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REGULATIONS OF THE ADMINISTRATOR

Federal Aviation Agency - Washington, D. C.

Part 408

Enforcement Procedures

(Effective December 31, 1958)

Under the provisions of the Federal Aviation Act of 1958, the Administrator of the Federal Aviation Agency is empowered (1) to administer and enforce the provisions of the Act and rules, regulations, and certificates issued pursuant to such provisions, and (2) to make and amend such general or special rules, regulations, and procedures as he deems necessary to exercise and perform such powers and duties. The regulations contained in this part are necessary to provide procedures for carrying out the Federal Aviation Act of 1958 on December 31, 1958, the effective date of the enforcement provisions of that Act.

Effective December 31, 1958, Part 408 of the Regulations of the Administrator of Civil Aeronautics is hereby repealed, and a new Part 408 containing the enforcement procedures of the Federal Aviation Agency is hereby adopted to read as follows:

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Subpart B—Processes Used In Enforcement

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408.27 Criminal penalties.

AUTHORITY: §§ 408.1–408.27 issued under sec. 313 (a) of the Federal Aviation Act of 1958, Act of August 23, 1958, 72 St. . . 752 (Pub. Law 85-726). Interpret or apply secs. 601, 609, 901, 902, 903, 1001, 1002; 72 Stat. 775, 779, 783, 784, 786, 788.

Subpart A—Introduction

§ 408.1 Definition of terms.

As used in this part:

(a) "Act" means the Federal Aviation Act of 1958.

(b) "Administrator" means the Administrator of Federal Aviation Agency, or his designee.

(c) "Agency" means the Federal Aviation Agency.

Subpart B—Processes Used in Enforcement

§ 408.11 Report channels.

Violations of the Act or any rule, regulation, or order issued thereunder, may be reported by any person having knowledge of such violations, to the appropriate personnel of the Agency assigned to one of the Agency's regional or district offices. Such a report will be investigated by personnel of the Agency and the results of such investigation will constitute the basis for determining the action to be taken by the Administrator.

§ 408.12 Investigations.

Under section 313 of the Act, the Administrator in the conduct of any public hearings or investigations regarding violations of the Act or any rules, regulations, or orders issued thereunder, is authorized to take evidence, issue subpoenas, take depositions, and compel testimony in the manner provided in section 1004 of the Act. The General Counsel and, when specifically authorized by him, the Agency's Regional Attorneys and personnel of the General Counsel's Office in Washington may undertake such investigations: (a) In complicated cases to procure and preserve business records where copying them would be impractical, (b) in accident cases, (c) in civil penalty cases to fix the amount that should be accepted in compromise, (d) in doubtful cases to determine whether any action should be taken, and (e) in such other types of cases as the Administrator may specifically prescribe.

Subpart C—Actions Taken in Enforcement

§ 408.21 Record.

A report of a violation may be filed for record if it appears, after investigation by the Agency, that the violations were inadvertently committed, were of an insignificant nature, or will not be repeated by the violator.

§ 408.22 Reprimands.

A letter may be sent to the violator reprimanding him for minor violations he is reported to have committed, and pointing out to him that the report will be considered in determining the action to be taken regarding any future violations reported against him.

§ 408.23 Civil penalties.

Under section 901 of the Act, any person who violates any provision of Titles III, V, VI, or XII of the Act, or any rule, regulation, or order issued thereunder, shall be subject to a civil penalty not to exceed $1,000 for each such violation.[1] Such civil penalty may be compromised by the Administrator. In the event imposition of a civil penalty is contemplated by the Administrator, and it is considered advisable to compromise such penalty, a Regional Attorney or the General Counsel of the Agency will send a letter to the violator advising as to the charges against him, stating what laws, rules, regulations, or orders have been violated, and affording an opportunity to compromise the civil penalty. The violator may submit to the official signing the letter, either orally or in writing, any material or information in answer to the charges, explaining, mitigating or denying the occurrence of the violation, or showing extenuating circumstances. Any material or information thus submitted will be considered in making the final determination as to probable existence of liability for a civil penalty, or the amount for which it will be compromised. If an offer is tendered to compromise the penalty for a specific amount, a certified check or money order in that amount, made payable to the Federal Aviation Agency, should be attached. The General Counsel of the Agency, or the Regional Attorney han-

[1] The same is true for violations of Title VII, but the Civil Aeronautics Board has cognizance of those violations.

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dling the case, will accept or refuse the offer of compromise. When scheduled and irregular air carriers and their personnel, air taxi operators, commercial operators, and certificated repair stations are involved, only the General Counsel of the Agency will accept or refuse the offer of compromise. If the offer of compromise is accepted, the violator will be notified by letter of its acceptance and that such acceptance constitutes full settlement of any civil penalties incurred by the violator. If a compromise settlement of the civil penalty cannot be effected, the Agency will, in an appropriate case, instigate proceedings in the United States District Court, pursuant to section 903 of the Act, for the purpose of collecting the civil penalty due.

§ 408.24 Seizure of aircraft.

(a) *Authority to seize aircraft.* Under section 903 of the Act, when an aircraft is involved in a violation for which a civil penalty may be imposed upon its owner or operator, such aircraft may be summarily seized by any state or Federal law enforcement officer or Federal Aviation Agency safety inspector authorized in an order of seizure issued by the Regional Administrator of the region in which the aircraft is located.

