

SMALL BUSINESS ADMINISTRATION**[Declaration of Disaster #2949; Amendment #2]****State of Minnesota**

In accordance with notices from the Federal Emergency Management Agency, dated April 18, 1997, and April 22, 1997, the above-numbered Declaration is hereby amended to include the Counties of Cass, Clearwater, Douglas, McLeod, Otter Tail, Pope, Todd, and Wadena in the State of Minnesota as a disaster area due to damage caused by severe flooding, severe winter storms, snowmelt, high winds, rain, and ice beginning March 21, 1997 and continuing.

Any counties contiguous to the above-named primary counties have already been covered.

All other information remains the same, i.e., the deadline for filing applications for physical damage is June 7, 1997 and for economic injury the termination date is January 8, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 25, 1997.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 97-11551 Filed 5-2-97; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION**[Declaration of Disaster #2937; Amendment #4]****State of Tennessee**

In accordance with a notice from the Federal Emergency Management Agency, dated April 21, 1997, the above-numbered Declaration is hereby amended to include the Counties of Benton, Decatur, and De Kalb as a disaster area due to damages caused by heavy rain, tornadoes, flooding, hail and high winds beginning on February 28, 1997 and continuing through March 24, 1997.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Cannon, Perry, Putnam, Smith, Warren, Wayne, and White in the State of Tennessee. Any counties contiguous to the above-named primary counties and not listed herein have been covered under a separate declaration for the same occurrence.

All other information remains the same, i.e., the termination date for filing

applications for physical damage is May 6, 1997, and for loans for economic injury the deadline is December 8, 1997.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 25, 1997.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 97-11553 Filed 5-2-97; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION**[Declaration of Disaster #2946; Amendment #1]****State of Washington**

In accordance with a notice from the Federal Emergency Management Agency, dated April 21, 1997, the above-numbered Declaration is hereby amended to include the Counties of Clallam, Kitsap, Lincoln, Pacific, Pend Oreille, Snohomish, Spokane, Stevens, and Thurston in the State of Washington as a disaster area due to damages caused by heavy rains, snow melt, mud/landslides, and flooding beginning March 18 and continuing through March 28, 1997.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Adams, Ferry, Grant, Island, Okanogan, San Juan, Skagit, Wahkiakum, and Whitman in the State of Washington; Benewah, Bonner, Boundary, and Kootenai in the State of Idaho; and Clatsop in the State of Oregon. Any counties contiguous to the above-named primary counties and not listed herein have already been covered.

The economic injury numbers assigned to this disaster are: 945600 for Washington, 947800 for Idaho, and 947900 for Oregon.

All other information remains the same, i.e., the deadline for filing applications for physical damage is June 2, 1997 and for economic injury the termination date is January 2, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 25, 1997.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 97-11552 Filed 5-2-97; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Index of Administrator's Decisions and Orders in Civil Penalty Actions; Publication**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of publication.

SUMMARY: This notice constitutes the required quarterly publication of an index of the Administrator's decisions and orders in civil penalty cases. The FAA is publishing an index by order number, an index by subject matter, and case digests that contain identifying information about the final decisions and orders issued by the Administrator. Publication of these indexes and digests is intended to increase the public's awareness of the Administrator's decisions and orders. Also, the publication of these indexes and digests should assist litigants and practitioners in their research and review of decisions and orders that may have precedential value in a particular civil penalty action. Publication of the index by order number, as supplemented by the index by subject matter, ensures that the agency is in compliance with statutory indexing requirements.

FOR FURTHER INFORMATION CONTACT:

James S. Dillman, Assistant Chief Counsel for Litigation (AGC-400), Federal Aviation Administration, 400 7th Street, SW., Suite PL 200-A, Washington, DC 20590; telephone (202) 366-4118.

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act requires Federal agencies to maintain and make available for public inspection and copying current indexes containing identifying information regarding materials required to be made available or published. 5 U.S.C. 552(a)(2). In a notice issued on July 11, 1990, and published in the **Federal Register** (55 FR 29148; July 17, 1990), the FAA announced the public availability of several indexes and summaries that provide identifying information about the decisions and orders issued by the Administrator under the FAA's civil penalty assessment authority and the rules of practice governing hearings and appeals of civil penalty actions. 14 CFR Part 13, Subpart G.

The FAA maintains an index of the Administrator's decisions and orders in civil penalty actions organized by order number and containing identifying information about each decision or order. The FAA also maintains a subject

matter index, and digests organized by order number.

In a notice issued on October 26, 1990, The FAA published these indexes and digests for all decisions and orders issued by the Administrator through September 30, 1990, 55 FR 45984; October 31, 1990. The FAA announced in that notice that it would publish supplements to these indexes and digests on a quarterly basis (*i.e.*, in January, April, July, and October of each year). The FAA announced further in that notice that only the subject-matter index would be published cumulatively, and that both the order number index and the digests would be non-cumulative. Subsequently, the FAA announced that for the convenience of the users of these indexes, the order number indexes published in January would reflect all of the civil penalty decisions for the previous year. 58 FR 5044; 1/19/93.

The indexes of the Administrator's decisions and orders in civil penalty cases have been published as follows:

Dates of quarter	Federal Register publication
11/1/89–9/30/90 ..	55 FR 45984; 10/31/90.
10/1/90–12/31/90	56 FR 44886; 2/6/91.
1/1/91–3/31/91	56 FR 20250; 5/2/91.
4/1/91–6/30/91	56 FR 31984; 7/12/91.
7/1/91–9/30/91	56 FR 51735; 10/15/91.
10/1/91–12/31/91	57 FR 2299; 1/21/92.
1/1/92–3/31/92	57 FR 12359; 4/9/92.

Dates of quarter	Federal Register publication
4/1/92–6/30/92	57 FR 32825; 7/23/92.
7/1/92–9/30/92	57 FR 48255; 10/22/92.
10/1/92–12/31/92	58 FR 5044; 1/19/93.
1/1/93–3/31/93	58 FR 21199; 4/19/93.
4/1/93–6/30/93	58 FR 42120; 8/6/93.
7/1/93–9/30/93	58 FR 58218; 10/29/93.
10/1/93–12/31/93	59 FR 5466; 2/4/94.
1/1/94–3/31/94	59 FR 22196; 4/29/94.
4/1/94–6/30/94	59 FR 39618; 8/3/94.
7/1/94–12/31/94 ..	60 FR 4454; 1/23/95.
1/1/95–3/31/95	60 FR 19318; 4/17/95.
4/1/95–6/30/95	60 FR 36854; 7/18/95.
7/1/95–9/30/95	60 FR 53228; 10/12/95.
10/1/95–12/31/95	61 FR 1972; 1/24/96.
1/1/96–3/31/96	61 FR 16955; 4/18/96.
4/1/96–6/30/96	61 FR 37526; 7/18/96.
7/1/96–9/30/96	61 FR 54833; 10/22/96.
10/1/96–12/31/96	62 FR 2434; 1/16/97.

The civil penalty decisions and orders have been published by commercial publishers (Hawkins Publishing Company and Clark Boardman Callahan) and are available on computer on-line services (Westlaw, LEXIS, Compuserve and FedWorld). (Information about these commercial publications and computer databases is provided at the end of this notice.) Also, the Administrator's final decision and orders, indexes, and digests are available for public inspection and copying at all FAA legal offices. (The addresses of the FAA legal offices are listed at the end of this notice.)

Civil Penalty Actions—Orders Issued by the Administrator

Order Number Index

(This index includes all decisions and orders issued by the Administrator from January 1, 1997, to March 31, 1997.)

