

COMPLIANCE/ENFORCEMENT BULLETIN NO. 90-8

Subject: Corrective action through remedial training. This compliance and enforcement bulletin describes the agency's program of affording certificated pilot and non-pilot airmen who violate certain provisions of the Federal Aviation Regulations (FAR) remedial training in lieu of legal enforcement action. The program complies with 14 CFR Section 13.11(a)(2) and FAA Order 2150.3A, Chapter 11, "Administrative Enforcement Action." Where appropriate, it is intended to encourage future compliance of airmen by bringing the seriousness of the incident to the attention of the person involved, providing remedial training in lieu of the imposition of punitive legal enforcement action, and documenting corrective action taken, thereby providing a source of information for agency use.

Policy: The purpose of this program is to achieve the future compliance by certificated airmen through alternatives to punitive legal enforcement action. This policy applies to certificate holders who were not exercising the privileges of their certificates for compensation or hire in air transportation when the apparent violation occurred. Where remedial training is determined to be appropriate, the airman is allowed to complete a FAA-designed corrective training program in lieu of the imposition of certificate or civil penalty action. The FAA will not impose a punitive legal enforcement sanction against the participating airman for that incident, if the airman satisfactorily completes the prescribed training course within the time specified by the agency.

It is within the discretion of the inspector, in coordination with the Field Office Management, to make an initial determination as to whether remedial training may be appropriate. In the exercise of this discretion, the inspector should consider the following factors:

- (1) Whether future compliance can reasonably be ensured through remedial training alone.
- (2) The airman should exhibit a constructive attitude which would lead the inspector to believe that the airman has a willingness to comply, so that non-compliance is less likely in the future.
- (3) Remedial training is not an appropriate response to conduct which discloses a lack of qualifications. If lack of qualifications is indicated by evidence gathered during the investigation, reexamination under Section 609 of the Federal Aviation (FA) Act of 1958 should be initiated; consult Chapter 8 of FAA Order 2150.3A.

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(4) The airman's record of enforcement actions, if any. Remedial training will generally be appropriate for airmen with no record of violations, but a record of violation will not automatically render remedial training inappropriate. For the purpose of this program, administrative actions and legal enforcement actions, including a civil penalty compromise or an order assessing civil penalty/settlement without a finding of violation, or a waiver of imposition of a certificate or civil penalty action in accordance with the Aviation Safety Reporting System, may be considered.

(5) Remedial training is not considered appropriate for conduct which is deliberate, grossly negligent, or which may constitute a criminal offense.

A remedial training course will be developed by an FAA Accident Prevention Specialist (APS), or other qualified person at the direction of the Flight Standards District Office (FSDO) Manager, only after review of the investigative file, discussion and counseling with the candidate in person, and discussion with the investigating field inspector. Ground instruction, flight training, simulator training, training conducted by a mechanic instructor, authorized inspector, designated mechanic examiner, or other training may be required and must be received from qualified training sources approved by the APS at the candidate's expense. FAA personnel will not conduct remedial training.

In order to ensure that the agency preserves its ability to initiate timely legal enforcement action in the event the airman fails to satisfy any terms and conditions of the training agreement, the APS, upon consultation with the investigating inspector, should develop a training program that is capable of completion within 120 days after the FAA became aware of the violation. Failure to complete the training program successfully within the time specified may result in termination of the airman's participation in the program, and may result in appropriate legal enforcement action.

Action: When an apparent violation of the FAR becomes known to the FAA, an investigating inspector is assigned and a full investigation is initiated in accordance with current FAA orders and policy. If, in the course of the investigation, the investigating inspector believes that, under the criteria of this policy, remedial training in lieu of legal enforcement action may be appropriate, the inspector should document the relevant factors which support this conclusion, and proceed as follows:

- (1) The Letter of Investigation (LOI) sent should advise the airman that he/she may be allowed to participate in the corrective action through remedial training program. The LOI should also advise that failure to respond to the LOI in the time specified in the LOI will preclude participation in the program, and that the airman in the response must express an interest in pursuing a prescribed course of remedial education and must cooperate with the investigation. A sample Letter of Investigation is provided in Attachment 1 to this Bulletin.
- (2) In all cases, the inspector must complete the investigation.
- (3) The investigating inspector should advise the APS of all facts and circumstances surrounding the apparent violation and provide the APS with a copy of the investigative file. If the airman resides within another FSDO's geographic area of responsibility, the APS at that FSDO may be utilized as the supervising APS.
- (4) The APS will schedule a meeting with the airman in person. Failure of the airman to participate in a face-to-face meeting could demonstrate a nonconstructive compliance disposition and will normally preclude participation in the program.
- (5) Before the meeting, the APS will develop an appropriate course of remedial study that clearly states a training objective. Guidance for developing appropriate remedial study experiences for both pilot and non-pilot airmen is contained in FAA Order 8740.1B, Appendix 7. The APS will coordinate development of each training program with operations, airworthiness and avionics inspectors, as needed.
- (6) During the meeting the APS will confirm whether remedial training is appropriate, propose a course of study, and thereafter develop a remedial training program.
  - a. In determining whether the airman has a constructive attitude toward compliance, the APS should consider the timeliness and nature of the response to the LOI, including the airman's attendance at a meeting with the APS and the manner in which the airman has met all regulatory responsibilities.
  - b. The APS will describe a proposed course of study, including training objectives and expected completion date, to the airman. In developing the training regimen, the APS should consider the nature of the apparent violation and, if relevant, the airman's enforcement record, if any. The APS will consider the specific needs of the candidate, and the availability of qualified instructors, simulators, etc. in the airman's geographic area of operation. The APS should solicit and consider the airman's views on the proposed course before developing a final remedial training program. A sample remedial training agreement is contained in Attachment 2 to this Bulletin.

(7) The meeting between the APS and the airman should be limited to a discussion of an appropriate remedial training program to assist the airman to comply with safety regulations in the future. The merits of the underlying incident or investigation should not otherwise be discussed. The APS should advise that because participation in a remedial training program is a substitute for legal enforcement action, the airman may not both legally challenge the apparent violation and participate in the program. If at any time the airman elects to contest the matter in litigation, the APS should advise that the remedial training agreement would become null and void, the remedial training process would terminate and appropriate legal enforcement action would be taken. Under these circumstances, no further efforts to undertake remedial training would be pursued.

(8) When an agreement on training has been reached, a letter of agreement specifying the terms and conditions of the remedial training program should be signed by the supervising APS and the airman. The remedial training agreement will clearly state the objective of the prescribed remedial training course, include a completion date and the method by which the airman will document satisfactory completion of the training.

(9) The APS will verify that the training objectives have been met. Within the time specified in the training agreement, the airman must provide the required evidence that training has been completed, including an original record of training, signed by each instructor or authorized official of the training establishment, certifying the areas of training and that the training program has been satisfactorily completed. This certification and other documentary evidence, such as logbook entries and aircraft rental invoices, will be placed in the file as required by the remedial training agreement. A discussion with the instructor who provided the training may also be appropriate, in which case a record of that discussion should be included in the file.

(10) When the APS is satisfied that the terms and conditions of remedial training course and objective have been met, the APS will notify the investigating inspector accordingly and return the file.

