actions the entire EIR (sections A and B) must be completed and referred to the appropriate U.S. Attorney. To aid the prosecuting attorney in the identification of the subject the FAA Form 2150.5 shall be replaced by an appropriately completed FAA Form 1600.32. coordination with the Chief Counsel's office will also be accomplished.

902A. REPORT ASSEMBLY. The report will consist of Sections A and B. (The composition of the sections is covered in paragraph 904A.) Section A will consist of:

(1) FAA Form 2150-5,
(2) Allegation(s),
(3) Citation(s),
(4) Summary of Findings
(5) Facts
(6) Analysis

Section B consists of:

(1) Exhibits

a. Report covers. The special agent will attach a front and back cover to the EIR; FAA Form 1600-75 and 1600.75-l must be appropriately annotated to comply with the Privacy Act.

b. Section dividers. Indices labeled A, B, and appropriate numerical indices should be used when compiling the report.

c. Component headinas. All subsection headings must be capitalized, underlined and in bold print. One blank line space must separate the headings from the narrative.

d. Names. The names of businesses and the surnames of individuals must be written in capital letters throughout the entire report to permit easy identification and location by the reader.

e. Terms. The word SUBJECT may be used in place of subject's surname and must be capitalized.

903A. SECTION A(1) - PREPARATION OF FAA FORM 2150-5. Information blocks on FAA Form 2150-5 shall be completed in accordance with the guidelines in paragraph b below. The report number, which identifies a specific EIR, should be entered as a 10-digit code consisting of the year, the region, the field office, and a sequential number as outlined in Chapter 14 (example: 88WP720001). Related enforcement investigative reports should be entered, in the same code form. See paragraph c(2).

a. Information required on FM Form 2150-5 should be entered into the EIS using an interactive terminal which displays information-as it is keyed. This form may then be printed out for use in the EIR. General information about EIS data entry is provided in paragraph b below. The pertinent information to be entered into EIS follows the guidelines in paragraph c below.

b. As a specific item (data element) is completed, the system will perform edit and validation routines to ensure the accuracy of each data element. -The system edits use tables, range checks, omission detection and date validation to prevent erroneous information from reaching the EIS database. When an error is discovered, the terminal will display a descriptive error message and sound an alarm. Two types of errors can be indicated by the system: Fatal, which must be corrected before the user can continue; and Warning, which is displayed to alert the user to a potential error situation. Refer to the EIS User's Manual for additional guidance on data entry edits.

c. Instructions for completing FM Form 2150-5 - Report Number and Related Cases.

(1) Report Number. Each report number as assigned from the individual ACS office shall be entered in the box in the upper right corner of Form 2150-5, labeled Report Number. An incident involving one allegation and one alleged violator will result in one Report Number. Example: During screening an individual is found to be carrying a weapon. This involves one alleged violation, and one alleged violator. Therefore, one Report Number is appropriate.

(2) Related Number. A related case number is used when there are two or more subjects (violators) involved in the same incident. A separate case shall be opened on each subject. For example, during screening at a connecting airport, an individual is found to be carrying a weapon. There will be one case opened against the individual, and a second case opened against the air carrier responsible .for screening the individual at the original departure point. Each case will be assigned a separate case number in the upper right corner of FM Form 2150.5. The special agent will enter the related case number in the appropriate box.

d. Instructions For Completing FAA Form 2150-5 - Items l-33

(1) Name. Enter the name of the alleged violator. The entry should show an individual by last, first and middle name. (e.g., Smith, Ralph Duane). The name of a legal entity should be shown in full (e.g., All American Airlines, Inc.: Ralph Duane Smith d/b/a All American Airlines: Tri-County Airport Authority: etc.). It would be helpful to include the air carrier designator or the airport identifier.

(2) Address/Telephone Number. Enter the current mailing address, including ZIP code, of the individual or legal entity. When practicable, the field office should verify this data. If the mailing address is a post office box, a street address to which over-night deliveries may be made should be included in the remarks section of the EIS. The telephone number is not a field in the EIS, but a complete telephone number, with area code, should be written on the print-out of FAA Form 2150-5.

(3) Date of Birth. Enter, in numerals, the date of birth of the individual alleged violator, in a six digit year-month-day (YY-MM-DD) format (e.g., 41-12-15; 54-05-23). Leave blank if not applicable.

(4) Sex. Enter male (M) or female (F). Leave blank, if not applicable.

(5) FAA certificate number. Enter the number of the FAA certificate held by the alleged violator, if related to the incident under investigation or the regulation believed violated. Use the code for NONE if no certificate is held or if certificate is unrelated to investigation.

(6) FM certificate type. Enter the type of certificate referenced in Item (5) (e.g., commercial pilot: air carrier: airport operator; etc.). Leave blank if not applicable.

(7) Aviation employer. Enter the alleged violator's employer if the alleged violation is related to that employment, and the employment involves a segment of aviation or aviation-related activity. In cases involving passenger violations, or passenger/nonpassenger screening/sterile-area violations, the designator of the responsible air carrier(s) should be entered.

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

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

(10) Identification No. For an aircraft, enter the identification number. For an aircraft engine, propeller, appliance, or aircraft component, enter the serial number when available.

(11) Owner. Enter the name of the owner of the aircraft or the aeronautical product involved in the alleged violation.

(12) Owner address. Enter the current mailing address of the owner listed in Item (11).

(13) Date occurred. Enter, in numerals, the date(s), on which the alleged violation occurred, in a six digit year-month-day format (e.g., 90-03-30).

(14) Time. Enter the local time at which the alleged violation occurred using military time (e.g., 1105 for 11:05 a.m.: 1435 for 02:35 p.m.). Leave blank if a specific time of occurrence is not applicable.

(15) Date known to FAA. Enter, in numerals, the date on which FM security first learned of the incident, in a six digit year-month-day format (e.g., 90-04-02).

(16) Reuion of discovery. Enter the two-character identifier of the region in which the alleged violation was first discovered (e.g., NM). (Note: This may not be the region of occurrence.)

(17) Location. Enter 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 (reference FAA Order ATC 7350.5T) contains standardized airport identifier information.

(18) **Regulations** believed violated. Enter all regulatory **violations** believed substantiated by the evaluation and technical analysis. All violations listed shall stem directly from the investigation of the initial incident or allegation. Be specific in identifying the regulations by section and subsection as appropriate. For example, if the rule believed violated .is Section **108.5(a) (1),** enter it as such: do not enter 108.5. In those cases where the regulation cited fails to adequately identify the act or aggravated circumstance involved, and the investigating agent 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 (e.g., ACSSP Section IV.A.4).

(19) **Type.** Enter the two-digit code (see Appendix 3 for code listing) which best describes the type of activity the alleged violator was engaged in at the time of the alleged violation.

(20) **Sub-type.** Enter the two-digit code (see Appendix 3 for code listing) which best describes the sub-type of activity in which the alleged violator was engaged.

(21) Cateuorv. Enter the two-digit code (see Appendix 3 for code listing) which best describes the category of the alleged violation.

(22) Source. Enter the two-digit code (see Appendix 3 for code listing) for the source of the initial information relating ***to*** the alleged violation.

(23) Accident associated. Enter code 00 if an accident was not associated with the alleged violation, or code 01 if an accident was involved. If the alleged violation caused the accident, enter code 02. The National Transportation Safety Board definition of an accident is controlling.

(24) **Security program.** This section of the form is for use in security violations only. From one to eight individual **two-** digit codes may be entered in sequential order (see Appendix 3 for code listing).

(25) Type action recommended or taken. Enter one of the following actions (items 25 through 28 need not be completed in airman medical cases):

(a) Administrative action

(b) Civil penalty

(c) Suspension

(d) Emergency suspension

(e) Revocation

(f) Emergency revocation

(g) Referral to DOD

(h) Referral to foreign government

(i) Criminal action

(j) Other recommended action should also be entered in addition to one of the above, when appropriate (e.g., aircraft seizure: cease and desist order; injunctive action: order of compliance).

(k) No action

(26) Recommended sanction. Enter one of the following sanctions:

(a) Warning Notice

(b) Letter of Correction

(c) The dollar amount for recommended civil penalty.

(d) The recommended duration for period of suspension (e.g., 180 days; pending compliance).

(e) No sanction need be entered when the recommended type action is other than administrative action, civil penalty, or suspension.

(27) Date. Enter the date signed by the field office Manager.

(28) Investiuatinu office. Enter the appropriate region or field office identifier (e.g., NW71; CE72). (See Chapter 14.)

(29) Requlations believed violated. Same as instructions for Item (18). If the,investigating field office entered an incorrect regulation in item (18), the correct regulation should be cited. (See paragraph 1001b.) May be left blank for administrative actions.

(30) Recommended type action. Same as instructions for Item (25). (See paragraph 1001b.) May be left blank for administrative actions.

(31) Recommended Sanction. Same as instructions for Item (26). (See paragraph 1001b.) May be left blank for administrative actions.

(32) Date. Enter the date signed by regional division.

(33) Reuion. Enter two-letter identifier for the reporting region (e.g., GL, NM, SO).

904A. REPORT FORMAT.

a. Section A will contain FM Form 2150-5, followed by FM Form 1600-32-1. FAA Form 1600-32-l will contain the following subsections:

(1) Allegation(s). This subsection must specifically state the allegation(s) made that led to this investigation, or succinctly describe the incident being investigated.

(2) Citation(s). This subsection must specify the law(s), regulation(s), or order(s) that allegedly has been violated. The agent shall provide a plain-language description of the citation which is concise but conveys its essential content. If a criminal violation is cited, the agent must provide the regulatory or administrative citation(s) which also address the allegations.

(3) Summarv of Findinus. This subsection must contain a sharply focused and concise statement of what the investigation found, i.e., whether or not the allegation was supported or refuted. This subsection provides the attorney with a quick reference point and summary of the case. A separate paragraph, under this subsection, shall contain a summary of information as submitted by the subject of the investigation. In cases which possess the potential for criminal prosecution, a final paragraph shall indicate whether the U.S. Attorney accepted or declined prosecution of the case.

(a) The Summary of Findings subsection need not be included in a security EIR in extremely simple cases where the "summary" and the "facts" would essentially be the same. Under no circumstances will this subsection be omitted in criminal cases.

(4) Facts. The fourth subsection shall be entitled "Facts". As the name implies, this subsection must contain onlv facts in clear and concise language. No opinions, conclusions, or recommendations may be included in this subsection of the report. The special agent must describe all the pertinent facts and circumstances. The facts should be presented in an orderly and logical statement of each significant fact and related investigative action, with a reference to specific supporting exhibits. The agent should describe the incident with as much detail as necessary to assure an understanding of the investigation but strive to be clear and avoid long narrative descriptions. Short, bullet statements or paragraphs are preferred. In this subsection, the agent should reference the exhibits that are contained in Section B to indicate which evidentiary exhibits support each fact.

(5) Analysis. The fifth subsection must analyze how aviation safety or security was or was not affected, the alleged violator's attitude, enforcement history, economic considerations, and impact on the livelihood of the alleged violator. The reliability of evidence shall be evaluated and conflicting evidence discussed. It may be necessary to again reference specific supporting exhibits. Under this subsection only, the agent may include opinions, feelings and conjectures, which should be characterized as such. The agent shall provide a conclusion and set out the reasons justifying the recommended enforcement action and sanction. For a list of items to be included in the analysis, refer to paragraphs 205-207. The analysis subsection shall be completed on a separate page (FAA Form 1600-32-l) to facilitate Privacy Act considerations.

(a) The investigator must determine, based on the analysis of the facts, the following:

1 Whether the alleged violation occured?

2 Whether the elements outlined in paragraph 205 were met? If so, outline the proposed administrative action. If not, determine the appropriate legal sanction. Refer to paragraph 206.

3 Whether any mitigating or extenuating circumstances were revealed by the investigation or presented in the response to the Letter of Investigation. Any aggravating circumstances, such as repeated violations, should be evaluated.

4 What is the appropriate sanction? (Refer to paragraph 207.) Discuss amount recommended in the Sanction Guidance Table (Appendix 4) and.any factors noted in (3) above. Any deviation from the Sanction Guidance Table must be fully explained.

(b) If information is received after the EIR has been forwarded to the region, the special agent shall prepare a new analysis and forward it through appropriate channels. This analysis shall indicate whether, based on the new information, the special agent has changed his or her conclusions or recommendations regarding the facts, the regulations violated, or the proposed sanction.

b. Section B. Shall include an "Index of Exhibits," and all exhibits referenced in the report. The index will contain a list of the exhibits by numeric symbol and give a short description of the exhibits submitted with the report. Each exhibit must be numbered consecutively and be arranged in a logical order to facilitate a review. Each exhibit referenced in the "facts" shall be included as an exhibit in section B. Items included in this section are:

(1) Special Agent's Statement. This exhibit will contain the background information of when, where, and how the special agent discovered the alleged violation. A statement on an incident reported by a law enforcement agency should provide sufficient background information to provide an adequate understanding of how the violation came to the attention of the FAA. An agent's statement shall be included in all cases where the personal observation of the agent is a significant factor in proving or disproving the case.

(2) Auency Record. This section shall contain the results of FAA records searches such as those maintained in CASIS, EIS, Airman or Aircraft Registry. Such file checks can assure that the special agent has not overlooked any pertinent background information that is available at the outset of the investigation. These records are essential in establishing a reasonable assessment of compliance history and significant compliance trends. The results of these records checks must be summarized on a separate FAA Form 1600.32~1. The individual computer printouts shall not be included in the report. The following guidelines are provided as an example of the extent of record searches that would normally be sufficient. Factors such as the size **and** frequency of the entity being inspected will qualify these guidelines.

(a) Record checks on individuals shall usually be conducted as far back as possible.

(b) A period of five years is generally sufficient to establish a compliance history for airports.

(c) In cases involving air carriers a period of from **one** to three **years** is generally necessary to document compliance trends.

(3) Other **pertinent** record checks. Some cases **may** require that checks of other agency's records be performed. A few examples would include local law enforcement agencies (e.g., airport police) or could include items such **as** airway bills, or shippers' declarations for dangerous goods, (hazardous materials **cases).** Other agency record checks must be reported in compliance with subparagraph (5).

(4) Technical information. Analysis performed by any professional or technical laboratory **(as** in hazardous material cases) must be included in the investigative report. Available information such as material safety data sheets (MSDS) should also be included in this section.

(5) Statements and Records of Interviews. There are two methods of documenting the investigative interview, the signed statement and the record of interview.

(a) Statements. The agent shall attempt to obtain **from** a witness a signed and preferably sworn statement when the witness' personal observation, or experience is an important factor in proving or disproving the violation.

(b) Record of interview. The purpose of a record of interview is to provide a narrative to explain the substance of a witness' observations. This is accomplished by including information given in the interview which is not included in the statement, if one has been obtained. If a signed statement cannot be obtained, the record of interview provides the substance of the information provided by a witness.

(c) Interviews. When recording either statements or records of interview, each person interviewed will be identified by name, address, phone number, occupation and/or title, date interviewed, place interviewed, how associated with the investigation, etc., with sufficient specificity to identify the witness and indicate his/her qualifications. The agent should attempt to obtain a signed sworn statement from the subject. If the age of a witness has a bearing on his/her credibility, it should be included, e.g., interviews of juveniles. Any of the above information that has not been included in a written statement should be included in the record of interview. The last paragraph of the interview should be in the following format when a statement has been given:

> The interview with Jones was reduced to a signed, sworn statement and it is included as . . . . . EXHIBIT 4

(d) Reporting Negative Interviews. When persons who are interviewed indicate that they have no knowledge or information pertinent to the matter under investigation, (i.e., negative interviews) a record of these interviews may be reported on a single report form by listing and fully identifying each individual interviewed with the following statement:

> The following persons were interviewed and stated they had no knowledge pertinent to the matter under investigation.

Similarly, when records are checked during an investigation with negative results, e.g., police records, the sources of the record should be identified and the results summarized on a single report form.

(6) Record Review. A report of a record review does not quote verbatim the substance of a record, but is an explanation of a technical form or record in plain language. The report will indicate where the record was obtained, from whom it was obtained and provide any necessary explanation. If the record reviewed is not an original, the report will reflect where the original is located, whether or not it is obtainable, from whom and under what circumstances it can be obtained: i.e., by subpoena, court order, etc. Original documents and certified, or authenticated, copies of official records should be obtained whenever possible. (When in doubt, check with.the appropriate Office of Assistant Chief Counsel.) Only those documents secured during the investigation phase which serve to prove or disprove the allegations should be attached as exhibits. In dealing with any documents, records, or other material, the agent must ensure that the necessary "chain of custody" is preserved, and document the chain of custody.

(7) Photouranhs. Paragraph 407 identifies logistical elements to consider when using photos. It is recommended that the agent place the pertinent information, not only on the back of the print but also, on the front of the paper to which the photo is attached. Appropriate chain of custody shall be maintained as needed.

(8) Reference items. Copies of appropriate sections of an air carrier's approved security program and airport security plans that are cited as alleged violations must be included in the report. These are vital documents required to prove the allegations cited in the EIR and must reflect the regulations or security program or plan that was in effect at the time of the violation.

905A. PROTECTION AND RELEASE OF EIRs.

a. Protective markinus. Enforcement investigative reports normally qualify for the designation of "FOR OFFICIAL USE ONLY" (FOUO) and shall be so marked unless the report contains national security information requiring a security classification. (See Order 1600.15, Control and Protection of FOUO Information).

b. Release of investicfations. Request for release of the EIR or investigative information should be handled in accordance with FAA Order 1200.23, Public Availability of Information. An EIR or any part of an EIR should be released only with the concurrence of the appropriate office of the Assistant Chief Counsel. Information of a security nature may be released only by the Director, Office of Civil Aviation Security, ACS-1, in accordance with FAR Part 191. Refer to Action Notice 1650.8, dated February 16, 1990, for additional guidance.

906A. EMERGENCY ENFORCEMENT ACTIONS. The appropriate handling of a violation requiring emergency certificate suspension or revocation involves participation or initiation of such action by the Assistant Chief Counsel, prior to actual completion of the EIR. An advance or partial EIR should be prepared and forwarded, and legal counsel should be provided copies of all evidence that supports the alleged violation. The complete EIR package should be completed as expeditiously as possible.

907A. REGIONAL COPIES. The distribution requirements of paragraph 1405 do not provide for a regional division copy of the EIR package. If an additional copy of the report is desired, divisions may either make copies or request that the field offices provide an additional copy.

908A. DOWNGRADING OF EIRs. EIRs initiated by the field office or regional division for legal enforcement may, in some cases, be returned for downgrading to administrative action or no action [paragraph 1002b(5)]. In this case, the investigating office should prepare and process an appropriate EIR using the same EIR number shown on the original, and with the annotation at the top of the form, "DOWNGRADED."

909A. - 999A. RESERVED.

COMPLIANCE/ENFORCEMENT BULLETIN NO. 90-8

Subject: Corrective action through remedial training. This compliance and enforcement bulletin describes the agency's program of affording certificated pilot and non-pilot airmen who violate certain provisions of the Federal Aviation Regulations (FAR) remedial training in lieu of legal enforcement action. The program complies with 14 CFR. Section 13.11(a)(2) and FAA Order 2150.3A, Chapter 11, "Administrative Enforcement Action." Where appropriate, it is intended to encourage future compliance of airmen by bringing the seriousness of the incident to the attention of the person involved, providing remedial training in lieu of the imposition of punitive legal enforcement action, and documenting corrective action taken, thereby providing a source of information for agency use.

Policy: The purpose of this program is to achieve the future compliance by certificated airmen through alternatives to punitive legal enforcement action. This policy applies to certificate holders who were not exercising the privileges of their certificates for compensation or hire in air transportation when the apparent violation occurred. Where remedial training is determined to be appropriate, the airman is allowed to complete a FAA-designed corrective training program in lieu of the imposition of certificate or civil penalty action. The FAA will not impose a punitive legal enforcement sanction against the participating airman for that incident, if the airman satisfactorily completes the prescribed training course within the time specified by the agency.

It is within the discretion of the inspector, in coordination with the Field Office Management, to make an initial determination as to whether remedial training may be appropriate. In the exercise of this discretion, the inspector should consider the following factors:

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

(2) The airman should exhibit a constructive attitude which would lead the inspector to believe that the airman has a willingness to comply, so that non-compliance is less likely in the future.

(3) Remedial training is not an appropriate response to conduct which discloses a lack of qualifications. If lack of qualifications is indicated by evidence gathered during the investigation, reexamination under section 609 of the Federal Aviation (FA) Act of 1958 should be initiated; consult Chapter 8 of FAA Order 2150.3A.

(4) The airman's record of enforcement actions, if any. Remedial training will generally be appropriate for airmen with no record of violations, but a record of violation will not automatically render remedial training inappropriate. For the purpose of this program, administrative actions and legal enforcement actions, including a civil penalty compromise or an order assessing civil penalty/settlement without a finding of violation, or a waiver of imposition of a certificate or civil penalty action in accordance with'the Aviation Safety Reporting System, may be considered.

(5) Remedial training is not considered appropriate for conduct which is deliberate, grossly negligent, or which may constitute a criminal offense.

A remedial training course will be developed by an FAA Accident Prevention Specialist (APS), or other qualified person at the direction of the Flight Standards District Office (FSDO) Manager, only after review of the investigative file, discussion and counseling with the candidate in person, and discussion with the investigating field inspector. Ground instruction, flight training, simulator training, training conducted by a mechanic instructor, authorized inspector, designated mechanic examiner, or other training may be required and must be received from qualified training sources approved by the APS at the candidate's expense. FAA personnel will not conduct remedial training.

In order to ensure that the agency preserves its ability to initiate timely legal enforcement action in the event the airman fails to satisfy any terms and conditions of the training agreement, the APS, upon consultation with the investigating inspector, should develop a training program that is capable of completion within 120 days after the FAA became aware of the violation. Failure to complete the training program successfully within the time specified may result in termination of the airman's participation in the program, and may result in appropriate legal enforcement action.

Action: When an apparent violation of the FAR becomes known to the FAA, an investigating inspector is assigned and a full investigation is initiated in accordance with current FAA orders and policy. If, in the course of the investigation, the' investigating inspector believes that, under the criteria of this policy, remedial training in lieu of legal enforcement action may be appropriate, the inspector should document the relevant factors which support this conclusion, and proceed as follows:

(1) The Letter of Investigation (LOI) sent should advise the airman that he/she may be allowed to participate in the corrective action through remedial training program. The LO1 should also advise that failure to respond to the LO1 in the time specified in the LO1 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. A sample Letter of Investigation is provided in Attachment 1 to this Bulletin.

(2) In all cases, the inspector' must complete the investigation.

(3) The investigating inspector should advise the APS of all facts and circumstances surrounding the apparent violation and provide the APS with a copy of the investigative file. If the airman resides within another FSDO's geographic area of responsibility, the APS at that FSDO may be utilized as the supervising APS.

(4) The APS will schedule a meeting with the airman in person. Failure of the airman to participate in a face-to-face meeting could demonstrate a nonconstructive compliance disposition and will normally preclude participation in the program.

(5) Before the meeting, the APS will develop an appropriate course of remedial study that clearly states a training objective. Guidance for developing appropriate remedial study experiences for both pilot and non-pilot airmen is contained in FAA Order 8740.1B, Appendix 7. The APS will coordinate development of each training program with operations, airworthiness and avionics inspectors, as needed.

(6) During the meeting the APS will confirm whether remedial training is appropriate, propose a course of study, and thereafter develop a remedial training program.

a. In determining whether the airman has a constructive attitude toward compliance, the APS should consider the timeliness and nature of the response to the LOI, including the airman's attendance at a meeting with the APS and the manner in which the airman has met all regulatory responsibilities.

b. The APS will describe a proposed course of Study, including training objectives and expected completion date, to the airman. In developing the training regimen, the APS should consider the nature of the apparent violation and, if relevant, the airman's enforcement record, if any. The APS will consider the specific needs of the candidate, and the availability of qualified instructors, simulators, etc. in the airman's geographic area of operation. The APS should solicit and consider the airman's views on the proposed course before developing a final remedial trai'ning program. A sample remedial training agreement is contained in Attachment 2 to this Bulletin.

(7) The meeting between the APS and the airman should be limited to a discussion of an appropriate remedial training program to assist the airman to comply with safety regulations in the future. The merits of the underlying incident or investigation should not otherwise be discussed. The APS should advise 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 APS should advise that the remedial training agreement would become null and void, the remedial training process would terminate and appropriate legal enforcement action would be taken. Under these circumstances, no further efforts to undertake remedial training would be pursued.

(8) When an agreement on training has been reached, a letter of agreement specifying the terms and conditions of the remedial training program should be signed by the supervising APS and the airman. The remedial training agreement will clearly state the objective of the prescribed remedial training course, include a completion date and the method by which the airman will document satisfactory completion of the training.

(9) The APS will verify that the training objectives have been met. Within the time specified in the training agreement, the airman must provide 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. This certification and other documentary evidence, such as logbook entries and aircraft rental invoices, will be placed in the file 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 should be included in the file.

(10) When the APS is satisfied that the terms and conditions of remedial training course and objective have been met, the APS will notify the investigating inspector accordingly and return the file.

(11) The investigating inspector will send the airman a Letter of Correction in accordance with FM Order 2150.3A, Paragraph 1104. A sample Letter of Correction is provided in Attachment 2 of this Bulletin. The investigative report (EIR) will be processed in accordance with FAA Order 2150.3A, Paragraph 1001 Regional Flight Standards personnel will forward a copy of the Letter of Correction to AFS-820 for review. Receipt of the Letter of Correction, which will contain a statement that the required remedial training has been satisfactorily accomplished, will close the case.

(12) If the airman fails to meet any term or condition of the program or the agreement, the airman shall be notified by letter, sent by certified mail with return receipt requested, that participation in the training program has been terminated, and that appropriate legal enforcement action will be taken. A sample Letter of Termination is provided in Attachment 4 to this Bulletin.

(13) There must be a clear division between enforcement activities conducted by the investigating inspector and remedial training activities conducted by the APS. The APS should guard against being drawn into the legal enforcement action process. In a legal enforcement action taken if the airman fails to complete the training program, the response to the LO1 may be used as evidence but information provided to the APS by the airman will not be used as evidence.

Applicability: The policy set forth in this compliance and enforcement bulletin is effective immediately and applies to all apparent violations in which an EIR was opened on or after March 5, 1990, the date on which the Administrator announced this and other compliance and enforcement policy initiatives. Additionally, in order to ensure broad application, it also will be applied to any other open case in which initial legal enforcement action (notice of proposed certificate action or civil penalty) has not been issued.

Attachments

Attachment 1, Sample Letter of Investigation, Flight Operations

July 5, 199-

File Number: 9-CE040235

Mr. John D. Smith
1711 Colorado Avenue
River City, Iowa 51649

Dear Mr. Smith:

Personnel of this office are investigating an incident that occurred on July 4, 199-, which involved the operation of a Cessna aircraft, N57785, in the vicinity of Metropolis Airport terminal control area (TCA) at approximately 3:15 p.m.

The aircraft was observed and identified as Cessna N57785 operating within the boundaries of the Metropolis Airport TCA without the required clearance from air traffic control. Operations of this type are in the view of the FM contrary to the Federal Aviation Regulations.

This letter is to inform you that this matter is under investigation by the Federal Aviation Administration (FAA). We would appreciate receiving any evidence or statements you might care to make regarding this matter within 10 days of receipt of this letter. Any discussion or written statements furnished by you will be given consideration in our investigation and any subsequently prescribed sanction or corrective action. If we do not hear from you within the specified time, our report will be processed without the benefit of your statement.

Additionally, you may be allowed to participate in the FAA's corrective action through remedial training program, in the place of legal enforcement action that may otherwise be determined to be appropriate. Remedial training may be appropriate if the FAA determines 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 a certificate;

c. You fully disclosed the facts and circumstances of this incident at the time of the investigation, and

d. upon review of your record of enforcement actions, if any, you have a good record of compliance with the Federal Aviation Regulations.

To be allowed to participate in the corrective action through remedial training program, you must respond to this letter within 10 days of receipt and specifically express your interest in pursuing a course of remedial education. 'However, the determination to use remedial training is within the discretion of the FAA, and a response by you does not guarantee that remedial training will be afforded you as a substitute for legal enforcement action.

If you wish to receive remedial training, and the FAA inspector believes remedial training may be appropriate, you will meet with an Accident Prevention Specialist, who will confirm whether training is appropriate and will propose a training course for you, at your expense. If you agree to the proposed remedial training program, a written agreement describing the terms and conditions of the training program will be signed by you and the FAA. upon satisfactory completion of the prescribed training program within the time specified, you will be issued a Letter of correction and the matter will be closed. Failure to carry out any of the terms of the remedial training agreement will result in termination of your participation in the program and may lead to appropriate legal enforcement. Information provided to the FAA, including the response to this letter, may be used in determining whether remedial training is appropriate. In addition, if remedial training is not afforded, or if the prescribed remedial training program is not satisfactorily completed, it may be used in subsequent legal enforcement action.

Information on the corrective action through remedial training program may be obtained by contacting this office at (213) 376-2181.

Sincerely,

JOHN L. DOE
Aviation Safety Inspector

ATCH: PRIVACY ACT NOTICE - Figure 4-9, FAAO 2150.3A

Attachment 2, Sample Training Agreement

File Number: 9-CE040235

Mr. John Smith
1711 Colorado Avenue
River City, Iowa 51649

Dear Mr. Smith:

On July 5, 199-, you were advised that the Federal Aviation Administration was investigating an incident which reportedly occurred on July 4, 199-, in the vicinity of the Metropolis Airport terminal control area (TCA), and involved your operation of Cessna N57785.

Our investigation indicates that you were observed operating within the boundaries of the Metropolis Airport TCA without the required clearance from air traffic control. You have been advised that in the view of the FAA, such an operation is contrary to Section 91.90(a)(1)(i) 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 comply with the following terms:

a. You must obtain the required training from an approved source. Approval can be obtained verbally from Bette B. Wright, Accident Prevention Specialist (APS), Metropolis Flight Standards District Office (FSDO), upon obtaining the services of a certified flight instructor.

b. Once training begins, you are required to make periodic progress reports to the Metropolis FSDO APS.

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 the Metropolis FSDO APS 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 will be borne by you.

Remedial Training Syllabus

Syllabus objective: TO improve the student's knowledge and pilot proficiency concerning VFR radio navigation, cross-country flying and terminal control area operations.

syllabus content:

a. A minimum of 6 hours of ground instruction on the following subjects:

(1) Map reading;
(2) Navigational equipment operation (both Loran c and VOR);
(3) Navigational equipment limitations (both Loran C and VOR);
(4) Air traffic control procedures concerning Terminal control area operations (VFR);
(5) At least one visit to the Metropolis terminal area radar control facility to participate in operation rain check. Travel time to and from the Metropolis Airport can not be credited toward the B-hour requirement.

b. Three hours of flight instruction in cross-country navigation procedures to include:

(1) Navigational equipment operation (both Loran C and VOR);
(2) Navigational equipment limitations (both Loran C and VOR);
(3) cross-country navigation (both pilotage and radio navigation using both Loran C and VOR);
(4) terminal control area qperatfons (VFR);

Completion standards: The training will have been successfully completed when the assigned instructor, by oral testing and practical demonstration, certifier that the student has completed instruction in the above-mentioned subjects in accordance with the reredial training syllabus.

Betty B. Wright
Accident Prevention Specialist

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.

John D. Smith

Date

Attachment 3, Sample Letter of Correction, Flight Operations

File Number: 9-CE040235

Mr. John D. Smith:

This letter is in regard to your operation as pilot in command of a Cessna aircraft, N57785, on July 4, 199-.

Our investigation indicates that on that date you were observed operating within the boundaries of the Metropolis Airport terminal control area without the required clearance from air traffic control. You have been advised that in the view of the FM, such operation is contrary to Section 91,90(a)(l)(i) of the Federal Aviation Regulations.

As a result of our discussion with you on August 1, 199-, you agreed to complete a program of remedial training as a substitute for legal enforcement action. You have submitted evidence showing satisfactory completion of 6 hours of ground instruction in map reading and navigation equipment operations and limitations and 3 hours of flight instruction in cross-country navigation procedures as specified in the training agreement.

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 2 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.

Sincerly,

John L. Doe
Aviation Safety Inspector

Attachment 4, sample Letter of Termination, Flight Operations

July 20, 199-

File Number: 9-CE040235

Mr. John D. smith
1711 Colorado Avenue
River City, Iowa 5 1 6 4 9

Dear Mr. Smith:

This is to inform you that we find you have not complied with the remedial training agreement executed on August 1, 199-, requiring that you complete specified remedial training. Specifically, your designated flight instructor, Mr. George Smith, advises you have not begun the navigational flight instruction you agreed to have completed by August 16, 199-. Although you were scheduled to participate in operation rain check beginning on August 20, 199-, you did not attend any of the three scheduled sessions. Moreover, 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 Cessna N57785 on July 4, 199-, to the Assistant Chief counsel for the Central Region for appropriate legal enforcement action.

Sincerely,

JOHN L. DOE
Aviation Safety Inspector

ATCH: PRIVACY ACT NOTICE - Figure 4-9, FAAO 2150.3A

Attachment 5, Corrective Action through Remedial Training Case Study (Operations).

Introduction

This case study involves the hypothetical application of remedial training in lieu of legal enforcement action. The facts which give rise to the apparent violation involve an unauthorized terminal control area (TCA) incursion. Although the concept of corrective action through remedial training is not limited to TCA incursions, this example illustrates an application of the program.

E X A M P L E

The pilot of a Cessna 182 was on a pleasure flight from a small uncontrolled airport to a major controlled airport approximately 200 miles away. The flight was conducted under visual flight rules (VFR) in reported VFR conditions with scattered clouds and visibility of 6 miles at several reporting points along the intended route. The pilot did not plot the planned course on his charts (which later were determined to be out of date by one revision cycle). He had previously flown this route using VORs as his primary means of navigation. However, on this flight he intended to use a newly installed Loran C receiver and not directly over fly the VOR stations. This major airport is within a TCA which the pilot intended to circumnavigate. The pilot did not pre-program any way points in his Loran C receiver prior to takeoff because he intended to rely on the built-in data base of the Loran c.

The flight proceeded normally with the pilot identifying certain geographical landmarks including a river, highway,. railroad tracks, and a small city along the way. About halfway through the trip some cumulus buildups appeared. He elected to deviate to the left of course. There was not a VOR in a good position for the new course. In addition there was not an appropriate pre-programmed way point in the Loran C data base. Therefore, he elected to use a distant airport as a way point and followed the course indicated by the Loran C. After several minutes of flying, the terrain looked unfamiliar. He attempted to cross-check his position with the VOR but was unable to receive the selected station. Then he decided to program a way point in the general direction he felt he should be going. He looked at his chart and defined the way point in terms of radial and distance from a VOR that was some distance off the intended course of flight. The pilot continued until he spotted a familiar river. However, he was surprised at how far south he Was and that he was past the major airport and TCA that was close to his originally intended flight path.

Nearing his intended destination he monitored ATIS and contacted the air traffic control tower for landing instructions. Following an uneventful landing and turn off from the runway, the ground controller requested him to contact the tower by telephone. He acknowledged and complied with the instruction as soon as he tied down his airplane.

upon calling the tower, the pilot was asked to identify himself and the aircraft. After supplying the requested information, the pilot asked if there was a problem. The controller advised that the informationwas requested by the Terminal Radar Approach control (TRACON) at the major airport in whose airspace the pilot had passed through. The pilot again asked if there was any problem, and the controller responded that the pilot would get an explanation in the mail.

About 10 days later, the pilot received a letter of investigation from the FAA Plight Standards District Office that was located near the aforementioned TRACON. The letter described the TCA incursion on the day of the earlier flight. In accordance with the instructions set forth in the letter, the pilot telephoned the investigating inspector to provide the details of the flight.

However, the investigating inspector was not in when the pilot called. The pilot inquired about the corrective action through remedial training program, and was transferred to the accident prevention specialist (APS). The APS briefed him about the program and informed him that the investigating inspector makes the initial determination as to whether the pilot is an appropriate candidate for the program. He arranged for the pilot to have an appointment with the investigating inspector.

When the pilot arrived for the appointment, he brought the charts, the operations manual for his Loran C and his airman and medical certificates. The investigating inspector interviewed the pilot at length and reviewed the pilot's cross-country planning procedures, as well as the pilot's knowledge of VOR and Loran c. The investigating inspector had previously plotted the aircraft's actual track, as determined from an National Track Analysis Program (NTAP) report, on a current sectional chart and used that information in the interview.

