

**VOLUME 14 COMPLIANCE AND ENFORCEMENT****CHAPTER 1 INTRODUCTION TO INVESTIGATION AND COMPLIANCE RELATED TASKS****Section 8 Enforcement Decision Process**

**14-140 GENERAL.** This section establishes policy for the Flight Standards Service (AFS) replacing the Enforcement Decision Tool (EDT) with the Enforcement Decision Process (EDP). EDP corrects deficiencies in the EDT policy and worksheet that were identified during a nationwide evaluation of how AFS enforcement personnel applied the EDT. This policy provides an eight-step electronic template/worksheet, the Electronic EDP (E-EDP) (Figure 14-11), for enforcement personnel to use to determine the appropriate action (legal, administrative, informal) to take for noncompliance with regulatory requirements. The change simplifies the EDP, reduces redundancies, and provides examples to facilitate completion of the E-EDP worksheet. This policy and worksheet conform to the FAA EDP guidelines in Federal Aviation Administration (FAA) Order 2150.3, Compliance and Enforcement Program Appendix F, current edition. This policy applies to all AFS personnel involved in compliance and enforcement tasks.

**14-141 TASK PREREQUISITES AND SIGNIFICANT INTERFACES.** Aviation safety inspectors (ASI) must have knowledge of the requirements of Title 49 of the United States Code (49 U.S.C.); Title 14 of the Code of Federal Regulations (14 CFR); and AFS policies.

**A. Significant Interfaces.** This process requires coordination and/or interface with the following:

- Field office management team;
- Flight Standards Division;
- Office of Regional Counsel;
- Enforcement Information System (EIS);
- Civil Aviation Registry;
- Accident Incident Data Subsystem (AIDS);
- Safety Performance Analysis System (SPAS); and
- Program Tracking and Reporting Subsystem (PTRS).

**B. References (current editions).** This process requires access to:

- Title 14 CFR parts 1 through 193,
- FAA Order 2150.3,
- FAA Order 8900.1, Flight Standards Information Management System (FSIMS),
- PTRS Procedures Manual (PPM),
- Title 49 U.S.C. Chapter 447, and Chapter 463.

**C. Forms.** None.

**D. Job Aids.** This process requires access to the E-EDP worksheet.

**E. Additional Guidance.** Authorization and additional guidance for this process is in FAA Order 2150.3.

**F. PTRS Activity Code.** This process requires the use of the following PTRS activity codes as appropriate:

- 1) Task Activity Codes—1734/3734/5734 (INVESTG/ENFRMNT/INFORMAL ACTION).
- 2) Task Activity Codes—1733/3732/5732 (INVESTG/ENFRMNT/ADMIN ACTION).
- 3) Task Activity Codes—1732/3731/5731 (INVESTG/ENFRMNT/LEGAL ACTION).
- 4) On-the-job training (OJT) Instructor Activity Code—1024/3024/5024
- 5) OJT Trainee Activity Code—1023/3023/5023.

#### 14-142 DEFINITIONS.

**A. Act.** An overt action and includes the failure to take an action.

**B. Adequate Deterrent.** The AFS action is reasonably likely to discourage the alleged violator and others similarly situated from committing the same or very similar conduct for the foreseeable future.

**C. Administrative Action.** A letter of correction or a warning notice.

**D. Constructive Attitude.** The alleged violator acts in a positive manner toward regulatory requirements, cooperates with AFS investigative personnel to achieve compliance, and willingly takes actions necessary to come into and maintain compliance.

**E. Inadvertent.** An act that is the result of both inattention and lack of purposeful choice. A violation is inadvertent when it does not result from an alleged violator's conscious decision to take, or not take any action that could have prevented the apparent violation.

**F. Informal Action.** Oral or written counseling of individuals or entities for regulatory noncompliance, documented in PTRS.

**G. Hazard.** A condition that could lead to injury or property damage.

**H. Lack of Qualification.** A certificate holder lacks the skills and competency, or care, judgment, and responsibility necessary to hold that certificate. Where a certificate holder commits a violation indicating a lack of qualifications to hold the certificate, the FAA takes legal action to revoke the violator's certificate.

**I. Likelihood.** The probability (frequent, occasional, or remote) of the worst type of injury or damage realistically (and potentially) occurring, considering the actual facts specific to each case.

**J. Legal Action.** Enforcement action other than administrative action or informal action.

**K. On-the-Spot.** Corrective action for a low-risk violation is completed on-the-spot when a violation(s) is identified by the FAA and communicated to an individual or company.

**L. Remedial Training.** A program authorized in Order 2150.3, Chapter 5 that AFS inspectors use for certificated airmen when remedial training is the appropriate action to take for a violation.

