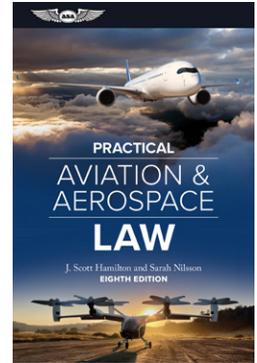


# UPDATE

# Practical Aviation & Aerospace Law

This document revises the eighth edition (ASA-PR-LAW8), published in 2024.



## Pages 46 through 48:

- List items 5 through 7 are renumbered to read 3 through 5. The corrected text reads as follows:

### 3. Civil Penalties (fines).

The FAA attorney has the option of imposing a fine instead of taking certificate action in some cases. (Constitutional prohibitions against double jeopardy have generally been construed to allow the FAA to either impose a fine or to take certificate action, but not to do both for the same violation.) For operational violations, FAA enforcement policy generally encourages the use of certificate action against individuals and civil penalties against companies. However, if the FAA feels that the management of a certificate-holding company (such as an air carrier or repair station) is not making a serious effort to obey the FARs, it will not hesitate to suspend or revoke that company's operating certificate. A civil penalty may be the only punishment available against an FAR violator who is not required to hold an FAA certificate, such as the pilot of a single-seat ultralight, or a skydiver. However, if that individual does hold an FAA airman certificate (but was not exercising the privileges of that certificate at the time), the FAA may still be able to take action to suspend or revoke that certificate for careless or reckless operation (uncrewed aircraft systems are still aircraft within the definitions appearing in the Federal Aviation Act and FARs) or for demonstrating judgment that calls the person's qualifications into question.

If the FAA attorney elects to proceed with a civil penalty (fine), the agency may seek to collect a maximum of \$1,501 per violation in most cases against individuals and some businesses, between \$13,699 and \$34,174 per violation by air carriers and airport operators, or \$250,000 for falsification of documents. Additionally, the FAA has the power to fine unruly citizens who are not certificate holders. For example, individuals may be fined up to \$25,000 for shining a laser at an aircraft. Unruly passengers on a commercial aircraft may be fined up to \$13,669 for interfering with a crew member; \$20,000 for physical assault or threat of physical assault of a crew member or other individual on an aircraft; \$35,883 for sexual assault or threat of sexual assault of a crew member or other individual on an aircraft or posing an imminent threat to the safety of the aircraft or other; \$4,388 for tampering with a smoke detector; and \$1,501 for smoking on an aircraft.

Most incidents give rise to more than one regulatory violation, if only because whenever an FAR is violated, the FAA almost always adds a residual charge of a violation of 14 CFR §91.13 (careless or reckless operation) on the theory that it is careless or reckless to violate any FAR. For continuing operations, the FAA may count them on a per-flight or per-day basis. For example, if an airplane made a dozen flights after an airworthiness directive (AD) was due but had not been performed, the operator could be fined \$1,501 per flight for the overdue AD plus \$1,501 per flight for a careless or reckless operation. In the alternative, if this situation was allowed to exist while the aircraft was operated over a period of thirty days, each day could count as a violation of each of these regulations. In either event the potential fine could quickly build to an astronomical number. If the violator is an air carrier or airport operator, multiply that result by ten.

According to the FAA, if unauthorized drone operations interfere with wildfire suppression, law enforcement, or emergency response efforts, those drone operators could face civil penalties that exceed \$20,000 and potential criminal prosecution.

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Some states have also enacted laws to this effect. Arizona, for example, has codified this in *ARS 13.3729*, wherein it is unlawful for a person to operate a model aircraft or a civil uncrewed aircraft if the operation interferes with a law enforcement, firefighter or emergency services operation.

#### **4. Summary Seizure of Aircraft.**

If the FAA charges you or your company with a violation and is concerned about your ability to pay such a fine, the agency also has the power to seize the aircraft involved and hold it until the fine is paid or bond is posted to cover the fine.

#### **5. Reexamination.**

If an accident, incident, or report of an FAR violation causes the FAA to be concerned about your competency, the FAA may require you to submit to reexamination in the area of concern. This may include a repetition of written, oral, flight, or other practical tests required for the certificate involved. The FAA must have some reasonable basis for requesting such reexamination, but if it does you have no right of appeal and *must* submit to reexamination, at your own expense.

If you do not submit to reexamination within a reasonable period of time, that in itself is an FAR violation for which the FAA may suspend or revoke your certificates. For example, if during IFR operations ATC observed you having some difficulty executing a published instrument approach procedure, wandering all over the sky, they might then require you to submit to another instrument flight test with concentration on instrument approach procedures as a condition of keeping your instrument rating. Before any reexamination, it is wise to spend some time with an instructor polishing your skills and updating your knowledge in the area in question.

Where an FAR violation caused the concern about your qualifications, the FAA can both require you to submit to reexamination and punish you for the violation by certificate action or fine. This is generally not considered to violate the constitutional prohibition against double jeopardy since the reexamination is not considered punishment. The *Pilot's Bill of Rights 2*, in addition to third class medical reform, clarified that pilots who are facing an FAA enforcement or certificate action can choose to appeal directly either to a U.S. district court or to the National Transportation Safety Board for a trial or full hearing. To ensure that certificate holders are given a fair chance to respond to a notification of an FAA investigation, the bill also required the agency to provide a specific description of the incident being investigated.