

CHANGE

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

**ORDER
2150.3B
CHG 8**

National Policy

Effective Date:
01/20/15

SUBJ: Settlement Guidance

- 1. Purpose.** This change to FAA Order 2150.3B adopts new guidance for closing legal enforcement actions pursuant to a settlement agreement.
- 2. Who this change affects.** The change affects all agency legal counsel who process enforcement actions.
- 3. Disposition of Transmittal Paragraph.** Retain this transmittal sheet until the directive is cancelled by a new directive.

PAGE CHANGE CONTROL CHART

Remove Pages	Dated	Insert Pages	Dated
viii thru xii	10/01/07	viii thru xii	01/20/15
6-5 thru 6-49	10/01/07	6-5 thru 6-50	01/20/15

- 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.



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Chief Counsel

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

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

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

7. Closing Cases.

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

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

c. Closing Cases Pursuant to a Settlement Agreement. Settlements, including settlements reached at hearing, are documented with a written settlement agreement that is executed by the parties. As applicable and appropriate, the settlement agreement:

(1) Specifies the terms and conditions of the settlement, including the obligations of each party;

(2) Defines material terms and phrases that are used in the settlement that are not otherwise commonly understood or are not defined in FAA regulations or policies;

- (3) States the sanction proposed or ordered and the sanction agreed to in settlement:
 - The period of suspension or, in the case of a revocation, the number of months after which the person may apply for new certificate(s) and/or rating(s).
 - The amount of the assessed civil penalty, whether the assessed civil penalty will be paid in a lump sum or in installments, the date(s) when the payment(s) must be made, and if the penalty is to be paid in installments, a statement that the person will sign a promissory note.
- (4) If applicable, states that the sanction is waived under ASRP;
- (5) States that the person charged with violating the regulations is waiving the right to a hearing;
- (6) Specifies the costs to be borne by each party;
- (7) If applicable and appropriate, states that the person charged with violating the regulations agrees not to initiate any litigation under the Equal Access to Justice Act or any other statutory provision or rule to collect legal fees or costs;
- (8) If appropriate, contains a waiver of all potential causes of action against the FAA and its employees and agents, both past and present, in their personal or official capacity;
- (9) States that the agreement accurately reflects the terms of the settlement between the parties and is binding; and
- (10) Is signed by legal counsel and the person charged with violating the regulations and/or their representative.

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

8. Certificate Actions Reviewable by the NTSB.

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

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

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

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

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

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

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

e. NTSB Deference to FAA.

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

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

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

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

9. Emergency Suspension or Revocation of Certificates.

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

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

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

d. Criteria for Emergency Action.

(1) Emergency action is taken only:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. Airman Medical Certificate Denials Process.

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

b. Appeals to the NTSB.

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

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

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

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

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

13. Suspension or Revocation of Airman Medical Certificates.

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

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

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

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

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

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

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

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

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

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

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

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

b. Initiation of Civil Penalty Action.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15. Aircraft Registration Violations.

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

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

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

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

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

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

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

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

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

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

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

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

c. Notice of Proposed Civil Penalty.

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

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

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

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

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

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

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

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

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

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

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

(5) Request a hearing.

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

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

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

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

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

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

j. Order Assessing Civil Penalty.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. Civil Penalty Guidelines.

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

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

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

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

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

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

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

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

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

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

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

Secretary of Transportation prescribes regulations “. . . for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce.” The regulations apply to a person “. . . transporting hazardous material in commerce . . . [or] causing hazardous material to be transported in commerce. . . .” *Commerce* means trade or transportation in the jurisdiction of the U.S. that is interstate or that affects interstate trade or transportation.

Notwithstanding traditional notions of operating *in air commerce*, an operation comes within the hazmat jurisdiction of the FAA only when the operation involves (or would involve) air transportation of the hazmat, or the flight is (or would be) for another commercial purpose. For example, an air carrier conducting a nonrevenue flight and carrying hazardous materials for the repair of its airplane brings itself within the FAA’s jurisdiction. Conversely, a private pilot flying with paint aboard only for the purpose of transporting it to his or her resident state to paint his or her house does not, without more, come within the FAA’s hazmat enforcement jurisdiction.

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

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

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

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

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

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

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

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

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

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

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

(9) Hearings. When a hearing is requested, legal counsel files a complaint with the hearing docket clerk not later than 20 days after receipt of the request. The complaint sets forth

the agency's allegations of facts and violations, and the civil penalty sought. Legal counsel suggests a location for the hearing when he or she files the complaint. Any hearing is held in accordance with the Rules of Practice in FAA Civil Penalty Actions in subpart G of 14 C.F.R. part 13. The administrative law judge issues an initial decision. The legal office that issued the complaint generally is responsible for representing the FAA at the evidentiary hearing before an administrative law judge. Where the complaint was issued in one region but the hearing is scheduled to be held in another region, the case may be transferred to the region where the hearing is to be held, if the affected regional counsel agrees.

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

(11) A respondent may seek judicial review of an FAA decisionmaker's decision and order under 5 U.S.C. § 704 and 28 U.S.C. § 1331 in an appropriate U.S. Court of Appeals. AGC-300 handles the appeal.

19. Civil Penalties in Excess of Assessment Authority Limits of \$50,000 or \$400,000.

a. General. When the amount in controversy in a case exceeds the applicable assessment authority limit, FAA legal counsel processes the case under 49 U.S.C. § 46301(d) (4) and 14 C.F.R. § 13.15 regardless of whether the case may eventually be compromised for less than these amounts. (There are no assessment authority limitations for hazardous material and commercial space transportation cases.) For violations occurring on or after December 12, 2003, the jurisdictional limits are \$50,000 for cases involving individuals and small business concerns, and \$400,000 for cases involving other persons. For violations that occurred before December 12, 2003, the jurisdictional limit is \$50,000 for all cases. In cases that exceed these limits, the FAA has no authority to assess a civil penalty. Under 49 U.S.C. § 46301(d) (4) and 14 C.F.R. § 13.15, the FAA proposes to the alleged violator an amount which the FAA would accept to settle the case. If no settlement agreement is reached, the FAA refers the matter to a U.S. attorney for prosecution in U.S. district court. The alleged violator has a right to a jury trial.

b. Initial Civil Penalty Action.

(1) General. Except when a case is referred directly to a U.S. attorney, FAA legal counsel initiates a civil penalty by issuance of a letter advising the alleged violator of the facts and regulations involved in the incident. The letter contains a statement of the charges and the statutory or regulatory sections alleged to be violated.

(2) Language. Because the Administrator has no authority to assess a civil penalty over the assessment authority limits, but only to settle or refer the matter to a U.S. attorney, all civil penalty letters and other correspondence or documents referring to the FAA's action in such

cases are phrased to read that the FAA *would accept (a specified amount) in settlement* rather than *impose* or *assess* a civil penalty.

(3) Attachments to letter. An information sheet and a reply form are sent with the civil penalty letter. In the information sheet, the alleged violator is advised of the alternatives that may be taken in response to the letter. On the reply form, the alleged violator may elect from the alternatives. Alternative 1 is to pay the civil penalty. Alternative 2 is to submit information or material in answer to the charges. Alternative 3 is to request an informal conference with legal counsel. Alternative 4 is to request that the matter be decided by a U.S. district court. Alternative 5 is to prove entitlement to waiver of penalty under the aviation safety reporting program.

c. Alternatives for Responding to Civil Penalty Letter. Following receipt of a civil penalty letter, an alleged violator may answer the charges to FAA legal counsel, orally or in writing, to explain, mitigate, or deny the violation, or show extenuating circumstances. An oral presentation is generally in the form of an informal conference.

d. Settlement.