(11) The investigating inspector will send the airman a Letter of Correction in accordance with FAA Order 2150.3A, Paragraph 1104. A sample Letter of Correction is provided in Attachment 2 of this Bulletin. The investigative report (EIR) will be processed in accordance with FAA Order 2150.3A, Paragraph 1001. Regional Flight Standards personnel will forward a copy of the Letter of Correction to AFS-820 for review. Receipt of the Letter of Correction, which will contain a statement that the required remedial training has been satisfactorily accomplished, will close the case.

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(12) If the airman fails to meet any term or condition of the program or the agreement, the airman shall be notified by letter, sent by certified mail with return receipt requested, that participation in the training program has been terminated, and that appropriate legal enforcement action will be taken. A sample Letter of Termination is provided in Attachment 4 to this Bulletin.

(13) There must be a clear division between enforcement activities conducted by the investigating inspector and remedial training activities conducted by the APS. The APS should guard against being drawn into the legal enforcement action process. In a legal enforcement action taken if the airman fails to complete the training program, the response to the LOI may be used as evidence but information provided to the APS by the airman will not be used as evidence.

Applicability: The policy set forth in this compliance and enforcement bulletin is effective immediately and applies to all apparent violations in which an EIR was opened on or after March 5, 1990, the date on which the Administrator announced this and other compliance and enforcement policy initiatives. Additionally, in order to ensure broad application, it also will be applied to any other open case in which initial legal enforcement action (notice of proposed certificate action or civil penalty) has not been issued.

Attachments

## Attachment 1, Sample Letter of Investigation, Flight Operations

July 5, 199-

File Number: 9-CEO40235

Mr. John D. Smith  
1711 Colorado Avenue  
River City, Iowa 51649

Dear Mr. Smith:

Personnel of this office are investigating an incident that occurred on July 4, 199-, which involved the operation of a Cessna aircraft, N57785, in the vicinity of Metropolis Airport terminal control area (TCA) at approximately 3:15 p.m.

The aircraft was observed and identified as Cessna N57785 operating within the boundaries of the Metropolis Airport TCA without the required clearance from air traffic control. Operations of this type are in the view of the FAA contrary to the Federal Aviation Regulations.

This letter is to inform you that this matter is under investigation by the Federal Aviation Administration (FAA). We would appreciate receiving any evidence or statements you might care to make regarding this matter within 10 days of receipt of this letter. Any discussion or written statements furnished by you will be given consideration in our investigation and any subsequently prescribed sanction or corrective action. If we do not hear from you within the specified time, our report will be processed without the benefit of your statement.

Additionally, you may be allowed to participate in the FAA's corrective action through remedial training program, in the place of legal enforcement action that may otherwise be determined to be appropriate. Remedial training may be appropriate if the FAA determines that:

a. The apparent violation was not deliberate or grossly careless;

b. The apparent violation did not involve apparent criminal conduct or disclose a lack of qualifications to hold a certificate;

c. You fully disclosed the facts and circumstances of this incident at the time of the investigation, and

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d. Upon review of your record of enforcement actions, if any, you have a good record of compliance with the Federal Aviation Regulations.

To be allowed to participate in the corrective action through remedial training program, you must respond to this letter within 10 days of receipt and specifically express your interest in pursuing a course of remedial education. However, the determination to use remedial training is within the discretion of the FAA, and a response by you does not guarantee that remedial training will be afforded you as a substitute for legal enforcement action.

If you wish to receive remedial training, and the FAA inspector believes remedial training may be appropriate, you will meet with an Accident Prevention Specialist, who will confirm whether training is appropriate and will propose a training course for you, at your expense. If you agree to the proposed remedial training program, a written agreement describing the terms and conditions of the training program will be signed by you and the FAA. Upon satisfactory completion of the prescribed training program within the time specified, you will be issued a Letter of Correction and the matter will be closed. Failure to carry out any of the terms of the remedial training agreement will result in termination of your participation in the program and may lead to appropriate legal enforcement. Information provided to the FAA, including the response to this letter, may be used in determining whether remedial training is appropriate. In addition, if remedial training is not afforded, or if the prescribed remedial training program is not satisfactorily completed, it may be used in subsequent legal enforcement action.

Information on the corrective action through remedial training program may be obtained by contacting this office at (213) 376-2181.

Sincerely,

JOHN L. DOE  
Aviation Safety Inspector

ATCH: PRIVACY ACT NOTICE - Figure 4-9, FAAO 2150.3A

**Attachment 2, Sample Training Agreement**

File Number: 9-CE040235

Mr. John Smith  
1711 Colorado Avenue  
River City, Iowa 51649

Dear Mr. Smith:

On July 5, 199-, you were advised that the Federal Aviation Administration was investigating an incident which reportedly occurred on July 4, 199-, in the vicinity of the Metropolis Airport terminal control area (TCA), and involved your operation of Cessna N57785.

Our investigation indicates that you were observed operating within the boundaries of the Metropolis Airport TCA without the required clearance from air traffic control. You have been advised that in the view of the FAA, such an operation is contrary to Section 91.90(a)(1)(i) of the Federal Aviation Regulations. Therefore, you have agreed to enter into this training agreement.

In consideration of all available facts and circumstances, we have determined that remedial training as a substitute for legal enforcement action is appropriate. Accordingly, your signature on this letter signifies your agreement to complete the prescribed course of remedial training within the assigned period of time. To complete this remedial training program successfully you must comply with the following terms:

a. You must obtain the required training from an approved source. Approval can be obtained verbally from Bette B. Wright, Accident Prevention Specialist (APS), Metropolis Flight Standards District Office (FSDO), upon obtaining the services of a certified flight instructor.

b. Once training begins, you are required to make periodic progress reports to the Metropolis FSDO APS.

c. You are required to complete all elements of the remedial training syllabus and meet acceptable completion standards within 21 days of accepting this training agreement.

d. You are required to provide the Metropolis FSDO APS with written documentation indicating satisfactory completion of the prescribed remedial training. You must provide the original of a written certification signed by the certified flight

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instructor who conducts the remedial training. The written certification must describe each element of the syllabus for which instruction was given, and the level of proficiency you have achieved.

e. All expenses incurred for the prescribed training will be borne by you.

Remedial Training Syllabus

Syllabus objective: To improve the student's knowledge and pilot proficiency concerning VFR radio navigation, cross-country flying and terminal control area operations.

Syllabus content:

a. A minimum of 6 hours of ground instruction on the following subjects:

- (1) Map reading;
- (2) Navigational equipment operation (both Loran C and VOR);
- (3) Navigational equipment limitations (both Loran C and VOR);
- (4) Air traffic control procedures concerning Terminal control area operations (VFR);
- (5) At least one visit to the Metropolis terminal area radar control facility to participate in operation rain check. Travel time to and from the Metropolis Airport can not be credited toward the 6-hour requirement.

b. Three hours of flight instruction in cross-country navigation procedures to include:

- (1) Navigational equipment operation (both Loran C and VOR);
- (2) Navigational equipment limitations (both Loran C and VOR);
- (3) Cross-country navigation (both pilotage and radio navigation using both Loran C and VOR);
- (4) terminal control area operations (VFR);

Completion standards: The training will have been successfully completed when the assigned instructor, by oral testing and practical demonstration, certifies that the student has completed instruction in the above-mentioned subjects in accordance with the remedial training syllabus.

