

1/29/97

2150.3A CHG 24
Appendix 1

COMPLIANCE/ENFORCEMENT BULLETIN NO. 97-1

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SUBJECT: Airport consortia: Enforcement policy for security violations of parts 107 or 108 of the Federal Aviation Regulations disclosed during initial vulnerability assessments and development of action plans.

1. **BACKGROUND:** On July 25, 1996, President Clinton established the White House Commission on Aviation Safety and Security and requested that the Commission provide a report in 45 days on how to deploy the latest technology to detect the most sophisticated explosives. On September 9, 1996, the Commission submitted its initial report that not only responded to the President's request but also included recommendations for non-technological improvements that the Commission believes will improve the safety and security of air carriers and airports. The Commission proposed a new government-industry partnership, and specifically recommended establishing consortia, composed of representatives of relevant aviation and law enforcement entities, at all commercial airports to implement the Commission's recommendations. On September 30, 1996, the President signed Public Law No. 104-208 that in pertinent part provides that "the Administrator of the Federal Aviation Administration may establish at individual airports such consortia of government and aviation industry representatives as the Administrator may designate to provide advice on matters related to aviation security and safety: Provided, That such consortia shall not be considered Federal advisory committees."

The FAA has taken initial action to establish these consortia. They have conducted or will conduct vulnerability assessments at Category X and 1 airports and, based on those assessments, prepare action plans satisfactory to the FAA concerning equipment and personnel improvements and other changes to improve aviation security. The focus of the initial assessments is on identifying vulnerabilities that can be addressed immediately. The consortia should identify strengths and weaknesses in all areas of airport and air carrier security (e.g., passenger screening, access controls, and screening of checked and carry-on baggage). Reports of the initial vulnerability assessments provide the bases for the development of action plans.

With regard to the work of the consortia, the Commission strongly advocated that all parties, including the FAA, other Federal agencies, and local law enforcement, work as partners. At the same time, the Commission noted that a government-industry partnership "doesn't mean that government abandons its responsibility to protect people and the public interest. On the contrary, government must keep all of its authority, ability, and resolve to enforce rules whenever needed."

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The purpose of this bulletin is to provide policy guidance to FAA personnel for their handling of violations of parts 107 or 108 of the Federal Aviation Regulations that are disclosed to the FAA by a party to a consortium during a time period that is reasonable for completion of the initial vulnerability assessments and development of action plans. To achieve maximum participation by regulated parties and to encourage complete disclosure of vulnerabilities, the FAA does not intend ordinarily to take punitive legal enforcement action against, or issue administrative action to, any party to a consortium based on such violations. Punitive legal enforcement action comprises civil penalty action and fixed-term certificate suspensions; it does not include such remedial measures as certificate suspensions pending demonstration of compliance, certificate revocations, and cease and desist orders. Administrative actions are either warning notices or letters of correction. The FAA will maintain a record of all the apparent violations and record any corrective action taken. The specific elements of the agency's policy are stated below.

2. POLICY:

a. Applicability. This policy applies to violations of parts 107 and 108 of the Federal Aviation Regulations disclosed to the FAA within the context of a consortium activity (e.g., during the initial assessment, a technical evaluation, or a meeting) by a party to a consortium during the time period, not to exceed 60 days from the date of the first consortium meeting, needed to complete an initial vulnerability assessment at that airport and to prepare and submit to the FAA an action plan. Nothing in this policy should be construed as providing any regulated party with an exemption from any security requirement; parties continue to be responsible for compliance with all such requirements. This policy does not apply to violations previously known by the FAA that happen also to be disclosed or discussed within the context of a consortium activity.

b. Punitive Legal Enforcement Action and Administrative Action. The FAA does not intend ordinarily to take punitive legal enforcement action against, or issue any administrative action to, a party to an airport consortium for a violation to which this policy applies. The FAA will exercise its prosecutorial discretion to take such enforcement action in appropriate cases. A party is expected to take action to correct any noncompliance; FAA punitive legal enforcement action is likely if the noncompliance is not resolved to the satisfaction of the FAA.

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ADDENDUM: Following the submission of an action plan, an airport consortium is expected to continue to address security issues at the airport. The FAA is considering the enforcement policy to apply in those situations where, following submission of an action plan, a party to a consortium discloses an apparent violation to the FAA through a consortium. Until that final policy determination is made, however, the applicability of the policy in this bulletin is extended to violations disclosed after the submission of a plan, provided the violations were not previously known to the FAA.

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COMPLIANCE/ENFORCEMENT BULLETIN NO. 98-1
WITHDRAWN - CHG 27

APPENDIX 2. STATUTORY AUTHORITY, RESPONSIBILITIES, AND
DELEGATIONS

1. DEPARTMENT OF TRANSPORTATION ACT. Under Section 106 of the Department of Transportation Act, the Secretary of Transportation shall carry out the duties and powers of the Federal Aviation Administration. The statute further provides that the Administrator shall carry out--

(1) duties and powers of the Secretary related to aviation safety (except those related to transportation, packaging, marking, or description of hazardous materials) and vested in the Secretary by section 308(b) of this title and sections 306-309, 312-314, 1101, 1105, and 1111 and titles VI, VII, IX, and XIII of the Federal Aviation Act of 1958, as amended; and

(2) additional duties and powers prescribed by the Secretary.

2. FEDERAL AVIATION ACT OF 1958.

a. Section 313(a) of the Federal Aviation Act of 1958, as amended, authorizes the Administrator "to perform such acts, to conduct such investigations, to issue and amend such orders...pursuant to and consistent with the provisions of this Act, as he shall deem necessary to carry out the provisions of, and to exercise and perform his powers and duties under, this Act."

b. Under Sections 313(c) and 1004, the Administrator is granted powers, in the conduct of any public hearing or investigation, to issue subpoenas, administer oaths, receive evidence, examine witnesses, take depositions, and enforce subpoenas.

c. Section 605(b) requires FAA inspectors to make inspections of aircraft, aircraft engines, propellers, and appliances designed for or used in air transportation to determine that they are in safe condition and are properly maintained for operation in air transportation. The section further prohibits an air carrier from using in air transportation any aircraft, aircraft engine, propeller, or appliance that is not in a condition for safe operation. The inspector shall notify the air carrier and, for a period of 5 days thereafter, such aircraft, aircraft engine, propeller, or appliance shall not be used "unless found by the inspector to be in condition for safe operation."

d. Section 1002(a) authorizes any person to file with the Secretary of Transportation a complaint with respect to anything done or omitted to be done by any person in contravention of any provision of the Act or any requirement established pursuant to the Act. It further provides for the investigation or dismissal of such complaints, and requires that complaints against a member of the Armed Forces of the United States, acting in the performance of his official duties, be referred to the Secretary of the department concerned.

e. Section 1002(b) empowers the Secretary of Transportation to institute, on his own initiative, at any time an investigation relating to the enforcement of any of the provisions of the Act.

f. Section 901(a) (1) provides that: "Any person who violates (A) any provision of title III, IV, V, VI, VII, or XII, or of section 1114, of this Act, or any rule, regulation, or order issued thereunder...shall be subject to a civil penalty of not to exceed \$1,000 for each such violation...." (Provision for a civil penalty involving hazardous materials is not applicable in that the Hazardous Materials Regulations are issued under the Hazardous Materials Transportation Act; violators are subject to penalties in Section 110 of the Act.)

g. Under Section 901(a) (2), penalties for violations of Titles III, V, VI, or XII may be compromised by the Administrator.

h. Section 901(b) provides that: "In case an aircraft is involved in such violation and the violation is by the owner or person in command of the aircraft, such aircraft shall be subject to lien for the penalty...."

i. Section 903(b) (1) provides procedures for the collection of civil penalties.

j. Section 903(b) (2) and (3) provide procedures for the seizure of aircraft that are subject to liens as provided in Section 901(b).

k. Section 609 authorizes the Administrator to reinspect any civil aircraft, aircraft engine, propeller, appliance, air navigation facility, or air agency or to reexamine any civil airman. It further provides that, as a result of any such reinspection or reexamination or any other investigation, the Administrator may issue an order amending, modifying, suspending, or revoking any type certificate, production certificate, airworthiness certificate, airman certificate, air carrier operating certificate, air navigation facility certificate (including airport operating certificates), or air agency certificates, if the Administrator determines that safety in air commerce or air transportation and the public interest requires such action. The section also provides procedures for: (1) the issuance of such orders; (2) the issuance of emergency orders; (3) appeals of orders to the National Transportation Safety Board (NTSB); and (4) appeals of NTSB orders for judicial review.

l. Section 1005(a) provides that when the Secretary is of the opinion that an emergency exists, requiring immediate action in respect to safety in air commerce, an order may be issued without notice, hearing, or the making of a report and without answer or other form of pleading by the interested party. The statute further requires the Secretary to immediately initiate proceedings relating to the matters embraced in such orders and, insofar as practicable, to give preference to such proceedings over all others under the Act.

m. Section 1006 provides that any order issued by the Secretary or the NTSB under the Act shall be subject to review by the courts of appeals of the United States. The section further provides procedures for the appeal and processing of such cases.

n. Section 1007 authorizes the Secretary, or his duly authorized agents, to apply to the district courts of the United States for the enforcement of any provision of the Act, or of any order, certificate, or permit issued thereunder. It further authorizes any U.S. attorney, upon request of the Secretary, to institute appropriate actions and prosecute all necessary proceedings for enforcement of such matters.

o. Section 902(a) through (p) and Section 1203 provide for fines or imprisonment for criminal violations of those statutes. The Federal Aviation Administration investigates all such violations, except those involving subsections 902(i) through (n), which are investigated by the Federal Bureau of Investigation.

3. HAZARDOUS MATERIALS TRANSPORTATION ACT.

a. Section 109(a) of the Hazardous Materials Transportation Act provides, in pertinent part, that: "The Secretary is authorized, to the extent necessary to carry out his responsibilities under his title, to conduct investigations, make reports, issue subpoenas, conduct hearings, require the production of relevant documents, records, and property, take depositions.... The Secretary is further authorized, after notice and an opportunity for a hearing, to issue orders directing compliance with this title or regulations issued under this title; the district courts of the United States shall have jurisdiction, upon petition by the Attorney General, to enforce such orders by appropriate means."

b. Section 109(c) provides: "Inspection.--The Secretary may authorize any officer, employee, or agent to enter upon, inspect, and examine, at reasonable times and in a reasonable manner, the records and properties of persons to the extent such records and properties relate to--

(1) the manufacture, fabrication, marking, maintenance, reconditioning, repair, testing, or distribution of packages or containers for use by any person in the transportation of hazardous materials in commerce; or

(2) the transportation or shipment by any person of hazardous materials in commerce.

Any such officer, employee, or agent shall, upon request, display proper credentials."

c. Section 110(a) provides that any person who "knowingly" violates any provision of the Act, or a regulation issued thereunder, "shall be subject to a civil penalty of not more than \$10,000 for each violation." It further provides that when the Secretary determines, "after notice and an opportunity for a hearing," that a violation has occurred, a civil

penalty "shall be assessed by the Secretary by written notice." The section specifies certain matters to be considered in determining the amount of such penalty, provides for the referral of cases to the Attorney General for the recovery of civil penalties in proceedings in U.S. district courts, and authorizes the Secretary to compromise any such penalty prior to referral to the Attorney General.

d. Section 110(b) provides that any person who "willfully" violates any provision of the Act or the regulations shall, upon conviction, be subject to "a fine of not more than \$25,000, imprisonment for a term not to exceed 5 years, or both," for each such offense.

e. Section 111 provides for action in U.S. district court for injunctive relief to redress violations of the Act or regulations, or to eliminate or ameliorate an "immediate hazard" involving the transportation of a hazardous material.

4. AIRPORT AND AIRWAY DEVELOPMENT ACT OF 1970. Section 27 provides that: "The Secretary is empowered to perform such acts, to conduct such investigations and public hearings, to issue and amend such orders, and to make and amend such regulations and procedures, pursuant to and consistent with the provisions of this part, as he considers necessary to carry out the provisions of, and to exercise and perform his powers and duties under, this part."

5. DELEGATION OF AUTHORITY.

a. By the Secretary. The powers and duties of the Secretary of Transportation under the Federal Aviation Act, the Hazardous Materials Transportation Act, and the Airport and Airway Development Act, which relate to enforcement of laws and regulations pertaining to aviation safety, have been delegated to the Administrator. Section 1.47 of the regulations issued by the Secretary of Transportation provides that the Administrator is delegated authority to:

(1) Carry out the powers and duties transferred to the Secretary of Transportation by, or subsequently vested in the Secretary by virtue of, Section 6(c)(1) of the Department of Transportation Act (49 U.S.C. 1655(c)(1)), including those pertaining to aviation safety (except those related to transportation, packaging, marking, or description of hazardous materials) and vested in the Secretary by section 308(b) of title 49, U.S.C., and sections 306-309, 312-314, 1101, 1105, and 1111 and titles VI, VII, IX (excluding section 902(h)), and XII of the Federal Aviation Act of 1958, as amended.

(2) Carry out the functions vested in the Secretary by:

(a) The Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1701 et seq.), except Sections 3 and 4 (49 U.S.C. 1702, 1703).

(b) Sections 208 and 209 of the Airport and Airway Revenue Act of 1970, as amended (49 U.S.C. 1742, 1742 note).

(c) Sections 21, 22, 23(b), 24, and 25 of the Airport and Airway Development Act Amendments of 1976 (49 U.S.C. 1346(a), 1348 note, 1713 note, 1356a, 1704).

(3) Carry out the functions vested in the Secretary by 49 U.S.C. 1808(a), (b), and (c), 1809, and 1810 relating to investigations, records, inspections, penalties, and specific relief so far as they apply to the transportation or shipment of hazardous materials by air.

b. By the Administrator. Certain powers and duties of the Administrator to investigate violations of regulations under his jurisdiction and to take appropriate enforcement action have been delegated to various officials within the FAA. Pertinent sections in Part 13 of the Federal Aviation Regulations provide as follows:

(1) Section 13.3(b) states: For the purpose of investigating alleged violations of the Federal Aviation Act of 1958 (except Title V), the Airport and Airway Development Act of 1970, or the Hazardous Materials Transportation Act, or any regulation or order issued under these Acts, the Administrator's authority under sections 313 and 1004 of the Federal Aviation Act, or section 109 of the Hazardous Materials Transportation Act the Administrator's authority has been delegated to the Chief Counsel, the Deputy Chief Counsel, each Assistant Chief Counsel, and each Regional Counsel. For the purpose of investigating alleged violations of Title V of the Act, or any regulation or order issued under it, the Administrator's authority under sections 313 and 1004 has been delegated to the Aeronautical Center Counsel.

(2) Section 13.3(c) states: For the purpose of investigating alleged violations of the Hazardous Materials Transportation Act, or of any regulation or order issued under it, relating to the transportation or shipment by air of hazardous materials, the authority under Section 109 of that Act (49 U.S.C. 1808), as delegated to the Administrator, has been redelegated to the Chief Counsel, the Deputy Chief Counsel, each Assistant Chief Counsel, and each Regional Counsel.

(3) Section 13.11(a) states: If it is determined that a violation or an alleged violation of the Federal Aviation Act of 1958, or an order or regulation issued under it, or of the Hazardous Materials Transportation Act, or an order or regulation issued under it, does not require legal enforcement action, an appropriate official of the Flight Standards Service, the Office of Airport Programs, or the Civil Aviation Security Service, or other appropriate FAA official may take administrative action in disposition of the case.

(4) Section 13.15 authorizes the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, and the Assistant Chief Counsel for a region or center to compromise civil penalties involving an amount in controversy in excess of \$50,000 under Section 901 of the Federal Aviation Act.

(5) Section 13.16 authorizes the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, and the Assistant Chief Counsel for a region or center to initiate and assess civil penalties under Sections 901 and 905 of the Federal Aviation Act of 1958, as amended, and Section 110 of the Hazardous Materials Transportation Act and to refer cases to the U.S. Attorney General for collection of such penalties.

(6) Section 13.17 states that an FAA safety inspector, who is authorized in an order of seizure issued by the Regional Director or by the Chief Counsel, may summarily seize an aircraft that is involved in a violation for which a civil penalty may be imposed on its owner or operator. The section prescribes followup actions to be taken in these cases.

(7) Section 13.19 authorizes the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, and each Regional Counsel to exercise the Administrator's authority under Section 609 of the Federal Aviation Act of 1958 to amend, modify, suspend, or revoke any type certificate, production certificate, airworthiness certificate, airman certificate, air carrier operating certificate, air navigation facility certificate, or air agency certificate. These officials may issue notices of proposed certificate action, hold informal conferences, issue orders of suspension, revocation, amendment, or modification, and handle appeals before the NTSB in such cases. The Aeronautical Center Counsel is authorized to issue orders suspending or revoking certificates of aircraft registration as provided in Title V of the Federal Aviation Act of 1958.

(8) Section 13.20 states that the Administrator's authority under Section 1005(a) of the Federal Aviation Act of 1958 to issue emergency orders, including cease and desist orders, is exercised by the Chief Counsel, the Deputy Chief Counsel, each Assistant Chief Counsel and each Regional Counsel, and the Aeronautical Center Counsel.

(9) Section 13.21 authorizes the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, and each Regional Counsel to send reports to the appropriate military authorities for disciplinary actions when members of the Armed Forces, while performing official duties, or civilian employees of the Department of Defense, who are subject to the Uniform Code of Military Justice, have violated the Federal Aviation Act of 1958, or a regulation or order issued under it.

(10) Section 13.25 authorizes the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, each Regional Counsel, or the Aeronautical Center Counsel, when it is determined that a person has engaged, or is about to engage, in any act in violation of the Federal

Aviation Regulations or the Hazardous Materials Regulations, to request the Attorney General to bring an action in U.S. District Court for injunctive relief and punitive damages. It further authorizes the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, and each Regional Counsel to bring, or request the Attorney General to bring, an action in U.S. District Court for an order to suspend or restrict the transportation of a hazardous material by air when it is determined that such transportation would constitute an imminent hazard.

