

**EFFECTIVE DATE:** This final rule is effective August 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** Brian R. Reed, Attorney, Enforcement Division (AGC-320), Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267-7158.

**SUPPLEMENTARY INFORMATION:** The changes in this rule involve matters of agency organization, procedure, and practice only. While notice and public comment are not required, the rule changes are being adopted after publishing notice of a temporary Special Federal Aviation Regulation (SFAR), which was implemented to test the procedures. Public comment was invited. Two comments were received.

The first commenter recommended that all actions taken against airmen under the streamlined procedures be appealable to the National Transportation Safety Board (NTSB). The streamlined procedures contained in this rule do not, however, address the jurisdiction of the NTSB. Therefore, the suggestion is beyond the scope of this rule.

The second commenter suggested that the streamlined procedures be used only in instances where the respondent has admitted the violation because the procedures do not require legal review before an enforcement action is initiated. The commenter expressed concern that those initiating the cases would lack the qualifications to conduct an appropriate review of an enforcement investigative report in order to determine whether the FAA's allegations have been substantiated.

In response, the FAA notes that the streamlined procedures only allow for initiation of factually uncomplicated cases without initial legal review. Any investigation revealing that an alleged violator denies the violation occurred would be too factually complicated for use of the procedures, and the case would be referred to the appropriate Assistant Chief Counsel's office for review. Additionally, the evidence used in the cases affected by the streamlined procedures tends to be uncontroverted evidence contained in police records and airport documentation, as well as screener and respondent statements. FAA security agents have been trained to refer any case that contains contradictory evidence to the legal office for initiation of an enforcement action.

**Availability of Regulation**

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office

or Rulemaking, ARM-1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-9677. Requests must include the amendment or docket number.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Federal Register electronic bulletin board service (telephone: 202-512-1661) or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service, at the toll-free number 1-800-322-2722 (1-800-FAA-ARAC). Internet users may reach the Federal Register's web page at:

[http://www.access.gpo.gov/su\\_docs](http://www.access.gpo.gov/su_docs)

Persons interested in being placed on a mailing list for future rulemaking actions should request a copy of Advisory Circular 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**Background**

Under 49 U.S.C. 46301(d), the FAA has authority to assess civil penalties not to exceed \$50,000 for certain violations of 49 U.S.C. Subtitle VIII, the FAA's regulations (14 CFR parts 1-199), and certain other statutes and orders (see 49 U.S.C. Subtitle III, Chapter 51). In the case of persons other than those acting as a pilot, flight engineer, mechanic, or repairman, the procedures for civil penalty assessment actions are those contained in section 13.16 and part 13, subpart G of the FAA's regulations. The current civil penalty assessment process for these actions is outlined as follows:

During the investigation phase of an enforcement action, FAA investigative personnel ordinarily notify alleged violators of an agency investigation by issuing a letter of investigation. This notification is described in FAA Order 2150.3A, Compliance and Enforcement Program, but is not required by statute, regulation, or that order. Following an investigation, a civil penalty may be assessed against individuals only after notice of the proposed charges and an opportunity for a hearing. This process is begun by issuing a notice of proposed civil penalty to an alleged violator (respondent). Section 13.16(c) delegates the authority to the FAA's Deputy Chief Counsel and certain Assistant Chief Counsel in the regions, centers, and headquarters to issue such notices.

Respondents have several options to respond to the notice of proposed civil penalty. The person charged with a violation is required to do one or more of the following:

**DEPARTMENT OF TRANSPORTATION**

Federal Aviation Administration

14 CFR Part 13

[Docket No. 27873; Amdt. No. 13-26]

RIN 2120-AF36

**Civil Penalties: Streamlined Enforcement Procedures for Certain Security Violations**

**AGENCY:** Federal Aviation Administration (FAA), (DOT).

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes streamlined procedures to be used to process civil penalty enforcement actions resulting from certain security violations. The procedures were tested as a result of recommendations made by the Vice President's National Performance Review. This streamlined enforcement process will reduce costs and improve efficiency in factually uncomplicated cases.

