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ENFORCEMENT OF FEDERAL AVIATION REGULATIONS BY THE FEDERAL AVIATION ADMINISTRATION

GREGG DANIEL MARTIN

I. INTRODUCTION

IN 1490 LEONARDO DA VINCI first designed a flying machine. Over three hundred fifty years later, in 1842, William S. Henson patented a design for a steam-powered airplane.¹ Another sixty years passed before Orville Wright piloted the first successful airplane in 1903.² In 1910 Edouard Nieuport flew the first airplane with an enclosed fuselage and in the same year John McCurdy sent and received radio messages from an airplane.³ Four years later, only eleven years after Orville Wright's first flight, Tony Jannus piloted the first airline flight.⁴ In 1936 Lockheed built the first pressurized cabin airplane and Douglas aircraft introduced the DC-3.⁵ In 1939 Germany flew the first successful jet airplane and in 1952 British Overseas Airways began the first regularly scheduled jet airliner service.⁶

Although these dates represent important progress in aviation technology, not all progress in the field is technological. On August 23, 1958, Congress passed the Federal

¹ Famous Airplane Firsts, 1 WORLD BOOK ENCYCLOPEDIA 220 (1967).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

Aviation Act of 1958.⁷ This act has had a tremendous impact on aviation in the United States and the world. Probably one of the greatest effects of the Act resulted from its creation of the Federal Aviation Agency.⁸ The Federal Aviation Act directed the Federal Aviation Agency to prescribe rules for air traffic and the Agency responded by creating the Federal Aviation Regulations.⁹

Federal Aviation Administration (FAA) enforcement of Federal Aviation Regulations (FARs) creates controversy in several areas and there is no shortage of commentary on the subject.¹⁰ Disagreement exists among the commentators about the various advantages and disadvantages of the FAA's enforcement policies and procedures.¹¹ This comment will first attempt to outline the steps and procedures followed in FAA enforcement actions, point-

⁷ Federal Aviation Act of 1958, Pub. L. No. 85-726, 1958 U.S. CODE CONG. & ADMIN. NEWS 855, 946. For a short history of the regulation of aviation see Hamilton, *Appellate Practice in Air Safety Proceedings*, 10 SW. U.L. REV. 247-50 (1978).

⁸ Federal Aviation Act of 1958 § 301, 1958 U.S. CODE CONG. & ADMIN. NEWS 885, 870. The Federal Aviation Agency is now the Federal Aviation Administration.

⁹ Federal Aviation Act of 1958 § 307(c), 1958 U.S. CODE CONG. & ADMIN. NEWS 877. Section 307(c) reads:

The Administrator is further authorized and directed to prescribe air traffic rules and regulations governing the flight of aircraft, for the navigation, protection, and identification of aircraft, for the protection of persons and property on the grounds, and for the efficient utilization of the navigable airspace, including rules as to safe altitudes of flight and rules for the prevention of collision between aircraft, between aircraft and land or water vehicles, and between aircraft and airborne objects.

Id.

The Federal Aviation Regulations are found in Title 14 of the Code of Federal Regulations. The regulations applicable to the topic of this comment are found in Chapters I and II of that title, which include 14 C.F.R. Part 1-399 (1987).

¹⁰ See, e.g., Hamilton, *Administrative Practice Before the FAA and NTSB: Problems, Trends and Developments*, 46 J. AIR L. & COM. 615 (1981) [hereinafter Hamilton, 1981]; Hamilton, *Appellate Practice in Air Safety Proceedings*, 10 SW. U.L. REV. 247 (1978); Hamilton, *Administrative Practice in Aviation Medical Proceedings*, 26 EMORY L. J. 565 (1977); Kovarick, *Procedures Before the Federal Aviation Administration*, 42 J. AIR L. & COM. 11 (1976); Pangia, *Handling FAA Enforcement Proceedings: A View From the Inside*, 46 J. AIR L. & COM. 573 (1981); Mathis, *The Traffic Cop of the Skies — FAA Enforcement Actions*, 35 J. AIR L. & COM. 40 (1969); Yodice, *Airmen Certification and Enforcement Procedures*, 37 J. AIR L. & COM. 281 (1971).

¹¹ Compare Pangia, *supra* note 10 with Hamilton, 1981, *supra* note 10.

ing out issues from both the FAA's and the alleged violator's points of view. This section of the comment will serve as a guide to the practitioner whose client is the subject of an FAA action. This comment will then address some of the criticisms of the FAA enforcement program and attempt to determine the validity of those criticisms. In conclusion, this comment will present some suggestions to alleged violators and their attorneys on dealing with FAA enforcement of FARs.

II. MECHANICS OF AN ENFORCEMENT ACTION

An FAA enforcement action begins when the FAA receives information that an airman has violated a Federal Aviation Regulation.¹² This information comes principally from three sources. The first source of information about FAR violations comes from FAA employees.¹³ As FAA employees perform their various duties, they are required to report any violations of FARs that come to their attention.¹⁴ The FAA, and therefore its employees, also have the authority to re-examine any holder of an aviation certificate.¹⁵ The statute providing for re-examination does not require cause, only stating that re-examination may be carried out "from time to time."¹⁶ Air traffic ser-

¹² See, FAA, COMPLIANCE AND ENFORCEMENT PROGRAM 43 (1980) [hereinafter ENFORCEMENT]. This publication was used extensively in preparing this article and it is an excellent source of information for anyone who is dealing with the FAA in an enforcement proceeding. The government document number of this handbook is TD 4.8/2:2150.3. Investigative and enforcement procedures are governed by part 13 of the Federal Aviation Regulations, 14 C.F.R. § 13 (1987).

¹³ ENFORCEMENT, *supra* note 12, at 38.

¹⁴ *Id.* "Any agency employee who becomes aware of an apparent violation by, or apparent lack of qualification of, any person subject to the Federal Aviation Regulations, shall report such information to an appropriate FAA office." *Id.*

¹⁵ 49 U.S.C. § 1429(a) (1982). This statute explicitly gives the authority mentioned to the Secretary of Transportation. The FAA, as a division of the Department of Transportation, falls under the control and authority of the Secretary.

¹⁶ *Id.* The NTSB has, however, imposed a requirement that a FAA request for re-examination must be reasonable. Elroy M. Ringer, 3 N.T.S.B. 3948, 3949 (1981). FAA policy is to re-examine wherever "reliable reports, personal knowledge, or . . . evidence obtained through investigation" suggest that a certificate holder may not be qualified to exercise the certificate. ENFORCEMENT, *supra* note 12, at 101. If the certificate holder does not establish qualifications, the FAA will

vice facilities provide the second source of information about FAR violations.¹⁷ These facilities include air traffic control centers, airport control towers, Flight Service Stations, and any other facility which monitors or has contact with aircraft operations. The FAA's third possible source of information regarding violation of FARs are individual complaints from citizens. Both the Federal Aviation Act of 1958 and the FARs contain provisions for reporting violations of the aviation statutes and regulations.¹⁸

After the FAA receives information that someone may have violated a FAR, its first action is to examine the factual data available to determine if it should begin an investigation.¹⁹ This examination includes considering the circumstances of the allegation and the nature of the violation. These steps serve both to determine if an investigation is required, and as primary steps in an investigation if one is indicated.²⁰

A. *The Investigation*

If the FAA determines that an investigation is in order the first step is to notify the alleged violator through a Letter of Investigation.²¹ The FAA orally informs some alleged violators of the investigation, but the FAA only follows this procedure when circumstances dictate that they take only administrative enforcement action.²² The

initiate a legal enforcement action to revoke the airman certificate. *Id.* at 102. For discussion of certificate enforcement action see *infra* notes 84-121 and accompanying text.

¹⁷ ENFORCEMENT, *supra* note 12, at 37.

¹⁸ 49 U.S.C. § 1482(a) (1982); 14 C.F.R. § 13.1(a) (1987). "Any person may file with the Secretary of Transportation . . . a complaint in writing with respect to anything done or omitted to be done by any person in contravention of this chapter, or of any requirement established pursuant thereto." 49 U.S.C.A. § 1482(a) (1982). "Any person who knows of a violation . . . should report it to appropriate personnel of any regional or district office." 14 C.F.R. § 13.1(a) (1987).

¹⁹ ENFORCEMENT, *supra* note 12, at 43.

²⁰ *Id.*

²¹ *Id.* at 44. For sample Letter of Investigation see *id.* at 63-69 (sample in Appendix A).

²² *Id.* For discussion of administrative versus legal enforcement action see *infra* notes 64-127 and accompanying text.

Letter of Investigation describes the facts and circumstances the FAA is investigating and indicates that the FAA believes these facts suggest that the alleged violator failed to observe the FARs.²³ The letter usually does not cite specific sections of the FARs that the FAA believes the recipient violated and the FAA does not consider this letter a statement of charges against a violator.²⁴ A Letter of Investigation gives a time limit in which the alleged violator can reply and may specify documents the alleged violator should retain.²⁵ If an alleged violator receives a Letter of Investigation and does not respond within the time period specified, the investigation will continue without the certificate holder's statement.²⁶ The FARs do not provide sanctions for failure to reply to a Letter of Investigation.

The opportunity to respond at the time of the Letter of Investigation allows an alleged violator to explain any extenuating circumstances and give his side of the story. However, a response may also give the FAA important evidence or information for its investigation.²⁷ Therefore, an alleged violator should carefully consider the situation and contact an attorney before contacting the FAA.

After the Letter of Investigation is sent, the FAA will

²³ ENFORCEMENT, *supra* note 12, at 45.