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2150.3A CHG 4  
Appendix 1

\_\_\_\_\_  
Betty B. Wright  
Accident Prevention Specialist

\_\_\_\_\_  
Date

I agree to comply with the terms and conditions specified in this letter. I understand that failure to complete any element of this agreement within the prescribed period of time may result in my removal from the corrective action through remedial training program and may result in appropriate legal enforcement action.

\_\_\_\_\_  
John D. Smith

\_\_\_\_\_  
Date

7/29/92

Attachment 3, Sample Letter of Correction, Flight Operations

File Number: 9-CE040235

Mr. John D. Smith:

This letter is in regard to your operation as pilot in command of a Cessna aircraft, N57785, on July 4, 199-.

Our investigation indicates that on that date you were observed operating within the boundaries of the Metropolis Airport terminal control area without the required clearance from air traffic control. You have been advised that in the view of the FAA, such operation is contrary to Section 91.90(a)(1)(i) of the Federal Aviation Regulations.

As a result of our discussion with you on August 1, 199-, you agreed to complete a program of remedial training as a substitute for legal enforcement action. You have submitted evidence showing satisfactory completion of 6 hours of ground instruction in map reading and navigation equipment operations and limitations and 3 hours of flight instruction in cross-country navigation procedures as specified in the training agreement.

In closing this case, we have considered all available facts and concluded that, based on your satisfactory completion of the remedial training program, legal enforcement action will not be pursued. In place of such action, we are issuing this letter that will be made a matter of record for a period of 2 years, after which the record of this matter will be expunged. This letter constitutes neither an admission nor an adjudication of a violation.

We appreciate your cooperation in this matter and expect your full compliance with the regulations in the future.

Sincerely,

John L. Doe  
Aviation Safety Inspector

Attachment 4

Attachment 4, Sample Letter of Termination, Flight Operations

July 20, 199-

File Number: 9-CE040235

Mr. John D. Smith  
1711 Colorado Avenue  
River City, Iowa 51649

Dear Mr. Smith:

This is to inform you that we find you have not complied with the remedial training agreement executed on August 1, 199-, requiring that you complete specified remedial training. Specifically, your designated flight instructor, Mr. George Smith, advises you have not begun the navigational flight instruction you agreed to have completed by August 16, 199-. Although you were scheduled to participate in operation rain check beginning on August 20, 199-, you did not attend any of the three scheduled sessions. Moreover, you have not contacted this office to request modification of any of the terms of the remedial training agreement.

In view of your failure to comply with the terms and conditions of the training program agreement, we have terminated your participation in the remedial training program effective this date. In addition, we have referred your case, involving the operation of Cessna N57785 on July 4, 199-, to the Assistant Chief Counsel for the Central Region for appropriate legal enforcement action.

Sincerely,

JOHN L. DOE  
Aviation Safety Inspector

ATCH: PRIVACY ACT NOTICE - Figure 4-9, FAAO 2150.3A

## Attachment 5

Attachment 5, Corrective Action through Remedial Training Case Study (Operations).

Introduction

This case study involves the hypothetical application of remedial training in lieu of legal enforcement action. The facts which give rise to the apparent violation involve an unauthorized terminal control area (TCA) incursion. Although the concept of corrective action through remedial training is not limited to TCA incursions, this example illustrates an application of the program.

E X A M P L E

The pilot of a Cessna 182 was on a pleasure flight from a small uncontrolled airport to a major controlled airport approximately 200 miles away. The flight was conducted under visual flight rules (VFR) in reported VFR conditions with scattered clouds and visibility of 6 miles at several reporting points along the intended route. The pilot did not plot the planned course on his charts (which later were determined to be out of date by one revision cycle). He had previously flown this route using VORs as his primary means of navigation. However, on this flight he intended to use a newly installed Loran C receiver and not directly over fly the VOR stations. This major airport is within a TCA which the pilot intended to circumnavigate. The pilot did not pre-program any way points in his Loran C receiver prior to takeoff because he intended to rely on the built-in data base of the Loran C.

The flight proceeded normally with the pilot identifying certain geographical landmarks including a river, highway, railroad tracks, and a small city along the way. About halfway through the trip some cumulus buildups appeared. He elected to deviate to the left of course. There was not a VOR in a good position for the new course. In addition there was not an appropriate pre-programmed way point in the Loran C data base. Therefore, he elected to use a distant airport as a way point and followed the course indicated by the Loran C. After several minutes of flying, the terrain looked unfamiliar. He attempted to cross-check his position with the VOR but was unable to receive the selected station. Then he decided to program a way point in the general direction he felt he should be going. He looked at his chart and defined the way point in terms of radial and distance from a VOR that was some distance off the intended course of flight. The pilot continued until he spotted a familiar river. However, he was surprised at how far south he was and that he was past the major airport and TCA that was close to his originally intended flight path.

Nearing his intended destination he monitored ATIS and contacted the air traffic control tower for landing instructions. Following an uneventful landing and turn off from the runway, the ground controller requested him to contact the tower by telephone. He acknowledged and complied with the instruction as soon as he tied down his airplane.

Upon calling the tower, the pilot was asked to identify himself and the aircraft. After supplying the requested information, the pilot asked if there was a problem. The controller advised that the information was requested by the Terminal Radar Approach Control (TRACON) at the major airport in whose airspace the pilot had passed through. The pilot again asked if there was any problem, and the controller responded that the pilot would get an explanation in the mail.

About 10 days later, the pilot received a letter of investigation from the FAA Flight Standards District Office that was located near the aforementioned TRACON. The letter described the TCA incursion on the day of the earlier flight. In accordance with the instructions set forth in the letter, the pilot telephoned the investigating inspector to provide the details of the flight.

However, the investigating inspector was not in when the pilot called. The pilot inquired about the corrective action through remedial training program, and was transferred to the accident prevention specialist (APS). The APS briefed him about the program and informed him that the investigating inspector makes the initial determination as to whether the pilot is an appropriate candidate for the program. He arranged for the pilot to have an appointment with the investigating inspector.

When the pilot arrived for the appointment, he brought the charts, the operations manual for his Loran C and his airman and medical certificates. The investigating inspector interviewed the pilot at length and reviewed the pilot's cross-country planning procedures, as well as the pilot's knowledge of VOR and Loran C. The investigating inspector had previously plotted the aircraft's actual track, as determined from an National Track Analysis Program (NTAP) report, on a current sectional chart and used that information in the interview.

The plotted course revealed that the aircraft had penetrated one of the outer rings of the TCA. After discussing the incident they determined that the penetration occurred while circumnavigating the cumulus buildups. The inspector determined that while the pilot's general knowledge of navigation and his skills were adequate, his Loran C navigation skills were insufficient.

The inspector noted the following deficiencies: use of out of date charts; failure to plot his course; and insufficient knowledge of his Loran C equipment.

Using the factors listed in Compliance/Enforcement Bulletin 90-8, the inspector made an initial determination that for this pilot, remedial training in lieu of legal enforcement action may be appropriate.

The inspector then referred the pilot to the APS who scheduled a face-to-face meeting the same day. The APS had previously reviewed the case with the investigating inspector and had drafted a remedial training agreement. After some discussion on the availability of a qualified instructor and the location of the nearest FAA radar-equipped air traffic facility, an agreement was reached on the training objectives and the elements necessary to achieve them. The finalized training agreement was signed by both the pilot and the supervising APS. The agreement included a provision requiring a progress report (by telephone) within 15 days from the date the agreement was executed. The APS knew the flight instructor chosen by the pilot.

