CHANGE

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

ORDER
2150.3C
CHG 13

National Policy

Effective Date:
01/21/2026

SUBJ: FAA Compliance and Enforcement Program

1. Purpose. This change to FAA Order 2150.3C, as amended, provides for a special emphasis enforcement program applicable to UAS operations that endanger the public, violate airspace restrictions, or further a crime.

2. Who this change affects. The change affects all agency personnel who investigate, report, or process statutory or regulatory violations involving UAS.

3.Explanation of policy change. FAA Order 2150.3C, Change 13 adds C&E Bulletin 2026-1, which implements Section 6 of the 2025 Restoring American Airspace Sovereignty Executive Order by requiring legal enforcement action when a UAS operation endangers the public, violates established airspace restrictions, or furthers another crime. C&E Bulletin 2026-1 also broadens the scope of when the FAA will take a civil penalty action in addition to revoking a remote pilot certificate, superseding C&E Bulletin 2021-2.

4. Disposition of transmittal paragraph. Retain this transmittal sheet until the directive is cancelled.

PAGE CHANGE CONTROL CHART

Remove Pages	Dated	Insert Pages	Dated
B-3	02/18/2021	B-10, B-11	01/21/2026

5. Administrative information. This Order change is distributed to divisions and branches in Washington D.C. headquarters, regions, and centers, and to all field offices and facilities.

Bryan Bedford
Administrator

CHANGE

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

ORDER
2150.3C
CHG 12

National Policy

Effective Date:
09/09/2024

SUBJ: FAA Compliance and Enforcement Program

1. Purpose. This change is a comprehensive update of FAA Order 2150.3C.

2. Who this change affects. The change affects all agency personnel who investigate, report, or process FAA enforcement actions.

3. Explanation of policy change. FAA Order 2150.3C Change 12, incorporates gender neutral pronouns and terms to the maximum extent possible. This change allows for the surrender for cancellation of airman medical certificates in specified circumstances. This change also amends chapter 6, paragraph 2.b., to allow agency personnel to exercise additional discretion to determine the appropriate action to distinctly address violations associated with in-flight emergencies. In addition, this change amends chapter 4 to clarify that ADS-B Out data can be used as a form of evidence in an enforcement investigative record. The change updates maximum civil monetary penalties in accordance with inflation adjustments in 14 C.F.R. §§ 13.301 and 406.9, small business size standards in accordance with 13 C.F.R. § 121.201, and the scope of mandatory Safety Management Systems under 14 C.F.R. part 5. Finally, this change makes minor clerical edits to existing guidance.

4. Disposition of transmittal paragraph. Retain this transmittal sheet until the directive is cancelled.

PAGE CHANGE CONTROL CHART

Remove Pages	Dated	Insert Pages	Dated
10-9	09/18/2018	10-9	09/09/2024
ii, vi to xi, xv, 2-1, 2-4, 2-7 to 2-13, 3-2, 3-5, 4-5, 4-8, 4-16, 4-20 to 4-22, 4-29 to 4-36, 4-42, 4-45, 4-46, 5-10, 6-1 to 6-14, 7-3, 7-9 to 7-12, 7-16 to 7-24, 7-25, 8-1 to 8-46, 8-53, 8-54, 9-4 to 9-6, 9-17, 9-18, 9-23, 9-31, 9-33, 9-34, 9-39, 10-4, 10-5, 11-2, 11-5, A-2 to A-4	11/14/2022	ii, vi to xi, xv, 2-1, 2-4, 2-7 to 2-13, 3-2, 3-5, 4-5, 4-8, 4-16, 4-20 to 4-22, 4-29 to 4-36, 4-42, 4-45, 4-46, 5-10, 6-1 to 6-14, 7-3, 7-9 to 7-12, 7-16 to 7-24, 7-25, 8-1 to 8-46, 8-53, 8-54, 9-4 to 9-6, 9-17, 9-18, 9-23, 9-31, 9-33, 9-34, 9-39, 10-4, 10-5, 11-2, 11-5, A-2 to A-4	09/09/2024

5. Administrative information. This Order change is distributed to divisions and branches in Washington D.C. headquarters, regions, and centers, and to all field offices and facilities.

Marc A. Nichols

Marc A. Nichols
Chief Counsel

CHANGE

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

ORDER
2150.3C
CHG 11

Effective Date:

National Policy

08/08/2023

SUBJ: FAA Compliance and Enforcement Program

1. Purpose. Order 2150.3C, Change 11 (C&E Bulletin 2023-1), discusses the processing of matters arising from the Department of Transportation's Office of the Inspector General (DOT OIG) investigation of applicants for airman medical certification who allegedly made fraudulent, intentionally false, or incorrect statements on an application for airman medical certification regarding the receipt of Veterans Affairs (VA) disability benefits and underlying medical conditions for which they are receiving such benefits. C&E Bulletin 2023-1 provides criteria under which the FAA will process such matters, including, in limited circumstances, criteria for forgoing legal enforcement action.

2. Who this change affects. The change affects all agency personnel who investigate, report, or process enforcement actions involving airman medical certificates.

3. Explanation of policy change. Through a DOT OIG investigation, the FAA became aware that some veterans allegedly made fraudulent, intentionally false, or incorrect statements on an application for airman medical certification regarding the receipt of VA disability benefits and underlying medical conditions for which a veteran is receiving such benefits. The FAA has identified limited circumstances where forgoing legal enforcement action against certain veterans subject to the investigation provides safety advantages that outweigh harm to the public interest caused by forgoing legal enforcement action. To be eligible for this limited circumstance, these veterans must reapply within specified timeframes and completely and truthfully disclose receipt of VA disability benefits and the underlying medical conditions associated with these benefits. In other circumstances, legal enforcement action will be appropriate.

4. Disposition of transmittal paragraph. Retain this transmittal sheet until the directive is cancelled.

PAGE CHANGE CONTROL CHART

Remove Pages	Dated	Insert Pages	Dated
N/A	N/A	Appendix B, B-7 through B-10	08/08/2023

5. Administrative information. This Order change is distributed to divisions and branches in Washington D.C. headquarters, regions, centers, and all field offices and facilities.

Polly Trottenberg
Acting Administrator

CHANGE

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

National Policy

ORDER
2150.3C
CHG 10

Effective Date:
11/14/2022

SUBJ: FAA Compliance and Enforcement Program

1. Purpose. This change is a comprehensive update of FAA Order 2150.3C.

2. Who this change affects. The change affects all FAA employees.

3. Explanation of Policy Change. Order 2150.3C, Change 10, implements policies and procedures related to statutory and regulatory changes relevant to the Compliance and Enforcement Program since the publication of Order 2150.3C on September 18, 2018. The updates contain policies and procedures for (1) recent statutory directives, such as the Aircraft Certification, Safety, and Accountability Act, and a prohibition on the operation of Unmanned Aircraft Systems (UAS) equipped with dangerous weapons; and (2) recently published regulations, such as the Pilot Records Database (14 C.F.R. part 111), Remote Identification of Unmanned Aircraft (14 C.F.R. part 89), Small Unmanned Aircraft Systems Operations Over Human Beings (14 C.F.R. part 107, subpart D), Investigation and Enforcement Procedures (including increased statutory maximum penalties) (14 C.F.R. part 13); Launch and Reentry License Requirements (14 C.F.R. part 450); and Security Threat Disqualification (14 C.F.R. part 3, subpart B). Change 10 also sets forth new policies and procedures for such initiatives as the Portal for International Pilot Deviations, streamlined foreign referrals, the implementation of material contribution and permanent disqualification processes, prompt settlement policies, and the use of electronic Enforcement Investigative Reports (EIRs), and provides minor editorial and programmatic edits to existing guidance.

4. Disposition of Transmittal Paragraph. Retain this transmittal sheet until the directive is canceled by a new directive.

PAGE CHANGE CONTROL CHART

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Remove Pages	Dated	Insert Pages	Dated
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xii, xiii, xv, 9-4 through 9-37, App. A-1 through A-4	1/24/2020		11/14/2022
ii, 2-10 through 2-13	9/30/2021		11/14/2022
iv, v, 4-36 through 4-45	9/20/2022		11/14/2022
N/A	N/A	4-46, 7-22 through 7-24, 8-54, 9-38, 9-39, 11-8	11/14/2022

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

Billy Nolen
Acting Administrator

CHANGE

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

ORDER
2150.3C
CHG 9

National Policy

Effective Date:
09/20/2022

SUBJ: FAA Compliance and Enforcement Program

1. Purpose. This change to FAA Order 2150.3C, as amended, provides notice to individuals with a foreign address and no U.S. mailing address of the opportunity to designate an agent for service with a U.S. mailing address in response to a letter of investigation or subsequent correspondence from AGC-300 counsel.

2. Who this change affects. The change affects all agency personnel who investigate, report, or process FAA enforcement actions.

3. Explanation of policy change. This bulletin announces the opportunity for prompt service of FAA notices, orders, and mailed correspondence in legal enforcement actions to individuals with a foreign address and no U.S. mailing address via an agent for service with a U.S. mailing address.

4. Disposition of transmittal paragraph. Retain this transmittal sheet until the directive is cancelled.

PAGE CHANGE CONTROL CHART

Remove Pages	Dated	Insert Pages	Dated
N/A	N/A	Appendix B, B-6	09/20/2022

5. Administrative information. This Order change is distributed to divisions and branches in Washington D.C. headquarters, regions, and centers, and to all field offices and facilities.

Marc A. Nichols

Marc A. Nichols
Chief Counsel

Distribution: Electronic Initiated By: AGC-300

CHANGE

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

National Policy

ORDER
2150.3C
CHG 8

Effective Date:
09/20/2022

SUBJ: FAA Compliance and Enforcement Program

1. Purpose. This change expedites the military referral process required under 49 U.S.C. § 46101(b).

2. Who this change affects. The change affects all FAA employees.

3. Explanation of Policy Change. Order 2150.3C, Change 8, amends chapter 4 to expedite the military referral process required under 49 C.F.R. § 46101(b) by ensuring the direct provision of information from the FAA line of business possessing that information to the military, and by ensuring that the military provide a response to the apparent violation directly to the line of business with the greatest need for such information.

4. 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
iv	10/31/2019	iv	09/20/2022
v	09/18/2018	v	09/20/2022
4-36 through 4-45	09/18/2018	4-36 through 4-45	09/20/2022

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

Marc A. Nichols

Marc A. Nichols
Chief Counsel

CHANGE

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

National Policy

ORDER
2150.3C
CHG 7

Effective Date:
09/30/2021

SUBJ: FAA Compliance and Enforcement Program

1. Purpose. This change aligns criminal referral procedures with DOT Order 8000.8A.

2. Who this change affects. The change affects all FAA employees.

3. Explanation of Policy Change. Order 2150.3C, Change 7, amends chapter 2 to require that FAA employees ensure investigative matters within the purview of the Department of Transportation Office of Inspector General are referred for disposition in accordance with the procedures in DOT Order 8000.8A.

4. Disposition of Transmittal Paragraph. Retain this transmittal sheet until the directive is canceled by a new directive.

PAGE CHANGE CONTROL CHART

Remove Pages	Dated	Insert Pages	Dated
ii	09/18/2018	ii	09/30/2021
2-10 through 2-13	09/18/2018	2-10 through 2-13	09/30/2021

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

Steve Dickson
Administrator

CHANGE

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

ORDER
2150.3C
CHG 6

National Policy

Effective Date:
03/31/2021

SUBJ: FAA Compliance and Enforcement Program

1. Purpose. This change to FAA Order 2150.3C, as amended, extends a special emphasis enforcement program applicable to passengers who assault, threaten, intimidate, or interfere with a crewmember in the performance of a crewmember's duties in violation of 14 C.F.R. §§ 91.11, 121.580, 125.328, or 135.120, or who engage in conduct proscribed under 49 U.S.C. § 46318.

2. Who this change affects. The change affects all agency personnel who investigate, report, or process statutory and regulatory violations involving passengers.

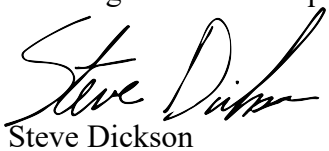
3. Explanation of policy change. The change extends the special emphasis enforcement program providing that passengers who assault, threaten, intimidate, or interfere with a crewmember in the performance of a crewmember's duties in violation of 14 C.F.R. §§ 91.11, 121.580, 125.328, or 135.120, or who engage in conduct proscribed under 49 U.S.C. § 46318, will be addressed with legal enforcement action in the form of a civil penalty, and that compliance and administrative actions will not be used to address such violations.

4. 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
N/A	N/A	Appendix B, B-4 and B-5	03/31/2021

5. Administrative information. This Order change is distributed to divisions and branches in Washington D.C. headquarters, regions, and centers, and to all field offices and facilities.



Steve Dickson
Administrator

CHANGE

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

ORDER
2150.3C
CHG 5

National Policy

Effective Date:
02/18/21

SUBJ: FAA Compliance and Enforcement Program

1. Purpose. This change to FAA Order 2150.3C provides sanction guidance applicable to remote pilot certificate holders whose conduct in violation of 14 C.F.R. part 107 demonstrates a lack of care, judgment, or responsibility.

2. Who this change affects. The change affects all agency personnel who investigate, report, or process enforcement actions involving the operation of UAS in the National Airspace System.

3. Explanation of Policy Change. The change contained herein clarifies sanction guidance for cases involving remote pilot certificate holders whose conduct in violation of 14 C.F.R. part 107 demonstrates a lack of care, judgment, or responsibility.

4. Disposition of Transmittal Paragraph. Retain this transmittal sheet until the directive is cancelled.

PAGE CHANGE CONTROL CHART

Remove Pages	Dated	Insert Pages	Dated
N/A	N/A	Appendix B, B-3	02/18/2021

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

Steve Dickson
Administrator

CHANGE

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

ORDER
2150.3C
CHG 4

National Policy

Effective Date:
01/13/2021

SUBJ: FAA Compliance and Enforcement Program

1. Purpose. This change to FAA Order 2150.3C, as amended, provides for a special emphasis enforcement program applicable to passengers who assault, threaten, intimidate, or interfere with a crewmember in the performance of a crewmember's duties in violation of 14 C.F.R. §§ 91.11, 121.580, 125.328, or 135.120, or who engage in conduct proscribed under 49 U.S.C. § 46318.

2. Who this change affects. The change affects all agency personnel who investigate, report, or process statutory and regulatory violations involving passengers.

3. Explanation of policy change. The change contained herein provides that passengers who assault, threaten, intimidate, or interfere with a crewmember in the performance of a crewmember's duties in violation of 14 C.F.R. §§ 91.11, 121.580, 125.328, or 135.120, or who engage in conduct proscribed under 49 U.S.C. § 46318, will be addressed with legal enforcement action in the form of a civil penalty. Compliance and administrative actions will not be used to address such violations.

4. 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
N/A	N/A	Appendix B, B-2	01/13/2021

5. Administrative information. This Order change is distributed to divisions and branches in Washington D.C. headquarters, regions, and centers, and to all field offices and facilities.

Steve Dickson
Administrator

CHANGE

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

ORDER
2150.3C
CHG 3

National Policy

Effective Date:
01/24/2020

SUBJ: FAA Compliance and Enforcement Program

1. Purpose. Order 2150.3C, Change 3, amends chapter 9 to include sanction guidance for violations of regulatory requirements involving Automatic Dependent Surveillance-Broadcast (ADS-B) Out equipment, performance, and broadcast requirements. The change also amends chapter 9 to include sanction guidance specific to amendments under the FAA Reauthorization Act of 2018 to 49 U.S.C. § 46318(a) regarding sexual assaults and threats of sexual assault and the increased civil monetary penalty maximum for violations of that statute. Additionally, the change updates maximum civil monetary penalties in accordance with inflation adjustments in 14 C.F.R. § 13.301, clarifies size limits and sector titles for support activities for transportation based on SBA size limits under 13 C.F.R. § 121.201, and clarifies sanction guidance for knowing omissions to conceal a material fact in a repair station application or record.

2. Who this change affects. The change affects Flight Standards Service personnel who investigate, report, and process legal enforcement actions and enforcement counsel who handle such 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
xii, xiii	09/18/2018	xii, xiii	01/24/2020
xv	10/31/2019	xv	01/24/2020
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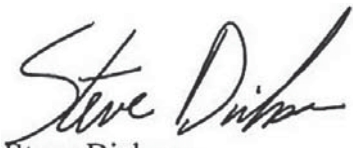
9-22 through 9-24, 9-29	10/31/2019	9-22 through 9-24, 9-29	01/24/2020
N/A	N/A	9-37	01/24/2020
A-1 through A-4	09/18/2018	A-1 through A-4	01/24/2020

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



Steve Dickson
Administrator

CHANGE

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

National Policy

ORDER
2150.3C
CHG 2

Effective Date:
10/31/2019

SUBJ: FAA Compliance and Enforcement Program

1. Purpose. This change serves two purposes. First, it incorporates Order 8000.373A, which recently changed "FAA Compliance Philosophy" to "FAA Compliance Program." Second, it incorporates recent amendments to the Pilot's Bill of Rights (PBR) under the FAA Reauthorization Act of 2018, Pub. L. 115-254 (Oct. 5, 2018).

2. Who this change affects. The change affects agency personnel who process enforcement actions and lines of business and program offices having compliance and enforcement oversight functions.

3. Explanation of Policy Change. The change updates Order 2150.3C to conform to Order 8000.373A (Oct. 31, 2018), which changed "FAA Compliance Philosophy" to "FAA Compliance Program." It also updates Order 2150.3C to conform to amendments to the PBR under Pub. L. 115-254.

4. 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
ii, iii, iv, xi, xv	9/18/2018	ii, iii, iv, xi, xv	10/31/2019
1-1 through 1-3	9/18/2018	1-1 through 1-3	10/31/2019
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10-6	9/18/2018	10-6	10/31/2019

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

Steve Dickson
Administrator

CHANGE

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

ORDER
2150.3C
CHG 1

National Policy

Effective Date:
02/08/19

SUBJ: Compliance and Enforcement Bulletin 2018-1A: Guidance on Unmanned Aircraft System (UAS) operations that interfere with wildfire suppression, law enforcement, or emergency response efforts.

1. Purpose. This change to FAA Order 2150.3, as amended, provides guidance on actions applicable to persons who operate Unmanned Aircraft System (UAS) that interfere with wildfire suppression, law enforcement, or emergency response efforts.

2. Who this change affects. The change affects all agency personnel who investigate, report, or process enforcement actions involving the operation of UAS in the National Airspace System.

3. Explanation of Policy Change. The change contained herein provides guidance for handling cases involving persons who operate UAS that interfere with wildfire suppression, law enforcement, or emergency response efforts.

4. 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
N/A	N/A	Appendix B, B-1	02/08/2019

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

Daniel K. Elwell
Acting Administrator

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

ORDER 2150.3C
Effective Date:
09/18/18

SUBJ: FAA Compliance and Enforcement Program

Order 2150.3C, which supersedes Order 2150.3B, sets forth policies and procedures relevant to the Federal Aviation Administration's compliance and enforcement program. The order applies to the compliance and enforcement programs and activities of all FAA offices that have statutory and regulatory compliance and enforcement responsibilities. It includes policies and procedures the FAA has developed since the last comprehensive revision of the order in 2007. Expired and out-of-date policies and procedures have been removed.

Order 2150.3C incorporates Order 8000.373 (Jun. 26, 2015), which sets forth overarching guidance for implementing FAA Compliance Oversight. Orders 2150.3C and 8000.373, and the policies and procedures issued by program offices, guide agency personnel in the exercise of prosecutorial discretion, including the use of compliance, administrative, and legal enforcement action, to best ensure that regulated persons conform their conduct to statutory and regulatory requirements.

In addition, Order 2150.3C provides a written statement of the Administrator's policy guidance for imposing sanctions for violations of statutory and regulatory requirements, and revises sanction guidance to implement the objectives of FAA Compliance Oversight and conform to Congressional directives on sanctions for hazardous materials, laser, and some unmanned aircraft system violations. The order provides guidance that addresses statutory changes resulting from the Pilot's Bill of Rights, Public Law 112-153. The order has been reorganized to be more useful for agency personnel.

A workgroup of agency personnel with extensive FAA compliance and enforcement experience assisted in the drafting of this comprehensive revision. Order 2150.3C is available electronically to agency personnel and the public.

Daniel K. Elwell
Acting Administrator

Distribution: Electronically

Initiated By: AGC-300

Table of Contents

Chapter 9. Legal Enforcement Action Sanction Policy

Tables

Appendices

Chapter 1. Introduction

1. Purpose of this Order. This order discusses the authorities, responsibilities, policies, guidance, procedures, and objectives relevant to the Federal Aviation Administration's (FAA's) compliance and enforcement program. It promotes standardization and uniformity in the application of the compliance and enforcement program. This order does not create any legal right, benefit, or entitlement, substantive or procedural, against the FAA or its employees.

2. Audience.

a. This order applies to the compliance and enforcement programs and activities of all FAA offices that have statutory and regulatory enforcement responsibilities, including the Flight Standards Service (FS), Office of Aerospace Medicine (AAM), Aircraft Certification Service (AIR), Security and Hazardous Materials Safety (ASH), Office of Airports (ARP), Office of Commercial Space Transportation (AST), and the Office of Policy, International Affairs, and Environment (APL).

b. This order is a staff manual for FAA personnel. Along with Order 8000.373, as amended, *FAA Compliance Program*, and program office policies and procedures, this order guides FAA personnel in the exercise of discretion in handling compliance and enforcement matters. This order emphasizes that agency personnel use FAA program office policy guidance for compliance or informal actions, and provides guidance for the use of administrative and legal enforcement actions.

c. This order does not cover every situation related to FAA enforcement activities and there will be situations where deviation is warranted. FAA personnel are expected to use training, experience, sound judgment, critical thinking, and interdependence in carrying out their compliance and enforcement responsibilities.

3. Where Can I Find This Order? This order is available on the Internet at http://drs.faa.gov.

4. Cancellation. This order cancels all parts of FAA Order 2150.3B, *Compliance and Enforcement Program*.

5. Explanation of Changes. This order replaces FAA Order 2150.3B and includes the following major additions and changes.

a. Sanction guidance has been revised to implement: (1) the objectives of the FAA Compliance Program; (2) Congressional directives to increase sanctions for hazmat, laser, and some UAS violations; and (3) inflation adjustments authorized by 28 U.S.C. § 2461 and 14 C.F.R. §§ 13.301, 406.9(a).

b. Policies previously issued by documents such as memoranda and Compliance and Enforcement Bulletins (C&E Bulletins) have been incorporated into the order.

c. Expired policies have been removed from the order.

d. Guidance that addresses requirements imposed by the Pilot's Bill of Rights, Public Law 112-153 has been added.

e. Guidance regarding the modernized Enforcement Information System has been added.

6. Distribution. The FAA distributes this order electronically:

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

b. To the director level in the offices of the Associate Administrator for Aviation Safety, the Associate Administrator for Airports, the Associate Administrator for Security and Hazardous Materials Safety, the Associate Administrator for Commercial Space Transportation, and the Assistant Administrator for Office of Policy, International Affairs, and Environment;

c. To the ATO service unit vice presidents, ATO division offices, and ATO field offices;

d. To the branch level at the Civil Aerospace Medical Institute, Airmen and Aircraft Registry, FAA Academy, and in the Regulatory Investigations Division at the Aeronautical Center;

e. To all FS, AAM, ARP, and ASH reviewing and investigative offices (*e.g.*, division, regional, center, or field offices); and AIR reviewing and investigative offices (*e.g.*, division and field offices); and

f. To all FAA International Field Offices.

7. Authority to Change This Order. The Administrator approves changes to Chapter 1 (Introduction); Chapter 2 (Statutory Authorities and Enforcement Responsibilities of FAA Offices); Chapter 3 (Compliance and Enforcement Overview); Chapter 5 (Responsibilities of Program Offices When Selecting Among Compliance, Administrative, and Legal Enforcement Actions); Chapter 9 (Legal Enforcement Action Sanction Policy); and Chapter 10 (Hazardous Materials Enforcement Sanction Policy) that involve policy, a delegation of the Administrator's authority, or an assignment of responsibility. The Chief Counsel approves all other changes to the order. The Administrator and Chief Counsel's authority to approve changes may not be delegated.

a. Submission of Comments and Proposed Changes. Any FAA employee may send proposed changes to, or provide comments on, this order by email to the Assistant Chief Counsel for AGC-300. The Assistant Chief Counsel for AGC-300 considers any proposed changes or comments when reviewing and revalidating this order.

b. Supplemental Compliance and Enforcement Documents. To ensure consistency, program offices must email the Assistant Chief Counsel for AGC-300, for coordination and

concurrence, a copy of any compliance and enforcement document intended to supplement this order before the issuance of any such document.

c. Compliance and Enforcement Bulletins. The FAA may issue short-term or urgent directives of fixed duration, as well as special emphasis programs, as C&E Bulletins. The FAA will attach a C&E Bulletin as an appendix to this order. C&E Bulletins will state when they supersede sections of this order.

Chapter 2. Statutory Authorities and Enforcement Responsibilities of FAA Offices

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

2. Key Statutory Authorities.

a. Regulatory and Investigative Authority. The FAA's central mission is to promote safety in civil aeronautics. To achieve this, the agency establishes regulatory standards and requirements found in 14 C.F.R. parts 1-199 under the statutory authority in 49 U.S.C. subtitle VII. The Administrator:

(1) Has broad authority to take action they deem necessary to carry out the agency's statutory responsibilities and powers relating to safety in air commerce or air transportation, including to conduct investigations; prescribe regulations, standards, and procedures; and issue orders (49 U.S.C. § 40113);

(2) May investigate, if reasonable grounds exist, possible violations of 49 U.S.C. subtitle VII (Aviation Programs), part A (Air Commerce and Safety) provisions or regulations and orders issued under that part (49 U.S.C. § 46101(a)(2));

(3) May reinspect at any time any civil aircraft, aircraft engine, propeller, appliance, design organization, production certificate holder, air navigation facility, or air agency and reexamine any civil airman (49 U.S.C. § 44709(a)); and

(4) In connection with conducting an investigation or hearing, may subpoena witnesses and records, administer oaths, receive evidence, examine witnesses, take depositions, and seek to enforce subpoenas (49 U.S.C. § 46104).

b. Authority to Take Certificate Action or Civil Penalty Action, or Issue Orders for Aviation Safety Violations. The Administrator has authority to:

(1) Issue orders amending, modifying, suspending, or revoking any part of a certificate issued under 49 U.S.C. chapter 447 if the Administrator decides after conducting a reinspection, reexamination, or other investigation that safety in air commerce or air transportation and the public interest require such action (49 U.S.C. § 44709(b)(1)(A));

(2) Suspend or revoke a certificate of registration when an aircraft no longer meets registration requirements (49 U.S.C. § 44105) and suspend or revoke a dealer's certificate of registration (49 U.S.C. § 44104);

(3) Impose civil penalties for violations of FAA statutory or regulatory requirements (49 U.S.C. §§ 46301, 44704);

(4) Issue orders they consider necessary to carry out their statutory powers and duties (49 U.S.C. § 40113);

(5) Bring a civil action in a U.S. district court to enforce a statutory or regulatory requirement or order (49 U.S.C § 46106);

(6) Place a lien on aircraft involved in a violation and seize aircraft subject to a lien (49 U.S.C. § 46304); and

(7) Issue immediately effective orders in response to air safety emergencies (49 U.S.C. § 46105(c) and 49 U.S.C. § 44709(e)).

c. Statutorily-Required Certificate Action. The Administrator is required to:

(1) Revoke an airman certificate of any individual who has been convicted of, or has knowingly carried out, an activity punishable under a federal or state law by death or imprisonment for more than one year relating to controlled substances (except simple possession) if an aircraft was involved and the individual served as an airman, or was on the aircraft, in connection with the offense (49 U.S.C. § 44710);

(2) Revoke the certificate of registration for an aircraft used for an offense described in 49 U.S.C. § 44710, and any other certificate of registration the owner of the aircraft holds, if the owner of the aircraft permitted such use (49 U.S.C. § 44106);

(3) Revoke a certificate if the holder of the certificate, or an individual who has a controlling or ownership interest in the certificate holder, was convicted of, or knowingly, and with the intent to defraud, carried out or facilitated an activity punishable under a federal law relating to the installation, production, repair, or sale of a counterfeit or fraudulently represented aviation part or material (49 U.S.C. § 44726);

(4) Amend, modify, suspend, or revoke any part of a certificate if the Administrator is notified by the Transportation Security Administration (TSA) that the holder of the certificate poses, or is suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety (49 U.S.C. § 46111);

(5) Suspend a foreign repair station's certificate upon notification by the TSA that the repair station does not maintain or carry out effective security measures until the TSA determines the repair station is maintaining effective security measures, and revoke a foreign repair station's certificate upon notification by the TSA that the repair station poses an immediate security risk (49 U.S.C. § 44924);

(6) Revoke an airman certificate of a pilot-in-command who allows an individual who does not hold a pilot certificate issued under 14 C.F.R. part 61 and airman medical certificate issued under 14 C.F.R. part 67 to control an aircraft if the pilot-in-command knows or should have known that the individual is attempting to set a record or engage in an aeronautical competition or feat (49 U.S.C. § 44724); and

(7) Revoke an airline transport pilot certificate held by an individual who, while acting on behalf of an applicant for, or holder of, a type certificate, knowingly makes a false statement with respect to the submission of safety-critical information for a transport category airplane. (49 U.S.C. § 44704(e)(5)(A)).

d. Certificate Issuance and Denial. The Administrator has authority to issue or deny the issuance of certificates, including airman certificates; type and supplemental type, production, airworthiness, and design and production organization certificates; air carrier operating certificates; airport operating certificates; and air agency certificates (49 U.S.C. §§ 44703-44707).

e. Authority for Hazardous Materials Investigations and Proceedings. The Hazardous Materials Transportation Act (HMTA) of 1974, as amended and re-codified at 49 U.S.C. § 5101, *et seq.*, authorizes the Secretary of Transportation to prescribe regulations and carry out compliance and enforcement functions related to the transportation of hazmat.

(1) Under 49 C.F.R. § 1.97(b), the Pipeline and Hazardous Materials Safety Administration (PHMSA) has been delegated authority to promulgate the Hazardous Materials Regulations (HMR), 49 C.F.R. parts 105-180, which govern the transportation of hazmat. In addition to regulations promulgated by PHMSA, the FAA promulgates certain hazmat regulations under its broad statutory authority, including training and manual requirements for air carriers and commercial operators in 14 C.F.R. parts 121 and 135.

(2) Under 49 C.F.R. § 1.83(d)(1) and (2), the Secretary of Transportation has delegated to the FAA Administrator the authority to carry out compliance and enforcement functions for certain hazmat transportation statutes (*i.e.*, 49 U.S.C. §§ 5121(a)-(d), 5122-5124) and the HMR, with particular emphasis on the transportation of hazmat by air (*i.e.*, 49 C.F.R. parts 171-175). The Secretary, as delegated to the FAA Administrator, is authorized to:

(i) Conduct investigations, make reports, issue subpoenas, conduct hearings, require the production of records and property, and take depositions (49 U.S.C. § 5121(a));

(ii) Inspect, at a reasonable time and in a reasonable way, records and property relating to the transportation of hazmat in commerce (49 U.S.C. § 5121(c));

(iii)Issue orders directing compliance with 49 U.S.C. chap. 51 and regulations issued under that chapter after notice and an opportunity for a hearing (49 U.S.C. § 5121(a));

(iv)Impose an emergency restriction or prohibition, or issue an order to cease operations, without advance notice or an opportunity for a hearing, for a violation of a provision of 49 U.S.C. chap. 51, or a regulation or order prescribed under that statute, or an unsafe condition or practice, that constitutes or is causing an imminent hazard (49 U.S.C. § 5121(d)); and

(v) Assess civil penalties for knowing violations of 49 U.S.C. chap. 51, and regulations and orders issued under that chapter (49 U.S.C. § 5123(a)(1)).

(3) In addition, the FAA oversees compliance and enforcement of hazmat regulations promulgated by the FAA, such as 14 C.F.R. part 121, subpart Z, and 14 C.F.R. part 135, subpart K. Under 49 U.S.C. § 46301, the FAA is authorized to impose civil penalties for such violations.

f. Authority for Commercial Space Investigations and Proceedings. The Commercial Space Launch Act of 1984, as amended and re-codified at 51 U.S.C. §§ 50901-50923, authorizes the Secretary of Transportation to oversee, investigate, license, and regulate commercial launch and reentry activities and the operation of launch and reentry sites by U.S. citizens or within the United States. This authority has been delegated to the Associate Administrator for Commercial Space Transportation. *See* 14 C.F.R. § 401.3. Regulations setting forth the procedures and requirements of the Commercial Space Launch Act are in 14 C.F.R. parts 400-460.

(1) The Associate Administrator may impose civil penalties under 51 U.S.C. § 50917 if they find that a person violated a requirement of the Commercial Space Launch Act, a regulation issued under that act, or any term or condition of a license issued or transferred under that act. The FAA implemented the authority to impose civil penalties in 14 C.F.R. part 406.

(2) The Associate Administrator is authorized to issue or deny a license or permit under 51 U.S.C. § 50905.

(3) The Associate Administrator is authorized to modify, suspend, or revoke a license or permit under 51 U.S.C. § 50908, as implemented in 14 C.F.R. § 405.3. Under 14 C.F.R. § 405.3(c), unless otherwise specified by the FAA, such actions are effective immediately and continue through any review proceedings.

(4) Licensees and permittees are required under 51 U.S.C. § 50907(a) and 14 C.F.R. § 405.1 to allow federal officers to monitor all activities the Associate Administrator for Commercial Space Transportation considers reasonable and necessary to determine compliance with license or permit requirements.

g. Delegations of Authority. The Administrator has delegated their compliance and enforcement authority, including investigative authority, to various FAA officials. For matters other than commercial space, those delegations are generally found in 14 C.F.R. part 13. For commercial space matters, compliance and enforcement authority has been delegated to the Associate Administrator for Commercial Space Transportation under 14 C.F.R. § 401.3.

h. Authority to Immediately Ground Aircraft, Engines, Propellers, and Appliances. Under 49 U.S.C. § 44713(c), when an inspector decides that an aircraft, aircraft engine, propeller, or appliance used in air transportation by an air carrier is not in condition for safe operation, the inspector shall notify the air carrier in the form and manner prescribed by the Administrator. For five days after the carrier is notified, the aircraft, engine, propeller, or appliance may not be used in air transportation or in a way that endangers air transportation unless the Administrator or the inspector decides the aircraft, engine, propeller, or appliance is in condition for safe operation.

i. Sanction Authority. In exercising its sanction authority, the FAA generally imposes two categories of sanctions: (1) sanctions for punitive and deterrent purposes; and (2) sanctions for remedial purposes. Sanctions for punitive and deterrent purposes include fixed-term certificate suspensions and civil penalties. Sanctions for remedial purposes include revocations and indefinite suspensions.

3. FAA Program Office Compliance and Enforcement Structures. FAA program offices carry out the agency's statutory authority and compliance and enforcement responsibilities. Generally, each program office having compliance and enforcement responsibilities has a headquarters oversight function, investigating offices, and reviewing offices.

a. Headquarters Offices. The offices of Aviation Safety, Security and Hazardous Materials Safety, Airports, Commercial Space Transportation, and Policy, International Affairs, and Environment have programmatic responsibility for carrying out the Administrator's compliance and enforcement policies. These offices oversee policies, procedures, strategies, and guidance in support of the agency's compliance and enforcement program, and evaluate compliance and enforcement activities for effectiveness and uniformity.

b. Investigating Offices. In the context of compliance and enforcement activities, investigating offices have investigative personnel whose responsibilities include conducting inspections and investigating and documenting apparent violations of statutory and regulatory requirements. They select actions to address apparent violations, including compliance, administrative, or legal enforcement actions, in accordance with chapter 5 and program office policy, and may use non-regulatory compliance action determinations to encourage regulated persons to adopt best practices of a non-regulatory nature. They advise reviewing offices of significant compliance and enforcement activities.

c. Reviewing Offices. In the context of compliance and enforcement activities, reviewing office responsibilities include assessing all administrative and legal enforcement actions recommended by investigating offices to ensure that such actions comport with FAA Order 8000.373, as amended, *FAA Compliance Program*, and applicable policies and procedures. When appropriate, reviewing offices refer cases recommended for legal enforcement action to the Office of the Chief Counsel, AGC-300, for handling. Reviewing offices provide investigating offices the status of legal enforcement and administrative actions and advise headquarters program offices of significant compliance and enforcement activities.

d. Aviation Safety (AVS). The following offices report to AVS.

(1) Flight Standards Service (FS). FS provides standards, certification, and oversight of persons, aircraft, and aircraft operations. Generally, among other responsibilities, FS safety assurance offices serve as investigating offices and FS safety standards offices serve as reviewing offices.

(2) Office of Aerospace Medicine (AAM). AAM has three divisions involved in compliance and enforcement activities: Drug Abatement, Medical Specialties, and Aerospace

Medical Certification. In addition, all Regional Flight Surgeon offices are involved in compliance and enforcement activities. The Drug Abatement Division oversees the aviation industry's compliance with Department of Transportation (DOT) and FAA drug and alcohol regulations. The Drug Abatement Division has investigating and reviewing office personnel assigned to headquarters or regional compliance and enforcement centers. The Medical Specialties Division develops and oversees the implementation of airman medical certification standards. The Aerospace Medical Certification Division (AMCD) and Regional Flight Surgeon offices investigate cases involving airman medical qualifications as well as various types of intentional falsifications and incorrect statements on applications for airman medical certification.

(3) Aircraft Certification Service (AIR) provides oversight of persons involved in the production and manufacture of aircraft and aircraft parts. Among other responsibilities, AIR field offices serve as investigating offices and AIR functional divisions serve as reviewing offices.

e. Security and Hazardous Materials Safety (ASH). The following offices report to ASH.

(1) Office of Hazardous Materials Safety (AXH). AXH is responsible for compliance and enforcement activities concerning persons who offer, accept, or transport hazmat to, from, or within the United States or on U.S.-registered aircraft in accordance with 49 C.F.R. parts 171-178 and certain FAA regulations, including 14 C.F.R. part 121, subpart Z, and part 135, subpart K. Regulated persons include operators (whether passenger-carrying or all-cargo operations) transporting hazmat, businesses that handle or offer hazmat, and individuals (*e.g.*, passengers carrying hazmat in checked luggage).

(2) Office of National Security Programs and Incident Response (AXE). AXE carries out the following programs in connection with its compliance and enforcement activities.

(i) DUI/DWI Program. The DUI/DWI Program investigates intentional falsifications and incorrect statements on applications for airman medical certification involving DUI/DWI entries. It investigates the failure of pilot certificate holders to timely provide reports of motor vehicle actions involving the operation of a motor vehicle while intoxicated, impaired, or under the influence of an alcohol or drug. The DUI/DWI program keeps AAM apprised of motor vehicle actions involving pilots who hold airman medical certificates and FS of such actions involving pilots operating certain small aircraft without an airman medical certificate under 14 C.F.R. part 68.

(ii) Law Enforcement Assistance Program (LEAP). LEAP responsibilities include providing assistance to federal, state, local, foreign, and other law enforcement agencies when investigations by these entities involve areas of FAA regulatory responsibility, such as the transportation of prohibited drugs by aircraft, aviation-related criminal acts, and threats to national security. LEAP investigates falsifications on applications for airman certificates, including airman medical certificates, involving felony and misdemeanor convictions. LEAP also investigates aircraft registration violations.

f. Airports (ARP). ARP is responsible for all programs related to airport certification, safety, and inspections, and standards for airport design, construction, and operation. ARP regional offices handle matters within regional geographic areas and include investigating and reviewing offices.

g. Commercial Space Transportation (AST). AST regulates the U.S. commercial space transportation industry. AST ensures the protection of persons, property, and national security and foreign policy interests of the United States during commercial launch or reentry activities. It also encourages, facilitates, and promotes U.S. commercial space transportation. AST investigating and reviewing office functions operate from AST headquarters with support from field office personnel.

h. Policy, International Affairs, and Environment (APL). APL oversees enforcement of aircraft noise-related requirements. It coordinates compliance, administrative, and legal enforcement actions with program offices responsible for investigating violations of aircraft noise-related requirements.

4. Air Traffic Organization (ATO). ATO personnel are in a unique position to observe apparent violations of federal statutory or regulatory requirements for which the FAA has oversight or conduct indicating a lack of qualifications to hold an airman certificate. Each ATO facility is responsible for promptly notifying the appropriate FAA office of an incident or complaint that may involve a violation or indication of a lack of qualifications to hold an airman certificate. Each facility provides the appropriate FAA office with air traffic data concerning any such incident or indication of an apparent lack of qualification as soon as practicable or after a request from FAA enforcement personnel.

5. Office of the Chief Counsel, AGC-300. Among other functions, AGC-300 is responsible for providing legal guidance and counsel on compliance and enforcement matters and processing enforcement investigative reports (EIRs) referred for legal enforcement action. AGC-300 consists of an Assistant Chief Counsel for AGC-300, who oversees AGC-300's operations, AGC-300 managers, and attorney personnel.

6. Compliance and Enforcement Responsibilities of All FAA Employees. All FAA employees have important compliance and enforcement-related responsibilities.

a. Duty to Report Apparent Violations. Any FAA employee who becomes aware of an apparent violation by, or apparent lack of qualification of, any regulated person has a duty to report such information to the FAA program office with oversight for the matter or the FAA Hotline. All FAA employees also must promptly, fully, and truthfully cooperate with any further inquiry or investigation, including providing statements, testimony, documents, or other information as requested.

b. Reporting Problematic Regulations and Enforcement Procedures. All FAA investigative, reviewing, or headquarters enforcement personnel are responsible for promptly identifying to program office management any potential problem involving regulations or enforcement procedures, including, for example, a regulation that is too vague for effective

enforcement or an unnecessarily cumbersome procedure. Program office management, in turn, forward the matter to the Assistant Chief Counsel for AGC-300 for evaluation and coordination with the program office and appropriate AGC management. AGC-300 counsel also reports potentially problematic regulations and enforcement procedures to the Assistant Chief Counsel for AGC-300. The Assistant Chief Counsel for AGC-300 ensures that the individual who identified the apparent problem is advised of any decision or action taken.

7. Coordination and Delegation Within the FAA.

a. Cooperation and Communication Within the FAA. All FAA offices and employees assist in executing the compliance and enforcement program. To promote coordination and consistency, FAA offices with compliance and enforcement responsibilities maintain communication with other FAA offices whose responsibilities are, or may be, affected by such cases.

b. Early Agency Coordination in Emergency Actions. When an investigating office becomes aware of a case that might be appropriate for emergency action, that office immediately notifies its reviewing office. For complex or controversial cases requiring emergency action, including those discussed at paragraph 8, below, reviewing offices immediately notify AGC-300 management.

c. Coordination of an Investigation. A program office having enforcement responsibilities that encounters a possible statutory or regulatory violation within the jurisdiction of another program office notifies the other office of the matter. In such a circumstance, all responsible FAA offices may contribute to the investigation of the matter and a determination as to the appropriate action to take pursuant to the guidance in chapter 5 and program office policy, as applicable.

d. Supporting Investigating Offices and Reviewing Offices.

(1) Some violations involve investigating offices other than, or in addition to, the office with primary investigating responsibility. These other offices not only have a vital interest in the conduct and outcome of the investigation, but often provide supporting information and expertise useful to the investigation of the matter. Both the primary and supporting investigating offices ensure timely coordination throughout the handling of the matter. Reviewing offices also provide timely support to investigating offices.

(2) While the primary investigating office and its reviewing office have authority and responsibility for investigating and processing apparent violations, they consider any comments, recommendations, or requests, including requests for transfer, by supporting investigating offices. The primary investigating office advises a supporting investigating office if its recommendations or requests cannot be accepted and the reasons why. If an issue related to a supporting investigating office’s recommendation or request cannot be resolved to the satisfaction of that office, it may request review by appropriate levels of authority. Where a reviewing office oversees both the primary and supporting investigating offices, it is responsible

for resolving such issues. Where primary and supporting investigating offices have different reviewing offices, such issues are elevated to the appropriate office.

e. Transfer of Cases by Investigating Offices. An investigating office may transfer responsibility for investigation, coordination, and reporting to another investigating office either within or outside the jurisdiction of its reviewing office when the reviewing office or offices agree that a transfer would be in the best interest of the government. For instance, a transfer may be appropriate when:

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

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

(3) Circumstances give rise to a determination that an investigation should be consolidated with an investigation being conducted by another investigating office.

When a transfer is made, the investigating office receiving the case and its reviewing office assume primary responsibility for the matter. The transferring investigating office assumes the role of a supporting investigating office. If an investigating office transfers a case outside its reviewing office's jurisdiction, the transferring investigating office and its reviewing office assume the role of supporting investigating and reviewing offices. An investigating office may transfer responsibility for corrective action to another investigating office when a transfer would facilitate the effective and timely implementation of such action. The investigating office receiving the case, and its reviewing office, is responsible for selecting the appropriate action in accordance with chapter 5 and program office policy.

f. Transfer of Cases by Reviewing Offices. A reviewing office may transfer responsibility for processing cases, or related corrective action, to another reviewing office when they mutually agree that a transfer is in the best interest of the government.

g. Notification of Case Closure. The FAA office responsible for closing a case informs all investigating and supporting offices of the final disposition of the case.

8. Complex or Controversial Cases.

a. General. FAA investigative personnel identify complex or controversial cases at the earliest possible stage of legal enforcement action efforts. Complex or controversial cases are those that require substantial coordination among FAA offices. They can best be identified by the nature and scope of the investigative effort needed. A case is likely complex or controversial if it:

(1) Involves complex and substantial issues of fact;

(2) Involves novel or competing interpretations of statutes, regulations, or case law;

(3) Requires a special investigative effort, such as extensive coordination among different offices, *e.g.*, air carrier maintenance violations that may involve engineering analysis and other type-certification issues;

(4) Involves remedial legal enforcement action against a major entity (other than a housekeeping revocation for an entity that has effectively stopped doing business);

(5) Involves extensive violations by, or may result in severe penalties against, major regulated entities;

(6) Will draw broad public attention or Congressional interest;

(7) Will have national impact because of the allegations or parties involved;

(8) Involves violations warranting initiation of a formal investigation under 14 C.F.R. part 13;

(9) Involves the need for specialized legal enforcement action, such as an injunction or the seizure of aircraft;

(10) Raises significant questions about consistency with national policy or consistent treatment among FAA offices;

(11) Involves allegations of FAA complicity or lack or professionalism; or

(12) Involves potential criminal violations (in which case the affected program office coordinates as soon as possible with ASH and AGC-300 in accordance with chapter 4, paragraph 15.g.).

b. Notifications. FAA investigative personnel, through their managers, promptly alert the appropriate reviewing office whenever a complex or controversial case is under investigation. The reviewing office, in turn, consults with AGC-300 to discuss the investigation, including whether an order of investigation is appropriate and what types of records or other evidence should be sought.

c. Role of AGC-300 Counsel. If requested, counsel provides advice to reviewing offices about evidentiary matters and viable violations that arise during an investigation of a complex or controversial case. AGC-300 counsel notifies the Department of Justice (DOJ) about cases likely to lead to litigation in U.S. courts, including agency orders directly appealable to courts of appeal and civil penalty actions above statutory maximums.

9. Coordination with Other Agencies.

a. General. Some matters within the investigatory jurisdiction of the FAA may involve violations of statutes or regulations that are within the investigatory jurisdiction of another

government agency. In such a case, FAA investigative personnel take the actions described in paragraph 9.a.(1)-(3), below.

(1) FAA investigative personnel generally report the matter to the appropriate FAA program office. The program office, in consultation with AGC-300 counsel, reports the matter to the government agency also having jurisdiction over the matter and requests that agency to provide any information that may be relevant to the FAA investigation. If the situation requires immediate action, FAA investigative personnel may directly contact the other government agency contemporaneously with counsel.

(2) FAA employees must ensure that investigative matters within the purview of the OIG are promptly referred for disposition in accordance with the procedures in DOT Order 8000.8A. FAA employees will cooperate with OIG requests for timely access to all relevant records, reports, audits, reviews, or other available material.

(3) FAA investigative personnel handle possible criminal violations by regulated persons in accordance with the guidance in chapter 4, paragraph 15.g.

b. DOT Office of Inspector General.

(1) The Inspector General Act of 1978, as amended, 5 U.S.C. app. 3, established the DOT OIG as an independent office authorized to:

(i) Conduct investigations of allegations that a person has engaged in criminal activity in violation of federal criminal statutes relating to the programs and operations of the DOT or its modal administrations;

(ii) Conduct and supervise audits and investigations relating to programs and operations of the DOT;

(iii)Provide leadership and coordination for DOT programs and operations, recommend policies designed to promote economy, efficiency, and effectiveness of audits and internal investigations, and detect and prevent fraud and abuse in DOT programs and operations; and

(iv) Keep the DOT Secretary and Congress fully and timely informed about problems and deficiencies relating to the administration of DOT programs and operations, including the necessity for, and progress of, corrective action for such programs and operations.

(2) The DOT OIG does not have any authority for conducting FAA safety investigations or taking FAA enforcement actions. Rather, these activities are within the purview of the FAA.

c. Department of Labor Whistleblower Protection Program.

(1) The Whistleblower Protection Program, 49 U.S.C. § 42121, as originally enacted on April 5, 2000, protected employees of air carriers under 49 U.S.C. § 44705 and their contractors

and subcontractors from discrimination for providing the Federal government information relating to any violation, or alleged violation, of any order, regulation, or standard of the FAA or any other federal law related to air carrier safety. Under the Aircraft Certification, Safety, and Accountability Act, enacted on December 27, 2020, Congress extended whistleblower protections to employees of type, production, airworthiness, or design and production organization certificate holders under 49 U.S.C. § 44704.

(2) The Department of Labor (DOL) is responsible for evaluating and ruling on employee whistleblower complaints under 49 U.S.C. § 42121. In carrying out its responsibilities, the DOL may: (i) seek guidance from the FAA on matters relating to air carrier safety, as well as statutes, regulations, orders, or standards pertinent to the FAA; and (ii) request the FAA to testify or provide evidence for use at a DOL hearing involving the Whistleblower Protection Program. FAA employees coordinate any response to such a request with their program office management and AGC-300 counsel.

d. Investigation of Stolen Aircraft. The FBI or an appropriate local law enforcement agency is responsible for investigating stolen aircraft. While 18 U.S.C § 2312 criminalizes the *transportation* of a stolen aircraft, there is no federal crime specifically addressing the *theft* of an aircraft. FAA personnel, however, are uniquely qualified to assist in their location and recovery.

e. Notification to Department of Defense and Office of Secretary of Transportation When Air Carrier Operating Certificate is Suspended or Revoked. The Department of Defense (DOD) sometimes uses U.S. air carriers, through long-term contracts or short-term charters, to transport passengers and freight domestically and internationally. When the FAA is preparing to suspend or revoke a U.S air carrier certificate, the Assistant Chief Counsel for AGC-300 contacts the FAA's Office of Policy, International Affairs, and Environment to determine whether the DOD uses the air carrier. If so, the Assistant Chief Counsel for AGC-300 informs the DOD of the prospective suspension or revocation. This notification allows the DOD to arrange for substitute air transportation or other modes of transportation with minimal interruption and inconvenience. The Assistant Chief Counsel for AGC-300 also advises the DOT Assistant General Counsel for Aviation Consumer Protection of the suspension or revocation. This process does not apply to "housekeeping" actions, *i.e.*, certificate actions against entities that have effectively ceased doing business.

10. Liability of FAA Employees. FAA enforcement personnel may be subject to lawsuits for common law torts (*e.g.*, negligence, trespass, wrongful death) or constitutional torts (*e.g.*, failure to give due process or unreasonable search or seizure) committed during official duties. A "tort" is a wrongful act forming the basis for civil legal liability.

a. Common Law Torts. Under the Federal Tort Claims Act (FTCA), 28 U.S.C. § 2671, *et seq.,* government employees have immunity from personal liability for common law torts they commit within the scope of their employment. The remedy for common law torts committed by government employees within the scope of their employment is against the United States.

b. Constitutional Torts. The FTCA does not apply to constitutional torts. Nonetheless, FAA personnel are likely to have protections against claims involving constitutional torts they may

commit during the scope of their employment. First, DOJ typically represents employees alleged to have committed a constitutional tort within the scope of their employment. Second, federal employees may be entitled to *absolute or qualified immunity* from liability for constitutional torts committed during the scope of their employment. Courts generally have limited the doctrine of absolute immunity to judicial functions and prosecutorial advocacy functions. Investigative activities, even if performed by a judge or prosecutor, are not eligible for absolute immunity. Qualified immunity protects federal employees working within the scope of their employment from damages unless the official violated a constitutional right that was clearly established by law at the time of the challenged conduct. Third, if an adverse judgment is entered against the United States, the same conduct may not give rise to a judgment against the government official under 28 U.S.C. § 2676.

c. Indemnification of Agency Employees. The Administrator has the authority to indemnify agency employees against any claim or judgment arising from acts committed within the scope of their employment. The indemnification authority applies to both constitutional and common law torts. The FAA employee indemnification policy is located in FAA Order 2300.2A, *Employee Indemnification Policy and Procedures*, available at https://www.faa.gov/regulations_policies/orders_notices/index.cfm/go/document.information/documentID/7420.

d. Indemnity or DOJ Representation Qualification. The United States Attorney General may certify that an FAA employee qualifies for immunity consideration or representation by the DOJ only after the Administrator recommends that the employee qualifies for such certification.

e. Notification to Counsel. FAA employees sued in connection with their compliance and enforcement duties immediately notify AGC-300. AGC-300 counsel will assess the impact of the lawsuit on the legal enforcement action, coordinating with the DOJ if necessary.

Chapter 3. Compliance and Enforcement Overview

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

2. Objective of Compliance and Enforcement Program. The primary objective of the FAA's compliance and enforcement program is to promote compliance with statutory and regulatory requirements. The program has two key aspects. One aspect involves the promotion of safety and compliance by encouraging regulated persons to adopt practices to ensure compliance and, when violations occur, to disclose the violations to the FAA and the circumstances surrounding the violations. Based on information provided through such disclosures, the agency's compliance and enforcement program fosters the implementation of permanent corrective measures to improve overall safety. The second aspect involves the responsibility of agency enforcement personnel to ensure that statutory or regulatory noncompliance is addressed promptly through the application of the FAA Compliance Program as appropriate, including the use of compliance action, administrative action, or legal enforcement action.

3. FAA Integrated Oversight Philosophy. FAA Order 8000.72, *FAA Integrated Oversight Philosophy*, sets forth the core principles for the agency's oversight programs and activities. It is intended to ensure that product/service providers, designees, and the flying public comply with safety-related requirements, regulations, and standards. This policy embraces many interdependent principles, including Risk-Based Decision Making (RBDM), Safety Management Systems (SMS), the FAA Compliance Program, and voluntary safety reporting programs. It is located at https://www.faa.gov.

4. FAA Compliance Program. FAA Order 8000.373, as amended, *FAA Compliance Program*, represents the FAA's approach to compliance and enforcement. Pursuant to the FAA Compliance Program, the obligation of the aviation and aerospace communities to comply with statutory and regulatory requirements includes a duty to develop and use processes and procedures that will prevent deviation from such requirements. The FAA's intent is for regulated persons to identify and correct underlying causes that may lead to statutory and regulatory violations and to ensure future compliance. When deviations from statutory or regulatory requirements occur, the FAA's goal is to use the most effective and appropriate means to ensure compliance and prevent recurrence. Chapter 5 provides FAA Compliance Program guidance. Specifically, chapter 5 provides guidance to FAA personnel for determining the best response to statutory or regulatory noncompliance, including the use of compliance, administrative, and legal enforcement actions. Chapter 5 also provides guidance to investigative personnel in Security and Hazardous Materials Safety (ASH) for selecting informal action or handling matters under the Hazardous Materials Passenger Discrepancy Reports policy. In addition, chapter 5 provides guidance for FAA personnel for recommending non-regulatory compliance action determinations to address situations that do not involve statutory or regulatory noncompliance but when such actions address other safety concerns. FAA Order 8000.373, as amended, is located at https://www.faa.gov.

5. Safety Management Systems. FAA Order 8000.369, as amended, *Safety Management System*, is the formal, top-down, organization-wide approach to managing safety risk and

assuring the effectiveness of safety risk controls. Under an SMS, regulated entities identify undue risks in their operations and develop systematic procedures, practices, and policies to control such risk. SMS represents a proactive approach to identifying and controlling potential safety risks rather than a reactive approach focusing on discovering and mitigating the cause of an accident or safety issue after its occurrence. Under 14 C.F.R. part 5, part 119 certificate holders, air tour operators under 14 C.F.R. § 91.147, and certain type and production certificate holders are required to have an SMS. The FAA, however, encourages other regulated entities to develop a voluntary SMS to proactively identify and manage risk in their operations. Because a regulated entity is in the best position to identify deficiencies and promptly correct them, an SMS includes procedures under which regulated entities perform internal compliance audits and inform senior management of the company's operations, compliance, and safety record. Such internal audits improve a regulated entity's ability to identify and correct any safety problems before, rather than after, FAA inspections. In addition, the FAA encourages individual certificate holders to manage their activities to ensure compliance. Although individuals may not have structured processes or safety or quality management systems, they can support effective compliance through the use of personal operating minimums, recommended practices, checklists, and similar approaches to safety. The FAA Compliance Program is grounded in SMS principles. For more information on SMS, *see* https://www.faa.gov.

6. Risk-Based Decision Making. RBDM is the use of data-informed approaches to enable the FAA to make appropriate decisions regarding safety-related issues. The FAA applies RBDM to carry out its safety oversight responsibilities under the FAA Compliance Program, building on SMS principles to proactively address safety risks. The objective of RBDM is to increase safety and efficiency by taking advantage of the growing availability of industry safety data and the development of analytical tools that will integrate safety risk into decision-making processes. To do this, the FAA develops policies, procedures, and systems to collect safety-related data in a consistent way across the agency and throughout the aviation and aerospace communities. The FAA uses this data to make safety decisions based on identified risks. Using a risk-based approach allows the FAA to better identify and mitigate possible causes of accidents.

7. Voluntary Reporting Programs. The FAA has programs to incentivize regulated persons to disclose their violations, other safety discrepancies, and general safety information to the FAA, and to promptly take corrective action to prevent future violations. These programs are the Voluntary Disclosure Reporting Program (VDRP), Aviation Safety Action Program (ASAP), Flight Operational Quality Assurance (FOQA) Program, and Aviation Safety Reporting Program (ASRP).

a. Voluntary Disclosure Reporting Programs.

(1) General. Unless otherwise stated in program office VDRPs referenced in paragraph 7.a.(2)-(5), below, the FAA forgoes enforcement action when it accepts a regulated entity's prompt disclosure of an apparent violation and the regulated entity takes expedient action satisfactory to the FAA to correct the violation and preclude its recurrence. Information accepted by the FAA in accordance with VDRPs is protected from release to the public under 14 C.F.R. part 193. VDRPs incentivize regulated entities to set up and maintain a system of internal compliance audits and ensure that senior management for the entity is informed of its

company's operations, compliance, and safety record. Such internal audits improve a regulated entity's ability to identify and correct any safety problems before, rather than after, FAA inspections.

(2) Flight Standards Service. Guidance on the Flight Standards Service VDRP is located in Advisory Circular (AC) 00-58, as amended, and in FAA Order 8900.1, volume 11. This program applies to certificate-holding entities, including air carriers and operators, repair stations, and qualified fractional ownership programs. Both AC 00-58, as amended, and Order 8900.1, *Flight Standards Information Management System*, are located at http://drs.faa.gov.

(3) Drug Abatement Division. AC 120-117, as amended, provides guidance for the Drug Abatement Division VDRP. It applies to all employers and contractors who have an FAA-mandated drug and alcohol testing program. AC 120-117 is located at http://drs.faa.gov.

(4) Aircraft Certification Service. AC 00-68 provides guidance for the FAA Aircraft Certification Service VDRP. It applies to production approval holders, design approval holders, and organization designation authorization holders. AC 00-68 is located at http://drs.faa.gov.

(5) Security and Hazardous Materials Safety. AC 121-37, as amended, provides guidance for the hazardous materials VDRP. It applies to certificate holders under 14 C.F.R. parts 119 and 125, and foreign air carriers issued operations specifications under 14 C.F.R. part 129, that accept hazmat for transportation by air. AC 121-37, as amended, is located at http://drs.faa.gov.

(6) Investigation of Voluntary Disclosure. FAA personnel thoroughly investigate, analyze, review, and report the facts and circumstances surrounding all reports involving the self-disclosure of apparent violations. The FAA exercises its discretion in determining whether the report meets the terms and conditions for acceptance into a VDRP and whether the regulated entity's proposed corrective action will correct the noncompliance and prevent its recurrence.

b. Flight Operational Quality Assurance Programs.

(1) General. FOQA programs are designed to make commercial aviation safer through the sharing of digital flight data generated during normal commercial aircraft operations. Aircraft operated under an approved FOQA Implementation and Operation Plan collect information about the total flight operations environment, which is shared with the FAA, air carriers, and commercial operators. This information is used to: (i) identify potentially adverse safety trends; (ii) proactively initiate corrective action before such trends can lead to accidents; (iii) improve training effectiveness, operational procedures, maintenance and engineering procedures; and (iv) improve air traffic control procedures.

(2) Collection of Data. In a FOQA program, the air carrier or operator collects aircraft data directly from the flight data recorder or through special acquisition devices, such as quick access recorders. Using one of several available transmission methods, the air carrier or operator periodically retrieves the data and sends it to the company's FOQA program office for analysis.

Data collected is used in trend identification, determination of corrective actions, and monitoring of effectiveness of those actions.

(3) Regulatory Requirements. Regulatory requirements applicable to FOQA programs are found in 14 C.F.R. § 13.401. Under 14 C.F.R. § 13.401(e), except for criminal and deliberate acts, the FAA may not use an air carrier or operator's FAA-approved FOQA program data in a legal enforcement action against that air carrier or operator or its employees. Data accepted by the FAA in accordance with FOQA programs is protected from release to the public under 14 C.F.R. part 193.

(4) Guidance. Guidance about FOQA programs is contained in Advisory Circular 120-82 (located at http://drs.faa.gov).

c. Aviation Safety Action Program.

(1) General. The ASAP is a program under which covered employees of air carriers, repair stations, and other entities with an ASAP are encouraged to voluntarily report safety information that may aid in identifying potential precursors to accidents. When an employee submits a report of an apparent violation under the ASAP, and the report is accepted (and not subsequently excluded), the FAA will forego any action against the employee to address the violation. Reports accepted in accordance with the ASAP are protected from release to the public under 14 C.F.R. part 193. Under the ASAP, reports involving intentional falsification, substance abuse, controlled substances, alcohol, criminal activity, intentional or reckless conduct, or events occurring outside the scope of employment are excluded, and reports involving repeated noncompliance may be excluded. An event review committee: (1) reviews and analyzes reports to determine whether they qualify for acceptance in the ASAP; (2) identifies actual or potential problems from the information in the reports and proposes solutions for those problems; and (3) conducts an annual review of the ASAP database to determine whether corrective actions have been effective in preventing or reducing the recurrence of targeted safety-related events.

(2) Guidance. Guidance about the ASAP is contained in AC 120-66, as amended, and FAA Order 8900.1, volume 11 (both located at http://drs.faa.gov).

d. Aviation Safety Reporting Program.

(1) General. The ASRP is a program under which individuals may report any information they believe discloses an unsafe condition in the national airspace system. The reports are made to the National Aeronautics and Space Administration (NASA), which will not release to the FAA any report that might reveal the identity of any individual involved in an occurrence or incident. The FAA will not use ASRP reports, *i.e.,* either the identification strip or the body of the report, in legal enforcement actions, except information concerning accidents or criminal offenses excluded from the ASRP, *see, e.g.,* 14 C.F.R. § 91.25, or unless the individual waives its protections.

(2) Sanction waiver. Under the ASRP, the FAA waives the imposition of a sanction for a violation if an individual other than a passenger files a timely report, provided that: (i) the

violation was inadvertent and not deliberate; (ii) the violation did not involve a criminal offense, accident, or action under 49 U.S.C. § 44709, that discloses a lack of qualification to hold a certificate; and (iii) the individual who committed the violation has not been found to have violated an FAA statutory or regulatory provision for five years prior to the date of the violation. The finding of violation need not result from adjudication. For example, the finding could result from an unappealed FAA order that has become final.

(3) Guidance. Guidance about the ASRP is contained in Advisory Circular AC 00-46, as amended (located at http://drs.faa.gov).

(4) Legal enforcement actions under ASRP. When FAA counsel determines that an individual qualifies for a waiver of imposition of sanction under the ASRP, the FAA issues an order of suspension or order of civil penalty, as appropriate, that includes the factual allegations, findings of any regulatory violations, the sanction, a statement that the sanction associated with the finding of violations is waived, and appropriate appeal rights, if applicable (*e.g.*, the order is not the product of a settlement waiving appeal).

8. FAA Responses to Violations. FAA enforcement personnel investigate and address every apparent violation of FAA statutes and regulations consistent with this order and have a range of options available for addressing apparent violations, including compliance, administrative, and legal enforcement action. They select the appropriate action in accordance with this order and program office policy to prevent future statutory and regulatory violations. The FAA refers: (1) violations of FAA regulations by members of the armed forces while performing official duties to the Department of Defense (DOD) for appropriate handling under 49 U.S.C. § 46101(b) (military referrals); (2) violations of FAA statutes or regulations by holders of foreign licenses and certificates to the appropriate foreign aviation authority (as appropriate) (foreign referrals); and (3) cases where there is possible criminal conduct to the Office of Inspector General (OIG) (or to the Department of Justice, if appropriate) for criminal investigation under 5 U.S.C. app. 3 (criminal referrals). In addition to referral, the FAA may pursue an action against the apparent violator in accordance with the guidance in this order. *See, e.g.*, chapter 4, paragraph 15.c. and chapter 6, paragraph 8.a. and b.

9. Compliance and Enforcement Policies and Practices.

a. Education. FAA investigative personnel endeavor to strengthen the understanding of statutory and regulatory requirements by regulated persons during surveillance and inspection activities. The FAA also promotes education through public awareness programs and other special aviation educational efforts.

b. Surveillance and Detection. The prompt discovery of apparent violations is an important element of an effective compliance and enforcement program. The FAA encourages self-disclosure of violations both through the FAA Compliance Program and formal voluntary disclosure programs. In addition, the FAA uses surveillance to detect apparent violations. Consistent with its statutory mandate, the FAA maintains a high level of surveillance of, among other entities, air carriers and commercial operators, repair stations, and aircraft manufacturing facilities.

c. Investigating and Reporting of Violations. FAA investigative personnel expeditiously conduct investigations of, and gather all information relevant to, apparent violations, and ensure that the information is accurate and complete. When an enforcement investigative report (EIR) is appropriate (*see* chapter 6), FAA investigative personnel ensure that they have completely and accurately reported all facts and have done so in an unbiased manner. An incomplete or inaccurate EIR can cause delay or result in the inappropriate initiation of administrative or legal enforcement action. *See* chapter 6 for information about the compilation of EIRs.

d. Timeliness. Timeliness is critical to the efficacy of any action referenced in chapter 5, including compliance, administrative, and legal enforcement action. Delays may lead to the continuation of an unsafe condition, de-emphasize the seriousness of a given violation, result in the loss of evidence, lessen the value of any action taken, or preclude the FAA from taking enforcement action.

(1) Whenever possible, FAA investigative personnel who identify potential violations immediately notify a responsible person so that appropriate and prompt action is taken to address the matter. For example, if an aviation safety inspector receives information about an air carrier pilot's attempt to operate a commercial flight while impaired by alcohol or drugs, the inspector immediately notifies the carrier's management so it can take appropriate action, including preventing the pilot from operating the flight. The inspector also requests that the air carrier help the FAA in its investigation.

(2) In matters warranting legal enforcement action, FAA investigative personnel timely investigate apparent violations and complete EIRs. The time needed for investigation and the completion of EIRs will vary depending on the complexity of each case. Timeliness considerations relevant to legal enforcement actions are in chapters 4 and 8.

e. Fairness. To be effective, the agency's compliance and enforcement program must be fair, reasonable, and just, and should be perceived as such by those subject to regulation. Fairness in compliance and enforcement does not imply an unwillingness to apply the full force of statutorily authorized actions and sanctions when warranted. Rather, fairness encompasses objective, evenhanded consideration of all circumstances surrounding allegations before final action is taken. It also requires a good faith effort to understand and objectively consider the apparent violator's position and apprise the apparent violator of the agency's position in a timely manner.

10. Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

a. General. SBREFA, which Congress enacted in 1996, requires federal agencies to have policies providing for the reduction and, under certain circumstances, waiver of civil penalties for violations by small entities. SBREFA, however, does not require agencies to reduce or waive penalties solely because a violator is a small entity.

b. The FAA's Compliance and Enforcement Policies Under SBREFA. The FAA's compliance and enforcement program includes the following policies that meet the requirements, and are consistent with the intent, of SBREFA.

(1) Under the FAA's compliance and enforcement program, investigative personnel have discretion to address violations by any person, including small entities, with an action other than a civil penalty assessment, such as compliance action or administrative action when the criteria for those actions are met.

(2) Under the agency's VDRP, the FAA refrains from imposing civil penalties against most regulated entities, including small entities, that voluntarily report certain apparent violations to the FAA, complete corrective action satisfactory to the FAA to prevent recurrence, and meet certain other criteria.

(3) The FAA also takes the size of small businesses into consideration in determining the appropriate amount of civil penalty. While the FAA has not specified sanction ranges for every possible type of business, the FAA's policy is to seek penalties generally relative to size and revenue for all entities subject to legal enforcement action.

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

Chapter 4. Investigations of Violations

1. Purpose. This chapter provides guidance for investigations into apparent violations of statutes and regulations, as well as qualifications to hold certificates, ratings, approvals, authorizations, licenses, or permits. The guidance is not all-inclusive or a substitute for common sense and good judgment. This chapter does not limit the FAA's investigative authority and does not create any right or entitlement for any person, including the subject of any investigation.

2. Role of Investigative Personnel. The role of investigative personnel in an investigation is to gather *all* evidence that tends to either prove or disprove the apparent violation being investigated, or that tends to show whether a person is qualified to hold FAA-issued certificates, ratings, approvals, authorizations, licenses, or permits.

a. Use of Evidence. Investigative personnel gather and analyze all relevant evidence to determine whether it proves a violation. If the evidence does not prove a violation, investigative personnel close the investigation with no action or with a non-regulatory compliance action determination under chapter 5. If the evidence is sufficient to prove a violation, investigative personnel select the appropriate action in accordance with chapter 5 and program office policy, including compliance, administrative, or legal enforcement action. Investigative personnel compile an enforcement investigative report (EIR) if they determine enforcement action (*i.e.*, administrative action or legal enforcement action) or EIR foreign referral (*see* chapter 6, paragraph 8.b.) is appropriate. Legal enforcement action EIRs are reviewed by management at the investigating office, reviewing office personnel, and AGC-300 counsel before counsel decides whether an EIR forms a sufficient basis for initiating legal enforcement action. Investigative personnel are mindful that evidence is compiled not only to support the elements of a statutory or regulatory violation but also the type of action and sanction amount, and that the evidence collected during an investigation may be used at a hearing.

b. Thorough Investigation. FAA Order 8000.373, as amended, *FAA Compliance Program*, requires a thorough investigation of apparent violations before deciding that compliance action, or informal action (for Office of Hazardous Materials Safety (AXH) investigations), is appropriate. Investigative personnel do not fail to collect evidence simply because they anticipate an investigation will result in compliance or informal action. For example, if investigative personnel discover an unairworthy aircraft, they document the condition of the aircraft (and photograph the aircraft, if appropriate) even if they anticipate selecting compliance action. Investigative personnel are mindful that a current investigation that results in compliance action may be taken into account in assessing whether, for example, administrative or legal enforcement action is appropriate in future investigations of the same apparent violator.

c. Restrictions on Disclosure of Information During and After Investigation.

(1) Freedom of Information Act (FOIA). While an investigation is open, documents collected for that investigation are not releasable under the FOIA, with the exception of air traffic data as discussed in paragraph 4.b.(4), below. An FAA investigation remains open until program office personnel and, where applicable, AGC-300 counsel, make a final decision on whether to take no action or an action consistent with the guidance in chapter 5. The decision to take no

action or an action under chapter 5 becomes final when the applicable document is issued, *e.g.*, no action letter, warning letter, notice of proposed certificate action.

(2) Privacy Act. Both during and after the investigation, the Privacy Act prohibits the disclosure of private, personal information about an individual to other persons without prior written authorization from that individual or unless an exception to the Privacy Act (*see* 5 U.S.C. § 552a.(b)) applies. In particular, FAA personnel do not disclose private information relating to individuals other than the subject of the investigation, such as witnesses' personal information, to the subject of the investigation. (Investigative personnel discuss any concerns regarding the release of information during the investigation with AGC-300 counsel.) Instances where disclosure is permitted are contained in the Privacy Act at 5 U.S.C. 552a(b), and in the "routine use" section of the applicable system of records notice, SORN DOT/FAA 847, *Aviation Records on Individuals.*

(3) Internal Recommendations Regarding Enforcement Actions. Internal recommendations regarding enforcement actions, such as recommendations on whether conduct violated a regulation, or the type of action or sanction amount, are privileged, and may not represent the position of the FAA. Accordingly, once an EIR is initiated, investigative personnel do not discuss their internal recommendations relating to the investigation with persons outside the FAA, including the subject of the investigation or any witnesses, either during or after the investigation.

3. Authority to Conduct Investigations and Inspections on Private Property.

a. General. As referenced in chapter 2, Congress has given the FAA broad investigative authority, and certain statutes and regulations authorize the FAA to conduct inspections that may involve entry on private property, including commercial business. For example, 14 C.F.R. § 119.59 authorizes the Administrator to inspect air carriers or commercial operators at any time or place to determine compliance. The Administrator is authorized under 14 C.F.R. § 21.610 to inspect the facilities of the holder of a technical standard order. Under 14 C.F.R. § 139.105, the holders of airport operator certificates must allow the Administrator to make any inspections, including unannounced inspections or tests to determine compliance with applicable statutory or regulatory requirements.[1] Commercial space launch licensees are required under 51 U.S.C. § 50907(a) and 14 C.F.R. § 405.1 to permit federal officers to monitor all activities the Associate Administrator for Commercial Space Transportation considers reasonable and necessary to determine compliance with license or permit requirements.

b. Denial of Access. Even when investigative personnel are legally authorized to be present (pursuant to statutory and regulatory authority and consistent with Fourth Amendment protections), they generally request permission from property owners before accessing private property for inspections. If permission to access private property is withdrawn, investigative personnel leave the property. Permission is not required to access open spaces (such as an airstrip) or areas of a business open to the public. Investigative personnel consult program office

[1] In addition, the Administrator has broad authority to inspect airport facilities for compliance with land use, revenue use, and other legal obligations of the airport owner and operator.

management and AGC-300 counsel whenever access to private property is denied or restricted, including areas of a business otherwise open to the public. Counsel determines appropriate measures to pursue to allow an inspection, including those provided in paragraph 3.c., below. Measures involving force or stealth are not used to gain entry to private property.

c. Considerations for Certificate Holders and Non-Certificate Holders. When investigative personnel are denied inspection access, different considerations arise depending on whether the person holds a certificate. (For the purpose of this paragraph, certificate holder includes approval, authorization, license, and permit holder.) This is particularly true when investigative personnel encounter persons refusing to provide records or allow inspections.

(1) Certificate Holders. The FAA has authority to take remedial or punitive action against a certificate holder for failing to comply with statutory or regulatory requirements for providing access to FAA-required records or allowing an inspection of facilities. Remedial action includes issuing an order suspending FAA-issued privileges pending inspection. Punitive action includes initiating a civil penalty for failure to comply with regulatory requirements. In appropriate circumstances involving certificate holders, FAA personnel may issue an administrative subpoena to compel the production of records or testimony, or seek an administrative inspection warrant to inspect facilities.

(2) Non-Certificate Holders. The FAA's options for addressing the refusal of non-certificate holders to provide evidence or allow inspections are more limited than for certificate holders. For non-certificate holders, the FAA may issue an administrative subpoena or seek an administrative inspection warrant.