The plotted course revealed that the aircraft had penetrated one of the outer rings of the TCA. After discussing the incident they determined that the penetration occurred while circumnavigating the cumulus buildups. The inspector determined that while the pilot's general knowledge of navigation and his skills were adequate, his Loran C navigation skills were insuffient.

The inspector noted the following deficiencies: use of out of date charts; failure to plot his course; and insufficient knowledge of his Loran C equipment.

Using the factors listed in Compliance/Enforcement Bulletin 90-8, 'the inspector made an initial determination that for this pilot, remedial training in lieu of legal enforcement action may be appropriate.

The inspector then referred the pilot to the APS who scheduled a face-to-face meeting the same day. The APS had previously reviewed the case with the investigating inspector and had drafted a remedial training agreement. After some discussion on the availability of a qualified instructor and the location of the nearest FAA radar-equipped air traffic facility, an agreement was reached on the training objectives and the elements necessary to achieve them. The finalized training agreement was signed by both the pilot and the supervising APS. The agreement included a provision requiring a progress report (by telephone) within 15 days from the date the agreement was executed. The APS knew the flight instructor chosen by the pilot.

During the progress report, the APS was informed that the pilot had an appointment for operation rain check at a TRACON 30 miles from his home. The APS later contacted the instructor, reviewed the pilot's progress, and asked the instructor to provide a letter detailing the elements of the pilot's training and certifying the results.

About 2 weeks later, the pilot returned to the FSDO and presented the APS with a letter written by the instructor who conducted the remedial training. In the letter, the instructor certified that the airman satisfactorily completed all of the elements listed in the remedial training syllabus. The APS compared the letter from the flight instructor with the written training agreement and determined that terms of the agreement had been satisfied. The APS advised the pilot that he had successfully completed the prescribed remedial training program and that he would receive a letter of correction that would close out this matter. The APS offered the pilot some advice concerning avoiding future incidents of this nature and the pilot thanked the APS.

The APS returned the file to the investigating inspector and they 'discussed the pilot's participation in and completion of the remedial training program. The investigating inspector issued a letter of correction to the pilot and processed the enforcement investigative report in accordance with policies governing administrative action.

COMPLIANCE/ENFORCEMENT BULLETIN 90-9

SUBJECT: SSER recommendations relating to analysis of a violation; determination of appropriate sanction; and coordination within the Office of the Chief Counsel.

DISCUSSION: The Administrator has approved several changes to the procedures for analyzing violations, determining sanctions, and coordinating proposed actions within the agency that were recommended by the recent system Safety and Efficiency Review (SSER) of the General Aviation Compliance and Enforcement Program. This Bulletin implements four of those recommendations. These changes are effective immediately and will be incorporated into the next revision of the FAA Order 2150.31.

I. Analysis of careless or reckless violations (FAR 91.9).

SSER Recommendation C&E005: FAA Order 2150.3A should be amended to provide that alleged violations of Federal Aviation Regulation (FAR) Section 91.9 should be supported by a separate discussion in the technical analysis portion of the Enforcement Investigative Report (EIR). This Bulletin provides for such an analysis.

II. Coordination of cases involving small air carriers.

SSER Recommendation C&E010: FAA Order 2150.3A, paragraph 1201c(3), should be amended such that the definition of "significant" cases (requiring AGC pre-issuance coordination) would exclude general aviation small operator civil penalty cases from coordination where the maximum statutory penalty could be $100,000 or more, solely through the multiplication of flights. In these general aviation multi-flight cases, a $500,000 potential maximum statutory penalty (or 50 flights) should be established as the threshold for AGC pre-issuance coordination. This Bulletin amends the coordination process as recommended. "Small operators. are defined as those air carriers or operators for compensation or hire conducting only on-demand operations using aircraft with nine or fewer passenger seats. This change provides that small operator cases are "significant" and, therefore, require pre-issuance coordination with headquarters, only when there is a proposed penalty of $50,000 or more; when there is a maximum statutory penalty of $100,000 or more and is not arrived at solely through multiplication of flights; or when there is a maximum statutory penalty of $500,000 or more.

III. Deference to field offices and other subordinate and client offices in choice of sanctions.

SSER Recommendation C&E0011: FAA Order 2150.3A should be amended to emphasize that during the review process of enforcement cases, FAA enforcement personnel should give due deference to sanction recommendations of subordinate and client offices if they are properly justified and explained. Implementing policy guidance is prescribed in this Bulletin.

IV. Declaration of an emergency as a factor to consider in setting a sanction.

SSER Recommendation C&E0022: FAA order 2150.3A, paragraph 207b(5), should be amended to state that declaring an emergency in an appropriate situation is evidence of good judgment and attitude. Such evidence is to be considered in setting enforcement penalties which might result from a violation attendant to such a declaration. This Bulletin makes an appropriate amendment to amend paragraph 207b(5), to implement this recommendation.

ACTION:

I. Analysis of careless or reckless operation. In a case in which the reporting inspector finds that a violation Of S91.9 has occurred, the inspector should document the factors on which that determination is based in the analysis portion of the Facts and Analysis Section of the EIR. Accordingly, the following language is added to paragraph 906b, Analysis, of FAA Order 2150.311:

> The inspector should explain how each PAR section cited was violated. This need not be an extensive discussion, and will be only one or two sentences in many cases.
>
> When the inspector finds that a pilot has operated an aircraft in a careless or reckless manner so as to endanger the life or property of another, the inspector should provide a brief explanation as to 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 operation is found to be inherently 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.

IV. . Declaration of an emergency. Paragraph 207b(5) is'revised to read as follows:

(5) Attitude of the alleged violator. A good compliance attitude is expected. More severe sanctions should be imposed on those who display poor attitudes. In emergency situations, the declaration of an emergency with Air Traffic Control, if it does not aggravate the existing risk, is viewed by the FAA as a sign of good judgment and a constructive attitude, which may in appropriate cases, be a factor in mitigating a sanction to be imposed for any violation committed.

The above policies will be incorporated in the next amendment to FAA Order 2150.3A.

Gregory S. Walden
Chief Counsel

Anthony J. Broderick
Associate Administrator for
Regulation and Certification

Monte R. Belger
Associate Administrator
for Aviation Standards

COMPLIANCE/ENFORCEMENT BULLETIN NO. 90-10

SUBJECT: Civil penalty assessment authority.

BACKGROUND: On June 27, 1990, revised rules of practice implementing the FAA's authority to assess civil penalties were issued (55 PR 27548: July 3, 1990). The initiation procedures and revised rules are effective August 2, 1990. Current paragraph, 1205 of FAA order 2150.3A (pages dated 12/14/88) contains guidance under the former rules for cases involving violations of the Federal Aviation Regulations (FAR) and other cases under the Federal Aviation Act (FA Act). Current paragraph 1206 (pages dated 12/14/88) contains guidance under the former rules for cases under .the Hazardous Materials Transportation Act (HMT Act). This Bulletin provides guidance for use with the new rules of practice for the civil penalty assessment authority, and supersedes paragraphs 1205 and 1206 of Order 2150.3~.

ACTION: Current paragraphs 1205 and 1206 of Order 2150.3~ should not be used, and the following guidance should be substituted:

CIVIL PENALTY ASSESSMENT AUTHORITY: CASES INVOLVING AN AMOUNT IN CONTROVERSY NOT EXCEEDING $50,000, AND CASES UNDER THE HAZARDOUS MATERIALS TRANSPORTATION ACT.

a. General. In most cases involving violations of the FAR or other violations under the PA Act in which the amount sought by the FAA does not exceed $50,000, the case is processed in accordance with the civil penalty assessment authority, section 905 of the PA Act, as amended, and section 13.16 of the FAR. Under this authority the FAA may assess civil penalties after affording the alleged violator notice and an opportunity to be heard. The opportunity to be heard is provided by an opportunity for a hearing before an administrative law judge. If a civil penalty is assessed or imposed under this authority, and payment is ndt made, collection of the civil penalty may be sought through proceedings in the appropriate U.S. District Court.

cases under the PA Act generally are initiated and prosecuted, including through hearings before an administrative law judge, by the Office of the Assistant Chief Counsel in the region or center where the case was investigated.

See paragraph n, below, for special provisions for handling violations under the HMT Act and the Hazardous Materials Regulations (HEIR).

b. Separation of functions. Under section 13.203 of the FAR, FAA personnel engaged in investigative or prosecutorial functions shall 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 (so-called "bubbled" employees) are the chief counsel, 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. Initial civil penalty action.

(1) Notice of Proposed Civil Penalty. A civil penalty action is initiated by issuing a Notice of Proposed civil Penalty pursuant to the procedures in section 13.16 of the PAR. See Figure 1. The Notice shall be issued by an official authorized in section 13.16(c), or by an attorney who has appropriate delegation and is signing with a by-line under the name and title of such official. If the Notice is to be signed by an attorney other than an official designated in section 13.16(c), a written delegation authorizing the attorney to sign Notices should be sent to AGC-200.

A. The Notice should set forth the facts alleged, the regulation(s) violated, and the civil penalty proposed. The Notice should contain a statement showing how the facts constituted a violation of the cited regulation(s).

B. The facts should be set forth in numbered paragraphs and in sufficient detail to that the alleged violator can know and understand the charges.

C. The Notice proposes to assess a civil penalty in a specific amount, rather than suggesting a compromise offer. The penalty proposed must be stated specifically. It may not be stated in the alternative.

(2) Attachments to the Notice. An information sheet, a reply form, and section 13.16 and Part 13, Subpart G, should be sent with the Notice. In the information sheet, the alleged violator is advised of the alternatives available in response to the Notice. See Figure 2. The alleged violator may elect one or more of the alternatives listed, as appropriate. On the reply form the alleged violator may indicate that election. See Figure 3. Alternative 1 is to pay

the proposed civil penalty. Alternative 2 is to submit information or material in answer to the charges. Alternative 3 is to submit information indicating a financial inability to pay the proposed penalty, or showing that payment would prevent continuation in business. (This alternative can be selected in combination with one of the other alternatives.) Alternative 4 is to propose to reduce the civil penalty for specified reasons. Alternative 5 is to request an informal conference with legal counsel.' Alternative 6 is to request consideration of a compromise without a finding of violation. Alternative 7 is to claim entitlement to waiver of penalty under the Aviation safety Reporting Program. Alternative 8 is to request a hearing. The reply form also provides a means for the respondent to designate a representative.

(3) Service. The Notice is mailed to the individual respondent, or to the president of a corporate or company respondent. The Notice should be sent by certified mail, return receipt requested, or by personal delivery. Thereafter, the corporate or company respondent may, in writing, designate another person to accept service of document8 in that civil penalty action.

(4) Time for submission of a response by the respondent. Section 13.16(d) requires the respondent to submit a response to a Notice not later than 30 days after receipt of the Notice. For purposes of this regulation, adequate submission of a response is deemed to have occurred 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 his or her response in the mail, the response is timely.

d. Informal procedures. In cases under the civil penalty assessment authority, section 13.16 provides an opportunity for a person to participate in informal procedures, by submitting additional information, participating in an informal conference with an FAA attorney, or both. The provisions in paragraph 1207 apply to informal conferences.

e. Coordination of change in amount of sanction. If the case is a significant case requiring coordination with AGC-200 under paragraph 1201b, any proposed change in the amount of sanction shall be coordinated with AGC-200 (Attn: AGC-260), to the extent provided in that paragraph.

f. Reevaluating the case. When the respondent submits evidence, information, or views in writing or in person at an informal conference, the Assistant Chief Counsel must consider

the new evidence or information and reexamine the Notice. A new determination regarding' the alleged violations must be made by legal counsel, upon consultation with the program office. Allegations which are disproved must be withdrawn. If the sanction proposed is determined to be excessive, it must be reduced'appropriately. unless matters not taken into consideration in issuing the Notice are brought to legal counsel's attention, the subsequent action normally should include the sanction proposed in the Notice.

g. Compromise Order. Under section 13.16(1)(1), 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, a compromise order is issued. The Compromise Order states that the respondent agrees to pay a civil penalty, that the FAA makes no finding of violation, and that the order shall not be used by the FAA as evidence of a prior violation in any subsequent civil penalty proceeding or certificate action proceeding. See Figure 4.

h. 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, a Final Notice of Proposed Civil Penalty is issued. See Figure 5. This gives the respondent one last opportunity to request a hearing. The Final Notice shall be issued by an official with authority to issue a Notice of Proposed Civil Penalty.

(1) Contents. The Final Notice should again set forth the facts alleged, the regulation(s) violated, and the action proposed. The allegations or proposed penalty may be modified'based on information received during informal procedures.

(2) Response. The Final Notice offers the following options: (1) pay the proposed civil penalty or an agreed amount, or (2) request a hearing.

(3) 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. The Final Notice should be sent by certified mail, return receipt requested, or by personal delivery.

(4) Time for submission of a response by the respondent. Section 13.16(e) requires the respondent to submit a response to a Final Notice not later than 15 days after

receipt of the Notice. For purposes of this regulation, adequate submission of a response is deemed to have occurred when the response is either put in the mail or personally delivered. Therefore, if on the 15th day after receipt of the Final Notice the respondent places his or her response in the mail, the response is timely.

i. Order Assessing Civil Penalty.

(1) Issuance by FAA counsel. An Order Assessing Civil Penalty orders the payment of the specified penalty regardless of whether payment of such penalty has been received by the FAA. The Order should set forth the findings of fact, the findings of regulations violated, and the amount of the penalty assessed. see Figure 6, and see Pigure 7 for an Order Assessing Civil Penalty With Waiver of Penalty under the Aviation Safety Reporting Program (ASRP). An Order Assessing Civil Penalty is issued by FAA counsel in the following situations:

A. When the person charged with the violation submits, or agrees to submit, the'proposed civil penalty or an amount agreed upon during informal procedures, receipt of the amount shall be acknowledged in the Order.

B. When the person charged with a violation does not respond appropriately within 15 days from receipt of the Final Notice of Proposed Civil Penalty.

(2) Final Agency Action. If the 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.

j. Hearings. When a hearing is requested, legal counsel shall file 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. A suggested location for the hearing must be attached to the Complaint. See Figures 8 and 9. Any hearing will be held in accordance with the Rules of Practice in FAA Civil Penalty Actions in Subpart G of PAR Part 13. The administrative law judge will issue an initial decision which makes findings on the allegations contained, and civil penalty sought, in the Complaint.

The legal office (i.e., regional or center Assistant Chief Counsel or AGC-260) that issued the complaint generally will be responsible for representing the FAA at the evidentiary hearing before an administrative law judge. Normally, legal counsel who prepared the case will represent the FAA at the hearing in order to avoid duplicative preparation by other counsel. In certain cases, where the complaint was issued in one region but the hearing is scheduled to be held in another region, legal counsel may transfer the case to the region where the hearing is to be held, under the criteria set forth in paragraph 208(e). Where cases are transferred to another area for a formal hearing, testimony of witnesses located in the originating area or at other locations outside the location of the hearing may be obtained through depositions. When appropriate, split hearings may be requested.

k. Appeals to the FAA decisionmaker. An initial decision issued by an administrative law judge may be appealed to the FAA decisionmaker, by either party, 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. In most cases, AGC-250 will handle the appeal. Concurrence of AGC-250 must be received for a regional attorney to retain the case on appeal to the FAA decisionmaker. The FAA decisionmaker's decision and order is the final FAA order in the case. In accordance with section 1006 of the FA Act, a respondent may petition a U.S. court of appeals for review of this order.

(1) Appeals by the FAA. When counsel wishes to appeal an initial decision, he or she should call AGC-250 as soon as possible, but not later than 5 days after receipt of the initial decision, to discuss the case. If it is determined to appeal, the attorney who handled the hearing normally will file the notice of appeal. If there is difficulty in discussing the case with AGC-250 within 5 days, counsel should file a protective notice of appeal to avoid losing appeal rights.

(2) All appeals. For all appeals, the FAA attorney handling the case should proceed as follows:

A. As soon as possible after the initial decision is issued, call AGC-250 to alert it that the case will be forwarded, and provide the following information: Who is appealing, the date of the initial decision, and whether it is an oral or written decision.

B. As soon as possible, send the case file to AGC-250. The form in Figure 10, filled out by the FAA attorney who tried the case, should be included.

1. Judicial review of decisions of the FAA decisionmaker. Within 60 days after the Administrator 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 section 1006 of the PA Act. The Department of Justice, in coordination with the FAA, or the FAA when so delegated, will handle such cases before the U.S. court of appeals. FAA participation in the handling of such cases is the responsibility of AGC-250, unless AGC-200 and the Assistant Chief counsel determine that the case should be handled by the region or center.

m. Collection of civil penalties. Sections 903 and 905 of the PA Act authorize referrals of civil penalty cases to an appropriate United States Attorney's office for collection action in district court. Such a referral should be made when a civil penalty has not been paid:

- within 60 days after service of an order Assessing Civil Penalty, or a compromise order, by FAA counsel: or

- within 60 days after expiration of the time for appealing an initial decision assessing a civil penalty; or within 60 days after service of a final decision and order of the Administrator assessing a civil penalty, if no petition for judicial review has been filed during that time.

Generally, the legal office that handled the hearing or issued the order will take any action which is necessary to collect the penalty.

(1) Referrals should be made directly to the appropriate U.S. Attorney.

(2) Pursuant to section 905 of the PA Act, an action in U.S. district court to collect a civil penalty does not involve a de novo hearing on the issue of liability or amount of a civil penalty. The penalty has already been adjudicated before, or settled with, the FAA, pursuant to procedures, which included either a formal evidentiary hearing or the opportunity for such hearing. Therefore, the U.S. Attorney should be requested to file an action for a judgment based on the order which assessed a civil penalty.

(3) Settlement of civil penalties. The FAA attorney may settle any civil penalty which has been assessed any time before referring the order Assessing Civil Penalty to the U.S. Attorney for collection. The settlement may include

imposing a civil penalty without finding a violation, in which case a Compromise order is issued. see section 13.16(1)(1). After an Order Assessing Civil Penalty has been referred for collection, the FAA attorney, as appropriate, may work toward a settlement of the case with the Office of the U.S. Attorney.

n. special Procedures for Violations of the Hazardous Materials Transportation Act. In general, civil penalty actions, regardless of amount, for violations of the HMT Act are handled the same as for violations of the PA Act where the amount in controversy does not exceed $50,000. The following describes some of the unique aspects of hazardous materials cases.

(1) General.

A. Section 110(a) of the Hazardous Materials Transportation Act (49 U.S.C. 1809) provides for civil penalties of not more than $10,000 for each violation of the HMT Act or the Hazardous Materials Regulations. The civil penalty provision applies only to a person who has "knowingly" committed an act which is a violation. Under section 110(a), the FAA is not required to establish that the alleged violator knew its actions constituted a violation of the HMT Act or the HMR. On the contrary, the term " knowingly" refers to 'knowingly commits an act." Knowledge of the contents of the shipment and the fact that such contents are hazardous are all that is required to establish a violation of the EMT Act or the HMR. Section 110(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.

B. Section 110(b) of the EMT Act provides for criminal penalties when willful violations of the EMT Act or the HMR are involved (see paragraph 1212, Legal Action Involving Criminal Violations). Under section 110(b), a violation will be considered to be "willful" if an alleged violator, who has knowledge of'the contents of the shipment and knows the requirements of the HMT, intentionally fails to comply.

c. The Secretary's enforcement responsibilities involving the transportation of hazardous materials by air have been delegated to the Administrator of the FAA (see Appendix 2). Legal enforcement actions for violations of the HMR are handled, within the FAA, by the Office of the Chief Counsel, Regulations and Enforcement Division, AGC-200.

(2) Determining the type of enforcement action and sanction required. Upon receipt of an Enforcement Investigative Report, counsel should review the file to determine the sufficiency of evidence to establish the violations alleged and, after considering recommendations of the regional division, determine whether criminal prosecution, civil penalty action, or the issuance of an order of compliance is the appropriate action.

A. If the evidence warrants criminal prosecution, such action should take priority over any other form of enforcement action, except one involving an order of immediate compliance, or other action to immediately address a safety problem.

B. AGC-200 has the final authority to determine the amount of a civil penalty to be proposed in a particular case, and the amount of the penalty finally assessed (except when a formal hearing is held), after considering any comments and recommendations of the appropriate regional division with reference to such sanction.

(3) Initial civil penalty action: Notice of Proposed Civil Penalty. A civil penalty action against a person who knowingly offered or accepted or transported by air a hazardous material in violation of the HMR is initiated by issuing a Notice of Proposed Civil Penalty pursuant to the procedures in section 13.16. The attachments to the Notice are similar to those for cases under the PA Act, however, the Aviation safety Reporting Program does not apply.

Figure 1. SAMPLE NOTICE OF PROPOSED CIVIL PENALTY
(Federal Aviation Act)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

MS. Annie 0. Rley
22 Calibur Way
Pistol, South Gun 00000

Re: Case No. 90NM768910

NOTICE OF PROPOSED CIVIL PENALTY

A report of an investigation indicates the following:

1. On or about December x, 19Xx, you presented yourself and your accessible property for inspection at the "L" Concourse Security Screening Checkpoint of the Portland International Airport in Portland, Oregon.

2. At that time, you were not a ticketed passenger.

3. Upon inspection of your accessible property, a Jennings Firearm, Inc., .22-caliber semi-automatic pistol, bearing serial number 123456, and one ammunition clip containing 6 live .22-caliber rounds of ammunition were discovered in your briefcase.

By reason of the foregoing facts and circumstances, you violated section 107.21(a)(l) of the Federal Aviation Regulations in that you had a firearm on or about your person or accessible property when performance began of the inspection of your person or accessible property before entering a sterile area.

Under sections 901 and 905 of the Pederal Aviation Act, as amended (49 U.S.C. App. 1471 and 1475), you are subject to a civil penalty not to exceed $1,000 for the violation noted. By reason of the foregoing facts and circumstances, we propose to assess a civil penalty in the amount of $750.

Enclosed is information concerning your options in responding to this Notice. The options include participating in an informal conference with an FAA attorney, and submission of information to the FAA for consideration. YOU must submit, in

writing, your choice of the alternatives explained on the enclosed information form, on or before 30 days after you receive this Notice. If you fail to submit your choice within that time, you will have no further right to participate in the two informal procedures listed above.

Assistant Chief counsel

By: _____
Attorney

Enclosures: Information Sheet
Reply Form
PAR 13.16 and Subpart G of Part 13

Figure 2. SAMPLE INFORMATION SHEET TO ACCOMPANY
NOTICE OF PROPOSED CIVIL PENALTY (Federal Aviation Act)

INFORMATION REGARDING CIVIL PENALTIES
UNDER SECTIONS 901 AND 905 OF THE
THE FEDERAL AVIATION ACT OF 1958, AS AMENDED

Sections 901 and 905 of the Federal Aviation Act of 1958, as amended, provide that any person who violates pertinent provisions of the Act, or any rule, regulation, or order issued under the Act, is subject to a civil penalty for each violation. The maximum assessment for each violation is also prescribed by law, as specified in the notice to which this is attached. The notice also states amount of the proposed civil penalty for the alleged violation(s). This proceeding is governed by the Federal Aviation Regulations (FAR) in Title 14, section 13.16, and Subpart G of Part 13, of the Code of Federal Regulations, which are enclosed.

Within thirty (30) days after your receipt of the notice, you may elect to proceed in one or more of the following ways by appropriately marking the corresponding box(es) on the attached election sheet and returning it by mail or personal-delivery to the address provided below.

1. You may submit the amount of the civil penalty specified in the notice by certified check or money order payable to the "Federal Aviation Administration." Your submission constitutes your agreement that an order Assessing C vil Penalty in that amount may be issued without further notice, and that you waive your right to a hearing in this matter.

2. YOU may submit, in writing, information and evidence demonstrating that a violation of the regulations was not committed or that, if it were, the facts and circumstance8 do not warrant the proposed civil penalty. Information provided will be considered in determining whether a civil penalty should be assessed or imposed and the amount of any such civil penalty. This information may be submitted in conjunction with a request for informal conference under paragraph 5. choosing this option will not affect your right to a hearing, unless you also elect paragraph 1 or 4.

3. YOU may submit, in writing, information and records indicating that you are financially unable to pay the proposed civil penalty, or showing that payment of the proposed penalty would prevent you from continuing in business. This will not affect your right to a hearing, unless you also elect paragraphs 1 or 4.

4. you may request that a civil penalty be assessed in a specific amount other than that proposed in the notice, or that no civil penalty be assessed and submit the reasons for the reduction in the proposed amount, and any additional information in writing (with appropriate supporting documentation), which show why the reduction is appropriate. Information provided will be considered in determining whether the amount you specified should be assessed.

If the FAA does not accept your offer, this will not affect your right to a hearing. If the FAA accepts your offer, your request constitutes your agreement that the Order Assessing Civil penalty in that amount may be' issued without further notice, and that you waive your right to a hearing.

5. You may'request to discuss the matter informally and in person at a conference with an FAA attorney at the Office of the Chief Counsel/Office of the Assistant Chief Counsel in _____ or at the Flight Standards District Office convenient to you (a list of those offices in the _____ Region is attached). If you reside outside. the _____ Region, you may request the transfer of the case to your area for the conference to be he'ld. This will not affect your right to a hearing. IMPORTANT: The purpose of the conference is to provide the opportunity for you to present your reasons and any supporting basis why the action should not be taken as proposed, including any information you wish to have considered before the FAA decides whether to proceed further with the proposed action.

6. You may request that the FAA impose a civil penalty without making findings of violations, and submit the reasons and any additional information in writing (with appropriate supporting documentation) which support your request. If the FAA does not accept your offer, this will not affect your right to a hearing. If the FAA accepts your offer, your request will constitute your agreement that a Compromise Order in that amount may be issued and that you waive your right to a hearing.

7. If you are an individual and have filed an FAA Aviation Safety Report with the National Aeronautics and Space Administration (NASA) concerning the incident set forth in the attached Notice of Proposed Civil Penalty, you may be entitled to waiver of any penalty. This program applies only to operations in the National Aviation System, including departure, enroute, approach, and landing operations and procedures, air traffic control procedures and equipment, pilot/controller communications, aircraft movement on the airport, and near midair collisions. This program does not apply to violations of Federal rules governing civil aviation security, such as carriage of weapons on an airport. YOU will be entitled to waiver only if all of the following are found:

a. That this violation was inadvertent and not deliberate:

b. That this violation did not involve a criminal offense or an accident, or disclose a lack of competence or qualification to be the holder of a certificate: and

C. You have not paid a civil penalty pursuant to section 901 of the Federal Aviation Act or been found in any prior FAA enforcement action to have committed a violation of the Federal Aviation Act, or any regulation under the Federal Aviation Act, for a period. of 5 years prior to the date of the occurrences.

d. You prove that within 10 days after the violation, you completed and delivered or mailed a written report of the incident or occurrence to NASA under the Aviation Safety Reporting Program.

In the event you establish your entitlement to a waiver of penalty, an order will be issued. finding you in violation but imposing no payment of civil penalty or suspension of your certificate. The order will be a matter of record. As to the findings of fact and violations, you may either waive your right to a hearing (in which case an Order Assessing Civil Penalty with Waiver of Penalty will be issued), or you may request a formal hearing on the allegations of fact and violations (in which case a Complaint will be filed).

8. You may request a hearing in accordance with section 13.16 of the PAR, Your request must be dated and signed. A complaint will be filed and a formal evidentiary law judge, Subpart G of Part 13. At the conclusion of the hearing all issues of fact and law will be decided and a decision rendered whether and in what amount a civil penalty will be assessed.

Your request for a hearing must be made to the Hearing Docket, Federal Aviation Administration, 800 Independence Ave., SW, Room 924A, Washington, DC 20591, Attention: Hearing Docket Clerk. You must mail a copy to the FAA attorney handling this case at the address indicated below.

Please address all communications in this matter to the FAA attorney who signed the Notice at the following address:

Office of Assistant chief Counsel
Federal Aviation Administration
Address

Your response to the Notice of Proposed Civil Penalty may be delivered personally to the Office of the Assistant Chief Counsel for the _____ Region at the above address during normal business hours.

Telephone: _____ (Collect calls cannot be accepted).

If you are an individual:

PRIVACY ACT NOTICE

This notice is provided in accordance with section (e)(3) of the Privacy Act, 5 U.S.C. 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 the Federal Aviation Act of 1958, 49 U.S.C. section 1301, et seq., and regulations issued thereunder codified in Part 13 of Title 14 of the code of Federal Regulations. Submission of the telephone number is voluntary. The request for information is intended to provide you with an opportunity to participate in the investigation.

B. Principal purpose. The requested information is intended to assist us in contacting you regarding this enforcement case.

C. Routine uses. Records from this system of records may be disclosed in accordance with the routine uses as they appear in System of Records No. DOT/FAA 847 as published from time to time in the Federal Register.

D. Effect of failure to respond: If you do not provide the requested information, there may be delay in contacting you regarding this enforcement case, and you may forfeit your right to a hearing on the merits of this case.

Figure 3. REPLY FORM FOP NOTICE OF PROPOSED CIVIL PENALTY (Federal Aviation Act)

Assistant Chief Counsel for the _____ Region
Federal Aviation Administration
P.O. Box 55555
City, State 00000

Subject: Notice of Proposed Civil Penalty

In reply to your Notice of Prppased Civil Penalty, I elect to proceed as indicated by my check mark beside the numbered paragraph(s) below:

1. /__/ I hereby submit the amount of the proposed civil penalty with the understanding the", an order assessing a civil penalty will be issued in that amount without further notice, and that I waive my right to a hearing.

2. /__/ I hereby submit: evidence and information, demonstrating that a violation of the regulations did not occur as alleged or that the amount of the penalty is not warranted by the circumstances.

3. /__/ I hereby submit information and records showing that I am financially unable to pay the proposed civil penalty, or that payment of the penalty would prevent me from continuing in business.

4. /__/ I hereby request that a civil penalty be assessed in the amount of S_____ and I submit the reasons for the reduction of the proposed amount. My request constitutes my agreement that if this offer is accepted by the FAA, an Order Assessing Civil Penalty in that amount may be issued without further notice and I waive my right to a hearing.

5. /__/ I hereby request an informal conference (which will be held at the Office of the Assistant Chief counsel in _____ or at a mutually convenient location) in order to discuss this matter with an FAA attorney and to present evidence and informatioa in my behalf.

6. /__/ I hereby request that the FAA impose a civil penalty without making findings of violations, and submit my reasons. My request constitutes my agreement that if this offer is accepted, a Compromise Order will be issued in that amount and I waive my right to a hearing,

7. /__/ I hereby claim entitlement to a waiver of penalty under the Aviation Safety Report Program and enclose evidence that a timely report was filed. As to the allegations of fact and violations --

// I request that an Order Assessing Civil Penalty with Waiver of Penalty be issued and waive my right to a hearing.

/__/ I request a hearing in this matter in accordance with paragraph 8.

8. /__/ I hereby request a hearing in accordance with Subpart G of Part 13 of the Federal Aviation Regulations with the understanding that a Complaint will be filed. I request that the hearing be held in _____.
I am sending this request both to the FAA attorney and to the Rearing Docket, Federal Aviation Administration,
800 Independence Ave., SW, Room 924A, Washington, DC 20591,
Attention: Hearing Docket Clerk.

Signature: _____
Name: _____
Address: _____
_____
Telephone: _____
Date: _____
Case No. _____

/__/ I request that future documents in this case be sent to:
Name: _____
Address: _____
_____
Telephone: _____

Figure 4. SAMPLE COMPROMISE ORDER (Federal Aviation Act)

CERTIFIED HAIL - RETURN RECEIPT REQUESTED

MS. Annie 0. Rley
22 Calibur Way
Pistol, South Gun 00000

Re: Case No. 90NM768910

COMPROMISE ORDER

On February XX, 19XX, you were advised through a Notice of Proposed Civil Penalty that the FAA proposed to assess a civil penalty in the amount of $750.

After further consideration, the parties have agreed to settle this matter by the payment of a civil penalty by you, without the FAA making a finding of violation. This settlement does not constitute an admission by you of the truth of any allegations set forth in the Notice of Proposed Civil Penalty.

This compromise order shall not be used as evidence by the FAA of a prior violation in any subsequent civil penalty proceeding or certificate action proceeding.

NOW, THEREFORE, IT IS AGREED, pursuant to sections 901 and 905 of the Federal Aviation Act, as amended (49 U.S.C. App. 1471 and 1475), that you shall pay a civil penalty in the amount of 5750.

[include one of the following]

You have agreed and shall pay, immediately, the agreed upon amount by mailing or delivering a certified check or money order in the amount of $750, payable to the Federal Aviation Administration, to Attorney, Office of the chief Counsel/Office of the Assistant Chief Counsel, address. [or] We hereby acknowledge receipt of your check 'in the amount of 5750, which we accept in full settlement of this matter. YOU may consider this matter closed.

Assistant Chief counsel

By: _____
Attorney

Figure 5. SAMPLE FINAL NOTICE OF PROPOSED CERTIFICATE ACTION (Federal Aviation Act)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

MS. Annie 0. Kley
22 Calibur Way
Pistol, South Gun 00000

Re: Case No. 90NM768910

FINAL NOTICE OF PROPOSED CIVIL PENALTY

On February XX, 19XX, you were advised through a Notice of Proposed Civil Penalty that the FAA proposed to assess a civil penalty in the amount of $750. As of [date of Final Notice], we have received no response to this Notice. [or] We have considered the information submitted in response to this Notice.

After considering all the evidence in this matter, including the information submitted at the informal conference on March XX, 19XX, it appears that:

> [Insert allegations of fact and violations, as in the Notice of Proposed Civil Penalty or as modified based on new information.1

under sections 901 and 905 of the Federal Aviation Act, as amended (49 U.S.C. App. 1471 and 1475), you are subject to a civil penalty not to exceed 51,000 for each of the violations noted. By reason of the foregoing facts and circumstances, we propose to assess a civil penalty in the amount of $750.

Unless you mail or personally deliver, in writing, your request for a hearing in this matter, on or before 15 days after you receive this Final Notice, we will issue an Order Assessing Civil Penalty and you will have'no further right to a hearing. If you do not submit a written request for a hearing, you must pay the proposed civil penalty.

Your request for a hearing must be sent to the Hearing Docket, Federal Aviation Administration, 800 Independence Ave., SW, Room 924A, Washington, DC 20591, Attention: Rearing Docket Clerk, and a copy must be sent to the undersigned FAA attorney. Your request must be dated and signed, in accordance with section 13.16 of the Federal Aviation Regulations, sent to you with the Notice of Proposed Civil Penalty (14 C.F.R. 13.16).

You may pay the proposed penalty by submitting a certified check or money order payable to the "Federal Aviation Administration,. to the undersigned.

Assistant Chief counsel

By: _____
Attorney

Figure 6. SAMPLE ORDER ASSESSING CIVIL PENALTY (Federal Aviation Act)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

ns. Annie 0. Kley
22 Calibur Way
Pistol, South Gun 00000

Re: Case No. 9081768910

ORDER ASSESSING CIVIL PENALTY

On February XX, 19XX, you were advised through a Notice of Proposed civil Penalty that the FAA proposed to assess a civil penalty in the amount of $750.

After consideration of all of the available information, including the information you presented at the March xx, 19XX, informal conference, it has been determined that:

> [insert findings of fact and violations, as in the Notice of Proposed Civil Penalty or as modified based on new information.]

NOW, THEREFORE, IT IS ORDERED, pursuant to section 901 and 905 of the Federal Aviation Act, as amended (49 U.S.C. App. 1471 and 1475), that you be and hereby are assessed a civil penalty in the amount of $750.

[include one of the following]

YOU are hereby ordered to pay, immediately, the assessed amount by mailing or delivering a certified check or money order in the amount of $750, payable to *Federal Aviation Administration,. to Attorney, Office of the Chief Counsel/Office of the Assistant Chief Counsel, address. [or] We hereby acknowledge receipt of your check in the amount of $750 which we accept in full settlement of this matter. YOU may consider the matter closed.

Assistant Chief counsel

By: _____
Attorney

Figure 7. SAMPLE ORDER ASSESSING CIVIL PENALTY WITH WAIVER OF PENALTY

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Al T. Tude
747 Boeing Circle
Deviation, LO 00000

Re: Case No. 90MN123450

ORDER ASSESSING CIVIL PENALTY WITH WAIVER OF PENALTY

On February XX, 19XX, you were advised through a Notice of Proposed Civil Penalty that the FAA proposed to assess a civil penalty in the amount of $1,200.

After consideration of all of the.available information, including the information you presented at the March XX, 19XX, informal conference, it has been determined that:

> [Insert findings of' fact and violations, as in the Notice of Proposed Civil Penalty or as modified based on new information.]