(11) Sections 13.71 through 13.79 authorize the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, and each Regional Counsel, who has reason to believe that a person is engaging in the transportation or shipment by air of a hazardous material in violation of the Hazardous Materials Regulations, to issue a notice of proposed order of compliance and a consent order of compliance, when appropriate, or an order of compliance (when no formal hearing is held).

(12) Section 13.81(a) states: Notwithstanding Sections 13.73 through 13.79, the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, or the Regional Counsel concerned may issue an order of immediate compliance, which is effective upon issuance, if he finds that:

(1) There is strong probability that a violation is occurring or is about to occur;

(2) The violation poses a substantial risk to health or to safety of life or property; and

(3) The public interest requires the avoidance or amelioration of that risk through immediate compliance and waiver of the procedures afforded under Sections 13.73 through 13.79.

APPENDIX 3. FAA FORM 2150-5,
STATISTICAL CODE LISTING

<u>FIELD</u>	<u>TITLE</u>	<u>CODE</u>	<u>DESCRIPTION</u>
19	Type of Operation	01	Air Carrier
		02	Foreign Air Carrier
		03	Commercial Operator & Part 125
		04	Air Taxi Commuter
		05	Air Taxi - Other
		06	Air Travel Club
		07	Personal Transportation
		08	Utility/Industrial
		09	Military
		10	Airport
		11	Manufacturer
		12	Shipper
		13	Certificated School
		14	Uncertificated School
		15	Repair Station
		16	Uncertificated Repair Facility
		17	Passenger
		18	Nonpassenger
		19	Parachute Jumper
99	Other		
20	Sub Type of Operation	01	Scheduled - Passenger
		02	Scheduled - Cargo
		03	Charter - Passenger
		04	Charter - Cargo
		05	Helicopter
		06	Corporate/Executive
		07	Business
		08	Public Aircraft
		09	Private
		10	Sport/Recreation
		11	Demonstration/Competition
		12	Criminal Activity
		13	Aerial Application
		14	External Load
		15	Aerial Surveillance
		16	Foreign Airman
		17	U.S. Army
		19	U.S. Air Force
		18	U.S. Navy/Marine
		20	U.S. Coast Guard
		21	Certificated Airport (Part 139)
		22	Noncertificated Airport
		23	Aircraft
		24	Engine

<u>FIELD</u>	<u>TITLE</u>	<u>CODE</u>	<u>DESCRIPTION</u>
20	Sub Type of Operation	25	Propeller
		26	Product Parts/Appliance
		27	Pilot (schools)
		28	Mechanic (schools)
		29	Flight Engineer (schools)
		30	Reexamination/Reinspection
		31	Airman - Alcohol
		32	Airman - Drug
		33	Airman - Falsification
		34	Alcohol/Flight Crew
		35	Drugs/Flight Crew
		36	Falsification/Flight Crew
		98	None
		99	Other
21	Category	01	Flight Operations
		02	Maintenance
		03	Records and Reports
		04	Training - Flight Crew
		05	Training - Other
		06	Hazardous Materials
		07	Airport Surfaces/Safety Areas
		08	Obstructions/Lighting
		09	Crash/Fire/Rescue
		10	Airport Operations/Self Inspection
		11	Quality Control
		12	Type Design Data
		13	Technical Standard Order
		14	Aircraft Alteration
		15	Near Mid-Air
		16	Hazard to Air Navigation
		17	Hazard to Persons on Surface
		18	Interference with Crewmember
		19	Noise
		20	Security
		21	Medical
		22	Alcohol/Flight Crew
23	Drugs/Flight Crew		
24	Falsification/Flight Crew		
99	Other		
22	Source	01	Air Traffic Service
		02	Other FAA Source
		03	U.S. Military
		04	Other U.S. Government Agency
		05	Foreign Referrals

<u>FIELD</u>	<u>TITLE</u>	<u>CODE</u>	<u>DESCRIPTION</u>		
22	Source	06	Local/State Government		
		07	Public Complaint		
		08	Accident Investigation		
		09	Surveillance		
		10	Enroute Inspection		
		11	Incident Investigation		
		12	Facility Inspection		
		13	Record/Log Inspection		
		14	Certification, Reinspection, or Reexamination		
		15	Ramp/Aircraft Spot Inspection		
		16	Mechanical Reliability Report		
		17	Mechanical Interruption Summary		
		18	Malfunction or Defect Report		
		19	Special Surveillance or Inspection		
		20	Hazardous Materials Report		
		21	Other reports required by FAR/HMR		
		22	Aeronautical Center, AAM-130		
		23	Aviation Medical Examiner		
		24	GASA Inspection - Segment 4		
		25	NASIP Inspections		
		26	Region Generated Special Surveillance		
		27	National Headquarters- Generated Special Surveillance or Inspection		
		28	IG Match		
		29	ACIEP/Voluntary Disclosure		
		99	Other		
		23	Accident Associated	00	No Accident
				01	Accident Occurred - Not Associated
				01	Accident Occurred - Associated
		24	Security Program	01	Firearm
02	Explosive				
03	Incendiary				
04	Detected - X-ray				
05	Detected - Metal Detector				
06	Detected - Physical Search				
07	Weapon Loaded				
08	Weapon Unloaded				
09	Local Arrest				
10	LEO Presence				
11	LEO Authority				
12	LEO Training				

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<u>FIELD</u>	<u>TITLE</u>	<u>CODE</u>	<u>DESCRIPTION</u>
24	Security Program	13	Law Enforcement Records
		14	Program - Not Approved
		15	Program - Changed Condition
		16	Barriers
		17	Access Points
		18	ID System Implementation - Airport
		19	Failure to Detect - Persons/Vehicles
		20	Failure to Screen Person
		21	Failure to Screen - Carry-On
		22	Failure to Screen Check Baggage
		23	Improper Screening - Person
		24	Improper Screening - Carry-On
		25	Improper Screening - Checked Baggage
		26	Failure to Detect - Weapons
		27	Metal Detector
		28	X-ray Device
		29	Notification to Public - Signage
		30	Dosimeter
		31	Unauthorized Access to Aircraft
		32	Unauthorized Access to AOA - Person
		33	Unauthorized Access to Sterile Area
		34	ID System Implementation - Air Carrier
		35	Cargo Acceptance
		36	Baggage Acceptance
		37	Bomb Threat/Hijack Notification
		38	Training - Crewmembers
		39	Training - Screening Personnel
		40	Improper Escort
		41	Armed Escort
		42	Unauthorized Access to AOA - Vehicle
		43	Tear Gas
		44	Ammunition Accessible
		45	Checked Baggage
		46	Failure to Declare
		47	Failure to Challenge
		48	Discharged
		49	Baggage Claim Tags
		50	Failure to Detect - Test Object
		51	Physical Search
		99	Other

EXPLANATION OF SOME TYPE AND SUB TYPE CODESTABLE ID: TYPOPCODE:

- 01 Air Carrier - Includes certificated air carriers that are carrying passengers.
- 03 Commercial Operator - Includes air carriers that are certificated for all-cargo operations.
- 07 Personal Transportation - a catchall that includes any type of personal transportation. Personal transportation includes, for example, corporate, private companies, and individual businesses.
- 08 Utility/Industrial - Includes 90% working helicopters and cropdusters.
- 12 Shippers - Includes anyone (individuals and companies) that ships materials and specifically, hazardous materials, by air.
- 14 Uncertified School - Includes primarily freelance flight instructors hired on an individual basis with no school facilities.
- 16 Uncertified Repair Facility - Includes mechanics, self employed, with no repair station certificate.
- 17 Passenger - Includes anyone boarding an aircraft, except designated crewmembers.
- 18 Non Passenger - Includes anyone not boarding an aircraft, for example, people who see off the aircraft but are not boarding.

TABLE ID: SUBOBCODE:

- 01 Scheduled - Passenger - Includes certificated air carriers that are carrying passengers.
- 02 Scheduled - Cargo - Includes air carriers that are certificated for all-cargo operations.

APPENDIX 4 ENFORCEMENT SANCTION GUIDANCE TABLE

INTRODUCTION: This Appendix provides guidance to assure greater national consistency in enforcing the Federal Aviation Regulations. Since the Sanction Guidance Table is only intended to provide general guidance for the exercise of the agency's prosecutorial discretion, it is sufficiently broad and flexible to permit full consideration of all mitigating and aggravating factors.

EMPHASIS APPROACH TO ENFORCEMENT: An increase in instances of noncompliance with a particular regulation, as well as other circumstances, may require analysis of the sufficiency of sanctions previously imposed for violations of that regulation. For example, the number of TCA violations or violations involving flying under the influence of alcohol or drugs may increase, and give rise to a concomitant increase in the number of accidents or incidents. Analysis of sanctions and other information available to FAA regarding such violations may result in an agency determination that the current sanction policy has not provided an effective deterrent. Under these circumstances, safety in air commerce and air transportation and the public interest may require a change in sanction policy and an increase in the severity of sanctions in order to promote vigilance and deter such violations. Notification to field and regional personnel of enforcement activities/areas requiring an emphasis approach will be accomplished through the issuance of Compliance/Enforcement Bulletins. (Order 2150.3A, paragraph 106).

GENERAL GUIDELINES: The Sanction Guidance Table is intended to be used only as internal guidance in selecting an appropriate sanction. Its purpose is to assist, not replace, the exercise of prosecutorial judgment. Determinations as to whether certificate action or civil penalty action is appropriate should be made in accordance with paragraph 206 of the Compliance and Enforcement Program, FAA Order 2150.3A. The Table represents the normal range of sanction for a single violation of a particular regulation. Alleged violations will fall within the normal range only when the violator has no prior violations and the actual or potential danger involved is not greater than the maximum degree of danger necessarily inherent in any such violation. Sanctions above or below the normal range may be

sought based on other considerations, such as factors of aggravation or mitigation or if necessary to further the Administrator's policy.

PL 100-223, effective December 30, 1987, increased the maximum civil penalty for violations committed by air carriers from \$1,000 to \$10,000 per violation. The increased civil penalty maximum will serve as an effective deterrent and will decrease the likelihood that low numbers of violations may be acceptable to an operator as a "cost of doing business." Experience has demonstrated that multiple violations of a single regulation often result in a sufficiently deterrent civil penalty, even under the \$1,000 maximum. Although the new civil penalty maximum will ordinarily result in a larger civil penalty than was sought under the old maximum, the computation of penalty for multiple violations should not be done simply by multiplying the range of sanction for a single violation of a particular regulation by the number of flights. Rather, judgment should be exercised in determining the seriousness of the

violations and applying a sanction that will serve to deter future violations by the violator or others similarly situated; i.e., the totality of the circumstances surrounding the case should be considered, including past violations.

With respect to certificate actions, multiple violations (i.e., multiple violations of a single regulation, a single violation of multiple regulations, or multiple violations of multiple regulations) may result in a sanction greater than the sum of sanction ranges for the particular violations cited. Where a certificate action for multiple violations does not involve qualifications, but rather is solely disciplinary or punitive, a suspension for a fixed period of days should be imposed to prevent or deter the violator and other persons similarly situated from committing similar violations in the future. Whenever multiple violations demonstrate a lack of qualifications or reason to believe that the certificate holder may lack qualifications, a remedial sanction such as revocation or suspension pending demonstration of qualifications is appropriate.

In selecting an appropriate sanction outside the normal range, various aggravating and mitigating factors and circumstances should be considered. These include the factors listed in FAA Order 1000.9D and FAA Order 2150.3. With respect to individuals, the following should also be considered:

1. Significance in degree of hazard to the safety of other aircraft, persons or property in the aircraft or on the ground, created by the alleged violation;
2. Nature of the violation - inadvertent or deliberate;
3. Past violation history (since past compliance should be the norm, this factor is considered only to assess the need for a greater than normal sanction);
4. Alleged violator's level of experience;
5. Attitude of alleged violator;
6. Nature of activity involved - private, public or commercial;

7. Ability of alleged violator to absorb the sanction;
and

8. Demonstrated lack of qualifications.

NOTE: Whenever a proposed sanction is outside the normal range of penalties indicated in this Table, it should be coordinated with AGC-300 prior to the issuance of the initial enforcement action document. The EIR file should contain a notation of the basis for such departure.

The Sanction Guidance Table describes civil penalties as minimum, moderate or maximum for a single violation of a particular regulation. These terms are defined as follows:

(1) Violations Committed by Air Carriers (on or after 12/31/87).

Maximum	\$7,500-\$10,000
Moderate	\$4,000-\$7,499
Minimum	\$1,000-\$3,999

(2) Violations Committed By Airport Operators.

Maximum	\$900-\$1,000
Moderate	\$750-\$899
Minimum	\$500-\$749

(3) Violations Committed By Air Carrier Personnel.

Maximum	\$750-\$1,000
Moderate	\$550-\$749
Minimum	\$500-\$549

(4) Violations Committed By Part 125 Operators.

Maximum	\$750-\$1,000
Moderate	\$550-\$749
Minimum	\$400-\$549

(5) Violations Committed By Part 125 Personnel.

Maximum	\$750-\$1,000
Moderate	\$550-\$749
Minimum	\$500-\$549

(6) Violations Committed By General Aviation Owners, Operators, Mechanics, Agencies, and Non-Certificated Persons.

Maximum	\$750-\$1,000
Moderate	\$550-\$749
Minimum	\$500-\$549

(7) Violations of Section 901(d) of the FA Act, Committed by Persons Intending to Board a Flight, are Subject to a Maximum Civil Penalty of \$10,000.

(8) Violations Committed By Repair Stations and Other Institutions.

Maximum	\$750-\$1,000
Moderate	\$550-\$749
Minimum	\$400-\$549

(9) Engineering and Manufacturer Violations.

Maximum	\$900-\$1,000
Moderate	\$750-\$899
Minimum	\$500-\$749

SANCTION GUIDANCE TABLE

SANCTION PER VIOLATION

Air Carriers, Part 125 Operators
and Airport Operators.

A. Maintenance Manual.

1. Failure to maintain a current manual.	Sus. Until manuals are made current to 7 day sus and thereafter until manuals are made current.
2. Failure to provide adequate instructions and procedures in manual.	Mod. to max. c.p.
3. Failure to distribute manual to appropriate personnel.	Mod. c.p.
4. Release of aircraft without required equipment.	Max. c.p. to 7 day sus.

B. Failure to Comply With
Airworthiness Directives.

Mod. to max. c.p.

C. Operations Specifications.

1. Failure to comply with inspection and overhaul time limitations.	Max. c.p. to 7 day sus.
2. Operations contrary to	Max. c.p.

operations specifications.

Page 4

		<u>SANCTION PER VIOLATION</u>
D.	<u>Failure to Provide Adequately for Proper Servicing, Maintenance, Repair and Inspection of Facilities and Equipment.</u>	Max c.p. to sus. until proper servicing maintenance, repair and inspection of facilities and equipment is provided.
E.	<u>Failure to Provide or Maintain a Maintenance & Inspection organization.</u>	Max. c.p. to sus. an appropriate maintenance and inspection organization is provided.
until		
F.	<u>Training Program.</u>	
	1. Failure to have or maintain an effective	Max. c.p. to sus. until compliance training program is demonstrated.
	2. Failure to train specific personnel adequately.	Mod. to max. c.p.
G.	<u>Failure to Insure that Maintenance Release is Completed and Signed.</u>	Mod. to max. c.p.
H.	<u>Performance of Maintenance by Unauthorized Persons.</u>	Max. c.p.
I.	<u>Failure to Perform or Improper Performance of Maintenance.</u>	Max. c.p.
J.	<u>Failure to Revise Aircraft Data After Repair.</u>	Mod. to max. c.p.
K.	<u>Records and Reports.</u>	
	1. Failure to make	Mod. to max. c.p.

accurate mechanical
interruption summary report.

2. Failure to make
available reports of major
alterations or repairs.

Mod. to max. c.p.

	<u>SANCTION PER VIOLATION</u>
3. Failure to make accurate mechanical reliability reports.	Mod. to max. c.p.
4. Failure to make required entry in aircraft log.	Mod. to max. c.p.
5. Failure to keep maintenance records.	Max. c.p. to 7 day sus. and thereafter until aircraft is in airworthy condition.
6. Failure to make available pilot records.	Mod. to max. c.p.
7. Failure to make available load manifests.	Mod. to max c.p.
L. <u>Operation of an Unairworthy Aircraft.</u>	
1. Technical nonconformity to type certificate, but no likely effect (potential or actual) on safe operation.	Min. c.p.
2. Non-conformity which may have an adverse effect on safety of operation.	Mod. c.p.
3. Non-conformity which has an adverse effect(actual or potential) on safe operation.	Max. c.p.
M. <u>Serving Alcoholic Beverages to or Boarding a Person Who Appears to Be Intoxicated.</u>	Max. c.p.
N. <u>Failure to Make Available</u>	Max. c.p.

a Seat on the Flight Deck
for Enroute Inspectors.

0. Using an Unqualified
Crewmember.

Max. c.p.

P. Improperly Returning
Aircraft to Service.

Max. c.p.

SANCTION PER VIOLATION

- | | |
|---|-------------------|
| Q. <u>Illegal Carriage of Controlled Substance with Knowledge of Carrier, i.e. Knowledge of Management Personnel.</u> | Rev. |
| R. <u>Security Violations.</u> | |
| 1. Failure to properly screen baggage or each passenger. | Max. c.p. |
| 2. Unauthorized access to Airport Operations Area. | Max. c.p. |
| 3. Failure to comply with Air Carrier Security Program includes failure to detect weapons, incendiary and other dangerous devices). | Max. c.p. |
| 4. Management personnel coerce, condone, or encourage falsification of records/reports. | Rev. |
| 5. Deliberate failure to maintain employee records. | Max. c.p. |
| 6. Failure to challenge. | Mod. C.P. |
| 7. Failure to test screeners or test equipment. | Mod. C.P. |
| 8. Failure to properly train. | Mod. c.p. |
| 9. Unintentional failure to maintain screener/CSS test records. | Min. to mod. c.p. |
| 10. Improper use of dosimeters. | Min. c.p. |

11. Failure to display I.D. Min. to mod. C.P.
12. Failure to manage/
control I.D. System. Max. c.p.
13. Failure to conduct
background check. Min. to mod. c.p.
14. Failure to detect test
objects. Max. c.p.
15. Failure to comply with
approved or current security
program. Max. c.p.

