

## § 13.7

withheld from the public under applicable law or regulations, and may obtain a photostatic or duplicate copy upon paying the cost of the copy.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, 1502); sec. 6(c), Dept. of Transportation Act (49 U.S.C. 1655(c)))

[Doc. No 13-14, 44 FR 63723, Nov. 5, 1979; as amended by Amdt. 13-16, 45 FR 35307, May 27, 1980; Amdt. 13-19, 54 FR 39290, Sept. 25, 1989]

### § 13.7 Records, documents and reports.

Each record, document and report that the Federal Aviation Regulations require to be maintained, exhibited or submitted to the Administrator may be used in any investigation conducted by the Administrator; and, except to the extent the use may be specifically limited or prohibited by the section which imposes the requirement, the records, documents and reports may be used in any civil penalty action, certificate action, or other legal proceeding.

## Subpart B—Administrative Actions

### § 13.11 Administrative disposition of certain violations.

(a) 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 FAA field office responsible for processing the enforcement case or other appropriate FAA official may take administrative action in disposition of the case.

(b) An administrative action under this section does not constitute a formal adjudication of the matter, and may be taken by issuing the alleged violator—

(1) A “Warning Notice” which recites available facts and information about the incident or condition and indicates that it may have been a violation; or

(2) A “Letter of Correction” which confirms the FAA decision in the matter and states the necessary corrective action the alleged violator has taken or agrees to take. If the agreed correc-

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tive action is not fully completed, legal enforcement action may be taken.

## Subpart C—Legal Enforcement Actions

### § 13.13 Consent orders.

(a) At any time before the issuance of an order under this subpart, the official who issued the notice and the person subject to the notice may agree to dispose of the case by the issuance of a consent order by the official.

(b) A proposal for a consent order, submitted to the official who issued the notice, under this section must include—

(1) A proposed order;

(2) An admission of all jurisdictional facts;

(3) An express waiver of the right to further procedural steps and of all rights to judicial review; and

(4) An incorporation by reference of the notice and an acknowledgment that the notice may be used to construe the terms of the order.

(c) If the issuance of a consent order has been agreed upon after the filing of a request for hearing in accordance with Subpart D of this part, the proposal for a consent order shall include a request to be filed with the Hearing Officer withdrawing the request for a hearing and requesting that the case be dismissed.

### § 13.15 Civil penalties: Federal Aviation Act of 1958, as amended, involving an amount in controversy in excess of \$50,000; an in rem action; seizure of aircraft; or injunctive relief.

(a) The following penalties apply to persons who violate the Federal Aviation Act of 1958, as amended:

(1) Any person who violates any provision of Title III, V, VI, or XII of the Federal Aviation Act of 1958, as amended, or any rule, regulation, or order issued thereunder, is subject to a civil penalty of not more than the amount specified in the Act for each violation in accordance with section 901 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1471, *et seq.*).

(2) Any person who violates section 404(d) of the Federal Aviation Act of

1958, as amended, or any rule, regulation, or order issued thereunder, is subject to a civil penalty of not more than the amount specified in the Act for each violation in accordance with section 404(d) or section 901 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1374, 1471, *et seq.*).

(3) Any person who operates aircraft for the carriage of persons or property for compensation or hire (other than an airman serving in the capacity of an airman) is subject to a civil penalty of not more than \$10,000 for each violation of Title III, VI, or XII of the Federal Aviation Act of 1958, as amended, or any rule, regulation, or order issued thereunder, occurring after December 30, 1987, in accordance with section 901 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1471 *et seq.*).

(b) The authority of the Administrator, under section 901 of the Federal Aviation Act of 1958, as amended, to propose a civil penalty for a violation of that Act, or a rule, regulation, or order issued thereunder, and the ability to refer cases to the United States Attorney General, or the delegate of the Attorney General, for prosecution of civil penalty actions proposed by the Administrator, involving an amount in controversy in excess of \$50,000, an *in rem* action, seizure of aircraft subject to lien, or suit for injunctive relief, or for collection of an assessed civil penalty, is delegated to the Chief Counsel, the Assistant Chief Counsel, Enforcement, the Assistant Chief Counsel, Regulations, the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office, the Regional Counsel, the Aeronautical Center Counsel, and the Technical Center Counsel.

(c) The Administrator may compromise any civil penalty, proposed in accordance with section 901 of the Federal Aviation Act of 1958, as amended, involving an amount in controversy in excess of \$50,000, an *in rem* action, seizure of aircraft subject to lien, or suit for injunctive relief, prior to referral of the civil penalty action to the United States Attorney General, or the delegate of the Attorney General, for prosecution.