(1) When the amount suggested in the civil penalty letter, or a lesser amount believed acceptable on consideration of additional facts is submitted, the alleged violator is informed in writing that the FAA accepts the offer in full settlement.

(2) Unless otherwise provided in a settlement agreement, the civil penalty settlement letter acknowledges that the settlement does not constitute an admission or finding of any violation.

(3) If the alleged violator wants to submit the suggested offer, arrangements may be made, if necessary, to pay the amount in reasonable installments. The alleged violator signs a promissory note for the amount of the settlement.

e. Referral to U.S. Attorney.

(1) FAA legal counsel refers civil penalty cases to the appropriate U.S. attorney when unable to settle them, and the cases should not otherwise be closed. When required for aviation safety, FAA legal counsel may refer the case directly to a U.S. attorney without seeking settlement.

(2) In the letter of referral, legal counsel sets out a summary of the facts, an analysis of the violations involved, a summary of action taken before referral, a statement of the amount that would be acceptable to the FAA in settlement, and any additional information necessary to give the U.S. attorney full information about the case. Legal counsel forwards, with the letter, a copy of the case file, including the violation report and any other available evidence. Legal counsel prepares and includes a draft of a complaint. In the letter of referral, legal counsel also offers assistance to the U.S. attorney in the preparation or trial of the action.

(3) Amount sought in complaint. When a case is referred to a U.S. attorney, it is necessary for all regulations believed violated to be cited in any complaint. The dollar amount sought in the complaint need not be limited to the amount sought in the civil penalty letter. Following initial referral of a civil penalty case to a U.S. attorney, legal counsel conducts periodic follow-up inquiries to obtain current information on the status of the case and to remind a U.S. attorney of our continuing interest in the matter. FAA legal counsel requests copies of all pleadings filed by the parties. In those cases where a U.S. attorney is unable to settle the case, and files a complaint, legal counsel volunteers assistance in preparation for trial.

(4) In those instances in which a U.S. attorney declines to file suit, legal counsel will usually be given a statement of the reasons. If legal counsel disagrees, legal counsel consults further with the U.S. attorney's office. If legal counsel ultimately is unable to persuade the U.S. attorney's office to take action and believes the decision to be erroneous, the matter is referred to the Assistant Chief Counsel for Enforcement for discussions with the Department of Justice.

20. Other Enforcement Actions Reviewable by U.S. Courts of Appeals.

a. Authority. In carrying out duties and responsibilities under 49 U.S.C. subtitle VII, the Administrator has the authority to issue orders other than those prescribed by 49 U.S.C. § 44709. *See* 49 U.S.C. § 40113. These include orders of compliance, cease and desist orders, and orders of denial of FAA certificates (other than airman certificates). These orders may be judicially enforced under 49 U.S.C. § 46106. When appropriate, the Administrator's emergency authority under 49 U.S.C. § 46105 may be used in issuing such orders.

b. Procedures. Such orders may be issued by the Chief Counsel, a Deputy Chief Counsel, an Assistant Chief Counsel, or a Regional Counsel under the procedures set forth in 14 C.F.R. § 13.20. These procedures provide for notice to the person subject to the proposed order and opportunity for a formal hearing before a hearing officer under 14 C.F.R. subpart D before the issuance of an order, except in emergency cases. In addition, these procedures provide for an appeal of orders issued by a hearing officer to the Administrator, who, after review, may issue a final FAA order.

c. Cease and Desist Orders, Orders of Compliance, and Injunctions. Whenever FAA investigative personnel determine that a regulated person is continuing to violate the statute or regulations despite advice to come into compliance, they bring the matter to the attention of program office management and legal counsel to consider the appropriateness of issuing a cease and desist order, an order of compliance, or initiating action in U.S. district court for injunctive relief. Before such action is taken, legal counsel coordinates the action with AGC-300.

d. Injunctions.

(1) General. 49 U.S.C. § 46106 authorizes the Administrator to bring a civil action in a U.S. district court to enforce any provision in 49 U.S.C. subtitle VII, part A, or any rule, regulation, requirement, or order issued under that law or any term, condition, or limitation of any certificate or permit issued under the 49 U.S.C. subtitle VII, part A, by the issuance of an

injunction or other process, restraining the violator from further violations. 49 U.S.C. § 46107 authorizes any U.S. attorney, on the request of the Administrator, to file such a civil action.

(2) Responsibility of legal counsel. In carrying out the Administrator's enforcement program, legal counsel has the responsibility for using available legal procedures that may be required for aviation safety and the public interest. The FAA may request an injunction, for example, in situations in which an airman knowingly continues to operate an aircraft without the proper certificate, in violation of the FAA's regulations. In such cases, where FAA legal enforcement actions have failed to deter violations, legal counsel may make appropriate referrals for initiation of injunction proceedings.

(3) Referral procedures. The Assistant Chief Counsel for Enforcement and Regional Counsel refer requests for injunctions to the U.S. attorney in the proper judicial district. A request for a civil penalty ordinarily accompanies a request for an injunction involving the same conduct. Cases not involving civil penalty proceedings are referred with a statement of the specific reasons for seeking an injunction. While the U.S. attorneys have been authorized to accept injunction requests directly from the Regional Counsel, rather than through the Department of Justice, they have not been delegated authority to obtain injunctions without prior approval by the Civil Division, Department of Justice, when the case does not involve a civil penalty under 49 U.S.C. § 46301. In such cases, a copy of legal counsel's referral letter to the U.S. attorney, including a copy of any attachments, is sent to the Assistant Attorney General, Civil Division, Department of Justice, Washington, D.C. 20530, who will decide whether to authorize the U.S. attorney to seek an injunction. FAA legal counsel offers to assist in the preparation and trial of the case.

e. Seizure of Aircraft.

(1) General. An aircraft may only be seized under 49 U.S.C. § 46304 if the aircraft was involved in the violation for which the civil penalty is incurred. Seizure action, when appropriate, may be taken regardless of the status of the investigation or legal processing of the violation. Because it is such an extraordinary remedy, seizure of an aircraft ordinarily occurs where the violation is particularly egregious, for example, use of the aircraft in a continuing violation.

(2) Issuance of civil penalty action. An aircraft may be seized after a civil penalty action is issued or when the issuance of such an action is contemplated. In the latter case, if immediate action is essential, it is not necessary that a civil penalty action be issued before seizure, because the written notice of seizure to the registered owner of the aircraft serves to advise the owner of the violations alleged and the associated liabilities. However, FAA legal counsel issues a civil penalty action as soon as practicable. If the aircraft is seized after a civil penalty has been administratively or judicially assessed, another civil penalty action need not be issued.

(3) Coordination. Legal counsel coordinates with AGC-300 before an order of seizure is issued.

(4) Order of seizure. An order of seizure may be issued by the Administrator, the Chief Counsel, or a Regional Administrator. The order of seizure is directed to the person ordered to seize the aircraft. Seizure may be made by a state or federal law enforcement officer or by an FAA aviation safety inspector. The order must:

- Include the finding that the aircraft has been involved in one or more violations;
- Properly identify the aircraft by type and registration number;
- Identify the registered owner of the aircraft by name and address; and
- State that the aircraft is subject to a lien because of the violations described.