²⁴ *Id.*

²⁵ *Id.*

²⁶ See *id.* at 64 for sample Letter of Investigation. The FAA informs alleged violators in the Letter of Investigation that the investigation will continue with or without the alleged violator's input. *Id.*

²⁷ Although an alleged violator's first inclination upon receiving a Letter of Investigation may be to contact the FAA and tell "his side of the story," even commentators who disagree on the merits of the FAA enforcement program agree that an alleged violator should contact an attorney before responding to a Letter of Investigation. See Pangia, *supra* note 10, at 581; Hamilton, 1981, *supra* note 10, at 623. In one case the FAA's evidence consisted primarily of information provided by the alleged violator in his response to the letter of investigation. William Cody, 3 N.T.S.B. 3807, 3808 (1981) (FAA inspectors testify that Cody's statement that there was only one quart of fuel in the tanks of his helicopter after a forced landing suggested that fuel exhaustion was the reason for the incident). However, the FAA might quickly end an investigation at this point if the alleged violator can explain the circumstances of the alleged violation. See Pangia, *supra* note 10, at 581.

begin its investigation procedures. The first step in these procedures involves a request for information from other FAA divisions regarding the alleged violator's certificates and any past violations involving the alleged violator.²⁸ The FAA next gathers evidence of the alleged violation.²⁹ The FAA instructs its investigators to obtain this information from "any place or source where it is legally available."³⁰ The Federal Aviation Act gives the Secretary of Transportation the power to "hold hearings, issue subpoenas, administer oaths, examine witnesses and receive evidence" in furtherance of its investigation.³¹ Most enforcement investigations are informal and although broad formal powers are available the FAA uses them only in complex cases.³²

In most investigations the FAA investigator initially visits the scene of the alleged violation in order to collect whatever physical evidence might be present and to determine any witnesses which the investigator might need to interview.³³ The FAA determines which witnesses to interview based on the nature of the case, the proof required, and witness availability.³⁴ In most cases the FAA investigator will interview at least two people: the person making the allegation and the alleged violator.³⁵ The in-

²⁸ ENFORCEMENT, *supra* note 12, at 45. The NTSB holds that a violation free record should not weigh in the violator's favor when the FAA is imposing a sanction or when an administrative law judge is reviewing an FAA action. Charles Wilson, 2 N.T.S.B. 2454, 2455 (1976); Harold Hein, 3 N.T.S.B. 14, 15 (1977); Rodney Herrig, 3 N.T.S.B. 73, 75 (1977); Benjamin Widtfeldt, 3 N.T.S.B. 1410, 1413 (1978). There are many cases in which the NTSB overrules an administrative law judge for considering a clean previous record in the alleged violator's favor. *See, e.g.*, Charles Wilson, 2 N.T.S.B. 2454, 2455 (1976); Harold Hein, 3 N.T.S.B. 14, 15 (1977). These cases suggest, however, that a clean record can help an alleged violator before an administrative law judge, assuming the NTSB won't overrule every case where an ALJ considers a clean previous record in alleged violators favor.

²⁹ ENFORCEMENT, *supra* note 12, at 46.

³⁰ *Id.*

³¹ 49 U.S.C. § 1484 (1982).

³² Pangia, *supra* note 10 at 583. For FARs governing FAA formal fact finding see *infra* note 54.

³³ ENFORCEMENT, *supra* note 12, at 46.

³⁴ *Id.*

³⁵ *Id.* at 48, 49.

vestigator will also normally interview any other persons involved in the alleged violation.³⁶

The FAA's interview of the alleged violator presents an area of some controversy. One commentator suggests that this interview puts the alleged violator in a "self incrimination dilemma," where his options are to "prove the prosecutor's otherwise unprovable case" or be "targeted for especially harsh sanctions" due to his "uncooperative attitude."³⁷ Some basis may exist for this criticism because the FAA may, in fact, look to the interview with the alleged violator for information to "develop investigative leads."³⁸ The FAA and some commentators indicate that the interview provides an opportunity for the alleged violator to discuss the incident rationally and effect a quick end to the investigation.³⁹ However, this is probably not the case. The FAA Compliance and Enforcement manual reminds investigators that the purpose of the interview is "not to divulge but to obtain information."⁴⁰ The FAA also advises investigators not to "iden-

³⁶ *Id.* at 49.

³⁷ See Hamilton, 1981, *supra* note 10, at 621. For a discussion of the self-incrimination problem faced by alleged violators of FARs see *infra* notes 129-152 and accompanying text.

³⁸ ENFORCEMENT, *supra* note 12, at 49.

The selection of the time for interviewing the person involved in the alleged violation can be a critical decision. At times it is best to accumulate solid evidence with which to confront the witness, while at other times it may be necessary to interview early so as to develop investigative leads. Only good judgment will dictate when the interview should be conducted.

Id.

³⁹ See Pangia, *supra* note 10, at 581.

⁴⁰ ENFORCEMENT, *supra* note 12, at 50.

The guidance for preparation and conduct of witness interviews applies also to interviews of alleged violators The inspector must keep in mind that the purpose for the interview is not to divulge but to obtain information. For example, do not identify sources of the allegation or sources of other supportive evidence or information, except where absolutely necessary. Care also must be taken not to discuss possible enforcement actions or sanctions. The investigating inspector does not have authority to grant immunity from criminal prosecution or FAA enforcement action. If the inspector believes that the granting of immunity to the person involved in a violation, or to any other witness, is essential to the satisfactory completion of

tify sources of the allegation or sources of other supportive evidence" and that "[c]are also must be taken not to discuss possible . . . sanctions."⁴¹ Because of these policies, alleged violators may find the investigatory interview frustrating and one-sided.⁴²

Documents are another form of evidence used in many FAA enforcement cases.⁴³ The FAA often uses weather reports, load manifests, operating manuals, communication logs, and aircraft logs.⁴⁴ The FAA also uses Air Traffic Service Records from air traffic service facilities (including Air Traffic Control Centers) in enforcement actions.⁴⁵ Since air traffic service facilities only retain these records for fifteen days,⁴⁶ the retention period may expire before an alleged violator receives a Letter of Investigation.⁴⁷ Therefore, unless the alleged violator recognizes that his conduct may lead to an investigation, the tapes may be destroyed before he can obtain them to establish his defense.⁴⁸ Thus, an airman who has reason to believe he might be subject to a FAA investigation should contact

an investigation, the Regional Counsel shall be consulted for advice. In general, the grant of immunity by FAA would require approval by the U.S. Attorney General as provided in the Organized Crime Control Act of 1970.

Id.

⁴¹ *Id.*

⁴² For self-incrimination questions presented by these procedures, see *infra* notes 129-152 and accompanying text.

⁴³ ENFORCEMENT, *supra* note 12, at 51.

⁴⁴ *Id.* at 50.

⁴⁵ See, e.g., *Specht v. CAB*, 254 F.2d 905 (8th Cir. 1958) (FAA used Air Traffic Control (ATC) tapes to review conversation between pilot and air traffic controller to determine if pilot violated FARs); *Arthur C. Stifel*, 3 N.T.S.B. 3536, 3537 (1981) (FAA used ATC tapes to demonstrate that Stifel failed to comply with ATC instructions).

⁴⁶ ENFORCEMENT, *supra* note 12, at 52.

⁴⁷ *Pangia*, *supra* note 10, at 589.

⁴⁸ See, e.g., *Harold Dwayne Beverage*, 3 N.T.S.B. 2710 (1980). In the Beverage case, the NTSB suggested that, because the persons involved in the conversation testified at the hearing, absence of the ATC tapes did not unduly prejudice the pilot. *Id.* at 2711. This suggests an alleged violator could call ATC personnel as witnesses if he could not acquire ATC tapes. This might be helpful in situations where ATC disposed of the tapes prior to the alleged violator receiving a Letter of Investigation.

the Air Traffic service facility soon after the incident to secure any tapes useful for his defense.

An alleged violator should also consider two other points. First, although often used by NTSB accident investigators,⁴⁹ cockpit voice recordings are not admissible evidence in FAA enforcement actions.⁵⁰ Second, medical records from an alleged violator's physician or hospital are usually privileged and the FAA cannot obtain them without a subpoena.⁵¹ The FAA, however, often attempts to acquire these records by obtaining the alleged violator's consent.⁵² An alleged violator should carefully consider the consequences of relinquishing these records, because once the FAA acquires the records they are admissible in the enforcement action.⁵³

The FAA's enforcement investigations are normally conducted informally following the procedures outlined above. However, the Agency does have the power to conduct formal fact finding under Part 13 of the Federal Aviation Regulations.⁵⁴ The FAA generally uses these

⁴⁹ See, e.g., NTSB, AIRCRAFT ACCIDENT REPORT, Logair Flight 51, Kelly Air Force Base, October 4, 1986 at 8 (April 9, 1987); NTSB, AIRCRAFT ACCIDENT REPORT, Delta L-1011, Dallas/Ft. Worth, August 2, 1985 at 24-25 (Aug. 15, 1986); NTSB, AIRCRAFT ACCIDENT REPORT, Pilgrim Airlines Fokker F-27, Kennedy International Airport, January 13, 1984 at 7 (Oct. 16, 1984).

⁵⁰ Cockpit Voice Recorders, 14 C.F.R. § 121.359 (1986) (applicable to supplemental air carriers and commercial operators). "Information obtained from the record is used to assist in determining the cause of accidents or occurrences in connection with investigations under Part 830. The Administrator does not use the record in any civil or certificate action." *Id.* § 135.151 (applicable to air-taxi operators); see also George R. Rapattoni, 1 N.T.S.B. 241, 242-45 (1968) (use of voice recorder was prejudicial error).