SANCTION PER VIOLATION

16. Failure of LBO to respond in a timely manner. Max. c.p.

II. Personnel of Air Carriers and Part 125 Operators.

A. Maintenance Performed By Unauthorized Personnel.

1. Without certificate. Max. c.p.
2. Exceeding limitations. 30 to 45 day sus.

B. Failure to Properly Perform Maintenance. 30 to 120 day sus.

C. Inspection Personnel.

1. Failure to make required. 30 to 60 day sus.
2. Making improper inspection. 30 to 120 day sus.
3. Improperly releasing an aircraft to service. 30 to 60 day sus.

D. Records and Reports.

1. Failure to make entries in aircraft log. 15 to 60 day sus.
2. Failure to make entries in worksheets. 15 to 30 day sus.
3. Failure to sign off work or inspection performed. 15 to 30 day sus.
4. Failure to 15 to 30 day sus.

complete and sign
maintenance release.

5. Falsification of
records or reports.

Rev.

E. Releasing Aircraft for
Service Without Required
Equipment.

30 to 60 day sus.

SANCTION PER VIOLATION

- F. Pre-Flight.
1. Failure to use pre-flight cockpit checklist. 15 to 30 day sus.
 2. Failure to check aircraft logs, flight manifests, weather, etc. 30 to 90 day sus.
- G. Taxiing.
1. Failure to adhere to taxi clearance or instruction. 30 to 60 day sus.
 2. Collision while taxiing. 30 to 120 day sus.
 3. Jet blast. 30 to 180 day sus.
 4. Taxiing with passenger standing. 30 to 60 day sus.
- H. Takeoff.
1. Takeoff against instruction or clearance. 60 to 120 day sus.
 2. Takeoff below weather minimums. 60 to 120 day sus.
 3. Takeoff in overloaded aircraft. 60 to 120 day sus.
- I. Enroute.
1. Deviation from clearance or instruction. 30 to 90 day sus.
 2. Operating VFR within clouds. 90 day sus. to rev.
 3. Operation of 30 to 180 day sus.

unairworthy aircraft.

4. Unauthorized departure 15 to 30 day sus.
from flight deck.

5. Operating within 30 to 90 day sus.
restricted or prohibited area,
or within positive control area.

	<u>SANCTION PER VIOLATION</u>
6. Operating without required equipment.	15 to 120 day sus.
7. Fuel mismanagement/exhaustion.	30 to 150 day sus.
J. <u>Approach to Landing.</u>	
1. Deviation from clearance or instruction in terminal area.	30 to 90 day sus.
2. Approach below weather minimums.	45 to 90 day sus.
3. Exceeding speed limitation in airport traffic areas.	30 to 60 day sus.
K. <u>Landing.</u>	
1. Landing at wrong airport.	90 to 180 day sus.
2. Deviation from instrument approach procedure.	30 to 90 day sus.
3. Overweight landing.	30 to 90 day sus.
4. Hard landing.	15 to 60 day sus.
5. Short or long landing.	30 to 180 day sus.
6. Wheels up landing.	30 to 180 day sus.
7. Failure to comply with preferential runway system.	Max. c.p. to 15 day sus.
L. <u>Unauthorized Admission to Flight Deck.</u>	30 to 90 day sus

M. Failure to Close and Lock
Cockpit Door.

Max. c.p. to 30 day sus.

N. Acting as Flight Crewmember
While Under the Influence of
Liquor or Drugs, or Alcoholic
Beverage Consumption within
8 hours.

Emergency rev.

	<u>SANCTION PER VIOLATION</u>
O. <u>Denial of Authorized Entry to Flight Deck.</u>	30 to 60 day sus.
P. <u>Flight and Duty Time Limitations.</u>	15 to 90 day sus.
Q. <u>Operation Without Required Certificate or Rating.</u>	
1. Medical certificate.	15 to 60 day sus.
2. Lack of type rating.	180 day sus. to rev.
3. Missed proficiency check.	30 to 90 day sus.
4. Lack of current experience.	30 to 90 day sus.
5. Failure to have current certificate in possession.	Mod. c.p. to 7 day sus.
R. <u>Operation with Known Physical Disability.</u>	Rev.
III. <u>Individuals and General Aviation - Owners, Pilots, Repair Stations, Maintenance Personnel.</u>	
A. <u>Owners and Operators Other Than Required Crewmembers.</u>	
1. Failure to comply with airworthiness directives.	Mod. to max. c.p.
2. Failure to perform or improper performance of maintenance, including required maintenance.	Mod. to max. C.P.
3. Failure to make proper entries in aircraft logs.	Min. to mod. c.p.

4. Operation of aircraft
beyond annual, 100-hour or
progressive inspection.

Min. to mod. c.p.

SANCTION PER VIOIATION

5. Operation of unairworthy Mod. to max. c.p.
aircraft.

6. Falsification of any Rev.
record.

B. Repair Stations.

1. Failure to provide Mod. to max. c.p.
adequately for proper servicing,
maintenance repairs, and
inspection.

2. Failure to provide Max. c.p. to 7 day
adequate personnel who can sus. and thereafter
perform, supervise and until adequate
inspect work for which the personnel are provided.
station is rated.

3. Failure to have enough Max. c.p. to 7 day sus.
qualified personnel to keep and thereafter until
up with the volume of work. certificate holder has
enough qualified
personnel.

4. Failure to maintain Mod. to max. c.p.
records of supervisory and
inspection personnel.

5. Failure to maintain Mod. to max. c.p.
performance records and reports.

6. Failure to insure Min. to max. c.p.
correct calibration of all
inspection and test equipment
is accomplished at prescribed
intervals.

7. Failure to set forth Min. to mod. c.p.
adequate description of work
performed.

8. Failure of mechanic to make log entries, records or reports. Mod. to max. c.p.
9. Failure to sign or complete maintenance release. Min. to mod. c.p.
10. Inspection of work performed and approval for return to service by other than a qualified inspector. Max. c.p. to 30 day sus.

SANCTION PER VIOLATION

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|---|--|
| 11. Failure to have an adequate inspection system that produces satisfactory quality control. | Mod. c.p. to 30 day sus. and thereafter until an adequate inspection system is attained. |
| 12. Maintaining or altering an article for which it is rated, without using required technical data, equipment or facilities. | Max. c.p. to 30 day sus. |
| 13. Failure to perform or properly perform maintenance, repairs, alterations, and required inspections. | Mod. c.p. to 30 day sus. |
| 14. Maintaining or altering an airframe, powerplant, propeller, instrument, radio or accessory for which it is not rated. | Max. c.p. to rev. |
| 15. Failure to report defects or unairworthy conditions to FAA in a timely manner. | Mod. to max. c.p. |
| 16. Failure to satisfy housing and facility requirements. | Mod. c.p. to sus. until housing and facility requirements are satisfied. |
| 17. Change of location, housing or facilities without advance written approval. | Mod. c.p. to sus. until approval is given. |
| 18. Operating as a certificated repair station without a repair station certificate. | Max. c.p. |

19. Failure to permit FAA to inspect. Max. c.p. to sus. until FAA is permitted to inspect.

C. General Aviation Maintenance Personnel.

1. Failure to revise aircraft data after major repairs or alterations. 30 to 60 day sus.

SANCTION PER VIOLATION

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|-----|--|--------------------------------|
| 2. | Failure to perform or improper performance of maintenance. | 30 to 120 day sus. |
| 3. | Failure of mechanic to properly accomplish inspection. | 30 to 60 day sus. |
| 4. | Failure of mechanic to record inspection. | Min. c.p. to 30 day sus. |
| IA. | 5. Failure of IA holder to properly accomplish inspection. | 60 to 180 day sus. of |
| | 6. Failure of IA holder to record inspection. | Mod. c.p. to 30 day sus. of IA |
| | 7. Maintenance performed by person without a certificate. | Mod. to max. c.p. |
| | 8. Maintenance performed by person who exceeded certificate limitations. | 15 to 60 day sus. |
| | 9. Improper approval for return to service. | Mod. c.p. to 60 day sus. |
| | 10. Failure to make maintenance record entries. | Mod. c.p. to 60 day sus. |
| | 11. Failure to set forth adequate description of work performed. | Min. c.p. to 30 day sus. |
| | 12. Falsification of maintenance records. | Rev. |
| D. | <u>Student Operations.</u> | |
| | 1. Carrying passengers. | Rev. |

- | | |
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| 2. Solo flight without required endorsement. | 45 to 90 day sus. |
| 3. Operation on international flight. | 60 to 90 day sus. |
| 4. Use of aircraft in business. | 90 to 120 day sus. |

	<u>SANCTION PER VIOLATION</u>
5. Operation for compensation or hire.	Rev.
E. <u>Flight Instructors.</u>	
1. False endorsement of student pilot certificate.	Rev.
2. Exceeding flight time limitations.	30 to 90 day sus.
3. Instruction in aircraft for which he/she is not rated.	30 to 90 day sus.
F. <u>Operational Violations.</u>	
1. Operation without valid airworthiness or registration certificate.	30 to 90 day sus.
2. Failure to close flight plan or file arrival notice.	Admin. action to Min. c.p.
3. Operation without valid pilot certificate (no certificate).	Max. c.p.
4. Operation while pilot certificate is suspended.	Emergency rev.
5. Operation without pilot or medical certificate in personal possession.	Admin. action to 15 day sus.
6. Operation without valid medical certificate.	30 to 180 day sus.
7. Operation for compensation or hire without commercial pilot certificate.	180 day sus. to rev.

8. Operation without type 60 to 120 day sus.
or class rating.

	<u>SANCTION PER VIOLATION</u>
9. Failure to comply with special conditions of medical certificate.	90 day sus. to rev.
10. Operation with known physical deficiency.	90 day sus. to rev.
11. Failure to obtain preflight information.	30 to 90 day sus.
12. Deviation from ATC instruction or clearance.	30 to 90 day sus.
13. Taxiing, takeoff, or landing without a clearance where ATC tower is in operation.	30 to 90 day sus.
14. Failure to maintain radio communications in airport traffic area.	30 to 60 day sus.
15. Failure to comply with airport traffic pattern.	30 to 60 day sus.
16. Operation in TCA without or contrary to a clearance.	60 to 90 day sus.
17. Operation in ARSA without maintaining contact with ATC.	30 to 60 day sus.
18. Failure to maintain altitude in airport traffic area.	30 to 60 day sus.
19. Exceeding speed limitations in traffic area.	30 to 60 day sus.
20. Operation of unairworthy aircraft.	30 to 180 day sus.

21. Failure to comply with Airworthiness Directives. 30 to 180 day sus.

22. Operation without required instruments and/or equipment. 30 to 90 day sus.

SANCTION PER VIOLATION

23. Exceeding operating limitations.	30 to 90 day sus.
24. Operation within prohibited or restricted area, or within positive control area.	30 to 90 day sus.
25. Failure to adhere to right of way rules.	30 to 90 day sus.
26. Failure to comply with VFR cruising altitudes.	30 to 90 day sus.
27. Failure to maintain required minimum altitudes over structures, persons or vehicles;	
a. congested area;	60 to 180 day sus.
b. sparsely populated areas.	30 to 120 day sus.
28. Failure to maintain radio watch while under IFR.	30 to 60 day sus.
29. Failure to report compulsory reporting points.	30 to 60 day sus.
30. Failure to display position lights.	30 to 60 day sus.
31. Failure to maintain proper altimeter settings.	30 to 60 day sus.
32. Weather operations;	
a. Failure to comply with visibility minimums in controlled airspace;	60 to 180 day sus.
b. Failure to comply	30 to 120 day sus.

with visibility minimums
outside controlled airspace;

c. Failure to comply 60 to 180 day sus.
with distance from clouds
requirements in controlled
airspace;

SANCTION PER VIOLATION

- d. Failure to comply with distance from clouds requirements outside of controlled airspace. 30 to 120 day sus.
- 33. Failure to comply with IFR landing minimums. 45 to 180 day sus.
- 34. Failure to comply with instrument approach procedures. 45 to 180 day sus.
- 35. Careless or reckless operations.
 - a. Fuel mismanagement/ exhaustion. 30 to 150 day sus.
 - b. Wheels up landing. 30 to 60 day sus.
 - c. Short or long landing. 30 to 90 day sus.
 - d. Landing on or taking off from closed runway. 30 to 60 day sus.
 - e. Landing or taking off from ramps or other improper areas. 30 to 120 day sus.
 - f. Taxiing collision. 30 to 90 day sus.
 - g. Leaving aircraft unattended with motor running. 30 to 90 day sus.
 - h. Propping aircraft without a qualified person at controls. 30 to 90 day sus.
- 36. Passenger operations.

- a. Operation without approved seat belts. 30 to 60 day sus.
- b. Carrying passengers who are under the influence of drugs or alcohol. 60 to 120 day sus.
- c. Performing acrobatics when all passengers are not equipped with approved parachutes. 60 to 90 day sus.

	<u>SANCTION PER VIOLATION</u>
d. Use of unapproved parachutes.	30 to 60 day sus.
e. Permitting unauthorized parachute jumping.	30 to 90 day sus.
f. Carrying passengers without recent flight experience.	30 to 120 day sus.
37. Operation while under the influence of drugs or alcohol, or consumption within 8 hours;	
a. Under the influence or .04 and above blood alcohol;	Rev. to emergency rev.
b. Within 8 hours.	180 day sus. to rev.
38. Dropping of objects from an aircraft.	30 to 60 day sus.
39. Unauthorized towing.	30 to 60 day sus.
40. Acrobatic flight on airways, over congested areas, below minimum altitudes, etc.	90 to 180 day sus.
41. Falsification of applications, certificates, records, etc.	Rev.
42. Taking off with insufficient fuel.	30 to 150 day sus.
43. Operating so as to cause a collision hazard.	60 to 180 day sus.
44. Failure to produce	30 day sus. and

pilot certificate, log
and records.

thereafter until
certificate, log,
records are produced.

45. Conviction for unlawful carriage of a controlled substance on an aircraft. Rev.

46. Drug conviction when an aircraft is not involved. 180 day sus. to Rev.

SANCTION PER VIOLATIONG. Security Violations by
Individuals.CHECKED BAGGAGE:

- | | |
|--|--------------------------------------|
| 1. Failure to declare unloaded firearm | \$100-\$300 |
| 2. Loaded firearm | \$300-\$1,000 |
| 3. Incendiary/explosive | Up to \$10,000 and/or crim. referral |

NON-PASSENGERS: No intent to board.

4. Possession of firearm (unloaded, unloaded with ammunition accessible, or loaded) or other dangerous or deadly weapon (including stun guns):

At screening point

- | | |
|-----------------------------------|---------------|
| with no aggravating circumstances | \$100-\$300 |
| with aggravating circumstances | \$500-\$1,000 |

In sterile area

- | | |
|-----------------------------------|---------------|
| with no aggravating circumstances | \$200-\$500 |
| with aggravating circumstances | \$750-\$1,000 |

- | | |
|--|-------------------------------------|
| 5. Possession of incendiary/explosive at screening point or in | \$500-\$1,000 and/or crim. referral |
|--|-------------------------------------|

sterile area with no intent
to board a flight.

6. Artful concealment of \$1,000
firearm (loaded or unloaded), and/or crim.
other dangerous or deadly referral
weapon (including stun guns),
or incendiary/explosive at
screening point or in sterile
area.

SANCTION PER VIOLATION

PASSENGERS: Intent to board.

7. Possession of dangerous or deadly weapon (including stun guns, mace, etc., but excluding firearms and incendiary/explosives) that would be accessible in flight in air transportation:

At screening point

with no aggravating circumstances \$100-\$300

with aggravating circumstances \$500-\$1,000

In sterile area or aboard aircraft

with no aggravating circumstances \$200-\$500

with aggravating circumstances \$750-\$1,000

8. Possession of firearm that would be accessible in flight in air transportation:

At screening point
(firearm unloaded, without accessible ammunition):

with no aggravating circumstances \$250-\$500

with aggravating circumstances \$1,000-\$2,000

In sterile area or
aboard aircraft
(firearm unloaded,
without accessible
ammunition):

with no aggravating circumstances	\$500-\$750
with aggravating circumstances	\$1,500-\$2,500

4/2/96

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Appendix 4

SANCTION PER VIOLATION

PASSENGER: Intent to board.

8. Possession of firearm
that would be accessible in
flight in air transportation:
(continued)

At screening point
(firearm loaded or with
accessible ammunition):

with no aggravating \$500-\$1,000
circumstances

with aggravating \$2,000-\$5,000
circumstances

In sterile area or
aboard aircraft
(firearm loaded or
with accessible
ammunition):

with no aggravating \$750-\$2,000
circumstances

with aggravating \$2,500-\$7,500
circumstances

9. Artful concealment of \$2,500-\$5,000
dangerous or deadly weapon and/or crim.
(including stun guns, but referral
excluding firearms and
incendiary/explosives) at
screening point, in sterile
area, or aboard aircraft.

10. Possession of \$5,000-\$10,000
incendiary/explosive and/or crim.
at screening point, in referral
sterile area, or aboard
aircraft that would be

accessible in flight in
air transportation.

11. Artful concealment of firearm or incendiary/ explosive at screening point, in sterile area, or aboard aircraft.	\$7,500-\$10,000 and/or crim. referral
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OTHER ACTS:

12. Entering sterile area
after failing to submit to
screening.

Non-aggravated	\$100-\$250
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Aggravated	\$500-\$1,000
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SANCTION PER VIOTATION

- | | |
|---|--------------------------------|
| 13. Imparting or conveying false information concerning an attempt to do an act that would be a crime prohibited by 49 U.S.C. §§46502, 46504, 46505, or 46506. | \$7,500-\$10,000 |
| 14. Threatening overt act or other intent to use or dangerously display firearm, incendiary/explosive, or other deadly or dangerous weapon (including stun guns). | \$10,000 and/or crim. referral |
| 15. Violation of 49 U.S.C. §§46502,46504, 46505, 46506, or 46507. | crim. referral |

AGGRAVATING CIRCUMSTANCES include any factor that makes a violation more serious than a simple instance of a first-time offender forgetting that he/she has a weapon on his/her person or in accessible carry-on baggage or forgetting to declare a weapon in checked baggage. Such factors may include: the number of weapons; type of weapon(s); display, use, or concealment of the weapon(s); attitude of the violator; traveling sophistication of the violator; history of similar violations.