(1) Submit the amount of the proposed civil penalty or an agreed-upon amount.

(2) Submit written information demonstrating that the violation did not occur, or that a penalty or the penalty amount is not warranted under the circumstances.

(3) Submit a written request for a reduction of the proposed civil penalty, including the amount of reduction along with supporting reasons and documentation, such as records indicating a financial inability to pay the proposed penalty.

(4) Submit a written request for an informal conference to discuss the matter with an agency attorney and submit relevant information or documents.

(5) Request a hearing before an administrative law judge (ALJ) of the Department of Transportation (DOT) Office of Hearings.

If a respondent does not respond to the notice of proposed civil penalty, or chooses to proceed informally in response to a notice of proposed civil penalty and the matter is not resolved, the FAA attorney then serves a final notice of proposed civil penalty. The respondent must either request a hearing before an ALJ or pay the amount of the proposed civil penalty, or an agreed-upon amount, within 15 days of receipt of the final notice. If the respondent does not respond to the final notice within the 15-day period, the FAA attorney serves an order assessing civil penalty, which contains a finding of violation and assesses a civil penalty. That order is final and not appealable.

On September 7, 1993, the Vice President's National Performance Review published a report entitled "From Red Tape to Results: Creating a Government that Works Better and Costs Less." That report included a recommendation that the FAA streamline its civil penalty enforcement program by eliminating several of the procedural steps it takes to issue civil penalties in certain minor, uncontested cases. The FAA has determined that streamlined procedures would be most appropriately applied to those legal enforcement actions that facially appear to be simple and factually straightforward.

On August 26, 1994, the FAA issued a Special Federal Aviation Regulation (SFAR) that adopted interim changes to the current rules governing procedures and delegation of authority that were designed to enhance the efficiency and effectiveness of the processing of civil penalty assessment actions in these types of cases. After testing the procedures for 1 year, the FAA found

that the streamlined enforcement process reduced costs and improved efficiency; the FAA also believes that safety was enhanced by the swift processing of these enforcement actions within reduced time frames.

In addition to shortening the time for initiating certain cases, the test program encouraged prompt settlement of proposed civil penalties in these cases. The program did not eliminate an individual's opportunity to request a hearing or otherwise contest a proposed civil penalty. This SFAR was made effective for two years, and expires on August 26, 1996 or upon publication of this rule, whichever occurs first.

#### Discussion of Rule

**Scope:** These regulatory changes will affect civil penalty assessment actions resulting from factually uncomplicated violations by individuals presenting dangerous or deadly weapons for screening at airports or in checked baggage, for which a civil penalty less than \$5,000 is proposed. While the FAA considers these violations to be serious, the initial evaluation and processing of these cases tends to be uncomplicated. Violations of weapons prohibitions, on the other hand, for which a penalty of \$5,000 or more is sought ordinarily are more factually complex and involve evidence of several aggravating factors. As a result, these cases tend to be more difficult to process, and, therefore, would not be appropriate for handling under these procedures. The FAA does not intend to apply these procedures to complex civil penalty actions, including factually complicated cases under \$5,000.

**Procedures and delegations:** Current enforcement practice will undergo internal policy change as well as changes resulting from these procedures. For example, the FAA's current practice of ordinarily issuing to the alleged violator a letter of investigation seeking information about the alleged violation will be dispensed with in cases subject to this rule. Experience has indicated that in the majority of factually clear, uncomplicated cases, the respondent often does not provide additional relevant information that is not already known to the FAA. The information received by the FAA from local law enforcement offices regarding weapons violations at airport screening checkpoints tends to be complete and beyond serious dispute. A respondent, however, will continue to have an opportunity to make any statements and submit any evidence regarding the alleged violation following notification of the alleged violation.

