NOTICE

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

N 8900.591

National Policy

Effective Date:
8/10/21

Cancellation Date:
8/10/22

SUBJ: Email Beta Test on Pilot Deviations Involving Foreign Air Carriers Operating Under 14 CFR Part 129

1. Purpose of This Notice. This notice announces a revision to Federal Aviation Administration (FAA) Order 8900.1, Volume 7, Investigation, and Volume 12, International Aviation, for processing pilot deviations (PD) associated with airmen who, when involved in the PD, were operating for a foreign operator under Title 14 of the Code of Federal Regulations (14 CFR) part 129 and whose State of the Operator is not a Portal for International Pilot Deviations (PIPD) participant. For the latest list of Civil Aviation Authorities (CAA), refer to https://www.faa.gov/about/office_org/headquarters_offices/avs/offices/afx/afs/afs050/afs052/. This change in guidance affects offices with responsibility for investigating part 129 PDs.

2. Audience. The primary audience for this notice is International Field Offices (IFO), Principal Operations Inspectors (POI), Principal Maintenance Inspectors (PMI), and Principal Avionics Inspectors (PAI). The secondary audience includes the Safety Standards and Foundational Business offices and other applicable agency and department personnel.

3. Where You Can Find This Notice. You can find this notice on the MyFAA employee website at https://employees.faa.gov/tools_resources/orders_notices. Inspectors can access this notice through the Flight Standards Information Management System (FSIMS) at https://fsims.avs.faa.gov. Air carriers (operators) can find this notice on the FAA's website at https://fsims.faa.gov. This notice is available to the public at https://www.faa.gov/regulations_policies/orders_notices.

4. Background. The Flight Standards (FS) International Program Division (AFS-50) is responsible for ensuring foreign operators are operating safely within the United States and are in compliance with applicable laws and regulations. This responsibility includes investigating preliminary PD reports from air traffic, as well as notifying and coordinating with the operator's CAA (State of the Operator responsible for the issuance of the Air Operator Certificate (AOC)), and following up as appropriate to assess whether corrective actions were effective.

a. Sharing Investigation Data. In an effort to expedite notifications of PDs, the FAA is testing the sharing of investigation data via email with States of the Operators that are not PIPD participants.

b. Sharing Preliminary PD Data. Neither the FAA nor its partner CAAs can effectively bring an operator into compliance and recognize trends when not aware of a PD. To ensure that a CAA promptly learns of a PD, AFS-50 has modified its guidance under this beta test to accommodate the sharing of preliminary PD report data via email. AFS-50 expects this to improve its respective oversight and to enhance aviation safety.

c. Evaluating Data. The FAA will evaluate data from the email beta test to address the efficacy of a potential long-term policy for sending foreign referrals by email and eliminate the need to prepare an enforcement investigative report (EIR) (in cases that do not warrant legal enforcement action.

5. Email Beta Test. Email beta test participation in accordance with this notice is mandatory for IFOs when the part 129 operator committing a PD is not from a PIPD-participating country. The email beta test changes the processing of part 129 PDs covered by this policy for the division. AFS-50 will continue processing PDs not covered by this policy in accordance with existing inspector guidance for PDs. The changes in processing PDs are as follows:

a. IFO Principal Inspector (PI). Once the PI determines a PD has occurred and the part 129 operator committing a PD is not from a PIPD-participating country, the PI will:

(1) Create an encrypted security envelope that includes a copy of the Mandatory Occurrence Report (MOR) for the PD. Encryption is done via Adobe Acrobat and password sent via separate email. See Appendix B, Sample Password Notification Email, and Appendix D, Tutorial on How to Encrypt with Adobe.

> **Note:** FAA information security and privacy policy includes restrictions on the provision of information by FAA personnel outside the FAA. When appropriate for purposes of compliance and enforcement, the FAA can provide information about a PD to CAAs and part 129 operators. However, information security requirements preclude the unencrypted electronic transmission of personally identifiable information (PII) to CAAs and part 129 operators. Accordingly, before electronically transmitting documents containing a pilot's PII (e.g., name, telephone number, personal address, or certificate number), PIs must ensure that the PII information is encrypted. See Appendix D. PIs do not need to encrypt an air traffic radar replay, an arrival, a departure, or an instrument approach plate.