- 91–1 Midtown Neon Sign Corp.
1/8/97 CP94EA0057
- 92–2 Sanford Air
1/8/97 CP95NE0301
- 97–3 [Airport Operator]
1/8/97 CP94**0032
- 97–4 [Airport Operator]
1/14/97 CP96**0043
- 97–5 Westair Commuter Airlines
d/b/a/ United Express
1/31/97 CP96WP0102
- 97–6 WRA, Inc.
2/7/97 CP95EA0193
- 97–7 Ronald Victor Stalling
2/20/97 CP96WP0083
- 97–8 Pacific Aviation d/b/a/ Inter-
Island Helicopters
2/20/97 CP95WP0049
- 97–9 Alphin Aircraft, Inc.
2/20/97 CP93EA0334
- 97–10 Alphin Aircraft, Inc.
2/20/97 CP94EA0183
- 97–11 Hampton Air Transport
Systems, Inc.
2/20/97 CP94EA0194
- 97–12 David H. Mayer
2/20/97 CP95NM0122
- 97–13 Westair Commuter Airlines, Inc.
2/26/97 CP96WP0102

Civil Penalty Actions—Orders Issued by the Administrator

Subject Matter Index

(Current as of March 31, 1997)

Administrative Law Judges—Power and Authority:

Authority to extend deadlines	95–28 Atlantic.
Continuance of hearing	91–11 Continental Airlines; 92–29 Haggland.
Credibility findings	90–21 Carroll; 92–3 Park; 93–17 Metcalf; 94–3 Valley Air; 94–4 Northwest Aircraft Rental; 95–25 Conquest; 95–26 Hereth.
Default Judgment	91–11 Continental Airlines; 92–47 Cornwall; 94–8 Nunez; 94–22 Harkins; 94–28 Toyota; 95–10 Diamond.
Discovery	89–6 American Airlines; 91–17 KDS Aviation; 91–54 Alaska Airlines; 92–46 Sutton-Sautter; 93–10 Costello.
Expert Testimony	94–21 Sweeney.
Granting extensions of time	90–27 Gabbert.
Hearing location	92–50 Cullop.
Hearing request	93–12 Langton; 94–6 Strohl; 94–27 Larsen; 94–37 Houston; 95–19 Rayner.
Initial Decision	92–1 Costello; 92–32 Barnhill.
Jurisdiction:	
Generally	90–20 Degenhardt; 90–33 Cato; 92–1 Costello; 92–32 Barnhill.
After issuance of order assessing civil penalty	94–37 Houston; 95–19 Rayner.
After complaint withdrawn	94–39 Kirola.
Motion for Decision	92–73 Wyatt; 92–75 Beck; 92–76 Safety Equipment; 93–11 Merkley; 96–24 Horizon.
Notice of Hearing	92–31 Eaddy.
Sanction	90–37 Northwest Airlines; 91–54 Alaska Airlines; 94–22 Harkins; 94–28 Toyota.
Vacate initial decision	90–20 Degenhardt; 92–32 Barnhill; 95–6 Sutton.
Aerial Photography	95–25 Conquest Helicopters.
Agency Attorney	93–13 Medel.
Air Carrier:	
Agent/independent contractor of	92–70 USAir.

Careless or Reckless	92-48 & 92-70 USAir; 93-18 Westair Commuter.
Duty of care:	
Non-delegable	92-70 USAir; 96-16 Westair Commuter; 96-24 Horizon; 97-8 Pacific Av. d/b/a Inter-Island Helicopter.
Employee	93-18 Westair Commuter; 97-8 Pacific Av. d/b/a Inter-Island Helicopters.
Ground Security Coordinator, Failure to provide	96-16 WestAir Commuter.
Aircraft Maintenance (see also Airworthiness, Maintenance Manual):	
Generally	90-11 Thunderbird Accessories; 91-8 Watts Agricultural Aviation; 93-36 & 94-3 Valley Air; 94-38 Bohan; 95-11 Horizon; 96-3 America West Airlines; 97-8 Pacific Av. d/b/a Inter-Island Helicopters; 97-9 Alphin; 97-10 Alphin; 97-11 Hampton.
Acceptable methods, techniques, and practices	96-3 America West Airlines.
After certificate revocation	92-73 Wyatt.
Airworthiness Directive, compliance with	96-18 Kilrain; 97-9 Alphin.
Inspection	96-18 Kilrain; 97-10 Alphin.
Major/minor repairs	96-3 America West Airlines Hampton.
Minimum Equipment List (MEL)	94-38 Bohan; 95-11 Horizon; 97-11 Hampton.
Aircraft Records:	
Aircraft Operation	91-8 Watts Agricultural Aviation.
Flight and Duty Time	96-4 South Aero.
Maintenance Records	91-8 Watts Agricultural Aviation; 94-2 Woodhouse.
"Yellow tags"	91-8 Watts Agricultural Aviation.
Aircraft-Weight and Balance (See Weight and Balance)	
Airmen:	
Pilots	91-12 & 91-31 Terry & Menne; 92-8 Watkins; 92-49 Richardson & Shimp; 93-17 Metcalf.
Altitude deviation	92-49 Richardson & Shimp.
Careless or Reckless	91-12 & 91-31 Terry & Menne; 92-8 Watkins; 92-49 Richardson & Shimp; 92-47 Cornwall; 93-17 Metcalf; 93-29 Sweeney; 96-17 Fenner.
Flight time limitations	93-11 Merkley.
Follow ATC Instruction	91-12 & 91-31 Terry & Menne; 92-8 Watkins; 92-49 Richardson & Shimp.
Low Flight	92-47 Cornwall; 93-17 Metcalf.
Owner's responsibility	96-17 Fenner.
See and Avoid	93-29 Sweeney.
Air Operations Area (AOA):	
Air Carrier:	
Responsibilities	90-19 Continental Airlines; 91-33 Delta Air Lines; 94-1 Delta Air Lines.
Airport Operator:	
Responsibilities	90-19 Continental Airlines; 91-4 [Airport Operator]; 91-18 [Airport Operator]; 91-40 [Airport Operator]; 91-41 [Airport Operator]; 91-58 [Airport Operator]; 96-1 [Airport Operator].
Badge Display	91-4 [Airport Operator]; 91-33 Delta Air Lines.
Definition of	90-19 Continental Airlines; 91-4 [Airport Operator]; 91-58 [Airport Operator].
Exclusive Areas	90-19 Continental Airlines; 91-4 [Airport Operator]; 91-58 [Airport Operator].
Airport Security Program (ASP):	
Compliance with	91-4 [Airport Operator]; 91-18 [Airport Operator]; 91-40 [Airport Operator]; 91-41 [Airport Operator]; 91-58 [Airport Operator]; 94-1 Delta Air Lines; 96-1 [Airport Operator].
Airport Operator:	
Responsibilities	90-12 Continental Airlines; 91-4 [Airport Operator]; 91-18 [Airport Operator]; 91-40 [Airport Operator]; 91-41 [Airport Operator]; 91-58 [Airport Operator]; 96-1 [Airport Operator].
Air Traffic Control (ATC):	
Error as mitigating factor	91-12 & 91-31 Terry & Menne.
Error as exonerating factor	91-12 & 91-31 Terry & Menne; 92-40 Wendt.
Ground Control	91-12 Terry & Menne; 93-18 Westair Commuter.
Local Control	91-12 Terry & Menne.
Tapes & Transcripts	91-12 Terry & Menne; 92-49 Richardson & Shimp.
Airworthiness	91-8 Watts Agricultural Aviation; 92-10 Flight Unlimited; 92-48 & 92-70 USAir; 94-2 Woodhouse; 95-11 Horizon; 96-3 America West Airlines; 96-18 Kilrain; 94-25 USAir; 97-8 Pacific Av. d/b/a Inter-Island Helicopters; 97-9 Alphin; 97-10 Alphin; 97-11 Hampton.
Amicus Curiae Briefs	90-25 Gabbert.
Answer:	
Timeliness of answer	90-3 Metz; 90-15 Playter; 92-32 Barnhill; 92-47 Cornwall; 92-75 Beck; 92-76 Safety Equipment; 94-5 Grant; 94-29 Sutton; 94-30 Columna; 94-43 Perez; 95-10 Diamond; 95-28 Atlantic.
What constitutes	92-32 Barnhill; 92-75 Beck.
Appeals (See also Timeliness; Mailing Rule):	