Under these procedures, FAA regional Civil Aviation Security Division Managers and Deputy Division Managers, instead of FAA attorneys, will initiate a legal enforcement action by issuing a notice of violation (NOV) to the respondent. The NOV will cite the relevant facts and circumstances pertaining to the alleged infraction and will include a proposed civil penalty amount. The authority to issue NOV's will not be delegated below the division level. By delegating to the Office of Civil Aviation Security the authority to send the initial notification to a respondent of an alleged violation, the FAA believes that it can reduce significantly the time currently expended before a respondent is given this notification. The name and phone number of a security agent involved in the investigation will be included in the NOV in case the respondent has any question about the action being proposed.

The NOV will serve the same purpose that the notice of proposed civil penalty now serves under current procedures. The NOV, however, will include the following specific information:

- (1) A description of the alleged violation;
- (2) The proposed amount of civil penalty;
- (3) An offer of settlement of the case, if appropriate, as described below;
- (4) The name and phone number of an FAA security special agent involved in the investigation of the violation;
- (5) Information regarding informal procedures; and
- (6) Information on how to request a formal hearing before a DOT ALJ.

In the NOV, the agency may extend to the respondent a settlement offer to resolve the case immediately with a reduction of the proposed civil penalty, on the condition either that the penalty is paid within 30 days, or, within 30 days, the respondent agrees to execute a promissory note for the penalty amount. A reduced penalty settlement offer will not be extended in cases that involve intentional conduct, repeated violations, or violations associated with felony conduct (other than possession of the weapon itself).

The FAA evaluated the test program for a 1-year period, from December 1, 1994 through December 1, 1995, and discovered that swifter notification of a violation, coupled, in most cases, with an immediate offer of settlement, encouraged quick resolution of simple cases and, at the same time, had no negative impact on the effectiveness of the enforcement process. As a result, the program was expanded to all airports in each of the FAA's domestic regions in January, 1996. The National

Performance Review studied a similar program offered by the Federal Highway Administration and found that approximately 40% of proposed civil penalties were paid in this manner within 30 days. The test program data evaluated by the FAA indicates that, during the 1-year evaluation period, approximately 87% of proposed civil penalties processed under these procedures were paid within 90 days of the violation date.

The provisions of the Federal Aviation Regulation will not limit a respondent's rights in any way. An individual may choose to proceed under the current informal and formal procedures, including requesting an informal conference with an FAA attorney or formal hearing before a DOT ALJ. If the FAA and respondent are unable to resolve the case informally, or if the respondent fails to respond to the NOV within 30 days after receiving it, a final notice of violation and civil penalty assessment order ("final notice and order") will be issued to the respondent. This document serves two purposes:

- (1) It provides a second opportunity for the respondent to request a hearing on the record before a DOT ALJ; and
- (2) It becomes an order assessing a civil penalty if the respondent pays the civil penalty proposed in the final notice and order, or the respondent does not request a hearing in accordance with the final notice and order and fails to pay the amount of the proposed civil penalty.

This streamlined process dispenses with the current procedure requiring a separate order assessing civil penalty to be sent to the respondent when the respondent pays the amount of the civil penalty reflected in the final notice of proposed civil penalty, or when the respondent fails to request a hearing in accordance with the final notice of proposed civil penalty and fails to pay the amount of the proposed civil penalty. The final disposition of the assessment action results from the respondent's act or failure to act upon receipt of the final notice. Issuance of a separate document entitled "order assessing civil penalty" under the existing procedures provides no additional rights of notice to the respondent that is not otherwise given in the final notice and order under these procedures. Accordingly, elimination of the issuance of a separate order assessing civil penalty under these circumstances will not alter the procedural protections afforded respondents.

The final notice and order will be issued by an appropriate Assistant Chief

Counsel. The final notice and order will result in either a civil penalty assessment or a formal hearing.