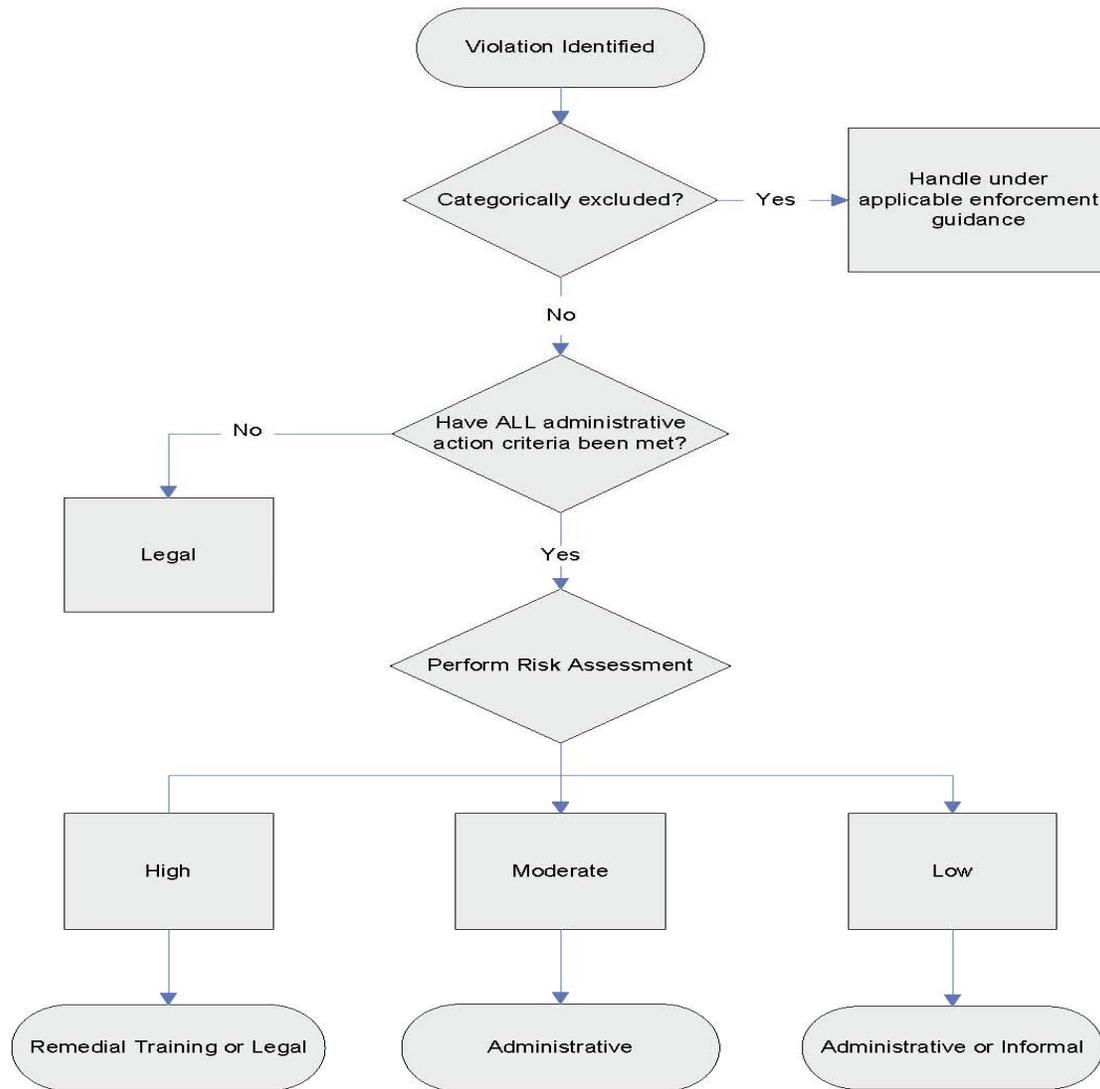
**M. Safety Risk.** The level (high, moderate, or low) of potential injury or property damage from a hazard created by an act, considering the hazard severity and the likelihood that the potential severity will be realized.

**N. Severity.** The worst type of injury or damage (catastrophic, critical, marginal, or negligible) that could realistically (and potentially) occur from a generic violation of the type involved in the subject violation. A generic violation refers to the basic act or failure to act, absent any specific facts or circumstances.

**O. Substantial Disregard for Safety or Security.**

1) In the case of a certificate holder, that the act was a substantial deviation from the degree of care, judgment, and responsibility normally expected of a person holding that certificate with that type, quality, and level of experience, knowledge, and proficiency.

2) In the case of a violator who is not a certificate holder, substantial disregard means the act was a substantial deviation from the degree of care and diligence expected of a reasonable person in those circumstances.

**Figure 14-10, Process Flowchart—AFS Enforcement Decision Process****14-143 PROCEDURES.**

**A. Application of the E-EDP Worksheet.** AFS investigative personnel use the E-EDP after they have gathered sufficient evidence and other relevant information to analyze the facts and circumstances of the apparent violation under the administrative action criteria and, if necessary, categorize its safety risk.

1) To apply the EDP, AFS enforcement personnel use the AFS E-EDP worksheet to analyze the facts and circumstances (appropriate to each step) disclosed by an investigation or identified during an inspection.

2) AFS enforcement personnel document their completion of the E-EDP in PTRS using the code appropriate for the enforcement action taken.