This recommended Table of penalties for security violations by individuals is NEVER intended as a substitute for vigorous criminal prosecution when warranted by the facts and circumstances and deemed appropriate by the cognizant state and Federal authorities. Such criminal prosecution may range from weapon forfeiture to a criminal fine to the imposition of a sentence, suspended or otherwise. Therefore, be alert to the following:

- a. When state prosecution has been undertaken, or appears likely, determine the results, when possible, and consider what, if any, reduction in the Federal civil penalty may be warranted.

In the case of fines imposed by a state or local government, a dollar-for-dollar reduction in the Federal civil penalty ordinarily would not be appropriate.

b. If Federal criminal prosecution has been undertaken, or appears likely, civil penalty action should be initiated ONLY after coordination with the U.S. Attorney, and a decision has been made that a civil penalty is appropriate.

SANCTION PER VIOLATION

- | | |
|--|--|
| b. Unloaded/ammunition accessible. | \$2,000. |
| c. Loaded firearm. | \$2,500. |
| d. Artfully concealed firearm or other intent to preclude detection, loaded or unloaded. | \$5,000 to \$10,000 and criminal referral. |
| e. Threatening overt act or other intent to use or dangerously display firearm. | \$10,000 and criminal referral. |
| f. Incendiary/explosive. | \$10,000 and criminal referral. |

*SPECIAL CONSIDERATIONS IN HANDGUN CASES: P.L. 98-473 (eff. October 12, 1984), added new subsection (d) to Section 901 of the Federal Aviation Act. The legislative history is found in the 1984 U.S. Code Congressional and Administrative News, at pp. 3687-3688. For the related Justice Department policies and procedures, see the United States Attorney's Manual (USAM) 9-63,000 et seq. Section 901(d) of the Act increases the maximum civil penalty from 1,000 to \$10,000 for persons who carry weapons or have weapons accessible to them on a flight in air transportation or while boarding or attempting to board an aircraft.

The recommended Table of penalties for this offense is NEVER intended as a substitute for vigorous criminal prosecution when warranted by the facts and circumstances and deemed appropriate by the cognizant state and Federal authorities. Such criminal prosecution may range from weapon forfeiture to a criminal fine to the imposition of a sentence, suspended or otherwise. Therefore, be alert to the following:

- a. When state prosecution has been undertaken, determine the results and consider what, if any, reduction in the Federal civil penalty may be warranted.

b. If Federal criminal prosecution has been undertaken, civil penalty action should be initiated only after coordination with the U.S. Attorney and a decision has been made that a civil penalty is appropriate.

c. The case law cited in the USAM, while principally criminal, can serve as a parallel in civil prosecutions, particularly the sections dealing with "Deadly or Dangerous," "Specific Intent," "Concealment." For a case holding for strict liability, see U.S. v. Gutierrez, 624 F. Supp. 759 (ED NY 1985).

SANCTION PER VIOLATION

IV. Engineering and Manufacturer Violations.

A. Production Under Type Certificate Only.

1. Failure to establish and maintain an approved production inspection system within 6 months from date of issuance of type certificate and ensure that each product conforms to the type design and is in condition for safe operation. (FAR 21.123(c), 21.125, 21.127, 21.128, and 21.129).	Mod. to max. c.p. and/or discontinue issuance of airworthiness (A.W.) certificate or approval until system complies.
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2. Failure to maintain technical data and drawing at the place of manufacture, as necessary, to determine conformity to the type design data (FAR 21.123(b)).	Min. to max. c.p. and/or discontinue until system complies.
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B. Approved Production Inspection System (APIS) Holders.

1. Failure to maintain an approved inspection system that ensures that each product conforms to the type design (FAR 21.123(c), 21.125 and 21.130).	Mod. to max. c.p. and/or discontinue issuance of A/W cert. or approval until system complies.
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2. Failure to maintain an approved inspection system that ensures that each product is in a condition for safe operation (FAR 21.123(c) and 21.125).	Mod. to max. c.p. and/or discontinue issuance of A/W cert. or approval until system complies.
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3. Failure to maintain	Mod. to max. c.p.
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records for completed products and retaining them for at least 2 years after the product is certificated (FAR 21.123(c) and 21.125(b)(10)).

4. Failure to flight test Mod. to max. c.p. each aircraft as a final check of the operation of the completed product, using FAA approved production flight test procedures and flight test check-off form (FAR 21.127).

SANCTION PER VIOLATION

5. Failure to conduct test runs on production engines as required by FAR 21.128. Mod. to max. c.p.

6. Failure to conduct functional tests on production propellers as required by FAR 21.129. Mod. to max. c.p.

C. Production Certificate Holders
(Including Delegation Option
Manufacturers).

1. Refusal to make individual products available for FAA inspections and tests (FAR 21.157 and Federal Aviation Act of 1958, Title IX, Section 609 and Title VI, Section 901(a) (1)). Mod. to max. c.p. or sus. of P.C. or withdrawal of Del Op approval.

2. Failure to make information available regarding all delegations of authority to subsidiary manufacturers or suppliers (FAR 21.143(b)). Mod. to max. c.p. or sus. of P.C. or withdrawal of Del op approval.

3. Failure to immediately notify the FAA in writing of any quality control system changes at prime manufacturer's main or outlying facilities and subsidiary manufacturers or suppliers affecting the inspection, conformity, or airworthiness of the product (FAR 21.147). Min. to max. c.p.

4. Failure to surrender a production certificate for Mod. c.p. to rev. of P.C.

cancellation upon transfer
of ownership or upon change
in location of the manufacturing
facility, from that described
in the approved (production
certificate) quality control
data (FAR 21.155 and 21.159).

5. Failure to determine that each completed product submitted for airworthiness certification for approval Is in conformity with the type design and in a condition for safe operation (FAR 21.165(b)).	Mod. To max. c.p. to sus. of P.C. pending corrective action.
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SANCTION PER VIOLATION

6. Failure to maintain the approved quality control system in conformity with the data and procedures approved for the production certificate (FAR 21.165(a)).

Mod. to max. c.p. to sus. of P.C. pending corrective action.

D. Technical Standard Order Authorization Manufacturers.

1. Unauthorized display of TSO markings on materials, parts or appliances (FAR 21.603(a) and Federal Aviation Act of 1958, Title VI, Sections 601, 603(b), 609, and 610(a)(7), Title IX, Section 901(a) and Section 1007(a)).

Max. c.p. to withdrawal of letter of restraining action.

2. Failure of a manufacturer holding a Letter of Acceptance issued Prior to July 1, 1962, to comply with FAR 21.603(b).

Withdrawal of Letter of Acceptance pending corrective action.

3. Failure to manufacture articles in accordance with the requirements of technical and quality control data forming the basis for the FAA letter of acceptance or authorization (FAR 21.607(a)).

Mod. to max. c.p.

4. Failure to conduct the required tests and inspections (FAR 21.607(b)).

Mod. to max. c.p.

5. Failure to maintain a quality control system to ensure that articles manufactured meet the

Mod. to max. c.p. and/or withdrawal of letter pending corrective action.

requirements of FAR
21.607(a) and are in
condition for safe
operation (FAR 21.607(b)).

6. Failure to prepare and
maintain a current file of
complete technical data and
inspection records
(FAR 21.607(c)).

Min. to max. c.p. and/or
withdrawal of letter
pending correction
action.

SANCTION PER VIOLATION

- | | |
|--|--|
| 7. Failure to permanently and legibly mark each article produced under a TSO Letter of Authorization or Acceptance with the information required by FAR 21.607(d). | Min. to mod. c.p. |
| 8. Unauthorized deviation from the performance standards established by FAR 21.609. | Min. c.p. to withdrawal of letter pending corrective action. |
| 9. Failure to forward information on major or minor design changes (FAR 21.611). | Min. to max. c.p. |
| 10. Failure to retain the technical data as required by FAR 21.613(a). | Min. to max. c.p. |
| 11. Refusal to permit an authorized representative of the FAA to inspect TSO articles, the quality control inspection and tests, or the manufacturing facilities and technical data files for TSO articles (FAR 21.615). | Mod. to max. c.p. and/or withdrawal of approval letter pending correction. |
| 12. Failure to meet the performance standards of the applicable TSO (FAR 21.619 and 21.601). | Max. c.p. to withdrawal of approval letter pending correction. |

E. Replacement or Modification
Parts Manufacturers.

- | | |
|--|----------------------------------|
| 1. No person may produce a modification or replacement | Max. c.p. to restraining action. |
|--|----------------------------------|

installation on a type
certificated product unless
it is produced pursuant to
PMA issued under Subpart K
(FAR 21.303(a)).

SANCTION PER VIOLATION

- | | |
|---|---|
| 2. Failure to establish and maintain a fabrication inspection system to ensure that each completed replacement and/or modification part is in conformity with approved design data and is safe for installation on applicable type certificated products (FAR 21.303(h)). | Mod. to max. c.p. and/or withdrawal of approval letter pending corrective action. |
| 3. Failure to ensure that all incoming materials used in the finished part are as specified in the design data (FAR 21.303(h)(1)). | Mod. to max. c.p. and/or withdrawal of approval letter pending corrective action. |
| 4. Failure to ensure that all incoming material is properly identified when chemical and physical properties cannot otherwise be readily and accurately determined (FAR 21.303(h)(2)). | Mod. to max. c.p. and/or withdrawal of approval letter pending corrective action. |
| 5. Failure to ensure that all materials subject to damage and deterioration are suitably stored and adequately protected (FAR 21.303(h) (3)). | Mod. to max. c.p. and/or withdrawal of approval letter pending and corrective action. |
| 6. Failure to accomplish all processes affecting quality and safety of the finished product in accordance with acceptable specifications (FAR 21.303(h)(4)). | Mod. to max. c.p. and/or withdrawal of approval letter pending corrective action. |

7. Failure to inspect parts in process for conformity with the design data at points in production where accurate determination can be made (FAR 21. 303(h)(5)). Mod. to max. c.p. and/or withdrawal of approval letter pending corrective action.

SANCTION PER VIOLATION

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|--|---|
| 8. Failure to make current design drawings readily available to manufacturing and inspection personnel, or to use such drawings when necessary (FAR 21.303(h)(6)). | Mod. to max. c.p. and/or withdrawal of approval letter pending corrective action. |
| 9. Failure to adequately control and obtain FAA approval of major changes to the basic design before they are incorporated in the finished part (FAR 21.97 and 21.303(h)(7)). | Mod. to max. c.p. and/or withdrawal of approval letter pending corrective action. |
| 10. Failure to segregate and identify rejected materials and components in such a manner as to preclude their use in the finished product (FAR 21.303(h)(8)). | Mod. to max. c.p. and/or withdrawal of approval letter pending corrective action. |
| 11. Failure to maintain and identify inspection records with the completed part where practical, and retain them in the manufacturer's file for a period of at least 2 years after the part has been completed (FAR 21.303(h)(9)). | Mod. to max. c.p. and/or withdrawal of approval letter pending corrective action. |
| 12. Failure to notify the FAA in writing within 10 days due to relocation or expansion of manufacturing facilities (FAR 21.303(j)). | Mod. to max. c.p. and/or withdrawal of approval letter pending corrective action. |
| 13. Failure to determine that each completed part | Mod. to max. c.p. and/or withdrawal of approval |

conforms to the design data letter pending
and is safe for installation corrective action.
on type certificated products
(FAR 21. 303(k)).

SANCTION PER VIOLATION

F. Authorized Delegation Option
Manufacturers.

- | | |
|---|--|
| 1. Refusal to permit authorized employees of the Administrator to inspect the Manufacturers' organization facilities, product, records technical data file or service difficulty files (FAR 21.249, 21.251, 21.277 and 21.293). | Max. c.p. to sus. of approval letter of authorization. |
| 2. Failure of the manufacturer to promptly submit the reports and information necessary for the issuance of an Airworthiness Directive under Part 39 (FAR 21.277). | Mod. c.p. to sus. of approval letter of authorization. |
| 3. Failure of the manufacturer to place the required technical data and type inspection report in the technical data file required by FAR 21.293(a)(1)(i) and FAR 21.253(a)(4). | Min. to max. c.p. |
| 4. Failure of the manufacturer to determine that the production certification requirements of Subpart G with respect to the new model or type are met (FAR 21.265(b) and 21.167(b)). | Mod. c.p. to sus. of approval letter of authorization. |
| 5. Failure of the manufacturer to place the manufacturing and quality control data required by FAR 21.143 with the data Required by FAR 21.293(a)(1)(ii) | Mod. to max. c.p. |

(FAR 21.267(d)).

6. Failure of the manufacturer to determine that each aircraft conforms to the type design and is in a condition for safe operation (FAR 21.273(a)).

Max. c.p. to sus. of approval letter of authorization.

7. Failure of the manufacturer to ensure that employees signing airworthiness certificates perform or are in direct charge of inspection and are listed on the manufacturer's application for authorization or amendments thereof (FAR 21.273(b)).

Max. c.p. to sus. of approval letter of authorization.

SANCTION PER VIOLATION

8. Failure of the manufacturer to determine that engines and propellers conform to the type design, and are in a condition for safe operation prior to the issuance of airworthiness approval tags. (FAR 21.271(a)).

Max. c.p. to sus. of approval letter of authorization.

G. Production Approval Holders.

1. Failure to report any malfunction or defect specified in FAR 21.3(c) within the time constraints provided in FAR 21.3(e). (FAR 21.3(a) & (b)).

Mod. to max. c.p.

2. Refusal to make individual parts, facilities, data or records available for FAA inspection. (FAR 21.33 and Federal Aviation Act of 1958, Title VI, Section 605(b)).

Max. c.p. to withdrawal of approval letter pending corrective action.

3. Failure to submit the data necessary for the issuance of an airworthiness directive containing the appropriate corrective action. (FAR 21.99).

Max. c.p. to withdrawal of approval letter pending corrective action.

APPENDIX 5. SELECTED CIVIL AND CRIMINAL STATUTES.

1. SECTION 602 OF THE FEDERAL AVIATION ACT OF 1958, as amended (49 U.S.C. app. 1422 1/ provides:

AIRMAN CERTIFICATES

POWER To ISSUE CERTIFICATE

Sec. 602.(a) The Administrator is empowered to issue airman certificates specifying the capacity in which the holders thereof are authorized to serve as airmen in connection with aircraft.

ISSUANCE OF CERTIFICATE

(b)(1) Any person may file with the Administrator an application for an airman certificate. If the Administrator finds, after investigation, that such person possesses proper qualifications for, and is physically able to perform duties pertaining to, the position for which the airman certificate is sought, he shall issue such certificate, containing such terms, conditions, and limitations as to duration thereof, periodic or special examinations, tests of physical fitness, and other matters as the Administrator may determine to be necessary to assure safety in air commerce. Except in the case of persons whose certificates are, at the time of denial, under order of suspension or whose certificates have been revoked within one year of the date of such denial, any person whose application for the issuance or renewal of an airman certificate is denied may file with the Board a petition for review of the Administrator's action. The Board shall thereupon assign such petition for hearing at a place convenient to the applicant's place of residence or employment. In the conduct of such hearing and in determining whether the airman meets the pertinent rules, regulations, or standards, the Board shall not be bound by findings of fact of the Administrator. At the conclusion of such hearing, the Board shall issue its decision as to whether the airman meets the pertinent rules, regulations, and standards and the Administrator shall be bound by such decision: provided that, the Administrator may, in his discretion, prohibit or restrict the issuance of airman certificates to aliens, or may make such

issuance dependent on the terms of reciprocal agreements entered into with foreign governments.

1/ Note that the majority of the Federal Aviation Act of 1958, as amended, has not been codified by Congress into the United States Code. As administratively compiled in the United States Code Appendix, the "Secretary of Transportation" has been substituted for the "Administrator" under the authority of Section 6(c)(1) of Pub. L. 89-670. See, 49 U.S.C. app. § 1429 note on Transfer of Functions at 1196 (1982). The functions of the Secretary related to aviation safety (with some exceptions), including Title VI of the FA Act were statutorily transferred back to the Administrator of the FAA. 49 U.S.C. 106(f) and (g). The act transferring the functions has been codified by Congress into the U.S.C. See, Pub. L. 97-449, 96 Stat. 2413. The FA Act itself, as amended, properly refers to the "Administrator," not to the "Secretary of Transportation."

(2)(A) Except as provided in subparagraphs (B) and (c), the Administrator shall not issue an airman certificate to any person whose airman certificate has been revoked under section 609(c).

(B) The Administrator may issue an airman certificate to any person whose airman certificate has been revoked under section 609(c) if the Administrator determines that issuance of such certificate will facilitate law enforcement efforts.

(C) In any case in which the Administrator has revoked an airman certificate of a person under section 609(c)(1) or (2) as a result of any activity and --

(i) such person is subsequently acquitted of all charges contained in an indictment or information which relate to controlled substances and which arise from such activity; or

(ii) in the case of a revocation under section 609(c)(1), the judgment of conviction on which the revocation is based is reversed on appeal;

the Administrator shall issue an airman certificate to such person if such person is otherwise qualified to serve as an airman under this section.

FORM AND RECORDING OF CERTIFICATE

(c) Each certificate shall be numbered and recorded by the Administrator; shall state the name and address of, and contain a description of, the person to whom the certificate is issued; and shall be entitled with the designation of the class covered thereby. Certificates issued to all pilots serving in scheduled air transportation shall be designated "airline transport pilot" of the proper class.

