

United States Department of Transportation
Federal Aviation Administration
Office of the Chief Counsel
Enforcement Division

The Federal Aviation Administration (FAA or Agency) and The Boeing Company (Boeing) (collectively, “the Parties”) enter into this Settlement Agreement (Agreement) by and through their undersigned representatives to resolve the allegations documented in the following cases: 2019NM410003, 2020NM410001, and 2019NM420003.

RECITALS

WHEREAS, the FAA issued a civil penalty letter to Boeing in Case No. 2019NM410003 on December 6, 2019, indicating that the FAA would accept in settlement \$3,916,871.00.

WHEREAS, the FAA issued a civil penalty letter to Boeing in Case No. 2020NM410001 on January 10, 2020, indicating that the FAA would accept in settlement \$5,401,155.00.

WHEREAS, the FAA issued a civil penalty letter to Boeing in Case No. 2019NM420003 on March 6, 2020, indicating that the FAA would accept in settlement \$19,682,200.00.

WHEREAS, the Parties agree that it is in the best interest of the FAA and Boeing to resolve Case Nos. 2019NM410003, 2020NM410001, and 2019NM420003, and both are willing to enter into this Agreement.

WHEREAS, the Parties wish to resolve the disputes that are the subject of this litigation without the expense and drain on resources that may be associated with protracted litigation.

WHEREAS, the Parties agree that it is in the best interest of the parties and the public to resolve these pending enforcement actions against Boeing.

WHEREAS, both Parties want Boeing to implement sustainable, enduring corrective actions that will address the root causes of the regulatory violations subject to this Agreement and prevent similar future violations.

WHEREAS, Boeing recognizes that regulatory compliance is critical to the quality, safety, and prompt delivery of its products. Boeing therefore has committed and is further committing, with this Agreement, to continue its efforts to improve its processes and practices for ensuring compliance with regulatory commitments.

NOW, THEREFORE, in consideration of the mutual covenants and payments described herein, the Parties hereby AGREE as follows:

1. Civil Penalty Payments and Deferrals

1.1. *Mitigation of Civil Penalties*

Consistent with FAA Order 2150.3C, which states that “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 FAA agrees to mitigate the civil penalties in Case Nos. 2019NM410003 and 2020NM410001 by a total of one million dollars (\$1,000,000.00) for completion of the following corrective action:

Improvements to the Notice of Escapement (NoE) process relating to revisions to the U-40 note which have reduced the timelines for processing NoEs.

Based on documentation that Boeing provided to the FAA, including Aircraft Readiness Logs (ARLs), the Parties agree that thirty-two (32) of the one hundred and seventy-three (173) Boeing 737 MAX aircraft alleged in the civil penalty letter in Case No. 2019NM420003 contained sensors compatible with the applicable Sensor Interchangeability Specification and Supplemental Type Certificate. As a result, the FAA agrees to reduce the civil penalty by eight hundred twenty-one thousand four hundred forty-eight dollars (\$821,448.00).

1.2. *Payment of a Civil Penalty*

Boeing agrees to pay a civil penalty of twenty seven million one hundred seventy-eight thousand seven hundred seventy-eight dollars (\$27,178,778.00) in resolution of Case Nos. 2019NM410003, 2020NM410001, and 2019NM420003. \$27,178,778.00 is the total amount listed in the civil penalty letters between the three cases, less the mitigation amounts in Section 1.1.

1.3. *Timing of Payment*

Boeing agrees to pay seventeen million dollars (\$17,000,000.00) of the civil penalty within 30 days of the date of the full execution of this Agreement.

Boeing agrees to pay this portion of the civil penalty per the terms of Section 3.4.

1.4. *Deferral of Payment*

The FAA agrees that it will defer up to and including ten million one hundred seventy-eight thousand seven hundred seventy-eight dollars (\$10,178,778.00) of the civil penalty if Boeing completes the corrective actions listed in Section 2 per the time limits and terms referenced throughout Section 2 and its paragraphs and subparagraphs. Further terms of the deferral are detailed in Section 3.