⁵¹ ENFORCEMENT, *supra* note 12, at 55.

⁵² The FAA Enforcement Manual states, "Where required, every effort should be made to obtain from the person involved a written consent in order to obtain such records. The person involved should be presented with an FAA Form 2759 (1-67), 'Authorization for the Release of Medical Information to the FAA,' for this purpose." *Id.*

⁵³ Calvin E. Deonier, 45 C.A.B. 916, 917 (1966) (CAB holds that, despite claim of privilege, medical records are admissible). Moreover, the FAA might request these records early in the investigation, even before the alleged violator knows specifically the charges against him.

⁵⁴ The FAA begins a formal investigation by issuing an order of investigation under FAR 13. 14 C.F.R. §§ 13.3(c), 13.5(i) (1987). The FAR provisions for formal fact finding, 14 C.F.R. §§ 13.101 - 13.131 (1987), provide for the FAA to,

procedures when its actions would affect a large number of persons or companies.⁵⁵ Thus, the procedures generally are not utilized in actions involving individual certificate holders.

After an investigation the FAA prepares a summary of its results in the form of an Enforcement Investigation Report.⁵⁶ This report serves as an excellent source of information for alleged violators who wish to determine the evidence against them. The Report consists of four basic sections, each serving a specific function.⁵⁷

Section A of the Report contains general information about the alleged violator, the incident, the aircraft involved, the owner of the aircraft, and the regulations which the FAA believes have been violated.⁵⁸ Section B of the Report includes a summary of the facts of the case.⁵⁹ Section C of the Report contains evidence the investigator has collected.⁶⁰ This includes copies of all documental proof as well as photographs of any physical evidence.⁶¹ The final section, Section D, contains a complete factual statement of the investigation and the investigator's analysis of the relevant safety and enforcement considerations.⁶² An alleged violator may obtain a copy of the completed Enforcement Investigation Report, but only from the Regional Counsel of the FAA.⁶³

among other things, issue subpoenas, 14 C.F.R. § 13.111 (1987), initiate judicial enforcement against any person who fails to comply with orders, 14 C.F.R. § 13.121 (1987), and take depositions, 14 C.F.R. § 13.125 (1987).

⁵⁵ ENFORCEMENT, *supra* note 12, at 89.

⁵⁶ *Id.* at 105.

⁵⁷ *Id.* at 105-06.

⁵⁸ *Id.* at 106-09. The FAA form number for the first section of Enforcement Investigative Reports is 2150-5. The other sections of the report will accompany this form. For sample of this form see Appendix B.

⁵⁹ *Id.* at 109.

⁶⁰ *Id.* at 110.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* at 110-11. An alleged violator should request a copy of the Enforcement Investigative Report under the Freedom of Information Act, 5 U.S.C. § 552 (1982). The amount of the Report which the alleged violator can obtain may be limited by the circumstances and stage of the investigation, 5 U.S.C. § 552(b)(7)

B. *Enforcement Actions*

Following preparation of an Enforcement Investigation Report, the FAA's next step in an alleged violation of the FARs is the enforcement phase itself. The FAA uses two general forms of enforcement actions: administrative and legal.⁶⁴ Legal action receives the most treatment by the commentators.⁶⁵ Administrative action, being less serious, is less likely to involve litigation or negotiations with the FAA.

1. *Administrative Enforcement Action*

An FAA administrative enforcement action involves issuing the alleged violator a letter.⁶⁶ It does not constitute an adjudication of the charges.⁶⁷ The FAA takes administrative action, as opposed to legal action, only if the matter has four characteristics: (1) no significantly unsafe condition resulted from the violation; (2) the violation did not involve a question of the violator's competency to hold his certificate; (3) the violation was not deliberate; and (4) the alleged violator has no previous record of similar violations and shows constructive interest in complying with regulations.⁶⁸ Although the FAA Compliance & Enforcement manual suggests that administrative enforcement action is taken only when conclusive proof of a violation of a FAR exists, the administrative action does not formally charge the alleged violator with a violation.⁶⁹

Administrative action serves one of two purposes, reflected by the two types of letters utilized by the FAA. A "Warning Notice" brings the incident to the attention of

(1982). Telephone interview with Dallas/Ft. Worth Regional Office of FAA (Sept. 21, 1987).

⁶⁴ Enforcement, *supra* note 12, at 14.

⁶⁵ See generally, Hamilton, 1981, *supra* note 10; Kovarick, *supra* note 10; Pangia, *supra* note 10; Yodice, *supra* note 10.

⁶⁶ 14 C.F.R. § 13.11(b) (1987). This letter may be either a Warning Notice or a Letter of Correction. *Id.*

⁶⁷ *Id.*

⁶⁸ ENFORCEMENT, *supra* note 12, at 14.

⁶⁹ *Id.* at 141.

the violator and advises that the incident may have involved a violation of the FARs.⁷⁰ This letter states that the matter has been corrected or does not warrant legal action, and requests compliance in the future.⁷¹ A "Letter of Correction," on the other hand, states that the person has violated a FAR and, according to a prior agreement between the FAA and the violator, the violation has been or will be corrected.⁷² If a violator does not take corrective action after receiving a letter of correction, the FAA may take legal enforcement action.⁷³

2. *Legal Enforcement Action*

If the circumstances dictate that administrative enforcement action is inadequate to deal with a violation of the FARs, the FAA will take legal enforcement action. Legal enforcement actions provide the "teeth" for the FAA's enforcement program. Sanctions include civil fines, seizure of aircraft, actions against a violator's certificate, orders of compliance, cease and desist orders, criminal penalties, and injunctions.⁷⁴ Legal actions are of two types, civil actions and certificate actions.

a. *Civil Action*

The FAA generally imposes civil penalties in enforcement actions where: (1) the violator does not hold a current certificate, (2) the violator holds a certificate but the violation does not involve a question of qualifications, or (3) the violator holds a certificate, but suspension of the certificate is not necessary to obtain corrective action.⁷⁵

⁷⁰ 14 C.F.R. § 13.11(b)(1) (1987); ENFORCEMENT, *supra* note 12, at 141.

⁷¹ ENFORCEMENT, *supra* note 12, at 141. For further samples of warning notices, see *id.* at 145-50 (sample in Appendix C).

⁷² 14 C.F.R. § 13.11(b)(2) (1987); ENFORCEMENT, *supra* note 12, at 141. For sample of Letter of Correction see *id.* at 151-56 (sample in Appendix D).

⁷³ 14 C.F.R. § 13.11(b)(2) (1987).

⁷⁴ 14 C.F.R. §§ 13.13-13.27 subpart C (1987).

⁷⁵ ENFORCEMENT, *supra* note 12, at 14-15. As an example of the situation where a violator holds a certificate but suspension is unnecessary, the FAA manual states, "where a major air carrier is involved in a maintenance violation and has taken satisfactory corrective action, a substantial civil penalty will serve as an ap-

After the FAA has determined that a civil penalty is in order, the FAA issues a civil penalty letter to the alleged violator.⁷⁶ This letter contains a statement of the reasons for the penalty, the FARs violated, and an offer to settle the civil penalty for a given amount.⁷⁷ Although the regulations don't require the FAA to hold an informal conference before proceeding with a civil penalty action,⁷⁸ FAA policy does encourage a conference.⁷⁹

If an alleged violator does not accept the FAA's offer to settle the civil penalty, and the FAA and the violator cannot reach an agreement at an informal conference, the FAA may instigate proceedings in a United States District Court, through the United States Attorney, to collect the penalty.⁸⁰ The FAA may impose civil penalties up to \$1,000 per occurrence for violations of the Federal Aviation Act of 1958 (or regulations issued under that act),⁸¹ or \$10,000 per occurrence for violations of the Hazardous Materials Transportation Act (or regulations issued under that act).⁸² The FAA will generally not take both civil and certificate action against a violator for a single violation.⁸³

propriate deterrent without disrupting essential air service to the public." *Id.* at 15.

⁷⁶ *Id.* at 164.

⁷⁷ *Id.*; 14 C.F.R. § 13.15(b) (1987).

⁷⁸ *See* 14 C.F.R. § 13.15 (1987).

⁷⁹ ENFORCEMENT, *supra* note 12, at 164.

⁸⁰ *Id.* at 165; 14 C.F.R. § 13.15(e) (1987); *see, e.g.*, *United States v. Gaunce*, 779 F.2d 1434 (9th Cir. 1986) (U.S. brought suit against pilot to recover civil penalty); *United States v. Lockheed L-188 Aircraft*, 656 F.2d 390 (9th Cir. 1979) (U.S. brought *in rem* action against aircraft for violation of safety regulations). The action in the district court under 49 U.S.C. § 1473 is to "conform as nearly as may be to civil suits in admiralty, except that with respect to proceedings involving penalties other than those assessed by the Board, either party may demand trial by jury of any issue of fact" 49 U.S.C. § 1473(b)(1) (1982). This implementation of admiralty procedure allows the FAA to bring an action *in rem* against an airplane. Congress included the clause allowing for a jury by request of either party because the traditional admiralty procedure does not include a jury. GILMORE & BLACK, *THE LAW OF ADMIRALTY* 35 (2d ed. 1975).

⁸¹ 49 U.S.C. § 1471 (1982); 14 C.F.R. § 13.15(a) (1987).

⁸² 49 U.S.C. § 1809 (1982); 14 C.F.R. § 13.16(a) (1987).

