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[4910-13]

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Docket No.: FAA-2020-0809]

**14 CFR Parts 61, 63, 65 and 67**

#### **Settlement Policy for Legal Enforcement Actions Involving Medical Certificate-Related Fraud, Intentional Falsification, Reproduction, or Alteration**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notification of Enforcement Policy.

**SUMMARY:** The FAA is adopting a policy for the prompt settlement of legal enforcement actions against individuals who have violated FAA regulations proscribing any: fraudulent or intentionally false statement on an application for a medical certificate or other document used to show compliance with any requirement for a medical certificate; reproduction of a medical certificate for fraudulent purposes; or alteration of a medical certificate. The policy is expected to afford eligible individuals who hold an airman or ground instructor certificate and who are the subject of such a legal enforcement action the opportunity to apply for a new airman or ground instructor certificate sooner than in the absence of this policy.

**DATES:** This notification of enforcement policy is effective September 30, 2020.

**FOR FURTHER INFORMATION CONTACT:** James Barry, Manager, Policy/Audit/Evaluation, Enforcement Division, AGC-300, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267-8198; james.barry@faa.gov; or Brandon Goldberg, Attorney, Enforcement Division, AGC-300, Federal Aviation Administration, 1701 Columbia Ave., College Park, GA 30337; telephone (404) 305-5230; brandon.goldberg@faa.gov.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

Under longstanding FAA policy, the revocation of airman, ground instructor, and medical certificates, and the withdrawal of all special issuances or SODAs, is the appropriate sanction for violations of 14 CFR 67.403(a)(1) through (4).<sup>1</sup> The period between the discovery of an apparent violation of 14 CFR 67.403(a)(1) through (4) and, if appropriate, the issuance of an order revoking airman, medical, and ground instructor certificates can be lengthy, making the date on which an order of revocation will be issued uncertain. Investigative personnel compile an enforcement investigative report (EIR) containing evidence relating to the apparent violation. Such investigations include gathering, among other evidence, legal and/or medical documentation from various governmental entities or healthcare providers. Investigative personnel also include as evidence letters of investigation (LOIs) to apparent violators and any information provided in response to LOIs. Following the compilation of evidence, investigative personnel provide analyses as to how the evidence relates to the violation and recommended sanction type. The EIR is subject to various levels of review within the FAA program office. If the program office deems the EIR sufficient, it transmits the EIR to the Office of the Chief Counsel's Enforcement Division (AGC-300) for evaluation and, if appropriate, initiation of legal

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<sup>1</sup> Under 14 CFR 67.403(a)(1)-(4), a person is prohibited from making or causing to be made: a fraudulent or intentionally false statement on any application for a medical certificate or on a request for any Authorization for Special Issuance of a Medical Certificate (Authorization) or Statement of Demonstrated Ability (SODA); a fraudulent or intentionally false entry in any logbook, record, or report that is kept, made, or used to show compliance with any requirement for any medical certificate or for any Authorization or SODA; a reproduction, for fraudulent purposes, of any medical certificate; or an alteration of any medical certificate. Under 14 CFR 67.403(b)(1)-(2), a violation of 14 CFR 67.403(a)(1)-(4) is a basis for: suspending or revoking all airman, ground instructor, and medical certificates and ratings held by the violator and withdrawing all Authorizations or SODA's held by the violator. *See also* FAA Order 2150.3C, chap. 9, para. 8 (revocation is appropriate for a violation of 14 CFR § 67.403(a)(1)-(4) since such a violation demonstrates a lack of qualification to hold a certificate).

enforcement action. Accordingly, a variety of factors affect the timing of the issuance of an order of revocation for an apparent violation of 14 CFR 67.403(a)(1) through (4).