NOW, THEREFORE, IT IS ORDERED, pursuant to section 901 and 905 Of the Federal Aviation Act, as amended (49 U.S.C. App. 1471 and 1475), that you be and hereby are assessed a civil penalty in the amount of 51,200.

Assistant Chief counsel

By: _____
Attorney

WAIVER OF PENALTY

The FAA determined that you are entitled to a waiver of penalty under the Aviation Safety Reporting Program, by reason of your having filed a timely report of the incident which is the subject of this case under that program, and otherwise meeting all of the requirements for such waiver. Accordingly, the civil penalty assessed in this order, although remaining a matter of record, will not actually be imposed. You are not required to pay the civil penalty. YOU may consider this matter closed.

Figure 8. SAMPLE COVER LETTER FOR FILING A COMPLAINT (Federal Aviation Act)

CERTIFIED HAIL - RETURN RECEIPT REQUESTED

Hearing Docket
Federal Aviation Administration
800 Independence Avenue, SW.
Room 9241
Washington, DC 20591

Attn: Hearing Docket Clerk

Re: In the Matter of Annie 0. Xley
Case No. 90MN768910

Enclosed herewith please find a copy of a'request for hearing and the original and one copy of the complaint in the above-referenced proceeding.

The FAA requests that the hearing in this matter be held in the Atlanta, Georgia, area, and expects that the hearing will last one day.

Please address all communications for the FAA to the undersigned, at:

Federal Aviation Administration
_____ Region, AXX-7
Post Office Box XXXXX
City, state xxxxx
Telephone: (XXX) XXX-XXXX; FTS XXX-XXXX
FAX: (XXX) XXX-XXXX; FTS XXX-XXXX

Sincerely,

Attorney

Enclosed: Request for Bearing
Complaint

cc: Respondent (with copy of Complaint)

Figure 9. SAMPLE COMPLAINT FILED WITH THE HEARING DOCKET

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

In the Matter of:	)
	)
	)
ANNIE 0. KLEY	) FAA DOCKET CPXXXX_____

JUDGE NOT ASSIGNED

COMPLAINT

The Federal Aviation Administration (FAA), by counsel, hereby files its complaint, pursuant to Rule 208 of the Rules of Practice (14 C.F.R. 13.208), and states as follows:

I.

1. On February XX, 19XX, Respondent Annie 0. Kley was advised through a Notice of Proposed Civil penalty that the FAA proposed to assess a civil penalty in the amount of $750. On August XX, 19XX, Respondent submitted a written request for a hearing.

II.

1. On or about December XX, 19XX, respondent presented herself and her accessible property for inspection at the "L" Concourse Security Screening Checkpoint of the Portland International Airport in Portland, Oregon.

Figure 9. SAMPLE COUPLAINT FILED WITH THE HEARING DOCKET

U.S. DEPARTMENT OF TRANSPORTATION
PEDERAL AVIATION ADMINISTRATION

In the Matter of:	)
	)
	)
ANNIE 0. KLEY	) FAA DOCKET CPXXXX_____

JUDGE NOT ASSIGNED

COMPLAINT

The Federal Aviation Administration (FAA), by counsel, hereby files its complaint, pursuant to Rule 208 of the Rules of Practice (14 C.F.R. 13.2081, and states a8 follows:

I.

1. On February XX, 19XX, Respondent Annie 0. Kley was advised through a Notice of Proposed Civil penalty that the FAA proposed to asses8 a civil penalty in the amount of $750. On August XX, 19XX, Respondent submitted a written request for a hearing.

II.

1. On or about December XX, 19XX, respondent presented herself and her accessible property for inspection at the "L" Concourse Security Screening Checkpoint of the Portland International Airport in Portland, Oregon.

Figure 9. SAMPLE COMPLAINT FILED WITH THE HEARING DOCKET

U.S. DEPARTMENT OF TRANSPORTATION
PEDERAL AVIATION ADMINISTRATION

In the Hatter of:	)
	)
	)
ANNIE 0. XLEY	) FAA DOCKET CPXXXX_____

JUDGE NOT ASSIGNED

COMPLAINT

The Federal Aviation Administration (FAA), by counsel, hereby files its Complaint, pursuant to Rule 208 of the Rule8 of Practice (14 C.F.R. 13.2081, and states a8 follow8:

I.

1. On February XX, 19XX, Respondent Annie 0. Kley was advised through a Notice of Proposed Civil Penalty that the FAA proposed to assess a civil penalty in the amount 0f $750. On August XX, 19XX, Respondent submitted a written request for a hearing.

II.

1. On or about December XX, 19XX, respondent presented herself and her accessible property for inspection at the "L" Concourse Security Screening Checkpoint of the Portland International Airport in Portland, Oregon.

Figure 9. SAMPLE COMPLAINT FILED WITH THE HEARING DOCKET

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

In the Matter of:	)
	)
	)
ANNIE 0. KLEY	) FAA DOCKET CPXXXX_____

JUDGE NOT ASSIGNED

COMPLAINT

The Federal Aviation Administration (FAA), by counsel, hereby file8 its complaint, pursuant to Rule 208 of the Rules of Practice (14 C.F.R. 13.2081, and states a8 follows:

I.

1. On February XX, 19XX, Respondent Annie 0. Kley was advised through a Notice of Proposed Civil Penalty that the FAA proposed to assess a civil penalty in the amount of $750. on August xx, 19XX, Respondent submitted a written request for a hearing.

II.

1. On or about December XX, 19XX, respondent presented herself and her accessible property for inspection at the "L" Concourse Security Screening Checkpoint of the Portland International Airport in Portland, Oregon.

2. At that time, respondent was not a ticketed passenger.

3. Upon inspection of respondent's accessible property, a Jennings Firearm, Inc., .22-caliber semi-automatic pistol, bearing serial number 123456, and one ammunition clip containing 6 live .22-caliber rounds of ammunition were discovered in your briefcase.

III.

1. By reason of the foregoing facts and circumstances, respondent violated section 107.21(a)(1) of the Federal Aviation Regulations in that respondent had a firearm on or about her person or accessible property when performance began of the inspection of her person or accessible property before entering a sterile area.

2. Pursuant to sections 901 and 905 of the Federal Aviation Act; a8 amended (49 U.S.C.app S1471 and 1475), Respondent is subject to a civil penalty not to exceed $1,000 for each of the violation8 alleged.

3. Under the facts and circumstances of this case, a civil penalty of $750 is appropriate.

WHEREFORE, the Agency, by counsel, respectfully requests that the Administrative Law Judge enter an order that Respondent be assessed a civil penalty in the amount of $750.

Respectfully submitted this _____ day of _____, 19XX.

_____
Agency Attorney

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Complaint has been mailed this date by certified Mail, Return Receipt Requested, to:

Respondent
address

Attorney
address

Hearing Docket
Federal Aviation Administration
800 Independence Avenue, SW.
Room 924A
Washington, DC 20591

_____
Attorney
Office of Assistant Chief Counsel
Address

_____
Date

Pigure 10. FORM FOR TRANSMITTAL OF APPEAL TO AGC-250

TO: AGC-250 FROM: _____ DATE: _____

RB: Transfer of case on appeal

Case Name: _____

Docket No. _____

FAA case No. _____

FOR AGC-250 USE

AGC-250 Attorney _____

Appeal Brief Due _____

Reply Brief Due _____

FAA Trial Attorney: _____ FTS: _____

Date of (oral/written) initial decision: _____
(Specify whether the decision was oral or written)

Cross-Appeal? _____

FAA's-Appeal? _____

Respondent's Appeal? _____

FOR ALL CASES, identify significant problems with the case, if any.

FOR ALL APPEALS, identify the issue(s) you believe should be appealed.

FOR ALL APPEALS, identify each alleged PAR violation that the ALJ rejected and that you believe the FAA should NOT pursue on appeal.

Figure 11. SAMPLE COMPLAINT FOR COLLECTION OF ASSESSED CIVIL PENALTY

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF SOUTH GUN

UNITED STATES OF AMERICA, Plaintiff vs. ANNIE 0. KLEY, Defendant	Civil Action No.

COMPLAINT

COMES NOW the Plaintiff, the United States of America, by and through its undersigned attorneys, and for a cause of action against the Defendant alleges:

I

This is a suit of civil nature brought by the United States of America to reduce to judgment a civil penalty assessed against the Defendant by the Federal Aviation Administration (FAA) pursuant to the civil Penalty Assessment Authority, Section 905 of the Federal Aviation Act of 1958, as amended (the Act) [Title 49 U.S.C. App. 1475], and pursuant to Section 901 of the Act [Title 49 U.S.C. App. 1471].

II

Jurisdiction is specifically conferred upon this court by Sections 903 and 905 Of the Act [Title 49 U.S.C. App. 1473 and 14751 and Title 28 United States Code, Sections 1345 and 1355.

III

As Defendant Annie 0. Kley is a resident of Pistol, South Gun, venue is conferred upon this court by Section 1395(a) of Title 28, united States Code.

IV

By Notice of Proposed Civil Penalty issued on February XX, 19XX, the Federal Aviation Administration, an agency of the United States Department of Transportation, notified the Defendant that it proposed to assess against her a civil penalty of $750 for a violation of section 107.21(a)(l) of the Federal Aviation Regulations [14 C.F.R. 107.21(a)(1)]. The Notice advised the Defendant of an opportunity for a hearing described in 14 C.F.R. Sections 13.16 and 13.201 et seq.

V

The Defendant did not respond to the Notice of Proposed Civil Penalty.

VI

On or about April XX, 19XX, the FAA issued to the Defendant a Final Notice of Proposed Civil Penalty, proposing to assess a civil penalty in the amount of $750 for violating Section 107.21(a)(1) of the Federal Aviation Regulations (14 C.F.R. 107.21(a)(1)) and advising the Defendant that, unless she requests a hearing within 15 days after receipt of this Final Notice of Proposed Civil Penalty, she will have no further right to a hearing.

VII

After due notice, and an opportunity for hearing, which the Defendant did not accept, on Hay XX, 19XX the FAA issued an Order assessing a civil penalty in the amount of $750 for violation of Section 107.21(a)(1) of the Federal Aviation Regulations. The FAA further ordered that the assessed penalty be paid immediately. A copy of the Order Assessing Civil Penalty is attached hereto as Exhibit 1.

VIII

In accordance with Sections 901, 903, and 905 of the Federal Aviation Act (49 U.S.C. App. 1471, 1473, and 1475), the Defendant is subject to a civil penalty not to exceed $1,000 for each violation of the Federal Aviation Regulations.

IX

By reason of the above, the Defendant is indebted to the united states in the amount of $750 plus interest from the date of assessment.

X

The FAA , by letter dated June XX, 19XX, demanded payment of the above-described civil penalty.

XI

As of this date, the Defendant has not complied with the order Assessing Civil Penalty dated nay xx, 19XX, in that the Defendant failed or refused to pay the civil penalty assessment despite having received notice of the proposed civil penalty and an opportunity for hearing, and despite demands by the FAA that the assessment be paid.

VII

Section 905(b) of the Act reads as follows:

(b) NO REEXAMINATION OF LIABILITY OR AMOUNT - In the case of a civil penalty assessed by the Administrator in accordance with this section, the issue of liability or amount of civil penalty shall not be reexamined in any subsequent suit for collection of such civil penalty.

WHEREFORE, the Plaintiff respectfully requests judgment against the Defendant in the amount of $750, plus interest from the date of assessment, and costs of this action.

Respectfully submitted this _____ day of _____, 19xx.

United States Attorney

By:

_____
Assistant United States Attorney

OF COUNSEL:

_____
Attorney
Federal Aviation Administration
XXXXXXXXRegion
xxxxxxx, xx xxxxx

COMPLIANCE/ENFORCEMENT BULLETIN 90-11

SUBJECT: SSER recommendations relating to informal communication between inspectors and attorneys and special emphasis programs.

DISCUSSION: The Administrator has approved several changes to the policies for analyzing violations and determining sanctions, and to the process for coordinating and handling proposed enforcement actions, as recommended by the recent system Safety and Efficiency Review (SSER) of the General Aviation Compliance and Enforcement Program. This Bulletin implements two of those recommendations. Each recommendation is set out verbatim and is followed by a discussion. These changes are effective immediately and will be incorporated into the next revision of the FAA Order 2150.3A.

I. Encouraging informal communicationa between inspectors and regional attorneys.

SSER C&E012: The Executive Director for Regulatory Standards and Compliance, in coordination with The Office of the Chief Counsel, should develop and publish a policy to encourage informal communication between regional enforcement personnel and Flight standards District Offices and Air Traffic facilities, not only on a regularly scheduled basis for the specific purpose of conducting regulatory compliance seminars, but also at other (non-specific) times to field general questions and relay information.

This Bulletin is intended to facilitate open lines of communication between FSDO personnel, CASFO personnel, air traffic personnel, and the legal staff in the regions and Washington headquarters. Although these communications exist to some extent in all areas of the country, it is advantageous to expand their use and scope. There are often occasions where a short conversation or correspondence directly between appropriate field office (e.g., PSDO, CASFO, etc.) and legal personnel could answer a simple question and save much time. AS an example, if an inspector has a question about the suitability of a particular piece of evidence in the investigation of an incident, a regional attorney can quickly give advice on the evidence. In addition, a short conversation between attorney and inspector may save hours and days of restructuring a file to make it usable by all parties. It is important to remember that direct communications outside the normal chain of command are not intended to usurp the responsibility or authority of any supervisor or manager. In most cases, each employee has the

responsibility to keep his/her supervisor apprised of significant developments in any situation, and in addition, each employee should seek the advice and counsel of the supervisor.

No supervisor or manager should place undue restrictions on open dialogue and sharing of information between field office and legal personnel. It is the aim of this Bulletin to allow open communications to improve the effectiveness and efficiency of working relationships among individual employees to better serve the public. In addition, where an effective and/or efficient way of communicating is found in a particular situation, that innovation should be shared with the rest of the affected FAA community.

On a more regular basis, the regional and headquarters legal and investigative staffs should consider joint compliance and enforcement conferences to promote consistency and standardization. Visits to field facilities to talk with inspectors, air traffic, and security personnel provide legal counsel an excellent opportunity to promote better understanding of policy, process, procedures, and interpretations. This allows free and open dialogues within and between the staffs and, ultimately, results in more effective and efficient compliance work. Finally, where general guidance is provided, every effort should be made to give that information the widest possible dissemination to the affected program offices. Although the SSER recommendations referred Only to FSDO inspectors, the policy applies equally as well to communications with security inspectors.

II. Special emphasis compliance and enforcement programs.

SSER C&E019: AVR and AGC should issue an action notice incorporating the language found in Volume II [of the SSER], which describes the special emphasis program in compliance and enforcement. The action notice should remain effective until Order 2150.3A is amended to include this language.

It is the policy of the FAA generally to avoid instituting mandatory sanction programs. However, at times, special situations arise which dictate the need for more effective enforcement through increased sanctions or other measures to bring about compliance in certain areas where existing guidance is insufficient. In such circumstances, a special emphasis enforcement program, designed to focus on a particular area of noncompliance, can be an effective deterrent and raise awareness of a particular problem. Therefore, when'necessary to reduce an elevated or critical incidence of noncompliance, special emphasis programs may be

instituted on a national or local geographical basis. They will be instituted nationally by a joint determination of the appropriate office or service (e.g., Flight Standards Service, office of Civil Aviation Security, etc.) and the Office of the Chief Counsel. Regionally, a recommendation for a special emphasis program shall be made jointly by the appropriate regional division (e.g., Flight Standards division, Civil Aviation security division, etc.) and Assistant Chief Counsel, after coordination with the Regional Administrator. A regional program may only be implemented with the concurrence of the Chief counsel and the Director of the appropriate service or office.

In any case subject to the provisions of a special emphasis program, mitigating or aggravating factors will still be considered in the determination of sanction.

A special emphasis program should be instituted only when conventional methods of obtaining compliance have not been effective. It is important to attempt to measure the results of special emphasis programs on an ongoing basis in order to determine when to return to a normal or non-critical status in a selected area. A tracking system should be instituted to measure the effectiveness until termination of the program. Objective as well as subjective measurements should be used as appropriate. The key to the success of a special emphasis program is to accomplish the intended compliance objective and return to a non-emphasis sanction range as soon as possible. Normally, such a program would be established with a fixed expiration date and would not be in effect for more than one year.

Before a special emphasis program is instituted, complete coordination between all affected elements of the FAA, including FAA headquarters, must be instituted. Also, adequate publicity regarding the program should be given through such means as letters to airmen, pilot forums, press releases, and publication in Federal Register where appropriate.

ACTION:

I. Informal communications with agency attorneys. Supervisors and managers of headquarters, regional, or field personnel involved in compliance and enforcement should avoid restrictions on open dialogue and sharing of information and opinions between those personnel and attorneys in the Office of the Assistant Chief Counsel for the region or the Office of the Chief Counsel.

II. Special emphasis enforcement programs. Paragraph 207f of FAA Order 2150.3A is revised, and new Paragraph 207g is added, to read as follows:

f. Compliance and enforcement bulletins. Periodic use will be made of compliance/Enforcement Bulletins to amend FAA Order 2150.3A. The guidance in these Bulletins supersedes the guidance in this Order.

g. Special emphasis enforcement programs. It is the policy of the FAA generally to avoid instituting mandatory sanction programs. However, at times, special situations arise which dictate the need for more effective enforcement through increased sanctions or other measures to bring about compliance in certain areas where existing methods are insufficient. In such circumstances, a special emphasis enforcement program, designed to focus on a particular area of noncompliance, can be instituted on a national or local geographical basis. The following procedures will apply:

(1) Special emphasis should be used only when other methods of obtaining compliance have not been effective. Normally, such a program would be established with a fixed expiration date and would not be in effect for more than one year.

(2) A national program will be instituted by a joint determination of the appropriate office or service (e.g., Flignt standards Service, Office of Civil Aviation Security, etc.) and the Office of the Chief counsel. A recommendation for a regional special emphasis program will be made jointly by the appropriate regional division (e.g., Flight Standards, Civil Aviation Security, etc.) and Assistant Chief Counsel, after coordination with the Regional Administrator. A regional program may only be implemented with the concurrence of the Chief counsel and the Director of the appropriate office or service.

(3) Before instituting a special emphasis program, adequate publicity regarding the program should be given through such means as letters to airmen, pilot forums, and press releases. Also, a tracking method should be maintained to evaluate the effectiveness of the special emphasis program on an ongoing basis until termination of the program.

(4) In any case subject to the provisions of a special emphasis program, mitigating or aggravating factors will still be considered in the determination of sanction.

COMPLIANCE/ENFORCEMENT BULLETIN 91-I

SUBJECT: Enforcement action in cases'involving drug convictions which do not involve falsification.

DISCUSSION: Compliance/Enforcement Bulletin No. 90-2 describes enforce&it sanction policv in cases involving a single drug conviction for simple possession, and, "except in extraordinary circumstances," for cases involving a single conviction for more than simple possession and for cases Involving more than one conviction. 'When this policy was announced in the Federal Register, the FAA reserved "the-prerogative to take more or less stringent actions in individual cases where aggravating or mitigating circumstances are present.** See, 54 Fed. Reg. 15145 (April 14, 1989). This Bulletin provides guidance for the Assistant Chief Counsel in exercising prosecutorial discretion and in determining when circumstances exist which may warrant departure from the general sanction policies stated in Bulletin 90-2.

Note that this policy does not apply to cases under Sections 602(b)(2) and 609(c) of the Federal Aviation Act of 1958, as amended. Section 609(c) requires the revocation of airman certificates for certain drug offenses involving the use of an aircraft where the person served as an airman or was aboard' the aircraft in connection with the offense. Section 602(b)(2) prohibits the issuance of a new airman certificate to a person whose airman certificate had been revoked under Section 609(c), unless the Administrator finds that certain circumstances exist Involving facilitating law enforcement efforts. The Administrator has not delegated the authority to make such a finding, and all such cases must be sent to the Chief Counsel's office for referral to the Administrator.

ACTION: In cases involving drug convictions which do not involve falsification (paragraph C in Bulletin 90-2), the Assistant Chief Counsel should take the following factors into account in determining whether a sanction other than that described in Bulletin 90-2 may be appropriate:

1. The circumstances underlying the criminal conviction. The sanctions in Bulletin 90-2 should be used if an aircraft was used in a criminal offense, or where other egregious circumstances exist.

2. The time which has passed since the conviction became final.

3. Confinement or other sentence completed as a result of the conviction.

4. Evidence of rehabilitation.

Sanctions shall also be in accordance with the following:

1. In every case, enforcement action shall be taken. The factors listed above may lead the Assistant Chief Counsel to determine that a suspension of less than 120 days is acceptable for a single simple possession conviction (C (1) of Bulletin 90-2), or a suspension instead of revocation is appropriate in the case of a conviction of other than simple possession or in the case of two or more convictions (C (2) and (3) of Bulletin 90-2).

2. The time served in prison will not be "credited" against a suspension. However, it may be considered in determining whether the public interest requires surrender of the airman certificate for the full period of the suspension, or warrants waiver of part or all of the period of surrender. The following is an example of a partial waiver to be included in an Order of Suspension in such a case:

PARTIAL WAIVER OF SUSPENSION

The Administrator has determined that, under the facts and circumstances of this case, a waiver of part of the requirement to surrender your certificate is appropriate. The 180-day suspension of your airman certificate ordered herein, although remaining a matter of record, will not fully be imposed, and you are required to surrender your certificate to the Administrator for a period of 30 days.

* COMPLIANCE/ENFORCEMENT BULLETIN NO. 92-1

SUBJECT: Proportional civil penalties. Consideration of company size in determining the appropriate amount of civil penalty for air carriers and certain other certificate holders.

DISCUSSION: This Bulletin provides guidance to FAA personnel in determining the appropriate amount of civil penalty for Part 121 and 135 carriers, **and other commercial operators, that violate the Federal Aviation Regulations** (FAR).

Pursuant to paragraph 207 of the Compliance and Enforcement Program, Order **2150.3A,** sanctions should serve **"as punishment for the particular violation, as a deterrent to further violations, and as an** example to others." It **is the policy and practice** of the FM, in determining the amount of a civil **penalty for a particular violation, to apply a sanction that** will **best promote** future compliance. The **guidelines discussed** below are **a means** of placing **a** relatively equivalent deterrent effect on each air carrier that violates the **same** FAR, **by considering** the size of the carrier in determining an **appropriate** amount of civil penalty. Paragraph **207b(7)** of FM Order **2150.3A** provides that the ability of the alleged **violator to absorb the sanction** should be considered **in determining the** amount of the penalty. However, the **sanction ranges in paragraph 207d and** the Enforcement **Sanction Guidance Table do** not differentiate between various sizes of respondent **air** carriers, but rather provide for the same range of **sanctions for** all carriers. A civil penalty which **may be a** mere **"cost** *of* doing business" to a major air carrier might compel **a** small air carrier to go out of business.

In order to establish standards for the implementation of this policy, the Office of the Chief Counsel established an Ability to Pay Working Group in 1989. That group developed draft guidelines that classify all Part 121 and Part 135 carriers into four groups in accordance with operating revenues **and the** ***number*** **and variety** of aircraft operated. The guidelines include the proportional maximum penalty amounts for single violations by carriers in each group as well **as** civil **penalty** ceilings for violations that are compounded by multiple flights. The guidelines do not address the ability of a particular respondent to pay a civil penalty: they only **provide** for sanction ranges which vary with the size of the company. The ability of **a** particular respondent to pay **a particular** civil penalty may be considered separately on **a case-by-case basis.**

* Subsequently, the General Aviation Compliance and Enforcement Systu Safety and Efficiency Review (SSER) recommended that the draft "ability-to-pay" guidelines developed by the working group be impluented, after appropriate coordination, as an amendment to PM Order 2150.3A. That recommendation was adopted as an action item by the Administrator in February 1990.

Accordingly, the Office of the Chief Counsel, the Office of Regulations and Certification, the Office of Civil Aviation Security, and the Office of Aviation Standards, upon consultation with the Office of Aviation Policy and Plans, have developed these guidelines as a means of placing a relatively equivalent deterrent effect on each air carrier that violates. the same FAR, by considering the size of the carrier in determining an appropriate uount of civil penalty. While these specific guidelines do not apply to other companies holding certificates, the policy of seeking penalties generally relative to the size and revenue of the operation should be applied to repair stations, manufacturers, airports, and other entities holding certificates.

The system used to classify carriers by size should fairly categorize carriers of significantly differing size and, at the same time, be practical for use by field inspectors. The guidelines adopted divide carriers into four groups, a number which is manageable for practical use but which also permits fair and reasonable classification of air carrier enterprises by size. "Size," for this purpose, is a combined consideration of annual operating revenue, number and variety of aircraft operated; and number of pilots employed.

Group I carriers are those Part 121 operators with annual operating revenue of $100,000,000 or more. This includes carriers considered by the Department of Transportation, Research and Special Programs Administration (RSPA), to be "majors" ($1,000,000,000+ operating revenue) and "nationals" ($100,000,000 to $1,000,000,000 operating revenue) and currently includes the 20 largest U.S. air carriers. Group II carriers are all other Part 121 operators and large Part 135 operators (50 or more pilots or 25 or more aircraft on operations specifications), with annual operating revenue of less than $100,000,000. These categories correspond to those used in the RSPA publication, "Air Carrier Industry Scheduled Traffic Statistics Quarterly." This publication provides FM compliance and enforcement personnel with a frequently updated and readily available reference to determine classification of the larger air carriers.

Groups III and IV comprise Part 135 operators distinguished by the number of pilots employed and the number and variety of aircraft used. Group III consists of Part 135 operators with *

* 6 to 49 pilots; or 6 to 24 aircraft: or any number of aircraft of 4 or more different types. Group IV consists of all Part 135 operators that do not meet the criteria for Group II or Group III, i.e., that have fewer than 6 aircraft of no more than 3 different types, and that employ fewer than 6 pilots. The category of Group IV carriers is essentially the same as the subcategory of Part 135 operators designated as "Basic Part 135 Operators" under FAA order 8400.10, Air Transportation Operations Inspector's Handbook, at Paragraph 175. Thus, the criteria for distinguishing Group IV carriers correspond to a category of operation already used by Flight Standards for other purposes and familiar to inspectors. The information on the type and number of aircraft used by a carrier is readily available to the inspector, generally by reference to operations specifications. Information on the number of pilots employed can also be ascertained by preliminary investigation.

As a result, Group I carriers are readily identified by reference to available publications containing information on carrier revenues. Group III and IV carriers are identified by easily obtained (in most cases) information on the number of aircraft operated and the pilots employed by the carrier. Group II carriers can be identified by reference to both the published revenue information and aircraft and pilot information obtained by investigation. The categories contained in the guidance are, therefore, practical for use by FM personnel, as well as representative of commonly accepted industry classification of operators by size and complexity of operation.

ACTION: Effective immediately, and until further notice, the following guidance should be followed by FAA personnel in determining the appropriate amount of civil penalty to be sought or assessed for FAR violations committed by Part 121 and 135 operators.

1. Air carriers are divided into the following groups. A carrier is assigned to the highest group for which it meets one or more criteria:

   Group I 1/

   All air carriers, Part 121, and 135, with annual operating revenue of $100,000,000 or more.

1/ Operating revenue will be determined by reference to RSPA's. *

* **Group II 2/**

All air carriers that hold Part 121 operations specifications and large Part 135 operators (50 or more pilots or 25 or more aircraft on operations specifications), with annual operating revenue of less than $100,000,000.

Group III

All Part 135 operators that do not meet the criteria for Group II with:

(1) 6 to 49 pilots; or

(2) 6 to 24 aircraft; or

(3) 5 or fewer aircraft

Group IV

All other Part 135 operators.

2. The normal ranges of sanction for single violations committed by air carriers, set forth in paragraph 1, page 3, Appendix 4 to Order 2150.3A, are amended as follows:

Group I

Maximum	-	7,500	-	10,000
Moderate	-	4,000	-	7,500
Minimum	-	1,000	-	4,000

Group II

Maximum	-	6,500	-	10,000
Moderate	-	3,500	-	6,500
Minimum	-	850	-	3,500

Group III

Maximum	-	5,500	-	10,000
Moderate	-	3,000	-	5,500
Minimum	-	750	-	3,000

Group IV

Maximum	-	4,000	-	10,000
Moderate	-	2,000	-	4,000
Minimum	-	500	-	2,000

2/ Air Carrier Industry Scheduled Traffic Statistics Quarterly.

* 3. The maximum total civil penalty ordinarily imposed for a violation committed by an air carrier and compounded by multiple flights, as set forth in Order 2150.3A, paragraph 207d, is amended as follows:

	Group I	Group II	Group III	Group IV
Par. 207d(3)A: (Inadvertent isolated violations.)	$100,000	s 75,000	$ 50,000	$25,000
Par. 207d(3)B: (Inadvertent systemic violations.)	$200,000	$150,000	$100,000	$50,000
Par. 207.d(3)C. Refer to C&E Bulletin 90-6, Reporting and Correction Policy.				
Par. 207.d(3)D: (Failure to follow requirements designed to disclose failures to comply.)	$500,000	$375,000	$250,000	$125,000

Par. 207.d(3)E. (Deliberate violations):

When Part 121 and 135 operators commit deliberate violations of the FAR, any civil penalties sought ordinarily should be in the range of 75% to 100% of the statutory maximum for each flight operated, regardless of the number of flights. In those instances in which the size of the air carrier would render such a maximum range civil penalty unduly harsh, agency personnel should exercise discretion to ensure that the amount of civil penalty sought is appropriate to the size of the carrier and the seriousness of the violation(s) committed. However, the amount of civil penalty sought always should be greater for deliberate violations than for inadvertent violations. *

COMPLIANCE/ENFORCEMENT BULLETIN NO. 92-2

SUBJECT: Reporting and correction policy and implementing guidance for holders of production approvals.

SUMMARY : In May 1990, the Federal Aviation Administration (FAA) issued Compliance/Enforcement Bulletin No. 90-6, which announced the FAA's reporting and correction policy and implementing guidance. The bulletin was intended to improve safety compliance by allowing the FAA to forego a civil penalty where a FAR Part 121 or 135 certificate holder has promptly disclosed to the FAA an apparent violation and has taken prompt action to correct the violation and prevent its recurrence. Compliance/Enforcement Bulletin No. 90-6 stated that its policy may be extended to other categories of certificate holders. In this Bulletin, the FAA extends that policy to include holders of production approvals issued under FAR Part 21. Application should be made in accordance with the following guidance.

POLICY: The FAA will not seek to impose a civil penalty on a production approval holder for failing to comply with the requirements of the FAR, when all of the following circumstances are present:

1. The production approval holder promptly discloses a noncompliance to the FAA. The notification may be made initially to the FM through informal communication, but in all cases must be reported to the FAA in writing, prior to FAA consideration under this policy. Holders who fail to comply with FAR 21.3, Reporting of failures, malfunctions, and defects, will not be considered to have promptly disclosed the noncompliance, as required under this policy.

2. The noncompliance is not deliberate or intentional.

3. The noncompliance does not indicate a lack of qualifications, nor does it reasonably call into question the qualifications of a production approval holder.

4. The production approval holder, upon discovery of the noncompliance, has taken or has begun to take immediate corrective action.

5. The production approval holder has taken, or has agreed to take, remedial action satisfactory to the FAA as may be necessary to preclude recurrence of the noncompliance.

Notwithstanding a production approval holder's failure to report an apparent violation, this Bulletin provides that the nature and extent of a production approval holder's corrective action may be considered in issuance of a letter of correction or in mitigation of any civil penalty which might otherwise be appropriate. However, where the production approval holder fails to promptly disclose and correct violations of which it was aware or should have been aware (for example, because the situation was obvious or because the company, through its auditing or evaluation program or other means, should have discovered the violations)-, substantial civil penalties, including the maximum allowed under the law, are warranted and may be sought.

It is the responsibility of the Chief Counsel and the Associate Administrator for Regulation and Certification to implement this policy. This compliance and enforcement policy is effective immediately, until further notice, and applies to all current and future enforcement cases.

ACTION: In order to ensure that all elements of this policy are present and observed, the following guidance should be followed:

1. When the production approval holder initially makes a disclosure of noncompliance to the FAA, contact should be made with, or directed to, the appropriate principal aviation safety inspector for manufacturing (ASI). In most cases, a telephone communication or facsimile notification will be considered an adequate means of initial contact.

2. The principal AS1 will respond to the production approval holder with a Letter of Acknowledgement (LOA) (Figure 1). The LOA includes a request for a written report and proposed remedial action plan to be submitted by the production approval holder to the FAA within 10 calendar days, and serves in lieu of a letter of investigation.

3. The written report should include, at a minimum, the following information: how, where, and by whom the apparent noncompliance was detected; when the production approval holder disclosed the noncompliance to the FAA; a brief description of the noncompliance and the applicable FAR violated; a brief description of the immediate corrective action taken; and the identity of the company official responsible for developing the remedial action plan.

4. A remedial action plan refers to a long-term effort by the production approval holder to prevent the recurrence of a noncompliance. To be acceptable under this policy, the remedial action plan must contain the following information:

a. Identification of the noncompliance.

b. Analysis of'objective evidence to determine the principal cause(s) of the noncompliance.

c. Identification'of planned remedial action steps in response to the noncompliance and the analysis of supporting documentation.

d. Implementation schedule for initiating remedial action.

e. Company official(s) responsible for implementing remedial action.

5. In cases where a proposed remedial action plan has not been fully developed within'10 calendar days of receipt of the LOA, the production approval holder should provide the FAA with an overview of planned actions. A detailed description of the plan should be provided to the FM within 30 calendar days after initial notification was made to the principal ASI.

6. When the apparent noncompliance takes place at a production approval holder's supplier facility, and the supplier is located in a different geographical area than the production approval holder, the following handoff procedures should be followed:

a. A letter requesting an investigation and a copy of the LOA will be sent by the requesting district office having certificate management responsibility to the district office having geographical responsibility for the area in which the supplier is located, with copies to each Aircraft Certification Directorate, and Manufacturing Inspection District Office involved.

b. The requesting district office should include in its letter all information received from the production approval holder.

7. The manager of the Manufacturing Inspection District Office (MIDO) having responsibility over the production approval holder shall ensure that the facts and circumstances surrounding any apparent violation are thoroughly investigated, analyzed, reviewed, and reported. The principal ASI, with the concurrence of the MIDO manager or his delegate, shall ascertain whether the apparent noncompliance was deliberate or inadvertent. Based on this analysis, the principal ASI, with the concurrence of the MIDO manager or his delegate, will determine the effectiveness of the production approval holder or supplier's remedial action measures to preclude a recurrence of the apparent noncompliance.

8. Whenever it is determined under this policy that no civil penalty will be sought, the production approval holder should be so advised by a Letter of Correction issued in accordance with Section 13.11(b)(2) of the FAR. As provided in that section, such a letter does not constitute a formal adjudication of the matter. However, in the event that the agreed remedial action is not fully completed, civil penalty action or other action should be considered and may be taken.

9. The Letter of Correction should be prepared by the principal AS1 and forwarded to the production approval holder upon receipt of its written report. It should contain all pertinent facts, including, but not limited to: how, where, and by whom the apparent noncompliance was detected: when the production approval holder disclosed the noncompliance to the FAA: the nature and extent of any actions taken to correct the noncompliance and preclude its recurrence: and any mitigating circumstances which were considered to be relevant.

10. Following issuance of the Letter of Correction, the case should be closed, subject to reopening in the event that the agreed remedial action is not completed. Until further notice, the file of each closed case should be forwarded to the appropriate Assistant Chief Counsel.

Figure 1. SAMPLE LETTER OF ACKNOWLEDGEMENT

Federal Aviation Administration
Manufacturing Inspection District Office
Address
Phone Number

CERTIFIED RETURN RECEIPT

April 24, 1991

File Number 90RTOOOO0

Oshkosh Manufacturing
Kokotee Ave., N.W.
Anywhere, USA 12345

Attn: Ms. Jane Doe
President, Quality Assurance

This office is writing to confirm your initial notification of April 10, 1991, of a possible violation of Federal Aviation Regulations (FAR), Part 21, Certification Procedures for Products and Parts, by Oshkosh Manufacturing with regard to a structural defect of the Mongoose wing spar.

This office expects Oshkosh Manufacturing to provide both a remedial action plan and written report to the principal inspector by _____ (10 days from date of initial notification) unless otherwise agreed to by this office. The remedial action plan must contain the following information: identification of the noncompliance; analysis of objective evidence to determine the principle cause(s) of the noncompliance: identification of planned remedial action steps in response to the noncompliance and the analysis of supporting objective evidence; implementation schedule and timeframe for initiating remedial action: and company official(s) responsible for implementing remedial action.