2. Programmatic Obligations of Boeing and Corrective Actions

2.1. Comprehensive BPSM relating to shipments at risk

Within 90 days of the date of the full execution of this Agreement, perform a comprehensive review using the Boeing Problem Solving Model (BPSM) process of all Boeing processes and procedures relating to the control and use of parts shipped at risk from suppliers, including the Boeing Fabrication Division. For the avoidance of doubt, parts “shipped at risk” are parts subject to BAC or industry specifications requiring lot, batch, or part testing to ensure conformance that are shipped from the supplier when such testing is incomplete, pending, or failed.

Within 30 days of completion of the comprehensive review, provide the FAA with the completed BPSM including all investigation aspects and corrective actions identified to ensure that Boeing has robust process controls in place to eliminate nonconformances in aircraft presented for airworthiness certification or a Certificate of Export arising from parts shipped at risk from suppliers, including the Boeing Fabrication Division. Such process controls must identify the criteria for determining when stopping the practice of shipping specific parts at risk is the only reasonable and appropriate corrective action. With the exception of parts associated with open certification projects, or other categories of parts as agreed upon by the FAA, such process controls must also ensure that any parts shipped at risk are quarantined, and are not installed on any aircraft, unless and until Boeing determines that those parts conform to their approved design and are in a condition for safe operation.

Within 30 days of the FAA’s approval of the process controls identified in the BPSM referenced in Section 2.1, add provisions to the Boeing Quality Manual which describe the process controls developed, define parts “shipped at risk” as noted in the first paragraph of Section 2.1, and state that these process controls and any future revisions must be approved by the FAA Boeing Certificate Management Office (CMO).

2.2. Revisions to PRO-3907

Within 90 days of the date of the full execution of this Agreement, Boeing will, in coordination with the FAA, revise Procedure (PRO) 3907, “Notice of Escapement – Nonconforming Products” to address and mitigate the risk of aircraft with known or suspected nonconformances being presented for airworthiness certification or a Certificate of Export. The revisions will:

- Ensure that timely and appropriate positive controls are applied to identify, track, document, evaluate, and disposition known or suspected nonconforming products or articles produced by internal or external suppliers;

- Incorporate SMS risk management principles;
- Incorporate into the PRO where appropriate the recommendations for improving timeliness provided by the Initial Technical Review (ITR) Working Group currently evaluating the procedures in PRO-3907; and
- Ensure compliance with 14 C.F.R. §§ 21.137(h)(1) and 21.146(c).

Within 90 days of the full execution of this Agreement, Boeing must incorporate PRO-3907 by reference in the Boeing Quality Manual. Specifically, Boeing shall mark PRO-3907 in the Approved Quality System Listing (AQSL) as “requiring FAA approval of all revisions”, thereby requiring that PRO-3907, including any future revisions, must be approved by the CMO.

2.3. *BPSM – Completion of Items*

Relating to the BPSM associated with the facts that led to Case No. 2019NM420003, Boeing will complete Corrective Action Verification of Item 6 in the BPSM on-time, as defined in the action detailed below:

Verification item 6 – 10/8/2021 – Perform the verification per the verification plan and document the results.

2.4. *Improvements for Supplier Oversight and STC Holders*

Within 90 days of the date of the full execution of this Agreement, using the BPSM process, Boeing shall identify and report to the FAA specific improvements associated with supplier oversight and how Boeing will apply those improvements to suppliers and Supplemental Type Certificate (STC) holders for production incorporation. The scope of the improvements shall include:

- a. Procedures, process controls, and accountability for airplane-level integration for the processes involved.
- b. Procedures and process controls for the integration of responsibilities between engineering and production.

Within 30 days of the completion of the BPSM, develop a plan to implement the improvements identified and provide a copy of the BPSM for review to the FAA Boeing Aviation Safety Oversight Office (BASOO) and CMO.

2.5. *Safety Risk Management Activities*

Perform a Safety Risk Management (SRM) activity in accordance with the Boeing Safety Management System Procedures for an SRM on the topics listed in Sections 2.5a through 2.5c. The SRM activities related to 2.5a and 2.5c must be completed within 90 days of the date of the full execution of this Agreement. The SRM activity related to 2.5b must be completed within 120 days of the date of the full execution of this Agreement.

