June 5,1991

Richard E. West, Esq.
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Dear Mr. West:

Thank you for your letter of April 10, 1991, concerning the reporting requirements of Federal Aviation Regulations (FAR) 61.15(c)(2). You have requested our comments regarding your analysis of these requirements.

In previous correspondence, you explained that your client was initially charged with "driving while under the influence," plead guilty to a "reckless operation" charge, and was fined $100 for that violation. In addition, your client's driver's license was suspended under Section 4511.191(D) of the Ohio Revised Code for refusal to submit to a chemical test when he was arrested for driving while under the influence of alcohol and /or drugs of abuse.

In our letter of April 2, 1991, we advised you that based on FAR 61.15(c)(1), your client need not report his conviction on the reckless operation charge; however, in accordance with FAR 61.15(c)(2), your client must report his license suspension for failure to submit to a chemical test.

The issues you now raise address what constitutes a motor vehicle action under FAR 61.15(c)(2), and the applicability of this section of the FAR to your client's license suspension for failing to submit to a chemical test under Ohio's implied consent law. First, you propose that your client's license suspension is unrelated to the operation of a motor vehicle because it is not based on a conviction for driving under the influence, and would therefore not be required to be reported under FAR 61.15(e). Second, you suggest that an implied consent suspension under Ohio law is not a motor vehicle action as is defined by FAR 61.15(c)(2).

In regard to your first proposition, FAR 61.15(c)(2) includes in the definition of motor vehicle action the suspension of a license to operate a motor vehicle by a state after November 29, 1990, for a cause related to the operation of a motor vehicle while intoxicated, impaired, or while under the influence of alcohol or a drug.

Under many state statutes (such as Ohio's), a person's refusal to submit to a test to determine blood alcohol content, when requested by a law enforcement officer, automatically results in an "administrative" *suspension* or revocation of a driver's license, regardless of whether the person is convicted of an alcohol or drug related motor vehicle offense.

The Ohio implied consent statute, and its related sanctions, does not require an underlying conviction for driving while under the influence, but is related to an arrest for driving while under the influence. The request for a test (and the related suspension) arises in the context of an "arrest for operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse...." under Ohio Revised Code Section 4511.191(D).

Your client's license suspension is "for a cause related to the operation of a motor vehicle while intoxicated by alcohol or a drug, ..." as provided in the rule's definition of "motor vehicle action," even though he was not convicted of driving while under the influence.

In this regard, your second proposition is that an implied consent suspension under Ohio law is not a motor vehicle action as is contemplated by FAR 61.15(c)(2). The preamble to the Notice of Proposed Rulemaking (NPRM) specifically addresses administrative actions based on implied consent statutes.

The NPRM preamble provides, in relevant part:

> The FAA intended to include all types of action taken by a state, from administrative action to criminal conviction, within the proposed definition of a motor vehicle action. For example, many states have statutory implied consent provisions that result in automatic or mandatory cancellation, *suspension* or revocation of a driver's license regardless of whether an individual is convicted of an alcohol- or drug-related motor vehicle offense....
>
> Under most state statutes, an individual's refusal

> to submit to a test to determine blood alcohol *content,* when requested by a law enforcement officer, automatically results in an 'administrative' *suspension* or revocation of a driver's license by operation of state law. It is possible that an individual may 'surrender' his or her driver's license, pursuant to a state's administrative *suspension* or revocation mechanism, to avoid a criminal conviction for an alcohol- or drug-related motor vehicle offense. The proposed amendment to section 61.15 is intended to address this situation by providing for certificate action in cases where there is no underlying criminal conviction for alcohol - or drug-related operation of a motor vehicle but a state has imposed an administrative sanction against a pilot's license to operate a motor vehicle on the basis of similar conduct or a related violation. (54 FR 21580, 21582; May 18, 1989.)

The text of the final rule, especially when read in conjunction with the NPRM preamble excerpt quoted above, conclusively indicates that an administrative suspension or revocation of a driver's license because of the driver's refusal to submit to a blood alcohol test -- regardless of the outcome of any related criminal charges -- is considered a "motor vehicle action."

Your client's driver's license suspension is a motor vehicle action that must be reported to the FAA pursuant to FAR 61.15(e). Failure to comply with this reporting requirement is grounds for denial of an application for any certificate or rating issued under FAR Part 61, or suspension or revocation of any certificate or rating issued under this Part (FAR 61.15(f)).

Sincerely,

Joseph R. Standell
Assistant Chief Counsel
Aeronautical Center