

STATEMENT OF EDWARD P. FABERMAN, ACTING CHIEF COUNSEL, FEDERAL AVIATION ADMINISTRATION, BEFORE THE SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS, SUBCOMMITTEE ON ENERGY, NUCLEAR PROLIFERATION, AND GOVERNMENT PROCESSES, CONCERNING PENALTIES FOR TRANSPORTING HAZARDOUS MATERIALS. MAY 9, 1984.

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to describe for you the processes we follow in the Federal Aviation Administration for determining, imposing, and collecting civil penalties for the illegal transportation of hazardous materials.

As you know, the FAA is responsible for enforcing DOT's regulations under the Hazardous Materials Transportation Act pertaining to carriage of hazardous materials by air. The safety record of transporting such materials by air has been quite good, with no fatalities since the four deaths reported in 1974. We have also seen a steady decline in hazardous materials-related incidents in recent years, suggesting that the regulations and their enforcement are meeting their intended safety objectives. To check compliance with these regulations and to find violations, FAA civil aviation security inspectors conduct both scheduled and unscheduled ramp and warehouse inspections. When a possible violation is discovered, the inspector is responsible for compiling necessary evidence of the violation and forwarding it through regional supervisory channels to our Civil Aviation Security Office in Washington, and then on to the Chief

Counsel's Office for legal action. The initial field inspector proposes a recommended level of civil penalty, setting forth the sections of the regulations alleged to have been violated. At any step of the review process, the amount of penalty sought may be modified; similarly, changes may be made in the alleged regulatory violations.

The level of civil penalty proposed is based upon the guidelines set forth in 49 USC 1809(a) directing that we take into account "the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require." Naturally, to some extent these factors are subjective. In order to preserve the government's legal remedies, all possible violations are typically included. During the review process, as in any legal proceeding, it may be determined that inadequate evidence exists to support some of the alleged regulatory violations. This involves a careful weighing of the evidence, the witnesses, the basis of the violations, as well as the cost of proceeding with the case. Consequently, for these kinds of reasons, our review process permits reviewing officials to propose modifications to the level of penalty initially recommended by the field inspector.

The Chief Counsel's Office has the ultimate authority to determine the level of sanction to be sought.

Once a decision has been reached concerning the level of a proposed civil penalty, a notice of proposed civil penalty--setting forth factual allegations and alleged regulatory violations--is sent to the purported violator. That individual is offered the opportunity for an informal conference; to respond in writing to the proposed civil penalty; to pay the proposed assessment or to offer a lesser amount citing mitigating circumstances; or to request a hearing.

Hearings are held before impartial hearing officers. A hearing officer may set aside, modify, or affirm the FAA's proposed civil penalty. Either party may appeal the order of the hearing officer to the Federal Aviation Administrator who issues the final order of the agency. If the hearing officer's order is not appealed, then that becomes the final agency order and that penalty, if any, is assessed against the violator.

If an individual does not pay an assessed penalty, the FAA issues a demand letter to the individual, and may follow-up with a second letter demanding payment. If payment is not forthcoming, in accordance with the statute, the civil penalty is referred to the appropriate U.S. Attorney for collection in U.S. District Court. This is not always the best use of

government resources, however. Therefore, some cases are settled at that point. When we encounter cases in which payment would prove a hardship, if appropriate, we have arranged with these individuals for a schedule of payments, committing such agreements to writing in the form of promissory notes.

Before closing, let me provide you with a general idea of the number of cases with which we deal in the FAA. Last year, there were 67 cases in which the FAA proposed civil penalties for hazardous materials violations. Settlements were reached in 34 of those cases. For those cases that we settled, we initially proposed civil penalties amounting to \$93,500. Civil penalties in the amount of \$74,150 were actually assessed and collected in behalf of the government. Therefore, the amounts we settled for equalled 79% of the amounts we originally proposed as civil penalties, and yielded an average civil penalty of \$2,127. During that same time, we also conducted one hearing. The FAA's proposed civil penalty of \$2,500 was upheld by the hearing officer in that case.

Mr. Chairman, that completes my prepared statement. I would be pleased to respond to questions you may have at this time.