(1) The Administrator, through the Chief Counsel, the Assistant Chief Counsel, Enforcement, the Assistant

Chief Counsel, Regulations, the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office, the Regional Counsel, the Aeronautical Center Counsel, and the Technical Center Counsel sends a civil penalty letter to the person charged with a violation of the Federal Aviation Act of 1958, as amended, or a rule, regulation, or order issued thereunder. The civil penalty letter contains a statement of the charges, the applicable law, rule, regulation, or order, the amount of civil penalty that the Administrator will accept in full settlement of the action or an offer to compromise the civil penalty.

(2) Not later than 30 days after receipt of the civil penalty letter, the person charged with a violation may present any material or information in answer to the charges to the agency attorney, either orally or in writing, that may explain, mitigate, or deny the violation or that may show extenuating circumstances. The Administrator will consider any material or information submitted in accordance with this paragraph to determine whether the person is subject to a civil penalty or to determine the amount for which the Administrator will compromise the action.

(3) If the person charged with the violation offers to compromise for a specific amount, that person shall send a certified check or money order for that amount, payable to the Federal Aviation Administration, to the agency attorney. The Chief Counsel, the Assistant Chief Counsel, Enforcement, the Assistant Chief Counsel, Regulations, the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office, the Regional Counsel, the Aeronautical Center Counsel, or the Technical Center Counsel may accept the certified check or money order or may refuse and return the certified check or money order.

(4) If the offer to compromise is accepted by the Administrator, the agency attorney will send a letter to the person charged with the violation stating that the certified check or money order is accepted in full settlement of the civil penalty action.

(5) If the parties cannot agree to compromise the civil penalty action or

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the offer to compromise is rejected and the certified check or money order submitted in compromise is returned, the Administrator may refer the civil penalty action to the United States Attorney General, or the delegate of the Attorney General, to begin proceedings in a United States District Court, pursuant to the authority in section 903 of the Federal Aviation Act, as amended (49 U.S.C. 1473), to prosecute and collect the civil penalty.

[Amdt. 13–18, 53 FR 34653, Sept. 7, 1988, as amended by Amdt. 13–20, 55 FR 15128, Apr. 20, 1990; Amdt. 13–29, 62 FR 46865, Sept. 4, 1997]

### **§ 13.16 Civil penalties: Federal Aviation Act of 1958, involving an amount in controversy not exceeding \$50,000; Hazardous Materials Transportation Act.**

(a) *General.* The following penalties apply to persons who violate the Federal Aviation Act of 1958, as amended, and the Hazardous Materials Transportation Act:

(1) Any person who violates any provision of title III, V, VI, or XII of the Federal Aviation Act of 1958, as amended, or any rule, regulation, or order issued thereunder, is subject to a civil penalty of not more than the amount specified in the Act for each violation in accordance with section 901 of the Federal Aviation Act, of 1958, as amended (49 U.S.C. 1471, *et seq.*).

(2) Any person who violates section 404(d) of the Federal Aviation Act of 1958, as amended, or any rule, regulation, or order issued thereunder, is subject to a civil penalty of not more than the amount specified in the Act for each violation in accordance with section 404(d) or section 901 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1374, 1471, *et seq.*).

(3) Any person who operates aircraft for the carriage of persons or property for compensation or hire (other than an airman serving in the capacity of an airman) is subject to a civil penalty of not more than \$10,000 for each violation of title III, VI, or XII of the Federal Aviation Act of 1958, as amended, or any rule, regulation, or order issued thereunder, occurring after December 30, 1987, in accordance with section 901 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1471, *et seq.*).

(4) Any person who knowingly commits an act in violation of the Hazardous Materials Transportation Act, or any rule, regulation, or order issued thereunder, is subject to a civil penalty of not more than \$10,000 for each violation in accordance with section 901 of the Federal Aviation Act of 1958, as amended, and section 110 of the Hazardous Materials Transportation Act (49 U.S.C. 1471 and 1809, *et seq.*). An order assessing civil penalty for a violation under the Hazardous Materials Transportation Act, or a rule, regulation, or order issued thereunder, will be issued only after consideration of—

- (i) The nature and circumstances of the violation;
- (ii) The extent and gravity of the violation;
- (iii) The person's degree of culpability;
- (iv) The person's history of prior violations;
- (v) The person's ability to pay the civil penalty;
- (vi) The effect on the person's ability to continue in business; and
- (vii) Such other matters as justice may require.

(b) *Order assessing civil penalty.* An order assessing civil penalty may be issued for a violation described in paragraph (a) of this section, or as otherwise provided by statute, after notice and opportunity for a hearing. A person charged with a violation may be subject to an order assessing civil penalty in the following circumstances:

(1) An order assessing civil penalty may be issued if a person charged with a violation submits or agrees to submit a civil penalty for a violation.

(2) An order assessing civil penalty may be issued if a person charged with a violation does not request a hearing under paragraph (e)(2)(ii) of this section within 15 days after receipt of a final notice of proposed civil penalty.

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