- a. A determination of whether Boeing has appropriate procedures and process controls in its internal procedures for reviewing Supply Chain Oversight conducted by the Boeing Supplier Quality (SQ) organization, including an assessment of SQ staffing levels, and the effectiveness of the suppliers' corrective actions developed in response to Boeing's supplier audit findings.
- b. A determination of whether Boeing has appropriate procedures and process controls in its internal procedures for incorporating Supplemental Type Certificates (STC) and Buyer-Furnished Equipment (BFE) into engineering and production operations. This SRM activity shall include participation from the following FAA offices — Boeing CMO, BASOO, and Seattle Aircraft Certification Office.
- c. A determination of Boeing's readiness for increasing the production rate of the 737 model.

Boeing will coordinate with the FAA in the development of the foregoing SRM activities.

2.6. *Production Rate Readiness*

Within 60 days of the date of the full execution of this Agreement, add a provision to PRO-2424, "Regulatory Administration of FAA Production Certificates and Air Agency Certificates," to allow the FAA access, for the purpose of providing the opportunity for the FAA to observe, to all Production Rate Readiness assessments, all underlying data on which the assessments were based, and the results of those assessments, at least 30 calendar days prior to any increase in the production rate of any airplane model covered by Production Certificate No. 700.

Within 60 days of the date of the full execution of this Agreement, add an addendum to the Boeing Quality Manual providing the CMO management with read-only access to Boeing's Smart Factory application, including its full suite of diagnostic reports. The addendum will also contain the terms and conditions that the CMO and Boeing agree to regarding the CMO's Smart Factory access.

3. Deferral of Civil Penalties and Opportunity to Cure any Noncompliance

3.1. Deferred Payments

In the event that Boeing does not perform the corrective actions in accordance with the terms as described in Section 2, the FAA and Boeing agree that Boeing shall be subject to deferred civil penalties up to and including ten million one hundred seventy-eight thousand seven hundred seventy-eight dollars (\$10,178,778.00).

Whether to require payment of any such deferred penalty and, if so, in what amount, shall be in the sole discretion of the FAA, subject to the remaining terms of this Section 3.

The amount of any deferred penalty the FAA requires to be paid shall be based on its reasonable and good faith assessment of the extent of Boeing's noncompliance relative to: the extent of its compliance with any other specific procedural or substantive obligation relating to the issue for which it is noncompliant, Boeing's compliance with the totality of its other obligations as of the date of such noncompliance, and the total remaining deferred penalty amount that could be assessed against Boeing as of such date.

3.2. Review of Boeing's Performance Under this Agreement — Notice of Noncompliance with the Agreement and Finding of Noncompliance

If the FAA finds that Boeing has failed to perform corrective action(s) in accordance with the terms specified in Section 2, the FAA will provide Boeing with a written Notice of Noncompliance. The FAA will review Boeing's completion of corrective actions as the deadlines within Section 2 pass, and will issue a Notice of Noncompliance, if applicable. The FAA will send all notice(s) of noncompliance to Boeing by email, mail, or courier service, to the attention of the following:

Carole Murray
Vice President, Total Quality
Boeing Commercial Airplanes
PO Box 3707, M/S 0H-230
Seattle, WA 98124

The FAA will afford Boeing the opportunity to submit a written response, with a deadline of 10 business days from the date of service of the applicable Notice of Noncompliance. For purposes of this Agreement, “date of service” refers to the date on which the FAA transmits the Notice of Noncompliance to Boeing as described above in this Section 3.2.

If Boeing chooses to submit a response to a Notice of Noncompliance, it shall direct its response by email, mail, or courier service to:

Manager, Boeing Certificate Management Office
Federal Aviation Administration
2200 South 216th Street
Des Moines, WA 98198
Email: tyler.feeley@faa.gov

Upon receipt of Boeing’s timely response to a Notice of Noncompliance, the FAA will consider the response and determine whether to require payment of any deferred penalty. If Boeing submits a late response, any consideration of such response shall be within the FAA’s sole discretion. The FAA and Boeing agree that if Boeing has not submitted a response to a Notice of Noncompliance by the deadline, the FAA may determine whether to require payment of any deferred penalty without the benefit of Boeing’s response.

The FAA will issue a Finding of Noncompliance if the FAA still finds after Boeing’s response (or non-response) to the associated Notice of Noncompliance that a deferred penalty should be imposed. The Finding(s) of Noncompliance will identify the noncompliance(s) and the amount of deferred penalty that Boeing must pay. The FAA will issue all Finding(s) of Noncompliance within 90 days after the latest deadline for a corrective action in Section 2, or by January 6, 2022, whichever is later.