In addition, FAA regulations generally proscribe individuals whose airman and ground instructor certificates have been revoked from applying for new airman and ground instructor certificates for one year following the effective date of an order of revocation. Under 14 CFR 61.13(d)(2), unless otherwise authorized by the Administrator, a person whose pilot, flight instructor, or ground instructor certificate has been revoked may not apply for any certificate, rating, or authorization for one year after the date of revocation. Under 14 CFR 63.11(d), unless the order of revocation provides otherwise, a person whose flight engineer or flight navigator certificate is revoked may not apply for the same kind of certificate for one year after the date of revocation. Under 14 CFR 65.11(d)(1) and (2), unless the order of revocation provides otherwise, a person whose air traffic control tower operator, aircraft dispatcher, or parachute rigger certificate is revoked may not apply for the same kind of certificate for one year after the date of revocation; and a person whose mechanic or repairman certificate is revoked may not apply for either of those kinds of certificates for one year after the date of revocation.<sup>2</sup> In short, following the requisite investigation and case evaluation processes that take place prior to the issuance of an order revoking airman and ground instructor certificates for a 14 CFR 67.403(a)(1) through (4) violation, an applicant may have to wait up to one year following the issuance of an order to make application for any new such certificate.

The prompt settlement policy announced in this notice for violations of 14 CFR 67.403(a)(1)-(4) will generally afford an individual eligible for the policy the

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<sup>2</sup> The one-year application restriction applicable to revoked 14 CFR parts 61, 63, and 65 certificates does not apply to certificates issued under 14 CFR part 67.

opportunity to apply for any airman and ground instructor certificate sooner than had the case proceeded in the absence of the policy. The individual would still be subject to the one-year post-revocation bar applicable to applications for new airman or ground instructor certificates, but would have the opportunity to apply for such certificates generally sooner than under the current process because much of the investigation and evaluation processes would be abbreviated or eliminated. Moreover, this policy will generally add predictability as to when the FAA would issue the order and, accordingly, when an individual could submit an application for a new airman or ground instructor certificate.

The policy will also apply when any controlled substance conviction or motor vehicle action that is the basis for a violation of 14 CFR 61.15(a), (d), or (e) also forms the basis for an intentional falsification violation under 14 CFR 67.403(a)(1).<sup>3</sup> For example, the policy will apply to: (1) violations of 14 CFR 67.403(a)(1) and 14 CFR 61.15(e) when the violations were related to the same driving under the influence conviction; (2) violations of 14 CFR 67.403(a)(1) and 14 CFR 61.15(a) when the violations were related to the same controlled substance conviction; and (3) violations of 14 CFR 67.403(a)(1) and 14 CFR 61.15(d) and (e) when the violations were related to the same motor vehicle action or actions.

In 2018, the FAA implemented a similar policy for commercial pilots who violate certain FAA drug and alcohol-related prohibitions, including those involving a disqualifying DOT drug

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<sup>3</sup> Under 14 CFR 61.15(a), a conviction for the violation of any Federal or State statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marijuana, or depressant or stimulant drugs or substances is grounds for suspension or revocation of any certificate, rating, or authorization issued under 14 CFR part 61. Under 14 CFR 61.15(d), except for a motor vehicle action that results from the same incident or arises out of the same factual circumstances, a motor vehicle action occurring within three years of a previous motor vehicle action is grounds for suspension or revocation of any certificate, rating, or authorization issued under 14 CFR part 61. Under 14 CFR 61.15(e), each person holding a certificate issued under this part shall provide a written report of each motor vehicle action to the FAA not later than 60 days after the motor vehicle action.

or alcohol test result or refusal to submit to DOT drug or alcohol testing.<sup>4</sup> The appropriate sanction for such violations is the revocation of airman, ground instructor, and medical certificates held by the commercial pilot. As with violations of 14 CFR 67.403(a)(1) through (4), a violation of drug and alcohol testing regulations is subject to comprehensive investigation, which, in turn, is subject to program office and Office of the Chief Counsel review before the FAA issues a revocation order. Further, as mentioned above, an individual whose part 61 certificate is revoked may not apply for a new part 61 certificate, rating, or authorization for one year after the effective date of the revocation order.<sup>5</sup> The FAA's drug and alcohol prompt settlement policy allows eligible pilots to promptly settle their case with the FAA and avoid a potentially lengthy investigation and FAA case evaluation process. In turn, eligible pilots can benefit from an earlier start of the one-year application waiting period specified in 14 CFR 61.13(d)(2). Further, the policy affords both the pilot and FAA the opportunity to better allocate resources.