Briefs, Generally	89-4 Metz; 91-45 Park; 92-17 Giuffrida; 92-19 Cornwall; 92-39 Beck; 93-24 Steel City Aviation; 93-28 Strohl; 94-23 Perez; 95-13 Kilrain.
Additional Appeal Brief	92-3 Park; 93-5 Wendt; 93-6 Westair Commuter; 93-28 Strohl; 94-4 Northwest Aircraft; 94-18 Luxemburg; 94-29 Sutton.
Appeal dismissed as premature	95-19 Rayner.
Appeal dismissed as moot after complaint withdrawn	92-9 Griffin.
Appellate arguments	92-70 USAir.
Court of Appeals, appeal to (See Federal Courts)	
"Good Cause" for Late-Filed Brief or Notice of Appeal	90-3 Metz; 90-17 Gabbert; 90-39 Hart; 91-10 Graham; 91-24 Esau; 91-48 Wendt; 91-50 & 92-1 Costello; 92-3 Park; 92-17 Giuffrida; 92-39 Beck; 92-41 Moore & Sabre Associates; 92-52 Beck; 92-57 Detroit Metro Wayne Co. Airport; 92-69 McCabe; 93-23 Allen; 93-27 Simmons; 93-31 Allen; 95-2 Meronek; 95-9 Woodhouse; 95-25 Conquest, 97-6 WRA Inc.; 97-7 Stalling.
Motion to Vacate construed as a brief	91-11 Continental Airlines.
Perfecting an Appeal, generally	92-17 Giuffrida; 92-19 Cornwall; 92-39 Beck; 94-23 Perez; 95-13 Kilrain; 96-5 Alphin Aircraft.
Extension of Time for (good cause for)	89-8 Thunderbird Accessories; 91-26 Britt Airways; 91-32 Bargaen; 91-50 Costello; 93-2 & 93-3 Wendt; 93-24 Steel City Aviation; 93-32 Nunez.
Failure to	89-1 Gressani; 89-7 Zenkner; 90-11 Thunderbird Accessories; 90-35 P. Adams; 90-39 Hart; 91-7 Pardue; 91-10 Graham; 91-20 Bargaen; 91-43, 91-44, 91-46 & 91-47 Delta Air Lines; 92-11 Alilin; 92-15 Dillman; 92-18 Bargaen; 92-34 Carrell; 92-35 Bay Land Aviation; 92-36 Southwest Airlines; 92-45 O'Brien; 92-56 Montauk Caribbean Airways; 92-67 USAir; 92-68 Weintraub; 92-78 TWA; 93-7 Dunn; 93-8 Nunez; 93-20 Smith; 93-23 & 93-31 Allen; 93-34 Castle Aviation; 93-35 Steel City Aviation; 94-12 Bartusiak; 94-24 Page; 94-26 French Aircraft; 94-34 American International Airways; 94-35 American International Airways; 94-36 American International Airways; 95-4 Hanson; 95-22 & 96-5 Alphin Aircraft; 96-2 Skydiving Center; 96-13 Winslow; 97-3 [Airport Operator], 97-6 WRA, Inc.
Notice of appeal construed as appeal brief	92-39 Beck; 94-15 Columna; 95-9 Woodhouse; 95-23 Atlantic World Airways; 96-20 Missirlian; 97-2 Sanford Air.
What Constitutes	90-4 Metz; 90-27 Gabbert; 91-45 Park; 92-7 West; 92-17 Giuffrida; 92-39 Beck; 93-7 Dunn; 94-15 Columna; 94-23 Perez; 94-30 Columna; 95-9 Woodhouse; 95-23 Atlantic World Airways; 96-20 Missirlian; 97-2 Sanford Air.
Service of brief:	
Failure to serve other party	92-17 Giuffrida; 92-19 Cornwall.
Timeliness of Notice of Appeal	90-3 Metz; 90-39 Hart; 91-50 Costello; 92-7 West; 92-69 McCabe; 93-27 Simmons; 95-2 Meronek; 95-9 Woodhouse; 95-15 Alphin Aviation; 96-14 Midtown Neon Sign Corp; 97-7 Stalling.
Withdrawal of	89-2 Lincoln-Walker; 89-3 Sittko; 90-4 Nordrum; 90-5 Sussman; 90-6 Dabaghian; 90-7 Steele; 90-8 Jenkins; 90-9 Van Zandt; 90-13 O'Dell; 90-14 Miller; 90-28 Puleo; 90-29 Sealander; 90-30 Steidinger; 90-34 D. Adams; 90-40 & 90-41 Westair Commuter Airlines; 91-1 Nestor; 91-5 Jones; 91-6 Lowery; 91-13 Kremer; 91-14 Swanton; 91-15 Knipe; 91-16 Lopez; 91-19 Bayer; 91-21 Britt Airways; 91-22 Omega Silicone Co.; 91-23 Continental Airlines; 91-25 Sanders; 91-27 Delta Air Lines; 91-28 Continental Airlines; 91-29 Smith; 91-34 GASPRO; 91-35 M. Graham; 91-36; Howard; 91-37 Vereen; 91-39 America West; 91-42 Pony Express; 91-49 Shields; 91-56 Mayhan; 91-57 Britt Airways; 91-59 Griffin; 91-60 Brinton; 92-2 Koller; 92-4 Delta Air Lines; 92-6 Rothgeb; 92-12 Bertetto; 92-20 Delta Air Lines; 92-21 Cronberg; 92-22, 92-23, 92-24, 92-25, 92-26 & 92-28 Delta Air Lines; 92-33 Port Authority of NY & NJ; 92-42 Jayson; 92-43 Delta Air Lines; 92-44 Owens; 92-53 Humble; 92-54 & 92-55 Northwest Airlines; 92-60 Costello; 92-61 Romerdahl; 92-62 USAir; 92-63 Schaefer; 92-64 & 92-65 Delta Air Lines; 92-66 Sabre Associates & Moore; 92-79 Delta Air Lines; 93-1 Powell & Co.; 93-4 Harrah; 93-14 Fenske; 93-15 Brown; 93-21 Delta Air Lines; 93-22 Yannotone; 93-26 Delta Air Lines; 93-33 HPH Aviation; 94-9 B&G Instruments; 94-10 Boyle; 94-11 Pan American Airways; 94-13 Boyle; 94-14 B&G Instruments; 94-16 Ford; 94-33 Trans World Airlines; 94-41 Dewey Towner; 94-42 Taylor; 95-1 Diamond Aviation; 95-3 Delta Air Lines; 95-5 Araya; 95-6 Sutton; 95-7 Empire Airlines; 95-20 USAir; 95-21 Faisca; 95-24 Delta Air Lines; 96-7 Delta Air Lines; 96-8 Empire Airlines; 96-10 USAir; 96-11 USAir, 96-12 USAir; 96-21 Houseal; 97-4 [Airport Operator]; 97-5 WestAir.
Assault (see also Passenger Misconduct)	96-6 Ignatov.
"Attempt"	89-5 Schultz.

Attorneys:	
No right to assigned counsel (see Due Process)	
Attorney Conduct:	
Obstreperous or Disruptive	94-39 Kirola.
Attorney Fees (See EAJA)	
Aviation Safety Reporting System	90-39 Hart; 91-12 Terry & Menne; 92-49 Richardson & Shimp.
Balloon (Hot Air)	94-2 Woodhouse.
Bankruptcy	91-2 Continental Airlines.
Battery	96-6 Ignatov.
Certificates and Authorizations:	
Surrender when revoked	92-73 Wyatt.
Civil Air Security National Airport Inspection Program (CASNAIP) ..	91-4 [Airport Operator]; 91-18 [Airport Operator]; 91-40 [Airport Operator]; 91-41 [Airport Operator]; 91-58 [Airport Operator].
Civil Penalty Amount (See Sanction)	
Closing Argument (See Final Oral Argument)	
Collateral Estoppel	91-8 Watts Agricultural Aviation.
Complaint:	
Complainant Bound By	90-10 Webb; 91-53 Koller.
No Timely Answer to (See Answer)	
Partial Dismissal/Full Sanction	94-19 Pony Express; 94-40 Polynesian Airways.
Timeliness of complaint	91-51 Hagwood; 93-13 Medel; 94-7 Hereth; 94-5 Grant.
Withdrawal of	94-39 Kirola; 95-6 Sutton.
Compliance & Enforcement Program:	
FAA Order No. 2150.3A)	89-5 Schultz; 89-6 American Airlines; 92-38 Esau; 92-5 Delta Air Lines.
Compliance/Enforcement Bulletin 92-3	96-19 [Air Carrier].
Sanction Guidance Table	89-5 Schultz; 90-23 Broyles; 90-33 Cato; 90-37 Northwest Airlines; 91-3 Lewis; 92-5 Delta Air Lines.
Concealment of Weapons (See Weapons Violations)	
Consolidation of Cases	90-12, 90-18 & 90-19 Continental Airlines.
Constitutionality of Regulations (See also Double Jeopardy)	90-12 Continental Airlines; 90-18 Continental Airlines; 90-19 Continental Airlines; 90-37 Northwest Airlines; 96-1 [Airport Operator]; 96-25 USAir.
Continuance of Hearing	90-25 Gabbert; 92-29 Haggland.
Corrective Action (See Sanction)	
Credibility of Witnesses:	
Generally	95-25 Conquest Helicopters; 95-26 Hereth.
Bias	97-9 Alphin.
Defer To ALJ determination of	90-21 Carroll; 92-3 Park; 93-17 Metcalf; 95-26 Hereth.
Expert witnesses (See also Witnesses)	90-27 Gabbert; 93-17 Metcalf; 96-3 America West Airlines.
Impeachment	94-4 Northwest Aircraft Rental.
De facto answer	92-32 Barnhill.
Deliberative Process Privilege	89-6 American Airlines; 90-12, 90-18 & 90-19 Continental Airlines.
Deterrence	89-5 Schultz; 92-10 Flight Unlimited; 95-16 Mulhall; 95-17 Larry's Flying Service; 97-11 Hampton.
Discovery:	
Deliberative Process Privilege	89-6 American Airlines; 90-12, 90-18 & 90-19 Continental Airlines.
Depositions, generally	91-54 Alaska Airlines.
Notice of deposition	91-54 Alaska Airlines.
Failure to Produce	90-18 & 90-19 Continental Airlines; 91-17 KDS Aviation; 93-10 Costello.
Sanction for	91-17 KDS Aviation; 91-54 Alaska Airlines.
Regarding Unrelated Case	92-46 Sutton-Sautter.
Double Jeopardy	95-8 Charter Airlines; 96-26 Midtown.
Due Process:	
Generally	89-6 American Airlines; 90-12 Continental Airlines; 90-37 Northwest Airlines; 96-1 [Airport Operator]; 97-8 Pacific Av. d/b/a Inter-Island Helicopters.
Before finding a violation	90-27 Gabbert.
Multiple violations	96-26 Midtown; 97-9 Alphin.
No right to assigned counsel	97-8 Pacific Av. d/b/a Inter-Island Helicopters; 97-9 Alphin.
Violation of	89-6 American Airlines; 90-12 Continental Airlines; 90-37 Northwest Airlines; 96-1 [Airport Operator]; 97-8 Pacific Av. d/b/a Inter-Island Helicopters.
EAJA:	
Adversary Adjudication	90-17 Wilson; 91-17 & 91-52 KDS Aviation; 94-17 TCI; 95-12 Toyota.
Amount of award	95-27 Valley Air.
Appeal from ALJ decision	95-9 Woodhouse.
Expert witness fees	95-27 Valley Air.
Final disposition	96-22 Woodhouse.
Further proceedings	91-52 KDS Aviation.
Jurisdiction over appeal	92-74 Wendt; 96-22 Woodhouse.
Late-filed application	96-22 Woodhouse.