(3) Administrative subpoenas are discussed in paragraph 16, below, and administrative inspection warrants are discussed in paragraph 3.d., below.

d. Administrative Inspection Warrants. When necessary, AGC-300 counsel may seek an administrative inspection warrant for investigative personnel to gain access to private property. The FAA must establish probable cause for such a warrant. *See Marshall v. Barlow's*, 436 U.S. 307 (1978). Investigative personnel may be required to complete a declaration to establish probable cause. Counsel coordinates with the Assistant Chief Counsel for AGC-300 who, in turn, consults with the Department of Justice (DOJ) before seeking an administrative inspection warrant.

4. Planning and Coordinating the Investigation.

a. Planning the Investigation. Once investigative personnel discover an apparent violation, they consider the facts and circumstances of the case and develop an investigative plan of action. Investigative personnel coordinate the plan with their supervisors, reviewing offices, or AGC-300 counsel, as appropriate. Investigative personnel reevaluate and revise the plan as necessary as the investigation progresses. In developing the plan, investigative personnel consider the following questions.

(1) What is the time limit for taking action for the apparent violation?

(2) Is the apparent violator the holder of a certificate or a non-certificated person?

(3) What statutes or regulations are involved in the case?

(4) What are the statutory or regulatory elements of the apparent violation?

(5) What evidence is needed to prove these elements?

(6) Where is the evidence located?

(7) How will the evidence be obtained?

(8) What records need to be inspected and how will they be accessed? Is there a requirement that the records be made available? Will they be provided voluntarily? If the records are not provided voluntarily, will remedial action or an administrative subpoena be necessary?

(9) Which witnesses need to be interviewed? Should the apparent violator be interviewed? Should AGC-300 counsel depose the apparent violator?

(10) At what stage of the investigation should witness interviews or depositions be conducted and document requests be made?

(11) Does the case need to be handled in an expedited fashion? Would non-expedited handling jeopardize public safety?

(12) Are special enforcement considerations (*see* paragraph 18, below) present?

b. Pilot's Bill of Rights.

(1) The Pilot's Bill of Rights (PBR), Public Law 112-153 (Aug. 3, 2012), as amended by Public Law 115-254 (Oct. 5, 2018), requires investigative personnel to provide airmen who are the subject of an investigation of an apparent statutory or regulatory violation with timely, written notification of the nature of the investigation, unless the notification would threaten the integrity of the investigation (as discussed in paragraph 4.b.(5), below). PBR notification is not required to be provided when the apparent violator is not the holder of an airman certificate (or the apparent violation cannot result in legal enforcement action against an airman certificate). For purposes of the PBR, an airman is an individual who holds a pilot, flight instructor, flight engineer, aircraft dispatcher, mechanic, mechanic with inspection authorization, repairman, parachute rigger, air traffic control tower operator, flight navigator, airman medical, or remote pilot certificate. Ground instructor and flight attendant certificates are not airman certificates as defined by statute or regulation.

(2) Generally, PBR notification for an investigation into an apparent violation includes the following:

(i) The nature of the investigation and the specific activity on which the investigation is based;

(ii) Oral or written response to a letter of investigation (LOI) is not required;

(iii) No action or adverse inference can be taken against the individual for declining to respond to an LOI;

(iv) Any response to an LOI or to an inquiry made by a representative of the Administrator by the individual may be used as evidence against the individual;

(v) The releasable portions of the Administrator's investigative report will be available to the individual at an appropriate time; and

(vi) The individual is entitled to access or otherwise obtain air traffic data, when applicable.

(3) PBR notification is required when investigative personnel first inquire into the nature and circumstances of an apparent violation. When it appears that legal enforcement action may be appropriate, investigative personnel issue an LOI to an airman with PBR notification (even if PBR notification was already given at the outset of an investigation).

(4) The PBR requires the FAA to provide timely, written notification to an individual who is the subject of an investigation that the individual is entitled access to any air traffic data that would facilitate the individual's ability to productively participate in a proceeding relating to an investigation. The PBR defines "air traffic data" as including relevant air traffic communication tapes, radar information, air traffic controller statements, flight data, investigative reports, and any other air traffic or flight data that would facilitate the individual's ability to productively participate in a proceeding. Investigative personnel provide this information to the airman or to their legal representative. Investigative personnel discuss any concerns regarding the release of information during the investigation, including air traffic data, with AGC-300 counsel.

(5) Investigative personnel may delay PBR notification if they determine that such notification may threaten the integrity of the investigation. Delaying PBR notification is appropriate when providing such notification would present a risk of destruction of evidence or other property, concealment of evidence, or death or injury. PBR notification is provided once the threat to the integrity of the investigation abates. If time permits, investigative personnel must consult with and get agreement from their frontline manager and AGC-300 counsel before delaying notification.

(6) Investigative personnel also provide PBR notification to an airman when the airman submits an application for an airman certificate or rating, or inspection authorization. If PBR

notification is part of the application form, no additional PBR notification is needed. In addition, investigative personnel provide PBR notification to an airman when requesting reexamination of the airman's qualifications to hold an airman certificate or rating, or inspection authorization. Because certificate applications and reexaminations are not investigations for the purpose of determining whether a violation occurred, FAA personnel only provide PBR notification advising the airman: (i) of the nature of the investigation and the specific activity on which the investigation is based; (ii) that any airman response to an inquiry made by a representative of the Administrator may be used as evidence against the airman; and (iii) that a copy of the airman's file will be made available to the airman upon written request.

(7) FAA Order 8900.1, *Flight Standards Information Management System*, provides additional Flight Standards Service guidance for complying with the PBR.

c. Coordinating With Supporting Offices. Where an apparent violation involves an air carrier certificate, an air agency certificate, a production approval holder, a design approval holder, an organization designation authorization, or an airport operator certificate, investigative personnel (or others in the investigating office) notify the FAA office responsible for supervision of that certificate *before* approving corrective action or issuing an LOI. Investigative personnel provide that supporting office with copies of all letters of investigation and corrective action plans.

d. Enforcement Investigative Report Number. When investigative personnel believe that administrative or legal enforcement action will be appropriate, they obtain an EIR number for the case. When a specially designated team conducts a formal fact-finding investigation, the team will designate an investigating or reviewing office to assign an EIR number to the case. EIRs are discussed more fully in chapter 6.

e. Communication With AGC-300 Counsel. Investigative personnel, their supervisors, and reviewing offices communicate and share information with AGC-300 counsel as needed. Open and informal communication between counsel and all personnel involved in an investigation is encouraged. Such communication provides improved effectiveness, efficiency, and consistency in investigations. For example, investigative personnel may discuss with counsel the sufficiency of the evidence collected or the interpretation of a regulation involved in the case.

f. Timeliness Goals. In addition to the time limits discussed in paragraph 5, below, investigative personnel strive to complete investigations and fully assemble any associated EIR within 75 days of the date they learn of the violation, and reviewing offices strive to complete their review of the EIR within 15 days, unless a case: (1) requires due diligence processing as discussed in paragraph 5.c.(1), below; (2) requires emergency action; or (3) involves compliance action or a letter of correction. For cases involving compliance actions or letters of correction in which a violator has failed to complete corrective action, investigative personnel strive to assemble any associated EIR as soon as possible from the date on which they determine that legal enforcement action is appropriate, *i.e.*, when they determine the violator has failed to complete corrective action to the FAA's satisfaction. Emergency cases are processed on an expedited basis because they represent an immediate threat to air safety.

5. Time Limits. Certain statutes and regulations provide time limits after the *date of a violation* within which legal enforcement action may be taken. Failure to comply with these time limits, or one of the exceptions to these time limits, will likely preclude the FAA from taking legal enforcement action or result in the dismissal of a case. Enforcement personnel are mindful of these time limits and ensure that a delay in handling an investigation does not prevent the FAA from taking legal enforcement action. For matters involving a compliance action or letter of correction, FAA personnel ensure that applicable time limits do not adversely affect the FAA's ability to take further action in the event corrective action is not completed to the FAA's satisfaction. If appropriate, FAA personnel consult with AGC-300 counsel to determine whether an agreement with the regulated person is needed to waive or extend the time limits period for legal enforcement action based on the noncompliance. FAA personnel do not take administrative action when a time limit would bar legal enforcement action.

a. Specific Time Limits. Different statutory and regulatory authorities establish appeal routes and time limits for particular types of legal enforcement action.

(1) All time limits run from the date a violation occurred, not from the date of discovery. Figure 4-1 provides the applicable time limits.

(2) *Cases Appealable to the NTSB – Six Months.* Punitive certificate actions and civil penalty actions of $50,000 or less against an individual acting as a pilot under 14 C.F.R. part 61, flight engineer, mechanic, or repairman are subject to adjudication before the National Transportation Safety Board (NTSB).

(i) The NTSB's jurisdiction to review a civil penalty action against an individual acting as a pilot under 14 C.F.R. part 61 includes the review of a civil penalty action against an individual operating an unmanned aircraft system (UAS) for which a 14 C.F.R. part 61 certificate is required. (As discussed in paragraph 5.a.(3), below, the NTSB does not have jurisdiction to review a civil penalty action against an individual operating a small UAS under 14 C.F.R. part 107 or 49 U.S.C. § 44809, or acting as visual observer (who is not an airman) for a small UAS operation.)

(ii) Punitive actions appealable to the NTSB have a time limit of six months from the date of violation for the issuance of a notice of proposed action *and* receipt of the notice by the apparent violator under 49 C.F.R. § 821.33 ("the stale complaint rule"). This time limit does not apply to certificate actions involving a lack of qualifications.

(3) *Civil Penalties Under 49 U.S.C. § 46301 Reviewable by a DOT ALJ – Two Years.* Civil penalty actions within the FAA's assessment authority under 49 U.S.C. § 46301(d)(8) that are not appealable to the NTSB are subject to adjudication by a DOT ALJ and, on appeal, by the FAA Decisionmaker. Such cases involve: civil penalties of $50,000 or less against a small business concern; civil penalties of $50,000 or less against an individual (other than an individual acting as a pilot under 14 C.F.R. part 61, flight engineer, mechanic, or repairman); and civil penalties of $400,000 or less against persons other than an individual or a small business concern, *i.e.*, a large business. To determine whether an entity is a small business concern or other than a small business concern, *i.e.*, a large business, *see* chapter 9, paragraph 11.

(i) Individuals subject to such actions include individuals not acting as airmen (*e.g.*, passengers, flight attendants, visual observers for small UAS operations, individuals who violate 49 U.S.C. § 44704(e)(5)); and individuals acting as remote pilots operating under 14 C.F.R. part 107 or 49 U.S.C. § 44809, flight instructors, aircraft dispatchers, parachute riggers, air traffic control tower operators, flight navigators, and non-certificated individuals performing supervised maintenance under 14 C.F.R. § 43.3(d).

(ii) Civil penalty actions within the FAA's assessment authority under 49 U.S.C. § 46301(d)(8) have a time limit of two years from the date of violation for the issuance of a notice of proposed civil penalty under 49 U.S.C. § 46301(d)(7)(C) and 14 C.F.R. § 13.208(d).

(4) *Penalties for Knowing Violations of 49 U.S.C. § 44704(d)(3)(A) and (e)(1)-(3) - Two Years.* Civil penalty actions for the knowing presentation of a nonconforming aircraft for issuance of an initial airworthiness certificate by a production certificate holder contrary to 49 U.S.C. § 44704(d)(3)(A), and the knowing failure to submit safety-critical information for a transport category airplane by an applicant for or holder of a type certificate under 49 U.S.C. § 44704(e)(1)-(3), are subject to adjudication by a DOT ALJ and, on appeal, by the FAA Decisionmaker. The FAA has until two years from the date of an apparent violation to issue a notice of proposed civil penalty under 14 C.F.R. § 13.208(d) regardless of business size.

(5) *Penalties Under the Hazardous Materials Regulations (HMR) – Two Years.* Civil penalty actions for apparent violations of the HMR are subject to adjudication by a DOT ALJ and, on appeal, by the FAA Decisionmaker. The FAA has until two years from the date of an apparent violation to issue a notice of proposed civil penalty under 14 C.F.R. § 13.208(d) regardless of business size.

(6) *Commercial Space Civil Penalties – Five Years.* Commercial Space civil penalty actions are subject to adjudication by a DOT ALJ and, on appeal, by the Associate Administrator for Commercial Space Transportation (who serves as the FAA Decisionmaker in Commercial Space civil penalty cases). These cases have a time limit of five years from the date of violation for the filing of a complaint before the DOT ALJ under 14 C.F.R. § 406.141(f)(2)(ii) regardless of business size.

(7) *United States District Court – Five Years.* Civil penalties above the FAA's assessment authority set forth in 49 U.S.C. § 46301(d)(8) ($50,000 for individuals and small businesses and $400,000 for large businesses) are subject to adjudication before a U.S. district court under 49 U.S.C. § 46301(d)(4). These cases have a five-year time limit from the date of violation for the filing of a complaint in a U.S. district court under 28 U.S.C. § 2462. The FAA initiates these cases with a civil penalty letter. The issuance of the civil penalty letter does not satisfy the FAA's timeliness obligations for these cases. If the case is not resolved following the issuance of the civil penalty letter and the FAA elects to pursue the case, AGC-300 counsel refers it to the DOJ to bring an action in a U.S. district court.

b. Lack of Qualifications. The stale complaint rule does not apply when a case involves a lack of qualifications to hold a certificate, or a reasonable basis to question qualifications (even if

an immediately effective order is not warranted). In such cases, remedial action to revoke or indefinitely suspend a certificate is appropriate. *See* chapter 9, paragraph 8, for guidance on sanctions for remedial purposes. Cases raising a lack of qualifications often present an immediate threat to air safety. When they do, they must be processed on an expedited basis.

Figure 4-1: Time Limits For Initiating Enforcement Cases

Type of Case	Court	Time Limit
Certificate action not involving an issue of lack of qualification (*i.e.*, punitive suspension)	NTSB	Six Months (*see* 49 C.F.R. § 821.33)
Certificate action involving an issue of lack of qualification	NTSB	No Statutory or Regulatory Time Limit (*see* 49 C.F.R. § 821.33)
Hazmat civil penalty action under 49 U.S.C. § 5123 (regardless of amount)	FAA Decisionmaker (Administrator)	Two Years (*see* 14 C.F.R. § 13.208(d))
Civil penalty action of $50,000 or less against an individual acting as a pilot under 14 C.F.R. part 61, flight engineer, mechanic, or repairman	NTSB	Six Months (*see* 49 C.F.R. § 821.33)
Civil penalty action of $50,000 or less against a small business or an individual *not* acting as a pilot under 14 C.F.R. part 61, flight engineer, mechanic, or repairman	FAA Decisionmaker (Administrator)	Two Years (*see* 49 U.S.C. § 46301(d)(7)(C) and 14 C.F.R. § 13.208(d))
Civil penalty action of $400,000 or less against a large business	FAA Decisionmaker (Administrator)	Two Years (*see* 49 U.S.C. § 46301(d)(7)(C) and 14 C.F.R. § 13.208(d))
Civil penalty action of over $50,000 against an individual or small business	U.S. district court	Five Years (*see* 28 U.S.C. § 2462)
Civil penalty action of over $400,000 against a large business	U.S. district court	Five Years (*see* 28 U.S.C. § 2462)
Civil penalty action by Commercial Space Transportation (regardless of amount)	FAA Decisionmaker (Associate Administrator for Commercial Space Transportation)	Five Years (*see* 14 C.F.R. § 406.141(f)(2)(ii))
Civil penalty action under 49 U.S.C. § 44704(d)(3)(B) or (e)(4) (regardless of amount)	FAA Decisionmaker (Administrator)	Two Years (*see* 14 C.F.R. § 13.208(d))

c. Late Discovery and Due Diligence.

(1) The six-month and two-year time limits for cases subject to adjudication by the NTSB and DOT contain "good cause" exceptions. The application of these exceptions primarily occurs when the FAA can demonstrate late discovery of a violation coupled with due diligence in processing the investigation into that violation. The FAA is considered to have discovered a violation on the date it knew or reasonably should have known of the likelihood of a violation.

(i) Due diligence requires that the investigation be fast-tracked at every step, and given priority over other work assignments. Due diligence includes ensuring that investigative personnel are actively assigned to the investigation at all times, even if that requires reassignment of the investigation if primary investigative personnel will be away from the office, such as for training or a vacation.

(ii) To establish due diligence, investigative personnel not only act quickly in handling the investigation, but also document their investigation activities. Investigative personnel also document any delay in discovering a violation and conducting the investigation.

(2) Under 28 U.S.C. § 2462, the U.S. government must file a complaint with a U.S. district court within five years from the apparent violation. The late discovery of a violation is not a basis for extending the five-year time limit.

d. Multiple Violation Dates. An investigation may result in the discovery of multiple apparent violations, some which exceed time limits for taking legal enforcement action. In cases for which punitive action is appropriate, only those violations that do not exceed time limits or meet time limit exceptions are actionable. Investigative personnel consider including in the EIR evidence of violations that exceed time limits if appropriate to show compliance disposition.

e. Examples of Time Limits. The following are examples related to the six-month and two-year time limits for cases subject to adjudication by the NTSB and DOT.

- On January 1, a mechanic commits a maintenance violation warranting a punitive certificate suspension, but the violation is not discovered until June 15. The case goes stale on July 1. However, the investigation is complex and cannot be finished before July 1. The investigation must be given priority handling so that the agency can show good cause for the delay and prevent the case from being dismissed as stale.

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

- An aircraft owner sends an aircraft to a small business repair station in January for an annual inspection and other maintenance. The following January, a mechanic inspects the

aircraft and the owner reports to the FAA that an AD was due and not complied with at the time of the previous inspection. The FAA could go forward with a notice of proposed civil penalty without priority handling because the time limit for a civil penalty against a small business for a single act of violation will be under $50,000, and subject to a two-year time limit.

- On January 1, a mechanic commits a maintenance violation warranting a punitive certificate suspension. An FAA inspector discovers the violation on April 1 and starts an investigation. On May 30, with the inspection still uncompleted, the inspector begins six weeks of FAA inspector training. During the inspector's absence, the office does not reassign the case or otherwise further the investigation. On the inspector's return to the office in mid-July, the case is stale and cannot be pursued because the office cannot show priority handling.

- On January 1, a pilot is convicted of operating a motor vehicle while intoxicated. The pilot failed to report the conviction to the FAA Regulatory Investigation Division (AXE-700) within 60 days of the conviction, *i.e.*, March 1. On June 1, the pilot applies for an airman medical certificate. The FAA receives National Driver Register (NDR) information for the January 1 motor vehicle action on September 1, which is the discovery date for the violation.[2] FAA investigative personnel do not begin the investigation regarding the airman's failure to report the DUI conviction until October 1. Because the case was stale upon notification from the NDR and FAA personnel did not diligently investigate the matter upon discovery of the violation, the case is stale and cannot be pursued.

f. Cease and Desist Orders, Orders of Compliance, and Other Orders. Under 49 U.S.C. § 40113(a), the Administrator has general authority to issue orders to carry out the FAA's aviation safety responsibilities, and may issue these orders pursuant to 14 C.F.R. § 13.20 when there is no other specific administrative process provided by statute, regulation, or order. Such orders include orders of compliance; cease and desist orders; orders of finding of material contribution; orders of permanent disqualification; orders terminating authorizations, approvals, or waivers; and orders of denial. In addition, the Administrator has authority to issue orders suspending or revoking an aircraft certificate of registration under 49 U.S.C. § 44105 and a dealer's certificate of registration under 49 U.S.C. § 44104, revoking an airman certificate under 49 U.S.C. § 44724, and revoking an airline transport pilot certificate under 49 U.S.C. § 44704(e)(5)(A). The procedures at 14 C.F.R. § 13.20 and part 13, subpart D, govern these types of orders referenced in this subparagraph.

(1) The Administrator is authorized to make an order issued under 49 U.S.C. § 40113(a) immediately effective under 49 U.S.C. § 46105 when an emergency exists and safety in air commerce requires the immediate issuance of the order. There is no statutory or regulatory time limit for the issuance of an immediately effective order. Nonetheless, FAA enforcement personnel are to act with dispatch in investigating and pursuing such actions.

[2] *See Ramaprakash v. Fed. Aviation. Admin.*, 346 F.3d 1121, 1128 (D.C. Cir. 2003) (information from the NDR "tipped off [the FAA] to a potential violation" and, therefore, constitutes discovery of violation for the purposes of the stale complaint rule).

(2) The FAA provides notice before issuing any order under 49 U.S.C.§ 40113(a) in non-emergency circumstances. There is no time limit for the issuance of such a notice. Nonetheless, enforcement personnel promptly handle such matters.

g. Doctrine of Laches. Regardless of time limits, legal enforcement actions may be subject to dismissal based on the doctrine of laches. Laches is a defense that may apply to legal enforcement actions when there is: (1) lack of diligence by the FAA in initiating or pursuing a legal enforcement action; and (2) prejudice to the respondent due to delay. Unlike the other limitations periods discussed in this paragraph, laches does not involve a specific time limit. Rather, the application of laches turns on whether the FAA delayed inexcusably or unreasonably and the respondent was prejudiced by the delay.

6. Letter of Investigation and Response. An LOI provides a person with notice that the person is under investigation for an apparent statutory or regulatory violation. If the person is an airman, an LOI provides PBR notification. Additionally, an LOI provides the person with an opportunity to respond to the contents of the letter. Learning "the other side of the story" early in the investigation is to everyone's advantage. Inviting input also helps to show that the FAA is conducting the investigation fairly and impartially. Investigative personnel issue an LOI to a person when it appears that administrative or legal enforcement action is warranted for the person's apparent statutory or regulatory violation. An LOI, however, is not necessary when, at the time an LOI would have been appropriate, investigative personnel have determined that the matter will be resolved with administrative action (such as through the use of the Streamlined No Action and Administrative Action Process (SNAAP)). An LOI is also not used for reexamination or reinspection cases, which are discussed in chapter 7, paragraph 6.

a. Contents of the Letter of Investigation.

(1) PBR Notification. If the recipient of the LOI is an airman (and the apparent violation may result in legal enforcement action against an airman certificate), then the LOI will include appropriate notice under the PBR, as described in paragraph 4.b., above. If the recipient is not an airman, no PBR notification is included in the LOI.

(2) Privacy Act Statement. If the recipient of the LOI is an individual, a Privacy Act statement must be included. If the recipient is not an individual, no Privacy Act statement is included with the LOI.

(3) Description of Apparent Violation. FAA investigative personnel do not issue an LOI unless evidence shows the possible occurrence of a violation. The LOI identifies the activity being investigated. It includes a description of the apparent violation with enough factual detail to permit the apparent violator to provide a response that meaningfully addresses the facts giving rise to the investigation. For example, in a case involving intentional falsification, investigative personnel identify the incorrect statement at issue and the basis for the belief it was false. The LOI typically does not provide a citation to a regulation that a person apparently violated unless a citation is necessary to accurately identify the incident.

(4) Time For Reply. The LOI specifies a time limit for a response. This time limit is normally ten days from the date the LOI is sent. Additional time may be necessary when the apparent violator is located outside the United States. An untimely response may still be considered, but investigative personnel will not delay the investigation beyond the time limit due to an untimely response.

(5) Request for Records. The LOI may include a request for inspection of records required to be kept or made available under specific regulatory provisions. When the LOI seeks records under one of these regulatory provisions, it specifies the regulation relied on and a time frame for the production of the records. Given that under the PBR a response to an LOI is not required, investigative personnel generally do not include a request for inspection of records in an LOI to an airman. Rather, a separate letter is used for such a request. A Privacy Act statement is included in any request for records from an individual.

b. Mailing the LOI. Investigative personnel send the LOI by certified mail, return-receipt requested (or registered mail for persons outside the U.S.) to establish a record of notice to the party under investigation. In addition, they send the LOI by regular mail. The LOI is sent to any address where the apparent violator may be located. If the apparent violator is a certificate holder or registered aircraft owner, investigative personnel also send the LOI to the current address of record. If the regular mail is returned or the certified mail is returned as undeliverable, investigative personnel correct the address, or obtain a new address, as appropriate, and resend the LOI by the same methods. Investigative personnel consult with Security and Hazardous Materials (ASH) to obtain a new address. If the certified mail is refused or returned unclaimed but the regular mail is not returned, then there is a presumption of service and investigative personnel do not resend the LOI. If FAA investigative personnel deliver the letter in person, they document the delivery in the file.

c. Inclusion of LOIs as Items of Proof. If FAA investigative personnel issue an LOI, they include a copy of the LOI and proof of service in any associated EIR as Items of Proof (IOP). (IOPs are discussed more fully in paragraph 9.f., below.) If the LOI is returned undelivered or unclaimed, investigative personnel include the unopened envelope for the LOI as an IOP.

d. Additional LOIs.

(1) When additional apparent violations are discovered during an investigation after the original LOI was sent, investigative personnel may need to issue an additional LOI (with a PBR notification for airman). Investigative personnel exercise their best judgment as to whether an additional LOI will be productive. When in doubt, investigative personnel send an additional LOI.

(2) If an apparent violation changes the nature of an investigation of an airman or indicates new specific activity that prompts further investigation of an airman, the PBR requires that the airman be informed of this new information. Accordingly, an additional LOI containing this new information is *required*. For example, when an initial LOI focused on an airman's operational violation, the FAA's subsequent discovery of a maintenance violation by the airman requires investigative personnel to send another LOI concerning the maintenance violation that

informs the airman of the nature of the investigation and the specific activity on which the investigation is based.

7. The Small Business Ombudsman. Congress established the Small Business Administration's Office of the National Ombudsman in 1996 as part of the Small Business Regulatory Enforcement Fairness Act (SBREFA).

a. Purpose. The purpose of the Office of the National Ombudsman is to assist small businesses facing unfair or excessive federal regulatory compliance or enforcement issues such as repetitive audits or investigations, excessive fines, or retaliation. The Ombudsman annually evaluates the enforcement activities of federal agencies and rates each agency's responsiveness to small businesses.

b. Information Sheet. FAA personnel who conduct an inspection of a small business concern provide an information sheet informing the business that it may submit complaints or comments regarding unfair FAA regulatory enforcement to the National Ombudsman. Investigative personnel send the information sheet with the LOI or otherwise at the onset of an investigation. They provide the information sheet either when they know the business concern is small or are uncertain of the business's size. The information sheet contains the following language.

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

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

a. Enforceable Regulations. An enforceable regulation generally contains either mandatory language (such as *shall* or *must*) or prohibitory language (such as *no person may* or *a person may not*). Regulations that contain words such as "no person may, except" or "no person may, unless" are enforceable only in instances that are not covered by the exceptions provided. Additionally, there are rare instances when conduct would otherwise constitute a violation but, because the apparent violator has been issued an exemption, deviation, or waiver, the conduct is not a violation.

(1) Some regulations written as authorizations are enforceable even though they do not contain mandatory or prohibitory language. For example, 14 C.F.R. § 65.95(a)(2) authorizes the holder of an inspection authorization to perform an annual inspection. Although the regulation

does not use words such as *no person may*, it prohibits persons other than the holders of an inspection authorization from performing annual inspections.

(2) Some regulations written in the question and answer format are enforceable even though they do not contain mandatory or prohibitory language. For example, 14 C.F.R. § 39.7 states:

> **What is the legal effect of failing to comply with an airworthiness directive?** Anyone who operates a product that does not meet the requirements of an applicable airworthiness directive is in violation of this section.

Although the regulation does not use such words as *must, shall, no person may,* or *a person may not*, it places a requirement on persons to comply with ADs by explicitly stating that they are *in violation* if they operate a product that does not meet AD requirements.

b. Elements of Regulations. Regulations consist of multiple *elements*. To prove a violation of a regulation, investigative personnel include IOPs for each of the individual elements. For example, investigative personnel provide IOPs for each of the six elements in 14 C.F.R. § 91.13(a) for independent violations of that regulation. Section 91.13(a) states: "*Aircraft operations for the purpose of air navigation*. No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another." Figure 4-2 breaks down the elements of this regulation.

Figure 4-2: Elements of an Independent Violation of 14 C.F.R. § 91.13(a).

Element	Proof Requirement	Examples of Possible Evidence
Person	Identify the person who operated the aircraft	➢ witness statement about identity of pilot ➢ pilot logbook ➢ LOI response
Operate (for purposes of air navigation)	Establish a flight (or operation for the purpose of a flight)	➢ witness statement about aircraft in flight ➢ air traffic recording of request for takeoff clearance ➢ radar data
Aircraft	Identify the specific aircraft involved	➢ aircraft photograph ➢ witness statement identifying aircraft ➢ aircraft registration
Careless or reckless	Establish an operation below the standard of care expected of a reasonable pilot in the same or similar circumstances (careless) or reflecting a gross disregard for or deliberate indifference to safety or a safety standard (reckless)	➢ photograph of gear handle in "up" position (gear-up landing) ➢ video of flight ➢ detailed evidence of the circumstances showing that the operation presented a risk that a reasonable pilot would have recognized and avoided

Element	Proof Requirement	Examples of Possible Evidence
Endangerment	Identify an aspect of the operation creating potential or actual harm or damage	➢ witness statements on how close aircraft was to a crowd ➢ diagram of flight path ➢ photograph of actual damage to aircraft or other property
Life or property of another	Show that the endangerment involved the life or property of another	➢ aircraft rental records ➢ passenger statement ➢ photographs of nearby structures

c. Burden and Standard of Proof. The FAA has the burden of proof, by a preponderance of the reliable, probative, and substantial evidence, to establish all facts necessary to satisfy each element of a statutory or regulatory violation in cases it processes. The preponderance of evidence standard requires that the evidence show that it is more likely than not the apparent violator committed the violation. An apparent violator has the burden of proving the elements of an affirmative defense by a preponderance of the reliable, probative, and substantial evidence.

9. Evidence – General Considerations.

a. Objectives. The object of an investigation is to collect evidence relevant to an apparent violation. Evidence includes all information that tends to prove or disprove a fact. Evidence helps FAA enforcement personnel to determine: (1) what, if any, statutes or regulations were violated; (2) the appropriate action to select in accordance with the guidance in chapter 5; (3) what type of legal enforcement action to select if such action is selected; and (4) the appropriate sanction amount. Evidence also allows adjudicators to determine whether to uphold the FAA's action. The FAA does not pursue a violation if the collected evidence indicates that there was no violation or the FAA would be unable to prove all elements of the violation.

b. Preservation of Evidence. Investigative personnel preserve potentially relevant evidence collected during an investigation. Potentially relevant evidence is preserved even when: (1) an EIR has not been opened (such as when handling a compliance action); and (2) the evidence is not included in an EIR as an IOP (such as logistical emails or additional photographs). The duty to preserve arises at the start of the investigation. Despite established record retention schedules, potentially relevant evidence is preserved until final action has been completed *and* (in the case of legal enforcement actions) investigative personnel have been released from any applicable notice to preserve. (*See* chapter 8, paragraph 5, for information on preserving evidence in response to a litigation hold.)

c. Direct and Circumstantial Evidence. Both direct and circumstantial evidence are valid methods for proving or disproving a fact in question and may be used as IOPs. Direct evidence proves a fact directly, without any inference. For example, a witness who testifies that they personally observed an aircraft in flight is providing direct evidence that the aircraft was operated. Circumstantial evidence also proves a fact, but requires an inference. For example, a witness who observed a pilot in a single-pilot aircraft operation taxiing the aircraft three minutes before takeoff is providing circumstantial evidence that the pilot operated the subsequent flight, *i.e.*, it is inferred that the taxiing pilot remained the pilot during the intervening three minutes.

d. Hearsay.

(1) Definition. Hearsay is an out-of-court statement offered to establish the truth of the matter asserted in the statement. It is generally testimony or a document offered at a hearing without the presence of a witness with personal knowledge of the events. For example, it would be hearsay if investigative personnel testified that a co-pilot told them that the pilot-in-command of a flight was intoxicated.

(2) Use of Hearsay. Hearsay evidence can be relevant, can be considered during an investigation, and can be included in the EIR. Hearsay evidence, however, is generally not admissible in NTSB hearings or in U.S. district court and is frequently given little weight in venues where it is admissible (such as in hearings before a DOT ALJ). The general inadmissibility of hearsay is known as "the hearsay rule." When possible, investigative personnel obtain non-hearsay evidence, or evidence that will allow AGC-300 counsel to present non-hearsay evidence at hearing. For example, if a witness to particular conduct relates observations of the conduct to another individual who did not see the conduct, and the latter individual relates the information to investigative personnel, investigative personnel interview the witness who observed the conduct. Even when a witness provides a written statement, investigative personnel obtain the witness's contact information to enable counsel to present the witness at hearing.

(3) Statements By Apparent Violators. One important aspect of the hearsay rule is that statements by the apparent violator are not hearsay. At hearing, the FAA may present testimony by investigative personnel, or by other witnesses, about statements made by the apparent violator. This extends to statements made by agents or employees of the apparent violator. For example, if a repairman tells investigative personnel that a repair station supervisor instructed that maintenance was to be performed improperly, the investigator may testify about this statement at hearing involving a case against the repair station.

(4) Obtain Hearsay and Non-Hearsay Evidence. The hearsay rule, while simple in principle, is complicated in application. For instance, many exceptions to the rule allow admission of hearsay evidence. Investigative personnel are not expected to master the nuances of the hearsay rule and its exceptions. Investigative personnel, therefore, obtain non-hearsay evidence when possible, as well as hearsay evidence, consider both, and include both in any EIR. Investigative personnel may contact AGC-300 counsel if hearsay questions arise during an investigation.

e. Determining Reliability of Witnesses and Documents. Investigative personnel assess the reliability of witnesses interviewed and documents acquired during the course of an investigation. In evaluating the reliability of a witness, investigative personnel consider such factors as the witness's demeanor, bias, competence, and opportunity and ability to observe an event at issue. Investigative personnel also consider whether the witness's statement is internally consistent, inherently improbable, inconsistent with or contradicted by other witnesses' statements or documentation, or based on hearsay. For documents, investigative personnel consider such factors as whether a document is internally inconsistent or supported or

contradicted by other documents or witnesses' statements, or was created close in time to the event in question or well afterwards.

f. Items of Proof. Evidence included in the EIR is referred to as an "item of proof" or "IOP." When an investigation does not involve an EIR, such as a compliance action, investigative personnel still obtain and preserve substantially similar evidence.

(1) Investigative personnel collect relevant evidence and include the evidence as IOPs in section C of the EIR. They prepare a report that clearly presents and discusses facts and circumstances of the case in section B of the EIR, and provide support for each factual statement by referencing IOPs. IOPs can include documents, photographs, witness statements, and records of conversation. Investigative personnel may also prepare written factual observations (as soon as possible after the observations are made) for inclusion as IOPs. Investigative personnel are mindful that IOPs can become evidence at hearings.

(2) Investigative personnel obtain IOPs from any place or source where it is legally available. The IOPs included in the EIR prove every element of every apparent violation. The IOPs also include any evidence that tends to disprove any element. Investigative personnel never hide or withhold evidence collected during an investigation. If investigative personnel are unsure about whether to include evidence as an IOP, they consult AGC-300 counsel, or err on the side of including the evidence in the EIR.

(3) All evidence that is relevant is included as IOPs in the EIR. Evidence is relevant if it has any tendency to make any fact that is of consequence in determining an issue more or less probable than it would be without the evidence. The facts at issue might be those that relate to whether a violation occurred, the decision to select a particular action (consistent with chapter 5) as a result of a violation, or the legal enforcement action type and sanction amount. Information that is not relevant is not included in the EIR.

(4) Unduly repetitious evidence is not included in the EIR. For example, where investigative personnel take notes of a conversation, then reduce those notes to a formal record of conversation, the notes are not included as an IOP in addition to the record of conversation. Similarly, when investigative personnel take numerous photographs, multiple similar photographs are not included where the additional photographs do not convey any additional information. Investigative personnel still have a duty to preserve unduly repetitious evidence.

(5) Program offices customarily transmit electronically formatted EIRs (*i.e.*, eEIRs) for legal enforcement actions to AGC-300. Investigative personnel convert IOPs for inclusion in eEIRs as appropriate. Investigative personnel retain IOPs in the format they obtained them and make them available to AGC-300 counsel upon request. For example, investigative personnel retain a hard copy of a letter received via U.S. mail or the file of a digital photograph.

g. Authentication of Evidence. For evidence to be used at hearing, it not only must be relevant, it also must be authenticated. Authentication of evidence establishes that the item is what the proponent of the evidence claims it to be.

(1) When collecting evidence, investigative personnel consider what will be needed to establish the authenticity of the evidence. For example, the testimony of the sender or recipient of a letter identifying the letter may be necessary as a condition for admission of the letter into evidence. For a photograph, a witness must be able to testify that the photograph is a fair and accurate representation of the subject of the photograph. Sometimes investigative personnel will be able to provide authentication testimony, but for many documents, investigative personnel must collect the name and contact information of a witness able to authenticate the document. When a document is copied, authentication includes verification that the copy is a true and accurate copy of the original.

(2) If appropriate for establishing authenticity, when investigative personnel obtain a record or document, they record the date (and, if appropriate, time) it was collected, along with where, how, and from whom it was obtained, and include that information in an IOP. This information may be included in an inspector statement addressing a single document or multiple documents as a separate IOP. This information may also be included through a statement appended to the beginning or end of a particular document in the EIR. Investigative personnel reference a separate IOP that establishes authentication in section B. The precise content of a statement establishing authenticity will vary according to the circumstances. No statement is necessary for some documents, including:

(i) Documents that already contain the required information on their face (such as emails or letters to investigative personnel that indicate the sender and date of transmission);

(ii) FAA-generated records (such as operations specifications (OpSpecs) or a working copy of an airman medical file);

(iii) Manuals in the FAA's possession prior to the initiation of the investigation (such as an aircraft maintenance manual or an air carrier's operations manual); or

(iv) Self-authenticating documents (such as signed and sealed, or signed and certified, documents from law enforcement agencies, or FAA blue ribbon packages). FAA personnel do not place marks or stickers on self-authenticating documents.

10. General Categories of Proof. FAA investigative personnel gather various types of evidence and prepare that evidence as IOPs when there is an associated EIR. The list of evidence and IOPs below is not all-inclusive and does not attempt to cover all, or even most, possible evidence and IOPs. When there is no associated EIR, investigative personnel gather the evidence discussed below, but do not prepare the evidence as IOPs. Consideration is given to all evidence that tends to prove (or disprove) an element of each regulation believed violated or that could affect sanction.

a. Witness Interviews and Witness Statements. Investigative personnel interview all witnesses with information about an apparent violation and obtain written witness statements whenever possible. Investigative personnel select witnesses for interviews based on the likelihood of their knowledge of the matter and their competence to relate the information sought. The order in which witnesses are interviewed is established to minimize the risk of

corruption of witness testimony. For example, company employees will generally be interviewed before company management officials, and eyewitnesses are generally interviewed before the apparent violator. Investigative personnel promptly interview witnesses and memorialize their statements to ensure the freshness of recollection.

(1) Conducting the Interview. Interviews are conducted in person when possible, but can be conducted via phone or videoconference. When a witness is located outside the geographic area of responsibility of the investigating office, investigative personnel from offices within the geographic area of the witness may be requested to obtain an in-person interview. Investigative personnel record the name, address, telephone number, and email address of the witness. Investigative personnel ask the witness to provide updates to contact information. The interviewing techniques used will vary depending on the circumstances, with specific techniques introduced through program office guidance and training. The following list provides general interview guidelines.

(i) As discussed in detail below, investigative personnel ensure that the interview is memorialized by a written statement by the witness, recording of the witness's interview, statement of the witness's account by the interviewer, or any combination of the three.

(ii) Investigative personnel plan ahead for the interview and are thoroughly prepared.

(iii) Investigative personnel plan and use questions that will accomplish the objective of getting complete and accurate information from the witness. Investigative personnel use broad, open-ended questions to start areas of discussion. They use specific searching questions to clarify details from the witness's broader answers, obtain specific information, and draw out conclusions. Investigative personnel allow the witness to present information in the witness's own words.

(iv) Investigative personnel do not promise confidentiality or immunity without consulting with AGC-300 counsel, and do not raise these subjects with witnesses.

(v) Investigative personnel do not disclose sources of information, unless necessary.

(vi) Investigative personnel listen attentively to the witness.

(vii) Investigative personnel take notes during the interview when possible, and if not possible, make notes immediately after the interview. They review their notes to ensure understandability and follow up with the witness to ensure accuracy and completeness.

(2) Recording Interviews. Investigative personnel may record an interview if the witness agrees to the recording. Investigative personnel ensure that the witness's granting of permission is included at the beginning of the recording. Investigative personnel include a transcript of the recording along with the recording as an IOP.

(3) Witness Statements. Investigative personnel obtain a written statement from the witness whenever possible.

(i) Contents of Witness Statements. Witness statements identify the witness and should include contact information for the witness, *i.e.*, home or work address, telephone number, and email address. The statement should contain a precise and complete account of those facts pertinent to the violation. It includes any witness observations, perceptions, conversations, and actions relevant to the case. Investigative personnel ask a witness who, what, when, where, why, and how questions as appropriate for the investigation, and ask the witness to distinguish witness opinions from facts. Investigative personnel ensure that the witness signs and dates the witness statement whenever possible.

(ii) Preparation of Witness Statements. Generally, witness statements are written, signed, and dated by the witness. They may but are not required to be taken in the form of a sworn statement (in which the witness endorses the truth of the statement under oath through their signature). Investigative personnel arrange for ASH to take sworn statements. When necessary, investigative personnel help the witness in framing or drafting a statement. If the witness refuses to prepare a statement, investigative personnel prepare the statement based on the information provided by the witness. Investigative personnel ask the witness to review the statement and whether the witness agrees with the statement. If the witness agrees with the statement, investigative personnel ask the witness to sign and date the statement. If the witness agrees with the statement, but refuses to sign and date it, investigative personnel make a note of these facts on the statement, and then sign and date the note. Regardless of how the statement is prepared, investigative personnel always advise the witness that the statement must be accurate and complete. Investigative personnel never dictate the content of the statement.

(iii) Record of Conversation or Record of Interview. Investigative personnel may use a record of conversation or interview, which is a statement drafted, signed, and dated by investigative personnel, when it is not possible to obtain a witness statement. The record of conversation or interview contains all the information that would have been in a witness statement. In addition, when a witness provides an incomplete statement (for example, the witness is willing to discuss more information than they are willing to write), a record of conversation or interview may be prepared containing the information that was not included in the witness statement. A record of conversation or interview is factual and does not contain opinions or analysis by investigative personnel. (Opinions and analysis from investigative personnel are presented in section B of the EIR.) If two or more investigative personnel are present during an interview, each prepares a separate record of conversation or interview. A record of conversation or interview can be used as an IOP.

(iv) Written Statements of Investigative Personnel as Witnesses. When investigative personnel witness a violation, they prepare, sign, and date a written statement covering all facts of which they have personal knowledge. This statement is made as soon as possible after the event witnessed. This factual statement can be used as an IOP.

(v) Interviewing the Apparent Violator. Normally, investigative personnel attempt to interview the apparent violator (and memorialize the interview) in addition to other witnesses.

Interviewing the apparent violator may help to establish facts relevant to the apparent violation. It also may give the FAA insight into the apparent violator's side of the story, which may help the FAA more fully analyze the case. Investigative personnel exercise good judgment in determining whether to interview the apparent violator early in the investigation (which may assist in the development of leads) or after the development of much of the EIR (which may result in more specific information). Regardless of the timing, investigative personnel ensure that the apparent violator, if an airman, has received written PBR notification prior to any interview.

(vi) Investigative Depositions. Investigative personnel consult AGC-300 counsel to determine whether depositions of witnesses are appropriate. An investigative deposition may be appropriate, for example, to solidify under oath the story of a witness whose credibility is questionable or to perpetuate the testimony of a witness who may be unavailable for trial.

b. Records and Other Documents. Records and other documents are the most common type of IOPs gathered by investigative personnel. Investigative personnel may request certified or non-certified records and other documents from individuals or organizations. They may be stored as hard copies or electronically (which may be provided electronically or in print format). Whether paper or electronic, investigative personnel promptly review and obtain such material before it is lost, destroyed, modified, or altered. Investigative personnel promptly notify an organization or individual that such material is the subject of a federal investigation and obtain all records and other documents that are relevant to matters being investigated. If there is any doubt about whether such material should be collected and preserved, investigative personnel secure and preserve it.

(1) Copying and Authentication. Authentication generally requires a witness to testify what the record or document is or represents and how it was obtained or prepared. If the record or document is a copy of the original, the witness must also testify that the copy is a true and accurate copy of the original.

(2) Currency. When obtaining records or documents for inclusion as IOPs, investigative personnel ensure that the records or documents include the version that was current and applicable at the time of the apparent violation. Earlier or later versions may also be relevant and included as an IOP.

(3) Statement of Diligent Search. If, during the course of an investigation, investigative personnel are unable to locate a record required to be retained by regulation, they draft a statement of diligent search indicating that the record could not be located despite a diligent search of the records system in which the record could have reasonably been expected to have been located.

c. Electronic Evidence. Investigative personnel include electronically stored evidence in section C. Although, for eEIRs, investigative personnel do not include as an IOP the storage medium (*e.g.*, flash drive or compact disc (CD)) from which evidence is transferred for conversion to an IOP, investigative personnel retain the medium since enforcement counsel may later request it. For physical EIRs, investigative personnel include the storage medium for electronically stored items. As with other forms of evidence, electronically stored evidence must

be authenticated to be admissible at a hearing. A witness may be needed to authenticate printed and electronic versions at hearing. Investigative personnel collect contact information from witnesses who can provide testimony to authenticate electronic evidence. Certain types of electronic evidence are discussed in paragraph 10.c.(1)-(5), below.

(1) Email. When including an email as an IOP, investigative personnel obtain and include the entire email, including the original message and all replies, and any attachments to the email. In addition, the original electronic email is metadata preserved.

(2) Internet Webpages. For documents obtained from an internet webpage (including social media sites), investigative personnel include the entire webpage as an IOP in PDF format, including the website address. They annotate the date and time it was observed and attach a statement that the printout is an accurate depiction of what appeared on the webpage on a certain date.

(3) Text or Instant Messages. When possible, investigative personnel gather relevant text or instant messages. Investigative personnel also retain the electronic original when possible. If necessary, investigative personnel request that witnesses in possession of the messages take these actions. Investigative personnel notify the witnesses that the text and instant messages are the subject of a federal investigation.

(4) Electronic Signatures. Investigative personnel may need to gather evidence to prove the authenticity of an electronic signature, such as the electronic signature on an FAA certificate application in an intentional falsification case. Investigative personnel include as IOPs a copy of the document with the electronic signature and, if there is a potential dispute as to the authenticity of the electronic signature, (i) written statements from witnesses who had a role in processing the document (*e.g.*, recommending flight instructor, airman medical examiner), (ii) system logs for applicable FAA systems (*e.g.,* IACRA); and (iii) other available evidence establishing the reliability of the electronic system.

(5) Voice Recordings. Any voice recording is electronically stored and included as an IOP. Investigative personnel include a transcription of the recording along with the recording as an IOP.

d. Photographs and Video (Digital or Non-digital). Photographs and videos convey information in ways that written or verbal descriptions cannot. Accordingly, investigative personnel obtain relevant photographic or video evidence whenever appropriate. For example, when investigative personnel observe an aircraft in an unairworthy condition, they photograph the aircraft so that the condition may be shown rather than just orally described at a hearing. Digital photographs and videos are electronically stored and included in the EIR. Photographs and videos taken using traditional equipment are converted for inclusion in eEIRs, and investigative personnel retain the original images from traditional photographic equipment since AGC-300 counsel may later request them. To prevent the alteration of photographs or videos, investigative personnel store them in a secure location.

(1) Photographs and videos may be taken with either traditional equipment or digital devices such as smartphones. When photographs or videos are used during an investigation, investigative personnel provide information about the type of camera and imaging medium (if available) and the date and time the images were taken.

(2) Photographs or videos are authenticated through testimony establishing that they are fair and accurate representations of the relevant object or place. A photograph does not necessarily have to be taken at the same time as the incident to be authenticated. For example, a photograph of a location on one date may be a fair and accurate representation of that location as it was the month before. Further, the individual who took the photograph or video does not have to be the person who authenticates it. Rather, anyone familiar with the subject of a photograph or video may be able to authenticate it.

(3) If investigative personnel alter a photograph in any way (*e.g.*, to add markings to point out certain features of an object depicted in the photograph), they include both the altered photograph and an original, unaltered photograph as IOPs.

(4) When photographs of an object are included in an EIR instead of the physical object itself, investigative personnel document information regarding the custodian (including contact information), location, and security of the physical object, if known.

e. Physical Evidence in the FAA's Possession. Physical evidence consists of objects relevant to the violation. Investigative personnel exercise care in handling physical evidence to prevent any damage, loss, or alteration. Investigative personnel photograph physical evidence when they obtain it to establish its condition at that time. They also maintain chain of custody documentation for each piece of physical evidence to establish a foundation for the admission of the object as evidence at a hearing. Investigative personnel commonly store physical evidence in a locked and safe location as soon as practicable after they obtain it for preservation for a hearing. If physical evidence is not in the FAA's possession, investigative personnel document in the EIR the individuals who have possession of the evidence, contact information for these individuals, and the location of the evidence. If physical evidence is not obtained by investigative personnel, they photograph it and include the photographs as IOPs.

f. Diagrams. Investigative personnel may use diagrams as IOPs. A diagram may be hand drawn or computer generated, but must be clear, legible, and informative. Diagrams contain, as appropriate, descriptive headings, depictions of all relevant features, cardinal compass headings, an indication of scale, and approximate or measured distances. The preparer signs and dates the diagram. Physical diagrams are converted for inclusion in eEIRs, and investigative personnel retain original physical diagrams since AGC-300 counsel may later request them.

11. Proof Typical for FAA Cases. In addition to the more generalized proof discussed in paragraph 10, above, certain evidence may be relevant across program offices. This paragraph provides a sampling of such items. The list is not all-inclusive and does not attempt to cover all, or even most, possible evidence or IOPs. When there is no associated EIR, investigative personnel gather the evidence discussed below, but do not prepare the evidence as IOPs.

a. Airman Information. For all cases where the apparent violator is an airman, investigative personnel provide a copy of airman information from the Multi System Access Tool-A (*i.e.*, "MSAT-A") or equivalent database and include it as an IOP. AGC-300 counsel will obtain a blue ribbon certified copy from FS Airmen Certification (AFB-720) if needed.

b. Aircraft Information. For all cases involving an aircraft, investigative personnel provide a copy of aircraft information from the Multi System Access Tool-B (*i.e.*, "MSAT-B") or equivalent database and include it as an IOP. AGC-300 counsel will obtain a blue ribbon certified copy from FS Aircraft Registration (AFB-710) if needed.

c. Airman Medical Records. When airman medical qualifications or entries in an application for airman medical certification are at issue in a case, a working copy of the current airman medical file (which may be electronically-stored) obtained from the Aerospace Medical Certification Division is included as an IOP. AGC-300 counsel will obtain a blue ribbon certified copy from the Office of Aerospace Medicine if needed. When appropriate for an investigation, investigative personnel attempt to obtain consent for access to medical records. Medical records held by a doctor, hospital, or other health care provider are usually privileged and cannot be released without the consent of the individual. Similarly, medical records held by other governmental agencies are covered by the Privacy Act, which restricts their release. If consent is not given, investigative personnel consult AGC-300 counsel, who consider the issuance of a subpoena.

d. Communications from Apparent Violator. If an apparent violator contacts FAA personnel on any subject relevant to the EIR, investigative personnel include any record of conversation for in-person or telephonic contact, or copies of correspondence, including letters and emails, as IOPs.

e. FAA Correspondence to Apparent Violator. Investigative personnel include all correspondence from the FAA to the apparent violator. In addition to LOIs, such correspondence may include reports of inspection to entities that describe findings of apparent noncompliance.

f. FAA Certificates Issued to Entities. In any EIR involving a certificated entity, investigative personnel include a copy of the certificate as an IOP.

g. Operations Specifications. When a case involves issues concerning an entity's OpSpecs, investigative personnel include the relevant sections of the entity's OpSpecs in effect at the time of the apparent violation as IOPs. Cases involving OpSpecs issues may involve the applicability of, permission granted by, or compliance with OpSpecs. For example, in cases involving an air carrier's failure to perform aircraft inspections in accordance with an approved maintenance program required by its OpSpecs, investigative personnel include as an IOP the OpSpecs section providing that requirement. Investigative personnel also include as IOPs pertinent parts of management specifications (MSpecs), training specifications (TSpecs), and letters of authorization (LOAs) when relevant to an entity's noncompliance.

h. Manuals, Programs, and Other Instructive Documents. When compliance with a manual, program, or other instructive document is at issue in a case, investigative personnel

include the applicable portions of such documents in effect at the time of the apparent violation as IOPs. These documents include operations manuals, training manuals, antidrug and alcohol misuse prevention programs, quality control manuals, aircraft maintenance manuals, aircraft flight manuals, operating limitations, certificates of waiver and authorization, engineering orders, inspection programs, continuous airworthiness maintenance programs, instructions for continued airworthiness, or conditions for special issuance of a medical certificate.

i. Criminal, Driving, and Law Enforcement Records. Investigative personnel include criminal, driving, and law enforcement-administered drug and alcohol testing records as IOPs when they are at issue in a case. These records are obtained in a certified format whenever possible. When certified, they are self-authenticating and, therefore, may be admitted into evidence without further testimony. When the custodian agency does not approve the release of records, investigative personnel review and summarize the records, if possible, and include the summary as an IOP. If necessary, investigative personnel consult with AGC-300 counsel when a custodian agency does not approve the release of such records.

(1) Criminal Records. Law Enforcement Assistance Program (LEAP) personnel obtain for other investigative personnel court records or other documents related to criminal history and activity.

(2) Driving Records. Investigative personnel obtain driving records for any state where the airman has or had a driver's license.

(3) Law Enforcement-Administered Drug and Alcohol Testing Records. When law enforcement has administered (or has attempted to administer) a drug or alcohol test to an airman, investigative personnel obtain records relating to the test and include them in any applicable EIR as IOPs. For an alcohol test, the records include documentation that the testing equipment was maintained in accordance with the applicable operating manual and, if available, evidence that the officer had been trained to use it. If the test results cannot otherwise be obtained, investigative personnel make a formal request under 14 C.F.R. § 91.17(c) or (d).

(4) Custom and Border Protection Air Marine Operations Center Records. Investigative personnel obtain records from the Custom and Border Protection Air Marine Operations Center, which include aircraft and passenger movement and historic flight plans.

j. Foreign Laws or Regulations. When a foreign law or regulation is relevant to an investigation, investigative personnel include a copy of the law or regulation as an IOP.

k. Evidence of Business Size. Chapter 9, paragraph 11, discusses the distinction between large and small businesses, and between different size categories of certain small businesses. Investigative personnel include in the EIR evidence or information that will allow for the determination of business size, size category, or both. Depending on the nature of the business, this includes information on revenue, number of employees, amount of equipment, fleet size, affiliated companies, the nature of the entity, or other factors as applicable.

l. Violation History. Investigative personnel determine whether the subject of the investigation has a violation history, *e.g.*, history of legal enforcement actions resulting in a finding of violation. Investigative personnel include a violation history printout from the Enforcement Information System (EIS) as an IOP. To the extent possible, investigative personnel include final orders showing prior violations as an IOP. Generally, investigative personnel include a person's violation history dating back five years (subject to the FAA Expunction Policy (*see* chapter 7, paragraph 12)) from the date of the violation in the present case or, if the present case involves multiple violations, from the date of the first violation. This time period may be expanded as appropriate to support the selection of a type of action or sanction amount, *e.g.*, when repeated violations supporting a legal enforcement action or an increased sanction amount span across this period. Final airman orders are in the airman file in the custody of FS Airman Certification (AFB-720).

m. Evidence of Compliance Disposition. Evidence of an apparent violator's compliance disposition is included in the EIR. For example, an apparent violator's knowing provision of intentionally false or misleading information to the FAA reflects a poor compliance disposition. Further, a refusal to provide records as required under FAA regulations during an investigation may also show a poor compliance disposition. An act or omission contrary to statutory or regulatory requirements after receiving notice through an action other than a legal enforcement action, *e.g.*, a prior compliance, informal, or administrative action, may also reflect a poor compliance disposition. Investigative personnel include an administrative action printout from EIS as an IOP. Investigative personnel summarize compliance or informal actions and include the summary as an IOP. Generally, investigative personnel include all prior compliance, informal, or administrative actions dating back five years for entities and two years for individuals (subject to the FAA Expunction Policy (*see* chapter 7, paragraph 12)) from the date of the violation in the present case or, if the present case involves multiple violations, from the date of the first violation. These time periods may be expanded as appropriate to support the selection of a type of action or sanction amount. Failing to respond to an LOI, retaining an attorney, or contesting a violation does not support a negative compliance disposition determination.

n. Evidence of Corrective Action. Evidence of an apparent violator's corrective action presented during an investigation is included in the EIR. Corrective action is a mitigating factor when it exceeds regulatory or statutory requirements, corrects the underlying violation, and is designed to prevent future violations. The significance of corrective action as a mitigating factor is determined by the timeliness of the action (*e.g.*, before FAA discovery of a violation, after discovery but before legal enforcement action is initiated, or after legal enforcement action is taken) and how extensive it is.

o. Charts and Maps. Investigative personnel include as IOPs charts and maps that are current on the date of the violation to show features, such as airports, terrain, congestion, flight paths, and obstructions. They may be useful both at hearing and for interviewing witnesses. When notations are made on a chart or map, such as the depiction of an aircraft's flight path or an unrepaired runway, investigative personnel also include a clean copy. Investigative personnel document the source of the chart or map and the source and reasons for any added markings. They also include evidence of the document's effective date. Physical charts and maps are

converted for inclusion in eEIRs. Investigative personnel retain the original chart or map since AGC-300 counsel may later request it.

p. Accident or Incident Information. When available, investigative personnel include complete reports of aircraft accidents or incidents as an IOP.

12. Program Office-Specific Evidence. Each program office has expertise in determining what evidence is necessary to advance an investigation or enforcement action. This paragraph provides an overview of proof commonly collected by specific program offices in carrying out the agency's statutory authority and enforcement responsibilities. The lists are not all-inclusive, do not attempt to cover all, or even most, possible evidence or IOPs, and are considered in conjunction with proof listed elsewhere in this chapter and program office guidance. Evidence and IOPs critical in advancing legal enforcement actions are necessarily case specific and may even change during the course of an investigation. When there is no associated EIR, investigative personnel gather the evidence discussed below, but do not prepare the evidence as IOPs.

a. Flight Standards Service. The following types of IOPs are typically most applicable in Flight Standards Service investigations.

(1) NOTAM. When a NOTAM is relevant to a case, such as a case involving an apparent temporary flight restriction violation, investigative personnel include the NOTAM as an IOP, along with any evidence showing that there was an operation contrary to the NOTAM, including radar data.

(2) Logbooks. Aircraft logbooks (and historical aircraft records) contain inspection, maintenance, and AD compliance records. Airman logbooks typically contain pilot flight time, the type and registration number of the aircraft flown, and flight conditions. When aircraft logbooks, pilot logbooks, or similar records are relevant to a case, and are not provided in response to an informal request, the FAA uses its regulatory authority (such as 14 C.F.R. § 91.417(c) and § 61.51(i)(1)(i)) to require the production of the records.

(3) Type Certificate or Type Design. When a case involves an operation of an aircraft while in nonconformity with its type certificate and this is relevant to the case (*e.g.*, there is an allegation that the aircraft was unairworthy), investigative personnel obtain and include as IOPs a copy of the relevant portions of the type certificate or type design (including blueprints or schematic diagrams, if obtainable) and type certificate data sheet, as well as documents establishing that the aircraft's condition does not meet applicable standards (when available).

(4) Evidence That an Aircraft Was Unsafe For Flight. When a case involves an aircraft that was operated when it was unsafe for flight, investigative personnel include as IOPs evidence of the condition of the aircraft, such as maintenance records and photographs.

(5) Airworthiness Directive. When a case involves noncompliance with an AD, investigative personnel include as IOPs a copy of the AD, maintenance records reflecting the absence of AD compliance, and/or photographs and other documentation of the condition of the aircraft that demonstrates a lack of compliance. If the AD makes a service bulletin mandatory,

and the EIR involves noncompliance with the service bulletin, then the service bulletin is included as an IOP.

(6) Failure to Perform or Improper Performance of Maintenance (Including Inspections). When a violation is alleged involving the failure to perform, or improper performance of, maintenance (including inspections), investigative personnel obtain and include as IOPs evidence that the maintenance was required and was not performed, or was performed improperly. This evidence may include maintenance or inspection manuals, maintenance logbooks, discrepancy logs, eyewitness statements, and photographs.

(7) Operations. When an operational violation is alleged, investigative personnel obtain and include as an IOP evidence that the aircraft was operated. When operations over a period of time are at issue, investigative personnel obtain evidence of how many times and when the aircraft was operated (to the extent possible). This evidence may include flight logs, eyewitness statements, operator records, and rental agreements.

(8) Weather and Time of Day Records. When weather or time of day (*e.g.*, day, night, or twilight) are relevant to a case, investigative personnel obtain certified copies of the relevant information from government sources such as the National Weather Service, the National Climactic Data Center, or the U.S. Naval Observatory. Investigative personnel obtain area forecasts, terminal forecasts, and airmen meteorological information. When applicable, investigative personnel collect witness statements about weather conditions at the time of operation.

(9) Air Traffic Data. Most air traffic data is automatically preserved for only a short period of time. Accordingly, investigative personnel promptly identify potentially relevant air traffic data and ensure it is preserved on a long-term basis. Air traffic data typically includes recordings of flight service station briefings, voice recordings for individual sectors, radar data, flight plans, telephonic recordings, air traffic radar replays, and Automatic Dependent Surveillance – Broadcast (ADS-B) Out data. Air Traffic Quality Control Group personnel generally certify air traffic data before providing it to investigative personnel in connection with legal enforcement actions. Refer to Order JO 8020.16, as amended, *Air Traffic Organization Aircraft Accident and Incident Notification, Investigation, and Reporting*, and Order 8900.1 for additional details on air traffic data.

(10) Unmanned aircraft system (UAS). Evidence for cases involving UAS operations in violation of FAA regulations is generally the same as for manned aircraft and may also include waivers, authorizations, or exemptions specific to UAS operations, such as low altitude authorization and notification capability (LAANC) authorizations. Additionally, evidence could include (1) the physical characteristics of a UAS (*e.g.*, weight, registration markings, lighting); (2) information collected during the forensic analysis of a UAS (*e.g.*, data from an internal flight log, flight controller, or external removable media card); and (3) UAS digital investigation reports.

(11) Independent Violations of 14 C.F.R. § 91.13. Every violation of an operational regulation is also a violation of 14 C.F.R. § 91.13. In addition to these *residual* violations of

14 C.F.R. § 91.13, there are also *independent* violations of 14 C.F.R. § 91.13 that are not linked with another specific regulatory violation. (Some examples of such violations can be found in chapter 9, Fig. 9-9-b). When the EIR alleges an independent 14 C.F.R. § 91.13 violation, investigative personnel include in the Other Information section of Section B of the EIR an analysis of why the conduct was careless or reckless. Investigative personnel include as IOPs in the EIR evidence establishing all the elements of the regulation, *see* Figure 4-2, above, as well as all evidence necessary to support the analysis presented in Section B.

(12) Interference Regulations and 49 U.S.C. § 46318. Conduct by unruly passengers and other individuals may violate interference regulations (such as 14 C.F.R. §§ 91.11, 121.580, 125.328, and 135.120), be proscribed under 49 U.S.C. § 46318, or both. Investigative personnel, when developing an EIR, are mindful of the differences in scope between the statute and the regulations. For example, 49 U.S.C. § 46318 is broader than the interference regulations in some ways because it prohibits conduct regardless of the operating status of the aircraft or whether the conduct affected crewmembers. However, the regulations are broader than the statute in that they apply to conduct that does not rise to the level of assault or a threat of assault. Investigative personnel preparing an EIR concerning an unruly passenger interview or obtain statements from all pertinent witnesses, including involved cabin crew and nearby passengers. Investigative personnel coordinate the referral of all apparent violations involving criminal conduct by unruly passengers, regardless of their nature (*e.g.*, assaults, sexual misconduct), as described in paragraph 15.g.(1) of this chapter.

(13) Pilot Records Improvement Act (PRIA) or Pilot Records Database (PRD). For apparent violations of PRIA or PRD, FAA investigative personnel include as IOPs (as appropriate): (i) records showing when an individual began service as a pilot for the employer; (ii) records of relevant PRIA requests and responses made or received by the employer; and (iii) records from PRD reflecting the employer's failure to timely upload or to access and evaluate PRD-required records and information.

(14) Material Contribution to Revocation. Whenever investigative personnel propose the revocation of a certificate issued under 14 C.F.R. part 119, 125, 142, or 145, they coordinate with AGC-300 counsel to identify individuals who may have materially contributed to the revocation. Investigative personnel obtain and include as IOPs evidence establishing: (i) the individual's position with, control over, or ownership of the entity; and (ii) that the individual performed an act, or failed to perform an act, that materially contributed to the circumstances causing the revocation. This evidence may include intentionally falsified records, OpSpecs showing the position of the individual with the entity, emails showing the exercise of control, and witness statements.

b. Drug Abatement. The following types of IOPs are typically most applicable in Drug Abatement investigations.

(1) General. For investigations into apparent violations by entities for noncompliance with drug and alcohol testing programs, investigative personnel generally include as IOPs: (i) drug and alcohol testing OpSpecs (*see* paragraph 11.g., above (*i.e.*, A001, A049, A449, D085)) or program registrations; (ii) records showing when an employee was hired, transferred,

or returned to perform a safety-sensitive function; (iii) documentation showing that a function was safety-sensitive (*e.g.*, position description); (iv) documentation that an employee performed a safety-sensitive function while not covered by a drug or alcohol testing program; and (v) a record of diligent search to show that an employer did not meet regulatory requirements.

(2) Pre-Employment. For cases involving an employer's apparent failure to conduct pre-employment drug testing, investigative personnel include as IOPs records showing the employer did not: (i) conduct a pre-employment test before the employee was hired or transferred into a safety-sensitive function; and/or (ii) receive a verified negative drug test result for a pre-employment test before the employee was hired or transferred into a safety-sensitive function.

(3) Random Pool – Failure to Include. For cases involving an employer's apparent failure to include a safety-sensitive employee in a random testing pool, investigative personnel include as IOPs: (i) all relevant random testing pool lists during the tenure of the employee's employment, including those in which the employee was not included; and (ii) random selections for the period of time the employee was not included in the random pool.

(4) Return-to-Duty. For cases involving an employer's apparent failure to meet return-to-duty testing requirements, investigative personnel include as IOPs: (i) documentation of the "trigger event" for the return-to-duty test, *e.g.,* refusal to test, verified positive drug test result, alcohol concentration of 0.04 or greater test result, pre-duty alcohol use, or alcohol use following an accident; (ii) substance abuse professional (SAP) records showing the SAP's qualifications, initial and follow-up evaluation, determination of successful completion of education and/or treatment, and follow-up testing schedule; and (iii) when applicable, a copy of a federal custody and control form and/or alcohol testing form showing the untimely completion of the return-to-duty test or that the test was not under direct observation.

(5) Follow-Up. For cases involving an employer's apparent failure to meet follow-up testing requirements, investigative personnel include as IOPs: (i) documentation of the "trigger event" for the follow-up test, *e.g.,* refusal to test, verified positive drug test result, alcohol concentration of 0.04 or greater test result, pre-duty alcohol use, or alcohol use following an accident; (ii) SAP records showing the SAP's qualifications, initial and follow-up evaluation, determination of successful completion of education and/or treatment, and follow-up testing schedule; (iii) a copy of the federal custody and control forms for follow-up tests; and (iv) when applicable, a copy of a federal custody and control form and/or alcohol testing form showing the untimely completion of a follow-up test or that any follow-up test was not under direct observation.

(6) Drug and Alcohol Records Check. For many cases involving a new employer's apparent failure to meet drug and alcohol records check requirements for an employee it intends to use to perform a safety-sensitive function for the first time for that employer under 49 C.F.R. § 40.25, investigative personnel include as IOPs: (i) documentation indicating that the employee previously worked for a DOT-regulated employer during the two years before the date of application or transfer into the new safety-sensitive position; (ii) documentation showing that the employee performed a safety-sensitive function after 30 days from the date on which the

employee first performed a safety-sensitive function for the new employer; and (iii) evidence indicating that the new employer failed to request (or timely request) documentation from the DOT-regulated employer showing that the employee violated DOT/FAA drug or alcohol regulations, or that the employee successfully completed DOT return-to-duty requirements, before the expiration of the 30-day period referenced above, including witness statements supporting the absence of such a request.

(7) Failure to Implement. For cases involving an employer's apparent failure to implement a drug and alcohol testing program, investigative personnel include as IOPs: (i) documentation that an employee performed a safety-sensitive function and (ii) a record of diligent search to show that the employer failed to comply with any FAA drug and alcohol testing program requirement, including DOT drug or alcohol testing or records check, OpSpec or contractor registration, and service agent requirements.

(8) Individual Test. In cases against individuals for refusing a test, or receiving a verified positive drug test and/or an alcohol concentration of 0.04 or greater test result, investigative personnel include as IOPs the following, as applicable: (i) documentation that the employee was in a safety-sensitive position, or was an applicant for such a position subject to pre-employment drug testing; (ii) testing notification information; (iii) copies of federal drug testing custody and control and/or breath alcohol testing forms; (iv) test results (laboratory data package); (v) calibration records for breath tests; (vi) training and/or qualification records for the collector, SAP, and Medical Review Officer (MRO); (vii) diagrams or photographs of the collection facility; (viii) the MRO's result report and examination notes; (ix) the SAP's referral letter and evaluations; (x) investigative personnel records of interview, including with the employee, employer's drug and alcohol program manager (and other management officials), designated employer representative, the individual who notified the employee of the test, collector, breath alcohol technician, and MRO; (xi) the employee's drug and alcohol training records; and (xii) a statement from the Federal Air Surgeon (or designee) that a pilot does not meet airman medical certification standards.

(9) Permanent Disqualification. In cases involving the permanent disqualification from performance of a safety-sensitive function, investigative personnel obtain and include as IOPs evidence establishing that the individual: (1) had verified positive drug test results on two DOT-required drug tests or engaged in on-duty drug use; (2) has twice violated the alcohol provisions at 14 C.F.R. §§ 120.19(b), (d), (e) and (f) or 120.37(b), (d), (e), and (f); or (3) engaged in on-duty alcohol use. This evidence may include prior orders establishing such violations or DOT-required drug or alcohol testing results.

c. Aerospace Medicine. The following is a list of possible proof for use in cases involving qualification to hold an airman medical certificate.

(1) Letters. All relevant letters between FAA personnel and the airman are included in the EIR, including: (i) FAA letters to the airman seeking additional medical information, advising the airman of a failure to provide additional medical information, and informing the airman that they are not qualified (or that their qualification cannot be determined); and (ii) letters from the airman responding to any such FAA letter. FAA personnel include in the EIR

the proof of service for any FAA letter. If an FAA letter is returned undelivered or unclaimed, FAA personnel include the unopened envelope for the letter in the EIR.

(2) Medical Information Submitted. When a case involves an airman's failure to comply with a request for additional medical information, and the airman provided some information in response to the request, investigative personnel include that information in the EIR.

(3) Airman Communications. FAA personnel memorialize and preserve contacts from an airman or an airman's representative on any subject relevant to qualifications to hold an airman medical certificate.

d. Airports. The following types of IOPs are typically most applicable in Airports investigations.

(1) Airport Certification Manual. When compliance with an Airport Certification Manual is at issue in a case, the applicable portions of the Certification Manual are included as an IOP.

(2) Airport Emergency Plan. When an airport's emergency procedures, vehicles, equipment, or training are at issue in a case, the applicable portions of the airport's emergency plan are included as IOPs.

(3) Aircraft Operations. When the operation of aircraft at the airport is an element of the violation at issue, evidence of the aircraft operation is included as an IOP.

(4) Records Required to be Maintained Under 14 C.F.R. part 139. For investigations involving noncompliance with training or inspection requirements, records for such requirements are included as IOPs.

e. Aircraft Certification. The following types of IOPs are typically most applicable in aircraft certification investigations.

(1) Production Approvals. When an investigation involves a production approval, investigative personnel obtain and include as IOPs copies of the production certificate (PC), technical standard order authorization (TSOA), parts manufacturer approval (PMA), type design, portions of the quality control manual pertaining to production approvals and traceability, any relevant statement from quality control personnel, and photographs of relevant parts.

(2) Airworthiness Approvals. When an investigation involves an airworthiness approval, investigative personnel obtain and include as IOPs copies of portions of the quality control manual pertaining to production approvals and traceability, any relevant statement from quality control personnel, and all available photographs of relevant components.

(3) Organizational Designation Authorization (ODA). When an investigation involves an ODA, investigative personnel obtain and include as IOPs copies of the authorization, type design, portions of the approved procedures manual pertaining to the noncompliance, any relevant statement from unit member personnel, and all available photographs of relevant items.

f. Office of Hazardous Materials Safety. The following types of IOPs are typically most applicable in AXH investigations.

(1) Written Hazardous Materials Incident Reports. A person in possession of a hazardous material is required to file a report under 49 C.F.R. § 171.16 when: (i) an incident occurs that is required to be reported under 49 C.F.R. § 171.15 (including death, injury, evacuation, or flight diversion as a direct result of a hazardous material); (ii) undeclared hazmat is discovered; (iii) hazmat is unintentionally released from a package; (iv) hazmat waste was discharged during transportation; or (v) a fire, violent rupture, explosion, or dangerous evolution of heat (*i.e.*, an amount of heat sufficient to be dangerous to packaging or personal safety, such as charring, melting, or scorching of packaging) occurs as a direct result of a battery or battery-powered device. The written report must be on DOT Form 5800.1 (hazardous materials incident report) and filed in duplicate within 30 days. Investigative personnel include these reports as IOPs in the EIR.

(2) Photographs of Hazmat Shipment. When investigative personnel have access to the hazmat shipment, they photograph the packaging and its contents. These photographs include (where there is no risk to the inspector's safety or of further release of hazmat): (i) all six sides of the outer packaging; (ii) any hazardous material marking or label on the outer packaging; (iii) any shipping label; (iv) any document pouch affixed to the outer package and the documents in that pouch; (v) any staining on the outer packaging or other evidence of release of hazmat; (vi) the contents of the package; (vii) any label on an inner package; and (viii) any indication on the contents of the package showing that the material was hazardous or dangerous. The photographs are sufficiently detailed and clear. Investigative personnel seek photographs from others when available. Investigative personnel include these photographs as IOPs.

(3) Material Safety Data Sheet (MSDS) or Safety Data Sheet (SDS). When hazmat is shipped in violation of the HMR, the MSDS or SDS for the hazardous material is included as an IOP. An MSDS or SDS typically includes hazmat descriptions and shipping names, hazard classes or divisions, identification numbers, packing groups, label codes, potential hazard effects, physical or chemical properties, and related information. Investigative personnel request the MSDS or SDS from the offeror, but obtain it from other sources, including the manufacturer, when the offeror does not provide an MSDS or SDS.

(4) Special Permit, Approval, or FAA Exemption. When the apparent violator is operating under a special permit, approval, or FAA exemption, and commits an apparent violation of the terms of these allowances, a copy of the special permit, approval, or exemption is included as an IOP. If AXH investigative personnel determine that the apparent violator has not complied with the terms of the allowance, they notify AXH management, who notifies the issuing office, *i.e.*, the Pipeline and Hazardous Materials Safety Administration (PHMSA) or Flight Standards Service. As part of this notification, investigative personnel draft a statement assessing whether and, if so, how the apparent violation may affect the apparent violator's fitness to continue operating under the allowance.

(5) Shipping Documents. Shipping documents may establish whether the shipment was declared or undeclared, accepted properly, loaded and segregated properly, and whether the pilot-in-command was properly notified about the hazmat. Investigative personnel include copies of all available shipping documents, including air waybills, as IOPs.

(6) Notification of Pilot-in-Command (NOPIC). When a case involves: (i) a failure to notify (or incomplete or improper notification of) the pilot-in-command of hazmat on an aircraft; (ii) improper acceptance, loading, or segregation of hazmat; or (iii) any similar transportation function, investigative personnel include as IOPs hazmat-related documentation given to the pilot-in-command, if any.