3.3. Timing of Payment

Boeing will pay any deferred penalty imposed herein within 30 calendar days of the date it receives a Finding of Noncompliance from the FAA.

3.4. Mechanism of Payment

Boeing will pay all civil penalties under this Agreement by wire transfer to the United States of America. To complete the wire transfer, Boeing will need the following information:

Receiver Bank Name: TREAS NYC
Receiver ABA/Routing Number: [REDACTED]
Receiving Institution: U.S. Treasury
c/o Federal Reserve Bank of New
York 33 Liberty Street
New York, NY 10045
Account Number: [REDACTED]
Beneficiary: Federal Aviation Administration
Reference: Boeing Global Settlement
Attn: Peggy Coulter, AMK-322

3.5. *Enforcement*

The FAA and Boeing each reserve the right to judicially enforce any terms or provisions of this Agreement that were not specifically waived. Venue shall be proper in any United States District Court for the District of Washington or the District of Columbia.

3.6. *Sunset of Deferred Civil Penalty*

If Boeing completes all of the corrective actions listed in Section 2 per the time limits and terms referenced throughout Section 2 and its paragraphs and subparagraphs, then Boeing will not be obligated to pay the FAA the deferred civil penalty amount of ten million one hundred seventy-eight thousand seven hundred seventy-eight dollars (\$10,178,778.00). If the FAA issues a Finding of Noncompliance and requires Boeing to pay a portion of the deferred civil penalty in accordance with this Section 3, Boeing will not be obligated to pay the FAA any remaining portion of the deferred civil penalty not associated with any Finding(s) of Noncompliance.

4. **Miscellaneous Provisions**

4.1. *Deviations and Noncompliances Unauthorized*

Nothing in this Agreement allows Boeing to deviate from the requirements of its production certificate, and the procedures approved or accepted by the FAA therein. Nothing in this Agreement authorizes Boeing to commit any regulatory noncompliance during any portion of the implementation of this Agreement. The approvals given by the FAA in this Agreement are not binding for any purposes outside of this Agreement. Boeing will not modify any commitment made in this Agreement by modifying any internal procedure referenced in this Agreement, or by seeking the passage of legislation by the United States Congress, without prior approval from the FAA. However, nothing about this provision is intended to impair Boeing's right to participate in industry-wide lobbying efforts.

4.2. *Scope*

This Agreement encompasses only those cases specifically identified in this Agreement and no others.

The FAA and Boeing agree that during the term of this Agreement all instances of statutory or regulatory noncompliance by Boeing that are voluntarily disclosed by Boeing and about which the FAA does not have knowledge independent of such voluntary reports will be evaluated by the FAA in accordance with the then-current revisions of:

- FAA Order 2150.3B;
- FAA Order 2150.3C; and
- Advisory Circular 00-68, *Aircraft Certification Service Voluntary Disclosure Reporting Program*.

4.3. *Avoidance of Duplicative Penalties*

The FAA and Boeing recognize that regulatory violations by Boeing may result in a new enforcement action against Boeing. The FAA agrees it will not use a failure to comply with a provision of this Agreement as the basis for both a payment of a deferred penalty under this Agreement and a new enforcement action. If the breach of the Agreement is also itself a regulatory violation, the FAA will elect to pursue it as either a breach of this Agreement or a new enforcement action, but not both.

4.4. *Violation History*

Boeing agrees that the violations alleged in the civil penalty letters in Case Nos. 2019NM410003, 2020NM410001, and 2019NM420003, will constitute a violation history, which may be used by the FAA for all purposes consistent with the guidance in the applicable version of FAA Order 2150.3.

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.

4.5. *Qualifications*

The terms of this Agreement do not apply to any matter which the FAA in its sole discretion determines Boeing's qualifications to hold and exercise the privileges of Production Certificate No. 700 and do not constitute a waiver by the FAA of any statutory responsibility.

4.6. *No Further Notice*

Boeing irrevocably waives any and all rights to further notice of the allegations contained in the EIRs listed above.

4.7. *Waiver*

Both parties irrevocably waive any right to appeal or otherwise seek administrative or judicial review of any case covered by this Agreement. Boeing irrevocably waives any and all causes of action it may have against the Administrator, the FAA, and any current or former FAA officials and employees relating to, or arising from, this Agreement and the cases covered by this agreement. Boeing irrevocably waives any and all causes of action and judicial review of any decision or action by the FAA taken under Sections 3.1 or 3.2 of this Agreement.