3) Inspectors must complete the AFS E-EDP worksheet for all violations, except:

a) Enforcement personnel take administrative action or informal action for low-risk violations corrected on the spot. For example, inspection findings of an incomplete field on an otherwise satisfactorily completed (and required) record or form, or a missing logbook entry for work-in-progress are usually low-risk violations. Placement of information by the alleged violator in the incomplete field, or completing the required logbook entry might suffice as an on-the-spot correction for these kinds of low-risk cases. When a certificate holder corrects low-risk violations on the spot, it is acceptable to use administrative action or informal action (oral or written counseling) after the correction to close these violations.

NOTE: Completion and retention of an E-EDP worksheet is not required for low-risk violations corrected on the spot; however, if inspectors accept an on-the-spot correction they must perform an E-EDP risk analysis before closing the case to confirm that the violation was low risk. (Refer to steps three, four, and five of the E-EDP worksheet.)

b) Cases that are accepted and closed under the Aviation Safety Action Program (ASAP) with administrative action or informal action.

NOTE: Although completion of the E-EDP worksheet is not required for violations accepted under ASAP, before *informal action* can be used to close an ASAP case, an affirmative response is required to E-EDP worksheet step two, criterion number three—the *apparent violation does not indicate a lack of qualification*. In addition, the violation *must* be low risk, determined by applying E-EDP worksheet steps three, four, and five.

**B. Determine Whether the Case is Categorically Excluded From the E-EDP.** AFS investigative personnel determine if the apparent violation involves any of the matters described in subparagraphs 1) through 7) below. If the violation involves any of these matters, the case is categorically excluded from the EDP.

NOTE: If the excluded case warrants legal enforcement action, enforcement personnel complete steps one and eight of an E-EDP worksheet for inclusion in section B of the Enforcement Investigation Report (EIR) indicating that the subject case was categorically excluded.

1) Apparent violations that are disclosed under and meet the criteria of the Voluntary Disclosure Reporting Program (VDRP) are handled per VDRP guidance.

2) A case involving a substantiated lack of qualification, or questionable qualification. For example:

a) Positive drug and alcohol test results.

- b) Failing to successfully complete a reexamination.
  - c) Failing to possess the skills and competency required for the certificate held.
  - d) Refusing to permit and/or submit to an inspection, reexamination, or a drug or alcohol test.
  - e) Intentionally falsifying a record or application.
  - f) Cheating on a written examination.
- 3) Criminal activity, such as narcotics convictions.
  - 4) Special-emphasis enforcement programs, such as temporary flight restriction violations.
  - 5) Operating without having been issued a required certificate, rating, or other required and valid authorization, such as a 14 CFR part 61, § 61.58 pilot in command proficiency check.
  - 6) Apparent violation(s) by a military pilot that are referred to the Department of Defense.
  - 7) Apparent violation(s) by a foreign pilot that are referred to the Department of State.

**C. Determine if All Criteria for Taking Administrative or Informal Action Have Been Met.** If a case is not categorically excluded from the E-EDP, then AFS investigative personnel determine whether the apparent violation meets the criteria for taking administrative action or informal action. Before taking either administrative action or informal action for an apparent violation, AFS investigative personnel must determine if all of the criteria have been met.

NOTE: Criteria for informal action and administrative action are the same.

- 1) If AFS investigative personnel determine that an apparent violation does not meet all criteria, then they must recommend the appropriate legal enforcement action for the violation(s), unless division management approves a deviation in accordance with subparagraph 14-143F.
- 2) AFS investigative personnel indicate on the AFS E-EDP worksheet whether all criteria for taking administrative action or informal action have been met.
- 3) If any of the criteria have not been met, AFS investigative personnel indicate which criteria were not met and explain why on the E-EDP worksheet.
- 4) Below is an abbreviated list of the criteria for taking administrative action or informal action; a complete discussion of these criteria is Order 2150.3, Chapter 5.

a) Legal enforcement action is not required by law. For example, 49 U.S.C., section 44710 mandates that the FAA revoke the certificate of any airman who is convicted of a drug-related offense where the underlying offense involves the use of an aircraft. For these cases, the FAA may not take administrative action, or even pursue legal enforcement action to suspend the airman's certificate, but instead must pursue legal enforcement action to revoke the violator's airman certificate.

b) Administrative action would deter future violations.

c) The apparent violation does not indicate a lack of qualification.

d) The apparent violation must have been inadvertent. A violation is inadvertent when it does not result from an alleged violator's conscious decision to take or not take any action that could have prevented the violation. For instance:

1. (Airworthiness): A mechanic improperly performs maintenance because he or she misreads an instruction in the maintenance manual has acted inadvertently.

2. An air carrier who operates an aircraft with an improperly deferred component because of genuine miscommunication with maintenance control has acted inadvertently (e.g., the maintenance controller misheard the discrepancy reported).

3. (Operations): A pilot misses a checklist item because of an air traffic control communication.