⁸³ ENFORCEMENT, *supra* note 12, at 163. The Compliance and Enforcement Manual states,

(3) *Multiple sanctions.* It is FAA policy that civil penalty action and punitive certificate action generally will not be instituted for the same

b. *Certificate Action*

If a civil penalty is not appropriate in a FAR violation case, the FAA will often take action to revoke or suspend an alleged violator's airman certificate. This is probably the most common type of enforcement action taken by the FAA in FAR violation cases.⁸⁴ The FAA Compliance and Enforcement Program follows the Federal Aviation Act when it states that, "[s]uspension action should be considered in all cases where safety requires it."⁸⁵ The enforcement manual also gives examples of situations where the FAA considers suspension of a certificate the appropriate remedy.⁸⁶ These situations include cases in which the violator's technical qualifications are in question, cases involving a certificate holder resisting reexamination or reinspection, and cases in which the nature of the violation suggests that the FAA should take punitive action.⁸⁷ The FAA suggests that its counsel seek revocation, as op-

offense against a certificate holder. As a matter of law, an election to impose one sanction is not a bar to a concurrent proceeding to impose another; however, such action has the appearance of "double jeopardy" and, in the usual situation, it is not necessary, as the FAA's enforcement powers to proceed either by way of civil penalty or certificate action are sufficient to satisfy the public interest with respect to even the most serious violation. If counsel is of the opinion that unusual circumstances in any case justify deviation from this policy, counsel shall first consult with the Assistant Chief Counsel, Regulations and Enforcement Divisions.

Id.

⁸⁴ See, e.g., Wendell K. Howell, 1 N.T.S.B. 1 (1972); Willis John Miller, 1 N.T.S.B. 6 (1967); John Richard Hawke, 1 N.T.S.B. 7 (1967). The great majority of cases reported on appeal to the NTSB are certificate action cases. The statutes and regulations which cover enforcement action against a certificate are 49 U.S.C. § 1429 (1982), and 14 C.F.R. § 13.19 (1987).

⁸⁵ ENFORCEMENT, *supra* note 12, at 15; 49 U.S.C. § 1429(a) (1982).

⁸⁶ ENFORCEMENT, *supra* note 12, at 15.

⁸⁷ *Id.* The courts have upheld the Civil Aeronautics Board's power to suspend or revoke airmen's certificates for disciplinary reasons rather than limiting that power to situations where the pilot was unqualified. See *Specht v. CAB*, 254 F.2d 905, 916 (8th Cir. 1958) (refusing to overturn CAB decision suspending airmen's certificate even though there was no question of pilot's technical ability); *Hard v. CAB*, 248 F.2d 761, 764 (7th Cir. 1957) (CAB had discretion to suspend airman certificate where airman's qualifications were not at issue); *Wilson v. CAB*, 244 F.2d 773, 774 (D.C. Cir. 1957) (refusing to overturn CAB's decision to suspend Wilson's airman certificate).

posed to suspension, in cases where there is a lack of capability on the part of the violator that the violator cannot readily correct.⁸⁸ The FAA will also seek revocation in cases where the violator, through repeat offenses, has demonstrated an unwillingness or inability to comply with the principles of air safety.⁸⁹

Two important limitations exist on the FAA's power to revoke or suspend airman certificates. First, except in an emergency,⁹⁰ the FAA must notify an airman of charges or reasons and provide an opportunity for him to answer before it may revoke or suspend his airman certificate.⁹¹ Second, only a few high ranking officials within the FAA can order a suspension or revocation.⁹²

The FAA begins a certificate enforcement action by providing notice to the alleged violator.⁹³ The notice informs the alleged violator of the facts alleged, the regulations violated, and the action proposed by the FAA.⁹⁴ The FAA attempts to set forth the facts in such a way that the alleged violator can understand the charges against him.⁹⁵ The notice also includes a form which the alleged violator must fill out to indicate his response to the action.⁹⁶ The alleged violator may either: (1) request that the FAA issue an order so that he may appeal to the National Transportation Safety Board,⁹⁷ (2) request an informal hearing with the FAA,⁹⁸ (3) respond to the charges by

⁸⁸ ENFORCEMENT, *supra* note 12, at 15.

⁸⁹ *Id.*

⁹⁰ See *infra* notes 110-115 and accompanying text for discussion of the FAA's emergency power.

⁹¹ 49 U.S.C. § 1429(a) (1982); *Pastrana v. United States*, 746 F.2d 1447, 1450 (11th Cir. 1984) (FAA's suspension of pilot's airman certificate without a presuspension hearing violated the pilot's Fifth Amendment right to due process).

⁹² *Pastrana*, 746 F.2d at 1450.

⁹³ ENFORCEMENT, *supra* note 12 at 168. 14 C.F.R. § 13.19(c) (1987).

⁹⁴ ENFORCEMENT, *supra* note 12, at 168.

⁹⁵ *Id.*

⁹⁶ 14 C.F.R. § 13.19(c) (1987).

⁹⁷ *Id.* § 13.19(c)(3). This choice only applies to cases where the violation is under Title VI of the Federal Aviation Act of 1958. This Title is Safety Regulations of Civil Aeronautics. 49 U.S.C. §§ 1421-1432 (1982).

⁹⁸ 14 C.F.R. § 13.19(c)(4) (1987).

written statement,⁹⁹ (4) admit the charges and surrender his certificate,¹⁰⁰ or (5) request a formal hearing under the Rules of Practice for FAA Hearings (this option is available to the violator only if the violation concerns ownership and registration of an aircraft).¹⁰¹

An alleged violator may wish to appeal the FAA's certificate enforcement action to the NTSB immediately. If so the alleged violator selects option one and requests that the FAA issue a final order. The alleged violator can then appeal that order in accordance with the procedure in the FARs.¹⁰²

If the alleged violator elects to attend an informal conference with the FAA, the FAA's counsel selects a location and represents the FAA at that conference.¹⁰³ At the conference, the FAA evaluates the violator's attitude and theoretically both the FAA and the violator reach a better understanding of the incident.¹⁰⁴ The FAA suggests that the goal of the informal conference is either to urge the violator to accept the sanctions against him or to unearth facts which indicate the FAA should withdraw the charges.¹⁰⁵ The FAA does not use the informal conference to gather additional evidence against the violator or to increase the sanction against him.¹⁰⁶ If the alleged violator elects to request an informal conference or respond to the FAA's charges in writing, the FAA will issue its order after considering all the information the alleged viola-

⁹⁹ *Id.* § 13.19(c)(2).

¹⁰⁰ *Id.* § 13.19(c)(1).

¹⁰¹ *Id.* § 13.19(c)(5). The Rules of Practice for FAA Hearings are Subpart D of section 13 of the Federal Aviation Regulations. 14 C.F.R. §§ 13.31-13.63 (1986). The alleged violator cannot elect this option unless the alleged violation falls under Title V of the Federal Aviation Act of 1958. 49 U.S.C. §§ 1401-1406 (1982).

¹⁰² See *infra* notes 116-121 and accompanying text.

¹⁰³ ENFORCEMENT, *supra* note 12, at 165.

¹⁰⁴ *Id.* at 170.

¹⁰⁵ *Id.* The Compliance and Enforcement Manual states, "In many instances, the informal conference process will disclose facts not revealed in the violation report, which may mitigate the sanction or cause withdrawal of the charges." *Id.*

¹⁰⁶ *Id.*

tor presents.¹⁰⁷

If the alleged violator elects at the time of the notice of certificate action to surrender his certificate, the FAA issues an order under part 13 of the FARs.¹⁰⁸ The FAA dates the order effective on the date the alleged violator surrenders his certificate.¹⁰⁹

The Federal Aviation Act and the FARs also empower the FAA to revoke or suspend certificates without notice in an emergency.¹¹⁰ The FAA does not exercise emergency power unless either the alleged violator has exhibited a lack of qualification to exercise his certificate, or he has indicated that he will not act in accordance with regulations.¹¹¹ Even then, the FAA will not use emergency power unless the alleged violator will likely continue using his certificate during the time prior to receiving suspension or revocation notice.¹¹² The FAA exercises its emergency power most often in cases of deliberate recklessness or where an airman continues to fly after a medical examiner informs him that he is no longer qualified to hold an airman medical certificate.¹¹³ Federal courts have held that the exercise of FAA emergency powers does not infringe on the alleged violator's right to due process.¹¹⁴

¹⁰⁷ 14 C.F.R. § 13.19(c) (1987).

¹⁰⁸ ENFORCEMENT, *supra* note 12, at 171. This order is issued by either the FAA Chief Counsel, Assistant Chief Counsel for Regulations and Enforcement, the Regional Counsel involved, or the Aeronautical Center Counsel. 14 C.F.R. § 13.19(c) (1987).

¹⁰⁹ ENFORCEMENT, *supra* note 12, at 171.

¹¹⁰ *Id.*; 49 U.S.C. § 1485 (1982).

¹¹¹ ENFORCEMENT, *supra* note 12, at 173. See Herman A. Schoenbachler, 1 N.T.S.B. 682, 683 (1969) (pilot stated in a hearing that he would continue to violate a minimum ceiling requirement and the Administrator used emergency power to suspend his airman's certificate).

¹¹² Enforcement, *supra* note 12, at 174.

¹¹³ *Id.* at 16. Medical certificates for airmen are issued by the FAA after the applicant for the certificate is examined by a designated medical examiner in accordance with 14 C.F.R. § 67 (1987). That section provides for first, second, and third class airman medical certificates. 14 C.F.R. §§ 67.13, 67.15, 67.17 (1987).