The written report should include, at a minimum: how, where, and by whom the apparent noncompliance was detected: when the production approval holder disclosed the noncompliance to FAA: a brief description of the noncompliance and the applicable FAR violated: ,a brief description of the immediate corrective action taken: and the identity of the company official responsible for developing the remedial action plan.

This letter of acknowledgement serves in lieu of a letter of investigation. If you have any questions in regard to the above, please contact us at your earliest convenience.

Sincerely,

J. P. Jones
Principal Inspector

COMPLIANCE/ENFORCEMENT BULLETIN 92-3

SUBJECT: -Guidance on enforcement action in cases involving detection of simulated weapons during Federal Aviation Administration (FAA) screening evaluations.

DISCUSSION: This bulletin provides new policies for enforcement actions on the failure of air carriers to detect simulated weapons, explosive devices, and other test objects during screening evaluations conducted by FAA Civil Aviation Security special agents.

In March 1988, the FAA adopted a strict civil penalty enforcement policy for air carriers' failure to detect simulated weapons, explosive devices, and other test objects during FAA screening checkpoint evaluations. Under this policy, each failure to detect a test object resulted in a civil penalty of $1,000 or $10,000, depending solely upon the carrier's previous success in detecting test objects at that screening checkpoint. On December 14, 1988, the Sanction Guidance Table in Appendix 4 of this order was adopted. It provided for a civil penalty in the maximum range ($7,500 to $10,000 for the largest air carriers) for failure to detect a test object.

Since the FAA began strong enforcement action for these cases, the aggregate detection rate among air carriers has improved substantially. The industry has enhanced significantly its screener training and adopted an aggressive self-testing campaign. However, the rate of detecting test objects during FAA screening point evaluations has not improved significantly since 1990.

This bulletin establishes a new enforcement policy for these cases in an effort to further improve the detection rate. Under this policy, the FM will place greater emphasis on identifying the causes of an apparent failure and the remedial action needed to improve compliance. Data on causes of failures and the success of remedial action will be maintained in the Civil Aviation Security Information System (CASIS). Information collected under this procedure will enable both air carriers and the FAA to analyze test object detection failures, to determine root causes of failures, to evaluate the effectiveness of corrective action, to make comparisons with improvements made elsewhere, and to assess the overall effectiveness of the passenger screening system. The goal will continue to be to prevent similar failures in the future. This policy is designed to encourage further improvements to the screening system and attain the ultimate goal of 100 percent detect ion.

Each failure to detect a test object will result in either administrative action or civil penalty action. The previous failures to detect test objects at specific checkpoints will be among the significant factors considered in deciding which type of enforcement action to use and determining the appropriate amount of any civil-penalty, but will not be solely determinative of the sanction. The type of action, as well as any civil penalty amount, will be determined only after consideration of all mitigating and aggravating circumstances surrounding the failure.

Civil penalty action generally will be the appropriate enforcement action. ***However,*** in some circumstances administrative action may be used. This policy allows broad discretion on the part of responsible FAA personnel to determine what enforcement action best suits the circumstances of the specific case.

ACTION: Effective September 1, 1992, all FAA personnel will use the ***procedures*** outlined in this bulletin to take action following the failure of an air carrier to detect simulated weapons, explosive devices, and other test objects during FAA screening checkpoint evaluations.

GUIDANCE:

1. Special agents shall prepare an enforcement investigative report (EIR) documenting each failure to detect a test object. Selection of the type of enforcement action, and determination of the amount of any proposed legal sanction, will depend upon the facts and circumstances surrounding the alleged violation.

2. The special agent should investigate and analyze factors that led to the failure and fully document the findings and analysis in the EIR. Each investigation should include, where appropriate, such evidence as witness statements or records of interviews of all principal-witnesses and other evidence to describe the circumstances of the failure. The air carrier's cooperation and assistance should be requested and used to the extent possible. The investigation may include, but is not limited to, the following:

a. If insufficient scrutiny or attention by the screener contributed to the failure, the special agent should consider what factors contributed to that inattention ***or*** lack of scrutiny, such as poor training, fatigue, duty schedules, or the **screener's** fitness for duty that day.

b. The special agent should consider whether any distractions or environmental factors may have contributed to the failure, such as reflective glare on the x-ray monitor or noise in the area.

c. The special agent should determine whether the equipment was working properly and had been tested as required.

d. Interviews of the screener and supervisor generally will be central to the investigation, as will a careful assessment of the physical layout and environment of the screening point. Complete witness statements should be obtained.

3. The special agent should consider the corrective action that may be needed to remedy the cause of the failure. The air carrier should be requested to assist in identifying the cause(s) of the failure and to formulate the most effective means of correcting deficiencies when they are observed. The special agent should, as soon as practicable, notify a responsible representative of the air carrier at the airport, the PSI, and the federal security manager,. if assigned to the airport, upon his or her discovery of any condition that affects the safety or security of the operation.

4. Paragraph 205 and Chapter 11 of this Order provide for the use of administrative action instead of legal enforcement action in certain circumstances. In the case of a failure to detect a test object, administrative action may be taken when it is found that legal action serves no valid purpose and that use of an administrative action is in the public interest. While the use of administrative action is at the discretion of the field office, all of the following factors, none of which are determinative, must be present:

a. The air carrier has achieved a high success rate in detecting test weapons, explosives, and other objects at that station during recent passenger screening checkpoint evaluations. As an example, the air carrier may be considered highly successful when it has had no comparable failures in the previous 12 months. Comparable failures refers to similar causes of the failure, similar test objects, or other similar aggravating circumstances.

b. The failure to detect the test object did not result from egregious circumstances, such as those described in paragraph 5.c., below.

c. The air carrier displays a constructive attitude toward complying with the regulations. This constructive attitude may be demonstrated in part by the carrier's cooperation in investigating the cause of the test object failure, and in-determining and taking the corrective action that might best prevent a recurrence.

d. Neither the screener nor the supervisor lacked the training or qualifications required under the FAR.

There must be agreement between the air carrier and the FAA that corrective action acceptable to the FAA has been taken or will be taken within a reasonable period of time.

5. If a civil penalty is determined to be the appropriate sanction, the amount of the penalty should be based largely on an assessment of the nature and causes of the failure to detect the test object and the prior enforcement history of the responsible air carrier at that checkpoint. The sanction ranges refer to the ranges described in the Sanction Guidance Table, Appendix 4 of this order, and in Compliance/Enforcement Bulletin 92-l.

a. A civil penalty in at least the moderate range generally is appropriate. The civil penalty may be in the minimum range or the maximum range if unusual mitigating or aggravating circumstances exist.

b. The pattern of previous failures by that air carrier at a specific checkpoint is significant, and may warrant an increased or decreased civil penalty. Repeated failures to detect one type of test weapon, repeated failures to detect when using a specific type of equipment, and how remote in time previous failures were, should be considered.

c. When a failure results from egregious circumstances, a civil penalty in the maximum range generally is appropriate. Notwithstanding the effective date of this bulletin, problems with an air carrier's screening system or equipment that existed before the effective date, but were not corrected, may be considered in determining whether egregious circumstances exist. Examples of egregious circumstances include the following:

1. Failures to identify or correct a reasonably apparent contributing factor affecting the screener or environment. Such factors include training that does not meet the requirements of the FAR.

ii. Serious neglect of duties by screener or supervisor, such as deliberate or gross lack of attention to assigned tasks.

iii. Failure to-meet screener training requirements.

iv. Failure to meet screener employment standards.

v. Failure to provide screener staffing levels consistent with the volume of persons processed through the checkpoint.

COMPLIANCE/ENFORCEMENT BULLETIN NO. 93-l

SUBJECT: **Policy and Procedures for the Collection of Administratively Assessed Civil Penalties.**

DISCUSSION: **This Bulletin sets forth the guidance and procedures to be followed by Federal Aviation Administration (FAA) personnel for the collection of administratively assessed civil penalties.**

In 1991, the Office of Inspector General (OIG) conducted a review of the civil penalty demonstration program. In its report, the OIG identified several deficiencies regarding the FAA's administrative collection of outstanding civil penalties that resulted in an under-reporting of agency assets. Implementation of the following procedures should reduce the burden of civil penalty collection of the Chief Counsel's office without impacting our authority to compromise or settle civil penalty cases. 'These procedures will assist us in complying with the Federal Debt Collection Act, the regulations that implement it, and recent Department of Justice initiatives, and should satisfy the OIG's concerns regarding the reporting of accurate accounts receivable by our accounting offices.

This guidance reflects changes brought about by the FM Civil Penalty Administrative Assessment Act of 1992, as well as amendments to the Federal Debt Collection Act, the Federal Claims Collection Act, and the Federal Claims Collection Standards.

ACTION: **The guidance contained in this bulletin replaces the guidance contained in paragraph m. and figures 6 and 11 of Compliance/Enforcement Bulletin No. 90-10.**

APPLICABILITY.: **This bulletin applies only to the collection of civil penalties that are administratively assessed by the FAA. The collection of judgments rendered on behalf of the FAA in federal district courts is governed by the United States Attorneys Manual and other Department of Justice policies.**

PROCEDURES:

Orders Assessinu Civil Penalty Auainst Anv Person Other Than a Person Acting in the Capacity of a Pilot, Flight Engineer, Mechanic, or Repairman.

New Section 901(a)(3)(E) of the Federal Aviation Act states that a civil penalty against a person other than a person acting in the capacity of a pilot, flight engineer, mechanic, or repairman, can be assessed only after the person is

afforded notice and an opportunity for a hearing on the record under 5 U.S.C. 554. If a respondent requests a hearing, a hearing before an administrative law judge satisfies the hearing-on-the-record requirement of 5 U.S.C. 554. Section 13.202 of the Federal Aviation Regulations (FAR) describes an order assessing civil penalty as a document that contains a finding of violation and that may direct payment of a civil penalty. Further, it defines an order assessing civil penalty as follows:

> . ..Unless an appeal is filed with the FM decisionmaker in a timely manner, an initial decision or order of an administrative law judge shall be considered an order assessing civil penalty if an administrative law judge finds that an alleged violation occurred and determines that a civil penalty, in an amount found appropriate by the administrative law judge, is warranted. Unless a petition for review is filed with a U.S. Court of Appeals in a timely manner, a final decision and order of the Administrator shall be considered an order assessing civil penalty if the FM decisionmaker finds that an alleged violation occurred and a civil penalty is warranted.

Orders of Assessment Against Persons Acting in the Capacity of a Pilot. Flight Engineer, Mechanic, or Repairman.

New Section 901(a)(3)(D) of the Federal Aviation Act states that any person acting in the capacity of a pilot, flight engineer, mechanic, or repairman, against whom an order assessing a civil penalty is issued by the Administrator, may appeal the order to the NTSB, which will afford the respondent notice and an opportunity for a hearing on the record under 5 U.S.C. 554. In the case of pilots, flight engineers, mechanics, and repairmen, the order assessing civil penalty will be referred to as an order of assessment. An order of assessment is different from an order assessing civil penalty in that the order of assessment is issued before the respondent is afforded a hearing on the record. In effect, an order of assessment under 901(a)(3)(D) is analogous to a final notice of proposed civil penalty issued under 901(a)(3)(E). Because the respondent has not been afforded an opportunity for a hearing on the record at this stage of'the proceeding, an order of

assessment does not become a legally collectible debt, unless the respondent fails to request a hearing before the NTSB within the timeframe allotted under the Board's rules.

Orders Assessinu Civil Penalties and Orders of Assessment must satisfv statutory requirements of an initial demand letter.

An order assessing civil penalty and an order of assessment (absent a request for a hearing on the record) reflect legally collectible debts, and collection of the assessed amounts should be undertaken immediately. To expedite the collection of civil penalties, these orders must contain language that satisfies the requirements of an initial "demand letter" under the Federal Debt Collection Act and the Federal Claims Collection Standards. An initial demand letter must inform the debtor of: 1) the amount of, and the basis for, the indebtedness and whatever rights the debtor may have to seek review within the agency; 2) the applicable standards for assessing interest, penalties, and administrative costs; 3) the date by which payment is to be made, which normally should be not more than'30 days from the date that the initial demand letter was mailed or hand-delivered; and 4) the possibility of referral of the debt to a credit reporting or collectionagency or to the Department of Justice. FM attorneys should exercise care to ensure that demand letters are mailed or hand-delivered on the same day that they are actually dated.

In cases involving persons other than those acting in the capacity of a pilot, flight engineer, mechanic, or repairman, agency counsel must include the language contained in the sample order assessing civil penalty (Attachment (1)). This revised sample order includes a paragraph adding the information outlined above, along with a notice of the address where the debtor should send his payment (the address of the accounting office servicing the region where the order originated). Attorneys should not advise the debtor to send the check to the Assistant Chief Counsel's office.

In cases involving persons acting in the capacity of a pilot, flight engineer, mechanic, or repairman, counsel will include the language contained in the sample order of assessment

(Attachment (2)). This sample order includes information regarding the respondent's right to a hearing before the NTSB, and indicates that the order 'of assessment becomes final if the respondent does not request a hearing within the appropriate timeframe. Because an order of assessment may serve as the final order in cases where the respondent fails to request a hearing, the language of an initial demand letter under the Debt Collection Act has been added to this document. Additionally, a notice 'of the address where the debtor should send his payment appears in the document (the address of the accounting office servicing the region where the final notice originated). Again, checks should not be sent to the Assistant Chief Counsel's office.

The individual preparing the order assessing civil penalty or the order of assessment must fill in 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 is a fixed rate established quarterly or yearly by the Department of the Treasury and can be obtained by telephoning FTS 202-874-6995 for a recorded message (or FTS 202-874-6705 for special assistance). The amount of the accounting office's administrative charge must also be completed. Currently, this amount is $12.00. 49 C.F.R. 89 allows interest, collection charges, or late penalty charges to be waived if certain findings are made (see section 89.23(e)).

Opening an Account Receivable.

The office issuing an order assessinu civil penalty under Section 901(a)(3)(E) should immediately send a copy of the order to the accounting office in that region so that an account receivable can be opened. The Office of Accounting already has a computerized tickler system that will automatically send to the debtor the thirty-and sixty-day demand notices required by the Debt Collection Act. The automated system will notify the debtor of the administrative charges as well as any penalties added to the debt as a result of delinquency.

The office issuing an order of assessment under Section 901(a)(3)(D) must track the timeframe the respondent has to request a hearing. If the respondent does not request a timely hearing, the office issuing the order of assessment will immediately send a copy of the order to the accounting office in that region so that an account receivable can be opened.

The accounting office will handle the order of assessment the same way it handles an order assessing civil penalty for purposes of debt collection. The date of "issuance" of the order of assessment for purposes of the date upon which interest begins to run is the date that the respondent's right to request a hearing expires. If the civil penalty is paid within 30 days from the date the respondent's right to request a hearing expires, no interest is assessed.

In all cases where an order assessing civil penalty has been sent without the language contained in the sample order found at Attachment (1), the attorney immediately should send the debtor the letter found at Attachment (3). Note that the fixed annual rate of interest and the administratives charges must be included in this letter. A copy of the letter should be sent to the appropriate accounting office (if an order has not been forwarded) so an account receivable can be opened. Accounting will send any subsequent delinquency notices to the debtor.

The accounting offices would prefer to have the debtor's social security number in the event it becomes necessary to refer a delinquent debt to a credit reporting or collection agency. For certificated airmen, this information may be contained in the Comprehensive Airman Information System. This information, if available, should be provided with any order sent to accounting. If the debtor is a company, the order should include the company's IRS employer identification number (EIN), if available.

Compromise Orders.

Compromise orders issued under section 13.16(1) of the FAR should be issued only after receipt of payment or upon receipt of a'signed promissory note providing for installment payments (Attachment (4)). This is a departure from the way we have processed compromise orders in the past. In the case of receipt of payment by the Assistant Chief Counsel's office, the payment and the compromise order should be sent to the accounting office immediately so that an account receivable can be opened and closed. In the case of a promissory note, the note and compromise order should be sent to the accounting office immediately so that an account receivable can be opened. The accounting office will be responsible for tracking proper payment of the note, and sending out any subsequent delinquency notices. Attorneys should not delay issuance of a compromise order until all payments are received. Attorneys should not advise the respondent to send payments to the Assistant Chief Counsel's office. If an installment payment plan is agreed upon, it should be reflected in an ensuing promissory note, and a compromise order should be issued

immediately. Both the promissory note and the compromise order are then sent to the responsible accounting office. The compromise order should accompany the payment or promissory note so that the accounting office will have a case number to use when opening the account receivable.

Installment Payments.

In some cases, 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 (4 CFR 103.11 requires a promissory note for amounts over $750; however, it is our practice to require a promissory note in all cases). The order assessing civil penalty, compromise order, or the order of assessment will be issued immediately and sent with the promissory note that outlines the installment agreement to the accounting office. The accounting office will use the information in the promissory note to open an account receivable and assume the responsibility for notifying the debtor if he becomes delinquent at any time during the repayment period. Attorneys should not delay the issuance of an order assessing civil penalty, a compromise order, or an order of assessment until payments are received; payments are to be sent to the cognizant installment accounting office.

After an Account Receivable is Opened.

In all cases,' after the accounting office has opened an account receivable, further administrative collection efforts will originate from that office. The Office of Accounting has agreed to notify its personnel that any telephonic or written inquiries it receives questioning either the amount or validity of an order will be forwarded immediately to the attorney who issued the order. As a result, FM counsel will be in a position to exercise authority to compromise the claim under 31 U.S.C. 3711(a)(2), if warranted. If a claim is compromised under 31 U.S.C. 3711(a)(2), the accounting office is notified and the respondent will be directed to remit payment to the accounting office.

The Debt Collection Act requires all agencies to take aggressive collection action. This includes: utilizing a debt-collection contractor; contacting credit reporting agencies; attempting IRS tax refund offsets; forwarding the collection file to the Assistant Chief Counsel's office for

referral to the Department of Justice; 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. The accounting office will notify the appropriate Assistant Chief Counsel when the debt has been collected or of any other final action it takes in collecting the debt or closing the account.

The responsible accounting offices may require further data regarding a debtor and a debtor's ability to pay, to aid in collection. This assistance may be obtained from regional security offices, credit reporting agencies or other sources.

Currently, administrative debt collection activities in the regions differ from one regional accounting office to another. The Office of Accounting at headquarters is in the process of standardizing these activities in the regions.

Referrals to the Department of Justice.

Regardless of the amount of the debt, and when other administrative collection attempts have failed, the responsible accounting office will request the Assistant Chief Counsel that issued the order assessing civil penalty or the order of assessment to refer the debt to the Department of Justice for legal action. Each Assistant Chief Counsel is responsible for all referrals to the Department of Justice. While the Assistant Chief Counsel has discretion not to refer a non-meritorious case to the Department of Justice, it is the policy of this office to refer all cases, even those under $600, if collection is in furtherance of regulatory goals. This bulletin supersedes any existing instructions that require automatic non-referral of debts under $600.

To refer matters to the Justice Department, the FAA must fill out a Claims Collection Litigation Report. Attachment (5) contains the report form and instructions for completing it. Attachment (6) is a sample letter of referral to the Department of Justice's intake facility, along with a sample Certificate of Indebtedness. Attachment (7) is a sample complaint for filing in the appropriate United States District Court. The Department of Justice has requested that the agency ensure that any request to the IRS for offset from the debtor's income tax return be withdrawn before referring matters for litigation. This responsibility will normally be handled by the regional accounting office. Unless otherwise advised, the attorney referring the matter to the Justice Department should check with the accounting office to be sure that any IRS offset request has been withdrawn.

Payments received by the Assistant Chief Counsel.

In the event debtors send checks to the Assistant Chief Counsel's office rather than the accounting office, the checks should be sent to the accounting office immediately. In no event should checks remain in counsel's office for longer than 24 hours. Each Assistant Chief Counsel should appoint 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.

Collection Procedures in the Event of a Hearing or Appeal.

In the event the respondent requests a hearing before an administrative law judge (ALJ), the attorney handling the case waits until the debtor's appeal rights have been exhausted before issuing a letter demanding payment. If a decision is reached in favor of the FAA by an NTSB administrative law judge in a civil penalty case, the letter found at Attachment (8) should be mailed after the time period for appealing that decision to the full Board has expired. If the decision is issued in favor of the FAA by a DOT administrative law judge, the letter found at Attachment (8) should be mailed after the ten-day period for filing a notice of appeal has expired. In the case of a.decision rendered in favor of the FM by the Administrator on appeal or by the full NTSB, the attorney mails the letter found at Attachment (8) after the 60-day period for seeking judicial review has expired. A copy of the letter should then be forwarded to the responsible accounting office so that it can open an account receivable and begin normal collection efforts.

OTHER GUIDANCE:

Collection personnel should also consult the United States Treasury Financial Manual, which provides in-depth explanations of many of the issues discussed in this bulletin.

Attachments

Attachment (1)

SAMPLE ORDER ASSESSING CIVIL **PENALTY**
(Federal Aviation Act)

CERTIFIED NAIL - RETURN RECEIPT REQUESTED

Ms. Annie 0. Kley
22 Caliber Way
Pistol, South Gun 00000

Re: Case No. **93NM76891**
[S.S. No. ###-##-####**I or** [IRS EIN]

ORDER ASSESSING CIVIL PENALTY

On [Date], you were advised through a Notice of Proposed Civil Penalty that the FM proposed to assess a civil penalty in the **amount of $.**____

After consideration of all the available information, including the information you presented at the **[Date],** informal conference, it has been determined that:

Insert findings of fact and violations, as in the Notice of Proposed Civil Penalty or as modified based on new information.

. NOW, THEREFORE, IT IS ORDERED, pursuant to section 901(a)(3) Of the Federal Aviation Act, as amended (49 U.S.C. app. 1471(a)(3)), that you be and hereby are assessed a civil penalty in the amount of $_____.

[Include one of the following:]

You are hereby ordered to pay, immediately, the assessed amount by mailing or delivering a certified check or money order in the amount of $_____, payable to **"The** Federal Aviation **Administration,"** to the Office of Accounting, address. The amount of civil penalty assessed in this Order **constitutes a** debt owed to the United States. You have now exhausted your right to seek review of the validity or amount of this debt. If this debt is not paid in full within 30 **days** of your receipt of this letter, the debt is considered delinquent. For delinquent debts, federal regulation (49 C.F.R. section 89.23) requires us to charge interest, from the date of this Order, at a fixed annual rate of _____**%,** along with an administrative charge of $ per month, representing our costs **of** administrative collection. Furthermore, if the full amount assessed is not paid in full within 120 **days of your receipt**

of this letter, we are required to assess an additional penalty at an annual rate of 6%, accruing from the date of delinquency. Delinquent debts may be reported to consumer reporting agencies or commercial credit bureaus, which could adversely affect your credit rating. Nonpayment of this debt may ultimately result in a referral to a collection agency, the Internal Revenue Service, or to the United States Department of Justice for enforced collection.

[or]

We hereby acknowledge receipt of your check in the amount of $_____, which we accept in full settlement of this matter. You may consider the matter closed.

Assistant Chief Counsel

By: _____
Attorney

Attachment (2)

[Sample Order of Assessment]

CERTIFIED WAIL - RETURN RECEIPT REQUESTED

Ms. Annie 0. Kley
22 Caliber Way
Pistol, South Gun 00000

Re: Case No. 93NM76891
S.S. No. ###-##-#### or [IRS EIN]

ORDER OF ASSESSMENT

On [Date], you were advised through a Notice of Proposed Assessment that the FM proposed to assess a civil penalty 'in the amount of $_____.

[Insert one of the following:]

As of this date, we have received no response to this notice.

[or]

After consideration of all of the available information, including the information you presented at the March xx, 19xx, informal conference, it appears that:

[Insert findings of fact and violations, as in the Notice of Proposed Assessment or as modified based on new information.]

Under Section 901(a)(1)and (3) of the Federal Aviation Act, as amended (49 U.S.C. app. 1471(a)(1)and(3)), you are subject to a civil penalty not to exceed [$1,000][$10,000] for each of the violations noted. By reason of the foregoing facts and circumstances, we hereby assess a civil penalty in the amount of _____

You may appeal from this order within days from the date it is served by filing a Notice of Appeal with the Office of Administrative Law Judges, National Transportation Safety Board, Suite 5531, Fifth Floor, 490 L'Enfant Plaza East, SW., Washington, D.C. 20594

In the event you appeal, a copy of your notice must be furnished to the undersigned FM attorney in the Office of the Assistant Chief Counsel at the address noted in this order. Your request must be dated and signed. If you do not appeal, you must pay the assessed civil penalty.

[Insert one of the following:]

You may pay the penalty amount by submitting a certified check or money order payable to the "Federal Aviation Administration," to the Office of Accounting, [Insert address of appropriate accounting office].

If you do not request a hearing before the National Transportation Safety Board on or before _____ days after you receive this Order, the amount of debt assessed in this Order constitutes a legally collectible debt owed to the United States. You will not have a right to seek review within the Federal Aviation Administration of the validity and/or amount of this debt. If this debt is not paid in full within 30 days of your receipt of this letter, the debt is considered delinquent. For delinquent debts, federal regulation (49 C.F.R. section 89.23) requires us to charge interest, from the date this order is issued, at a fixed annual rate of _____%, along with an administrative charge of $_____ per month, representing our costs of administrative collection. Furthermore, if the full amount assessed is not paid in full within 120 days of your receipt of this letter, we are required to assess an additional penalty at an annual rate of 6%, accruing from the date of delinquency. Delinquent debts may be reported to consumer reporting agencies or commercial credit bureaus, which could adversely affect your credit rating. Nonpayment of this debt may ultimately result in a referral to a collection agency, the Internal Revenue Service, or to the United States Department of Justice for enforced collection.

[or]

We hereby acknowledge receipt of your check in the amount of $_____, which we accept in full settlement of this matter. You may consider the matter closed.

Assistant Chief Counsel

By: _____
Attorney

Attachment (3)

[Letter to be used for existing cases where Order Assessing Civil Penalty has already been issued without the required debt collection notice language. This letter will serve as the first required written demand letter.]

[Date]

Case No. ##XX#####
[S.S.No. ###-##-##if] or [IRS EIN]

CERTIFIED RAIL - RETURN RECEIPT REQUESTED and REGULAR MAIL

TO: NAME
ADDRESS
ADDRESS

On [Date], this office issued to you, under section 901(a)(3) of the Federal Aviation Act of 1958, as amended, an Order Assessing Civil Penalty in the amount of $_____.

The amount of civil penalty assessed in that Order constitutes a debt owed to the United States. You have exhausted your right to seek review of the validity or amount of this debt. If this debt is not paid in full within 30 days of your receipt of this letter, the debt is considered delinquent, For delinquent debts, federal regulation (49 C.F.R. section 89.23) requires us to charge interest, from the date of this letter, at a fixed annual rate of _____%, along with an administrative charge of $_____ per month, representing our costs of administrative collection. Furthermore, if the full amount assessed is not paid in full within 120 days of your receipt of this letter, we are required to assess an additional penalty at an annual rate of 6%, accruing from the date of delinquency. Delinquent debts may be reported to consumer reporting agencies or commercial credit bureaus, which could adversely affect your credit rating. Nonpayment of this debt may ultimately result in a referral to a collection agency, the Internal Revenue Service, or to the United States Department of Justice for enforced collection.

Please pay the assessed amount by mailing or delivering a certified check or money order in the amount of $_____ payable to "The Federal Aviation Administration," to Office of Accounting, [address of applicable accounting office]. If you have any questions concerning this matter, you may contact me at (###) ###-####.

NOTE: Add any other provisions that are applicable under 49 C.F.R. 89.21(b).

Sincerely,

Assistant Chief Counsel

By: _____
FM Attorney

Attachment (4)

[Sample Promissory Note]

PROMISSORY NOTE

COUNTY OF:

STATE OF:

This promissory note is for a sum justly due and owing by (name of the debtor), arising from a civil penalty administratively assessed by the Administrator of the Federal Aviation Administration (FM) in FM Enforcement Investigative Report (EIR) No. _____.

I, _____, promise to pay the amount of _____ dollars to the order of the FM in installments as follows:

$ _____ on or before the _____ day of _____, 19___.

$ _____ on or before the _____ day of _____, 19___.

$ _____ on or before the _____ day of _____, 19___.

or

$ _____ on or before the first day of each month thereafter until paid in full.

I also waive all rights to appeal the amount of civil penalty administratively assessed by the Administrator of the FM in EIR No. _____.

These installments are payable to the order of the FM at the Office of the Assistant Chief Counsel, _____ Region, (address of the Office of the Assistant Chief Counsel), on or before each due date until the obligation is fully paid. If any installment remains unpaid for a period of 10 days after its due date, the entire amount of the obligation, less payments made, shall become immediately due and payable at the option of the Assistant Chief Counsel without demand or notice, which I expressly waive.

[THE FOLLOWING PARAGRAPH SHOULD BE INSERTED WHEN APPROPRIATE]

I understand that interest on this indebtedness is waived as long as I make payments in accordance with the schedule set forth above. If I am delinquent in making any payments, interest may be assessed on the amount owed. Further, I understand that a failure to make payments in accordance with the payment schedule may result in the imposition of an administrative charge for the cost of administrative collection action and penalties for payments that are delinquent for ninety or more days.

I authorize and empower the Office of the Assistant Chief Counsel, any of his assistants, or any attorney of any court of record, State or Federal, to appear for me and to enter and confess judgment against me for the entire amount of this obligation less payments actually made at any time after the obligation becomes due and payable, as herein provided, in any court or record, Federal or State; to waive any venue requirement in the suit; to release all errors that may intervene in entering a judgment or in issuing any execution on the judgment; and to consent to immediate execution of the judgment. I hereby ratify and confirm all that such attorney may do by virtue of this paragraph.

This confession of judgment is for a debt justly due and owing by me, having arisen because of violations under Section 901 of the Federal Aviation Act of 1958, as amended (49 U.S.C. app. 1471) and of the Federal Aviation Regulations as alleged in the [Notice of Proposed Civil Penalty] or [Notice of Proposed Assessment] dated _____, and signed by _____ , o behalf of the Assistant Chief Counsel, 'acting on behalf of the Administrator of the FM.

In the event I default or fail to fully carry out the obligations of this promissory note, then the FM may sue to enforce this note for collection.

_____ _____

Date Signature of Debtor

Attachment (5)

INSTRUCTIONS FOR COMPLETING CLAIMS COLLECTION LITIGATION REPORT

Anyone completing a Claims Collection Litigation Report (CCLR) for the Department of Justice (DOJ) should insert the following information for each numbered section of the printed report:

1. FM Case No.

2. Date CCLR is mailed to the Central Intake Facility.

3. Name and complete mailing address of the United States Attorney's office in whose district the debtor resides or does business.

4. Assistant Chief Counsel's name and Regional Office's address.

5. Debtor's complete name and address.

6. Debtor's social security number (if individual), or IRS employer identification number (if company).

7. Insert date of delinquency of debt (30 days after initial FM written notice of debt is received by debtor).

8. Insert date five years from date of initial violation.

9. 28 U.S.C. section 2462.

10. Check box entitled **Enforced Collection" in all cases, and box entitled "Program Enforcement@' for all cases in which debt is less than $600, exclusive of interest, administrative fees, and penalty charges.

11. a. Insert the penalty amount stated in the order assessing civil penalty or the order of assessment (order).

b. Insert interest computed from date of the order through date of CCLR mailing, using annual interest rate stated in the order or subsequent demand letters.

c. Insert administrative fee used by your regional accounting office, referenced in the Order or subsequent demand letters (currently $12 per month).

d. Insert penalty charges from the date of delinquency through mailing date of the CCLR, at 6% annual rate.

e. Add the amounts listed in a. through d. and insert total.

12. Insert annual rate of interest stated in the Order or subsequent demand letters.

13. Insert the minimum compromise dollar amount that the FAA attorney handling the case will accept.

14. In cases where there is no promissory note, check the second box, and insert 49 U.S.C. app. 1471. In cases in which the debtor has signed a promissory note, check the first box, and amend the second box to read "claim evidenced by note and based upon 49 U.S.C. app. 1471."

15. Insert name and telephone number of the FAA attorney handling the case.

16. Insert debtor's full name.

17. Insert any other name used by debtor.

18. Insert debtor's date of birth, if known.

19. Insert debtor's home phone number, if known.

20 - 23. Insert debtor's employment information, if known.

24. Check "home," unless circumstances warrant differently.

25. Insert name of person filling out the CCLR and state "review of case file."

26 - 33. Insert information regarding company available from the case file. If not available, state "unknown."

34 - 50, 52. Skip these sections.

51 & 53. State "see debtor's financial statement" if one is in the file. Otherwise state "not available."

54 - 56. State "see cover letter."

57 & 58. Skip these sections.

59. Check all under "in general."

60. Insert debtor's full name.

61. Insert FM case file number.

62 - 66. Skip these sections.

67. Insert mailing address of the originating Assistant Chief Counsel's Office.

Page 1 of 7

CLAIMS COLLECTION LITIGATION REPORT (CCLR)

(SEE INSTRUCTIONS ON REVERSE OF EACH PAGE)

1. Agency Claim No. _____ **2. Date** _____

THE CLAIM AT A GLANCE

3. To: (Use Complete Address)

4. From: (Use Complete Address)

5. Debtor's Name & Address:* _____

* *(If a* FORECLOSURE, *insert address* of property here *so claim will be referred* to *USAO where* property b *located.)*

6. Debtor's SSN / **EIN:**

7. Default Date:

8. *SOL* **Expiration** *Date:*

9. Basis for SOL **Expiration Date:**

IO. Referred for:

- ☐ **Enforced Collection**
- ☐ **Judgment Lien Only**
- ☐ **Renew Judgment Lien Only**
- ☐ **Renew Judgment Lien & Enforce Collection**
- ☐ **Program Enforcement**
- ☐ **Foreclosure Only**
- ☐ **Foreclosure & Deficiency Judgment**
- ☐ **DOJ Concurrence for:**
  - ☐ **Compromise (4 CFR 103)**
  - ☐ **Suspension (4 CFR 104)**
  - ☐ **Termination (4 CFR 104)**

10a. ☐ **DEBTOR IN BANKRUPTCY:**

Chapter: 7 11 12 13

11. Amount of **Claim:**

- **a. Total Principal Due** $_____
- b. **Total** *Interest* **Due Through** $_____ mo /day /yr
- **c. Total Administrative Charges** Duo $_____
- **d. Total Penalty Charges** *Due* $_____
- **e. Total amount of Claim** $_____

72 **Annual Rate of Interest** _____ %

13. Compromise Amount or % $_____ *or* ___ %

14. **Basis** *of* **Claim:**

- ☐ **Claim** evidenced *by note,* **guaranty, or surety obligation;** *OR*
- ☐ **Claim not evidenced** *by* **note but** *by* **the following statute** *or* **regulation:** _____

15. *Agency* **Contact:**

Name: _____

Phone Nos.: _____
(FTS and Commercial)

CCLR

(SEE INSTRUCTIONS ON REVERSE OF EACH PAGE)

Agency Claim No. _____

THE INDIVIDUAL DEBTOR

76, **Debtor's Full Name:**	7. **AKA:**
18. **Date of Birth:**	9. **Home Phone** No. (Include **Area Code):**
20. Employer'8 **Name & Address:**	7. **Debtor's** Job **Title:**
	22. **Work Phone No. (Include Area Code):**
	3. **Debtor's Salary: $** _____ ☐ Qrou ☐ **Weekly** ☐ **Monthly** ☐ **Net** ☐ **Biweekly** ☐ **Annually**
24. **Best place for Marshal to serve process** by **personal delivery:** (Do **NOT give** P.O. **Box)** ☐ Home ☐ Work ☐ **Other (Specify)** _____	5. Name of **person** who **verified** above data, **date verified and** how **verified:** _____

THE COMPANY DEBTOR

NOTE: If this claim is to collect a debt owed by an entity other than an individual person, such as a company, partnership, corporation, etc., additional information will be required. In such cases, insert the data called for in blocks 26-33 below and use CCLR Supplementary Data Sheets to furnish additional information, as aporopriate.

