

CHANGE

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

2150.3B CHG 3

Effective Date:
5/13/2011

National Policy

SUBJ: Sanction Guidance for Violations of Drug and Alcohol Testing Regulations

1. **Purpose.** This change to FAA Order 2150.3B amends the sanction guidance for violations of the industry drug and alcohol testing requirements under 14 CFR part 120 (formerly codified at 14 CFR part 121 Appendices I and J). The change provides more specific guidance for determining sanctions in cases where there are multiple violations of certain industry drug and alcohol regulations and amends the prescribed ranges for certain types of violations set forth in Appendix B.

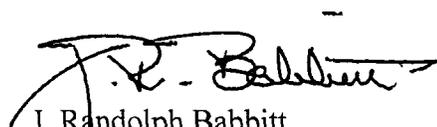
2. **Who this change affects.** The change affects all agency personnel who investigate, report, or process enforcement actions involving violations of the industry drug and alcohol testing requirements in the Federal Aviation Regulations.

3. **Disposition of Transmittal Paragraph.** Retain this transmittal sheet until the directive is cancelled by a new directive.

PAGE CHANGE CONTROL CHART

Remove Pages	Dated	Insert Pages	Dated
xiii thru xv	10/01/07	xiii thru xiv	05/13/2011
7-14 thru 7-21	10/01/07	7-14 thru 7-26	05/13/2011
Appendix B, B-31 thru B-52	10/01/07	Appendix B, B-31 thru B-53	05/13/2011

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


 J. Randolph Babbitt
 Administrator

Distribution: A-W-1; A-W (AT/PS/SM)-2;
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H-1

occur, the ranges set forth in Figures 7-1 and 7-2 do not apply. For example, operation of an aircraft when there is evidence the operator knew the aircraft or flight was not in compliance with statutory or regulatory requirements, yet deliberately operated it anyway, is most serious, and apart from civil penalties, requires consideration of remedial certificate action. For multiple violations in these circumstances, any civil penalties sought may be up to the statutory maximum penalty for each violation, regardless of the number of violations.

e. Civil Complaints. The guidance in chapter 7, paragraph 7 does not limit the amount of civil penalties that may be sought in a civil complaint filed in U.S. district court.

8. Guidance for Determining Sanctions in Cases Involving Drug and Alcohol Testing

Violations. The FAA Drug Abatement Division regularly conducts comprehensive inspections of certificate holding entities and other companies that are required, or have opted, to have an Antidrug and Alcohol Misuse Prevention Program, to determine compliance with 14 CFR part 120 (formerly codified at 14 CFR part 121, Appendices I and J). During these inspections, Drug Abatement Inspectors may discover that a company has committed multiple violations of the same regulation or multiple violations of multiple regulations governing similar types of conduct. When determining the appropriate sanction for such violations, FAA enforcement personnel might arrive at a recommended sanction amount that is disproportionately harsh for the misconduct involved in an average case if they were to simply add the appropriate amounts of penalty for each violation based on the guidance in Appendix B and chapter 7, paragraph 4. To achieve appropriate and more consistent sanctions in these cases, FAA enforcement personnel follow the guidance in subparagraphs 8.a.-d. when determining sanction amounts for violations of 14 CFR part 120.

a. Determining Proposed Penalty. To determine an appropriate civil penalty in a case involving violations of 14 CFR part 120, FAA enforcement personnel:

(1) Identify each separate violation discovered during the inspection. (For example, each employee for whom pre-employment drug test results were not received prior to hire; each employee who was not included in the random drug testing pool, each employee for whom a background check was not performed).

(2) Consult the table in Appendix B and the general guidance in chapter 7, paragraph 4, on aggravating or mitigating factors to determine the amount of penalty for each separate violation.

(3) If the apparent violation is of a type listed in the first column of Figures 7-3 and 7-4, then FAA enforcement personnel follow the guidance in subparagraphs 8.a.(4)-(7) to determine the appropriate sanction for these apparent violations. If the apparent violation is not covered under the first column of Figures 7-3 and 7-4, then the appropriate sanction is the recommended amount of civil penalty for that violation determined under subparagraph 8.a.(2).

(4) Add separately the amounts of penalty determined under subparagraph 8.a.(2) for each of the following types of violations (i-iv) or groupings of types of violations (v-vi):

i. All pre-employment testing violations committed by the employer, 14 CFR part 145 certificate holder, or other company, where there was no performance by the employee.

ii. All pre-employment testing violations committed by the employer, 14 CFR part 145 certificate holder, or other company where there was performance by the employee.

iii. All return-to-duty or follow-up testing violations by the employer, 14 CFR part 145 certificate holder, or other company.

iv. All failures to include safety-sensitive employees in the random pool.

v. All failures to perform drug and alcohol records checks (49 CFR § 40.25), all specimen collection failures, all failures by a qualified SAP to perform required functions.

vi. All failures to distribute or display informational materials, all failures relating to the annual MIS report requirements

(5) Consult Figure 7-3 or Figure 7-4. If the total amount of penalty calculated under subparagraph 8.a.(4) for a type of violation or grouping of types of violations does not exceed the middle of the recommended range for the type of violator (e.g., Group I, Small Business) in the case, then that amount is the recommended amount of penalty for that type of violation or grouping of types of violations in the case.

(6) If the total amount of penalty calculated under subparagraph 8.a.(4) for a type of violation or grouping of types of violations exceeds the middle of the recommended range for the type of violator in the case, then FAA enforcement personnel apply the guidance in subparagraph 8.a.(7).

(7) In an average case that is not covered under chapter 7, subparagraphs 8.b or 8.c., the amount of recommended penalty for multiple violations of a type of violation or a grouping of types of violations listed in column one of Figure 7-3 or 7-4 will fall within a range provided in those tables. To determine a specific sanction amount for such multiple violations, FAA enforcement personnel begin with an amount in the middle of the appropriate range for the type of violation or grouping of types of violations and the type of violator in the case. FAA enforcement personnel then apply the factors in paragraph 4 to determine what the specific amount of penalty should be for the multiple violations, i.e., FAA enforcement personnel increase the amount toward the higher end of the range for aggravating factors or decrease the amount toward the lower end of the range for mitigating factors. Sometimes a single entity might have more than one type of certificate. For example, an entity might be a certificated air carrier authorized to conduct part 121 operations and that same entity might hold a part 145 repair station certificate. If that entity is a Group I Large Business air carrier but uses its part 145 certificate to perform maintenance on aircraft it uses in its part 121 operations or performs maintenance of aircraft used by another part 121 operator, FAA enforcement personnel use the civil penalty ranges set forth in Figure 7-3 instead of 7-4. If an entity is large enough to be

classified as a Group I Large Business when it acts as an air carrier or when it performs all of its maintenance work on its own aircraft or the aircraft of others under its part 145 repair station certificate, then it will be subject to the higher range of penalties set forth in Figure 7-3.

(8) To determine the total amount of penalty for the case, FAA enforcement personnel add the amounts of sanction determined appropriate for apparent violations covered under Figures 7-3 or 7-4 to those amounts determined appropriate for violations not covered under Figures 7-3 or 7-4.

b. Penalties Outside the Ranges.

(1) Penalties lower than the ranges. For multiple violations covered under the guidance in subparagraph 8.a.(7), it may be appropriate to select a civil penalty amount below the ranges in Figures 7-3 or 7-4, if the degree of culpability of the apparent violator is minimal, the degree of potential hazard is extremely low, and there are no aggravating circumstances.

(2) Penalties higher than the ranges. For multiple violations covered under the guidance in subparagraph 8.a.(7), it may be appropriate to select a civil penalty higher than the ranges in Figures 7-3 or 7-4, up to the statutory maximums:

- If the apparent violator was significantly culpable in permitting the apparent violations to occur;
 - If the apparent violations presented significant safety risks;
 - If the nature and circumstances of the multiple violations indicate problems or deficiencies with the systems supporting the apparent violator's antidrug and alcohol misuse prevention programs, particularly a lack of organizational policies, procedures, and controls that evidence a neglect by company management of its regulatory responsibilities to implement antidrug and alcohol misuse prevention programs.
 - If there was an absence of corrective action by the apparent violator over an extended period of time;
 - Where it is necessary to provide an economic disincentive for regulatory noncompliance;
- or
- If the apparent violator has a poor compliance disposition or history.

c. Intentional Violations. When there is substantial and reliable evidence that management officials of the certificate holding entity or other company knew it was acting contrary to requirements in 14 CFR part 120 or failing to act as required by 14 CFR part 120 then the ranges in Figures 7-3 and 7-4 do not apply. For multiple violations in these circumstances, any civil penalties sought may be up to the statutory maximum penalty for each violation, regardless of the number of violations.

d. Civil Complaints. The guidance in chapter 7, paragraph 8 does not limit the amount of civil penalties that may be sought in a civil complaint filed in U.S. district court.