¹¹⁴ Stern v. Butterfield, 529 F.2d 407, 411 (5th Cir. 1976) (FAA revoked pilot's certificate without notice where pilot violated FARs prohibiting acrobatic flight in a control zone and acrobatic flight below a certain altitude); Air East, Inc. v. National Transp. Safety Bd., 512 F.2d 1227, 1230-31 (3d Cir. 1975) (FAA revoked Air East's air taxi certificate without notice after an intense investigation found Air

Generally, courts determine whether the FAA has infringed on the alleged violator's right to due process by balancing the public interest in safety against the alleged violator's right to a hearing prior to suspension.¹¹⁵

After the FAA issues an order involving a violator's certificate, the violator may appeal the order to the National Transportation Safety Board (NTSB).¹¹⁶ The FAA counsel that has handled the case generally represents the FAA before the NTSB Administrative Law Judge, and the FAA's order serves as the complaint against the alleged violator.¹¹⁷ In these proceedings the Rules of Practice in Air Safety Proceedings¹¹⁸ apply.¹¹⁹ After the hearing by the NTSB Administrative Law Judge, the violator may appeal to the full NTSB.¹²⁰ The violator may appeal the NTSB's judgment to the federal court of appeals in the circuit where he resides or does business, or in the circuit court for the District of Columbia Circuit.¹²¹

In addition to administrative, civil, and certificate actions, the FAA may take other actions in enforcing FARs. These may include seizure of aircraft,¹²² issuance of vari-

East had allowed overloading of flights, flights without proper instruments, and flights without proper repairs).

¹¹⁵ Although the courts generally rely on a balancing test which weighs public safety against the alleged violator's right to a presuspension hearing to support the FAA's emergency action, at least one case supports emergency action by pointing out the minimal nature of the deprivation. *Aircrane, Inc. v. Butterfield*, 369 F. Supp. 598, 608 (E.D. Pa. 1974) (FAA seized a helicopter without a hearing after the FAA determined that Airplane was violating a FAR).

¹¹⁶ 49 U.S.C. § 1429(a) (1982); 14 C.F.R. § 13.19(d) (1987); *ENFORCEMENT*, *supra* note 12, at 171-73.

¹¹⁷ *ENFORCEMENT*, *supra* note 12, at 171, 172.

¹¹⁸ 49 C.F.R. § 821 (1986).

¹¹⁹ See *Otho Mowdite Cockes*, 2 N.T.S.B. 1756, 1756-59 (1975) (NTSB states Federal Rules of Civil Procedure do not apply to areas not covered by Rules of Practice in Air Safety Proceedings).

¹²⁰ 49 C.F.R. § 821.47 (1986).

¹²¹ 49 U.S.C. app. §§ 1429(a), 1486(a)-(b) (1982).

¹²² 14 C.F.R. § 13.17 (1987). This section provides that the FAA or a Federal or State law enforcement officer may seize an aircraft if the aircraft is involved in a violation for which the FAA could impose a civil penalty. *Id.* § 13.17(a). The section provides that whoever seizes the aircraft must place the aircraft in suitable storage. *Id.* § 13.17(b). The section also requires that counsel for the FAA give notice to the owner of the aircraft, send a report of the seizure to the U.S. Attor-

ous orders of compliance or denial,¹²³ and request for injunctions.¹²⁴ The FAA uses these enforcement methods only in extraordinary circumstances.¹²⁵ The FAA may also participate to a limited extent in criminal cases involving violations of FARs.¹²⁶ This participation mainly involves turning over the FAA's investigation report to a local United States Attorney's office.¹²⁷

III. CRITICISMS OF THE SYSTEM

When the FAA takes enforcement action against a certificate holder, the FAA may be depriving that person of property (in a civil action) or of a valuable right to perform as an airman. Therefore, airmen and others involved in the system are sometimes concerned whether the FAA's enforcement procedures contain adequate safeguards to protect the rights of accused violators. Some criticisms of the present enforcement procedures include: (1) that the procedures violate an alleged violator's Fifth Amendment privilege against self-incrimination; (2) that the burden of proof in an enforcement action is often unfairly shifted to the alleged violator; and (3) that the admissibility of hearsay evidence in Air Safety Proceedings

ney's office, and release the aircraft if the owner pays the civil penalty or provides a bond for the penalty. *Id.* § 13.17(c)-(e).

¹²³ 14 C.F.R. § 13.20 (1987). This section provides that, except in cases of emergency as determined by the Federal Aviation Administrator, the FAA must notify the person subject to an order before that order is issued. *Id.* § 13.20(b). The FAA is required to give the person subject to such an order an opportunity to reply in writing or request an oral hearing. *Id.* § 13.20(c). For a discussion of when the FAA generally uses emergency power, see *supra* notes 110-113 and accompanying text.

¹²⁴ 14 C.F.R. § 13.25 (1987); 49 U.S.C. app. § 1487 (1982). When the FAA determines that a person is violating or is about to violate a FAR, the Federal Aviation Act of 1958, or the Hazardous Materials Transportation Act, the FAA's counsel requests the U.S. Attorney General's office to bring an injunctive action in the U.S. District Court. 14 C.F.R. § 13.25 (1987).

¹²⁵ See ENFORCEMENT, *supra* note 12, at 176-77. Although these actions are rare, they may become more common. The FAA Enforcement Program suggests that seizure of an aircraft is considered where the violator is known to have insufficient assets, other than the aircraft to compromise or satisfy a civil penalty. *Id.* This situation might exist in the smaller airlines which have arisen since deregulation.

¹²⁶ 14 C.F.R. § 13.23 (1987).

¹²⁷ ENFORCEMENT, *supra* note 12, at 186-87.

eases the FAA's burden of proof.¹²⁸

A. Self-Incrimination

After the FAA investigates an alleged violation of the FARs, the U.S. Attorney's office may use the results of that investigation in a criminal prosecution.¹²⁹ This suggests that the Fifth Amendment's privilege against self-incrimination may apply to these investigations.¹³⁰

The Supreme Court case of *Mathis v. United States*¹³¹ indicates that perhaps the privilege against self-incrimination applies even though an investigation is not initiated on the basis of anticipated criminal enforcement.¹³² In *Mathis* investigators for the IRS questioned the defendant in a "routine tax investigation" while he was being held in a state prison on other charges.¹³³ After considering documents and oral statements that the IRS investigator obtained during this routine investigation, the jury convicted Mathis of filing false claims against the Government.¹³⁴ The Supreme Court held that the privilege against self-incrimination applied in this case where the *possibility* exists that the information acquired would be used in a criminal proceeding against the person.¹³⁵ This decision suggests that the courts should require the FAA to give alleged violators, prior to interviewing them, a warning similar to that described in *Miranda v. Arizona*.¹³⁶ The

¹²⁸ See Hamilton, 1981, *supra* note 10, at 619-22.

¹²⁹ See *supra* notes 126-127 and accompanying text.

¹³⁰ For a proponent of this position see Hamilton, 1981, *supra* note 10, at 620.

¹³¹ 391 U.S. 1 (1968).

¹³² *Id.* at 2-4.

¹³³ *Id.*

¹³⁴ *Id.* at 2-3.

¹³⁵ *Mathis*, 391 U.S. at 4. Justice White, joined by Justice Harlan and Justice Stewart dissented from this opinion on several grounds. *Id.* at 5. The Justices dissented because they thought the *Miranda* doctrine, see *infra* note 136, should be abandoned, the investigation was civil and not criminal, and Mathis was not "in custody" in the sense in which the phrase was used in *Miranda*. *Id.* at 5-8. For a discussion of the "in custody" issue see *infra* notes 143-152 and accompanying text.

¹³⁶ 384 U.S. 436 (1966). The *Miranda* decision was in response to four similar cases that came to the U.S. Supreme Court from the New York Court of Appeals,

courts and the NTSB have rejected this theory on several grounds and have distinguished FAA type investigations from those circumstances which require *Miranda* warnings.

For example, the Civil Aeronautics Board rejected *Miranda* type warnings in FAA legal enforcement actions in *Gordon H. Smith*.¹³⁷ In that case, the Civil Aeronautics Board¹³⁸ held that the Fifth Amendment privilege against self-incrimination does not apply to certificate enforcement actions since those actions are civil, as opposed to criminal, and remedial, as opposed to punitive, in nature.¹³⁹ The NTSB has used this same analysis in several cases.¹⁴⁰ These cases do not address the holding in *Mathis* that *Miranda* warnings must be given when the *possibility* exists during the investigation that the work will end up in a criminal prosecution.¹⁴¹ The above mentioned cases do, however, point out a basic flaw in the argument that the Constitution requires the FAA to give alleged violators a *Miranda* type warning, in that these cases suggest that the

the California Supreme Court, and the U.S. Court of Appeals for the Ninth Circuit and the Arizona Supreme Court. *Id.* at 436. In all four cases police questioned a defendant in a police station after arrest, and the state used the defendant's resulting admissions against the defendant at trial. *Id.* at 440. The Supreme Court held that before an investigator may question a suspect who is in custody in a criminal investigation, the suspect must be informed of his right to remain silent, that anything he says may be used against him, that he has the right to an attorney, and that he may have an appointed attorney if he cannot afford his own. *Id.* at 479. The Court further held that if these procedures were not followed, any evidence the investigator acquired from questioning the suspect would not be admissible in court. *Id.* For discussion of the *Miranda* doctrine and its development, see Belson, "Public-Safety" Exception to *Miranda*: The Supreme Court Writes Away Rights, New York v. Quarles, 61 CHI. KENT L. REV. 577 (1985); Lederer, *Miranda v. Arizona - The Law Today*, 78 MIL. L. REV. 107 (1977); Sonenshein, *Miranda and the Burger Court: Trends and Countertrends*, 13 LOY. U. CHI. L.J. 405 (1982).