#### Regulatory Evaluation Summary

Changes to Federal regulations are required to undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. With respect to this rule, the FAA has determined that it: (1) is not "a significant regulatory action" as defined in the Executive Order; (2) is not significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; and (4) will not constitute a barrier to international trade. Therefore, a full regulatory analysis, which includes the identification and evaluation of cost-reducing alternatives to this rule, has not been prepared. Instead, the agency has prepared a more concise analysis of this rule which is presented in the following paragraphs.

The rule establishes new procedures to be implemented nation-wide. The procedures cover certain civil penalty cases against individuals submitting dangerous or deadly weapons for screening at airport checkpoints or in checked baggage. The rule will apply only to those cases that facially appear to be simple and are factually straightforward, and that are uncomplicated to process. The rule delegates authority to program office Division and Deputy Division managers to initiate legal enforcement actions and reduces the number of documents issued in these actions. The rule is intended to streamline the agency's civil penalty enforcement process for certain violations by processing these actions within reduced time frames.

#### Cost

There will be no costs associated with this rule because it consists only of changes to agency rules of procedure or practice in part 13 of the FAA's regulations. The changes do not impose any new economic requirements on the affected parties.

#### Benefits

The streamlined procedures will reduce the number of documents to be served upon individuals. Additionally, this rule will reduce the time between the violation and the processing of the enforcement action.

#### Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a rule will have "a significant economic impact on a substantial number of small entities." FAA Order 2100.14A outlines FAA's procedures and criteria for implementing the RFA. Small entities are defined as independently owned and operated small businesses and small not-for-profit organizations. Because this rule will directly affect certain individuals (who are not defined as entities), the rules will not have a significant economic impact on a substantial number of small entities.

#### International Trade Impact Assessment

Because the rule only will affect certain individuals, it will not constitute a barrier to international trade, including the export of American goods and services to foreign countries and the import of foreign goods and services to the United States.

#### Federalism Implications

The rule will not have substantial direct effects on the states, on the relationship between the national government and that of any state, or on the distribution of power and responsibilities among the various levels of government. The respondents affected by the amendments are private citizens, not state governments. Therefore, in accordance with Executive Order 12612, it is determined that this regulation will not have federalism implications to warrant the preparation of a Federalism Assessment.

#### Paperwork Reduction Act

This rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*).

#### Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not a significant

regulatory action under Executive Order 12866. This rule is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 13

Administrative practice and procedure, Air transportation, Investigations, Law enforcement, Penalties.

#### The Amendments

Accordingly, the Federal Aviation Administration amends part 13 of Title 14, Code of Federal Regulations, by adding section 13.29, as follows:

#### PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

1. The authority citation for part 13 continues to read as follows:

**Authority:** 18 U.S.C. 6002; 49 U.S.C. 106(g), 5121–5124, 40113–40114, 44103–44106, 44702–44703, 44709–44710, 44713, 46101–46110, 46301–46316, 46501–46502, 46504–46507, 47106, 47111, 47122, 47306, 47531–47532.

2. Section 13.29 is added to read as follows:

#### § 13.29 Civil penalties: Streamlined enforcement procedures for certain security violations.

This section may be used, at the agency's discretion, in enforcement actions involving individuals presenting dangerous or deadly weapons for screening at airports or in checked baggage where the amount of the proposed civil penalty is less than \$5,000. In these cases, sections 13.16(a), 13.16(c), and 13.16 (f) through (l) of this chapter are used, as well as paragraphs (a) through (d) of this section:

(a) *Delegation of authority.* The authority of the Administrator, under 49 U.S.C. 46301, to initiate the assessment of civil penalties for a violation of 49 U.S.C. Subtitle VII, or a rule, regulation, or order issued thereunder, is delegated to the regional Civil Aviation Security Division Manager and the regional Civil Aviation Security Deputy Division Manager for the purpose of issuing notices of violation in cases involving violations of 49 U.S.C. Subtitle VII and the FAA's regulations by individuals presenting dangerous or deadly weapons for screening at airport checkpoints or in checked baggage. This authority may not be delegated below the level of the regional Civil Aviation Security Deputy Division Manager.