Other expenses	93-29 Sweeney.
Position of agency	95-27 Valley Air.
Prevailing party	91-52 KDS Aviation.
Special circumstances	95-18 Pacific Sky.
Substantial justification	91-52 & 92-71 KDS Aviation; 93-9 Wendt; 95-18 Pacific Sky; 95-27 Valley Air; 96-15 Valley Air.
Supplementing the application	95-27 Valley Air.
Evidence (See Proof & Evidence)	
Ex Parte Communications	93-10 Costello; 95-16 Mulhall; 95-19 Rayner.
Expert Witnesses (See Witness)	
Extension of Time:	
By Agreement of Parties	89-6 American Airlines; 92-41 Moore & Sabre Associates.
Dismissal by Decisionmaker	89-7 Zenkner; 90-39 Hart.
Good Cause for	89-8 Thunderbird Accessories.
Objection to	89-8 Thunderbird Accessories; 93-3 Wendt.
Who may grant	90-27 Gabbert.
Federal Courts	92-7 West; 97-1 Midtown Neon Sign.
Federal Rules of Civil Procedure	91-17 KDS Aviation.
Federal Rules of Evidence (See also Proof & Evidence):	
Admissions	96-25 USAir.
Settlement Offers	95-16 Mulhall; 96-25 USAir.
Subsequent Remedial Measures	96-24 Horizon; 96-25 USAir.
Final Oral Argument	92-3 Park.
Firearms (See Weapons)	
Ferry Flights	95-8 Charter Airlines.
Flight & Duty Time:	
Circumstances beyond crew's control:	
Generally	95-8 Charter Airlines.
Foreseeability	95-8 Charter Airlines.
Late freight	95-8 Charter Airlines.
Weather	95-8 Charter Airlines.
Competency check flights	96-4 South Aero.
Limitation of Duty Time	95-8 Charter Airlines; 96-4 South Aero.
Limitation of Flight Time	95-8 Charter Airlines.
"Other commercial flying"	95-8 Charter Airlines.
Flights	94-20 Conquest Helicopters.
Freedom of Information Act	93-10 Costello.
Fuel Exhaustion	95-26 Hereth.
Guns (See Weapons)	
Ground Security Coordinator (See also Air Carrier; Standard Security Program):	
Failure to provide	96-16 WestAir Commuter.
Hazardous Materials:	
transportation of, generally	90-37 Northwest Airlines; 92-76 Safety Equipment; 92-77 TCI; 94-19 Pony Express; 94-28 Toyota; 94-31 Smalling; 95-12 Toyota; 95-16 Mulhall; 96-26 Midtown.
Civil Penalty, generally	92-77 TCI; 94-28 Toyota; 94-31 Smalling; 95-16 Mulhall; 96-25 Midtown.
Corrective Action	92-77 TCI; 94-28 Toyota.
Culpability	92-77 TCI; 94-28 Toyota; 94-31 Smalling.
Financial hardship	95-16 Mulhall.
Installment plan	95-16 Mulhall.
First-time violation	92-77 TCI; 94-28 Toyota; 94-31 Smalling.
Gravity of violation	92-77 TCI; 94-28 Toyota; 94-31 Smalling; 96-26 Midtown.
Minimum penalty	95-16 Mulhall.
Criminal Penalty	92-77 TCI; 94-31 Smalling.
EAJA, applicability of	94-17 TCI; 95-12 Toyota.
Individual violations	95-16 Mulhall.
Judicial review	97-1 Midtown Neon Sign.
Knowingly	92-77 TCI; 94-19 Pony Express; 94-31 Smalling.
Informal Conference	94-4 Northwest Aircraft Rental.
Initial Decision:	
What constitutes	92-32 Barnhill.
Interference with crewmembers (see Passenger Misconduct; Assault)	92-3 Park; 96-6 Ignatov; 97-12 Mayer.
Interlocutory Appeal	89-6 American Airlines; 91-54 Alaska Airlines; 93-37 Airspect; 94-32 Detroit Metropolitan.
Inter alia FAA Policy &/or Procedures	89-6 American Airlines; 90-12 Continental Airlines; 92-73 Wyatt.
Jurisdiction:	
After initial decision	90-20 Degenhardt; 90-33 Cato; 92-32 Barnhill; 93-28 Strohl.
After Order Assessing Civil Penalty	94-37 Houston; 95-19 Rayner.
After withdrawal of complaint	94-39 Kirola.
\$50,000 Limit	90-12 Continental Airlines.
EAJA cases	92-74 Wendt; 96-22 Woodhouse.
HazMat cases	92-76 Safety Equipment.
NTSB	90-11 Thunderbird Accessories.
Knowledge of concealed weapon (See also Weapons Violation)	89-5 Schultz; 90-20 Degenhardt.