2. SECTION 609 OF THE FEDERAL AVIATION ACT OF 1958, as amended (49 U.S.C. app. 1429) provides:

AMENDMENT, SUSPENSION, AND REVOCATION OF CERTIFICATES

PROCEDURE

Sec. 609.(a) The Administrator may, from time to time, re-inspect any civil aircraft, aircraft, engine, propeller, appliance, air navigation

facility, or air agency, or may reexamine any civil airman. If, as a result of any such re-inspection or reexamination, or if, as a result of any other investigation made by the Administrator, he determines that safety in air commerce or air transportation and the public interest requires, the Administrator may issue an order amending, modifying, suspending, or revoking, in whole or in part, any type certificate, production certificate, airworthiness certificate, airman certificate, air carrier operating certificate, air navigation facility certificate (including airport operating certificate), or air agency certificate. Prior to amending, modifying, suspending, or revoking any of the foregoing certificates, the Administrator shall advise the holder thereof as to any charges or other reasons relied upon by the Administrator for his proposed action and, except in cases of emergency, shall provide the holder of such a certificate an opportunity to answer any charges and be heard as to why such certificate should not be amended, modified, suspended, or revoked. Any person whose certificate is affected by such an order of the Administrator under this section may appeal the Administrator's order to the Board and the Board may, after notice and hearing, amend, modify, or reverse the Administrator's order if it finds that safety in air commerce or air transportation and the public interest do not require affirmation of the Administrator's order. In the conduct of its hearings the Board shall not be bound by findings of fact of the Administrator. The filing of an appeal with the Board shall stay the effectiveness of the Administrator's order unless the Administrator advises the Board that an emergency exists and safety in air commerce or air transportation requires the immediate effectiveness of his order, in which event the order shall remain effective and the Board shall finally dispose of the appeal within sixty days after being so advised by the Administrator. The person substantially affected by the Board's order may obtain judicial review of said order under the provisions of section 1006, and the Administrator shall be made a party to such proceedings.

VIOLATION OF CERTAIN LAWS

(b) The Administrator, in his discretion, may issue an order amending, modifying, suspending, or revoking any airman certificate upon conviction of the holder of such certificate of any violation of subsection (a) of section 13 of the Fish

and Wildlife Act of 1956, regarding the use or operation of an aircraft.

TRANSPORTATION, DISTRIBUTION, AND OTHER ACTIVITIES RELATED TO
CONTROLLED SUBSTANCES

(c)(1) The Administrator shall issue an order revoking the airman certificates of any person upon conviction of such person of a crime punishable by death or imprisonment for a term exceeding one year under a State or Federal law relating to a controlled substance (other than a law relating to simple possession of a controlled substance), if the Administrator determines that (A) an aircraft was used in the commission of the offense or to facilitate the commission of the offense, and (B) such person served as an airman, or was on board such aircraft, in connection with the commission of the offense or the facilitation of the commission of the offense. The Administrator shall have no authority under this paragraph to review the issue

of whether an airman violated a State or Federal law relating to a controlled substance.

(2) The Administrator shall issue an order revoking the airman certificates of any person if the Administrator determines that (A) such person knowingly engaged in an activity that is punishable by death or imprisonment for a term exceeding one year under a State or Federal law relating to a controlled substance (other than any law relating to simple possession of a controlled substance), (B) an aircraft was used to carry out such activity or to facilitate such activity, and (C) such person served as an airman, or was on board such aircraft, in connection with such activity or the facilitation of such activity. The Administrator shall not revoke, and the National Transportation Safety Board on appeal under paragraph (3) shall not affirm the revocation of, a certificate under this paragraph on the basis of any activity if the holder of the certificate is acquitted of all charges contained in an indictment or information which relate to controlled substances and which arise from such activity.

(3) Prior to revoking an airman certificate under this subsection, the Administrator shall advise the holder thereof of the charges or any reasons relied upon by the Administrator for his proposed action and shall provide the holder of such certificate an opportunity to answer any charges and be heard as to why such certificate should not be revoked. Any person whose certificate is revoked by the Administrator under this subsection may appeal the Administrator's order to the National Transportation Safety Board and the Board shall, after notice and a hearing on the record, affirm or reverse the Administrator's order. In the conduct of its hearings, the National Transportation Safety Board shall not be bound by findings of fact of the Administrator. The filing of an appeal with the National Transportation Safety Board shall stay the effectiveness of the Administrator's order unless the Administrator advises the Board that safety in air commerce or air transportation requires the immediate effectiveness of his order, in which event the order shall remain effective and the Board shall finally dispose of the appeal within sixty days after being so advised by the Administrator. The person substantially affected by the National Transportation Safety Board's order may obtain judicial review of such order under

the provisions of section 1006, and the Administrator shall be made a party to such proceedings.

(4) For purposes of this subsection, the term "controlled substance" has the meaning given such term by section 102(6) of the Controlled Substances Act (21 U.S.C. 820(6)).

(5) Upon request of a Federal or State law enforcement official, the Administrator may waive the requirements of paragraphs (1) and (2) that an airman certificate of any person be revoked if the Administrator determines that such waiver will facilitate law enforcement efforts.

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Appendix 5

3. SECTION 610 OF THE FEDERAL AVIATION ACT OF 1958, as amended (49 U.S.C. 1430) provides:

PROHIBITIONS

VIOIATIONS OF TITLE

Sec. 610.(a) It shall be unlawful--

(1) For any person to operate in air commerce any civil aircraft for which there is not currently in effect an airworthiness certificate, or in violation of the terms of any such certificate;

(2) For any person to serve in any capacity as an airman in connection with any civil aircraft, aircraft engine, propeller or appliance used or intended for use, in air commerce without an airman certificate authorizing him to serve in such capacity, or in violation of any term, condition, or limitation thereof, or in violation of any order, rule, or regulations issued under this title;

(3) For any person to employ for service in connection with any civil aircraft used in air commerce an airman who does not have an airman certificate authorizing him to serve in the capacity for which he is employed;

(4) For any person to operate as an air carrier without an air carrier operating certificate, or in violation of the terms of any such certificate;

(5) For any person to operate aircraft in air commerce in violation of any other rule, regulation, or certificate of the Administrator under this title; and

(6) For any person to operate a seaplane or other aircraft of United States registry upon the high seas in contravention of the regulations proclaimed by the President pursuant to section 1 of the Act entitled "An Act to authorize the President to proclaim regulations for preventing collisions at sea", approved October 11, 1951 (Public Law 172, 82nd Congress, 65 States. 406);

(7) For any person holding an air agency or production certificate, to violate any term, condition, or limitation thereof, or to violate any order, rule, or regulation under this title relating to the holder of such certificate;

(8) For any person to operate an airport without an airport operating certificate required by the Administrator pursuant to section 612, or in violation of the terms of any such certificate: and

(9) For any person to manufacture, deliver, sell, or offer for sale, any aviation fuel or fuel additive in violation of any regulation prescribed under section 601(e).

4. SECTION 901 OF THE FEDERAL AVIATION ACT OF 1958, as amended (49 U.S.C. app. 1471) provides:

CIVIL PENALTIES

SAFETY, ECONOMIC, AND POSTAL OFFENSES

Sec. 901.(a)(1) Any person who violates: (A) any provision of title III, IV, V, VI, VII, or XII, or of section 1114, of this Act, or any rule, regulation, or order issued thereunder, or under section 1002(i), or any term, condition, or limitation of any permit or certificate issued under title IV; or (B) any rule or regulation issued by the Postmaster General under this Act, shall be subject to a civil penalty of not to exceed \$1,000 for each such violation, except that the amount of such civil penalty shall not exceed \$10,000 for each such violation which relates to the transportation of hazardous materials. If such violation is a continuing one, each day of such violation shall constitute a separate offense. The amount of any such civil penalty which relates to the transportation of hazardous material shall be assessed by the Secretary or his delegate, upon written notice upon a finding of violation by the Secretary, after notice and an opportunity for a hearing. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require. The amount of any such civil penalty for any violation of any provision of title IV of this Act, or any rule, regulation, or order issued thereunder, or under section 1002(i) of this Act, or any term, condition, or limitation of any permit or certificate issued under title IV shall be assessed by the Board only after notice and an opportunity for a hearing and after written notice upon a finding of violation by the Board. Judicial review of any order of the Board assessing such a penalty may be obtained only pursuant to section 1006 of this Act. This subsection shall not apply to members of the Armed Forces of the United States, or those civilian employees of the Department of Defense who are subject to the provisions of the Uniform Code of Military Justice, while engaged in the performance of their official duties; and the appropriate military authorities shall

be responsible for taking any necessary disciplinary action with respect thereto and for making to the Administrator or Board, as appropriate, a timely report of any such action taken.

(2) Any civil penalty may be comprised by the Secretary of Transportation in the case of penalties provided for in subsections (c) and (d) of this section or violations of title III, V, VI, or XII of this Act, or any rule, regulation, or order issued thereunder or by the National Transportation Safety Board in the case of violations of title VII of this Act, or any rule, regulation, or order issued thereunder, or by the Postmaster General in the case of regulations issued by him. The amount of such penalty when finally determined or fixed by order of the board, or the amount agreed upon in compromise, may be deducted from any sums which the United States owes to the person charged.

LIENS

(b) In case an aircraft is involved in such violation and the violation is by the owner or person in command of the aircraft, such aircraft shall be subject to lien for the penalty: provided, that this subsection shall not apply to a violation of a rule or regulation of the Postmaster General.

(c) Whoever imparts or conveys or causes to be imparted or conveyed false information, knowing the information to be false and under circumstances in which such information may reasonably be believed, concerning an attempt or alleged attempt being made or to be made, to do any act which would be a crime prohibited by subsection (i), (j), (k), or (l) of section 902 of this Act, shall be subject to a civil penalty of not more than \$10,000 which shall be recoverable in a civil action brought in the name of the United States.

(d) Except for law enforcement officers of any municipal or State government or officers or employees of the Federal Government, who are authorized or required within their official capacities to carry arms, or other persons who may be so authorized under regulations issued by the Administrator, whoever while aboard, or while attempting to board, any aircraft in, or intended for operation in, air transportation or intrastate air transportation, has on or about his person or his property a concealed deadly or dangerous weapon, which is, or would be, accessible to such person in flight shall be subject to a civil penalty of not more than \$10,000 which shall be recoverable in a civil action brought in the name of the United States.

5. SECTION 902 OF THE FEDERAL AVIATION ACT OF 1958, as amended (49 U.S.C. app. 1472), provides:

GENERAL

Sec. 902.(a) Any person who knowingly and willfully violates any provision of this Act (except titles III, V, VI, VII, and XII), or any order, rule, or regulation issued by the Administrator or by the Board under any such provision or any term, condition, or limitation of any certificate or permit issued under title IV, for which no penalty is otherwise

provided in this section or in section 904, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject for the first offense to a fine of not more than \$500, and for any subsequent offense to a fine of not more than \$2,000. If such violation is a continuing one, each day of such violation shall constitute a separate offense.

FORGERY OF CERTIFICATES AND FALSE MARKING OF AIRCRAFT

(b)(1) Except as provided in paragraph (2), any person who knowingly and willfully forges, counterfeits, alters, or falsely makes any certificate authorized to be issued under this Act, or knowingly sells, uses, attempts to use, or possesses with the intent to use any such fraudulent certificate, and any person who knowingly and willfully displays or causes to be displayed on any aircraft, any marks that are false or misleading as to the nationality or

registration of the aircraft, shall be subject to a fine of not exceeding \$1,000 or to imprisonment not exceeding three years, or to both such fine and imprisonment.

(2)(A) Any person who violates paragraph (1) of this subsection (other than by selling a fraudulent certificate) with the intent to commit a crime punishable by death or imprisonment for a term exceeding one year under a State or Federal law relating to a controlled substance (other than any law relating to simple possession of a controlled substance) shall be subject to a fine not exceeding \$25,000 or to imprisonment not exceeding five years, or both.

(B) Any person who violates paragraph (1) of this subsection by selling a fraudulent certificate with the knowledge that the purchaser intends to use such certificate in connection with the commission of a crime punishable by death or imprisonment for a term exceeding one year under a State or Federal law relating to controlled substances (other than any law relating to simple possession of a controlled substance) shall be subject to a fine not exceeding \$25,000 or to imprisonment not exceeding five years, or both.

(C) For purposes of this paragraph, the term "controlled substance" has the meaning given such term by section 102(6) of the Controlled Substances Act (21 U.S.C. app. 802(6)).

INTERFERENCE WITH AIR NAVIGATION

(c) A person shall be subject to a fine of not exceeding \$5,000 or to imprisonment not exceeding five years, or to both such fine and imprisonment, who--

(1) with intent to interfere with air navigation, within the United States, exhibits within the United States any light or signal at such place or in such manner that is likely to be mistaken for a true light or signal established pursuant to this Act, or for a true light or signal in connection with an airport or other air navigation facility; or

(2) after due warning by the Administrator, continues to maintain any misleading light or signal; or

(3) knowingly removes, extinguishes, or interferes with the operation of any such true light or signal.

GRANTING OR RECEIVING REBATES

(d)(1) Any air carrier, foreign air carrier, or ticket agent, or any officer, agent, employee, or representative thereof, who shall, knowingly and willfully, offer, grant, or give, or cause to be offered, granted, or given, any rebate or other concession in violation of the provisions of this Act, or who, by any device or means, shall, knowingly and willfully, assist, or shall willingly suffer or permit, any person to obtain transportation or services subject to this Act at less than the rates, fares, or charges lawfully in

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effect, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be subject for each offense to a fine of not less than \$100 and not more than \$5,000.

(2) Any person who, in any manner or by any device, knowingly and willfully solicits, accepts, or receives a refund or remittance of any portion of the rates, fares, or charges lawfully in effect for the air transportation of property, or for any service in connection therewith, or knowingly solicits, accepts, or receives any privilege, favor, or facility, with respect to matters required by the Board to be specified in currently effective tariffs applicable to the air transportation of property, shall be fined not less than \$100, nor more than \$5,000, for each offense.

FAILURE TO FILE REPORTS; FALSIFICATION OF RECORDS

(e) Any air carrier, or any officer, agent, employee, or representative thereof, who shall, knowingly and willfully, fail or refuse to make a report to the Board or Administrator as required by this Act, or to keep or preserve accounts, records, and memoranda in the form and manner prescribed or approved by the Board or Administrator, or shall, knowingly and willfully, falsify, mutilate, or alter any such report, account, record, or memorandum, shall be deemed guilty of a misdemeanor and, upon conviction thereof, be subject for each offense to a fine of not less than \$100 and not more than \$5,000.

DIVULGING INFORMATION

(f) If the Administrator or any member of the Board, or any officer or employee of either, shall knowingly and willfully divulge any fact or information which may come to his knowledge during the course of an examination of the accounts, records, and memoranda of any air carrier, or which is withheld from public disclosure under section 1104, except as he may be directed by the Administrator or the Board in the case of information ordered to be withheld by either, or by a court of competent jurisdiction or a judge thereof, he shall upon conviction thereof be subject for each offense to a fine of not more than \$5,000 or imprisonment for not more than two years, or both: provided, that nothing in this section shall

authorize the withholding of information by the Administrator or Board from the duly authorized committees of the Congress.

REFUSAL TO TESTIFY

(g) Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, or documents, if in his power to do so, in obedience to the subpoena or lawful requirement of the Board or Administrator, shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than \$100 nor more than \$5,000, or imprisonment for not more than one year, or both.

HAZARDOUS MATERIALS

(h)(1) In carrying out his responsibilities under this Act, the Secretary of Transportation may exercise the authority vested in him by section 105 of the Hazardous Materials Transportation Act to provide by regulation for the safe transportation of hazardous materials by air.

(2) A person is guilty of an offense if he willfully delivers or causes to be delivered to an air carrier or to the operator of a civil aircraft for transportation in air commerce, or if he recklessly causes the transportation in air commerce of, any shipment, baggage, or other property which contains a hazardous material, in violation of any rule, regulation, or requirement with respect to the transportation of hazardous materials issued by the Secretary of Transportation under this Act. Upon conviction, such person shall be subject, for each offense, to a fine of not more than \$25,000, imprisonment for a term not to exceed 5 years, or both.

(3) Nothing in this subsection shall be construed to prohibit or regulate the transportation by any individual, for personal use, of any firearm (as defined in paragraph (4) of section 232 of title 18, United States Code) or any ammunition therefor.

AIRCRAFT PIRACY

(i)(1) Whoever commits or attempts to commit aircraft piracy, as herein defined, shall be punished--

(A) by imprisonment for not less than 20 years; or

(B) notwithstanding the provisions of 18 U.S.C. 3559(b), if the death of another person results from the commission or attempted commission of the offense, by death or by imprisonment for life.

(2) As used in this subsection, the term "aircraft piracy" means any seizure or exercise of control, by force or violence or threat of force or violence, or by any other form of intimidation, and with wrongful intent, of an aircraft within the special aircraft jurisdiction of the United States.

(3) An attempt to commit aircraft piracy shall be within the special aircraft jurisdiction of the United States even though the aircraft is not in flight at the time of such attempt if the aircraft would have been within the special aircraft jurisdiction of the United States had the offense of aircraft piracy been completed.

INTERFERENCE WITH FLIGHT CREW MEMBERS OF FLIGHT ATTENDANTS

(i) Whoever, while aboard an aircraft within the special aircraft jurisdiction of the United States, assaults, intimidates, or threatens any flight crew member or flight attendant (including any steward or stewardess) of such aircraft, so as to interfere with the performance by such member or attendant of his duties or lessen the ability of such member or attendant to perform his duties, shall be fined not more than \$10,000 or imprisoned not

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more than twenty years, or both. Whoever in the commission of any such act uses a deadly or dangerous weapon shall be imprisoned for any term of years or for life.

CERTAIN CRIMES ABOARD AIRCRAFT FLIGHT

(k)(1) Whoever, while aboard an aircraft within the special aircraft jurisdiction of the United States, commits an act which, if committed within the special maritime and territorial jurisdiction of the United States, as defined in section 7 of title 18, United States Code, would be in violation of section 113, 114, 661, 662, 1111, 1112, 1113, 2031, 2032, or 2111 of such title 18 shall be punished as provided therein.

(2) Whoever, while aboard an aircraft within the special aircraft jurisdiction of the United States, commits an act, which, if committed in the District of Columbia would be in violation of section 9 of the Act entitled "An Act for the preservation of the public peace and the protection of property within the District of Columbia", approved July 29, 1892, as amended (D.C. Code, sec. 22-1112), shall be punished as provided therein.