(b) *Notice of violation.* A civil penalty action is initiated by sending a notice of violation to the person charged with the violation. The notice of violation contains a statement of the charges and the amount of the proposed civil penalty. Not later than 30 days after receipt of the notice of violation, the person charged with a violation shall:

(1) Submit the amount of the proposed civil penalty or an agreed-upon amount, in which case either an order assessing a civil penalty or a compromise order shall be issued in that amount; or

(2) Submit to the agency attorney identified in the material accompanying the notice any of the following:

(i) Written information, including documents and witness statements, demonstrating that a violation of the regulations did not occur or that a penalty or the penalty amount is not warranted by the circumstances; or

(ii) A written request to reduce the proposed civil penalty, the amount of reduction, and the reasons and any documents supporting a reduction of the proposed civil penalty, including records indicating a financial inability to pay or records showing that payment of the proposed civil penalty would prevent the person from continuing in business; or

(iii) A written request for an informal conference to discuss the matter with an agency attorney and submit relevant information or documents; or

(3) Request a hearing in which case a complaint shall be filed with the hearing docket clerk.

(c) *Final notice of violation and civil penalty assessment order.* A final notice of violation and civil penalty assessment order ("final notice and order") may be issued after participation in any informal proceedings as provided in paragraph (b)(2) of this section, or after failure of the respondent to respond in a timely manner to a notice of violation. A final notice and order will be sent to the individual charged with a violation. The final notice and order will contain a statement of the charges and the amount of the proposed civil penalty and, as a result of information submitted to the agency attorney during any informal procedures, may reflect a modified allegation or proposed civil penalty.

A final notice and order may be issued—

(1) If the person charged with a violation fails to respond to the notice of violation within 30 days after receipt of that notice; or

(2) If the parties participated in any informal procedures under paragraph (b)(2) of this section and the parties

have not agreed to compromise the action or the agency attorney has not agreed to withdraw the notice of violation.

(d) *Order assessing civil penalty.* An order assessing civil penalty may be issued after notice and opportunity for a hearing. A person charged with a violation may be subject to an order assessing civil penalty in the following circumstances:

(1) An order assessing civil penalty may be issued if a person charged with a violation submits, or agrees to submit, the amount of civil penalty proposed in the notice of violation.

(2) An order assessing civil penalty may be issued if a person charged with a violation submits, or agrees to submit, an agreed-upon amount of civil penalty that is not reflected in either the notice of violation or the final notice and order.

(3) The final notice and order becomes (and contains a statement so indicating) an order assessing a civil penalty when the person charged with a violation submits the amount of the proposed civil penalty that is reflected in the final notice and order.

(4) The final notice and order becomes (and contains a statement so indicating) an order assessing a civil penalty 16 days after receipt of the final notice and order, *unless* not later than 15 days after receipt of the final notice and order, the person charged with a violation does one of the following—

(i) Submits an agreed-upon amount of civil penalty that is not reflected in the final notice and order, in which case an order assessing civil penalty or a compromise order shall be issued in that amount; or

(ii) Requests a hearing in which case a complaint shall be filed with the hearing docket clerk.

(5) Unless an appeal is filed with the FAA decisionmaker in a timely manner, an initial decision or order of an administrative law judge shall be considered an order assessing civil penalty if an administrative law judge finds that an alleged violation occurred and determines that a civil penalty, in an amount found to be appropriate by the administrative law judge, is warranted.

(6) Unless a petition for review is filed with a U.S. Court of Appeals in a timely manner, a final decision and order of the Administrator shall be considered an order assessing civil penalty if the FAA decisionmaker finds that an alleged violation occurred and a civil penalty is warranted.

Issued in Washington, D.C. on August 23, 1996.

David R. Hinson,  
Administrator.

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