Laches (See Unreasonably Delay):	
Mailing Rules, generally	89-7 Zenkner; 90-3 Metz; 90-11 Thunderbird Accessories; 90-39 Hart.
Overnight express delivery	89-6 American Airlines.
Maintenance (See Aircraft Maintenance):	
Maintenance Instruction	93-36 Valley Air.
Maintenance Manual	90-11 Thunderbird Accessories; 96-25 USAir.
Air carrier maintenance manual	96-3 America West Airlines.
Approved/accepted repairs	96-3 America West Airlines.
Manufacturer's maintenance manual	96-3 America West Airlines.
Minimum Equipment List (MEL) (See Aircraft Maintenance):	
Mootness, appeal dismissed as moot	92-9 Griffin; 94-17 TCI.
National Aviation Safety Inspection Program (NASIP)	90-16 Rocky Mountain
National Transportation Safety Board:	
Administrator not bound by NTSB case law	91-12 Terry & Menne; 92-49 Richardson & Shimp; 93-18 Westair Commuter.
Lack of Jurisdiction	90-11 Thunderbird Accessories; 90-17 Wilson; 92-74 Wendt.
Notice of Hearing:	
Receipt	92-31 Eaddy.
Notice of Proposed Civil Penalty:	
Initiates Action	91-9 Continental Airlines.
Signature of agency attorney	93-12 Langton.
Withdrawal of	90-17 Wilson.
Operate, generally	91-12 & 91-31 Terry & Menne; 93-18 Westair Commuter; 96-17 Fenner.
Responsibility of aircraft owner/operator for actions of pilot	96-17 Fenner.
Oral Argument before Administrator on appeal:	
Decision to hold	92-16 Wendt.
Instructions for	92-27 Wendt.
Order Assessing Civil Penalty:	
Appeal from	92-1 Costello; 95-19 Rayner.
Timeliness of request for hearing	95-19 Rayner.
Withdrawal of	89-4 Metz; 90-16 Rocky Mountain; 90-22 USAir; 95-19 Rayner; 97-7 Stalling.
Parts Manufacturer Approval (PMA):	
Failure to obtain	93-19 Pacific Sky Supply.
Passenger Misconduct	92-3 Park.
Assault	96-6 Ignatov; 97-12 Mayer.
Interference with a crewmember	96-6 Ignatov; 97-12 Mayer.
Smoking	92-37 Giuffrida.
Stowing carry-on items	97-12 Mayer.
Penalty (See Sanction; Hazardous Materials)	
Person	93-18 Westair Commuter.
Proof & Evidence (See also Federal Rules of Evidence):	
Affirmative Defense	92-13 Delta Air Lines; 92-72 Giuffrida.
Burden of Proof	90-26 & 90-43 Waddell; 91-3 Lewis; 91-30 Trujillo; 92-13 Delta Air Lines; 92-72 Giuffrida; 93-29 Sweeney.
Circumstantial Evidence	90-12, 90-19 & 91-9 Continental Airlines; 93-29 Sweeney; 96-3 America West Airlines; 97-10 Alphin; 97-11 Hampton.
Credibility (See Administrative Law Judges; Credibility of Witnesses)	
Criminal standard rejected	91-12 Terry & Menne.
Closing Arguments (See also Final Oral Argument)	94-20 Conquest Helicopters.
Extra-record material	95-96 Hereth; 96-24 Horizon.
Hearsay	92-72 Giuffrida.
Preponderance of evidence	90-11 Thunderbird Accessories; 90-12 Continental Airlines; 91-12 & 91-31 Terry & Menne; 92-72 Giuffrida.
Presumption that message on ATC tape is received as transmitted.	91-12 Terry & Menne; 92-49 Richardson & Shimp.
Presumption that a gun is deadly or dangerous	90-26 Waddell; 91-30 Trujillo.
Presumption that owner gave pilot permission	96-17 Fenner.
Prima Facie case	95-25 Hereth; 96-3 America West.
Settlement offer	95-16 Mulhall; 96-25 USAir.
Subsequent remedial measures	96-24 Horizon; 96-25 USAir.
Substantial evidence	92-72 Giuffrida.
Prima Facie Case (See also Proof & Evidence)	95-26 Hereth; 96-3 America West Airlines.
Pro Se Parties:	
Special Considerations	90-11 Thunderbird Accessories; 90-3 Metz; 95-25 Conquest.
Prosecutorial Discretion	89-6 American Airlines; 90-23 Broyles; 90-38 Continental Airlines; 91-41 [Airport Operator]; 92-46 Sutton-Sautter; 92-73 Wyatt; 95-17 Larry's Flying Service.
Reconsideration:	
Denied by ALJ	89-4 & 90-3 Metz.
Granted by ALJ	92-32 Barnhill.
Petition based on new material	96-23 Kilrain.
Repetitious petitions	96-9 [Airport Operator].

Stay of Order Pending	90-31 Carroll; 90-32 Continental Airlines.
Redundancy, enhancing safety	97-11 Hampton.
Remand	89-6 American Airlines; 90-16 Rocky Mountain; 90-24 Bayer; 91-51 Hagwood; 91-54 Alaska Airlines; 92-1 Costello; 92-76 Safety Equipment; 94-37 Houston.
Repair Station	90-11 Thunderbird Accessories; 92-10 Flight Unlimited; 94-2 Woodhouse; 97-9 Alphin; 97-10 Alphin.
Request for Hearing	94-37 Houston; 95-19 Rayner.
Constructive withdrawal of	97-7 Stalling.
Rules of Practice (14 CFR Part 13, Subpart G):	
Applicability of	90-12, 90-18 & 90-19 Continental Airlines; 91-17 KDS Aviation.
Challenges to	90-12, 90-18 & 90-19 Continental Airlines; 90-21 Carroll; 90-37 Northwest Airlines.
Effect of Changes in	90-21 Carroll; 90-22 USAir; 90-38 Continental Airlines.
Initiation of Action	91-9 Continental Airlines.
Runway incursions	92-40 Wendt; 93-18 Westair Commuter.
Sanction:	
Ability to Pay	89-5 Schultz; 90-10 Webb; 91-3 Lewis; 91-38 Esau; 92-10 flight Unlimited; 92-32 Barnhill; 92-37 & 92-72 Giuffrida; 92-38 Cronberg; 92-46 Sutton-Sautter; 92-51 Koblick; 93-10 Costello; 94-4 Northwest Aircraft Rental; 94-20 Conquest Helicopters; 95-16 Mulhall; 95-17 Larry's Flying Service; 97-8 Pacific Av. d/b/a Inter-Island Helicopter; 97-11 Hampton.
Agency policy:	
ALJ Bound by	90-37 Northwest Airlines; 92-46 Sutton-Sautter; 96-19 [Air Carrier].
Statements of (e.g., FAA Order 2150.3A, Sanction Guidance Table, memoranda pertaining to)	90-19 Continental Airlines; 90-23 Broyles; 90-33 Cato; 90-37 Northwest Airlines; 92-46 Sutton-Sautter; 96-4 South Aero; 96-19 [Air Carrier]; 96-25 USAir.
Consistency with Precedent	96-6 Ignatov; 96-26 Midtown.
But when precedent is based on superceded sanction policy	96-19 [Air Carrier].
Corrective Action	91-18 [Airport Operator]; 91-40 [Airport Operator]; 91-41 [Airport Operator]; 92-5 Delta Air Lines; 93-18 Westair Commuter; 94-28 Toyota; 96-4 South Aero; 96-19 [Air Carrier].
Discovery (See Discovery)	
Factors to consider	89-5 Schultz; 90-23 Broyles; 90-37 Northwest Airlines; 91-3 Lewis; 91-18 [Airport Operator]; 91-40 [Airport Operator]; 91-41 [Airport Operator]; 92-10 Flight Unlimited; 92-46 Sutton-Sautter; 92-51 Koblick; 94-28 Toyota; 95-11 Horizon; 96-19 [Air Carrier]; 96-26 Midtown.
First-Time Offenders	89-5 Schultz; 92-5 Delta Air Lines; 92-51 Koblick.
HazMat (See Hazardous Materials)	
Inexperience	92-10 Flight Unlimited.
Installment Payments	95-16 Mulhall; 95-17 Larry's Flying Service.
Maintenance	95-11 Horizon; 96-3 America West Airlines; 97-8 Pacific Av. d/b/a Inter-Island Helicopters; 97-9 Alphin; 97-10 Alphin; 97-11 Hampton.
Maximum	90-10 Webb; 91-53 Koller; 96-19 [Air Carrier].
Minimum (HazMat)	95-16 Mulhall; 96-26 Midtown.
Modified	89-5 Schultz; 90-11 Thunderbird Accessories; 91-38 Esau; 92-10 Flight Unlimited; 92-13 Delta Air Lines, 92-32 Barnhill.
Partial Dismissal of Complaint/Full Sanctions (See also Complaint).	94-19 Pony Express; 94-40 Polynesian Airways.
Sanctions in specific cases:	
Unairworthy aircraft	97-8 Pacific Av. d/b/a Inter-Island Helicopters; 97-9 Alphin.
Passenger Misconduct	97-12 Mayer.
Pilot Deviation	92-8 Watkins.
Test object detection	90-18 & 90-19 Continental Airlines; 96-19 [Air Carrier].
Unauthorized access	90-19 Continental Airlines; 90-37 Northwest Airlines; 94-1 Delta Air Lines.
Weapons violations	90-23 Broyles; 90-33 Cato; 91-3 Lewis; 91-38 Esau; 92-32 Barnhill; 92-46 Sutton-Sautter; 92-51 Koblick; 94-5 Grant.
Screening of Persons:	
Air Carrier failure to detect weapon:	
Sanction	94-44 American Airlines
Entering Sterile Areas	90-24 Bayer; 92-58 Hoedl
Security (See Screening of Persons, Standard Security Program, Test Object Detection, Unauthorized Access, Weapons Violations):	
Sealing of Record	97-13 Westair Commuter
Separation of Functions	90-12 Continental Airlines; 90-18 Continental Airlines; 90-19 Continental Airlines; 90-21 Carroll; 90-38 Continental Airlines; 93-13 Medel
Service (See also Mailing Rule; Receipt):	
Of NPCP	90-22 USAir.
Of FNPCP	93-13 Medel.
Receipt of document sent by mail	92-31 Eaddy.