During the progress report, the APS was informed that the pilot had an appointment for operation rain check at a TRACON 30 miles from his home. The APS later contacted the instructor, reviewed the pilot's progress, and asked the instructor to provide a letter detailing the elements of the pilot's training and certifying the results.

About 2 weeks later, the pilot returned to the FSDO and presented the APS with a letter written by the instructor who conducted the remedial training. In the letter, the instructor certified that the airman satisfactorily completed all of the elements listed in the remedial training syllabus. The APS compared the letter from the flight instructor with the written training agreement and determined that terms of the agreement had been satisfied. The APS advised the pilot that he had successfully completed the prescribed remedial training program and that he would receive a letter of correction that would close out this matter. The APS offered the pilot some advice concerning avoiding future incidents of this nature and the pilot thanked the APS.

The APS returned the file to the investigating inspector and they discussed the pilot's participation in and completion of the remedial training program. The investigating inspector issued a letter of correction to the pilot and processed the enforcement investigative report in accordance with policies governing administrative action.

COMPLIANCE/ENFORCEMENT BULLETIN 90-9

**SUBJECT:** SSER recommendations relating to analysis of a violation; determination of appropriate sanction; and coordination within the Office of the Chief Counsel.

**DISCUSSION:** The Administrator has approved several changes to the procedures for analyzing violations, determining sanctions, and coordinating proposed actions within the agency that were recommended by the recent System Safety and Efficiency Review (SSER) of the General Aviation Compliance and Enforcement Program. This Bulletin implements four of those recommendations. These changes are effective immediately and will be incorporated into the next revision of the FAA Order 2150.3A.

I. Analysis of careless or reckless violations (FAR 91.9).

SSER Recommendation C&E005: FAA Order 2150.3A should be amended to provide that alleged violations of Federal Aviation Regulation (FAR) Section 91.9 should be supported by a separate discussion in the technical analysis portion of the Enforcement Investigative Report (EIR). This Bulletin provides for such an analysis.

II. Coordination of cases involving small air carriers.

SSER Recommendation C&E010: FAA Order 2150.3A, paragraph 1201c(3), should be amended such that the definition of "significant" cases (requiring AGC pre-issuance coordination) would exclude general aviation small operator civil penalty cases from coordination where the maximum statutory penalty could be \$100,000 or more, solely through the multiplication of flights. In these general aviation multi-flight cases, a \$500,000 potential maximum statutory penalty (or 50 flights) should be established as the threshold for AGC pre-issuance coordination. This Bulletin amends the coordination process as recommended. "Small operators" are defined as those air carriers or operators for compensation or hire conducting only on-demand operations using aircraft with nine or fewer passenger seats. This change provides that small operator cases are "significant" and, therefore, require pre-issuance coordination with headquarters, only when there is a proposed penalty of \$50,000 or more; when there is a maximum statutory penalty of \$100,000 or more and is not arrived at solely through multiplication of flights; or when there is a maximum statutory penalty of \$500,000 or more.

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III. Deference to field offices and other subordinate and client offices in choice of sanctions.

SSER Recommendation C&E0011: FAA Order 2150.3A should be amended to emphasize that during the review process of enforcement cases, FAA enforcement personnel should give due deference to sanction recommendations of subordinate and client offices if they are properly justified and explained. Implementing policy guidance is prescribed in this Bulletin.

IV. Declaration of an emergency as a factor to consider in setting a sanction.

SSER Recommendation C&E0022: FAA Order 2150.3A, paragraph 207b(5), should be amended to state that declaring an emergency in an appropriate situation is evidence of good judgment and attitude. Such evidence is to be considered in setting enforcement penalties which might result from a violation attendant to such a declaration. This Bulletin makes an appropriate amendment to amend paragraph 207b(5), to implement this recommendation.

ACTION:

I. Analysis of careless or reckless operation. In a case in which the reporting inspector finds that a violation of §91.9 has occurred, the inspector should document the factors on which that determination is based in the analysis portion of the Facts and Analysis Section of the EIR. Accordingly, the following language is added to paragraph 906b, Analysis, of FAA Order 2150.3A:

The inspector should explain how each FAR section cited was violated. This need not be an extensive discussion, and will be only one or two sentences in many cases.

When the inspector finds that a pilot has operated an aircraft in a careless or reckless manner so as to endanger the life or property of another, the inspector should provide a brief explanation as to why the conduct was careless or reckless, and the potential or actual danger involved. For instance, The NTSB has held that potential or inherent danger occurs when a pilot deviates from an assigned altitude, even in clear weather with no other aircraft shown to be close by. Such operation is found to be inherently dangerous, in that actual danger might have developed in the ordinary course of events. A finding of actual danger may be appropriate if the altitude deviation caused the aircraft to be operated so close to another aircraft as to cause a collision hazard.

II. Coordination of small air carrier cases. For purposes of this paragraph, "small operator" means an air carrier or operator for compensation or hire which conducts only on-demand operation using aircraft with nine or fewer passenger seats. In order to revise guidance in accordance with the recommendation, Paragraph 1201c(2) of FAA Order 2150.3A is revised to read as follows:

(2) All of the following civil penalty actions:

A. Proposed civil penalties of \$50,000 or more.

B. Proposed civil penalties involving violations, other than violations by small operators, for which the maximum statutory penalty is \$100,000 or more.

C. Proposed civil penalties involving violations by small operators for which the maximum statutory penalty is \$100,000 or more, at least in part for reasons other than multiplication of flights.

D. Proposed civil penalties involving violations by small operators for which the maximum statutory penalty is \$500,000 or more, whether or not determined by multiplication of flights.

III. Deference to field offices and other subordinate and client offices in choice of sanctions.

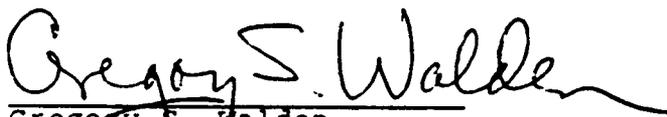
The following paragraph is added at the end of paragraph 207a of FAA Order 2150.3A:

The selection of the appropriate action begins with the investigating inspector. In many cases, he or she is in the best position to evaluate various subjective considerations, such as the alleged violator's compliance attitude and whether an alternative to legal enforcement action may be sufficient to achieve compliance. The EIR prepared by the inspector is reviewed at various levels within the agency to ensure consistency in the application of agency compliance and enforcement policy. In this review, due deference must be afforded the reporting inspector's recommendation as to the appropriate sanction, if the recommendation is properly justified and explained. All other persons who review the choice of sanction must give due deference to sanction recommendations of subordinate and client offices if they are properly justified and explained. However, FAA personnel at all levels are expected to exercise sound judgment and discretion to propose, modify, and substitute alternative remedies within existing guidance, to correct regulatory non-compliance.

IV. Declaration of an emergency. Paragraph 207b(5) is revised to read as follows:

(5) Attitude of the alleged violator. A good compliance attitude is expected. More severe sanctions should be imposed on those who display poor attitudes. In emergency situations, the declaration of an emergency with Air Traffic Control, if it does not aggravate the existing risk, is viewed by the FAA as a sign of good judgment and a constructive attitude, which may in appropriate cases, be a factor in mitigating a sanction to be imposed for any violation committed.

The above policies will be incorporated in the next amendment to FAA Order 2150.3A.