(2) Determine whether an MP4 file created from the Falcon replay is attached to the MOR. The MP4 file is accessed by clicking on the link identified in the notice of a preliminary PD report from noreply@cedar.faa.gov to the FS mailbox. If the replay is not attached to the MOR, IFOs may:

(a) Create the Falcon replay in the MP4 format via the Falcon automation; or

(b) Contact the Air Traffic Quality Assurance (ATQA) specialist who created the MOR, request a Falcon replay in the MP4 format, and attach a copy of the replay (if available) to the email.

(3) Send the Information Email to the operator's operations representative with a copy to the responsible State Government Official identified in the operators' operations specification (OpSpec) A006. See Appendix A, Sample Information Email. An Information Email:

(a) Provides a summary of the event that does not contain any PII.

(b) Provides an encrypted copy of the MOR (see subparagraph 5a(1)), with the MP4 file (Falcon replay), if available.

(c) Requests that the operator acknowledge receipt of the email, review the information provided, and provide any information regarding the investigation and/or corrective action, including what happened, why it happened, what action the operator has taken to mitigate reoccurrence, and documentation that shows that the responsible State Government Official has accepted the mitigation action. This email also advises that operator that it must provide acknowledgement of receipt of the email and the requested information within 15 calendar-days of the date of the email, and that if the operator needs more time to review and take action on the FAA-provided information, then to request, in writing, an extension from the responsible FAA office.

(d) Informs the operator of the opportunity to request that the FAA provide it more information.

(4) Monitor the operator's response to the Information Email. If the operator does not respond within 15 calendar-days, the PI sends a follow-up email to the operator. If the operator does not respond to the follow-up email, the PI requests assistance from the International Field Office Management Branch (AFS-54) in determining whether any additional follow-up emails are appropriate or if the matter should proceed without a response (see subparagraph 5d(2)(c)*3*).

(5) Assess whether any proposed corrective action or corrective action taken, by either the part 129 operator and accepted by the foreign CAA or proposed by the foreign CAA and taken by the foreign operator, mitigates reoccurrence. For repeated violations, IFOs may jointly work with the part 129 operator and a representative from the CAA to resolve the matter. If adequate corrective action has been verified, the IFO PI may be able to close the case without preparing an EIR.

(6) Document activities in Safety Assurance System (SAS) Activity Recording (AR) as follows:

(a) For foreign referrals not requiring an EIR (i.e., "non-EIR foreign referrals" (see subparagraphs 6a and b)), document all actions taken by the foreign operator, FAA, or foreign CAA in the PD investigation record comments. Do not create any compliance action activity records.

(b) For foreign referrals requiring an EIR (i.e., "EIR foreign referrals" (see subparagraphs 6a and c)), trigger the enforcement activity record from the PD investigation record.

(7) Send a Closure Email to the foreign operator's operations representative with a copy to the responsible State Government Official stating that the matter is closed. See Appendix C, Sample Closure Email. The PI will send this email on the same email string as the one used for the Information Email. The Closure Email provides closure details for non-EIR foreign referrals (see subparagraph 5d(1)); they are not sent for EIR foreign referrals (see subparagraph 5d(2)). The Closure Email must not contain any PII.

b. The International Field Office Management Branch (AFS-54). This office will provide:

(1) Backup support to the International Operations Branch (AFS-52), and

(2) Data analysis.

c. The International Operations Branch (AFS-52). This office will:

(1) Track progress, and

(2) Work with FS to continue to fine-tune the process.

d. Foreign Referrals. Foreign referrals under the email beta test may be accomplished without EIRs (see subparagraph 5d(1)), except as detailed in subparagraph 5d(2).

(1) Non-EIR Foreign Referrals. When conducting a non-EIR foreign referral, PIs do not obtain an EIR number. A non-EIR foreign referral is accomplished with the provision of information to the foreign air carrier and CAA through email. In addition to the provision of information to the foreign air carrier and CAA through email, PIs ensure the completion of one of the following:

(a) Counseling by FS. This may be appropriate if the part 129 operator was operating N-registered aircraft and the pilots held U.S. pilot certificates or Special Purpose Pilot Authorizations issued under 14 CFR part 61, § 61.77.

(b) Corrective action by the CAA responsible for the airman's certificate (or, if no pilot information is available, responsible for the aircraft registration owner).

(c) Corrective action by the foreign air carrier that is accepted by the foreign CAA.