Figure 7-3. Ranges of Penalties for Air Carriers and Commercial Operators

	Group I Large Business	Group I Small Business	Group II Large Business	Group II Small Business	Group III	Group IV
Type of Violations						
Pre-employment (no performance/low risk)	\$50,000- \$100,000	\$22,000- \$45,000	\$40,000- \$85,000	\$20,000- \$40,000	\$15,000- \$35,000	\$5,000- \$12,000
Pre-employment (performance/mod erate-high risk)	\$150,000- \$300,000	\$50,000- \$100,000	\$140,000- \$285,000	\$45,000- \$95,000	\$40,000 \$90,000	\$15,000- \$45,000
Return-to- Duty/Follow-up Testing	\$175,000- \$350,000	\$75,000- \$150,000	\$165,000- \$325,000	\$75,000- \$150,000	\$55,000- \$135,000	\$35,000- \$55,000
Failure to include in Random Pool	\$150,000- \$300,000	\$50,000- \$100,000	\$140,000- \$285,000	\$45,000- \$95,000	\$40,000- \$90,000	\$15,000- \$45,000
(1) Drug and Alcohol Records Check (2) Specimen Collection (3) Failures by Qualified SAP to perform functions	\$30,000- \$50,000	\$15,000- \$25,000	\$25,000- \$45,000	\$12,000- \$22,000	\$12,000- \$20,000	\$7,000- \$12,000
(1) Information Distribution (2) Annual MIS Report	\$10,000- \$30,000	\$5,000- \$15,000	\$8,000- \$25,000	\$4,000- \$10,000	\$4,000- \$10,000	\$3,000- \$6,000

Figure 7-4.

Ranges of Penalties for Repair Stations (Certificated) and Non-Certificated Contractors

	Repair Station Large Business	Repair Station Small Business	Other Large Business	Other Small Business
Type of Violations				
Pre-employment (no performance/low risk)	\$40,000-\$85,000	\$18,000-\$40,000	\$40,000-\$85,000	\$18,000-\$40,000
Pre-employment (performance/moderate-high risk)	\$140,000-\$285,000	\$45,000-\$95,000	\$140,000-\$285,000	\$45,000-\$95,000
Return-to-Duty/Follow-up Testing	\$165,000-\$325,000	\$55,000-\$135,000	\$165,000-\$325,000	\$55,000-\$135,000
Failure to include in Random Pool	\$140,000-\$285,000	\$45,000-\$95,000	\$140,000-\$285,000	\$45,000-\$95,000
(1) Drug and Alcohol Records Check (2) Specimen Collection (3) Failures by Qualified SAP to perform functions	\$25,000-\$45,000	\$12,000-\$20,000	\$25,000-\$45,000	\$12,000-\$20,000
(1) Information Distribution (2) Annual MIS Report	\$8,000-\$25,000	\$4,000-\$10,000	\$8,000-\$25,000	\$4,000-\$10,000

9. Modification.

a. Type of Sanction. Except when the FAA exercises its prosecutorial discretion to settle an enforcement action, the FAA generally does not modify orders suspending or revoking a certificate to provide for a civil penalty. The FAA also generally does not modify orders assessing a civil penalty to provide for a certificate action. The FAA modifies the type of

sanction only in those cases involving extraordinary circumstances (beyond the normal aggravating or mitigating factors and elements listed in chapter 7, paragraph 4). New facts discovered after the original order has been issued may provide a basis for modifying the amount of sanction, but would not ordinarily provide a basis for modifying the type of sanction. However, if newly discovered facts raise new issues, such as the alleged violator's qualifications to hold a certificate, or if they implicate a statutorily-mandated penalty, the FAA modifies the type of sanction.

b. Amount of Sanction. The FAA does not apply the factors listed in chapter 7, paragraph 4. in a manner that would double their effect. Once the FAA has fairly considered the relevant mitigating and aggravating circumstances, it generally does not modify the amount of sanction. The FAA modifies the amount of sanction normally only when new information indicates the factors or elements were not fairly applied, or when other clear and compelling reasons are articulated.

10. Special Emphasis Enforcement Programs. At times special situations arise that dictate the need for more effective enforcement action through increased sanctions or other measures in a particular regulated area or segment of industry. When these circumstances arise, the FAA may set up a special emphasis enforcement program, designed to focus on a particular area of noncompliance on a national or local geographical basis.

11. Small Entities.

a. General.

(1) Under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), the FAA is required to have a policy or program to provide for the reduction, and under appropriate circumstances waiver, of civil penalties for statutory or regulatory violations by small entities. Under the law, such a policy is to contain certain conditions. Those suggested by Congress are: requiring the small entity to correct the violation within a reasonable correction period; limiting the applicability to violations discovered through participation in a compliance assistance or audit program operated or supported by the agency; excluding small entities that have been subject to multiple enforcement actions by the agency; excluding violations involving willful or criminal conduct; excluding violations that pose serious health, safety or environmental threats; and requiring a good faith effort to comply with the law. The SBREFA also provides that under appropriate circumstances, the FAA may consider ability to pay in determining the penalty to assess a small entity.

(2) Congress intended that agencies have the discretion to develop the limits of their enforcement policies for small entities and the specific circumstances under which penalty reductions or waivers would be granted. Because the statute requires an agency, subject to the requirements and limitations of other statutes, to place conditions or exclusions on its enforcement policy under SBREFA, it does not appear Congress intended agencies to reduce or waive penalties solely because an alleged violator is a small entity. Rather, the statute contemplates that certain criteria be met before an agency reduces or waives a penalty against a small entity. Although the SBREFA imposes a requirement on agencies to establish penalty

reduction and waiver programs for small entities, Congress recognized that some agencies already have formal or informal policies or programs that would meet this requirement.

b. FAA's Policy under the SBREFA.

(1) The FAA's compliance and enforcement program includes several policies that meet the requirements of, and are consistent with the intent of, SBREFA. Taken together, these policies constitute the FAA's policy mandated by SBREFA.

(2) Under the FAA's compliance and enforcement program, for example, FAA investigative personnel have the discretion to address alleged violations by any person, including small entities, with lesser enforcement action than a civil penalty, that is, administrative action, provided the criteria in chapter 5 are met. There are two forms of administrative action: a warning notice and a letter of correction. A warning notice brings to the attention of the regulated person or entity the facts and circumstances that indicate that a violation has occurred, identifies the regulatory provision at issue, and requests future compliance. A letter of correction is similar but is intended for use when there is an agreement with the regulated party that corrective action acceptable to the FAA has, or within a reasonable period will be, taken. Administrative actions are less onerous than a waiver of penalty in that they neither carry a sanction nor result in a finding of violation.

(3) Under the agency's voluntary disclosure reporting program, the FAA takes administrative action instead of civil penalty action against most regulated entities, including small entities that voluntarily report certain apparent violations to the FAA, complete corrective action satisfactory to the FAA to prevent their recurrence, and meet certain other criteria.

(4) The FAA's sanction policies have historically provided for reductions of civil penalties in appropriate cases based on the mitigating factors listed in chapter 7, subparagraph 4., which include ability to pay and whether a penalty would prevent the entity from continuing in business.

(5) For air carriers and commercial operators, the FAA also takes company size into consideration in determining the appropriate amount of civil penalty. The sanction ranges in Part I. Definitions and Abbreviations of the table for single, inadvertent, first-time violations by U.S. air carriers and U.S. commercial operators differentiate among various sizes of such entities as a means of providing a relatively equivalent deterrent for the same violation against each air carrier and commercial operator. While the FAA has not specified such sanction ranges for other certificate holding entities, it is the FAA's policy to seek penalties generally relative to the size and revenue of the operation for repair stations, manufacturers, airports, and other entities holding certificates.

(6) Although the FAA does not reduce or waive the penalty of an alleged violator solely because it is a small entity, the FAA appropriately reduces a civil penalty, or elects to take administrative action rather than legal enforcement action, against a small entity if appropriate under the policies described in chapter 7, subparagraphs 10.b.(1)-(5).

c. The Small Business Ombudsman.

(1) The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates the enforcement activities and rates each agency's responsiveness to small business.

(2) Each FAA employee who conducts an inspection of a small business concern that is regulated by the FAA provides the small business concern with an information sheet. The information sheet informs that entity that it may submit complaints or comments regarding unfair FAA regulatory enforcement to the National Ombudsman. The information sheet contains the following language:

Our objective is to ensure a fair regulatory enforcement environment. If you feel that you have been treated unfairly or unprofessionally, you may contact the FAA by calling the FAA's Office of Rulemaking at (202)-267-3404 or by mailing your comments or complaints to the Federal Aviation Administration, Office of Rulemaking, 800 Independence Avenue, S.W., Room 808, Washington, D.C., 20591. You also have a right to contact the Small Business Administration's National Ombudsman at 1- 888-REG-FAIR (1-888-734-3247), or www.sba.gov/ombudsman regarding the fairness of the compliance and enforcement activity of the FAA. The FAA strictly forbids retaliatory acts by its employees. As such, you should feel confident that you will not be penalized for expressing your concerns about the FAA's compliance and enforcement activities.

12. Remedial Sanction Guidance Policy.

a. General.