  
\_\_\_\_\_  
Gregory S. Walden  
Chief Counsel

  
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Anthony J. Broderick  
Associate Administrator for  
Regulation and Certification

  
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Monte R. Belger  
Associate Administrator  
for Aviation Standards

COMPLIANCE/ENFORCEMENT BULLETIN NO. 90-10

SUBJECT: Civil penalty assessment authority.

BACKGROUND: On June 27, 1990, revised rules of practice implementing the FAA's authority to assess civil penalties were issued (55 FR 27548; July 3, 1990). The initiation procedures and revised rules are effective August 2, 1990. Current paragraph 1205 of FAA Order 2150.3A (pages dated 12/14/88) contains guidance under the former rules for cases involving violations of the Federal Aviation Regulations (FAR) and other cases under the Federal Aviation Act (FA Act). Current paragraph 1206 (pages dated 12/14/88) contains guidance under the former rules for cases under the Hazardous Materials Transportation Act (HMT Act). This Bulletin provides guidance for use with the new rules of practice for the civil penalty assessment authority, and supersedes paragraphs 1205 and 1206 of Order 2150.3A.

ACTION: Current paragraphs 1205 and 1206 of Order 2150.3A should not be used, and the following guidance should be substituted:

CIVIL PENALTY ASSESSMENT AUTHORITY: CASES INVOLVING AN AMOUNT IN CONTROVERSY NOT EXCEEDING \$50,000, AND CASES UNDER THE HAZARDOUS MATERIALS TRANSPORTATION ACT.

a. General. In most cases involving violations of the FAR or other violations under the FA Act in which the amount sought by the FAA does not exceed \$50,000, the case is processed in accordance with the civil penalty assessment authority, section 905 of the FA Act, as amended, and section 13.16 of the FAR. Under this authority the FAA may assess civil penalties after affording the alleged violator notice and an opportunity to be heard. The opportunity to be heard is provided by an opportunity for a hearing before an administrative law judge. If a civil penalty is assessed or imposed under this authority, and payment is not made, collection of the civil penalty may be sought through proceedings in the appropriate U.S. District Court.

Cases under the FA Act generally are initiated and prosecuted, including through hearings before an administrative law judge, by the Office of the Assistant Chief Counsel in the region or center where the case was investigated.

See paragraph n, below, for special provisions for handling violations under the HMT Act and the Hazardous Materials Regulations (HMR).

b. Separation of functions. Under section 13.203 of the FAR, FAA personnel engaged in investigative or prosecutorial functions shall not, in that case or a factually-related case, participate or give advice in a decision to the administrative law judge or to the FAA decisionmaker on appeal, except as counsel or a witness in the public proceeding. No FAA employee is permitted to advise an administrative law judge. The employees who advise the FAA decisionmaker on any appeal of an initial decision to the FAA decisionmaker (so-called "bubbled" employees) are the Chief Counsel, the Assistant Chief Counsel for Litigation, and attorneys on the staff of the Assistant Chief Counsel for Litigation. All FAA employees are required strictly to comply with this separation of functions.

c. Initial civil penalty action.

(1) Notice of Proposed Civil Penalty. A civil penalty action is initiated by issuing a Notice of Proposed Civil Penalty pursuant to the procedures in section 13.16 of the FAR. See Figure 1. The Notice shall be issued by an official authorized in section 13.16(c), or by an attorney who has appropriate delegation and is signing with a by-line under the name and title of such official. If the Notice is to be signed by an attorney other than an official designated in section 13.16(c), a written delegation authorizing the attorney to sign Notices should be sent to AGC-200.

A. The Notice should set forth the facts alleged, the regulation(s) violated, and the civil penalty proposed. The Notice should contain a statement showing how the facts constituted a violation of the cited regulation(s).

B. The facts should be set forth in numbered paragraphs and in sufficient detail so that the alleged violator can know and understand the charges.

C. The Notice proposes to assess a civil penalty in a specific amount, rather than suggesting a compromise offer. The penalty proposed must be stated specifically. It may not be stated in the alternative.

(2) Attachments to the Notice. An information sheet, a reply form, and section 13.16 and Part 13, Subpart G, should be sent with the Notice. In the information sheet, the alleged violator is advised of the alternatives available in response to the Notice. See Figure 2. The alleged violator may elect one or more of the alternatives listed, as appropriate. On the reply form the alleged violator may indicate that election. See Figure 3. Alternative 1 is to pay

the proposed civil penalty. Alternative 2 is to submit information or material in answer to the charges. Alternative 3 is to submit information indicating a financial inability to pay the proposed penalty, or showing that payment would prevent continuation in business. (This alternative can be selected in combination with one of the other alternatives.) Alternative 4 is to propose to reduce the civil penalty for specified reasons. Alternative 5 is to request an informal conference with legal counsel. Alternative 6 is to request consideration of a compromise without a finding of violation. Alternative 7 is to claim entitlement to waiver of penalty under the Aviation Safety Reporting Program. Alternative 8 is to request a hearing. The reply form also provides a means for the respondent to designate a representative.

(3) Service. The Notice is mailed to the individual respondent, or to the president of a corporate or company respondent. The Notice should be sent by certified mail, return receipt requested, or by personal delivery. Thereafter, the corporate or company respondent may, in writing, designate another person to accept service of documents in that civil penalty action.

(4) Time for submission of a response by the respondent. Section 13.16(d) requires the respondent to submit a response to a Notice not later than 30 days after receipt of the Notice. For purposes of this regulation, adequate submission of a response is deemed to have occurred when the response is either put in the mail or personally delivered. Therefore, if on the 30th day after receipt of the Notice the respondent places his or her response in the mail, the response is timely.

d. Informal procedures. In cases under the civil penalty assessment authority, section 13.16 provides an opportunity for a person to participate in informal procedures, by submitting additional information, participating in an informal conference with an FAA attorney, or both. The provisions in paragraph 1207 apply to informal conferences.

e. Coordination of change in amount of sanction. If the case is a significant case requiring coordination with AGC-200 under paragraph 1201b, any proposed change in the amount of sanction shall be coordinated with AGC-200 (Attn: AGC-260), to the extent provided in that paragraph.

f. Reevaluating the case. When the respondent submits evidence, information, or views in writing or in person at an informal conference, the Assistant Chief Counsel must consider

the new evidence or information and reexamine the Notice. A new determination regarding the alleged violations must be made by legal counsel, upon consultation with the program office. Allegations which are disproved must be withdrawn. If the sanction proposed is determined to be excessive, it must be reduced appropriately. Unless matters not taken into consideration in issuing the Notice are brought to legal counsel's attention, the subsequent action normally should include the sanction proposed in the Notice.

g. Compromise Order. Under section 13.16(1)(1), counsel has the authority to compromise a civil penalty by accepting the payment of a civil penalty without making a finding of violation. In such a case, a Compromise Order is issued. The Compromise Order states that the respondent agrees to pay a civil penalty, that the FAA makes no finding of violation, and that the order shall not be used by the FAA as evidence of a prior violation in any subsequent civil penalty proceeding or certificate action proceeding. See Figure 4.

h. Final Notice of Proposed Civil Penalty. If a respondent does not timely respond to a Notice of Proposed Civil Penalty, or if during informal procedures no agreement is reached for resolving a case and no timely written request for a hearing has been received, a Final Notice of Proposed Civil Penalty is issued. See Figure 5. This gives the respondent one last opportunity to request a hearing. The Final Notice shall be issued by an official with authority to issue a Notice of Proposed Civil Penalty.