(7) Financial Information. Investigative personnel include as IOPs financial information, including information on business size and ability to pay, to the extent that such information is available. Investigative personnel obtain this information from reliable financial databases, the apparent violator, or both. Depending on the nature of the business, this includes information on revenue, number of employees, amount of equipment, fleet size, corporate structure, affiliated companies, officers, the nature of the entity, and business address, as applicable.

g. Commercial Space Transportation. When an investigation involves a person's failure to comply with a license, permit, or safety approval, investigative personnel include as IOPs FAA-required documentation related to the activity. This information may include: (1) license, permit, or safety approval and application material; (2) any waiver requests and approvals; (3) payload information; and (4) evidence reflecting a deviation from FAA authorizations, such as launch vehicle configuration and performance information.

13. Special Evidentiary Considerations.

a. Evidence That *Cannot* be Considered in an Investigation or be Used in an Enforcement Action.

(1) Cockpit voice recorder. Use of the information recorded on a cockpit voice recorder as evidence is prohibited by 14 C.F.R. §§ 121.359 and 135.151.

(2) Aviation Safety Reporting Program (ASRP) reports. Use of ASRP reports as evidence is prohibited by 14 C.F.R § 91.25 unless the case concerns an accident or criminal offense.

(3) Digital Flight Data Obtained from an FAA-Approved Flight Operations Quality Assurance (FOQA) Program. Use of digital flight data from an operator's FOQA data or aggregate FOQA data as evidence is prohibited by 14 C.F.R. § 13.401 if the data is from an approved FOQA program unless the case concerns deliberate violations or a criminal offense.

(4) Aviation Safety Action Program (ASAP) Reports and Contents. Neither a written ASAP report nor the content of that report is used in an enforcement action unless the event reported involves possible criminal activity, substance abuse, controlled substances, alcohol, or intentional falsification.

(5) Voluntary Disclosure Reporting Program (VDRP) Reports and Contents. Disclosures accepted under the VDRP (and not later withdrawn by the FAA) are not used in an enforcement action. However, initially rejected disclosures and disclosures accepted under the VDRP but later withdrawn by the FAA can be used in an enforcement action, unless otherwise provided for in program office guidance.

(6) NTSB Evidence. Under 49 C.F.R. § 821.20(c), the NTSB prohibits the use of: (i) testimony from NTSB accident investigators or other NTSB personnel; or (ii) any documentary evidence gathered or prepared by NTSB personnel during the course of an NTSB accident investigation. NTSB final reports, including causation and conclusions, may be used as evidence.

b. Information That Is Not Used as Evidence or IOPs.

(1) Attorney Communications. Communications to or from AGC-300 counsel, such as emails and memoranda, are covered by the attorney-client privilege and are not used as evidence or as IOPs in an EIR.

(2) Deliberative Process Materials. Writings reflecting internal deliberative process are not used as evidence or IOPs. Such writings include evaluations and recommendations as to: (i) statutes or regulations violated; (ii) the selection of actions in accordance with chapter 5, including compliance, administrative, or legal enforcement action; (iii) the selection of type of legal enforcement action; and (iv) sanction amount.

(3) Internal Tracking Systems. Internal reporting and analysis system records are generally not used as evidence or IOPs. However, investigative personnel print out EIS entries, and summarize compliance or informal action entries, and include them as an IOP as appropriate. *See* paragraph 11.l and m., above, for guidance on including EIS printouts and compliance or informal action summaries as an IOP.

(4) Grid Copies. Documents with a "grid" for signatures or initials are generally not used as evidence or IOPs. Evidence and IOPs are original documents or true and accurate copies of those documents. As such, the copy of an outgoing letter that is included as evidence or an IOP does not include a grid, because the actual letter sent did not include a grid.

c. FAA/NTSB Aircraft Accident/Incident Investigations. FAA personnel investigate aircraft accidents and incidents that are also the subject of an investigation by the NTSB in accordance with the guidance in Order 8020.11, as amended, *Aircraft Accident and Incident Notification, Investigation, and Reporting*. FAA personnel who conduct an accident or incident investigation in such a circumstance determine whether various areas within the FAA's responsibilities as detailed in Order 8020.11, as amended, are involved, including whether the accident or incident involved noncompliance with FAA statutes or regulations.

(1) If the FAA has sufficient personnel to participate in an NTSB accident or incident investigation and an independent FAA investigation into the matter, the FAA assigns separate FAA personnel to support both investigations. FAA personnel may testify in enforcement

proceedings before the NTSB or DOT in connection with FAA accident or incident investigations involving apparent statutory or regulatory noncompliance.

(2) Some, if not all, of the investigation activities for both NTSB and independent FAA investigations can be conducted together to minimize the burden on witnesses and parties to the investigation. FAA personnel conducting independent investigations, however, notify witnesses or the subjects of requests for evidence that they are not working under the direction of the NTSB and take other measures to ensure against the appearance of NTSB involvement in an independent FAA investigation, such as not using NTSB forms for witness statements.

14. Submission of Additional Evidence before Final Disposition of Enforcement Action. If investigative personnel acquire new evidence or information after they forward an EIR to reviewing personnel or AGC-300 counsel, they submit that additional material, along with an evaluation and recommendations about the material. Additionally, reviewing personnel or counsel may request further investigation to supplement the original EIR.

15. Special Circumstances in Investigations.

a. Servicemembers Civil Relief Act. The Servicemembers Civil Relief Act (50 U.S.C. § 3901 *et seq*.) applies to FAA legal enforcement actions and provides protection for members of the military when they are subject to civil action, including FAA legal enforcement actions. Among other relief, the statute protects servicemembers from default judgments while in military service. When the subject of an investigation may be a servicemember, investigative personnel include information on the subject's service status in any associated EIR. AGC-300 counsel determines the applicability of this statute in any legal enforcement action brought against a servicemember.

b. Public Aircraft Operations and Government Aircraft. Whether an aircraft operation is public or civil may be a factor in determining if the operation violated FAA regulations. To qualify as a public aircraft operation, the operation must meet the definition for a public aircraft in 49 U.S.C. §§ 40102(a)(41) and 40125. Although public aircraft operations must comply with certain FAA regulations, including those applicable to all aircraft operating in the National Airspace System (NAS), other civil certification and safety oversight regulations do not apply to public aircraft operations. In general, regulations that include the term "civil aircraft" in their applicability language do not apply to public aircraft operations. Any governmental aircraft operation that does not meet the public aircraft statutory definition is a civil aircraft operation and must be conducted in accordance with all FAA regulations applicable to the operation.

(1) Advisory Circular (AC) 00-1.1, as amended (Public Aircraft Operations) (located at http://drs.faa.gov), provides guidance for determining whether an operation is public or civil. Whether an operation qualifies as a public aircraft operation is determined on a flight-by-flight basis and involves considerations relating to aircraft ownership, the operator, the purpose of the flight, and the persons on board the aircraft. An investigation into operations of government-owned aircraft includes collecting evidence on these considerations for the purpose of assessing the aircraft's public or civil status at the time of the operation.

(2) The FAA has authority to initiate compliance or enforcement action against an individual or operator for violating FAA regulations applicable to all aircraft operating in the NAS (*e.g.*, maintaining minimum safe altitude) even during public aircraft operations (regardless of whether the aircraft or individuals involved held certificates). The FAA may also take remedial action against an airman who operated a public aircraft when the airman demonstrated a lack of qualification during the operation. In addition, the FAA may initiate compliance or enforcement action for a government aircraft operation that does not meet the statutory definition for public aircraft. For all such circumstances, FAA investigative personnel process the matter in accordance with chapter 5.

(3) Although Flight Standards personnel do not open an EIR for an unsafe operation that would have been violative of FAA regulations but for the public aircraft status of the operation (*e.g.,* operation of an aircraft in an unairworthy condition), they consider referring information relating to an unsafe operation to the governmental entity responsible for the operation for appropriate action. This information may include items already in the FAA's possession (*e.g.*, controller statements, tapes, radar, transcripts) and from sources outside the FAA relevant to the matter.

c. Military Referrals. Under 49 U.S.C. § 46101(b), the Administrator refers any apparent violation of FAA statutes or regulations by a member of the U.S. armed forces committed while performing official duties as a complaint to the Secretary of the appropriate military department so that the department can take responsive action (*e.g.*, corrective or disciplinary action). The military department must inform the FAA of the action taken within 90 days of receipt of the complaint.

(1) FAA personnel refer information relating to apparent violations covered by 49 U.S.C. § 46101(b) to a liaison for the appropriate military department and notify the liaison that (i) the matter is referred as a complaint in accordance with 49 U.S.C. § 46101(b); and (ii) the military department must inform designated FAA personnel of the action taken in response to the apparent violation within 90 days of the military department's receipt of the information. EIRs are not required for military referrals.

(2) Military referrals commonly involve apparent operational violations tracked by the Air Traffic Organization (ATO). For such apparent violations, ATO personnel take the actions described in paragraph 15.c.(2)(i)-(ii), below.

(i) ATO provides all information relating to the apparent violation in its possession to a liaison for the appropriate military department. In addition to transmitting the information for the apparent violation, ATO provides the notifications referenced in paragraph 15.c.(1)(i)-(ii), above. ATO provides certified data only when requested by the appropriate military authority, Flight Standards Service, or the Office of the Chief Counsel. Any certified data must be requested within 38 days of the violation.

(ii) ATO also provides information relating to the apparent operational violation to Flight Standards Service investigative personnel to determine whether legal enforcement action is appropriate.

(3) If the member of the U.S. armed forces who commits an apparent violation while performing official military duties also holds an FAA-issued pilot certificate and the apparent violation raises a question or shows a lack of qualifications to hold the certificate, investigative personnel process the case as a legal enforcement action consistent with this order. The EIR for the case includes information already in the FAA's possession (*e.g.*, controller statements, tapes, radar, transcripts) and from sources outside the FAA relevant to the matter (such as witness statements from non-FAA personnel). The FAA processes apparent violations by members of the U.S. armed forces while performing official duties that do not raise a question or show a lack of qualifications exclusively as military referrals.

(4) If the member of the U.S. armed forces who commits an apparent violation was not performing official military duties during the apparent violation, FAA investigative personnel process the matter in accordance with chapter 5 and program office policy.

d. Violations of Foreign Aviation or International Civil Aviation Organization (ICAO) Regulations by FAA Certificate Holders, U.S. Citizens, or U.S. Companies. The FAA receives reports of violations of foreign aviation laws by FAA certificate holders, U.S. citizens, or U.S. companies from different sources, including complaints by foreign aviation authorities or individuals to U.S. Foreign Service Posts or directly to the FAA. *See* Order 8900.1, *Flight Standards Information Management System* (located at http://drs.faa.gov), for more on operations of civil aircraft of U.S. registry outside the United States).

(1) FAA personnel refer reports of violations of foreign aviation laws to the FAA office having geographical and compliance and enforcement responsibility for the country in which the alleged violation occurred. This office, in turn, investigates the complaint and reports the results of the investigation to the appropriate foreign aviation authority (typically through the U.S. Foreign Service Post in that country). Investigative personnel conduct any investigation in a foreign country with the concurrence of the appropriate foreign aviation authority and coordinate any such investigation with the U.S. Foreign Service Post in that country.

(2) When the FAA has authority to take action concerning the operation of U.S.-registered aircraft outside the United States, investigative personnel select the appropriate action (*see* chapter 5) and process EIRs, if applicable (*see* chapter 6). These actions generally involve apparent violations of 14 C.F.R. § 91.703, which requires, in part, that each person operating U.S.-registered aircraft outside the U.S. comply with foreign flight regulations or ICAO Annex 2 (Rules of the Air), most of 14 C.F.R. part 91 (when not inconsistent with applicable foreign regulations), and Reduced Vertical Separation Minimums (RVSM) regulations.

(3) When a foreign aviation authority refers a matter to the FAA, but the case does not result in legal enforcement action, the program office advises the foreign aviation authority of the action taken or that no action was taken.

e. Violations of FAA Regulations by Persons Residing Outside the U.S. Investigative personnel handle cases involving violations of U.S. statutes and regulations by persons residing

outside the U.S. in accordance with the guidance for selecting actions and processing EIRs in this order, if appropriate (and the guidance in Order 8900.1 relating to the holders of FAA pilot certificates and foreign pilot licenses who are not operating under an air operator certificate). In investigating such cases, investigative personnel may seek assistance from the FAA office having geographical and compliance and enforcement responsibility for the country in which the person resides. That office, in turn, may consult with the U.S. Foreign Post for the country for assistance in collecting evidence.

f. Investigation of Crewmembers for Operating Under the Influence of Alcohol or Drugs. When investigative personnel receive a report of a crewmember who may operate a civil aircraft under the influence of alcohol or drugs, they take immediate action to notify appropriate FAA personnel, air carrier management, and law enforcement. The prevention of a crewmember from performing crewmember duties while under the influence is of the highest priority.

(1) Notification of FAA Personnel. Investigative personnel immediately notify their supervisor and, for a crewmember for an air carrier or commercial operator, the responsible Flight Standards office or the certificate management unit that holds the entity's operating certificate. Investigative personnel also notify the Drug Abatement Division in Headquarters (AAM-800), the Airman Medical Certification Division (AAM-300), the appropriate Regional Flight Surgeon, and the ASH Regulatory Investigations Division (AXE-700) of the information.

(2) Notification to Air Carrier and Commercial Operator Officials. If the crewmember is an employee of an air carrier or commercial operator, investigative personnel immediately notify an appropriate management official for the entity. Investigative personnel provide all relevant information to enable the entity to conduct its own investigation while protecting any confidential source. Investigative personnel also notify the entity's drug program manager to ensure that the entity requires drug and/or alcohol testing for the crewmember. If the entity does not satisfactorily respond to the notification, investigative personnel immediately elevate the matter to their program office management, who will immediately notify AGC-300 counsel. FAA elevation of the matter continues (up to and including the Administrator) as necessary to induce the entity to take appropriate action.

(3) Notification to Law Enforcement. Investigative personnel immediately notify state or local law enforcement personnel, when appropriate, and request their assistance in the investigation or other appropriate action (such as meeting the aircraft on landing to conduct a drug and/or alcohol test).

(4) Conducting an Investigation on the Scene. If investigative personnel encounter an individual they have reason to believe acted, or attempted to act, as a crewmember of a civil aircraft while under the influence of alcohol and/or drugs, they request the identification of the individual, including the individual's pilot and airman medical certificates. If the individual refuses to provide identification, investigative personnel consider contacting airport personnel or the local fixed-based operator in an effort to identify the individual. If the crewmember tries to leave the scene, investigative personnel do not attempt to physically detain the crewmember. Investigative personnel notify airport security, law enforcement, or both, providing a full description of the crewmember and, if applicable, the crewmember's vehicle and license number.

On a controlled airport, investigative personnel notify air traffic control so that the aircraft can be denied clearance to take off or tracked by radar. Investigative personnel may consult a reviewing office and AGC-300 counsel for help in determining what evidence to obtain.

(5) Blood and Urine Sample. If the NTSB obtains a blood or urine sample from the airman as part of its investigation and it is tested at the FAA Mike Monroney Aeronautical Center, investigative personnel request a litigation package from the FAA's toxicology department.

g. Criminal Investigations. FAA investigations sometimes intersect with federal or state criminal investigations or uncover potential criminal conduct, and sometimes other authorities request FAA assistance in criminal investigations.

(1) Discovery of Potential Criminal Conduct. When investigative personnel discover an apparent violation of any federal or state criminal statute in a matter involving aviation, they immediately coordinate with their supervisor, the affected program office, ASH, and AGC-300. For example, investigative personnel follow this coordination process for cases involving 49 U.S.C. §§ 44106, 44710, and 44726 actions in the absence of a criminal conviction, intentional falsifications of FAA-required records, sexual misconduct of a criminal nature on board aircraft, or willful or reckless violations of the HMRs. After coordination, if it is agreed that criminal conduct has possibly occurred, ASH refers the matter to the DOT OIG; another Federal law enforcement agency (*e.g.*, FBI) if appropriate, or both. FAA employees also have the option of reporting a suspected violation via direct referral to OIG through the OIG hotline at 800-424-8071, at http://www.oig.dot.gov/hotline, by email at hotline@dot.oig.gov, or by mail to Office of Inspector General 1200 New Jersey Avenue, S.E., West Building, 7th Floor, Washington, DC 20590. In addition, FAA personnel may seek assistance from state or local law enforcement personnel for an aviation safety matter requiring immediate action, *e.g.*, situations involving suspected intoxicated pilots.

(2) Securing Evidence and Communication with a Violator in a Criminal Case. As with all investigations, when possible criminal violations are identified, investigative personnel identify potential witnesses and preserve relevant evidence. To avoid compromising the criminal investigation, investigative personnel do not speak to the apparent violator about the criminal investigation or violation.

(3) Concurrent Civil and Criminal Investigations. At times, a suspected statutory or regulatory violation within the investigative responsibility of the FAA also leads to investigation by a federal, state, or local law enforcement agency. Unless otherwise instructed, investigative personnel proceed with the FAA investigation in accordance with this order, maintaining close coordination with law enforcement.

(4) Prioritization of Investigations. DOT OIG or other criminal investigations take priority over FAA enforcement investigations except those that require or may require immediately effective remedial action or action to address a hazmat imminent hazard. Accordingly, FAA enforcement investigations may be held in abeyance when requested by the DOT OIG, a U.S. attorney's office, or other federal law enforcement agency. When a federal law

enforcement agency requests that FAA personnel hold an FAA enforcement investigation in abeyance, investigative personnel coordinate the request with program office management and AGC-300 counsel. Investigative personnel ask that the federal law enforcement agency make the abeyance request in writing. Counsel documents the terms of any agreement between the FAA and the federal law enforcement agency that subordinates an FAA investigation to a criminal investigation. After concurrence, FAA personnel maintain contact with the federal law enforcement agency to ensure that the delay does not compromise the FAA's case. If immediately effective remedial enforcement action or a hazmat imminent hazard action is or may be appropriate, investigative personnel promptly complete the FAA investigation and forward the EIR for appropriate action in coordination with program office management and AGC-300 counsel.

(5) FAA Assistance to Law Enforcement Agency. When a law enforcement agency requests technical assistance from investigative personnel to help in investigating or prosecuting a criminal case, the request is immediately coordinated with program office management, ASH, and AGC-300 counsel. In particular, immediate coordination with program office management and counsel will enable counsel to ensure that the secrecy pertaining to matters occurring before a grand jury does not hamper the FAA's ability to take action for any matter related to the criminal case.

(6) Preparation of an EIR. When the FAA investigation proceeds concurrently with a criminal investigation, coordination with AGC-300 counsel and law enforcement must include a determination of whether the investigations are to be joint or independent. If the investigations are independent, investigative personnel include in the EIR evidence discovered only through the FAA's investigation. If the investigations are conducted jointly, evidence discovered by both FAA investigative personnel and law enforcement may be used in the EIR. Law enforcement requests for copies of the EIR are coordinated with AGC-300. Generally, the FAA provides the entire EIR for federal investigations and the releasable portions of the EIR for state and local investigations.

16. Administrative Subpoenas. Under 49 U.S.C. § 46104(a), the Administrator has the authority to subpoena witnesses and records in conducting an investigation. An administrative subpoena requires the person on whom it is served to provide either testimony or records on matters that are under investigation. Either the person to whom the subpoena is directed or another person may be the subject of an investigation.

a. General. The FAA has various means to ensure the production of evidence, such as a certificate suspension pending compliance with an FAA-required records request. In appropriate circumstances, FAA personnel may obtain an administrative subpoena to compel the production of records, testimony, or both. Administrative subpoenas are generally only used: (1) after other methods of obtaining information have failed; or (2) if investigative personnel believe that evidence will be destroyed following a request for evidence. The FAA may also issue administrative subpoenas when a person is reluctant to provide information without a subpoena to compel their production of records or testimony. Program office personnel consult with AGC-300 counsel about whether an administrative subpoena may be necessary to obtain documents or testimony, and program office personnel and counsel closely coordinate any subpoena request.

b. Issuance and Enforcement. Administrative subpoenas may only be issued by the Chief Counsel, a Deputy Chief Counsel, or an Assistant Chief Counsel (except as provided in paragraph 17, below). Administrative subpoenas may be judicially enforced under 49 U.S.C. § 46104(b) after referral to a U.S. attorney.

c. Requesting an Administrative Subpoena. When program office personnel have concluded, after consultation with AGC-300 counsel, that an administrative subpoena should be issued, they submit a written request to counsel, who will coordinate the subpoena request with the Assistant Chief Counsel for AGC-300. Such a request includes the following information.

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

(2) What is requested? This includes an accurate description of the records or testimony to be subpoenaed. The request must be reasonable in both scope and duration.

(3) Where are the records or the person from whom testimony is sought located?

(4) Who is the custodian of the records?

(5) Where do any records need to be produced? FAA personnel consider whether the records need to be produced at an FAA office or the place of business of their custodian, or whether they may be sent by mail.

(6) On what date should the records be produced or deposition take place? FAA personnel provide a reasonable time to allow for production of subpoenaed records or testimony. If investigative personnel believe that records may be destroyed, they consider arranging for the issuance of a subpoena requiring their immediate production.

d. Service of an Administrative Subpoena. Generally, once the FAA has issued an administrative subpoena, investigative personnel serve it on the person to whom it was issued. Investigative personnel fully complete a return of service indicating when, where, how, and to whom service of the subpoena was made. If there is no return of service, then investigative personnel prepare a memorandum specifically listing the details of how they served the subpoena.

17. Formal Fact Finding Using an Order of Investigation. Under 49 U.S.C. §§ 40113 and 46101, and 5 U.S.C. § 555, the Administrator may conduct formal fact-finding investigations. The purpose of formal fact-finding investigations is to obtain evidence and testimony relevant to apparent violations; it is not to adjudicate disputes. Formal fact-finding procedures may be vital for a thorough enforcement investigation, particularly in complex matters. Such procedures may be helpful for gathering or preserving evidence, coordinating an interregional investigation, or compelling evidence and testimony that would otherwise not be voluntarily provided.

a. Order of Investigation. Formal fact-finding investigations are conducted pursuant to an order of investigation issued under 14 C.F.R. part 13, subpart F. An order of investigation: (1) defines the scope of an investigation by describing the information sought in terms of its subject matter or relevance to FAA functions; (2) sets forth the form of the investigation (*e.g.*, whether depositions will be used); and (3) names the official who is authorized to conduct the investigation. The authority to issue an order of investigation has been delegated to the Chief Counsel, each deputy chief counsel, and the Assistant Chief Counsel for AGC-300. A program office requests the issuance of an order of investigation in writing to AGC-300 counsel, and all such requests are coordinated with the Assistant Chief Counsel for AGC-300.

b. Presiding Officer Duties. The presiding officer may designate additional persons as parties to the investigation, issue subpoenas, order information to be withheld from the public, question witnesses, and administrator oaths. The presiding officer prepares a written report of the investigation based on the record developed during the investigation.

c. Result of Formal Fact-Finding Investigation. The investigating program office takes appropriate action based on evidence developed during the formal fact-finding investigation, the presiding officer's report, and any other information in its possession. If the presiding officer determines that evidence compiled during the investigation supports emergency action, enforcement personnel promptly prepare an EIR and issue an immediately effective order.

18. Special Enforcement Consideration – Immunity for Individuals Who Disclose Information about Potential Violations.

a. General. The FAA uses the term "special enforcement consideration" when it agrees to not take full legal enforcement action against an individual (or "informant") who offers information to the FAA about potential violations committed by both the informant and another person in exchange for the information. Special enforcement consideration may range from no action to sanction mitigation for the informant.

b. Policy. There is a strong public interest in discovering violations that result from pressure from others, or that have been encouraged, condoned, or accepted within a company. The agency, therefore, may grant special enforcement consideration to individuals who, incident to their report of another's violations, voluntarily disclose their own participation in the same or related violations. The FAA generally does not invite or suggest special enforcement consideration unless it is apparent the informant would not otherwise provide the information. The public interest benefits obtained by granting special enforcement consideration must outweigh the expected public interest benefits in pursuing an action against the informant to the fullest extent.

c. Factors to Consider. Factors to consider in determining whether to grant special enforcement consideration and, if granted, to what extent, are as follows:

(1) Whether the information disclosed by the informant indicates noncompliance and, if so, the seriousness of the noncompliance (*e.g.,* whether the noncompliance warrants remedial action);

(2) The significance of an action against the subject of the informant's information (*e.g.*, whether the action will result in compliance and deterrence);

(3) The informant's relative culpability and violation history;

(4) The informant's credibility;

(5) Whether the FAA could reasonably be expected to discover or prove the violations committed by the subject of the informant's information without the informant's cooperation; and

(6) Whether the informant's testimony or information could reasonably be expected to contribute significantly to either an investigation of, or an action against, the subject of the informant's information.

d. Immunity Concerning Criminal Violations. Violations of some regulatory requirements, *e.g.*, intentional falsification of FAA-required records, may also involve violations of criminal laws. Immunity from criminal prosecution can be granted only on approval of the U.S. Attorney General under 18 U.S.C. § 6004. In general, the FAA seeks such approval only when testimony or other information from an individual may be necessary in the public interest and the individual has refused (or is likely to refuse) to testify or provide information on the basis of their privilege against self-incrimination. The immunity sought in such cases is limited by law to use immunity, *i.e.*, an assurance that testimony or information so provided by an individual will not be used against them in a criminal prosecution. Only the Chief Counsel has the authority to refer a request for immunity to the U.S. Attorney General.

e. Receipt of Request for Special Enforcement Consideration. When investigative personnel receive a request for special enforcement consideration, they endeavor to determine:

(1) The informant's identity;

(2) The informant's position, if any, in an organization that is a subject of the informant's information;

(3) The informant's degree of involvement in the violations;

(4) The informant's reliability and credibility;

(5) The informant's violation history;

(6) The identity of the person that is the subject of the informant's information;

(7) The nature of the violations alleged by the informant, including the type and dates of violations, the culpability of the subject of the informant's information, whether the violations are continuing, and the degree of safety hazard created by the violations; and

(8) The FAA's ability to discover or prove the apparent violations without the informant's testimony or assistance.

f. Processing Requests. FAA personnel address any request for special enforcement consideration on a priority basis.

(1) Investigative personnel promptly report any request for special enforcement consideration to their program office management, which, in conjunction with investigative personnel, determines whether a grant of special enforcement consideration may be appropriate considering the factors in paragraph 18.c., above. If program office management concludes that special enforcement consideration may be appropriate, it refers the matter in writing to the Assistant Chief Counsel for AGC-300. The referral contains a detailed discussion of the factors in paragraph 18.c., and may include a recommendation as to the nature and extent of special enforcement consideration. If program office management determines that special enforcement consideration is not warranted, it documents that determination in a memorandum to the file and transmits a copy to the Assistant Chief Counsel for AGC-300.

(2) The Assistant Chief Counsel for AGC-300 evaluates program office referrals for special enforcement consideration in accordance with the factors in paragraph 18.c. The evaluation may require further information, including an interview between the Assistant Chief Counsel for AGC-300 (or a designee) and the informant (or their representative). The Assistant Chief Counsel for AGC-300 may deny a special enforcement request. If the Assistant Chief Counsel for AGC-300 concludes that special enforcement consideration is appropriate, they forward the request in writing to the Chief Counsel. Only the Chief Counsel has the authority to grant special enforcement consideration. The Chief Counsel memorializes any special enforcement consideration determination (whether granted or denied) and the reasons for that determination to the Assistant Chief Counsel for AGC-300. The formal grant of special enforcement consideration is in writing, details the terms and scope of the grant, and must be executed by the informant (or their representative) and appropriate FAA personnel to be effective. The Assistant Chief Counsel for AGC-300 notifies the program office of special enforcement consideration grants or denials.

Chapter 5. Responsibilities of Program Offices When Selecting Among Compliance, Administrative, and Legal Enforcement Actions

1. Purpose. FAA Order 8000.373, as amended, *FAA Compliance Program*, this order, and the policies and procedures issued by program offices guide agency personnel in the exercise of FAA prosecutorial discretion when using compliance, administrative, and legal enforcement actions (and, for the Office of Hazardous Materials Safety (AXH), the actions set forth in paragraph 6, below) to ensure that all regulated persons conform their conduct to statutory and regulatory requirements. This order also provides guidance for FAA personnel to issue non-regulatory compliance action determinations in situations not involving statutory or regulatory noncompliance but when such actions would address other safety concerns. Noncompliances by regulated persons willing and able to comply and willing to cooperate in corrective actions may be addressed with compliance actions, except when legal enforcement action is required under paragraph 5.a., below, or administrative or legal enforcement action is preferred under paragraph 5.b., below. Noncompliances by regulated persons unwilling or unable to comply or not cooperative in corrective actions must be addressed with enforcement action. Note that in every case, regardless of how a noncompliance is addressed, the regulated person must return to compliance, now and for the future, or enforcement action may be taken.

2. FAA Responses to Statutory or Regulatory Noncompliance and Other Safety Risks. FAA personnel use compliance, administrative, or legal enforcement actions (and, for AXH, the actions set forth in paragraph 6, below) to uphold the public's safety interest in ending statutory and regulatory noncompliance and ensuring full compliance in the future.

- Holders of certificates, approvals, authorizations, permits, or licenses are subject to compliance, administrative, or legal enforcement action.

- Except as provided in the next bullet, non-certificated persons are subject to compliance, administrative, or legal enforcement action.

- Non-certificated shippers of hazardous materials, including non-certificated holders of special permits issued by the Pipeline and Hazardous Materials Safety Administration (PHMSA) and other non-certificated entities under the Hazardous Materials Regulations (HMR) are subject to informal action, administrative action, or legal enforcement action. Passengers may be eligible for the Hazardous Materials Passenger Discrepancy Reports policy. Non-certificated shippers of hazardous materials are not subject to compliance action.

Regardless of the chosen course of action, FAA personnel are, in accordance with program office policy, to determine whether corrective action is necessary. If corrective action is necessary, FAA personnel ensure that the regulated person takes corrective action satisfactory to the FAA to strengthen the regulated person's operations or to bring a regulated person into compliance, prevent recurrence of noncompliance, and mitigate risks to safety.

Neither compliance actions nor administrative actions are adjudications and neither constitutes a finding of violation. However, FAA personnel will consider a regulated person's prior compliance actions for regulatory noncompliance and administrative actions in deciding on the appropriate action in response to any future noncompliance.

FAA personnel may use non-regulatory compliance action determinations, as discussed in paragraph 3.b., below, to encourage regulated persons to adopt FAA-recommended best practices to address safety concerns of a non-regulatory nature.

3. Compliance Action.

a. Noncompliance. Under the FAA Compliance Program, the FAA's goal is to use the most effective means to return a person holding an FAA certificate, approval, authorization, permit, or license to full compliance and prevent recurrence. Many deviations from regulatory compliance are caused by factors such as flawed procedures, simple mistakes, lack of understanding, or diminished skills. When FAA personnel determine that a person is both willing and able to comply with regulatory standards, they may use compliance action to address the underlying root cause of noncompliance through such means as airman training, counseling, or education, and/or appropriate improvements to a regulated person's procedures, training, or other programs. When FAA personnel take compliance action, they are required to document the following:

- A detailed identification and description of the noncompliance;
- An appropriate analysis of the cause of the event;
- A detailed description of the regulated person's corrective actions to come into full compliance and avoid recurrence, including documentation of any action taken; and
- Documentation that the corrective actions have been fully implemented and whether such actions have returned the person to full compliance.

In a compliance action, when a person fails to implement agreed-upon corrective action to bring the person into full compliance, FAA personnel shall recommend legal enforcement action for the noncompliance that gave rise to the compliance action, as well as any subsequent noncompliances that would have been addressed by the corrective action. A failure to implement agreed-upon corrective action differs from implementing an agreed-upon corrective action that does not achieve its intended purpose. In the latter case, further corrective action may be appropriate.

The program office retains a record of compliance actions in accordance with FAA record retention policies. Compliance action is not appropriate when the criteria for legal enforcement action are met as set forth in paragraph 5.a., below.

FAA personnel consult the provisions in chapter 4, paragraph 4.b., and program office guidance, about providing persons with notification under the Pilot's Bill of Rights.

In the context of a compliance action, the term "willing" may be demonstrated where:

- The person acknowledges responsibility for the event;
- The person openly shares information with the FAA to determine the root cause of the event; and
- The person promptly implements, or agrees to implement through a corrective action plan, any necessary corrective action.

The term "able" may be demonstrated where:

- The person has resources (*e.g.*, personnel, financial, time) sufficient to implement any necessary corrective action;
- The person has access to data, equipment, facilities, and similar resources necessary to comply with regulatory requirements and appropriately manage risk; and
- The person has, or has the ability to develop through corrective action, the knowledge and technical competence required of the certificate they hold.

If FAA personnel identify a competency or qualification issue, it must be addressed in accordance with paragraph 5.b.(3), below.

FAA personnel are mindful of the time limitations for initiating legal enforcement action when considering compliance action, including the time required to implement corrective action. In general, the FAA must initiate a punitive certificate action against an airman certificate holder or a certificated entity within six months after the noncompliance occurs. In other cases (*e.g.*, most civil penalty actions), the FAA generally must initiate legal enforcement action within two years after the noncompliance occurs. (*See* chapter 4, paragraph 5, for a discussion of time limits.) For matters involving a compliance action, FAA personnel ensure that applicable time limits do not adversely affect the FAA's ability to take further action in the event corrective action is not completed to the FAA's satisfaction. If appropriate, FAA personnel consult with AGC-300 counsel to determine whether an agreement with the regulated person is needed to waive or extend the time limit for legal enforcement action based on the noncompliance. Regardless of whether a time limit (*e.g.*, stale complaint rule) would bar legal enforcement action, FAA personnel advise the apparent violator of the noncompliance and request future compliance.

b. Non-Regulatory Compliance Action Determination. FAA personnel may, in accordance with program office policy, use a non-regulatory compliance action determination to encourage regulated persons to adopt FAA-recommended best practices to address safety concerns of a non-regulatory nature. Such recommendations may be made either independent of, or in conjunction with, a compliance, administrative, or legal enforcement action taken for regulatory noncompliance that also exists. Because these suggestions to improve operations are non-regulatory in nature, they may be made notwithstanding the regulated person's compliance with all applicable regulatory requirements. A non-regulatory compliance action determination

may be used when evidence is insufficient to establish all elements of a regulatory noncompliance but a safety concern remains, including cases that were opened as legal enforcement actions but are closed as no action due to lack of evidentiary support. When recommendations are made in conjunction with any compliance, administrative, or legal enforcement action taken for statutory or regulatory noncompliance, the recommendations must be documented as non-regulatory in nature and set apart from both the statement of facts and circumstances for the statutory or regulatory noncompliance and any agreed-upon corrective action. A regulated person is not subject to enforcement action for electing not to take corrective action pertaining to a non-regulatory compliance action determination.

4. Administrative Action.

a. Criteria. FAA personnel take administrative action when:

- They reasonably and in good faith determine that compliance action will not remediate noncompliance and ensure future compliance; and

- Legal enforcement action is not required under paragraph 5.a., below, or warranted under paragraph 5.b., below.

FAA personnel do not take administrative action when evidence to support a finding of violation is lacking or when a time limit (*e.g.*, stale complaint rule) would bar legal enforcement action. FAA personnel nonetheless advise the apparent violator of the noncompliance and request future compliance.

b. Types of Administrative Action. There are two types of administrative action: warning notices and letters of correction.

(1) Warning Notice. A warning notice advises the noncompliant person of the facts and circumstances constituting noncompliance and requests future compliance. If a letter of investigation (LOI) has not been issued to the noncompliant person, FAA personnel include the statement, "If you wish to add any information in explanation or mitigation, please write to me at the above address," in the warning notice and, if the recipient is an individual, a Privacy Act statement with the warning notice. FAA personnel evaluate any responsive information to determine whether the warning notice continues to be appropriate and withdraw the warning notice if they determine it is no longer appropriate.

(2) Letter of Correction. While a letter of correction serves the same purpose as a warning notice, it also memorializes a specific agreement between FAA personnel and the regulated person as to the particular corrective action taken or to be taken within a specified time to effectuate compliance. Because a letter of correction reflects the regulated person's agreed-upon action, it does not invite the regulated person to submit information in explanation or mitigation (and, therefore, no Privacy Act statement is included). FAA personnel ensure that applicable time limits do not adversely affect the FAA's ability to take further action in the event corrective action is not completed to the FAA's satisfaction. If appropriate, FAA personnel consult with AGC-300 counsel to determine whether an agreement with the regulated person is

needed to waive or extend the time limit for legal enforcement action based on the noncompliance.

c. Follow-up Inspection to Verify Completed Corrective Action. In the event corrective action has not been completed before or at the time of issuance of a letter of correction, FAA personnel perform a timely follow-up inspection. If the corrective action is fully implemented, FAA personnel will send a letter acknowledging that fact and closing the matter.

d. Failure to Fulfill Agreement to Take Corrective Action. If a corrective action is not completed to the satisfaction of the FAA in the agreed-upon manner and time, FAA personnel refer the matter and any documentation of additional noncompliance to the Office of Chief Counsel, AGC-300, for legal enforcement action evaluation and, if appropriate, initiation.

e. Streamlined No Action and Administrative Action Process (SNAAP). Investigative personnel in the Flight Standards Service, and the Security and Hazardous Materials Safety DUI/DWI program and Law Enforcement Assistance Program (LEAP), may, with the approval of their program office, issue no action letters or warning notices using the SNAAP to remediate noncompliance that does not require extensive investigation or warrant legal enforcement action. The SNAAP is not used where further corrective action should be taken. *See* Order 8900.1, *Flight Standards Information Management System* (located at http://drs.faa.gov), for more SNAAP information.

5. Legal Enforcement Action. In some circumstances FAA personnel are required, and in other circumstances have the discretion, to refer matters to AGC-300 for legal enforcement action evaluation and, if appropriate, initiation of legal enforcement action against a regulated person. These circumstances are discussed in paragraph 5.a. and b., below.

a. Required Legal Enforcement Action. FAA personnel refer cases to AGC-300 that involve a regulated person's noncompliance arising from or relating to the criteria in paragraph 5.a.(1)-(5), below:

(1) Intentional Conduct: A deliberate act (or failure to act) while knowing that such conduct is contrary to a regulation or statute, or is otherwise prohibited;

(2) Reckless Conduct: An act (or failure to act) demonstrating a gross disregard for or deliberate indifference to safety or a safety standard;

(3) Failure to Complete Corrective Action: Failure to complete corrective action on terms satisfactory to the FAA;

(4) Conduct Creating or Threatening to Create an Unacceptable Risk to Safety: Conduct that creates or threatens to create a high level in the likelihood and/or severity of significant risk to safety, when the director of the program office determines that alternative means to address the noncompliance and to effectuate immediate and future compliance would not be sufficient; and

(5) Legal Enforcement Required by Law: The express terms of a statute or regulation require the initiation of a legal enforcement action.

(6) Justified Exception. In unusual circumstances, FAA personnel may forgo referring a matter to AGC-300 for legal enforcement action evaluation even if it meets the criteria of paragraph 5.a.(1)-(4), above, and instead take administrative action. However, before taking such action, the director of the program office or delegate at the executive level coordinates the proposed justified exception with the Assistant Chief Counsel for AGC-300. This coordination includes providing the Assistant Chief Counsel for AGC-300 a written statement explaining the rationale for why legal enforcement action would serve no salutary purpose and the basis to conclude that use of an administrative action effectuates full and immediate compliance. When legal enforcement action is required by law (*see* paragraph 5.a.(5), above), no exceptions from legal enforcement action referral are permitted.

b. Discretionary Legal Enforcement Action. Matters for which FAA personnel have discretion as to whether to refer to AGC-300 are set forth in paragraphs 5.b.(1)-(4), below (except as otherwise noted).

(1) Repeated Noncompliances. FAA personnel have discretion to respond to repeated noncompliance by: (i) using compliance action or administrative action; or (ii) referring the matter to AGC-300 for legal enforcement action evaluation and, if appropriate, initiation. Repeated noncompliance means:

- Multiple noncompliances with various sections or subsections of the same or similar regulations discovered during a single inspection;

- Recurring noncompliance with the same or similar section or subsection of a regulation discovered during multiple or successive inspections; or

- Noncompliance with different regulatory sections or subsections arising from a common root cause.

FAA personnel determine whether the facts and circumstances of the case indicate a repeated noncompliance, as defined above, and, if so, determine in accordance with program office guidance whether a compliance, administrative, or legal enforcement action is the appropriate response. In determining the appropriate response, FAA personnel consider safety risk as determined by the program office.

FAA personnel consider a progressive response to repeated noncompliance. For example, where FAA personnel determine that compliance action did not correct the noncompliance, administrative action or legal enforcement action might be the appropriate response. The following are examples of when these actions may be appropriate.

- Compliance action may be appropriate when it would effectively remediate the root cause or causes of the repeated noncompliance. If the agreed upon corrective action, properly executed, did not remediate the noncompliance and additional corrective

action has been identified, it may be appropriate for FAA personnel to take further compliance action. If the noncompliance persists, FAA personnel must evaluate whether the noncompliance reflects an unwillingness or inability to fix the problem, in which case enforcement action will be appropriate.

- Administrative action may be appropriate when the regulated person has implemented significant but not complete corrective action, immediate implementation of the remaining corrective action will effectuate full compliance, and the circumstances warrant additional documentation of the continued noncompliance.

- Referral to AGC-300 for legal enforcement action evaluation is appropriate when the regulated person demonstrates an unwillingness or inability to comply as evidenced by, for example, disregard for its compliance obligations, failure to prioritize or invest appropriate resources to achieve compliance, or inadequate safety culture, or where prior use of administrative action did not effectuate full compliance.

(2) Accurate Data. Accurate data is the foundation of safety management processes and supports the timely development and implementation of appropriate risk mitigation measures. FAA personnel may take compliance, administrative, or legal enforcement action based on the applicable program office policy as it pertains to evaluating the cause and impact of noncompliant safety management data systems and processes. However, statutory or regulatory noncompliance related to inaccurate or unreliable data resulting from intentional falsification or other intentional misconduct always is referred to AGC-300 for legal enforcement action evaluation and, if appropriate, initiation.

(3) Matters Pertaining to Certificate Holder's Competency or Qualification. FAA personnel address issues of a certificate holder's competency or qualification through use of compliance, administrative, or legal enforcement action as follows.

(i) If an issue of competence or qualification relates to a certificate holder's skills or ability to meet technical eligibility requirements, FAA personnel may take either compliance or administrative action provided such action ensures that the certificate holder is in full compliance with the requisite qualification or competence standards when exercising the privileges of a certificate.

(ii) If a lack of qualification is evidenced by a lack of the care, judgment, and responsibility to hold that certificate, FAA personnel refer the matter to AGC-300 for legal enforcement action evaluation and, if appropriate, initiation.

(iii) Pursuant to 49 U.S.C. § 44709, FAA personnel have authority to take appropriate action, including reexamining or reinspecting a certificate holder, to resolve any question as to the holder's competence or qualification to hold a certificate.

(4) Law Enforcement-Related Activities. FAA personnel usually refer matters involving law enforcement-related activities to AGC-300 for legal enforcement action evaluation and, if appropriate, initiation. For example, FAA personnel ordinarily recommend legal enforcement

action in cases where a certificate holder exercises the privileges of the certificate while under the influence of drugs or alcohol, or where an aircraft is used in the commission of a criminal offense. In other cases involving law enforcement-related activities, however, FAA personnel have discretion to address the matter with compliance or administrative action, or by referring the matter to AGC-300 for legal enforcement action evaluation. (For additional guidance on the handling and coordination of criminal investigations, refer to chapter 4, paragraph 15.g.; chapter 6, paragraph 7.e.; and chapter 8, paragraph 36.) FAA personnel might address a certificate holder's failure to timely report a motor vehicle action involving alcohol or drugs to the FAA with compliance action or administrative action, or by recommending legal enforcement action, depending on the circumstances.

6. Office of Hazardous Materials Safety. AXH enforcement personnel follow the guidance in this chapter and consult the current Enforcement Decision Process Worksheet in selecting the appropriate action for apparent hazmat violations. As applied to non-certificated persons, AXH generally uses informal action, administrative action, the Hazardous Material Passenger Discrepancy Reports policy, or legal enforcement action, as appropriate, to address apparent statutory or regulatory noncompliance. Noncompliance by non-certificated persons is not addressed with compliance action.

a. Informal Action. Non-certificated regulated persons offering or transporting hazardous materials may be subject to informal action to address noncompliance. Informal action typically consists of either oral or written counseling and may require the regulated person to complete immediate, on-the-spot, corrective action.

The following two criteria must be met to give FAA personnel discretion to use informal action:

- The noncompliant conduct must meet all AXH criteria for administrative action (set forth below); and

- Noncompliance must present a low risk to safety (as indicated in AXH's modified Enforcement Decision Process Worksheet).

Despite satisfaction of both criteria, AXH retains discretion to forgo using informal action to respond to such noncompliance and, instead, may use either administrative action or referral to AGC-300 for legal enforcement action evaluation and, if appropriate, initiation.

FAA personnel record the following data on informal actions:

- Name of the regulated person;

- Regulation involved (include section, paragraph, and subparagraph);

- Date of informal action;

- Whether oral or written counseling was used;

- Name, title, and contact information of the person(s) counseled;
- Brief description of the noncompliance; and
- Information demonstrating verified completion of corrective action.

b. Administrative Action. The following six criteria guide AXH personnel in determining when administrative action is appropriate:

- Legal enforcement action is not required by law;
- Administrative action (*i.e.*, warning notice or letter of correction) is more likely to deter future noncompliance;
- Noncompliance does not arise from or is not related to purposeful conduct;
- The noncompliant conduct did not constitute a "substantial disregard" for safety (*i.e.*, substantial deviation from the degree of care and diligence expected of a reasonable person in those circumstances);[1]
- The noncompliant person demonstrably manifests a constructive attitude toward coming into and maintaining compliance; and
- The noncompliance does not evidence a trend of noncompliance with, or a disregard for, a specific part of an FAA regulation as demonstrated by prior noncompliance with the same FAA regulation.[2]

Generally, FAA personnel use administrative action when all six criteria are met and the violation is not subject to dismissal as stale or by a statute of limitation.

c. Hazardous Materials Passenger Discrepancy Reports Policy. AXH addresses apparent HMR violations by passengers using the Hazardous Materials Passenger Discrepancy Reports policy. Under this policy, AXH investigative personnel may use passenger "engagement," which includes the provision of information on HMR requirements, for passengers suspected of having violated the HMR when the hazmat is offered in checked baggage, carry-on baggage, or on one's person.

(1) The Hazardous Materials Passenger Discrepancy Reports policy is not applicable when: (i) the hazmat involved is not a consumer item in a typical quantity and/or it is reasonable to assume that the passenger understood the danger associated with the hazmat; (ii) the passenger is a "hazmat employee" or "hazmat employer" and the business is involved in hazmat sales or distribution; (iii) the apparent noncompliance is associated with a courier service; (iv) the

[1] For purposes of this criterion, the offering of undeclared hazardous materials does not always constitute a "substantial disregard for safety," as clarified in AXH's internal policy ADG 2015-03.

[2] The concept of "trend of noncompliance" is further amplified in AXH's internal policy.

hazardous material caused an unintentional release, fire, violent rupture, explosion, dangerous evolution of heat, or suspected contamination; (v) a passenger attempts to circumvent a security or safety system measure by artful concealment or falsifies pertinent information on the nature of the hazmat (in which case criminal action is considered); or (vi) AXH finds that application of the Hazardous Materials Passenger Discrepancy Reports policy would not be appropriate.

(2) When any of the criteria at paragraph 6.c.(1) apply, AXH investigative personnel consider whether the investigation into the matter warrants referring the matter to AGC-300 for legal enforcement action evaluation and, if appropriate, initiation.

d. Safety Risk. AXH uses a modified Enforcement Decision Process Worksheet that correlates safety risk with the choice of informal, administrative, or legal enforcement action to address noncompliance. Administrative action or legal enforcement action are used to address noncompliance that creates or threatens to create moderate or high safety risk.

e. Justifiable Deviations. AXH management officials may authorize deviations from policy in this chapter provided that the authorizing official includes in the enforcement investigative report their written explanation of the reasons for such deviation together with identification of persons consulted.

Chapter 6. Enforcement Investigative Report and Record Distribution Requirements

1. Purpose. This chapter provides Enforcement Investigative Report (EIR) policies and procedures, and guidance for distributing EIRs and associated documents.

2. Determining Whether to Open an EIR. For an apparent violation, investigating and reviewing office personnel determine whether compliance action or administrative action, or referral to the Office of the Chief Counsel, AGC-300, for evaluation for legal enforcement action or foreign referral, is appropriate. In addition, investigative personnel in the Office of Hazardous Materials Safety (AXH) determine whether informal action or application of the Hazardous Materials Passenger Discrepancy Reports policy is warranted. Investigative personnel compile EIRs for administrative or legal enforcement actions and EIR foreign referrals (*see* paragraph 8.b., below). EIRs are not used for processing compliance or informal actions, or for matters handled under the Hazardous Materials Passenger Discrepancy Reports policy. Rather, investigative personnel make appropriate entries in the applicable program office-specific database, *e.g.*, Safety Assurance System (SAS), for such actions. EIRs are also not used for military referrals, which are processed in accordance with chapter 4, paragraph 15.c.

a. EIR Processing. The EIR provides a means to assemble, organize, and present all information relevant to apparent violations and sanction determinations obtained during an investigation in matters for which EIRs are applicable. Investigating and reviewing office personnel ensure that EIRs are factual, well-reasoned, and contain sufficient proof to substantiate the action contemplated.

b. Multiple Violation EIRs. A program office may discover multiple apparent violations during the course of an investigation, some of which, if considered independently, would be appropriate for legal enforcement action and others for compliance and/or administrative action. A program office has discretion to include all apparent violations in a legal enforcement action EIR or only those that would independently warrant legal enforcement action. Where, however, the same root cause results in additional apparent violations for which the apparent violator is responsible, and at least one of those apparent violations warrants legal enforcement action, all apparent violations resulting from the same root cause are included in the legal enforcement action EIR. For example, when an air carrier's improper performance of aircraft maintenance warrants legal enforcement action, its operation of the aircraft in an unairworthy condition following the improper maintenance is also included in the legal enforcement action EIR. However, for apparent violations related to in-flight emergencies, a program office has discretion to determine whether to include all such apparent violations in a legal enforcement action EIR or only those that would independently warrant legal enforcement action, even if the apparent violations have the same root cause.

c. Circumstances Requiring Separate EIRs. Generally, an investigation results in only a single EIR for each apparent violator. However, separate EIRs are required for an apparent violator when there are multiple applicable sanctions and (1) the sanctions are subject to different adjudicative processes or (2) one of the sanctions warrants emergency action and the other does not. For example, if a repair station refuses to allow investigative personnel to inspect the repair

station, two EIRs would be required: one EIR for a suspension of the repair station's certificate pending compliance (*i.e.*, an emergency action subject to adjudication by the National Transportation Safety Board (NTSB)) and one EIR for a civil penalty for a violation of 14 C.F.R. § 145.223(a) (*i.e.*, a non-emergency action subject to adjudication by a Department of Transportation (DOT) Administrative Law Judge under 14 C.F.R. part 13, subpart G).

3. EIR Overview. A complete EIR consists of three sections labeled A, B, and C. Investigative personnel complete EIR sections in accordance with the guidance contained in paragraph 3.a.-d., below. As discussed in paragraph 7, below, the type of action determines whether an EIR is required and, if so, the extent of the EIR.

a. Section A. Section A of the EIR consists of Form 2150-5. Investigating and reviewing office personnel complete section A in accordance with the guidance in paragraph 3.a.(1) and (2), below. FAA personnel enter the required information in Form 2150-5, which is located in the Enforcement Information System (EIS). (*See* chapter 11 for EIS information.)

(1) EIR Number. When investigative personnel believe that administrative or legal enforcement action will be appropriate, they obtain an EIR number for the case. Investigative personnel enter the EIR number in the appropriate block on Form 2150-5. An EIR number is a machine-assigned twelve-character identifier consisting of the fiscal year the EIR is created, a regional (*i.e.*, reviewing) office identifier, a field (*i.e.*, investigating) office identifier, and four sequential numbers. (*See* chapter 11, paragraph 4.b. for detailed information on EIR numbers.) The block identified as "Related Number" refers to the EIR number for another EIR associated with the principal EIR. (If there is more than one related case, investigative personnel select a case to be the principal case and enter that case as the related EIR case number to represent all related cases.) Investigative personnel enter the report number for the related EIR in the same 12-digit format used for the principal EIR number. When a specially-designated team conducts a formal fact-finding investigation, the team designates an investigating or reviewing office to assign an EIR number to the case.

(2) Instructions for Completing Blocks 1-33 on Form 2150-5. Investigative personnel complete all entries up to and including Block 28. Reviewing office personnel complete all entries after Block 28.

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

- Block 2. *Address and telephone number*. Enter the current complete address of record for an apparent violator. If the mailing address is a post office box, include a street

address if one is available. If the apparent violator is an entity, include the entity's corporate address. Enter a complete telephone number with area code, if available.

- Block 3. *Date of birth*. Enter the date of birth for an apparent violator in an eight-digit year/month/day format without hyphens, *i.e.*, YYYY MM DD (*e.g.*, 1991 09 21). This block must be completed for an individual for expunction purposes.

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

- Block 5. *FAA certificate number*. Enter the number of the FAA certificate held by the apparent violator if related to the incident under investigation. Leave blank if no certificate is held. If multiple certificate numbers are involved, enter each additional certificate number in Section B, Statement of Case.

- Block 6. *FAA certificate type*. Enter the type of certificate referenced in Block 5, *e.g.*, commercial pilot; air carrier; airport operator. If no certificate is held, use "98-none." If multiple certificates are involved, enter each additional certificate type in Section B, Statement of Case.

- Block 7. *Aviation employer*. If an apparent violator is an individual, enter their employer if the apparent violation is related to the individual's employment.

- Block 8. *Make*. Enter the name (or trade name) of the manufacturer when an aircraft, aircraft engine, propeller, aircraft component, or appliance is involved in the apparent violation.

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

- Block 10. *Identification number*. For an aircraft, enter the civil registration number and, if available, serial number. For an aircraft engine, propeller, appliance, or aircraft component, enter the serial number, if available.

- Block 11. *Owner*. Enter the owner of the aircraft involved in the apparent violation.

- Block 12. *Owner address*. Enter the address of record of the owner listed in Block 11.

- Block 13. *Date occurred*. Enter the date on which the apparent violation occurred in an eight-digit year/month/day format without hyphens, *i.e.*, YYYY MM DD. Enter the earliest actionable apparent violation date if there are multiple dates. (*See* chap. 4, para. 5., for a discussion of time limits.)

- Block 14. *Time*. Enter the local time at which the apparent violation occurred using a 24-hour clock (*e.g.*, 1105 for 11:05 a.m.; 1435 for 02:35 p.m.). Leave blank if the time of the apparent violation is not known or applicable.

- Block 15. *Date known to FAA*. Enter the date on which anyone in the FAA first learned of the apparent violation in an eight-digit year/month/day format without hyphens. For example, if an air traffic employee discovers that a pilot deviated from an air traffic control clearance, the date known to the FAA is the date of the air traffic employee's discovery of the deviation rather than the date the employee refers the air traffic data to an investigative office.

- Block 16. *Region of discovery*. Enter the two-character identifier for the regional/reviewing office in which the apparent violation was first discovered. This may not be the region of occurrence.

- Block 17. *Location*. Enter the name of the geographic location where the apparent violation occurred. Use the airport identifier and name (if appropriate), the city and state, and any information needed to describe the location relative to a specific airport or city.

- Block 18. *Regulations or statutes believed violated*. Enter all regulations or statutes believed to have been violated. In citing regulations or statutes, use specific sections and subsections. For example, if the regulation believed to have been violated is 14 C.F.R. § 43.13(a) (formatted as 04313A in EIS), enter it as such (and not more generally as 14 C.F.R. § 43.13). For cases involving the failure to meet a qualification standard, cite the specific section or subsection at issue.

- Block 19. *Type*. Select the two-digit code that best describes the type of operation the apparent violator was engaged in at the time of the apparent violation. *See* paragraph 11 (FAA Form 2150-5 Codes for Blocks 6 and 19-24), below, for type of operation code listings.

- Block 20. *Sub-type*. Select the two-digit code that best describes the subtype of operation the apparent violator was engaged in at the time of the apparent violation. *See* paragraph 11, below, for subtype of operation code listings.

- Block 21. *Category*. Select the two-digit code that best describes the category of the apparent violation. *See* paragraph 11, below, for category code listings.

- Block 22. *Source*. Select the two-digit code that best describes the source of the initial information about the apparent violation. *See* paragraph 11, below, for source code listings.

- Block 23. *Accident associated*. Select code 00 if an accident (as defined by 49 C.F.R. § 830.2) was not associated with the apparent violation. Select code 01 if an accident was involved, but not associated with the apparent violation. Select code 02 if the apparent violation caused the accident. *See* paragraph 11, below, for accident associated code listings.

- Block 24. *Security program*. FAA security offices select a security program description of the apparent violation. *See* paragraph 11, below, for security program code listings.

- Block 25. *Type action*. Enter the investigating personnel's action type recommendation. This includes administrative action, civil penalty, suspension, revocation, emergency suspension, emergency revocation, and foreign referral.

- Block 26. *Sanction*. Select the sanction type, which includes, as applicable, warning notice, letter of correction, dollars, days, pending compliance, and revocation. Since, except for AXH, program offices do not make sanction amount recommendations, leave the sanction amount blank. For AXH, enter a specific sanction amount recommendation.

- Block 27. *Date*. Enter the date signed by the investigating office manager in an eight-digit year/month/day format. (Note that if the EIR is coded as a SNAAP in EIS, entering a date in Block 27 will automatically populate the reviewing office and Final fields and close the EIR.)

- Block 28. *Investigating office*. Enter the appropriate investigating or regional/reviewing office identifier, which is populated from the EIR number.

- Block 29. *Regulations or statutes believed violated*. Refer to the instructions for Block 18, above. This entry reflects the opinion of the reviewing office as to regulations or statutes apparently violated. If the reviewing office adds to or changes a regulatory or statutory citation entered in Block 18, provide the new citation. Leave blank for cases closed with no action.

- Block 30. *Recommended type action*. Enter the reviewing office's action type recommendation.

- Block 31. *Recommended sanction*. Enter the reviewing office's sanction type recommendation. Since, except for AXH, program offices do not make sanction amount recommendations, leave the recommended sanction amount blank. For AXH, enter a specific sanction amount recommendation.

- Block 32. *Date*. Enter the date signed by the appropriate reviewing office.

- Block 33. *Region*. Enter the two-letter identifier for the reporting regional/reviewing office, which is populated from the EIR number.

b. Section B. Section B consists of a "Statement of Basis for Legal Enforcement Action," "Statement of Case," "Factors Affecting Sanction," and "Other Information."

(1) Statement of Basis for Legal Enforcement Action. In the event that the EIR is referred for legal enforcement action evaluation, investigative personnel indicate the applicable legal

enforcement action criterion or criteria (among that listed in chapter 5 and referenced in program office guidance) that provide the basis for the selection. Investigative personnel explain the basis for any criterion selected in Section B.

(2) Statement of Case. Investigative personnel provide an orderly statement of the facts and a discussion as to how the facts establish each element of each regulation believed violated.

(i) Investigative personnel identify (to the extent known) who did what, when, where, why, and how, and provide as much detail as appropriate depending on the complexity and nature of the case. A chronological statement of the case is typically appropriate. Investigative personnel may briefly describe the origin of or basis for the investigation. Although the statement of the facts may list statutes and regulations apparently violated, any opinion linking the facts and the apparent violations appears in the Other Information section.

(ii) Investigative personnel support each factual statement by referring to an item of proof (IOP). The reference to the IOP appears directly after the statement it supports. If an IOP supports an entire paragraph, investigative personnel reference the IOP at the end of the paragraph.

(iii) To the extent that witnesses' accounts vary or evidence is otherwise inconsistent or contradictory, investigative personnel identify the differences.

(3) Factors Affecting Sanction. Investigative personnel analyze any factors affecting sanction (*e.g.*, severity level, culpability, business size, mitigating factors and aggravating factors) that are relevant to the case. General sanction guidance on factors affecting sanction is in chapter 9. For cases involving Hazardous Materials Regulation violations, the factors affecting sanction are in chapter 10.

(i) Investigative personnel address each relevant factor affecting sanction, explaining how any factor relates to an apparent violation, supports the type of legal enforcement action recommended, and may affect a sanction amount determination. They provide the level of detail necessary to ensure appropriate sanction amount determinations. Investigative personnel support analyses of factors affecting sanction with reference to appropriate IOPs. If a factor does not apply to the case, then investigative personnel state that the factor is not applicable. Additionally, AXH investigative personnel include the specific sanction amount recommended and a detailed analysis of the basis for the sanction amount recommended.

(ii) Investigative personnel perform an EIS record review of and summarize violation histories (*i.e.*, history of findings resulting from legal enforcement actions) and administrative actions. They also perform a program office-specific database review for prior compliance actions involving statutory or regulatory noncompliance, as well as informal actions, and summarize those actions. Generally, investigative personnel include a person's violation history dating back five years, and administrative actions, compliance actions, and informal actions dating back five years for entities and two years for individuals, from the date of the violation in the present case. If the present case involved multiple violations, investigative personnel include this information from the date of the first violation. *See* chapter 4, paragraphs 11.l. and m. These

time limits may be expanded as necessary to support the selection of a type of action or sanction amount, *e.g.*, when repeated violations supporting legal enforcement action span across these time limits.

(4) Other Information. The Other Information section allows investigative personnel to state their opinions and impressions regarding matters relevant to the case, including evidentiary concerns, analyses of any statement provided by the apparent violator about the incident, recommended bases for settlement (including, for example, suggested corrective action combined with a reduced punitive sanction), and extenuating factors.

(5) Additional Information. If investigative personnel receive any information after forwarding the EIR to the reviewing office, they analyze the information, amend the EIR as appropriate, and forward the information or amended EIR to the reviewing office. Their analysis indicates whether, based on the new information, they have changed their conclusions about the case.

c. Section C. Section C of the EIR consists of IOPs for the case and a numerical index with concise descriptions of each IOP. IOPs consist of original or certified copies of each piece of evidence relevant to apparent violations, types of action, and sanction amounts. *See* chapter 4 for types of evidence investigative personnel may include as IOPs. Investigative personnel number each IOP consecutively and present them in a logical order to facilitate review. All evidence referenced in section B of the EIR is included as an IOP. IOPs not only include evidence relating to apparent regulatory violations but also factors affecting sanction. IOPs include evidence demonstrating that the FAA complied with statutory requirements, such as providing notice under the Pilot's Bill of Rights. IOPs also support the basis for selecting legal enforcement action in accordance with criteria in chapter 5, such as when a violation is intentional or reckless, or when repeated noncompliance warrants legal enforcement action. For example, when violation conduct was intentional, investigative personnel provide proof that the violator engaged in deliberate conduct knowing that the conduct was contrary to a statutory or regulatory requirement, or was otherwise prohibited. Similarly, to support an allegation that violation conduct was reckless, investigative personnel provide proof that the violator committed a violation evidencing a gross disregard for or deliberate indifference to safety or a safety standard.

d. Reviewing Office Recommendations. The reviewing office prepares a separate written statement, *e.g.*, a transmittal memorandum, for all legal enforcement action cases. This statement consists of a recommendation for the type of legal enforcement action selected and may include comments concerning the apparent violation, selection of legal enforcement action, factors affecting sanction, and other considerations relevant to the case. For AXH, this statement also includes the specific sanction amount recommended and a detailed analysis of the basis for the recommended sanction amount.

4. Electronic EIR (eEIR). Program offices customarily transmit electronically formatted EIRs (*i.e.*, eEIRs) for legal enforcement actions to AGC-300. Investigative personnel retain IOPs in the format they obtained them and make them available to AGC-300 counsel upon request. For example, investigative personnel retain a hard copy of letter received via U.S. mail or the file of a digital photograph.

5. EIR Management Requirements. FAA personnel handle EIRs in accordance with the Privacy Act (System of Records 847, 75 Fed. Reg. 68849-01 (http://federalregister.gov); Electronic Records Management (36 C.F.R. part 1236); FAA Order 1370.121, *FAA Information Security and Privacy Program & Policy* (records expunction policy); and the AGC E-Discovery Program, Litigation Hold System).

6. Information Related to Small Business Concerns. If an apparent violator is a business concern, investigative personnel gather evidence, such as website information and financial reports, to determine the alleged violator's number of employees or annual receipts, as applicable. *See* chapter 4 for information on evidence relevant to business size. Investigative personnel compare that information to the Small Business Maximum Size Limits at chapter 9, Fig. 9-7, to determine whether the apparent violator is a small or large business. FAA enforcement personnel enter business size information in the "business concern" field on the violator information screen in the EIS in accordance with chapter 11, paragraph 4.c.(1). Business size information informs sanction determinations and is used to track enforcement actions against small business concerns.

7. EIR Applicability for Types of Action.

a. No Action Cases.

(1) Generally, when investigative personnel close an EIR with no action, they complete only section A and the Statement of Case portion of section B. In the event there was no violation, investigative personnel notify anyone who received a letter of investigation that the matter is closed. Investigating offices may destroy a no action EIR 30 days after the date the case is closed in EIS (and must destroy the EIR within 90 days). *See* FAA Order 1350.14B, *Records Management*, which provides that the FAA may destroy records only in accordance with a record schedule approved by the National Archives and Records Administration (NARA). NARA-approved record schedules are located at https://www.archives.gov/records-mgmt/rcs/schedules/index.html?dir=/departments/department-of-transportation/rg-0237.

(2) Streamlined No Action and Administrative Action Process (SNAAP). Flight Standards Service (FS) and Security and Hazardous Materials Safety (ASH) DUI/DWI and Law Enforcement Assistance Program (LEAP) investigative personnel use the SNAAP for closing an EIR with no action.

b. Compliance Actions.

(1) Investigative personnel do not open an EIR for compliance actions. Instead, they enter all relevant information related to the investigation and compliance action in accordance with program office policy in the appropriate database. The entries must be detailed and complete. The reviewing office may review a proposed compliance action to ensure, among other things, that compliance action is appropriate and corrective action is sufficient. When an EIR has been opened for a case designated as an administrative or legal enforcement action but is closed with compliance action, investigative personnel close the EIR in accordance with program

office policy. AXH personnel follow the process in this subparagraph for informal actions and matters handled under the Hazardous Materials Passenger Discrepancy Reports policy.

(2) Investigative personnel open an EIR for a legal enforcement action based on violations that were the subject of corrective action that a person failed to complete.

c. Administrative Actions.

(1) When investigative personnel use administrative action (except for SNAAP EIRs), they complete section A and the Statement of Case portion of Section B and include a copy of the warning notice or letter of correction. If corrective action has been fully implemented, investigative personnel send a letter acknowledging the completion of corrective action and include a copy of the letter in the case file. A program office may require a complete EIR (as discussed in paragraph 7.d., below) for cases recommended for administrative action, particularly for complex or sensitive cases.

(2) The investigating office uses the EIR number originally assigned when it started the investigation to identify the administrative action EIR. The investigating office must destroy an administrative action EIR one year after the date it closes the case in EIS. *See* FAA Order 1350.14B.

(3) The reviewing office reviews administrative action EIRs (except for SNAAP EIRs). The reviewing office ensures that administrative action is appropriate.

d. Legal Enforcement Actions. Except for EIRs involving the failure to surrender certificates (which are addressed in paragraph 7.d.(4), below), EIRs for legal enforcement actions are processed in accordance with paragraph 7.d.(1)-(3), below.

(1) Investigative personnel complete EIR section A blocks 1 through 28, and sections B and C. The investigating office uses the EIR number originally assigned when it started the investigation to identify the legal enforcement action EIR. After the investigating office completes the EIR, it forwards the EIR to its reviewing office, which processes the EIR in accordance with paragraph 7.d.(2), below. The investigating office ensures the following persons and offices are advised of the final disposition of a legal enforcement action: (i) each person or organization to whom a letter of investigation was sent; (ii) each supporting FAA office; and (iii) any agency, person, or organization that provided information that was a basis for opening the investigation or that otherwise has a significant interest in the case. The investigating office keeps a complete copy of the investigation file, including a copy of the EIR transmitted to the reviewing office, in accordance with Electronic Records Management (36 C.F.R. part 1236); FAA Order 1370.121, as amended, *FAA Information Security and Privacy Program: Policy* (records expunction policy)); and the AGC E-Discovery Program, Litigation Hold System.

(2) Reviewing office personnel complete EIR section A blocks 29 through 33. The reviewing office reviews the EIR for sufficiency. If the reviewing office approves the EIR for legal enforcement action, it transmits the EIR to the appropriate AGC-300 manager for handling.

The reviewing office promptly informs the investigating office of referral of the legal enforcement action to AGC-300.

(3) AGC-300 counsel initiates legal enforcement action if supported by the EIR (and any additional relevant evidence), law, and policy. The legal enforcement action file held by counsel is the official FAA record copy and is retained, transferred, and disposed of in accordance with FAA Order 1350.14B. Counsel promptly informs investigating and reviewing offices of the final disposition of any legal enforcement action.

(4) AGC-300 opens and develops EIRs for failure to surrender certificate civil penalty actions. The certificate action EIR becomes a related case to the civil penalty action. The EIR normally consists of section A and the following section C IOPs: (i) the certificate action order; (ii) the demand letter; and (iii) proof of service of the order and demand letter.

e. Cases Referred for Criminal Investigation. For cases involving possible criminal violations, program offices open an EIR and complete sections A, B, and C, regardless of the type of action being taken by the FAA, and immediately coordinate the case with ASH and AGC-300. After coordination, if criminal conduct has possibly occurred, ASH refers the matter to the DOT Office of Inspector General (OIG); another Federal law enforcement agency (e.g., the FBI), if appropriate; or both. The EIR is provided to the law enforcement agency.

f. Downgraded EIRs. AGC-300 counsel may return EIRs recommending legal enforcement action to the appropriate reviewing office for downgrading to compliance action, administrative action, informal action, or no action. The reviewing office uses the same EIR number with a note at the top of Form 2150-5 stating "Downgraded." The reviewing office changes the "recommended type action" (block 30) and "date" (block 32) on the Form 2150-5, and closes the EIR consistent with the downgraded action, *e.g.*, legal enforcement actions downgraded to compliance actions are closed as compliance actions.

8. Enforcement Investigation Reports Requiring Special Processing.

a. Apparent Violations Involving Members of the U.S. Armed Forces. When an FAA airman certificate-holding member of the armed forces, while in the performance of official duties, appears to have committed a violation of FAA statutes or regulations that raises a question or shows a lack of qualifications to hold an airman certificate, FAA personnel prepare an EIR in the same manner as an EIR for potential legal enforcement action as described in paragraph 7.d., above. This process is independent of the process for military referrals, which is discussed in chapter 4, paragraph 15.c., and for which no EIR is required.

b. Apparent Violations Involving a Foreign Certificate. The FAA refers violations of U.S. statutes or regulations involving the exercise of a foreign certificate or license (or other approval or authorization) to the appropriate foreign aviation authority. FAA Order 8900.1, *Flight Standards Information Management System,* provides guidance as to whether such referrals are made through non-EIR foreign referrals or EIR foreign referrals. For EIR foreign referrals, FAA personnel prepare an EIR in the same manner as an EIR for potential legal

enforcement actions, as described in paragraph 7.d., above. FAA personnel transfer such EIRs to AGC-300 for handling in accordance with chapter 8, paragraph 27.a.

c. Apparent Violations Involving Government Aircraft Operations. FAA personnel prepare an EIR in accordance with paragraph 7.d., above, for investigations involving individuals or operators operating aircraft within the scope of official government duties when the operation is not a public aircraft operation or when the operation is a public aircraft operation that involves apparent violations of FAA operating regulations applicable to both public and nonpublic operations (*e.g.*, maintaining minimum safe altitude) or raises a question or shows a lack of qualifications to hold an FAA certificate. Investigating and reviewing office personnel handle these cases in accordance with chapter 4, paragraph 15.b., and Order 8900.1.

d. Requests for Emergency Action Based on Partial EIR. The appropriate handling of an alleged violation requiring emergency certificate suspension or revocation may involve initiation of such action by AGC-300 counsel before completion of the EIR. In these cases, investigative personnel prepare, and reviewing office personnel forward, an advance or partial EIR, with copies of all evidence that supports the alleged violation, to AGC-300. The releasable portions of the advance or partial EIR are included with the copy of the emergency order sent via expedited service. The program office completes the full EIR and forwards it to AGC-300 as quickly as possible. Where the certificate at issue is an airman certificate, counsel provides the full EIR to the airman within 5 days after its completion.

e. Processing of EIRs for Noise Violations. For apparent violations of the noise regulations in 14 C.F.R. part 91, subpart I, investigative personnel complete EIR section A, blocks 1 through 28, and sections B and C, and forward the EIR to the appropriate reviewing office. If the reviewing office concurs that legal enforcement action is appropriate, it completes EIR section A blocks 29 through 33 and forwards the EIR to Office of Policy, International Affairs & Environment, Noise Division, AEE-100. AEE-100 reviews the EIR and, if it concurs that legal enforcement action is appropriate, forwards the EIR to the Assistant Chief Counsel for AGC-300. The Assistant Chief Counsel for AGC-300, or delegated AGC-300 counsel, handles the EIR in accordance with paragraph 7.d.(3), above.

9. Use of "For Official Use Only" Designation. In accordance with FAA Order 1600.75, *Protecting Sensitive Unclassified Information*, For Official Use Only, or "FOUO", is the primary designation for sensitive unclassified information, which consists of information that could adversely affect the national interest, the operation of federal programs, or the privacy of individuals, if released to unauthorized individuals. The purpose for placing a designation on this type of information is to protect it from uncontrolled release outside the FAA and indiscriminate dissemination within the FAA. *See* FAA Order 1600.75, chapter 1, paragraph 5. (FAA Order 1600.75 can be accessed only from within the FAA network). Documents contained in EIRs could adversely affect the FAA's compliance and enforcement program if they are inappropriately released to the public. In addition, for EIRs on individuals, an inappropriate release of information outside or within the FAA could adversely affect privacy rights. Accordingly, investigative personnel mark documents in EIRs with a "For Official Use Only" or "FOUO" designation in accordance with FAA Order 1600.75, Appendix D. When EIR documents no longer need protection, FAA personnel may cancel their sensitive unclassified

status under FAA Order 1600.75, chapter 3, paragraph 19. FAA personnel redact the "For Official Use Only" or "FOUO" marking from documents no longer needing such designation before releasing them outside the FAA or disseminating them within the FAA.

10. Distribution of Enforcement Documents.

a. General. The distribution of EIRs, letters, notices, orders, and associated documents varies with the type of enforcement action recommended and the FAA function involved. Enforcement personnel do not routinely distribute paper copies of records that can be accessed electronically in EIS, except as stated in paragraphs 10. b.-d., below.

b. Distribution of Documents for Administrative Actions.

(1) When the investigating office determines that administrative action is appropriate, it distributes information related to the action, including the forwarding of information to the reviewing office, in accordance with the applicable program office's policies and procedures. The investigating office sends a copy of the warning notice or letter of correction to any FAA office supporting the investigation.

(2) The investigating office sends the original warning notice or letter of correction to the apparent violator. In cases involving companies with complex organizational structures, the investigating office ensures that it addresses the letter to the responsible official.

c. Legal Enforcement Actions or Referrals.

(1) When an investigating office determines that legal enforcement action or EIR foreign referral is appropriate, it transmits the EIR to its reviewing office. The investigating office transmits a copy of section B of the EIR to any office that has supported the investigation. The supporting office may electronically access section A (Form 2150-5) through EIS.

(2) The reviewing office, after review and evaluation, transmits the EIR to AGC-300 in accordance with this order.

(3) AGC-300 counsel processes legal enforcement actions and EIR foreign referrals in accordance with this order.

d. Legal Enforcement Action Documents. Paragraph 10.d.(1), below, provides guidance to FAA legal offices for the distribution of either electronic or hard copies of letters, notices, orders, and associated documents related to legal enforcement actions.

(1) FAA legal offices send:

(i) copies of FAA notices, orders, and civil penalty letters to investigating and reviewing offices involved in such action;

(ii) final orders imposing civil penalties to the FAA accounting office servicing the area where the order originated;

(iii) copies of FAA notices, orders, and civil penalty letters as well as NTSB or court decisions involving airman certificate holders to FS Airmen Certification (AFB-720);

(iv) copies of FAA notices and orders regarding Transportation Security Administration security threat certificate actions to ASH's Law Enforcement Assistance Unit (LEAU);

(v) copies of referral letters to U.S. attorneys to investigating and reviewing offices involved in any such action;

(vi) copies of notices of appeal from NTSB and FAA Decisionmaker or Administrator decisions to the investigating and reviewing offices involved in any such action; and

(vii) a letter to a foreign aviation authority notifying the authority of the disposition of a matter resulting in legal enforcement action the authority referred to the FAA.