4. Unruly or intoxicated passengers, or passengers who smoke aboard an aircraft, act purposefully, and therefore, have not acted inadvertently.

e) The apparent violation does not involve a substantial disregard for safety or security. Substantial disregard for safety or security means in the case of a certificate holder, that the act was a substantial deviation from the degree of care, judgment, and responsibility normally expected of a person holding that certificate with that type, quality, and level of experience, knowledge, and proficiency. In the case of a violator who is not a certificate holder, substantial disregard means the act was a substantial deviation from the degree of care and diligence expected of a reasonable person in those circumstances. For instance:

1. (Airworthiness): Failing to consult the maintenance manual and then conducting an incomplete or improper inspection of a critical required inspection item.

2. (Operations): A Commercial-rated pilot taking off at a busy controlled airport without having received takeoff clearance.

3. (Airworthiness, no certificate held): A maintenance controller instructs a line mechanic to defer a discrepancy using a specific minimum equipment list item number with knowledge that the system or component deferred is not inoperative.

4. (Operations, no certificate held): An uncertificated flight school operates its aircraft without conducting an annual inspection for 3 years.

f) The circumstances of the apparent violation were not aggravated. Aggravated circumstances are those that make or could make the violation worse, more serious or the potential outcome more severe. For instance:

1. In a case involving an intentional violation with passengers onboard, both the intentional misconduct, and the fact that passengers were onboard are aggravating circumstances.

2. (Airworthiness): For a mechanic who performs an annual inspection improperly, the circumstances are more aggravated if the FAA later identifies 30 separate discrepancies, than when the FAA finds only 2.

3. (Operations): For a pilot who operates an aircraft that is not in an airworthy condition, the circumstances are more aggravated where the unairworthy condition presents a safety-of-flight issue, than where the condition is a technical nonconformity to the aircraft's type design.

g) The alleged violator has a constructive attitude toward compliance. Constructive attitude means that the alleged violator acts in a positive manner toward regulatory requirements, cooperates willingly with FAA personnel to achieve compliance, and willingly takes actions necessary to come into and maintain compliance.

h) The apparent violation does not indicate a trend of noncompliance. A trend of noncompliance is indicated by a violation history that can include legal enforcement action(s), administrative action(s) and/or informal action(s). If the violations resulted from the same repeated misconduct by an individual, or by the same department, section or group of a small entity's organization, then the subsequent violation might suggest a disregard for the regulations and the beginning of a trend of noncompliance. In this case, administrative action or informal action is not appropriate.

**D. Analyzing Risk.** AFS investigative personnel analyze the risk of an apparent violation only if all criteria for administrative action or informal action have been met.

1) To determine the level of risk, AFS investigative personnel first categorize the potential severity and actual likelihood of the hazard, that is, the dangerous condition, created by the apparent violation(s).

2) The use of the term severity in assessing risk always means the worst type of injury or damage that could realistically (and potentially) occur from any hazardous condition. It is not based on the actual outcome of any act or violation but, as previously stated, must reflect the worst type of outcome that could realistically (and potentially) occur. For this reason, AFS investigative personnel consider only the potential outcome, not the actual outcome resulting from the act(s) or failure to act relevant to the subject violation when categorizing severity.

3) Determining Severity. Based on the explanation stated above severity is the worst type of injury or damage that could realistically (and potentially) occur from a generic violation. A generic violation refers to the basic act or failure to act without considering any specific facts

or circumstances. For example, an altitude deviation, a runway excursion, improperly performed maintenance, flight and duty recordkeeping, etc. The following guidelines apply to the determination of severity:

a) To determine severity, AFS enforcement personnel do not consider the specific facts of the case; the specific facts of the case are considered only when determining likelihood.

b) Severity and likelihood are determined separately, and severity must be determined without considering the likelihood of that severity (or outcome) being realized. For example, if a plausible argument can be made that a hazard could under some circumstances result in death or severe damage, the potential severity is catastrophic, in spite of the fact that such an outcome from the hazard might be extremely rare, or would not (realistically) occur.

c) The most common error in determining severity is prematurely considering the facts and circumstances of a case.

d) Severity can be one of the following:

- Catastrophic (death or severe damage);
- Critical (severe injury or substantial damage);
- Marginal (moderate injury or damage); and
- Negligible (minor or no injury or damage).

e) When determining the potential severity of an apparent violation, the existence of fortuitous circumstances is not considered. The following is an example of fortuitous (by chance) circumstances and the determination of severity: An altitude deviation from an ATC clearance has the same potential outcome (catastrophic, due to a mid-air collision) regardless of whether there was another aircraft that came into conflict or not. For any altitude deviation violation, AFS enforcement personnel must consider what is the worst type of injury or damage that could realistically happen if an aircraft deviates from its assigned altitude without considering the weather, obstructions, other traffic in the area, the time of day, or other similar circumstances. The absence of another aircraft coming into conflict is a fortuitous circumstance.

f) Other examples relevant to the categorization of severity:

1. A fuel exhaustion occurrence has the same potential outcome (catastrophic) irrespective of whether an actual accident resulted.

2. A pilot who operates after his or her medical certificate expires has the same potential outcome (catastrophic), irrespective of whether he or she has an actual medical condition.