CARRYING WEAPONS OR EXPLOSIVES ABOARD AIRCRAFT

(l)(1) With respect to any aircraft in, or intended for operation in air transportation or intrastate air transportation, whoever--

(A) while aboard, or while attempting to board such aircraft has on or about his person or his property a concealed, deadly or dangerous weapon which is, or could be, accessible to such person in flight;

(B) has placed, attempted to place, or attempted to have placed a loaded firearm aboard such aircraft in baggage or other property which is not accessible to passengers in flight; or

(C) has on or about his person, or who placed, attempted to place, or attempted to have placed aboard such aircraft any bomb or similar explosive or incendiary device

shall be fined not more than \$10,000 or imprisoned not more than one year, or both.

(2) Whoever willfully and without regard for the safety of human life, or with reckless disregard for the safety of human life, shall commit an act prohibited by paragraph (1) of this subsection, shall be fined not more than \$25,000 or imprisoned not more than five years, or both.

(3) Paragraph (1)(A) of this subsection shall not apply to law enforcement officers of any municipal or State government, or officers or employees of the Federal Government, who are authorized or required within their official capacities to carry arms, or to persons who may be authorized, under regulations issued by the Administrator, to carry deadly or dangerous weapons in air transportation or intrastate air transportation; nor shall it

apply to persons transporting weapons (other than loaded firearms) contained in baggage which is not accessible to passengers in flight if the presence of such weapons has been declared to the air carrier.

(4) For purposes of this subsection--

(A) the term "firearm" means any starter gun and any weapon which is designed to or has been converted to expel any projectile by the action of an explosive; and

(B) the term "loaded firearm" means any firearm which has a cartridge, a detonator, or power in the chamber, magazine, cylinder, or clip of such firearm.

FALSE INFORMATION AND THREATS

(m)(1) Whoever willfully and maliciously, or with reckless disregard for the safety of human life, imparts or conveys or causes to be imparted or conveyed false information, knowing the information to be false and under circumstances in which such information may reasonably be believed, concerning an attempt or alleged attempt being made or to be made, to do any act which would be a felony prohibited by subsection (i), (j), (k), or (l) of this section, shall be fined not more than \$25,000 or imprisoned not more than five years, or both.

(2) Whoever imparts or conveys or causes to be imparted or conveyed any threat to do an act which would be a felony prohibited by subsection (i), (j), (k), or (l) of this section with an apparent determination and will to carry the threat into execution shall be fined not more than \$25,000 or imprisoned not more than five years, or both.

AIRCRAFT PIRACY OUTSIDE SPECIAL AIRCRAFT JURISDICTION OF THE UNITED STATES

(n)(1) Whoever aboard an aircraft in flight outside the special aircraft jurisdiction of the United States commits "an offense", as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft, and is afterward found in the United States shall be punished--

(A) by imprisonment for not less than 20 years; or

(B) notwithstanding the provisions of 18 U.S.C. 3559(b), if the death of another person results from the commission or attempted commission of the offense, by death or by imprisonment for life.

(2) A person commits "an offense", as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft when, while aboard and aircraft in flight, that person--

(A) unlawfully, by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of, that aircraft, or attempts to perform any such act; or

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(B) is an accomplice of a person who performs or attempts to perform any such act.

(3) This subsection shall only be applicable if the place of takeoff or the place of actual landing of the aircraft on board which the offense, as defined in paragraph (2) of this subsection, is committed is situated outside the territory of the State of registration of that aircraft.

(4) For purposes of this subsection an aircraft is considered to be in flight from the moment when all the external doors are closed following embarkation until the moment when one such door is opened for disembarkation, or in the case of a forced landing, until the competent authorities take over responsibility for the aircraft and for the persons and property aboard.

INVESTIGATIONS BY FEDERAL BUREAU OF INVESTIGATION

(o) violations of subsections (i) through (n), inclusive, of this section shall be investigated by the Federal Bureau of Investigation of the Department of Justice.

INTERFERENCE WITH AIRCRAFT ACCIDENT INVESTIGATION

(p) Any person who knowingly and without authority removes, conceals, or withholds any part of a civil aircraft involved in an accident, or any property which was aboard such aircraft at the time of the accident, shall be subject to a fine of no less than \$100 nor more than \$5,000, or imprisonment for not more than one year, or both.

TRANSPORTING CONTROLLED SUBSTANCES WITHOUT AIRMAN CERTIFICATE

(q) Any person who knowingly and willfully serves in any capacity as an airman without an airman certificate authorizing him to serve in such capacity, in connection with the transportation by aircraft of any controlled substance, where (1) such transportation is punishable by death or imprisonment for a term exceeding one year under a State or Federal law or is provided in connection with any act that is punishable by death or imprisonment for a term exceeding one year under a State or Federal law relating to controlled substance (other than any law relating to simple possession of a controlled

substance), and (2) such person has knowledge of such transportation, shall be subject to a fine not exceeding \$25,000 or to imprisonment not exceeding five years, or to both such fine and imprisonment. For purposes of this subsection, the term "controlled substance" has the meaning given such term by section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)).

SECURED AREAS OF AIRPORTS

(r)(1) Violation. It shall be unlawful for any person to knowingly and willfully enter an aircraft or an airport area that serves air carriers or foreign air carriers contrary to security requirements established pursuant to section 315 or 316 of this Act.

(2) General penalty. Upon conviction of a violation of paragraph (1), a person shall be subject to imprisonment for a term not to exceed 1 year or a fine not to exceed \$1,000, or both.

(3) Penalty for violations in connection with felonies. If any person violates paragraph (1) of this subsection with the intent to commit in the aircraft or secured area an act punishable as a felony under Federal or State law, such person shall be subject to imprisonment for a term not to exceed 10 years or a fine not to exceed \$10,000, or both.

6. TITLE XII - SECURITY PROVISIONS.

PURPOSE

Sec. 1201. The purpose of this title is to establish security provisions which will encourage and permit the maximum use of the navigable air space by civil aircraft consistent with the national security.

SECURITY CONTROL OF AIR TRAFFIC

Sec. 1202. In the exercise of his authority under section 307(a) of this Act, the Administrator, in consultation with the Department of Defense, shall establish such zones or areas in the airspace of the United States as he may find necessary in the interests of national defense, and by rule, regulation, or order restrict or prohibit the flight of civil aircraft, which he cannot identify, locate, and control with available facilities, within such zones or areas.

PENALTIES

Sec. 1203. In addition to the penalties otherwise provided for by this Act, any person who knowingly or willfully violates any provision of this title, or any rule, regulation, or order issued thereunder shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine not exceeding \$10,000 or to imprisonment not exceeding one year, or to both such fine and imprisonment.

7. SECTION 110 OF THE HAZARDOUS MATERIALS TRANSPORTATION ACT (49 U.S.C. app. 1809), provides:

§110 Penalties

(a) Civil. (1) any person (except an employee who acts without knowledge) who is determined by the Secretary, after notice and an opportunity for a hearing, to have knowingly committed an act which is a violation of a provision of this title or of a regulation issued under this title, shall be liable to the United States for a civil penalty. Whoever knowingly commits an act which is a violation of any regulation, applicable to any person who transports or causes to be transported or shipped hazardous materials, shall be subject to a civil penalty of not more than \$10,000 for each violation, and if any such violation is a continuing one, each day of violation constitutes a separate offense. Whoever knowingly commits an act

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which is a violation of any regulation applicable to any person who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a package or container which is represented, marked, certified, or sold by such person for use in the transportation in commerce of hazardous materials shall be subject to a civil penalty of not more than \$10,000 for each violation. The amount of any such penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

(2) Such civil penalty may be recovered in an action brought by the Attorney General on behalf of the United States in the appropriate district court of the United States or, prior to referral to the Attorney General, such civil penalty may be compromised by the Secretary. The amount of such penalty, when finally determined (or agreed upon in compromise), may be deducted from any sums owed by the United States to the person charged. All penalties collected under this subsection shall be deposited in the Treasury of the United States as miscellaneous receipts.

(b) Criminal. A person is guilty of an offense if he willfully violates a provision of this title or a regulation issued under this title. Upon conviction, such person shall be subject, for each offense, to a fine of not more than \$25,000, imprisonment for a term not to exceed 5 years, or both.

8. SECTION 517 OF THE AIRPORT AND AIRWAY IMPROVEMENT ACT OF 1982 (49 U.S.C. app. 2216), provides:

§517 False statements

Any officer, agent, or employee of the United States, or any officer, agent, or employee of any public agency, or any person, association, firm, or corporation who, with intent to defraud the United States--

(1) knowingly makes any false statement, false representation, or false report as to the character, quality,

quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the costs thereof, in connection with the submission of plans, maps, specifications, contracts, or estimates of project costs for any project submitted to the Secretary for approval under this title;

(2) knowingly makes any false statement, false representation, or false report or claim for work or materials for any project approved by the Secretary under this title;

(3) knowingly makes any false statement or false representation in any report or certification required to be made under this title shall, upon conviction thereof, be punished by imprisonment for not to exceed five years or by a fine of not to exceed \$10,000, or by both.

9. SELECTED SECTIONS FROM TITLE 18, UNITED STATES CODE,
provide:

18 U.S.C. § 32. Destruction of aircraft or aircraft
facilities

(a) Whoever willfully--

(1) sets fire to, damages, destroys, disables, or wrecks any aircraft in the special aircraft jurisdiction of the United States or any civil aircraft used, operated, or employed in interstate, overseas, or foreign air commerce;

(2) places or causes to be placed a destructive device or substance in, upon, or in proximity to, or otherwise makes or causes to be made unworkable or unusable or hazardous to work or use, any such aircraft, or any part or other materials used or intended to be used in connection with the operation of such aircraft, if such placing or causing to be placed or such making or causing to be made is likely to endanger the safety of any such aircraft;

(3) sets fire to, damages, destroys, or disables any air navigation facility, or interferes by force or violence with the operation of such facility, if such fire, damaging, destroying, disabling, or interfering is likely to endanger the safety of any such aircraft in flight;

(4) with the intent to damage, destroy, or disable any such aircraft, sets fire to, damages, destroys, or disables or places a destructive device or substance in, upon, or in proximity to, any appliance or structure, ramp, landing area, property, machine, or apparatus, or any facility or other material used, or intended to be used, in connection with the operation, maintenance, loading, unloading or storage of any such aircraft or any cargo carried or intended to be carried on any such aircraft;

(5) performs an act of violence against or incapacitates any individual on any such aircraft, if such act of violence or incapacitation is likely to endanger the safety of such aircraft;

(6) communicates information, knowing the information to be false and under circumstances in which such information may reasonably be believed, thereby endangering the safety of any such aircraft in flight; or

(7) attempts to do anything prohibited under paragraphs (1) through (6) of this subsection, shall be fined not more than \$100,000 or imprisoned not more than twenty years or both.

(b) Whoever willfully--

(1) performs an act of violence against any individual on board any civil aircraft registered in a country other than the United States while such aircraft is in flight, if such act is likely to endanger the safety of that aircraft;

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(2) destroys a civil aircraft registered in a country other than the United States while such aircraft is in service or causes damage to such an aircraft which renders that aircraft incapable of flight or which is likely to endanger that aircraft's safety in flight;

(3) places or causes to be placed on a civil aircraft registered in a country other than the United States while such aircraft is in service, a device or substance which is likely to destroy that aircraft, or to cause damage to that aircraft which renders that aircraft incapable of flight or which is likely to endanger that aircraft's safety in flight;
or

(4) attempts to commit an offense described in paragraphs (1) through (3) of this subsection; shall, if the offender is later found in the United States, be fined not more than \$100,000 or imprisoned not more than twenty years, or both.

(c) Whoever willfully imparts or conveys any threat to do an act which would violate any of paragraphs (1) through (5) of subsection (a) or any paragraphs (1) through (3) of subsection (b) of this section, with an apparent determination and will to carry the threat into execution shall be fined not more than \$25,000 or imprisoned not more than five years, or both.

18 U.S.C. § 35. Imparting or conveying false information.

(a) Whoever imparts or conveys or causes to be imparted or conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to do any act which would be a crime prohibited by this chapter [18 USCS §§ 31 et seq.] or chapter 97 [18 USCS §§ 1991, 1992] or chapter 111 [18 USCS §§ 2271 et seq.] of this title shall be subject to a civil penalty of not more than \$1,000 which shall be recoverable in a civil action brought in the name of the United States.

(b) Whoever willfully and maliciously, or with reckless disregard for the safety of human life, imparts or conveys or causes to be imparted or conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to do any act which would be

a crime prohibited by this chapter [18 USCS §§ 31 et seq.] or chapter 97 [18 USCS §§ 1991, 1992] or chapter 111 [18 USCS §§ 2271 et seq.] of this title shall be fined not more than \$5,000, or imprisoned not more than five years, or both.

18 U.S.C. CHAPTER 17A-COMMON CARRIER OPERATION UNDER THE INFLUENCE OF ALCOHOL OR DRUGS

§ 341. Definitions

As used in this chapter, the term 'common carrier' means a rail carrier, sleeping car carrier, a bus transporting passengers in interstate commerce, water common carrier, and an air common carrier.

§ 342. Operation of a common carrier under the influence of alcohol or drugs.

Whoever operates or directs the operation of a common carrier while under the influence of alcohol or drugs, shall be imprisoned not more than five years or fined not more than \$10,000, or both.

§ 343. Presumptions.

For purposes of this chapter--

(1) an individual with a blood alcohol content of .10 or more shall be conclusively presumed to be under the influence of alcohol;

(2) an individual shall be conclusively presumed to be under the influence of drugs if the quantity of the drug in the system of the individual would be sufficient to impair the perception, mental processes, or motor functions of the average individual.

(3) identification documents (other than those issued lawfully for the use of the possessor) or false identification documents;

(4) knowingly possesses an identification document (other than one issued lawfully for the use of the possessor) or a false identification document, with the intent such document be used to defraud the United States;

(5) knowingly produces, transfers, or possesses a document-making implement with the intent such document-making implement will be used in the production of a false identification document or another document-making implement which will be so used; or

(6) possesses an identification document that is or appears to be an identification document of the United States which is stolen or produced without authority knowing that such document was stolen or produced without authority, or attempts to do so, shall be punished as provided in subsection (b) of this section.

(b) The punishment for an offense under subsection (b) of this section is--

(1) a fine of not more than \$25,000 or imprisonment for not more than five years, or both, if the offense is--

(A) the production or transfer of an identification document or false identification document that is or appears to be--

(i) an identification document issued by or under the authority of the United States; or

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(ii) a birth certificate, or a driver's license or personal identification card;

(B) the production or transfer of more than five identification documents or false identification document; or

(C) an offense under paragraph (5) of such subsection;

(2) a fine of not more than \$15,000 or imprisonment for not more than three years, or both, if the offense is--

(A) any other production or transfer of an identification document or false identification document; or

(B) an offense under paragraph (3) of such subsection; and

(3) a fine of not more than \$5,000 or imprisonment for not more than one year, or both in any other case.

(c) The circumstances referred to in subsection (a) of this section is that--

(1) the identification document or false identification document is or appears to be issued by or under the authority of the United States or the document-making implement is designed or suited for making such an identification document or false identification document;

(2) the offense is an offense under subsection (a)(4) of this section; or

(3) the production, transfer, or possession prohibited by this section is in or affects interstate or foreign commerce, or the identification document, false identification document, or document-making implement is transported in the mail in the course of the production, transfer, or possession prohibited by this section

(d) As used in this section--

(1) the term "identification document" means a document made or issued by or under the authority of the United States Government, a State, political subdivision of a State, a foreign government, political subdivision of a foreign government, an international quasi-governmental organization which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals;

(2) the term "produce" includes alter, authenticate, or assemble;

(3) the term "document-making implement" means any implement or impression specially designed or primarily used for making an identification document, a false identification document, or another document-making implement;

(4) the term "personal identification card" means an identification document issued by a State or local government solely for the purpose of identification; and

(5) the term "State" includes any State of United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other possession or territory of the United States.

(e) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under title V of the Organized Crime Control Act of 1970 (18 U.S.C. note prec. 3481) [note prec. 18 USCS § 3481].

18 U.S.C. § 506. Seals of departments or agencies.

(a) Whoever falsely makes, forges, counterfeits, mutilates, or alters the seal of any department or agency of the United States;

(b) Whoever knowingly uses, affixes, or impresses any such fraudulently made, forged, counterfeited, mutilated, or altered seal to or upon any certificate, instrument, commission, document, or paper, of any description;

(c) Whoever, with fraudulent intent, possesses any such seal, knowing the same to have been so falsely made, forged, counterfeited, mutilated, or altered--

Shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

18 U.S.C. § 1001. Statements or entries generally.

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to

contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

18 U.S.C. § 1018. Official certificates or writings.

Whoever, being a public officer or other person authorized by any law of the United States to make or give a certificate or other writing, knowingly makes and delivers as true such a certificate or writing, containing any statement which he knows to be false, in a case where the punishment thereof is not elsewhere expressly provided by law, shall be fined not more than \$500 or imprisoned not more than one year, or both.

18 U.S.C. § 1028. Fraud and related activity in connection with identification documents.

(a) Whoever, in a circumstance described in subsection (c) of this section--

(1) knowingly and without lawful authority produces an identification document or a false identification document;

(2) knowingly transfers an identification document or a false identification document knowing that such a document was stolen or produced without lawful authority; or

(3) knowingly possesses with intent to use unlawfully or transfer unlawfully five or more.