(5) The order directs the seizing official to seize and place the aircraft in the nearest available public storage facility within the judicial district in which seizure is made. If the aircraft is seized after a civil penalty has been administratively or judicially assessed, the order reflects that a judgment was issued against the owner or person in command for a violation in which the aircraft was involved. The order must designate the person seizing the aircraft, or other appropriate person, as its custodian.

(6) Procedure. On receiving an order of seizure, the person directed to seize an aircraft proceeds as in chapter 6, subparagraphs 20.e. (7)-(16). These procedures are guidance for FAA personnel in seizing aircraft. They are not intended to be all-inclusive or applicable to every situation. In each instance, legal counsel should be consulted for guidance.

(7) Take appropriate steps to locate the aircraft. This is done discreetly so as not to alert the owner of the impending seizure to avoid movement of the aircraft from the jurisdiction of the court or to avoid hostile or violent acts by the owner of the aircraft when it is seized.

(8) Take possession of the aircraft as soon as possible and place it in the nearest public storage facility in the judicial district where it was seized. The logistics office provides advice and assistance in obtaining public storage.

(9) If the aircraft is known to be in a hangar, arrangements are made for access to the hangar. If it appears that access cannot be gained voluntarily, legal counsel is consulted on authorization to enter the hangar.

(10) Once access to the aircraft is gained, an inventory of all equipment, including avionics, and other property on board, is made immediately. Any damage is specifically documented. If possible, detailed color photographs are taken.

(11) Once the aircraft has been seized and the aircraft placed in storage, copies of the notice of seizure are placed on the aircraft on or near each door and elsewhere so they are visible from all sides. Additionally, the aircraft is physically restrained from moving. This may be done by wrapping a locked chain in a figure 8 around the propeller, if any, or by locking the chain from the airplane to a tie down. If the airplane is in a single hangar, the door is padlocked and a notice of seizure placed on the hangar door.

(12) Appropriate arrangements are made for preserving the aircraft.

(13) Immediately after seizing the aircraft, the individual who seized it notifies the Regional Counsel by telephone.

(14) Appropriate arrangements are made to permit the owner or operator to dispose of cargo on the aircraft.

(15) When an aircraft is released from seizure, the owner is asked to inspect the aircraft and sign a release. Any damage the owner claims occurred during the period of seizure is documented.

(16) Immediately upon release of the aircraft, the Regional Counsel is notified. The release signed by the owner is mailed to the Regional Counsel by certified mail, return-receipt requested, or registered mail.

(17) Concurrently with issuing the order of seizure, or immediately after that, a written notice of seizure and a copy of 14 C.F.R. § 13.17 are sent by regular mail and either certified mail, return-receipt requested, or registered mail, to the registered owner of the seized aircraft, and to each person shown by FAA records to have an interest in the seized aircraft. The notice states the time, date, and place of seizure; the name and address of the custodian of the aircraft; the reasons for the seizure, including the violations believed or judicially determined to have been committed; and the amount that may be tendered as a compromise of a civil penalty or payment of a civil penalty administratively or judicially assessed. The amount includes the costs of seizure, storage, and maintenance. If the aircraft was seized after a civil penalty had been assessed, the notice of seizure to the registered owner reflects the assessment and a copy of the judgment or order is attached.

f. Judicial Proceedings. Concurrently with issuing the order of seizure, legal counsel reports by telephone to the U.S. attorney for the district in which the aircraft is being seized and after that sends a written report requesting the initiation of proceedings to enforce a lien against the seized aircraft. A copy of the notice of seizure is included in the report to the U.S. attorney. If the aircraft is being seized before the institution of an action to collect a civil penalty, a draft libel is also sent to the U.S. attorney.

g. Release of Seized Aircraft.

(1) An order releasing a seized aircraft is issued by the person who ordered the aircraft seized, whenever:

- The registered owner or other violator pays a civil penalty compromise or assessment and the costs of seizure, storage, and maintenance of the aircraft;
- the aircraft is seized under an order of a federal district court in proceedings *in rem* to enforce a lien against the aircraft;
 - The U.S. attorney notifies the FAA of a refusal to institute such proceedings; or
 - A bond in the amount and with the sureties prescribed by the FAA and the district court having jurisdiction of the action is deposited, conditioned on

payment of the civil penalty or the compromise amount, and the costs of seizure, storage, and maintenance of the aircraft.

(2) Copies of the order of release are sent to all those to whom notice of seizure was given and to the U.S. attorney.

(3) Release is carried out by the FAA employee who seized the aircraft, or who is responsible for storing it, or another appropriate person.

21. Orders of Compliance, Consent Orders of Compliance, Civil Actions to Require Compliance as Authorized under the Federal Hazardous Materials Law.

a. Authority. 49 U.S.C. § 5121(a) provides the Secretary of Transportation, in performing duties and responsibilities under the federal hazardous materials law, with the general authority to investigate, make reports, issue subpoenas, conduct hearings, require the production of records and property, take depositions, and conduct research, development, demonstration, and training activities. Besides civil penalties issued under 49 U.S.C. § 5123, actions may include orders of compliance and consent orders of compliance, which are necessary to carry out the provisions of 49 U.S.C. § 5101 through 49 U.S.C. § 5127. 49 U.S.C. § 5121(a) contains the authority for conducting proceedings related to the issuance of most orders; 49 U.S.C. § 5122(a)-(b) provide the authority for the Secretary to act in an emergency. Under 49 C.F.R. § 1.47(j), the Administrator has been delegated the authority to carry out the functions vested in the Secretary by 49 U.S.C. §§ 5121(a), (b), and (c), 5122, 5123, and 5124 relating to investigations, records, inspections, penalties, and specific relief, with particular emphasis on the transportation or shipment of hazardous materials by air, including the manufacture, fabrication, marking, maintenance, reconditioning, repair or test of containers which are represented, marked, certified, or sold for use in the bulk transportation of hazardous materials.

b. Responsibility of Legal Counsel. In carrying out the Administrator's hazardous materials enforcement program, legal counsel uses all available legal procedures as necessary. FAA civil action in the appropriate U.S. district court for injunctive relief or to suspend or restrict the transportation of the hazardous material responsible for an imminent hazard, or to eliminate or ameliorate the hazard is not used often. Such actions may be pursued only where there is a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury, or endangerment.

c. Procedures for Filing a Civil Action. Legal counsel advises AGC-300 before requesting the Environmental Enforcement Section, Environmental and Natural Resources Division of the Department of Justice, or a U.S. attorney to bring a civil action seeking injunctive relief or to suspend or restrict the transportation of the hazardous material responsible for the hazard, or to eliminate or ameliorate the hazard. When requesting the filing of a civil action, FAA legal counsel offers to assist in the preparation and trial of the case.

d. Order of Compliance Involving Other than Imminent Hazard. 49 U.S.C. § 5121(a) allows the Administrator, after notice and opportunity for hearing, to issue an order to compel

compliance if the Administrator finds that a person is violating chapter 51 or a regulation issued under that chapter. Proceedings for issuance of an order of compliance are described in 14 C.F.R. part 13, subpart E. An order of compliance contains findings regarding the nature and the extent of the violation, and directs the remedial action to be taken to achieve compliance. It may be used alone in circumstances where a person is not in compliance with regulatory requirements, but civil penalty action would be premature or otherwise inappropriate. It may also be appropriate with a civil penalty when there is a continuing violation. Orders of compliance may allow for a period of time within which a person must come into compliance; however, this does not excuse violations that occur in this interim period. Civil penalty action may be appropriate for those interim violations.