3. Failing to maintain accurate and current flight- and duty-time records has the same potential outcome (catastrophic) irrespective of whether the pilot were actually fatigued at the time of their operation.

4. The operation of an aircraft past the time limit for conducting a required inspection has the same potential outcome (catastrophic) irrespective of whether an actual airworthiness condition was not corrected on the aircraft as a result of the missed inspection.

5. Failing to carry a load manifest onboard the aircraft has the same potential outcome (negligible) irrespective of any other factors because the failure to do so does not create a safety-of-flight condition.

6. Operating an aircraft with an antenna that was improperly repaired with speed tape has the same potential outcome (catastrophic) irrespective of whether the speed tape interfered with its operation or rendered the antenna inoperative.

7. Failing to make an entry in the aircraft maintenance logbook after installation of a repaired component has the same potential outcome (negligible) irrespective of other factors.

4) Determining Likelihood. Likelihood is the probability of the worst type of injury or damage realistically occurring, considering the specific facts of the case. In other words, AFS investigative personnel determine how likely it is that the potential severity would actually be realized, given the facts and circumstances involved.

a) Likelihood can be one of the following:

1. Frequent (likely to occur often).
2. Occasional (likely to occur sometimes).
3. Remote (unlikely to occur, would seldom occur, or so unlikely, one can assume the potential severity (outcome) would not occur).

b) Examples of how the facts of a case affect likelihood:

1. For a restricted airspace incursion, the likelihood becomes higher the longer the pilot operated in the restricted airspace, the farther into the airspace the pilot penetrated, and the greater the number of other aircraft in the area.
2. For operating an aircraft past a required inspection, the actual likelihood becomes higher the more time that has passed since the inspection was due, and the more time between inspections (100-hour v. annual). Also, the actual likelihood will be higher where the aircraft has an actual safety-of-flight airworthiness condition that would have been corrected had the inspection been completed when required.
3. For failing to maintain current flight and duty records, the actual likelihood will be higher for an active pilot who has no flight time records, or flies many hours past the flight time limitations, than for a pilot who flies a small amount of time past the flight time limits, or does not exceed the flight time limits.

4. For operating an aircraft with an inoperative cargo restraint component, the likelihood will be less likely where the cargo weight does not exceed the maximum weight for operating with one restraint inoperative, and will be more likely where the weight is excessive, or multiple restraints are inoperative.

5. For operating without complying with Airworthiness Directives, the likelihood will be higher when the aircraft is operated many hours beyond the compliance date than for an aircraft that is operated a small amount of time past the compliance date.

6. For improperly performing maintenance, the likelihood will be more likely the more egregious the error and the greater the impact on safety-of-flight.

7. For operating an aircraft with a very-high frequency antenna that had been improperly repaired with speed tape, the likelihood will be less likely if the aircraft had three separate communication systems, and the improperly repaired antenna was connected to only one of those systems.

5) Determine the Safety Risk and the Appropriate Enforcement Action. The Risk Assessment and Action Matrix, in Figure 14-11, E-EDP Worksheet, helps determine the level of risk (high, moderate, or low) for an apparent violation and the necessary corresponding enforcement action the FAA should take after severity and likelihood have been determined.

**E. Remedial Training.** AFS investigative personnel must address an apparent violation by an airman with remedial training provided all criteria for taking administrative action/informal action are met, the apparent violation presents a high safety risk, and all criteria for offering remedial training are met. Refer to Order 2150.3 Chapter 5 for a complete description of the remedial training process. The criteria for offering remedial training are as follows:

- 1) Future compliance can be reasonably ensured through remedial training alone.
- 2) The airman exhibits a constructive attitude that would lead the inspector to believe the airman has a willingness to comply, so noncompliance is less likely in the future.
- 3) The conduct does not disclose a lack of, or reasonable basis to question, the airman's qualifications.
- 4) The airman's record of enforcement actions does not indicate that remedial training would be inappropriate.
- 5) The conduct is not deliberate, grossly negligent, or criminal in nature.

NOTE: If the airman has not responded to the remedial training Letter of Investigation within 10 days of receipt, initiate legal enforcement action. Flight Standards District Office management has latitude to extend the response period beyond 10 days in extraordinary circumstances.

NOTE: Remedial training cannot be used for airmen using their certificate in air transportation (air carrier operations) at the time of the violation.

**F. Deviation From the Matrix (if applicable).** Enforcement personnel may determine that a case warrants a deviation from the enforcement action indicated by the Risk Assessment and Action Matrix. If AFS investigative personnel select a type of action other than that indicated by the matrix, then they must provide a justification and have approval of the division manager or equivalent. Refer to Order 2150.3, Chapter 5 for more information on using administrative action when the required criteria are not met. The following are examples of where a deviation from the type of action indicated by the matrix might be justified:

1) In certain cases, where a business commits an apparent violation that meets the criteria for administrative/informal action, but presents a high safety risk, administrative action in the form of a letter of correction may be more appropriate to improve the operator's system for system safety benefits, even though the matrix directs legal action. For these cases, the potential safety benefits of a structured corrective action process that incorporates a corrective action plan might be preferable to respond to the high safety risk.