(b) *Custody of seized aircraft.* When an aircraft has been seized pursuant to this section, it will be placed in the nearest available adequate public storage facility in the judicial district in which the seizure is made.

(c) *Notice of seizure.* When an aircraft has been seized pursuant to this section, a written notice and a copy of this section will be sent without delay by the Regional Administrator to the registered owner of, and to other persons having a recorded interest in, the aircraft according to the records of the Federal Aviation Agency. The written notice will state:

(1) The time, date, and place of seizure;

(2) The name and address of the custodian of the aircraft;

(3) The reasons for the seizure, including the violations believed, or judicially determined, to have been committed; and

(4) The amount which may be tendered;

(i) As an offer in compromise of any civil penalties which might have been incurred as a result of the alleged violation, or

(ii) As payment of civil penalties which have been imposed by a Federal court as a result of the established violations.

(d) *Report of seizure.* When an aircraft has been seized pursuant to this section, a report of the cause will be transmitted immediately by the Regional Administrator to the United States Attorney for the judicial district in which the seizure is made, requesting the United States Attorney to institute proceedings for the enforcement of the lien.

(e) *Release of seized aircraft.* When an aircraft has been seized pursuant to this section, it will be released by direction of the Regional Administrator under any one of the following conditions:

(1) Upon payment of the civil penalty or the amount agreed upon in compromise, and the costs incurred in connection with the seizure, storage, and maintenance of the aircraft;

(2) Upon seizure of the aircraft pursuant to process of a Federal court in proceedings in rem for enforcement of a lien against the aircraft, or notification by the United States Attorney of refusal to institute such proceedings; or

(3) Upon deposit of a bond in such amount and with such sureties as the Regional Administrator may prescribe, conditioned upon payment of the penalty or the amount agreed upon in compromise, and the costs incurred in connection with the seizure, storage, and maintenance of the aircraft.

§ 408.25 Certificate action.

(a) Under section 609 of the Act, the Administrator may reinspect any civil aircraft, aircraft engine, propeller, appliance, air navigation facility, or air agency, or may reexamine any civil airman. If, as a result of any such reinspection, reexamination, or any other investigation made by the Administrator, he determines that safety in air commerce or air transportation and the public interest requires such action, he may issue an order amending, modifying, suspending, or revoking, in whole or in part, any type certificate, production certificate, airworthiness certificate, airman certificate, air carrier operating certificate, air navigation facilities certificate, or air agency certificate. Prior to issuing such an order, the Agency's General Counsel or Regional Attorney will advise the certificate holder as to the charges or other reasons relied upon by the Administrator for the proposed action and, except in case of emergency, provide him an opportunity to answer any charges to be heard as to why such certificate should not be amended, modified, suspended, or revoked. At his option, the holder may answer the charges in writing, or he or his representative may make a personal presentation before an appropriate representative of the Administrator at a designated office of the Agency. After due consideration thereof, the holder will be informed of the decision of the Agency by the General Counsel or Regional Attorney.

(b) Any person whose certificate is affected by an order issued under this section may appeal to the Civil Aeronautics Board. The filing of an appeal with the Board stays the effectiveness of the Administrator's order unless the Administrator advises the Board that an emergency exists and safety in air commerce or air transportation requires the immediate effectiveness of his order.

§ 408.26 Military aircraft.

When a report reveals that violations have been committed by members of the Armed Forces of the United States or those civilian employees of the Department of Defense who are subject to the provisions of the Uniform Code of Military Justice, while engaged in the performance of their official duties, copies of the report will be forwarded by the Administrator to the appropriate military authorities in order that they may take such disciplinary actions as they consider appropriate and report back to the Administrator thereon.

§ 408.27 Criminal penalties.

(a) Under section 902 (a) of the Act, any person who knowingly and willfully violates any provision of the Act (except Titles III, V, VI, VII, and XII), or any rule, regulation, or order issued under such provision, for which no penalty is otherwise provided in the Act, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine.

(b) Under section 902 of the Act, any person who knowingly and willfully forges, counterfeits, alters, or falsely makes any certificate authorized to be issued under the Act, or knowingly uses or attempts to use any such fraudulent certificates, and any person who knowingly and willfully displays and causes to be displayed on any aircraft, any marks that are false and misleading as to the nationality or registration of such aircraft, shall be subject to fine or imprisonment, or both.

(c) Under section 902 (c), any person who, with intent to interfere with air navigation within the United States, exhibits within the United States any light or signal at such place or in such manner that it is likely to be mistaken for a true light or signal established pursuant to the Act, or for a true light or signal in connection with an airport or air navigation facility; or after due warning by the Administrator continues to maintain any misleading light or signal; or knowingly removes, extinguishes, or interferes with the operation of any such true light or signal, shall be subject to fine or imprisonment, or both. If it appears from a report received by the Agency that any of these offenses has been committed, the Administrator will, in an appropriate case, send the report to the United States Department of Justice for criminal prosecution of the person who committed the offense.

E. R. QUESADA,
Administrator

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(24 Federal Register 10)

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