(1) Delegation. The authority to issue orders under 14 C.F.R. § 13.71 is generally exercised by the Chief Counsel; Deputy Chief Counsel for Operations; Assistant Chief Counsel for Enforcement; Assistant Chief Counsel for Europe, Africa, and the Middle East Area Office; and each Regional Counsel.

(2) Notice and opportunity for a hearing. Notice must be provided to an individual before issuance of an order. The opportunity to reply in writing or request a hearing before a hearing officer under the provisions of 14 C.F.R. part 13, subpart D must be provided to the individual before an order is issued. In addition, 14 C.F.R. § 13.83(a) provides for an appeal to the Administrator from orders issued by a hearing officer. 14 C.F.R. §§ 13.71 through 13.75, 13.79, and 13.83 through 13.87 prescribe procedures for issuance of the order of compliance.

(3) Judicial review. A person disclosing a substantial interest in a final administrative order issued by the Administrator may seek judicial review of that order in the appropriate U.S. district court, under 5 U.S.C § 704 and 28 U.S.C. § 1331.

(4) Consent order of compliance. Under 14 C.F.R. § 13.77, the FAA may issue a consent order of compliance to dispose of a case that has been initiated by a notice of proposed order of compliance. Before the issuance of an order of compliance, the official who issued the notice and the alleged violator may agree to dispose of the case by issuance of a consent order of compliance. The alleged violator's proposal for a consent order of compliance must include: a proposed order of compliance; an admission of all jurisdictional facts; an express waiver of the right to further procedural steps and of all right to judicial review; and an incorporation by reference of the notice and an acknowledgment the notice may be used to construe the terms of the order of compliance. In cases in which a request for a hearing has been made, the consent order requires the request for a hearing be withdrawn from the hearing docket and the case be dismissed.

(5) Judicial enforcement. 49 U.S.C. § 5122 provides for the enforcement of the federal hazardous material law and regulations or orders issued under that statute. At the request of the Administrator, the Attorney General may bring a civil action in an appropriate U.S. district court to enforce 49 U.S.C. subtitle III, chapter 51 or a regulation prescribed or order issued under that chapter. The U.S. district courts may award any relief that is necessary or appropriate, including mandatory or prohibitive injunctive relief, and punitive damages.

e. Imminent Hazard.

(1) Authority. The Administrator has delegated authority under 49 U.S.C. § 5122, to bring an action in U.S. district court if he or she has reason to believe that an *imminent hazard* exists.

- An *imminent hazard* exists, "if there is substantial likelihood that death, serious illness or serious personal injury will result from the transportation by air of the hazardous material before an order of compliance proceeding, or other administrative hearing or other formal proceeding to abate the risk of the harm, can be completed." (*See* 14 C.F.R. § 13.25(b)).

- The action may suspend or restrict the transportation of the hazmat responsible for the hazard, or eliminate or ameliorate the hazard.

(2) Delegation. The Administrator has the delegated authority under 49 U.S.C. § 5122(b)(1) to bring the action, or he or she may request the Attorney General to bring the emergency action under 49 U.S.C. § 5122(b)(2). The authority to bring the action or request the Attorney General to do so is delegated to the Chief Counsel; Deputy Chief Counsel for Operations; Assistant Chief Counsel for Enforcement; Assistant Chief Counsel for the Europe, Africa and Middle East Area Office; and each Regional Counsel.

(3) Procedures for filing a civil action. The action may be brought in the judicial district in which the person does business or the imminent hazard exists. The Regional Counsel advises AGC-300 before requesting the Environmental Enforcement Section, Environmental and Natural Resources Division of the Department of Justice, or a U.S. attorney to bring a civil action seeking injunctive relief or to suspend or restrict the transportation of the hazardous material responsible for the hazard, or to eliminate or ameliorate the hazard. In such a case, a copy of legal counsel's referral letter to the U.S. Attorney, including all attachments, is sent to the Assistant Attorney General, Civil Division, Department of Justice, Washington, DC 20530, who will decide whether to authorize the U.S. attorney to seek an injunction or proceed against the imminent hazard. The Regional Counsel offers to assist in the preparation and trial of the case. No FAA person initiates an action in a U.S. district court without the express approval of the Chief Counsel, coordinated through AGC-300, and after regional coordination with the U.S. attorney's office or U.S. Attorney General's office, as appropriate.

22. Criminal Penalties for Hazardous Materials Violations.

a. Handling of Criminal Cases. In reviewing an EIR, FAA legal counsel may determine there is evidence of a criminal violation. In such a case, legal counsel refers the investigative file, including all available evidence, to the FAA's Office of Internal Security and Investigations, AIN-1, which will contact the DOT OIG. Security and the OIG will determine whether the case should be referred to the Department of Justice with a recommendation for criminal prosecution. The Department of Justice, through its Environmental Crimes Section and U.S. attorneys, has responsibility for prosecution of all criminal violations involving the transportation of hazardous materials. FAA legal counsel may assist the Department of Justice in handling the cases.

b. Parallel Civil Case. Sometimes an investigative file may contain evidence of regulatory violations that warrant FAA legal enforcement action (for example, civil penalty, certificate action, order of compliance), as well as evidence of a criminal violation. When FAA legal counsel determines that issuing an order of compliance or other remedial action is required for aviation safety, such action is coordinated with AIN-1, OIG, and the Department of Justice. However, remedial action ordinarily is not delayed because of the criminal prosecution. FAA civil penalty actions may be delayed, when requested by the Department of Justice, but FAA legal counsel requests that the U.S. attorney expedite the handling of the criminal case.

23. Certificate Actions in Response to a Security Threat. 49 U.S.C. § 46111 requires the FAA to issue an order amending, modifying, suspending, or revoking any FAA-issued certificate if the Administrator is notified by the Under Secretary of Border and Transportation Security of the Department of Homeland Security (DHS) that the certificate holder poses, or is suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety. AIN-1 will be notified upon receipt of a request by the Under Secretary of Border and Transportation Security to issue an order amending, modifying, suspending, or revoking a certificate issued by the FAA. A citizen who receives such an order may appeal from the order to a panel of the Transportation Security Oversight Board following a hearing before a DHS administrative law judge.

24. Oral or Written Emergency Orders in Alcohol and Drug Cases. If necessary to protect the safety of the traveling public and in furtherance of the public interest, the Administrator, the Chief Counsel, the Deputy Chief Counsel, the Assistant Chief Counsel for Enforcement, and each Regional Counsel may issue an emergency order, either orally or in writing, to prohibit an air carrier from operating a particular flight with a particular crewmember or crewmembers or to suspend an airman certificate to ensure the safety of flight of civil aircraft in air commerce. The Regional Counsel advises the Regional Administrator where practicable. Any order is in writing, if time permits. The inspector may communicate orally the contents of a written order to the crewmember, the air carrier, or both. FAA legal counsel may issue an order orally, which is communicated by the inspector, if necessary to prevent operations detrimental to aviation safety, but the order is reduced to writing as soon as possible. Each oral or written order states the grounds for issuing the order, and notifies the respondents of any right of appeal. Any order, whether written or oral, is served on the crewmember, the air carrier, or both, named in the order at the earliest possible time.