¹³⁷ 44 C.A.B. 864 (1966).

¹³⁸ Prior to 1968, alleged violators appealed FAA orders to the Civil Aeronautics Board as opposed to the National Transportation Safety Board.

¹³⁹ *Smith*, 44 C.A.B. at 865.

¹⁴⁰ Odell L. Burton, 3 N.T.S.B. 3357, 3358 (1981); Leon Salkind, 1 N.T.S.B. 714, 716 (1970); John Ray Gable, 1 N.T.S.B. 654, 656 (1969) (the N.T.S.B. points out that 49 U.S.C. § 1484(i) [now repealed] requires that an alleged violator must assert his privilege against self incrimination before the immunity resulting from it will arise).

¹⁴¹ *Mathis*, 391 U.S. at 4.

absence of the *Miranda* warning bears on the required evidence's admissibility in a criminal proceeding, not on the propriety of the civil investigation.¹⁴²

Therefore, the FAA need not give an alleged violator a *Miranda* warning in order to use his statements in a civil proceeding. Furthermore, those statements can probably also be used in a criminal prosecution because the alleged violator is not in "custody" at the time of his interview. In *Miranda*, the court stated, "we hold that when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized."¹⁴³ In *Orozco v. Texas*,¹⁴⁴ the Supreme Court extended the *Miranda* doctrine outside the police station to include questioning of a murder suspect in his bedroom at a boarding house. The suspect was, however, "under arrest and not free to leave when he was questioned."¹⁴⁵ After *Mathis* and *Orozco* some commentators speculated that the courts would extend "custody" to situations where the party being questioned was not formally in custody.¹⁴⁶ However, it seems clear that the FAA's questioning of alleged FAR violators does not qualify.¹⁴⁷

¹⁴² *Miranda*, 384 U.S. at 444. "The prosecution may not use statements . . . unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." *Id.* (emphasis added).

¹⁴³ *Id.* at 478 (emphasis added).

¹⁴⁴ 394 U.S. 324 (1969). In the *Orozco* case the defendant was involved in a shooting and afterwards went back to his boarding house. Police came to the boarding house and questioned him in his bedroom, during which time he was not free to leave. *Id.* at 325. The Supreme Court held that these facts indicate that *Orozco* was "in custody," even though not in a police station, and that the *Miranda* doctrine applied. *Id.* at 326. Therefore, *Orozco's* admissions that he owned a pistol and where the pistol was hidden were not admissible. *Id.* at 325-26.

¹⁴⁵ *Id.* at 327.

¹⁴⁶ Lay, *The Effect of Mathis on Right to Counsel in Tax Investigations*, 14 VILL. L. REV. 689, 695-702 (1969).

¹⁴⁷ Many questionable "custody" cases involved situations in which the party being questioned had much less freedom than an alleged violator would have while being interviewed by the FAA. See, e.g., *Securities & Exch. Comm'n v. Dott*, 302 F. Supp. 169 (S.D.N.Y. 1969) (plaintiff Wunsch was instructed by his employer to answer all questions of the Treasury Dept. and the agents told him his

In *Beckwith v. United States*,¹⁴⁸ the Supreme Court held that Beckwith was not entitled to a *Miranda* warning even though he was under criminal investigation for income tax violations.¹⁴⁹ The special agents of the Internal Revenue Service interviewed Mr. Beckwith extensively in his home.¹⁵⁰ Although the internal revenue investigators gave Beckwith some warning in that case,¹⁵¹ the Court did not rest its holding upon the warning given, but upon the fact that "[a]n interview with Government agents in a situation such as the one shown . . . simply does not present the elements which the *Miranda* court found so inherently coercive."¹⁵² *Beckwith* held that tax agents interviewing a suspected tax violator in a criminal investigation did not trigger the application of the *Miranda* doctrine. Therefore FAA interviews with alleged FAR violators probably also fall outside that doctrine, since FAA investigations are not primarily criminal and alleged violators are almost never in custody.

B. *The Lindstam Doctrine*

Another complaint regarding FAA enforcement actions is that the burden of proof is often unfairly shifted to the alleged violator. This is sometimes accomplished through the Lindstam Doctrine.

Gordon Lindstam worked as a pilot for Northwest Air-

answers would be confidential); *United States v. Montez-Hernandez*, 291 F. Supp. 712 (E.D. Cal. 1968) (plaintiff's car was stopped by immigration officials and one official approached from each side while asking plaintiff for his "papers").

¹⁴⁸ 425 U.S. 341 (1976).

¹⁴⁹ In the *Beckwith* case IRS agents went to Beckwith's home at eight a.m. and, after Beckwith invited them into the house, they waited while he finished dressing. *Id.* at 342-43. The agents then told Beckwith his rights and questioned him for about three hours. *Id.* at 345. The Supreme Court held that when IRS agents questioned Beckwith in his home he was not "in custody." *Id.* at 348.

¹⁵⁰ *Id.* at 343.

¹⁵¹ *Id.*

¹⁵² *Id.* at 347. Justice Marshall concurred in the result only because of the warning that the IRS special agents gave Beckwith prior to the questioning. *Id.* at 348. Justice Brennan dissented from the court's holding, stating that the application of *Miranda* depended on "conditions that have the practical consequence of compelling the taxpayer to make disclosures." *Id.* at 350.

lines.¹⁵³ On March 8, 1962, he was piloting a Boeing 720B between Miami and Ft. Lauderdale, Florida.¹⁵⁴ While Lindstam attempted to land at Ft. Lauderdale, his aircraft struck the ground 84 feet before reaching the approach end of the runway.¹⁵⁵ The FAA charged Mr. Lindstam with careless operation of an aircraft and based its case on evidence that: (1) the aircraft landed short of the runway; (2) the area where the aircraft landed was marked with chevrons (a marking indicating that the landing threshold is further ahead); (3) the landing gear were below runway level on impact; and (4) no weather conditions or mechanical defects existed which might have caused the accident.¹⁵⁶ In *Gordon H. Lindstam*,¹⁵⁷ the Civil Aeronautics Board (CAB) held that, where an aviation accident had occurred, the FAA need not prove specific acts of carelessness on the part of the pilot in order to sanction that pilot for violation of regulations which prohibit careless operation of an aircraft.¹⁵⁸ The CAB stated that the FAA had established a *prima facie* case against Lindstam, not on the basis of *res ipsa loquitur*, but instead on the principle that the FAA can use circumstantial evidence to establish a *prima facie* case of negligence.¹⁵⁹ The NTSB often applies the *Lindstam* doctrine to cases where the FAA contends that an alleged violator carelessly operated

¹⁵³ *Gordon H. Lindstam*, 41 C.A.B. 841 (1964).

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 842.

¹⁵⁷ 41 C.A.B. at 841.

¹⁵⁸ Mr. Lindstam was sanctioned under section 60.12 of the Civil Air Regulations. That section is now section 91.9 of the Federal Aviation Regulations, which reads, "No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another." 14 C.F.R. § 91.9 (1987).

¹⁵⁹ *Lindstam*, 41 C.A.B. at 842. The court based its statement that circumstantial evidence can be used to create a *prima facie* case of a violation on the case of Sheldon E. Pangburn, 35 C.A.B. 907 (1962), where the CAB held that Pangburn was *prima facie* careless under Civil Air Regulation 60.12 when the aircraft he was piloting struck a dike while on approach to land. The FAA's evidence in that case showed only that the weather was normal, there was no mechanical failure, and the runway was adequate to facilitate a normal landing. 35 C.A.B. at 910; see *supra* note 158 for explanation of Civil Air Regulation 60.12.

an aircraft¹⁶⁰ in relation to an accident or an incident.¹⁶¹

The NTSB has said that the *Lindstam* doctrine "does not create a presumption of carelessness, but only an inference, which the examiner is permitted, but not compelled, to draw from the circumstantial evidence."¹⁶² Although the NTSB contends that the burden of proof remains with the FAA regardless of the inference of carelessness, that inference shifts to the alleged violator the burden of "going forward with the evidence, and of explaining away the case thus made."¹⁶³ This has the practical effect of shifting the burden of proof to the alleged violator, a harsh decision where, by definition, no direct evidence as to the cause of the accident or incident can be found. The NTSB suggests that an alleged violator can overcome the "inference of carelessness" created by the *Lindstam* doctrine by giving any reasonable explanation for the accident.¹⁶⁴ However, in practice, the violator's burden under the *Lindstam* doctrine has been somewhat higher.

In *Frank E. Davis*,¹⁶⁵ Mr. Davis was charged with careless operation of an aircraft¹⁶⁶ when the plane he was piloting ran off of a runway into a snow covered field. The runway had patches of packed snow, and the airport crew had applied sand to increase traction for braking.¹⁶⁷ Mr. Davis contended that the runway was not in the condition that FAA personnel reported to him and that misinformation

¹⁶⁰ See 14 C.F.R. § 91.9 (1987).

¹⁶¹ Henry Davis, 1 N.T.S.B. 1517, 1520 (1971). The FARs defined an "aircraft accident" as, "an occurrence associated with the operation of an aircraft which takes place between the time any person boards the aircraft with the intention of flight and all such persons have disembarked, and in which any person suffers death or serious injury, or in which the aircraft receives substantial damage." 49 C.F.R. § 830.2 (1986). An "incident" means, "an occurrence other than an accident, associated with the operation of an aircraft, which affects or could affect safety." *Id.*

¹⁶² *Henry Davis*, 1 N.T.S.B. at 1521.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ 1 N.T.S.B. 420 (1969).