(2) Headquarters AGC-300 distributes copies of NTSB, FAA Decisionmaker or Administrator, and court decisions and orders to all AGC-300 managers who, in turn, inform reviewing and investigating offices of the decisions.

11. FAA Form 2150-5 Codes for Blocks 6 and 19-26. FAA personnel use the following codes when completing blocks 6 and 19-26 on FAA Form 2150-5.

BLOCK 6 – CERTIFICATE TYPE

Code	Description
00	Sched Air Carrier 121 &/or 135
01	Sched Cargo Carrier 121 &/or 135
02	Supplemental Air Carrier
03	Comm Oper & Part 125 Operators
04	Foreign Air Carrier
05	Air Carrier on Demand - 135
06	External Load-Rotorcraft
07	Approved Repair Station
08	Aircraft Production
09	Engine Production
10	Propeller Production
11	Component Production
12	Military Rated Pilot
13	Airline Transport Pilot
14	Commercial Pilot
15	Private Pilot
16	Student Pilot

BLOCK 6 – CERTIFICATE TYPE

Code	Description
17	Flight Engineer
18	Flight Navigator
19	Flight Radio Operator
20	Flight Instructor
21	Aircraft Dispatcher
22	Airframe - Powerplant Mechanic
23	Airframe Mechanic
24	Powerplant Mechanic
25	Maintenance Repairman
26	Ground Instructor
27	Control Tower Operator
28	Foreign Airman
29	Inspection Authorization
30	Parachute Rigger
31	Agriculture Operator
32	Travel Club
33	Sched Air Carrier - Helicopter
34	Airport Operator
35	Certificated School
36	1st Class Medical Certificate
37	2nd Class Medical Certificate
38	3rd Class Medical Certificate
39	1st Class Medical–Student Pilot
40	2nd Class Medical–Student Pilot
41	3rd Class Medical–Student Pilot
42	Medical Cert - Type Unknown
43	Airworthiness Certificate
44	Instrument Rating-Pilot
45	Aircraft Registration Cert
46	Recreational Pilot
47	Indirect Air Carrier
48	Org Designation Authorization
49	Commercial Space Transportation Operation
92	Remote Pilot
93	Flight Attendant
94	Auth Aircraft Instructor
95	Repairman Light Sport Aircraft
96	Light Sport Pilot Cert
97	Whole Pilot
98	None
99	Other

BLOCK 19 – TYPE OF OPERATION

Code	Description
01	Air Carrier - 121
02	Foreign Air Carrier
03	Commercial Oper & Part 125 Operations
04	Scheduled Air Carrier - 135
05	Air Carrier on Demand - 135
06	Air Travel Club
07	Personal/Business Transport
08	Utility/Industrial
09	Military
10	Airport
11	Manufacturer
12	Shipper
13	Certificated School
14	Uncertificated School
15	Repair Station
16	Uncertificated Repair Facility
17	Passenger
18	Non-passenger
19	Parachute Jumper
20	Indirect Air Carrier
21	Light Sport Aircraft
22	Org Designation Authorization
23	Design Approval Holder
24	Commercial Space Transportation Operation
25	Non-Operational
99	Other

BLOCK 20 – SUBTYPE OF OPERATION

Code	Description
01	Scheduled Passenger
02	Scheduled Cargo
03	On Demand- Passenger
04	On Demand - Cargo
05	Helicopter
06	Corporate/Executive
07	Business
08	Public Aircraft
09	Private
10	Sport/Recreation
11	Demonstration/Competition
12	Criminal Activity
13	Aerial Application

BLOCK 20 – SUBTYPE OF OPERATION

Code	Description
14	External Load
15	Aerial Surveillance
16	Foreign Airman
17	United States Army
18	United States Navy/Marine
19	United States Air Force
20	United States Coast Guard
21	Certif Airport (Part 139)
22	Noncertificated Airport
23	Aircraft
24	Engine
25	Propeller
26	Product Parts/Appliance (expired 12/5/2017)
26	Article (12/6/2017)
27	Pilot (Schools)
28	Mechanic (Schools)
29	Flight Engineer (Schools)
30	Exam/Reexam/Reinspect
31	Airman - Alcohol
32	Airman - Drug
33	Airman - Falsification
34	Flight Crew - Alcohol
35	Flight Crew - Drug
36	Flight Crew - Falsification
37	ODA - Type Certification
38	ODA - Supplemental Type Cert
39	ODA - Product Certification
40	ODA - Parts MFG Approval
41	ODA-Major Repair Alteration AW
42	ODA-Tech Standard Ord Auth
43	ODA - Air Operator
44	ODA - Airman Knowledge Testing
45	Air Carr Stores/Hazmat Shipper
46	Launch License
47	Site License
48	Reentry License
49	Reentry Site License
50	Reusable Launch License
51	Permit
52	Safety Approved
98	None
99	Other

BLOCK 21 – CATEGORY

Code	Description
01	Flight Operations
02	Maintenance
03	Records and Reports
04	Training - Flight Crew
05	Training - Other
06	Hazardous Materials
07	Airport Surfaces/Safety Areas
08	Obstructions/Lighting
09	Crash/Fire/Rescue
10	Airport Operations/Self Insp
11	Quality Control
12	Type Design Data
13	Technical Standard Order
14	Aircraft Alterations
15	Near Mid-Air
16	Hazard to Air Navigation
17	Haz to Persons/Prop on Surface
18	Interference With Crewmember
19	Noise
20	Security
21	Medical
22	Drug Testing
23	Cargo Security
24	DOT Alcohol Testing
25	Security Risk-AGC Only
26	Security Related Airspace
27	Security Investigation
28	Registration
29	ODA Manual Non-Compliance
30	Laser
31	Unmanned Aircraft System
32	Procedural Control
33	Commercial Space Operations
34	Alcohol/Drug Motor Vehicle Action
99	Other

BLOCK 22 – SOURCE

Code	Description
01	Air Traffic Service
02	Other FAA Source
03	United States Military
04	Other U S Government Agency

BLOCK 22 – SOURCE

Code	Description
05	Foreign Referrals
06	Local/State Government
07	Public Complaint
08	Accident Investigation
09	Surveillance
10	Enroute Inspection
11	Incident Investigation
12	Facility Inspection
13	Record/Log Inspection
14	Certification Rein/Reexam
15	Ramp/Aircraft Spot Inspection
16	Mechanical Reliability Report
17	Mechanical Interruption Sum
18	Malfunction or Defect Report
19	Spl Surveillance/Inspection
20	Hazardous Materials Report
21	Oth Rptr Required by FAR/HMR
22	Aeronautical Center AAM-300
23	Aviation Medical Examiner
24	GASA Insp - Segment 4
25	NASIP Inspections
26	Region Generated Spec Survlnce
27	Natl HQs Gen Spec Surv or Insp
28	Inspector General Match
29	Self Disc - Flight Standards
30	Prison Match (Federal)
31	ADAPT
32	DUI/DWI Match
33	Drug Abatement Program
34	Prison Match (State)
35	Self Disc – Manufacturing (expired 12/6/2017)
36	Self Disc - Security
37	Self Disc - Medical
38	Self Disc - Denial
39	Fed/State Prob/Parole Match
40	Undeliverable Triennials
41	Insurance Companies
42	Salvaged - Security Only
43	Aviation Industry
44	ASAP Disclosure
45	Whistleblower Protection Program
46	Self Disclosure - ODA

BLOCK 22 – SOURCE

Code	Description
47	Commercial Space Operations
48	Notification Letter
99	Other

BLOCK 23 – ACCIDENT ASSOCIATED

Code	Description
00	No Accident
01	Accident Occurred-Not Associate
02	Accident Occurred-Associated

BLOCK 24 – SECURITY PROGRAM

Code	Description
D100	Drug Investigations Violations–General
D210	Safety Related
D220	Non-safety – Imprisoned
D999	Drug Investigations Violations-Other
H999	Hazmat Violations-Other
P100	DUI/DWI Program-General
P999	DUI/DWI Program-Other
R100	Aircraft Registration Violation-General
R110	Aircraft Registration Certificate Not On Board
R120	Aircraft Registration Certificate Not On Board Inbound US
R130	Invalid Corporation
R140	Citizenship
R150	Fraudulent Certificate
R160	Fraudulent Aircraft Registration Number
R200	Airman Certificate-General
R210	Airman Certificate- Fraudulent
R999	Aircraft Registration Violations Other

BLOCK 25 – RECOMMENDED ACTION

Code	Description
01	Administrative Action
02	Civil Penalty
03	Suspension
04	Emergency Suspension
05	Revocation
06	Emergency Revocation
07	Referral to DOD (expired 11/30/2022)
08	Foreign/Referral to Gen Counsel
09	Criminal Action
10	Order of Compliance

BLOCK 25 – RECOMMENDED ACTION

Code	Description
11	Cease and Desist Order
12	Injunction
13	Aircraft Seizure
14	No Action
15	Other Action
25	Finding of Material Contribution
26	Unable to Locate
29	Certificate Expired
30	Successful Reexam/Proof Qualif
33	Civil Penalty (NOV)
34	Comp Ord-No Fnd (NOV)
35	Return to Investigating Ofc
37	Closed to Take Informal
38	Compliance Action – No Enforcement Action Taken
61	Permanent Disqualification

BLOCK 26 – RECOMMENDED SANCTION

Code	Description
01	Warning Letter
02	Letter of Correction
03	Dollars
04	Days
05	Revocation
06	Warning Notice
07	Denial
08	Pending Compliance
09	Sanction Deferred
10	Sanction Waived
11	Consolidated Case
12	Ltr of Corr - Remedial Train
13	Dollars with Offer
15	Form-Warning Notice
16	Form-Letter of Correction
17	Indefinite Duration-AGC Only
18	Successful Compliance
19	Finding of Material Contribution
20	PSP Revocation
21	Permanent Disqualification

Chapter 7. Legal Enforcement Actions and Related Matters.

1. Purpose. This chapter provides guidance for legal enforcement actions and related matters.

2. Responsibilities for Legal Enforcement Actions. Consistent with FAA Order 8000.373, as amended, *FAA Compliance Program*, this order, and program office policies, FAA program offices refer cases selected for legal enforcement action to the Office of the Chief Counsel, AGC-300. AGC-300, in turn, evaluates such cases and, if appropriate, initiates legal enforcement action. The responsibilities of the various offices involved in the handling of legal enforcement actions are set forth in paragraph 2.a.-c., below.

a. Responsibilities of Investigating Office Personnel.

(1) FAA investigative personnel gather evidence relevant to an apparent violation in accordance with the guidance in chapter 4. They analyze the evidence to determine whether sufficient proof exists to support a violation. If such proof exists, investigative personnel determine what action to select to address the apparent violation in accordance with the guidance in chapter 5 and program office policies.

(2) If investigative personnel determine that legal enforcement action is appropriate to address an apparent violation, they compile an enforcement investigative report (EIR) in accordance with the guidance in chapter 6. Investigative personnel provide items of proof (IOPs) relevant to any violation alleged in the EIR, explain how IOPs support any apparent violation, and discuss the basis for the selection and type of legal enforcement action. They provide a detailed analysis for each factor affecting sanction and ensure that the IOPs support this analysis. They also provide opinions and impressions regarding matters relevant to the case. Investigating office management reviews the EIR to ensure sufficiency. Investigative personnel contact FAA counsel if they have questions about the sufficiency of the EIR. Additionally, Office of Hazardous Materials Safety (AXH) investigative personnel provide a specific recommended sanction amount and a detailed analysis of the basis for the recommended amount.

(3) An investigating office carefully reevaluates and quickly responds to each legal enforcement action EIR returned to it as insufficient by a reviewing office or AGC-300 counsel, addressing each issue raised. The investigating office considers whether safety and the public interest continue to require the pursuit of legal enforcement action. If the investigating office determines that legal enforcement action remains viable, then it coordinates this decision with reviewing office personnel and, if appropriate, counsel. If investigative personnel determine that legal enforcement action is not appropriate, they determine whether to select another action, *e.g.*, compliance action or administrative action, or no action.

(4) In circumstances where a case recommended for legal enforcement action is legally insufficient to pursue because, for example, the allegations lack evidentiary support or warrant dismissal due to staleness, investigative personnel send the apparent violator a letter stating that the matter is closed with no action. The letter states that the decision is limited to FAA actions.

b. Responsibilities of Reviewing Offices.

(1) Reviewing office (and, in certain circumstances, FAA headquarters program office) personnel review the legal enforcement action EIR to ensure that the IOPs in the EIR support any alleged violation, the selection and type of legal enforcement action is appropriate, and factors affecting sanction have been sufficiently discussed. Reviewing offices also ensure that sections A, B, and C of the EIR are completed in accordance with chapter 6. If reviewing office personnel determine that the selection or type of legal enforcement action (and, for AXH, the sanction amount recommended) does not comport with this order, or the EIR is otherwise insufficient, they address the matter with the investigating office and may return the EIR to the investigating office for appropriate handling.

(2) If reviewing office personnel determine that the EIR is sufficient, they forward it to AGC-300 for handling. Reviewing office personnel document the basis for agreement with, or a change to, the type of legal enforcement action in the EIR and provide any other information they deem useful for consideration by AGC-300 counsel. Additionally, AXH reviewing office personnel provide a specific recommended sanction amount and a detailed analysis of the basis for the recommended amount.

c. Responsibilities of AGC-300 Counsel. The responsibilities of AGC-300 counsel in processing EIRs are discussed in chapter 8, paragraph 3.

3. Enforcement Priorities.

a. General. The FAA's enforcement program focuses on persons unwilling or unable to comply with FAA statutes or regulations and deviations from such provisions that otherwise present an unacceptable risk to safety. The FAA's highest priority among legal enforcement actions are emergency actions, which typically involve issues regarding qualifications to hold a certificate, rating, approval, authorization, license, or permit. Following emergency actions, the FAA prioritizes cases identified by program offices as warranting aggressive and swift prosecution.

b. Special Emphasis Enforcement Programs. The FAA may set up a special emphasis enforcement program to address particular areas of noncompliance at a national, regional, or local level. The program may include increased sanctions or more focused enforcement activity. Generally, a special emphasis enforcement program has a fixed expiration and is used when other methods of gaining compliance have not been sufficiently effective. The following procedures apply to special emphasis enforcement programs.

(1) The director of the program office involved and the Assistant Chief Counsel for AGC-300 jointly determine whether to institute a special emphasis enforcement program. Either headquarters program office management or reviewing office management apprise Regional Administrators about the implementation of a regional special emphasis enforcement program that may affect that region.

(2) Before instituting a special emphasis enforcement program, the program office and the Office of the Chief Counsel determine what public notice, if any, is needed. Sometimes publicity may not be appropriate, *e.g.*, where only increased surveillance is needed. In other cases, letters to airmen, pilot forums, and even press releases may be appropriate. The program office maintains a tracking method to evaluate the effectiveness of the special emphasis enforcement program on a continuing basis.

4. Types of Legal Enforcement Actions. This paragraph describes legal enforcement actions the FAA uses to address apparent violations and issues of qualifications to hold certificates, ratings, approvals, authorizations, licenses, or permits.

a. Certificate Actions Under 49 U.S.C. § 44709.

(1) General. Under 49 U.S.C. § 44709(b), the Administrator is authorized to amend, modify, suspend, or revoke any part of a certificate issued under 49 U.S.C. chapter 447 if the Administrator decides that safety in air commerce or air transportation and the public interest require that action. Holders of certificates issued under 49 U.S.C. chapter 447 may appeal actions taken against their certificates under 49 U.S.C. § 44709 to the National Transportation Safety Board (NTSB). The certificate holder has a right to an adjudication before an NTSB ALJ, and either the certificate holder or the Administrator may appeal an ALJ's decision to the full NTSB. Either the certificate holder or the Administrator (when the Administrator determines that the order will have a significant adverse impact on the FAA's ability to carry out aviation programs under 49 U.S.C. subtitle VII) may petition a U.S. court of appeals to review the NTSB's final order. Under the Pilot's Bill of Rights (PBR), an airman may appeal a final NTSB order to a U.S. district court rather than a court of appeals.

(2) Emergency Authority. Under 49 U.S.C. § 46105(c), the Administrator is authorized to make certificate actions under 49 U.S.C. § 44709(b) immediately effective if they find that an emergency exists and safety in air commerce or air transportation requires such action. The Administrator generally takes emergency certificate actions when: (i) the certificate holder lacks qualifications, there is a reasonable basis to question whether the certificate holder is qualified to hold the certificate, or the certificate holder does not comply with statutory or regulatory requirements to cooperate with the FAA; and (ii) the certificate holder is reasonably able to exercise the privileges of the certificate.

(i) Emergency orders require the immediate surrender of the certificate at issue. Under 49 U.S.C. § 44709(e), the certificate holder may appeal the emergency order to the NTSB and challenge the Administrator's use of emergency authority. The certificate holder may not continue to exercise the privileges of the certificate at issue while the appeal is pending unless the NTSB reverses the emergency nature of the order. The NTSB must hear and decide an appeal from an emergency certificate action within 60 days after the date on which the appeal is filed unless the certificate holder waives the emergency procedures.

(ii) The investigation of an emergency certificate action, and compilation of an EIR related to the action, is generally given priority over all other work. When investigative personnel believe an emergency certificate action is appropriate, they immediately coordinate the

matter within their chain of command. Because emergency actions receive accelerated handling, investigative personnel must be ready to assist AGC-300 counsel up to and after the issuance of the emergency order to allow for timely hearing preparation.

(3) Revocation. The Administrator is authorized to revoke any certificate when the certificate holder lacks the qualifications to hold the certificate. A certificate holder may lack the qualifications to hold the certificate because of: (i) a lack of technical proficiency; (ii) the failure to meet technical eligibility requirements (including airman medical standards); or (iii) a lack of the care, judgment, or responsibility required of a certificate holder. When the Administrator revokes a certificate under 49 U.S.C. § 44709(b), the certificate is no longer valid and the holder may not exercise any of its privileges. Unlike a suspension, a certificate that has been revoked cannot be reinstated.

(i) A person whose certificate has been revoked may be issued a new certificate provided that the person meets the qualification requirements for the new certificate. Any experience requirements for the new certificate may be met with experience obtained before the revocation.

(ii) Unless otherwise authorized by the Administrator, an order of revocation will set a period of one year from its effective date before the holder of a certificate issued under 14 C.F.R. part 61, 63, or 65 may apply for a new certificate. If a revoked certificate was issued under: (1) 14 C.F.R. part 61, the waiting period will apply to all certificates issued under 14 C.F.R. part 61; (2) 14 C.F.R. part 63, the waiting period will apply to the kind of part 63 certificate revoked; (3) 14 C.F.R. part 65, and that certificate was a mechanic or repairman certificate, the waiting period will apply to both kinds certificates; or (4) 14 C.F.R. part 65, and that certificate was an air traffic control tower operator, aircraft dispatcher, or parachute rigger certificate, the waiting period will apply to the same kind of certificate revoked. Under 49 U.S.C. § 44703(d), an individual has no NTSB appeal right from an FAA denial of an application for 14 C.F.R. part 61, 63, or 65 certificate if the application is made before the expiration of the waiting period specified in an order of revocation.

(4) Suspension. When the Administrator suspends a certificate under 49 U.S.C. § 44709(b), the certificate ceases to be effective during the period of suspension.

(i) Punitive suspensions are used for deterrent purposes. For punitive suspensions, the Administrator suspends a certificate for a specific time period consistent with agency sanction guidance.

(ii) Indefinite suspensions are used when the Administrator has reason to question, but is unable to determine, a certificate holder's qualifications, or when the certificate holder does not comply with statutory or regulatory requirements to cooperate with the FAA. For indefinite suspensions, the Administrator suspends the certificate until certain conditions are met, *e.g.*, until a reexamination or reinspection under 49 U.S.C. § 44709(a) is successfully completed. The period of time the certificate is not effective is specified in the order of suspension, and once the required period has passed, the certificate is reinstated.

(iii)The Administrator may issue a deferred punitive suspension of a certificate when legal enforcement action is appropriate and investigative personnel want to encourage the certificate holder to take corrective action. The Administrator proposes the suspension of the certificate, but advises the certificate holder that the imposition of the suspension may be avoided if the certificate holder takes acceptable corrective action within a specified period of time. If the certificate holder completes the corrective action within the time period, the certificate holder does not lose the privileges of the certificate, although the Administrator issues an order of suspension making a finding of violation and enters the finding into the Enforcement Information System (EIS). The certificate holder may appeal a deferred suspension to the NTSB.

(5) Suspension or Revocation of Airman Medical Certificates. The Administrator is authorized to suspend or revoke an airman medical certificate under 49 U.S.C. § 44709(b).

(i) The Administrator is authorized to revoke an airman medical certificate when the holder of such a certificate does not meet the medical certification standards in 14 C.F.R. part 67. In addition, the Administrator is authorized to revoke an airman medical certificate when the certificate holder (A) provides a fraudulent or intentionally false statement on an application for an airman medical certificate; (B) reproduces, for fraudulent purposes, an airman medical certificate; or (C) alters an airman medical certificate. Under agency sanction policy, the violation conduct referenced in the previous sentence also generally results in the revocation of all airman and ground instructor certificates, and any rating held by the certificate holder. The Administrator is also authorized to revoke an airman medical certificate based on an incorrect statement, on which the FAA relied, made in support of an application for an airman medical certificate.

(ii) The Administrator is authorized to suspend an airman medical certificate when: (A) the Administrator has a reasonable basis to question the qualifications of an airman medical certificate holder pending demonstration of qualifications to meet FAA medical certificate requirements; or (B) the holder of an airman medical certificate fails to provide medical information requested by the FAA that is necessary to determine an airman's qualification to hold an airman medical certificate.

(6) Unless otherwise authorized by the Administrator, the Administrator will not accept an application for an airman certificate, rating, or authorization from an individual whose airman certificate is under suspension. The individual has no NTSB appeal right from such an action.

b. Mandatory Certificate Revocation Under 49 U.S.C. §§ 44710, 44106, or 44726. The Administrator is required to revoke certificates in certain circumstances, including those described in 49 U.S.C. §§ 44710 (captioned "Revocations of airman certificates for controlled substance violations"); 44106 (captioned "Revocation of aircraft certificates for controlled substance violations"), and 44726 (captioned "Denial and revocation of certificate for counterfeit parts violations"). Prior to revoking a certificate under these provisions, the Administrator first issues a notice of proposed certificate action to allow the certificate holder an opportunity to be heard as to why the certificate should not be revoked. An order of revocation is appropriate if, after this informal process, the Administrator determines that a basis for revocation remains. An immediately effective order is appropriate if the certificate holder is reasonably able to exercise

the privileges of the certificate. The certificate holder may appeal the merits portion of such an order to the NTSB and the immediate effectiveness of the order to a U.S. court of appeal. The certificate holder has a right to an adjudication of the merits before an NTSB ALJ, and either the certificate holder or the Administrator may appeal an ALJ's decision to the full NTSB. Either the certificate holder or the Administrator (when the Administrator determines that the order will have a significant adverse impact on the FAA's ability to carry out aviation programs under 49 U.S.C. subtitle VII) may petition a U.S. court of appeals to review a final order of the NTSB.

(1) The Administrator is required, under 49 U.S.C. § 44710, to revoke an airman certificate of any individual who has been convicted of, or has knowingly carried out, an activity punishable under a federal or state law by death or imprisonment for more than one year relating to controlled substances (except simple possession) if an aircraft was involved and the individual served as an airman, or was on the aircraft, in connection with the offense. When the revocation of a certificate under 49 U.S.C. § 44710 becomes final, the Administrator may not issue an airman certificate to the subject of the revocation unless the subject is acquitted of all charges on which the revocation was based or the conviction that formed the basis for the revocation is reversed. *See* 49 U.S.C. §§ 44710(e)(1) and (2). The revocation (or denial) may be waived if a law enforcement officer requests the waiver and the Administrator decides that the waiver will facilitate law enforcement purposes. *See* 49 U.S.C. §§ 44703(f)(1) and 44710(f).

(2) Under 49 U.S.C. § 44106, the Administrator is required to revoke the certificate of registration for an aircraft used during an offense described in 49 U.S.C. § 44710, and any other certificate of registration that the owner of the aircraft holds, if the owner of the aircraft permitted such use. The Administrator may not issue a certificate of registration to a person whose certificate of registration was revoked under 49 U.S.C. § 44106 during the five-year period beginning on the date of the revocation unless the Administrator finds the period excessive or contrary to the public interest, *see* 49 U.S.C. § 44103(b)(1)(B), or, if the case had been based on a conviction, the person is acquitted of all charges or the charges are reversed, *see* 49 U.S.C. § 44106(e)(2).

(3) The Administrator is required, under 49 U.S.C. § 44726, to revoke the certificates of any certificate holder convicted of violating a "law of the United States" relating to the installation, production, repair, or sale of a counterfeit or fraudulently-represented aviation part or material or who, in the absence of a conviction, knowingly, and with the intent to defraud, engaged in or facilitated conduct prohibited by such law. This authority extends to the certificate of any business in which an individual who violates 49 U.S.C. § 44726 holds a controlling interest. The chief "law of the United States" is 18 U.S.C. § 38. Under 18 U.S.C. § 38(a), whoever knowingly, and with the intent to defraud, falsifies or conceals a material fact concerning any aircraft part used in interstate commerce is subject to a range of criminal penalties under 18 U.S.C. § 38(b). When the revocation of a certificate under 49 U.S.C. § 44726 becomes final, the Administrator may not issue a certificate governed by 49 U.S.C. chap. 447 to the subject of the revocation unless the subject is acquitted of all charges on which the revocation was based or the conviction that formed the basis of the revocation is reversed. *See* 49 U.S.C. §§ 44726(a) and (e)(2). The revocation (or denial) may be waived if a law enforcement officer requests the waiver and the Administrator decides that the waiver will facilitate law enforcement purposes. *See* 49 U.S.C. § 44726(f).

c. Mandatory Certificate Revocation Under 49 U.S.C. § 44724. Under 49 U.S.C. § 44724, the Administrator is required to issue an order revoking an airman certificate of a pilot-in-command of an aircraft who knowingly allows an individual who does not hold a pilot and airman medical certificate to control the aircraft in an attempt to set a record or engage in an aeronautical competition or feat. An immediately effective order is appropriate if the certificate holder is reasonably able to exercise the privileges of the certificate. The order and a notice of proposed action are simultaneously issued under the emergency procedures at 14 C.F.R. § 13.20(d). In the event the issuance of an immediately effective order is not appropriate, AGC-300 counsel issues a notice of proposed action under the non-emergency procedures at 14 C.F.R. § 13.20(c). In either circumstance, the certificate holder may request a hearing before an FAA hearing officer, and a party to the proceeding may appeal a hearing officer's decision to the Administrator under 14 C.F.R. part 13, subpart D. The certificate holder may petition a U.S. court of appeals for review of the Administrator's final decision.

d. Mandatory Certificate Revocation Under 49 U.S.C. § 44704(e)(5)(A). Under 49 U.S.C. § 44704(e)(5)(A), the Administrator is required to issue an order revoking an airline transport pilot certificate held by an individual who, while acting on behalf of an applicant for, or holder of, a type certificate, knowingly makes a false statement with respect to the submission of safety-critical information for a transport category airplane. If an immediately effective order is appropriate, the order and a notice of proposed action are simultaneously issued under the emergency procedures at 14 C.F.R. § 13.20(d). If an immediately effective order is not appropriate, AGC-300 counsel issues a notice of proposed action under the non-emergency procedures at 14 C.F.R. § 13.20(c). In either circumstance, the certificate holder may request a hearing before an FAA hearing officer, and a party to the proceeding may appeal a hearing officer's decision to the Administrator under 14 C.F.R. part 13, subpart D. The certificate holder may petition a U.S. court of appeals for review of the Administrator's final decision.

e. Mandatory Certificate Action Under 49 U.S.C. § 46111. Pursuant to 49 U.S.C. § 46111 and 14 C.F.R. § 3.200, the Administrator is required to issue an order amending, modifying, suspending, or revoking any FAA-issued certificate if the Transportation Security Administration (TSA) notifies the Administrator 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. Appeals of threat assessments on which orders are issued under 49 U.S.C. § 46111 and 14 C.F.R. § 3.200 are to the TSA rather than the FAA or NTSB. The Administrator may make the order immediately effective under 49 U.S.C. § 46105(c), if appropriate. Under 14 C.F.R. § 3.205(a), if the TSA notifies the FAA that an individual who has applied for an FAA certificate poses, or is suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety, the FAA holds the application in abeyance pending further notification by the TSA. Under 14 C.F.R. § 3.205(b), if the TSA notifies the FAA that the TSA has made a final security threat determination regarding an individual, the FAA denies all FAA certificate applications by the individual.

f. Mandatory Certificate Action Under 49 U.S.C. § 44924. Pursuant to 49 U.S.C. § 44924, upon notification by the TSA that a foreign repair station does not maintain or carry out effective security measures, the Administrator is required to issue an order suspending the repair

station's certificate until the TSA determines that the repair station is maintaining effective security measures. Under the same provision, the Administrator is required to issue an order revoking the certificate of a foreign repair station upon notification by the TSA that the repair station poses an immediate security risk. Appeals of the immediate security risk determination on which such orders are issued is to the TSA rather than the FAA or NTSB. The Administrator may make the order immediately effective under 49 U.S.C. § 46105(c), if appropriate.

g. Aircraft Registration Certificate Actions Under 49 U.S.C. §§ 44104 and 44105. The Administrator is authorized under 49 U.S.C. § 44105 to suspend or revoke a certificate of registration when an aircraft no longer meets registration requirements under 49 U.S.C. § 44102. Such certificate actions are taken against the certificate holder as an *in personam* action rather than against the aircraft as an *in rem* action. In addition, the Administrator is authorized to suspend or revoke a dealer's certificate of registration under 49 U.S.C. § 44104. When an immediately effective order is appropriate, the order and a notice of proposed action are simultaneously issued under the emergency procedures at 14 C.F.R. § 13.20(d). In the event the issuance of an immediately effective order is not appropriate, AGC-300 counsel issues a notice of proposed action under the non-emergency procedures at 14 C.F.R. § 13.20(c). In either circumstance, the certificate holder may request a hearing before an FAA hearing officer, and a party to the proceeding may appeal a hearing officer's decision to the Administrator under 14 C.F.R. part 13, subpart D. The certificate holder may petition a U.S. court of appeals for review of the Administrator's final decision.

h. Cease and Desist Orders, Orders of Compliance, and Other Orders.

(1) Under 49 U.S.C. § 40113(a), the Administrator has general authority to issue orders to carry out the FAA's aviation safety responsibilities, and may issue these orders pursuant to 14 C.F.R. § 13.20 when there is no other specific administrative process provided by statute, regulation, or order. Such orders include orders of compliance; cease and desist orders; orders of finding of material contribution; orders of permanent disqualification; orders terminating authorizations, approvals, or waivers; and orders of denial. The procedures at 14 C.F.R. § 13.20 and part 13, subpart D, govern these types of orders referenced in this subparagraph. Pursuant to 49 U.S.C. § 46106, these orders may be judicially enforced.

(2) The Administrator makes orders issued under 49 U.S.C. § 40113(a) immediately effective under 49 U.S.C. § 46105(c) when an emergency exists and safety in air commerce or air transportation requires the immediate issuance of an order. For example, the Administrator may issue an immediately effective cease and desist order under 49 U.S.C. §§ 40113(a) and 46105(c) to address ongoing violations by persons holding a technical standard order authorization (TSOA) or a parts manufacturer approval (PMA) reflecting a lack of qualifications to hold the TSOA or PMA. Under the emergency procedures at 14 C.F.R. § 13.20(d), the Administrator issues such an order simultaneously with notice of proposed action. A person subject to an action under 14 C.F.R. § 13.20(d) may request an expedited hearing before an FAA hearing officer, and a party to the proceeding may appeal a hearing officer's decision to the Administrator under 14 C.F.R. part 13, subpart D. The person may petition a U.S. court of appeals for review of the Administrator's final decision.

(3) For non-emergency actions under 49 U.S.C. § 40113(a), the Administrator issues a notice of proposed action (*e.g.*, notice of proposed order of compliance) under 14 C.F.R. § 13.20(c). A person subject to such a notice may request a hearing before an FAA hearing officer, and a party to the proceeding may appeal a hearing officer's decision to the Administrator under 14 C.F.R. part 13, subpart D. The person may petition a U.S. court of appeals for review of the Administrator's final decision.

(4) The Administrator is authorized to issue an order of compliance other than for an imminent hazard to address hazmat violations under 49 U.S.C. chap. 51. When using this authority, the FAA issues a notice of proposed order of compliance under 14 C.F.R. § 13.71 before issuing an order under 49 U.S.C. chap. 51. A person subject to such a notice may request a hearing before an FAA hearing officer, and a party to the proceeding may appeal a hearing officer's decision to the Administrator under 14 C.F.R. part 13, subpart D. The person may petition a U.S. court of appeals for review of the Administrator's final decision.

i. Hazardous Material Emergency Orders. The Administrator has authority under 49 U.S.C. § 5121(d) and 49 C.F.R. § 109.17 to impose emergency restrictions or prohibitions, or issue emergency orders to cease operations. The Administrator can exercise this authority if they determine that a violation of a hazardous material statute, regulation, or order, or an unsafe condition or practice, constitutes or is causing an imminent hazard. The person subject to the order may petition for review of the order before a Department of Transportation (DOT) administrative law judge (ALJ), and a party to the proceeding may request reconsideration of the DOT ALJ decision by the Pipeline and Hazardous Materials Safety Administration (PHMSA) Chief Safety Officer. The subject of the emergency order may petition a U.S. court of appeals for review of the PHMSA Chief Safety Officer's final action.

j. Injunctions. Injunctions are court orders that may require a person to do something (mandatory) or not to do something (prohibitory). Failure to comply with an injunction may be punishable as contempt of court, which may result in fines or imprisonment. The Administrator is authorized under 49 U.S.C. § 46106 to bring a civil action against a person in U.S. district court to enforce – through a court-issued injunction – provisions of 49 U.S.C. subtitle VII (Aviation Programs) or regulations and orders prescribed under those provisions. For example, when an airman knowingly continues to operate an aircraft without an appropriate certificate, the Administrator may bring an action to request the court to issue an injunction to stop the conduct.

k. Commercial Space License and Permit Actions. The Commercial Space Launch Act authorizes the FAA to modify, suspend, or revoke a license or permit. *See* 51 U.S.C. § 50908. These actions are effective immediately unless otherwise specified. *See* 51 U.S.C. § 50908(e). Under 49 U.S.C. § 50912(a) and 49 C.F.R. § 406.1, a person subject to such an action may request a hearing and decision on the record. The hearing is before an ALJ. The Associate Administrator for Commercial Space Transportation reviews the ALJ's decision and issues a final decision. Under 51 U.S.C. § 50912(b), the person may petition a U.S. district court for review of the Associate Administrator's final decision.

l. Civil Penalty Actions.

(1) Under 49 U.S.C. § 46301, the Administrator is authorized to impose a civil penalty against a person for violating certain provisions of 49 U.S.C. subtitle VII and regulations prescribed or orders issued under those provisions. Generally, the forum for appealing civil penalty actions depends on the amount of the proposed civil penalty and the person charged with the violation. Under 49 U.S.C. § 46301(d)(4), U.S. district courts have exclusive jurisdiction to adjudicate civil penalty amounts over $50,000 for individuals and small businesses, and over $400,000 for persons other than individuals and small business concerns. When the penalty sought does not exceed these jurisdictional limits, the person subject to the civil penalty may request a hearing before a DOT ALJ (except for cases involving an individual acting as an airman, discussed in paragraph 4.k.(3), below). A party to the proceeding may appeal the ALJ's decision to the FAA Decisionmaker (*i.e.*, the FAA Administrator). The person may petition a U.S. court of appeals for review of the FAA Decisionmaker's final decision.

(2) Under 49 U.S.C. § 44704(d)(3)(B) and (e)(4)(A), the Administrator may assess a civil penalty for the knowing presentation of a nonconforming aircraft by a production certificate holder for issuance of an initial airworthiness certificate, and the knowing failure to submit safety-critical information for a transport category airplane by an applicant for or holder of a type certificate. Regardless of the proposed civil penalty amount, a person subject to a civil penalty under these sections may request a hearing before a DOT ALJ, and a party to the proceeding may appeal a DOT ALJ's decision to the FAA Decisionmaker. The person may petition a U.S. court of appeals for review of the FAA Decisionmaker's final decision.

(3) Under 49 U.S.C. § 46301(d)(2), the Administrator is authorized to administratively assess civil penalties not exceeding $50,000 against an individual acting as an airman (*i.e.*, an individual acting as a pilot under 14 C.F.R. part 61, flight engineer, mechanic, or repairman). The airman may appeal the penalty to the NTSB under 49 U.S.C. § 46301(d)(5). The certificate holder has a right to an adjudication before an NTSB ALJ, and either the certificate holder or the Administrator may appeal an ALJ's decision to the full NTSB. Either the individual acting as an airman or the Administrator (when the Administrator determines that the order will have a significant adverse impact on the FAA's ability to carry out aviation programs under 49 U.S.C. subtitle VII) may petition a U.S. court of appeals to review the NTSB final order.

(4) Under 49 U.S.C. § 5123, the Administrator may assess a civil penalty for a knowing violation of 49 U.S.C. chap. 51, and regulations and orders issued under that chapter, including the Hazardous Material Regulations. Regardless of the proposed civil penalty amount, a person subject to a civil penalty assessed under 49 U.S.C. § 5123 may request a hearing before a DOT ALJ, and a party to the proceeding may appeal a DOT ALJ's decision to the FAA Decisionmaker. The person may petition a U.S. court of appeals for review of the FAA Decisionmaker's final decision.

(5) Under 51 U.S.C. § 50917, the FAA is authorized to assess civil penalties for a violation of the Commercial Space Launch Act, regulations prescribed under that act, and the terms of any license issued under that act. Under 49 U.S.C. § 50912(a), a person subject to such an action may request a hearing and decision on the record. The hearing is before an ALJ

appointed under 5 U.S.C. § 3105, such as a DOT ALJ. A party to the proceeding may appeal the ALJ's initial decision to the FAA Decisionmaker. (For the purpose of commercial space civil penalty actions, the "FAA Decisionmaker" is the Associate Administrator for Commercial Space Transportation.) Under 51 U.S.C. § 50912(b), the person may petition a U.S. district court for review of the FAA Decisionmaker's final decision.

m. Liens on Aircraft. Under 49 U.S.C. § 46304(a), the Administrator has the authority to place a lien on an aircraft for civil penalties when the aircraft is involved in a violation under 49 U.S.C. § 46301(a)(1)(A)-(C) and the violation is by the aircraft owner or an individual commanding that aircraft. A lien gives the federal government a financial interest in that aircraft. The amount of the lien is the amount of the civil penalty for the violation.

n. Seizures of Aircraft. Under 49 U.S.C. § 46304(b), the Administrator is authorized to seize, that is, take physical possession, of an aircraft subject to a lien through the issuance of an order of seizure. Only aircraft that were involved in the violation for which a civil penalty was assessed may be seized. Seizure of an aircraft ordinarily is considered only when the violation is particularly serious, for example, when an aircraft is being used in a continuing violation and all other efforts to stop its operation have failed. Procedures for the seizure of aircraft are in 14 C.F.R. part 13.

5. Denials. The Administrator issues certificates (and commercial space licenses and permits) to qualified persons. The Administrator is authorized to deny applications to unqualified persons.

a. Airman Certificate Denials. Under 49 U.S.C. § 44703, the Administrator must issue an airman certificate, such as a pilot, mechanic, and airman medical certificate, to an individual qualified to hold the certificate. The Administrator is also authorized to deny an airman certificate to an unqualified individual. The applicant has a right to an adjudication of the denial of an application for an airman certificate before an NTSB ALJ, and either the applicant or the Administrator may appeal an ALJ's decision to the full NTSB. Either the applicant or the Administrator (when the Administrator determines that the order will have a significant adverse impact on the FAA's ability to carry out aviation programs under 49 U.S.C. subtitle VII) may petition a U.S. court of appeals to review the NTSB's final order.

(1) Airman Medical Certificate Denials. Aviation medical examiners (AMEs) are authorized to examine applicants' qualifications for airman medical certification and to issue, defer, or initially deny airman medical certification. When an AME defers or denies issuance of a medical certificate, an applicant may ask the FAA to reconsider the AME's action. If, after reconsideration, the Federal Air Surgeon (or, in certain cases, other FAA medical officers), issues a final denial of the application, the applicant has a right to appeal the denial to the NTSB. A certificate issued by an AME is considered to be affirmed as issued unless the Federal Air Surgeon (or other FAA medical officer, as appropriate) reverses that issuance within 60 days after the date of issuance. However, if the FAA requests the certificate holder to submit additional medical information within 60 days after an AME issues a certificate, the issuance may be reversed, *i.e.*, the certificate denied, within 60 days after receipt of the requested information. The date the FAA mails the request for additional medical information by certified or registered mail constitutes the date of the request. *See* 49 U.S.C. § 46103(b)(2).

(2) Denials of Airman Certificates Other Than Medical Certificates. The Administrator may deny applications for airman certificates other than airman medical certificates under 49 U.S.C. § 44703. If the Administrator denies such an application, the applicant has a right to appeal the denial to the NTSB (except for denials of applications made within one year of a revocation).

b. Certificate Denials Other Than Airman Certificates. Under 49 U.S.C. § 40113(a), the Administrator is authorized to issue orders denying applications for certificates other than those applied for by airman, such as applications for air carrier operating and air agency certificates. The Administrator issues these orders pursuant to 14 C.F.R. § 13.20 when there is no other specific administrative process provided by statute, regulation, or order. When 14 C.F.R. § 13.20 applies, the Administrator issues a notice of proposed denial before issuing an order of denial. A person subject to such a notice may request a hearing before an FAA hearing officer, and a party to the proceeding may appeal a hearing officer's decision to the Administrator under 14 C.F.R. § 13.20, and part 13, subpart D. The person may petition a U.S. court of appeals to review the Administrator's decision. The FAA applies the certification dispute resolution process at 49 U.S.C. § 44704(g) for type certification application activities under 49 U.S.C. § 44704(a), including activities related to a manufacturer's compliance with design requirements.

c. Commercial Space License and Permit Denials. The FAA is authorized to deny an application for a license or permit. *See* 51 U.S.C. § 50905. Under 49 U.S.C. § 50912(a), a person subject to such an action may request a hearing and decision on the record. The hearing is before an ALJ. The Associate Administrator for Commercial Space Transportation reviews the ALJ's decision and issues a final decision. Under 51 U.S.C. § 50912(b), the person may petition a U.S. district court for review of the Associate Administrator's final decision.

6. Reexamination and Reinspection. Pursuant to 49 U.S.C. § 44709, FAA personnel have authority to take appropriate action, including reexamining or reinspecting a certificate holder, to resolve any question as to the certificate holder's competence or qualification to hold a certificate. (For the purpose of this paragraph, "certificate holder" includes the holders of airman and ground instructor certificates, entity certificate holders, and the holders of approvals and authorizations.) This paragraph discusses legal enforcement actions in connection with reexaminations and reinspections.

a. General.

(1) Reexamination. FAA personnel have authority to reexamine airman (or ground instructor) certificate holders under 49 U.S.C. § 44709(a) when they have a reasonable basis to *question* whether an airman is qualified to hold a certificate or rating. Reexamination is not appropriate if circumstances show that an airman is *not qualified* due to a lack of care, judgment, or responsibility to hold a certificate or rating. Rather, in those circumstances, the FAA takes legal enforcement action to revoke the airman's certificate or rating. (The FAA may address issues of an airman's competence relating to skills or ability to meet technical eligibility

requirements through compliance, administrative, or legal enforcement action, as discussed in chapter 5, paragraph 5.b.(3).)

(2) Reinspection. Under 49 U.S.C. § 44709(a), investigative personnel may reinspect, at any time, a civil aircraft, aircraft engine, propeller, appliance, design organization, production certificate holder, air navigation facility, or air agency to ensure compliance with requisite standards. This authority includes surveillance, ramp check, and routine inspection activities.

(3) If a certificate holder fails to submit to a request for reexamination or reinspection, AGC-300 counsel issues an order suspending the certificate under 49 U.S.C. § 44709(b) until the holder submits to reexamination or reinspection and the FAA finds the holder qualified. This action removes a potentially unqualified certificate holder from the system and encourages compliance with the reexamination or reinspection request.

(4) Reexamination and reinspection are not punitive measures. They do not preclude the initiation of concurrent punitive enforcement action when appropriate.

(5) The Federal Aviation Regulations require the holder of a PMA or TSOA to allow the FAA to inspect its quality system, facilities, technical data, and any manufactured article and witness any tests necessary to determine compliance with the regulations. FAA enforcement personnel generally apply the procedures applicable to reinspection of a certificate or rating in this paragraph to address noncompliance with PMA and TSOA inspection requirements, *i.e.*, the FAA suspends the approval or authorization pending compliance (although the order is issued under 49 U.S.C. § 40113(a) (*see* paragraph 4.h., above)).

b. Procedures for Reexamination.

(1) Investigative personnel generally notify an airman by certified mail, return-receipt requested (or registered mail for certificate holders outside the U.S.) and regular mail that a reexamination is necessary. Investigative personnel provide the airman a reasonable time period to comply with the reexamination request. The letter advises the airman that failure to comply with the request for reexamination will result in referral of the matter to AGC-300 counsel for possible suspension of the certificate or rating pending compliance with the request.

(2) The reexamination notification letter typically requests that within ten days of the date of the letter the airman contact the FAA to schedule the time and place for the reexamination. In selecting a location, investigative personnel give reasonable consideration to the convenience of the airman. Investigative personnel point out precisely the certificate or rating subject to reexamination. The letter provides a detailed factual basis for, and scope of, the reexamination. For reexaminations involving holders of airman medical certificates, the Office of Aerospace Medicine identifies the specific information needed to determine whether the airman meets the applicable medical standards.

(3) In cases where punitive enforcement action may be taken in addition to reexamination, investigative personnel take care not to suggest that reexamination is the only

action to be taken. When appropriate, the notification letter states that the FAA may take enforcement action in addition to reexamination.

(4) Occasionally, immediate suspension in advance of reexamination may be appropriate, such as when safety considerations will not allow for the usual reexamination procedures to be followed. Investigative personnel consult AGC-300 counsel in such a circumstance. In some instances, instead of a letter, the FAA may notify the airman of the need for a reexamination through the issuance of an administrative subpoena.

c. Failure to Submit to Reexamination or Reinspection. If a certificate holder fails to submit to a reexamination or reinspection request, investigative personnel follow the procedures in paragraph 6.c.(1)-(5), below.

(1) Investigative personnel prepare an EIR recommending suspension of the certificate or rating until the certificate holder submits to reexamination or reinspection and the FAA finds the holder qualified. However, when an airman is physically unable to complete a reexamination (*e.g.,* the airman is medically disqualified or is imprisoned), the FAA does not suspend the airman's certificate. In such a circumstance, investigative personnel monitor the airman and resume the reexamination process when the airman is physically able. When punitive action is appropriate in addition to reexamination or reinspection, investigative personnel prepare a separate EIR for the punitive action.

(2) For both reexamination and reinspection cases, investigative personnel include in section C of the EIR IOPs showing that the FAA requested a reexamination or reinspection and that the certificate holder received or otherwise was on notice of the request but failed to comply. (Additionally, for reexamination cases, investigative personnel provide IOPs supporting the reasonable basis for the reexamination.) In section B, investigative personnel provide a "Statement of the Case" explaining how the proof supports a suspension pending reexamination or reinspection.

(3) If the evidence is sufficient to establish that a certificate holder has failed to submit to reexamination or reinspection and may lack the qualifications to hold a certificate or rating, AGC-300 counsel issues an order suspending the certificate or rating pending satisfactory completion of the reexamination or reinspection. Likewise, if the evidence establishes that a reexamination or reinspection cannot be accomplished because of a certificate holder's lack of cooperation during the reexamination or reinspection, counsel issues an order suspending the certificate or rating pending compliance. An emergency order of suspension pending compliance is appropriate if the certificate holder possesses the certificate and is reasonably able to exercise its privileges. The emergency order immediately suspends the certificate or rating and orders the immediate surrender of the certificate or rating to AGC-300 counsel.

(4) When a certificate or rating is suspended pending reexamination or reinspection, the certificate or rating remains suspended indefinitely pending the certificate holder's successful reexamination or reinspection.

(5) If, after the issuance of the order, the certificate holder satisfactorily establishes qualifications to continue to hold the certificate or rating, investigative personnel issue a letter advising the certificate holder of that finding and send a copy of the letter to AGC-300 counsel who issued the order. Counsel, in turn, issues a letter notifying the certificate holder that the order terminated according to its terms (*i.e.*, on the successful completion of a reexamination or reinspection) and returns the surrendered certificate or rating to the certificate holder. In the event the order has been appealed to the NTSB, counsel moves to terminate the proceeding as moot based on the termination of the order.

d. Unsuccessful Reexamination or Reinspection.

(1) An unsuccessful reexamination or reinspection demonstrates a lack of qualifications to hold the certificate or rating at issue.

(2) Certificate holders are permitted to surrender their certificate or rating for cancellation after failing an initial reexamination if the surrender is not made to avoid a certificate action not based on the failed reexamination. *See* paragraph 7.a., below.

(3) The FAA does not allow an airman who has not demonstrated qualifications during an initial reexamination to try repeatedly to prove qualifications. Generally, the FAA revokes an airman certificate or rating when an airman has failed both an initial and second reexamination.

(4) Revocation of an airman certificate or rating is warranted when an airman submits to an initial reexamination, is unable to demonstrate technical proficiency, and does not promptly place the certificate or rating on deposit with the FAA or voluntarily surrender the certificate or rating for cancellation. Revocation is also warranted when an airman submits to an initial reexamination and is unable to demonstrate qualifications for reasons other than for technical proficiency, *e.g.*, the airman does not meet age requirements or demonstrates a lack of qualifications during reexamination based on a lack of care, judgment, or responsibility.

(5) If the FAA offers an airman the opportunity for a second reexamination, the second reexamination is only allowed when (i) the airman failed the initial reexamination; (ii) the failure was the result of a lack of technical proficiency; and (iii) the airman has promptly placed the certificate or rating on deposit with the FAA. The FAA provides written notification to the airman of the failed initial reexamination and any additional information in accordance with program office policy.

(6) If revocation based on a failed reexamination is warranted, FAA enforcement personnel follow the procedures in paragraph 6.d.(6)(i)–(iii), below.

(i) Investigative personnel prepare an EIR recommending revocation of the certificate or rating. Emergency certificate action is appropriate when the airman is reasonably able to exercise the privileges of the certificate. The case is assigned a new EIR number, *i.e.*, one different from any EIR number assigned to any suspension pending compliance action. The EIR number for any suspension pending compliance action is listed in the related EIR block on FAA Form 2150-5.

(ii) AGC-300 counsel issues an order revoking the certificate or rating if the evidence is sufficient to establish that the airman failed to establish qualifications and has not voluntarily surrendered that certificate or rating for cancellation.

(iii) If revocation action is taken against only part of the certificate, such as a single rating, investigative personnel issue to the airman the necessary temporary certificate or new certificate with the remaining privileges.

(7) If the certificate holder submits to a reinspection and fails to establish qualifications, FAA personnel take action in accordance with chapter 5.

7. Voluntary Surrender of Certificate for Cancellation.

a. Refusal to Accept Voluntary Surrender of Certificates. While FAA-issued certificates may be voluntarily surrendered for cancellation (*see*, *e.g.*, 14 C.F.R. §§ 61.27(a), 63.15(c), 65.15, 119.61(a)(1), 145.55(a) and (b)), FAA personnel refuse the voluntary surrender of a certificate if it appears the surrender is to avoid certificate action. FAA personnel are alert for indications that a certificate holder is attempting to avoid a certificate action through the voluntary surrender of a certificate. They refuse the certificate holder's attempt to voluntarily surrender a certificate if FAA databases or other reliable information reveal that the certificate holder is the subject of an enforcement investigation or legal enforcement action. This policy generally does not apply to certificate surrenders pursuant to reexamination or reinspection as long as the surrender attempt does not follow a second failed reexamination or is not made to avoid a certificate action not based on the circumstances leading to reexamination or reinspection.

b. Voluntary Surrender of Medical Certificates.

(1) If the FAA determines that an airman medical certificate holder does not meet the qualification requirements of 14 C.F.R. part 67, or an airman medical certificate holder has not provided additional medical information or history requested under 14 C.F.R. § 67.413(a), and the certificate holder attempts to surrender their airman medical certificate, FAA personnel generally refuse the voluntary surrender. Under the following limited circumstances, FAA personnel may consider exercising discretion to accept the voluntary surrender.

(i) The FAA determines that the certificate holder meets all of the qualification requirements of 14 C.F.R. § 67.307(a)-(b), 67.309(a), 67.311, and 67.313(a); and

(ii) The benefits of accepting surrender are not outweighed by the risk to aviation safety, considering the nature of the medical condition(s) and the totality of the circumstances.

(2) FAA personnel refuse an airman's attempt to voluntarily surrender an airman medical certificate if the airman has received a verified positive result for a DOT-required drug test or a DOT-required alcohol test result of 0.04 or above alcohol concentration, or has refused to submit to a DOT-required drug or alcohol test.

8. AGC-300 Case Status Review. The Assistant Chief Counsel for AGC-300 and program office officials meet periodically to review the status of cases referred for legal enforcement action. This review consists of a joint AGC-300/program office assessment of caseload management, with an emphasis on the timeliness and effectiveness of legal enforcement action investigation and processing; trend analyses (*e.g.*, the impact of the FAA Compliance Program on the number of cases referred to AGC-300); sanction uniformity; and any other significant evaluative factors. AGC-300 management routinely assesses AGC-300 caseloads and, if appropriate, redistributes cases for processing.

9. Formal Complaints.

a. Authority to Investigate Complaints of Violations. Under 49 U.S.C. § 46101(a)(1), a person may file a written complaint with the Administrator concerning violations of 49 U.S.C. subtitle VII (Aviation Programs), part A (Air Commerce and Safety), or a requirement prescribed under part A. Under 49 U.S.C. § 46101(a)(2), the Administrator, on their initiative, may investigate the complaint if it provides reasonable grounds in support of a violation. If the complaint does not state facts that warrant an investigation or further action, the Administrator may dismiss it without a hearing under 49 U.S.C. § 46101(a)(3).

b. Procedures for Handling Formal Complaints.

(1) The procedures for handling complaints filed under 49 U.S.C. § 46101 are in 14 C.F.R. § 13.5, which is captioned "Formal Complaints." Under this section, any person may file a complaint with the Administrator about any violation of a statute, regulation, or order regarding matters within the jurisdiction of the Administrator. This section does not apply to complaints against the Administrator or any employee of the FAA acting within the scope of their employment.

(2) If the Assistant Chief Counsel for AGC-300 determines that the complaint meets the criteria for being docketed as a formal complaint in 14 C.F.R. § 13.5(b), they (or a delegee) send the formal complaint to any person who is the subject of the complaint. Each such person has 20 days to file an answer. Complaints that do not meet the applicable criteria are not docketed as formal complaints. Rather, the Assistant Chief Counsel for AGC-300 treats them as reports of violation under 14 C.F.R. § 13.2 and refers them to the appropriate program office for investigation.

(3) After the complaint has been answered or the period to respond has expired, the Assistant Chief Counsel for AGC-300 sends a copy of the complaint and answer to the appropriate program office with a request that the program office determine whether the complaint states facts that warrant further investigation. If the program office determines that no further action is warranted, it dismisses the complaint and prepares a record of decision that informs the person who filed the complaint and any person who is the subject of the complaint of the reasons for the dismissal. If the program office determines that reasonable grounds exist for investigating the complaint, it may initiate an informal investigation or issue an order of investigation under 14 C.F.R. part 13, subpart F. If the investigation substantiates the allegations

in the complaint, the FAA may proceed with legal enforcement action or other action as appropriate.

(4) The complaint, other pleadings, and official FAA records involving the disposition of the complaint are maintained in the Formal Complaint Docket (AGC-300), Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591. Interested persons may examine any docketed material at that office (except material that is ordered withheld from the public under applicable laws or regulations).

10. Disclosure of Legal Enforcement Action Information. The public has a right to obtain information related to FAA legal enforcement actions. This right, however, is subject to privileges and exceptions under law, including the Freedom of Information Act (FOIA), 5 U.S.C § 552, and the Privacy Act, 5 U.S.C § 552a.

a. Actions Against Individuals.

(1) Privacy Act and FOIA. The Privacy Act prohibits the voluntary or unsolicited disclosure of personally identifiable information of an individual subject to a legal enforcement action without prior written authorization from that individual or unless an exception to the Privacy Act (*see* 5 U.S.C. § 552a.(b)) applies. The FAA may disclose information related to a legal enforcement action against an individual in response to a FOIA request or under a routine use published in the Federal Register pertaining to the Privacy Act (System of Records 847, 75 Fed. Reg. 68849) (http://federalregister.gov). The FAA handles any third-party request under FOIA for the release of an EIR or other investigative information relating to a legal enforcement action against an individual in accordance with FAA Order 1270.1, as amended, *Freedom of Information Act Program*. The FAA applies FOIA exemptions in releasing such information, as appropriate, and releases information under FOIA only when the public interest in disclosure outweighs the privacy interest involved. Disclosure under the routine-use provision requires a written request and is treated the same as a FOIA request. Unless covered by paragraph 10.c, below, the FAA handles requests from first parties under the Privacy Act and FOIA and applies applicable Privacy Act and FOIA exemptions in processing such requests.

(2) Pilot Records Improvement Act (PRIA). Under 49 U.S.C. § 44703(h) (*i.e.*, PRIA), before allowing an individual to begin service as a pilot for an air carrier or operator, the air carrier or operator is required to request and receive information on record with the FAA regarding the individual, including summaries of legal enforcement actions resulting in a finding by the FAA of a violation that was not subsequently overturned. The information provided by the FAA is limited to the five years preceding the request (except for suspensions and revocations of airman certificates in effect on the date of the request). The FAA is transitioning from PRIA to the Pilot Records Database (PRD). This transition will be completed in September 2024. PRD is discussed at paragraph 10.a.(3), below.

(3) PRD. Under 49 U.S.C. § 44703(i) and 14 C.F.R. part 111, certain entities, including the holders of air carrier or operating certificates, fractional ownership programs, and air tour operators under 14 C.F.R § 91.147, must access and evaluate records regarding individuals in the PRD before permitting the individual to begin service as a pilot for them. The FAA provides

several different types of records to the PRD, including summaries of legal enforcement actions against individuals resulting in a finding by the FAA of a violation that was not subsequently overturned. An entity to which 14 C.F.R. part 111 applies is required to provide certain records to the PRD for any individual employed by it as a pilot, including those that may relate to legal enforcement action against the pilot. An entity cannot review an individual's PRD records without first obtaining written consent from that individual or use PRD records for any purpose other than to inform whether to hire that individual as a pilot. All PRD records are maintained for the life of the pilot.

b. Actions Against Entities.

(1) FOIA Requests. The FAA releases information relevant to a legal enforcement action (such as releasable material in EIRs) involving entities in response to a request for the information in accordance with privileges and exemptions under FOIA (including provisions relating to any private information on individuals contained in the EIR). The FAA also may release information of a public nature involving entities, such as the scheduling of a public hearing.

(2) Legal Enforcement Action Initiating Documents. The FAA may make a document that initiates a legal enforcement action (*e.g.*, notices of proposed actions or immediately effective orders issued without prior notice) involving an entity publicly available in the absence of a request, particularly if the case is likely to attract significant interest, such as one involving an air carrier or aircraft manufacturer. The FAA may make a notice available to the public after the entity has had an adequate opportunity to review the document. Typically, the FAA will wait one to three days after the entity has received a notice before making it publicly available. The FAA may make an immediately effective legal enforcement action involving an entity publicly available the same day it issues the document as long as the FAA has notified the entity of the issuance.

c. Release to Apparent Violator. Once AGC-300 counsel initiates a legal enforcement action, counsel commonly releases documents pertaining to the action to the apparent violator without requiring a request under FOIA. Counsel carefully reviews the information contained in the record and withholds or redacts portions of documents that would have been withheld in response to a FOIA request, such as private information on individuals other than the apparent violator or content that is privileged or deliberative. In a typical legal enforcement action, counsel withholds recommendations about violations alleged and sanctions, case analyses, and attorney work product. The closing of a legal enforcement action involving a person does not foreclose that person's right to documents pertaining to the action.

d. Protection of Voluntarily Submitted Information. Certain information, which might otherwise be disclosed, is prohibited from disclosure if it is protected by an order issued under 49 U.S.C. § 40123, as implemented in 14 C.F.R. part 193. Under 14 C.F.R. part 193, the FAA uses the following orders to designate information as protected: FAA Order 8000.81, *Designation of Flight Operational Quality Assurance (FOQA) Information as Protected from Public Disclosure under 14 CFR Part 193*; FAA Order 8000.82, *Designation of Aviation Safety Action Program (ASAP) Information as Protected from Public Disclosure under 14 CFR*

Part 193; FAA Order 8000.89, *Designation of Voluntary Disclosure Reporting Program (VDRP) Information as Protected from Public Disclosure under 14 CFR Part 193*). These orders are located at http://drs.faa.gov.

11. Publicizing Legal Enforcement Actions in News Releases, Monthly Reports, and Quarterly Enforcement Reports.

a. General.

(1) The FAA publicizes legal enforcement actions involving regulated entities in news releases, monthly reports, or quarterly enforcement reports. Publicizing such actions serves several purposes. The public has a right to know how the FAA is conducting its compliance and enforcement responsibilities and which entities are subject to legal enforcement actions. Further, the adverse publicity and associated public reaction to noncompliance may be more effective in deterring future violations by the violator – and others similarly situated – than monetary loss resulting from a civil penalty.

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

(3) The FAA complies with the Privacy Act for news releases, monthly reports, and quarterly enforcement reports and, accordingly, does not publicize the identity of individuals against whom it takes legal enforcement actions.

b. News Releases. The Office of Communications issues news releases (which the FAA also refers to as "press releases") for legal enforcement actions against entities in cases of interest to the public or to promote the deterrence of violations. News releases generally are issued for cases initiated with civil penalty letters or notices of proposed civil penalty of $50,000 or more, and immediately effective orders or notices proposing certificate action (except in housekeeping legal enforcement actions, *i.e.*, certificate actions against entities who have stopped business activities). The Office of Communications drafts a news release based on the notice, civil penalty letter, or order and circulates it for coordination in accordance with paragraph 11.d., below. In certain circumstances, the FAA may issue news releases for safety-compromising violations of FAA statutes and regulations in the absence of a legal enforcement action, such as violations of 49 U.S.C. § 42121, which penalizes retaliation by air carriers against employees and safety-related contractors for reporting air carrier violations.

(1) A news release should:

(i) Be factual and objective;

(ii) Provide the current status of the case, including whether the entity that is the subject of the action disputes the allegations or has filed an appeal; and

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

(2) While a news release should avoid comparisons of a particular alleged violator or case with other alleged violators or cases, it may contain statements about whether the case is precedent-setting or unique.

(3) Except in special circumstances directed by the Office of Communications in consultation with the Office of the Chief Counsel, FAA offices do not publicly disseminate any information regarding the subject of a news release until the news release has been issued.

(4) A news release is not provided to an entity, and the contents of a news release are not provided to the public, before the formal issuance of the news release.

(5) The FAA does not negotiate the contents of a news release or whether it will issue one.

c. Monthly Reports. The Office of Communications posts a monthly report on its website referencing civil penalty actions against entities in which the proposed penalty is $50,000 or more, and suspensions or revocations involving entities other than housekeeping actions. The report contains an introduction in a news release format highlighting such items of interest as the number of cases and total amount of the proposed civil penalties.

d. Coordinating News Releases and Monthly Reports. Before the issuance of any news release or monthly report involving an FAA enforcement matter, the Office of Communications obtains the concurrence of the Office of the Chief Counsel, the appropriate Associate or Assistant Administrator, and any other concerned agency or DOT official including, when appropriate, the Administrator or DOT Secretary.

e. Quarterly Enforcement Reports. At the end of each quarter, AGC-300 posts on the FAA's website a compilation of all enforcement actions that the FAA closed during that period that were taken against aviation entities. The report is available at https://www.faa.gov/about/office_org/headquarters_offices/agc/practice_areas/enforcement/reports.

12. Expunction Policy.

a. General. In 1991, the FAA adopted a policy of expunging records of certain closed enforcement actions against individuals. (*See* FAA *Enforcement Records; Expunction Policy*, 56 Fed. Reg. 55788 (October 29, 1991) (http://federalregister.gov)). The policy provided for the expunction of certain enforcement action records for individuals who hold airman certificates and those who do not, such as passengers. In 2011, the FAA suspended the expunction policy based on the Airline Safety and Federal Aviation Administration Extension Act of 2010. (*See FAA Policy Statement on Expungement of Certain Enforcement Actions*, 76 Fed. Reg. 7893 (Feb. 11, 2011) (http://federalregister.gov)). This act amended the PRIA by requiring the FAA to create a pilot records database, or "PRD," for air carriers to use for pre-hire pilot background

checks. The FAA is required to maintain in the PRD various types of records, including any summary of a legal enforcement action against an individual resulting in a finding by the FAA of a violation that was not subsequently overturned. These records are required to be retained for the life of the pilot. The FAA's suspension of the expunction policy as described in this paragraph remains in effect until the FAA determines the full effect of the PRD final rule, published at 14 C.F.R. part 111, on the expunction policy.

b. Applicability and Expunction Periods. The expunction policy currently applies only to the circumstances, and in accordance with the time periods, referenced in paragraph 12.b.(1)-(5), below. For these actions, a record is generally eligible for expunction once no further action is required in the enforcement action and the matter has been closed for the appropriate period of time. The records described in paragraph 12.b.(1)-(5), below, are contained in, and expunged from, EIS in the manner described in paragraph 12.c., below.

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

(2) Administrative Actions. Administrative actions against individuals for apparent violations committed in their individual capacities are expunged two years after the closure of the administrative action.

(3) No Action. Cases opened as enforcement actions but closed as no action are expunged within 90 days after the closure or downgrade. If legal enforcement action has been initiated and is subsequently withdrawn, the record is expunged within 90 days after the withdrawal, unless an administrative action is subsequently issued, in which case the record is expunged in the manner described in paragraph 12.b.(2), above.

(4) Military and Foreign Referrals. The FAA expunges records of any military and foreign referral two years after the referral is closed. Records of military and foreign referrals will be closed after (i) the FAA receives a response from the military authority or civil aviation authority, as appropriate, stating the action taken; or (ii) 180 days from the date of the referral, whichever occurs first.

(5) Civil Penalty Actions With No Finding of Violation. Civil penalty actions settled with no finding of violation are expunged five years after the civil penalty was paid or an individual subject to the civil penalty action provides the FAA a promissory note for payment of the civil penalty.

(6) The expunction policy does not apply to circumstances not referenced in paragraph 12.b.(1)-(5), above, including:

(i) Legal enforcement actions resulting in fixed-period suspensions of airman certificates or civil penalty actions against airman certificate holders (or non-certificated

individuals performing supervised maintenance under 14 C.F.R. § 43.3(d)) resulting in a finding of violation;

(ii) Legal enforcement actions resulting in indefinite suspensions of airman certificates *and* a finding of violation, such as the failure to provide records required under the FAA regulations;

(iii) Legal enforcement actions resulting in certificate revocations;

(iv) Records concerning enforcement actions against businesses or other entities;

(v) Information contained in airman applications;

(vi) Denials of airman medical certificates;

(vii) Airman medical records;

(viii) Records generated or maintained by entities other than the FAA, such as orders and decisions issued by the NTSB and any federal courts;

(ix) Records maintained by the FAA Hearing Docket for administrative adjudications of FAA enforcement actions; or

(x) An application for an airman certificate or rating completed by an airman on FAA Form 8710-1 as part of a reexamination.

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

d. **Compliance Actions.** FAA program offices retain records of compliance actions against individuals within their internal database(s) rather than within EIS (except for cases opened in EIS as enforcement actions but closed for compliance action). Program offices expunge summary information for compliance actions against individuals three years after they close the compliance action activity record. They expunge such records by destroying information that identifies the individual. Records of compliance actions against entities are not subject to expunction unless the entity, or its successor, ceases operations.

e. Requests to Expunge Records. If an individual becomes aware of any enforcement record pertaining to them that may be eligible for expunction but has not been expunged, then they may request amendment of the record under the Privacy Act, 5 U.S.C. § 552a(d). An individual makes a request to amend their enforcement record in writing to the appropriate systems manager in accordance with the procedures in 49 C.F.R. part 10.

f. Negotiations. The FAA does not negotiate deviations from the expunction policy.

13. Enforcement Document Destruction Requirements. FAA Order 1350.14B, *Records Management*, provides that the FAA may destroy records only in accordance with a record schedule approved by the National Archives and Records Administration (NARA). NARA-approved record schedules located at https://www.archives.gov/records-mgmt/rcs/schedules/index.html?dir=/departments/department-of-transportation/rg-0237.

Chapter 8. AGC-300 Counsel Responsibilities

1. Purpose. This chapter prescribes policies and procedures for AGC-300 counsel responsibilities in handling legal enforcement actions.

2. Prosecutorial Discretion. FAA counsel exercises broad prosecutorial discretion in the handling of legal enforcement actions and uses sound prosecutorial judgment to make decisions that further the agency's safety mission and the public interest. This judgment extends from the initial determination of whether legal enforcement action is supportable through the closure of a case. After initiating a case, AGC-300 counsel, in consultation with the program office when practicable or appropriate, may settle the case when settlement is warranted.

3. Evaluating Cases. AGC-300 counsel evaluates cases to ensure that the evidence supports statutory and regulatory violations and, if so, which violations to pursue; determines whether the program office's selection of legal enforcement action, and type of such action, is appropriate; and determines the appropriate sanction amount in punitive legal enforcement actions in accordance with the sanction policies in this order.

a. Evaluating the Evidence. AGC-300 counsel reviews an enforcement investigative report (EIR), which contains evidence (*i.e.*, items of proof (IOP)) relevant to a particular enforcement action, to determine what (if any) factual and legal allegations are supported by the evidence. This includes consideration of any violation alleged by the program office, as well as possible violations not identified by the program office but supported by evidence in the EIR. Counsel does not pursue alleged violations unsupported by the evidence. If counsel finds that the evidence is insufficient to support an alleged statutory or regulatory noncompliance, counsel consults with program office personnel to determine what additional evidence is needed. Counsel consults with program office personnel to address questions they may have about any evidence in an EIR.

b. Assessing the Appropriateness of the Recommended Legal Enforcement Action. Based on an evaluation of what factual and legal allegations are supported by the evidence, AGC-300 counsel assesses whether a program office's selection of legal enforcement action, and type of legal enforcement action, comports with guidance in this order. Counsel consults with program office personnel if counsel determines that the selection, or type, of legal enforcement action is not supported by evidence, policy, or case law. If counsel determines that legal enforcement action may not be appropriate, counsel coordinates with the program office to determine whether the case should be downgraded. Counsel consults with the program office to discuss disagreements in the type of legal enforcement action selected.

c. Determining Sanction Amount. AGC-300 counsel determines the specific sanction amount in punitive legal enforcement actions. Counsel applies the sanction policies in this order to determine the appropriate sanction amount based on an evaluation of the case. Counsel documents the basis for the sanction amount selected in the case file. If the sanction amount is later changed, counsel documents the basis for the change in the case file. Counsel consults with investigating or reviewing office personnel regarding sanction amount determinations in novel cases, or in hazmat cases where counsel disagrees with the sanction amount recommended by the

Office of Hazardous Materials Safety (AXH). For significant legal enforcement actions as described in paragraph 10, below, the Assistant Chief Counsel for AGC-300 or a delegee coordinates sanction amounts with appropriate headquarters officials.

d. Reevaluating the Case.

(1) Whenever AGC-300 counsel receives new information about a case (such as a submission by an apparent violator at an informal conference, or information received during litigation through discovery), counsel considers the new information to determine whether existing allegations remain viable and whether legal enforcement action, the type of such action, and sanction amount remain appropriate. If, after receiving new information, counsel determines that: (i) legal enforcement action may no longer be appropriate, counsel consults with the program office about downgrading the case; (ii) the new evidence renders any existing allegations untenable, counsel notifies the program office and withdraws those allegations; (iii) the type of legal enforcement action selected is no longer appropriate, counsel discusses recommendations as to the appropriate type with the program office; and (iv) the sanction amount should be adjusted in light of new evidence, counsel notifies the program office and adjusts the sanction amount.

(2) Occasionally, evidence received after the initiation of a legal enforcement action may warrant adding allegations. In such a circumstance, AGC-300 counsel: (i) consults with the program office to ensure the viability of any new charge; (ii) is mindful of the effect of timeliness considerations discussed in paragraph 9, below, on any newly added allegation; and (iii) ensures that the apparent violator receives notice and an opportunity to be heard regarding any added charge. When new evidence leads counsel to take any of these actions, counsel documents the basis for the action in the case file.

e. Consideration of Ability to Pay in Civil Penalty Cases. In civil penalty cases, AGC-300 counsel reviews financial information in the EIR, if any, and evaluates its sufficiency and relevance in determining an appropriate civil penalty prior to initiating the case. Frequently, reliable and sufficiently detailed financial information is sparse prior to the initiation of a case. Counsel, therefore, commonly considers ability to pay only after initiation of the case (if the apparent violator chooses to provide detailed financial information). If ability to pay information is sufficient to reduce a penalty at initiation of a case, counsel references this in the notice or civil penalty letter so the violator is on notice of the basis for the reduction. Even if ability to pay information is factored into a notice or civil penalty letter, a post-initiation adjustment of the sanction may be warranted based on a violator's financial submissions after initiation of the case.

4. Matter Tracking and Enforcement Information System. AGC-300 counsel handling a particular enforcement matter is responsible for ensuring that matter status and significant events and notes are entered in a matter tracking database ("matter tracking") and are always current, and significant documents (including documents added to the case file) are promptly uploaded. AGC-300 counsel also provides timely updates regarding significant events to Office of the Chief Counsel, AGC-300 support staff for entry in the Enforcement Information System (EIS).

5. Preservation of Evidence. The FAA has a duty to preserve evidence when litigation is reasonably anticipated. When AGC-300 counsel determines that legal enforcement action will be initiated, counsel notifies FAA personnel or FAA contractors involved in the matter of their duty to preserve all information that is potentially relevant to the matter through the AGC E-Discovery Program Litigation Hold System. If counsel learns that additional FAA personnel or FAA contractors are or become involved in a matter, counsel notifies these individuals of their duty to preserve. Counsel coordinates duty to preserve notifications with the Department of Justice (DOJ) if it is representing the FAA in a matter. Counsel notifies FAA personnel or FAA contractors who received litigation hold notices of the release from a litigation hold promptly after final resolution of a case.

6. Continuity of Counsel. In general, a single AGC-300 counsel represents the FAA from initiation of the case through hearing. When appropriate, AGC-300 management may transfer a case to another AGC-300 counsel during this period. AGC-300 management may also transfer cases for informal conference (as described in paragraph 28, below) or appeal (as described in paragraph 31, below). Prior to the transfer of a case, counsel ensures that the file is in order and that the case records are up-to-date in matter tracking, and prepares a memorandum summarizing the purpose of the transfer and the status of the case.

7. Closing or Returning Cases Without Taking or Pursuing Legal Enforcement Action.

a. Closing or Returning Cases Before Initiation. If AGC-300 counsel reviews an EIR and determines that the EIR is legally insufficient to support any apparent violation (*e.g.*, lack of evidence, outside limitations period), counsel contacts the program office to explain the basis for the legal insufficiency. Except for cases that become stale while in AGC-300's possession, counsel ensures that any legally insufficient case is transferred in EIS to the program office and returns the EIR to the program office for further investigation, closure, or an appropriate action in accordance with chapter 5. AGC-300 counsel prepares a memorandum for the case file providing the reasons for returning the case to the program office and ensures that the program office is notified of the return. AGC-300 closes any case that becomes stale while in AGC-300's possession, prepares a memorandum for the case file stating the reason for the closure, and notifies the program office of the closure. Counsel ensures that appropriate entries concerning the case are noted in matter tracking and EIS before transferring or closing the case.

b. Closing Cases After Initiation of Legal Enforcement Action. If, after the initiation of legal enforcement action, AGC-300 counsel determines that a case should be closed as "no action" because of legal insufficiency, counsel consults with the program office and, if appropriate following such consultation, withdraws the legal enforcement action and notifies the subject person that the action has been withdrawn. Counsel ensures that the significant events in the case are noted in matter tracking and EIS before closing the case. Counsel retains the EIR in accordance with the FAA's records management and expunction policies.

c. Downgrading From Legal Enforcement Action. If, at any time after receipt of a case in AGC-300, AGC-300 counsel, in consultation with the program office, determines that legal enforcement action is not warranted but other action (*e.g.*, administrative action, compliance action) might be, counsel returns the case to the program office with a memorandum

recommending that other appropriate action be taken. Counsel ensures that the case is transferred to the program office in EIS and that the "Remarks" section notes that counsel and the program office agreed to downgrade the action.