(2) EIR Foreign Referrals. PIs prepare EIRs for referral to foreign CAAs when:

(a) The foreign CAA requests the completion of an EIR; or

(b) Legal enforcement action would be required or appropriate under the guidance in FAA Order 2150.3, FAA Compliance and Enforcement Program, as amended, chapter 5, including for the following circumstances:

1. Intentional conduct.

2. Reckless conduct.

3. Failure to complete corrective action on terms satisfactory to the FAA.

4. Conduct that creates or threatens to create a high level in the likelihood and/or severity of significant risk to safety, and the FS Executive Director (AFX-1) determines that alternative means to address the noncompliance and to effectuate immediate and future compliance would not be sufficient. Refer to Order 8900.1, Volume 14, Chapter 1, Section 2, paragraph 14-1-2-8, for the process to get FS AFX-1 approval.

5. Legal enforcement action is required by law.

6. Repeated noncompliances, when the PI identifies:

a. Multiple noncompliances with various sections or subsections of the same or similar regulations during a single event,

b. Prior noncompliance with the same or similar section or subsection of a regulation during a previous event, or

c. Noncompliance with different sections or subsections of a regulation arising from a common root cause; and

d. The PI determines that legal enforcement action is the appropriate response.

(c) One of the following circumstances is present:

1. The part 129 operator provides insufficient information to allow for a root cause determination for the PD;

2. The operator is unlikely to or will not take appropriate corrective action to address the PD; or

3. The PI determines that the operator has failed to respond to the Information Email or has not adequately responded to the Information Email.

6. Action. All IFOs will review the guidance in this notice and take appropriate action to ensure compliance.

a. Provide the following information in SAS AR for all foreign referrals:

(1) A description of deviation;

(2) Causal and/or contributing factors, if any;

(3) Aviation safety inspector (ASI) recommendation(s);

(4) Steps the operator or corresponding CAA or governing body is doing or has done to mitigate the possibility of the same event happening again (if applicable);

(5) Whether an encrypted MOR and MP4 for the PD was sent via email to the appropriate foreign authority;

(6) SAS AR number for the PD investigation record;

(7) The foreign authority's name; and

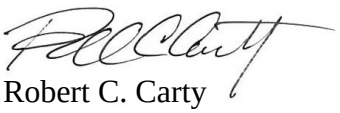
(8) Other comments (if none, state "none").

b. For non-EIR foreign referrals, document all FAA actions (e.g., counseling) in the PD investigation record comments. Do not create any compliance action activity records.

c. For EIR foreign referrals, trigger the enforcement activity record from the PD investigation record.

> **Note:** Identifying data, such as airmen names, may not be available. Aircraft Information should be as complete as possible, with attention to flight no. or call sign (if applicable). When information is insufficient, the ASI must complete SAS AR and state in the narrative block: "Due to the lack of information, unable to complete the investigation."

7. Disposition. The information in this notice will be incorporated into Order 8900.1, Volume 7, Chapter 1, Section 2, Pilot Deviations, Incident Investigations and Occurrences, and Volume 12, Chapter 4, Section 15, Accidents, Incidents, Near Midair Collision (NMAC), Pilot Deviation (PD), and Compliant Investigation (Includes Part 375), before this notice expires. The information in this notice has been coordinated with the General Aviation and Commercial Division (AFS-800) and the Office of the Chief Counsel, Enforcement Division (AGC-300). Direct questions or comments concerning the information in this notice to AFS-52 at 202-267-0962.



Robert C. Carty
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Appendix A. Sample Information Email

Subject: Request for Information, Pilot Deviation (PD) [MOR number]

Dear [enter names of operator's operations representative]:

The [name] International Field Office has received notice of a preliminary PD report relating to a PD occurring at [location of PD] on [date of PD]. Below is a summary of the event:

[PD summary from preliminary PD report. It must not include any personally identifiable information (PII).]

Along with this email, please find a copy of the encrypted Mandatory Occurrence Report (MOR) and an MP4 file (Falcon replay) of the referenced PD. A password to decrypt will be sent via separate email.

Please review the information provided and acknowledge receipt by [enter date of 15 calendar-days from email date]. Please provide any information regarding investigation of this PD and/or corrective action taken, including analysis (what happened and why it happened) and what action has been taken or is planned to be taken to mitigate reoccurrence, if applicable. Please include documentation that shows that your responsible State Government Official has accepted the mitigation. If more time is needed for review and action on the FAA-provided information, please request, in writing, an extension from this office.