(1) The FAA statute requires the Administrator to promote "safe flight of civil aircraft in air commerce . . ." 49 U.S.C. § 44701(e). As one means of achieving this goal, the statute specifically authorizes the Administrator to issue various certificates. These certificates include airman certificates, type certificates, production certificates, airworthiness certificates, air carrier operating certificates, airport operating certificates, air agency certificates, and air navigation facility certificates. 49 U.S.C. § 44702(a). For most of these certificates, the statute requires the Administrator to investigate and make appropriate findings regarding qualifications to hold the certificate applied for before the certificate is issued. For example, the Administrator is required to investigate and make findings that persons applying for airman certificates are *qualified* to hold those certificates; that aircraft and aircraft engine parts are properly designed and manufactured, perform properly, and meet the regulations and minimum standards prescribed before issuing a type certificate, and so forth. 49 U.S.C. §§ 44702-44706. Once the Administrator finds the applicant is qualified for the certificate applied for, the Administrator is required to issue the certificate in question.

(2) Because the Administrator's responsibility to promote safety in air commerce and air transportation is constant, the Administrator must also take appropriate action when the Administrator finds, or has reason to believe, the certificate holder no longer possesses the qualifications required to hold a certificate. Thus, the statute provides that the Administrator "may reinspect at any time a civil aircraft, aircraft engine, propeller, appliance, air navigation facility, or air agency or reexamine an airman holding a certificate issued under section 44703 of this title," and that the Administrator "may issue an order amending, modifying, suspending or revoking . . . any part of a certificate issued under [chapter 447 of the statute] if . . . the Administrator decides after conducting a reinspection, reexamination, or other investigation that safety in air commerce or air transportation requires that action." 49 U.S.C. §§ 44709(a) and (b) (1) (A).

(3) Revocation is the appropriate remedy for conduct that demonstrates that a certificate holder lacks either the technical proficiency or the degree of care, judgment, and responsibility, required for the certificate and ratings held. The proper standard for revocation is not whether specific violations demonstrate a failure to exercise the necessary qualifications of a certificate holder, but rather whether the violations demonstrate that the holder has never possessed or no longer possesses such qualifications. Similarly, suspension until demonstration of qualification is appropriate when the agency has reason to believe the certificate holder may lack the required competence to hold a certificate and generally when the certificate holder fails or refuses to be reexamined. In either case, using the factors normally applied to select a sanction in punitive suspension cases is neither required nor appropriate.

b. Misconduct Generally Warranting Revocation.

(1) The FAA has concluded that by their nature, some acts of misconduct are so egregious as to demonstrate the certificate holder never possessed or no longer possesses the qualifications required to hold any airman certificate and other certificates. Therefore, such acts of misconduct warrant revocation of all airman certificates and other certificates held by the certificate holder. Such acts include: making a fraudulent or intentionally false statement; operating an aircraft while under the influence of alcohol or drugs, or with an alcohol concentration of .04 percent or above, or within 8 hours of consuming alcohol, in violation of 14 C.F.R. § 91.17(a); operating a civil aircraft within the United States with knowledge that narcotic drugs, marijuana, and depressant or stimulant drugs or substances as defined in federal or state statutes are carried in the aircraft, in violation of 14 C.F.R. § 91.19(a); refusing to submit to a drug or alcohol test; and conviction for the violation of any federal or state statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marijuana, depressant or stimulant drugs or substances involving the use of an aircraft, the exercise of the privileges of the alleged violator's airman certificate to further the prohibited conduct, or more than one drug conviction of any kind within the scope of 14 C.F.R. §§ 61.15(a), 63.12(a), or 65.12(a).¹

¹ A drug conviction within the scope of 14 C.F.R. §§ 61.15(a), 63.12(a), or 65.12(a) that does not involve the use of an aircraft or the exercise of the privileges of the alleged violator's certificate also can warrant revocation in some circumstances. Revocation is appropriate where the totality of the circumstances underlying the conviction indicates that the alleged violator lacks the judgment, responsibility, and compliance attitude required of an airman. This determination must be made on a case-by-case basis.

(2) Except for cases under 49 U.S.C. §§ 44106, 44710, 44726, and 46111, there may be unique circumstances for which a sanction other than revocation is warranted. Because of the serious implications for aviation safety raised by these cases, however, FAA legal counsel coordinates any decision to seek a sanction other than revocation with the Assistant Chief Counsel for Enforcement. In addition, legal counsel documents the basis for that decision in the case file.

c. Intentionally False or Fraudulent Statements.

(1) In general, the FAA considers the making of intentionally false or fraudulent statements so serious an offense that it results in revocation of all certificates held by the certificate holder. *See, for example, Administrator v. Twomey*, 5 NTSB 1258 (1986), *aff'd* 821 F.2d 63 (1st Cir. 1987) (violation of 14 C.F.R. § 67.20(a)). Falsification has a serious effect on the integrity of the records on which the FAA's safety oversight depends. If the reliability of these records is undermined, the FAA's ability to promote aviation safety is compromised.

(2) The FAA has handled differently one area of intentional falsification - omitting information related to alcohol- or drug-related convictions, and other similar convictions, from applications for airman medical certification. In FAA Order 2150.3A, Compliance and Enforcement (C & E) Bulletin No. 90-2, issued on February 6, 1990, the agency's policy called for the following sanctions: revoking the alleged violator's current medical certificate, if any, and suspending any airman or ground instructor certificates for 60 days when the falsification involved omitting from the application for medical certification information on a single driving while intoxicated or driving under the influence (DUI) conviction; revoking any current medical certificate and suspending any airman or ground instructor certificates for 180 days when the falsification involved omitting information on a single drug conviction for simple possession from the application for medical certification; and revoking any current medical *and* any airman or ground instructor certificates when the falsification involved omitting information on more than one DUI conviction, or a conviction for more than simple possession, or more than two drug convictions of any type.

(3) The FAA has reevaluated the sanction guidance contained in C & E Bulletin No. 90-2, and has concluded that the sanction guidance for fraudulent or intentional falsification should be the same regardless of the type of case involved. The FAA has determined that falsification in the cases described in C & E Bulletin No. 90-2 has the same potentially adverse consequences for aviation safety as does falsification of any other record. In essence, a person who fraudulently or intentionally falsifies these records demonstrates the same lack of care, judgment, and responsibility as a person who falsifies any other aviation safety-related records. To correct the anomaly created by C & E Bulletin No. 90-2, the FAA rescinds the sanction guidance regarding intentionally false or fraudulent statements in that bulletin and withdraws the Notice of Enforcement Policy found at 54 Fed. Reg. 15144 (1989).

13. General Guidance for Using the Sanction Guidance Table for Unruly Passenger Conduct Under 49 U.S.C. § 46318.

a. General Purpose and Policy.

(1) The table at Appendix B, part II, Figure B-3-p provides the suggested sanction ranges for a single act of unruly conduct by a passenger subject to the provisions of 49 U.S.C. § 46318. *See* also Crew Interference (Unruly Passengers), chapter 4, paragraph 14. They provide general guidance only about how to apply the agency's civil penalty authority under 49 U.S.C. § 46318. The sanction guidance tables do not supplant the agency's judgment or its prosecutorial discretion in evaluating a particular case for enforcement action.

(2) Whether a particular passenger's unruly act warrants a sanction within or outside the sanction range, or in the exercise of prosecutorial discretion a decision not to proceed with enforcement action depends on the totality of the circumstances in a particular case. Where the mitigating and aggravating factors described in chapter 7, paragraph 4 are also present in a 49 U.S.C. § 46318 case, FAA enforcement personnel applying the sanction ranges at Appendix B, part II, Figure B-3-p consider those factors in selecting an appropriate sanction within or outside the range. The variety of conduct subject to 49 U.S.C. § 46318 and the varied facts and circumstances within which unruly conduct may occur, may also warrant consideration of other mitigating and aggravating factors unique to unruly passenger conduct. Some of these additional factors are set forth in chapter 7, subparagraphs 12.b. and c.

b. Additional Aggravating Factors to Consider. In addition to the factors described in chapter 7, paragraph 4, FAA enforcement personnel consider other potentially aggravating factors in chapter 7, subparagraphs 12.b.(1)-(7) in the selection of an appropriate sanction within or outside the sanction range.

(1) The severity of the unruly conduct. The severity of the conduct may be indicated by several factors, including:

- The physical characteristics of the individual committing the unruly conduct contrasted with those of the victim.
- The nature of the conduct itself.
- The extent of any injury inflicted.

(2) Whether the unruly conduct occurred when the aircraft was in flight or while passengers were boarding or deplaning. Certain unruly conduct that occurs during flight or on a crowded boarded flight may be more aggravating than the same conduct that occurs while passengers are deplaning.

(3) Whether the unruly conduct was directed at a crewmember or a passenger. Because a crewmember has safety duties to perform on a flight, unruly conduct against a crewmember may be more aggravating than the same unruly conduct directed at an individual who does not have any safety duties to perform on the flight.

(4) Whether the unruly passenger provoked the situation that resulted in the unruly conduct. For instance, a passenger who instigates a confrontation, or a passenger who mixes alcohol with prescribed or over-the-counter drugs that the passenger claims precipitated the unruly conduct.