(1) Contents. The Final Notice should again set forth the facts alleged, the regulation(s) violated, and the action proposed. The allegations or proposed penalty may be modified based on information received during informal procedures.

(2) Response. The Final Notice offers the following options: (1) pay the proposed civil penalty or an agreed amount, or (2) request a hearing.

(3) Service. The Final Notice is mailed to the individual respondent, or to the president of a corporate or company respondent, or to the person the respondent has designated to receive documents in that civil penalty action. The Final Notice should be sent by certified mail, return receipt requested, or by personal delivery.

(4) Time for submission of a response by the respondent. Section 13.16(e) requires the respondent to submit a response to a Final Notice not later than 15 days after

receipt of the Notice. For purposes of this regulation, adequate submission of a response is deemed to have occurred when the response is either put in the mail or personally delivered. Therefore, if on the 15th day after receipt of the Final Notice the respondent places his or her response in the mail, the response is timely.

i. Order Assessing Civil Penalty.

(1) Issuance by FAA counsel. An Order Assessing Civil Penalty orders the payment of the specified penalty regardless of whether payment of such penalty has been received by the FAA. The Order should set forth the findings of fact, the findings of regulations violated, and the amount of the penalty assessed. See Figure 6, and see Figure 7 for an Order Assessing Civil Penalty With Waiver of Penalty under the Aviation Safety Reporting Program (ASRP). An Order Assessing Civil Penalty is issued by FAA counsel in the following situations:

A. When the person charged with the violation submits, or agrees to submit, the proposed civil penalty or an amount agreed upon during informal procedures, receipt of the amount shall be acknowledged in the Order.

B. When the person charged with a violation does not respond appropriately within 15 days from receipt of the Final Notice of Proposed Civil Penalty.

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

j. Hearings. When a hearing is requested, legal counsel shall file a Complaint with the hearing docket clerk not later than 20 days after receipt of the request. The Complaint sets forth the agency's allegations of facts and violations, and the civil penalty sought. A suggested location for the hearing must be attached to the Complaint. See Figures 8 and 9. Any hearing will be held in accordance with the Rules of Practice in FAA Civil Penalty Actions in Subpart G of FAR Part 13. The administrative law judge will issue an initial decision which makes findings on the allegations contained, and civil penalty sought, in the Complaint.

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The legal office (i.e., regional or center Assistant Chief Counsel or AGC-260) that issued the complaint generally will be responsible for representing the FAA at the evidentiary hearing before an administrative law judge. Normally, legal counsel who prepared the case will represent the FAA at the hearing in order to avoid duplicative preparation by other counsel. In certain cases, where the complaint was issued in one region but the hearing is scheduled to be held in another region, legal counsel may transfer the case to the region where the hearing is to be held, under the criteria set forth in paragraph 208(e). Where cases are transferred to another area for a formal hearing, testimony of witnesses located in the originating area or at other locations outside the location of the hearing may be obtained through depositions. When appropriate, split hearings may be requested.

k. Appeals to the FAA decisionmaker. An initial decision issued by an administrative law judge may be appealed to the FAA decisionmaker, by either party, within 10 days after an oral decision is entered on the record or a written decision is served on the parties. Each party has an opportunity to submit a brief. In most cases, AGC-250 will handle the appeal. Concurrence of AGC-250 must be received for a regional attorney to retain the case on appeal to the FAA decisionmaker. The FAA decisionmaker's decision and order is the final FAA order in the case. In accordance with section 1006 of the FA Act, a respondent may petition a U.S. court of appeals for review of this order.

(1) Appeals by the FAA. When counsel wishes to appeal an initial decision, he or she should call AGC-250 as soon as possible, but not later than 5 days after receipt of the initial decision, to discuss the case. If it is determined to appeal, the attorney who handled the hearing normally will file the notice of appeal. If there is difficulty in discussing the case with AGC-250 within 5 days, counsel should file a protective notice of appeal to avoid losing appeal rights.

(2) All appeals. For all appeals, the FAA attorney handling the case should proceed as follows:

A. As soon as possible after the initial decision is issued, call AGC-250 to alert it that the case will be forwarded, and provide the following information: Who is appealing, the date of the initial decision, and whether it is an oral or written decision.

B. As soon as possible, send the case file to AGC-250. The form in Figure 10, filled out by the FAA attorney who tried the case, should be included.

1. Judicial review of decisions of the FAA decisionmaker. Within 60 days after the Administrator issues a final decision and order in a case under the civil penalty assessment authority, the respondent may petition the appropriate U.S. court of appeals for judicial review of the order as provided in section 1006 of the FA Act. The Department of Justice, in coordination with the FAA, or the FAA when so delegated, will handle such cases before the U.S. court of appeals. FAA participation in the handling of such cases is the responsibility of AGC-250, unless AGC-200 and the Assistant Chief Counsel determine that the case should be handled by the region or center.

m. Collection of civil penalties. Sections 903 and 905 of the FA Act authorize referrals of civil penalty cases to an appropriate United States Attorney's office for collection action in district court. Such a referral should be made when a civil penalty has not been paid:

- within 60 days after service of an Order Assessing Civil Penalty, or a Compromise order, by FAA counsel; or
- within 60 days after expiration of the time for appealing an initial decision assessing a civil penalty; or within 60 days after service of a final decision and order of the Administrator assessing a civil penalty, if no petition for judicial review has been filed during that time.

Generally, the legal office that handled the hearing or issued the order will take any action which is necessary to collect the penalty.

(1) Referrals should be made directly to the appropriate U.S. Attorney.

(2) Pursuant to section 905 of the FA Act, an action in U.S. district court to collect a civil penalty does not involve a de novo hearing on the issue of liability or amount of a civil penalty. The penalty has already been adjudicated before, or settled with, the FAA, pursuant to procedures, which included either a formal evidentiary hearing or the opportunity for such hearing. Therefore, the U.S. Attorney should be requested to file an action for a judgment based on the order which assessed a civil penalty.

(3) Settlement of civil penalties. The FAA attorney may settle any civil penalty which has been assessed any time before referring the Order Assessing Civil Penalty to the U.S. Attorney for collection. The settlement may include

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imposing a civil penalty without finding a violation, in which case a Compromise Order is issued. See section 13.16(1)(1). After an Order Assessing Civil Penalty has been referred for collection, the FAA attorney, as appropriate, may work toward a settlement of the case with the Office of the U.S. Attorney.

n. Special Procedures for Violations of the Hazardous Materials Transportation Act. In general, civil penalty actions, regardless of amount, for violations of the HMT Act are handled the same as for violations of the FA Act where the amount in controversy does not exceed \$50,000. The following describes some of the unique aspects of hazardous materials cases.

(1) General.

A. Section 110(a) of the Hazardous Materials Transportation Act (49 U.S.C. 1809) provides for civil penalties of not more than \$10,000 for each violation of the HMT Act or the Hazardous Materials Regulations. The civil penalty provision applies only to a person who has "knowingly" committed an act which is a violation. Under section 110(a), the FAA is not required to establish that the alleged violator knew its actions constituted a violation of the HMT Act or the HMR. On the contrary, the term "knowingly" refers to "knowingly commits an act." Knowledge of the contents of the shipment and the fact that such contents are hazardous are all that is required to establish a violation of the HMT Act or the HMR. Section 110(a) authorizes the Secretary of Transportation to assess a civil penalty, after notice and an opportunity for a hearing has been given to the alleged violator.