Sincerely,

[Principal inspector's signature, name, title, and telephone number]

[IFO address]

Attachments: MP4 file (Falcon replay) MOR

cc [Responsible State Government Official]
[Additional names as appropriate]

Appendix B. Sample Password Notification Email

Subject: Password Request for Information, Pilot Deviation (PD) [MOR number]

Dear [enter names of operator's operations representative]:

Please find below the password to open Pilot Deviation (PD) [MOR number] emailed on [date].

Sincerely,

[Principal inspector's signature, name, title, and telephone number]

[IFO address]

cc [Responsible State Government Official]
[Additional names as appropriate]

Appendix C. Sample Closure Email

Subject: Closure, Pilot Deviation (PD) [MOR number]

Dear [enter names of operator's operations representative]:

The [name] International Field Office is closing preliminary PD report relating to a PD occurring at [location of PD] on [date of PD] as follows:

[Description of how the matter was closed. It must not contain any personally identifiable information (PII). See subparagraph 5d(1) for non-EIR foreign referral and subparagraph 5d(2) for EIR foreign referral.]

Sincerely,

[Principal inspector's signature, name, title, and telephone number]

[IFO address]

cc [Responsible State Government Official]
[Additional names as appropriate]

Appendix D. Tutorial on How to Encrypt With Adobe

1) Obtain a PDF version of the Mandatory Occurrence Report (MOR). For an MOR: by clicking on the Adobe icon on the right of the MOR page, you can create a PDF file. Name the file the MOR reference number (without slashes). Save in an easy-to-find location.



2) Download any attachments in the MOR "Supporting Data" area. Save in an easy-to-find location.



Note: If there is a Falcon audiovisual file (radar/radio playback), it needs to be converted to an MP4 file. Request assistance from the air traffic control (ATC) specialist under "Assigned to" in the top right area of the MOR. Alternatively, a better facility Quality Control point of contact (POC) may be listed in the supporting data file. Place the MP4 file in an easy-to-find location.

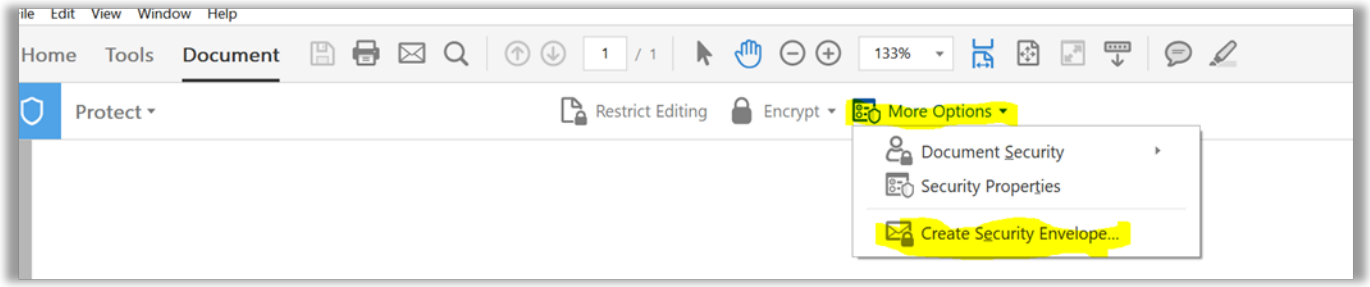
Note: Air Traffic Organization (ATO) Quality Assurance maintains the following Knowledge Services Network (KSN) sites for transfer of pilot deviation files that are too large for emails (MP4 files are often quite large):

- Eastern Service Area: https://ksn2.faa.gov/faa/QA-ESAE/Facilities%20ESA%20%20Enroute/Forms/AllItems.aspx.
- Central Service Area: https://ksn2.faa.gov/faa/QA-CSAE/Facilities%20CSA%20%20Enroute/Forms/AllItems.aspx.
- Western Service Area: https://ksn2.faa.gov/faa/QA-WSAE/Facilities%20WSA%20%20Terminal/Forms/AllItems.aspx.

Note: Coordinate transfer of supporting files with the facility Quality Control representatives. Request access as needed using the link on the KSN site.