### **Statement of Policy**

Under this prompt settlement policy, following the issuance of an LOI for violations of 14 CFR 67.403(a)(1)-(4), an eligible individual who is the subject of the legal enforcement action would have the opportunity to enter into a settlement agreement providing for (1) the acceptance of the prompt issuance of an order revoking the individual's airman or ground instructor certificates; (2) the immediate surrender of the affected certificates in response to the order; and (3) the waiver of appeal rights. This policy is expected to afford eligible individuals who are the subject of legal enforcement action for violating 14 CFR 67.403(a)(1)-(4) the opportunity to apply for a new airman certificate under 14 CFR parts 61, 63, and 65, or a new

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<sup>4</sup> See 83 Fed. Reg. 34040 (Jul. 19, 2018).

<sup>5</sup> 14 CFR § 61.13(d)(2).

ground instructor certificate under 14 CFR Part 61, sooner than in the absence of such a policy. The policy will also apply when any controlled substance conviction or motor vehicle action that was the basis for a violation of 14 CFR 61.15(a), (d), or (e) also forms the basis for an intentional falsification violation under 14 CFR 67.403(a)(1). Under this policy, the FAA will send notification to individuals who appear to have violated those provisions that they may contact the applicable program office within ten days of receipt of the notice to request consideration for a prompt settlement of the legal enforcement action. The FAA will send the notification in conjunction with the LOI.

Following an individual's request to be considered for application of this policy, the FAA will determine the individual's eligibility for the policy. The policy is not available when there is a question about an individual's qualification to hold a part 61, 63, or 65 certificate other than that presented by the 14 CFR 67.403(a)(1) through (4) violation. It is also not available for individuals who the FAA has found to have previously violated 14 CFR 67.403(a)(1) through (4).

If the FAA deems application of the prompt settlement policy is appropriate, AGC-300 enforcement counsel will provide the individual, or his or her legal representative, a formal agreement that sets forth the conditions for prompt settlement. The terms of this settlement agreement will normally include the following provisions.

- (1) The settlement agreement must be executed by the parties within ten days after the FAA sends the agreement to the individual.
- (2) The FAA will issue an emergency order revoking all airman, ground instructor, and unexpired medical certificates the individual holds immediately upon receiving the fully executed settlement agreement.

- (3) The order of revocation will (i) require the immediate surrender of all airman, ground instructor, and unexpired medical certificates the individual holds to enforcement counsel; (ii) notify the individual that the failure to immediately surrender these certificates could subject the individual to further legal enforcement action, including a civil penalty; and (iii) inform the individual that the FAA will not accept an application for any new airman or ground instructor certificate for a period of one year from the date of the issuance of the order of revocation.
- (4) The individual will waive all appeal rights from the order of revocation.
- (5) The individual acknowledges that this agreement only concerns this enforcement action brought by the FAA and does not affect any actions that might be brought by State or other Federal agencies (whether civil or criminal), and that this agreement does not prevent the FAA from providing information about this matter to State or other Federal agencies.
- (6) The parties will agree to bear their own costs and attorney fees, if any, in connection with the matter.
- (7) The individual will agree to not initiate any litigation before any court, tribunal, or administrative entity concerning any costs, damages, or attorney fees, including applications under the Equal Access to Justice Act, incurred as a result of the above-referenced matter.
- (8) The individual will agree to waive any and all causes of action against the FAA and its current and/or former officials and employees relating to the above-referenced matter.

This policy is expected to allow eligible individuals to more quickly apply for new certificates under 14 CFR parts 61, 63, and 65 following violations of 14 CFR 67.403(a)(1)-(4). It will also reduce uncertainty about the date of issuance of orders of revocation related to such violations, eliminate the unpredictability of litigation, and promote better resource allocation.

Issued in Washington, DC on September 21, 2020.

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