B. Section 110(b) of the HMT Act provides for criminal penalties when willful violations of the HMT Act or the HMR are involved (see paragraph 1212, Legal Action Involving Criminal Violations). Under section 110(b), a violation will be considered to be "willful" if an alleged violator, who has knowledge of the contents of the shipment and knows the requirements of the HMT, intentionally fails to comply.

C. The Secretary's enforcement responsibilities involving the transportation of hazardous materials by air have been delegated to the Administrator of the FAA (see Appendix 2). Legal enforcement actions for violations of the HMR are handled, within the FAA, by the Office of the Chief Counsel, Regulations and Enforcement Division, AGC-200.

(2) Determining the type of enforcement action and sanction required. Upon receipt of an Enforcement Investigative Report, counsel should review the file to determine the sufficiency of evidence to establish the violations alleged and, after considering recommendations of the regional division, determine whether criminal prosecution, civil penalty action, or the issuance of an order of compliance is the appropriate action.

A. If the evidence warrants criminal prosecution, such action should take priority over any other form of enforcement action, except one involving an order of immediate compliance, or other action to immediately address a safety problem.

B. AGC-200 has the final authority to determine the amount of a civil penalty to be proposed in a particular case, and the amount of the penalty finally assessed (except when a formal hearing is held), after considering any comments and recommendations of the appropriate regional division with reference to such sanction.

(3) Initial civil penalty action: Notice of Proposed Civil Penalty. A civil penalty action against a person who knowingly offered or accepted or transported by air a hazardous material in violation of the HMR is initiated by issuing a Notice of Proposed Civil Penalty pursuant to the procedures in section 13.16. The attachments to the Notice are similar to those for cases under the FA Act, however, the Aviation Safety Reporting Program does not apply.

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Figure 1. SAMPLE NOTICE OF PROPOSED CIVIL PENALTY  
(Federal Aviation Act)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ms. Annie O. Kley  
22 Calibur Way  
Pistol, South Gun 00000

Re: Case No. 90NM768910

NOTICE OF PROPOSED CIVIL PENALTY

A report of an investigation indicates the following:

1. On or about December X, 19XX, you presented yourself and your accessible property for inspection at the "L" Concourse Security Screening Checkpoint of the Portland International Airport in Portland, Oregon.
2. At that time, you were not a ticketed passenger.
3. Upon inspection of your accessible property, a Jennings Firearm, Inc., .22-caliber semi-automatic pistol, bearing serial number 123456, and one ammunition clip containing 6 live .22-caliber rounds of ammunition were discovered in your briefcase.

By reason of the foregoing facts and circumstances, you violated section 107.21(a)(1) of the Federal Aviation Regulations in that you had a firearm on or about your person or accessible property when performance began of the inspection of your person or accessible property before entering a sterile area.

Under sections 901 and 905 of the Federal Aviation Act, as amended (49 U.S.C. App. 1471 and 1475), you are subject to a civil penalty not to exceed \$1,000 for the violation noted. By reason of the foregoing facts and circumstances, we propose to assess a civil penalty in the amount of \$750.

Enclosed is information concerning your options in responding to this Notice. The options include participating in an informal conference with an FAA attorney, and submission of information to the FAA for consideration. You must submit, in

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writing, your choice of the alternatives explained on the enclosed information form, on or before 30 days after you receive this Notice. If you fail to submit your choice within that time, you will have no further right to participate in the two informal procedures listed above.

Assistant Chief Counsel

By: \_\_\_\_\_  
Attorney

Enclosures: Information Sheet  
Reply Form  
FAR 13.16 and Subpart G of Part 13

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Figure 2. SAMPLE INFORMATION SHEET TO ACCOMPANY  
NOTICE OF PROPOSED CIVIL PENALTY (Federal Aviation Act)

INFORMATION REGARDING CIVIL PENALTIES  
UNDER SECTIONS 901 AND 905 OF THE  
THE FEDERAL AVIATION ACT OF 1958, AS AMENDED

Sections 901 and 905 of the Federal Aviation Act of 1958, as amended, provide that any person who violates pertinent provisions of the Act, or any rule, regulation, or order issued under the Act, is subject to a civil penalty for each violation. The maximum assessment for each violation is also prescribed by law, as specified in the notice to which this is attached. The notice also states amount of the proposed civil penalty for the alleged violation(s). This proceeding is governed by the Federal Aviation Regulations (FAR) in Title 14, section 13.16, and Subpart G of Part 13, of the Code of Federal Regulations, which are enclosed.

Within thirty (30) days after your receipt of the notice, you may elect to proceed in one or more of the following ways by appropriately marking the corresponding box(es) on the attached election sheet and returning it by mail or personal-delivery to the address provided below.

1. You may submit the amount of the civil penalty specified in the notice by certified check or money order payable to the "Federal Aviation Administration." Your submission constitutes your agreement that an Order Assessing Civil Penalty in that amount may be issued without further notice, and that you waive your right to a hearing in this matter.

2. You may submit, in writing, information and evidence demonstrating that a violation of the regulations was not committed or that, if it were, the facts and circumstances do not warrant the proposed civil penalty. Information provided will be considered in determining whether a civil penalty should be assessed or imposed and the amount of any such civil penalty. This information may be submitted in conjunction with a request for informal conference under paragraph 5. Choosing this option will not affect your right to a hearing, unless you also elect paragraph 1 or 4.

3. You may submit, in writing, information and records indicating that you are financially unable to pay the proposed civil penalty, or showing that payment of the proposed penalty would prevent you from continuing in business. This will not affect your right to a hearing, unless you also elect paragraphs 1 or 4.

4. You may request that a civil penalty be assessed in a specific amount other than that proposed in the notice, or that no civil penalty be assessed and submit the reasons for the reduction in the proposed amount, and any additional information in writing (with appropriate supporting documentation), which show why the reduction is appropriate. Information provided will be considered in determining whether the amount you specified should be assessed.

If the FAA does not accept your offer, this will not affect your right to a hearing. If the FAA accepts your offer, your request constitutes your agreement that the Order Assessing Civil Penalty in that amount may be issued without further notice, and that you waive your right to a hearing.

5. You may request to discuss the matter informally and in person at a conference with an FAA attorney at the Office of the Chief Counsel/Office of the Assistant Chief Counsel in \_\_\_\_\_ or at the Flight Standards District Office convenient to you (a list of those offices in the \_\_\_\_\_ Region is attached). If you reside outside the \_\_\_\_\_ Region, you may request the transfer of the case to your area for the conference to be held. This will not affect your right to a hearing. **IMPORTANT:** The purpose of the conference is to provide the opportunity for you to present your reasons and any supporting basis why the action should not be taken as proposed, including any information you wish to have considered before the FAA decides whether to proceed further with the proposed action.

6. You may request that the FAA impose a civil penalty without making findings of violations, and submit the reasons and any additional information in writing (with appropriate supporting documentation) which support your request. If the FAA does not accept your offer, this will not affect your right to a hearing. If the FAA accepts your offer, your request will constitute your agreement that a Compromise Order in that amount may be issued and that you waive your right to a hearing.