¹⁶⁶ 14 C.F.R. § 91.9 (1987); see *supra* note 158.

¹⁶⁷ *Frank E. Davis*, 1 N.T.S.B. at 422.

resulted in the accident on landing.¹⁶⁸ The NTSB conceded that FAA personnel may not have reported the condition of the runway correctly, but still held that Davis did not overcome the "inference of carelessness" created by the *Lindstam* doctrine.¹⁶⁹ In *Joseph N. Schneider*,¹⁷⁰ the aircraft piloted by Mr. Schneider, while on an instrument approach, struck obstacles approximately 700 feet short of the runway.¹⁷¹ Mr. Schneider testified that his altimeter never indicated that the aircraft was below the decision height¹⁷² for the approach.¹⁷³ FAA investigators checked the aircraft altimeter system after the incident, and it gave a false reading of 180 feet higher than actual altitude in one test.¹⁷⁴ One witness testified that an altimeter error probably did occur during Mr. Schneider's approach, while two other witnesses testified that an error probably did not occur.¹⁷⁵ The NTSB found, however, that the FAA had presented a prima facie case under the *Lindstam* doctrine and that Schneider had not overcome the inference of carelessness.¹⁷⁶ The NTSB suspended Schneider's airline transport pilot certificate for 40 days.¹⁷⁷

The *Lindstam* doctrine often combines with the very high degree of care required of airline transport pilots (ATP)¹⁷⁸ to result in the FAA imposing sanctions in cir-

¹⁶⁸ *Id.*; see *supra* note 158 for description of the FAR Davis was accused of violating.

¹⁶⁹ *Frank E. Davis*, 1 N.T.S.B. at 422.

¹⁷⁰ 1 N.T.S.B. 1553 (1971).

¹⁷¹ *Id.* at 1558 (contained in initial decision by administrative law judge).

¹⁷² "Decision Height" with respect to the operation of aircraft means the height at which a decision must be made during an ILS or PAR instrument approach, to either continue the approach or to execute a missed approach. 14 C.F.R. § 1.1 (1987). When an aircraft reaches this altitude on an approach the pilot is to proceed no lower. If the pilot then has the runway environment in sight such that he can safely land using visual references he may land; if not, he must execute a missed approach.

¹⁷³ *Schneider*, 1 N.T.S.B. at 1555.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* at 1557.

¹⁷⁷ *Id.* at 1558.

¹⁷⁸ See Charles B. Stead, 1 C.A.B. 74 (1939). "The Civil Aeronautics Authority interprets the act of Congress which it administers as calling for the highest de-

cumstances which might indicate the pilot was not careless.¹⁷⁹ Nevertheless, the NTSB has held the doctrine applicable to all pilot certificates, not just ATP certificates.¹⁸⁰

Although the *Lindstam* doctrine clearly creates a problem for airmen who are involved in accidents or incidents and are then accused of violations of the FARs, two factors help mitigate this problem. First, the normal sanction imposed in cases based on the *Lindstam* doctrine is a *suspension* of the airman certificate involved for a period of thirty to ninety days.¹⁸¹ Thirty to ninety days can be a very long time to a commercial pilot unable to fly, and the sanctions may be a hardship. However, the alleged violator whose case is proven by the *Lindstam* doctrine can take heart because I found no cases in which the doctrine was used to *revoke* a pilot certificate.

Second, an apparent decline in the use of the *Lindstam* doctrine may mitigate its effect. In the period between April, 1967 and December 1972, eleven cases reached a full NTSB review and were reported citing the *Lindstam* doctrine.¹⁸² In the three year period between January, 1973 and December, 1976 only four cases reported cited *Lindstam*, and in the four year period between January, 1977 and December, 1981 only two cases cited that authority.¹⁸³

gree of care on the part of those who sit at the controls of the air liners that carry the traveling public." *Id.* at 84-85.

¹⁷⁹ See, e.g., Frank E. Davis, 1 N.T.S.B. 420, 425 (1969) (pilot loses control on snow covered runway); Joseph N. Schneider, 1 N.T.S.B. 1553, 1557 (1971) (faulty altimeter presents possible cause of accident).

¹⁸⁰ Harold E. Hibbard, 1 N.T.S.B. 1152, 1154 (NTSB disagrees with the Administrative Law Judge's contention that the *Lindstam* doctrine does not apply to private pilots).

¹⁸¹ Hugh R. Wells, 1 N.T.S.B. 1489, 1490 (1971), *modified*, 1 N.T.S.B. 1470 (1972) (citing Davis, 1 N.T.S.B. 420 (1969); Simmonds, 1 N.T.S.B. 1122 (1971); O'Leary, 1 N.T.S.B. 913 (1970); and Lindstam, 41 C.A.B. 841 (1964) for the contention that the normal sanction based on the *Lindstam* doctrine is a thirty to ninety day suspension).

¹⁸² Table of Aviation Decisions Cited, 1 N.T.S.B. XIV (1973).

¹⁸³ Table of Aviation Decisions Cited, 2 N.T.S.B. XV (1978); Table of Aviation Decisions Cited, 3 N.T.S.B. XVIII (1984). Although this decline could be due to factors other than a decline in the use of the *Lindstam* doctrine, (such as cases

C. Hearsay Evidence

When an alleged violator appeals a FAA order revoking or suspending an airman certificate to the NTSB, the NTSB conducts a hearing according to the Rules of Practice for Air Safety Proceedings.¹⁸⁴ The FAA bears the burden of proof in this hearing and must prove its case by a preponderance of reliable, probative, and substantial evidence.¹⁸⁵ Hearsay evidence is admissible in the hearing,¹⁸⁶ and the NTSB has held hearsay evidence to be "substantial" within the burden of proof rule.¹⁸⁷ As a result of these rules, the FAA can issue an order against an airman certificate, present the NTSB with the testimony of its investigators who spoke to those who observed the alleged violation,¹⁸⁸ and end up with a *prima facie* case against the alleged violator. The *prima facie* case shifts the burden of production to the alleged violator,¹⁸⁹ who may not be prepared to obtain and present evidence to

based on *Lindstam* not being appealed to the NTSB) another indication of the doctrine's disfavor is that neither of the cases citing *Lindstam* between 1977 and 1981 relied on that doctrine for the decision. Donald R. Hardin, 3 N.T.S.B. 1973, 1975 (1979); Harold H. Hamre, 3 N.T.S.B. 28, 31 (1977).

¹⁸⁴ 49 C.F.R. § 821 (1986).

¹⁸⁵ See, e.g., William Hayes Cody, 3 N.T.S.B. 3807 (1981); Union Flight, Inc., 3 N.T.S.B. 1371, 1373 (1978); William A. Nurnberger, 3 N.T.S.B. 705, 707 (1977).

¹⁸⁶ See, e.g., John Stanley Trier, 2 N.T.S.B. 379, 380 (1973); Milton Sacks, 1 N.T.S.B. 1894 (1972).

¹⁸⁷ Andrew Ortner, 2 N.T.S.B. 396, 397 n.5 (1973) (states that hearsay evidence can be "substantial" even when not corroborated).

¹⁸⁸ The NTSB has held that double hearsay is inadmissible as evidence. William Henry Smith, 2 N.T.S.B. 2527, 2528 (1976). Therefore, the NTSB will not allow an investigator to testify as to what a party questioned by the investigator heard from others about the alleged violation.

¹⁸⁹ *Erickson v. NTSB*, 758 F.2d 285, 288 (8th Cir. 1985) (court states that once the FAA makes a *prima facie* case of FAR violation, the burden of production shifts to the alleged violator); *Newman v. Shaffer*, 494 F.2d 1219, 1220 (2nd Cir. 1974) (creation of *prima facie* case shifted burden of production to alleged violator). The burden of *proof* may also shift to the alleged violator if he asserts that he did violate the regulations but that he was justified in doing so. *Haines v. DOT*, 449 F.2d 1073, 1076 (D.C. Cir. 1971) (court rejected pilot's contention that flying below a prescribed minimum altitude did not *prove* absence of danger); *Specht v. CAB*, 254 F.2d 905 (8th Cir. 1958) (court held that pilot had not overcome the burden of proof that his deviation from FARs was necessary in the situation). If the alleged violator admits violating the FARs and thus bears the burden of proof, the admissibility of hearsay evidence may be in his favor.

rebut the FAA investigator's testimony. The lack of provisions for discovery under the Rules of Practice for Air Safety Proceedings compounds this problem.¹⁹⁰

An alleged violator or his attorney should note however, that the admissibility of hearsay evidence may favor the alleged violator in some circumstances. Although the rule may reduce the FAA's burden to produce evidence to create a *prima facie* case, it may also make the evidence which the alleged violator can most easily obtain (testimony of persons who know something about the alleged violation), easier for him to present to the NTSB. The alleged violator may also call FAA investigators to testify to facts in the case.¹⁹¹ This may allow the alleged violator to use the admissibility of hearsay evidence to his advantage.

IV. CONCLUSION

The policies and procedures through which the FAA enforces the FARs can subject an alleged violator to unwarranted sanctions. However, probably no error free legal system exists. At least one commentator suggests that the FAA should modify its enforcement mechanism to more closely resemble that of our criminal system.¹⁹² This type of modification would undoubtedly result in more lenient enforcement of the Federal Aviation Regulations and could conceivably have a great impact on air safety. In weighing air safety against the rights of a relatively few airman certificate holders, the legislative scales will undoubtedly tip in favor of public safety.