8. Types of Legal Enforcement Actions. The FAA has broad authority to take the legal enforcement actions discussed in paragraph 8.a.-e., below, in the interest of aviation safety. Additional detail on the statutory authorities referenced below is found in chapter 7, paragraphs 4 and 5.

a. Actions Reviewable by the National Transportation Safety Board (NTSB). Figure 8-1 provides an overview of actions reviewable by the NTSB.

(1) The NTSB has jurisdiction to review certain types of FAA legal enforcement actions, most commonly those involving the suspension or revocation of FAA-issued certificates under 49 U.S.C. chapter 447. The NTSB also has authority to review: (i) determinations of emergency in certificate action cases (except for those involving mandatory statutory revocation, which are reviewable by a court of appeals); (ii) the denial of airman certificates; and (iii) civil penalty actions for some individuals acting as airmen, specifically mechanics, repairmen, flight engineers, and pilots operating under 14 C.F.R. part 61 (including individuals operating unmanned aircraft systems (UAS) for which a 14 C.F.R. part 61 certificate is required).

(2) NTSB cases are governed by the NTSB's Rules of Practice in Air Safety Proceedings, 49 C.F.R. part 821, and (to the extent practicable) by the Federal Rules of Civil Procedure and the Federal Rules of Evidence. In its review of FAA actions, the NTSB must apply principles of judicial deference to the FAA's interpretation of the laws, regulations, and policies (including sanction policy) that the Administrator carries out. *See, e.g., Martin v. Occupational Safety & Health Review Comm'n,* 499 U.S. 144, 150 (1991) (requiring deference to an agency's interpretation of its regulations); *cf. Butz v. Glover Livestock Comm'n Co., Inc.*, 411 U.S. 182, 186 (1973) (citing *American Power & Light Co. v. SEC*, 329 U.S. 90,112-113 (1946) (courts should overturn an agency's choice of remedy only if it "is unwarranted in law or is without justification in fact.")).[1] Actions reviewed by the NTSB are adjudicated by an NTSB administrative law judge (ALJ), and the parties may appeal the ALJ's decision to the full NTSB. The parties may seek judicial review of final NTSB decisions in a U.S. court of appeals. Alternatively, an airman may seek review of a final NTSB decision involving a certificate action in a U.S. district court.

Figure 8-1: Actions Reviewable by the NTSB.

Type of Action	Authority for Action	Authority for NTSB Review	Cross-Reference
Non-Emergency Certificate Actions	49 U.S.C. § 44709(b); 14 C.F.R. § 13.19	49 U.S.C. § 44709(d); 14 C.F.R. § 13.19	Paragraph 15

[1] *See also Garvey v. National Transp. Safety Bd.*, 190 F.3d. 571, 577 (D.C. Cir. 1999) (NTSB must defer to FAA interpretations of its regulations); *Pham v. National Transp. Safety Bd.*, 33 F. 4th 576, 583 (D.C. Cir. 2022) (NTSB should overturn FAA sanction selection only if the selection is unwarranted in law or is without justification in fact).

Type of Action	Authority for Action	Authority for NTSB Review	Cross-Reference
Emergency Certificate Actions	49 U.S.C. §§ 44709(b), 46105(c); 14 C.F.R. § 13.19	49 U.S.C. §§ 44709(d), 44709(e)(3); 14 C.F.R. § 13.19	Paragraph 13
Mandatory Revocations	49 U.S.C. §§ 44106(b), 44710(b), 44726(b); 14 C.F.R. § 13.19	49 U.S.C. §§ 44106(d), 44710(d), 44726(d); 14 C.F.R. § 13.19	Paragraph 13
Airman Certificate Denials	49 U.S.C. § 44703(a)	49 U.S.C. § 44703(d)	Paragraph 17
Civil Penalties Against Individuals Acting As Pilots (under 14 C.F.R. part 61), Flight Engineers, Mechanics, or Repairmen	49 U.S.C. § 46301(d)(2); 14 C.F.R. § 13.18	49 U.S.C. § 46301(d)(5); 14 C.F.R. § 13.18	Paragraph 16

b. Actions Reviewable by the "FAA Decisionmaker" or "Administrator." Figure 8-2 provides an overview of actions reviewable by the FAA Decisionmaker or Administrator.

(1) The FAA Decisionmaker is authorized to review civil penalty actions within the FAA's administrative assessment authority under 49 U.S.C. § 46301(d)(8), except those reviewable by the NTSB. Civil penalty actions reviewable by the FAA Decisionmaker include those against: (i) businesses; (ii) individuals not acting as airmen (*e.g.*, passengers; flight attendants; visual observers for small UAS operations; individuals who violate 49 U.S.C § 44704(e)(5)); and (iii) individuals acting as remote pilots under 14 C.F.R. part 107 or 49 U.S.C. § 44809; flight instructors; flight navigators; aircraft dispatchers; parachute riggers; air traffic control tower operator; and non-certificated individuals performing supervised maintenance under 14 C.F.R. § 43.3(d). These civil penalty cases are governed by the Rules of Practice in FAA Civil Penalty Actions, 14 C.F.R part 13, subpart G. They are adjudicated by a Department of Transportation (DOT) ALJ, and the parties may appeal the ALJ's decision to the FAA Decisionmaker. The subject of the civil penalty action may petition a U.S. court of appeals for review of the FAA Decisionmaker's final order.

(2) The FAA Decisionmaker is authorized to review knowing violations of 49 U.S.C. § 44704(d)(3)(A) (nonconformity with approved type design) and (e)(1)-(3) (failure to disclose safety critical type certificate-related information) regardless of the sanction amount. Civil penalties assessed under these sections are adjudicated by a DOT ALJ, and the parties may appeal the ALJ's decision to the FAA Decisionmaker. These cases are governed by 14 C.F.R. part 13, subpart G[2]. The subject of the civil penalty action may petition a U.S. court of appeals for review of the FAA Decisionmaker's final order.

[2] In stating that 14 C.F.R. part 13, subpart G, applies to violations involving nonconformity with approved type design, 49 U.S.C. § 44704(f) incorrectly cites 49 U.S.C. § 44704(a)(6), which does not exist. The correct citation is 49 U.S.C. § 44704(d)(3). The FAA infers that it was the intent of Congress that 14 C.F.R. part 13, subpart G apply

(3) The FAA Decisionmaker is authorized to review civil penalties involving apparent violations of 49 U.S.C. chap. 51, and hazardous material regulations and orders issued under that chapter, regardless of the sanction amount. Civil penalties assessed under 49 U.S.C. § 5123 are adjudicated by a DOT ALJ, and the parties may appeal the ALJ's decision to the FAA Decisionmaker. These cases are governed by 14 C.F.R. part 13, subpart G. The subject of the civil penalty action may petition a U.S. court of appeals for review of the FAA Decisionmaker's final order.

(4) The Administrator is authorized to review actions arising from orders issued under 49 U.S.C. § 40113(a) and 14 C.F.R. § 13.20. Such orders include orders of compliance; cease and desist orders; orders of finding of material contribution; orders of permanent disqualification; orders terminating authorizations or approvals; and orders of denial (for other than airman certificates). In addition, the Administrator is authorized to review actions involving the suspension or revocation of an aircraft certificate of registration under 49 U.S.C. § 44105 and a dealer's certificate of registration under 49 U.S.C. § 44104, and the revocation of an airman certificate under 49 U.S.C. § 44724 and an airline transport pilot certificate under 49 U.S.C. § 44704(e)(5)(A). These actions referenced in this paragraph are governed by 14 C.F.R. § 13.20 and part 13, subpart D.

(i) For immediately effective actions under 14 C.F.R. § 13.20, the FAA simultaneously issues an immediately effective order that expires 80 days after issuance and a notice of proposed action to which the emergency procedures at 14 C.F.R. § 13.67 apply. The temporary order is akin to an immediately effective injunction to cease conduct that poses an immediate safety threat, and courts of appeals have exclusive jurisdiction to review such orders under 49 U.S.C. § 46110(c). The notice of proposed action is adjudicated by a hearing officer, and the parties may appeal the hearing officer's decision to the Administrator, who must issue a decision no later than 80 days after the date of the issuance of the notice of proposed action. The subject of the Administrator's final order may petition a U.S. court of appeals to review the order.

(ii) Non-immediately effective actions under 14 C.F.R. part 13, subpart D, are adjudicated by a hearing officer, and the parties may appeal the hearing officer's decision to the Administrator. The subject of the Administrator's final order may petition a U.S. court of appeals to review the order.

(5) The Associate Administrator for Commercial Space Transportation is authorized to review commercial space license and permit suspensions or revocations, denials of applications for launch licenses or permits, and civil penalty actions. These Commercial Space actions are governed by 14 C.F.R. parts 406, Investigations, Enforcement, and Administrative Review. Commercial Space cases are subject to assessment by an ALJ, and the ALJ's recommendation decision is reviewed by the Associate Administrator. For commercial space civil penalty actions, the Associate Administrator is the "FAA Decisionmaker." The subject of Commercial Space cases may petition a U.S. district court for review of the FAA Decisionmaker's final order.

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to both § 44704(d)(3) and § 44704(e)(1)-(3).

Figure 8-2: Actions Reviewable by the FAA Decisionmaker or Administrator.

Type of Action	Authority for Action	Authority for Review	Cross-Reference
49 U.S.C. § 46301 Civil Penalties Within Administrative Assessment Authority	49 U.S.C. § 46301; 14 C.F.R. § 13.16	49 U.S.C. § 46301(d)(7); 14 C.F.R. § 13.16	Paragraph 18
Civil Penalties for knowing violations of 49 U.S.C. § 44704(d)(3)(A) and (e)(1)-(3) (regardless of amount)	49 U.S.C. § 44704(d)(3)(B) and (e)(4); 14 C.F.R. § 13.16	49 U.S.C. § 44704(f); 14 C.F.R. § 13.16	Paragraph 18
Hazmat civil penalty action for Hazardous Material Regulation (HMR) violations (regardless of amount)	49 U.S.C. § 5123(a)(1); 14 C.F.R. § 13.16	49 U.S.C. § 5121(a); 14 C.F.R. § 13.16	Paragraph 18
Orders of Denial (not including airman certificates)	49 U.S.C. § 40113; 14 C.F.R. § 13.20	14 C.F.R. § 13.20	Paragraph 20
Immediately and Non-Immediately Effective Cease & Desist Orders, Orders of Compliance, and Other Orders Issued Under 14 C.F.R. § 13.20	49 U.S.C. §§ 40113, 44104, 44105, 44704(e)(5)(A), 44724; 14 C.F.R. § 13.20	14 C.F.R. § 13.20	Paragraph 20
Commercial Space License Actions	51 U.S.C. § 50908; 14 C.F.R. §§ 405.3(a), (b)	51 U.S.C. § 50912(a); 14 C.F.R. § 406.1	Paragraph 24
Commercial Space Civil Penalties (regardless of amount)	51 U.S.C. § 50917(c); 14 C.F.R. § 406.9(a)	51 U.S.C. § 50917(c); 14 C.F.R. § 406.9(g)	Paragraph 24
Commercial Space License Denials	51 U.S.C. § 50905(a); 14 C.F.R. § 413.21(a)	51 U.S.C. § 50912(a); 14 C.F.R. § 406.1	Paragraph 24

c. Civil Penalties in Excess of Administrative Assessment Authority. When imposing civil penalties (other than in hazmat and commercial space cases and cases involving knowing violations of 49 U.S.C. § 44704(d)(3)(A) and (e)(1)-(3)), the FAA's administrative assessment authority is limited to $50,000 against individuals and small business concerns and $400,000 against persons other than individuals and small business concerns. Under 49 U.S.C. § 46301(d)(4), enforcement of civil penalties in excess of this administrative assessment authority must be brought in a U.S. district court by a U.S. attorney.

d. Hazardous Material Emergency Orders. The Administrator has authority under 49 U.S.C. § 5121(d) and 49 C.F.R. § 109.17 to impose emergency restrictions or prohibitions, or issue emergency orders to cease operations, for hazmat violations involving an imminent hazard. The Administrator can exercise this authority if they determine that a violation of a hazardous material statute, regulation, or order, or an unsafe condition or practice, constitutes or is causing an imminent hazard. The emergency order is subject to administrative adjudication before a DOT

ALJ, and the parties may seek reconsideration of the DOT ALJ decision by the Pipeline and Hazardous Materials Safety Administration (PHMSA) Chief Safety Officer. The subject of the emergency order may petition a U.S. court of appeals to review the PHMSA Chief Safety Officer's final action.

e. Security Threat Certificate Actions. Under 49 U.S.C. § 46111 and 14 C.F.R. § 3.200, the FAA is required to take certificate action when notified by the Transportation Security Administration (TSA) that the certificate holder poses, or is suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety. Under 14 C.F.R. § 3.205(a), if the TSA notifies the FAA that an individual who has applied for an FAA certificate poses, or is suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety, the FAA holds the application in abeyance pending further notification by the TSA. Under 14 C.F.R. § 3.205(b), if the TSA notifies the FAA that the TSA has made a final security threat determination regarding an individual, the FAA denies all FAA certificate applications by the individual. Under 49 U.S.C. § 46924, the FAA is required to take certificate action against a foreign repair station certificate upon notification from the TSA that the repair station does not have effective security measures or poses an immediate safety risk.

9. Timeliness. AGC-300 counsel initiates cases within applicable limitations periods to the extent practicable. Figure 8-3 provides an overview of limitations periods. All limitations periods run from the date of violation, although the six-month and two-year time limitations periods for cases subject to appeal to the NTSB and FAA hearing docket contain "good cause" exceptions. Although there are no statutory or regulatory limitations periods for emergency actions, these cases are processed on an expedited basis because they represent an immediate threat to air safety. *See* chapter 4, paragraph 5, for a detailed discussion of limitation periods for legal enforcement actions.

Figure 8-3: Key Limitations Periods for Punitive Actions

Document	Reviewing Body	Limitations Period	Authority	Good Cause Exception
Notice of Proposed Certificate Action	NTSB	Six Months	49 C.F.R. § 821.33	Yes
Notice of Proposed Assessment	NTSB	Six Months	49 C.F.R. § 821.33	Yes
Notice of Proposed Civil Penalty (except Commercial Space)	FAA Decisionmaker	Two Years	49 U.S.C. § 46301(d)(7)(C); 49 U.S.C. § 5123; 14 C.F.R. § 13.208(d)	Yes
Complaint	U.S. District Court	Five Years	28 U.S.C. § 2462	No

Document	Reviewing Body	Limitations Period	Authority	Good Cause Exception
Complaint	FAA Decisionmaker in Commercial Space civil penalty actions	Five Years	14 C.F.R. § 406.141(f)(2)(ii)	No

10. Coordination with Headquarters Through Enforcement Alerts.

a. General. The FAA coordinates significant legal enforcement actions (as described in paragraph 10.c.(1)-(4), below) with appropriate headquarters officials through the enforcement alerts process. Enforcement alerts ensure that: (1) significant legal enforcement actions reflect appropriate and consistent application of national policy and law; and (2) key headquarters personnel are aware of, and given the opportunity to concur in or not concur in, significant legal enforcement actions.

b. Enforcement Alerts Coordination Process.

(1) AGC-300 counsel who receives a significant legal enforcement action is responsible for transmitting to the Assistant Chief Counsel for AGC-300 or a delegee an enforcement alert memorandum containing relevant information for the case, including, as applicable: (i) an overview of the case and statement of the facts; (ii) the nature of an entity that is the subject of the alert; (iii) considerations presented by the apparent violator; (iv) a sanction determination; and (v) other observations about the case. Counsel also provides the draft notice, civil penalty letter, or order for the case, and other information the Assistant Chief Counsel for AGC-300 or a delegee requests.

(2) The Assistant Chief Counsel for AGC-300 or a delegee is responsible for coordinating significant legal enforcement actions with appropriate program office officials. The Assistant Chief Counsel for AGC-300 or a delegee ensures that the action reflects the appropriate application of FAA policy and applicable law, and considers other factors relevant to the action. While the determination of sanction amounts is within the purview of AGC-300 counsel, the Assistant Chief Counsel for AGC-300 or a delegee coordinates sanction amounts for significant legal enforcement actions with headquarters program office personnel during the alerts coordination process.

(3) The coordination of significant legal enforcement actions is an internal FAA policy and is not intended to limit the FAA from taking timely and appropriate action. Although coordination and clearance ordinarily are accomplished before the initiation of a significant legal enforcement action, special circumstances may warrant coordination contemporaneous with the issuance of the action.

c. Types of Significant Legal Enforcement Actions. The following are significant legal enforcement actions:

(1) Special circumstances – legal enforcement actions involving major aviation safety issues or other special circumstances that are likely to draw broad public attention or congressional interest or that program offices and the Assistant Chief Counsel for AGC-300 deem appropriate for alerts coordination;

(2) Certificate actions involving entities – all certificate actions against the holders of certificates issued under 14 C.F.R. parts 119, 125, 133, 137, 139, 141, 142, and 145, and the holders of type and production certificates (except housekeeping actions to retrieve certificates held by certificate holders or the holders of PMAs or TSOAs that have effectively stopped doing business);

(3) Civil penalty actions – all proposed civil penalty actions in which the proposed civil penalty is $400,000 or greater and all proposed civil penalty actions under $400,000 that are significantly less than the minimum penalty that could be calculated under the enforcement policies contained in this order; and

(4) Extraordinary actions – all extraordinary actions, such as orders of compliance, cease and desist orders, aircraft seizures, injunctive relief, and the suspension or termination of authorizations and approvals (such as parts manufacturing approvals (PMAs) and technical standard order authorizations (TSOAs)).

11. Consolidating Civil Penalty Actions. AGC-300 counsel may initiate separate EIRs involving the same type of legal enforcement action with one initiating document provided that consolidating the EIRs does not change the jurisdictional forum for 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, counsel does not combine them into a single civil penalty action since that would change the forum from the DOT Office of Hearings to a federal district court. In such a circumstance, once the complaints have been filed, counsel may move to consolidate the cases for litigation purposes.

12. Service of Notice, Final Notice, Order, or Civil Penalty Letter.

a. General. AGC-300 counsel sends notices, final notices, orders, or civil penalty letters by regular mail and certified mail, return receipt requested (or registered mail, if certified mail is not available). Counsel uses Federal Express overnight or another expedited delivery service in addition to regular and certified (or registered) mail when time is of the essence, including for emergency orders, or notices and orders with impending limitations period deadlines. For persons whose addresses are on record with the FAA, such as certificate, approval, or authorization holders, or licensees, these documents are sent to the address of record and any other address where counsel believes the apparent violator may be reached. Counsel verifies the address of record before sending the document. If counsel is aware of a registered agent for an apparent violator that is an entity, service is also made on the registered agent. If counsel arranges for personal or international service of a document, then counsel documents the details of that service in the case file.

b. Returned Mail. If certified (or registered) mail is returned unclaimed or refused, but regular mail is not returned, then there is a presumption of service and AGC-300 counsel does not resend the document. If certified (or registered) and regular mail is returned as undeliverable (*e.g.*, because of an incorrect address or because the apparent violator has moved and left no forwarding address), then counsel takes appropriate measures to ensure proper delivery (*e.g.*, they correct the address or attempt to obtain a new address (even for a person whose address is on record with the FAA)) and resends the document by certified (or registered) and regular mail. Counsel consults with Security and Hazardous Materials Safety (ASH) to obtain a new address. Regardless of how the mail is returned, service is obtained on a person whose address is on record with the FAA when counsel serves the person at the address of record (and every other known location).

13. Emergency Certificate Actions and Other Immediately Effective Orders Reviewable by the NTSB. Under 49 U.S.C. § 46105(c), the FAA has authority to issue an emergency order when safety in air commerce or air transportation requires the immediate effectiveness of the order. If such an order involves the emergency suspension or revocation of a certificate issued under 49 U.S.C. chapter 447, the NTSB, under 49 U.S.C. §§ 44709(d) and (e)(3), is authorized to review the merits and, except for mandatory revocation actions (discussed in paragraph 13.a.(4), below), the immediate effectiveness of the order.

a. Criteria for Emergency Action.

(1) Emergency action is taken when: (i) the certificate holder lacks qualifications; there is a reasonable basis to question whether the certificate holder is qualified to hold the certificate; or the certificate holder does not comply with statutory or regulatory requirements to cooperate with the FAA; and (ii) the certificate holder is reasonably able to exercise the privileges of the certificate.[3] AGC-300 counsel does not allege a lack of qualifications to avoid dismissal of charges under the NTSB's stale complaint rule.

(2) If FAA personnel know that a certificate holder lacking qualifications is unable to exercise the privileges of the certificate, AGC-300 counsel issues a notice proposing certificate action in accordance with the notice procedures in paragraphs 14 and 15, below. For example, counsel issues a notice proposing certificate action if the certificate holder is imprisoned.

(i) But for the circumstance discussed in paragraph 13.a.(3), below, AGC-300 counsel generally issues a notice proposing certificate action involving the revocation of a pilot certificate when the certificate holder is required to but does not hold or is medically incapable of exercising the privileges of a valid medical certificate. In those circumstances, counsel notifies the Aerospace Medical Certification Division (AAM-300) to flag the certificate holder's medical certification file and to advise counsel immediately if a new medical certificate is issued to the

[3] Emergency action is appropriate for 14 C.F.R. § 61.15(a) violations demonstrating a lack of care, judgment, and responsibility (provided that the certificate holder is reasonably able to exercise the privileges of a certificate issued under 14 C.F.R. part 61). An exception to this policy occurs when an alleged 14 C.F.R. § 61.15(a) violation is included in a case involving a conviction under 49 U.S.C. § 44710, which requires the issuance of a notice of proposed certificate action under 49 U.S.C. § 44710(c). In that circumstance, AGC-300 counsel issues a notice of proposed certificate action for both apparent violations.

airman. If a medical certificate is subsequently issued to the airman, counsel issues an emergency order to replace the notice.

(ii) Occasionally, an individual who is the recipient of an emergency order of suspension for failure to provide medical information (and who does not surrender their certificate for cancellation following the issuance of the order) will provide sufficient information for AAM to determine that they do not meet qualification requirements to hold a medical certificate while the emergency order of suspension is effective. In such a circumstance, AGC-300 counsel keeps the emergency order of suspension in place and issues to the individual a notice proposing revocation of the medical certificate based on the disqualifying condition.

(3) Emergency action is appropriate when the holder of a pilot certificate who lacks qualifications to hold that certificate and is required to, but does not, hold a valid medical certificate operates an aircraft. In addition, emergency action is appropriate when the holder of a pilot certificate who lacks qualifications to hold that certificate has met the medical education and examination requirements for operating certain small aircraft without an airman medical certificate under 14 C.F.R. part 68.

(4) AGC-300 counsel initiates mandatory statutory revocation cases under 49 U.S.C. §§ 44106, 44710, or 44726 by issuing a notice proposing certificate action. The notice is prepared and served in accordance with paragraphs 12, 14, and 15 of this chapter. The notice informs the apparent violator of the right to submit information or request an informal conference. If an informal conference is requested, it is conducted as described in paragraph 28, below. If there is no response within 15 days of receipt of the notice, counsel issues an order. An informal conference is generally held within 30 days of the receipt of the request. If, after an informal conference, the action remains appropriate, counsel issues an immediately effective order unless the certificate holder is unable to exercise the privileges of the certificate.

b. Emergency Actions Are Not Used for or Combined With Punitive Action. FAA emergency authority is not used for punitive purposes, *e.g.*, fixed-period suspensions. Further, emergency suspensions and revocations, which are remedial, are not combined with punitive sanctions. If a punitive sanction is appropriate in addition to an emergency suspension or revocation, AGC-300 counsel seeks the punitive sanction by issuing a notice separate from the emergency order. For example, the emergency suspension of a pilot certificate based on the airman's refusal to submit to a reexamination following an incident that calls into question their qualifications to hold the certificate *and* the issuance of a notice of proposed certificate action based on the pilot's regulatory violations during the course of the incident may both be appropriate. *See* chap. 6, para. 2.c., for a discussion of separate EIRs.

c. Emergency Order.

(1) An emergency order sets forth the facts alleged and the regulatory or statutory basis for the action. AGC-300 counsel sets forth the facts in numbered paragraphs and in sufficient detail so that the apparent violator has notice of the basis of the action. An emergency order contains all the allegations and findings necessary to establish either a lack of qualification in revocation cases, or a reasonable basis to question qualification or failure to comply with

statutory or regulatory requirements to cooperate with the FAA in indefinite suspension cases. Counsel alleges the apparent violator's violation history when using it to support the sanction.

(2) An emergency order states that it is immediately effective upon service of the order. An appeal does not stay the effectiveness of the order. The order informs the apparent violator that the certificate at issue must be surrendered immediately to AGC-300 counsel (and that a civil penalty may be imposed for failure to surrender). For revocations involving a certificate issued under 14 C.F.R. part 61, 63, or 65, the order sets a period of one year from its effective date before the holder may reapply for a new certificate. *See* chapter 7, paragraph 4.h.(2). For cases involving mandatory lifetime certificate revocations, the order states that the Administrator shall not issue a certificate consistent with the provisions of the applicable statute.

(3) The emergency order includes a section called "Determination of Emergency" that explains the agency's rationale for making the order immediately effective.

(4) The emergency order notifies the apparent violator how to appeal from the order, and includes a website address to access the NTSB's Rules of Practice in Air Safety Proceedings.

(5) If the order includes allegations supporting certificate action under 49 U.S.C. § 44709(b) and mandatory statutory revocation, AGC-300 counsel issues an order consolidating both actions, *e.g.*, "Consolidated Emergency Order of Revocation and Immediately Effective Order of Revocation." The order presents the 49 U.S.C. § 44709(b) action and the mandatory statutory revocation in separate counts, including the different appeal rights referenced in paragraph 13.j. and l., below.

(6) Emergency orders may contain allegations of conduct that appear to support *both* remedial *and* punitive certificate action, *e.g.*, revocation *and* fixed-period suspension. For example, an emergency order of revocation may allege that a mechanic intentionally falsified FAA-required maintenance records *and* failed to properly perform maintenance. In such a circumstance, AGC-300 counsel provides argument independently supporting both actions in the event the basis for revocation is not affirmed.

d. Attachments to the Emergency Order. The releasable portions of the EIR are included with the copy of the emergency order sent via expedited service (*see* paragraph 13.g., below). Where the certificate at issue is an airman certificate, AGC-300 counsel includes a notice advising the apparent violator of the procedures for requesting access to information under the Pilot's Bill of Rights (PBR).

e. Timeliness of Emergency Action.

(1) AGC-300 counsel coordinates an emergency order with AGC-300 management and issues the order as soon as possible after AGC-300 receives the EIR for the case. There may be circumstances when the exigency of a safety problem warrants an exercise of discretion to use emergency action even before the completion of an investigation. In such a case, counsel issues an emergency order pending the completion of the investigation. For example, the FAA may issue an emergency order suspending the pilot and medical certificates of an airman who has

threatened to commit suicide by aircraft pending the completion of an investigation and, thereafter, convert the order to an emergency order of revocation, if appropriate.

(2) Failure to take prompt action in every emergency case does not preclude the issuance of an emergency order when appropriate. Public safety should not be jeopardized because of FAA delay. *See* 68 Fed. Reg. 22623, 22624-5 (Apr. 29, 2003) (http://federalregister.gov) ("an arguably dilatory prosecution does not vitiate an otherwise proper judgment as to the necessity, in the interest of aviation safety, for the immediate effectiveness of an action against a certificate before the certificate holder's appeal is adjudicated. . ."). If a significant delay has occurred, however, circumstances justifying the emergency action may have changed, and the appropriateness of emergency action, and even a determination regarding qualifications, is reevaluated. In such a circumstance, a reinspection or reexamination of the certificate holder may be warranted. For example, when the FAA is ready to initiate emergency revocation action against an entity, the unqualified or culpable management personnel at the entity may have changed and the FAA may, accordingly, determine that emergency revocation is no longer appropriate.

f. Preparation of Airman Stop Order. On issuance of an emergency order suspending or revoking an airman or ground instructor certificate, AGC-300 counsel prepares and electronically transmits an airman stop order to FS Airman Certification (AFB-720). If the emergency order suspends or revokes an airman medical certificate, either alone or in addition to another type of airman certificate, counsel ensures that a copy of the stop order is electronically transmitted to AAM-300. Counsel enters certificate-status information on the stop order form relating to the underlying order, including the effective and termination dates of the emergency suspension or revocation, as applicable. Counsel timely updates the stop order to reflect relevant events, such as the surrender of the airman or ground instructor certificate that is the subject of the emergency order.

g. Service of Emergency Orders.

(1) AGC-300 counsel sends the apparent violator an emergency order by: (i) Federal Express overnight delivery or other expedited delivery service; (ii) regular mail; and (iii) certified mail, return-receipt requested (or by registered mail for foreign addresses). Counsel sends the emergency order to the current address of record and, when in doubt about service at the current address of record, any other address where counsel believes the apparent violator may be reached. Counsel verifies the address of record before sending the emergency order. If counsel arranges for the personal or international service of the emergency order on the apparent violator, then counsel documents the details of that service in the case file.

(2) If certified (or registered) and regular mail is returned as undeliverable (*e.g.*, because of an incorrect address or because the apparent violator has moved and left no forwarding address), then AGC-300 counsel takes appropriate measures to ensure proper delivery (*e.g.*, they correct the address or attempt to obtain a new address (even for a person whose address is on record with the FAA)) and resends the emergency order by the methods referenced in paragraph 13.g.(1), above, to the new address. Counsel consults with ASH to obtain a new

address. 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 counsel does not resend the order.

h. Oral Emergency Orders. In exigent circumstances when necessary to protect the safety of the public and in the public interest, the Administrator, the Chief Counsel, the Deputy Chief Counsels, and the Assistant Chief Counsel for AGC-300 may issue an immediately effective order orally under 49 U.S.C. § 46105(c). For example, an oral order suspending an intoxicated pilot's medical certificate is appropriate if that is the only way to prevent the pilot from operating an aircraft. Oral orders are reduced to writing as soon as practicable after the oral order is served on the apparent violator. Like its written counterpart, each oral order states: (1) the factual, statutory, and regulatory allegations that form the basis for the order; (2) that the order is immediately effective and the immediate surrender the certificate at issue is required; (3) the nature of the exigency requiring the issuance of an oral emergency order; and (4) the apparent violator's appeal rights. If the certificate at issue is an airman certificate, the holder is orally advised of the procedures for requesting access to information under the PBR.

i. Appeal, Complaint, and Answer Procedures. To receive a hearing, the apparent violator must file an appeal from the order within ten days after the date on which the order was served, *i.e.*, sent via certified or registered mail (absent good cause for a late-filed appeal). AGC-300 counsel must file the emergency order as the complaint within three days after the date on which the FAA received the appeal from the order, or within three days after the date of service of an order disposing of a petition for review of emergency determination (*see* paragraph 13.j., below). Counsel suggests a location for the hearing when counsel files the complaint, taking into consideration the location of expected FAA witnesses. The apparent violator must file an answer to the complaint within five days after the date on which the complaint was served.

j. Petition for Review of Emergency Determination. The NTSB reviews the apparent violator's petition for review of the FAA's emergency determination in emergency certificate actions (except for mandatory revocation actions discussed in paragraph 13.l., below). Under 49 U.S.C. § 44709(e)(3) and the NTSB's rules of practice, 49 C.F.R. § 821.54, the apparent violator must file a petition for review of an emergency determination within two business days of receipt of the emergency order. Under 49 C.F.R. § 821.54(c), the FAA may respond to a petition for review if the apparent violator provides reasons for believing the emergency determination was unwarranted. The FAA has two business days from the date the petition is filed to file a response. An NTSB ALJ is required to rule on the petition within five business days of the NTSB's receipt of the petition. If the ALJ grants the petition, the effectiveness of the emergency order is stayed until final disposition of the order, and the accelerated timeframes applicable in emergency cases remain in effect. Also, if a petition is granted, the apparent violator cannot waive the accelerated timeframes without FAA consent. AGC-300 counsel does not consent to such a waiver unless the apparent violator surrenders the affected certificates during the pendency of the case. If the ALJ denies the petition for review, the emergency determination and accelerated timeframes remain in effect, although the apparent violator is entitled to waive the accelerated timeframes. *See* paragraph 13.k., below, for a discussion of waiver of the accelerated timeframes.

k. Waiver of Accelerated Timeframes. Except as provided in paragraph 6.j., above, at any time after filing an appeal from an emergency order, the apparent violator may waive the applicability of the accelerated timeframes in emergency cases unless the ALJ or NTSB determines that the waiver would be unduly burdensome. A waiver does not lengthen any period of time for complying with emergency procedures that expired before the date on which the waiver was made.

l. Petition for Review of Mandatory Certificate Actions Reviewable by the NTSB. While 49 U.S.C. §§ 44106(d), 44710(d), and 44726(d) provide for NTSB review of the merits of an appeal from an order issued under those statutes, the statutes do not provide for the NTSB's review of the Administrator's determination that such an order should be immediately effective. An apparent violator challenging the immediate effectiveness of an order issued under 49 U.S.C. §§ 44106, 44710, or 44726 may 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. AGC-300 counsel promptly advises AGC-300 management of a petition for court review of an immediately effective order issued under 49 U.S.C. §§ 44106, 44710 or 44726.

m. Hearings on the Merits Before NTSB ALJs 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. AGC-300 counsel prepares the case in accordance with the accelerated timeframes applicable in emergency cases. This includes conducting expedited discovery and ensuring the presence of FAA witnesses at a hearing likely to be set within several weeks after the issuance of the order.

n. Hearings Before an NTSB ALJ. The ALJ assigned to hear the case sets the time, date, and location for the hearing, has subpoena authority, rules on motions, conducts the hearing, and issues an initial decision in accordance with 49 C.F.R. part 821, subpart I.

o. Appeals from NTSB ALJ Decisions in Emergency Cases. Either party may appeal an initial decision issued by an ALJ by filing a notice of appeal within two days after an oral decision is entered on the record or a written decision is served on the parties. An appeal is perfected by filing a brief within five days of the date on which the notice of appeal was filed. A reply brief may be filed within seven days after the filing date of the appeal brief. Because of the accelerated processing of emergency cases, counsel who represented the FAA at the hearing generally prepares any briefs in the case on appeal to the NTSB. Such appeals are coordinated with headquarters AGC-300. *See* paragraph 31, below, for coordination of appeals.

p. Judicial Appeals in Emergency Cases. Within 60 days after the NTSB issues a final decision, either party may petition a U.S. court of appeals for review of the order as provided in 49 U.S.C. §§ 44709(f) and 46110. An apparent violator alternatively may seek judicial review in an appropriate federal district court under the PBR.

14. General Process and Procedures in Non-Emergency Cases. The guidance in this paragraph applies to non-emergency certificate actions and administratively assessed civil penalties. Further details on these types of actions are in paragraphs 15, 16, 18, and 24.b., below.

a. Notice. AGC-300 counsel initiates non-emergency cases with a notice proposing either a certificate action or civil penalty. Counsel sets forth the facts alleged, the regulations or statutes violated, and the specific sanction proposed. The facts are set forth in numbered paragraphs and in sufficient detail that the apparent violator has notice of the charges. Counsel includes the apparent violator's violation history when using it as an aggravating factor for the sanction proposed.

b. Attachments to Notice. AGC-300 counsel ensures that an information sheet and reply form are sent with the notice. The information sheet provides a website address where the apparent violator can access applicable procedural regulations and this order. The reply form allows the apparent violator to select alternatives for responding to the notice, including accepting the penalty, responding to the allegations in writing, requesting an informal conference, and taking measures to request a hearing.

c. Appealable Document. If the apparent violator does not respond to the notice or responds and requests a hearing, or if no settlement is reached during informal procedures, AGC-300 counsel issues an appealable document. The nature of the appealable document varies depending on the type of action, *e.g.*, order of suspension, order of assessment, final notice of proposed civil penalty. The appealable document sets forth the facts alleged, the regulations violated, and the specific sanction proposed or imposed. The facts are set forth in numbered paragraphs and in sufficient detail to provide adequate notice. The appealable document ordinarily tracks the original notice, but reflects counsel's reevaluation of the case in response to any additional information submitted by the apparent violator. The appealable document informs the apparent violator of the response options, *i.e.*, either to accept the sanction or to request a hearing.

15. Non-emergency Certificate Actions Reviewable by the NTSB. The FAA is authorized to issue non-emergency orders for certificate actions under 49 U.S.C. § 44709(b), and the NTSB is authorized to review such orders under 49 U.S.C. § 44709(d). Non-emergency actions may involve not only suspensions but also revocations when emergency action is not warranted.

a. Notice of Proposed Certificate Action. The FAA initiates a non-emergency certificate action through a notice of proposed certificate action under the procedures in 14 C.F.R. § 13.19. The notice is issued by an official authorized in 14 C.F.R. § 13.19, or by AGC-300 counsel who has an appropriate delegation and signs with a by-line under the name and title of the authorized official. A notice of proposed certificate action commonly involves a certificate, but it also may involve only a rating, *e.g.*, a type rating or inspection authorization. When the notice proposes the suspension of a rating, it informs the apparent violator that during the suspension period the FAA will issue a temporary certificate that permits the exercise of the privileges not affected by the suspension.

b. Attachments to the Notice. The information sheet for non-emergency certificate actions provides a website address to access 14 C.F.R. § 13.19 and the NTSB's Rules of Practice in Air Safety Proceedings. In addition to the information sheet and reply form, if a notice concerns an airman certificate, the attachments include a notice advising the apparent violator of the procedures for requesting access to information under the PBR.

c. Pending Requests for Air Traffic Data Under the PBR. If an apparent violator has made a request under the PBR to access or otherwise obtain available air traffic data following the issuance of a notice, AGC-300 counsel promptly provides the information to the apparent violator. Counsel extends the time the apparent violator has to respond to a notice until after counsel provides the requested information.

d. Time Allotted to Submit a Response to the Notice. Under 14 C.F.R. § 13.19, the apparent violator is required to submit a response to a notice not later than 15 days after the date of receipt of the notice.

e. Alternatives for Responding to the Notice. Under 14 C.F.R. § 13.19, the apparent violator's options for responding to a notice include admitting the allegations and surrendering the certificate as proposed, responding to the allegations in writing, requesting an informal conference, and requesting the issuance of an order so that it may be appealed.

f. Apparent Violator's Submission of Information. When the apparent violator responds to a notice by requesting an informal conference, AGC-300 counsel follows the procedures for informal conferences in paragraph 28, below. When the apparent violator submits evidence or other information in writing or at an informal conference, counsel considers the new information and reevaluates the case as described in paragraph 3, above.

g. Order of Suspension Cases Where the Certificate Was Surrendered Prior to the Issuance of the Order. Surrendering the certificate in response to the notice constitutes a waiver of the apparent violator's appeal rights when the apparent violator has been informed of the appeal rights in the information sheet and notice. AGC-300 counsel issues an order of suspension without appeal rights when the apparent violator surrenders the certificate prior to the issuance of the order. The order sets forth the findings of fact, the findings of regulations or statutes violated, and the length of the suspension. The order acknowledges receipt of the surrendered certificate. The effective date of the surrender is the date on which the apparent violator surrendered the certificate to the FAA, *i.e.*, the postmark date of mailing or the date of personal delivery.

h. Order of Suspension or Revocation Where Certificate Has Not Been Surrendered. For non-emergency certificates actions appealable to the NTSB, the appealable document is an order of suspension or revocation. The order includes a website address to access 14 C.F.R. § 13.19 and the NTSB's Rules of Practice in Air Safety Proceedings. The order informs the apparent violator of the effective date of the order and, if the order is not appealed, that the certificate must be surrendered on that date and a civil penalty may be imposed for failure to surrender. Orders of suspension provide that: (1) if the certificate is not surrendered by the effective date, the suspension goes into effect on the effective date but the suspension period does not run until the date of surrender; and (2) no new application for the type of certificate will be accepted during the suspension.

i. Preparation of Airman Stop Order. On issuance of an order suspending or revoking an airman or ground instructor certificate, AGC-300 counsel prepares and electronically transmits an airman stop order to FS Airman Certification (AFB-720). If the underlying order suspends or

revokes an airman medical certificate, either alone or in addition to another type of airman certificate, counsel ensures that a copy of the stop order is electronically transmitted to AAM-300. Counsel enters certificate-status information on the stop order form relating to the underlying order, including the effective and termination dates of the underlying order, as applicable. Counsel timely updates the stop order to reflect relevant events, such as the surrender of the airman or ground certificate that is the subject of the stop order.

j. Appeal, Complaint, and Answer Procedures. To receive a hearing, the apparent violator must file an appeal from the order within 20 days after the date on which the order was served. This 20-day period is extended by three days if the order was only served by mail. AGC-300 counsel must file the order as the complaint within ten days after the date on which the FAA received the appeal. Counsel suggests a location for the hearing when counsel files the complaint, taking into consideration the location of expected FAA witnesses. The apparent violator must file an answer to the complaint within 20 days after the date on which the complaint was served.

k. Hearings Before an NTSB ALJ. The ALJ assigned to hear the case sets the time, date, and location for the hearing, has subpoena authority, rules on motions, conducts the hearing, and issues an initial decision in accordance with 49 C.F.R. part 821, subpart D.

l. Appeals to the NTSB. Either party may appeal an initial decision issued by an ALJ by filing a notice of appeal within ten days after an oral decision is rendered or a written decision is served on the parties. Absent extensions of time, an appeal is perfected by filing a brief within 50 days of the date on which the oral decision was rendered, or within 30 days if the decision was written, and a reply brief may be filed within 30 days of the filing date of the appeal brief.

m. Judicial Review of NTSB Decisions. Within 60 days after the NTSB issues a final decision, either party may petition a U.S. court of appeals for review of the order as provided in 49 U.S.C. §§ 44709(f) and 46110. An apparent violator alternatively may seek review in a U.S. district court under the PBR.

n. Effective Date of Order. The order becomes effective when the apparent violator fails to timely pursue an appeal at any stage of the process.

o. Voluntary Surrender of Certificate Pursuant to Settlement. When AGC-300 counsel settles punitive suspension actions, counsel ensures the entire suspension period is continuously served. A divided suspension period is not allowed.

p. Voluntary Surrender of Certificate Pending the Appeal of an Order of Suspension. AGC-300 counsel may accept the voluntary surrender of a certificate to begin a suspension in response to an order of suspension despite an appeal of the order only if the apparent violator agrees to stipulate to the period of suspension stated in the order and appeals only the findings of violations set forth in the order.

(1) AGC-300 counsel and the apparent violator document the voluntary surrender through a formal written agreement that makes it clear that the apparent violator waives the

postponement of the effective date of the order pending appeal, limits their appeal only to the findings of violation, and agrees to the period of suspension stated in the order. Under such an agreement, counsel credits the period of voluntary surrender as service of the suspension if the Administrator prevails in the pending litigation.

(2) If AGC-300 counsel allows the voluntary surrender of an FAA certificate pending the appeal of the findings in the order of suspension, counsel ensures the entire suspension period is continuously served. A divided suspension period is not allowed.

16. Civil Penalty Actions Reviewable by the NTSB. The FAA is authorized to issue civil penalties of $50,000 or less against individuals acting as pilots (under 14 C.F.R. part 61), flight engineers, mechanics, and repairmen under 49 U.S.C. § 46301(d)(5)(A), and the NTSB is authorized to review such actions under 49 U.S.C. § 46301(d)(5)(B).

a. Notice of Proposed Assessment. The FAA initiates a civil penalty reviewable by the NTSB through a notice of proposed assessment under the procedures in 14 C.F.R. § 13.18. The notice is issued by an official authorized in 14 C.F.R. § 13.18, or by AGC-300 counsel who has an appropriate delegation and signs with a by-line under the name and title of the authorized official.

b. Attachments to the Notice. The information sheet provides a website address to access 14 C.F.R. § 13.18 and the NTSB's Rules of Practice in Air Safety Proceedings.

c. Time Allotted to Submit a Response to the Notice. Under 14 C.F.R. § 13.18, the apparent violator is required to submit a response to the notice not later than 15 days after the date of receipt of the notice.

d. Alternatives for Responding to the Notice. For civil penalties reviewable by the NTSB, 14 C.F.R. § 13.18(d) provides the apparent violator's options for responding to the notice, including submitting the civil penalty amount proposed or an agreed upon amount, responding to the allegations in writing, requesting an informal conference, and taking measures to request a hearing.

e. Apparent Violator's Submission of Information. When the apparent violator responds to a notice by requesting an informal conference, AGC-300 counsel follows the procedures for informal conferences in paragraph 28, below. When the apparent violator submits evidence or other information, in writing or at an informal conference, counsel considers the new information and reevaluates the case as described in paragraph 3, above.

f. Compromise Order. Under 14 C.F.R. § 13.18(i), the FAA has authority to compromise a civil penalty by accepting the payment of a civil penalty without making a finding of violation. The FAA uses compromise orders only in unusual circumstances in civil penalty actions reviewable by the NTSB. Before making such an agreement with the apparent violator, AGC-300 counsel obtains the approval of their AGC-300 manager. Counsel also follows the settlement procedures, as applicable, in paragraph 29, below. Under the terms of the agreement, counsel issues a compromise order after the apparent violator pays the agreed-upon civil penalty amount

or signs a promissory note for installment payments. The compromise order states that: (1) the person has paid a civil penalty or signed a promissory note for installment payments; (2) the FAA makes no finding of violation; and (3) 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 Where the Penalty Was Paid Prior to the Issuance of the Order. Payment of the penalty in response to the notice constitutes a waiver of the apparent violator's appeal rights when the apparent violator has been informed of the appeal rights in the information sheet and notice. AGC-300 counsel issues an order of assessment without appeal rights when the apparent violator pays the penalty prior to the issuance of the order. The order sets forth the findings of fact, the findings of regulations violated, and the specific penalty imposed. The order acknowledges receipt of the payment and that the matter is now closed.

h. Order of Assessment Where Payment Has Not Been Made. The appealable document is an order of assessment. The order includes a website address to access 14 C.F.R. § 13.18 and the NTSB's Rules of Practice in Air Safety Proceedings.

i. Appeal, Complaint, and Answer Procedures. For a hearing, the apparent violator must file an appeal from the order within 20 days after the date on which the order was served. AGC-300 counsel must file the order as the complaint within ten days after the date on which the FAA received the appeal. Counsel suggests a location for the hearing when counsel files the complaint, taking into consideration the location of expected FAA witnesses. The apparent violator must file an answer to the complaint within 20 days after the date on which the complaint was served.

j. Hearings Before an NTSB ALJ. The ALJ assigned to hear the case sets the time, date, and location for the hearing, has subpoena authority, rules on motions, conducts the hearing, and issues an initial decision in accordance with 49 C.F.R. part 821, subpart D.

k. Appeals to the NTSB. Either party may appeal an initial decision issued by an ALJ by filing a notice of appeal within ten days after an oral decision is rendered or a written decision is served on the parties. Absent extensions of time, an appeal is perfected by filing a brief within 50 days of the date on which the oral decision was rendered, or within 30 days if the decision was written, and a reply brief may be filed within 30 days of the filing date of the appeal brief.

l. Judicial Review of NTSB Decisions. Within 60 days after the NTSB issues a final decision, either party may petition a U.S. court of appeals for review of the order as provided in 49 U.S.C. §§ 44709(f) and 46110.

m. Effective Date of Order. The order becomes effective when the apparent violator fails to timely pursue an appeal at any stage of the process.

17. Airman Certificate Denials. Under 49 U.S.C. § 44703, the Administrator is authorized to deny applications for airman certificates, such as pilot, mechanic, or airman medical certificates, and the NTSB is authorized to review such denials.

a. Process. The applicant files a petition for review with the NTSB and has the burden of proving qualifications for the airman certificate. The NTSB processes these cases under its Rules of Practice in Air Safety Proceedings, 49 C.F.R. part 821, subpart C.

b. Airman Medical Certificates.

(1) The most common airman certificate denial cases involve applications for airman medical certification. The NTSB's review of airman certificate denials includes *final* denials of airman medical certificate applications and not *interim* denials. The denial of an application by: (i) an Airman Medical Examiner (AME) is not a final denial; (ii) a Regional Flight Surgeon or the Manager of the Aeromedical Certification Division is a final denial, except when it concerns the medical standards listed in 14 C.F.R. § 67.409(b)(3); and (iii) the Federal Air Surgeon is a final denial.

(2) A certificate issued by an AME is considered affirmed unless the Federal Air Surgeon, a Regional Flight Surgeon, or the Manager of the Aeromedical Certification Division: (i) reverses the issuance within 60 days of the date of issuance; or (ii) requests additional medical information within 60 days of the date of issuance and reverses the issuance within 60 days of the receipt of the additional information. The FAA uses legal enforcement action – typically emergency action as discussed in paragraph 13, above – to revoke or suspend a medical certificate that is considered affirmed.

18. Civil Penalty Actions Reviewable by the FAA Decisionmaker Under 49 U.S.C. §§ 46301, 44704, and 5123. The Administrator is authorized to impose civil penalties under 49 U.S.C. §§ 46301, 44704(d)(3)(B) and (e)(4), and 49 U.S.C. § 5123. The FAA Decisionmaker is authorized to review civil penalty actions within the assessment authority limits in 49 U.S.C. § 46301(d)(8) (*i.e.*, $50,000 for cases involving individuals and small business concerns and $400,000 for cases involving other persons). In addition, the FAA Decisionmaker is authorized to review all civil penalty actions assessed under 49 U.S.C. § 44704(d)(3)(B) and (e)(4), and § 49 U.S.C. § 5123, regardless of the civil penalty amount. AGC-300 counsel processes these cases under 14 C.F.R. § 13.16 and 14 C.F.R. part 13, subpart G.[4]

a. Separation of Functions. Under 14 C.F.R. § 13.203, FAA personnel who have performed investigative or prosecutorial functions in a civil penalty action must not participate in deciding or advising a DOT ALJ or the FAA Decisionmaker in that case, or a factually-related case, but may participate as counsel for the complainant or as a witness in the public proceedings.

b. Notice of Proposed Civil Penalty. The FAA initiates a civil penalty action 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, or by AGC-300 counsel who has an appropriate delegation and signs with a by-line under the name and title of the authorized official. If the apparent violator is an entity, the notice is served on the president of the entity.

[4] While 14 C.F.R. § 13.16 does not specifically reference 49 U.S.C. § 44704, AGC-300 counsel applies the processes of 14 C.F.R. § 13.16 in cases arising under 49 U.S.C. §§ 44704(d)(3)(B) and (e)(4), as appropriate.

c. Attachments to the Notice. The information sheet provides a website address to access 14 C.F.R. § 13.16 and 14 C.F.R. part 13, subpart G (the Rules of Practice in FAA Civil Penalty Actions).

d. Time Allotted to Submit a Response to the Notice. Under 14 C.F.R. § 13.16, the apparent violator is required to submit a response to the notice not later than 30 days after receipt of the notice.

e. Alternatives for Responding to the Notice. In cases brought under the FAA Decisionmaker's civil penalty assessment authority, 14 C.F.R. § 13.16 provides the apparent violator's options for responding to the notice, including submitting the civil penalty amount proposed or an agreed upon amount, responding to the allegations in writing, requesting an informal conference, and requesting a hearing.

f. Apparent Violator's Submission of Information. When the apparent violator responds to a notice by requesting an informal conference, AGC-300 counsel follows the procedures for informal conferences in paragraph 28, below. When the apparent violator submits evidence or other information, in writing or at an informal conference, counsel considers the new information and reevaluates the case as described in paragraph 3, above.

g. Compromise Order. Under 14 C.F.R. § 13.16(n), the FAA has authority to compromise a civil penalty by accepting the payment of a civil penalty without making a finding of violation.

(1) The FAA uses compromise orders in only unusual circumstances (and only in cases not involving hazmat). Before making such an agreement with the apparent violator, AGC-300 counsel obtains the approval of their AGC-300 manager. Counsel also follows the settlement procedures, as applicable, in paragraph 29, below. Under the terms of the agreement, counsel issues a compromise order after the apparent violator pays the agreed-upon civil penalty amount or signs a promissory note for installment payments. The compromise order states that: (i) the person has paid a civil penalty or signed a promissory note for installment payments; (ii) the FAA makes no finding of violation; and (iii) the FAA will not use the order as evidence of a prior violation in any subsequent civil penalty proceeding or certificate action proceeding.

(2) In hazmat cases, the FAA, as a matter of policy, does not issue compromise orders.

h. Final Notice of Proposed Civil Penalty. The appealable document is a final notice of proposed civil penalty. The final notice includes a website address to access 14 C.F.R. § 13.16 and part 13, subpart G.

i. Order Assessing Civil Penalty. AGC-300 counsel issues an order assessing civil penalty when the apparent violator: (1) does not request a hearing within 15 days of receipt of the final notice of proposed civil penalty; or (2) submits, or agrees to submit, the proposed penalty or an agreed upon amount. Payment of the penalty in response to the notice constitutes a waiver of the apparent violator's appeal rights when the apparent violator has been informed of the appeal rights in the information sheet and notice. When the penalty was paid prior to the issuance of the order, the order acknowledges receipt of the payment. The order sets forth the findings of fact,

the findings of regulations or statutes violated, the amount of the civil penalty assessed, and a specified penalty regardless of whether payment of the penalty has been received by the FAA.

j. Request for Hearing, Complaint, and Answer Procedures. For a hearing, the apparent violator must file a request for a hearing within 15 days after the date on which the final notice was received. The FAA files a complaint within 20 days after the date on which the FAA received the request for hearing. The complaint sets forth the FAA's factual and regulatory allegations and the civil penalty proposed. AGC-300 counsel suggests a location for the hearing when counsel files the complaint, taking into consideration the location of expected FAA witnesses. The apparent violator must file an answer to the complaint within 30 days after the date on which the complaint was served. For cases subject to the Rules of Practice in FAA Civil Penalty Actions, whenever a party has a right or duty to respond with a prescribed period after service by mail, five days are added to the response period. *See* 14 C.F.R. § 13.211(g).

k. Hearings Before a DOT ALJ. The ALJ assigned to hear the civil penalty action sets the time, date, and location for the hearing, has subpoena authority, rules on motions, conducts the hearing, and issues an initial decision in accordance with the Rules of Practice in FAA Civil Penalty Actions in 14 C.F.R. part 13, subpart G.

l. Appeals to the FAA Decisionmaker. Either party may appeal an initial decision issued by an ALJ to the FAA Decisionmaker by filing a notice of appeal within ten days after an oral decision is rendered or a written decision is served on the parties. Absent extensions of time, an appeal is perfected by filing a brief within 50 days of the date on which the decision was issued, and a reply brief may be filed within 35 days of the filing date of the appeal brief. The FAA Decisionmaker's decision and order is the final FAA order in the case.

m. 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 apparent violator may petition a U.S. court of appeals for judicial review of the order. For cases issued under 49 U.S.C. §46301, judicial review rights are provided in 49 U.S.C. § 46110. For hazmat cases issued under 49 U.S.C. § 5123, judicial review rights are provided in 49 U.S.C. § 5127.

n. Order Assessing Civil Penalty After Hearing. If an ALJ issues a decision finding that a violation occurred and determines that a civil penalty is warranted in an amount found appropriate by the ALJ, 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 FAA Decisionmaker's decision is considered an order assessing civil penalty.

19. Civil Penalties in Excess of Assessment Authority Limits. When the Administrator seeks a civil penalty that exceeds the assessment authority limits established in 49 U.S.C. § 46301(d)(8), *i.e.*, $50,000 for cases involving individuals and small business concerns, and $400,000 for cases involving other persons, AGC-300 counsel processes the case under 14 C.F.R. § 13.15. If no settlement agreement is reached following the FAA's initiation of the case through a civil

penalty letter, the FAA refers the matter to the U.S. Department of Justice (DOJ), Civil Division, for prosecution in U.S. district court.

a. Civil Penalty Letter. Regardless of whether the case eventually may be compromised for less than the assessment limits, AGC-300 counsel initiates the case by sending the apparent violator a civil penalty letter. A civil penalty letter sets forth the facts alleged, the regulations violated, and the specific penalty sought. The facts are set forth in numbered paragraphs and in sufficient detail that the apparent violator has notice of the charges. The letter is issued by an official authorized in 14 C.F.R. § 13.15, or by counsel who has an appropriate delegation and signs with a by-line under the name and title of the authorized official. All civil penalty letters (and all other correspondence or documents referring to the amount sought) are phrased to read that the FAA would accept a specified amount in settlement rather than impose or assess a civil penalty.

b. Attachments to the Civil Penalty Letter. An information sheet and a reply form are included with the civil penalty letter. The information sheet includes the settlement terms the FAA will apply if the apparent violator submits the suggested settlement amount. The reply form includes alternatives for responding to the civil penalty letter, including submitting the amount suggested, responding to the allegations in writing, requesting an informal conference, or requesting a U.S. district court to decide the matter.

c. Time Allotted to Submit a Response to the Civil Penalty Letter. Under 14 C.F.R. § 13.15(c)(2), the apparent violator is required to submit a response to the civil penalty letter not later than 30 days after receipt of the letter.

d. Alternatives for Responding to the Civil Penalty Letter. Under 14 C.F.R. § 13.15(c)(2), the apparent violator may respond in writing to a civil penalty letter by presenting any material or information that may explain, mitigate, or deny the allegations. The apparent violator may also request, and present information at, an informal conference.

e. Apparent Violator's Submission of Information. When the apparent violator responds to a civil penalty letter by requesting an informal conference, AGC-300 counsel follows the procedures for informal conferences in paragraph 28, below. When the apparent violator submits evidence or other information, in writing or at an informal conference, counsel considers the new information and reevaluates the case as described in paragraph 3, above.

f. Settlement of Cases in Excess of Assessment Authority Limits.

(1) When the apparent violator submits the amount suggested in the civil penalty letter, AGC-300 counsel informs the apparent violator in a settlement letter that the FAA accepts the offer in full settlement.

(2) AGC-300 counsel may settle the case for a lesser amount if acceptable based on consideration of the facts. In such a circumstance, counsel follows the settlement procedures, as applicable, in paragraph 29, below. After the apparent violator submits the agreed-upon amount, counsel informs the apparent violator in writing that the FAA has received the payment and that

the matter is closed. Unless otherwise provided in a settlement agreement, the writing acknowledges that the settlement does not constitute an admission or finding of any violation.

g. Referral to the DOJ.

(1) General**.** When AGC-300 counsel is unable to settle a case in which the FAA seeks a civil penalty in excess of the Administrator's assessment authority, counsel refers the case to the DOJ, which may delegate the matter to the appropriate U.S. Attorney's Office. The case remains open until the DOJ has completed prosecution or declined to prosecute. When necessary (such as to meet a statute of limitations), counsel may, with the approval of the Assistant Chief Counsel for AGC-300, refer a matter to the DOJ without first sending a civil penalty letter.

(2) Letter of Referral. AGC-300 counsel sends a copy of the case file (including the EIR and any other available evidence) with a letter of referral to the Department of Justice, Civil Division, which sets out the following:

(i) A summary of the facts;

(ii) An analysis of the violations alleged;

(iii)A summary of action taken before referral, including settlement negotiations;

(iv)A statement of the amount that would be acceptable to the FAA in settlement;

(v) An explanation in support of the sanction that would be acceptable (in accordance with guidance in chapter 9 of this order) with evidentiary support;

(vi)Any additional information necessary to better understand the case; and

(vii) An offer by AGC-300 counsel to assist the DOJ attorney or delegated AUSA in the preparation and trial of the action.

(3) Draft Complaint. AGC-300 counsel prepares and includes a draft of the complaint for the case with the referral letter. Counsel ensures that the draft complaint cites all regulations believed to have been violated. The dollar amount sought in the complaint reflects an appropriate sanction amount based on counsel's current evaluation of the case consistent with paragraph 3, above. The amount of the civil penalty need not be limited to the amount sought in the civil penalty letter, but must comport with sanction guidance in chapter 9 of this order.

(4) Periodic Follow-up of Case Status. Following initial referral of a civil penalty case to the DOJ, AGC-300 counsel conducts periodic follow-up inquiries to obtain current information on the status of the case and to remind the prosecuting attorney of the FAA's continuing interest in the matter. Counsel requests copies of all court pleadings filed by the parties for inclusion in the FAA's case file.

(5) When the FAA's Referral for Prosecution is Declined. When the DOJ or the delegated U.S. attorney declines to file suit, the DOJ usually gives AGC-300 counsel a statement of the reasons for doing so. If counsel disagrees, counsel, in coordination with the appropriate AGC-300 manager, consults with the DOJ or the U.S. attorney's office. If 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 AGC-300 for discussions with the DOJ.

20. Orders of Compliance, Cease and Desist Orders, Orders of Denial, Orders Suspending or Revoking Aircraft Certificates of Registration, and Other Orders. Under 49 U.S.C. § 40113(a), the Administrator has general authority to issue orders to carry out the FAA's aviation safety responsibilities, and may issue these orders pursuant to 14 C.F.R. § 13.20 when there is no other specific administrative process provided by statute, regulation, or order. Such orders include orders of compliance; cease and desist orders; orders of finding of material contribution; orders of permanent disqualification; orders terminating authorizations or approvals; and orders of denial. In addition, the Administrator has authority to issue orders suspending or revoking aircraft certificates of registration under 49 U.S.C. § 44105 and dealer's certificates of registration under 49 U.S.C. § 44104. Under 49 U.S.C. § 44724, the Administrator is required to issue an order revoking the certificate of a pilot-in-command of an aircraft who knowingly allows an individual who does not hold a pilot and airman medical certificate to control the aircraft in an attempt to set a record or engage in an aeronautical competition or feat. Under 49 U.S.C. § 44704(e)(5)(A), the Administrator is required to revoke an airline transport pilot certificate held by an individual who, while acting on behalf of an applicant for, or holder of, a type certificate, knowingly makes a false statement with respect to the submission of safety-critical information for a transport category airplane. The procedures at 14 C.F.R. § 13.20, and 14 C.F.R. part 13, subpart D, govern the types of orders referenced in this paragraph.

a. Immediately Effective Orders Issued Under 49 U.S.C. §§ 40113, 44104, 44105, 44724, and 44704. The Administrator may issue orders referenced in this paragraph as immediately effective under 49 U.S.C. § 46105(c) when an emergency exists and safety in air commerce or air transportation requires the immediate issuance of an order. The procedures at 14 C.F.R. §§ 13.20(d) and 13.67, and the guidance in paragraph 20.b.(1)-(8), below, apply to such actions.

(1) Simultaneous Order and Notice. AGC-300 counsel simultaneously issues an immediately effective order and notice of proposed action to the apparent violator.

(i) The immediately effective order expires 80 days after its date of issuance and sets forth the factual and regulatory allegations and the action proposed. It also informs the apparent violator of the right to seek court review of the order under 49 U.S.C. § 46110. (As a practical matter, this temporary order is akin to an immediately effective injunction to cease conduct that poses an immediate safety threat, and an appeal from the order would be in the nature of a petition to stay the effectiveness of the order.)

(ii) The notice of proposed action sets forth the factual and regulatory allegations and the action proposed, and states that within ten days after service of the notice the apparent

violator may appeal from the notice by requesting an expedited hearing in accordance with 14 C.F.R. § 13.20(d) and the emergency procedures of 14 C.F.R. part 13, subpart D. The notice provides that the failure to request a hearing within ten days constitutes a waiver of the right to a hearing and appeal, and authorizes the Administrator, without further notice or proceedings, to make appropriate findings of fact, issue an immediately effective order without expiration, and withdraw the 80-day immediately effective order. The notice also provides that the filing of a request for hearing does not stay the effectiveness of the immediately effective order.

(iii) AGC-300 counsel serves the immediately effective order and the notice of proposed action together by personal or overnight delivery and by certified or registered mail to the apparent violator.

(iv) The order and notice are issued by the Chief Counsel, a Deputy Chief Counsel, or the Assistant Chief Counsel for AGC-300, or by AGC-300 counsel who has an appropriate delegation and signs with a by-line under the name and title of one of these officials.

(2) Attachments to the Notice. The information sheet provides a website address to access 14 C.F.R. part 13, subparts C and D, which include procedural rules applicable to notices issued under 14 C.F.R. § 13.20.

(3) Request for a Hearing, Complaint, and Answer Procedures. Under 14 C.F.R. § 13.20(d), the apparent violator may appeal from the notice by filing and serving a request for an expedited hearing not later than ten days after service of the notice. Within three days after receipt of the request for hearing, the FAA must file a copy of the notice, which serves as the complaint. AGC-300 counsel suggests a location for the hearing when counsel files the complaint, taking into consideration the location of expected FAA witnesses. The apparent violator must file an answer to the complaint within three days after receipt of the complaint. Failure to file a timely answer absent a showing of good cause constitutes withdrawal of the request for hearing. The procedures at 14 C.F.R. § 13.67 apply to 14 C.F.R. part 13, subpart D expedited hearings.

(4) Order Based on Failure to or Withdrawal of Request Hearing. AGC-300 counsel issues an order if the apparent violator does not request a hearing within ten days after service of the notice or fails to file a timely answer absent a showing of good cause. The order sets forth findings of facts, findings of regulations violated, and the sanction imposed. Counsel also withdraws the 80-day immediately effective order.

(5) Hearings Before a Hearing Officer. The Hearing Officer assigned to hear the action sets the time, date, and location for the hearing, has subpoena authority, rules on motions, conducts the hearing, and issues decisions in accordance with in 14 C.F.R. § 13.67.

(6) Appeals to the Administrator. Either party may appeal the Hearing Officer’s initial decision to the Administrator by filing a notice of appeal within three days after the date on which the Hearing Officer’s decision is issued. An appeal is perfected by filing a brief within seven days of the date on which the Hearing Officer’s decision was issued, and a reply brief must be filed within seven days of the service date of the appeal brief. The Administrator must issue

an order deciding the appeal no later than 80 days after the date the notice of proposed action was issued. The Administrator's order is immediately effective and constitutes the final agency decision. The procedures at 14 C.F.R. § 13.67 apply to 14 C.F.R. part 13, subpart D expedited appeals.

(7) Judicial Review of Decisions of the Administrator. Within 60 days after the Administrator issues a final order under 14 C.F.R. § 13.67, the apparent violator may petition a U.S. court of appeals for judicial review of the order as provided in 49 U.S.C. § 46110.

(8) Finality of Administrative Orders. If a Hearing Officer affirms any allegation in the proposed notice, and that decision is not timely appealed, the initial decision becomes the order. Similarly, if, on appeal, the Administrator issues a final decision affirming any allegation in the proposed notice, and a timely petition for judicial review is not filed, the Administrator's decision becomes the final order.

b. Non-Immediately Effective Orders Issued Under 49 U.S.C. §§ 40113, 44104, 44105, 44724, and 44704. When the Administrator's emergency authority is not invoked for the types of orders discussed in this paragraph, the procedures at 14 C.F.R. § 13.20(c) and 14 C.F.R. part 13, subpart D, and the guidance in paragraph 20.b.(1)-(12), below, apply.

(1) Notice. The FAA provides the apparent violator with notice of the proposed order. The notice is issued by the Chief Counsel, a Deputy Chief Counsel, or the Assistant Chief Counsel for AGC-300, or by AGC-300 counsel who has an appropriate delegation and signs with a by-line under the name and title of one of these officials. The notice sets forth factual and regulatory allegations and the action proposed. The notice states that the failure by the alleged violator to submit a selection of the options for responding to the notice at 14 C.F.R. § 13.20(c)(1) within 30 days of the service of the notice constitutes a waiver of the right to a hearing and appeal, and authorizes the Administrator, without further notice or proceedings, to make appropriate findings of fact and issue an appropriate order.

(2) Attachments to the Notice. The information sheet provides a website address to access 14 C.F.R. part 13, subparts C and D, which include procedural rules applicable to notices issued under 14 C.F.R. § 13.20.

(3) Time Allotted to Submit a Response to the Notice. Under 14 C.F.R. § 13.20(c)(1), the apparent violator is required to submit a response to the notice not later than 30 days after receipt of the notice.

(4) Alternatives for Responding to the Notice. Under 14 C.F.R. § 13.20(c)(1), the apparent violator may request an informal conference, respond to the allegations in writing, agree to the issuance of the order as proposed and waive any right to appeal from the order, or request a hearing.

(5) Apparent Violator's Submission of Information. When the apparent violator responds to a notice by requesting an informal conference, AGC-300 counsel follows the procedures for informal conferences in paragraph 28, below. When the apparent violator submits evidence or

other information, in writing and/or at an informal conference, counsel considers the new information and reevaluates the case as described in paragraph 3, above.

(6) Verification Letter. If AGC-300 counsel determines that legal enforcement action remains appropriate after the issuance of the notice, and an order is not appropriate under paragraph 20.b.(7), below, counsel serves a verification letter on the apparent violator. The verification letter, which is the appealable document in these cases, notifies the apparent violator of any allegation in the notice that will not be withdrawn. The verification letter includes a website address to access 14 C.F.R. part 13, subparts C and D.

(7) Order. AGC-300 counsel issues the order if the apparent violator does not respond to the notice or verification letter or agrees to the issuance of the order as referenced in paragraph 20.b.(4), above. The order sets forth the findings of fact, the findings of regulations violated, and the sanction imposed.

(8) Request for a Hearing, Complaint, and Answer Procedures. For a hearing, the apparent violator must file a request for a hearing within 30 days after service of the notice or ten days after service of the verification letter, as applicable. The request for hearing must describe the action proposed by the FAA and contain a statement that the hearing is requested under 14 C.F.R. part 13, subpart D. The FAA must file the notice with any allegation not withdrawn as its complaint within 20 days after service of the request for hearing. AGC-300 counsel suggests a location for the hearing when counsel files the complaint, taking into consideration the location of expected FAA witnesses. The apparent violator must file an answer to the complaint within 30 days of service of the complaint.

(9) Hearings Before a Hearing Officer. The Hearing Officer assigned to hear the action sets the time, date, and location for the hearing, has subpoena authority, rules on motions, conducts the hearing, and issues decisions in accordance with 14 C.F.R. part 13, subpart D.

(10) Appeals to the Administrator. Either party may appeal the Hearing Officer's initial decision to the Administrator by filing a notice of appeal within 20 days after the order is issued. Absent extensions of time, an appeal is perfected by filing a brief within 40 days of the date on which the decision was issued, and a reply brief may be filed within 40 days of the service date of the appeal brief.

(11) Judicial Review of Decisions of the Administrator. Within 60 days after the Administrator issues a final order under 14 C.F.R. § 13.65, the apparent violator may petition a U.S. court of appeals for judicial review of the order as provided in 49 U.S.C. § 46110.

(12) Finality of Administrative Orders. If a Hearing Officer affirms any allegation in the proposed notice, and that decision is not timely appealed, the initial decision becomes the order. Similarly, if, on appeal, the Administrator issues a final decision affirming any allegation in the proposed notice, and a timely petition for judicial review is not filed, the Administrator's decision becomes the final order.

c. Orders of Finding of Material Contribution. When the Administrator has revoked, or is in the process of revoking, a certificate issued under 14 C.F.R. parts 119, 125, 142, or 145, enforcement personnel identify individuals who had authority or control over the entity's operations and who materially contributed to the circumstances causing the revocation or revocation process. Such individuals are subject to an action resulting in a record in EIS that the FAA has found them to have materially contributed to the circumstances causing the revocation or the revocation process. The procedures in paragraphs 20.a. and 20.b., above, govern such actions. In addition to the content referenced in paragraphs 20.a.(1) or 20.b.(1), notices (and, if appropriate, orders) of finding of material contribution notify the individual that:

(1) A record will be made in EIS that they have been found to have materially contributed to the revocation or revocation process of a certificate issued under 14 C.F.R. part 119, 125, 142, or 145; and

(2) Any application for a new certificate under 14 C.F.R. part 119, 125, 142, or 145 may be denied if the applicant names an individual who has a database record of a finding of material contribution in EIS as an individual who would have the same or similar position of authority or control over the new entity's operation.

d. Orders of Permanent Disqualification. The procedures in paragraphs 20.a. and 20.b., above, govern actions involving permanent disqualifications from safety-sensitive duties under 14 C.F.R. §§ 120.111(e) and 120.221(b). In addition to the content referenced in paragraphs 20.a.(1) or 20.b.(1), notices (and, if appropriate, orders) of permanent disqualification notify the individual that a record will be made in EIS that they have been found to be permanently precluded from performing certain safety-sensitive duties.

21. Emergency Orders Under 49 C.F.R. Part 109, Subpart C. Under 49 U.S.C. § 5121(d), the Administrator has delegated authority under 49 C.F.R. § 109.17 to impose emergency restrictions or prohibitions, or issue orders to cease operations, without advance notice or an opportunity for a hearing, if the Administrator determines that a violation of a provision of 49 U.S.C. chap. 51, or a regulation or order prescribed under the statute, or an unsafe condition or practice, constitutes or is causing an imminent hazard. An *imminent hazard* means the existence of a condition relating to hazardous material that presents 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 for the matter. Emergency orders issued under 49 C.F.R. part 109, subpart C, are reviewable by the PHSMA Chief Safety Officer.

a. Emergency Order. An emergency order under 49 C.F.R. part 109: (1) provides a description of the violation, condition, or practice that constitutes or is causing the imminent hazard; (2) sets forth the terms and conditions of the order; (3) is limited to the extent necessary to abate the imminent hazard; (4) advises the apparent violator that, within 20 calendar days of the date the order is issued, the apparent violator may request review and that any request for a formal hearing in accordance with 5 U.S.C. § 554 must set forth the material facts in dispute giving rise to the request for a hearing; and (5) provides the filing and service requirements contained in 14 C.F.R. § 109.19(f). The emergency order is issued by an official authorized in 14 C.F.R. § 13.71, or by AGC-300 counsel who has an appropriate delegation to sign with a by-line under the name and title of the authorized official.

b. Service of Emergency Order. The order is sent to the apparent violator by: (1) Federal Express overnight or other expedited delivery service; (2) regular mail; and (3) certified mail, return-receipt requested (or by registered mail for foreign addresses). The official or a delegee sends the emergency order to the current address of record and, when in doubt about service at the current address of record, any other address where the apparent violator may be reached. The official or a delegee verifies the address of record before sending the emergency order. If the official or a delegee arranges for the personal or international service of the emergency order on the apparent violator, then details of that service are documented in the case file.

c. Petition for Review and Response Procedures. The apparent violator may file a petition for review from the emergency order. The petition must be in writing, state which aspects of the order are being challenged; and state whether a formal hearing under 5 U.S.C. § 554 is requested. The petition must be served in accordance with 49 C.F.R. § 109.19(f), including with service on the PHMSA Chief Safety Officer and FAA Chief Counsel. The FAA official or a delegee issues a response within five calendar days of receipt of the petition.

d. No Hearing Requested or No Material Facts In Dispute. If the apparent violator does not request a formal hearing, or the petition for review fails to state material facts in dispute, the Chief Safety Officer issues a decision on the merits within 30 days of receipt of the petition. This decision is the final agency action.

e. Hearing Requested. If the apparent violator requests a hearing, the hearing request will be assigned to the DOT Office of Hearings, unless the Chief Safety Officer issues an order stating that the petition fails to set forth material facts in dispute. If the Chief Safety Officer does not issue such an order within three calendar days after they receive the petition, the petition is deemed assigned to the DOT Office of Hearings.

f. Hearings Before a DOT ALJ. Formal hearings are conducted before a DOT ALJ. The assigned ALJ sets the time, date, and location for the hearing, has subpoena authority, rules on motions, conducts the hearing, and issues a report and recommendation in accordance with 49 C.F.R. § 109.19. The report and recommendation, which contains the grounds for a decision on material issues of fact, must be issued no later than 25 days after the Chief Safety Officer's receipt of the petition for review. If the report and recommendation is not the subject of a request for reconsideration, then the emergency order remains in effect, as modified (if at all), by the ALJ.

g. Reconsideration. Either party may petition the Chief Safety Officer for reconsideration of the ALJ's report and recommendation within one calendar day (*i.e.*, weekdays, weekends, and holidays) of service of the report and recommendation. A response to the petition for reconsideration may be filed within one calendar day of service of the petition for reconsideration. The Chief Safety Officer issues a final agency action within three calendar days of service of the final pleading (whether the petition for reconsideration or response), but no later than 30 days after receipt of the original petition for review.

h. Expiration of the Order. If the Chief Safety Officer or ALJ has not disposed of the petition for review within 30 days after the Chief Safety Officer's receipt of the petition for review, the order ceases to be effective unless the FAA official or a delegee who issued the order issues a determination that the imminent hazard providing the basis for the order continues to exist.

i. Judicial Review. Within 60 days after the issuance of the final agency decision, the apparent violator may petition a U.S. court of appeals for review of the order as provided in 49 U.S.C. § 5127.

j. Cessation of Imminent Hazard. If the Administrator determines that an imminent hazard no longer exists, the official or a delegee who issued the emergency order rescinds or suspends the order and considers issuing to the apparent violator a notice of proposed order of compliance, as discussed in paragraph 22.a., below.