2) Administrative action may be more appropriate where the criteria for administrative/informal action are not met because an individual's apparent violation was not inadvertent, but there is negligible safety risk involved. For example, an apparent violation by a pilot who operates an aircraft without a pilot certificate in his or her possession, but is qualified and current to operate the aircraft, may be more appropriately addressed with a warning notice, as the violation does not endanger the aircraft or any occupants.

3) The investigating office could also recommend that administrative action would not be appropriate and that the FAA should take legal enforcement action.

**G. Documentation.**

1) E-EDP Worksheet—Retention requirements. E-EDP Worksheets required by this policy are maintained in accordance with established retention periods for EIRs and other enforcement records.

2) E-EDP Worksheet—Filing requirements for cases requiring an E-EDP worksheet.

a) Legal Enforcement Actions. Section B of the EIR includes the completed and signed E-EDP worksheet.

b) Administrative Action and Informal Action Cases. AFS field offices retain the E-EDP worksheet in the investigating office files for cases closed with administrative action and informal actions.

1. For all administrative action cases requiring an E-EDP worksheet (including cases closed with the Streamlined No Action and Administrative Action Process (SNAAP)) the completed E-EDP worksheet, FAA Form 2150-5, Enforcement Investigation

Report and the administrative action letter (or the SNAAP job aid) is placed in an investigating office enforcement case file for each separate action.

2. This requirement does not apply to accepted ASAP cases closed with administrative action or informal action, or to other cases closed on the spot with informal action or administrative action.

3) Excluded Cases Warranting Legal Enforcement Action. AFS inspectors complete Step One and sign the E-EDP worksheet indicating that the apparent violation is categorically excluded from the E-EDP. The signed E-EDP worksheet is included in Section B of the excluded case EIR.

4) Excluded Cases That are Closed With Administrative or Informal Action. AFS inspectors complete Step One of a signed E-EDP worksheet indicating that the violation is categorically excluded from the E-EDP. The signed worksheet is placed in the investigating office case file. Alternatively, an E-EDP worksheet indicating categorical exclusion is not required if an Enforcement Information System (EIS) code, or PTRS code or field, or a PTRS comment indicate that the case was of a type that is categorically excluded. For example, VDRP cases, 49 U.S.C. section 44709 cases, etc.

#### **H. Entry in Tracking Systems.**

1) Record all legal action cases and administrative action cases in EIS and PTRS.

2) Informal action cases do not require the preparation of an EIR nor a case number from EIS, but must be documented in PTRS to support national, regional, and local systems safety analysis, and to identify trends.

a) AFS investigative personnel must record the following information on informal actions in PTRS:

- Name of the individual or business;
- Certificate type and number of the individual or business (as applicable);
- Regulations involved (include section, paragraph and subparagraph);
- Date of counseling;
- Type of counseling (oral or written);
- For businesses, name and title of person counseled; and
- Brief description of the apparent noncompliance.

#### **I. Review of Application of the Enforcement Decision Process.**

1) AFS Regional Offices (RO) and field office management are responsible for reviewing each E-EDP worksheet and determining that it is completed in accordance with this section. The preparer and each reviewer will print and sign each E-EDP worksheet. A signature will indicate that the signatory concurs in the appropriateness of the action recommended and believes the E-EDP worksheet is prepared in accordance with all applicable policies.

2) Copies of the complete administrative action case file (for all cases requiring completion of an E-EDP worksheet), including evidence sufficient to prove the violation, must be forwarded to the appropriate RO for review after issuance by the investigating office.

NOTE: While this requirement does not require Items of Proof, sufficient documentation must be included with the file to show that the violation(s) occurred (e.g., a brief inspector statement, a copy of a photograph, copy of a logbook page).

3) Legal Concurrence. Before initiating legal enforcement action, legal counsel determines whether the recommendation for legal enforcement action is appropriate under the E-EDP. If legal counsel concurs with the AFS recommendation and analysis, legal counsel signs the E-EDP worksheet and initiates the case. If legal counsel disagrees that legal enforcement action is appropriate, or disagrees with how the E-EDP was applied in a case, then legal counsel and the appropriate AFS RO will discuss and attempt to resolve those disagreements before the legal action is initiated. If legal counsel still disagrees with taking legal enforcement action after discussion with the AFS RO, then legal counsel explains the reasons for such disagreement on the E-EDP worksheet, signs it, and returns the EIR to the AFS RO after review by the regional counsel or designate. If legal counsel disagrees with the AFS analysis under the E-EDP, but agrees with the recommended action, legal counsel does not return the EIR to the RO. Rather, legal counsel explains the reasons for the disagreement on the E-EDP worksheet, signs it, and initiates the case.

**14-144 TASK OUTCOMES.** Completion of the E-EDP worksheet results in one of the following:

- Exclusion of an apparent violation from the EDP;
- Legal enforcement action;
- Administrative action;
- Informal action;
- Remedial training; or
- Deviation from the enforcement action indicated by the E-EDP process.