26. **Debtor's** Full **Name:**	27. **Debtor's Address:**
28. **DBA:**	28. **Phone** No. **(Include Area Code):**
30. **Type** Of **Business:**	37. **Date & State** of **Incorporation:**

CCLR

(SEE INSTRUCTIONS ON REVERSE OF EACH PAGE)

Agency Claim No. _____

2. Name, Address & Phone Number (Include Area Code) of Service **Agent:**	**3.** Name **of person** who **verified above company** debtor **data, date verified, and how verified:**

CO-DEBTOR(S) / GUARANTOR(S) / CO-SIGNER(S)

4. Full Name(s):	**5.** SSN **/ EIN:**
6. AKA:	**7.** Dote of **Birth:**
8. Home Address & Phone No. (include **Area Code):**	**9. Employer's Name & Address:**
IO. Work Phone No. (Include **Area** Code):	**13. Best place** for **Marshal** to **serve process** by **personal delivery:** (Do **NOT give** P.O. Box) ☐ **Home** ☐ **Work** ☐ **Other (Specify)** _____
11. Co-Debtor's Job Title:	
12. Salary: $_____ ☐ **Gross** ☐ **Weekly** ☐ **Monthly** ☐ **Net** ☐ **Biweekly** ☐ **Annually**	
14. Basis of Liability:	**15. Name of person who verified above data on co-debtor(s)/guarantor(s)/co-signer(s), date verified, and how verified:** _____

CCLR

(SEE INSTRUCTIONS ON REVERSE OF EACH PAGE)

Agency Claim No. _____

FORECLOSURES

NOTE: If this claim is referred for foreclosure only or foreclosure and a deficiency judgment, the following additional data will be required. In such cases, insert the data called for in blocks 46-50 below and use CCLR Supplementary Data Sheets to furnish additional information, as appropriate.

46. Debtor's Address:

47. Mortgage Recording Information:

County _____

Date of Recording _____

Volume (Liber) _____

Page Number (Folio) _____

48. Property Occupancy:

Debtor Resides on Property: Yes ☐ No ☐

Property Is Abandoned: Yes ☐ No ☐

Property occupied by tenant: Yes ☐ No ☐

49. If recovery of chattels is included in the foreclosure, list the chattels here and provide more detailed information on the CCLR Supplementary Data Sheet:

_____

_____

_____

50. List other Federal liens on the property: _____

_____

_____

DEBTOR'S ABILITY TO PAY

51. The debtor/co-debtor owns or is buying the following real or other property (cars, boats, etc.):

_____

_____

_____

52. Assets in which the Government has a secured interest: _____

_____

_____

_____

53. Other Assets: (savings/checking accounts, provide bank and/or credit union name(s) and address(es) and account number(s); deceased debtor's estate, provide administrator/executor information; other sources of income): _____

_____

_____

CCLR

(SEE INSTRUCTIONS ON REVERSE OF EACH PAGE)

Agency Claim No. _____

AGENCY CLAIM HISTORY

54. Date of **last demand** for **payment** to **debtor** end **summary** of **debtor's response:**

_____

_____

_____

55. Details of any compromise or settlement offers made by, or to, the debtor and any responses thereto:

_____

_____

_____

56. Summary of collection ● ction8 **taken** by ● geny: _____

_____

_____

_____

ADDITIONAL INFORMATION

57. For HHS **loans: Medical** or **other professional association locator data:**

_____

_____

_____

58. Addltionel ● gency **comments:**

59. AGENCY CHECK LIST: CCLR package must contain:

In General:

- ☐ **CCLR**
- ☐ **Certificate** of **Indebtedness**
- ☐ **Credit Report**
- ☐ **Payment History,** if Any
- ☐ **Original Notes** or Other **Evidence** of Debt, Including **Assignments, If** Any
- ☐ Summery of **Collection Actions Taken** by **Agency**

Debtor in **Bankruptcy:**

- ☐ Proof Of **Claim,** or Copy **Thereof, Attached**

For **Foreclosures:**

- ☐ **CCLR**
- ☐ **Credit Report**
- ☐ **Original Promissory Note**
- ☐ **Original Real Estate Mortgage**
- ☐ **Original Statement of Account/Affidavit of Amount Due**
- ☐ **Title Evidence, If Available**
- ☐ **Directions To Property If** No **Street Address Available**
- ☐ **Chattel Lien Searches If Chattels Involved**

CCLR

(SEE INSTRUCTIONS ON REVERSE OF EACH PAGE)

Agency Claim No. _____

CCLR SUPPLEMENTARY DATA SHEET

Use this sheet to provide any additional information which might help locate those from whom the claim might be collected and any assets which might be available to satisfy a judgment in favor of the United States. Please indicate the number(s) of the block(s) on the CCLR which any additional data is intended to supplement.

CCLR

(SEE INSTRUCTIONS ON REVERSE OF EACH PAGE)

Page 7 of 7

Agency Claim No. _____

ACKNOWLEDGMENT FORM

(FOLD HERE)

DOJ/USAO ACKNOWLEDGMENT TO AGENCY

60. Debtor's Full Name: _____

61. Agency Claim No.: _____

62. DOJ/USAO Number: _____

63. Received by DOJ/USAO on: _____

64. Received at DOJ/USAO by: _____
(Print Name)

65. Questions?
Contact: _____
(Print Name & Phone Number (Include Area Code) of DOJ/USAO Contact)

(FOLD HERE)

66.

67.

Attachment (6)
[Letter to DOJ Referring debt for collection.]

[Date]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

TO: DEPARTMENT OF JUSTICE
CENTRAL INTAKE FACILITY
1110 Bonifant Street
Suite 220
Silver Spring, MD 20410-3312

Re: [Name of Case], FAA Case No. ##XX#####

Pursuant to 4 C.F.R. part 105, and to Section 901(a)(3) of the Federal Aviation Act of 1958, as amended (Title 49 U.S.C. app. 1471), we transmit this case to you for enforced collection of a civil penalty assessed by the Federal Aviation Administration (FAA).

Enclosed, for your transmittal to the appropriate United States Attorney, are: draft complaint; completed Claims Collection Litigation Report; Certificate of Indebtedness; and a copy of relevant portions of the FM case file (including the [order assessing civil penalty] [order of assessment), subsequent correspondence between the FM and the debtor, and any available financial information concerning the debtor).

Our case file correspondence includes copies of all written demands for payment issued by the FAA to administratively collect this debt. To date, the debtor has failed to submit payment in full. [INSERT SUMMARY OF ANY WRITTEN OR TELEPHONIC RESPONSES FROM DEBTOR.]

Please note that Section 901(a)(3)(B) 'reads as follows:

> (B) NO REEXAMINATION OF LIABILITY OR AMOUNT - In the case of a civil penalty assessed by the Administrator under this paragraph, the issue of liability or amount of civil penalty shall not be reexamined in any subsequent suit for collection of such civil penalty.

This matter does not involve a de novo hearing on the issue of liability or amount of civil penalty. Therefore, we request that you file an action for judgment based on the order that assessed'the civil penalty.

[THE FOLLOWING SHOULD BE INSERTED ONLY WHEN APPROPRIATE:]

Although this debt is less than the $600 minimum referral amount specified by 4 C.F.R. 105.4, referral of this case for enforced collection is important to the FAA's regulatory enforcement program, which qualifies the case for referral.

We would appreciate receiving periodic updates and copies of correspondence showing the status of collection efforts in this case. We will be pleased to assist the appropriate Office of United States Attorney in any way requested. I can be reached at (###) ###-##XI%.

Sincerely,

Assistant Chief Counsel

By: _____
FAA Attorney

Enclosures

SAMPLE CERTIFICATE OF INDEBTEDNESS

OFFICE OF ASSISTANT CHIEF COUNSEL
FEDERAL AVIATION ADMINISTRATION
CITY, STATE

CERTIFICATE OF INDEBTEDNESS

Debtor's Name and Address: _____

_____

_____

Total debt due United States as of [Date]: $_____

I certify that Federal Aviation Administration records show that the debtor named above is indebted to the United States in the amount stated above, plus additional interest of $_____ on the principal balance, accrued from [Date], under section 901(a)(3) of the Federal Aviation Act of 1958, as amended (49 U.S.C. app. 1471). Payment on this indebtedness became delinquent on [Date]. In addition to the principal and interest specified above, the debtor is liable for administrative costs totaling $_____, and a penalty assessment at 6% annual rate from the date of delinquency.

CERTIFICATION: Pursuant to 28 U.S.C. 1746, I hereby certify under penalty of perjury that the foregoing is true and correct.

_____ _____
Date [name and title of certifying official] (ordinarily administrative support staff person)

Attachment (7)
[Sample Complaint to be sent with referral letter to DOJ.]

UNITED STATES DISTRICT COURT
FOR THE XXXXX DISTRICT OF XXXXXXXX

XXXX DIVISION

UNITED STATES OF AMERICA	)	
Plaintiff	)	
v.	)	**Civil Action No.**
JOHN DOE	)	
Defendant	)	

COMPLAINT

The United States of America, represented herein by the Federal Aviation Administration (FAA), hereby files it Complaint against Defendant, JOHN DOE, alleging as follows:

I

This is a civil suit brought by the United States to reduce to judgment a civil penalty assessed against the Defendant by the Federal Aviation Administration (FAA) **pursuant to its civil penalty assessment authority, Section 901(a)(3) of the Federal Aviation Act of 1958, as amended (Title 49 U.S.C. app. 1471(a)(3)) (the FAAct).**

II

Jurisdiction is conferred upon this Court by Sections 901(a)(3) and 903 of the FAAct (Title 49 U.S.C. app. 1471(a)(3) and 49 U.S.C. app. 1473)) and Title 28 United States Code, Sections 1345 and 1355.

III

Defendant JOHN DOE [is a resident of] [does business in] (CITY AND STATE) ; venue is conferred upon this Court by Section 1395 of Title 28, United States Code.

IV

On _____ XX, 19XX, the FAA issued to the defendant a [Notice Of Proposed Civil Penalty] [Notice of Proposed Assessment], advising Defendant that it proposed to assess a civil penalty of $### for violation of Section(s) XXXXXXX of the Federal Aviation Regulations (14 C.F.R. XXXXXX). The Notice advised the defendant of an opportunity for a hearing described in 14 C.F.R. Sections [13.16] [13.18] and 13.201 et seq.

[THE FOLLOWING SHOULD BE INSERTED AS APPROPRIATE]

V

On _____ XX, 19XX, the FM issued to the Defendant a Final Notice of Proposed Civil Penalty, proposing to assess a civil penalty in the amount of $### for violating Section(s) XXXXX of the Federal Aviation Regulations (14 C.F.R. XXXXX), and advising the Defendant that, unless a hearing was requested within 15 days of receipt of the Final Notice of Proposed Civil Penalty, Defendant would have no further right to a hearing.

VI

After due notice, and an opportunity for a hearing [which was held on] [which Defendant did not accept] on _____ xx, 19XX, the FM issued an [Order Assessing Civil Penalty] [Order of Assessment] in the amount of $### for violation of Section(s) XXXX of the Federal Aviation Regulations. The FAA further ordered that the assessed penalty be paid immediately. Attached hereto as Exhibit 1 is a copy of the [Order Assessing Civil Penalty] [Order of Assessment) [decision of the administrative law judge, which under 14 C.F.R. 13.232(d) constitutes an Order Assessing Civil Penalty].

VII

The FAA, by letter(s) dated _____ XX, 19XX, demanded payment of the above-described civil penalty, and advised Defendant of the additional liability for interest, administrative charges, penalties and surcharge, should prompt payment not be made.

VIII

As of this date, the Defendant has not complied with the [Order Assessing Civil Penalty] or [Order of Assessment], in that the Defendant has failed or refused to pay the civil penalty assessment despite having received notice of the proposed civil penalty and an opportunity for hearing, and despite repeated demands by the FAA that the assessment be paid.

IX

In accordance with Sections 901 and 903 of the Federal Aviation Act (49 U.S.C. app. 1471 and 1473), the Defendant is subject to a civil penalty not to exceed [$1,000] [$10,000] for each

violation of the Federal Aviation Regulations, and is now indebted to the United States in the amount assessed by the FAA. In accordance with 31 U.S.C. 3717, the Defendant is also liable for interest, administrative costs, and penalties on the amount assessed, and in accordance with 28 U.S.C. 3011, the Defendant is liable for a surcharge of 10% of the amount of the debt to cover the costs of this enforced collection.

X

Section 901(a)(3)(B) of the Act reads as follows:

> (B) NO REEXAMINATION OF LIABILITY OR AMOUNT – In the case of a civil penalty assessed by the Administrator under this paragraph, the issue of liability or amount of civil penalty shall not be reexamined in any subsequent suit for collection of such civil penalty.

XI

WHEREFORE, the Plaintiff respectfully requests judgment against the Defendant in the assessed amount of $###, plus interest,

administrative costs, penalties, and a surcharge, in amounts which will be specified at the time of trial and such other relief as plaintiff may be entitled.

Respectfully submitted this ___ day of _____, 199_.

XXXXXXXXXXXXXXXXXXXX
United States Attorney

By:

_____
Assistant U.S. Attorney

OF COUNSEL

_____
Attorney
Federal Aviation Administration
Street
City, State, Zip
Phone

'[Follow-up letter to Final NTSB, DOT, or AOA-1 decision. This letter serves as the first required vritten demand.]

[Date] Case No. XX##XXXXXX
[S.S.No. #I#-##-####] or [IRS EIN]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED, and REGULAR MAIL

TO: NAME
ADDRESS
ADDRESS

On [Date], [the National Transportation Safety Board] [an administrative law judge] [the Administrator of the Federal Aviation Administration] issued a decision in this case. That decision, [now a final order of the Administrator under section 901(a)(3) of the Federal Aviation Act of 1958, as amended, constitutes an Order Assessing Civil Penalty] [affirmed the Administrator's Order of Assessment of Civil Penalty] in the amount of $_____.

The amount of civil penalty assessed in that Order constitutes a debt owed to the United States. You have exhausted your right to seek review of the validity or amount of this debt. If this debt is not paid in full within 30 days of your receipt of this letter, the debt is considered delinquent.

For delinquent debts, federal regulation (49 C.F.R. section 89.23) requires us to charge interest, from today's date, at a fixed annual rate of _____%, along with an administrative charge of $ _____ per month, representing our costs of administrative collection. Furthermore, if the full amount assessed is not paid in full within 120 days of your receipt of this letter, we are required to assess an additional penalty at an annual rate of 6%, accruing from the date of delinquency.

Delinquent debts may be reported to consumer reporting agencies or commercial credit bureaus, which could adversely affect your credit rating. Nonpayment of this debt may ultimately result in a referral to a collection agency, the Internal Revenue Service, or to the United States Department of Justice for enforced collection.

If you have any questions concerning this matter, you may contact me at (###) ###-####.

NOTE: Add any other provisions that are applicable under 49 C.R.R. 89.21(G).

Sincerely,

Assistant Chief Counsel

By: _____
FAA Attorney

COMPLIANCE/ENFORCEMENT BULLETIN NO. 94-1

SUBJECT: Streamlined Enforcement Test and Evaluation Program.

1. BACKGROUND: On September 7, 1993, the Vice President's National Performance Review published a report entitled "From Red Tape to Results: Creating a Government that Works Better and Costs Less." That report included a recommendation that the FAA streamline its civil penalty enforcement process by eliminating several of the procedural steps it takes to issue civil penalties in certain minor, uncontested cases. The FAA has determined that streamlined procedures would be most appropriately tested in certain legal enforcement actions that upon initial review appear to be simple and factually straightforward and are uncomplicated to process. On August 26, 1994, Special Federal Aviation Regulation No. 72 (SFAR) was issued revising part 13 of the Federal Aviation Regulations (FAR), Investigative and Enforcement Procedures, as it pertains to the administrative assessment of civil penalties, to establish a program to test streamlined procedures for assessing penalties in certain cases. The proposed changes are intended to streamline the enforcement process by notifying individuals of certain violations and processing these actions within reduced timeframes. The program will be tested only in certain cases against individuals submitting dangerous or deadly weapons for screening at airport checkpoints or in checked baggage where the amount of the proposed civil penalty is less than $5,000.

2. ACTION: Those regions processing actions under the test program should follow the guidance set forth in this bulletin in lieu of paragraphs a through i of Appendix 1, Compliance/Enforcement Bulletin No. 90-10. Those regions not processing actions under the test program should follow the guidance contained in Appendix 1, Compliance Enforcement Bulletin No. 90-10, as well as the guidance set forth in paragraph 3i. of this bulletin.

3. GUIDANCE:

a. General. The test program will apply only to certain alleged violations by individuals presenting dangerous or deadly weapons for screening at airports or in checked baggage for which a civil penalty under $5,000 is proposed. While the FAA considers these violations to be serious, the initial evaluation and processing of most of these cases tends to be uncomplicated. Violations of weapons prohibitions for which a penalty of $5,000 or more is sought ordinarily are more factually complex and involve evidence of several aggravating factors. As a result, these cases tend to be more difficult to process, and, therefore, would not be appropriate for handling under the test program. The FAA does not intend to apply this test program to complex civil penalty actions, including factually complicated cases under $5,000. For instance, cases involving artful concealment of a weapon, explosive, or incendiary, by their very nature, ordinarily involve subjective inferences and circumstances that render a case factually complex because of the nature of the evidence needed to prosecute successfully. While "artful concealment" violations by nonticketed passengers would carry a penalty no higher than $1,000, these types of violations would not be subject to the streamlined enforcement process for the reasons stated above.

The regulatory changes in SFAR No. 72 will be tested in two FAA regions (Great Lakes and Southwest) at three airports (Dallas/Fort Worth International Airport, O'Hare International Airport, and Indianapolis International Airport). The test program may be extended to violations at other airports or regions during the duration of the test program.

b. Initial civil penalty action.

(1) Notice of Violation. A civil penalty action is initiated by issuing a notice of violation (NOV) pursuant to the procedures in SFAR No. 72 and the guidance in this bulletin. The NOV will be issued by the appropriate division manager or deputy division manager of the Civil Aviation Security regional office pursuant to section B of the SFAR. FAA investigative personnel should consult

paragraph 1201b. of this order before initiating a legal enforcement action under this program.

(a) The NOV should set forth the facts alleged, the regulation(s) allegedly violated, and the civil penalty proposed. The NOV should contain a statement showing how the facts constitute a violation of the cited regulation(s).

(b) A form NOV has been created, and ordinarily should be used in cases under this test program. See Figure 1, "Notice of Violation." Each applicable block should be checked and each applicable section of the NOV should be completed with appropriate information in sufficient detail so that the alleged violator can know and understand the charges.

(c) The NOV proposes to assess a civil penalty in a specific amount, and in appropriate cases described below, may also contain a settlement offer to resolve the case immediately with a reduction of the proposed civil penalty. The proposed civil penalty, and any settlement offer, must be stated specifically in the appropriate spaces on the NOV.

(2) Settlement offer in the NOV. In appropriate cases, the FAA may extend to the respondent an offer to resolve the case immediately with a reduction of the proposed civil penalty, on the condition that within 30 days from receipt of the NOV, respondent pays the penalty or agrees to issuance of an order assessing civil penalty in the reduced penalty amount. Generally, this penalty amount will be 50 percent of the proposed civil penalty. The settlement should be offered in all cases under this program except those where the FAA determines that the respondent has a history of involvement in similar incidents; the information available indicates that the violation was intentional; or the FAA has reason to believe that felony charges against the respondent may result based on the facts and circumstances surrounding the violation.

The settlement offer of a reduced penalty expires if the amount is not paid within 30 days, or if, within the

30-day period, the respondent does not agree to the issuance of an order assessing civil penalty in the reduced penalty amount. If the settlement amount is not paid within 30 days, or if, within the 30-day period, the respondent fails to request the issuance of an order assessing civil penalty in the reduced penalty amount, the respondent is subject to the full amount of the civil penalty proposed in the NOV.

If settlement discussions ensue after the 30-day deadline for payment, absent evidence indicating a financial inability to pay, or some other, extraordinary circumstance, the case should not be settled for an amount that would represent a reduction of 50 percent or more of the proposed civil penalty.

(3) Attachment to the NOV. An option sheet should be sent with the NOV. See Figure 2, "Option Sheet." In the option sheet, the alleged violator is advised of the alternatives available for responding to the NOV. The alleged violator must elect one or more of the numbered paragraphs, as appropriate, which describe the different alternatives. The alleged violator may indicate that election on the option sheet. Alternative 1 is to pay the proposed civil penalty (or settlement amount) within 30 days, or to request, within 30 days, that an order assessing civil penalty be issued in the penalty (or settlement) amount. Alternative 2 is to submit information or material demonstrating that a violation of the regulations did not occur or the penalty amount is not warranted by the circumstances. Alternative 3 is to submit a written request to reduce the proposed civil penalty, the amount of reduction, and the reasons and any documents supporting a reduction of the proposed civil penalty, including records indicating a financial inability to pay the proposed penalty or showing that payment would prevent the person from continuing in business. Alternative 4 is to request an informal conference with an agency attorney. Alternative 5 is to request a hearing. The option sheet also provides a means for the respondent to designate a representative. A copy of section 13.16 and part 13, subpart G of the FAR and SFAR No. 72 should also be sent with the NOV.

(4) Service. The division manager or deputy division manager of the appropriate Civil Aviation Security regional office should send the NOV to the individual respondent. The NOV should be sent by certified mail, return receipt requested or personal delivery. If the NOV is returned as undeliverable, the Civil Aviation Security regional office should take appropriate steps to verify the address. The NOV then should be resent immediately by certified mail, return receipt requested and regular mail to the most recent, available address for the respondent.

(5) Time for submission of a response by the respondent. Section B of SFAR No. 72 requires the respondent to submit a response to the NOV not later than 30 days after receipt of the NOV. For purposes of this regulation, timely submission of a response is deemed to have occurred when the response either is put in the mail or personally delivered. Therefore, if on the 30th day after receipt of the NOV the respondent places a response in the mail, the response is timely.

If alternative 1 is chosen in response to the NOV, the respondent should mail the completed NOV option sheet to the appropriate Office of the Assistant Chief Counsel. If the respondent chooses to pay the penalty immediately, the completed NOV option sheet should be sent to the appropriate Office of the Assistant Chief Counsel, and the payment should be sent to the appropriate Office of Accounting. The payment sent to the Accounting Office should be identified by the case number, which should be written on the face of the certified check or money order. If the respondent selects any of the other options, the respondent should return the completed NOV option sheet to the appropriate Office of the Assistant Chief Counsel. The Office of the Assistant Chief Counsel will notify the division manager or deputy division manager of the Civil Aviation Security regional office upon receipt of the completed NOV option sheet.

d. Informal procedures. In cases processed under this test program, section B of SFAR No. 72 provides an opportunity for a person to participate in informal procedures by submitting written information, participating in an informal conference with an FAA attorney, or both. The informal conference may be held by telephone or in

person with an FAA attorney in accordance with the procedures set forth in paragraph 1207 of this order.

e. Coordinating and reevaluating the case. When the respondent submits evidence, information, or views in writing or during an informal conference, agency counsel, and the division manager or deputy division manager of the Civil Aviation Security regional office must consider the evidence or information and reexamine the NOV. Agency counsel, upon consultation with the program office, should make a determination of whether a modification of the alleged regulatory violations and the proposed penalty stated in the NOV are warranted based on the information submitted by the respondent. Allegations that are disproved must be withdrawn. If the sanction proposed is determined to be excessive, it must be reduced appropriately. Unless matters not previously taken into consideration in issuing the NOV are brought to agency counsel's attention, the subsequent action normally should include the FULL sanction proposed in the NOV. If agency counsel determines that a reduced sanction amount is appropriate based on the information provided by the respondent, the reduction shall be taken from the full amount of the proposed civil penalty, not the reduced sanction amount that may have been offered as an immediate settlement.

f. Compromise order. Under section 13.16(l)(1), agency 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, a compromise order is issued. The compromise order states that the respondent agrees to pay a civil penalty, that the FAA makes no finding of violation, and that the order shall not be used by the FAA as evidence of a prior violation in any subsequent civil penalty proceeding or certificate action proceeding. See Figure 3, "Sample Compromise Order."

g. Final notice of violation and civil penalty assessment order. If a respondent does not timely respond to the NOV, or if during informal procedures no agreement is reached for resolving the case, a final notice of violation and civil penalty assessment order ("final notice and order") is issued. See Figure 4, "Sample Final Notice of Violation and Civil Penalty Assessment Order." This document provides the respondent one last opportunity to

request a hearing. It also becomes an order assessing a civil penalty if the respondent pays the civil penalty proposed in the final notice and order, or the respondent does not request a hearing in accordance with the final notice and order and fails to pay the amount of the proposed civil penalty. The final notice and order shall be issued by an Assistant Chief Counsel who has authority to initiate and assess civil penalties.

(1) Contents. The final notice and order should state the facts and statutory and regulatory violations that are alleged in the NOV, and the penalty proposed, unless information received during informal procedures warrants modification of the allegations or proposed penalty. Absent additional, relevant information that agency counsel and the program office determine warrants a modification of the proposed penalty, the final notice and order should include the FULL amount of civil penalty proposed in the NOV. The final notice and order must clearly explain that it becomes an order assessing civil penalty if respondent does not request a hearing or pay the full amount of civil penalty within 15 days. The final notice and order also should state that it becomes an order assessing civil penalty if the respondent pays the amount of civil penalty reflected in the final notice and order. All required debt collection notices should be included in the final notice and order.

(2) Response. The final notice and order offers the following options: (1) pay the proposed civil penalty or (2) request a hearing.

(3) Service. The final notice and order is sent to the respondent or to the person the respondent has designated to receive documents in that civil penalty action. The final notice and order should be sent by certified mail, return receipt requested or personal delivery. If the final notice and order is returned as undeliverable, the Assistant Chief Counsel's office may request the Civil Aviation Security regional office to take appropriate steps to verify the address. The final notice and order then should be resent immediately by certified mail, return receipt requested and regular mail to the most recent, available address for the respondent.

(4) Time for submission of a response by the respondent. Section D of SFAR No. 72 requires the respondent to submit a response to the final notice and order not later than 15 days after receipt. For purposes of this regulation, timely submission of a response is deemed to have occurred when the response is either put in the mail or personally delivered. Therefore, if on the 15th day after receipt of the final notice and order the respondent places a response in the mail, the response is timely.

h. Order assessing civil penalty.

(1) Issuance by Assistant Chief Counsel. An order assessing civil penalty orders the payment of the specified penalty regardless of whether payment of the penalty has been received by the FAA. The order should set forth the findings of fact, the statutory and regulatory violations, and the amount of the penalty assessed. See Figure 5, "Sample Order Assessing Civil Penalty." An order assessing civil penalty is issued by an Assistant Chief Counsel when the person charged with a violation submits, or agrees to submit, the penalty reflected in the NOV or an agreed-upon amount of civil penalty other than the penalty that is reflected in the NOV or final notice and order (in cases where settlement is reached after issuance of an NOV or a final notice and order). Receipt of the amount should be acknowledged in the order if payment is made prior to issuance of the order.

(2) Final agency action. If the 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 a timely petition for judicial review is not filed, the Administrator's decision is considered an order assessing civil penalty. In either event, the letter found at Figure 6, "Sample Follow-up Letter," should be sent.

i. Guidance for immediate settlement of weapons cases arising from violations at airports not identified in the streamlined enforcement test and evaluation program.

In cases involving allegations and an amount of proposed civil penalty described in paragraph a. of this bulletin, when appropriate, an Assistant Chief Counsel may agree to resolve the case immediately with a reduction of the proposed civil penalty, on the condition that within 30 days from receipt of the Notice of Proposed Civil Penalty, respondent pays the penalty or agrees to issuance of an order assessing civil penalty in the reduced penalty amount. Generally, this reduced penalty amount will be 50 percent of the proposed civil penalty. The settlement may be agreed to in all cases except those where the FAA determines that the respondent has a history of involvement in similar incidents; the information available indicates that the violation was intentional; or the FAA has reason to believe that felony charges against the respondent may result based on the facts and circumstances surrounding the violation. In cases where the reduction is appropriate, the notice of proposed civil penalty should be accompanied by a cover letter found at Figure 7 "Sample Cover Letter," informing the respondent of the possibility of settling the case immediately.

The reduced settlement offer expires if the amount is not paid within 30 days, or if, within 30 days, respondent does not request issuance of an order assessing civil penalty in the reduced penalty amount. If the settlement amount is not paid within 30 days, or if, within the 30-day period, the respondent does not request issuance of an order assessing civil penalty in the reduced penalty amount, the respondent is subject to the full amount of the civil penalty proposed in the Notice of Proposed Civil Penalty.

If settlement discussions ensue after the 30-day deadline for payment, absent evidence indicating a financial inability to pay, or some other extraordinary circumstance, the case should not be settled for an amount that would represent a reduction of 50 percent or more of the proposed civil penalty.

FIGURE 1. NOTICE OF VIOLATION

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

NOTICE OF VIOLATION

To: (Name and address)

Date of Violation: _____ Local Time: _____ am/pm

Location:

Airport: _____

Terminal: _____ Checkpoint: _____

city: _____ State: _____

Civil Penalty Amount

Based on the following facts and information, it appears that you violated 49 U.S.C. §46303 and/or specified sections of the Federal Aviation Regulations (FAR). As a result, it has been determined that legal enforcement action is warranted. Passengers may be subject to a maximum civil penalty in the amount of $11,000 per incident. Non-passengers are subject to a maximum civil penalty in the amount of $1,000 per violation (see 49 U.S.C. §46301). Based on the information below, we propose to assess you a civil penalty in the amount of:

$ _____

DESCRIPTION OF INCIDENT

An investigation by the Federal Aviation Administration has been conducted and ● ●♦♦□ consideration of all available information it appears that:

☐ On the date of violation indicated above, you were a ticketed passenger on _____ airline, flight # _____ and presented yourself and your accessible property for inspection before entering a sterile area at the location identified above. During the screening of you and your accessible property, an undeclared, _____ (Loaded/Unloaded) _____ (Make/Model of Firearm) or _____ (Weapon) was discovered.

☐ On the date of violation indicated above you presented yourself and your accessible property for inspection before entering a sterile area at the location identified above. During the screening of you and your accessible property, an undeclared, _____ (Loaded/Unloaded) _____ (Make/Model of Firearm) or _____ (Weapon) was discovered.

☐ On the date of violation indicated above, you tendered for transport a loaded _____ (Make/Model of Firearm) in checked baggage aboard an airplane at the location identified above

☐ On the date of violation indicated above, you tendered for transport an undeclared, unloaded _____ (Make/Model of Firearm) in checked baggage aboard an airplane at the location identified above.

If you have questions concerning this Notice of Violation, you may contact _____ (Special Agent) at _____ (Phone Number).

VIOLATION

☐ **PASSENGER**

49 U S C §46303 prohibits persons from having on or about their persons or accessible property a concealed deadly or dangerous weapon while aboard or attempting to board any aircraft in or intended for operation in air transportation or intrastate air transportation.
Section 107 21(a) of the FAR, 14 C F R 107 21(a), provides that no person may have a deadly or dangerous weapon on or about the individual's person or accessible property when performance has begun of the inspection of the individual's person or accessible property before entering a sterile area, and when entering or in a sterile area.

☐ **NON-PASSENGER**

Section 107 21(a) of the FAR provides that no person may have a deadly or dangerous weapon on or about the individual's person or accessible property when performance has begun of the inspection of the individual's person or accessible property before entering a sterile area, and when entering or in a sterile area.

CHECKED BAGGAGE

☐ Section 108 11(c) of the FAR prohibits any person from transporting or tendering for transport a loaded firearm in checked baggage aboard an airplane.

☐ Section 108 11(d) of me FAR prohibits any person from transporting or tendering for transport an undeclared, unloaded firearm in checked baggage aboard an airplane.

PAYMENT

☐ If, within 30 days of receipt of this notice, you pay or agree to issuance of an order in accordance with the instructions on the enclosed option sheet, the Federal Aviation Administration will accept $ _____, in full resolution of the enforcement action. Enclosed is an option sheet explaining your options in responding to this Notice. **If, within 30 days, you do not pay this amount or agree to issuance of an order, the proposed civil penalty amount found at the top of this page will be sought.**

☐ You may pay the proposed penalty amount found at the top of this page within 30 days of receipt of this Notice. Enclosed is an option sheet explaining your options in responding to this Notice should you decide not to remit payment within 30 days.

Division or Deputy Division Manager Signature & Date		Case Number

FIGURE **2. OPTION SHEET**

Name:_____

Date:_____ Case No.:_____

IMPORTANT: FILL OUT THIS OPTION SHEET AND RETURN IT WITHIN 30 DAYS TO:

Office of the Assistant Chief Counsel for the_____Region
Federal Aviation Administration
Street Address
City, State, Zip

Please find enclosed with this option sheet: a Notice of Violation, section 13.16 and part 13 subpart G of the Federal Aviation Regulations, and Special Federal Aviation Regulation No. 72.

Notice of Violation
Option Sheet

In reply to your Notice of Violation, I elect to proceed as indicated by my check mark beside the numbered paragraph(s) below:

1. **I choose to pay the proposed civil penalty.**

/__/ I hereby submit a certified check or money order payable to the Federal Aviation Administration in the amount of the proposed civil penalty stated in the Notice of Violation with the understanding that an order assessing civil penalty will be issued in that amount without further notice, and that I waive my right to a hearing.

I am sending the payment, with the case number written on the face of the check or money drder to:
Office of Accounting
__[address]_____
_____

Name:_____

Date:_____ Case No.:_____

/__/ I request that an order assessing civil penalty be issued in the amount of the proposed civil penalty stated in the Notice of Violation without further notice and with the understanding that I waive my right to a hearing. I understand that payment of the penalty will be due 30 days from my receipt of the order.

[PLEASE NOTE: If the box checked under the PAYMENT section of the Notice of Violation indicates that the FAA will accept a reduced sanction amount, you must agree to one of the above options and return this form within 30 days. .If you do not pay the penalty within 30 days, or, within 30 days, you do not request issuance of an order assessing civil penalty in the reduced penalty amount, the FAA will seek the full penalty amount found in the shaded box at the top of the Notice of Violation.]

2. **/_/ I am submitting evidence for your consideration.** I hereby submit evidence and information demonstrating that a violation of the regulations did not occur as alleged or that the amount of the penalty is not warranted by the circumstances.

3. **/__/ I am submitting information for your consideration in support of a reduction of the civil penalty.** I hereby submit a written request for a reduction of the civil penalty. I am including the amount of the requested reduction in my written request; I am also submitting information and records (including last year's Federal income tax returns) with my written request showing that I am financially unable to pay the proposed civil penalty, or that payment of the penalty would prevent me from continuing in business.

4. /_/ **I request an informal conference with an agency attorney.**

( ) I hereby request to discuss this matter informally, by telephone, with an FAA attorney. (One of our attorneys will call you at a telephone number you provide here ( ) _____. You will be provided at least 2 weeks advance notice of the date and time of this conference.)

( ) I hereby request to discuss this matter in person at an informal conference with an attorney at an FAA office located in _____, or a mutually convenient location.
NOTE: If you choose to discuss this matter informally by telephone, you should provide in advance any documents or other information you wish to be considered on your behalf.

5. /_/ **I request a formal hearing.**
I hereby request a formal hearing before an administrative law judge in accordance with subpart G of Part 13 of the Federal Aviation Regulations with the understanding that a complaint will be filed by the FAA. I request the hearing to be held in _____. **I am sending a copy of this request to the "Hearing Docket, Federal Aviation Administration, 800 Independence Ave., SW, Room 924A, Washington, DC 20591, Attention: Hearing Docket Clerk."**

Signature:_____

Name (Please print):_____

Address:_____

_____

Telephone:_____

Date:_____

Case No: _____

IF YOU ARE BEING REPRESENTED BY AN ATTORNEY OR OTHER REPRESENTATIVE:

/_/ I request that future documents be sent to my attorney/representative at:

Name: _____

Address: _____

_____

Telephone: _____

FIGURE 3

SAMPLE COMPROMISE ORDER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ms. Annie O. Kley
22 Caliber Way
Pistol, South Gun 00000

Re: Case No. 90NM7785391

COMPROMISE ORDER

On _____, *you were* advised through a Notice of Violation that the FAA proposed to assess a civil penalty in the amount of $_____.

After further consideration, the parties have agreed to settle this matter by the payment of a civil penalty by you, without the FAA making a finding of violation. This settlement does not constitute an admission by you of the truth of any allegations set forth in the Notice of Violation.

This compromise order shall not be used as evidence by the FAA of a prior violation in any subsequent civil penalty proceeding or certificate action proceeding.

NOW, THEREFORE, IT IS AGREED, pursuant to Title 49 U.S.C. section(s) 46301 [***Add, if appropriate:*** and 46303], that you shall pay a civil penalty in the amount of $_____.

[Include one of the following:]

You have executed a promissory note agreeing to pay the agreed-upon amount by mailing or delivering a certified check or money order in the amount of $_____ payable to the Federal Aviation Administration, to Office of Accounting, address, [no later than **Date**] **or** [in accordance with the installment payment schedule set forth in the promissory note].

[or]

We hereby acknowledge receipt of your check in the amount of $_____, which we accept in full settlement of this matter. You may consider this matter closed.