(5) Whether the unruly conduct necessitated that the flight be diverted from its intended destination.

(6) Whether the unruly conduct necessitated that the flight crew call ahead for law enforcement to meet the flight on arrival.

(7) Whether the unruly conduct was inflicted with malice or in anger.

c. Additional Mitigating Factors to Consider. The factors listed in chapter 7, subparagraphs 12.c.(1)-(3) may justify a sanction below the sanction range, or in the agency's prosecutorial discretion, may justify a decision not to prosecute a passenger's unruly conduct.

(1) Whether the unruly passenger has already served a criminal sentence for the same conduct or has already made monetary restitution in the context of a criminal prosecution for the same conduct.

(2) Whether the passenger's unruly conduct was caused by a diagnosed medical or mental condition for which the passenger was receiving medical treatment.

(3) Whether the unruly conduct was a reasonable response to a provocation by another. However, a passenger's use of unreasonable force in response to a provocation by another individual on the aircraft would not constitute a mitigating factor.

d. When to Apply the Sanction Range for Acts Posing an "Imminent Threat" to Safety of the Aircraft or Others on Board the Aircraft.

(1) The sanction range at Appendix B, part II, Figure B-3-p for an act that poses an imminent threat to safety of aircraft or other individuals on the aircraft applies when there is an *imminent* threat to the safety of the aircraft or to the *collective* safety of others on board the aircraft. For example, a passenger attempting to open an emergency exit door would be an imminent threat to the safety of the aircraft. If the imminent threat to safety is directed to specific individuals on the aircraft, then the sanction range for physical assault or threatened physical at Appendix B, part II, Figure B-3-p applies.

(2) In selecting an appropriate sanction within or outside the sanction range for an act posing an imminent safety threat, FAA enforcement personnel consider whether the resultant imminent threat was the unintended consequence of the passenger's careless or reckless act or whether the passenger intended the consequences. The former would justify a sanction toward the low end of the range, while the latter would justify a sanction toward the maximum range.

e. Applicable Sanction Ranges for Security Officers or Others Assigned a Law Enforcement Function on a Flight (for example, Federal Air Marshals Assigned to the Flight). FAA enforcement personnel apply the sanction range applicable to physical assaults or threatened physical assaults on crewmembers (Appendix B, part II, Figure B-3-p).

f. Applying Unruly Passenger Sanction Guidance Tables to Multiple Acts.

When applying the table to multiple acts by an unruly passenger, FAA enforcement personnel consider not only the individual unruly acts committed, but also the collective consequences of all the unruly behavior. FAA enforcement personnel do not approach the sanction determination for multiple acts as a mechanical exercise of multiplying the number of separate acts of unruly behavior by a sanction amount in the range for a single act. Instead, they use the guidance in the table and exercise their judgment as to the seriousness of the conduct, given the totality of circumstances, to determine an appropriate sanction amount that will deter future violations by the unruly passenger and others similarly situated.

Fig. B-4-c. Drug convictions - no falsification involved cont.	Civil Penalty	Certificate Action
(2) Multiple convictions for simple possession*		120-day Suspension to Revocation of all part 61, 63, or 65 certificates
(3) Conviction(s) for other than simple possession*		Revocation of all part 61, 63, or 65 certificates

*It may be appropriate, in the exercise of prosecutorial discretion, not to take enforcement action when a conviction is several years old when discovered by the FAA and there is evidence that the certificate holder has been rehabilitated such that the individual can be expected to conform his or her conduct to safety requirements.

5. DRUG AND ALCOHOL TESTING VIOLATIONS.

Fig. B-5-a. Drug and Alcohol Testing Violations	Civil Penalty	Certificate Action
(1) Failure of an air carrier operating under part 121 or part 135 operator to obtain an operations specification	Moderate	
(2) Failure of a part 145 operator (that opts to have its own drug program and AMPP) to obtain an operations specification	Moderate	
(3) Failure of a Section 91.147 or non-FAA air traffic control facility to submit a registration to the FAA	Moderate	
(4) Failure of a contractor (that opts to have its own drug and alcohol programs) to submit a registration to the FAA	Moderate	
(5) Failure to implement or maintain continuous coverage in an FAA antidrug program and/or AMPP in accordance with Appendices I and/or J or 14 CFR part 120	Maximum	Indefinite Suspension pending compliance or Revocation

Fig. B-5-b. Coverage	Civil Penalty	Certificate Action
(1) Failure to include a safety-sensitive employee in FAA mandated drug and alcohol testing programs	Moderate to Maximum	
(2) Permitting a contractor employee to perform a function listed in Appendix I or J or 14 CFR part 120 who is not covered under an FAA-mandated antidrug and/or alcohol	Moderate to Maximum	

misuse prevention program		
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Fig. B-5-c. Pre-employment drug testing	Civil Penalty	Certificate Action
(1) Failure to advise each individual applying to perform a safety-sensitive function of the pre-employment testing requirement	Minimum	
(2) Failure to pre-employment drug test an individual or receive a negative drug test result prior to hiring or transferring that individual for a safety-sensitive function that has a negligible impact on safety.	Minimum to Moderate	
(3) Failure to pre-employment drug test an individual or receive a negative drug test result prior to hiring or transferring that individual for a safety-sensitive function that has, or may have, an adverse effect on safety.	Moderate to Maximum	
(4) Failure to pre-employment drug test before hiring or transferring an individual into a safety-sensitive position if more than 180 days elapse between a pre-employment test and placing the individual into a safety-sensitive function that has a negligible impact on safety.	Minimum to Moderate	
(5) Failure to pre-employment drug test before hiring or transferring an individual into a safety-sensitive position if more than 180 days elapse between a pre-employment test and placing the individual into a safety-sensitive function that has, or may have, an adverse effect on safety.	Moderate to Maximum	

Fig. B-5-d. Random drug and alcohol testing	Civil Penalty	Certificate Action
(1) Failure to conduct random drug and/or alcohol testing	Maximum	
(2) Failure to meet the minimum annual percentage rate for random drug and/or alcohol testing	Minimum to Moderate	
(3) Failure to use a scientifically valid method of random selection	Moderate	
(4) Failure to ensure that random drug and/or alcohol tests are unannounced	Moderate	
(5) Failure to ensure the dates for administering random tests are spread reasonably throughout the calendar year	Minimum to Moderate	
(6) Failure to ensure that an employee who is notified to report for random drug and/or alcohol testing proceeds immediately to the testing site	Moderate to Maximum	
(7) Failure to conduct alcohol testing just before the employee is to perform a safety-sensitive function, during or just after the employee has ceased performing a safety-sensitive function	Minimum	

Fig. B-5-e. Post-accident drug and alcohol testing	Civil Penalty	Certificate Action
(1) Failure to drug and/or alcohol test each employee who performs a safety-sensitive function, if that employee's performance either contributed to an accident or cannot be completely discounted as a contributing factor to the accident.	Maximum	
(2) Failure to post-accident drug test an employee within 32 hours after the accident.	Maximum	
(3) Failure to conduct post-accident alcohol testing on an employee within 8 hours after the accident	Maximum	
(4) Failure to prepare and maintain on file required records stating the reasons the post-accident alcohol test was not administered within 2 hours and/or 8 hours.	Minimum	

Fig. B-5-f. Reasonable cause drug and reasonable suspicion alcohol testing	Civil Penalty	Certificate Action
(1) Failure to drug and/or alcohol test each employee who performs a safety-sensitive function and who is reasonably suspected of using a prohibited drug and/or misusing alcohol	Maximum	
(2) Reasonable cause drug testing of individuals without a reasonable and articulable belief that the employee is using a prohibited drug on the basis of specific, contemporaneous physical, behavioral, or performance indicators of probable drug use	Moderate	
(3) Reasonable suspicion alcohol testing of individuals when reasonable suspicion of alcohol misuse has not been determined by a trained supervisor based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odor of the employee	Moderate	
(4) Failure to prepare and maintain on file a record stating the reasons the reasonable suspicion alcohol test was not administered within 2 hours and/or 8 hours	Minimum to Moderate	
(5) Failure to remove a safety-sensitive employee who is under the influence of or impaired by alcohol	Maximum	

Fig. B-5-g. Return to duty drug and alcohol testing	Civil Penalty	Certificate Action
(1) Failure to conduct a return-to-duty drug test before an individual is returned to perform a safety-sensitive function after the individual refused to submit to a required drug test or received a verified positive drug test result	Maximum	
(2) Failure to receive a verified negative return to duty drug test result for an individual prior to the individual's return to a safety-sensitive function	Maximum	
(3) Failure to administer a return-to-duty alcohol test on an individual who engaged in prohibited conduct prior to	Maximum	

returning him or her to a safety-sensitive function.		
Fig. B-5-g. Return to duty drug and alcohol testing cont.	Civil Penalty	Certificate Action
(4) Failure to ensure that the employee has received an alcohol test result with an alcohol concentration of less than 0.02 on a return-to-duty test prior to resuming the performance of safety-sensitive duties	Maximum	