7. If you are an individual and have filed an FAA Aviation Safety Report with the National Aeronautics and Space Administration (NASA) concerning the incident set forth in the attached Notice of Proposed Civil Penalty, you may be entitled to waiver of any penalty. This program applies only to operations in the National Aviation System, including departure, enroute, approach, and landing operations and procedures, air traffic control procedures and equipment, pilot/controller communications, aircraft movement on the airport, and near midair collisions. This program does not apply to violations of Federal rules governing civil aviation security, such as carriage of weapons on an airport. You will be entitled to waiver only if all of the following are found:

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- a. That this violation was inadvertent and not deliberate;
- b. That this violation did not involve a criminal offense or an accident, or disclose a lack of competence or qualification to be the holder of a certificate; and
- c. You have not paid a civil penalty pursuant to section 901 of the Federal Aviation Act or been found in any prior FAA enforcement action to have committed a violation of the Federal Aviation Act, or any regulation under the Federal Aviation Act, for a period of 5 years prior to the date of the occurrences.
- d. You prove that within 10 days after the violation, you completed and delivered or mailed a written report of the incident or occurrence to NASA under the Aviation Safety Reporting Program.

In the event you establish your entitlement to a waiver of penalty, an order will be issued finding you in violation but imposing no payment of civil penalty or suspension of your certificate. The order will be a matter of record. As to the findings of fact and violations, you may either waive your right to a hearing (in which case an Order Assessing Civil Penalty with Waiver of Penalty will be issued), or you may request a formal hearing on the allegations of fact and violations (in which case a Complaint will be filed).

8. You may request a hearing in accordance with section 13.16 of the FAR. Your request must be dated and signed. A Complaint will be filed and a formal evidentiary law judge, Subpart G of Part 13. At the conclusion of the hearing all issues of fact and law will be decided and a decision rendered whether and in what amount a civil penalty will be assessed.

Your request for a hearing must be made to the Hearing Docket, Federal Aviation Administration, 800 Independence Ave., SW, Room 924A, Washington, DC 20591, Attention: Hearing Docket Clerk. You must mail a copy to the FAA attorney handling this case at the address indicated below.

Please address all communications in this matter to the FAA attorney who signed the Notice at the following address:

Office of Assistant Chief Counsel  
Federal Aviation Administration  
Address

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Your response to the Notice of Proposed Civil Penalty may be delivered personally to the Office of the Assistant Chief Counsel for the \_\_\_\_\_ Region at the above address during normal business hours.

Telephone: \_\_\_\_\_ (Collect calls cannot be accepted).

If you are an individual:

#### PRIVACY ACT NOTICE

This notice is provided in accordance with section (e)(3) of the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter or form with which this Notice is enclosed.

A. Authority. This information is solicited pursuant to the Federal Aviation Act of 1958, 49 U.S.C. section 1301, et seq., and regulations issued thereunder codified in Part 13 of Title 14 of the Code of Federal Regulations. Submission of the telephone number is voluntary. The request for information is intended to provide you with an opportunity to participate in the investigation.

B. Principal purpose. The requested information is intended to assist us in contacting you regarding this enforcement case.

C. Routine uses. Records from this system of records may be disclosed in accordance with the routine uses as they appear in System of Records No. DOT/FAA 847 as published from time to time in the Federal Register.

D. Effect of failure to respond: If you do not provide the requested information, there may be delay in contacting you regarding this enforcement case, and you may forfeit your right to a hearing on the merits of this case.

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Figure 3. REPLY FORM FOR NOTICE OF PROPOSED CIVIL PENALTY  
(Federal Aviation Act)

Assistant Chief Counsel for the \_\_\_\_\_ Region  
Federal Aviation Administration  
P.O. Box 55555  
City, State 00000

Subject: Notice of Proposed Civil Penalty

In reply to your Notice of Proposed Civil Penalty, I elect to proceed as indicated by my check mark beside the numbered paragraph(s) below:

1.  I hereby submit the amount of the proposed civil penalty with the understanding that an order assessing a civil penalty will be issued in that amount without further notice, and that I waive my right to a hearing.
2.  I hereby submit evidence and information, demonstrating that a violation of the regulations did not occur as alleged or that the amount of the penalty is not warranted by the circumstances.
3.  I hereby submit information and records showing that I am financially unable to pay the proposed civil penalty, or that payment of the penalty would prevent me from continuing in business.
4.  I hereby request that a civil penalty be assessed in the amount of \$\_\_\_\_\_ and I submit the reasons for the reduction of the proposed amount. My request constitutes my agreement that if this offer is accepted by the FAA, an Order Assessing Civil Penalty in that amount may be issued without further notice and I waive my right to a hearing.
5.  I hereby request an informal conference (which will be held at the Office of the Assistant Chief Counsel in \_\_\_\_\_ or at a mutually convenient location) in order to discuss this matter with an FAA attorney and to present evidence and information in my behalf.
6.  I hereby request that the FAA impose a civil penalty without making findings of violations, and submit my reasons. My request constitutes my agreement that if this offer is accepted, a Compromise Order will be issued in that amount and I waive my right to a hearing.

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7.   / I hereby claim entitlement to a waiver of penalty under the Aviation Safety Report Program and enclose evidence that a timely report was filed. As to the allegations of fact and violations --

  / I request that an Order Assessing Civil Penalty with Waiver of Penalty be issued and waive my right to a hearing.

  / I request a hearing in this matter in accordance with paragraph 8.

8.   / I hereby request a hearing in accordance with Subpart G of Part 13 of the Federal Aviation Regulations with the understanding that a Complaint will be filed. I request that the hearing be held in \_\_\_\_\_.  
I am sending this request both to the FAA attorney and to the Hearing Docket, Federal Aviation Administration, 800 Independence Ave., SW, Room 924A, Washington, DC 20591, Attention: Hearing Docket Clerk.

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Date: \_\_\_\_\_  
Case No. \_\_\_\_\_

  / I request that future documents in this case be sent to:  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_

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Figure 4. SAMPLE COMPROMISE ORDER  
(Federal Aviation Act)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ms. Annie O. Kley  
22 Calibur Way  
Pistol, South Gun 00000

Re: Case No. 90NM768910

COMPROMISE ORDER

On February XX, 19XX, you were advised through a Notice of Proposed Civil Penalty that the FAA proposed to assess a civil penalty in the amount of \$750.

After further consideration, the parties have agreed to settle this matter by the payment of a civil penalty by you, without the FAA making a finding of violation. This settlement does not constitute an admission by you of the truth of any allegations set forth in the Notice of Proposed Civil Penalty.

This compromise order shall not be used as evidence by the FAA of a prior violation in any subsequent civil penalty proceeding or certificate action proceeding.

NOW, THEREFORE, IT IS AGREED, pursuant to sections 901 and 905 of the Federal Aviation Act, as amended (49 U.S.C. App. 1471 and 1475), that you shall pay a civil penalty in the amount of \$750.

[include one of the following]

You have agreed and shall pay, immediately, the agreed upon amount by mailing or delivering a certified check or money order in the amount of \$750, payable to the Federal Aviation Administration, to Attorney, Office of the Chief Counsel/Office of the Assistant Chief Counsel, address. [or] We hereby acknowledge receipt of your check in the amount of \$750, which we accept in full settlement of this matter. You may consider this matter closed.

Assistant Chief Counsel

By:

\_\_\_\_\_  
Attorney