25. Timeliness Goals. For the processing of legal enforcement actions, FAA legal counsel's goal is to initiate a legal enforcement action on average within 60 days of receipt of the EIR. If an alleged violator requests an informal conference in response to a proposed enforcement action, legal counsel's goal is to hold that informal conference on average within 60 days of receipt of the request and to issue either a final notice of proposed civil penalty or order on average within 60 days of the date of the informal conference. If an alleged violator submits additional information in response to a proposed enforcement action, legal counsel's goal is to consider that information and issue either a final notice of proposed civil penalty or order on average within 120 days of the date the legal enforcement action is initiated. If an alleged violator fails to respond to a proposed enforcement action, legal counsel expects to issue a final notice of proposed civil penalty or order on average within 60 days of the date the legal enforcement action is initiated.

26. Procedures for Bankrupt Respondents.

a. Purpose. This paragraph discusses the procedures for handling of bankruptcy matters by FAA legal counsel.

b. General. The filing of a petition under chapters 7 (Liquidation) and 11 (Reorganization), 12 (Farmers with Regular Annual Income), and 13 (Individuals with Regular Incomes) of the Bankruptcy Code sets in motion a system that is designed to resolve the financial affairs of the debtor. The purpose of the bankruptcy petition is to establish for a U.S. bankruptcy court, creditors, and trustee that the debtor is qualified to be a debtor under the particular Bankruptcy Code chapter proceeding commenced and that the proceeding has been filed in the district with proper venue. The jurisdiction of the U.S. bankruptcy courts is very broad and applies to FAA legal enforcement actions seeking payment of civil penalties.

c. Automatic Stay. Once a bankruptcy proceeding is commenced through the filing of a petition, under 11 U.S.C. § 362(a), all creditor activity to collect debts, obtain judgments, or obtain property of a debtor to satisfy a debt is stopped. Under 11 U.S.C. § 362(b) (4), however, the filing of the petition does not operate as a stay of "... an action or proceeding by a governmental unit ... to enforce such governmental unit's police or regulatory power." The purpose of the automatic stay, which is designed to stabilize the status of the debtor's assets, is to facilitate the orderly administration of the debtor's estate. Thus, legal counsel can proceed with the processing of a civil penalty to enforce safety regulations as long as legal counsel clearly informs the debtor that such action is not a demand for payment. FAA actions concerning the debtor's certificate status or other compliance or safety-related actions on the part of the debtor are excepted from the automatic stay. All civil penalty actions that arise from conduct occurring before the filing of the bankruptcy petition are covered by the automatic stay and must be included in the FAA's proof of claim.

d. Pre-Petition Claims. Pre-petition bankruptcy claims are claims arising on or before the date the alleged violator files a petition in bankruptcy. Thus, pre-petition claims include all violations (whether or not the civil penalty action document has been issued) that occurred on or before the date the petition in bankruptcy was filed. For example, if an air carrier filed a petition in bankruptcy on April 5, 2004, pre-petition claims would include any violations that occurred on or before April 5, 2004.

(1) The FAA files a single proof of claim specifying all pre-petition claims, which can be amended, with the appropriate bankruptcy court. The Regional Counsel in the region holding the certificate of the debtor is responsible for preparing and filing the proof of claim. If the debtor is a certificated pilot or noncertificated individual, the region in which he or she resides is responsible for preparing and filing the proof of claim. If the debtor is a noncertificated business entity, the region in which its principal place of business is located is responsible for preparing and filing the proof of claim.

(2) The Regional Counsel's office responsible for filing the proof of claim determines what civil penalty actions, initiated and uninitiated, exist to ensure the proof of claim that is filed represents all outstanding claims of the FAA. The responsible Regional Counsel notifies all

Regional Counsel that a particular bankruptcy petition has been filed. Some cases may be in the investigative stage and, therefore, have not yet reached legal counsel but are documented in the EIS. Regional Counsel, other than the Regional Counsel responsible for filing the proof of claim, notify the responsible Regional Counsel if they have any civil penalty actions or any other claims pending against the debtor. Before filing the proof of claim with the appropriate bankruptcy court, the responsible Regional Counsel requests the Department of Justice (DOJ) Commercial Litigation Section attorney or the assigned U.S. attorney to review the proof of claim. Once the review has been coordinated, and unless otherwise instructed by DOJ, the responsible Regional Counsel files the proof of claim and forwards a copy to AGC-300.

(3) The Regional Counsel responsible for preparing and filing the proof of claim provides AGC-300 with the following information:

- Name of the bankruptcy petitioner;
- The date the bankruptcy petition was filed and the bankruptcy court in which it was filed;
- Bar date set by the bankruptcy court for filing the proof of claim;
- Copy of the notification given to all Regional Counsel that a bankruptcy petition has been filed;
 - Name of the legal counsel handling the matter;
 - Amount of the claim;
 - A copy of the proof of claim that was filed;
 - A contact point for the bankruptcy matter.

(4) All open civil penalty actions, initiated and uninitiated, where the violations occurred before filing the bankruptcy petition, are consolidated into a single proof of claim, which contains the total amount owed under the FAA's claim. The bankruptcy court sets the date for filing the proof of claim. Generally, the bar date for governmental entities is 180 days after the bankruptcy petition is filed. *See* 11 U.S.C. § 502(b) (9). However, DOJ counsel may want the FAA to file its proof of claim by the general bar date for strategic purposes or to ensure the bankruptcy process proceeds rapidly. Regional Counsel follows DOJ's lead in such cases. The bankruptcy court ordinarily provides a specific proof of claim form for a particular bankruptcy case and DOJ ordinarily forwards the appropriate form to the FAA. However, the forms are always available through the bankruptcy court.

(5) The proof of claim may be amended if all necessary information is not readily available at the time the proof of claim is filed. For initiated cases, civil penalty action documents (that is, civil penalty letters and notices of proposed civil penalty) are filed as attachments to the proof of claim. If legal counsel cannot initiate a civil penalty case before the bar date set by the bankruptcy court, Regional Counsel prepares documentation for each such case that includes the EIR number, case type (for example, flight standards, drug abatement, hazmat), a short summary of the facts, the regulations violated, and the recommended amount of civil penalty, which is filed as an attachment to the proof of claim. As soon as possible after the proof of claim is filed, the Regional Counsel issues civil penalty action documents for the previously uninitiated cases. It may be necessary to amend the proof of claim to include these civil penalty action documents.

(6) Setoff rights are preserved in proofs of claims by attaching the following paragraph to the proof of claim:

This claim reflects the known liability of the debtor to this agency of the United States. The United States reserves the right to amend this claim to assert subsequently discovered liabilities. This agency holds subject to setoff against this claim a debt owed to the debtor in the amount of \$____. The identification of any sums held subject to setoff is without prejudice to any other right under 11 U.S.C. § 553 to setoff against this claim, debts owed to debtors by this or any other federal agency.