**14-145 FUTURE ACTIVITIES.** Conduct a followup inspection to ensure completion of corrective action(s) when a Letter of Correction has been or will be issued.

**Figure 14-11, E-EDP Worksheet****AFS ENFORCEMENT DECISION PROCESS (E-EDP) WORKSHEET**

Case Name: \_\_\_\_\_

EIR Number for Legal and Administrative Actions: \_\_\_\_\_

PTRS Report Number for Informal Actions: \_\_\_\_\_

**Note:** Refer to FAA Order 8900.1, Volume 14, Chapter 1, Section 8, Enforcement Decision Process for definitions, policy explanations, and examples for each step.

**STEP ONE—Determine if this case is categorically excluded.**

*Review the list below* to determine if this case should be categorically excluded from the Enforcement Decision Process (EDP). If the case is excluded, either place a *checkmark* in the box adjacent to the type of case from the following list, *or* explain *why* this case has been excluded. (See below.)

**Types of cases that are categorically excluded from the EDP:**

**1. Voluntary Disclosure Reporting Program (VDRP).** Violations that are voluntarily disclosed under VDRP and that meet all acceptance criteria for the program.

**2. Lack of Qualifications.** *Lack of qualification* means a certificate holder lacks the skills and competency, or care, judgment, and responsibility necessary to hold that certificate. For examples, see the list below:

- Drug and alcohol positives;
- Failing to successfully complete a reexamination;
- Failing to possess the skills and competency required for the certificate held;
- Refusing to permit and/or submit to an inspection, reexamination, or drug or alcohol test;
- Intentionally falsifying a record or application; or
- Cheating on a written examination.

**Note:** Legal enforcement action is *required* for these cases.

**3. Criminal Activity.** For example, cases involving controlled substances.

**Note:** Legal enforcement action is *required* for these cases.

**4. Special Emphasis Enforcement Programs.** For example, currently cases involving Temporary Flight Restriction (TFR) violations.

**5. Operating without having been issued a required certificate, rating or other required authorization.**

**Note:** Legal enforcement action is *required* for these cases.

**6. Violations involving military pilots that are referred to the Department of Defense (DOD).**

**7. Violations involving foreign rated airmen that are referred to the State Department.**

*Is this case categorically excluded?* Place a checkmark in the box adjacent to your *yes* or *no* selection.

**Yes**—the case is excluded. Explain in the space provided below if you have not placed a checkmark in one of the boxes above.

**Comments:**

If the case is excluded,  the EDP after completing Step One and print and sign the worksheet. Then proceed in accordance with applicable enforcement guidance.

**No**—the case is not excluded. **Proceed to Step Two.**

**STEP TWO—Administrative Action and Informal Action Criteria.**

*Review the following criteria.* For each of the criteria that *have been met* place a checkmark in the appropriate box.

**1. Legal enforcement action is not required by law.** For example, U.S.C. Section 44710 and drug-related offenses.

**2. Administrative action would adequately deter future violations.** *Adequately deter* means that the FAA action is reasonably likely to discourage the alleged violator and others similarly situated from committing the same or very similar conduct for the foreseeable future.

**3. The apparent violation does not indicate a lack of qualification.** *Lack of qualification* means a certificate holder lacks the skills and competency, or care, judgment, and responsibility necessary to hold that certificate.

**4. The apparent violation was inadvertent, (i.e., not the result of purposeful conduct).** A violation is *inadvertent* when it does *not* result from an alleged violator's conscious decision to take or not take any action that could have prevented the violation.

**5. The apparent violation does not involve a substantial disregard for safety or security.** *Substantial disregard for safety or security* means, in the case of a certificate holder, that the act was a substantial deviation from the degree of care, judgment, and responsibility normally expected of a person holding that certificate with that type, quality, and level of experience, knowledge, and proficiency.

**6. The circumstances of the apparent violation were not aggravated.** *Aggravated circumstances* are those that make, or could make, the violation worse, more serious, or the potential outcome more severe.

**7. The alleged violator has a constructive attitude toward compliance.** *Constructive attitude* means that the alleged violator acts in a positive manner toward regulatory requirements, cooperates willingly with FAA investigative personnel to achieve compliance, and willingly takes actions necessary to come into and maintain compliance.

- 8. The apparent violation does not indicate a trend of noncompliance.** A *trend of noncompliance* is indicated by a prior violation history which can include legal enforcement action(s), administrative action(s) and/or informal action(s).

Have all criteria for taking Administrative Action been met? Please place a checkmark in the box adjacent to your *yes* or *no* selection.

- No**, all of the criteria have *not* been met. In the space provided below, please explain *why* the criteria have *not* been met.

**Explanation:**

Please  the EDP, and after completing Step Two, print and sign the worksheet and *proceed with legal enforcement action*.

- Yes**, all criteria have been met. **Proceed to Step Three.**

**STEP THREE—Determine Severity.** For severity, select the worst type of injury/damage that could realistically (and potentially) occur from a *generic* violation of this type.