Assistant Chief Counsel

By: _____

FIGURE 4

SAMPLE FINAL NOTICE *OF* VIOLATION AND CIVIL PENALTY ASSESSMENT **ORDER**

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ms. Annie O. Kley
22 Caliber Way
Pistol, South Gun 00000

Re: Case No. 90NM7785391

Final Notice of Violation and Civil Penalty Assessment Order

On_____, you were advised through a Notice of Violation that the FAA proposed to assess a civil penalty against you in the amount of $_____.

[As of the date of this final notice, we have received no response to the Notice of Violation. After consideration of the information available to us, it has been determined that:]

or

[After consideration of the information that you submitted in response to the Notice of Violation, it has been determined that:]

1. [Recitation of the facts--taken from DESCRIPTION OF INCIDENT from the Notice of Violation (or as modified after receiving other information)]

By reason of the foregoing facts and circumstances, you violated the following Federal Aviation Regulations:

a. [Recitation of the regulation(s) and/or statutory provisions violated--taken from REGULATIONS CITED from the Notice of Violation (or as modified after receiving other information).1

In accordance with Title 49 U.S.C. section 46301, you are subject to a civil penalty not to exceed $1,000 for each violation of the regulations. ***[Add, if appropriate:*** In addition, under section 46303 (49 U.S.C. section 46303), you are subject to a civil penalty not to exceed $10,000 for each violation of section 46303.] By reason of the foregoing facts and circumstances, we propose to assess a civil penalty in the amount of $_____.

Within 15 days after your receipt of this final notice, you must elect either to submit the full civil penalty amount or request a hearing in writing. IF YOU FAIL TO REQUEST A HEARING IN WRITING WITHIN 15 DAYS, THIS FINAL NOTICE WILL SERVE AS AN ORDER ASSESSING A CIVIL PENALTY IN THIS MATTER in the amount of $_____ and you will have no further right to a hearing. The amount of civil penalty assessed in this order will constitute a debt owed to the United States and must be paid within 46 days of receipt of this notice. IF YOU FAIL TO REQUEST A HEARING WITHIN 15 DAYS, YOU WILL HAVE EXHAUSTED YOUR RIGHT TO SEEK REVIEW OF THE VALIDITY OR AMOUNT OF THIS DEBT.

Should you elect to submit the civil penalty, please mail or deliver a copy of this final notice, along with a certified check or money order payable to the Federal Aviation Administration, to: Office of Accounting, [street, city, state, zip]. This final notice will serve as an order assessing a civil penalty in this case.

Should you elect to request a formal hearing, you must file a typewritten or legibly handwritten request for hearing with the hearing docket clerk at: Hearing Docket, Attention: Federal Aviation Administration, 800 Independence Ave., SW., Room 924A, Washington, DC 20591 Attention: Hearing Docket Clerk. You must also mail a copy of your request for hearing to the undersigned attorney at [street, city, state, zip]. Your request must be dated and signed, in accordance with section 13.16 of the Federal Aviation Regulations (14 C.F.R. 13.16). A copy of 14 C.F.R. 13.16 and part 13, subpart G of the Federal Aviation Regulations were enclosed with the Notice of Violation.

As noted, this Final Notice of Violation and Civil Penalty Assessment Order will constitute an order assessing a civil penalty if you fail to respond with one of the alternatives described above within 15 days of your receipt of this final notice. You are also advised that if you do not timely file a request for a hearing, and this debt is not paid in full within 46 days of your receipt of this final notice, this debt will be considered delinquent. For delinquent debts, Federal regulation (49 C.F.R. section 89.23) requires us to charge interest from the date of delivery of notice of the debt. Please be advised that interest will begin to accrue 16 days after your receipt of this final notice if this civil penalty is not paid by the due date. The interest will be charged at a fixed annual rate of_____ percent, along with an administrative charge of $_____per month, representing our costs of administrative collection. Furthermore, if the full amount assessed is not paid in full within 120 days of the date that this final notice becomes an order assessing a civil penalty, we are required to assess an additional penalty at an annual rate of 6 percent, accruing from the date of delinquency. Delinquent debts may be reported to consumer reporting agencies or commercial credit bureaus, which could adversely affect your credit rating. Nonpayment of this debt may ultimately result in a referral to a collection agency, the Internal Revenue Service, or to the United States Department of Justice for enforced collection.

Assistance Chief Counsel

By: _____
Attorney

Enclosures

Figure 5

SAMPLE ORDER ASSESSING CIVIL PENALTY
***(For* use in the Streamlined Enforcement Test and Evaluation program)**

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ms. Annie O. Kley
22 Caliber Way
Pistol, South Gun 00000

Re: Case No. 93NM76891
[S.S. No. ###-##-####] or [IRS EIN]

ORDER ASSESSING CIVIL PENALTY

On [Date], you were advised through a [Final Notice of Violation and Civil Penalty Assessment Order] *or* [Notice of Violation1 that the FAA proposed to assess a civil penalty in the amount of $_____

After consideration of all of the available information, including the information you presented [at the informal conference held on [Date]], it has been determined that:

Insert either: [Recitation of the facts--taken from DESCRIPTION OF INCIDENT from the Notice of Violation (or as modified after receiving other information) and recitation of the regulation(s) and/or statutory provisions violated --taken from REGULATIONS CITED from the Notice of Violation (or as modified after receiving other information)] or [findings of fact and violation(s) stated in the Final Notice of Violation and Civil Penalty Assessment Order.]

NOW, THEREFORE, IT IS ORDERED, pursuant to Title 49 U.S.C. section(s) ***46301 [Add, if appropriate:*** and 46303], that you be and hereby are assessed a civil penalty in the amount of $_____.

[Include *one* of the following:]

You are hereby ordered to pay, immediately, the assessed amount by mailing or delivering a certified check or money order in the amount of $_____, payable to "The Federal Aviation Administration," to Office of Accounting, address. This Order Assessing Civil Penalty constitutes a debt owed to the United States. You have now exhausted your right to seek review within the Federal Aviation Administration of the validity and/or amount of this debt. If this debt is not paid in full within 30 days of your receipt of this letter, the debt is considered delinquent. For delinquent debts, Federal regulation (49 C.F.R. section 89.23) requires us to charge interest, from the date this order is delivered, at a fixed annual rate of _____ percent, along with an administrative charge of $_____ per month, representing our costs of administrative collection. Furthermore, if the full amount assessed is not paid in full within 120 days of your receipt of this order, we are required to assess an additional penalty at an annual rate of 6 percent, accruing from the date of delinquency. Delinquent debts will be reported to consumer reporting agencies or commercial credit bureaus, which could adversely affect your credit rating. Nonpayment of this debt may ultimately result in a referral to a collection agency, the Internal Revenue Service, or to the United States Department of Justice for enforced collection.

[or]

We hereby acknowledge receipt of your check in the amount of $_____, which we accept in full settlement of this matter. You may consider the matter closed.

Assistant Chief Counsel

By: _____
Attorney

FIGURE 6 SAMPLE FOLLOW-UP LETTER

[SAMPLE follow-up letter to Final DOT ALJ initial decision, or *FM* decisionmaker decision. This letter serves as the first required written demand after judgment.]

[Date] Case No. XX##XXXXXX
[S.S.No. ###-##-####I or [IRS EIN]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

TO: NAME
ADDRESS

On [Date], [an administrative law judge] [the FAA decisionmaker] issued a decision in this case. That decision, which you did not [appeal] or [petition the Court of Appeals to review], constitutes an Order Assessing Civil Penalty in the amount of $_____

This Order Assessing Civil Penalty constitutes a debt owed to the United States. You have exhausted your right to seek review within the Federal Aviation Administration of the validity and/or amount of this debt. If this debt is not paid in full within 30 days of your receipt of this letter, the debt is considered delinquent.

For delinquent debts, Federal regulation (49 C.F.R. section 89.23) requires us to charge interest, from the date this notice is delivered, at a fixed annual rate of _____ percent, along with an administrative charge of $ _____ per month, representing our costs of administrative collection. Furthermore, if the full amount assessed is not paid in full within 120 days of your receipt of this letter, we are required to assess an additional penalty at an annual rate of 6 percent, accruing from the date of delinquency.

Delinquent debts will be reported to consumer reporting agencies or commercial credit bureaus, which

could adversely affect your credit rating. Nonpayment of this debt may ultimately result in a referral to a collection agency, the Internal Revenue Service, or to the United States Department of Justice for enforced collection.

If you have any questions concerning this matter, you may contact me at (###) ###-####.

Sincerely,

FAA Attorney

FIGURE 7 SAMPLE COVER LETTER

[SAMPLE cover-letter to respondent offering immediate settlement of proposed civil penalty, to be sent with the Notice of Proposed Civil Penalty in appropriate cases, or to offer settlement in appropriate cases already pending.]

[Date] Case No. XX##XXXXXX
[S.S.No. ###-##-####I or [IRS EIN]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

TO: NAME
ADDRESS

Insert either:

[Enclosed please find a Notice of Proposed Civil Penalty, in which we propose to assess a civil penalty against you in the amount of $_____.]

or

[On ___[Date]___ you were advised through a Notice of Proposed Civil Penalty that the FAA proposes to assess a civil penalty in the amount of $_____. 1

Please be advised that the Federal Aviation Administration is willing to settle this matter immediately for $ [50 percent of the proposed penalty] if you pay this amount within 30 days from receipt of this letter, or if you agree, within 30 days from receipt of this letter, to issuance of an order assessing civil penalty in this amount.

You may send your payment, **with the case number written on the face of the check** or **money order** to:

Office of Accounting
__[address]_____
_____

Please notify the undersigned attorney at the address or telephone number below if you are sending payment to the above address.

Within 30 days from receipt of this letter, you may also request that we issue an order assessing civil penalty in the reduced penalty amount of $ [50 percent of proposed penalty] . Payment will be due 30 days from your receipt of the order. Please send your request to the undersigned attorney at:

_____

_____

This offer of settlement is being made in the interest of resource and judicial economy. If, within 30 days, you do not pay the reduced amount offered above or request issuance of an order assessing civil penalty in the reduced amount offered above, the offer expires and we will continue this action, but will seek the full amount of the penalty reflected in the Notice of Proposed Civil Penalty.

If sending letter with the Notice of Proposed Civil Penalty, add:

[Please refer to the option sheet included with the Notice of Proposed Civil Penalty for information regarding other options you have in responding to the notice. You must respond in accordance with the option sheet within 30 days.]

If you choose to pay the reduced penalty amount within **30** days, or within **30** days, you request that we issue an order assessing the reduced penalty amount, you will waive your right to a hearing, and the case will be closed.

If you would like further information regarding immediate payment of the reduced civil penalty offered in this letter, please contact the undersigned attorney at ###-###-####.

Sincerely,

FAA ATTORNEY

APPENDIX 2. STATUTORY AUTHORITY, RESPONSIBILITIES, AND DELEGATIONS

1. DEPARTMENT OF TRANSPORTATION ACT. Under Section 106 of the Department of Transportation Act, the Secretary of Transportation shall carry out the duties and powers of the Federal Aviation Administration. The statute further provides that the Administrator shall carry out--

(1) duties and powers of the Secretary related to aviation safety (except those related to transportation, packaging, marking, or description of hazardous materials) and vested in the Secretary by section 308(b) of this title and sections 306-309, 312-314, 1101, 1105, and 1111 and titles VI, VII, IX, and XIII of the Federal Aviation Act of 1958, as amended: and

(2) additional duties and powers prescribed by the Secretary.

2. FEDERAL AVIATION ACT OF 1958.

a. Section 313(a) of the Federal Aviation Act of 1958, as amended, authorizes the Administrator "to perform such acts, to conduct such investigations, to issue and amend such orders...pursuant to and consistent with the provisions of this Act, as he shall deem necessary to carry out the provisions of, and to exercise and perform his powers and duties under, this Act."

b. Under Sections 313(c) and 1004, the Administrator is granted powers, in the conduct of any public hearing or investigation, to issue subpoenas, administer oaths, receive evidence, examine witnesses, take depositions, and enforce subpoenas.

c. Section 605(b) requires FAA inspectors to make inspections of aircraft, aircraft engines, propellers, and appliances designed for or used in air transportation to determine that they are in safe condition and are properly maintained for operation in air transportation. The section further prohibits an air carrier from using in air transportation any aircraft, aircraft engine, propeller, or appliance that is not in a condition for safe operation. The inspector shall notify the air carrier and, for a period of 5 days thereafter, such aircraft, aircraft engine, propeller, or appliance shall not be used "unless found by the inspector to be in condition for safe operation.

d. Section 1002(a) authorizes any person to file with the Secretary of Transportation a complaint with respect to anything done or omitted to be done by any person in contravention of any provision of the Act or any requirement established pursuant to the Act. It further provides for the investigation or dismissal of such complaints, and requires that complaints against a member of the Armed Forces of the United States, acting in the performance of his official duties, be referred to the Secretary of the department concerned.

e. Section 1002(b) empowers the Secretary of Transportation to institute, on his own initiative, at any time an investigation relating to the enforcement of any of the provisions of the Act.

f. Section 901(a) (1) provides that: "Any person who violates (A) any provision of title III, IV, V, VI, VII, or XII, or of section 1114, of this Act, or any rule, regulation, or order issued thereunder...shall be subject to a civil penalty of not to exceed $1,000 for each such violation...." (Provision for a civil penalty involving hazardous materials is not applicable in that the Hazardous Materials Regulations are issued under the Hazardous Materials Transportation Act: violators are subject to penalties in Section 110 of the Act.)

g. Under Section 901(a) (2), penalties for violations of Titles III, V, VI, or XII may be compromised by the Administrator.

h. Section 901(b) provides that: "In case an aircraft is involved in such violation and the violation is by the owner or person in command of the aircraft, such aircraft shall be subject to lien for the penalty...."

i. Section 903(b)(l) provides procedures for the collection of civil penalties.

j. Section 903(b) (2) and (3) provide procedures for the seizure of aircraft that are subject to liens as provided in Section 901(b).

k. Section 609 authorizes the Administrator to reinspect any civil aircraft, aircraft engine, propeller, appliance, air navigation facility, or air agency or to reexamine any civil airman. It further provides that, as a result of any such reinspection or reexamination or any other investigation, the Administrator may issue an order amending, modifying, suspending, or revoking any type certificate, production certificate, airworthiness certificate, airman 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 transrortation and the public'interest requires such action. The section also provides procedures for: (1) the issuance of such orders: (2) the issuance of emergency orders: (3) appeals of orders to the National Transportation Safety Board (NTSB); and (4) appeals of NTSB orders for judicial review.

1. Section 1005(a) provides that when the Secretary is of the opinion that an emergency exists, requiring immediate action in respect to safety in air commerce, an order may be issued without notice, hearing, or the making of a report and without answer or other form of pleading by the interested party. The statute further requires the Secretary to immediately initiate proceedings relating to the matters embraced in such orders and, insofar as practicable, to give preference to such proceedings over all others under the Act.

m. Section 1006 provides that any order issued by the Secretary or the NTSB under the Act shall be subject to review by the courts of appeals of the United States. The section further provides procedures for the appeal and processing of such cases.

n. Section 1007 authorizes the Secretary, or his duly authorized agents, to apply to the district courts of the United States for the. enforcement of any provision of the Act, or of any order, certificate, or permit issued thereunder. It further authorizes any U.S. attorney, upon request of the Secretary, to institute appropriate actions and prosecute all necessary proceedings for enforcement of such matters.

o. Section 902(a) through (p) and Section 1203 provide for fines or imprisonment for criminal violations of those statutes. The Federal Aviation Administration investigates all such violations, except those involving subsections 902 (i) through (n) , which are investigated by the Federal Bureau of Investigation.

3. HAZARDOUS MATERIALS TRANSPORTATION ACT.

a. Section 109(a) of the Hazardous Materials Transportation Act provides, in pertinent part, that: "The Secretary is authorized, to the extent necessary to carry out his responsibilities under his title, to conduct investigations, make reports, issue subpoenas, conduct hearings, require the production of relevant documents, records, and property, take depositions.... The Secretary is further authorized, after notice and an opportunity for a hearing, to issue orders directing compliance with this title or regulations issued under this title: the district courts of the United States shall have jurisdiction, upon petition by the Attorney General, to enforce such orders by appropriate means."

b. Section 109 (c) provides: "Inspection.--The Secretary may authorize any officer, employee, or agent to enter upon, inspect, and examine, at reasonable times and in a reasonable manner, the records and properties of persons to the extent such records and properties relate to--

(1) the manufacture, fabrication, marking, maintenance, reconditioning, repair, testing, or distribution of packages or containers for use by any person in the transportation of hazardous materials in commerce: or

(2) the transportation or shipment by any person of hazardous materials in commerce.

Any such officer, employee, or agent shall, upon request, display proper credentials . "

c. Section 110 (a) provides that any person who "knowingly" violates any provision of the Act, or a regulation issued thereunder, "shall be subject to a civil penalty of not more than $10,000 for each violation." It further provides that when the Secretary determines, "after notice and an opportunity for a hearing," that a violation has occurred, a civil

penalty "shall be assessed by the Secretary by written notice." The section specifies certain matters to be considered in determining the amount of such penalty, provides for the referral of cases to the Attorney General for the recovery of civil penalties in proceedings in U.S. district courts, and authorizes the Secretary to compromise any such penalty prior to referral to the Attorney General.

d. Section 110(b) provides that any person who "willfully" violates any provision of the Act or the regulations shall, upon conviction, be subject to "a fine of not more than $25,000, imprisonment for a term not to exceed 5 years, or both," for each such offense.

e. Section 111 provides for action in U.S. district court for injunctive relief to redress violations of the Act or regulations, or to eliminate or ameliorate an "immediate hazard" involving the transportation of a hazardous material.

4. AIRPORT AND AIRWAY DEVELOPMENT ACT OF 1970. Section 27 provides that: "The Secretary is empowered to perform such acts, to conduct such investigations and public hearings, to issue and amend such orders, and to make and amend such regulations and procedures, pursuant to and consistent with the provisions of this part, as he considers necessary to carry out the provisions of, and to exercise and perform his powers and duties under, this part."

5. DELEGATION OF AUTHORITY.

a. By the Secretary.. The powers and duties of the Secretary of Transportation under the Federal Aviation Act, the Hazardous Materials Transportation Act, and the Airport and Airway Development Act, which relate to enforcement of laws and regulations pertaining to aviation safety, have been delegated to the Administrator. Section 1.47 of the regulations issued by the Secretary of Transportation provides that the Administrator is delegated authority to:

(1) Carry out the powers and duties transferred to the Secretary of Transportation by, or subsequently vested in the Secretary by virtue of, Section 6(c) (1) of the Department of Transportation Act (49 U.S.C. 1655(c) (1)) , including those pertaining to aviation safety (except those related to transportation, packaging, marking, or description of hazardous materials) and vested in the Secretary by section 308(b) of title 49, U.S.C., and sections 306-309, 312-314, 1101, 1105, and 1111 and titles VI, VII, IX (excluding'section 902(h)), and XII of the Federal Aviation Act of 1958, as amended.

(2) Carry out the functions vested in the Secretary by:

(a) The Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1701 et seq.) , except Sections 3 and 4 (49 U.S.C. 1702, 1703) .

(b) Sections 208 and 209 of the Airport and Airway Revenue Act of 1970, as amended (49 U.S.C. 1742, 1742 note).

(c) Sections 21, 22, 23(b), 24, and 25 of the Airport and Airway Development Act Amendments of 1976 (49 U.S.C. 1346(a), 1348 note, 1713 note, 1356a, 1704).

(3) Carry out the functions vested in the Secretary by 49 U.S.C. 1808(a), (b), and (c), 1809, and 1810 relating to investigations, records, inspections, penalties, and specific relief so far as they apply to the transportation or shipment of hazardous materials by air.

b. By the Administrator. Certain powers and duties of the Administrator to investigate violations of regulations under his jurisdiction and to take appropriate enforcement action have been delegated to various officials within the FAA. Pertinent sections in Part 13 of the Federal Aviation Regulations provide as follows:

(1) Section 13.3(b) states: For the purpose of investigating alleged violations of the Federal Aviation Act of 1958 (except Title V), the Airport and Airway Development Act of 1970, or the Hazardous Materials Transportation Act, or any regulation or order issued under these Acts, the Administrator's authority under sections 313 and 1004 of the Federal Aviation Act, or section 109 of the Hazardous Materials Transportation Act the Administrator's authority has been delegated to the Chief Counsel, the Deputy Chief Counsel, each Assistant Chief Counsel, and each Regional Counsel. For the purpose of investigating alleged violations of Title V of the Act, or any regulation or order issued under it, the Administrator's authority under sections 313 and 1004 has been delegated to the Aeronautical Center Counsel.

(2) Section 13.3(c) states: Ebr the purpose of investigating alleged violations of the Hazardous Materials Transportation Act, or of any regulation or order issued under it, relating to the transportation or shipment by air of hazardous materials, the authority under Section 109 of that Act (49 U.S.C. 1808), as delegated to the Administrator, has been redelegated to the Chief Counsel, the Deputy Chief Counsel, each Assistant Chief Counsel, and each Regional Counsel.

(3) Section 13.11(a) states: If it is determined that a violation or an alleged violation of the Federal Aviation Act of 1958, or an order or regulation issued under it, or of the Hazardous Materials Transportation Act, or an order or regulation issued under it, does not require legal enforcement action, an appropriate official of the Flight Standards Service, 'the Office of Airport Programs, or the Civil Aviation Security Service, or other appropriate FAA official may take administrative action in disposition of the case.

(4) Section 13.15 authorizes the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, and the Assistant Chief Counsel for a region or center to compromise civil penalties involving an amount in controversy in excess of $50,000 under Section 901 of the Federal Aviation Act.

(5) Section 13.16 authorizes the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, and the Assistant Chief Counsel for a region or center to initiate and assess civil penalties under Sections 901 and 905 of the Federal Aviation Act of 1958, as amended, and Section 110 of the Hazardous Materials Transportation Act and to refer cases to the U.S. Attorney General for collection of such penalties.

(6) Section 13.17 states that'an FAA safety inspector, who is authorized in an order of seizure issued by the Regional Director or by the Chief Counsel, may summarily seize an aircraft that is involved in a violation for which a civil penalty may be imposed on its owner or operator. The section prescribes followup actions to be taken in these cases.

(7) Section 13.19 authorizes the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, and each Regional Counsel to exercise the Administrator's authority under Section 609 of the Federal Aviation Act of 1958 to amend, modify, suspend, or revoke any type certificate, production certificate, airworthiness certificate, airman certificate, air carrier operating certificate, air navigation facility certificate, or air agency certificate. These officials may issue notices of proposed certificate action, hold informal conferences, issue orders of suspension, revocation, amendment, or modification, and handle appeals before the NTSB in such cases. The Aeronautical Center Counsel is authorized to issue orders suspending or revoking certificates of aircraft registration as provided in Title V of the Federal Aviation Act of 1958.

(8) Section 13.20 states that the Administrator's authority under Section 1005(a) of the Federal Aviation Act of 1958 to issue emergency orders, including cease and desist orders, is exercised by the Chief Counsel, the Deputy Chief Counsel, each Assistant Chief Counsel and each Regional Counsel, and the Aeronautical Center Counsel.

(9) Section 13.21 authorizes the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, and each Regional Counsel to send reports to the appropriate military authorities for disciplinary actions when members of the Armed Forces, while performing official duties, or civilian employees of the Department of Defense, who are subject to the Uniform Code of Military Justice, have violated the Federal Aviation Act of 1958, or a regulation or order issued under it.

(10) Section 13.25 authorizes the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, each Regional Counsel, or the Aeronautical Center Counsel, when it is determined that a person has engaged, or is about to engage, in any act in violation of the Federal

Aviation Regulations or the Hazardous Materials Regulations, to request the Attorney General to bring an action in U.S. District Court for injunctive relief and punitive damages. It further authorizes the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, and each Regional Counsel to bring, or request the Attorney General to bring, an action in U.S. District Court for an order to suspend or restrict the transportation of a hazardous material by air when it is determined that such transportation would constitute an imminent hazard.

(11) Sections 13.71 through 13.79 authorize the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, and each Regional Counsel, who has reason to believe that a person is engaging in the transportation or shipment by air of a hazardous material in violation of the Hazardous Materials Regulations, to issue a notice of proposed order of compliance and a consent order of compliance, when appropriate, or an order of compliance (when no formal hearing is held).

(12) Section 13.81(a) states: Notwithstanding Sections 13.73 through 13.79, the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, or the Regional Counsel concerned may issue an order of immediate canpliance, which is effective upon issuance, if he finds that:

(1) There is strong probability that a violation is occurring or is about to occur:

(2) The violation poses a substantial risk to health or to safety of life or property: and

(3) The public interest requires the avoidance or amelioration of that risk through immediate compliance and waiver of the procedures afforded under Sections 13.73 through 13.79.

APPENDIX 3. FAA FORM 2150-5, STATISTICAL CODE LISTING

FIELD	TITLE	CODE	DESCRIPTION
19	Type of Operation	01	Air Carrier
		02	Foreign Air Carrier
		03	Commercial Operator & Part 125
		04	Air Taxi Commuter
		05	Air Taxi - Other
		06	Air Travel Club
		07	Personal Transportation
		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	Nonpass'enger
		19	Parachute Jumper
		99	Other
20	Sub Type of Operation	01	Scheduled - Passenger
		02	Scheduled - Cargo
		03	Charter - Passenger
		04	Charter - 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
		17	U.S. Army
		19	U.S. Air Force
		18	U.S. Navy/Marine
		20	U.S. Coast Guard
		21	Certificated Airport (Part 1391
		22	Noncertificated Airport
		23	Aircraft
		24	Engine

FIELD	TITLE	CODE	DESCRIPTION
20	Sub Type of Operation	25	Propeller
		26	Product Parts/Appliance
		27	Pilot (schools1
		28	Mechanic (schools)
		29	Flight Engineer (schools)
		30	Reexamination/Reinspection
		31	Airman - Alcohol
		32	Airman - Drug
		33′	Airman - Falsification
		34	Alcohol/Flight Crew
		35	Drugs/Flight Crew
		36	Falsification/Flight Crew
		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 on Surface
		18	Interference with Crewmember
		19	Noise
		20	Security
		21	Medical
		22	Alcohol/Flight Crew
		23	Drugs/Flight Crew
		24	Falsification/Flight Crew
		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

FIELD	TITLE	CODE	DESCRIPTION
22	Source	06	Local/State Government
		07	Public Complaint
		08	Accident Investigation
		09	Surveillance
		10	Hnroute 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	Halfunction or Defect Report
		19	Special Surveillance or Inspection
		20	Eaxardous Materials Report
		21	Other reports required by FAR/HMR
		22	Aeronautical Center, AAM-130
		23	Aviation Medical Examiner
		24	GASA Inspection - Segment 4
		25	NASIP Inspections
		26	Region Generated Special Surveillance
		27	National Headquarters-Generated Special Surveillance or Inspection
		28	IG Match
		29	ACIEP/Voluntary Disclosure
		99	Other
23	Accident Associated	00	No Accident
		01	Accident Occurred - Not Associated
		01	Accident Occurred - Associated
24	Security Program	01	Firearm
		02	Explosive
		03	Incendiary
		04	Detected - X-ray
		05	Detected - Metal Detector
		06	Detected - Physical search
		07	Weapon Loaded
		08	Weapon Unloaded
		09	Local Arrest
		10	LEO Presence
		11	LEO Authority
		12	LEO Training

FIELD	TITLE	CODE	DESCRIPTION
24	Security Program	13	Law Enforcement Records
		14	Program - Not Approved
		15	Program - Changed Condition
		16	Barriers
		17	Access Points
		18	ID System Implementation - Airport
		19	Failure to Detect - Persons/Vehicles
		20	Failure to Screen Person
		21	Failure to Screen - Carry-On
		22	Failure to Screen Check Baggage
		23	Improper Screening - Person
		24	Improper Screening - Carry-On
		25	Improper Screening - Checked Baggage
		26	Failure to Detect - Weapons
		27	Metal Detector
		28	X-ray Device
		29	Notification to Public - Signage
		30	Dosimeter
		31	Unauthorized Access to Aircraft
		32	Unauthorized Access to AOA - Person
		33	Unauthorized Access to Sterile Area
		34	ID System Implementation - Air Carrier
		35	Cargo Acceptance
		36	Baggage Acceptance,
		37	Bomb Threat/Hi jack Notification
		38	Training - Crewmembers
		39	Training - Screening Personnel
		40	Improper Escort
		41	Armed Escor t
		42	Unauthorized Access to AOA - Vehicle
		43	Tear Gas
		44	Ammunition Accessible
		45	Checked Baggage
		46	Failure to Declare
		47	Failure to Challenge
		48	Discharged
		49	Baggage Claim Tags
		50	Failure to Detect - Test Object
		51	Physical Search
		99	Other

EXPLANATION OF SOME TYPE AND SUB TYPE CODE8

TABLE ID: TYPOP

CODE:

01 Air Carrier - Includes certificated air carriers that are carrying passengers.

03 Commercial Operator - Includes air carriers that are certificated for all-cargo operations.

07 Personal Transportation - a catchall that includes any type of personal transportation. Personal transportation includes, for example, corporate, private companies, and individual businesses.

08 Utility/Industrial - Includes 90% working helicopters and cropdusters.

12 Shippers - Includes anyone (individuals and companies) that ships materials and specif ically, hazardous materials, by air.

14 Uncertified School - Includes primarily freelance flight instructors hired on an individual basis with no school facilities.

16 Uncertified Repair Facility - Includes mechanics, self employed, with no repair station certificate.

17 Passenger - Includes anyone boarding an aircraft, except designated crewmembers.

18 Non Passenger - Includes anyone not boarding ah aircraft, for example, people who see off the aircraft but are not boarding.

TABLE ID: SUBOB

CODE:

01 scheduled - Passenger - Includes certificated air carriers that are carrying passengers.

02 Scheduled - Cargo - Includes air carriers that are certificated for all-cargo operations.

APPENDIX 4 ENFORCEMENT SANCTION GUIDANCE TABLE

INTRODUCTION: This Appendix provides guidance to assure greater national consistency in enforcing the Federal Aviation Regulations. Since the Sanction Guidance Table is only intended to provide general guidance for the exercise of the agency's prosecutorial discretion, it is sufficiently broad and flexible to permit full consideration of all mitigating and aggravating factors.

EMPHASIS APPROACH TO ENFORCEMENT: An increase in instances of noncompliance with a particular regulation, as well as other circumstances, may require analysis of the sufficiency of sanctions previously imposed for violations of that regulation. For example, the number of TCA violations or violations involving flying under the influence of alcohol or drugs may increase, and give rise to a concomitant increase in the number of accidents or incidents. Analysis of sanctions and other information available to FAA regarding such violations may result in an agency determination that the current sanction policy has not provided an effective deterrent. Under these circumstances, safety in air commerce and air transportation and the public interest may require a change in sanction policy and an increase in the severity of sanctions in order to promote vigilance and deter such violations. Notification to field and regional personnel of enforcement activities/areas requiring an emphasis approach will be accomplished through the issuance of Compliance/Enforcement Bulletins. (Order 2150.3A, paragraph 106).

GENERAL GUIDELINES: The Sanction Guidance Table is intended to be used only as internal guidance in selecting an appropriate sanction. Its purpose is to assist, not replace, the exercise of prosecutcrial judgment. Determinations as to whether certificate action or civil penalty action is appropriate should be made in accordance with paragraph 206 of the Canpliance and Enforcement Program, FAA Order 2150.3A. The Table represents the normal range of sanction for a single violation of a particular regulation. Alleged violations will fall within the normal range only when the violator has no prior violations and the actual or potential danger involved is not greater than the maximum degree of danger necessarily inherent in any such violation. Sanctions above or below the normal range may be sought based on other considerations, such as factors of aggravation or mitigation or if necessary to further the Administrator's policy.

PL 100-223, effective December 30, 1987, increased the maximum civil penalty for violations committed by air carriers from $1,000 to $10,000 per violation. The increased civil penalty maximum will serve as an effective deterrent and will decrease the likelihood that low numbers of violations may be acceptable to an operator as a "cost of doing business." Experience has demonstrated that multiple violations of a single regulation often result in a sufficiently deterrent civil penalty, even under the $1,000 maximum. Although the new civil penalty maximum will ordinarily result in a larger civil penalty than was sought under the old maximum, the computation of penalty for multiple violations should not be done simply by multiplying the range of sanction for a single violation of a particular regulation by the number of flights. Rather, judgment should be exercised in determining the seriousness of the

violations and applying a sanction that will serve to deter future violations by the violator or others similarly situated: i.e., the totality of the circumstances surrounding the case should be considered, including past violations.

With respect to certificate actions, multiple violations (i.e., multiple violations of a single regulation, a single violation of multiple regulations, of multiple violations of multiple regulations) may result in a sanction greater than the sum of sanction ranges for the particular violations cited. Where a certificate action for multiple violations does not involve qualifications, but rather is solely disciplinary or punitive, a suspension for a fixed period of days should be imposed to prevent or deter the violator and other persons similarly situated from committing similar violations in the future . Whenever multiple violations demonstrate a lack of qualifications or reason to believe that the certificate holder may lack qualifications, a remedial sanction such as revocation or suspension pending demonstration of qualifications is appropriate.

In selecting an appropriate sanction outside the normal range, various aggravating and mitigating factors and circumstances should be considered. These include the factors listed in FAA Order 1000.9D and FAA Order 2150.3. With respect to individuals, the following should also be considered.

1. Significance in degree of hazard to the safety of other aircraft, persons or property in the aircraft or on the ground, created by the alleged violation:

2. Nature of the violation – inadvertent or deliberate:

3. Past violation history (since past compliance should be the norm, this factor is considered only to assess the need for a greater than normal sanction) ;

4. Alleged violator 's level of experience ;

5. Attitude of alleged violator:

6. Nature of activity involved – private, public or commercial:

7. Ability of alleged violator to absorb the sanction: and

8. Demonstrated lack of qualifications.

NOTE: Whenever a proposed sanction is outside the normal range of Penalties indicated in this Table, it should be coordinated with AGC-200 (Attn: AGC-260) prior to the issuance of the initial enforcement action document. The EIR file should contain a notation of the basis for such departure.

The Sanction Guidance Table describes civil penalties as minimum, moderate or maximum for a single violation of a particular regulation. These terms are defined as follows:

(1) Violations Committed by Air Carriers (on or after 12/31/87).

Maximum $7,500-$10,000
Moderate $4,000-$7,499
Minimum $1,000-$3,999

(2) Violations Committed By Airport Operators.

Maximum $900-$1,000
Moderate $750-$899
Minimum $500-$749

(3) Violations Committed By Air Carrier Personnel.

Maximum $750-$1,000
Mcderate $550-$749
Minimum $500-$549

(4) Violations Committed By Part 125 Operators.

Maximum $750-$1,000
Moder ate $5504749
Minimum $400-$549

(5) Violations Committed By Part 125 Personnel.

Maximum $750-$1,000
Moderate $550-$749
Minimum $500-$549

(6) Violations Committed By General Aviation Owners, Operators, Mechanics, Agencies, and Non-Certificated Persons.

Maximum $750-$1,000
Moderate $550-$749
Minimum $500-$549

(7) Violations of Section 901(d) of the FAAct, Committed by Persons Intending to Board a Flight, Are Subject to a Maximum Civil Penalty of $10,000.

(8) Violations Committed By Repair Stations and Other Institutions.

Maximum $750-$1,000
Moderate $550-$749
Minimum $400-$549

(9) Engineering and Manufacturer Violations.

Maximum $900-$1,000
Moderate $750-$899
Minimum $500-$749

SANCTION GUIDANCE TABLE

	SANCTION PER VIOLATION
I. Air Carriers, Part 125 Operators and Airport Operators.	
A. Maintenance Manual.	
1. Failure to maintain a current manual.	Sus. until manuals are made current to 7 day sus and thereafter until manuals are made current.
2. Failure to provide adequate instructions and procedures in manual.	Mod. to max. c.p.
3. Failure to distribute manual to appropriate personnel.	Mod. c.p.
4. Release of aircraft without required equipment.	Max. c.p. to 7 day sus.
B. Failure to Comply With Airworthiness Directives.	Mod. to max. c.p.
C. Operations Specifications.	
1. Failure to comply 'with inspection and overhaul time limitations.	Max. c.p. to 7 day sus.
2. Operations contrary to operations specifications.	Max. c.p.