(7) The Judicial Conference of the United States adopted a privacy policy designed to protect individuals. In accordance with that policy, amendments were made to the Federal Rules of Bankruptcy Procedure and official forms, effective December 1, 2003. The new privacy amendments concern the use of the debtor's social security number on documents. If the debtor's social security number is used on a proof of claim, an "X" is used in place of the first five numbers and only the last four digits are used.

e. Post-Petition Administrative Claims. Post-petition bankruptcy claims concern violations that occur after the bankruptcy petition was filed, but before the bar date for filing administrative claims. Such claims ordinarily qualify as administrative claims, and administrative claims generally are paid in full. Post-petition claims are sometimes filed on a specific form provided by the bankruptcy court. However, Regional Counsel consults the Department of Justice's Civil Division Commercial Litigation Corporate Financial Unit or the local U.S. attorney's office handling the case on how such claims should be filed. Civil penalty actions may be pursued throughout the period the debtor is in bankruptcy. To the extent a post-petition claim has not been fully recovered, legal counsel can file an administrative claim.

f. The Role of the Enforcement Division, AGC-300. AGC-300 is the central clearinghouse for bankruptcy matters and maintains a point of contact in each Regional Counsel Office. Often, DOJ contacts AGC-300 and needs an immediate response regarding a particular bankruptcy case. As a result, it is critical for the responsible Regional Counsel to send copies of all proofs of claim to AGC-300 for its central file. Once a bankruptcy petition is filed with a bankruptcy court, a DOJ attorney often contacts AGC-300 and provides information about the bankruptcy. Such information includes the date the respondent declared bankruptcy, any affiliates of the debtor that are included in the bankruptcy, the bankruptcy court handling the bankruptcy, and the bar date. Sometimes a U.S. attorney will contact a Regional Counsel. All air carrier bankruptcies are coordinated with DOJ or the U.S. attorney's office handling the case. FAA legal counsel may receive a bankruptcy notice about an air carrier before any contact with DOJ. In such cases, the attorney receiving the notice should contact AGC-300 and DOJ immediately.

g. Bankruptcy Impact on Active Civil Penalty Cases. Active enforcement cases are affected as soon as a debtor files a bankruptcy petition. If a civil penalty letter or notice of proposed civil penalty has not been issued, legal counsel issues the letter or notice before the bar

date, if possible. However, legal counsel includes the following language in all civil penalty action documents where the violations occurred before the date the bankruptcy petition was filed:

Since you have filed a chapter 11 bankruptcy petition, this is not a demand for payment to the extent prohibited by the Bankruptcy Code.

After the civil penalty action document has been issued, if further action is pursued, legal counsel continues to advise the debtor that a debt is not owed until the bankruptcy court resolves the matter.

h. Settlement of Pre-Petition Claims. Because the FAA is an unsecured creditor, it is paid only after secured creditors. Any remaining assets are split among the other unsecured creditors. It is important for FAA to resolve its bankruptcy claims. The amount paid on a specific claim is less significant than the finding of violation, which becomes part of the debtor's violation history. FAA does not ordinarily use compromise orders to resolve bankruptcy claims because there is no finding of violation. All settlements are coordinated with DOJ counsel or the assistant U.S. attorney assigned to the case.

i. Setoff Funds Owning to Debtors. No funds owed to a debtor should be released to a debtor after a bankruptcy petition is filed without obtaining approval from DOJ. FAA claims can be satisfied with funds due the debtor by other government agencies.

j. Bankruptcy Petitions Filed by Foreign Persons. If a foreign person commits a violation of the FAA's regulations or the DOT hazmat regulations before filing a bankruptcy petition in the bankruptcy court located in the foreign person's country, the Regional Counsel in the region in which the violation occurred is responsible for obtaining the proof of claim and preparing and filing the proof of claim with the foreign country's bankruptcy court. Regional Counsel follows the coordination procedures discussed above on preparing and filing proof of claim in U.S. bankruptcy courts. The DOJ's Office of Foreign Litigation advises, however, that pursuit of such action may be fruitless because foreign bankruptcy courts often do not extend extraterritorial recognition to confiscatory claims.

k. Debtor's Emergence from Bankruptcy. When a debtor emerges from bankruptcy, Regional Counsel consult the Regional Counsel responsible for filing the proof of claim or AGC-300 before proceeding with a civil penalty case. In some situations, a debtor may have paid the amount set by the bankruptcy court for the claim or participated in a settlement agreement with the FAA for the claims. If a violation is not a pre- or post-petition claim, the attorney may proceed as usual with the case.

27. Consent Orders. A program office and legal counsel may agree to resolve certain legal enforcement actions with a consent order. A consent order ordinarily includes an agreement that the alleged violator will take corrective and remedial action as a condition for the suspension or forgiveness of a portion of the sanction or, in some cases, a modification of the proposed sanction. A consent order, for example, may be an appropriate means for resolving several pending enforcement actions that demonstrate similar, systemic deficiencies in an air carrier's practices and procedures. In such a case, the carrier, with the agency's approval, might agree to

take prompt corrective action to cure the systemic deficiencies by making improvements to or updating procedures regarding its operations and maintenance practices. This agreement would be set forth in the consent order. A consent order may or may not contain findings of violation. A carrier's failure to fulfill the agreement within the terms set forth in the consent order ordinarily would result in imposition of the entire sanction amount.

28. Documenting Changes in Proposed Sanctions. Reductions in a proposed sanction occur for various reasons, for example, because an alleged violator demonstrates an inability to pay, for settlement purposes, when mitigating circumstances are presented, and when allegations are dropped. Legal counsel document in the case file any changes in a proposed sanction and the reasons that justify the change.

29. Application of Servicemembers Civil Relief Act. The Servicemembers Civil Relief Act (50 U.S.C. App. 501 *et seq.*) applies to FAA administrative proceedings before the NTSB and the DOT ALJs and the FAA Decisionmaker. Among other relief, this statute tolls any limitation period for the bringing of any action or proceeding in a court or before any board, bureau, commission, department, or other agency of the U.S. by or against a service member. *See* 50 U.S.C. App. 526. FAA legal counsel determines the applicability of the Servicemembers Civil Relief Act in any legal enforcement action brought against a service member.

30. Waiver of Mandatory 49 U.S.C. § 44710 and 49 U.S.C. § 44726 Certificate Revocations or 49 U.S.C. 44703(f) and 49 U.S.C. 44726(a) Certificate Denials

a. Authority.

(1) 49 U.S.C. § 44703(f) allows the FAA to reissue a certificate to an individual whose certificate has been revoked under 49 U.S.C. § 44710(b) for a drug-related offense, when the Administrator decides that issuing the certificate will facilitate law enforcement efforts. Issuance of a certificate is also permitted when the individual has been acquitted of the charges on which a prior revocation was based or when the conviction on which it was based has been reversed. 49 U.S.C. § 44710(f), allows the Administrator to waive the requirement to revoke an individual's certificate under 49 U.S.C. § 44710(b), if a law enforcement official of the U.S. or a state government so requests, and the Administrator decides that the waiver will facilitate law enforcement efforts.

(2) 49 U.S.C. § 44726(a)(2) allows the FAA to issue a certificate to a person convicted of a counterfeit parts crime or whose certificate has been revoked under 49 U.S.C. § 44726(b) or that is subject to a controlling or ownership interest of an individual convicted of a counterfeit parts crime or whose certificate has been revoked under 49 U.S.C. § 44726(b) if the issuance of the certificate will facilitate law enforcement efforts. 49 U.S.C. § 44726(f) allows the Administrator to waive the requirement to revoke a certificate under 49 U.S.C. § 44726(b) if a law enforcement official of the U.S. government requests a waiver and the waiver will facilitate law enforcement efforts.

b. Processing a Request for a Waiver of Revocation or Denial. When a program office or Regional Counsel's office receives a request for a waiver of revocation or denial from a law enforcement official, it follows the procedures in chapter 6, subparagraphs 30.b. (1)-(7).

(1) The program office or Regional Counsel's office forwards the request to AGC-300.

