**ORDER** DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

1000.9C

4/26/79

SUBJ: ENFORCEMENT POLICY

1. PURPOSE. This order sets forth the agency's policy concerning enforcement of the Federal Aviation Act of 1958, as amended, the Federal Aviation Regulations and the Hazardous Materials Transportation Act and the regulations issued thereunder as they apply to the transportation or shipment of hazardous materials by air.

2. DISTRIBUTION. This order is distributed to the Office of the Associate Administrator for Airports, to the branch level in the Flight Standards, Air Traffic and Civil Aviation Security Services, and in the Office of Airport Standards; to the branch level in the regional Flight Standards, Air Traffic, Airports, and Air Transportation Security Divisions; to the director level in the overseas area offices; to all Airports District Offices, Air Traffic Field Offices, International Aviation Field Offices, Air Transportation Security Field Offices; and to all General Aviation, Air Carrier, Engineering and Manufacturing, and Flight Standards District Offices, and International Field Offices.

3. CANCELLATION. Order 1000.9B is cancelled.

4. BACKGROUND. The Secretary of Transportation is charged under the Federal Aviation Act with responsibility for regulating air commerce in such a manner as to best promote its development and safety. The Secretary is also directed to promote the safety of flight of civil aircraft in air commerce by prescribing safety regulations and standards. The powers and duties of the Secretary as described above are carried out by the Administrator in accordance with Section 6(c)(1) of the Department of Transportation Act. The functions vested in the Secretary by Sections 109, 110, and 111 of the Hazardous Materials Transportation Act, so far as they apply to the transportation or shipment of hazardous materials by air, were delegated to the Administrator by Section 1.47(k) of the Regulations of the Office of the Secretary.

Distribution: A-WRP-1; A-W (FS/AT/AS/CS-3; A-X (FS/AT/AS/CS)-3; A-E-1; A-FAS-1; A-FAT-0; A-FIA-0; A-FCS-1 (Std); A-FFS-1,2,3,5,7 (Std); ZGC-343

Initiated By: AGC-20 AFS-50

5. GENERAL POLICY.

a. With the passage of the Airline Deregulation Act of 1978 and its implementation, many new operators will enter the field of commercial aviation and present operators will expand or upgrade their operations. These new activities will require particular vigilance to insure compliance with the congressional mandate in the Act that the highest degree of safety in air transportation and air commerce be maintained. There must be a high level of surveillance and investigation of these operations to insure that potential problems be promptly identified and corrected before there is any derogation of safety. Special attention must be given to commuters and air taxi operators falling under the stringent requirements of new Part 135. These statutory changes require that the agency's enforcement policy be reemphasized and redefined.

b. Inherent in the authority to issue any regulations is the necessity of enforcing them. A vigorous enforcement policy is necessary to achieve compliance with the regulations and must forcefully respond to violations. While recognizing the need to foster the development of civil aeronautics, the paramount objective of this policy is to achieve compliance with the regulations in order to assure safety.

c. As part of the enforcement effort it is imperative that violations be revealed and addressed at the earliest possible time. Continuing surveillance and prompt effective investigations must be conducted. Enforcement sanctions must be imposed in a manner and in an amount to assure future compliance by the violator as well as others similarly situated. In selecting the appropriate sanction, special consideration should be given to the category of certificate, experience, compliance disposition, and history of previous violations of the individual. If the incident in question is an inadvertent or "first time" offense of a relatively inexperienced individual and the incident did not present a serious compromise of safety, administrative action is usually warranted. On the other hand, incidents involving individuals with substantial experience or deliberate or reckless or repeat violations should be treated with the full force of the law. In aid of implementing this policy, procedures for selecting between administrative and legal sanctions are contained within this Order. The ability of a violator to absorb a sanction as a cost of doing business must also be considered. The impact

of inflation should also be considered in setting the amount of a monetary sanction. At a minimum, sanctions should be chosen and applied in a manner that will prevent violators from profiting from their own violations.

d. An inherent objective of our enforcement policy is the prevention of violations. Education and counseling can contribute to that goal. Our efforts should prevent violations before they occur. However, once a violation has occurred, education and counseling should not be viewed as a replacement of more direct enforcement actions.

e. Since the agency's organizational structure is decentralized, considerable authority and responsibility have been delegated to regional and field offices. In carrying out the enforcement program, Washington Headquarters relies heavily on the judgment of field personnel. In his or her relationship with the aviation community, the field inspector shall strive always to be courteous, fair and objective. Public respect for the enforcement program is best maintained by the inspector's consistent exercise of his or her authority in a professional manner without either favoritism or officiousness.

f. All agency employees shall participate in the enforcement program by making all apparent violations known to the appropriate investigative personnel. All observed violations shall be reported.