Return of certified mail	97-7 Stalling.
Valid Service	92-18 Bargaen.
Settlement	91-50 & 92-1 Costello; 95-16 Mulhall.
Smoking	92-37 Giuffrida; 94-18 Luxemburg.
Standard Security Program (SSP):	
Compliance with	90-12, 90-18 & 90-19 Continental Airlines; 91-33 Delta Air Lines; 91-55 Continental Airlines; 92-13 & 94-1 Delta Air Lines; 96-19 [Air Carrier].
Ground Security Coordinator	96-16 Westair Commuter.
Stay of Orders	90-31 Carroll; 90-32 Continental Airlines.
Pending judicial review	95-14 Charter Airlines.
Strict Liability	89-5 Schultz; 90-27 Gabbert; 91-18 [Airport Operator]; 91-40 [Airport Operator]; 91-58 [Airport Operator].
Test Object Detection	90-12, 90-18, 90-19, 91-9 & 91-55 Continental Airlines; 92-13 Delta Air Lines; 96-19 [Air Carrier].
Proof of violation	90-18, 90-19 & 91-9 Continental Airlines; 92-13 Delta Air Lines.
Sanction	90-18 & 90-19 Continental Airlines; 96-19 [Air Carrier].
Timeliness (See also Complaint; Mailing Rule; and Appeals):	
Of response to NPCP	90-22 USAir.
Of complaint	91-51 Hagwood; 93-13 Medel; 94-7 Hereth.
Of NPCP	92-73 Wyatt.
Of reply brief	97-11 Hampton.
Of request for hearing	93-12 Langton; 95-19 Rayner.
Of EAJA application (See EAJA—Final disposition, EAJA—Jurisdiction)	
Unapproved Parts (See also Parts Manufacturer Approval)	93-19 Pacific Sky Supply.
Unauthorized Access:	
To Aircraft	90-12 & 90-19 Continental Airlines; 94-1 Delta Air Lines.
To Air Operations Area (AOA)	90-37 Northwest Airlines; 91-18 [Airport Operator]; 91-40 [Airport Operator]; 94-1 Delta Air Lines.
Unreasonable Delay In Initiating Action	90-21 Carroll.
Visual Cues Indicating Runway, Adequacy of	92-40 Wendt.
Weapons Violations, generally	89-5 Schultz; 90-10 Webb; 90-20 Degenhardt; 90-23 Broyles; 90-33 Cato; 90-26 & 90-43 Waddell; 91-3 Lewis; 91-30 Trujillo; 91-38 Esau; 91-53 Koller; 92-32 Barnhill; 92-46 Sutton-Sautter; 92-51 Koblick; 92-59 Petek-Jackson; 94-5 Grant; 94-44 American Airlines.
Concealed weapon	89-5 Schultz; 92-46 Sutton-Sautter; 92-51 Koblick.
“Deadly or Dangerous”	90-26 & 90-43 Waddell; 91-30 Trujillo; 91-38 Esau.
First-time Offenders	89-5 Schultz.
Intent to commit violation	89-5 Schultz; 90-20 Degenhardt; 90-23 Broyles; 90-26 Waddell; 91-3 Lewis; 91-53 Koller.
Knowledge Of Weapon Concealment:	
(See also Knowledge)	89-5 Schultz; 90-20 Degenhardt.
Sanction (See Sanction)	
Weight and Balance	94-40 Polynesian Airways.
Witnesses (See also Credibility):	
Absence of:	
Failure to subpoena	92-3 Park.
Expert testimony:	
Evaluation of	93-17 Metcalf; 94-3 Valley Air; 94-21 Sweeney; 96-3 America est Airlines; 96-15 Valley Air; 97-9 Alphin.
Expert witness fees (See EAJA)	

Regulations (Title 14 CFR, unless otherwise noted)

1.1 (maintenance)	94-38 Bohan; 97-11 Hampton.
1.1 (major repair)	96-3 America West Airlines.
1.1 (minor repair)	96-3 America West Airlines.
1.1 (operate)	91-12 & 91-31 Terry & Menne; 93-18 Westair Commuter; 96-17 Fenner.
1.1 (person)	93-18 Westair Commuter.
1.1 (propeller)	96-15 Valley Air.
13.16	90-16 Rocky Mountain; 90-22 USAir; 90-37 Northwest Airlines; 90-38 & 91-9 Continental Airlines; 91-18 [Airport Operator]; 91-51 Hagwood; 92-1 Costello; 92-46 Sutton-Sautter; 93-13 Medel; 93-28 Strohl; 94-27 Larsen; 94-37 Houston; 94-31 Smalling; 95-19 Rayner; 96-26 Midtown Neon Sign; 97-1 Midtown Neon Sign; 97-9 Alphin.
13.201	90-12 Continental Airlines.
13.202	90-6 American Airlines; 92-76 Safety Equipment.
13.203	90-12 Continental Airlines; 90-21 Carroll; 90-38 Continental Airlines.
13.204	
13.205	90-20 Degenhardt; 91-17 KDS Aviation; 91-54 Alaska Airlines; 92-32 Barnhill; 94-32 Detroit Metropolitan; 94-39 Kirola; 95-16 Mulhall.

13.206	94-39 Kirola.
13.207	90-21 Carroll; 91-51 Hagwood; 92-73 Wyatt; 92-76 Safety Equip-
13.208	ment; 93-13 Medel; 93-28 Strohl; 94-7 Hereth.
13.209	90-3 Metz; 90-15 Playter; 91-18 [Airport Operator]; 92-32 Barnhill;
	92-47 Cornwall; 92-75 Beck; 92-76 Safety Equipment; 94-8
	Nunez; 94-5 Grant; 94-22 Harkins; 94-29 Sutton; 94-30
	Columna; 95-10 Diamond; 95-28 Valley Air; 97-7 Stalling.
13.210	92-19 Cornwall; 92-75 Beck; 92-76 Safety Equipment; 93-7 Dunn;
	93-28 Strohl; 94-5 Grant; 94-30 Columna; 95-28 Valley Air; 96-
	17 Fenner; 97-11 Hampton.
13.211	89-6 American Airlines; 89-7 Zenkner; 90-3 Metz; 90-11 Thunder-
	bird Accesories; 90-39 Hart; 91-24 Esau; 92-1 Costello; 92-9 Grif-
	fin; 92-18 Bargaen; 92-19 Cornwall; 92-57 Detroit Metro. Wayne
	County Airport; 92-74 Wendt; 92-76 Safety Equipment; 93-2
	Wendt; 94-5 Grant; 94-18 Luxemburg; 94-29 Sutton; 95-12 Toy-
	ota; 95-28 Valley Air; 97-7 Stalling; 97-11 Hampton.
13.212	90-11 Thunderbird Accessories; 91-2 Continental Airlines.
13.213	
13.214	91-3 Lewis.
13.215	93-28 Strohl; 94-39 Kirola.
13.216	
13.217	91-17 KDS Aviation.
13.218	89-6 American Airlines; 90-11 Thunderbird Accessories; 90-39
	Hart; 92-9 Griffin; 92-73 Wyatt; 93-19 Pacific Sky Supply; 94-6
	Strohl; 94-27 Larsen; 94-37 Houston; 95-18 Rayner; 96-16
	WestAir; 96-24 Horizon.
13.219	89-6 American Airlines; 91-2 Continental Airlines; 91-54 Alaska
	Airlines; 93-37 Airspect; 94-32 Detroit Metro. Wayne Airport.
13.220	89-6 American Airlines; 90-20 Carroll; 91-8 Watts Agricultural
	Aviation; 91-17 KDS Aviation; 91-54 Alaska Airlines; 92-46 Sut-
	ton-Sautter.
13.221	92-29 Haggland; 92-31 Eaddy; 92-52 Cullop.
13.222	92-72 Giuffrida; 96-15 Valley Air.
13.223	91-12 & 91-31 Terry & Menne; 92-72 Giuffrida; 95-26 Hereth; 96-
	15 Valley Air; 97-11 Hampton.
13.224	90-26 Waddell; 91-4 [Airport Operator]; 92-72 Giuffriad; 94-18
	Luxemburg; 94-28 Toyota; 95-25 Conquest; 96-17 Fenner.
13.225	
13.226	
13.227	90-21 Carroll; 95-26 Hereth.
13.228	92-3 Park.
13.229	
13.230	92-19 Cornwall; 95-26 Hereth; 96-24 Horizon.
13.231	92-3 Park.
13.232	89-5 Schultz; 90-20 Degenhardt; 92-1 Costello; 92-18 Bargaen; 92-
	32 Barnhill; 93-28 Strohl; 94-28 Toyota; 95-12 Toyota; 95-16
	Mulhall; 96-6 Ignatov.
13.233	89-1 Gressani; 89-4 Metz; 89-5 Schultz; 89-7 Zenkner; 89-8 Thun-
	derbird Accessories; 90-3 Metz; 90-11 Thunderbird Accessories;
	90-19 Continental Airlines; 90-20 Degenhardt; 90-25 & 90-27
	Gabbert; 90-35 P. Adams; 90-19 Continental Airlines; 90-39 Hart;
	91-2 Continental Airlines; 91-3 Lewis; 91-7 Pardue; 91-8 Watts
	Agricultural Aviation; 91-10 Graham; 91-11 Continental Airlines;
	91-12 Bargaen; 91-24 Esau; 91-26 Britt Airways; 91-31 Terry &
	Menne; 91-32 Bargaen; 91-43 & 91-44 Delta; 91-45 Park; 91-46
	Delta; 91-47 Delta; 91-48 Wendt; 91-52 KDS Aviation; 91-53
	Koller; 92-1 Costello; 92-3 Park; 92-7 West; 92-11 Alilin; 92-15
	Dillman; 92-16 Wendt; 92-18 Bargaen; 92-19 Cornwell; 92-27
	Wendt; 92-32 Barnhill; 92-34 Carrell; 92-35 Bay Land Aviation;
	92-36 Southwest Airlines; 92-39 Beck; 92-45 O'Brien; 92-52
	Beck; 92-56 Montauk Caribbean Airways; 92-57 Detroit Metro.
	Wayne Co. Airport; 92-67 USAir; 92-69 McCabe; 92-72 Giuffrida;
	92-74 Wendt; 92-78 TWA; 93-5 Wendt; 93-6 Westair Commuter;
	93-7 Dunn; 93-8 Nunez; 93-19 Pacific Sky Supply; 93-23 Allen;
	93-27 Simmons; 93-28 Strohl; 93-31 Allen; 93-32 Nunez; 94-9 B
	& G Instruments; 94-10 Boyle; 94-12 Bartusiak; 94-15 Columna;
	94-18 Luxemburg; 94-23 Perez; 94-24 Page; 94-26 French Air-
	craft; 94-28 Toyota; 95-2 Meronek; 95-9 Woodhouse; 95-13
	Kilrain; 95-23 Atlantic World Airways; 95-25 Conquest; 95-26
	Hereth; 96-1 [Airport Operator]; 96-2 Skydiving Center; 97-1 Mid-
	town Neon Sign; 97-2 Sanford Air; 97-7 Stalling.
13.234	90-19 Continental Airlines; 90-31 Carroll; 90-32 & 90-38 Continen-
	tal Airlines; 91-4 [Airport Operator]; 95-12 Toyota; 96-9 [Airport
	Operator]; 96-23 Kilrain.