3) Open the PDF version of the MOR.

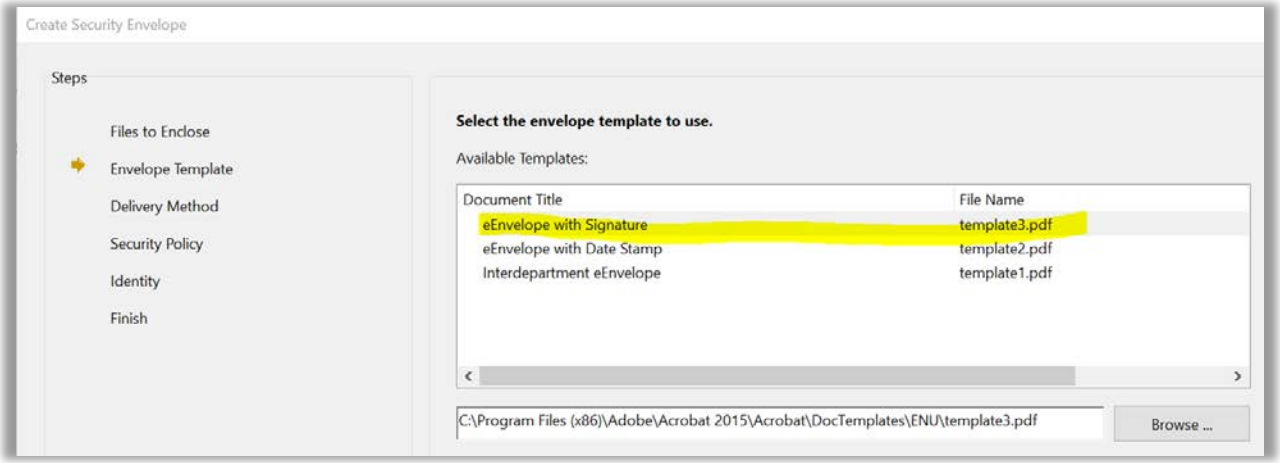
4) Under "Tools," select "Protect," then under "More Options" or "Advanced Options" (depending on which Adobe Acrobat Pro PD version you have), select "Create Security Envelope."



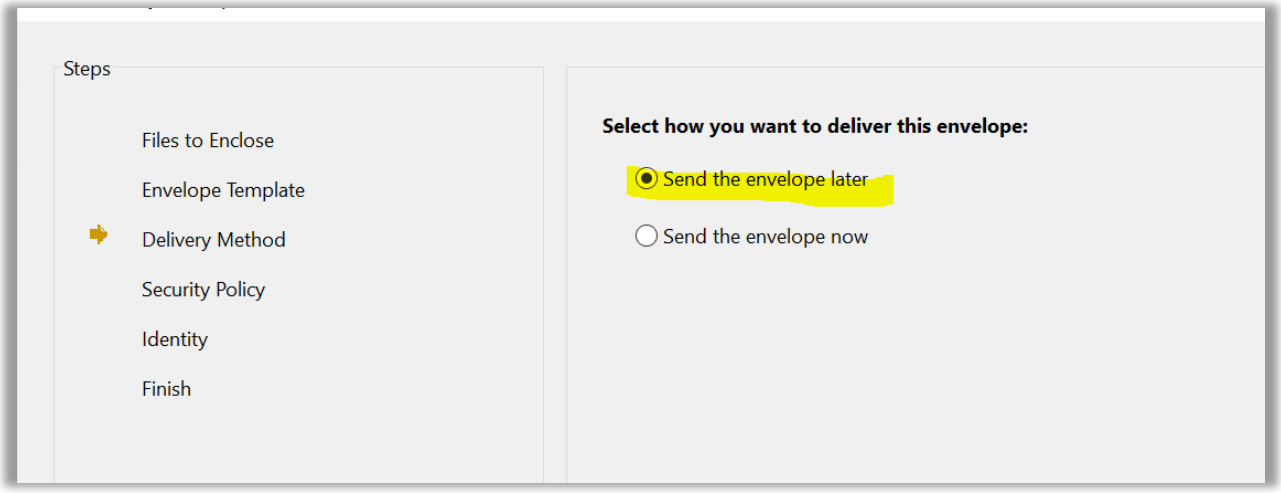
A dialog box will open.