(2) AGC-300 reviews the request for legal sufficiency. If AGC-300 determines the request is not legally sufficient (for example, the request was submitted by a local law enforcement official), then AGC-300 advises the requester that the statutory requirements for processing a waiver request have not been met and closes the matter. If AGC-300 determines the request is legally sufficient, then it transfers the request for waiver to the National Security Coordinator Staff, ASH-60. ASH-60 contacts the headquarters office of the federal or state agency for whom the requesting official works. ASH-60 asks the headquarters office of the requester's agency to confirm, in writing, that it supports the request for waiver, and obtains further supporting information, if any, from the agency. If the headquarters office of the requesting agency does not support the request for waiver, ASH-60 asks the agency to withdraw it in writing.

(3) If the headquarters office of the requester's agency withdraws the request, ASH-60 returns the request to AGC-300, which advises the requester that the waiver request is denied because the law enforcement agency has withdrawn its request.

(4) If the headquarters office of the requester's agency supports the request, ASH-60 forwards the request for waiver, with all supporting information, to AVS. ASH-60 may also forward an advisory opinion for AVS and the Administrator on whether granting the waiver request would facilitate law enforcement efforts and a recommendation on whether the waiver request should be granted.

(5) AVS evaluates the request and the supporting information. AVS may include an advisory opinion to the Administrator regarding whether it believes the certificate should be reissued or the revocation waived based on the information provided by the requesting agency. AVS forwards the waiver request and its advisory opinion, if any, to AGC-300.

(6) AGC-300 transmits the waiver request and all accompanying documentation to AGC-1. AGC-300 includes two draft letters from the Administrator to the requesting law enforcement official; one letter provides that the waiver is granted and the other provides that the request is denied. AGC-1 forwards the waiver request and all accompanying documentation to the Administrator.

(7) The Administrator returns the documentation to AGC-1. AGC-300 advises the office that submitted the request initially so that appropriate action is taken to effectuate the Administrator's decision.

31. Procedures for Recovering Certificates and Related Enforcement Action.

a. Issuance of a Demand Letter. If a person does not surrender a suspended or revoked certificate, authorization, or other approval within 15 days of the date an emergency order is issued or within 30 days of the date a nonemergency order is issued, legal counsel issues a letter to the certificate holder demanding the immediate surrender of the suspended or revoked certificate, authorization, or other approval. In the demand letter, legal counsel advises the holder that failure to do so will result in civil penalty action for failure to surrender.

b. Civil Penalty Action for Failure to Surrender. If the holder of a certificate, authorization, or other approval fails to surrender a suspended or revoked certificate, authorization, or other approval within 15 days of the date of a demand letter is issued, legal counsel ordinarily initiates a civil penalty action against the holder for failing to surrender. Legal counsel opens a separate EIR for the civil penalty action and makes appropriate entries in the EIS. The holder is subject to a civil penalty for each day the holder failed to surrender the certificate, authorization, or other approval. If the holder was acting as a pilot, mechanic, flight engineer, or repairman when he or she committed the violations that resulted in the suspension or revocation, then the civil penalty action for failing to surrender would be within the jurisdiction of the NTSB. A civil penalty action against any other holder for failing to surrender would be within the jurisdiction of the DOT ALJs and the FAA Decisionmaker. In addition, in appropriate circumstances, revocation of certificates may be taken. An alternative to taking administrative civil penalty action is for a U.S. attorney to seek injunctive relief.

c. Continued Failure to Surrender. If the holder fails to surrender a certificate, authorization, or other approval after the FAA has taken civil penalty action under chapter 6, subparagraph 31.b., then FAA legal counsel refers the failure to surrender to the appropriate U.S. attorney's office and requests judicial enforcement of the FAA order of suspension or revocation and injunctive relief, if appropriate.

32. Procedures for the Collection of Administratively Assessed Civil Penalties.

a. Applicability. This guidance applies only to the collection of civil penalties the FAA administratively assesses. The collection of judgments rendered for the FAA in federal district courts is governed by the United States Attorneys Manual and other Department of Justice policies.

b. Procedures for Cases where Hearing is Not Requested.

(1) An order assessing civil penalty and a final order of assessment (that is, after the time periods for appealing have expired) are legally collectible debts. FAA personnel immediately take steps to collect the assessed amounts once an order assessing civil penalty has been issued or the period for appealing an order of assessment has expired. To expedite the collection of civil penalties, these orders contain language that satisfies the requirements of an initial demand letter under 49 C.F.R. part 89. An initial demand letter must inform the debtor of: the amount of, and the basis for, the indebtedness and whatever rights the debtor may have to seek review within the agency; the applicable standards for assessing interest, penalties, and administrative

costs; the date by which payment is to be made, which normally should be not more than 30 days from the date the initial demand letter was mailed or hand-delivered; the possibility of referral of the debt to commercial credit bureaus and consumer reporting agencies; the possibility the debt will be forwarded to a collection agency, the General Accountability Office, the Department of Justice, or private counsel contracting with the Department of Justice for collection; and that domestic and overseas payments in excess of ten thousand dollars or more must be made by wire transfer through the Federal Reserve communications (Fedwire), to the account of the U.S. Treasury in accordance with the instructions in the demand letter. Legal counsel exercises care to ensure that orders imposing civil penalties, which are initial demand letters, are mailed or hand-delivered on the same day that they are dated.

(2) In the order assessing civil penalty or order of assessment, legal counsel advises the violator to send payment of the civil penalty to the accounting office servicing headquarters or the region where the order originated.

(3) The order assessing civil penalty or the order of assessment includes the appropriate interest rate (the published Treasury Current Value of Funds Rate, or CVF rate) in effect on the date the order is issued. The CVF rate can be obtained by accessing the website of the Department of Treasury Financial Management Service at www.fms.treas.gov. The order also includes the amount of the accounting office's administrative charge. 49 C.F.R. part 89 allows interest, collection charges, or late penalty charges to be waived if certain findings are made (*See* 49 C.F.R. § 89.23(e)).

c. Procedures for Cases where Hearing is Requested.

(1) If either an NTSB or DOT ALJ orders a respondent to pay a civil penalty, then legal counsel issues to the respondent the initial letter demanding payment after the time period for filing a notice of appeal of the ALJ's decision has expired. If the ALJ's decision is appealed to the full Board or the FAA Decisionmaker and a decision ordering payment of a civil penalty is issued in favor of the FAA, then legal counsel issues to the respondent the initial demand letter demanding payment after the 60-day period for seeking judicial review has expired.

(2) The letter demanding payment of the civil penalty must contain language that satisfies the requirements of an initial demand letter under 49 C.F.R. part 89. The letter must inform the debtor of: the amount of, and the basis for, the indebtedness and whatever rights the debtor may have to seek review within the agency; the applicable standards for assessing interest, penalties, and administrative costs; the date by which payment is to be made, which normally should be not more than 30 days from the date the initial demand letter was mailed or hand-delivered; the possibility of referral of the debt to commercial credit bureaus and consumer reporting agencies; the possibility the debt will be forwarded to a collection agency, the Government Accountability Office, the Department of Justice, or private counsel contracting with the Department of Justice for collection; and that domestic and overseas payments in excess of ten thousand dollars or more must be made by wire transfer through the Federal Reserve communications (Fedwire), to the account of the U.S. Treasury in accordance with the instructions in the demand letter. Legal counsel exercises care to ensure that the demand letter is mailed or hand-delivered on the same day that it is dated.

(3) In the letter, legal counsel advises the debtor to which accounting office the debtor must send payment of the civil penalty.

(4) The letter includes the appropriate interest rate (the published Treasury Current Value of Funds Rate, or CVF" rate) in effect on the date the ALJ's, full Board's, or FAA Decisionmaker's order became effective. The CVF rate can be obtained by accessing the website of the Department of Treasury Financial Management Service at www.fms.treas.gov. The letter also includes the amount of the accounting office's administrative charge. 49 C.F.R. part 89 allows interest, collection charges, or late penalty charges to be waived if certain findings are made (*See* 49 C.F.R. § 89.23(e)).

d. Opening an Account Receivable.