4.8. *Freedom of Information Act*

The Parties agree that any release by the FAA in response to any requests from the public for this Agreement or related records (including, without limitation, any information provided by Boeing to the FAA as described in this Agreement) will be governed by the Freedom of Information Act (FOIA), Executive Order 12600, and the Department of Transportation's regulations pertaining to the public availability of information found at 49 C.F.R. part 7. Boeing maintains that this Agreement and related records (including, without limitation, any information provided by Boeing to the FAA as described in this Agreement) in total or in part contain trade secrets and information that is commercial or financial and privileged or confidential, and therefore should be exempt from disclosure in response to FOIA requests. Accordingly, the FAA will notify Boeing of any request for public release of the aforementioned documents, or portions thereof, and the FAA will consult with Boeing prior to any public release of them, consistent with the FAA's and Department of Transportation's current FOIA policies, procedures, and applicable law.

4.9. *Third-Parties*

No person or entity is intended to be a third-party beneficiary of the provisions of this Agreement for purposes of any civil, criminal, or administrative action and, accordingly, no person or entity may assert any claim or right as a beneficiary or

protected class under this Agreement in any civil, criminal, or administrative action.

4.10. Completeness

The terms set forth in this Agreement shall constitute a full settlement and release of any and all civil penalties that have been, or could have been, pursued against Boeing as a result of the alleged violations described in Case Nos. 2019NM410003, 2020NM410001, and 2019NM420003. This Agreement constitutes the entire agreement and understanding between the Parties. Any statement, representation, agreement, or understanding, in oral or written form that is not contained in this Agreement shall not be enforced, recognized, or used to interpret this Agreement.

4.11. Severability

Except as expressly stated with respect to particular provisions in this Agreement, if any provision of this Agreement is determined by a court or administrative body to be illegal, invalid, or unenforceable, this Agreement will be construed as if the severed term or provision had never comprised a part of this Agreement, and the remaining terms and provisions of this Agreement will remain in full force and effect and will not be affected by the severed term or provisions or by its severance from this Agreement.

4.12. Choice of Governing Law

Federal law shall apply to interpret and enforce this Agreement.

4.13. Calculation of Time

For purposes of calculating any time period arising under this agreement, the date of an act, event, or notice, after which a designated time period begins to run, is not included in a computation of time under this agreement. The last day of a time period is included in a computation of time, unless the last day is a Saturday, Sunday, or Federal legal holiday. In such case, the time period runs until the end of the next day that is not a Saturday, Sunday, or Federal legal holiday. Time periods will be calculated using calendar days and expire at 5:00 P.M., Pacific Time, on the last day of the period.

Where any time period pursuant to this Agreement expires on a Saturday, Sunday, or Federal legal holiday, the period in question will be extended to 5:00 P.M., Pacific Time, on the next business day.

4.14. *Costs*

Each party to this Agreement shall bear its own costs relating to any of the cases covered by this agreement or the enforcement of any provision or term of this agreement, including attorney fees.

4.15. *Joint Drafting*

This Agreement shall be considered a jointly drafted agreement and shall not be construed against any party as the drafter.

4.16. *Amendment*

This Agreement cannot be modified or amended except through a written instrument that specifically refers to this Agreement and that is signed by the Parties' counsel. No provision of this Agreement may be waived or altered except through a written waiver or amendment signed by the parties counsel.

4.17. *Copies and Counterparts*

A photocopy, facsimile, or PDF copy of this Agreement shall have the same force and effect as an original of this Agreement.

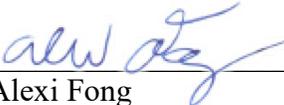
4.18. *Authority*

The counsel for each party signing this Agreement pledge that they are duly authorized to do so on behalf of the FAA or Boeing and, by their signatures on this page, indicate the consent of the FAA and Boeing to the terms and conditions set forth above.

5. Signatures

For the Federal Aviation Administration:

For The Boeing Company:



Alexi Fong
Attorney
Federal Aviation Administration



Mark C. Fava
Chief Counsel, Boeing Engineering,
Regulatory & South Carolina Operations

May 26, 2021

Date

May 25, 2021

Date