18 U.S.C. § 1505. Obstruction of proceedings before departments, agencies, and committees.

(a) Whoever, with intent to avoid, evade, prevent, or obstruct compliance, in whole or in part, with any civil investigative demand duly and properly made under the Antitrust Civil Process Act, willfully withholds, misrepresents, removes from any place, conceals, covers up, destroys, mutilates, alters, or by other means falsifies any documentary material, answers to written interrogatories, or oral testimony, which is the subject of such demand; or attempts to do so or solicits another to do so; or

(b) Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress--

Shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

APPENDIX 6. POLICY ON ENFORCEMENT OF HAZARDOUS
MATERIALS REGULATIONS: PENALTY GUIDELINES

**Federal Aviation Administration Policy on Enforcement of Hazardous
Materials Regulations: Penalty Guidelines**

Purpose and Scope: This Guidance is intended to provide a general framework for agency personnel in the exercise of the Federal Aviation Administration's (FAA) prosecutorial discretion in enforcement cases concerning transportation of hazardous materials by air. The guidance should aid in analysis of the facts and circumstances of each case so as to arrive at an appropriate sanction in light of the statutorily defined penalty considerations. The analytical framework should also promote a relative consistency in determining civil penalties for violations of the Department of Transportation Hazardous Materials Regulations (HMR), Title 49 Code of Federal Regulations Subchapter C (49 C.F.R. Parts 171-178).

Background: Congress determined that the unregulated transportation of hazardous materials constitutes a threat to public safety in all forms of transportation. Congress addressed that threat in 1974 by enacting the Hazardous Materials Transportation Act (HMTA). By 1990, Congress determined that effective enforcement of the HMTA required more severe action, and enacted the Hazardous Materials Transportation Uniform Safety Act of 1990, Public Law No. 101-615, 1990 U.S. Code Congress. & Admin. News 104 Stat. 4605. The primary effect of this 1990 revision of the HMTA was to raise the maximum civil penalty for violation of any regulation enacted under the HMTA to \$25,000, and, for the first time, to require a \$250 minimum penalty for any such violation. The HMTA was recodified in 1994 and is now referred to as the "Federal hazardous material transportation law," 1994 U.S. Code Congress. & Admin. News 108 Stat. 759, codified at 49 U.S.C. §§ 5101-5127. In the 1994 recodification, Congress specifically stated that the recodification created no substantive change to the earlier form of the statute.

The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 (note), as amended by the Debt Collection Improvement Act of 1996, Public Law 104-134, April 26, 1996, provides a mechanism for adjustments for monetary civil penalties for inflation in order to maintain the deterrent effect of monetary civil penalties and promote compliance with the law. Under the statute, the new civil penalty maximums cannot be applied unless they are implemented by regulation. On December 20, 1996, the FAA published a final rule (61 FR 6744), implementing the statute for each civil penalty subject to the FAA's jurisdiction. On January 21, 1997, the FAA published a correction to the final rule (62 FR 4134). The final rule is codified at 14 C.F.R. Part 13, Subpart H. Pursuant to 14 C.F.R. § 13.305(d), the maximum civil penalty that may be assessed for a violation of the Federal hazardous material law or a hazardous material regulation is now \$27,500.

Congress assigned the responsibility for the enforcement of the Federal hazardous material transportation law to the Secretary of Transportation. Within the Department of Transportation, the Research and Special Programs Administration (RSPA) adopts the HMR, which govern the transportation of hazardous materials (Hazmat). Although RSPA has some enforcement responsibilities, the responsibility for enforcing the HMR with respect to civil aviation is delegated by the Secretary of Transportation to the FAA. 49 C.F.R. § 1.47(k).

The HMR set forth regulations for the transportation of Hazmat. A knowing violation of the statute or of the HMR can support the assessment of a civil penalty between \$250 and \$27,500. A person acts knowingly when the person has actual knowledge of the facts giving rise to the violation; or a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge. 49 U.S.C. § 5123(a)(1)(A). The civil penalties authorized under the statute apply to EACH violation of any regulation set forth in the HMR. Moreover, under the statute, each continuing violation of the HMR can constitute a separate violation for each day a violation continues. In section 5124 of the statute, Congress prescribed criminal penalties for a willful violation of the Federal hazardous material transportation law or the HMR; willful violations require evidence of both knowledge of the laws and regulations and intent to violate them.

Part 13 of the Federal Aviation Regulations - Investigative and Enforcement Procedures (14 C.F.R. Part 13) governs the procedures applicable to enforcement of the HMR by the FAA. Hazmat violations occurring on or after August 2, 1990, may be dismissed by an administrative law judge (ALJ) if a Notice of Proposed Civil Penalty has not been issued within 2 years of the violation, unless good cause for delay has been shown. 14 C.F.R. §13.208(d).

Consideration of Statutory Criteria: In determining the sanction to be assessed, penalty criteria set forth in 49 U.S.C. § 5123 must be considered. These criteria are the nature, circumstances, extent, and gravity of the violation, the degree of culpability of the violator, any history of past violations, the ability to pay, any effect on the ability to continue to do business, and other matters as justice requires. Some of these considerations already are factored to some extent into the categories in the Hazardous Material Sanction Guidance Matrix. The statutory factors are further considered under the weighting analysis that is performed to indicate the amount of civil penalty within the appropriate range, i.e., at the minimum, moderate, or maximum portion of the sanction range. To comply with the underlying purposes of the Federal hazardous material transportation law and HMR, a sanction should be imposed that is sufficiently deterrent but not excessive.

Appendix 6

The Hazardous Materials Sanction Guidance is designed to promote better consistency so that similar penalties are imposed in similar cases. The Matrix ranges are intended to reflect the nature, circumstances, extent, and gravity of the case as compared with other types of cases. Each case, however, must be evaluated on its own facts. A sanction may differ from the Matrix ranges when the facts and circumstances of a case support either a greater or lesser penalty. When a special agent believes that a penalty should exceed the Matrix ranges, the agent should consult with legal counsel before further processing of the Enforcement Investigative Report (EIR). This consultation is not necessary in the case of a recommended penalty that is less than that provided in the Matrix. In either situation, the basis for the decision to go outside the ranges should be explained in detail.

Violations of Part 175 of the HMR, which establish particular requirements for air carriers and other aircraft operators, are contained in a separate matrix. However, such operators often offer hazardous materials for air transportation, as well as accept and transport them. For this reason, such operators may be liable for violations both as a business entity within the Hazardous Materials Sanction Guidance Matrix, as well as for specific air carrier violations.

Use of the Sanction Guidance: This guidance provides agency personnel with a systematic way to evaluate a case and arrive at an appropriate penalty, considering all the relevant statutory criteria including any mitigating and aggravating circumstances. Statutory considerations have been factored into the various ranges within the Sanction Guidance Matrix. Determination of where a sanction lies within these ranges is aided by a series of weighting questions that probe the various aggravating and mitigating factors that may exist in a case.

First, the weighting analysis is performed. Agency personnel respond to a series of questions to determine the aggregate weight of the case. The aggregate weight of the case helps determine the sanction amount for each violation group within the established ranges of the Matrix.

It is important to note that determination of where the sanction lies within the Matrix is not the result of a mathematical computation. Evaluation of the case is based on the totality of the facts and circumstances. Generally, if the answer to a particular question represents a more significant aspect of a case, greater consideration should be given to that answer. For example, violations involving an extremely dangerous substance, even in minute quantities, might warrant a penalty at the maximum end of the range or even a penalty exceeding the Matrix ranges.

Under the Sanction Guidance Matrix, agency personnel determine the category of violator the person falls within (e.g., business entity that regularly offers, accepts, or transports Hazmat) and the offense category (e.g., undeclared shipment within Hazmat quantity limitations). The

sanction ranges under the various violator categories take into account the relative culpability of the violator. Similarly, the offense categories address the nature, circumstances, and gravity of the particular offense. After determining the appropriate categories and intersecting box of the Matrix, agency personnel then determine which subcategories of offenses (e.g., shipping papers) are alleged to have been violated. Based on the weighting analysis performed in Section I, an appropriate penalty is assigned for each of the applicable violation groups. The penalty amount for each relevant violation group is added together to reach the recommended sanction.

Under Section III of the Guidance, the special agent then considers other relevant factors, including evidence of corrective action. A recommended sanction may be reduced prior to the issuance of a Notice of Proposed Civil Penalty when there is adequate reliable information concerning the corrective actions taken by a respondent. Corrective actions that justify reduction of the recommended penalty must exceed the minimum legal requirements. The special agent also attempts to provide information concerning the alleged violator's size, financial condition, and ability to pay a recommended sanction.

When an EIR is forwarded to legal counsel for enforcement action, counsel will give appropriate consideration to the recommended sanction. FAA legal counsel will also review the factors, analysis, and determinations under the Hazardous Materials Sanction Guidance. Any basis for deviating from the recommended sanction is ordinarily explained to, and discussed with, the investigating special agent. Final determination of the sanction amount proposed in the Notice of Proposed Civil Penalty is ordinarily a product of joint decisionmaking and approval of the investigating agent and the legal office.

Federal Aviation Administration Hazardous Materials Sanction Guidance

This Sanction Guidance is divided into three sections:

- I. Case Analysis,
- II. Utilization of the Sanction Guidance Matrix (Matrix), and
- III. Consideration of other Statutory Factors.

The Sanction Guidance Matrix is contained in Figure 1 and the Risk Categories are contained in Figure 2.

I. CASE ANALYSIS

(Evaluation of Statutory Assessment Factors)

This section contains a series of questions designed to assist special agents and attorneys in evaluating a particular case. The questions review factors involving the nature, circumstances, extent and gravity of the violation, the violator's degree of culpability, and the violator's history of prior violations. Some of these factors are already considered to some extent within the various categories of the Sanction Guidance Matrix. The questions in this section provide additional consideration of the statutory factors and examine the existence of aggravating and mitigating factors in a case.

The agent/attorney answers each question in Section I and determines if a relative weight of minimum, moderate, or maximum should be assigned based on the response to the question. With the exception of Question A.1., not all questions will apply to a given fact situation. Question A.1., which addresses the nature of the hazardous material(s) involved, is the only question that always receives a "yes" answer to one of its subquestions and is considered in every case. The aggravating or mitigating factors addressed in the questions only apply to the case when the question receives a "yes" response. Questions receiving a "no" response do not affect the weighting of the case and are not considered. For example, if the violation resulted in harm to persons or property, that may be an aggravating factor in the case. However, the fact that the violation did not result in injury or damage is not a mitigating factor and should not result in penalty mitigation. In many instances, the answers to most or all of the questions will be "no" and the only relevant weighting factor in this section will be the risk category of the material identified in Question A.1.

In determining the final aggregate weight of the case, the responses to each of the questions do not have to be equally considered. Determination of whether the overall case should have a minimum, moderate, or maximum weight cannot be determined with mathematical certainty. Generally, if the answer to a question demonstrates that the factor at issue represents a more significant aspect of the case, greater consideration is given to that factor. The final aggregate weight is based on the totality of the facts and circumstances of the case. Once determined, the final aggregate weight is then utilized to arrive at the recommended sanction for each applicable violation group on the Sanction Guidance Matrix (Figure 1).

A. The Nature, Circumstances, Extent, and Gravity of the Violation:

(Factors Concerning the Shipment)

1. What material(s) was offered, transported, or accepted for air transportation?

(Figure 2 divides hazardous materials of particular classes, divisions, and packing groups into three risk categories: Category A, Category B, and Category C. Find the material(s) at issue in Figure 2 and answer the questions below.)

- a. Is the material(s) offered, transported, or accepted in Category A?
If yes, assign a **Maximum** weight.
- b. Is the material(s) offered, transported, or accepted in Category B?
If yes, assign a **Moderate** weight.
- c. Is the material(s) offered, transported, or accepted in Category C?
If yes, assign a **Minimum** weight.

Guidance Note: *The categories in Figure 2 represent the inherent risk of danger to air transportation posed by the material. If there is more than one type of hazardous material involved in the shipment, answer this question using the hazardous material in the highest risk category.*

2. What quantity of the material(s) was offered, transported, or accepted for air transportation?

- a. Did the package(s) exceed the authorized quantity limitations by a significant amount?

If yes, consider a **Moderate** or **Maximum** weight depending on the degree to which the limitation was exceeded.

Guidance Note: *The Matrix, discussed in Section III, takes into account the factual situations where the quantity limitations for the material are exceeded. This part of the analysis is intended to determine whether further aggravating circumstances exist where quantity limitations are exceeded by a significant amount. Whether this factor is assigned a moderate or maximum weight will depend on the degree by which the quantity limitation was exceeded.*

Example: *The quantity limitation for gasoline on a passenger plane is 5 liters per package. If a violator offers 30 liters in a single package on a passenger plane, this may result in a maximum weight for this factor.*

- b. Were there multiple packages in the shipment?

If yes, consider a **Moderate** or **Maximum** weight, depending on the number of packages and total amount of hazardous material being transported in violation.

***Guidance Note:** A package means a packaging plus its contents. There may be multiple packages in one shipment or overpack. Multiple packages often represent multiple violations. Under the Sanction Guidance, this fact is considered an aggravating circumstance rather than a direct multiplier of the sanction for each violation. Each case, however, must be evaluated on its particular facts. A very large number of packages may result in such an egregious case that the overall weight of the case is so high that a penalty beyond the maximum point in the range is warranted.*

An investigation will occasionally reveal several shipments from the same offeror over a period of several days, all of which involve violations of the HMR. These independent acts of offering usually are consolidated into one EIR and addressed in one Notice of Proposed Civil Penalty. However, for purposes of determining the appropriate sanction, each separate shipment with a separate air waybill or shipping papers, separate destination and/or any other evidence establishing it as a separate shipment is ordinarily considered as a separate incident for purposes of applying the sanction guidance analysis. It is suggested that the separate shipments be treated as individual counts in the EIR and the Notice of Proposed Civil Penalty, with each count having its own sanction derived from application of this guidance. Note, there must be sufficient evidence to support each count.

3. Did the shipment cause damage or harm to persons or property or interfere with commerce? If yes, consider a **Moderate** or **Maximum** weight.

***Guidance Note:** The fact that no damage occurred as a result of the shipment is not a mitigating factor. However, damage or harm may aggravate the nature, circumstances, extent, and gravity of the violation. Depending on the degree of damage caused by the shipment and/or the existence of other aggravating factors, departure from the ranges may be justified.*

B. Violator's Degree of Culpability

(The Matrix, Figure 1, considers the relative culpability of the violator. This section of the analysis further evaluates the degree of culpability of the violator.)

1. Is the violator the manufacturer of the hazardous material?

If yes, consider a **Maximum** weight.

Guidance Note: A manufacturer of a hazardous material is expected to have complete knowledge of the nature of the hazardous material and thus, a high degree of culpability will ordinarily be imputed to it.

2. Did someone other than the violator prepare the shipment for transportation?

If yes, consider a **Minimum** or **Moderate** weight.

Guidance Note: Facts supporting an affirmative answer to this question may be cause to mitigate culpability and/or pursue a separate enforcement action against other responsible parties who handled the shipment. A shipper that **reships materials received from another person** in the same packaging is independently responsible for ensuring the shipment complies with the HMR. Nevertheless, the reshipper is generally considered to have a lesser degree of culpability for compliance of the package as received. However, if the reshipper unpacks and/or repackages the shipment, the reshipper remains as culpable as the original shipper and generally is not accorded mitigation under this weighting factor. (For purposes of this section, a “reshipper” refers to a person, other than the original offeror, who offers a shipment of hazardous material for transportation.)

3. Did the violator reasonably rely on incorrect information from another source?

If yes, consider a **Minimum** weight.

Guidance Note: Detrimental or reasonable reliance on another party may be a mitigating factor when considering the violator’s degree of culpability. For example, reliance on an inaccurate Material Safety Data Sheet (MSDS) may be mitigating.

4. Does the violator have a history of previous HMR violations?

If yes, consider a **Moderate** or **Maximum** weight.

Guidance Note: To establish a violation history, **a prior violation must be an actual finding of violation pursuant to a legal enforcement action.** Special agents should attempt to determine the corporate structure of the violator and whether other business entities or names are or have been used by the entity in order to obtain a complete violation history. The number and age of violations should be considered. Ordinarily, findings of violation more than 5 years old carry less weight, unless a continuing pattern of violation exists.

C. Other Factors

Each case must be evaluated on its particular facts. As such, many cases may present unique scenarios and aggravating or mitigating factors that are not routinely seen. If an aggravating or mitigating circumstance exists that is not adequately addressed elsewhere in the sanction

guidance, it may be included and assigned a weight under this section. The factor should be clearly identified and explained in the analysis portion of the EIR and carefully scrutinized by legal counsel.

Guidance Note: For example, a shipment of a single package containing several different hazardous materials may present an aggravating factor. The degree of seriousness of this factor will increase if the hazardous materials are incompatible with each other and, therefore, create an increased risk.

*Mitigating factors may also exist that have not been adequately considered. For example, a shipment containing a *de minimis* quantity of material or an amount that would have qualified under the small quantity exception of §173.4 may present a mitigating factor if as a result there was a reduced risk to safety in transportation.*

D. Determine the Final Aggregate Weight of the Case.

All the responses/weights are evaluated to determine a final aggregate weight for the case (**Minimum, Moderate, and Maximum.**). Questions receiving a “no” response will not be included in this evaluation. To determine the final aggregate weight, the agent/attorney must exercise his/her discretion in light of the statutory factors and knowledge of the particular facts of the case. The facts of the particular case will dictate the relative importance of each of the weighting factors in reaching the final aggregate weight. The final aggregate weight should be decided as a result of careful analysis, not a mathematical averaging. It is possible that a single weighting factor may outweigh all others. The agent/attorney’s analysis should always be explained in this regard.

Example: A case involving a hazardous material in the lowest risk category may be evaluated to have a maximum weight because of the large quantity shipped or the damage resulting from the shipment.

II. UTILIZE THE MATRIX (Figure 1)

The sanction ranges under the offeror and offense categories of the Sanction Guidance Matrix reflect the relative culpability of the violator and the nature, circumstances, extent, and gravity of the case. Consideration of these particular statutory factors under the Federal hazardous material transportation law is built into the Matrix. Further analysis of the statutory factors is required to determine the appropriate sanction within the ranges established under the Matrix. This analysis is performed in Section I. After determining the final aggregate weight of the case under the Section I analysis, that weight is applied to the appropriate matrix range to identify the recommended sanction amount for each of the relevant violation groups and for the case as a whole. Although the Notice of Proposed Civil Penalty may cite numerous violations of a particular part or subpart of the HMR, unless upward departure is justified, a single penalty amount for each violation group is ordinarily used to reach the full sanction.