Fig. B-5-h. Follow-up drug and alcohol testing	Civil Penalty	Certificate Action
(1) Failure to implement a reasonable program of unannounced testing for each individual who has been hired to perform or who has been returned to the performance of a safety-sensitive function after refusing to submit to a test, receiving a verified positive drug test result, or engaging in prohibited alcohol conduct	Maximum	
(2) Failure to administer at least six follow-up tests in the first 12 months following the return to duty of an employee	Maximum	
(3) Failure to discontinue follow-up testing after 60 months from the date the individual returned to a covered function	Minimum to Moderate	
(4) Failure of a substance abuse professional to determine the number and frequency of follow-up tests	Maximum	
(5) Failure to ensure that follow-up alcohol testing of a covered employee only occurs just before the employee is to perform safety-sensitive functions, during, or just after the employee has ceased covered functions	Minimum	

Fig. B-5-i. Retesting covered employees	Civil Penalty	Certificate Action
(1) Failure to retest a covered employee with an alcohol concentration of greater than .02 and less than .04 when the employer has chosen to permit the employee to perform a safety-sensitive function within 8 hours of alcohol use	Maximum	
(2) Permitting an individual with an alcohol concentration of .02 or above to return to duty performing safety-sensitive functions unless 8 hours has elapsed or the individual is retested and tests below .02	Maximum	

Fig. B-5-j. Inappropriate testing	Civil Penalty	Certificate Action
(1) Inappropriate testing using DOT or FAA Authority	Minimum to Moderate	

Fig. B-5-k. Administrative and other matters	Civil Penalty	Certificate Action
(1) Failure to permit the Administrator or the Administrator's representative to examine records	Maximum	Indefinite Suspension pending compliance to Revocation
(2) Failure to conduct drug and alcohol records check required under 49 C.F.R. § 40.25	Moderate to Maximum	
(3) Failure to provide drug and alcohol testing records requested under 49 C.F.R. § 40.25	Moderate to Maximum	
(4) Using an employee to perform safety-sensitive functions after obtaining information that the employee violated DOT drug and alcohol regulations, without obtaining information that the employee complied with return-to-duty requirements	Moderate to Maximum	
(5) Failure to notify the FAA of a medical certificate holder (issued under part 67), who tested positive on a DOT drug test, within two working days of the date of the verified positive result	Moderate to Maximum	
(6) Failure to notify the FAA of a medical certificate holder (issued under part 67), who engaged in prohibited alcohol conduct, within two working days of the violation date	Moderate to Maximum	
(7) Failure to notify the FAA of the refusal to submit to testing by a part 61, part 63, or part 65 certificate holder within two working days of the refusal to test	Moderate to Maximum	
(8) Knowingly using any person to perform any safety-sensitive function after being permanently precluded from performing that safety-sensitive function	Maximum	Indefinite Suspension pending compliance to Revocation
(9) Failure to submit an annual drug and alcohol (MIS) report in accordance with Appendices I and J or 14 CFR part 120.	Minimum	
(10). Failure to maintain records of an employee's drug rehabilitation, the drug test collection process, training, and/or negative drug test results for the required timeframe	Moderate	
(11) Releasing drug or alcohol testing information without the appropriate consent	Maximum	
(12) Failure to maintain records in a secure location with controlled access	Maximum	
(13) Failure to maintain records of employee alcohol test results of 0.02 or greater for the required timeframe	Moderate	
(14) Failure to maintain records related to violations of	Moderate	

sections 65.46a, 120.19, or 120.37 or 121.458 or 135.253 for the required timeframe		
Fig. B-5-k. Administrative and other matters cont.	Civil Penalty	Certificate Action
(15) Failure to maintain documentation of refusals, calibration documentation, employee evaluations and referrals, and copies of annual reports (MIS) for the required timeframe	Moderate	
(16) Failure to maintain records related to all test results below 0.02 for the required timeframe	Minimum	
(17) Failure to submit an annual report (MIS) in the form and manner prescribed by the Administrator	Minimum	
(18) Failure to submit an annual report (MIS) by March 15 th	Minimum	
(19) Releasing alcohol testing information without the appropriate consent	Maximum	

Fig. B-5-l. Medical Review Officer (MRO)	Civil Penalty	Certificate Action
(1) Failure to use a qualified individual to perform MRO services	Maximum	
(2) Failure of MRO to verify and/or maintain records of negative test results	Minimum	
(3) Failure of MRO to review, interpret, and verify positive test results	Maximum	
(4) Failure of MRO to interview an employee or applicant who has had a confirmed positive drug test result	Maximum	
(5) Failure of MRO to transmit the results to employer	Maximum	
(6) Failure of MRO to process employee requests for testing of split specimens	Maximum	
(7) Failure of MRO to ensure all records maintained by the former MRO are forwarded to the new MRO within the appropriate time frame	Moderate	
(8) Failure of MRO to maintain records in confidence and release only in accordance with the provisions of 14 C.F.R. part 121, Appendix I or 14 CFR part 120 and 49 C.F.R. part 40	Maximum	
(9) Failure of MRO to maintain records concerning drug tests confirmed positive by the laboratory for the required timeframe	Maximum	
(10) Failure of MRO to inquire whether an individual holds an airman medical certificate issued under part 67, or would be required to hold such certificate in order to perform the duties of the position for which the applicant is applying	Maximum	
(11) Failure of MRO to verify the primary test result pending the result of the split specimen	Maximum	

Fig. B-5-m. Substance Abuse Professional (SAP) referral and evaluation	Civil Penalty	Certificate Action
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(1) Failure to use a qualified individual to perform SAP services	Maximum	
(2) Failure to advise an employee of the resources available to him or her in evaluating and resolving problems associated with the misuse of alcohol	Minimum	
Fig. B-5-m. Substance Abuse Professional (SAP) referral and evaluation cont.	Civil Penalty	Certificate Action
(3) Failure of a SAP to conduct a face-to-face evaluation of the employee and recommend education and/or treatment	Moderate	
(4) Failure of a SAP to ensure that each employee who has committed a DOT drug and/or alcohol regulation violation, has successfully complied with the SAP's recommendations for education and/or treatment prior to establishing a follow-up testing plan	Moderate	

Fig. B-5-n. Employee Assistance Program	Civil Penalty	Certificate Action
(1) Failure to display and distribute informational materials, a community service hotline telephone number and the employer's policy regarding drug use in the work place	Minimum	
(2) Failure to conduct initial employee training	Minimum to Moderate	
(3) Failure to conduct initial and recurrent supervisory training	Moderate	
(4) Failure to document initial employee and supervisory training on drug use	Minimum	

Fig. B-5-o. Alcohol misuse information, training, and referral	Civil Penalty	Certificate Action
(1) Failure to promulgate a policy on the misuse of alcohol	Minimum	
(2) Failure to conduct supervisory training regarding alcohol use	Minimum	
(3) Failure to distribute and/or document the distribution of alcohol informational materials to employees	Minimum	

Fig. B-5-p. Violations of the drug and alcohol prohibitions	Civil Penalty	Certificate Action
(1) Failure to remove an individual from safety-sensitive functions for on-duty use, pre-duty use, use following an accident, refusal to submit to a test, and/or a drug positive and/or an alcohol concentration of .04 or greater	Maximum	
(2) Allowing a covered employee who used alcohol within 8 hours of an accident to perform or continue performing safety-sensitive functions	Maximum	
(3) Failure to notify the Federal Air Surgeon of a part 67 medical certificate holder who received a positive drug test result and/or received an alcohol concentration of .04 or greater on an alcohol test	Maximum	

(4) Allowing a part 67 medical certificate holder to perform safety-sensitive duties for an employer following an alcohol violation and/or drug positive	Maximum	
(5) Failure to notify the FAA of a part 61, 63, and/or 65 certificate holder who refused to submit to testing	Maximum	

Fig. B-5-q. Employees located outside the Territory of the U.S.	Civil Penalty	Certificate Action
(1) Subjecting an employee located outside the territory of the United States to a DOT drug or alcohol test	Minimum	

Fig. B-5-r. Specimen collection	Civil Penalty	Certificate Action
(1) Failure to use urine collection personnel who meet the requirements of 49 C.F.R. part 40, subpart C	Minimum to Moderate	
(2) Failure to use collection sites, forms, equipment and supplies for DOT urine collections that meet the requirements in 49 C.F.R. part 40, subpart D	Minimum to Moderate	
(3) Failure to conduct specimen collections in accordance with 49 C.F.R. part 40, subpart E	Minimum to Moderate	
(4) Failure to process split specimen tests in accordance with 49 C.F.R. part 40, subpart H	Moderate	
(5) Failure to address problems with drug tests in accordance with 49 C.F.R. part 40, subpart I	Minimum to Moderate	

Fig. B-5-s. Laboratory issues	Civil Penalty	Certificate Action
(1) Failure to use drug testing laboratories that meet the requirements in 49 C.F.R. part 40, subpart F	Maximum	