**Note:** Do *not* consider the facts and circumstances specific to this case when determining severity.

**Note:** A *generic* violation refers to the basic act or failure to act absent any specific facts or circumstances. For example, a generic violation could include the following: failure to comply with an ATC clearance, failure to perform maintenance in accordance with the manufacturer's maintenance manual, low flight over terrain, etc.

- Catastrophic (death or severe damage)
- Critical (severe injury or substantial damage)
- Marginal (moderate injury or damage)
- Negligible (minor or *no* injury or damage)

Why did you select this severity level?

**Explanation:**

**Proceed to Step Four.**

**STEP FOUR—Determine Likelihood.** Select the probability of the worst type of injury/damage that could realistically occur, considering the facts specific to this case.

- Frequent (likely to occur often)
- Occasional (likely to occur sometimes)
- Remote (unlikely to occur, or would seldom occur, or would *not* occur)

Why did you select this likelihood?

**Explanation:**

**Proceed to Step Five.**

**STEP FIVE—Use the Risk Assessment and Action Matrix.** Using your selections for severity and likelihood in Steps Three and Four above, determine the level of risk and the type of enforcement action to take using the matrix and place your selections in the spaces provided.

		SEVERITY			
		Catastrophic	Critical	Marginal	Negligible
LIKELIHOOD	Frequent	Risk: High Action(s): Remedial Training or Legal	Risk: High Action(s): Remedial Training or Legal	Risk: Moderate Action: Administrative	Risk: Moderate Action: Administrative
	Occasional	Risk: High Action(s): Remedial Training or Legal	Risk: Moderate Action: Administrative	Risk: Moderate Action: Administrative	Risk: Low Action(s): Administrative or Informal
	Remote	Risk: Moderate Action: Administrative	Risk: Moderate Action: Administrative	Risk: Low Action(s): Administrative or Informal	Risk: Low Action(s): Administrative or Informal

Level of risk selected: \_\_\_\_\_

Type of action selected: \_\_\_\_\_

**Proceed to Step Six.**

**STEP SIX—Use of Remedial Training.** If Remedial Training (RT) is indicated by the matrix, Flight Standards Inspectors *must* offer an airman RT, provided *all* criteria for taking administrative action *and* RT are met, and the apparent violation causes a *high* safety risk. If RT is refused, or not completed satisfactorily, proceed with *legal* enforcement action.

**Note:** All of the RT criteria *must* be met before the FAA can offer RT to an airman. If all criteria are *not* met then *legal* enforcement *must* be taken.

**Note:** RT *cannot* be used for airmen using their FAA certificate(s) in air transportation (air carrier operations) when the violation occurred.

1. If the airman *was* using his FAA certification in air carrier operations when the violation occurred, place a checkmark in this box and proceed with *legal* enforcement action. **Proceed to Step Seven.**

2. If the airman was *not* using his FAA certification in air carrier operations at the time the violation occurred place a checkmark in this box and determine whether RT criteria have been met.

*Review each of the following criteria.* If met, place a checkmark in the appropriate box adjacent to the criteria.

1. Future compliance can reasonably be ensured through RT alone.

2. The airman exhibits a constructive attitude that would lead the inspector to believe that the airman has a willingness to comply, so noncompliance is less likely in the future.

3. The conduct does not disclose a lack of, or a reasonable basis to question, the airman's qualifications.

4. The airman's record of enforcement actions does not indicate that RT would be inappropriate

5. The conduct is not deliberate, grossly negligent, or criminal in nature.

*Have all criteria for using RT been met?*

Yes

No

Not Applicable

If *no*, explain below *why* the criteria have not been met, print and sign the E-EDP worksheet and then proceed with *legal enforcement action*.

**Explanation:**

**Proceed to Step Seven.**

#### **STEP SEVEN—Deviation Procedures.**

In exceptional circumstances, the investigating office can recommend that an action be taken other than that indicated by the matrix. For example:

1. The investigating office can provide a written explanation for why legal enforcement action would serve no useful purpose and that use of an administrative action is otherwise in the public interest.
2. The investigating office could also recommend that administrative action would not be appropriate and that legal enforcement action should be taken.
3. If a type of action is proposed other than that indicated by the Enforcement Decision Process, the division manager, or his/her designee's approval is required.

**EDP Process Outcome Requested: Yes  No**

If yes, describe the action you propose, explain the facts and circumstances, and justify your proposal:

**Explanation:**

**Division Manager/Designee Action:**  Approved  Disapproved  Not Applicable

**Print Name:** \_\_\_\_\_

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Proceed to Step Eight and print and sign the E-EDP worksheet.**

**STEP EIGHT—SIGNATURE PAGE**

**Inspector:**

**PRINTED NAME:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**1st Level Reviewer:**

**PRINTED NAME:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**CMO/FSDO/IFO Manager:**

**PRINTED NAME:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**Regional Office Reviewer:**

**PRINTED NAME:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**Attorney (if forwarded for legal enforcement action):**

**PRINTED NAME:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

If the attorney finds that the proposed type of enforcement action does not conform to the EDP process, explain *why* it does not:

**Explanation:**

**RESERVED.** Paragraphs 14-146 through 14-149.