13.235	90-11 Thunderbird Accessories; 90-12 Continental Airlines; 90-15 Playter; 90-17 Wilson; 92-7 West.
Part 14	92-74 & 93-2 Wendt; 95-18 Pacific Sky Supply.
14.01	91-17 & 92-71 KDS Aviation.
14.04	91-17, 91-52 & 92-71 KDS Aviation; 93-10 Costello; 95-27 Valley Air.
14.05	90-17 Wilson.
14.12	95-27 Valley Air.
14.20	91-52 KDS Aviation; 96-22 Woodhouse.
14.22	93-29 Sweeney.
14.26	91-52 KDS Aviation; 95-27 Valley Air.
14.28	95-9 Woodhouse.
21.181	96-25 USAir.
21.303	93-19 Pacific Sky Supply; 95-18 Pacific Sky Supply.
25.855	92-37 Giuffrida.
39.3	92-10 Flight Unlimited; 94-4 Northwest Aircraft Rental.
43.3	92-73 Wyatt.
43.5	96-18 Kilrain.
43.9	91-8 Watts Agricultural Aviation.
43.13	90-11 Thunderbird Accessories; 94-3 Valley Air; 94-38 Bohan; 96-3 America West Airlines; 96-25 USAir; 97-9 Alphin; 97-10 Alphin.
43.15	90-25 & 90-27 Gabbert; 91-8 Watts Agricultural Aviation; 94-2 Woodhouse; 96-18 Kilrain.
65.15	92-73 Wyatt.
65.92	92-73 Wyatt.
91.7	97-8 Pacific Av. d/b/a Inter-Island Helicopters.
91.8 (91.11 as of 8/18/90)	92-3 Park.
91.9 (91.13 as of 8/18/90)	90-15 Playter; 91-12 & 91-31 Terry & Menne; 92-8 Watkins; 92-40 Wendt; 92-48 USAir; 92-49 Richardson & Shimp; 92-47 Cornwall; 92-70 USAir; 93-9 Wendt; 93-17 Metcalf; 93-18 Westair Commuter; 93-29 Sweeney; 94-29 Sutton; 95-26 Hereth; 96-17 Fenner.
91.11	96-6 Ignatov; 97-12 Mayer.
91.29 (91.7 as of 8/18/90)	91-8 Watts Agricultural Aviation; 92-10 Flight Unlimited; 94-4 Northwest Aircraft Rental.
91.65 (91.111 as of 8/18/90)	91-29 Sweeney; 94-21 Sweeney.
91.67 (91.113 as of 8/18/90)	91-29 Sweeney.
91.71	97-11 Hampton.
91.75 (91.123 as of 8/18/90)	91-12 & 91-31 Terry & Menne; 92-8 Watkins; 92-40 Wendt; 92-49 Richardson & Shimp; 93-9 Wendt.
91.79 (91.119 as of 8/18/90)	90-15 Playter; 92-47 Cornwall; 93-17 Metcalf.
91.87 (91.129 as of 8/18/90)	91-12 & 91-31 Terry & Menne; 92-8 Watkins.
91.103	95-26 Hereth.
91.111	96-17 Fenner.
91.113	96-17 Fenner.
91.151	95-26 Hereth.
91.173 (91.417 as of 8/18/90)	91-8 Watts Agricultural Aviation.
91.213	97-11 Hampton.
91.403	97-8 Pacific Av. d/b/a Inter-Island Helicopters.
91.703	94-29 Sutton.
107.1	90-19 Continental Airlines; 90-20 Degenhardt; 91-4 [Airport Operator]; 91-58 [Airport Operator].
107.13	90-12 & 90-19 Continental Airlines; 91-4 [Airport Operator]; 91-18 [Airport Operator]; 91-40 [Airport Operator]; 91-41 [Airport Operator]; 91-58 [Airport Operator]; 96-1 [Airport Operator].
107.20	90-24 Bayer; 92-58 Hoedl.
107.21	89-5 Schultz; 90-10 Webb; 90-22 Degenhardt; 90-23 Broyles; 90-26 & 90-43 Waddell; 90-33 Cato; 90-39 Hart; 91-3 Lewis; 91-10 Graham; 91-30 Trujillo; 91-38 Esau; 91-53 Koller; 92-32 Barnhill; 92-38 Cronberg; 92-46 Sutton-Sautter; 92-51 Koblick; 92-59 Petek-Jackson; 94-5 Grant; 94-31 Smalling; 97-7 Stalling.
107.25	94-30 Columna.
108.5	90-12, 90-18, 90-19, 91-2 & 91-9 Continental Airlines; 91-33 Delta Air Lines; 91-54 Alaska Airlines; 91-55 Continental Airlines; 92-13 & 94-1 Delta Air Lines; 94-44 American Airlines; 96-16 WestAir; 96-19 [Air Carrier].
108.7	90-18 & 90-19 Continental Airlines.
108.10	96-16 WestAir.
108.11	90-23 Broyles; 90-26 Waddell; 91-3 Lewis; 92-46 Sutton-Sautter; 94-44 American Airlines.
108.13	90-12 & 90-19 Continental Airlines; 90-37 Northwest Airlines.
121.133	90-18 Continental Airlines.
121.153	92-48 & 92-70 USAir; 95-11 Horizon; 96-3 America West Airlines; 96-24 Horizon; 96-25 USAir.
121.317	92-37 Giuffrida; 94-18 Luxemburg.