Fig. B-5-t. Alcohol testing	Civil Penalty	Certificate Action
(1) Failure to use alcohol testing personnel that meet the requirements of 49 C.F.R. part 40, subpart J	Minimum to Moderate	
(2) Failure to use sites, forms, and supplies for DOT alcohol testing that meet the requirements in 49 C.F.R. part 40, subpart K	Minimum to Moderate	
(3) Failure to use equipment for DOT alcohol testing that meets the requirements in 49 C.F.R. part 40, subpart K	Moderate to Maximum	
(4) Failure to conduct alcohol screening tests in accordance with 49 C.F.R. part 40, subpart L	Minimum to Moderate	
(5) Failure to conduct alcohol confirmation tests in accordance with 49 C.F.R. part 40, subpart M	Moderate to Maximum	

(6) Failure to address problems with alcohol tests in accordance with 49 C.F.R. part 40, subpart N.	Minimum to Moderate	
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Fig. B-5-u. Consequences to the uncertificated individual	Civil Penalty	Certificate Action
(1) Refusal to submit to an alcohol test	Maximum	
(2) Positive drug test result or alcohol test result .04 or above on any drug or alcohol test.	Maximum	
Fig. B-5-u. Consequences to the uncertificated individual	Civil Penalty	Certificate Action
(3) Performs a safety-sensitive function for an employer after receiving a verified positive test result without complying with the return to duty procedures	Maximum	
(4) Performs a safety-sensitive function for an employer while having an alcohol concentration of 0.04 or greater	Maximum	
(5) Performs a safety-sensitive function for an employer while using prohibited drugs or alcohol on duty	Maximum	
(6) Performs a safety-sensitive function for an employer within 8 hours after consuming any alcoholic beverage	Maximum	
(7) Performs a safety-sensitive function for an employer within 4 hours after consuming any alcoholic beverage	Maximum	
(8) Has actual knowledge of an accident involving an aircraft for which he or she performed a safety sensitive function at or near the time of the accident, and uses alcohol within the 8 hours following the accident	Maximum	

Fig. B-5-v. Consequences to the certificated individual	Civil Penalty	Certificate Action
(1) Refusal by the holder of a certificate issued under parts 61, 63, or 65 to submit to a drug or alcohol test		Revocation
(2) Positive drug test result or alcohol test result .04 or above or other alcohol violation by the holder of a certificate issued under parts 61, 63, or 65 on any drug or alcohol test.		Revocation
(3) Failure of an individual to disclose to the MRO that he or she holds an airman medical certificate issued under part 67, or would be required to hold such certificate, in order to perform the duties of the position for which he or she is applying		Revocation
(4) Performs a safety-sensitive function for an employer after receiving a verified positive test result without complying with the return to duty procedures		Revocation
(5) Performs a safety-sensitive function for an employer while having an alcohol concentration of 0.04 or greater		Revocation

(6) Performs a safety-sensitive function for an employer while using prohibited drugs or alcohol on duty		Revocation
(7) Performs a safety-sensitive function (flight crewmember, flight attendant, air traffic control) for an employer within the prohibited time period after consuming any alcoholic beverage		Revocation
Fig. B-5-v. Consequences to the certificated individual cont.	Civil Penalty	Certificate Action
(8) Has actual knowledge of an accident involving an aircraft for which he or she performed a safety sensitive function at or near the time of the accident, and uses alcohol within the 8 hours following the accident		Revocation

6. AIRPORT OPERATORS.

Fig. B-6-a. Certification	Civil Penalty	Certificate Action
(1) Operation without a part 139 certificate	Maximum; Injunctive relief	
(2) Operation in violation of a part 139 certificate	Moderate to Maximum	
(3) Failure to permit FAA inspector to conduct inspection	Maximum	Indefinite Suspension until Compliance to Revocation

Fig. B-6-b. Certification Manual	Civil Penalty	Certificate Action
(1) Failure to comply with an approved airport certification manual	Moderate to Maximum	
(2) Failure to include all required information in the airport certification manual	Minimum to Moderate	
(3) Failure to maintain current airport certification manual on the airport	Moderate to Maximum	
(4) Failure to make current airport certification manual available to the FAA for inspection	Moderate to Maximum	Indefinite Suspension until Compliance to Revocation

Fig. B-6-c. Operations	Civil Penalty	Certificate Action
(1) Failure to maintain sufficient qualified personnel to comply with requirements of the airport certification	Moderate to Maximum	

manual and FAA regulations		
(2) Failure to maintain and repair the pavement of each runway, taxiway, loading ramp, and parking area on the airport	Moderate to Maximum	
(3) Failure to maintain and repair each gravel, turf, or other unpaved runway, taxiway, or loading ramp and parking area on the airport	Moderate to Maximum	
Fig. B-6-c. Operations cont.	Civil Penalty	Certificate Action
(4) Failure to provide and maintain an airport safety area	Moderate to Maximum	
(5) Failure to provide and maintain the required marking and signing systems for air carrier operations	Maximum	
(6) Failure to provide and maintain lighting systems for air carrier operations when the airport is open during hours of darkness or during conditions below VFR minimums	Moderate to Maximum	
(7) Failure to provide and maintain required rescue and firefighting capability and equipment during air carrier operations	Maximum	
(8) Failure to maintain rescue and firefighting vehicles	Maximum	
(9) Failure to respond to an emergency during air carrier operations or demonstrate compliance with response requirements	Maximum	
(10) Failure to respond within the required performance response times	Maximum	
(11) Failure to ensure that rescue and firefighting personnel are equipped in an acceptable manner	Moderate to Maximum	
(12) Failure to ensure that rescue and firefighting personnel are properly trained	Moderate to Maximum	
(13) Failure to ensure that sufficient rescue and firefighting personnel are available during all air carrier operations	Moderate	
(14) Failure to ensure that procedures are established and equipment is maintained for alerting rescue and firefighting personnel to any existing or impending emergency	Moderate to Maximum	
(15) Failure to establish and maintain standards for protecting against fire and explosions in storing, dispensing, and otherwise handling fuel, lubricants, and oxygen on the airport	Moderate to Maximum	
(16) Failure to perform surveillance of a fueling activity by fueling agent on the airport	Moderate to Maximum	
(17) Failure to ensure and maintain a record of the inspection of the physical facilities of each airport tenant fueling agent	Minimum to Moderate	
(18) Failure to ensure that a fueling agent and its employees are properly trained	Moderate to Maximum	
(19) Failure to require a tenant fueling agent to take corrective action for noncompliance with a fueling standard	Moderate to Maximum	
(20) Failure to ensure that the airport emergency plan is reviewed with all parties under the plan and that all information in the plan is current	Minimum to Moderate	

(21) Failure to establish and maintain procedures for the protection of persons and property on the airport during the handling and storing of hazardous materials	Moderate to Maximum	
(22) Failure to provide traffic and wind direction indicators	Moderate	
Fig. B-6-c. Operations cont.	Civil Penalty	Certificate Action
(23) Failure to develop and maintain airport emergency plan	Maximum	
(24) Failure to conduct self- inspections of the airport as required	Maximum	
(25) Failure to provide equipment and procedures for carrying out an inspection program for a reporting system to ensure correction of conditions noted during the inspections	Moderate to Maximum	
(26) Failure to prepare, keep, and make available a record of self-inspections	Moderate to Maximum	
(27) Failure to limit access by ground vehicles to movement areas and safety areas	Moderate	
(28) Failure to establish and implement procedures for access to and operation on, the movement area and safety areas by ground vehicles	Moderate	
(29) Failure to ensure that ground vehicles operating on the movement area are controlled by two-way radio communication or other acceptable means	Moderate	
(30) Failure to ensure that each person operating a ground vehicle with access to the movement area is familiar with airport procedures for operation of ground vehicles	Minimum to Moderate	
(31) Failure to ensure that obstructions are removed, marked, or lighted	Moderate to Maximum	
(32) Failure to prevent the construction of facilities on the airport that would derogate the operation of an electronic or visual navaid and air traffic control facilities on the airport	Moderate to Maximum	
(33) Failure to take immediate measures to alleviate wildlife hazards	Moderate to Maximum	
(34) Failure to prevent the inadvertent entry to the movement area by unauthorized persons or vehicles	Moderate	
(35) Failure to provide for the collection and dissemination of airport condition information to air carriers	Moderate to Maximum	
(36) Failure to mark and, if appropriate, light construction areas and unserviceable areas, construction equipment, and each construction roadway	Moderate to Maximum	

(37) Failure to provide procedures for avoiding damage to existing utilities, cables, wires, conduits, pipelines, or other underground facilities	Minimum to Moderate	
(38) Failure to restrict air carrier operations to safe portions of the airport	Maximum	
(39) Failure to take action to conduct a wildlife assessment	Moderate to Maximum	
(40) Failure to implement wildlife assessment or the FAA-approved wildlife Hazard Management Plan	Moderate to Maximum	

7. VIOLATIONS OF NOISE PROVISIONS.

Fig. B-7-a. Aircraft Noise (14 C.F.R. part 91, subpart I)	Civil Penalty	Certificate Action
(1) Prohibition on operating without complying with Stage 3 noise levels under 49 U.S.C. § 47528	Moderate to Maximum	
(2) Nonaddition Rule under 49 U.S.C. § 47529	Moderate to Maximum	
(3) Imported aircraft operated to provide air transportation in the 48 contiguous states without complying with Stage 3 noise levels under 49 U.S.C. § 47530	Moderate to Maximum	
(4) Recordkeeping or notification violation	Minimum	