A. Instructions

1. Identify the appropriate category for the type of entity and the nature of the offense involved in the case. Refer to the Definitions Section that follows the Matrix in Figure 1 for guidance. Go to the intersecting box and identify the applicable sanction range for each violation group.
2. Apply the conclusion reached in the Section I weighting analysis to assign a sanction amount within the minimum, moderate, or maximum portion of the sanction range for each relevant violation group. The recommended civil penalty at this stage is the sum of the sanctions for each of the applicable violation groups. A sanction should not be assessed for a violation group if there have been no violations of that part or subpart of the HMR. The sanction amount for each violation group need not be identical but ordinarily is within the portion of the particular sanction range that represents the overall weight of the case.
3. **Departure from the Matrix ranges** –The Matrix is designed to cover the majority of cases involving violations of the HMR. The facts and circumstances of a particular case, however, may justify either an upward or downward departure from the Matrix ranges. This sanction guidance anticipates and encourages departure from the Matrix ranges when justified. A case involving violations in which the nature, circumstances, extent, and gravity of the incident are particularly severe or egregious, may justify upward departure from the Matrix. If the investigating agent believes, based upon the facts of a case, that a penalty should exceed the Matrix ranges, the agent should consult with legal

counsel before further processing of the EIR. Conversely, the investigating agent may believe that mitigating factors justify a downward departure from the Matrix range.

Consultation with legal counsel is not necessary in the case of a recommended penalty that is less than that provided in the Matrix. In either situation, however, the agent is to provide a detailed explanation of the basis for the decision to go outside the ranges.

4. Violations of Part 175 regulations, which establish particular requirements for air carriers and other aircraft operators, are contained in a separate matrix. However, such operators often offer Hazmat for air transportation as well as accept and transport it. As such, the operator may be liable for violations as a business entity within the main Matrix as well as for the specific Part 175 violations.

III. IMPACT OF OTHER STATUTORY FACTORS

The Federal hazardous material transportation law also requires consideration of a violator's ability to pay a civil penalty, the impact of the civil penalty on the violator's ability to continue to do business, and other matters that justice requires. Consideration of these factors may result in adjustment of the recommended civil penalty calculated in Section II. In situations where the agent or attorney is in possession of mitigating information, such an inability to pay the recommended civil penalty or corrective action taken, reduction of the recommended penalty may be appropriate. Mitigating information should be sufficiently reliable, uncontroverted, and documented in order to support reduction of the recommended civil penalty prior to issuing the Notice of Proposed Civil Penalty.

A. Ability to Pay/Continue in Business

Historically, the FAA has considered these factors after the issuance of the Notice of Proposed Civil Penalty due to the absence of reliable financial information on which to base a reduction prior to the issuance of a Notice. This Sanction Guidance recommends that the special agent make efforts to obtain reliable information regarding the violator's size and financial condition for review prior to the issuance of a Notice. This information will be transmitted to the legal office for consideration. It is recognized that it may not always be possible for the special agent and/or attorney to obtain reliable financial information on a particular respondent, that financial circumstances change, and that information may be provided after the issuance of the Notice that may warrant further consideration of a respondent's ability to pay.

1. The investigating agent will attempt to include financial information as an exhibit in the EIR. It is anticipated that this information, if available, will be obtained from reliable financial data bases. Financial documentation should include, but need not be limited to,

information concerning the violator's corporate structure, business address, officers, number of employees, and gross revenues.

2. The investigating agent provides a statement or comment with respect to the financial information obtained but ordinarily does not evaluate the financial condition of a respondent with respect to its ability to pay a proposed civil penalty. The investigating agent's statement should encompass areas like the number of employees, gross revenues, and nature of business of the violator.
3. FAA legal counsel reviews the financial information provided in the EIR and evaluates its sufficiency and relevance to the recommended civil penalty. Legal counsel may determine if more current information exists concerning the financial condition of a respondent and if that information substantially differs from the information available at the time of preparation of the EIR. If there is a basis for determining that the recommended sanction is inappropriate based upon the financial information provided in the EIR, the recommended sanction is adjusted prior to issuance of the Notice of Proposed Civil Penalty. This is a preliminary consideration of a company's ability to pay. As such, pre-Notice adjustment of a recommended civil penalty does not preclude further consideration of a respondent's financial claims after issuance of the Notice.
4. If legal counsel determines that a respondent qualifies as a small business entity, counsel may consider that status under the Small Business Regulatory Enforcement Fairness Act (SBREFA) with respect to the appropriateness of the recommended civil penalty. A respondent's status as a small business entity may be considered in conjunction with analysis of the statutory factors.

B. Corrective Action

The most common "other matter" that the FAA takes into consideration is corrective action. Corrective action that results in mitigation is remedial action that exceeds the minimum legal requirements. The primary factors in determining the appropriate amount of penalty reduction are the extent and timing of the corrective action. In other words, mitigation is determined on the basis of how much corrective action was taken and how quickly the action was taken. Systemic change intended to prevent future violations should be given greater consideration. Similarly,

corrective action that commences upon the violator's first notice of the violations ordinarily is given greater credit than corrective action that commences only after the Notice of Proposed Civil Penalty has been issued.

Mitigation of a recommended civil penalty based upon corrective action should be referenced in the Notice of Proposed Civil Penalty so that the respondent is on notice that credit already has been given for such action.

MATRIX & DEFINITIONS
(Figure 1)

OFFENSE CATEGORIES	A. Individual	B. Business Entity	C. Business Entity that uses or handles Hazmat in the course of business	D. Business Entity that regularly offers, accepts, or transports Hazmat
<u>I. Declared Shipment</u>				
1. Shipping Papers	250-500	250-1,000	500-2,000	1,000-5,000
2. Labels	250-500	250-1,000	500-2,000	1,000-5,000
3. Markings	250-500	250-1,000	500-2,000	1,000-5,000
4. Packaging	250-500	250-1,000	500-2,000	1,000-5,000
5. Training	-----	250-1,000	500-2,000	1,000-5,000
6. Emerg. Response	250-500	250-1,000	500-2,000	1,000-5,000
7. Release into Environ.	250-500	250-1,000	500-2,000	1,000-5,000
8. Other	250-500	250-1,000	500-2,000	1,000-5,000
<u>II. Undeclared Shipment Within Hazmat Quantity Limitations</u>				
1. Shipping Papers	250-1,000	1,500-7,500	2,500-10,000	5,000-12,000
2. Labels	250-1,000	1,500-7,500	2,500-10,000	5,000-12,000
3. Markings	250-1,000	1,500-7,500	2,500-10,000	5,000-12,000
4. Packaging	250-1,000	1,500-7,500	2,500-10,000	5,000-12,000
5. Training	-----	1,500-7,500	2,500-10,000	5,000-12,000
6. Emerg. Response	250-1,000	1,500-7,500	2,500-10,000	5,000-12,000
7. Release into Environ.	250-1,000	1,500-7,500	2,500-10,000	5,000-12,000
8. Other	250-1,000	1,500-7,500	2,500-10,000	5,000-12,000
<u>III. Undeclared Shipment Hazmat Forbidden on, or exceeds qty limits for, Passenger Aircraft</u>				
1. Shipping Papers	500-5,000	5,000-15,000	7,500-20,000	10,000-27,500
2. Labels	500-5,000	5,000-15,000	7,500-20,000	10,000-27,500
3. Markings	500-5,000	5,000-15,000	7,500-20,000	10,000-27,500
4. Packaging	500-5,000	5,000-15,000	7,500-20,000	10,000-27,500
5. Training	-----	5,000-15,000	7,500-20,000	10,000-27,500
6. Emerg. Response	500-5000	5,000-15,000	7,500-20,000	10,000-27,500
7. Release into Environ.	500-5000	5,000-15,000	7,500-20,000	10,000-27,500
8. Other	500-5000	5,000-15,000	7,500-20,000	10,000-27,500
<u>IV. Undeclared Shipment Forbidden on, or exceeds qty limits for, All Aircraft</u>				
1. Shipping Papers	500-27,500	7,500-27,500	10,000-27,500	15,000-27,500
2. Labels	500-27,500	7,500-27,500	10,000-27,500	15,000-27,500
3. Markings	500-27,500	7,500-27,500	10,000-27,500	15,000-27,500
4. Packaging	500-27,500	7,500-27,500	10,000-27,500	15,000-27,500
5. Training	-----	7,500-27,500	10,000-27,500	15,000-27,500
6. Emerg. Response	500-27,500	7,500-27,500	10,000-27,500	15,000-27,500
7. Release into Environ.	500-27,500	7,500-27,500	10,000-27,500	15,000-27,500
8. Other	500-27,500	7,500-27,500	10,000-27,500	15,000-27,500
<u>V. Intentional or Deliberate Violation</u>	CONSULT LEGAL	CONSULT LEGAL	CONSULT LEGAL	CONSULT LEGAL

AIR CARRIER AND OTHER AIRCRAFT OPERATOR VIOLATIONS	E. Group I & II Air Carriers and Other Aircraft Operators	F. Group III & IV Air Carriers and Other Aircraft Operators
Failure to comply with Parts 171, 172, or 173 requirements of the HMR as an offeror of Hazmat.	Use main Matrix.	Use main Matrix.
Improper acceptance of Hazmat for air transportation. (i.e., quantity, labeling, marking, packaging, and shipping papers) See 49 CFR §§ 175.30(a)(1) – (4)	5,000-27,500	2,500-15,000
Failure to inspect Hazmat shipment properly. See 49 CFR §§ 175.30(b), (c), (d), (e)	10,000-27,500	5,000-15,000
Improper storage/securing of Hazmat aboard aircraft	10,000-27,500	5,000-15,000
Failure to provide Hazmat training, maintain records of training, or meet minimum requirements for Hazmat training.	10,000-27,500	5,000-15,000
Failure to notify FAA properly of incident/discrepancies in Hazmat shipment.	5,000-15,000	1,000-5,000
Failure to provide notice to the pilot-in-command.	5,000-15,000	1,000-5,000
Other Part 175 violations	5,000-15,000	1,000-5,000

DEFINITIONS:

- (a) **Air Carrier and Other Aircraft Operator Groups (I, II, III, IV)** – Air carriers and other aircraft operators are divided into two categories for purposes of determining an appropriate sanction. These categories track the air carrier groups established in FAA Order No. 2150.3A, Appendix 1, Compliance/Enforcement Bulletin 92-1, but also includes any operator of an aircraft that is operated “in commerce” as defined in the Federal hazardous materials law, including Part 129 Foreign Air Carriers, Part 125 Operators, and Part 91 Operators. Group I is comprised of air carriers and other aircraft operators with annual operating revenue of \$100,000,000 or more. Group II is comprised of air carriers and other aircraft operators that hold Part 121 certificates or have 50 or more pilots or operate 25 or more aircraft, with annual operating revenue of less than \$100,000,000. Group III is comprised of air carriers and other aircraft operators that do not meet the criteria for Group II with (1) 6 to 49 pilots, or (2) 6 to 24 aircraft. Group IV is comprised of all other air carriers or aircraft operators not meeting the criteria for Groups I, II, or III.

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- (b) **Business Entity** – The violator is a business, corporation, partnership, Sub-S Corporation, sole proprietor, association, or any type of commercial entity. An individual who offers a Hazmat shipment in air transportation in the course of his/her self-owned business falls into this category. Includes all entities defined under the HMR’s definition of “person,” (49 C.F.R. § 171.8) with the exception of an individual as defined herein.
- (c) **Business Entity that Regularly Offers, Accepts, or Transports Hazardous Materials in the Course of Its Business** - A manufacturer or distributor of Hazmat falls into this category. A freight forwarder would also fall into this category. The aspect of “regularly” offering covers a business entity that offers Hazmat with some anticipated frequency or purports to do so; e.g., a catalogue company that offers hazardous material to its customers would fall into this category, even though its actual sale or transportation of the Hazmat is infrequent or limited.
- (d) **Business Entity that Uses, Handles Hazmat in the Course of Its Business** – This category encompasses the business that utilizes Hazmat in its business but does not offer it for transportation on a regular basis, as described above. For example, a manufacturer of a non-Hazmat product that uses Hazmat in the manufacturing process could fall into this category. It must be established that the company ordinarily does not offer the Hazmat it utilizes for transportation, and the shipment in this instance represents an isolated incident. This type of business is held to a higher standard than the business entity that has no regular involvement with Hazmat. The described business entity receives the subject hazardous material in transportation and uses it in its business; thus, it is clearly on notice of the hazardous nature of the material and the regulatory requirements to which the Hazmat is subject.
- (e) **Declared Shipment** – A declared shipment, for purposes of this matrix only, is one that complies with one or more of the communicative requirements of the HMR, i.e., it has markings, labels, and/or partially-correct shipping papers. A package that has shipping papers that declare the contents as hazardous material but is otherwise not marked or labeled falls into this category. Similarly, a properly marked and labeled package that lacks shipping papers also falls into this category. A case falls into this category where there is clear indication that the offeror made some attempt to give notice of the hazardous nature of the shipment.
- (f) **Forbidden or Exceeds Quantity Limits for Passenger Aircraft** – A shipment falls into this category if the quantity of Hazmat per package exceeds the quantity

limitations for passenger-carrying aircraft or if the particular hazardous material is forbidden in air transportation on passenger aircraft.

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- (g) **Forbidden on or Exceeds Quantity Limits for All Aircraft** – A shipment falls into this category if the quantity of hazardous material per package exceeds the allowable amount for both passenger and cargo aircraft or the Hazmat is absolutely forbidden in air transportation.
- (h) **Hazmat** – A “hazardous material,” as defined in 49 C.F.R. § 171.8, includes and is interchangeable with the term “dangerous goods,” as used in the International Civil Aviation Organization (ICAO) Technical Instructions.
- (i) **Individual** – An individual who offers a shipment of hazardous material in his/her personal capacity without any business purpose or as part of a commercial enterprise on the part of the individual.
- (j) **Intentional or Deliberate Violation** – A shipment falls into this category when there is evidence that the offeror, acceptor, air carrier, or aircraft operator had knowledge of the requirements of the HMR and willfully circumvented or attempted to circumvent those requirements. For example, an offeror who places a properly marked and labeled Hazmat shipment along with properly completed shipping papers, into an overpack marked as “printed material,” has committed an intentional or deliberate violation. In this type of case, the investigating agent shall consult with FAA legal counsel and follow agency guidance for potential criminal violations of the HMR.
- (k) **Undeclared Shipment** – This is a shipment that has no indication of its hazardous material contents and/or no indication that the offeror communicated the hazardous nature of the shipment’s contents to persons who accept or transport.
- (l) **Within Hazmat Quantity Limitations** – The amount of hazardous material is within the quantity limitations per package as established in the §172.101 Table (49 C.F.R. § 172.101) for the type of aircraft on which the shipment traveled. For example, if the shipment was offered for transportation on a passenger aircraft, the quantity of hazardous material was within the established limit for transportation by

passenger aircraft. If the shipment was offered for transportation on a cargo aircraft, the quantity limitations for cargo aircraft apply.

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RISK CATEGORIES **(Figure 2)**

CATEGORY “A” **{Maximum Weight}**

Category “A” materials are materials that when released in the confines of an aircraft can potentially have a catastrophic effect on an aircraft’s ability to continue safe flight, resulting in a crash or emergency landing causing injury or death to passengers and flightcrew, as well as persons on the ground.

- Class 1 Explosives: Division 1.1, 1.2, 1.3,**
- Class 2 Compressed Gases All 2.1, 2.2 with Subsidiary Risk 5.1 and All 2.3 PIH Zones A-D**
- Class 3 Flammable Liquids PG I, II, and (PIH)**
- Class 4 Division 4.1 Flammable Solids PG I, & (Matches)**
 - Division 4.2 Spontaneously Combustible Materials PG I (Pyrophoric)**
 - Division 4.3 Dangerous When Wet PG I**
- Class 5 Division 5.1 Oxidizing Liquids and Solids PG I, II, e.g., “Chemical Oxygen Generators”**
 - Division 5.2 Organic Peroxides PG II (Type A,B,C,D)**
- Class 6 Division 6.1 Poisonous Liquids PG I (PIH)**
- Class 7 Cargo Aircraft Only Quantities on Passenger Aircraft**
- Class 8 Corrosive Material Liquid PG I and (PIH)**
- Forbidden Materials (See 49 CFR 173.21 & ICAO Technical Instructions)**
- Forbidden Hazmat listed in Dangerous Goods Table 49 CFR § 172.101**

CATEGORY “B” **{Moderate Weight}**

The materials listed in Category “B” are materials that may not pose an immediate threat to the safety of a flight, but can cause death or injury to persons due to unintended releases in aircraft cabin areas, and potential damage to aircraft structures over a longer period of time due to undiscovered releases on aircraft structural components.

- Class 1 Division 1.4, 1.5, 1.6, All Compatibility Groups**
- Class 3 PG III Flammable Liquids**
- Class 4 Division 4.1 Flammable Solids PG II, III**

	Division 4.2 Spontaneously Combustible Materials PG III
	Division 4.3 Dangerous When Wet PG II, III
Class 5	Division 5.1 Oxidizing Liquids or Solids PG III
	Division 5.2 Organic Peroxides (Type E,F,G)
Class 6	Division 6.1 Poisonous Liquids PG I, II (NON-PIH)
	Division 6.2 Infectious Substances
Class 7	Radioactive Materials, yellow label II, white label I
Class 8	Liquids PG II, III Solids PG I, II, III

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Category “C” {Minimum Weight}

The materials listed in Category “C” are materials that present the least amount of risk to the transportation system.

Class 2	2.2 Nonflammable Gas
Class 6	Division 6.1 Packing Group III
Class 7	All other RAM (LSA, LTD QTY, Instruments, and Articles)
Class 9	Miscellaneous Dangerous Goods {ORM-D and Consumer Commodity}

NOTE: This guidance is not intended to replace the experienced judgment of a special agent who is convinced, based on the evidence and facts of a case, that the failure of an air carrier, shipper, freight forwarder, or passenger to follow established regulations has posed a risk to aviation safety.