	SANCTION PER VIOLATION
D. Failure to Provide Adequately for Proper Servicing, Maintenance, Repair and Inspection of Facilities and Equipment.	Max c.p. to sus. until proper servicing maintenance, repair and inspection of facilities and equipnent is provided.
E. Failure to Provide or Maintain a Maintenance & Inspection Organization.	Max. c.p. to sus. until an appropriate maintenance and inspection organization is provided.
F. Training Program.	
1. Failure to have or maintain an effective training program.	Max. c.p. to sus. until canpliance is demonstrated.
2. Failure to train specific personnel adequately.	Mod. to max. c.p.
G. Failure to Insure that Maintenance Release is Completed and Signed.	Mod. to max. c.p.
H. Performance of Maintenance by Unauthorized Persons.	Max. c.p.
I. Failure to Perform or Improper Performance of Maintenance.	Max. c.p.
J. Failure to Revise Aircraft Data After Repair.	Mod. to max. c.p.
K. Records and Reports.	
1. Failure to make accurate mechanical interruption summary report.	Mod. to max. c.p.
2. Failure to make available reports of major alterations or repairs.	Mod. to max. c.p.

	SANCTION PER VIOLATION
3. Failure to make accurate mechanical reliability reports.	Mod. to max. c.p.
4. Failure to make required entry in aircraft log.	Mod. to max. c.p.
5. Failure to keep maintenance records.	Max. c.p. to 7 day sus. and thereafter until aircraft is in airworthy condition.
6. Failure to make available pilot records.	Mod. to max. c.p.
7. Failure to make available load manifests.	Mod. to max. c.p.
L. Oneration of an Unairworthy Aircraft .	
1. Technical non-conformity to type certificate, but 'no likely effect (potential or actual) on safe operation.	Min. c.p.
2. Non-conformity which may have an adverse effect on safety of operation.	Mod. c.p.
3. Non-conformity which has an adverse effect (actual or potential) on safe operation.	Max. c.p.
M. .Serving Alcoholic Beverages to or Boarding a Person Who Appears to Be Intoxicated.	Max. c.p.
N. Failure to Make Available a Seat on the Flight Deck for Enroute Inspectors.	Max. c.p.
0. Using an Unqualified Crewmember .	Max. c.p.
P. Improperly Returning Aircraft to Service.	Max. c.p.

	SANCTION PER VIOLATION
Q. Illegal Carriage of Controlled Substance with Knowledge of Carrier, i.e. Knowledge of Management Personnel.	Rev.
R. Security Violations.	
1. Failure to properly screen baggage or each passenger.	Max. c.p.
2. Unauthorized access to Airport Operations Area.	Max. c.p.
3. Failure to comply with Air Carrier Security Program (includes failure to detect weapons, incendiary and other dangerous devices).	Max. c.p.
4. Management personnel coerce, condone, or encourage falsification of records/reports.	Rev.
5. Deliberate failure to maintain employee records.	Max. c.p.
6. Failure to challenge.	Mod. c.p.
7. Failure to test screeners or test equipment.	Mod. c.p.
8. Failure to properly train.	Mod. c.p.
9. Unintentional failure to maintain screener/CSS test records.	Min. to mod. c.p.
10. Improper use of dosimeters.	Min. c.p.
11. Failure to display I.D.	Min. to mod. c.p.
12. Failure to manage/control I.D. System.	Max. c.p.
13. Failure to conduct background check.	Min. to mod. c.p.
14. Failure to detect test objects.	Max. c.p.
15. Failure to comply with approved or current security program.	Max. c.p.

	SANCTION PER VIOLATION
16. Failure of LEO to respond in a timely manner.	Max. c.p.
II. Personnel of Air Carriers and Part 125 Operators.	
A. Maintenance Performed By Unauthorized Personnel.	
1. Without certificate.	Max. c.p.
2. Exceeding limitations.	30 to 45 day sus.
B. Failure to Properly Perform Maintenance.	30 to 120 day sus.
C. Inspection Personnel.	
1. Failure to make required.	30 to 60 day sus.
2. Making improper inspection.	30 to 120 day sus.
3. Improperly releasing an aircraft to service.	30 to 60 day sus.
D. Records and Reports.	
1. Failure to make entries. in aircraft log.	15 to 60 day sus.
2. Failure to make entries in worksheets.	15 to 30 day sus.
3. Failure to sign off work or inspection performed.	15 to 30 day sus.
4. Failure to complete and sign maintenance release.	15 to 30 day sus.
5. Falsification of records or reports.	Rev.
E. I&leasing Aircraft for Service Without Required Equipment.	30 to 60 day sus.

	SANCTION PER VIOLATION
F. Pre-Flight.	
1. Failure to use pre-flight cockpit checklist. .	15 to 30 day sus.
2. Failure to check aircraft logs, flight manifests, weather, etc.	30 to 90 day sus.
G. Taxiing.	
1. Failure to adhere to taxi clearance or instruction.	30 to 60 day sus.
2. Collision while taxiing.	30 to 120 day sus.
3. Jet blast.	30 to 180 day sus.
4. Taxiing with passenger standing..	30 to 60 day sus.
H. Takeoff.	
1. Takeoff against instruction or clearance.	60 to 120 day sus.
2. Takeoff below weather minimums.	60 to 120 day sus.
3. Takeoff in overloaded aircraft.	60 to 120 day sus.
I. Enroute.	
1. Deviation from clearance or instruction.	30 to 90 day sus.
2. Operating VFR within clouds.	90 day sus. to rev.
3. Operation of unairworthy aircraft.	30 to 180 day sus.
4. Unauthorized departure from flight deck.	15 to 30 day sus.
5. Operating within restricted or prohibited area, or within positive control area.	30 to 90 day sus.

	SANCTION PER VIOLATION
6. Operating without required equipment.	15 to 120 day sus.
7. Fuel mismanagement/exhaustion.	30 to 150 day sus.
J. Approach to Landing.	
1. Deviation fran clearance or instruction in terminal area.	30 to 90 day sus.
2. Approach below weather minim.	45 to 90 day sus.
3. Exceeding speed limitation in airport traffic areas.	30 to 60 day sus.
K. Landing.	
1. Landing at wrong airport.	90 to 180 day sus.
2. Deviation from instrument approach procedure.	30 to 90 day sus.
3. Overweight landing.	30 to 90 day sus.
4. Hard landing.	15 to 60 day sus.
5. Short or long landing.	30 to 180 day sus.
6. Wheels up landing.	30 to 180 day sus.
7. Failure to comply with preferential runway system.	Max. c.p. to 15 day sus.
L. Unauthorized Admission to Flight Deck.	30 to 90 day sus
M. Failure to Close and Lock Cockpit Door.	Max. c.p. to 30 day sus.
N. Acting as Flight Crewmember While Under the Influence of Liquior or Drugs, or Alcoholic Beverage Consumption within 8 hours.	Emergency rev.

	SANCTION PER VIOLATION
0. Denial of Authorized Entry to Flight Deck.	30 to 60 day sus.
P. Flight and Duty Time Limitations.	15 to 90 day sus.
Q. Operation Without Required Certificate or Rating.	
1. Medical certificate.	15 to 60 day sus.
2. Lack of type rating.	180 day sus. to rev.
3. Missed proficiency check.	30 to 90 day sus.
4. Lack of current experience.	30 to 90 day sus.
5. Failure to have current certificate in possession.	Mod. c.p. to 7 day sus.
R. Operation with Known Physical Disability.	Rev.
III. Individuals and General Aviation - Owners, Pilots, Repair Stations, Maintenance Personnel.	
A. Owners and Operators Other Tha. Required Crewmembers.	
1. Failure to comply with airworthiness directives.	Mod. to max. c.p.
2. Failure to perform or improper performance of maintenance, including required maintenance'.	Mod. to max. c.p.
3. Failure to make proper entries in aircraft logs.	Min. to mod. c.p.
4. Operation of aircraft beyond annual, 100-hour or progressive inspection.	Min. to mod. c.p.

	SANCTION PER VIOLATION
5. Operation of unairworthy aircraft .	Mod. to max. c.p.
6. Falsification of any record.	Rev.
B. Repair Stations.	
1. Failure to provide adequately for proper servicing, maintenance repairs, and inspection.	Mod. to max. c.p.
2. Failure to provide adequate personnel who can perform, supervise and inspect work for which the station is rated.	Max. c.p. to 7 day sus. and thereafter until adequate personnel are provided.
3. Failure to have enough qualified personnel to keep up with the volume of work.	Max. c.p. to 7 day sus. and thereafter until certificate holder has enough qualified personnel.
4. Failure to maintain records of supervisory and inspection personnel.	Mod. to max. c.p.
5. Failure to maintain performance records and reports.	Mod. to max. c.p.
6. Failure to insure correct calibration of all inspection and test equipment is accanplished at prescribed intervals.	Min. to max. c.p.
7. Failure to set forth adequate description of work performed.	Min. to mod. c.p.
8. Failure of mechanic to make log entries, records or reports.	Mod. to max. c.p.
9. Failure to sign or complete maintenance release.	Min. to mod. c.p.
10. Inspection of work performed and approval for return to service by other than a qualified inspector.	Max. c.p. to 30 day sus.

	SANCTION PER VIOLATION
11. Failure to have an adequate inspection system that produces satisfactory quality control.	Mod. c.p. to 30 day sus. and thereafter unit1 an adequate inspection system is attained.
12. Maintaining or altering an article for which it is rated, without using required technical data, equipment or facilities.	Max. c.p. to 30 day sus.
13. Failure to perform or properly perform maintenance, repairs, alterations, and required inspections.	Mod. c.p. to 30 day sus.
14. Maintaining or altering an airframe, powerplant, propeller, instrument, radio or accessory for which it is not rated.	Max. c.p. to rev.
15. Failure to report defects or unairworthy conditions to FAA in a timely manner.	Mod. to max. c.p.
16. Failure to satisfy housing and facility requirements.	Mod. c.p. to sus. until housing and facility requirements are satisfied.
17. Change of location, housing or facilities without advance written approval.	Mod. c.p. to sus. until approval is given.
18. Operating as a certificated repair station without a repair station certificate.	Max. c.p.
19. Failure to permit FAA to inspect.	Max. c.p. to sus. until FAA is permitted to inspect.
c. General Aviation Maintenance Personnel.	
1. Failure to revise aircraft data after major repairs or alterations.	30 to 60 day sus.

	SANCTION PER VIOLATION
2. Failure to perform or improper performance of maintenance.	30 to 120 day sus.
3. Failure of mechanic to properly accanplish inspection.	30 to 60 day sus.
4. Failure of mechanic to record inspection.	Min. c.p. to 30 day sus.
5. Failure of IA holder to properly accomplish inspection.	60 to 180 day sus. of IA.
6. Failure of IA holder to record inspection.	Mod. c.p. to 30 day sus. of IA
7. Maintenance performed by person without a certificate.	Mod. to max. c.p.
8. Maintenance performed by person who exceeded certificate limitations.	15 to 60 day sus.
9. Improper approval for return to service.	Mod. c.p. to 60 day sus.
10. Failure to make maintenance record entries.	Mod. c.p. to 60 day sus.
11. Failure to set forth adequate description of work performed.	Min. c.p. to 30 day sus.
12. Falsification of maintenance records.	Rev.
D. Student Operations.	
1. Carrying passengers.	Rev.
2. Solo flight without required endorsement.	45 to 90 day sus.
3. Operation on international flight.	60 to 90 day sus.
4. Use of aircraft in business.	90 to 120 day sus.

	SANCTION PER VIOLATION
5. Operation for compensation or hire.	Rev.
E. Flight Instructors.	
1. False endorsement of student pilot certificate.	Rev.
2. Exceeding flight time limitations.	30 to 90 day sus.
3. Instruction in aircraft for which he/she is not rated.	30 to 90 day sus.
F. Operational Violations.	
1. Operation without valid airworthiness or registration certificate.	30 to 90 day sus.
2. Failure to close flight plan or file arrival notice.	Admin. action to Min. c.p.
3. Operation without valid pilot certificate (no certificate).	Max. c.p.
4. Operation while pilot certificate is suspended.	Emergency rev.
5. Operation without pilot or medical certificate in personal possession.	Admin. action to 15 day sus.
6. operation without valid medical certificate.	30 to 180 day sus.
7. Operation for canpensation or hire without commercial pilot certificate.	180 day sus. to rev.
8. Operation without type or class rating.	60 to 120 day sus.

	SANCTION PER VIOLATION
9. Failure to comply with special conditions of medical certificate.	90 day sus. to rev.
10. Operation with known physical deficiency.	90 day sus. to rev.
11. Failure to obtain preflight information.	30 to 90 day sus.
12. Deviation from ATC instruction or clearance.	30 to 90 day sus.
13. Taxiing, takeoff, or landing without a clearance where ATC tower is in operation.	30 to 90 day sus.
14. Failure to maintain radio communications in airport traffic area.	30 to 60 day sus.
15. Failure to comply with airport traffic pattern.	30 to 60 day sus.
16. Operation in TCA without or contrary to a clearance.	60 to 90 day sus.
17. Operation in ARSA without maintaining contact with ATC.	30 to 60 day sus.
18. Failure to maintain altitude in airport traffic area.	30 to 60 day sus.
19. Exceeding speed limitations in traffic area.	30 to 60 day sus.
20. Operation of unairworthy aircraft.	36 to 180 day sus.
21. Failure to comply with Airworthiness Directives.	30 to 180 day sus.
22. Operation without required instruments and/or equipment.	30 to 90 day sus.

	SANCTION PER VIOLATION
23. Exceeding operating limitations.	30 to 90 day sus.
24. Operation within prohibited or restricted area, or within positive control area.	30 to 90 day sus.
25. Failure to adhere to right of way rules.	30 to 90 day sus.
26. Failure to comply with VFR cruising altitudes.	30 to 90 day sus.
27. Failure to maintain required minimum altitudes over structures, persons or vehicles;	
a. congested area:	60 to 180 day sus.
b. sparsely populated areas.	30 to 120 day sus.
28. Failure to maintain radio watch while under IFR.	30 to 60 day sus.
29. Failure to report compulsory reporting points.	30 to 60'day sus.
30. Failure to display position lights.	30 to 60 day sus.
31. Failure to maintain proper altimeter settings.	30 to 60 day sus.
32. Weather operations:	
a. Failure to comply with visibility minimums in controlled airspace:	60 to 180 day sus.
b. Failure to comply with visibility minimums outside controlled airspace:	30 to.120 day sus.
c. Failure to comply with distance from clouds requirements in controlled airspace:	60 to 180 day sus.

	SANCTION PER VIOLATION
d. Failure to comply with distance from clouds requirements outside of controlled airspace.	30 to 120 day sus.
33. Failure to comply With IFR landing minimums.	45 to 180 day sus.
34. Failure to comply with instrument approach procedures.	45 to 180 day sus.
35. Careless or reckless operations	
a. Fuel mismanagement/exhaustion.	30 to 150 day sus.
b. wheels up landing.	30 to 60 day sus.
c. Short or long landing.	30 to 90 day sus.
d. Landing on or taking off fran closed runway.	30 to 60 day sus.
e. Landing or taking off from ramps or other improper areas.	30 to 120 day sus.
f. Taxiing collision.	30 to 90 day sus.
g. Leaving aircraft unattended with motor running.	30 to 90 day sus.
h. Propping aircraft without a qualified person at controls.	30 to 90 day sus.
36. Passenger operations.	
a. Operation without approved seat belts.	30 to 60 day sus.
b. Carrying passengers who are under the influence of drugs or alcohol.	60 to 120 day sus.
c. Performing acrobatics when all passengers are not equipped with approved parachutes.	60 to 90 day sus.

	SANCTION PER VIOLATION
d. Use of unapproved parachutes.	30 to 60 day sus.
e. Permitting unauthorized parachute jumping.	30 to 90 day sus.
f. Carrying passengers without recent flight experience.	30 to 120 day sus.
37. Operation while under the influence of drugs or alcohol, or consumption within 8 hours:	
a. Under the influence or .04 and above blood alcohol:	Rev. to emergency rev.
b. Within 8 hours.	180 day sus. to rev.
38. Dropping of objects from an aircraft.	30 to 60 day sus.
39. Unauthorized towing.	30 to 60 day sus.
40. Acrobatic flight on airways, over congested areas, below minimum altitudes, etc.	90 to 180 day sus.
41. Falsification of applications, certificates, records, etc.	Rev.
42. Taking off with insufficient fuel.	30 to 150 day sus.
43. Operating so as to cause a collision hazard.	60 to 180 day sus.
44. Failure to produce pilot certificate, log and records.	30 day sus. and thereafter until certificate, log, records are produced.
45. Conviction for unlawful carriage of a controlled substance on an aircraft.	Rev.
46. Drug conviction when an aircraft is not involved.	180 day sus. to rev.

	SANCTION PER VIOLATION
G. Security Violations bv Individuals.	
CHECKED. BAGGAGE:	
1. Failure to declare unloaded firearm:	Admin. - $150
2. Loaded firearm:	$300 - 1,000
3. Incendiary/explosive:	$5,000 - 10,000 or crim. ref.
NON-PASSENGERS: No intent to board.	
4. Possession of firearm (unloaded, unloaded with ammunition accessible, or loaded), or other dangerous or deadly weapon (including stun guns):	
At screening point:	
with no aggravating circumstances	Admin.
with aggravating circumstances	$500 - 1,000
In sterile area:	
with no aggravating circumstances	Admin. - $500
with aggravating circumstances	$750 - 1,000
5. Artful concealment of firearm (loaded or unloaded) or other dangerous or deadly weapon (including stun guns), at screening point or in sterile area.	$1,000
6. Possession of, or artful concealment of, incendiary/explosive at screening point or in sterile area with no intent to board a flight.	$1,000

SANCTION PER VIOLATION

PASSENGERS: Intent to board.

7. Possession of dangerous or deadly weapon (including stun guns, mace, etc. but excluding firearms and incendiary/explosives) that would be accessible in flight in **air** transportation:

At **screening point**:	
with no aggravating circumstances	Admin.
with aggravating circumstances	$500 - 1,000
In sterile area or aboard aircraft:	
with no aggravating circumstances	Admin. - $500
with aggravating circumstances	$750 - 1,000

8. Possession of firearm that would be accessible in flight in air transportation:

At **screening point**:	
with no aggravating circumstances	
unloaded/ammunition not accessible	Admin. - $500
unloaded/ammunition accessible	Admin. - $750
loaded	Admin - $1,000

	SANCTION PER VIOLATION
with aggravating circumstances	
unloaded/ammunition not accessible	$1,000 - 2,000
unloaded/ammunition accessible	$2,000 - 3,000
loaded	$2,500 - 5,000
In sterile area or aboard aircraft:	
with no aggravating circumstances	
unloaded/ammunition not accessible	$500 - 750
unloaded/ammunition accessible	$750 - 1,000
loaded	$1,000 - 2,000
with aggravating circumstances	
unloaded/ammunition not accessible	$1,500 - 2,500
unloaded/ammunition accessible	$2,500 - 3,500
loaded	$3,500 - 7,500
9. Artful concealment of dangerous or deadly weapon (including stun guns, but excluding firearms and incendiary/explosives), at screening point, in sterile area, or aboard aircraft.	$2,500 - 5,000 or crim. ref.

	SANCTION PER VIOLATION
10. Possession of incendiary/explosive at screening point, in sterile area, or aboard aircraft that would be accessible in flight in air transportation.	$5,000 - 10,000 or crim. ref.
11. Artful concealment of firearm or incendiary/explosive, at screening point, in sterile area, or aboard aircraft.	$7,500 - 10,000 or crim. ref.
OTHER ACTS:	
12. Entering sterile area after failing to submit to screening.	
Non-aggravated	$100 - 250
Aggravated	$500 - 1,000
13. Imparting or conveying false information concerning an attempt to do an act that would be a crime prohibited by sec. 902(i), (j), (k), or (l).	$7,500 - 10,000
14. Threatening overt act or other intent to use or dangerously display firearm, incendiary/explosive, or other deadly or dangerous weapon (including stun guns).	$10,000 or crim. ref.

SANCTION PER VIOLATION

15. Violation of FAAct Sections 902 (i), (j), (k), (l), or (m). crim. ref.

Aggravating circumstances include prior violation history or evidence of intentional conduct.

Administrative Action can be taken in cases with mitigating circumstances. Mitigating circumstances include such factors as: another individual having primary responsibility for the presence of the weapon at the airport; concurrent state/local prosecution; the traveling sophistication of the passenger involved; age and capacity of the violator; or similar factors either bearing upon the culpability of the violator or upon his compliance disposition.

SPECIAL CONSIDERATION IN HANDGUN CASES: P.L. 98-473 (eff. October 12, 1984), added new subsection (d) to Section 901 of the Federal Aviation Act. The legislative history is found in the 1984 U.S. Code Congressional and Administrative News, at pp. 3687-3688. For the related Justice Department policies and procedures, see the United States Attorney's Manual (USAM) g-63.000 et. seq. Section 901(d) of the Act increases the maximum civil penalty from $1,000 to $10,000 for persons who carry weapons or have weapons accessible to them on a flight in air transportation or while boarding or attempting to board an aircraft.

The recommended Table of penalties for this offense is NEVER intended as a substitute for vigorous criminal prosecution when warranted by the facts and circumstances and deemed appropriate by the cognizant state and Federal authorities. Such criminal prosecution may range from weapon forfeiture to a criminal fine to the imposition of a sentence, suspended or otherwise. Therefore, be alert to the following:

a. When state prosecution has been undertaken, determine the results and consider what, if any, reduction in the Federal civil penalty may be warranted.

b. If Federal criminal prosecution has been undertaken, civil penalty action should be initiated pnlv after coordination with the U.S. Attorney and a decision has been made that a civil penalty is appropriate.

	SANCTION PER VIOLATION
b. Unloaded/ammunition accessible.	$2,000.
c. Loaded firearm.	$2,500.
d. Artfully concealed firearm or other intent to preclude detection, loaded or unloaded.	$5,000 to $10,000 and criminal referral.
e. Threatening overt act or other intent to use or dangerously display firearm.	$10,000 and criminal referral.
f. Incendiary/explosive.	$10,000 and criminal referral.

*SPECIAL CONSIDERATIONS IN HANDGUN CASES: P.L. 98-473 (eff. October 12, 1984), added new subsection (d) to Section 901 of the Federal Aviation Act. The legislative history is found in the 1984 U.S. Code Congressional and Administrative News, at pp. 3687-3688. For the related Justice Department policies and procedures, see the United States Attorney's Manual (USAM) 9-63.000 et seq.. Section 901(d) of the Act increases the maximum civil penalty from $1,000 to $10,000 for persons who carry weapons or have weapons accessible to them on a flight in air transportation or while boarding or attempting to board an aircraft.

The recommended Table of penalties for this offense is NEWER intended as a substitute for vigorous criminal prosecution when warranted by the facts and circumstances and deemed appropriate by the cognizant state and Federal authorities. Such criminal prosecution may range from weapon forfeiture to a criminal fine to the imposition of a sentence, suspended or otherwise. Therefore, be alert to the following:

a. When state prosecution has been undertaken, determine the results and consider what, if any, reduction in the Federal civil penalty may be warranted.

b. If Federal criminal prosecution has been undertaken, civil penalty action should be initiated only after coordination with the U.S. Attorney and a decision has been made that a civil penalty is appropriate.

c. The case law cited in the USAM, while principally criminal, can serve as a parallel in civil prosecutions, particularly the sections dealing with "Deadly or Dangerous," "Specific Intent," "Concealment." For a case holding for strict liability, see U.S. v. Gutierrez, 624 F. Supp. 759 (ED NY 1985).

	SANCTION PER VIOLATION
IV. Engineering and Manufacturer Violations.	
A. Production Under Type Certificate Only.	
1. Failure to establish and maintain an approved production inspection system within 6 months from date of issuance of type certificate and ensure that each product conforms to the type design and is in condition for safe operation. (FAR 21.123(c), 21.125, 21.127, 21.128, and 21.129).	Mod. to max. c.p. and/or discontinue issuance of airworthiness (A.W.) certificate or approval until system complies.
2. Failure to maintain technical data and drawing at the place of manufacture, as necessary, to determine conformity to the type design data (FAR 21.123(b)).	Min. to max. c.p. and/or discontinue until system complies.
B. Approved Production Inspection System (APIS) Holders.	
1. Failure to maintain an approved inspection system that ensures that each product conforms to the type design (FAR 21.123(c), 21.125 and 21.130).	Mod. to max. c.p. and/or discontinue issuance of A/W cert. or approval until system complies.
2. Failure to maintain an approved inspection system that ensures that each product is in a condition for safe operation (FAR 21.123(c) and 21.125).	Mod. to max. c.p. and/or discontinue issuance of A/W cert. or approval until system complies.
3. Failure to maintain inspection records for completed products and retaining them for at least 2 years after the product is certificated (FAR 21.123(c) and 21.125(b) (10)).	Mod. to max. c.p.
4. Failure to flight test each aircraft as a final check of the operation of the completed product, using FAA approved production flight test procedures and flight test check-off form (FAR 21.127).	Mod. to max. c.p.

	SANCTION PER VIOLATION
5. Failure to conduct test runs on production engines as required by FAR 21.128.	Mod. to max. c.p.
6. Failure to conduct functional tests on production propellers as required by FAR 21.129.	Mod. to max. c.p.
C. Production Certificate Holders (Including Delegation Option Manufacturers).	
1. Refusal to make individual products available for FAA inspections and tests (FAR 21.157 and Federal Aviation Act of 1958, Title IX, Section 609 and Title VI, Section 901(a) (1)).	Mod. to max. c.p. or sus. of P.C. or withdrawal of Del Op approval.
2. Failure to make information available regarding all delegations of authority to subsidiary manufacturers or suppliers (FAR 21.143(b)).	Mod. to max. c.p. or sus. of P.C. or withdrawal of Del Op approval.
3. Failure to immediately notify the FAA in writing of any quality control system changes at prime manufacturer's main or outlying facilities and subsidiary manufacturers or suppliers affecting the inspection, conformity, or airworthiness of the product (FAR 21.147).	Min. to max. c.p.
4. Failure to surrender a production certificate for cancellation upon transfer of ownership or upon change in location of the manufacturing facility, from that described in the approved (production certificate) quality control data (FAR 21.155 and 21.159).	Mod. c.p. to rev. of P.C.
5. Failure to determine that each completed product submitted for airworthiness certification or approval is in conformity with the type design and in a condition for safe operation (FAR 21.165(b)).	Mod. to max. c.p. to sus. of P.C. pending corrective action.

	SANCTION PER VIOLATION
6. Failure to maintain the approved quality control system in conformity with the data and procedures approved for the production certificate (FAR 21.165 (a)).	Mod. to max. c.p. to sus. of P.C. pending corrective action.
D. Technical Standard Order Authorization Manufacturers.	
1. Unauthorized display of TSO markings on materials, parts or appliances (FAR 21.603(a) and Federal Aviation Act of 1958, Title VI, Sections 601, 603(b), 609, and 610(a) (7), Title IX, Section 901(a) and Section 1007(a)).	Max. c.p. to withdrawal of letter or restraining action.
2. Failure of a manufacturer holding a Letter of Acceptance issued prior to July 1, 1962, to comply with FAR 21.603(b).	Withdrawal of Letter of Acceptance pending corrective action.
3. Failure to manufacture articles in accordance with the requirements of technical and quality control data forming the basis for the FAA letter of acceptance or authorization. (FAR 21.607(a)).	Mod. to max. c.p.
4. Failure to conduct the required tests and inspections (FAR 21.607(b).	Mod. to max. c.p.
5. Failure to maintain a quality control system to ensure that articles manufactured meet the the requirements of FAR 21.607(a). and are in condition for safe operation (FAR 21.607(b)).	Mod. to max. c.p. and/or withdrawal of letter pending corrective action.
6. Failure to prepare and maintain a current file of complete technical data and inspection records. (FAR 21.607(c)).	Min. to max. c.p. and/or withdrawal of letter pending correction action.

	SANCTION PER VIOLATION
7. Failure to permanently and legibly mark each article produced under a TSO Letter of Authorization or Acceptance with the information required by FAR 21.607(d).	Min. to mod. c.p.
8. Unauthorized deviation from the performance standards established by FAR 21.609.	Min. c.p. to withdrawal of letter pending corrective action.
9. Failure to forward information on major or minor design changes (FAR 21.611).	Min. to max. c.p.
10. Failure to retain the technical data as required by FAR 21.613(a).	Min. to max. c.p.
11. Refusal to permit an authorized representative of the FAA to inspect TSO articles, the quality control inspection and tests, or the manufacturing facilities and technical data files for TSO articles (FAR 21.615).	Mod. to max. c.p. and/or withdrawal of approval letter pending correction.
12. Failure to meet the performance standards of the applicable TSO (FAR 21.619 and 21.601).	Max. c.p. to withdrawal of approval letter pending correction.
E. Replacement or Modification Parts Manufacturers.	
1. No person may produce a modification or replacement part for sale for installation on a type certificated product unless it is produced pursuant to PMA issued under Subpart K (FAR 21.303(a)).	Max. c.p. to restraining action.

	SANCTION PER VIOLATION
2. Failure to establish and maintain a fabrication inspection system to ensure that each completed replacement and/or modification part is in conformity with approved design data and is safe for installation on applicable type certificated products (FAR 21.303(h)).	Mod. to max. c.p. and/or withdrawal of approval letter pending corrective action.
3. Failure to ensure that all inccming materials used in the finished part are as specified in the deisgn data (FAR 21.303(h)(l)).	Mod. to max. c.p. and/or withdrawal of approval letter pending corrective action.
4. Failure to ensure that all incoming material is properly identified when chemical and physical properties cannot otherwise be readily and accurately determined (FAR 21.303(h)(2)).	Mod. to max. c.p. and/or withdrawal of approval letter pending corrective action.
5. Failure to ensure that all materials subject to damage and deterioration are suitably stored and adequately protected (FAR 21.303(h) (3)).	Mod. to max. c.p. and/or withdrawal of approval letter pending corrective action.
6. Failure to accomplish all processess affecting quality and safety of the finished product in accordance with acceptable specifications (FAR21.303(h)(4)).	Mod. to max. c.p. and/or withdrawal of approval letter pending corrective action.
7. Failure to inspect parts in process for conformity with the design data at points in production where accurate determination can be made (FAR 21.303(h) (5)).	Mod. to max. c.p. and/or withdrawal of approval letter pending corrective action.

	SANCTION PER VIOLATION
8. Failure to make current design drawings readily available to manufacturing and inspection personnel, or to use such drawings when necessary (FAR 21.303(h) (6)).	Mod. to max. c.p. and/or withdrawal of approval letter pending corrective action.
9. Failure to adequately control and obtain FAA approval of major changes to the basic design before they are incorporated in the finished part (FAR 21.97 and 21.303(h) (7)).	Mod. to max. c.p. and/or withdrawal of approval letter pending corrective action.
10. Failure to segregate and identify rejected materials and components in such a manner as to preclude their use in the finished product (FAR 21.303(h)(8)).	Mod. to max. c.p. and/or withdrawal of approval letter pending corrective action.
11. Failure to maintain and identify inspection records with the completed part where practical, and retain them in the manufacturer's file for a period of at least 2 years after the part has been completed (FAR 21.303(h) (9)).	Mod. to max. c.p. and/or withdrawal of approval letter pending corrective action.
12. Failure to notify the FAA in writing within 10 days due to relocation or expansion of manufacturing facilities (FAR 21.303(j)).	Mod. to max. c.p. and/or withdrawal of approval letter pending corrective action.
13. Failure to determine that each completed part conforms to the design data and is safe for installation on type certificated products (FAR 21. 303(k)).	Mod. to max. c.p. and/or withdrawal of approval letter pending corrective action.

	SANCTION PER VIOLATION
F. Authorized Delegation Option Manufacturers.	
1. Refusal to permit authorized employees of the Administrator to inspect the manufacturers' organization facilities, product, records technical data file or service difficulty files (FAR 21.249, 21.251, 21.277 and 21.293).	Max. c.p. to sus. of approval letter of authorization.
2. Failure of the manufacturer to promptly submit the reports and information necessary for the issuance of an Airworthiness Directive under Part 39 (FAR 21.277).	Mod. c.p. to sus. of approval letter of authorization.
3. Failure of the manufacturer to place the required technical data and type inspection report in the technical data file required by FAR 21.293(a)(1)(i) and FAR 21.253(a)(4).	Min. to max. c.p.
4. Failure of the manufacturer to determine that the production certification requirements of Subpart G with respect to the new model or type are met (FAR 21.267 (b) and 21.165(b)).	Mod. c.p. to sus. of approval letter of authorization.
5. Failure of the manufacturer to place the manufacturing and quality control data required by FAR 21.143 with the data required by FAR 21.293(a)(1)(ii) (FAR 21.267(d)).	Mod. to max. c.p.
6. Failure of the manufacturer to determine that each aircraft conforms to the type design and is in a condition for safe operation (FAR 21.273(a)).	Max. c.p. to sus. of approval letter of authorization.
7. Failure of the manufacturer to ensure that employees signing airworthiness certificates perform or are in direct charge of inspection and are listed on the manufacturer's application for authorization or amendments thereof (FAR 21.273(b)).	Max. c.p. to SUS. of approval letter of authorization.

	SANCTION PER VIOLATION
8. Failure of the manufacturer to determine that engines and propellers conform to the type design, and are in a condition for safe operation prior to the issuance of airworthiness approval tags. (FAR 21.271(a)) .	Max. c.p. to Sus. of approval letter of authorization.
G. Production Approval Holders.	
1. Failure to report any malfunction or defect specified in FAR 21.3(c) within the time constraints provided in FAR 21.3(e). (FAR 21.3 (a) & (b)) .	Mod. to max. c.p.
2. Refusal to make individual parts, facilities, data or records available for FAA inspection. (FAR 21.33 and Federal Aviation Act of 1958, Title VI, Section 605(b)) .	Max. c.p. to withdrawal of approval letter pending corrective action.
3. Failure to submit the data necessary for the issuance of an airworthiness directive containing the appropriate corrective action. (FAR 21.99).	Max. c.p. to withdrawal of approval letter pending corrective action.

APPENDIX 5. SELECTED CIVIL AND CRIMINAL STATUTES.

1. SECTION 602 OF THE FEDERAL AVIATION ACT OF 1958, as amended (49 U.S.C. app. 1422)[1/] provides:

AIRMAN CERTIFICATES

POWER TO ISSUE CERTIFICATE

Sec. 602. (a) The Administrator is empowered to issue airman certificates specifying the capacity in which the holders thereof are authorized to serve as airmen in connection with aircraft.

ISSUANCE OF CERTIFICATE

(b) (1) Any person may file with the Administrator an application for an airman certificate. If the Administrator finds, after investigation, that such person possesses proper qualifications for, and is physically able to perform duties pertaining to, the position for which the airman certificate is sought, he shall issue such certificate, containing such terms, conditions, and limitations as to duration thereof, periodic or special examinations, tests of physical fitness, and other matters as the Administrator may determine to be necessary to assure safety in air commerce. Except in the case of persons whose certificates are, at the time of denial, under order of suspension or whose certificates have been revoked within one year of the date of such denial, any person whose application for the issuance or renewal of an airman certificate is denied may file with the Board a petition for review of the Administrator's action. The Board shall thereupon assign such petition for hearing at a place convenient to the applicant's place of residence or employment. In the conduct of such hearing and in determining whether the airman meets the pertinent rules, regulations, or standards, the Board shall not be bound by findings of fact of the Administrator. At the conclusion of such hearing, the Board shall issue its decision as to whether the airman meets the pertinent rules, regulations, and standards and the Administrator shall be bound by such decision: Provided, That the Administrator may, in his discretion, prohibit or restrict the issuance of airman certificates to aliens, or may make such issuance dependent on the terms of reciprocal agreements entered into with foreign governments.

1/ Note that the majority of the Federal Aviation Act of 1958, as amen&d, has not been codified by Congress into the United States Code. As administratively compiled in the United States Code Appendix, the "Secretary of Transportation" has been substituted for the "Administrator" under the authority of Section 6(c)(l) of Pub. L. 89-670. See, 49 U.S.C. app. § 1429 note on Transfer of Functions at 1196 (1982). The functions of the Secretary related to aviation safety (with some exceptions), including Title VI of the FA Act were statutorily transferred back to the Administrator of the FAA. 49 U.S.C. 106(f) and (g). The act transferring the functions has been codified by Congress into the U.S.C. See, Pub. L. 97-449, 96 Stat. 2413. The FA Act itself, as amended, properly refers to the "Administrator," not to the "Secretary of Transportation."

(2)(A) Except as provided in subparagraphs (B) and (C), the Administrator shall not issue an airman certificate to any person whose airman certificate has been revoked under section 609(c).

(B) The Administrator may issue an airman certificate to any person whose airman certificate has been revoked under section 609(c) if the Administrator determines that issuance of such certificate will facilitate law enforcement efforts.