5) Add supporting files (for example, MP4 file) via the dialog box ("Add File to Send…"). Make sure there are no extraneous files. If there are, select "Remove Selected Files." Select "Next >" on the bottom right after you have added all files.

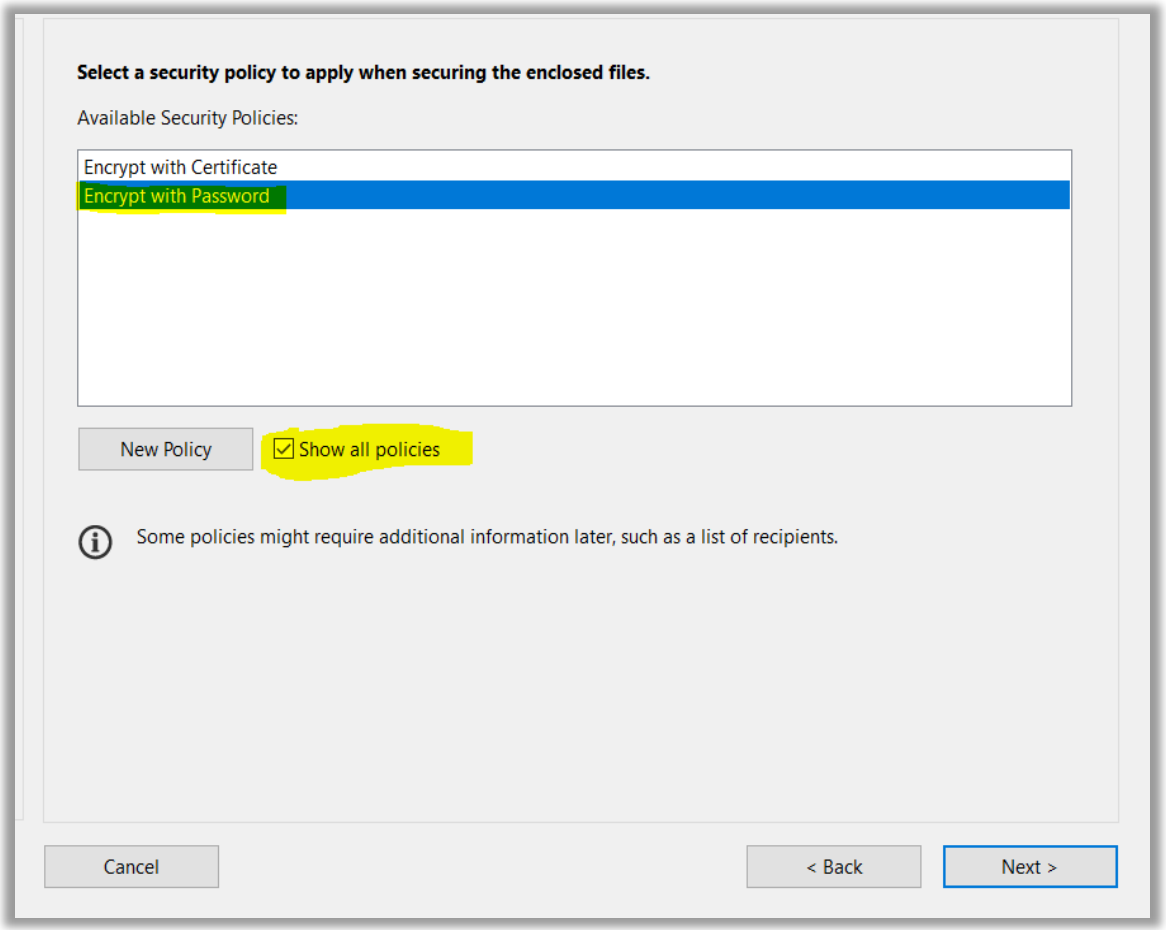
6) Select "eEnvelope with Signature." Select "Next >" on the bottom right.