(1) Legal counsel immediately sends a copy of the order to the accounting office servicing their office so it can open an account receivable. The Office of Accounting through an automated system sends to the debtor the second and third demand letters required by 49 C.F.R. part 89. Through this system, the Office of Accounting notifies the debtor of the administrative charges as well as any penalties added to the debt because of delinquency.

(2) When legal counsel issues an order of assessment, he or she tracks the time frame the respondent has to request a hearing. Once a respondent's appeal rights have been exhausted, legal counsel immediately sends a copy of the order to the accounting office servicing their office so it can open an account receivable. The accounting office handles the order of assessment the same way it handles an order assessing civil penalty for purposes of debt collection. The date interest begins to run is the date the respondent's right to request a hearing expires or, if the case is appealed, once a decision is final. However, if the civil penalty is paid within 30 days from the date the respondent's right to request a hearing expires or a decision on appeal is final, no interest is assessed.

(3) If the debtor's social security number or other taxpayer identification number is available, legal counsel provides it to the accounting office in case it becomes necessary to refer a delinquent debt to a credit reporting or collection agency or the Department of Treasury Financial Management Services for cross-servicing. For certificated airmen, this information may be contained in the Comprehensive Airman Information System.

e. Compromise Orders. Legal counsel issues compromise orders under 14 C.F.R. § 13.16(l) only after receipt of payment or on receipt of a signed promissory note providing for installment payments. If legal counsel receives payment, he or she sends the payment and the compromise order to the accounting office immediately so it can open and close an account receivable. If the debtor executes a promissory note, legal counsel sends the note and compromise order to the accounting office immediately so it can open an account receivable. The accounting office tracks proper payment of the note and sends out any delinquency notices. Legal counsel does not delay issuance of a compromise order until all payments are received. If an installment payment plan is agreed upon, it is reflected in a promissory note, and a compromise order is issued immediately. Legal counsel sends the compromise order with the payment or promissory note so the accounting office will have a case number to use when opening the account receivable.

f. Installment Payments. Sometimes, the respondent may agree to pay a civil penalty, and negotiate an installment payment schedule with the attorney handling the case. In that instance, the installment payment schedule must be memorialized in a promissory note. The order assessing civil penalty, compromise order, or the order of assessment is issued immediately and sent with the promissory note that outlines the installment agreement to the accounting office. The accounting office uses the information in the promissory note to open an account receivable and notifies the debtor if the debtor becomes delinquent during the repayment period. Legal counsel does not delay issuing an order assessing civil penalty, a compromise order, or an order of assessment until payments are received; payments are to be sent to the accounting office that services the legal office that issued the order.

g. Handling of Debt after an Account Receivable is Opened. After the accounting office has opened an account receivable, it handles all further administrative collection efforts on the debt. Accounting personnel forward any telephonic or written inquiries they receive questioning either the amount or validity of an order to FAA legal counsel who issued the order. FAA legal counsel may compromise a debt under 31 U.S.C. § 3711(a)(2), if warranted. If a claim is compromised under 31 U.S.C. § 3711(a)(2), legal counsel notifies the accounting office and directs the debtor to send payment to the accounting office.

h. Actions to Collect Debts. Federal debt collection law requires all agencies to take aggressive collection action. This includes: using debt collection centers and collection agencies; reporting to credit bureaus; tax refund offset; federal salary offset; litigation; and if all else fails, reporting to the IRS, as income to the debtor, the amount of any civil penalty the agency writes off as a bad debt. FAA accounting offices may transfer to the Department of Treasury Financial Management Service any debt for collection. Any debt that has been delinquent for 180 days or more must be transferred to the FMS, unless it is a debt that is in litigation or foreclosure, will be disposed of under an approved asset sale program, has been referred to a private collection contractor for a period of time acceptable to the Secretary of the Treasury, is at a debt collection center for a period of time acceptable to the Secretary, will be collected under internal offset procedures within three years after the debt first became delinquent, or is exempt from this requirement based on a determination by the Secretary that exemption for a certain class of debt is in the best interest of the United States. The accounting office notifies the Assistant Chief Counsel for Enforcement or Regional Counsel when a debt has been collected or of any other final action it takes in collecting the debt or closing the account.

i. Referrals to the Department of Justice. An accounting office may request the Assistant Chief Counsel for Enforcement or a Regional Counsel that issued an order assessing civil penalty or an order of assessment to refer a debt to the Department of Justice for litigation. Legal counsel must not refer a debt less than \$2,500, exclusive of interest, penalties, and administrative costs, unless litigation to collect a smaller amount is important to ensure compliance with the FAA policies or programs; the debt is referred solely for the purpose of securing a judgment against the debtor, which will be filed as a lien against the debtor's property under 28 U.S.C. § 3201 and returned to the FAA for enforcement; or the debtor has the clear ability to pay the debt and the Government effectively can enforce payment, with due regard for the exemptions available to the debtor under state and federal law and the judicial remedies

available to the Government. Legal counsel consults the Financial Litigation Staff of the Executive Office for the United States Attorneys in the Department of Justice before referring debts less than \$2,500. To refer matters to the Justice Department, the FAA must fill out and send a Claims Collection Litigation Report and a signed Certificate of Indebtedness.

j. Payments received by Legal Counsel. If debtors send checks to legal counsel's office rather than the accounting office, legal counsel sends the checks to the accounting office immediately. The Assistant Chief Counsel for Enforcement and each Regional Counsel appoints one individual to be the principal contact responsible for collecting any checks sent to the legal office and for transmitting those checks to the appropriate accounting office.

33. Violations of Foreign Regulations by U.S. Citizens or Companies. Legal counsel for the region with geographical responsibility for the country filing the complaint processes a legal enforcement case for a violation of a foreign regulation by a U.S. citizen or company. After the completion of the case, legal counsel advises the foreign aviation authority through the Department of State of the action taken, except in the case of Canada, the contact is made directly with Transport Canada. If the program office does not refer the case to the legal office for handling, the program office advises the foreign aviation authority.

34. Violations of FAA Regulations by Foreign Persons.

a. General. Legal counsel for the region with geographic responsibility for the investigation processes a case against a foreign person who violates the Federal Aviation Regulations. Legal counsel takes legal enforcement action against an airman who commits a violation while exercising the privileges of his or her FAA airman certificate, a foreign individual who commits a passenger violation, or a foreign air carrier operating under 14 C.F.R. part 129. All other violations committed by foreign persons, except Canadian persons, are referred to the appropriate foreign aviation authority through the Department of State. Violations committed by Canadian persons, for whom legal enforcement action is not taken, are referred directly to Transport Canada.

b. Preparation of Referral to Foreign Authority. To refer a case to another foreign aviation authority, FAA legal counsel prepares a letter that includes a brief factual summary of the violation, a statement of the regulations violated, and a request that Transport Canada or other foreign aviation authority advise the FAA of any action that it takes regarding the matter. FAA legal counsel sends a copy of the EIR with the referral letter.

c. Notification of Legal Enforcement Action Taken. FAA legal counsel advises Transport Canada directly or other foreign aviation authority through the U.S. Foreign Service Post, if appropriate, of the final action taken in a legal enforcement case against a foreign person for violating the Federal Aviation Regulations.