(C) In any case in which the Administrator has revoked an airman certificate of a person under section 609(c)(l) or (2) as a result of any activity and --

(i) such person is subsequently acquitted of all charges contained in an indictment or information which relate to controlled substances and which arise from such activity: or

(ii) in the case of a revocation under section 609(c) (l), the judgment of conviction on which the revocation is based is reversed on appeal:

the Administrator shall issue an airman'certificate to such person if such person is otherwise qualified to serve as an airman under this section.

FORM AND RECORDING OF CERTIFICATE

(c) Each certificate shall be numbered and recorded by the Administrator: shall state the name and address of, and contain a description of, the person to whom the certificate is issued: and shall be entitled with the designation of the class covered thereby. Certificates issued to all pilots serving in scheduled air transportation shall be designated "airline transport pilot" of the proper class.

2. SECTION 609 OF THE FEDERAL AVIATION ACT OF 1958, as amended (49 U.S.C. app. 1429) provides:

AMENDMENT, SUSPENSION, AND REVOCATION OF CERTIFICATES

PROCEDURE

Sec. 609.(a) The Administrator may, from time to time, reinspect any civil aircraft, aircraft, engine, propeller, appliance, air navigation

facility, or air agency, or may reexamine any civil airman. If, as a result of any such reinspection or reexamination, or if, as a result of any other investigation made by the Administrator, he determines that safety in air commerce or air transportation and the public interest requires, the Administrator may issue an order amending, modifying, suspending, or revoking, in whole or in part, any type certificate, production certificate, airworthiness certificate, airman certificate, 'air carrier operating certificate, air navigation facility certificate (including airport operating certificate), or air agency certificate. Prior to amending, modifying, suspending, or revoking any of the foregoing certificates, the Administrator shall advise the holder thereof as to any charges or other reasons relied upon by the Administrator for his proposed action and, except in cases of emergency, shall provide the holder of such a certificate an opportunity to answer any charges and be heard as to why such certificate should not be amended, modified, suspended, or revoked. Any person whose certificate is affected by such an order,of the Administrator under this section may appeal the Administrator's order to the Board and the Board may, after notice and hearing, amend, modify, or reverse the Administrator's order if it finds that safety in air commerce or air transportation and the public interest do not require affirmation of the Administrator's order. In the conduct of its hearings the Board shall not be bound by findings of fact of the Administrator. The filing of an appeal with the Board shall stay the effectiveness of the Administrator's order unless the Administrator advises the Board that an emergency exists and safety in air commerce or air transportation requires the immediate effectiveness of his order, in which event the order shall remain effective and the Board shall finally dispose of the appeal within sixty days after being so advised by the Administrator. The person substantially affected by the Board's order may obtain judicial review of said order under the provisions of section 1006, and the Administrator shall be made a party to such proceedings.

VIOLATION OF CERTAIN LAWS

(b) The Mministrator, in his discretion, may issue an order amending, modifying, suspending, or revoking any airman certificate upon conviction of the holder of such certificate of any violation of subsection (a) of section 13 of the Fish and Wildlife Act of 1956, regarding the use or operation of an aircraft.

TRANSPORTATION, DISTFUBUTION, AND OTHER ACTIVITIESRELATED TO CONTROLLED SUBSTANCES

(c) (1) The Administrator shall issue an order revoking the airman certificates of any person upon conviction of such person of a crime punishable by death or imprisonment for a term exceeding one year under a State or Federal law relating to a controlled substance (other than a law relating to simple possession of a controlled substance), if the Administrator determines that (A) an aircraft was used in the commission of the offense or to facilitate the commission of the offense, and (B) such person served as an airman, or was on board such aircraft, in connection with the canmission of the offense or the facilitation of the commission of the offense. The Administrator shall have no authority under this paragraph to review the issue

of whether an airman violated a State or Federal law relating to a controlled substance.

(2) The Administrator shall issue an order revoking the airman certificates of any person if the Administrator determines that (A) such person knowingly engaged in an activity that is punishable by death or imprisonment for a term exceeding one year under a State or Federal law relating to a controlled substance (other than any law relating to simple possession of a controlled substance), (B) an aircraft was used to carry out such activity or to facilitate such activity, and (C) such person served as an airman, or was on board such aircraft, in connection with such activity or the facilitation of such activity. The Administrator shall not revoke, and the National Transportation Safety Board on appeal under paragraph (3) shall not affirm the revocation of, a certificate under this paragraph on the basis of any activity if the holder of the certificate is acquitted of all charges contained in an indictment or information which relate to controlled substances and which arise from such activity.

(3) Prior to revoking an airman certificate under this subsection, the Administrator shall advise the holder thereof of the charges or any reasons relied upon by the Administrator for his proposed action and shall provide the holder of such certificate an opportunity to answer any charges and be heard as to why such certificate should not be revoked. Any person whose certificate is revoked by the Administrator under this subsection may appeal the Administrator's order to the National Transportation Safety Board and the Board shall, after notice and a hearing on the record, affirm or reverse the Administrator's order. In the conduct of its hearings, the National Transportation Safety Board shall not be bound by findings of fact of the Administrator. The filing of an appeal with the National Transportation Safety Board shall stay the effectiveness of the Administrator's order unless the Administrator advises the Board that safety in air commerce or air transportation requires the immediate effectiveness of his order, in which event the order shall remain effective and the Board shall finally dispose of the appeal within sixty days after being so advised by the Administrator. The person substantially affected by the National Transportation Safety Board's order may obtain judicial review of such order under the provisions of section 1006, and the Administrator shall be made a party to such proceedings.

(4) For purposes of this subsection, the term "controlled substance" has the meaning given such term by section 102(6) of the Controlled Substances Act (21 U.S.C. 820(6)).

(5) Upon request of a Federal or State law enforcement official, the Administrator may waive the requirements of paragraphs (1) and (2) that an airman certificate of any person be revoked if the Administrator determines that such waiver will facilitate law enforcement efforts.

3. SECTION 610 OF THE FEDERAL AVIATION ACT OF 1958, as amended (49 U.S.C. 1430) provides:

PROHIBITIONS

VIOLATIONS OF TITLE

Sec. 610. (a) It shall be unlawful--

(1) For any person to operate in air commerce any civil aircraft for which there is not currently in effect an airworthiness certificate, or in violation of the terms of any such certificate.

(2) For any person to serve in any capacity as an airman in connection with any civil aircraft, aircraft engine, propeller or appliance used or intended for use, in air commerce without an airman certificate authorizing him to serve in such capacity, or in violation of any term, condition, or limitation thereof, or in violation of any order, rule, or regulations issued under this title:

(3) For any person to employ for service in connection with any civil aircraft used in air commerce an airman who does not have an airman certificate authorizing him to serve in the capacity for which he is employed;

(4) For any person to operate as an air carrier without an air carrier operating certificate, or in violation of the terms of any such certificate:

(5) For any person to Operate aircraft in air commerce in violation of any other rule, regulation, or certificate of the Administrator under this title: and

(6) For any person to operate a seaplane or other aircraft of United States registry upon the high seas in contravention of the regulations proclaimed by the President pursuant to section 1 of the Act entitled "An Act to authorize the President to proclaim regulations for preventing collisions at sea", approved October 11, 1951 (Public Law 172, Eighty-second Congress, 65 States. 406);

(7) For any person holding an air agency or production certificate, to violate any term, condition, or limitation thereof, or to violate any order, rule, or regulation under this title relating to the holder of such certificate:

(8) For any person to operate an airport without an airport operating certificate required by the Administrator pursuant to section 612, or in violation of the terms of any such certificate: and

(9) For any person to manufacture, deliver, sell, or offer for sale, any aviation fuel or fuel additive in violation of any regulation prescribed under section 601(e).

4. SECTION 901 OF THE FEDERAL AVIATION ACT OF 1958, as amended (49 U.S.C. app. 1471) provides:

CMLPENALTIES

SAFETY,ECONOMIC, AND POSTAL OFFENSES

Sec. 901. (a)(l) Any person who violates (A) any provision of title III, IV., V, VI, VII, or XII, or of section 1114, of this Act, or any rule, regulation, or order issued thereunder, or under section 1002(i), or any term, condition, or limitation of any permit or certificate issued under title IV, or (B) any rule or regulation issued by the Postmaster General under this Act, shall be subject to a civil penalty of not to exceed $1,000 for each such violation, except that the amount of such civil penalty shall not exceed $10,000 for each such violation which relates to the transportation of hazardousmaterials. If such violation is a continuing one, each day of such violation shall constitute a separate offense. The amount of any such civil penalty which relates to the transportation of hazardous material shall be assessed by the Secretary or his delegate, upon written notice upon a finding of violation by the Secretary, after notice and an opportunity for a hearing. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require. The amount of any such civil penalty for any' violation of any provision of title IV of this Act, or any rule, regulation, or order issued thereunder, or under section 1002(i) of this Act, or any term, condition, or limitation of any permit or certificate issued under title IV shall be assessed by the Board only after notice and an opportunity for a hearing and after written notice upon a finding of violation by the Board. Judicial review of any order of the Board assessing such a penalty may be obtained only pursuant to section 1006 of this Act. This subsection shall not apply to members of the Armed Forces of the United States, or those civilian employees of the Department of Defense who are subject to the provisions of the Uniform Code of Military Justice, while engaged in the performance of their official duties: and the appropriate military authorities shall be responsible for taking any necessary disciplinary action with respect thereto and for making to the Administrator or Board, as appropriate, a timely report of any such action taken.

(2) Any civil penalty may be comprised-by the Secretary of Transportation in the case of penalties provided for in subsections (c) and (d; oF this section or violations of title III, V, VI, or XII of this Act, or any rule, regulation, or order issued thereunder or by The National Transportation Safety Board in the case of violations of title VII of this Act, or any rule, regulation, or order issued thereunder, or by the Postmaster Genera? in the case of regulations issued by him. The amount of such penalty when finally determined or fixed by order of the Board, or the amount agreed upon in compromise, may be deducted from any sums which the United States owes to the person charged.

LIENS

(b) In case an aircraft is involved in such violation and the violation is by the owner or person in command of the aircraft, such aircraft shall be subject to lien for the penalty: Provided, That this subsection shall not apply to a violation of a rule or regulation of the Postmaster General.

(c) Whoever imparts or conveys or causes to be imparted or conveyed false information, knowing the information to be false and under circumstances in which such information may reasonably be believed, concerning an attempt or alleged attempt being made or to be made, to do any act which would be a crime prohibited by subsection (i), (j), (k), or (1) of section 902 of this Act, shall be subject to a civil penalty of not more than $10,000 which shall be recoverable in a civil action brought in the name of the United States.

(d) Except for law enforcement officers of any municipal or State government or officers or employees of the Federal Government, who are authorized or required within their official capacities to carry arms, or other persons who may be so authorized under regulations issued by the Administrator, whoever while aboard, or while attempting to board, any aircraft in, or intended for operation in, air transportation or intrastate air transportation, has on or about his person or his property a concealed deadly or dangerous weapon, which is, or would be, accessible to such person in flight shall be subject to a civil penalty of not more than $10,000 which shall be recoverable in a civil action brought in the name of the United States.

5. SECTION 902 OF TEE FEDERAL AVIATION ACT OF 1958, as amended (49 U.S.C. app. 1472), provides:

GENERAL

Sec. 902. (a) Any person who knowingly and willfully violates any provision of this Act (except titles III, V, VI, VII, and XII), or any order, rule, or regulation issued by the Administrator or by the Board under any such provision or any term, condition, or limitation of any certificate or permit issued under title IV, for which'no penalty is otherwise provided in this section or in section 904, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject for the first offense to a fine of not more than $500, and for any subsequent offense to a fine of not more than $2,000. If such violation is a continuing one, each day of such violation shall constitute a separate offense.

FORGERY OF CERTIFICATES AND FALSE MARKING OF AIRCRAFT

(b)(1) Except as provided in paragraph (2), any person who knowingly and willfully forges, counterfeits, alters, or falsely makes any certificate authorized to be issued under this Act, or knowingly sells, uses, attempts to use, or possesses with the intent to use any such fraudulent certificate, and any person who knowingly and willfully displays or causes to be displayed on 'any aircraft, any marks that are false or misleading as to the nationality or

registration of the aircraft, shall be subject to a fine of not exceeding $1,000 or to imprisonment not exceeding three years, or to both such fine and imprisonment.

(2)(A) Any person who violates paragraph (1) of this subsection (other than by selling a fraudulent certificate) with the intent to commit a crime punishable by death or imprisonment for a term exceeding one year under a State or Federal law relating to a controlled substance (other than any law relating to simple possession of a controlled substance) shall be subject to a fine not exceeding $25,000 or to imprisonment not exceeding five years, or both.

(B) Any person who violates paragraph (1) of this subsection by selling a fraudulent certificate with the knowledge that the purchaser intends to use such certificate in connection with the commission of a crime punishable by death or imprisonment for a term exceeding one year under a State or Federal law relating to controlled substances (other than any law relating to simple possession of a controlled substance) shall be subject to a fine not exceeding $25,000 or to imprisonment not exceeding five years, or both.

(C) For purposes of this paragraph, the term 'controlled substance" has the meaning given such term by section 102(6) of the Controlled Substances Act (21 U.S.C. app. 802(6)).

INTERFERENCE WITH AIR NAVIGATION

(c) A person shall be subject to a fine of not exceeding $5,000 or to imprisonment not exceeding five years, or to both such fine and imprisonment, who--

(1) with intent to interfere with air navigation, within the United States, exhibits within the United States any light or signal at such place or in such manner that is likely to be mistaken for a true light or signal established pursuant to this Act, or for a true light or signal in connection with an airport or other air navigation facility: or

(2) after due warning by the Administrator, continues to maintain any misleading light or signal; or

(3) knowingly removes, extinguishes, or interferes with the operation of any such true light or signal.

GRANTING OR RECEIVING REBATES

(d) (1) Any air carrier, foreign air carrier, or ticket agent, or any officer, agent, employee, or representative thereof, who shall, knowingly and willfully, offer, grant, or give, or cause to be offered, granted, or given, any rebate or other concession in violation of the provisions of this Act, or who, by any device.or means, shall, knowingly and willfully, assist, or shall willingly suffer or permit, any person to obtain transportation or services Subject to this Act at.less than the rates, fares, or charges lawfully in

effect, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be subject for each offense to a fine of not less than $100 and not more than $5,000.

(2) Any person who, in any manner or by any device, knowingly and willfully solicits, accepts, or receives a refund or remittance of any portion of the rates, fares, or charges lawfully in effect for the air transportation of property, or for any service in connection therewith, or knowingly solicits, accepts, or receives any privilege, favor, or facility, with respect to matters required by the Board to be specified in currently effective tariffs applicable to the air transportation of property, shall be fined not less than $100, nor more than $5,000, for each offense.

FAILURE TO FILE REPORTS; FALSIFICATION OF RECORDS

(e) Any air carrier, or any officer, agent, employee, or representative thereof, who shall, knowingly and willfully, fail or refuse to make a report to the Board or Administrator as required by this Act, or to keep or preserve accounts, records, and memoranda in the form and manner prescribed or approved by the Board or Administrator, or shall, knowingly and willfully, falsify, mutilate, or alter any such report, account, record, or memorandum, shall be deemed guilty of a misdemeanor and, upon conviction thereof, be subject for each offense to a fine of not less than $100 and not more than $5,000.

DIVULGING INFORMATION

(f) If the Administrator or any member of the Board, or any officer or employee of either, shall knowingly and willfully divulge any fact or information which may come to his knowledge during the course of an examination of the accounts, records, and memoranda of any air carrier, or which is withheld from public disclosure under section 1104, except as he may be directed by the Administrator or the Board in the case of information ordered to be withheld by either, or by a court of competent jurisdiction or a judge thereof, he shall upon conviction thereof be subject for each offense to a fine of not more than $5,000 or imprisonment for not more than two years, or both: Provided, That nothing in this section shall authorize the withholding of information by the Administrator or Board from the duly authorized committees of the Congress.

REFUSAL TO TESTIFY

(g) Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, or documents, if in his power to do so, in obedience to the subpoena or lawful requirement of the Board or Administrator, shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than $100 nor more than $5,000, or imprisonment for not more than one year, or both.

HAZARDOUS MATERIALS

(h)(l) In carrying out his responsibilities under this Act, the Secretary of Transportation may exercise the authority vested in him by section 105 of the Hazardous Materials Transportation Act to provide by regulation for the safe transportation of hazardous materials by air.

(2) A person is guilty of an offense if he willfully delivers or causes to be delivered to an air carries or to the operator of a civil aircraft for transportation in air commerce, or if he recklessly causes the transportation in air commerce of, any shipment, baggage, or other property which contains a hazardous material, in violation of any rule, regulation, or requirement with respect to the transportation of hazardous materials issued by the Secretary of Transportation under this Act. Upon conviction, such person shall be subject, for each offense, to a fine of not more than $25,000, imprisonment for a term not exceed 5 years, or both.

(3) Nothing in this subsection shall be construed to prohibit or regulate the transportation by any individual, for personal use, of any firearm (as defined in paragraph (4) of section 232 of title 18, United States Code) or any ammunition therefor.

AIRCRAFT PIRACY

(i) (1) Whoever commits or attempts to ccnnmit aircraft piracy, as herein defined, shall be punished--

(A) by imprisonment for not less than 20 years; or

(B) notwithstanding the provisions of 18 U.S.C. 3559(b), if the death of another person results from the commission or attempted commission of the offense, by death or by imprisonment for life.

(2) As used in this subsection, the term "aircraft piracy" means any seizure or exercise of control, by force or violence or threat of force or violence, or by any other form of intimidation, and with wrongful intent, of an aircraft within the special aircraft jurisdiction of the United States.

(3) An attempt to commit aircraft piracy shall be within the special aircraft jurisdiction of the United States even though the aircraft is not in flight at the time of such attempt if the aircraft would have been within the special aircraft jurisdiction of the United States had the offense of aircraft piracy been completed.

INTERFERENCE WITH FLIGHT CREW MEMBERS OF FLIGHT ATTENDANTS

(j) Whoever, while aboard an aircraft within the special aircraft jurisdiction of the United States, assaults, intimidates, or threatens any flight crew member or flight attendant (including any steward or stewardess) of such aircraft, so as to interfere with the performance by such member or attendant of his duties or lessen the ability of such member or attendant to perform his duties, shall be fined not more than $10,000 or imprisoned not

more than twenty years, or both. Whoever in the commission of any such act uses a deadly or dangerous weapon shall be imprisoned for any term of years or for life.

CERTAIN CRIMES ABOARD AIRCRAFT FLIGHT

(k)(l) Whoever, while aboard an aircraft within the special aircraft jurisdiction of the United States, commits an act which, if committed within the special maritime and territorial jurisdiction of the United States, as defined in section 7 of title 18, United States Code, would be in violation of section 113, 114, 661, 662, 1111, 1112, 1113, 2031, 2032, or 2111 of such title 18 shall be punished as provided therein.

(2) Whoever, while aboard an aircraft within the special aircraft jurisdiction of the United States, commits an act, which, if committed in the District of Columbia would be in violation of section 9 of the Act entitled "An Act for the preservation of the public peace and the protection of property within the District of Columbia", approved July 29, 1892, as amended (D.C. Code, sec. 22-1112), shall be punished as provided therein.

CARRYING WEAPONS OR EXPLOSIVES ABOARD AIRCRAFT

(l)(l) With respect to any aircraft in, or intended for operation in air transportation or intrastate air transportation, whoever--

(A) while aboard, or while attempting to board such aircraft has on or about his person or his property a concealed deadly or dangerous weapon which is, or could be, accessible to such person in flight:

(B) has placed, attempted to place, or attempted to have placed a loaded firearm aboard such aircraft in baggage or other property which is not accessible to passengers in flight: or

(C) has on or about his person, or who placed, attempted to place, or attempted to have placed aboard such aircraft any bomb or similar explosive or incendiary device:

shall be fined not more that $10,000 or imprisoned not more than one year, or both.

(2) Whoever willfully and without regard for the safety of human life, or with reckless disregard for the safety of human life, shall canmit an act prohibited by paragraph (1) of this subsection, shall be fined not more that $25,000 or imprisoned not more than five years, or both.

(3) Paragraph (l)(A) of this subsection shall not apply to law enforcement officers of any municipal or State government, or officers or employees of the Federal Government, who are authorized or required within their official capacities to carry arms, or to persons who may be authorized, under regulations issued by the Administrator, to carry deadly or dangerous weapons in air transportation or intrastate air transportation: nor shall it

apply to persons transporting weapons (other than loaded firearms) contained in baggage which is not accessible to passengers in flight if the presence of such weapons has been declared to the air carrier.

(4) For purposes of this subsection--

(A) the term "firearm" means any starter gun and any weapon which is designed to or has been converted to expel any projectile by the action of an explosive: and

(B) the term "loaded firearm" means any firearm which has a cartridge, a detonator, or power in the chamber, magazine, cylinder, or clip of such firearm.

FALSE INFORMATION AND THREATS

(m)(l) Whoever willfully and maliciously, or with reckless disregard for the safety of human life, imparts or conveys or causes to be imparted or conveyed false information, knowing the information to be false and under circumstances.in which such information may reasonably be believed, concerning an attempt or alleged attempt being made or to be made, to do any 4ct which would be a felony prohibited by subsection (i), (j), (k), or (1) of this section, shall 'be fined not more than $25,000 or imprisoned not more than five years, or both.

(2) Whoever imparts or conveys or causes to be imparted or conveyed any threat to do an act which would be a felony prohibited by subsection (i), (j), (k), or (1) of this section with an apparent determination and will to carry the threat into execution shall be fined not more than $25,000 or imprisoned not more than five years, or both.

AIRCRAFT PIRACY OUTSIDE SPECIAL AIRCRAFT JURISDICTION OF THE UNITED STATES

(n)(l) Whoever aboard an aircraft in flight outside the special aircraft jurisdiction of the United States commits "an offense", as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft, and is afterward found in the United States shall be punished--

(A) by imprisonment for not less than 20 years: or

(B) notwithstanding the provisions of 18 U.S.C. 3559(b), if the death of another person results from the commission or attempted commission of the offense, by death or by imprisonment for life.

(2) A person commits "an offense", as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft when, while aboard and aircraft in flight, he--

(A) unlawfully, by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of, that aircraft, or attempts to perform any such act: or

(B) is an accomplice of a person who performs or attempts to perform any such act.

(3) This subsection shall only be applicable if the place of takeoff or the place of actual landing of the aircraft on board which the offense, as defined in paragraph (2) of this subsection, is committed is situated outside the territory of the State of registration of that aircraft.

(4) For purposes of this subsection an aircraft is considered to be in flight from the moment when all the external doors are closed following embarkation until the moment when one such door is opened for disembarkation, or in the case of a forced landing, until the competent authorities take over responsibility for the aircraft and for the persons and property aboard.

INVESTIGATIONS BY FEDERAL BUREAU OF INVESTIGATION

(o) Violations of subsections (i) through (n), inclusive, of this section shall be investigated by the Federal Bureau of Investigation of the Department of Justice.

INTERFERENCE WITH AIRCRAFT ACCIDENT INVESTIGATION

(p) Any person who knowingly and without authority removes, conceals, or withholds any part of a civil aircraft involved in an accident, or any property which was aboard such aircraft at the time of the accident, shall be subject to a fine of no less that $100 nor more than $5,000, or imprisonment for not more than one year, or both.

TRANSPORTING CONTROLLED SUBSTANCES WITHOUT AIRMAN CERTIFICATE

(q) Any person who knowingly and willfully serves in any capacity as an airman without an airman certificate authorizing him to serve in such capacity, in connection with the transportation by aircraft of any'controlled substance, where (1) such transportation is punishable by death or imprisonment for a term exceeding one year under a State or Federal law or is provided in connection with any act that is punishable by death or imprisonment for a term exceeding one year under a State or Federal law 'relating to controlled substance (other than any law relating to simple possession of a controlled substance), and (2) such person has knowledge of such transportation, shall be subject to a fine not exceeding $25,000 or to imprisonment not exceeding five years, or to both such fine and imprisonment. For purposes of this subsection, the term "controlled substance" has the meaning given such term by section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)).

SECURED AREAS OF AIRPORTS

(r)(l) Violation. It shall be unlawful for any person to knowingly and willfully enter an aircraft or an airport area that serves air carriers or foreign air carriers contrary to security requirements established pursuant to section 315 or 316 of this Act.

(2) General penalty. Upon conviction of a violation of paragraph (1), a person shall be subject to imprisonment for a term not to exceed 1 year or a fine not to exceed $1,000, or both.

(3) Penalty for violations in connection with felonies. If any person violates paragraph (1) of this subsection with the intent to canmit in the aircraft or secured area an act punishable as a felony under Federal or State law, such person shall be subject to imprisonment for a term not to exceed 10 years or a fine not to exceed $10,000, or both.

6. TITLE XII -SECURITY PROVISIONS.

PURPOSE

Sec. 1201. The purpose of this title is to establish security provisions which will encourage and permit the maximum use of the navigable air space by civil aircraft consistent with the national security.

SECURITY CONTROL OF AIR TRAFFIC

Sec. 1202. In the exercise of his authority under section 307(a) of this Act, the Administrator, in consultation with the Department of Defense, shall establish such zones or areas in the airspace of the United States as he may find necessary in the interests of national defense, and by rule, regulation, or order restrict or prohibit the flight of civil aircraft, which he cannot identify, locate, and control with available facilities, within such zones or areas.

PENALTIES

Sec. 1203. In addition to the penalties otherwise provided for by this Act, any person who knowingly or willfully violates any provision of this title, or any rule, regulation, or order issued thereunder shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine of not exceeding $10,000 or to imprisonment not exceeding one year, or to both such fine and imprisonment.

7. SECTION 110 OF THE HAZARDOUS MATERIALS TRANSPORTATION ACT (49 U.S.C. app. 1809), provides:

$110 Penalties

(a) Civil. (1) any person (except an employee who acts without knowledge) who is determined by the Secretary, after notice and an opportunity for a hearing, to have knowingly committed an act which is a violation of a provision of this title or of a regulation issued under this title, shall be liable to the United States for a civil penalty. Whoever knowingly commits an act which is a violation of any regulation, applicable to any person who transports or causes to be transported or shipped hazardous materials, shall be subject to a civil penalty of not more than $10,000 for each violation, and if any such violation is a continuing one, each day Of violation constitutes a separate offense. Whoever knowingly commits an act

which is a violation of any regulation applicable to any person who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a package or container which is represented, marked, certified, or sold by such person for use in the transportation in commerce of hazardous materials shall be subject to a civil penalty of not more than $10,000 for each violation. The amount of any such penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

(2) Such civil penalty may be recovered in an action brought by the Attorney General on behalf of the United States in the appropriate district court of the United States or, prior to referral to the Attorney General, such civil penalty may be compromised by the Secretary. The amount of such penalty, when finally determined (or agreed upon in compromise), may be deducted from any sums owed by the United States to the person charged. All penalties collected under this subsection shall be deposited in the Treasury of the United States as miscellaneous receipts.

(b) Criminal. A person is guilty of an offense if he willfully violates a provision of this title or a regulation issued under this title. Upon conviction, such person shall be subject, for each offense, to a fine of not more than $25,000, imprisonment for a term not to exceed 5 years, or both.

8. SECTION 517 OF THE AIRPORT AND AIRWAY IMP- ACT OF 1982 (49 U.S.C. app. 2216), provides:

$517 False statements
Any officer, agent, or employee of the United States, or any office, agent, or employee of any public agency, or any person, association, firm, or corporation who, with intent to defraud the United States-

(1) knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the costs thereof, in connection with the submission of plans, maps, specifications, contracts, or estimates of project costs for any project submitted to the Secretary for approval under this title:

(2) knowingly makes any false statement, false representation, or false report or claim for work or materials for any project approved by the Secretary under this title: or

(3) knowingly makes any false statement or false representation in any report or certification required to be made under this title:

shall, upon conviction thereof, be punished by imprisonment for not to exceed five years or by a fine of not to exceed $10,000, or by both.

9. SELECTED SECTIONS FROM TITLE 18, UNITED STATES CODE, provide:

18 U.S.C. $32. Destruction of aircraft or aircraft facilities

(a) Whoever willfully--

(1) sets fire to, damages, destroys, disables, or wrecks any aircraft in the special aircraft jurisdiction of the United States or any civil aircraft used, operated, or employed in interstate, overseas, or foreign air commerce;

(2) places or causes to be placed a destructive device or substance in, upon, or in proximity to, or otherwise makes or causes to be made unworkable or unusable or hazardous to work or use, any such aircraft, or any part or other materials used or intended to be used in connection with the operation of such aircraft, if such placing or causing to be placed or such making or causing to be made is likely to endanger the safety of any such aircraft:

(3) sets fire to, damages, destroys, or disables any air navigation facility, or interferes by force or violence with the operation of such facility, if such fire, damaging, destroying, disabling, or interfering is likely to endanger the safety of any such aircraft in flight:

(4) with the intent to damage, destroy, or disable any such aircraft, sets fire to, damages, destroys, or disables or places a destructive device or substance in, upon, or in proximity to, any appliance or structure, ramp, landing area, property, machine, or apparatus, or any facility or other material used, or intended to be used, in connection with the operation, maintenance, loading, unloading or storage of any such aircraft or any cargo carried or intended to be carried on any such aircraft;

(5) performs an act of violence against or incapacitates any individual on any such aircraft, if such act of violence or incapacitation is likely to endanger the safety of such aircraft:

(6) canmunicates information, knowing the information to be false and under circumstances in which such information may reasonably be believed, thereby endangering the safety of any such aircraft in flight: or

(7) attempts to do anything prohibited under paragraphs (1) through (6) of this subsection:
shall be fined not more than $100,000 or imprisoned not more than twenty years or both.

(b) Whoever willfully--

(1) performs an act of violence against any individual on board any civil aircraft registered in a country other than the United States while such aircraft is in flight, if such act is likely to endanger the safety of that aircraft;

(2) destroys a civil aircraft registered in a country other than the United States while such aircraft is in service or causes damage to such an aircraft which renders that aircraft incapable of flight or which is likely to endanger that aircraft's safety in flight:

(3) places or causes to be placed on a civil aircraft registered in a country other than the United States while such aircraft is in service, a device or substance which is likely to destroy that aircraft, or to cause damage to that aircraft which renders that aircraft incapable of flight or which is likely to endanger that aircraft's safety in flight; or

(4) attempts to commit an offense described in paragraphs (1) through (3) of this subsection: shall, if the offender is later found in the United States, be fined not more than $100,000 or imprisoned not more than twenty years, or both.

(c) Whoever willfully imparts or conveys any threat to do an act which would violate any of paragraphs (1) through (5) of subsection (a) or any paragraphs (1) through (3) of subsection (b) of this section, with an apparent determination and will to carry the threat into execution shall be fined not more than $25,000 or imprisoned not more than five years, or both.

18 U.S.C. $35. Imparting or conveying false information.

(a) Whoever imparts or conveys or causes to be imparted or conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to do any act which would be a crime prohibited by this chapter [18 USCS §§ 31 et seq.] or chapter 97 [18 USCS §§ 1991, 1992] or chapter 111 [18 USCS §§ 2271 et seq.] of this title shall be subject to a civil penalty of not more than $1,000 which shall be recoverable in a civil action brought in the name of the United States.

(b) Whoever willfully and maliciously, or with reckless disregard for the safety of human life, imparts or conveys or causes to be imparted or conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to do any act which would be a crime prohibited by this chapter [18 USCS §§ 31 et seq.] or chapter 97 [18 USCS §§ 1991, 1992] or chapter 111 [18 USCS §§ 2271 et seq.] of this title-shall be fined not more than $5,000, or imprisoned not more than five years, or both.

18 U.S.C. **CHAPTER 17A-COMMON CARRIER OPERATION UNDER THE INFLUENCE OF ALCOHOL OR DRUGS**

9341. Definitions

As used in this chapter, the term 'common carrier' means a rail carrier, a sleeping car carrier, a bus transporting passengers in interstate commerce, a water common carrier, and an air common carrier.

$342. Operation of a common carrier under the influence of alcohol or drugs.

Whoever operates or directs the operation of a common carrier while under the influence of alcohol or drugs, shall be imprisoned not more than five years or fined not more than $10,000, or both.

$343. Presumptions.

For purposes of this chapter--

(1) an individual with a blood alcohol content of .10 or more shall be conclusively presumed to be under the influence of alcohol: and

(2) an individual shall be conclusively presumed to be under the influence of drugs if the quantity of the drug in the system of the individual would be sufficient to impair the perception, mental processes, or motor functions of the average individual.

(3) identification documents (other than those issued lawfully for the use of the possessor) or false identification documents:

(4) knowingly possesses an identification document (other than one issued lawfully for the use of the possessor) or a false identification document, with the intent such document be used to defraud the United States; or

(5) knowingly produces, transfers, or possesses a document-making implement with the intent such document-making implement will be used in the production of a false identification document or another document-making implement which will be so used:

(6) possesses an identification document that is or appears to be an identification document of the United States which is stolen or produced without authority knowing that such document was stolen or produced without authority:

or attempts to do so, shall be punished as provided in subsection (b) of this section.

(b) The punishment for an offense under subsection (b) of this section is--

(1) a fine of not more than $25,000 or imprisonment for not more than five years, or both, if the offense is--

(A) the production or transfer of an identification document or false identification document that is or appears to be--

(i) an identification document issued by or under the authority of the United States; or

(ii) a birth certificate, or a driver's license or personal identification card;

(B) the production or transfer Of more than five identification documents or false identification document ; or

(C) an offense under paragraph (5) of such subsection;

(2) a fine of not more than $15,000 or imprisonment for not more than three years, or both, if the offense is--

(A) any other production or transfer of an identification document or false identification document: or

(B) an offense under paragraph (3) of such subsection: and

(3) a fine of not more than $5,000 or imprisonment for not more than one year, or both in any other case.

(c) The circumstances referred to in subsection (a) of this section is that--

(1) the identification document or false identification document is or appears to be issued by or under the authority of the United States or the document-making implement is designed or suited for making such an identification document or false identification document:

(2) the offense is an offense under subsection (a)(4) of this section: or

(3) the production, transfer, or possession prohibited by this section is in or affects interstate or foreign commerce, or the identification document, false identification document, or document-making implement is transported in the mail in the course of the production, transfer, or possession prohibited by this section

(d) As used in this section--

(1) the term "identification document" means a document made or issued by or under the authority of the United States Government, a State, political subdivision of a State, a foreign government, political subdivision of a foreign government, an international quasi-governmental organization which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals:

(2) the term "produce" includes alter, authenticate, or assemble:

(3) the term "document-making implement" means any implement or impression specially designed or primarily used for making an identification document, a false identification document, or another document-making implement:

(4) the term "personal identification card" means an identification document issued by a State or local government solely for the purpose of identification: and

(5) the term "State" includes any State of United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other possession 9or territory of the United States.

(e) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under title V of the Organized Crime Control Act of 1970 (18 U.S.C. note prec. 3481) [note prec 18 USCS § 3481].

18 U.S.C. $506. Seals of departments or agencies.

Whoever falsely makes, forges, counterfeits, mutilates, or alters the seal of any department or agency of the United States: or

Whoever knowingly uses, affixes, or impresses any such fraudulently made, forged, counterfeited, mutilated, or altered seal to or upon any certificate, instrument, conmission, document, or paper, of any description: or

Whoever, with fraudulent intent, possesses any such seal, knowing the same to have been so falsely made, forge, counterfeited, mutilated, or altered-

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

18 U.S C. §1001. Statements or entries generally.

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.'

18 U.S.C. 1018. Official certificates or writings.

Whoever, being a public officer or other person authorized by any law of the United States to make or give a certificate or other writing, knowingly makes and delivers as true such a certificate or writinq, containing any statement which he knows to be false, in a case where the punishment thereof is not elsewhere expressly provided by law, shall be fined not more than $500 or imprisoned not more than one year, or both.

18 U.S.C. $1028. fraud and related activity in connection with identification documents.

(a) Whoever, in a circumstance described in subsection (c) of this section--

(1) knowingly and without lawful authority produces an identification document or a false identification document:

(2) knowingly transfers an identification document or a false identification document knowing that such a document was stolen or produced without lawful authority:

(3) knowingly possesses with intent to use unlawfully or transfer unlawfully five or more

18 U.S.C. $1505. Obstruction of proceedings before departments, agencies, and committees.

Whoever, with intent to avoid, evade, prevent, or obstruct compliance, in whole or in part, with any civil investigative demand duly and properly made under the Antitrust Civil Process Act, willfully withholds,' misrepresents, removes from any place, conceals, covers up, destroys, mutilates, alters, or by other means falsifies any documentary material, answers to written interrogatories, or oral testimony, which is the subject of such demand: or attempts to do so or solicits another to do so: or

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress-

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.