¹⁹⁰ 49 C.F.R. § 821.19 (1986). Automatic discovery provisions consist only of allowing the alleged violator to take the depositions of witnesses. All other discovery effectively proceeds on order by the Administrative Law Judge assigned to the case. *Id.*

¹⁹¹ 49 C.F.R. § 9.5 (1986). This section states "Except as provided in paragraph (c) of this section, an employee of the Department may not testify as an expert or opinion witness for any party other than the United States in any legal proceeding in which the United States is involved, *but may testify as to facts.*" *Id.* § 9.5(a)(emphasis added).

¹⁹² See Hamilton, 1981, *supra* note 10, at 620-21; Hamilton, *Appellate Practice*, *supra* note 10, at 251-53.

This is the proper result. National Transportation Safety Board decisions and contentions of the FAA's counsel before the board indicate that both bodies attempt to protect the individual involved, while still promoting air safety. Although occasional decisions seem harsh or unwarranted,¹⁹³ they constitute the great minority. However, public pressure may force the FAA to change its procedures for enforcement of FARs in the near future. Because of the deregulation of the airline industry in 1978, and the resulting lower ticket prices, air travel has increased by nearly fifty percent since 1982.¹⁹⁴ Because of the increasingly crowded airways, violations of FARs that once presented only slight danger may now prove catastrophic.¹⁹⁵ The FAA may react to this increasing threat to air safety by more vigorous enforcement against alleged violators. The FAA's more vigorous enforcement may result in more certificate holders being unjustly sanctioned unless the certificate holder, or his attorney, is familiar with some aspects of the enforcement procedure that they may use to their advantage.

First, the FAA's administrative law judges and the NTSB put great weight on the attitude of an alleged violator. The simplest tactic for a certificate holder under FAA investigation is to be as cooperative as possible. In using

¹⁹³ *E.g.*, David L. Eby, 1 N.T.S.B. 614 (1977) (NTSB suspended Eby's commercial pilot certificate for flying his agriculture plane at altitudes of 80 to 90 feet over a small subdivision adjacent to a wheat field he was spraying); Reid N. Carlson, 1 N.T.S.B. 1699 (1979) (NTSB suspended Carlson's ATP certificate for 15 days when he misunderstood, and taxied contrary to, instructions from ground control). These cases may be examples of seemingly harsh sanctions, however, there may also have been circumstances not contained in the opinions which influenced the NTSB's decisions.

¹⁹⁴ Magnuson, *Be Careful Out There*, TIME, Jan. 12, 1987, graph at 29.

¹⁹⁵ The Aug. 31, 1985 collision of a DC-9 and a single engine Piper over Cerritos, California was caused in part by the Piper straying 500 feet into the Los Angeles International Airport's Terminal Control Area in violation of 14 C.F.R. § 91.90(a)(1) (1987). Other factors besides crowded airways are also making compliance with FARs more important. These factors include less experienced pilots being hired by the airlines due to increase in demand for pilots, less experienced traffic controllers due to the 1980 Air Traffic Controllers strike, and older aircraft flown by airlines in response to increased price competition after deregulation. Magnuson, *supra* note 194, at 26-29.

this tactic however, the alleged violator should remember that information he gives to the FAA may be used against him.¹⁹⁶ Nevertheless, an alleged violator who projects the image of an airman who recognizes the seriousness of the FARs and wishes to work with the FAA to work out any problems, has gone a long way toward settling the conflict.

Second, an attorney handling an FAA enforcement case should keep in mind that hearsay evidence is admissible in Air Safety Proceedings.¹⁹⁷ It may be much easier for an attorney to prove extenuating circumstances explaining the violation using testimony about radio and other conversations. This evidence would not be admissible if the hearsay rule functioned.

Third, an alleged violator and his attorney should remember that they may use circumstantial evidence as proof in an enforcement action.¹⁹⁸ This may be important for two reasons. First, an alleged violator should consider whether there will be adequate *circumstantial* evidence to prove that he did violate the FAR. If the FAA will be able to present that evidence, it may be in the alleged violator's best interest to admit the violation in his initial contact with the FAA. Then, the alleged violator will be able to present all facts which justified the violation without concern that the facts he presents will be used to prove the FAA's case. Also, this would certainly allow the violator to appear cooperative. Secondly, the probative value of circumstantial evidence may be valuable to an alleged violator in an enforcement action to prove innocence or extenuating circumstances.

Finally, knowledge of the steps and procedures in an enforcement action, are advantageous for an alleged violator. By knowing how the FAA will go about its investigation and enforcement action an alleged violator can prepare to present his case or rebut the FAA's. A knowl-

¹⁹⁶ See *supra* note 37-42 and accompanying text.

¹⁹⁷ See *supra* note 184-191 and accompanying text.

¹⁹⁸ See *supra* note 159 and accompanying text.

edge of the procedures involved in an FAA enforcement action might also remind an airman (a potential alleged violator) of the seriousness of the FARs, and lead to greater caution. The result will be safer air travel; the FARs and the FAA will have done their job well.

APPENDIX A

SAMPLE LETTER OF INVESTIGATION
FLIGHT OPERATIONS

July 5, 1979

File Number: 80CE040235

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

Dear Mr. Smith:

Personnel of this office are investigating an incident occurring on July 4, 1979, which involved the operation of Cessna aircraft N57785 in the vicinity of City Park at approximately 3:15 p.m.

The aircraft was observed and identified as Cessna N57785 diving on picnickers and bathers from 3:15 to 3:35 p.m. We were informed that Cessna N57785, piloted by you, landed at the airport at 3:45 p.m. Operation of this type is contrary to the Federal Aviation Regulations.

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

Sincerely,

JOHN L. DOE
General Aviation Operations Inspector, GAD0-4

APPENDIX B

SAMPLE ENFORCEMENT INVESTIGATIVE REPORT
SECTION A, FAA FORM 2150-5

RIS FO 2150 1

ENFORCEMENT INVESTIGATIVE REPORT (Read Order 2150 3 for instructions)				REPORT	
TITLE NUMBER				RELATED NUMBER	
ALLEGED VIOLATOR IDENTIFICATION					
1. NAME			2. ADDRESS (include zip code)		
TELEPHONE NUMBER (include area code)		3. DATE OF BIRTH		4. SEX <input type="checkbox"/> MALE <input type="checkbox"/> FEMALE	
5. FAA CERTIFICATE NUMBER		6. FAA CERTIFICATE TYPE		7. AVIATION EMPLOYER	
AIRCRAFT, ENGINE, PROPELLER, COMPONENT OR APPLIANCE INVOLVED					
8. MAKE		9. MODEL		10. IDENTIFICATION NUMBER	
11. OWNER		12. ADDRESS (include zip code)			
ALLEGED VIOLATION					
13. DATE OCCURRED		14. TIME		15. DATE KNOWN TO FAA	
16. REGION OF DISCOVERY					
17. LOCATION					
18. REGULATIONS BELIEVED VIOLATED					
RELATED DATA					
19. TYPE <input type="checkbox"/> <input type="checkbox"/>		20. SUB TYPE <input type="checkbox"/> <input type="checkbox"/>		21. CATEGORY <input type="checkbox"/> <input type="checkbox"/>	
22. SOURCE <input type="checkbox"/> <input type="checkbox"/>		23. ACCIDENT ASSOCIATED <input type="checkbox"/> <input type="checkbox"/>			
24. SECURITY PROGRAM <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>					
INVESTIGATING FIELD OFFICE RECOMMENDATION					
25. TYPE ACTION		26. SANCTION		REPORTING INSPECTOR (Typed name)	
27. DATE		28. INVESTIGATING OFFICE		CHIEF (Typed name and signature)	
REGIONAL DIVISION REVIEW					
29. REGULATIONS BELIEVED VIOLATED				30. RECOMMENDED TYPE ACTION	
31. DATE				32. REGION	
TYPED NAME/TITLE SIGNATURE OF APPROVING OFFICIAL					

APPENDIX C

FIGURE 11-2. SAMPLE WARNING LETTER
FLIGHT OPERATIONS

November 20, 1979

Mr. Fred Smith
1075 Victory Boulevard
Los Angeles, California 90009

Dear Mr. Smith:

On October 20, 1979, you were the pilot in command of a Beech Baron N13697 that entered the City Airport traffic pattern and landed at the airport without maintaining radio communications with the airport traffic control tower.

After a discussion with you concerning this flight and your demonstrated effort to adequately familiarize yourself with the local air traffic rules pertaining to City Airport, we have concluded that the matter does not warrant legal enforcement. In lieu of such action, we are issuing this letter which will be made a matter of record. We will expect your future compliance with the regulations.

Sincerely,

JOHN J. FRANK
Chief, Van Nuys GADO

APPENDIX D
SAMPLE LETTER OF CORRECTION
FLIGHT OPERATIONS

May 9, 1979

Mr. John Smith
100 Bush Street
Atlanta, Georgia 30308

Dear Mr. Smith:

This letter is in regard to your operation as pilot in command of Cessna 180 N24689 on May 2, 1979.

On that date you flew from City Airport to Brown Field and returned to City Airport. Available facts and information indicate that without prior permission you flew through a restricted area over the Midtown Atomic Energy Plant during this trip, which is contrary to the provisions of FAR 91.95.

As a result of our discussion of this incident, you agreed to receive additional instruction before May 30, 1979. We understand that you have received 4 hours of ground school instruction in map reading and cross-country flight planning from a certificated flight instructor.

In closing this case, we have given consideration to all available facts and concluded that the matter does not warrant legal enforcement. In lieu of such action, we are issuing this letter which will be made a matter of record. We will expect your future compliance with the regulations.

Sincerely,

SAM B. EARLY
Chief, ATL GADO

Casenotes and Statute Notes