22. Hazmat Orders of Compliance. Under 49 U.S.C. § 5121(a), the Administrator has authority to issue orders of compliance when they have reason to believe that a person is engaging in the transportation or shipment by air of hazardous materials in violation of 49 U.S.C. chap. 51 or a regulation or order issued under that chapter. An order of compliance may be used in conjunction with a civil penalty when there is a continuing violation and civil penalty action would be appropriate. An order of compliance may specify a period of time within which a person must come into compliance, but does not excuse violations that occur in the interim period. Civil penalty action may be appropriate for those interim violations. Orders of compliance are reviewable by the Administrator.

a. Orders of Compliance Other than for an Imminent Hazard. The FAA issues an order of compliance to address violations of 49 U.S.C. chap. 51, or a regulation or order issued under that chapter, if there is no imminent hazard.

(1) Notice. The FAA provides the apparent violator with notice of the proposed order of compliance. It advises the apparent violator of the nature and the extent of the apparent violation and sets forth the remedial action appropriate to address the noncompliance. The notice is issued by the Chief Counsel, a Deputy Chief Counsel, or the Assistant Chief Counsel for AGC-300, or by AGC-300 counsel who has an appropriate delegation and signs with a by-line under the name and title of the authorized official. The notice states that the failure by the alleged violator to submit a selection of the options for responding to the notice at 14 C.F.R. § 13.75(a) within 30 days of the service of the notice constitutes a waiver of the right to a hearing and appeal, and

authorizes the Administrator, without further notice or proceedings, to make appropriate findings of fact and issue an appropriate order.

(2) Attachments to the Notice. The information sheet provides a website address to access 14 C.F.R. part 13, subparts D and E, which include procedural rules for non-immediately effective orders of compliance.

(3) Time Allotted to Submit a Response to the Notice. Under 14 C.F.R. § 13.75(a), the apparent violator is required to submit a response to the notice not later than 30 days after service of the notice.

(4) Alternatives for Responding to the Notice. Under 4 C.F.R. § 13.75(a), the apparent violator may request an informal conference, respond to the allegations in writing, or request a hearing.

(5) Apparent Violator's Submission of Information. When the apparent violator responds to a notice by requesting an informal conference, AGC-300 counsel follows the informal conference procedures in paragraph 28, below. When the apparent violator submits evidence or other information, in writing and/or at an informal conference, counsel considers the new information and reevaluates the case as described in paragraph 3, above.

(6) Verification Letter. If AGC-300 counsel determines that legal enforcement action is appropriate after the issuance of the notice, and an order is not appropriate under paragraph 22.a.(7), below, counsel serves a verification letter on the apparent violator. The verification letter, which is the appealable document in these cases, notifies the apparent violator of any allegation in the notice that will not be withdrawn. The verification letter includes a website address to access 14 C.F.R. subparts D and E.

(7) Order. AGC-300 counsel issues the order if the apparent violator does not respond to the notice or verification letter. The order sets forth the findings of fact, the findings of regulations violated, and the sanction imposed.

(8) Request for a Hearing, Complaint, and Answer Procedures. For a hearing, the apparent violator must file a request for a hearing within 30 days after service of the notice or ten days after service of the verification letter, as applicable. The request for hearing must describe the action proposed by the FAA and contain a statement that the hearing is requested under 14 C.F.R. part 13, subpart D. The FAA must file the notice with any allegation not withdrawn as its complaint within 20 days after service of the request for hearing. AGC-300 counsel suggests a location for the hearing when counsel files the complaint, taking into consideration the location of expected FAA witnesses. The apparent violator must file an answer to the complaint within 30 days of service of the complaint.

(9) Hearings Before a Hearing Officer. The Hearing Officer assigned to hear the action sets the time, date, and location for the hearing, has subpoena authority, rules on motions, conducts the hearing, and issues decisions in accordance with subpart D of 14 C.F.R. part 13.

(10) Appeals to the Administrator. Either party may appeal the Hearing Officer's initial decision to the Administrator by filing a notice of appeal within 20 days after the order is issued. Absent extensions of time, an appeal is perfected by filing a brief within 40 days of the date on which the decision was issued, and a reply brief may be filed within 40 days of the service date of the appeal brief.

(11) Judicial Review of Decisions of the Administrator. Within 60 days after the Administrator issues a final order under 14 C.F.R. § 13.65, the apparent violator may petition a U.S. court of appeals for review of the order as provided in 49 U.S.C. § 5127.

(12) Finality of Administrative Orders. If a Hearing Officer affirms any allegation in the proposed notice, and that decision is not timely appealed, the initial decision becomes the order. Similarly, if, on appeal, the Administrator issues a final decision affirming any allegation in the proposed notice, and a timely petition for judicial review is not filed, the Administrator's decision becomes the final order.

b. Consent Orders of Compliance. Under 14 C.F.R. § 13.77, following the issuance of a notice of proposed order of compliance but before the issuance of an order of compliance, the FAA and apparent violator may agree to dispose of the case through the issuance of a consent order of compliance. A consent order of compliance must include: (1) an admission of all jurisdictional facts; (2) an express waiver of the right to further procedural steps and of all right to legal review in any forum; (3) an express waiver of attorney's fees; (4) an incorporation by reference of the notice and an acknowledgment that the notice may be used to construe the terms of the consent order of compliance; and (5) in cases in which the apparent violator has requested a hearing, a provision that the apparent violator will withdraw the request and request the dismissal of the case.

c. Emergency Orders of Compliance. The FAA issues emergency orders under the authority granted to it by 49 U.S.C. § 5122, including emergency orders of compliance, in accordance with the procedures contained in 49 C.F.R. part 109, as discussed in paragraph 21, above. If, at *any time* during the course of a proceeding involving an order of compliance that initially did not involve an imminent hazard the hazard becomes imminent, the official or a delegee who issued the notice may issue an emergency order to address the imminent hazard.

23. Judicial Enforcement of FAA Orders.

a. Injunctive Action Under 49 U.S.C. § 46106. Under 49 U.S.C. § 46106, the Administrator is authorized to bring injunctive action in U.S. district court to enforce: (1) 49 U.S.C. subtitle VII, part A; (2) any regulation enforced by the Administrator; (3) the limits of any certificate issued by the Administrator; or (4) any order issued by the Administrator (including cease and desist orders, orders of compliance, and orders of revocation or suspension). Under 49 U.S.C. § 46107, a U.S. attorney's office may file a civil action in a U.S. district court to obtain an injunction.

b. Enforcement of 49 C.F.R. Part 109 and 14 C.F.R. Part 13, Subpart E Orders. Under 49 C.F.R. § 109.21, the Administrator may request the U.S. Attorney General to bring an action

in a U.S. district court seeking temporary or permanent injunctive relief, punitive damages, assessment of civil penalties as provided by 49 U.S.C. § 5122(a), and any other appropriate relief to enforce 49 U.S.C. chap. 51 provisions, or a regulation or order issued under that chapter. The court may award appropriate relief, including a temporary or permanent injunction, punitive damages, and assessment of civil penalties.

c. Process. With the exception of actions to recover suspended or revoked certificates or ratings, or suspended or terminated authorizations or approvals (which are discussed in paragraph 33.a.(3), below), any request for judicial enforcement of an FAA order is coordinated with the Assistant Chief Counsel for AGC-300 and is made to the DOJ Civil Division, which will determine whether to authorize a U.S. attorney's office to seek an injunction or other remedy. AGC-300 counsel drafts a referral letter describing the specific reasons for seeking judicial enforcement, attaching all pertinent evidence, and offering to assist the DOJ attorney or delegated AUSA in the preparation and trial of the action.

24. Legal Enforcement Actions Under the Commercial Space Launch Act. The Commercial Space Launch Act of 1984, as amended and re-codified at 51 U.S.C. §§ 50901-50923, authorizes the Secretary of Transportation to oversee, license, and regulate commercial launch and reentry activities and the operation of launch and reentry sites as carried out by U.S. citizens or within the United States. The Secretary's authority has been delegated to the Administrator, who has further delegated that authority to the Associate Administrator for Commercial Space Transportation (who is the FAA Decisionmaker in commercial space civil penalty actions).

a. License and Permit Actions. The Commercial Space Launch 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. *See* 51 U.S.C. § 50908; 14 C.F.R. § 405.3(a). (For the purpose of this paragraph, references to a license includes a permit and to licensee includes a permittee.) Unless otherwise specified, such actions are effective immediately and remain effective through any review proceedings. *See* 51 U.S.C. § 50908(e); 14 C.F.R. § 405.3(c). These actions are initiated by the Office of Commercial Space Transportation (AST), and AST coordinates any such action with the Office of the Chief Counsel. The FAA may also deny an application for a license. *See* 51 U.S.C. § 50905; 14 C.F.R. §§ 413.17 and 413.21. Under 49 U.S.C. § 50912(a), as implemented by 14 C.F.R. part 406, a licensee whose license is modified, suspended, or revoked, or an applicant whose application for a license is denied, is entitled to an administrative hearing and decision on the record. The hearing is before an ALJ, who issues a recommendation decision. Under 14 C.F.R. part 406, subpart A, the Associate Administrator for Commercial Space Transportation reviews the ALJ's decision and issues a final decision. Under 51 U.S.C. § 50912(b), a licensee or applicant may seek judicial review of the FAA Decisionmaker's decision in a U.S. district court.

b. Civil Penalty Actions. The Commercial Space Launch Act authorizes the FAA to assess civil penalties for violations of the Act and regulations issued under the Act. *See* 51 U.S.C. § 50917(c). The FAA Decisionmaker has authority to review civil penalty actions taken under the Act. AGC-300 counsel processes these civil penalty actions in accordance with 14 C.F.R. § 406.9.

(1) Separation of Functions. Under 14 C.F.R. § 406.105, FAA personnel who investigate or prosecute a civil penalty action that is subject to review by the FAA Decisionmaker must not, in that case or a factually related case, participate in, or provide advice in connection with, the ALJ or FAA Decisionmaker's decisional process except as a witness in any such case.

(2) Notice of Proposed Civil Penalty. The FAA initiates a civil penalty action 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 AGC-300 counsel who has an appropriate delegation and signs with a by-line under the name and title of this official.

(3) Attachments to the Notice. The information sheet provides a website address to access 14 C.F.R. part 406, subpart B (the Rules of Practice in FAA Space Transportation Adjudications).

(4) Time Allotted to Submit a Response to the Notice. Under 14 C.F.R. § 406.9(c), the apparent violator must submit a response to a notice not later than 30 days after receipt of the notice.

(5) Alternatives for Responding to the Notice. Under 14 C.F.R. § 406.9(c) the apparent violator's options for responding to the notice include submitting the civil penalty amount proposed or an agreed upon amount, submitting written information in response to the allegations or a written request to reduce the proposed amount, requesting an informal conference, or taking measures to request a hearing.

(6) Apparent Violator's Submission of Information. When the apparent violator responds to a notice by requesting an informal conference, AGC-300 counsel follows the procedures for informal conferences in paragraph 28, below. When the apparent violator submits evidence or other information, in writing and/or at an informal conference, counsel considers the new information and reevaluates the case as described in paragraph 3, above.

(7) Compromise Order. Under 14 C.F.R. § 406.9(f), AGC-300 counsel has authority to compromise a civil penalty by accepting the payment of a civil penalty without making a finding of violation. The FAA uses compromise orders only in unusual circumstances in Commercial Space civil penalty actions. Counsel coordinates any AST compromise order with the Assistant Chief Counsel for AGC-300. Counsel also follows the settlement procedures, as applicable, in paragraph 29, below. Under the terms of the agreement, counsel issues a compromise order after the apparent violator pays the agreed-upon civil penalty. The compromise order states that: (i) the apparent violator agrees to pay a civil penalty; (ii) the FAA makes no finding of violation; and (iii) the FAA will not use the order as evidence of a prior violation in any subsequent civil penalty or license action.

(8) Final Notice of Proposed Civil Penalty. The appealable document is a final notice of proposed civil penalty. The final notice includes a website address to access 14 C.F.R. § 406.9 and part 406, subpart B.

(9) Order Assessing Civil Penalty. AGC-300 counsel issues an order assessing civil penalty when the apparent violator: (i) does not request a hearing within 15 days of receipt of the final notice of proposed civil penalty; or (ii) submits, or agrees to submit, the proposed penalty or an agreed upon amount. Payment of the penalty in response to the notice constitutes a waiver of the apparent violator's appeal rights when the apparent violator has been informed of the appeal rights in the information sheet and notice. When the penalty was paid prior to the issuance of the order, the order acknowledges receipt of the payment. The order sets forth the findings of fact, the findings of regulations or statutes violated, and the amount of the civil penalty assessed, regardless of whether payment of the penalty has been received by the FAA.

(10) Request for Hearing, Complaint, and Answer Procedures. For a hearing, the apparent violator must file a request for a hearing within 15 days after the date on which the final notice was received. The FAA files a complaint within 20 days after the date on which the FAA received the request for hearing. The complaint sets forth the FAA's factual and regulatory allegations and the civil penalty proposed. AGC-300 counsel suggests a location for the hearing when counsel files the complaint, taking into consideration the location of expected FAA witnesses. The apparent violator must file an answer to the complaint within 30 days after the date on which the complaint was served.

(11) Hearings Before a DOT ALJ. The ALJ assigned to hear the civil penalty action sets the time, date, and location for the hearing, has subpoena authority, rules on motions, conducts the hearing, and issues an initial decision in accordance with 14 C.F.R. part 406, subpart B.

(12) Appeals to the FAA Decisionmaker. Either party may appeal an initial decision issued by an ALJ to the FAA Decisionmaker by filing a notice of appeal within ten days after an oral decision is rendered or a written decision is served on the parties. Absent extensions of time, an appeal is perfected by filing a brief within 50 days of the date on which the decision was issued, and a reply brief may be filed within 35 days of the filing date of the appeal brief. The FAA Decisionmaker's decision and order is the final FAA order in the case.

(13) 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 Commercial Space civil penalty assessment authority, the apparent violator may petition a U.S. district court for review of the order under 51 U.S.C. § 50912(b).

(14) Order Assessing Civil Penalty After Hearing. If an ALJ issues a decision finding that a violation occurred and determines that a civil penalty is warranted in an amount found appropriate by the ALJ, 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 FAA Decisionmaker's decision is considered an order assessing civil penalty.

25. Seizure of Aircraft. Under 49 U.S.C. § 46304 and 14 C.F.R. § 13.17, the FAA may seize an aircraft pursuant to an order of seizure when the aircraft was involved in a violation, the violation

was committed by the owner or individual commanding the aircraft, and the violation would result in a civil penalty (whether or not a civil penalty case has been initiated or completed). AGC-300 counsel issues an order of seizure only with the approval of the Assistant Chief Counsel for AGC-300 and after coordination with the DOJ.

26. Cooperating With TSA on Security-Related Matters. Under 49 U.S.C. § 46111 and 14 C.F.R. § 3.200, the FAA is required to issue an order amending, modifying, suspending, or revoking any FAA-issued certificate if the Administrator is notified by the TSA 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. An individual adversely affected by an FAA order issued under 49 U.S.C. § 46111 and 14 C.F.R. § 3.200 may seek review of the threat assessment with the TSA. Under 14 C.F.R. § 3.205(a), if the TSA notifies the FAA that an individual who has applied for an FAA certificate poses, or is suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety, the FAA holds the application in abeyance pending further notification by the TSA. Under 14 C.F.R. § 3.205(b), if the TSA notifies the FAA that the TSA has made a final security threat determination regarding an individual, the FAA denies all FAA certificate applications by the individual. Under 49 U.S.C. § 44924, the FAA must suspend or revoke a foreign repair station's 14 C.F.R. part 145 certificate when notified by TSA of certain security issues regarding the repair station. In all circumstances, AGC-300 works with ASH and other appropriate FAA program offices (*e.g.*, FS Airman Certification) to promptly take the requested action.

27. Referral to Foreign Authority, Legal Enforcement Action Against Foreign Persons, and Apparent Violations of Foreign Regulations Involving U.S.-Registered Aircraft.

a. Referral to Foreign Authority. AGC-300 counsel send EIR foreign referrals for violations of U.S. statutes or regulations involving the exercise of a foreign certificate or license (or other approval or authorization) to the appropriate foreign aviation authority. (*See* chapter 6, paragraph 8.b.) In addition to referring the EIR, counsel prepares a letter that includes a brief factual summary of the alleged violations, a statement of the regulations violated, and a request that the foreign aviation authority advise the FAA of any action that it takes regarding the matter.

(1) For referrals of EIRs when the United States and the foreign country are participating in the use of the Portal for International Pilot Deviations (PIPD), AGC-300 counsel ensures that PIPD is used to notify the foreign aviation authority and Department of State.

(2) For apparent violations not covered by PIPD by Canadian persons, AGC-300 counsel directly notifies Transport Canada.

(3) For all other violations, AGC-300 counsel notifies the appropriate foreign aviation authority through the State Department using PIPD.

b. Legal Enforcement Action Against Foreign Persons. The FAA may take legal enforcement action for apparent violations of U.S. statutes or regulations by a foreign person: (1) exercising the privileges of an FAA-issued certificate, approval, authorization, license, or permit (*e.g.*, a foreign pilot exercising an FAA-issued pilot certificate to operate an aircraft);

(2) engaging in conduct that would require an FAA-issued certificate, approval, authorization, license, or permit (*e.g.,* an individual performing maintenance that would require an FAA-issued mechanic certificate, even if the individual did not hold a certificate); (3) engaging in conduct unrelated to an FAA-issued or foreign-issued certificate, approval, authorization, license, or permit (*e.g.*, a passenger violation on a U.S.-registered aircraft); or (4) engaging in conduct contrary to the HMR (*e.g.*, a person offering hazardous material for transportation by air into the U.S.). The FAA may take legal enforcement action based on apparent violations involving an airman's exercise of the privileges of both an FAA-issued certificate and a foreign certificate (in addition to referring these matters to a foreign authority). Although apparent violations by foreign persons other than those described above are generally resolved with referral to a foreign authority, the FAA has the authority to take legal enforcement action against any foreign person who violates U.S. statutes or regulations and may do so in the exercise of prosecutorial discretion (in addition to any referral to a foreign authority).

c. Apparent Violations of Foreign or International Civil Aviation Organization (ICAO) Regulations Involving U.S.-Registered Aircraft. The FAA has authority to take legal enforcement action concerning the operation of U.S.-registered aircraft even when those operations take place outside the United States. These legal enforcement actions generally involve apparent violations of 14 C.F.R. § 91.703, which requires, in part, that each person operating U.S.-registered aircraft outside the U.S. comply with foreign flight regulations or ICAO Annex 2 (Rules of the Air), most of 14 C.F.R. part 91 (when not inconsistent with applicable foreign regulations), and Reduced Vertical Separation Minimums (RVSM) regulations. AGC-300 counsel processes such legal enforcement actions using the procedures discussed in this chapter.

d. Communication With Foreign Aviation Authorities For Final Actions. The FAA provides information to foreign aviation authorities in the circumstances discussed in paragraph 27.d.(1)-(4), below.

(1) When legal enforcement action is taken against a foreign person for violations of U.S. statutes and regulations, AGC-300 counsel advises the Office of Policy, International Affairs, and Environment, which then notifies the appropriate foreign aviation authority of the final action.

(2) When a matter is referred to the FAA by a foreign aviation authority and legal enforcement action is taken, AGC-300 counsel notifies the foreign aviation authority of the final action.

(3) When a matter is referred to the FAA by a foreign aviation authority, but the case does not result in legal enforcement action, the program office advises the foreign aviation authority of the final action or that no action was taken.

28. Informal Conferences.

a. Purpose and Policy.

(1) The option for an informal conference is required by 49 U.S.C. §§ 44106, 44704(f), 44709, 44710, 44726, and 46301, and provides an apparent violator an opportunity to be heard in response to the FAA's issuance of a notice proposing legal enforcement action. Except in emergency cases, the FAA provides an opportunity for an informal conference before issuing an order of suspension or revocation. The FAA also provides this opportunity before issuing an order of assessment or a final notice of proposed civil penalty or before referring a civil penalty case in excess of assessment authority limits in 49 U.S.C. § 46301(d)(8) to the DOJ.

(2) The apparent violator has an opportunity at the informal conference to speak to AGC-300 counsel and present documentation and/or other information in response to the proposed legal enforcement action. Counsel evaluates any new information obtained at the informal conference in accordance with paragraph 3, above.

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

b. Procedure.

(1) The FAA tries to hold informal conferences within 60 days of receiving the request for an informal conference. Informal conferences in cases arising under 49 U.S.C. §§ 44106, 44710, and 44726, however, are generally held within 30 days of receiving the request for the informal conference. AGC-300 counsel schedules and holds the informal conference. Counsel asks the program office that processed the EIR to assign a representative to attend the conference, if practicable, but conducts the conference even if a program office representative is not present.

(2) When the apparent violator has made a written request to the FAA for the releasable portions of the EIR, AGC-300 counsel provides a copy of those materials, and any evidence counsel receives after AGC-300 receives the EIR, to the apparent violator prior to the informal conference.

(3) At the conclusion of the informal conference, AGC-300 counsel prepares a detailed summary and includes it in the case file.

(4) Ordinarily, the FAA holds the informal conference either in person, by videoconference, or by telephone. The FAA typically will hold an in-person informal conference at an FAA facility where AGC-300 counsel is stationed.

(5) Requests by an apparent violator to hold an in-person informal conference at an FAA facility other than where the AGC-300 counsel who issued the notice proposing the action is

stationed will generally not be granted if the informal conference can be held by videoconference. Counsel who initiated the notice coordinates any request for a change of location of an in-person informal conference with AGC-300 management. If such a request is granted, the case is transferred to counsel at the requested location. Counsel receiving the case typically handles it through full disposition. However, in coordination with AGC-300 management, counsel who initiated the case may specify that the transfer is only for purposes of the informal conference or that counsel receiving the transferred case consults and coordinates with the initiating counsel before settling or otherwise disposing of the case. For cases transferred to another counsel for purposes of the informal conference only, counsel receiving the case prepares a detailed summary of the informal conference for the case file and returns the file to the initiating counsel as soon as practicable after the informal conference.

29. Procedures for Settling Legal Enforcement Actions.

a. Involvement of the Program Office. AGC-300 counsel involves the program office in settlement determinations when practicable or appropriate. In significant cases, counsel consults with program office personnel knowledgeable about the case during critical stages of settlement negotiations, and coordinates the final terms of a settlement agreement with the program office when practicable or appropriate. For any settlement agreement in lieu of the revocation or suspension pending compliance of an entity's certificate, counsel ensures that the applicable program office has performed appropriate risk analyses and factored them into the FAA's decision-making before entering into the settlement agreement.

b. Content of Settlement Agreement. Settlements, including settlements reached at hearing, are documented with a written settlement agreement executed by the parties and included in the case file. AGC-300 counsel coordinates settlements having atypical terms or conditions with AGC-300 management. Settlement agreements have the following elements, as applicable and appropriate.

(1) The agreement specifies terms and conditions of the settlement, including the obligations of each party (*e.g.*, the apparent violator will withdraw the request for hearing and FAA will issue an amended order effectuating the terms of the settlement). If a settlement agreement involves amending an order, AGC-300 counsel includes the amended order with the agreement.

(2) The agreement defines material terms and phrases used in the settlement that are not otherwise commonly understood or are not defined in FAA regulations or policies.

(3) The agreement states the sanction proposed or ordered and the sanction agreed upon in settlement as well as details relevant to the payment of civil penalties. For punitive suspension cases, the settlement states the period of suspension proposed and the period agreed upon. For revocation cases involving airman or ground instructor certificates (except airman medical certificates), the settlement states the number of months after which the individual may apply for a new certificate or rating, as applicable. For civil penalty cases, the settlement includes the amount proposed and the amount assessed, whether the assessed civil penalty will be paid in a lump sum or in installments, the date or dates when the payment must be made and, if the

penalty is to be paid in installments, a statement that the person agrees to sign a promissory note. The promissory note is signed before the order is issued.

(4) The agreement states that the sanction is waived under ASRP, if applicable.

(5) The agreement states that the person charged with violating the regulations is waiving the right to a hearing.

(6) When agreed upon in civil penalty letter cases, the agreement states that the person charged with violating the regulations agrees that the allegations in the letter (or an agreed-upon subset of those allegations) will be considered a violation history. (AGC-300 counsel ensures that a corresponding entry is made in EIS.)

(7) The agreement specifies the costs to be borne by each party.

(8) The agreement states that the person charged with violating the regulations agrees to not initiate any litigation under the Equal Access to Justice Act or any other statutory provision or rule to collect legal fees or costs.

(9) The agreement 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.

(10) The agreement states that it accurately reflects the terms of the settlement between the parties and is binding.

(11) The agreement is signed by AGC-300 counsel and the apparent violator's representative and may also be signed by the apparent violator.

c. Prompt Settlement Policy. The FAA has two settlement policies published in the Federal Register that allow individuals the opportunity to promptly receive an emergency order of revocation and, thereby, apply for a new airman or ground instructor certificate sooner than in the absence of those policies.

(1) Under the "Settlement Policy for Commercial Pilots In Drug and Alcohol Testing Cases," the FAA implemented a procedure for prompt settlement of certificate actions against commercial pilots who have: (i) received a verified positive result for a DOT-required drug test; (ii) received a DOT-required alcohol test result of 0.04 or above alcohol concentration; (iii) refused to submit to a DOT-required drug or alcohol test in violation of 14 C.F.R. part 120 and 49 C.F.R. part 40; or (iv) acted or attempted to act as a crewmember of an aircraft in commercial operations while having violated a provision in 14 C.F.R. § 91.17(a)(1)-(4). *See* 83 Fed. Reg. 34040 (Jul. 19, 2018) (http://federalregister.gov).

(2) Under the "Amended Prompt Settlement Policy for Legal Enforcement Actions Involving Medical Certificate-Related Fraud, Intentional Falsification, Reproduction, or Alteration," the FAA implemented a procedure for the prompt settlement of certificate actions against individuals who have violated regulations prohibiting any: (i) fraudulent or intentionally

false statement on an application for a medical certificate or other document used to show compliance with any requirement for a medical certificate; (ii) reproduction of a medical certificate for fraudulent purposes; or (iii) alteration of a medical certificate. *See* 87 Fed. Reg. 3643 (Jan. 25, 2022) (http://federalregister.gov).

d. Closing the Case After Settlement Terms Are Satisfied. AGC-300 counsel closes the case only after all the terms of the settlement agreement have been satisfied by the parties (*e.g.*, payment in full of an agreed-upon civil penalty; return of surrendered certificate after the agreed-upon period of suspension has been served). Before closing the case, counsel ensures that the case file contains the executed settlement agreement (including any amended order resulting from the agreement and promissory note, if applicable) and notes that the terms of the settlement agreement have been fully satisfied. Counsel then ensures that the case is closed in both EIS and matter tracking. Counsel retains the case file in accordance with the agency's records management and expunction policies.

30. Consent Orders. AGC-300 counsel together with a program office may agree to settle certain legal enforcement actions with a consent order. A consent order ordinarily includes an agreement that the apparent violator will take corrective and remedial action as a condition for the forgiveness of a portion of the sanction or, in some cases, a modification of the proposed sanction. A consent order 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 FAA's approval, might agree to take prompt corrective action to cure the systemic deficiencies by addressing a root cause through improvements to or updating of operational procedures and maintenance practices. This agreement would be included in the consent order. A consent order may or may not contain findings of violation. An apparent violator's failure to fulfill the agreement within the terms set forth in the consent order ordinarily results in imposition of the entire originally proposed sanction amount.

31. Coordination of Appeals. AGC-300 counsel who provides trial-level representation for the FAA (trial counsel) coordinates with headquarters AGC-300 management all appellate work of which counsel becomes aware, including appeals from final trial-level decisions and judicial appeals to U.S. district courts and the U.S. courts of appeals.

a. Procedures for Coordinating With Headquarters AGC-300. FAA trial counsel alerts headquarters AGC-300 management to all appellate matters of which counsel becomes aware, including administrative or judicial decisions whether favorable or unfavorable to the FAA. Trial counsel provides headquarters AGC-300 management with a description of the facts of the case as developed at the trial level, a summary of the decision, and an overview of any potential issues on appeal.

b. FAA Appeals of Adverse Decisions. FAA trial counsel, their AGC-300 manager, and headquarters AGC-300 management promptly assess the efficacy of appealing an adverse decision. Among other issues, they consider whether: (1) there are adverse consequences from the ruling that are particular to the case or that may implicate other cases; (2) the ALJ's ruling is consistent with precedent and FAA policy; (3) the ALJ's ruling is arbitrary or capricious; (4) the

ALJ failed to defer to an interpretation of the regulations, other validly adopted interpretation, or sanction selection; (5) the ALJ misinterpreted or disregarded the evidence presented at the hearing; (6) the ALJ's credibility findings were arbitrary or capricious; (7) the ALJ's decision is novel or controversial; and (8) the ALJ made erroneous pretrial or evidentiary rulings that affected the outcome of the case. Headquarters AGC-300 management makes the final decision as to whether to file an appeal.

c. Preparation of Briefs. Headquarters AGC-300 management determines whether a case will be transferred on appeal. When headquarters AGC-300 management decides transfer is appropriate, FAA trial counsel ensures that the case file is in order and complete before transferring the case. FAA trial counsel ensures that prior to transfer: (1) all significant events have been recorded in matter tracking; (2) all significant documents have been uploaded in matter tracking; and (3) the case has been transferred in both matter tracking and EIS. In emergency cases in which the emergency procedures have not been waived, any appeal or reply briefs generally are prepared by FAA trial counsel assigned to the case. Briefs in emergency cases are prepared in coordination with headquarters AGC-300 management.

d. Completion of the Appellate Work. AGC-300 counsel who handles the appeal (appellate counsel) transfers all case files back to trial counsel once the dispositive order in the case becomes final. Before transferring the case, appellate counsel includes a copy of the dispositive order in the case file and an explanation of any other legal action that needs to be addressed. Trial counsel is responsible for pursuing the surrender of certificates, processing the collection civil penalties, and answering EAJA applications. Trial counsel notifies the originating program office of the final disposition of the case when all legal matters in the case are completed.

32. Closing Cases After Final Adjudication. When a legal enforcement action is resolved through final adjudication, AGC-300 counsel closes the case only upon satisfaction of the final judgment or order. Prior to closing the case, counsel ensures that the case file contains a copy of the final order, the final disposition is noted in EIS, and the case is closed in EIS and matter tracking. Counsel retains the case file in accordance with the agency's records management and expunction policies.

33. Certificate Recovery and Civil Penalty Collection Procedures. This paragraph sets forth the procedures to follow when a person fails to surrender a suspended or revoked certificate or rating, or a suspended or terminated authorization or approval. This paragraph also provides procedures for the collection of administratively assessed civil penalties.

a. Procedures for Recovering Certificates.

(1) Issuance of a Demand Letter. If a person does not surrender a suspended or revoked certificate or rating, or a suspended or terminated authorization or approval, within 15 days of the date an emergency order is issued, or within 30 days of the date a non-emergency order becomes final (*e.g.*, the opportunity for appeal ceases), AGC-300 counsel sends the person a letter demanding the immediate surrender of the certificate, rating, authorization, or approval.

Counsel advises the person that the failure to surrender within 15 days of the service date of the demand letter for emergency and non-emergency actions will result in civil penalty action.

(2) Civil Penalty Action. If a person does not surrender a certificate, rating, authorization, or approval as prescribed in paragraph 33.a.(1), above, AGC-300 counsel initiates and pursues a civil penalty action for failure to surrender. Counsel ensures that a separate EIR is opened for the action and corresponding entries are made in matter tracking and EIS. The certificate action EIR becomes a related case to the civil penalty action. If the certificate or rating not surrendered is a 14 C.F.R. part 61 pilot, mechanic, flight engineer, or repairman certificate or rating, then counsel issues a notice of proposed assessment under 14 C.F.R. § 13.18. Counsel initiates a civil penalty action concerning the failure to surrender any other certificate, rating, authorization, or approval through a notice of proposed civil penalty under 14 C.F.R. § 13.16. The person is subject to a civil penalty for each day the failure to surrender continues, although failure to surrender sanctions are ordinarily capped consistent with the ranges in chapter 9, paragraph 6.k.

(3) Referral to DOJ. If a person has not surrendered a suspended or revoked certificate or rating, or a suspended or terminated authorization or approval, after an order of assessment under 14 C.F.R. § 13.18 or order assessing civil penalty under 14 C.F.R. § 13.16 has become final, then AGC-300 counsel coordinates a referral letter with the Assistant Chief Counsel for AGC-300, who forwards the letter to the DOJ Federal Programs Branch. The letter requests injunctive relief and judicial enforcement of the FAA's order of suspension, revocation, or termination for failure to comply with the order to surrender. Counsel includes a sample final demand letter and a copy of the case file with the referral letter.

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

(1) When Legal Action Results in a Legally Collectable Debt. An order assessing civil penalty is a legally collectible debt when issued. An order of assessment becomes a legally collectible debt when it becomes final. The order of an ALJ, a hearing officer, the NTSB, or the FAA Decisionmaker becomes a final order, and a legally collectible debt, when not challenged within the applicable appeal period. If judicial review is sought, the order becomes a legally collectible debt when the judicial review process has concluded, and all applicable appeal periods have expired.

(2) Initial Demand Letter Requirements. To expedite the collection of civil penalties that become legally collectable debts, AGC-300 counsel issues orders assessing civil penalty and orders of assessment containing 49 C.F.R. part 89 initial demand letter requirements. Such orders, in effect, become initial demand letters by meeting 49 C.F.R. part 89 requirements.

(i) AGC-300 counsel ensures that orders assessing civil penalty and orders of assessment meet the following initial demand letter requirements in 49 C.F.R. part 89 by providing:

- 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 is not more than 30 days from the date the initial demand letter was mailed or hand-delivered;
- a statement that the debt may possibly be referred to commercial credit bureaus and consumer reporting agencies;
- a statement that the debt may possibly 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
- a statement that domestic and overseas payments in excess of $10,000 must be made by wire transfer through Federal Reserve communications (Fedwire) to the account of the U.S. Treasury in accordance with the instructions in the demand letter.

(ii) In addition, orders assessing civil penalty and orders of assessment:

- advises the debtor to send payment to the FAA accounting office servicing the area where the order originated;
- advises the debtor that the FAA is required to charge interest on the assessed amount at the published Treasury Current Value of Funds Rate in effect on the date that the debt became legally collectible;
- indicates the amount of FAA administrative costs for the matter; and
- is mailed or hand-delivered on the same day it is dated.

(3) Opening an Account Receivable.

(i) FAA General Accounting Section (AMK-322). In addition to issuing orders assessing civil penalty and orders of assessment containing 49 C.F.R. part 89 initial demand letter requirements, AGC-300 counsel immediately sends a copy of such orders to the FAA General Accounting Section (AMK-322), so it can open an account receivable.

(ii) AMK-322 Notification. AMK-322 sends to the debtor the second and third demand letters required by 49 C.F.R. part 89 using an automated system. Through this system, AMK-322 notifies the debtor of the administrative charges as well as any penalties added to the debt because of delinquency and reiterates that the debtor is to send the debt to FAA accounting office servicing the area where the order originated.

(iii) Referral of Debtor Information. If the debtor's social security number or other taxpayer identification number is available, AGC-300 counsel provides it to AMK-322 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.

(iv) Payments Received by AGC-300 Counsel. If a debtor sends a check to AGC-300 counsel rather than to the FAA accounting office servicing the area where the order originated, counsel promptly sends the check to the accounting office. When such a payment is made prior to the issuance of an order, counsel immediately issues the order, then sends a copy of the order and the check to the accounting office. The accounting office opens and closes an account receivable.

(v) Installment Payments. Sometimes, a person may agree to pay a civil penalty according to an installment payment schedule as part of a settlement agreement. In that instance, the installment payment schedule is memorialized in a promissory note, as described in paragraph 29.b.(3), above. A social security number or other taxpayer identification number is required for a promissory note for individuals. AGC-300 counsel sends the order and promissory note to AMK-322, which uses the information in the promissory note to open an account receivable and notifies the debtor of any delinquency during the repayment period.

(vi) Handling of Debt After an Account Receivable is Opened. After AMK-322 has opened an account receivable, it handles all further administrative collection efforts on the debt. AMK-322 personnel forward any telephonic or written inquiries they receive questioning either the amount or validity of an order to the AGC-300 counsel who issued the order. Counsel may compromise a debt under 31 U.S.C. § 3711(a)(2), if warranted, after approval from the appropriate AGC-300 manager. If a claim is compromised under 31 U.S.C. § 3711(a)(2), counsel notifies AMK-322 and directs the debtor to send payment to AMK-322.

(vii) Actions to Collect Debts. Federal debt collection law requires all agencies to take aggressive collection action. *See* 31 C.F.R. § 285.12. AMK-322 transfers any debt that has been delinquent for 180 to the Department of Treasury Financial Management Service, 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 the requirement that the debt be transferred to the Department of Treasury based on a determination by the Secretary of Treasury that exemption for a certain class of debt is in the best interest of the United States.

(viii) AMK-322 notifies AGC-300 counsel when a debt has been collected or it takes other final action in collecting the debt or closing the account receivable.

(ix) Referrals to the Department of Justice Under 31 C.F.R. § 904.4. An FAA accounting office may request that AGC-300 counsel refer a debt to the DOJ for litigation. AGC-300 counsel does not refer a debt less than $2,500, exclusive of interest, penalties, and administrative costs, unless:

- litigation to collect such a debt is important to ensure compliance with 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 of the lien; or

- the debtor has the clear ability to pay the debt and the government can effectively 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.

AGC-300 counsel consults the Financial Litigation Staff of the Executive Office for the United States Attorneys before referring debts less than $2,500. To refer matters to the DOJ, the FAA must fill out and send a Claims Collection Litigation Report and a signed Certificate of Indebtedness.

(4) Cessation of Hazardous Materials Operations Orders. Pursuant to 49 C.F.R. § 109.103, when full payment of a civil penalty in a case involving HMR violations has not been made within 45 days after the date specified in the order assessing civil penalty, AGC-300 counsel issues a cessation of hazardous materials operations order. For cases where a settlement agreement provides for installment payments, this order is issued if any payment has not been made within 45 days of the agreed-upon date. Cessation of hazardous materials operations orders are not issued when the debtor has declared chapter 11 bankruptcy. Counsel references 49 C.F.R. § 109.103 in orders assessing civil penalty for cases involving HMR violations.

(i) Contents of Cessation of Hazardous Materials Operations Order. The order includes the following information:

- A citation to the regulation the debtor violated and to the terms in the order assessing civil penalty and/or settlement agreement requiring payment;

- A statement that the debtor will be prohibited from conducting any activity regulated under 49 C.F.R. subtitle B, chapter I, subchapters A or C, or any activity under any exemption, special permit, approval, or registration issued under subchapter C, if the debtor fails to pay the full outstanding balance within 90 days after the payment due date specified in the order assessing civil penalty or a settlement agreement-related installment payment;

- A statement notifying the debtor that the debtor may request reconsideration of the order within 20 days of the receipt of the order; and

- A description of the manner in which the debtor can make required payments.

(ii) Service of Cessation of Hazardous Materials Operations Order. The order is delivered by personal service, unless such service is impossible or impracticable. Personal service will generally be accomplished by AXH investigative personnel. AGC-300 counsel documents the details of personal service in the case file. If personal service is impossible or impracticable, service is accomplished via certified mail (return receipt requested) and regular mail. If the debtor's principal place of business is foreign and the debtor has a designated agent (*see* 49 C.F.R. § 105.40), service is made on the designated agent.

34. Procedures for Bankrupt Persons. The jurisdiction of the U.S. bankruptcy courts is broad and applies to legal enforcement actions involving the payment of civil penalties. A bankrupt person's (*i.e.*, debtor's) filing of a bankruptcy petition sets in motion a system that is designed to resolve the financial difficulties of the debtor.

a. Automatic Stay. Once a bankruptcy proceeding is started 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 to provide the debtor with a respite from its creditors. However, under 11 U.S.C. § 362(b)(4), 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." AGC-300 counsel can proceed with the processing of a civil penalty case as long as counsel does not demand payment of money for that civil penalty. The automatic stay has no effect on certificate actions or other nonmonetary actions.

b. Immediate Impact of Bankruptcy on Active Civil Penalty Actions. Active civil penalty actions are affected by a bankruptcy petition as soon as it is filed. AGC-300 counsel includes the following language in all civil penalty action documents (*e.g.*, civil penalty letters, notices of proposed civil penalty, final notices of proposed civil penalty, orders assessing civil penalty) where the violations occurred before the date the bankruptcy petition was filed:

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

If a violation occurred after the bankruptcy petition date, the above language does not need to be included in civil penalty documents.

c. Pre-Petition Claims. Pre-petition bankruptcy claims include all violations subject to a civil penalty (regardless of whether a civil penalty action document has been issued) that occurred on or before the date the bankruptcy petition was filed.

(1) A designated AGC-300 point of contact ("AGC-300 bankruptcy POC") is responsible for ensuring that a single proof of claim specifying any pre-petition claim in a civil penalty action is filed with the appropriate bankruptcy court. A proof of claim is a document that

registers a claim against the debtor. The bankruptcy court sets the time for filing a 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). The DOJ may provide a specific proof of claim form for a particular bankruptcy case to the FAA. Standard proof of claim forms are available through the bankruptcy court's website. Before ensuring the filing of the proof of claim, the AGC-300 bankruptcy POC follows the steps provided at paragraph 34.c.(2)-(4), below.

(2) The AGC-300 bankruptcy POC coordinates the proof of claim with the DOJ Commercial Litigation Section or the assigned assistant U.S. attorney.

(3) The AGC-300 bankruptcy POC determines what civil penalty actions, initiated and uninitiated, exist to ensure the proof of claim that is filed represents all outstanding FAA claims.

(i) The AGC-300 bankruptcy POC, in coordination with AGC-300 management, notifies all AGC-300 counsel who have been assigned a case involving the debtor that the debtor has filed a bankruptcy petition. Counsel assigned to any initiated civil penalty case against the debtor provides the AGC-300 bankruptcy POC with the most recent civil penalty action document for the case. Counsel assigned to any uninitiated case against the debtor initiates the case before the bar date and forwards the civil penalty action document to the AGC-300 bankruptcy POC. If counsel cannot initiate a civil penalty action before the bar date, counsel prepares documentation for the case that includes the EIR number, responsible program office, a short summary of the facts, the regulations found to have been violated, and the recommended civil penalty amount. Counsel forwards this documentation to the AGC-300 bankruptcy POC.

(ii) The AGC-300 bankruptcy POC ensures that EIS is checked to determine whether there are any open investigations involving the debtor. If there are, the AGC-300 bankruptcy POC obtains a description of the investigation.

(iii) The AGC-300 bankruptcy POC contacts the Airports and Environmental Law Division (AGC-600), International and Security Law Division (AGC-700), and the General Accounting Section (AMK-322) to determine whether those offices have pre-petition claims against the debtor. If so, the AGC-300 bankruptcy POC obtains a description of the claim and any documentation supporting the claim.

(4) The AGC-300 bankruptcy POC consults with AGC-300 management to determine who in AGC will file a proof of claim. All open civil penalty actions where violations occurred before filing the bankruptcy petition (whether initiated or uninitiated), claims based on open investigations, and claims identified and documented by AGC-600, AGC-700, and AMK-322 are consolidated into a single proof of claim, which contains the total amount owed under the FAA's claim. Attachments to the proof of claim include: (i) civil penalty action documents; (ii) documentation of any uninitiated cases; and (iii) documentation of other claims provided by other program offices or AGC-600, AGC-700, and AMK-322.

(5) As soon as possible after the proof of claim is filed, AGC-300 counsel for any remaining uninitiated cases issues civil penalty action documents for those cases and provides

those documents to the AGC-300 bankruptcy POC. It may be necessary to amend the proof of claim to include these civil penalty action documents.

d. Setoffs. FAA claims can sometimes be satisfied with funds the FAA or other government agencies owe the debtor, such as grants. No funds owed to a debtor are released to a debtor after a bankruptcy petition is filed without consulting and obtaining approval from the DOJ. The AGC-300 bankruptcy POC verifies with AMK-322 whether the FAA holds funds owed to the debtor. Setoff rights are preserved in proofs of claims by including 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 rights is without prejudice to any other right under 11 U.S.C. § 553 to setoff against this claim the debts owed to debtor by this or any other federal agency.

e. Settlement of Pre-Petition Claims. If the FAA is an unsecured creditor, it is paid only after secured creditors and administrative creditors. Any settlement is coordinated with the DOJ counsel or the assistant U.S. attorney assigned to the case.

f. Post-Petition Administrative Claims. Post-petition bankruptcy claims concern violations that occur after the bankruptcy petition was filed. Such claims ordinarily qualify as administrative claims, which are generally paid in full. *See* 11 U.S.C. § 1129(a)(9). The AGC-300 bankruptcy POC consults with the DOJ Civil Division Commercial Litigation Corporate Financial Unit or the assigned U.S. attorney's office handling the case for guidance on the filing of such claims.

g. Providing Headquarters AGC-300 With Information. AGC-300 counsel promptly informs AGC-300 management (or the AGC-300 bankruptcy POC) of an apparent violator's bankruptcy filing. The AGC-300 bankruptcy POC ensures that a copy of all petitions, court orders, proofs of claim, and other bankruptcy filings are included in matter tracking.

h. Certificates. An FAA-issued certificate is not owned by the certificate holder, is not transferable, and should not be identified as an asset of the bankruptcy estate. Bankruptcy petitioners, however, sometimes make such claims. This may result in efforts to "sell" the certificate or difficulties in obtaining the surrender of an invalid certificate. The AGC-300 bankruptcy POC coordinates efforts to obtain invalid certificates with AGC-300 management and the DOJ. The AGC-300 bankruptcy POC immediately contacts AGC-300 management and the DOJ upon learning of any intent to sell or transfer FAA certificates.

i. Bankruptcy Petitions Filed by Foreign Persons. If a foreign person commits a violation of statutes or regulations over which the FAA has enforcement authority and has filed a bankruptcy petition in a court located in the foreign person's country, the AGC-300 bankruptcy POC generally follows the procedures discussed above on coordinating, preparing, and filing a

proof of claim. Instead of filing the proof claim, however, the AGC-300 bankruptcy POC ensures that a proof of claim is drafted and provides it to the DOJ's Office of Foreign Litigation for consideration of whether it is in the best interests of the United States to file in the foreign jurisdiction.

35. Servicemembers Civil Relief Act (SCRA). The SCRA (50 U.S.C. § 3901 *et seq*.) provides protection for members of the military when they are subject to civil actions, including legal enforcement actions. Among other relief, the statute protects servicemembers from default judgments while in military service. AGC-300 counsel determines the applicability of the SCRA in any legal enforcement action brought against a servicemember.

36. Criminal Violations Related to Enforcement Cases.

a. Evidence of Criminal Conduct. An EIR may contain evidence of criminal conduct that may also constitute a regulatory violation. For example, the intentional falsification of FAA-required records is both a federal criminal offense and a violation of FAA regulations. Many states also have criminal statutes concerning unsafe aircraft operations that would be in violation of FAA regulations. Additionally, a person who willfully or recklessly violates the HMR is subject to criminal penalties in addition to civil penalties. When an EIR contains allegations supporting both criminal and legal enforcement action, FAA counsel promptly coordinates the matter for referral for possible criminal investigation with: (1) the Assistant Chief Counsel for AGC-300; (2) Security and Hazardous Materials Safety, Office of National Security Programs and Incident Response; (3) the Department of Transportation, Office of Inspector General (DOT OIG); and (4) the Department of Justice (DOJ), in that order. AGC-300 counsel ensures that any case where the FAA pursues 49 U.S.C. §§ 44710, 44726, and 44106 revocations in the absence of a criminal conviction is referred to the DOT OIG.

b. Parallel Federal Criminal Case. DOT OIG or other criminal investigations take priority over legal enforcement actions except those involving immediately effective remedial action or action to address a hazmat imminent hazard. Applicable legal enforcement actions, including civil penalty actions, may be held in abeyance when requested in writing by the DOT OIG, a U.S. attorney's office, or other federal law enforcement agency, but AGC-300 counsel requests that the handling of the criminal case be expedited. Counsel documents the terms of any agreement between the FAA and the federal law enforcement agency that subordinates a legal enforcement action to a criminal investigation. When there is an ongoing criminal investigation into a matter that is the subject of a legal enforcement action (regardless of whether that criminal investigation resulted from referral by the FAA), Counsel coordinates all actions in the FAA case with the program office involved, the Assistant Chief Counsel for AGC-300, the DOT OIG (if involved), and the applicable prosecutors or law enforcement agency involved (which is most commonly the DOJ or a local U.S. attorney's office).

37. Waiver of 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. General. Under 49 U.S.C. §§ 44703, 44710, and 44726, the Administrator has discretionary authority to waive the mandatory revocation or denial of a certificate for

aircraft-related drug offenses or fraudulently represented parts-related offenses when a waiver is requested by a law enforcement official and will facilitate law enforcement efforts.

b. Process. When a program office or AGC-300 receives a request for a waiver of revocation or denial from a law enforcement requesting official, it follows the process in paragraph 37.b.(1)-(8), below.

(1) The program office or AGC-300 counsel forwards the request to the Assistant Chief Counsel for AGC-300.

(2) If the Assistant Chief Counsel for AGC-300 determines the request does not meet the statutory requirements for processing a waiver, they advise the requester and close the matter. If the Assistant Chief Counsel for AGC-300 determines the request meets the statutory requirements, they transfer the request to ASH's Special Activities and Law Enforcement Support Division (AXE-300).

(3) AXE-300 contacts the headquarters office of the federal or state agency for whom the requesting official works. AXE-300 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 that agency. If the headquarters office of the requesting agency does not support the request for waiver, AXE-300 asks that agency to withdraw it in writing.

(4) If the headquarters office of the requester's agency withdraws the request, AXE-300 returns the request to the Assistant Chief Counsel for AGC-300, who advises the requester that the waiver request is denied because the law enforcement agency has withdrawn its request.

(5) If the headquarters office of the requester's agency supports the request, AXE-300 forwards the request for waiver, with all supporting information, to the Associate Administrator for Aviation Safety (AVS-1). AXE-300 may also forward an advisory opinion to AVS-1 on whether granting the waiver request would facilitate law enforcement efforts and a recommendation on whether the waiver request should be granted.

(6) AVS-1, after evaluating the waiver request information, sends an advisory opinion to the Assistant Chief AGC-300 stating whether the certificate should be reissued or the revocation waived. AVS-1 may also forward a copy of the advisory opinion to the Administrator.

(7) The Assistant Chief Counsel for AGC-300 transmits the waiver request and all accompanying documentation to the Chief Counsel. The Assistant Chief Counsel for AGC-300 includes two draft letters from the Administrator to the requesting law enforcement official: one letter states that the waiver is granted and the other states that the request is denied. The Chief Counsel forwards the waiver request and all accompanying documentation to the Administrator.

(8) The Administrator returns the documentation to the Chief Counsel, including a signed letter indicating whether waiver is granted or denied. The Assistant Chief Counsel for AGC-300 advises the program office that submitted the request (or other applicable program office) so that appropriate action is taken to carry out the Administrator's decision.

Chapter 9. Legal Enforcement Action Sanction Policy

1. Purpose. This chapter contains the general guidance the FAA applies in selecting sanction types and ranges, and specific sanction amounts within ranges, for common violations of the FAA's statutes and regulations after the FAA deems legal enforcement action appropriate. The guidance in this chapter is applied to all FAA legal enforcement actions based on statutory and regulatory noncompliances occurring after the effective date of this order (except those concerning violations of the Hazardous Materials Regulations, which are addressed in chapter 10).[1]

2. The FAA's Exercise of Prosecutorial Discretion. The decision whether to prosecute a particular case is based on a review of the evidence and relevant law, policy, and litigation considerations. The FAA exercises broad discretion in the decision to bring a legal enforcement action and in any later case determinations, including whether to compromise or settle a case. The FAA's discretion in these areas is absolute and immune from review. *Heckler v. Cheney*, 470 U.S. 821, 831 (1985). The guidance in this chapter applies only to the selection of sanction after the FAA decides to take legal enforcement action.

3. FAA Decisional Law. Decisions of the FAA decisionmaker represent the FAA Administrator's position on issues regarding sanctions. The policy in this order also represents the Administrator's position on sanctions in legal enforcement actions. To the extent that this order conflicts with FAA decisionmaker decisions published before this document's issuance, the policy in this order supersedes those decisions. However, FAA decisionmaker decisions published after the issuance of this order that conflict with the policy in this order supersede this order and are controlling.

4. Use of Punitive or Remedial Sanctions. The FAA generally imposes sanctions for punitive and deterrent purposes and sanctions for remedial purposes. Sanctions for punitive and deterrent purposes are discussed below in paragraph 6, and include such sanction types as fixed-term certificate suspensions and civil penalties. Sanctions for remedial purposes are discussed below in paragraphs 7 and 8, and include such sanction types as revocations and indefinite suspensions. Punitive action is not a substitute when remedial action is necessary or appropriate. When warranted, the FAA may take both punitive and remedial action arising from the same matter.

5. Sanction Selection. Program offices select the type of legal enforcement action in accordance with this chapter and AGC-300 counsel assesses whether the type of legal enforcement action selected comports with this chapter. Counsel determines the specific sanction amount in punitive legal enforcement actions. To ensure that counsel makes an appropriate sanction amount determination, investigative personnel provide a detailed analysis for each factor affecting sanction (*e.g.*, severity level, culpability, business size, mitigating factors and aggravating factors) in section B of the Enforcement Investigative Report (EIR) with evidentiary support in section C of the EIR. Counsel applies the sanction polices in this chapter to determine the appropriate sanction amount based on an evaluation of the case. Counsel consults with

[1] For any statutory or regulatory noncompliance resulting in legal enforcement action occurring before the effective date of this order, enforcement personnel apply the sanction guidance in FAA Order 2150.3B and the statutory maximums in effect at the time of the violation.

investigating or reviewing office personnel regarding sanction determinations in novel cases. For significant legal enforcement actions as described in chapter 8, paragraph 10, the Assistant Chief Counsel for AGC-300 or a delegee coordinates sanction determinations with appropriate headquarters officials. If a case is litigated, counsel provides the reasons for the sanction selected. Counsel's analysis of the sanction is based on the allegations in the complaint and evidence relating to the violation, including relevant factors affecting sanction. The sanction analysis, although based in part on evidence, is provided through argument by counsel, and is not itself evidence presented by counsel or investigative personnel. This argument may be presented, for example, by pre-trial motion, orally in closing following a hearing, and/or by brief following a hearing.

6. Sanctions for Punitive and Deterrent Purposes. The FAA imposes fixed-term certificate suspensions and civil penalties for punitive and deterrent purposes. The FAA does not typically take both types of punitive action against a certificate holder for the same conduct. If a certificate holder improperly exercises the privileges of a certificate in such a manner that legal enforcement action is warranted, a natural consequence of that act is to lose the privileges for a period of time commensurate with the violation. Balanced against this principle, the FAA considers the adverse impact that a certificate suspension could have on the public. Thus, the FAA generally suspends the certificates held by individuals for violations committed by those individuals. However, to prevent the disruption of service with potential adverse impact on the public, the FAA generally imposes civil penalties against certificated entities such as holders of air carrier, airport, and air agency certificates. The agency will nonetheless punitively suspend the certificate of any type of certificate holder when the FAA determines that safety considerations warrant such action.

a. Sanction Determinations Based on Conduct. Sanction determinations are based on conduct and primarily focus on acts that result in statutory or regulatory violations. A separate sanction is determined for each act resulting in a violation. When a single act results in multiple regulatory violations, the FAA ordinarily does not compound the sanction for each violation. Under 49 U.S.C. § 46301(a)(2), a separate violation occurs for each day the violation continues or, if applicable, for each flight involving the violation.

b. Use of Punitive Sanction Guidance. The sanction guidance in this paragraph provides a systematic process for use by AGC-300 counsel to arrive at an appropriate civil penalty. In performing this process, counsel are mindful that sanction determinations are not the result of a strict mathematical formula. Rather, sanction determinations result from a judgment of where a case lies along a spectrum of gravity. The circumstances of each case are evaluated in terms of the needs of safety and the public interest, and this guidance does not supplant the agency's judgment or its prosecutorial discretion in determining sanction.

(1) Sanction Range Determination. AGC-300 counsel uses the following process to identify the specific sanction range applicable to a single act resulting in a violation.

Step 1: Use the Table of Violations (Figure 9-9) to identify the severity level of the violation (paragraph 12).

Step 2: Identify the culpability of the violator (paragraph 6.d.).

Step 3: Use the Sanction Matrix (Figure 9-1) to identify a general sanction range (Low, Moderate, High, or Maximum) using the severity level of the violation and the culpability of the violator (paragraph 6.e.).

Step 4: Use the Sanction Ranges Table (Figure 9-2) to determine the specific sanction range using the general sanction range and the type of violator (paragraph 6.f.).

(2) Aggravating and Mitigating Factors. Once the applicable specific sanction range for an act of violation is identified, AGC-300 counsel consults paragraph 6.g., below, to assess aggravating and mitigating factors to determine the particular sanction within the range applicable to that act of violation. Counsel begins with a sanction at the midpoint of the applicable range and increases the sanction for aggravating factors and decreases the sanction for mitigating factors. In unusual circumstances, a sanction above or below the identified sanction range may be warranted by significant aggravating or mitigating factors.

c. Severity Levels (Step 1). Statutes and regulations enforced by the FAA set the minimum acceptable level of conduct. This conduct is categorized into three levels that represent increasingly severe departures from safety or safety standards with Level 1 representing the least severe and Level 3 representing the most severe violations. AGC-300 counsel identifies the applicable severity level for conduct using the Table of Violations (Figure 9-9) and the guidance for this table in paragraph 12, below. The level of severity selected for violation conduct in the Table of Violations represents the severity of a generic violation. More severe departures are generally associated with an increased likelihood of harm to persons or property and, therefore, warrant a higher severity level. The determination of severity level for a kind of violation is based on the FAA's experience and expertise.

d. Culpability (Step 2). The following definitions apply to the culpability levels represented in the Sanction Matrix.

Careless. A violation is careless when the violator's conduct falls below the standard of care expected of a reasonable person or certificate holder in the same or similar circumstances, but is not reckless or intentional. The statutes and regulations enforced by the FAA set the minimum acceptable level of conduct. Accordingly, all violations are at least careless.

Reckless. A violation is reckless when the violator's conduct demonstrates a gross disregard for or deliberate indifference to safety or a safety standard.

Intentional. A violation is intentional when the violator's conduct is deliberate and the violator knows that the conduct is contrary to statute or regulation, or is otherwise prohibited.

Entity Culpability. An entity (*e.g.,* a corporation or partnership) is liable for violations committed by its agents, contractors, and employees. An entity's level of culpability for a violation may

differ from that of the individual who committed the violation. In assessing an entity's culpability for a violation, AGC-300 counsel considers all facts and circumstances leading up to the violation. This includes consideration of the levels of participation, managerial responsibility, and knowledge of individuals involved in the actions or inactions resulting in the violation, as well as any prior notification to those individuals that such actions may result in noncompliance.

e. The Sanction Matrix (Step 3). The Sanction Matrix assigns general sanction ranges from Low to Maximum depending on the severity level of the apparent violation and the culpability of the violator for the violation. AGC-300 counsel determines the severity of the violation and the culpability of the violator, then uses the Sanction Matrix to identify the applicable general sanction range.

Figure 9-1: Sanction Matrix.

	Careless	**Reckless or Intentional**
Severity Level 1	Low	Moderate
Severity Level 2	Moderate	High
Severity Level 3	High	Maximum

f. Sanction Ranges Table (Step 4). The Sanction Ranges Table assigns specific sanction ranges for civil penalties or certificate actions. Once AGC-300 counsel identifies a general sanction range (Low, Moderate, High, or Maximum) using the Sanction Matrix, counsel uses the Sanction Ranges Table to identify the specific sanction range for the category of violator.

Figure 9-2: Sanction Ranges Table.

	Low	**Moderate**	**High**	**Maximum**
Individual Certificate Holder	20 - 60 days	60 - 120 days	90 - 150 days	150 - 270 days
Individual Acting as an Airman (violations under 49 U.S.C. § 46301(a)(1))	$100 - $400	$400 - $700	$700 - $1,100	$1,100 - $1,828
Individual (violations under 49 U.S.C. § 46301(a)(5)(A))	$1,000 - $2,500	$2,500 - $5,500	$5,500 - $8,000	$8,000 - $16,630
Small Business or Individual (violations under 49 U.S.C. § 46301(a)(1) but not § 46301(a)(5)(A))	$100 - $400	$400 - $700	$700 - $1,100	$1,100 - $1,828
Large Business	$3,000 - $9,500	$9,500 - $20,500	$20,500 - $28,500	$28,500 - $41,577
Small Business – Category I (violations under 49 U.S.C. § 46301(a)(5)(A))	$1,000 - $2,500	$2,500 - $5,500	$5,500 - $8,000	$8,000 - $16,630
Small Business – Category II (violations under 49 U.S.C. § 46301(a)(5)(A))	$1,000 - $3,500	$3,500 - $6,500	$6,500 - $9,500	$9,500 - $16,630
Small Business – Category III (violations under 49 U.S.C. § 46301(a)(5)(A))	$1,000 - $4,500	$4,500 - $7,500	$7,500 - $10,000	$9,500 - $16,630
Small Business or Individual (violations under 49 U.S.C. § 46301(a)(5)(B))	$1,000 - $3,500	$3,500 - $6,500	$6,500 - $9,500	$9,500 - $16,630

	Low	Moderate	High	Maximum
UAS Interfering With Wildfire Suppression, Law Enforcement, or Emergency Response Under 49 U.S.C. § 46320	$15,000 - $25,455			
Operation of UAS equipped with dangerous weapon	$20,000 - $30,417			
Individual Interfering with a Crewmember	$1,000 - $4,500	$4,500 - $7,500	$7,500 - $10,500	$10,500 - $16,630
Individual Interfering with a Crewmember – Laser	N/A	N/A	$5,000 - $10,000	$10,000 - $31,819
Passengers (tampering with smoke detector)	$3,400 – 5,339			
Passengers (smoking)	N/A	N/A	$700 - $1,100	$1,100 - $1,828
Passenger (physical assault or threat of physical assault of crew member or other individual on aircraft under 49 U.S.C. § 46318)	N/A	$1,000 - $5,000	$5,000 - $10,000	$10,000 - $20,000
Passenger (sexual assault or threat of sexual assault of crew member or other individual on aircraft or posing imminent threat to safety of aircraft or the collective safety of other individuals under 49 U.S.C. § 46318)	N/A	N/A	$10,000 - $20,000	$20,000 - $43,658
Passengers (other violations)	$1,000 - $3,500	$3,500 - $6,500	$6,500 - $9,500	$9,500 - $16,630
Commercial Space	$10,000 - $50,000	$40,000 - $125,000	$125,000 - $175,000	$120,000 - $292,181
Knowing presentation of a nonconforming aircraft for issuance of initial airworthiness certificate by a production certificate holder under 49 U.S.C. § 44704(d)(3)(B)	Small Business Category I: $200,000 - $400,000 Small Business Category II: $400,000 - $600,000 Small Business Category III: $600,000 - $800,000 Large Business: $800,000 - $1,181,581			
Knowing failure to submit safety-critical information for a transport category airplane by an applicant for or holder of a type certificate under 49 U.S.C. § 44704(e)(4)	Small Business Category I: $200,000 - $400,000 Small Business Category II: $400,000 - $600,000 Small Business Category III: $600,000 - $800,000 Large Business: $800,000 - $1,181,581			

(1) *Individual Certificate Holder, Individual Acting as an Airman, and Individual*.

(i) An "Individual Certificate Holder" is an individual who holds a pilot, flight instructor, flight engineer, aircraft dispatcher, mechanic, mechanic with inspection authorization, repairman, parachute rigger, air traffic control tower operator, flight navigator, remote pilot, or

ground instructor certificate. The term "Individual Certificate Holder" does not include a flight attendant certificate of demonstrated proficiency.

(ii) "Individual Acting as an Airman" is an individual who acts as a pilot, flight instructor, flight engineer, aircraft dispatcher, mechanic, mechanic with inspection authorization, repairman, parachute rigger, air traffic control tower operator, flight navigator, or remote pilot regardless of whether they actually hold one of these certificates. The term "Individual Acting as an Airman" also includes non-certificated individuals performing supervised maintenance under 14 C.F.R. § 43.3(d).

(iii) An "Individual" is someone who is neither an Individual Certificate Holder nor an Individual Acting as an Airman, and includes passengers, flight attendants, and visual observers for small UAS operations. However, under 49 U.S.C. § 46301(a)(5)(B) an Individual does include an Individual Acting as an Airman, such as an uncertificated individual acting as remote pilot of an unregistered aircraft.

(2) Pursuant to 28 U.S.C. § 2461, Congress has provided a mechanism for inflation adjustments for civil penalties. Under the statute, the adjusted civil penalty maximums cannot be applied unless they are implemented by regulation. The adjusted civil penalty maximums are listed in 14 C.F.R. § 13.301. With the exception of "Passenger (physical assault or threat of physical assault of crew member or other individual on aircraft under 49 U.S.C. § 46318)," the high end of the Maximum civil penalty ranges listed in the Sanction Ranges Table corresponds to the applicable maximum authorized penalties as of the regulatory adjustment of December 28, 2023. Regardless of the maximums listed in Sanction Ranges Table, the applicable civil penalty maximum for a violation is the maximum that was listed in 14 C.F.R. § 13.301 on the date of the violation.

(3) The FAA is authorized to assess a maximum civil penalty under 49 U.S.C. § 46301(a)(1)(A) of $25,000 (as adjusted) against someone other than an individual or small business concern, and $1,100 (as adjusted) against an individual or small business concern, for violating the provisions in 49 U.S.C. § 46301(a)(1)(A) or regulations authorized under those provisions. Under 49 U.S.C. § 46301(a)(5)(A), the FAA is authorized to assess a penalty of $10,000 (as adjusted) for violating the provisions in 49 U.S.C. § 46301(a)(5)(A)(i) (or regulations authorized under those provisions) against a small business concern or an individual, except an individual acting as an airman. If the violation by an individual or small business is of a provision that is referenced in 49 U.S.C. § 46301(a)(1)(A) (or regulation authorized by that provision) but not 49 U.S.C. § 46301(a)(5)(A) (such as a smoking violation), the civil penalty is limited to $1,100 (as adjusted). If the violation is of a provision that is referenced in both 49 U.S.C. § 46301(a)(1)(A) and (a)(5)(A)(i) (or regulation authorized by that provision), the only time the civil penalty is limited to $1,100 (as adjusted) is when the violation is by an individual acting as an airman. *See* 71 Fed. Reg. 28518, 28519 (May 16, 2006) (http://federalregister.gov).

(4) When an act resulting in a violation would be covered by more than one row in the Sanction Ranges Table, such as interfering with a crewmember and physical assault or threat of physical assault of crew member or other individual on aircraft under 49 U.S.C. § 46318, whichever row would produce the higher sanction range for that act applies.

(5) *Knowing Violations of 49 U.S.C. §§ 44704(d)(3)(A) and (e)(1)-(3)*. Under 49 U.S.C. § 44704(d)(3)(C) and (e)(4)(B), the FAA considers the following factors in assessing civil penalties for the knowing presentation of a nonconforming aircraft for issuance of an initial airworthiness certificate by a production certificate holder (49 U.S.C. §§ 44704(d)(3)(A)), and the knowing failure to submit safety critical information for a transport category airplane by an applicant for or holder of a type certificate (49 U.S.C. §§ 44704(e)(1)-(3)): (i) the nature, circumstances, extent, and gravity of the violation, including the length of time the nonconformity of safety-critical information was known but not disclosed; and (ii) with respect to the violator, the degree of culpability, any history of prior violations, and the size of the business concern. Figure 9-2 provides ranges reflecting the gravity (*i.e.*, severity) and degree of culpability, and incorporating business sizes, for these violations. AGC-300 counsel considers the other factors to determine the appropriate penalty within the ranges.

g. Mitigating and Aggravating Factors. The following factors are used to determine the appropriate penalty within a specific sanction range. Not all factors will apply to all cases. The list of factors below is not exhaustive, and other factors may be relevant as well. AGC-300 counsel selects a sanction for a single act by starting at the middle of the range, with aggravating factors increasing the sanction within the range and mitigating factors reducing the sanction within the range. In certain circumstances, aggravating factors may indicate a lack of qualifications requiring remedial action, as discussed in paragraph 8, below. An apparent violator has the burden of proving the applicability of any given mitigating factor; the FAA does not have the burden of proving the nonexistence of a mitigating factor.

(1) *Degree of Hazard.* The severity level for violation conduct in the Table of Violations represents a generic violation of that type. Each violation, however, represents its own unique circumstances. The degree of hazard may be a mitigating or aggravating factor. The degree of hazard is affected by the precise nature of the conduct forming the violation (*e.g.*, the extent of the deviation from an altitude requirement or the extent of the overflight of a required inspection) and other factors potentially impacting the violation, including those in the operational environment (*e.g.*, traffic congestion, weather conditions). The degree of hazard is based on the reasonably foreseeable consequences of the misconduct. Whether the violation results in actual harm (or whether a missed inspection would have detected a problem) is fortuitous, and is neither mitigating nor aggravating. Actual harm, however, could serve as evidentiary support for a determination as to the reasonably foreseeable consequences of violation conduct. As noted in paragraph 12.a., below, in unusual circumstances, the degree of hazard presented may warrant selection of a different severity level than the level identified in the table.

(2) *Violation History.* A violation history is an aggravating factor. A violation-free history is the expected norm, not a mitigating factor.

(i) A violation history often justifies imposing a sanction at the higher end of the normal range. A significant violation history, such as multiple careless violations in the past five years or a prior violation involving reckless or intentional conduct, may warrant a sanction above the identified sanction range. It might also justify revocation rather than suspension if the pattern of violation reflects a lack of qualification. A violation history might justify a certificate suspension against an entity if previously issued civil penalties have not produced the desired

deterrent effect. In deciding the extent and nature of the aggravation applied, the FAA considers such factors as the length of time that has elapsed between violations, whether the violations involved the same or similar regulations, and whether the violations are factually similar.

(ii) The following actions constitute a violation history when they involve statutory or regulatory violations and have become final: orders of amendment, modification, suspension, or revocation of an FAA certificate, rating, authorization, approval, license, or permit; orders assessing a civil penalty; findings of violation contained in a consent order, order of compliance or denial; and findings of violation made by a federal court. In addition, a party may agree as part of a settlement of a case initiated by a civil penalty letter that the FAA may consider violations alleged in the civil penalty letter as findings of violation for future sanction determinations.

(3) *Level of Certificate and Experience.* Certificate holders with a higher level of certificate as well as those with more experience are held to a higher standard of safety. The level of certificate held and amount of experience serve only as aggravating factors. Note that in addition to serving as an aggravating factor, the level of certificate held by a violator and the violator's overall experience may be relevant in assessing whether a violation rose to the level of reckless or intentional conduct.

(i) Holders of a higher level of certificate are held to a higher standard. For example, commercial pilots are held to a higher standard than private pilots and airline transport pilots are held to an even higher standard than commercial pilots. Similarly, a mechanic who is the holder of an inspection authorization is held to a higher standard than a mechanic who is not. Air carrier certificate holders and their personnel are held to the highest standard of safety.

(ii) Certificate holders with more experience are held to a higher standard. For example, a pilot with 2,000 hours will be held to a higher standard than a pilot with 200 hours. A commercial operator that has held its certificate for ten years will be held to a higher standard than a newly certificated operator.

(4) *Compliance Disposition of Violator.* The attitude of a violator is largely accounted for in the determination of the violator's culpability. However, a violator may demonstrate a poor compliance disposition through acts or omissions prior to or following the violation. In such a circumstance, a poor compliance disposition is an aggravating factor. Acts demonstrating a poor compliance disposition may include a history of noncompliance that has not resulted in a violation history. For example, a violator may evidence a poor compliance attitude when the violator has been previously notified through compliance or administrative action that conduct similar to that at issue in the current case was in violation of the regulations. Further, knowingly providing false or misleading information to FAA investigators evidences a poor compliance disposition. A refusal to provide records as required under FAA regulations during an investigation may also show a poor compliance disposition. In evaluating compliance disposition, the FAA does not view a violator as having a poor attitude because the violator does not respond to a letter of investigation, chooses to be represented by counsel, or contests the violation. A positive compliance attitude is the norm and is not a mitigating factor.

(5) *Systemic/Isolated Violations*. Violations of a systemic nature warrant aggravation. Systemic violations involve repeated noncompliance with the same or similar regulations or otherwise demonstrate an underlying deficiency in a violator's system, practices, or procedures. Systemic violations indicate a need for corrective action. In contrast, isolated violations involve a single instance of failing to follow a statutory or regulatory requirement, or multiple unrelated instances of noncompliance. That violations are isolated is not mitigating.

(6) *Corrective Action.* Corrective action is a mitigating factor when it exceeds regulatory or statutory requirements, corrects the underlying violation, and is designed to prevent future violations. The significance of corrective action as a mitigating factor is determined by the timeliness of the action (*e.g.*, before FAA discovery of the violation, after discovery but before legal enforcement action is initiated, or after legal enforcement action is taken) and how extensive it is. Prompt corrective action ordinarily warrants greater mitigation than delayed corrective action. Systemic change intended to prevent future violations should be given greater mitigation consideration. Corrective action that simply places the violator in compliance with the regulations is not a mitigating factor.

(7) *Inadvertence.* Inadvertence, a type of carelessness that involves lesser culpability than other careless violations, is a mitigating factor. A violation is inadvertent when it is the result of both inattention and a lack of purposeful choice. A violation is not inadvertent if it results from the violator's conscious decision to take or not take any action that could have prevented the violation. For example, a violation is inadvertent if a pilot flies at an incorrect altitude because the pilot misreads the aircraft's instruments.

(8) *Voluntary Reporting of Violations.* A violator's voluntary reporting of a violation committed by the violator may be a mitigating factor if the violator reports the violation before the FAA discovers the violation and the violator works with the FAA to correct the noncompliance and prevent its recurrence. This mitigating factor also applies when the violator discloses another person's violation to the FAA and in so doing discloses the violator's own violation. This factor does not apply when the violator is covered by a distinct FAA voluntary disclosure program.

(9) *Criminal Conviction.* When a violator has been criminally convicted for the same conduct that forms the basis of the violation, the FAA may consider the criminal conviction, and the penalties imposed for that conviction, as a mitigating factor. The FAA generally takes remedial action if warranted despite the criminal prosecution.

h. Employment Discipline. Actions taken by a violator's employer are not: (1) a consideration in determining whether to take legal enforcement action; (2) a mitigating factor in determining sanction; and (3) credited towards any period of suspension.

i. General Guidance on Multiple Acts. Legal enforcement actions often involve multiple acts resulting in violations. Ordinarily, the sanction in these cases is determined by adding the individual penalties for each act. However, this may produce a sanction that is disproportionately harsh for the conduct involved and, in such cases, AGC-300 counsel will reduce the sanction to a level proportionate to the facts and circumstances of the case. In contrast, some cases may be so

serious as to require a sanction greater than the sum of the penalties for each act or may indicate a lack of qualification requiring remedial action. Some particular circumstances of multiple acts of violation are given special consideration, as described in paragraph 6.j., below.

j. Special Consideration for Certain Multiple Acts. To prevent disproportionately high sanctions, the special consideration policy sets limits in cases involving multiple acts resulting in multiple violations that stem from an initial act or omission, or by companies that violate Antidrug and Alcohol Misuse Prevention Program regulations. Special consideration is given only for careless violations. Special consideration is not given for reckless or intentional violations. The special consideration policy does not limit the penalty amount the government may seek in a U.S. district court for a civil penalty case in excess of the assessment authority limits in 49 U.S.C. § 46301(d)(8).