6. PROCEDURES. The Enforcement Program consists of administrative actions and legal enforcement actions.

a. Administrative Actions. Administrative enforcement action may be taken in lieu of legal enforcement action only when all of the following elements are present:

(1) No significant unsafe condition existed.
(2) Lack of competency or qualification was not involved.
(3) The violation was not deliberate; and
(4) The alleged violator has a constructive attitude toward complying with the regulations.

The following administrative actions may be used:

(1) Warning notices.
(2) Letters of correction.

b. Legal Enforcement. Legal actions will be taken in all cases which do not meet all of the criteria for administrative actions. Legal enforcement actions will consist of the following:

(1) Civil Penalties.
(2) Certificate actions.
(3) Other actions such as aircraft seizures, cease and desist orders, injunctive relief, and criminal prosecution, as may be required.

c. Since the Aviation Safety Reporting Program has been modified to eliminate waiver of disciplinary actions the inspector no longer will check with NASA to see if a report has been filed. The Reporting program will therefore no longer prevent enforcement action for matters reported to or discovered by FAA during the normal course of a timely investigation or surveillance.

7. RESPONSIBILITY.

a. Cooperation Within FAA.

(1) All offices and services including those which do not have primary responsibility in the enforcement program shall assist in the execution of the program. Any agency employee who becomes aware of an apparent violation, or an apparent lack of qualification on the part of any person subject to the regulations must provide the responsible agency element with information concerning the violation or lack of qualification. All agency personnel should also cooperate with any further investigation and provide testimony as required.

(2) Air traffic control personnel at centers, towers and flight service stations are in a unique position to observe apparent violations or lack of qualification of airmen. Therefore, air traffic personnel shall provide the appropriate FAA element with factual information concerning such incidents as soon as permitted by their air traffic control responsibilities but in any event, not later than 24 hours after becoming aware of the incident.

b. Surveillance. It is the responsibility of Flight Standards Inspectors, Airport Certification Safety Inspectors, and Civil Aviation Security Inspectors to conduct surveillance inspections of persons, aircraft or operations subject to the regulations to determine compliance with the regulations and any lack of qualifications.

c. Investigations. It is the responsibility of Flight Standards Inspectors, Airport Certification Safety Inspectors, and Civil Aviation Security Inspectors to conduct appropriate investigations of all known or reported violations of the regulations.

d. Determination of Type of Enforcement Action. The supervisor of the lowest operational field office of Flight Standards, Airports, or Air Transportation Security appropriate to the violation involved, will decide whether, subject to the criteria set out in paragraph 6, compliance may best be obtained through administrative action or through legal enforcement action.

e. Determination of Legal Enforcement Action. The determination of the specific type of action to be initiated will be the product of a joint determination by Flight Standards, Airports or Air Transportation Security personnel and Legal Counsel. When agreement cannot be reached, the matter will be referred to the Regional Director for decision. Where appropriate, the Regional Director shall consult with the Chief Counsel and the appropriate Service Director.

f. Legal Handling. It is the responsibility of the Legal Counsel to undertake all handling of legal enforcement actions.

g. Sanctions. Flight Standards, Airports, Air Transportation Security and Legal Counsel are responsible for the selection of sanctions. Sanctions should be as uniform as possible but of paramount importance is the requirement that the sanction selected in each case be sufficient to serve as a deterrent. In determining the deterrent effect the impact on the violator shall be considered as well as the effect of inflation on the amount of any monetary sanction. Settlement may be entered into by Legal Counsel when in his or her judgment such action will avoid unnecessary litigation and is warranted by the facts.

h. Review by Regional Offices. All actions taken by field personnel will be reviewed by appropriate Regional Division chiefs or their designees to ensure fair and equal treatment and provide assurance that action taken will serve to promote safety and protect the public interest. The Regional Division Chief will insure that their enforcement program as well as any individual enforcement action are handled in accordance with this order and will periodically provide the investigating office with the status of enforcement actions investigated by that office. Regional offices will advise their counterparts in Headquarters of significant enforcement activities.

i. Review by the Washington Headquarters. The Office of the Chief Counsel and the Office of Airport Standards, Flight Standards Service, and Civil Aviation Security Service will monitor and evaluate regional enforcement procedures to ensure consistent enforcement nationally. They will advise me of any deficiencies or discrepancies and will undertake any special investigative or enforcment action that I direct.

8. REGIONAL DIRECTORS PARTICIPATION. The enforcement program is of such importance and sensitivity that Regional Directors are to be personally informed of the progress of the program in their region and shall review all major cases.

Langhorne Bond

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Administrator