8. VIOLATIONS OF PILOT RECORDS IMPROVEMENT ACT (PRIA).

Fig. B-8-a. PRIA	Civil Penalty	Certificate Action
(1) Permitting a person to begin service as a pilot prior to requesting, receiving, and evaluating records pursuant to the provisions of PRIA	Maximum	
(2) Failing to obtain from the subject of a PRIA request a written consent for release of records requested under PRIA		
(a) Inadvertent error	Moderate	
(b) Egregious/no consent given	Maximum	
(3) Furnishing records, pursuant to request under PRIA, that have been maintained for more than 5 years before the date of request when record does not relate to revocation or suspension of airman certificate or motor vehicle license that was in effect at time of request	Moderate	
(4) Failing to maintain records described in 49 U.S.C. §§ 44703(h)(1)(A) and (B) for five years	Moderate to Maximum	
(5) Furnishing records pursuant to a request under PRIA before receiving a copy of the written consent of the individual who is the subject of the request		
(a) Inadvertent error	Moderate	

(b) Egregious/no consent given	Maximum	
(6) Failing to provide a copy of all records pursuant to a request under PRIA within 30 days of the date the request is received		
(a) Inadvertent error	Moderate	
(b) Egregious/intentional	Maximum	
Fig. B-8-a. PRIA cont.	Civil Penalty	Certificate Action
(7) Failing to provide to the individual who is the subject of request under PRIA, on or before the 20 th day following the date of the receipt of such a request, written notice of the request and of the individual's right to receive a copy of such records	Maximum	
(8) Failing, upon a request from an individual who is the subject of request under PRIA, to provide a copy of records to the individual	Maximum	
(9) Failing to permit the subject of a request for records under PRIA to submit written comments to correct any inaccuracies in those records before making a final hiring decision	Maximum	
(10) Failing, upon a written request from a pilot who is or has been employed by an air carrier, to make available for review within 30 days, records referred to in 49 U.S.C. §§ 44703(h)(1)(B)(i) or (ii) pertaining to the employment of that pilot		
(a) Making records available but untimely	Minimum to Moderate	
(b) Not making the records available	Maximum	
(11) Use of records received pursuant to PRIA for reasons other than assessing the qualifications of individual in deciding whether to hire the individual as pilot	Maximum	
(12) Failing to protect the privacy of a pilot and the confidentiality of records received	Maximum	
(13) Divulging contents of records received pursuant to PRIA to individual not directly involved in hiring process		
(a) Minor	Minimum	
(b) Intent to cause harm	Maximum	
(14) For air carriers that operate aircraft with a maximum load capacity of 7,500 pounds or less, or a helicopter, on a flight that is not a scheduled operation –		

(a) Permitting a pilot to continue in service longer than 90 days without requesting, receiving and evaluating records identified in 49 U.S.C. § 44703(f)(1)	Maximum	
(b) Failing to provide contractual notification to the individual that continuation of employment after the 90-day period is subject to a satisfactory evaluation of records identified in 49 U.S.C. § 44703(f)(1)	Moderate	

9. ENGINEERING AND MANUFACTURING VIOLATIONS. Note that the following actions taken in cases of violations by FAA designees only include legal enforcement actions under 14 C.F.R. part 13. Whenever FAA enforcement action personnel determine that the holder of a designation, or the holder of a design or production approval that is not a certificate, is no longer qualified to hold that designation or approval, remedial action should be initiated. In addition, remedial action should be considered whenever the holder refuses to allow inspection, or otherwise continues to fail to comply with an applicable requirement. Suspensions and terminations of designations are handled in accordance with FAA Orders No. 8100.8B, *Designee Management Handbook*, Chapter 11; No. 8100.9, *DAS, DOA, and SFAR 36 Authorization Procedures*, Chapter 8; and No. 8110.37C, *Designated Engineering Representative (DER) Guidance Handbook*, Chapter 7

Fig. B-9-a. APIS Holders, including production under type certificate	14 C.F.R.	49 U.S.C.	Civil Penalty	Certificate Action
(1) Failure to maintain the approved production inspection system (APIS) to ensure product conformity and to ensure product is in condition for safe operation	21.123(c), 21.125, 21.127, 21.128, 21.129, 21.130		Moderate to Maximum	Discontinue issuance of a/w certificates pending compliance
(2) Failure to maintain technical data or drawing at the place of manufacture	21.123(b)		Moderate to Maximum	Discontinue issuance of a/w certificates pending compliance
(3) Failure to maintain inspection record	21.123(c), 21.125 (b)(10)		Moderate to Maximum	
(4) Failure to properly flight test aircraft	21.127		Moderate to Maximum	
(5) Failure to properly conduct required test run on a production engine	21.128		Moderate to Maximum	
(6) Failure to properly conduct required function test on a production propeller	21.129		Moderate to Maximum	

Fig. B-9-b. Production Certificate Holders	14 C.F.R.	49 U.S.C.	Civil Penalty	Certificate Action
(1) Refusal to allow FAA to make any inspections and tests necessary to determine compliance with	21.157		Moderate to Maximum	Indefinite Suspension pending

regulations				compliance to Revocation
(2) Failure to make information regarding a delegation of authority to subsidiary manufacturer or supplier	21.143(b)		Moderate to Maximum	
(3) Failure to immediately notify FAA, in writing, of quality control system changes that affect the inspection, conformity, or airworthiness of the product	21.147		Moderate to Maximum	
Fig. B-9-b. Production Certificate Holders cont.	14 C.F.R.	49 U.S.C.	Civil Penalty	Certificate Action
(4) Failure to surrender a PC for cancellation upon transfer of ownership or upon change in location of the manufacturing facility	21.155, 21.159		Moderate	Revocation
(5) Failure to maintain the approved quality control system	21.165(a)		Moderate to Maximum	
(6) Failure to determine that each completed product submitted for a/w certification or approval is in conformity with the type design and in condition for safe operation	21.165(b)		Moderate to Maximum	

Fig. B-9-c. Designees	14 C.F.R.	49 U.S.C.	Civil Penalty	Certificate Action
(1) Delegation Option Authorization (DOA)				
(a) Refusal to permit authorized FAA employee to inspect the manufacturer's organization, facilities, product, record, technical data file, or service difficulty file	21.249		Maximum	
(b) Failure to submit a report or information necessary for the issuance of an AD	21.277		Moderate to Maximum	Indefinite Suspension of TC or AWCs, pending compliance to Revocation
(c) Failure to place the required technical data and type inspection report in the technical data file required by 21.293(a)(1)(i)			Minimum to Moderate	
(d) Failure to determine that the	21.267(b)		Moderate to	

PC requirements of subpart G are met prior to certifying that the determination has been made			Maximum	
(e) Failure to place the manufacturing and quality control data required by 21.143 with the data required by 21.293(a)(1)(ii) prior to certifying that this has been done	21.267(d)		Moderate to Maximum	
Fig. B-9-c. Designees cont.	14 C.F.R.	49 U.S.C.	Civil Penalty	Certificate Action
(f) Failure to notify the FAA within 48 hours of any change that could affect the ability of the DOA to meet the requirements in Subpart J	21.245		Moderate to Maximum	
(g) Failure to obtain FAA concurrence on the application of any equivalent safety provision applied under 21.21	21.261		Minimum to Moderate	Indefinite Suspension of TC or AWC, pending compliance to Revocation
(h) DOA issues new or amended TC, or STC, AWC, or A/W approval beyond the scope of its authorization	21.251			Revocation of certificate
(2) Designated Alteration Station (DAS)				
(a) Exercising any authority under subpart M without submitting and obtaining approval of procedures manual	21.441(a)		Maximum	
(b) Performing any DAS function affected by change in facilities or staff necessary to meet the requirements of § 21.439, or affected by any change in the procedures approved under § 21.441(a) without obtaining approval from the FAA for those changes	21.441(b)		Moderate to Maximum	
(c) Failure to notify the FAA within 48 hours of any change that could affect the ability of the DAS to meet subpart M	21.445		Moderate to Maximum	
(d) Failure, upon reasonable	21.449		Maximum	

request, to let the FAA inspect the DAS facility, product, or record				
(e) DAS issues STC or AWC beyond the scope of its authorization	21.451		Maximum	Revocation of STC or AWC
(f) Issuing an STC involving exhaust emissions change requirements of part 34 or acoustical change requirements of part 36 before the FAA finds those requirements are met	21.451(d)		Maximum	Indefinite Suspension of STC pending compliance to Revocation
Fig. B-9-c. Designees cont.	14 C.F.R.	49 U.S.C.	Civil Penalty	Certificate Action
(g) For each STC issued under subpart M, failure to follow the procedures manual approved under § 21.441 or failure to submit statement describing the requirements in § 21.463(a)(1)	21.463(a)(1)		Moderate to Maximum	Indefinite Suspension of STC pending compliance to Revocation
(h) Issuing an STC without finding that each applicable airworthiness requirement is met	21.463(a)(2)		Moderate to Maximum	Indefinite Suspension of STC pending compliance to Revocation
(i) Issuing an STC without finding that the type of product, as modified by the STC data, is of proper design for safe operation	21.463(a)(3)		Moderate to Maximum	Indefinite Suspension of STC pending compliance to Revocation
(j) For each STC issued under subpart M, failure to submit the copies of the STC or the other required data	21.463(b)		Moderate	
(k) For each amendment to an airworthiness certificate under subpart M, failure to follow the procedures manual approved under § 21.441 or failure to follow § 21.473(a)-(c)	21.473		Moderate to Maximum	
(l) Issuing an experimental AWC without obtaining from the FAA a necessary limitation or condition	21.475		Minimum to Moderate	
(m) Failure to conduct an investigation or report the results of the investigation or taken or proposed action	21.477(a)		Moderate to Maximum	