(1) To determine the appropriate penalty in a case when the special consideration policy may apply, AGC-300 counsel uses the lesser of either: (i) the sum of the penalties for all acts resulting in violations calculated under paragraph 6.a.-g., above; or (ii) the special consideration sanction.

(2) *Special Consideration Sanction for Multiple Acts Resulting From an Initial Act or Omission*. Special consideration may be given for multiple acts that violate regulations resulting from an initial act or omission. For example, the special consideration policy may apply when an air carrier improperly performed aircraft maintenance and then operated the aircraft numerous times in an unairworthy condition. This policy does not apply to commercial space violations. To determine the special consideration penalty for these cases, AGC-300 counsel uses the following process.

(i) Determine a penalty for the initial act or omission (if a violation) under paragraph 6.a.-g., above.

(ii) For the resulting multiple acts, use Figure 9-3 to determine the applicable sanction range given the category of violator and the applicable severity level. If a case involves resulting multiple acts with different severity levels, AGC-300 counsel uses the highest of those severity levels.

(iii)Consider aggravating and mitigating factors to determine the appropriate penalty within the applicable range.

(iv)Add the penalty for the initial act or omission (if a violation) to the penalty for the resulting multiple acts.

Figure 9-3: Numerous Violations Resulting From a Single Act or Omission Special Consideration Sanction Ranges Table

	Severity Level 1	Severity Level 2	Severity Level 3
Individual Certificate Holder	30 - 90 days	90 - 150 days	120 - 180 days
Individual Acting as an Airman	$5,000 - $10,000	$7,500 - $15,000	$10,000 - $20,000
Individual	$50,000 - $100,000	$75,000 - $150,000	$100,000 - $200,000
Small Business – Category I	$50,000 - $100,000	$75,000 - $150,000	$100,000 - $200,000
Small Business – Category II	$75,000 - $150,000	$100,000 - $200,000	$125,000 - $250,000
Small Business – Category III	$100,000 - $200,000	$150,000 - $300,000	$200,000 - $400,000
Large Business	$200,000 - $400,000	$300,000 - $500,000	$400,000 - $600,000

(3) *Special Consideration Sanction for Drug and Alcohol Testing.* Special consideration may be given for the six types of drug and alcohol testing violations in Figure 9-4 by companies that have, or are required to have, an Antidrug and Alcohol Misuse Prevention Program. To determine the special consideration penalty for these type of violations, AGC-300 counsel uses the following process.

(i) Use Figure 9-4 to determine the applicable sanction range given the type of violation and the size of the violator.

(ii) Consider aggravating and mitigating factors to determine the appropriate penalty within the applicable range.

(iii)If more than one type of violation is present in a case, determine whether to give special consideration separately to each type.

Figure 9-4: Drug and Alcohol Testing Special Consideration Sanction Ranges Table

	Category I Small Business	Category II Small Business	Category III Small Business	Large Business
Type A: Pre-Employment (performance)	$15,000 - $45,000	$40,000 - $90,000	$45,000 - $95,000	$145,000 - $290,000
Type B: Pre-Employment (no performance)	$5,000 - $12,000	$15,000 - $30,000	$20,000 - $40,000	$45,000 - $90,000
Type C: Return-to-Duty/Follow-Up Testing	$35,000 - $55,000	$55,000 - $135,000	$75,000 - $150,000	$170,000 - $340,000
Type D: Failure to Include in Random Pool	$15,000 - $45,000	$40,000 - $90,000	$45,000 - $95,000	$145,000 - $290,000

	Category I Small Business	Category II Small Business	Category III Small Business	Large Business
Type E: Drug and Alcohol Records Check (performance)	$7,000 - $12,000	$12,000 - $20,000	$12,000 - $22,000	$25,000 - $50,000
Type F: Failure to Implement	$35,000 - $55,000	$55,000 - $135,000	$75,000 - $150,000	$170,000 - $340,000

k. Sanctions for Failure to Surrender. When an FAA-issued certificate is revoked, suspended, or denied (*e.g.*, where the FAA reverses the issuance of an airman medical certificate), the certificate holder or applicant is required to surrender the certificate to the FAA. Failure to do so is a continuing violation that subjects the violator to a new civil penalty every day. However, the applicable ranges for failure to surrender ordinarily are as follows: $5,000-$11,000 for an individual; $11,000-$25,000 for a small business; and $27,500-$60,000 for a large business.

l. Ability to Absorb Sanction/Economic Impact. While the FAA does not allow financial circumstances to excuse any violation, it considers a violator's financial strength in choosing an appropriate sanction amount. This is, to some extent, taken into account by the different sanction ranges applicable to different kinds of businesses. In addition to the application of these ranges, the FAA considers an individual or entity's ability to pay a civil penalty and the effect a civil penalty will have on a person's ability to continue in business to the extent the FAA knows such information. Consideration of ability to pay does not justify refraining from legal enforcement action, making a finding of violation, or imposing a sanction. Consideration of ability to pay, while a factor that may move a sanction outside of the applicable range, remains only one factor – it is not an absolute defense to the imposition of a sanction. In appropriate circumstances, the FAA may decide to not reduce a penalty even if the penalty will have a significant impact on a person's ability to continue in business.

7. Mandatory Certificate Actions. Several statutory provisions require the FAA Administrator to take certain certificate actions in certain specified circumstances.

a. Mandatory Revocations. The Administrator is required to revoke certificates under 49 U.S.C. §§ 44710 ("Revocations of airman certificates for controlled substance violations"); 44106 ("Revocation of aircraft certificates for controlled substance violations"); 44726 ("Denial and revocation of certificate [issued under 49 U.S.C. chap. 447] for counterfeit parts violations"); 44724 (revocation of pilot certificate held by an individual who knowingly allows an non-certificated individual to control an aircraft to set a record or engage in an aeronautical competition or feat); and 44704(e)(5)(A) (revocation of airline transport pilot certificate for knowingly making a false statement regarding safety critical type certificate-related information). These statutes are discussed in detail in chapter 7, paragraph 4.b., c., and d.

b. Mandatory Certificate Action for Security Concerns. When notified by the Transportation Security Administration (TSA), the Administrator is required to amend, modify, suspend, or revoke any certificate under 49 U.S.C. § 46111 ("Certificate actions in response to a security threat") and 14 C.F.R. § 3.200, and suspend or revoke foreign repair station certificates

under 49 U.S.C. § 44924 (“Repair station security”). These statutes are discussed in detail in chapter 7, paragraph 4.e. and f.

8. Determining Sanctions for Remedial Purposes. Remedial legal enforcement action involves the revocation or indefinite suspension of FAA-issued certificates, ratings, approvals, authorizations, licenses, or permits (collectively referred to in this paragraph as certificates unless otherwise specified).

a. Revocations.

(1) *General Guidance:* Revocation is appropriate whenever the certificate holder lacks the qualifications to hold a certificate. A certificate holder may lack the qualifications to hold a certificate because of (1) a lack of technical proficiency; (2) the failure to meet technical eligibility requirements (including airman medical standards); or (3) a lack of the care, judgment, or responsibility required of a certificate holder. The certificate holder’s continued exercise of the privileges of the certificate in such circumstances would be contrary to safety in air commerce or air transportation and the public interest. A lack of qualifications may be demonstrated by a pattern of conduct or by a single event.

(2) *Scope of Certificates Revoked When a Certificate Holder Demonstrates a Lack of Care, Judgment, or Responsibility.*

(i) Not only is revocation appropriate for conduct demonstrating a lack of care, judgment, or responsibility, the scope of the certificates affected by the revocation generally includes all certificates held regardless of which certificate (if any) was used at the time of the conduct. Such conduct may be evidenced by either a single act or repeated noncompliance. Airman medical certificates are not included in the scope of revoked certificates unless the conduct also evidences a lack of qualifications to meet airman medical certification standards, or involves a drug or alcohol violation, or intentional falsification or fraudulent conduct. For example, when an individual who holds pilot, remote pilot, mechanic, and medical certificates conducts an operation that reflects a lack of lack of care, judgment, or responsibility (but does not demonstrate a lack of qualification to meet airman medical certification standards or involve a drug or alcohol violation), revocation of the pilot, remote pilot, and mechanic certificates is generally appropriate regardless of which certificate (if any) was used for the operation.

(ii) For certain violations demonstrating a lack of care, judgment, or responsibility, the scope of certificates affected is dictated by statute or regulation. For example, the scope of certificates affected by making a fraudulent or intentional false statement on an application for an airman medical certificate in violation of 14 C.F.R. § 67.403 is broad; this regulation provides a basis to revoke all airman (including medical) and ground instructor certificates. Further, an intentional falsification on an application for a certificate issued under 14 C.F.R. part 61 is a basis for revoking any airman certificate, rating, or authorization. In contrast, operating an aircraft while under the influence of alcohol in violation of 14 C.F.R. § 91.17(a)(2) is a basis for revocation, but 14 C.F.R. § 61.15(b) limits the scope of the revocation to certificates issued under 14 C.F.R. part 61.

(3) *Egregious Conduct*. In some cases, an airman's deliberate conduct during one event (*e.g.*, a single act, multiple acts during a single flight, or multiple flights in succession) may be so egregious that it demonstrates that the respondent lacks the care, judgment, or responsibility required of a certificate holder. In such a case, revocation of airman and ground instructor certificates is appropriate. For example, revocation would be warranted when: (i) a pilot continues a flight under 14 C.F.R. part 121 at high altitude to the intended destination despite the deployment of passenger oxygen masks and the depletion of oxygen supplies; (ii) a pilot conducts low high speed passes and aerobatics in a congested area; or (iii) a pilot executes longitudinal rolls in an aircraft used in 14 C.F.R. part 135 operations on several repositioning flights.

(4) *Repeated Noncompliance.* Repeated noncompliance may demonstrate a lack of qualifications. The FAA may revoke a certificate when a certificate holder's repeated noncompliance can no longer be sufficiently addressed through punitive sanctions.

(5) *Single Acts of Misconduct Generally Warranting Revocation.* Some acts of misconduct are, by their very nature, so egregious or significant as to demonstrate that the certificate holder does not possess the care, judgment, or responsibility to hold a certificate. These acts include, but are not limited to, those listed in Figure 9-5. AGC-300 counsel coordinates any decision to seek a sanction other than revocation with the Assistant Chief Counsel for AGC-300 and documents the basis for the decision in the case file. If it is necessary to impose a punitive sanction for such a violation (*e.g.*, because the violator does not hold a certificate), then a Maximum range penalty is applied.

Figure 9-5: Single Acts Generally Warranting Revocation

Intentional Falsification and Fraudulent Conduct
(1) Fraudulent or intentionally false statement
(2) Fraudulent or intentionally false alteration or reproduction
(3) Cheating on any required test or check
(4) Intentionally false endorsement of any student pilot record
(5) Intentional improper crediting or graduation of a student
(6) Improper removal of, changing, or placing an identification plate or identification information on a product with the intent to misrepresent the identity of the product
(7) Intentionally false or misleading statements when conveying information related to an advertisement or sales transaction about products, parts, appliances, and materials
(8) Knowing omission or concealment of a material fact
(9) Transmitting inaccurate ADS-B information with the intent to deceive
Drugs and Alcohol
(10) Acting or attempting to act as a flight crewmember while under the influence of alcohol or drugs, with an alcohol concentration of .04 or above, or within eight hours of consuming alcohol
(11) Refusing to submit to a drug or alcohol test
(12) Performing a safety-sensitive function with a prohibited drug in system
(13) Reporting or remaining on duty to perform safety-sensitive function with alcohol concentration of .04 or above

(14) Failure of an individual to disclose to a medical review officer (MRO) or substance abuse professional (SAP) that the individual holds an airman medical certificate, or would be required to hold such certificate, to perform the duties of the position for which the individual is applying
(15) Performing a safety-sensitive function for an employer without complying with required return-to-duty procedures
(16) Performing a safety-sensitive function for an employer while having an alcohol concentration of .04 or above, within the prohibited time after consumption of alcohol, or while using alcohol or drugs
(17) Using alcohol within eight hours following an aircraft accident when having actual knowledge of the accident and having performed a safety-sensitive function at or near the time of the accident
(18) Three motor vehicle actions (as defined by 14 C.F.R. § 61.15(c)) arising from separate incidents within three years
Activity Related to Controlled Substances
(19) Operating an aircraft with knowledge that illegal controlled substances are carried in the aircraft or allowing an aircraft to be operated under such circumstances
(20) Drug conviction(s) for other than simple possession (unless the conviction(s) are more than five years old when discovered by the FAA and there is evidence that the certificate holder has been rehabilitated such that the individual can be expected to conform to safety standards)
Student Pilot Operations
(21) Passenger-carrying operation by a student pilot
(22) Operation for compensation or hire by a student pilot
Other
(23) Significant failure of an inspection authorization (IA) holder to accomplish an inspection properly (revocation of IA rating only)
(24) Aiming a laser beam so that it interferes with the operation of an aircraft
(25) Incorrect (but not intentionally false) statement on a medical application (medical certificate only)
(26) Exercising the privileges of a certificate while that certificate is suspended
(27) Lack of good moral character (airline transport pilot certificate only)
(28) Operating with a known disqualifying medical condition or when application for medical certificate deferred or denied
(29) Operating an aircraft without activated transponder or ADS-B Out transmission (except as provided in 14 C.F.R. § 91.225(f)) for purposes of evading detection

(6) *Unsuccessful Reexamination.* An unsuccessful reexamination demonstrates a lack of qualifications to hold a certificate or rating. Revocation of a certificate or rating is warranted when an airman submits to an initial reexamination, is unable to demonstrate technical proficiency, and does not promptly place the certificate or rating on deposit with the FAA or voluntarily surrender the certificate or rating. Generally, the FAA revokes an airman certificate or rating when an airman has failed both an initial and second reexamination. Revocation is also warranted when an airman submits to an initial reexamination and is unable to demonstrate qualifications for reasons other than for technical proficiency *See* chapter 7, paragraph 6 for a detailed guidance on reexaminations.

b. Indefinite Suspensions. The FAA may suspend a certificate indefinitely when the FAA has reason to question, but is unable to determine, the certificate holder's qualifications, or when the certificate holder does not comply with statutory or regulatory requirements to cooperate with the FAA. In such circumstances, the FAA may suspend the certificate until it has been determined that the certificate holder is qualified or until the certificate holder complies with its obligation to cooperate with the FAA. Circumstances where an indefinite suspension is imposed include, but are not limited to, those listed in Figure 9-6.

Figure 9-6: Circumstances Generally Warranting Indefinite Suspension

(1) Failure to comply with a request for reexamination of airman competency
(2) Failure to comply with a request for reinspection of the airworthiness of an aircraft
(3) Failure to comply with a request for additional medical information
(4) Failure to produce aircraft records, such as maintenance records like those required to be kept by the owner
(5) Failure to produce airman records, such as airman certificates or pilot logbooks
(6) Failure to produce records that an entity is required to keep and/or produce to the FAA, such as training, maintenance, flight or duty, or anti-drug or alcohol misuse prevention program records
(7) Failure to permit access to facilities that an entity is required to permit the FAA to inspect
(8) Refusal to permit test, check, or examination of student
(9) Imposing any prohibition, condition, restriction, or penalty with respect to contact between an employee of Organization Designation Authorization (ODA) holder and the FAA regarding aircraft design or production

c. Emergency Nature of Remedial Actions. Remedial actions are taken on an emergency basis when: (1) the certificate holder lacks qualifications, there is a reasonable basis to question whether the certificate holder is qualified to hold the certificate, or the certificate holder does not comply with statutory or regulatory requirements to cooperate with the FAA; and (2) the certificate holder is reasonably able to exercise the privileges of the certificate. *See* chapter 8, paragraph 13, for more information on criteria for emergency action.

d. Remedial Sanctions Do Not Preclude Punitive Sanctions. In some circumstances when the FAA takes remedial action, a punitive sanction may also be appropriate. For example, when the remedial action is an indefinite suspension arising from a violator's refusal to comply with an FAA inspection or record production request, punitive action may also be appropriate. The FAA generally does not pursue punitive sanctions in addition to remedial sanctions: (1) based on an airman's failure to appear for a re-examination or to produce additional medical information; or (2) when only revoking an airman or ground instructor certificate. The FAA, however, may pursue a punitive civil penalty against an entity whose certificate is revoked.

9. Special Emphasis Enforcement Programs. At times, special situations arise that dictate the need for heightened legal enforcement action through increased sanctions or other measures in a particular regulated area or segment of industry. When these circumstances arise, the FAA may establish a special emphasis enforcement program designed to focus on a particular area of

noncompliance on a national or local geographical basis. Special emphasis enforcement programs may differ from the general guidance provided in this chapter.

10. Violations by Members of the U.S. Armed Forces. When a member of the U.S. Armed Forces apparently commits a violation while acting in the performance of official duties, 49 U.S.C. § 46101(b) requires the FAA to forward reports of such violations to the Secretary of the department concerned. However, the FAA may also take remedial action against a member of the U.S. Armed Forces, even if the individual was acting in performance of official duties, if the individual's actions demonstrate or raise a question concerning a lack of qualification to hold an FAA-issued certificate. The FAA does not take punitive action against a member of the U.S. Armed Forces for a violation committed when the member is performing official duties. The FAA may take punitive or remedial action against a member of the U.S. Armed Forces for a violation committed when the member is not performing official duties.

11. Penalties for Small Businesses.

a. Introduction. If an entity meets the definition of a *small business,* the FAA will determine the civil penalty using the applicable range as set forth in Figure 9-2 (or Figures 9-3 or 9-4 if applicable). Lower civil penalty maximums apply to small businesses as compared to other entities.

b. Definition of Small Business. The term "small business" as used in this order means a "small business concern" under 49 U.S.C. § 46301(i), which is defined under the Small Business Act (15 U.S.C. § 632), as interpreted by the Small Business Administration (SBA). A small business is a business entity: (1) "organized for profit, with a place of business located in the U.S., and which operates primarily within the U.S. or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor"; (2) "which is independently owned and operated and which is not dominant in its field of operation"; and (3) that meets the size standards specified by the SBA. *See* 15 U.S.C. § 632; 13 C.F.R. §§ 121.101 and 121.105.

c. Size Limits for Small Businesses. The SBA defines small business concerns in tables according to the economic activity or industry in which they are primarily engaged (generally according to the North American Industry Classification System (NAICS)) and number of employees or annual receipts. These limits are set by the SBA and can be found at 13 C.F.R. § 121.101. The SBA provides guidance on affiliates (13 C.F.R. § 121.103), calculating annual receipts (13 C.F.R. § 121.104), and calculating the number of employees (13 C.F.R. § 121.106). Limits for some common aviation entities are listed in Figure 9-7. If a business is engaged in more than one industry, AGC-300 counsel determines the primary industry in accordance with 13 C.F.R. § 121.107.

Figure 9-7: Small Business Maximum Size Limits

Business Subsector/Business Type (with NAICS code)	**Size Limit**
Computer and Electronic Manufacturing (Subsector 334)	
Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System, and Instrument Manufacturing (334511)	1,350 employees

Business Subsector/Business Type (with NAICS code)	**Size Limit**
Transportation Equipment Manufacturing (Subsector 336)	
Aircraft Manufacturing (336411)	1,500 employees
Aircraft Engine and Engine Parts Manufacturing (336412)	1,500 employees
Other Aircraft Part and Auxiliary Equipment Manufacturing (336413)	1,250 employees
Air Transportation (Subsector 481)	
Scheduled Passenger Air Transportation (481111)	1,500 employees
Scheduled Freight Air Transportation (481112)	1,500 employees
Nonscheduled Chartered Passenger Air Transportation (481211)	1,500 employees
Nonscheduled Chartered Freight Air Transportation (481212)	1,500 employees
Other Nonscheduled Air Transportation (481219)	$25million annual receipts
Scenic and Sightseeing Transportation (Subsector 487)	
Scenic and Sightseeing Transportation, Other (other than land or water) (487990) (includes air tour operators)	$25 million annual receipts
Support Activities for Transportation (Subsector 488)	
Other Airport Operations (other than Air Traffic Control) (488119) (includes airport operators)	$40 million annual receipts
Freight Transportation Arrangement (488510) (includes freight forwarders for hazmat sanction calculations)	$20million annual receipts
Except Non-Vessel Owning Common Carriers and Household Goods Forwarders	$34 million annual receipts
Other Support Activities for Air Transportation (488190) (includes repair stations)	$40 million annual receipts
Educational Services (Subsector 611)	
Flight Training (611512)	$34.0 million annual receipts

d. Definition of Large Business. The term “large business” is not defined in a statute or regulation relevant to FAA legal enforcement actions. As used in this order, a large business is any entity that does not meet the definition of a small business concern. However, an entity that is not a “small business concern” only because it is a not organized for profit will be treated, for purposes of sanction selection, as a small business. This does not affect which statutory maximum is applicable to the entity.

e. Categorization of Small Businesses. The FAA’s sanction ranges take into consideration a wide range of businesses that fall into the definition of a “small business.” Accordingly, the FAA divides small businesses into several categories for purposes of the sanction guidance in this chapter. Small businesses are placed in three categories that represent the size of the business, with Category I representing the smallest and Category III representing the largest. Common aviation businesses are categorized by the number of aviation personnel they employ or aircraft they have available, as detailed in Figure 9-8. If a particular type of business is not listed in the table, AGC-300 counsel refers to analogous or similar business types for guidance.

Figure 9-8: Small Business Size Category Limits

	Type and Maximum Number of Personnel or Aircraft		
Type of Business	Category I	Category II	Category III
Air Carrier or Commercial Operator	1-5 pilots and 1-5 aircraft on operations specifications	6-49 pilots or 6-24 aircraft on operations specifications	50 or more pilots and 25 or more aircraft on operations specifications
Flight School/Pilot School	1-5 instructors and 1-5 aircraft on operations specifications	6-49 instructors or 6-24 aircraft on operations specifications	50 or more instructors and 25 or more aircraft on operations specifications
Repair Station	1-5 persons authorized to perform maintenance	6-49 persons authorized to performance maintenance	50 or more persons authorized to perform maintenance
Training Center/Aviation Maintenance Technician Schools	1-5 instructors	6-49 instructors	50 or more instructors
Airports	1-5 employees	6-49 employees	50 or more employees
Manufacturers	1-5 employees	6-49 employees	50 or more employees

12. Table of Violations. The Table of Violations (Figure 9-9) is used when establishing severity levels for punitive sanctions, as referenced in paragraph 6.c., above.

a. General. The level of severity selected for violation conduct in the Table of Violations represents the severity of a generic violation. The determination of severity level for a kind of violation is based on the FAA's experience and expertise. In unusual circumstances, the severity level for a particular violation may be higher or lower than the level identified in the table. If violation conduct is not included in the Table of Violations, enforcement personnel refer to analogous violation conduct listed. In the absence of analogous conduct listed, enforcement personnel determine the severity of departure from safety or a safety standard considering the specific facts and circumstances surrounding the violation; more severe departures are generally associated with an increased likelihood of harm to persons or property and, therefore, warrant a higher severity level.

b. Violation Conduct With Multiple Applicable Table of Violations Entries. When violation conduct implicates more than one entry in the Table of Violations, the most applicable entry is used, based on the facts and circumstances of the case. If the entries are equally applicable to the facts, the more specific entry is used to determine severity. If none of the entries is more specific, then the higher severity level is used.

c. Related Table of Violations Entries With Varying Levels of Severity. In the table of violations, there are many entries describing related conduct with differing levels of severity, *e.g.*, low flight violations having a different severity level depending on whether the operation

was over a congested or uncongested area. When assessing the applicable severity level, AGC-300 counsel considers the facts and circumstances of the particular case, but not fortuitous aspects of the case. For example, an operational violation may be more hazardous in heavy traffic, but it is not less hazardous because no midair collision actually occurred. Similarly, a failure to inspect may be more hazardous the more overdue the inspection is, but it is not less hazardous because no problems were detected when the inspection was finally performed.

d. Violation Conduct That May Warrant Remedial Action Instead of or in Conjunction with Punitive Action. As discussed in paragraph 8, above, the FAA may take remedial action when a certificate holder lacks the qualifications to hold the certificate, the FAA has reason to question, but is unable to determine, the certificate holder's qualifications, or the certificate holder does not comply with statutory or regulatory requirements to cooperate with the FAA. Violation conduct marked with an (*) are types of violations that often indicate a lack of qualifications for which remedial action may be appropriate, either instead of, or in conjunction with, a punitive action.

e. Violation Conduct That May Warrant Remedial and Punitive Action. As noted in paragraph 4, above, the FAA may take both remedial and punitive action when appropriate. Violation conduct for which this is likely is marked with a (†).

f. Technical Noncompliance, Potential Effect on Safety, and Likely Effect on Safety. Some of the related entries with varying severity levels use the phrases "technical noncompliance," "potential effect on safety," and "likely effect on safety."

> *Technical Noncompliance (or Technical Non-Conformity)*: A violation falls into this category where serious injury, death, or severe damage could not realistically occur as a result of the violation conduct. Such a consequence may be theoretically possible, but the likelihood is remote.
>
> *Potential Effect on Safety*: A violation falls into this category where serious injury, death, or severe damage could realistically occur as a result of the violation conduct, but in the particular facts and circumstances of the case such a consequence would not often occur.
>
> *Likely Effect on Safety*: A violation falls into this category where serious injury, death, or severe damage may occur more often as a result of the violation conduct.

Figure 9-9: Table of Violations.

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Fig. 9-9-a. General Violations	**Severity**
(1) Failure to make available a record required to be provided†	Severity 3
(2) Failure to permit inspection†	Severity 3
(3) Engaging in an activity that requires a certificate, rating, approval, authorization, license, or permit without holding one	Severity 3
(4) Failure to surrender a revoked, suspended, denied, or invalid certificate	Severity 1
(5) Improper removal, changing, or placing of identification information on a product	Severity 2
(6) Improper removal or installation of identification plate	Severity 2
(7) Conviction for violation of Section 13(a) of Fish & Wildlife Act of 1956 (49 U.S.C. § 44709(b)(2))	Severity 3

Fig. 9-9-b. Violations of Generally Applicable Operational Requirements	**Severity**
Qualification and Certification	
(1) Operation without holding pilot certificate	Severity 3
(2) Operation without pilot or medical certificate in personal possession (certificates valid) (not intentional)	Severity 1 (civil penalty)
(3) Operation without pilot or medical certificate in personal possession (certificates valid) (intentional)	Severity 1
(4) Operation with expired medical certificate when medically qualified (medical certificate expired by less than three months and operation only required a third-class medical certificate)	Severity 1
(5) Operation with expired medical certificate when medically qualified (medical certificate expired by more than three months or operation required a first- or second-class medical certificate)	Severity 2
(6) Operation without type or class rating	Severity 2
(7) Operation for compensation or hire when valid pilot certificate allowing for commercial operations had not been issued†	Severity 3
(8) Advertising or offering to perform unauthorized air carrier or commercial operations	Severity 3

Fig. 9-9-b. Violations of Generally Applicable Operational Requirements	**Severity**
(9) Operation without a current flight review	Severity 1
Airworthiness and Maintenance	
(10) Unairworthy aircraft operation - technical noncompliance (*e.g.*, technical non-conformity to TC)	Severity 1
(11) Unairworthy aircraft operation - potential effect on safety	Severity 2
(12) Unairworthy aircraft operation - likely effect on safety	Severity 3
(13) Operation of aircraft without required equipment or with required equipment not activated or nonfunctional - technical noncompliance	Severity 1
(14) Operation of aircraft without required equipment or with required equipment not activated or nonfunctional - potential effect on safety	Severity 2
(15) Operation of aircraft without required equipment or with required equipment not activated or nonfunctional - likely effect on safety	Severity 3
(16) Operation of aircraft when airworthiness directive is not complied with	Severity 3
(17) Operation of aircraft beyond annual, 100-hour, or progressive inspection	Severity 2
(18) Failure to ensure discrepancy is cleared prior to operation	Severity 1
(19) Operation when an airworthiness certificate has not been issued	Severity 2
(20) Operation without airworthiness certificate on aircraft	Severity 1
Preflight	
(21) Failure to obtain pre-flight information	Severity 1
(22) Taking off with insufficient fuel, fuel mismanagement, or exhaustion	Severity 2
Taxiing	
(23) Deviation from air traffic control (ATC) instruction or clearance (runway incursion)	Severity 2
(24) Deviation from ATC instruction or clearance	Severity 1
(25) Jet blast	Severity 2
Takeoff, Approach, and Landing	
(26) Takeoff or landing without clearance	Severity 2
(27) Deviation from takeoff clearance or instruction	Severity 2
(28) Deviation from approach or landing clearance or instruction	Severity 1
(29) Failure to comply with airport traffic pattern	Severity 1
(30) Failure to comply with instrument approach procedure	Severity 1
(31) Takeoff in excess of maximum gross weight	Severity 2
(32) Overweight landing	Severity 1
Operations – General	
(33) Failure to comply with operating limitation	Severity 2
(34) Failure to adhere to right of way rule	Severity 2
(35) Failure to maintain required minimum altitude – congested area	Severity 3
(36) Failure to maintain required minimum altitude – uncongested area	Severity 2

Fig. 9-9-b. Violations of Generally Applicable Operational Requirements	**Severity**
(37) Failure to display position light	Severity 1
(38) Unauthorized dropping of object from aircraft	Severity 2
(39) Unauthorized towing	Severity 1
(40) Unauthorized aerobatic flight	Severity 3
(41) Operating so as to cause a collision hazard	Severity 3
(42) Exceeding speed limitation	Severity 1
(43) Deviation from ATC clearance or instruction	Severity 1
Operations – Visual Flight Rules (VFR)/Instrument Flight Rules (IFR)/Weather	
(44) Failure to comply with VFR cruising altitude	Severity 1
(45) Operating VFR in clouds	Severity 3
(46) Failure to comply with distance from clouds requirement	Severity 2
(47) Failure to comply with weather minimum	Severity 2
(48) Failure to maintain radio watch while under IFR	Severity 1
(49) Failure to report compulsory reporting point under IFR	Severity 1
(50) Failure to comply with IFR landing minimum	Severity 2
Operations – Airspace Restrictions	
(51) Operation in Class B airspace without clearance	Severity 2
(52) Operation contrary to NOTAM	Severity 1
(53) Unauthorized operation within Class A airspace	Severity 1
(54) Operating within restricted or prohibited area (including a temporary flight restriction (TFR))	Severity 1
(55) Failure to establish and maintain radio communications in Class C or D airspace	Severity 1
(56) Failure to comply with ADS-B Out performance or broadcast requirements – technical noncompliance	Severity 1
(57) Failure to comply with ADS-B Out performance or broadcast requirements – possible effect on safety	Severity 2
(58) Failure to comply with ADS-B Out performance or broadcast requirements – likely effect on safety	Severity 3
Careless or Reckless Operation (Independent Violation)	
(59) Leaving aircraft unattended with engine running	Severity 1
(60) Taxiing collision hazard (no runway incursion)	Severity 1
(61) Taxiing aircraft off runway, taxiway, or ramp	Severity 1
(62) Landing on or taking off from closed runway	Severity 2
(63) Landing on or taking off from taxiway, ramp, or other improper area	Severity 2
(64) Wheels up landing	Severity 1
(65) Short or long landing	Severity 2
Passenger Operations	
(66) Carrying passenger who is under the influence of drugs or alcohol	Severity 2

Fig. 9-9-b. Violations of Generally Applicable Operational Requirements	Severity
(67) Performing acrobatics when not all passengers are equipped with approved parachutes	Severity 2
(68) Carrying unapproved emergency use parachute on aircraft	Severity 1
(69) Permitting unauthorized parachute jumping	Severity 2
(70) Carrying passenger without required recent flight experience	Severity 2
(71) Operation without an approved seat or berth and approved safety belt for each person on board the aircraft required to have them	Severity 2
Flight Instructors	
(72) Exceeding hours of training limitation	Severity 1
(73) Instruction in aircraft for which instructor is not rated	Severity 3
Student Pilot Operations	
(74) Solo flight without required endorsement	Severity 2
(75) Operation on international flight	Severity 2
(76) Operation in furtherance of a business	Severity 2
Aircraft Noise	
(77) Violation of noise standard or regulation	Severity 2
(78) Violation of sonic boom standard or regulation	Severity 3
(79) Recordkeeping or notification violation	Severity 1

Fig. 9-9-c. Small Unmanned Aircraft Systems (sUAS) Violations	Severity
(1) Operation without remote pilot certificate	Severity 3
(2) Operation without required rating	Severity 2
(3) Operation of sUAS without registration	Severity 1
(4) Operation of sUAS without registration – enhanced severity (including operations in restricted airspace, interfering with manned aircraft operations, disrupting airport operations, interfering with law enforcement, interfering with wildfire suppression, interfering with emergency response, involving carriage of contraband, and/or involving carriage of weapons)	Severity 3
(5) Participation in operation of sUAS with medical condition that would interfere with safe operation	Severity 3
(6) Operation of sUAS without designated remote pilot-in-command	Severity 3
(7) Dropping an object that creates an undue hazard	Severity 2
(8) Operation from moving vehicle or aircraft	Severity 2
(9) Operation at night while not in compliance with 14 C.F.R. § 107.29	Severity 2
(10) Operation during civil twilight while not in compliance with 14 C.F.R. § 107.29	Severity 1
(11) Operation beyond visual line of sight	Severity 3
(12) Operation of more than one sUAS at the same time	Severity 2
(13) Failure to give way to any other aircraft	Severity 3
(14) Operation close to another aircraft so as to create a collision hazard	Severity 3

Fig. 9-9-c. Small Unmanned Aircraft Systems (sUAS) Violations	Severity
(15) Unauthorized operation in Class B, C, or D airspace	Severity 3
(16) Unauthorized operation within the lateral bounds of Class E airspace designated for an airport	Severity 2
(17) Operation in a prohibited or restricted area (including a TFR)	Severity 3
(18) Failure to complete preflight familiarization or inspection	Severity 1
(19) Failure to ensure sUAS is in a condition for safe operation – potential effect on safety	Severity 2
(20) Failure to ensure sUAS is in a condition for safe operation – likely effect on safety	Severity 3
(21) Operation in excess of 87 knots (100 mph)	Severity 1
(22) Operation above 400 feet above ground level or 400 feet above a structure within 400 feet of the sUAS	Severity 2
(23) Operation with visibility less than 3 miles	Severity 2
(24) Failure to comply with distance from clouds requirement	Severity 2
(25) Carriage of hazardous material	Severity 3
(26) Operation after failing to update address of records	Severity 1
(27) Operation without aeronautical knowledge recency	Severity 1
(28) Failure to make required accident report	Severity 2
(29) Failure to permit FAA inspection, testing, and demonstration of compliance or failure to present remote pilot certificate upon request†	Severity 3
Operations Over Human Beings	
(30) sUAS meeting weight criteria of 14 C.F.R. part 107, subpart D, Category 1 without meeting all other requirements for that category	Severity 1
(31) sUAS meeting injury criteria of 14 C.F.R. part 107, subpart D, Category 2 without meeting all other requirements for that category	Severity 2
(32) sUAS meeting injury criteria of 14 C.F.R. part 107, subpart D, Category 3 without meeting all other requirements for that category†	Severity 3
(33) Category 4 operation – failure to meet maintenance performance requirements – technical noncompliance	Severity 1
(34) Category 4 operation – failure to meet maintenance performance requirements – potential effect on safety	Severity 2
(35) Category 4 operation – failure to meet maintenance performance requirements – actual effect on safety	Severity 3
(36) Category 4 operation – failure to meet maintenance records requirements	Severity 2

Fig. 9-9-d. Remote Identification of Unmanned Aircraft	Severity
(1) Failure to comply with remote ID requirements	Severity 3
(2) Failure to comply with record retention requirements	Severity 2
(3) Failure to comply with the remote identification design or production requirements	Severity 3

Fig. 9-9-e. Violations of Generally Applicable Maintenance and Documentation Requirements	**Severity**
(1) Failure to perform or improper performance of maintenance including inspection – technical noncompliance	Severity 1
(2) Failure to perform or improper performance of maintenance including inspection – potential effect on safety	Severity 2
(3) Failure to perform or improper performance of maintenance including inspection – likely effect on safety	Severity 3
(4) Failure to comply with airworthiness directive (AD)	Severity 3
(5) Making improper or incomplete entry in maintenance record	Severity 1
(6) Failure to make entry in maintenance record	Severity 2
(7) Failure to revise aircraft data after repair or alteration	Severity 2
(8) Failure to properly record major repair or alteration	Severity 2
(9) Failure to provide to owner and/or forward to Flight Standards Aircraft Registration an FAA Form 337 following a major repair or alteration	Severity 2
(10) Failure of IA holder to accomplish inspection properly – potential effect on safety	Severity 2
(11) Failure of IA holder to accomplish inspection properly – likely effect on safety*	Severity 3
(12) Maintenance performed by person without a certificate	Severity 3
(13) Maintenance performed by person who exceeded certificate limitations	Severity 2
(14) Improper approval for return to service	Severity 1
(15) Alteration of aircraft based on a supplemental type certificate (STC) without authorization to use STC	Severity 1
(16) Making improper or incomplete entry in aircraft log	Severity 1
(17) Failure to make entry in aircraft log	Severity 2

Fig. 9-9-f. Violations Specific to Air Carriers, Commercial Operators, Part 125 Operators, Part 129 Operators, and Their Personnel	**Severity**
General	
(1) Failure to adequately provide for proper servicing, maintenance, repair, or inspection of facilities and equipment*	Severity 3
(2) Failure to permit inspection of facilities, records, aircraft, or certificate†	Severity 3
(3) Failure to make flight deck seat available to authorized en route inspector	Severity 3
Operations Specifications	
(4) Operation contrary to ops specs – technical noncompliance	Severity 1
(5) Operation contrary to ops specs – potential effect on safety	Severity 2
(6) Operation contrary to ops specs – likely effect on safety	Severity 3
(7) Carriage of hazmat contrary to will-not-carry hazmat specification	Severity 3
Manuals	
(8) Failure to maintain or distribute current manual	Severity 1

Fig. 9-9-f. Violations Specific to Air Carriers, Commercial Operators, Part 125 Operators, Part 129 Operators, and Their Personnel	**Severity**
(9) Failure to provide adequate instructions and procedures in manual	Severity 2
(10) Failure to keep manual current	Severity 1
(11) Failure to have current manual on aircraft	Severity 1
Training Program	
(12) Failure to have training program*	Severity 3
(13) Failure to maintain training program	Severity 2
(14) Failure to train personnel adequately	Severity 2
Crew	
(15) Use of crewmember with expired medical certificate (no known medical deficiency)	Severity 2
(16) Use of unqualified flight crewmember	Severity 3
(17) Use of unqualified personnel other than flight deck crewmember	Severity 3
(18) Missed proficiency or line check	Severity 1
(19) Lack of current experience	Severity 2
(20) Lack of initial or recurrent training	Severity 2
(21) Flight and duty time violation	Severity 2
(22) Violation of sterile cockpit rule	Severity 1
(23) Failure to use, or improper use of, checklist	Severity 1
(24) Failure to perform or ensure performance of preflight check	Severity 2
(25) Improper performance of preflight check	Severity 1
Passenger Operations	
(26) Taxiing with standing passenger	Severity 1
(27) Failure to brief passengers	Severity 2
(28) Failure to store baggage properly	Severity 2
(29) Unauthorized admission to flight deck	Severity 1
(30) Failure to close and lock flight deck door	Severity 1
Maintenance	
(31) Failure to provide or maintain a maintenance and inspection organization*	Severity 3
(32) Incomplete or unsigned release	Severity 1
(33) Maintenance performed by person without certificate	Severity 3
(34) Maintenance performed by person who exceeded certificate limitations	Severity 2
(35) Performance of maintenance or approval for return to service by unauthorized person	Severity 3
Records and Reports	
(36) Failure to make accurate mechanical interruption summary report	Severity 2
(37) Failure to make accurate mechanical reliability report	Severity 2

Fig. 9-9-f. Violations Specific to Air Carriers, Commercial Operators, Part 125 Operators, Part 129 Operators, and Their Personnel	**Severity**
Release and Dispatch	
(38) Dispatch or release of an aircraft or beginning a flight without being familiar with reported and forecast weather conditions	Severity 2
(39) Failure to provide and update pilot-in-command with all available weather reports and forecasts that may affect the safety of the flight	Severity 2
(40) Failure to provide and update pilot-in-command with all available current reports or information on airport conditions and irregularities at navigational facilities that may affect the safety of the flight	Severity 2
(41) Dispatch or release below applicable weather minimums	Severity 2
(42) Dispatch or release without appropriate alternate airport	Severity 2
(43) Continuing flight in unsafe conditions despite safer alternative	Severity 3
(44) Dispatch, release, or operation in icing conditions that may affect the safety of flight	Severity 3
(45) Dispatch, release, or takeoff when snow, ice, or frost is adhering or could reasonably be expected to adhere to the aircraft	Severity 3
(46) Failure to prepare an accurate load manifest	Severity 1
(47) Operation without having filed a flight plan	Severity 1
Operations at Airports Requiring Slots	
(48) Operation without a reservation from ATC	Severity 2
(49) Operation with a reservation from ATC but at the wrong time	Severity 1
(50) Use of international slot for domestic flight	Severity 2
(51) Use of aircraft not meeting criteria in 14 C.F.R. § 93.123(c)(2) in commuter slot	Severity 2
Pilot Records Improvement Act (PRIA) & Pilot Records Database (PRD)	
(52) Permitting a person to begin service as a pilot prior to evaluating all information required under PRIA or PRD	Severity 3
(53) Failing to obtain from the subject of a PRIA request a written consent for release of records requested under PRIA	Severity 2
(54) Furnishing records pursuant to a request under PRIA before receiving a copy of the written consent of the individual who is the subject of the request	Severity 2
(55) Failing to obtain written consent from a pilot before performing a National Driver Register search as part of a PRD record review	Severity 2
(56) Failing to provide a copy of all records pursuant to a request under PRIA within 30 days of the date the request is received	Severity 2
(57) Failing to provide required written notice to the subject of a PRIA request	Severity 2
(58) Failing to permit a pilot to correct inaccuracies in PRIA records before making a final hiring decision	Severity 1
(59) Failing to make required PRIA records available within 30 days upon written request from a pilot	Severity 2
(60) Failing to timely provide a pilot with a copy of state motor vehicle records obtained as part of a PRD record review	Severity 1

Fig. 9-9-f. Violations Specific to Air Carriers, Commercial Operators, Part 125 Operators, Part 129 Operators, and Their Personnel	Severity
(61) Failing to provide final disciplinary action or final separation from employment records upon request from a pilot or reviewing entity	Severity 2
(62) Failing to maintain required records or information	Severity 3
(63) Failing to timely report required records or information for entry into the PRD	Severity 3
(64) Failing to timely correct records or information reported to the PRD	Severity 2
(65) Reporting records or information prohibited by 14 C.F.R part 111, subpart C, to PRD	Severity 2
(66) Using PRD access or PRD/PRIA information for reasons other than to inform a hiring decision concerning a pilot or to report information	Severity 2
(67) Failing to protect the confidentiality of PRIA/PRD records or the privacy of the pilot as to PRIA/PRD records	Severity 2
(68) Failing to timely apply or timely amend application for PRD access	Severity 2

Fig. 9-9-g. Violations Specific to Repair Stations	Severity
(1) Failure to maintain record of supervisory or inspection personnel	Severity 2
(2) Failure to maintain record	Severity 2
(3) Failure to ensure correct calibration of inspection and test equipment at prescribed intervals	Severity 2
(4) Making improper or incomplete entry in maintenance record	Severity 1
(5) Failure to make entry in maintenance record	Severity 2
(6) Making improper or incomplete record or report	Severity 1
(7) Failure to make entry in record or report	Severity 2
(8) Failure to sign or complete maintenance release	Severity 1
(9) Performance of maintenance or approval for return to service by unauthorized person	Severity 3
(10) Maintaining or altering an airframe, powerplant, propeller, instrument, radio, or accessory for which the repair station is not rated*	Severity 3
(11) Maintaining or altering an article for which the repair station is rated without using required technical data, equipment, or facilities	Severity 3
(12) Failure to report defect or unairworthy condition to FAA in a timely manner	Severity 2
(13) Failure to report defect or unairworthy condition to FAA	Severity 3
(14) Failure to have adequate housing*	Severity 2
(15) Failure to have required facilities*	Severity 2
(16) Failure to provide qualified personnel who can perform, supervise, and inspect work for which the station is rated*	Severity 3
(17) Failure to meet equipment, materials, and data requirements*	Severity 2
(18) Change of location, housing, or facilities without written approval	Severity 2
(19) Failure to provide adequate instructions and procedures in repair station manual (RSM) or quality control manual (QCM)	Severity 2
(20) Failure to follow RSM/QCM – technical noncompliance	Severity 1

Fig. 9-9-g. Violations Specific to Repair Stations	Severity
(21) Failure to follow RSM/QCM – potential effect on safety	Severity 2
(22) Failure to follow RSM/QCM – likely effect on safety	Severity 3
(23) Failure to permit FAA to inspect†	Severity 3
(24) Failure to have training program*	Severity 3
(25) Failure to maintain training program	Severity 2
(26) Failure to train personnel adequately	Severity 2
(27) Failure to provide notification of hazmat authorizations	Severity 2

Fig. 9-9-h. Violations Specific to Part 141 Pilot Schools	Severity
(1) Failure to permit inspection of facilities, equipment, personnel, records, or certificate*	Severity 3
(2) False or misleading advertising*	Severity 3
(3) Failure to carry checklist or operator's handbook on aircraft	Severity 1
(4) Improper crediting to, or graduation of, student	Severity 2
(5) Refusal to permit FAA test, check, or examination of student†	Severity 3
(6) Unqualified or unauthorized instruction	Severity 3
(7) Failure to establish training record	Severity 3
(8) Failure to maintain current and accurate training record	Severity 2
(9) Failure to retain training record	Severity 2

Fig. 9-9-i. Interference with Crewmembers and Unruly Passenger Conduct	Severity
(1) Using a laser to interfere with a crewmember†	Severity 3
(2) Interference with a crewmember	Severity 2
(3) Physically assault or threat to physically assault a flight or cabin crewmember under 49 U.S.C. § 46318	Severity 3
(4) Physically assault or threaten to physically assault a person assigned to perform a law enforcement function on a flight under 49 U.S.C. § 46318	Severity 3
(5) Physically assault or threaten to physically assault an individual other than a crewmember under 49 U.S.C. § 46318	Severity 2
(6) Sexually assault or threaten to sexually assault a flight or cabin crewmember or other individual under 49 U.S.C. § 46318	Severity 3
(7) Acts in a manner that poses imminent threat to safety of aircraft or collective safety of other individuals on aircraft under 49 U.S.C. § 46318	Severity 3
(8) Smoking on aircraft	Severity 3
(9) Tampering with a smoke detector	*See* Fig. 9-2
(10) Failure to fasten seat belt/harness or failure to occupy approved seat or berth when required	Severity 2
(11) Unauthorized operation of a portable electronic device	Severity 1
(12) Drinking alcoholic beverage not served by carrier	Severity 1

Fig. 9-9-j. Aircraft Registration Violations	Severity
(1) Operation of an aircraft that has never been registered	Severity 3
(2) Operation, by the owner, of an aircraft with an invalid, suspended, or revoked registration	Severity 2
(3) Operation of an aircraft with an invalid, suspended, or revoked registration (operator other than owner)	Severity 1
(4) Operation of an aircraft on an otherwise ineffective registration	Severity 1
(5) Operation without certificate of registration readily available	Severity 1
(6) Operation on pink copy after 90 days	Severity 1
(7) Operation on pink copy outside the U.S.	Severity 2
(8) Failure to submit required flight information on an aircraft registered to a non-citizen corporation	Severity 1
(9) Failure to submit change of address	Severity 1
(10) Failure to submit required dealer information	Severity 2

Fig. 9-9-k. Drug Convictions and DUI/DWI Program Violations	Severity
Motor Vehicle Actions (MVA)	
(1) Failure to report an MVA	Severity 1
(2) Two MVAs arising from separate incidents within 3 years	Severity 2
Drug Convictions	
(It may be appropriate, in the exercise of prosecutorial discretion, to not take legal enforcement action when the most recent conviction is at least five years old when discovered by the FAA and there is evidence that the certificate holder has been rehabilitated such that the individual can be expected to conform their conduct to safety requirements)	
(3) Single conviction for simple possession (offense of conviction does not include growing, processing, manufacturing, sale, distribution, transportation, or importation, or intent to engage in such conduct)	Severity 1
(4) Two convictions for simple possession	Severity 2
(5) Three or more convictions for simple possession*	Severity 3

Fig. 9-9-l. Drug and Alcohol Testing Violations	Severity
General	
(1) Failure to implement an FAA-mandated drug and alcohol testing program*	Severity 3
(2) Failure to include a safety-sensitive employee (or contractor) in FAA-mandated drug and alcohol testing program	Severity 3
(3) Inappropriate testing using DOT or FAA authority	Severity 1
Violations of Drug and Alcohol Prohibitions	
(4) Failure to remove an individual from safety-sensitive functions for on-duty use, pre-duty use, use following an accident, refusal to submit to a test, and/or a drug positive and/or an alcohol concentration of .04 or greater	Severity 3

Fig. 9-9-l. Drug and Alcohol Testing Violations	**Severity**
(5) Allowing a covered employee who used alcohol within 8 hours of an accident to perform or continue performing safety-sensitive functions	Severity 3
(6) Failure to notify the Federal Air Surgeon of a medical certificate holder who received a positive drug test result and/or received an alcohol concentration of .04 or greater on an alcohol test	Severity 3
(7) Allowing a medical certificate holder to perform safety-sensitive duties for an employer following an alcohol violation and/or drug positive	Severity 3
(8) Failure to notify the FAA of a certificate holder who refused to submit to testing	Severity 3
(9) Failure to notify the FAA of an individual who tested positive on a DOT drug test, engaged in prohibited alcohol conduct, or refused to submit to a test within two working days of the date of the incident	Severity 2
(10) Knowingly using any person to perform any safety-sensitive function after that person was permanently precluded from performing that safety sensitive function†	Severity 3
Pre-employment drug testing	
(11) Failure to advise each individual applying to perform a safety-sensitive function of the pre-employment testing requirement	Severity 1
(12) Failure to pre-employment drug test an individual or receive a negative drug test result prior to hiring or transferring that individual for a safety-sensitive function (no performance)	Severity 1
(13) Failure to pre-employment drug test an individual or receive a negative drug test result prior to hiring or transferring that individual for a safety-sensitive function (performance)	Severity 3
(14) Failure to pre-employment drug test before hiring or transferring an individual into a safety-sensitive position if more than 180 days elapse between a pre-employment test and placing the individual into a safety-sensitive function (no performance)	Severity 1
(15) Failure to pre-employment drug test before hiring or transferring an individual into a safety-sensitive position if more than 180 days elapse between a pre-employment test and placing the individual into a safety-sensitive function (performance)	Severity 3
Random Drug and Alcohol Testing	
(16) Failure to conduct any random drug and/or alcohol testing for safety-sensitive employees during calendar year	Severity 3
(17) Failure to meet the minimum annual percentage rate for random drug and/or alcohol testing	Severity 2
(18) Failure to test employee selected for random drug and/or alcohol testing	Severity 3
(19) Failure to use a scientifically valid method of random selection	Severity 2
(20) Failure to ensure that random drug and/or alcohol tests are unannounced	Severity 2
(21) Failure to ensure the dates for administering random tests are spread reasonably throughout the calendar year	Severity 1

Fig. 9-9-l. Drug and Alcohol Testing Violations	Severity
(22) Failure to ensure that an employee who is notified to report for random drug and/or alcohol testing proceeds immediately to the testing site	Severity 2
(23) Conducting a random alcohol test at a time other than just before, during, or just after the employee has ceased performing a safety-sensitive function	Severity 1
(24) Failure to include an employee in random testing pool	Severity 3
Post-Accident Drug and Alcohol Testing	
(25) Failure to drug and/or alcohol test each employee if that employee's performance of a safety-sensitive function either contributed to an accident or cannot be completely discounted as a contributing factor to the accident	Severity 3
(26) Failure to post-accident drug test an employee within 32 hours after the accident	Severity 3
(27) Failure to conduct post-accident alcohol testing on an employee within 8 hours after the accident	Severity 3
(28) Failure to prepare and maintain on file required records stating the reasons the post-accident alcohol test was not administered within 2 hours and/or 8 hours	Severity 1
Reasonable Cause Drug and Reasonable Suspicion Alcohol Testing	
(29) Failure to drug and/or alcohol test each employee who performs a safety-sensitive function and who is reasonably suspected of using a prohibited drug and/or misusing alcohol	Severity 3
(30) Reasonable cause drug testing of individuals without a reasonable and articulable belief that the employee is using a prohibited drug on the basis of specific, contemporaneous physical, behavioral, or performance indicators of probable drug use	Severity 1
(31) Reasonable suspicion alcohol testing of individuals when reasonable suspicion of alcohol misuse has not been determined by a trained supervisor based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odor of the employee	Severity 1
(32) Failure to prepare and maintain on file a record stating the reasons the reasonable suspicion alcohol test was not administered within 2 hours and/or 8 hours	Severity 1
(33) Failure to remove a safety-sensitive employee who is under the influence of or impaired by alcohol	Severity 3
Return-to-Duty Drug and Alcohol Testing	
(34) Failure to conduct a return-to-duty drug test under direct observation and receive a negative result before an individual is returned to perform a safety-sensitive function after the individual refused to submit to a required drug test or received a verified positive drug test result	Severity 3
(35) Failure to administer a return-to-duty alcohol test and receive a result with an alcohol concentration of less than 0.02 on an individual who engaged in prohibited conduct prior to returning them to a safety-sensitive function.	Severity 3

Fig. 9-9-l. Drug and Alcohol Testing Violations	**Severity**
Follow-up Drug and Alcohol Testing	
(36) Failure to conduct unannounced follow-up drug or alcohol testing in accordance with the SAP's recommendation	Severity 3
(37) Failure to conduct follow-up drug testing under direct observation	Severity 3
(38) Administering a follow-up test after 60 months from the date the individual returned to a covered function, beyond the SAP's follow-up testing plan, or following the SAP's termination of the follow-up testing plan.	Severity 1
(39) Failure to ensure that follow-up alcohol testing of a covered employee only occurs just before the employee is to perform safety-sensitive functions, during, or just after the employee has ceased performing such functions	Severity 1
Retesting Covered Employees	
(40) Failure to retest a covered employee with an alcohol concentration of greater than .02 and less than .04 when the employer has chosen to permit the employee to perform a safety-sensitive function within 8 hours of alcohol use	Severity 3
(41) Permitting an individual with an alcohol concentration of .02 or above to return-to-duty performing safety-sensitive functions unless 8 hours has elapsed or the individual is retested and tests below 0.02	Severity 3
Administrative Matters	
(42) Failure to conduct employee drug and alcohol testing records check under 49 C.F.R. § 40.25	Severity 1
(43) Failure to conduct drug and alcohol records check and allowing the employee to perform more than 30 days after the date of first performance	Severity 3
(44) Failure to ask employee if they ever tested positive or refused a pre-employment test in the previous two years and/or request such records from a DOT employer	Severity 1
(45) Failure to provide employee drug and alcohol testing records under 49 C.F.R. § 40.25	Severity 2
(46) Using an employee to perform safety-sensitive functions after obtaining information that the employee violated DOT drug and alcohol regulations, without verifying that the employee complied with return-to-duty requirements	Severity 2
(47) Failure to submit an accurate annual drug and alcohol (Management Information System) report	Severity 1
(48) Failure to maintain required records related to drug and alcohol program, testing, and/or violations	Severity 2
(49) Failure to maintain records related to all alcohol test results below 0.02	Severity 1
(50) Releasing drug or alcohol testing information without specific written employee consent	Severity 2
(51) Failure to maintain records in a secure location with controlled access	Severity 2
Service Agents	
(52) Failure to use a qualified individual to perform MRO services	Severity 3
(53) Failure to ensure MRO complies with FAA/DOT drug testing requirements	Severity 3

Fig. 9-9-l. Drug and Alcohol Testing Violations	Severity
(54) Failure to use a qualified individual to perform SAP services	Severity 3
(55) Failure to ensure SAP recommends minimum follow-up testing requirements	Severity 3
(56) Failure to ensure SAP complies with FAA/DOT drug and alcohol testing requirements	Severity 2
(57) Failure to use appropriate urine collection and alcohol testing personnel	Severity 1
(58) Failure to conduct direct observation drug test	Severity 3
(59) Failure to ensure that urine collection or alcohol testing personnel comply with FAA/DOT drug and alcohol testing requirements (that results in test cancellation)	Severity 2
(60) Failure to ensure that urine collection or alcohol testing personnel comply with FAA/DOT drug and alcohol testing requirements (that does not result in test cancellation)	Severity 1
(61) Failure to use a Department of Health and Human Services-approved drug testing laboratory or a National Highway Traffic Safety Administration-approved alcohol testing device	Severity 3
Employee Assistance Program/Alcohol Misuse Program	
(62) Failure to establish drug use and/or alcohol misuse policy	Severity 1
(63) Failure to display and/or distribute required information and materials	Severity 1
(64) Failure to conduct employee or supervisory training	Severity 1
(65) Failure to document training or to display or distribute materials	Severity 1

Fig. 9-9-m. Design and Production (Including ODA) Violations	Severity
Specific Violations	
(1) Failure to submit to the FAA or implement design changes necessary to correct an unsafe condition subject to an AD	Severity 3
(2) Failure to report each failure, malfunction, or defect in a product or article when such report is required	Severity 2
(3) Presentation of a nonconforming aircraft for issuance of an initial airworthiness certificate by a production certificate holder (unknowing violation)	Severity 3
(4) Failure to submit safety critical information for a transport category airplane by an applicant for or holder of a type certificate (unknowing violation)	Severity 3
(5) Individual's knowing false statement regarding safety critical type certificate-related information†	Severity 3
(6) Interference with an ODA unit member's performance of authorized functions	Severity 3
(7) Imposing any prohibition, condition, restriction, or penalty with respect to contact between an employee and the FAA regarding aircraft design or production†	Severity 3

Fig. 9-9-m. Design and Production (Including ODA) Violations	Severity
General	
(8) Remote effect on continued operational airworthiness in the National Airspace System (NAS)	Severity 1
(9) Possible effect on continued operational airworthiness in the NAS	Severity 2
(10) Likely effect on continued operational airworthiness in the NAS	Severity 3

Fig. 9-9-n. Violations Specific to Airport Operators	Severity
General	
(1) Operation without a part 139 certificate	Severity 3
(2) Failure to permit FAA inspector to conduct inspection or make airport certification manual available to the FAA for inspection†	Severity 3
Certification Manual	
(3) Failure to comply with an approved airport certification manual – technical noncompliance	Severity 1
(4) Failure to comply with an approved airport certification manual – potential effect on safety	Severity 2
(5) Failure to comply with an approved airport certification manual – likely effect on safety	Severity 3
(6) Failure to include all required information in the airport certification manual	Severity 2
(7) Failure to maintain current airport certification manual on the airport	Severity 1
Operations	
(8) Failure to maintain sufficient qualified personnel to comply with requirements of the airport certification manual and FAA regulations	Severity 3
(9) Failure to maintain and repair each paved or unpaved runway, taxiway, loading ramp, and parking area on the airport (major damage or surface failure)	Severity 3
(10) Failure to maintain and repair each paved or unpaved runway, taxiway, loading ramp, and parking area on the airport (other than major damage)	Severity 2
(11) Failure to provide and maintain an airport safety area	Severity 3
(12) Failure to provide and maintain required marking, signing, and lighting systems	Severity 3
(13) Violation of any regulation concerning rescue, firefighting, and/or emergency response	Severity 3
(14) Failure to establish and maintain standards for protecting against fire and explosions in storing, dispensing, and otherwise handling fuel, lubricants, and oxygen	Severity 3
(15) Failure to perform surveillance of fueling activity or inspect physical facilities of fueling agents	Severity 2
(16) Failure to create and maintain a record of the inspection of the physical facilities of each airport tenant fueling agent	Severity 1
(17) Failure to ensure that a fueling agent and its employees are properly trained	Severity 3

Fig. 9-9-n. Violations Specific to Airport Operators	Severity
(18) Failure to require a tenant fueling agent to take corrective action for noncompliance with a fueling standard	Severity 3
(19) Failure to ensure that the airport emergency plan is reviewed with all parties under the plan and that all information in the plan is current	Severity 2
(20) Failure to establish and maintain procedures for the protection of persons and property on the airport during the handling and storing of hazardous materials	Severity 3
(21) Failure to provide traffic and wind direction indicators	Severity 2
(22) Failure to develop and maintain airport emergency plan	Severity 3
(23) Failure to conduct self-inspections of the airport as required	Severity 3
(24) Failure to provide equipment and procedures for carrying out a self-inspection program	Severity 2
(25) Failure to provide for a reporting system to ensure correction of conditions noted during self-inspections	Severity 2
(26) Failure to prepare and keep a record of self-inspections	Severity 2
(27) Failure to make available a record of self-inspections†	Severity 3
(28) Failure to limit access to movement and safety areas to necessary pedestrians and ground vehicles	Severity 3
(29) Failure to establish and implement procedures for access to and operation on movement and safety areas	Severity 3
(30) Failure to ensure that ground vehicles and pedestrians operating on the movement area are controlled by two-way radio communication or other acceptable means	Severity 2
(31) Failure to ensure training on procedures for access to and operation on movement and safety areas	Severity 3
(32) Failure to mark, light, or remove obstructions, construction areas, unserviceable areas, construction equipment, and/or construction roadways	Severity 3
(33) Failure to prevent the construction of facilities on the airport that would derogate the operation of an electronic or visual navaid and air traffic control facilities on the airport	Severity 3
(34) Failure to take immediate measures to alleviate wildlife hazards	Severity 3
(35) Failure to provide for the collection and dissemination of airport condition information to air carriers	Severity 3
(36) Failure to provide procedures for avoiding damage to existing utilities, cables, wires, conduits, pipelines, or other underground facilities	Severity 1
(37) Failure to restrict operations to safe portions of the airport	Severity 3
(38) Failure to conduct and submit a wildlife assessment	Severity 2
(39) Failure to implement an FAA-approved wildlife hazard management plan	Severity 3

Fig. 9-9-o Commercial Space	Severity
(1) Inaccuracy in application or failure to apply for modification of application – technical noncompliance	Severity 1
(2) Inaccuracy in application or failure to apply for modification of application – potential effect on safety	Severity 2

Fig. 9-9-o Commercial Space	**Severity**
(3) Inaccuracy in application or failure to apply for modification of application – likely effect on safety	Severity 3
(4) Failure to maintain records	Severity 2
(5) Untimely submission of launch or preflight report or update	Severity 1
(6) Failure to submit launch or preflight report or update	Severity 2
(7) Failure to permit monitoring – failure to provide adequate notification of inspectable activities	Severity 1
(8) Failure to permit monitoring – failure to provide any notice of inspectable activity	Severity 2
(9) Failure to permit monitoring – denial of lawful access†	Severity 3
(10) Failure to file report per specific regulatory timeframe – discrepancy, anomaly, deviation, or mishap present	Severity 2
(11) Failure to file report per specific regulatory timeframe – no discrepancy, anomaly, or deviation present	Severity 1
(12) Failure to comply with post-flight data review requirements	Severity 2
(13) Failure to comply with financial responsibility requirements	Severity 1
(14) Failure to maintain safety organization	Severity 3
(15) Failure to document safety organization	Severity 2
(16) Failure to have personnel certification or qualification program	Severity 3
(17) Failure to properly employ personnel certification or qualification program	Severity 2
(18) Failure to meet flight safety or launch risk criteria requirements	Severity 3
(19) Failure to comply with flight safety analysis requirements	Severity 3
(20) Failure to meet reentry risk criteria requirements	Severity 3
(21) Failure to meet disposal safety requirements	Severity 3
(22) Failure to prevent on-orbit collision	Severity 3
(23) Failure to implement or follow pre-flight procedures	Severity 3
(24) Failure to meet ground safety requirements	Severity 3
(25) Failure to follow launch safety plan	Severity 3
(26) Failure to have or follow mishap plan	Severity 3
(27) Failure to comply with configuration management and control requirements	Severity 3
(28) Failure to follow launch safety rules	Severity 3
(29) Failure to perform pre-launch review or rehearsal	Severity 2
(30) Failure to comply with readiness requirements	Severity 2
(31) Failure to comply with computing systems and software requirements	Severity 2
(32) Failure to comply with computing systems and software requirements – Critical Flight Safety Systems	Severity 3
(33) Failure to comply with license or experimental permit – technical noncompliance	Severity 1
(34) Failure to comply with license or experimental permit – potential effect on safety	Severity 2
(35) Failure to comply with license or experimental permit – likely effect on safety	Severity 3
(36) Work shift and rest rules violations	Severity 2

Fig. 9-9-o Commercial Space	**Severity**
(37) Hazard analysis, management, and control violations	Severity 3
(38) Failure to comply with flight commit criteria requirements	Severity 3
(39) Failure to comply with tracking requirements	Severity 2
(40) Collision avoidance analysis violations	Severity 2
(41) Communications violations	Severity 2
(42) Failure to comply with radio frequency management requirements	Severity 2
(43) Failure to follow flight or mission rules	Severity 3
(44) Failure to preserve and retain records related to a mishap	Severity 3
(45) Failure to permit FAA access to records†	Severity 3
(46) Failure to comply with compliance monitoring requirements†	Severity 3
(47) Failure to comply with human space flight requirements	Severity 3
(48) Launch/Reentry without authorization	Severity 3
(49) Failure to notify public of planned impact	Severity 3
(50) Failure to establish or follow a hazard control agreement	Severity 3
(51) Lack of clear delineation of roles and responsibilities in hazard control agreement	Severity 1
(52) Failure to submit space object registration information	Severity 2
(53) Untimely submission of space object registration information	Severity 1
(54) Failure to notify of space object removal	Severity 2
(55) Failure to comply with orbital debris mitigation requirements	Severity 2
(56) Creation of debris at end of launch	Severity 3

10. Hazardous Materials Enforcement Sanction Policy

1. Purpose. This chapter contains the guidance the FAA applies in selecting sanction ranges and specific sanction amounts within ranges for common violations of the Hazardous Materials Regulations (HMR) after the FAA deems civil penalty action appropriate. The guidance in this chapter is applied to all FAA legal enforcement actions based on HMR violations occurring after the effective date of this order. (Violations of hazmat requirements in FAA regulations, *e.g.*, 14 C.F.R. parts 121 and 135, are addressed in chapter 9).[1]

2. Overview. Hazmat is a substance or material that the Secretary of Transportation has designated as hazardous and has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce. Congress has determined that the unregulated transportation of hazmat constitutes a risk to public safety and has enacted a number of statutes to address this risk over the years.[2] Hazmat laws passed by Congress are codified at 49 U.S.C. § 5101, *et seq.*

3. The FAA's Exercise of Prosecutorial Discretion. The decision whether to prosecute a particular case is based on a review of the evidence and relevant law, policy, and litigation considerations. The agency exercises broad discretion in the initial decision to bring a legal enforcement action and in any later case determinations, including whether to compromise or settle a case. The FAA's discretion in these areas is absolute and immune from review. *Heckler v. Cheney*, 470 U.S. 821, 831 (1985). The guidance in this chapter applies only to the selection of sanction after the decision has been made to take civil penalty action for HMR violations.

4. FAA Decisional Law. Decisions of the FAA decisionmaker represent the FAA Administrator's position on issues regarding sanctions. The policy in this order also represents the Administrator's position on sanctions in legal enforcement actions. To the extent that this order conflicts with FAA decisionmaker decisions published before this document's issuance, the policy in this order supersedes those decisions. However, FAA decisionmaker decisions published after the issuance of this order that conflict with the policy in this order supersede this order and are controlling.

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[1] For civil penalty actions involving HMR violations occurring before the effective date of this order, enforcement personnel apply the sanction guidance in FAA Order 2150.3B and the statutory maximums in effect at the time of the violation.

[2] The first such statute – the Hazardous Materials Transportation Act (HMTA), 49 U.S.C. app. § 1801 – was enacted in 1974. By 1990, Congress determined that effective enforcement of the HMTA required increased sanction limits. Accordingly, it revised the HMTA through the enactment of the Hazardous Materials Transportation Uniform Safety Act of 1990, Public Law 101-615 (1990). Through this act, Congress raised the maximum civil penalty for a violation of any regulation enacted under the HMTA and, for the first time, required a minimum penalty for any such violation. The HMTA was recodified without substantive change in 1994 and was renamed the "Federal hazardous material transportation law," 49 U.S.C. § 5101, *et seq*. In 2005, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA – LU), Public Law 109-59 (Aug. 10, 2005), was enacted. SAFETEA-LU raised the previous limitations on civil penalties for hazmat violations. The Moving Ahead for Progress in the 21st Century Act (MAP-21), which was enacted in 2012, Public Law 112-141 (Jul. 6, 2012), modified the limitations on civil penalties that may be assessed for violations of the hazmat statute and regulations.

5. General Civil Penalty Sanction Considerations. Hazmat sanction guidance is designed to promote consistency so that similar penalties are imposed in similar cases. Each case, however, must be evaluated on its own facts based on an analysis of factors affecting sanction. A punitive sanction, such as a civil penalty, should be sufficient to deter future violations of the hazmat statute and HMR, but should not be excessive given the circumstances of a case.

a. Authority. Under 49 U.S.C. § 5123(a)(1), the Secretary is authorized to assess civil penalties for knowing violations of 49 U.S.C. chap. 51, and regulations and orders issued under that chapter. A person acts knowingly when the person has actual knowledge of the facts giving rise to the violation, or a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge. Accordingly, the FAA is not required to prove that a person knew the person's actions constituted a violation of the HMR to establish a violation.

b. Civil Penalty Maximums. The Secretary is authorized to assess a maximum civil penalty under 49 U.S.C. § 5123(a)(1) of $75,000 (as adjusted). Where a violation results in death, serious illness, severe injury to any person, or substantial destruction of property, the Secretary is authorized under 49 U.S.C. § 5123(a)(2) to assess a maximum civil penalty of $175,000 (as adjusted). There is no minimum civil penalty limit except for training violations, which is $450 (as adjusted). Pursuant to 28 U.S.C. § 2461, Congress has provided a mechanism for adjustments for monetary civil penalties for inflation. Under the statute, the adjusted civil penalty maximums cannot be applied unless they are implemented by regulation. The adjusted civil penalties are listed in 14 C.F.R.§ 13.301. The applicable civil penalty maximum for a violation is the maximum on the date of violation. The high end of the sanction ranges listed in the Hazmat Sanction Ranges Table for (1) deliberate or intentional violations ($89,678); and (2) violations resulting in death, serious illness, severe injury to any person, or substantial destruction of property ($209,249), correspond to the applicable maximum authorized penalties as of the adjustment of March 21, 2022. When a maximum authorized penalty is adjusted, the high end of theses ranges are immediately increased to the new maximum authorized penalty.

c. Consideration of Statutory Criteria. Penalty criteria in 49 U.S.C. § 5123(c) have been incorporated in the guidance for determining sanctions in hazmat civil penalty actions. These criteria are the nature, circumstances, extent, and gravity of the violation; the degree of culpability of the violator; the history of past violations (if any); the ability to pay; the effect on the ability to continue to do business; and other matters as justice requires.

d. Sanction Selection. AGC-300 counsel determines the specific sanction amount in civil penalty actions. To ensure that counsel makes an appropriate sanction amount determination, Office of Hazardous Materials Safety (AXH) investigative personnel provide a detailed analysis for each factor affecting sanction (*e.g.*, severity level, culpability, business size, aggravating and mitigating factors) in section B of the enforcement investigative report (EIR) with evidentiary support in section C of the EIR. Additionally, AXH personnel recommend a specific sanction amount and provide a detailed analysis of the basis for the recommended amount consistent with the policies in this chapter (or in chapter 9 for violations of hazmat requirements in FAA regulations). Counsel applies the sanction policies in this chapter to determine the appropriate sanction amount based on an evaluation of the case. Counsel consults with AXH personnel regarding sanction amount determinations in novel cases or when counsel disagrees with the

recommended sanction amount. For significant legal enforcement actions as described in chapter 8, paragraph 10, the Assistant Chief Counsel for AGC-300 or a delegee coordinates sanction determinations with appropriate headquarters officials. If a case is litigated, counsel provides the reasons for the sanction selected. Counsel's analysis of the sanction is based on the allegations in the complaint and evidence relating to the violation, including relevant factors affecting sanction. The sanction analysis, although based in part on evidence, is provided through argument by counsel, and is not itself evidence presented by counsel or investigative personnel. This may be presented, for example, by pre-trial motion, orally in closing following a hearing, and/or by brief following a hearing.

e. Violations Involving International Civil Aviation Organization Technical Instructions. Under 49 C.F.R. § 171.22, a person may comply with the International Civil Aviation Organization (ICAO) Technical Instructions for the Safety Transport of Dangerous Goods by Air (ICAO TI) instead of 49 C.F.R. parts 172 and 173. The failure by a person to comply with the ICAO TI typically constitutes a violation of 49 C.F.R. § 171.22, and any parallel requirement in 49 U.S.C. chap. 51 and the HMR. Civil penalties for violations of the ICAO TI are determined under this chapter in the same manner as HMR violations. The term "dangerous goods" as used in the ICAO TI is interchangeable with the term "hazmat" as used in this chapter. In the event of a person's noncompliance with the ICAO TI, FAA investigative personnel lists the 49 C.F.R. § 171.22 violation and any parallel HMR violated in the EIR. If no parallel HMR exists, then a violation of 49 C.F.R. § 171.22 is still applicable. In either case, the applicable ICAO TI citation or citations are addressed in AXH investigative personnel statements and/or in Section B of the EIR, but not in the EIS violations field.

f. Willful or Reckless Violations. Under 49 U.S.C. § 5124(a), a person who willfully or recklessly violates 49 U.S.C. chap. 51, or regulations and orders issued under that chapter, is subject to a criminal penalty. Under 49 U.S.C. § 5124(d), a person acts: (1) willfully when the person has knowledge of the facts giving rise to the violation and knowledge that the conduct was unlawful; and (2) recklessly when the person displays a deliberate indifference or conscious disregard to the consequences of the violation conduct. A violator's potential criminal liability for willful or reckless violations does not preclude the FAA from pursuing a civil penalty action.

g. Violations of FAA Hazmat Regulations. Under 49 U.S.C. § 46301, the FAA is authorized to assess civil penalties for violations of FAA regulations. Sanctions for violations of FAA hazmat-related regulations, such as hazmat training requirements in 14 C.F.R. part 121, subpart Z, and 14 C.F.R. part 135, subpart K, are determined using the guidance in chapter 9. For example, if an air carrier's operations specifications and manual system provide that it will not carry hazmat, and the air carrier transports hazmat, the guidance in chapter 9 is used to determine the appropriate penalty for this violation.

6. Use of Hazmat Sanction Guidance. The sanction guidance in paragraphs 6 through 8 provides a systematic process for use by AGC-300 counsel to arrive at an appropriate civil penalty for hazmat violations. In performing this process, counsel are mindful that sanction determinations are not the result of mathematical computations. Rather, sanction evaluation is based on the reasoned consideration of the case's facts and circumstances known to the FAA.

a. Sanction Range Determination. AGC-300 counsel uses the following process to determine the applicable sanction range. Steps 1 through 4 are used for offeror violations and 49 C.F.R. part 175 violations. Step 5 is used only for part 175 violations. Step 6 is used only for training and record-keeping violations.

Step 1: Determine the appropriate categories for the nature, quantity, and packaging of the hazmat, using paragraph 7.a., below.

Step 2: Determine severity level of the violation, using paragraph 7.b., below.

Step 3: Determine violator category using paragraph 7.c., below.

Step 4: Determine the appropriate sanction range in the Hazmat Sanction Ranges Table (Figure 10-4) using paragraph 7.d., below.

Step 5: For part 175 violations, determine applicable violation categories using paragraph 7.e., below.