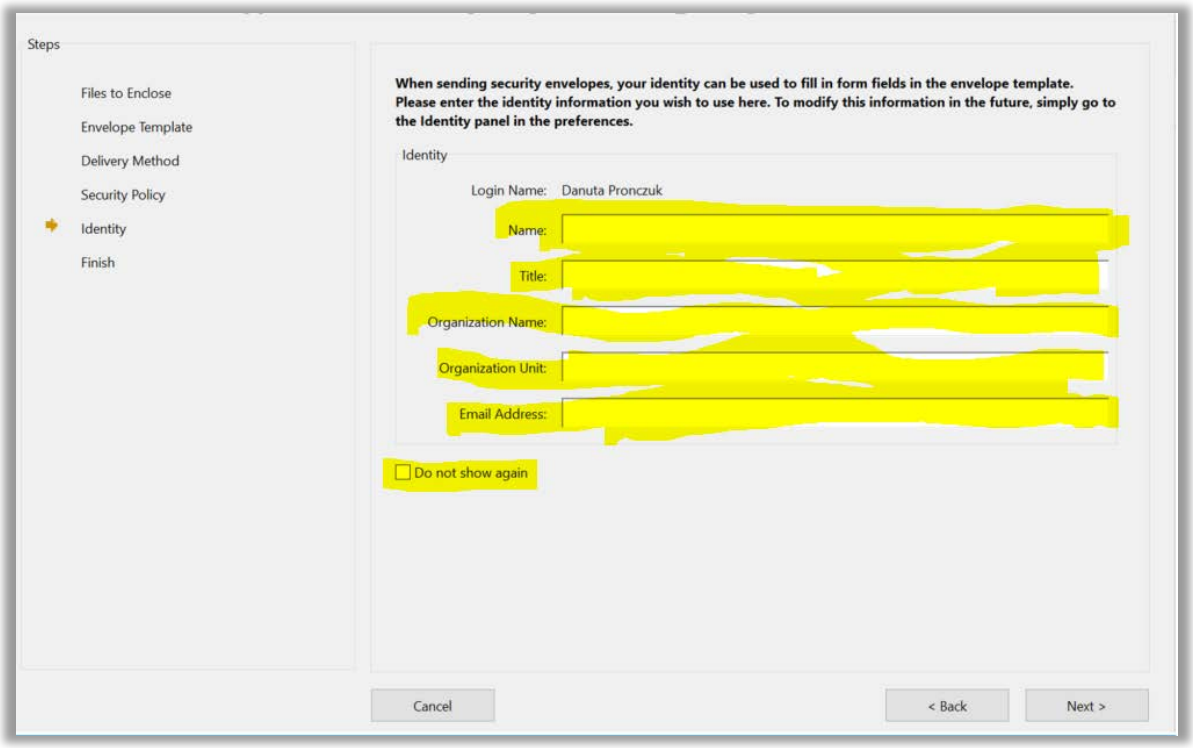
7) Select “Send the envelope later” (default). Select “Next >” on the bottom right.