(n) Failure to submit the information necessary for the issue of an airworthiness directive	21.477(b)		Moderate to Maximum	Indefinite Suspension of STC or AWC, pending compliance to Revocation
Fig. B-9-c. Designees cont.	14 C.F.R.	49 U.S.C.	Civil Penalty	Certificate Action
(o) Failure to maintain, at the DAS facility, the required current records	21.493(a)		Moderate to Maximum	
(p) Failure to provide requested records to the FAA; failure to send data file when DAS no longer operates under subpart M	21.493(b)		Moderate to Maximum	

Fig. B-9-d. Technical Standard Order Authorization (TSOA), Letter of Design Approval, and Letter of Acceptance Manufacturers	14 C.F.R.	49 U.S.C.	Civil Penalty	Certificate Action
(1) Unauthorized display of TSO marking	21.603(a)		Maximum	
(2) Failure of holder of Letter of Acceptance to comply with 21.603(b)	21.603(b)		Maximum	
(3) Failure to manufacture article in accordance with the approved technical and quality control data and the TSO	21.607(a)		Moderate to Maximum	
(4) Failure to properly conduct a required test or inspection	21.607(b)		Moderate to Maximum	
(5) Failure to maintain the Q/C system to ensure each article meets 21.607(a) and is in a condition for safe operation	21.607(b)		Moderate to Maximum	
(6) Failure to prepare and maintain a current file of complete technical data and inspection records	21.607(c)		Moderate to Maximum	
(7) Failure to permanently and legibly mark each article produced under the TSOA or Letter of Design	21.607(d)		Minimum to Moderate	

Approval				
(8) Failure to forward information on a minor design change to the appropriate Aircraft Certification Office	21.611(a)		Minimum to Moderate	
Fig. B-9-d. Technical Standard Order Authorization (TSOA), Letter of Design Approval, and Letter of Acceptance Manufacturers cont.	14 C.F.R.	49 U.S.C.	Civil Penalty	Certificate Action
(9) Before making a major change, failure to assign a new type or model designation to the article and apply for an authorization under 14 CFR § 21.605	21.611(b)		Moderate to Maximum	
(10) Failure to retain technical data	21.613		Moderate to Maximum	
(11) Refusal to permit an authorized FAA representative to inspect an article, Q/C inspection or test, or the manufacturing facilities or technical data file	21.615		Moderate to Maximum	

Fig. B-9-e. Replacement or Modification Parts Manufacturers	14 C.F.R.	49 U.S.C.	Civil Penalty	Certificate or Other Action
(1) Production without PMA or other authority	21.303(a)		Maximum	Injunctive relief
(2) Failure to maintain the fabrication inspection system to ensure each completed part conforms with its approved design and is safe for installation on applicable TC product	21.303(h)		Moderate to Maximum	
(3) Failure to ensure that incoming materials used in the finished part are as specified in the design data	21.303(h)(1)		Moderate to Maximum	
(4) Failure to ensure that incoming materials are properly identified if their physical and chemical properties cannot otherwise be	21.303(h)(2)		Moderate to Maximum	

readily and accurately determined				
(5) Failure to ensure that materials are suitably stored and adequately protected	21.303 (h)(3)		Moderate to Maximum	
(6) Failure to accomplish all processing affecting quality and safety of the part in accordance with acceptable specifications	21.303 (h)(4)		Moderate to Maximum	
(7) Failure to inspect parts process for conformity with the design data at points in production where accurate determinations can be made	21.303 (h)(5)		Moderate to Maximum	
Fig. B-9-e. Replacement or Modification Parts Manufacturers cont.	14 C.F.R.	49 U.S.C.	Civil Penalty	Certificate or Other Action
(8) Failure to make a current design drawing readily available to manufacturing and inspection personnel or to use such a drawing when necessary	21.303 (h)(6)		Moderate to Maximum	
(9) Failure to adequately control a major design change or to obtain FAA approval of a major design change before it is incorporated into the finished part	21.303 (h)(7)		Moderate to Maximum	
(10) Failure to segregate and identify rejected materials and components in such a manner as to preclude their use in a finished product	21.303 (h)(8)		Moderate to Maximum	
(11) Failure to maintain and identify an inspection record with a completed part, or to retain the record for at least 2 years	21.303 (h)(9)		Moderate to Maximum	
(12) Failure to notify the FAA, in writing, within 10 days after relocating or expansion of manufacturing facilities	21.303(j)		Moderate to Maximum	
(13) Failure to determine that each completed part conforms to the design data and is safe for installation on TC product	21.303(k)		Moderate to Maximum	

Fig. B-9-f. All Production Approval Holders	14 C.F.R.	49 U.S.C.	Civil Penalty	Certificate Action
(1) Failure to report each malfunction or defect specified in section 21.3(c) within the time specified in 21.3(e)			Moderate to Maximum	

Fig. B-9-g. TC or STC Holder; Manufacturers and Alteration Entities	14 C.F.R.	49 U.S.C.	Civil Penalty	Certificate or Other Action
(1) Failure to submit the data necessary for the issuance of A/W directive containing the appropriate corrective action	21.99		Maximum	Indefinite Suspension of TC or AWCs, pending corrective action to Revocation

Fig. B-9-h. All persons, including designees	14 C.F.R.	49 U.S.C.	Civil Penalty	Certificate or Other Action
(1) Falsification of application, report, or record	21.2(a)(1), (2), (3), or (4)		Maximum	Revocation of certificate(s)
Fig. B-9-h. All persons, including designees cont.	14 C.F.R.	49 U.S.C.	Civil Penalty	Certificate or Other Action
(2) Failure to provide written evidence of permission to use an STC		44704 (a)(2)	Minimum	
(3) Failure to provide written evidence of permission to use a TC		44704 (a)(3)	Minimum	
(4) Changing a product based on an STC without being the holder or having the permission of the STC holder		44704 (a)(2)	Maximum	
(5) Manufacturing a product based on a TC without being the holder or having permission of the TC holder		44704 (a)(3)	Maximum	

10. AIRCRAFT OWNER/OPERATOR REGISTRATION VIOLATIONS

Fig. B-10. Registration.	14 C.F.R.	49 U.S.C.	Civil Penalty	Certificate Action
(1) Operation of an unregistered aircraft	91.203 (a)(2)	44101	Maximum*	30-90 day Suspension of pilot certificate
(2) Operation of an aircraft without an effective (14 C.F.R. 47.41), valid (14 C.F.R. § 47.43) certificate on board	91.203 (a)(2)		Minimum to Maximum*	30-90 day Suspension of pilot certificate
(3) Operation outside U.S. on pink copy	91.203 (a)(2)	44101	Minimum to Maximum*	30-90 day Suspension of pilot certificate
(4) Operation in U.S. on pink copy without compliance with 14 C.F.R. 47.31(b)	91.203 (a)(2)		Moderate to Maximum*	30-90 days suspension of pilot certificate
(5) Failure to return an ineffective or invalid aircraft registration certificate	47.41(b) 47.43(b)		Minimum	Revoke aircraft registration certificate

(6) Failure to submit triennial report	46.51(d)	44105		Suspension or revocation of registration certificate
(7) Failure to submit required flight information	47.9(f)		Minimum to Moderate*	
(8) Failure to submit change of address	47.45	44105	Minimum	
(9) Failure to submit required dealer information	47.71		Minimum to Moderate	
Fig. B-10. Registration cont.	14 C.F.R.	49 U.S.C.	Civil Penalty	Certificate Action
(10) Use of registered aircraft to carry out or facilitate unlawful drug activities		44106 (b), 44710		Mandatory revocation of aircraft registration certificate and of all other certificates of aircraft registration issued to its owner, and revocation of all airman certificates

* Civil penalty action applies only if owner/operator is different from pilot.

11. ALL INDIVIDUALS AND ENTITIES. Failure to surrender suspended or revoked certificate, authorization, or other approval

Fig. B-11.	Civil Penalty
(1) Individual	Moderate c.p. per day, with the total c.p. generally \$5,000 to \$11,000
(2) Entity	Moderate c.p. per day, with the total calculated under the Multiple Act policy