Step 6: For training and record-keeping violations, determine the appropriate sanction range in the Hazmat Training and Record-Keeping Sanction Ranges Table (Figure 10-5) using paragraph 7.f., below.

b. Aggravating and Mitigating Factors. Once the applicable range for each violation is identified, AGC-300 counsel begins with the midpoint of the applicable range and applies the aggravating and mitigating factors in paragraph 8, below, to determine the particular sanction within the identified sanction range. AGC-300 counsel increases the sanction for aggravating factors and decreases the sanction for mitigating factors. For part 175 violations, counsel applies aggravating and mitigating factors to each violation category within the identified sanction range. In unusual circumstances, a sanction outside the identified sanction range may be warranted by significant aggravating or mitigating factors.

c. Final Sanction Calculation. AGC-300 counsel determines the final penalty for hazmat violations as provided below.

(1) *Offeror Violations*. Offeror violations are those involving offering hazmat in violation of 49 C.F.R. parts 171, 172, 173, and 49 C.F.R. § 175.3. AGC-300 counsel uses the sanction arrived at after applying aggravating and mitigating factors to the sanction range identified in Step 4, above.

(2) *Part 175 Violations*. Part 175 violations are violations of 49 C.F.R part 175, including violations of 49 C.F.R. § 175.3 involving accepting or transporting hazmat. (However, violations 49 C.F.R. § 175.3 that involve offering hazmat are offeror violations). Additionally, violations of 49 C.F.R. §§ 171.15 and 171.16 relating to hazmat incident reporting are treated as part 175 violations. AGC-300 counsel uses the sanction arrived at after applying aggravating and mitigating factors and adding the penalty amount for each violation category identified in Step 5.

(3) *Training Violations.* AGC-300 counsel uses the sanction arrived at after applying aggravating and mitigating factors to the sanction range identified in Step 6, above. The sanction amount for training violations cannot be below the applicable statutory minimum of $471.

(4) *Record-Keeping Violations.* Record-keeping violations concern keeping and maintaining records, and failure to make records available upon request. Violations of other records-related requirements, such as creating or obtaining records are not record-keeping violations. Rather, they are included in the applicable category referenced in paragraph 6.c.(1)-(3), above. For example, failure to create shipping papers and include them with a shipment is an offeror violation. Failure to provide notification to the pilot-in-command is a part 175 violation. Failure to create training records is a training violation. Violations of requirements to produce records to the FAA are record-keeping violations, but are generally also intentional or deliberate violations (*see* paragraph 7.h., below). AGC-300 counsel uses the sanction arrived at after applying aggravating and mitigating factors to the sanction range identified in Step 6, above.

(5) When there are penalties under more than one category in this paragraph, the final sanction is the sum of all applicable penalties.

(6) In appropriate circumstances, an apparent violator's ability to pay may be factored into the final sanction amount as provided in paragraph 9, below.

7. Sanction Range Determination Step 1 through Step 6.

a. Nature, Quantity, and Packaging of the Hazmat (Step 1). The severity level of a hazmat violation is determined by examining the nature, quantity, and packaging of the hazmat, as discussed in paragraphs 7.a.(1)-(3), below. This step does not apply to severity level 6 or lithium battery shipments, which are discussed in paragraphs 7.b.(1) and 7.b.(3), below.

(1) Inherent Danger. The inherent danger category addresses the nature of the hazmat in a case. To determine inherent danger, AGC-300 counsel consults the Hazmat Inherent Danger Table at Figure 10-1, which divides hazardous materials into three categories that represent increasing inherent danger posed by the hazmat, with "minimum" representing the least risk to safety and "maximum" representing the most risk to safety. If descriptors in more than one category apply to a hazmat, the hazmat is treated as the most dangerous category. If there is more than one type of hazmat in the shipment, the inherent danger category determination is based on the hazmat in the highest inherent danger category. For purposes of determining inherent danger, a shipment is treated as a minimum inherent danger hazardous material when the UN Number, Proper Shipping Name, Hazard Class, Division, Packing Group, net capacity of each inner packaging, and the net capacity of each outer packaging, would have allowed the shipment to have been offered as a limited quantity shipment onboard aircraft, even if the shipment did not meet other HMR requirements for a limited quantity shipment (*e.g.*, hazmat communications and packaging capability).

Figure 10-1: Hazmat Inherent Danger Table.

MAXIMUM	
Forbidden Materials (*see* 49 C.F.R. § 173.21 & ICAO Technical Instructions)	
Forbidden Hazmat listed in Dangerous Goods Table 49 C.F.R. § 172.101	
All Poison Inhalation Hazard (PIH) (*e.g.*, certain hazmat from Classes 3, 8; Divisions 2.3, 6.1)	
Class 1	Explosives in Division 1.1, 1.2, 1.3
Class 2	Division 2.1 – Flammable Gas
	Division 2.2 – Nonflammable Gas with Subsidiary Risk 5.1
	Division 2.3 – Poisonous/Toxic Gas
Class 3	Flammable and Combustible Liquids – PGI, PGII, and PIH
Class 4	Division 4.1 (Flammable Solids) – Matches and PGI
	Division 4.2 (Spontaneously Combustible Materials) – PGI (Pyrophoric)
	Division 4.3 (Dangerous When Wet) – PGI
Class 5	Division 5.1 (Oxidizers) – PGI, PGII
	Division 5.2 (Organic Peroxides) – Types A, B, C, D
Class 6	Division 6.1 (Poisonous/Toxic Substances) – PIH
Class 7	Radioactive Materials with Yellow-III or Fissile labels
Class 8	Liquid Corrosive Substances, PGI and PIH

MODERATE	
Class 1	Explosives in Division 1.4, 1.5, and 1.6
Class 3	Flammable and Combustible Liquids - PGIII
Class 4	Division 4.1 (Flammable Solids) – PG II and PG III
	Division 4.2 (Spontaneously Combustible Materials) – PGII and PGIII
	Division 4.3 (Dangerous When Wet) – PGII and PGIII
Class 5	Division 5.1 (Oxidizers) – PGIII
	Division 5.2 (Organic Peroxides) – Types E, F, G
Class 6	Division 6.1 (Poisonous/Toxic Substances) – PGI and PGII (except PIH)
	Division 6.2 (Biohazard/Infectious Substances)
Class 7	Radioactive Materials with Yellow-II or White-I labels
Class 8	Liquid Corrosive Substances, PGII
	Solid Corrosive Substances, PGI and PGII

MINIMUM	
Class 2	Division 2.2 – Nonflammable Gas without Subsidiary Risk 5.1
Class 6	Division 6.1 (Poisonous/Toxic Substances) – PGIII
Class 7	All Other Radioactive Materials (*e.g.,* Empty labels, LSA and limited quantities)
Class 8	Corrosive Substances, PGIII
Class 9	Miscellaneous Dangerous Goods (except for lithium batteries)

(2) Quantity of the Hazmat. Quantity category assessment addresses the quantity of the hazmat in a case in relation to the quantity limits in the hazmat regulations.

(i) *Small Quantities.* The hazmat shipment is an excepted quantity under 49 C.F.R. § 173.4a or a *de minimus* quantity under 49 C.F.R. § 173.4b, or could have been shipped as a consumer commodity.

(ii) *Within Quantity Limits.* The hazmat shipment is not a small quantity, but was within quantity limits for the type of aircraft (passenger or cargo) on which the hazmat was placed. If the hazmat was not placed on an aircraft, quantity limits are assessed using cargo aircraft standards (unless the offer is to a passenger-carrying operator, in which case passenger aircraft standards apply).

(iii)*Exceeds Quantity Limits.* The hazmat exceeded quantity limits for the type of aircraft on which the hazmat was placed. Note that quantity limits are necessarily exceeded if the hazmat was forbidden (or otherwise prohibited) on the aircraft on which it was placed. If the hazmat was not placed on an aircraft, quantity limits are assessed using cargo aircraft standards (unless the offer is to a passenger-carrying operator, in which case passenger aircraft standards apply).

(3) Packaging of Hazmat. Packaging category assessment addresses the nature of the packaging of the hazmat in the case. Packaging is either *compliant* or *noncompliant* based on whether there is any violation of a packaging regulation. For purposes of assessing severity level for part 175 violations, packaging is considered compliant if the violator did not know, and could not reasonably have known, that the shipment was not packaged in accordance with the regulations.

b. Determine Severity Level (Step 2). There are six severity levels. Severity levels 1-5 reflect the interrelation of the nature, quantity, and packaging of the hazmat, and divides hazmat shipments into categories that represent increasing safety risk posed by the shipment, with severity level 1 representing the least risk to safety and severity levels 2-5 representing increasingly significant safety risks. Note that severity level analysis is instructive but not binding when determining sanction range for violations that are (i) intentional or deliberate; or (ii) result in death, severe injury, or substantial destruction of property. These categories of violation are discussed in paragraph 7.h. and 7.i., below.

(1) Severity Level 6. A hazmat shipment is in severity level 6 if the hazmat shipment is: (i) associated with an incident reportable under 49 C.F.R. § 171.15; (ii) associated with a release reportable under 49 C.F.R. § 171.16 that results in any injury; (iii) contains hazmat forbidden on all aircraft (*i.e.,* 49 C.F.R. § 172.101 column 3 or 9.a. and 9.b.) and there is a release; (iv) contains one or more oxygen generators and has noncompliant packaging; or (v) contains one or more lithium batteries of any chemistry, exceeds quantity limits, and has noncompliant packaging.

(2) Severity Levels 1-5. The Hazmat Severity Level Table (Figure 10-2) assigns severity levels for hazmat shipments given the nature, quantity, and packaging of the shipment. Figure 10-2 does not apply to lithium battery shipments.

Figure 10-2. Hazmat Severity Level Table

	Packaging: Compliant			**Packaging: Noncompliant**		
Inherent Danger (Nature of the Hazmat)	*Small Quantities*	*Within Quantity Limits*	*Exceeds Quantity Limits*	*Small Quantities*	*Within Quantity Limits*	*Exceeds Quantity Limits*
Minimum	1	1	1	2	3	3
Moderate	1	1	2	2	3	4
Maximum	1	2	3	2	4	5

(3) Lithium Batteries. The Lithium Batteries Severity Level table (Figure 10-3) assigns severity levels for lithium battery shipments given the nature and quantity of the batteries involved (*e.g.,* number of cells or batteries, Watt-hour rating, and mass) and the packaging of the shipment.

Figure 10-3. Lithium Battery Severity Level Table

	Lithium Batteries (UN3480 or UN3090)		*Lithium Batteries Packed With or Contained In Equipment (UN3481 and UN3091)*	
Packaging	Compliant	Non-Compliant	Compliant	Non-Compliant
Single Package Within 49 C.F.R. § 173.185(c)(4)(i) Limits	1	2	N/A	N/A
Within 49 C.F.R. § 173.185(c)(4)(iv) Limits	N/A	N/A	2	3
Within 49 C.F.R. § 173.185(c)(4)(vi) Limits	3	4	N/A	N/A
Within 49 C.F.R. § 172.101 Quantity Limits	4	5	3	4
Exceeds Quantity Limits	5	6	5	6

(i) *Single Package Within 49 C.F.R. § 173.185(c)(4)(i) Limits.* The shipment consisted of a single package and could have been sent under the provisions of 49 C.F.R. § 173.185(c)(4)(i) given the nature and quantity of the lithium batteries it contained.

(ii) *Within 49 C.F.R. § 173.185(c)(4)(iv) Limits.* The shipment consisted of lithium batteries packed with, or contained in, equipment and could have been sent under the provisions of 49 C.F.R. § 173.185(c)(4)(iv) given the nature and quantity of the lithium batteries contained in each package in the shipment.

(iii)*Within 49 C.F.R. § 173.185(c)(4)(vi) Limits.* The shipment could not have been shipped under the provisions of 49 C.F.R. § 173.185(c)(4)(i) (or could have been shipped under § 173.185(c)(4)(i) but contained multiple packages), but could have been shipped under the provisions of 49 C.F.R. § 173.185(c)(4)(vi) given the nature and quantity of the lithium batteries contained in each package in the shipment.

(iv) *Within 49 C.F.R. § 172.101 Quantity Limits.* The shipment did not exceed the quantity limits in the 49 C.F.R. § 172.101 hazardous materials table, as discussed in paragraph 7.a.(2)(ii), above, but could not have been sent under the provisions of 49 C.F.R. §§ 173.185(c)(4)(i), (iv), or (vi), given the nature and quantity of the lithium batteries it contained. This does not include shipments containing lithium batteries, the transportation of which is prohibited under 49 C.F.R. §§ 173.185(a), (f).

(v) *Exceeds Quantity Limits.* The shipment exceeded quantity limits, as discussed in paragraph 7.a.(2)(iii), above. This includes shipments containing lithium batteries, the transportation of which is prohibited under 49 C.F.R. §§ 173.185(a), (f).

c. Determine Violator Category (Step 3). There are four violator categories, as discussed in paragraph 7.c.(1)-(4), below. Violator categories take into account the relative culpability of the violator.

(1) An *individual* is a human who offers a shipment of hazmat in their personal capacity, without any association with a business purpose or commercial enterprise. An individual traveling commercially in their own capacity who offers hazmat for transportation aboard an aircraft in checked baggage, carry-on baggage, or on their person in violation of the HMR warrants consideration for legal enforcement action consistent with the guidance in chapter 5, paragraph 6.

(2) A *business entity* is any person (as defined in 49 C.F.R. § 171.8) that offers a shipment of hazmat in association with a business purpose or commercial enterprise. Business entities most commonly are corporations, companies, associations, firms, and partnerships. Business entities also include any human who offers shipments of hazmat in association with a business purpose or commercial enterprise. However, when a human offers a shipment on behalf of another business entity, the FAA generally takes legal enforcement action only against the other business entity.

(3) A *business entity that uses, receives, or handles hazmat in the course of business* is a business entity that uses or handles hazmat in its business but does not offer hazmat for transportation on a regular basis. This category includes a manufacturer of a non-hazmat product that uses hazmat in the manufacturing process but does not typically ship hazmat. This category does not include a business that only incidentally uses hazmat (*e.g.*, a law firm that uses cleaning supplies in an office). An entity that falls within this category is held to a higher standard than the entity that has no regular involvement with hazmat since it receives and uses hazardous material and, thus, is on notice of the hazardous nature of the material and the pertinent hazmat regulatory requirements.

(4) A *business entity that regularly offers, accepts, or transports hazardous materials in the course of its business* is a business entity that offers, accepts, or transports hazmat with some frequency or regularity. For example, an online retailer that offers hazmat to its customers would fall into this category even though its actual sale or transportation of the hazmat is infrequent or limited. This category includes manufacturers, freight forwarders, air carriers, and commercial

operators due to their enhanced culpability (as compared to most businesses) even if they do not regularly offer, accept, or transport hazmat.

(5) For factors to use in determining whether an entity is a small or large business, refer to the guidance contained in chapter 9, paragraph 11. If it is unknown whether a hazmat violator is a small or large business, AGC-300 counsel uses the large business ranges, and later provides the violator with an additional opportunity to demonstrate that it is a small business.

d. The Hazmat Sanction Ranges Table (Step 4). The Hazmat Sanction Ranges Table (Figure 10-4) assigns specific sanction ranges for offeror and part 175 violations given the severity level and violator category. Declared shipments and undeclared shipments are categories of offeror violations. A *declared shipment* is a shipment that contains hazmat and has at least one communicative indicia referenced in the HMR, *i.e.*, shipping papers, markings, and/or labels. An *undeclared shipment* is a shipment that does not have any communicative indicia referenced in the HMR. *Part 175 violations* are discussed in paragraph 6.c.(2), above.

Figure 10-4 Hazmat Sanction Ranges Table.

	A. Individual	**B. Business Entity**		**C. Business Entity that uses, receives, or handles hazmat in the course of business**		**D. Business Entity that regularly offers, accepts, or transports hazmat**	
Severity Level		**Small Business**	**Large Business**	**Small Business**	**Large Business**	**Small Business**	**Large Business**
Declared Shipment							
1	$100 - $300	$375 - $625	$750 - $1,250	$750 - $1,250	$1,500 - $2,500	$1,500 - $2,500	$3,000 - $5,000
2	$300 - $600	$625 - $1,000	$1,250 - $2,000	$1,250 - $2,000	$2,500 - $4,000	$2,500 - $4,000	$5,000 - $8,000
3	$600 - $1,050	$1,000 - $1,750	$2,000 - $3,500	$2,000 - $3,500	$4,000 - $7,000	$4,000 - $7,000	$8,000 - $14,000
4	$1,050 - $1,500	$1,750 - $2,500	$3,500 - $5,000	$3,500 - $5,000	$7,000 - $10,000	$7,000 - $10,000	$14,000 - $20,000
5	$1,500 - $1,800	$2,500 - $4,000	$5,000 - $8,000	$5,000 - $8,000	$10,000 - $16,000	$10,000 - $16,000	$20,000 - $32,000
6	$3,000 - $4,000	$5,000 - $7,500	$10,000 - $15,000	$10,000 - $15,000	$20,000 - $30,000	$20,000 - $30,000	$40,000 - $60,000
Undeclared Shipment							
1	$300 - $550	$500 - $3,000	$1,000 - $6,000	$1,500 - $6,500	$3,000 - $13,000	$3,500 - $10,000	$7,000 - $20,000
2	$550 - $1,100	$3,000 - $6,500	$6,000 - $13,000	$6,500 - $10,000	$13,000 - $20,000	$10,000 - $13,500	$20,000 - $27,000
3	$1,100 - $1,400	$6,500 - $10,000	$13,000 - $20,000	$10,000 - $13,500	$20,000 - $27,000	$13,500 - $18,500	$27,000 - $37,000
4	$1,400 - $1,800	$10,000 - $16,000	$20,000 - $32,000	$16,000 - $22,000	$32,000 - $44,000	$22,000 - $28,000	$44,000 - $56,000

Severity Level	**A. Individual**	**B. Business Entity**		**C. Business Entity that uses, receives, or handles hazmat in the course of business**		**D. Business Entity that regularly offers, accepts, or transports hazmat**	
		Small Business	**Large Business**	**Small Business**	**Large Business**	**Small Business**	**Large Business**
5	$1,800 - $2,200	$20,000 - $25,000	$40,000 - $50,000	$25,000 - $30,000	$50,000 - $60,000	$30,000 - $40,000	$60,000 - $80,000
6	$3,000 - $5,000	$40,000 - $50,000	$80,000 - $100,000	$50,000 - $60,000	$100,000 - $120,000	$60,000 - $70,000	$120,000 - $140,000
Part 175 Violations							
1	N/A	$500 - $1,500	$1,000 - $3,000	$1,000 - $3,250	$2,000 - $6,500	$2,500 - $5,000	$5,000 - $10,000
2	N/A	$1,500 - $2,500	$3,000 - $5,000	$3,250 - $5,000	$6,500 - $10,000	$5,000 - $7,500	$10,000 - $15,000
3	N/A	$2,500 - $5,000	$5,000 - $10,000	$5,000 - $7,500	$10,000 - $15,000	$7,500 - $10,000	$15,000 - $20,000
4	N/A	$5,000 - $7,500	$10,000 - $15,000	$7,500 - $10,000	$15,000 - $20,000	$10,000 - $12,500	$20,000 - $25,000
5	N/A	$7,500 - $10,000	$15,000 - $20,000	$10,000 - $12,500	$20,000 - $25,000	$12,500 - $15,000	$25,000 - $30,000
6	N/A	$15,000 - $20,000	$30,000 - $40,000	$17,500 - $22,250	$35,000 - $45,000	$20,000 - $25,000	$40,000 - $50,000

e. Determine Part 175 Violation Categories (Step 5). There are five categories of part 175 violations: (i) failure to properly notify the FAA of an incident or discrepancy with a hazmat shipment (under part 171 or part 175); (ii) failure to provide proper notice to the pilot-in-command; (iii) improper acceptance or inspection of a hazmat shipment; (iv) improper storing or securing of a hazmat shipment aboard an aircraft; and (v) any other part 175 violation not otherwise referenced in this paragraph (except training and record-keeping violations, which are discussed in paragraph 7.f., below).

f. Training and Record-Keeping Violations (Step 6). The Hazmat Training and Record-Keeping Sanction Ranges Table (Figure 10-5) assigns specific sanction ranges for training and record-keeping violations given the violator category.

Figure 10-5 Hazmat Training and Record-Keeping Sanction Ranges Table.

Business Entity		**Business Entity that uses, receives, or handles hazmat in the course of business**		**Business Entity that regularly offers, accepts, or transports hazmat**	
Small Business	Large Business	Small Business	Large Business	Small Business	Large Business
$1,250 - $5,500	$2,500 - $11,000	$4,500 - $9,500	$9,000 - $19,000	$6,000 - $11,500	$12,000 - $23,000

g. Passengers and Crewmembers. Where the violator is a passenger or crewmember, the violation does not involve intentional or deliberate conduct, and there was no injury or destruction of property, the sanction range is $250 to $2,200 if the violator is an individual, and $5,000 to $25,000 if the violator is other than an individual. This sanction range replaces the total range that otherwise would have been calculated using paragraphs 7.a.-f., above.

h. Intentional or Deliberate Violations. An intentional or deliberate violation is committed when a violator knows that the offer, acceptance, or transportation of hazmat is contrary to the HMR, or is otherwise prohibited. When a violation is intentional or deliberate, a sanction exceeding the ranges in the Hazmat Sanction Ranges Table, Figure 10-4, will usually be appropriate and may involve a sanction up to the statutory maximum of $89,678 (as adjusted) per regulatory violation considering all circumstances surrounding the violation. In setting sanction for such a violation, the ranges in Figure 10-4 provide an instructive starting point considering the severity level of the violation and the violator category. Intentional or deliberate violations may be violations of parts 171, 172, 173 or 175. However, in general, the sanction imposed will not exceed $89,678 (as adjusted) per subpart violated for part 172. (Violations of parts 171, 173, and 175 are generally not limited in this way).

i. Violations Resulting in Death, Severe Injury, or Substantial Destruction of Property. A violation resulting in death, severe injury, or substantial destruction of property occurs when a hazardous material causes death, severe injury, or substantial destruction of property. For such a violation, a sanction exceeding the ranges in the Hazmat Sanction Ranges Table, Figure 10-4, will be appropriate and may involve a sanction up to the statutory maximum of $209,249 (as adjusted) per regulatory violation considering all circumstances surrounding the violation. In setting sanction in a case involving such a violation, the ranges in Figure 10-4 provide an instructive starting point considering the severity level of the violation and the violator category. Violations resulting in death, severe injury, or substantial destruction of property may be violations of parts 171, 172, 173, or 175. However, in general, the sanction imposed will not exceed $209,249 (as adjusted) per subpart violated for part 172. (Violations of parts 171, 173, and 175 are not generally limited in this way.)

8. Aggravating and Mitigating Factors. AGC-300 counsel use the following factors, which variously involve statutory penalty considerations, to determine the appropriate penalty within a given sanction range. Not all factors will apply to all cases. The list below is not exhaustive, and other factors as justice may require may be relevant as well. Such other factors are considered on a case-by-case basis and may be either aggravating or mitigating. Counsel selects a sanction by starting at the middle of the range, with aggravating factors increasing the sanction and

mitigating factors reducing the sanction within the range. Some of these factors are already incorporated to some extent by the sanction tables in this chapter, but may warrant additional consideration. In unusual circumstances, aggravating factors may be so significant as to warrant exceeding the range. A significantly aggravating factor may include considerations not referenced in the hazmat statute, such as where a root cause for violations remains unaddressed by the apparent violator. Similarly, in unusual circumstances, a mitigating factor may be so significant as to warrant going below the range. An apparent violator has the burden of proving the applicability of any given mitigating factor.

a. Aggravating Factors.

(1) *Release*. Release of hazmat into the environment is an aggravating factor.

(2) *Significantly Exceeding Quantity Limitations.* A package that significantly exceeds quantity limitations is an aggravating factor. The more a hazmat quantity exceeds the limitations the more significant this aggravating factor is.

(3) *Forbidden Hazmat.* A package containing hazmat forbidden on the aircraft used is an aggravating factor. This factor does not apply for severity level 6 violations where the hazmat was classified as severity level 6 because it was forbidden on any aircraft and there was a release.

(4) *Multiple Packages*. Sanctions in this chapter typically are based on single shipments of hazmat. Accordingly, when an offeror makes multiple shipments, each shipment typically warrants a separate violation with a separate sanction. Multiple packages, however, may constitute a single shipment for sanction purposes where the packages: (i) are contained in an overpack; (ii) are shipped under a single air waybill; or (iii) are offered by the same offeror to the same consignee on the same day. When multiple packages constitute a single shipment, the multiple packages are an aggravating factor.

(5) *Damage and Economic Interference.* A hazmat shipment that causes damage to property, or interferes with commerce (*e.g.*, the diversion of an aircraft from its intended destination), is a significant aggravating factor and may even warrant exceeding the applicable sanction range. When the shipment causes substantial destruction of property, AGC-300 counsel applies the guidance in paragraph 7.i. The absence of damage is not a mitigating factor.

(6) *Manufacturers.* A manufacturer of a hazardous material is expected to have complete knowledge of the nature of the hazmat it manufactures or uses. Accordingly, an apparent violator's status as a hazmat manufacturer is an aggravating factor.

(7) *Incompatible Hazmat.* Certain types of hazmat create a significant safety hazard when combined. An aggravated sanction is appropriate when incompatible hazmat that create a significant safety hazard are in a single package.

(8) *Violation History.* A history of hazmat violations is an aggravating factor and a significant violation history, such as multiple prior violations or a prior violation involving intentional or deliberate conduct, is a significant aggravating factor that may warrant a penalty

above the identified sanction range. In deciding whether a violation history justifies aggravating the sanction or changing the usual type of sanction, AGC-300 counsel considers such factors as the number of prior violations, the length of time that has elapsed between violations, whether the violations involved the same or similar regulations, and whether the violations are factually similar. Ordinarily, findings of violation of more than five years old should not be considered unless a continuing pattern of violation exists. A prior violation constitutes a violation history where there is a finding of violation from a prior legal enforcement action (whether from an order assessing civil penalty or a settlement agreement). Investigative personnel should attempt to determine the corporate structure of the violator and whether other business entities or names are, or have been, used by the entity to obtain a complete violation history. A violation-free history is the expected norm, not the exception, and a lack of a violation history is not a mitigating factor.

(9) *Compliance Disposition of Violator.* An apparent violator may demonstrate a poor compliance disposition through acts or omissions prior to or following the violation that constitute an aggravating factor. Acts demonstrating a poor compliance disposition may include a history of noncompliance that has not resulted in a violation history. For example, where the violator has previously been notified through informal, compliance, or administrative action that similar conduct as that at issue is in violation of the regulations, such circumstances may evidence a poor compliance disposition. Further, knowingly providing false or misleading information to FAA investigators evidences a poor compliance disposition. In evaluating compliance disposition, the FAA does not view a violator as having a poor attitude because the violator does not respond to a letter of investigation, chooses to be represented by counsel, or contests the violation. Generally, a positive compliance attitude is the norm and is not a mitigating factor.

(10) *Systemic Violations*. Systemic violations warrant an aggravated sanction amount. Systemic violations involve repeated noncompliance with the same or similar regulations and typically result from an underlying deficiency in a violator's system, practices, or procedures. Systemic violations indicate a need for corrective action. That violations are isolated, *i.e.*, not systemic, is not mitigating.

b. Mitigating Factors.

(1) *Reasonable Reliance.* A violator's reasonable reliance on incorrect information from another source, or on a prior shipper's preparation of a shipment (where the violator received the hazmat in the same packaging from the prior shipper), may be a mitigating factor. This mitigating factor is distinct from the affirmative defense of reasonable reliance, as referenced in 49 C.F.R. § 171.2(b) and (f).

(2) *Degree Shipment Has Been Declared*. For hazmat violations involving declared shipments, that the shipment had some – albeit incomplete – communication giving notice of the shipment of hazmat may be a mitigating factor. The amount of mitigation depends on the extent to which notice of the hazmat was communicated.

(3) *Partial or Expired Training*. For training violations, that the employee involved had some training (*e.g.,* partial training or prior training that has since expired) may be a mitigating factor. The amount of mitigation depends on the extent to which training was provided.

(4) *Corrective Action*. Corrective action is a mitigating factor when the corrective action exceeds minimum legal requirements, corrects the underlying violation, and is designed to prevent future violations. The significance of corrective action as a mitigating factor is determined by the timeliness of the action (*e.g.*, before FAA discovery, after discovery but before legal action is initiated, or after legal action is taken) and how extensive it is. Prompt corrective action ordinarily warrants greater mitigation than delayed corrective action. Systemic change intended to prevent future violations should be given greater mitigation consideration. Corrective action that simply places the violator in compliance with the regulations is not a mitigating factor. AGC-300 counsel states in the notice of proposed civil penalty that a recommended civil penalty has been reduced due to corrective action measures so that the violator is on notice that credit has been given for the measures.

(5) *Voluntary Reporting of Violations.* Mitigation of sanction may be appropriate when a violator voluntarily reports a violation committed by that violator before the FAA discovers the violation, and the violator works with the FAA to correct the noncompliance and prevent its recurrence. This mitigating factor also applies when the violator discloses the violations of others to the FAA and in so doing discloses the violator's own violations. This factor does not apply when the violator is covered by a distinct FAA voluntary disclosure program.

c. Severity Level 6 Violations. In applying aggravating factors to severity level 6 violations, AGC-300 counsel does not aggravate within a sanction range when the aggravating factor was already fully considered in classifying the shipment as severity level 6. For example, when a shipment is classified as severity level 6 because it was forbidden on any aircraft and there was a release, release and forbidden hazmat are not aggravating factors.

9. Ability to Pay.

a. General. For entities and individuals, the FAA assesses the statutory penalty consideration of ability to pay a civil penalty or the effect a civil penalty will have on a person's ability to continue in business to the extent the FAA knows such information. While the FAA does not allow financial circumstances to excuse any violation, it considers a violator's financial strength in choosing the appropriate sanction amount. This is, to some extent, taken into account by Figures 10-4 and 10-5. Proof of inability to pay does not justify refraining from taking legal enforcement action, making a finding of violation, or imposing a civil penalty. It can justify reducing a civil penalty, even to the extent that the reduction is below the ranges in Figures 10-4 and 10-5. In appropriate circumstances, the FAA may decide to not reduce a civil penalty even if the penalty will have a significant impact on a person's ability to continue in business.

b. Affirmative Defense. Inability to pay is an affirmative defense. A violator must provide financial information to support a lower civil penalty, whether during informal procedures or at hearing.

c. Small Business Concerns. As identified in Figure 10-4 and 10-5, AGC-300 counsel considers the status of a violator as a small business concern in determining sanction. The FAA will usually further reduce a penalty only if the small business entity provides evidence to demonstrate its inability to pay or that the proposed penalty would prevent the entity from continuing in business. For purposes of sanction calculations under this chapter, a human being not classified as an individual uses the small business sanction ranges.

Chapter 11. Enforcement Information System and Portal for International Pilot Deviations

1. Purpose. This chapter provides general information concerning the FAA's Enforcement Information System (EIS) and Portal for International Pilot Deviations (PIPD).

2. EIS Overview.

a. General. EIS is the FAA's primary database for recording and tracking information about FAA administrative and legal enforcement actions.

b. EIS Capabilities. The EIS application is a web-based system. EIS allows for data input and retrieval at investigating (*e.g.*, field) office, reviewing (*e.g.*, regional) office, and headquarters levels. Users may perform data entry and data retrieval, and print FAA Form 2150-5, code tables, ad hoc reports, and standard reports. EIS is available through the FAA Intranet and supports users throughout the FAA.

c. Security. All EIS users are required to have an active directory identification (ID). The Flight Standards Service (FS) Aviation Data Systems Branch confirms all EIS use by the user's active directory ID, security level, and office code.

d. Annual EIS Database Review and Reconciliation. Each FAA program office and legal office annually reviews its EIS records and reconciles those records with the corresponding enforcement investigative reports (EIRs). FAA personnel make corrections and updates to EIS, including closing EIS records or changing the record owner for cases, to ensure EIS records accurately reflect the status of a case.

e. Assistance for Statistical Analysis. The EIS database is replicated on the FS Regulatory Support Division server for data retrieval and statistical analysis. The Regulatory Support Division helps with requests for statistical analysis and comparison of data.

3. EIS Operations.

a. System Design. All EIS processes, programs, and functions are selected using tabs or buttons that display and describe the available options. EIS includes various functions to simplify and quicken the data entry process, check for data entry errors, provide help to users while online, and assist in producing management reports.

b. Code Tables. Many EIS record fields rely on tables of codes. Users select a coded value (*e.g.*, the standard abbreviation for an airport name) and the name or description of that data item is generated for the record. EIS will reject the entry of incorrect codes.

c. Error Checking. EIS uses various editing methods, such as tables, range checks, omission detection, and date validation, to prevent the entry of incorrect data into the database. These functions assist in editing and validating data to ensure the data entered conforms to the expected values and formats. EIS does not allow the entry of certain definite errors, *e.g.*, fatal

errors. If a user enters data that results in an error, they correct the data before continuing. EIS highlights other types of likely errors, *e.g.*, warning errors, that allow the user to determine whether the data entered is correct before continuing.

d. Online Help. Each EIS field includes a "Help" function that allows the user to receive instructions, error message descriptions, and general information online. Users can get help by hovering over a "?" in the field where they need assistance. When a table is used for editing an EIS field, the user can select the dropdown arrow to get the codes listing. The help function also permits the use of partial code values to review the selection of codes containing those values. EIS users can access help with nearly all EIS functions. There is also an online tutorial available to all users available on the EIS homepage.

e. Standard Reports. Several standard reports are available on EIS. Most of these reports let the user specify certain parameters, such as the period for which data should be reported, and sort results by either investigating, reviewing, or headquarters offices. EIS standard reports include:

(1) Code Table Listing (all tables used in the EIS data entry process);

(2) Cases Referred to AGC-300 Counsel;

(3) Uninitiated Aged Cases (open legal enforcement actions in which no legal enforcement action has been taken);

(4) Legal Activity Logs;

(5) Workload Statistics Report;

(6) Legal Events Report;

(7) Legal with No Activity; and

(8) Fiscal Year Closed Cases.

f. Ad Hoc Reports. EIS can produce ad hoc reports that are tailored to the specific needs of the user. EIS has an interactive function – the "Logi Reporting Tool" – that lets the user specify the conditions under which a report will be generated, the specific data elements that will be printed, and additional header lines. The system establishes a specification file or library for each ad hoc report so the same report can be regenerated.

4. EIS Record.

a. General. When beginning the administrative or legal enforcement action investigative process, investigating office personnel initiate an EIS record (and, thereby, receive an EIR number for the corresponding EIR). (*See* chapter 6 for EIR information.) They initiate an EIS record by accessing the EIS homepage and following the procedures necessary to receive a

machine-assigned EIR number. In the uncommon event reviewing or headquarters office personnel begin and conduct an investigation, they initiate an EIS record. Personnel from the Office of the Chief Counsel, AGC-300, initiate an EIS record for failure to surrender legal enforcement actions.

(1) EIS Applicability. EIS is used for administrative or legal enforcement actions. It is not used for compliance or informal actions, or cases handled under the Hazardous Materials Passenger Discrepancy Reports policy. Rather, FAA personnel make appropriate entries in the applicable program office-specific database for such actions.

(2) EIS Initiation Timeframe. In cases in which FAA personnel determine that administrative or legal enforcement action is appropriate, they initiate an EIS record within 72 hours from the date the violation becomes known to the FAA, or as soon as practicable thereafter, or within 72 hours after FAA personnel select administrative or legal enforcement action following the failure to effectuate a compliance action, *e.g.*, failure to complete corrective action to the FAA's satisfaction. Office of National Security Programs and Incident Response personnel initiate an EIS record for DUI/DWI and prison match cases within 72 hours after receiving documentation supporting an apparent violation.[1]

b. EIR Number. An EIR number is a machine-assigned twelve-character identifier that contains a year, regional identifier, investigating/field office identifier, and investigation identifier, *e.g.*, "2018NM070047." Once issued, an EIR number remains associated with a case and does not change. A breakdown of EIR numbers is provided in paragraph 4.b.(1)-(4), below.

(1) Year. FAA personnel use the four-digit fiscal year the EIS record is initiated (and corresponding EIR is opened) for this segment of the EIR number (rather than the date of the alleged violation or date the violation becomes known to the FAA).

(2) Regional Identifier. The two-letter identifier for the region in which the EIS record is initiated (and corresponding EIR is opened) follows the year. The regional identifiers are as follows:

(i) AC: Mike Monroney Aeronautical Center;
(ii) AGC: Office of the Chief Counsel;
(iii) AL: Alaska Region;
(iv) CE: Central Region;
(v) EA: Eastern Region;
(vi) FS: Flight Standards;
(vii) GL: Great Lakes Region;
(viii) NE: New England Region;
(ix) NM: Northwest Mountain Region;

[1] The administrative requirement for initiating an EIS record differs from the discovery date for the purpose of a stale complaint analysis under 49 C.F.R. § 821.33 in DUI/DWI and prison match cases. The discovery date for a stale complaint analysis is the date the FAA receives information regarding motor vehicle actions or serious driving-related convictions from the NDR, or convictions from departments of correction, that potentially involve individuals listed in the airman registry.

(x) SO: Southern Region;
(xi) SW: Southwest Region;
(xii) WA: Washington Headquarters OFC; and
(xiii) WP: Western-Pacific Region.

All administrative and legal enforcement actions initiated in EIS by the Office of Hazardous Materials Safety (AXH) are assigned a "WA" identifier regardless of geographic location.

(3) Investigating/Field Office Identifier. The two-digit permanent identifier assigned by the region to its investigating/field offices follows the regional identifier. Program office identifiers conform to the following range of numbers:

Identifier	Type of Program Office
00 – 39	Flight Standards;
40 – 59	Aircraft Certification;
60 – 69	Flight Standards;
70 – 79	Hazardous Materials and Other Security Cases;
80 – 89	Airport Regional Office;
90 – 98	Aerospace Medicine; and
99	Commercial Space.

The identifiers "00", "40", and "80" are used to identify EIRs for which the investigation and reporting were initiated and conducted by a headquarters or reviewing office. The identifier "70" is used for EIRs opened by Security and Hazardous Materials Safety. The identifier "90" is used for EIRs opened by Regional Flight Surgeons, the Aerospace Certification Branch, or the Federal Air Surgeon.

(4) Investigation Identifier. The four-digit sequential number provides the basis to identify the specific investigation and follows the investigating/field office identifier.

c. EIS Data Entry. FAA personnel use EIS to enter information concerning administrative and legal enforcement actions. EIS data may be entered at the investigating office, reviewing office, or headquarters level as necessary to record a reportable event for administrative or legal enforcement actions. Data entries to an existing EIS record are generally made within 48 hours of the occurrence of a reportable event. EIS entries must be precise.

(1) Initiating EIS Records. To initiate an EIS record, FAA personnel open the EIS homepage on the FAA website and select the "New" tab. An EIR number is assigned based on the user name and office. The user, at minimum, must enter the investigation start date, the date the violation occurred, and the company or individual identifier name on Form 2150-5. The user must also complete the field "business concern" on the violator information screen. FAA personnel use the following codes to complete the "business concern" field: 1=small business concern; 2=large business concern; 3=individual; or 4=other concern. After the EIR number is assigned, the investigating office makes EIS data entries for Form 2150-5 Blocks 1 through 28. The reviewing office makes EIS entries for Blocks 29 through 33. *See* chapter 6, paragraph 3.a.,

for details on completing these blocks. Form 2150-5 serves as Section A of the EIR. Codes used for the completion of Form 2150-5 Blocks 6 and 19-26 are in chapter 6, paragraph 11

(2) Recording Ownership. The office that initiates an EIS record for a case retains ownership and data-entry responsibilities for the EIS record and corresponding EIR unless and until it transfers the case to another office. The transferring office is responsible for changing EIS ownership to the office receiving the case.

(3) Quality control. The FAA office required to enter the data for a particular case has primary responsibility for EIS data quality control for that case.

(4) No Action Cases. Occasionally, a program office may recommend that a matter opened in EIS as an administrative or legal enforcement action be handled as no action or another type of action (*e.g.*, compliance action). In such a circumstance, the appropriate office makes an EIS entry reflecting this determination and closes the EIS record for the matter.

d. Failure to Surrender Action. In cases where a person does not surrender a suspended or revoked certificate within 15 days from the date the emergency order is issued, or within 30 days from the date a nonemergency order becomes final (*i.e.*, the opportunity for appeal ceases), AGC-300 counsel takes the actions set forth in chapter 8, paragraph 33.a. (For the purpose of this paragraph, "certificate" includes certificate, rating, authorization, or approval.) Such actions normally involve the initiation of a civil penalty action for the failure to surrender. The AGC-300 team handling the underlying legal action will also normally handle the failure to surrender action. The Office of the Chief Counsel, Legal & Litigation Support (AGC-10) opens an EIR for the case. The following information is entered into the EIS record for a failure to surrender action: (1) the case number for the underlying certificate action; (2) the regulation or authority cited for the failure to surrender action; (3) the penalty amount proposed for the failure to surrender action; and (4) the name of the FAA counsel assigned to the failure to surrender action.

e. Pending Status. "Pending Status" is an EIS data entry option that is used only by legal office personnel. Legal office personnel place in pending status:

(1) Indefinite suspension certificate actions when the certificate holder has not complied with the underlying request (except as discussed in paragraph 4.f.(ii) (second bullet), below);

(2) Fixed-period suspension certificate actions when the violator:

(i) Has surrendered the certificate as required by the order and the suspension period has not expired;

(ii) Has not surrendered the certificate as required by an order and has not timely appealed from the order;

(3) Revocation action cases when the violator has not surrendered the certificate as

required by an order and has not timely appealed from the order;

(4) Civil penalty actions:

(i) Subject to a payment plan during the effective period of the payment plan;

(ii) Not subject to a payment plan when the violator has not paid the civil penalty in accordance with the order; and

(5) Cases in which a violator has filed a petition for bankruptcy if no further activity is planned. This circumstance usually arises when the FAA initiates a civil penalty action regarding a case that is the subject of a proof of claim to prevent the case from going stale.

f. Closing an EIS Record.

(1) Administrative and legal enforcement actions are closed in EIS by making an entry of the final disposition of the case in EIS and closing the EIS record.

(2) Program office personnel close cases that had been opened in EIS but have been terminated with no action, compliance action, or administrative action. This includes cases that a program office referred to a legal office for legal enforcement action that the legal office returns to the program office for an action other than legal enforcement action.

(3) Legal office personnel close legal enforcement actions in EIS when future reportable events are unlikely to occur. For civil penalty and certificate actions, legal office personnel follow the guidance in paragraph 4.f.(3)(i)-(ii), below.

(i) Civil penalty actions are closed when:

- Requirements set forth in FAA enforcement orders have been completed, *e.g.*, the civil penalty has been paid;

- The legal office transfers control for the collection of debts arising from FAA enforcement actions to non-FAA entities, *e.g.*, Department of Treasury, and such entities complete debt collection; or

- All options for collecting debts have been exhausted and authorized FAA officials have determined the debt is uncollectible.

(ii) Certificate actions are closed when:

- Requirements set forth in FAA enforcement orders have been completed, *e.g.*, certificate suspension period completed;

- All medical certificates under suspension for failure to provide medical information expire;

- The appropriate U.S. attorney's office declines to take action or exhausts efforts to obtain the certificate; or

- All efforts to obtain a viable address for the respondent have been exhausted after all forms of mail have been returned as undeliverable.

(4) If a case is closed under either circumstance set forth in paragraph 4.f.(3)(i), bullets 2 and 3, and paragraph 4.f.(3)(ii), bullets 1-3, AGC-300 counsel ensures that an electronic copy of the file is preserved in an AGC-300-specific database (*e.g.*, matter tracking) and marks records related to the case for permanent retention in the event counsel receives information sufficient to reopen the case.

(5) FAA legal office personnel may close cases in EIS when AGC-300 counsel determines that legal enforcement action is not viable, *e.g.*, insufficient evidence. In such a circumstance, counsel provides a memorandum to the file providing the basis for the closing of the case and returns the case file to the program office. FAA legal offices do not close cases in EIS that counsel has downgraded from legal enforcement action to compliance, administrative, or informal action (*see* chapter 6, paragraph 7.f. for discussion on downgraded EIRs).

5. EIS System Support.

a. EIS Program Manager. The EIS Program Manager is in the Flight Standards Service Aviation Data Systems Branch. The EIS Program Manager is responsible for day-to-day management of the EIS, including establishing procedures, responding to special user requirements, and supervising routine system maintenance.

b. Office of Aviation Safety (AVS) Support Central. The AVS Support Central hotline is available to help users who cannot find assistance for EIS-problems through the EIS on-line help capabilities or the tutorial. If the user suspects a hardware or telecommunications problem, the hotline directs the user to the responsible organization. The IT hotline may be reached at helpdesk@faa.gov or 1-844-FAA-MYIT (322-6948).

c. User Comments. The Flight Standards Service is always interested in hearing suggestions and recommendations from users on how to improve the performance or usefulness of the system. Users direct their comments to:

EIS Program Manager
Aviation Data Systems Branch
P.O. Box 25082
Oklahoma City, OK 73125

6. PIPD.

a. Overview. PIPD is the FAA's platform for electronically sharing and exchanging information about pilot deviations with PIPD-participating foreign aviation authorities. PIPD

facilitates compliance with Article 12 to the Convention on International Civil Aviation (also known as the Chicago Convention). Article 12 generally requires any contracting State to: (1) adopt measures to ensure that every civil aircraft operating within its territory and every civil aircraft carrying its nationality marking "comply with the rules and regulations relating to the flight and maneuver . . . there in force"; and (2) ensure "the prosecution of all persons violating the regulations applicable."

b. Foreign Referrals. The FAA uses PIPD to refer apparent violations of U.S. statutes or regulations involving the exercise of a foreign certificate or license (or other approval or authorization) to the appropriate PIPD-participating foreign aviation authority or to the Department of State for referral to foreign aviation authorities that do not participate in PIPD. Such referrals may involve either non-EIR foreign referrals (transmitted by Flight Standards) or EIR foreign referrals (transmitted by AGC-300), as discussed in chap. 6, paragraph 8.b.

c. Cases Referred to the FAA. PIPD accommodates referrals to the FAA by PIPD-participating foreign aviation authorities of apparent violations of foreign regulations involving U.S.-registered aircraft.

d. Technical Features.

(1) PIPD is hosted on an FAA SharePoint platform, which is password protected and requires acceptance of standards of behavior on login.

(2) PIPD-participating foreign aviation authorities only have access via PIPD to information they share with the FAA and the FAA shares with them.

(3) PIPD accommodates large files (*e.g.*, air traffic playback files) that are easy to download.

(4) Personally Identifiable Information (PII) contained in a PIPD transmission must be appropriately protected. The FAA encrypts PII transmitted via PIPD using Adobe Acrobat passphrase-based encryption, which complies with the Federal Information Processing System (FIPS) 140-2 Standard and FAA Order 1370.121, as amended, *FAA Information Security and Privacy: Policy*.

e. Management and Support. Basic PIPD administrative support (*e.g.*, password resets, minor updates to page content) is provided by AGC-300. AGC-300 coordinates design changes to the PIPD platform with the Flight Standards PIPD Program Manager.

(1) To add foreign aviation authorities to the PIPD platform, AGC-300 coordinates with the Office of the Chief Counsel's International and Security Law Division (AGC-700), the Office of International Affairs (API), and Flight Standards.

(2) In accordance with applicable record retention policy, AGC-300 removes cases older than three years from the PIDP platform.

Appendix A. Acronym List and Definitions

The following acronyms, initialisms, abbreviations, and definitions are applicable to this order unless otherwise indicated:

"AAM" means Office of Aerospace Medicine.

"AC" means advisory circular.

"AFX" means Flight Standards Service.

"AIR" means Aircraft Certification Service.

"ALJ" means administrative law judge.

"AMCD" means the Aerospace Medical Certification Division.

"ARP" means Airports.

"ASAP" means Aviation Safety Action Program.

"ASH" means Security and Hazardous Materials Safety.

"ASRP" means Aviation Safety Reporting Program.

"AST" means Commercial Space Transportation.

"ATC" means air traffic control.

"ATO" means Air Traffic Organization.

"ATQA" means Air Traffic Quality Assurance.

"AVS" means the Office of Aviation Safety.

"C&E" means Compliance and Enforcement.

"CMO" means Certificate Management Office.

"DOD" means Department of Defense.

"DOJ" means Department of Justice.

"DOL" means Department of Labor.

“DOT” means Department of Transportation.

“DUI” means driving under the influence.

“DWI” means driving while intoxicated.

“*e.g.*,” means “for example.”

“EIR” means enforcement investigative report.

“EIS” means Enforcement Information System.

“Enforcement Action” means administrative action and legal enforcement action.

“FAA Decisionmaker” means the Administrator for all civil penalty assessment cases, except for commercial space civil penalty actions, in which case it means the Associate Administrator for Commercial Space Transportation.

“FOIA” means Freedom of Information Act.

“FOUO” means For Official Use Only.

“FS” means Flight Standards.

“FSDO” means Flight Standards District Office.

“FTCA” means Federal Tort Claims Act.

“Hazmat” means hazardous materials.

“Headquarters AGC-300” means the Assistant Chief Counsel, Deputy Assistant Chief Counsel(s), Policy Manager, and Appellate Manager.

“HMR” means Hazardous Materials Regulations.

“HMTA” means Hazardous Materials Transportation Act.

“IA” means inspection authorization.

“ICAO” means International Civil Aviation Organization.

“*i.e.*,” means “that is.”

“IFR” means instrument flight rules.

“IOP” means item of proof.

“LAANC” means low altitude authorization and notification capability.

“LEAP” means Law Enforcement Assistance Program.

“LOI” means letter of investigation.

“MRO” means medical review officer.

“NASA” means National Aeronautics and Space Administration.

“NAS” means National Airspace System.

“NTSB” means National Transportation Safety Board.

“ODA” means organization designation authorization.

“OIG” means Office of Inspector General.

“OST” means Office of the Secretary of Transportation.

“PIC” means pilot-in-command.

“PBR” means Pilot’s Bill of Rights, Public Law 112-153.

“Person” means an individual or entity, firm, partnership, corporation, company, association, joint stock association, or governmental entity. It includes a trustee, receiver, assignee, or similar representative of any of them.

“PIPD” means Portal for International Pilot Deviations.

“PMA” means parts manufacturer approval.

“PRD” means Pilot Record Database.

“PRIA” means Pilot Records Improvement Act.

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

“QCM” means quality control manual.

“Regions” means all regions and the Aeronautical Center.

“RSM” means repair station manual.

“SAP” means substance abuse professional.

“SAFETEA-LU” means the Safe, Accountable, Flexible, Efficient Transportation Equity Act.

“SIC” means second-in-command.

“SMS” means Safety Management System.

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

“SPAS” means Safety Performance Analysis System.

“TC” means type certificate.

“STC” means supplemental type certificate.

“sUAS” means small unmanned aircraft system.

“TSA” means Transportation Security Administration.

“TSOA” means technical standard order authorization.

“UAS” means unmanned aircraft system.

“VFR” means visual flight rules.

COMPLIANCE AND ENFORCEMENT BULLETIN NO. 2018-1A

SUBJECT: Actions for the operation of an Unmanned Aircraft System (UAS) when the operation interferes with a wildfire suppression, law enforcement, or emergency response effort.

DISCUSSION: The Federal Aviation Administration's (FAA) safety mandate under 49 U.S.C. § 40103 requires the agency to regulate aircraft operations in the National Airspace System (NAS), including those involving UAS, to prevent aircraft collisions and protect persons and property on the ground. UAS operations that interfere with wildfire suppression, law enforcement, or emergency response efforts create an unacceptable level of risk to aircraft and persons conducting such operations.

On July 14, 2016, Congress promulgated the FAA Extension, Safety, and Security Act of 2016. Section 2205 of the Act amended the United States Code to add 49 U.S.C. § 46320 – Interference with wildfire suppression, law enforcement, or emergency response effort by operation of unmanned aircraft. This statute authorizes the FAA to impose a civil penalty of not more than $20,000 against an individual who operates a UAS and in so doing knowingly or recklessly interferes with a wildfire suppression, law enforcement, or emergency response effort.

UAS operations that interfere with wildfire suppression, law enforcement, or emergency response efforts endanger the safety of the NAS.

ACTION: Until further notice, the following compliance and enforcement procedures are in effect for actions against persons who operate UAS that interfere with wildfire suppression, law enforcement, or emergency response efforts.

1. When a person operates a UAS and in so doing interferes with a wildfire suppression, law enforcement, or emergency response effort, FAA investigative personnel send the case to the Office of the Chief Counsel, Enforcement Division (AGC-300), for legal enforcement action.

2. When a person operates a UAS and in so doing interferes with a wildfire suppression, law enforcement, or emergency response effort, the FAA generally will proceed with legal enforcement action for violations of applicable Federal Aviation Regulations regardless of the culpability of the operator.

3. When FAA investigative personnel believe there may be a violation of any federal criminal statute, they coordinate the matter with their supervisor, the affected program office, Office of Security and Hazardous Materials Safety (ASH), and AGC-300. After coordination, if it is agreed that criminal conduct has possibly occurred, ASH will refer the matter to the U.S. Department of Transportation, Office of Inspector General.

COMPLIANCE AND ENFORCEMENT BULLETIN NO. 2021-1

SUBJECT: Sanctions for passengers who assault, threaten, intimidate, or interfere with a crewmember in the performance of a crewmember's duties in violation 14 C.F.R. §§ 91.11, 121.580, 125.328, or 135.120 or who engage in conduct proscribed under 49 U.S.C. § 46318.

DISCUSSION: The Federal Aviation Administration (FAA) has authority to sanction conduct by passengers aboard U.S.-registered aircraft in violation of 14 C.F.R. §§ 91.11, 121.580, 125.328, or 135.120, or who engage in conduct proscribed under 49 U.S.C. § 46318. The FAA has recently observed a proliferation of such conduct, including conduct stemming from the failure to wear masks in response to the COVID-19 pandemic-related health measures in place on board aircraft or conduct following the January 6, 2021 violence at the U.S. Capitol.[1] This bulletin announces an FAA special emphasis enforcement program to more effectively address and deter such conduct by passengers.

This special emphasis enforcement program provides that civil penalty action will be initiated against passengers who assault, threaten, intimidate, or interfere with a crewmember in the performance of a crewmember's duties in violation of FAA regulations or who engage in conduct proscribed under 49 U.S.C. § 46318 regardless of culpability. The civil penalties will be assessed in accordance with chapter 9 of this order. This special emphasis enforcement program does not restrict the use of other types of actions available to the FAA, such as orders of compliance or cease and desist orders, nor does it limit the possibility of criminal sanctions, such as for violations of 49 U.S.C. § 46504.

ACTION: Effective immediately and through March 30, 2021, the following compliance and enforcement procedures are in effect for conduct resulting in violations of 14 C.F.R. §§ 91.11, 121.580, 125.328, and 135.120, or conduct proscribed under 49 U.S.C. § 46318:

1. When a passenger commits any such regulatory violation,[2] or when a passenger's conduct is proscribed under 49 U.S.C. § 46318, FAA investigative personnel will send the case to the Office of the Chief Counsel's Enforcement Division (AGC-300) for legal enforcement action. Compliance actions and administrative actions will not be used to address such conduct.

2. The FAA will address any such conduct through legal enforcement action. The FAA will assess a civil penalty for any such conduct consistent with the guidance provided in chapter 9 of this order.

[1] While a passenger's failure to wear a mask aboard an aircraft is not itself a violation of federal law, conduct related to such a failure that results in a violation of 14 C.F.R. §§ 91.11, 121.580, 125.328, and 135.120, or is proscribed under 49 U.S.C. § 46318, will be subject to civil penalty in accordance with this bulletin.

[2] The cited regulations also apply to interference with crewmembers committed by persons not on board the aircraft (for example, by directing a laser toward the aircraft). Such violations are not covered by this special emphasis enforcement program.

COMPLIANCE AND ENFORCEMENT BULLETIN NO. 2021-3

SUBJECT: Extension of compliance and enforcement program involving sanctions for passengers who assault, threaten, intimidate, or interfere with a crewmember in the performance of a crewmember's duties in violation 14 C.F.R. §§ 91.11, 121.580, 125.328, or 135.120, or who engage in conduct proscribed under 49 U.S.C. § 46318.

DISCUSSION: On January 13, 2021, the FAA issued Compliance and Enforcement (C&E) Bulletin 2021-1, which announced a special emphasis enforcement program to address the proliferation of conduct by passengers onboard U.S.-registered aircraft in violation of 14 C.F.R. §§ 91.11, 121.580, 125.328, or 135.120, or proscribed under 49 U.S.C. § 46318.[1] The FAA observed that such conduct included that stemming from the failure to wear masks in response to the COVID-19 pandemic-related health measures in place onboard aircraft or conduct following the January 6, 2021 violence at the U.S. Capitol.

On January 29, 2021, the Centers for Disease Control and Prevention (CDC) issued an order that included a requirement that individuals wear a mask when traveling on conveyances, including aircraft, to prevent the spread of the virus that causes COVID-19. The CDC made the order enforceable by the Transportation Security Administration (TSA). On January 31, 2021, the TSA issued Security Directive (SD) 1544-21-02 and Emergency Amendment (EA) 1546-21-01. SD 1544-21-02 includes a requirement for individuals to wear masks while onboard a commercial aircraft operated by a U.S. aircraft operator. EA 1546-21-01 imposes the same requirement for all individuals onboard a commercial aircraft operated by a foreign air carrier.

Since the issuance of C&E Bulletin 2021-1, the CDC order, and TSA SD-1544-21-02 and EA-1546-21-01, the FAA has continued to receive a large number of reports of passenger misconduct in violation of FAA regulations or proscribed under 49 U.S.C. § 46318. Accordingly, this bulletin extends the special emphasis enforcement program announced in C&E Bulletin 2021-1. This extension will remain in effect at least until TSA SD 1544-21-02 and EA 1546-21-01, or any extension of the passenger mask requirement in TSA SD 1544-21-02 and EA 1546-21-01, expire.

This special emphasis enforcement program provides that civil penalty action will be initiated against passengers who assault, threaten, intimidate, or interfere with a crewmember in the performance of a crewmember's duties in violation of FAA regulations or who engage in conduct proscribed under 49 U.S.C. § 46318 regardless of culpability. The civil penalties will be assessed in accordance with chapter 9 of this order. This special emphasis enforcement program does not restrict the use of other types of legal enforcement actions available to the FAA, such as

[1] While a passenger's failure to wear a mask onboard an aircraft is not itself a violation of FAA regulations or proscribed under 49 U.S.C. § 46318, conduct related to such a failure that results in a violation of FAA regulations or is proscribed under 49 U.S.C. § 46318 will be subject to civil penalty in accordance with this bulletin.

orders of compliance or cease and desist orders, nor does it limit the possibility of criminal sanctions, such as for violations of 49 U.S.C. § 46504.

ACTION: Effective immediately, and at least as long as TSA SD 1544-21-02 and EA-1546-21-01 remain in effect or any extension of the passenger mask requirement in TSA SD 1544-21-02 and EA 1546-21-01 remains in effect, the following compliance and enforcement procedures are in effect for cases involving conduct in violation of 14 C.F.R. §§ 91.11, 121.580, 125.328, and 135.120, or conduct proscribed under 49 U.S.C. § 46318:[2]

1. When a passenger commits any such regulatory violation,[3] or when a passenger's conduct is proscribed under 49 U.S.C. § 46318, FAA investigative personnel will send the case to the Office of the Chief Counsel's Enforcement Division (AGC-300) for legal enforcement action. Compliance actions and administrative actions will not be used to address such conduct.

2. The FAA will address any such conduct through legal enforcement action. The FAA will assess a civil penalty for any such conduct consistent with the guidance provided in chapter 9 of this order.

[2] This special emphasis enforcement program applies to cases involving violation conduct that occurred before the effectiveness of TSA SD 1544-21-02 and EA 1546-21-01, and at least while SD 1544-21-02 and EA 1546-21-01, or any extension of the passenger mask requirement in TSA SD 1544-21-02 and EA 1546-21-01, remain in effect.

[3] The cited regulations also apply to interference with crewmembers committed by persons not onboard the aircraft (for example, by directing a laser toward the aircraft). Such violations are not covered by this special emphasis enforcement program.

COMPLIANCE AND ENFORCEMENT BULLETIN NO. 2022-1

SUBJECT: Notice to individuals with a foreign address and no U.S. mailing address of the opportunity to designate an agent for service with a U.S. mailing address ("U.S. agent for service") in response to a letter of investigation (LOI) or subsequent correspondence from AGC-300 counsel.

DISCUSSION: Service of FAA legal enforcement action notices and orders abroad can trigger international service of process requirements that often significantly delay service of such documents. The two international service conventions applicable to service of process are the Hague Service Convention, 20 U.S.T. 361 (signed Nov. 15, 1965), and the Additional Protocol to the Inter-American Convention on Letters Rogatory (ICA), S. Treaty Doc. No. 98-27, 58 Fed. Reg. 31,132 (1988). A significant majority of countries that are a party to these Conventions require service of process through a designated central authority, which is cumbersome, slow, and costly compared to service accomplished directly through registered mail. Additionally, most countries in the world are not parties to the Hague Service Convention or the ICA. Service of process to individuals in these countries must be made by letters rogatory sent through diplomatic channels or by other means that comport with the receiving country's laws and U.S. law regulating extraterritorial service of process. Letters rogatory are sent through diplomatic channels and service can take eighteen months or more.

This bulletin announces the opportunity for individuals with a foreign address and no U.S. mailing address to promptly receive service of FAA notices, orders, and mailed correspondence in legal enforcement actions. To promote this prompt service, FAA LOIs to such individuals will include the option to designate a U.S. agent for service who can receive notices, orders, and mailed correspondence in legal enforcement actions on an individual's behalf. In the event such individuals do not designate a U.S. agent for service in response to the LOI, AGC-300 counsel will offer this opportunity in subsequent correspondence for the matter. The FAA expects that the designation of a U.S. agent for service will reduce delays that may compromise aviation safety and afford individuals subject to legal enforcement action timely due process. This bulletin does not affect existing requirements for designating an agent for service within the United States.

ACTION: The following procedures are in effect immediately and until further notice:

1. Each LOI sent to individuals with a foreign address and no U.S. mailing address will advise such individuals that service of FAA legal enforcement action notices and orders may be significantly delayed due to international service requirements. The LOI will state that for expedited receipt of all FAA notices, orders, and mailed correspondence in a legal enforcement action, such individuals may designate a U.S. agent for service in writing and provide the agent's name, U.S. mailing address, and email.

2. In the event that individuals with a foreign address and no U.S. mailing address do not designate a U.S. agent for service in response to the LOI, AGC-300 counsel will offer such individuals the opportunity to designate a U.S. agent for service in subsequent correspondence for the matter.

COMPLIANCE AND ENFORCEMENT BULLETIN NO. 2023-1

SUBJECT: Processing of matters arising from the Department of Transportation's Office of the Inspector General (DOT OIG) investigation of applicants for airman medical certification who allegedly made fraudulent, intentionally false, or incorrect statements on an application for airman medical certification regarding the receipt of Department of Veterans Affairs (VA) disability benefits and underlying medical conditions for which they are receiving such benefits, including, in limited circumstances, applying criteria resulting in forgoing legal enforcement action.

DISCUSSION: Over the last several years, DOT OIG has investigated circumstances where an applicant for an airman medical certificate made entries on the application indicating that they were qualified to hold airman medical certification despite receiving medical disability benefits. The investigation led to a robust collaboration between the DOT OIG and the VA to identify veterans receiving VA disability benefits for underlying medical conditions but failing to fully disclose this information on an application for an airman medical certificate. The DOT OIG identified approximately 4700 cases where veterans allegedly provided fraudulent, intentionally false, or incorrect statements on applications for airman medical certification regarding the receipt of VA disability benefits and underlying medical conditions for which they are receiving such benefits.[1]

FAA personnel are required to refer certain matters to the Office of the Chief Counsel, AGC-300, for legal enforcement action evaluation and, if appropriate, initiation of legal enforcement action. *See* Order 2150.3C, chap. 5, para. 5. Such matters include noncompliance arising from or relating to intentional or reckless conduct or conduct demonstrating a lack of the care, judgment, or responsibility to hold a certificate. *Id*. at chap. 5, para. 5.(a)(1)-(2) and (b)(3)(ii). Making a fraudulent or intentionally false statement on an application for an airman medical certificate, conduct prohibited by 14 C.F.R. § 67.403(a)(1), is deliberate conduct, *i.e.*, either intentional or reckless, and demonstrates a lack of care, judgment, and responsibility to hold a certificate. Accordingly, FAA personnel are required to refer violations of 14 C.F.R. § 67.403(a)(1) to AGC-300 for legal enforcement action handling. In addition, a violation of 14 C.F.R. § 67.403(a)(1) generally warrants the revocation of all airman, ground instructor, and unexpired airman medical certificates held by the airman. *See* Order 2150.3C, chap. 7, para. 4.a.(5)(i) and chap. 9, Figure 9-5(1); 14 C.F.R. § 67.403(b)(1).

Further, FAA personnel have the authority to take appropriate action to resolve any question regarding the holder's competence or qualification to hold a certificate. *See* Order 2150.3C, chap. 5, para. 5.(b)(3)(iii). Accordingly, the FAA is authorized to revoke an airman medical certificate based on an incorrect statement, on which the FAA relied, made in support of an application for an airman medical certificate. *Id*. at chap. 7, para. 4.(a)(5)(i). An incorrect statement on an application for an airman medical certificate, proscribed by 14 C.F.R.

[1] FAA Form 8500-8 (FAA Medical Application), Item 18.y., requires applicants to answer "yes" or "no" in response to whether they receive or have previously received medical disability benefits. In addition, applicants are required to, among other information, disclose any illness, disability, or surgery they have ever had, as well as current medications and visits to health professionals within the last three years. Item 20 also requires applicants to certify that all statements and answers provided on the application are complete and true.

§ 67.403(c), generally warrants the revocation of any unexpired airman medical certificate held by the airman. *See* Order 2150.3C, chap. 7, para. 4.a.(5) and chap. 9, Figure 9-5(25).

The FAA is departing from its required legal enforcement action guidance for a limited period for eligible veterans who allegedly made fraudulent, intentionally false, or incorrect statements on an application for airman medical certification regarding the receipt of VA disability benefits and underlying medical conditions for which they are receiving such benefits. Under the criteria discussed in the "ACTION" section below, the FAA will not initiate legal enforcement action for violations of 14 C.F.R. § 67.403(a) or (c) by eligible veterans if they reconcile their medical records by submitting a new application for airman medical certification and schedule an appointment with an aviation medical examiner (AME) within specific and expedited timeframes depending on the class of the medical certificate. Reconciliation involves the complete and truthful disclosure regarding the receipt of VA disability benefits and underlying medical conditions for which they are receiving VA disability benefits.

Forgoing legal enforcement action under such circumstances will encourage the complete and truthful disclosure relating to the receipt of VA disability benefits and the underlying medical conditions associated with those benefits. Additionally, it will allow the FAA to more promptly address medical qualifications to ensure the safety of the National Airspace System. The safety benefits of the disclosures outweigh harm to the public interest caused by forgoing FAA enforcement action for falsification.

For veterans who do not meet the eligibility criteria, the Office of Aerospace Medicine (AAM) will refer the matter to AGC-300 for legal enforcement action consideration and, if appropriate, initiation.

The FAA does not have the authority to offer immunity from criminal prosecution under 18 U.S.C. § 1001 for making any materially false, fictitious, or fraudulent statement or entry on the medical application because the Department of Justice can only offer such immunity.

The policy set forth in this bulletin is limited to disclosures of the receipt of VA disability benefits and underlying medical conditions for which a veteran is receiving disability benefits. It is not intended to undermine the FAA's lack of tolerance for airmen who intentionally falsify applications for airman medical certification. This bulletin, therefore, does not protect from legal enforcement action individuals who engage in conduct in violation of 14 C.F.R. § 67.403(a) outside the scope of this bulletin. This bulletin also does not prevent the FAA from taking legal enforcement action for incorrect statements outside the scope of the bulletin contrary to 14 C.F.R. § 67.403(c).

ACTION: Effective immediately and until further notice, the following criteria are applicable to the approximately 4700 matters involving noncompliance with 14 C.F.R. § 67.403(a)(1) and (c) identified by the DOT OIG.

1. Veterans with a VA disability rating of less than 70 percent[2] and no evidence of one or more of the disqualifying medical conditions under BasicMed[3] will have an opportunity to reconcile their medical records by submitting a new application for airman medical certification and scheduling an appointment with an AME within specific and expedited timeframes depending on the class of the medical certificate. Applicants must provide complete and truthful information regarding the receipt of VA disability benefits and underlying medical conditions for which they are receiving VA disability benefits in connection with the new application. First-class airman medical certificate holders must have completed these requirements. Second- and third-class airman medical certificate holders must complete these requirements before their current medical certificate expires or no later than January 31, 2024, whichever is earlier. AAM will issue letters to eligible veterans notifying them of the opportunity to reconcile their medical records, the timeframe in which they must comply, and the procedural requirements.

2. Veterans with a VA disability rating of less than 70 percent and evidence of one or more of the disqualifying medical conditions will have an opportunity to reconcile their records by submitting a new application for airman medical certification and scheduling an appointment with an AME. Applicants must provide complete and truthful information regarding the receipt of VA disability benefits and underlying medical conditions for which they are receiving VA disability benefits in connection with the new application. AAM will issue letters to eligible veterans notifying them of these procedural requirements and will require these veterans to comply within 60 days from the date of the letter.

3. Veterans with a VA disability rating of 70 percent or higher and who have not (1) submitted multiple applications for a first- or second-class medical certificate or (2) submitted an application after receiving the 70 percent rating may be eligible to reconcile their medical records by submitting a new application for airman medical certification and scheduling an appointment with an AME. AAM will evaluate these cases on a case-by-case basis. AAM will exercise its discretion in determining whether to issue one of the letters referenced in ACTION paragraph 1 or 2, above, or send the case to AGC-300 for evaluation, and, if appropriate, initiation of legal enforcement

[2] The VA assigns disability ratings based on the severity of a veteran's service-connected condition. The VA then uses the disability rating to determine how much disability compensation a veteran should receive each month as well as eligibility for other VA benefits. *See* https://www.va.gov/disability/about-disability-ratings/.

[3] BasicMed allows certain pilots relief from holding an FAA medical certificate. *See* FAA Extension, Safety, and Security Act of 2016 (Pub. L. 114-190) § 2307; 14 C.F.R. part 68. In lieu of a third-class medical certification, an airman can fly covered aircraft if they meet a list of requirements. *Id.;* 14 C.F.R. § 61.113(i). Section 2307(e) lists the medical conditions that require special issuance before operating under BasicMed.

action in accordance with FAA Order 2150.3C, chap. 5, para. 5.a. and b.(3)(ii).

4. Veterans with a VA disability rating of 70 percent or higher and have submitted multiple applications for an airman medical certificate, including an application after receiving the 70 percent VA rating, are not eligible to reconcile their medical records. AAM will send these cases to AGC-300 for evaluation, and if appropriate, initiation of legal enforcement action in accordance with FAA Order 2150.3C, chap. 5, para. 5.a. and b.(3)(ii).

This opportunity to reconcile medical records will only be available to veterans who comply with the deadlines and disclose all reasonably known medical information on their next application and re-examination. Failure to comply with the above requirements and/or failure to disclose all reasonably known information may result in legal enforcement action.

COMPLIANCE AND ENFORCEMENT BULLETIN NO. 2026-1

SUBJECT: Actions for (1) the operation of an Unmanned Aircraft System (UAS) in a manner that endangers the public, violates established airspace restrictions, or is in furtherance of an element of another crime; and (2) sanctions in cases involving regulatory or statutory violations by remote pilot certificate holders whose conduct demonstrates a lack of care, judgment, or responsibility.

DISCUSSION: The Federal Aviation Administration's (FAA) safety mandate under 49 U.S.C. § 40103 requires the agency to regulate aircraft operations in the National Airspace System, including those involving UAS, to prevent aircraft collisions and protect persons and property on the ground.

On June 6, 2025, President Trump issued the Restoring American Airspace Sovereignty Executive Order (EO). Section 6 of the EO requires steps to ensure full enforcement of applicable civil and criminal laws when UAS operators endanger the public, violate established airspace restrictions, or operate a drone in furtherance of an element of another crime.

UAS operations that endanger the public include: 1) operations over people when the requirements in 14 CFR § 107.39 and subpart D are not complied with; 2) operations beyond visual line of sight in violation of 14 CFR § 107.31; 3) operations that create an undue hazard to persons or property in violation of 14 CFR §§ 107.19(c) or 107.23(b); and 4) operation of a weaponized UAS in violation of 49 U.S.C. § 44802, Note Prohibition Regarding Weapons.

UAS operations that violate established airspace restrictions include: 1) Operations within the airspace without remote identification in violation of 14 CFR § 89.105; 2) Operations in controlled airspace in violation of 14 CFR § 107.41; 3) Operations that interfere with airport operations and traffic patterns in violation of 14 CFR § 107.43; 4) Operation in prohibited or restricted areas in violation of 14 CFR § 107.45; and 5) Operations contrary to a NOTAM issued under 14 CFR §§ 91.137 through 91.145 and 99.7 in violation of 14 CFR § 107.47.

Operations of UAS under different regulatory schemes, such as 14 CFR parts 91, 135, or 137, will be treated the same as those described for operations under 14 CFR part 107.

Operation of a UAS in furtherance of an element of another crime includes all federal crimes.

Additionally, in connection with its regulation of small UAS, the FAA has observed a proliferation of regulatory and statutory violations evidencing a lack of qualifications because of a lack of care, judgment, or responsibility. This bulletin announces FAA sanction guidance to more effectively address such violations by remote pilot certificate holders.

As discussed in chapter 9 of this Order, while the FAA generally does not impose both a remedial and punitive sanction when the remedial sanction is the revocation of an airman certificate, the FAA may take both actions when appropriate. The FAA will continue to address regulatory and statutory violations that demonstrate a lack of care, judgment, or responsibility by remote pilot certificate holders through the use of remedial enforcement action to revoke the

remote pilot certificate. Such violations reflect a lack of qualifications to hold a certificate. The FAA generally will also assess a punitive civil penalty to remote pilot certificate holders consistent with this Order for deterrent purposes. In determining whether to take both remedial and punitive action in accordance with this policy, the FAA will consider whether the holder of the remote pilot certificate also holds a ground instructor or airman certificate issued under 14 CFR parts 61, 63, or 65[1] that would be subject to revocation.[2]

ACTION: Until further notice, the following compliance and enforcement procedures are in effect for actions involving the operation of a UAS in a manner that endangers the public, that violates established airspace restrictions, or is in furtherance of an element of another crime.

1. When a person operates a UAS and in so doing endangers the public, violates established airspace restrictions, or is in furtherance of an element of another crime, FAA investigative personnel will send the case to the Chief Counsel for legal enforcement action. Compliance and administrative actions will not be used to address such conduct except as permitted by this bulletin.

2. The FAA will assess a civil penalty and/or take certificate action for any such conduct consistent with the guidance provided in chapter 9 of this order and this bulletin.

3. In limited instances, program offices may forgo referring a matter to AGC even if it meets the criteria of paragraph 1 with the approval of the program office director and the Chief Counsel or his designee. Before addressing any matter with compliance or administrative action, the director of the program office coordinates the proposed exception with the Chief Counsel. This coordination includes the director providing the Chief Counsel with a justification for the exception.

4. When the holder of a remote pilot certificate engages in operational conduct that demonstrates a lack of care, judgment, or responsibility, the FAA generally will proceed with both remedial legal enforcement action to revoke the remote pilot certificate and punitive legal enforcement action in the form of a civil penalty for any regulatory violation. The assessment of the punitive sanction will be consistent with the guidance provided in chapter 9 of this Order.

5. When FAA investigative personnel believe there may be a violation of any federal or state criminal statute, they coordinate the matter as described in chapter 4, paragraph 15.g.(1) of this order. In addition, FAA employees have the option of reporting a suspected violation via direct referral to the Department of Transportation Office of the Inspector General (OIG) through the OIG hotline.

[1] The FAA will not take into consideration whether the holder of the remote pilot certificate also holds an airman medical certificate.

[2] UAS violations that demonstrate a lack of care, judgment, or responsibility by a remote pilot certificate holder generally warrant the revocation of not only the remote pilot certificate but also any other airman certificate (excluding airman medical certificates) or ground instructor certificate held by the violator.