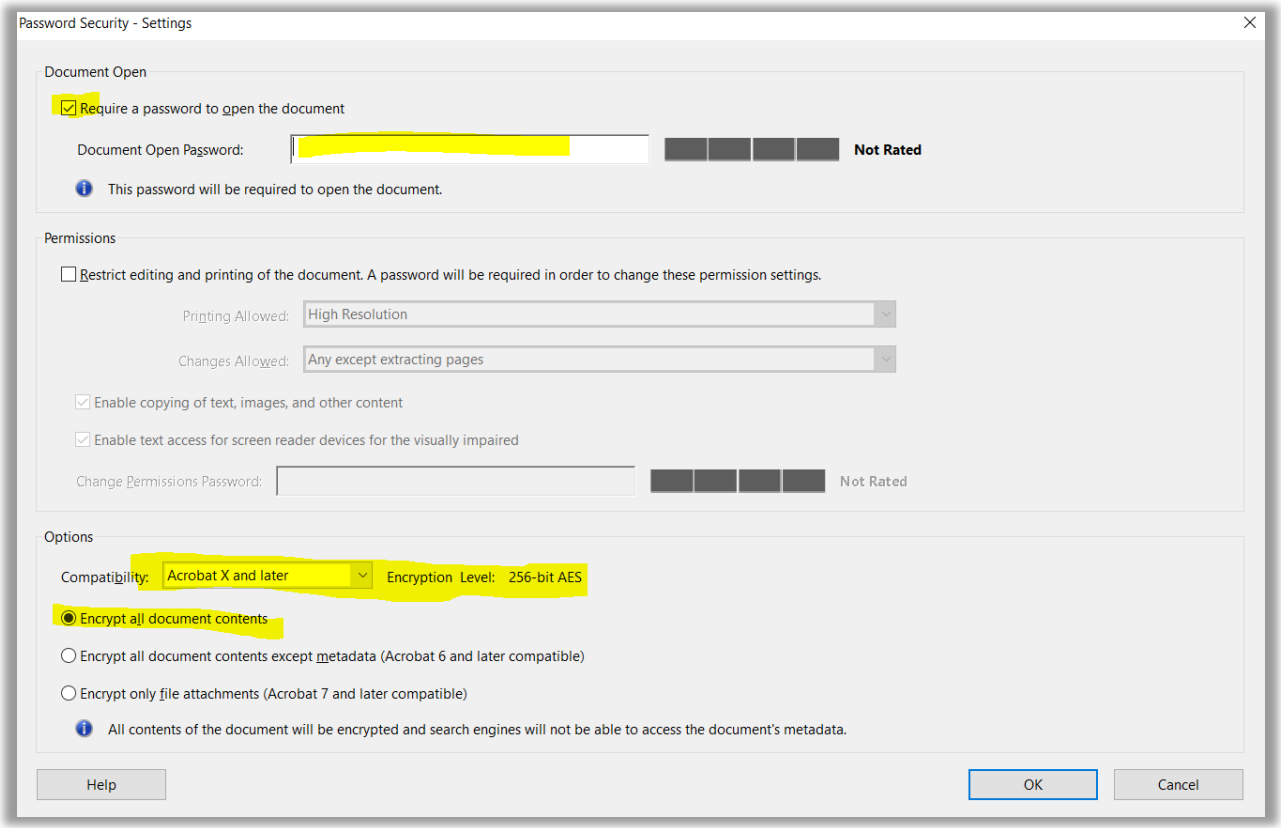
8) On the “Security Policy” page, click “Show all policies,” then select “Encrypt with Password.” Select “Next >” on the bottom right.



9) If this is first time doing this, then fill out the identity screen (see below) and check the box "do not show again."



10) Select “Finish” on the bottom right. That gets you to this dialog box:



11) Click on “Require a password to open the document.”

12) Go to Outlook and initiate the draft password notification email. Create a password in the body of the password notification email. This method allows copying and pasting, and reduces the chances of a typographical error. Paste the password into the Adobe “Document Open Password” field (see screenshot above). Ensure password is rated “Best.”

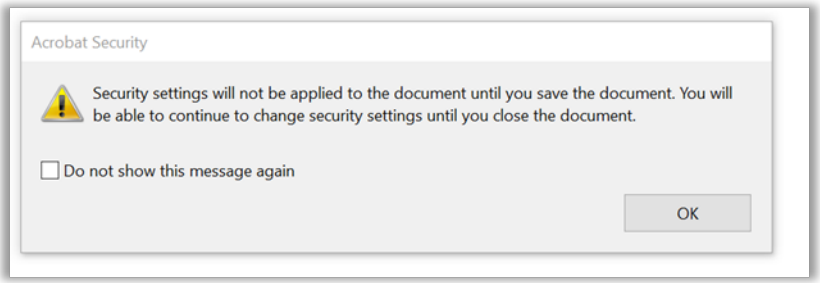
> **Note:** Password complexity must comply with Appendix 2 of FAA Order 1370.121, FAA Information Security and Privacy Program and Policy, which stipulates that passwords must contain at least 16 characters, consist of a mix of upper- and lower-case letters, numbers, and special characters, and not contain common dictionary words.

13) Under “Options,” verify that “Acrobat X and later” in the drop-down menu is selected so that “Encryption Level: 256-bit AES” is listed.

14) Select the radio button “Encrypt all document contents.” Select “OK.”

15) A dialog box opens asking you to confirm the “Document Open Password.” Enter it and select “OK.”

16) A dialog box tells you that security settings will not be applied until you save the document. Select “OK.”



17) Save the document. Use the MOR reference number as the file name, preceded by “Security Envelope.” You should see “(SECURED)” at the end of the file name.

18) Re-open to confirm the document is encrypted.

> **Note:** Once you send the Information Email (see Appendix A) with the security envelope you just created, return to the draft password notification email (see Appendix B) and add the case number, etc. The case number is the file name (see Appendix D, paragraph 1). Once complete, send the password notification email.