121.318	92-37 Giuffrida.
121.367	90-12 Continental Airlines; 96-25 USAir.
121.571	92-37 Giuffrida.
121.589	97-12 Mayer.
121.628	95-11 Horizon.
135.1	95-8 Charter Airlines; 95-25 Conquest.
135.5	94-3 Valley Air; 94-20 Conquest Helicopters; 95-25 Conquest; 95-27 Valley Air; 96-15 Valley Air.
135.25	92-10 Flight Unlimited; 94-3 Valley Air; 95-27 Valley Air; 96-15 Valley Air.
135.63	94-40 Polynesian Airways; 95-17 Larry's Flying Service; 95-28 Atlantic; 96-4 South Aero.
135.87	90-21 Carroll.
135.95	95-17 Larry's Flying Service.
135.179	97-11 Hampton.
135.185	94-40 Polynesian Airways.
135.263	95-9 Charter Airlines; 96-4 South Aero.
135.267	95-8 Charter Airlines; 95-17 Larry's Flying Service; 96-4 South Aero.
135.293	95-17 Larry's Flying Service; 96-4 South Aero.
135.343	95-17 Larry's Flying Service.
135.411	97-11 Hampton.
135.413	94-3 Valley Air; 96-15 Valley Air; 97-8 Pacific Av. d/b/a Inter-Island Helicopters.
135.421	93-36 Valley Air; 94-3 Valley Air; 96-15 Valley Air.
135.437	94-3 Valley Air; 95-15 Valley Air.
145.1	97-10 Alphin.
145.3	97-10 Alphin.
145.25	97-10 Alphin.
145.45	97-10 Alphin.
145.47	97-10 Alphin.
145.49	97-10 Alphin.
145.53	90-11 Thunderbird Accessories.
145.57	94-2 Woodhouse; 97-9 Alphin.
145.61	90-11 Thunderbird Accessories.
191	90-12 & 90-19 Continental Airlines; 90-37 Northwest Airlines.
298.1	92-10 Flight Unlimited.
302.8	90-22 USAir.
49 CFR:	
1.47	92-76 Safety Equipment.
171 et seq.	95-10 Diamond.
171.2	92-77 TCI; 94-28 Toyota; 94-31 Smalling; 95-16 Mulhall; 96-26 Midtown.
171.8	92-77 TCI.
172.101	92-77 TCI; 94-28 Toyota; 94-31 Smalling; 96-26 Midtown.
172.200	92-77 TCI; 94-28 Toyota; 95-16 Mulhall; 96-26 Midtown.
172.202	92-77 TCI; 94-28 Toyota; 94-31 Smalling; 95-16 Mulhall.
172.203	94-28 Toyota.
172.204	92-77 TCI; 94-28 Toyota; 94-31 Smalling; 95-16 Mulhall.
172.300	94-31 Smalling; 95-16 Mulhall; 96-26 Midtown.
172.301	94-31 Smalling; 95-16 Mulhall.
172.304	92-77 TCI; 94-31 Smalling; 95-16 Mulhall.
172.400	92-77 TCI; 94-28 Toyota; 94-31 Smalling; 95-16 Mulhall.
172.402	94-28 Toyota.
172.406	92-77 TCI.
173.1	92-77 TCI; 94-28 Toyota; 94-31 Smalling; 95-16 Mulhall.
173.3	94-28 Toyota; 94-31 Smalling.
173.6	94-28 Toyota.
173.22(a)	94-28 Toyota; 94-31 Smalling.
173.24	94-28 Toyota; 95-16 Mulhall.
173.25	94-28 Toyota.
173.27	92-77 TCI.
173.115	92-77 TCI.
173.240	92-77 TCI.
173.243	94-28 Toyota.
173.260	94-28 Toyota.
173.266	94-28 Toyota; 94-31 Smalling.
175.25	94-31 Smalling.
191.5	97-13 Westair Commuter.
191.7	97-13 Westair Commuter.
821.30	92-73 Wyatt.
821.33	90-21 Carroll.

Statutes

5 U.S.C:	
504	90-17 Wilson; 91-17 & 92-71 KDS Aviation; 92-74, 93-2 & 93-9 Wendt; 93-29 Sweeney; 94-17 TCI; 95-27 Valley Air; 96-22 Woodhouse.
552	90-12, 90-18 & 90-19 Continental Airlines; 93-10 Costello.
554	90-18 Continental Airlines; 90-21 Carroll; 95-12 Toyota.
556	90-21 Carroll; 91-54 Alaska Airlines.
557	90-20 Degenhardt; 90-21 Carroll; 90-37 Northwest Airlines; 94-28 Toyota.
705	95-14 Charter Airlines.
5332	95-27 Valley Air.
11 U.S.C.:	
362	91-2 Continental Airlines.
28 U.S.C.:	
2412	93-10 Costello; 96-22 Woodhouse.
2462	90-21 Carroll.
49 U.S.C.:	
5123	95-16 Mulhall; 96-26 & 97-1 Midtown Neon Sign.
40102	96-17 Fenner.
44701	96-6 Ignatov; 96-17 Fenner.
44704	96-3 America West Airlines; 96-15 Valley Air.
46110	96-22 Woodhouse; 97-1 Midtown Neon Sign.
46301	97-1 Midtown Neon Sign.
46303	97-7 Stalling.
49 U.S.C. App.:	
1301(31) (operate)	93-18 Westair Commuter.
(32) (person)	93-18 Westair Commuter.
1356	90-18 & 90-19, 91-2 Continental Airlines.
1357	90-18, 90-19 & 91-2 Continental Airlines; 91-41 [Airport Operator]; 91-58 [Airport Operator].
1421	92-10 Flight Unlimited; 92-48 USAir; 92-70 USAir; 93-9 Wendt.
1429	92-73 Wyatt.
1471	89-5 Schultz; 90-10 Webb; 90-20 Degenhardt; 90-12, 90-18 & 90-19 Continental Airlines; 90-23 Broyles; 90-26 & 90-43 Waddell; 90-33 Cato; 90-37 Northwest Airlines; 90-39 Hart; 91-2 Continental Airlines; 91-3 Lewis; 91-18 [Airport Operator]; 91-53 Koller; 92-5 Delta Air Lines; 92-10 Flight Unlimited; 92-46 Sutton-Sautter; 92-51 Koblick; 92-74 Wendt; 92-76 Safety Equipment; 94-20 Conquest Helicopters; 94-40 Polynesian Airways; 96-6 Ignatov; 97-7 Stalling.
1472	96-6 Ignatov.
1475	90-20 Degenhardt; 90-12 Continental Airlines; 90-18, 90-19 & 91-1 Continental Airlines; 91-3 Lewis; 91-18 [Airport Operator]; 94-40 Polynesian Airways.
1486	90-21 Carroll; 96-22 Woodhouse.
1809	92-77 TCI; 94-19 Pony Express; 94-28 Toyota; 94-31 Smalling; 95-12 Toyota.

Civil Penalty Actions—Orders Issued by the Administrator Digests

(Current as of March 31, 1997)

The digests of the Administrator's final decisions and orders are arranged by order number, and briefly summarize key points of the decision. The following compilation of digests includes all final decisions and orders issued by the Administrator from January 1, 1997, to March 31, 1997.

These digests do not constitute legal authority, and should not be cited or relied upon as such. The digests are not intended to serve as substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

In the Matter of Midtown Neon Sign Corporation

Order No., 97-1 (1/8/97)

Petition to Modify Granted. This action was brought under 49 U.S.C. 5123. As a result, the judicial review provisions of 49 U.S.C. 46110 does not apply to this case. Footnote 13 of FAA Order No. 96-26 (August 13, 1996) is omitted.

In the Matter of Sanford Air, Inc.

Order No. 97-2 (1/8/97)

Notice of Appeal Construed As An Appeal Brief. Respondent failed to perfect its timely filed notice of appeal. However, the notice of appeal is sufficiently detailed to be construed as an appeal brief. Complainant is given 35 days in which to file its reply brief.

In the Matter of [Airport Operator]

Order No. 97-3 (1/8/97)

Order No. 97-3 (1/8/97)

Appeal Dismissed. Respondent filed a timely notice of appeal but failed to perfect its appeal by filing an appeal brief. Respondent's appeal is dismissed.

In the Matter of [Airport Operator]

Order No. 97-4 (1/14/97)

Appeal Withdrawn. Respondent's appeal is dismissed in light of Respondent's withdrawal of its appeal.

In the Matter of WestAir Commuter Airlines, Inc. d/b/a United Express

Order No. 97-5 (1/3/97)

Appeal Withdrawn. Respondent has withdrawn its notice of appeal. Its appeal is dismissed.

In the Matter of WRA, Inc.

Order No. 97-6 (2/7/97)

Appeal Dismissed. Respondent has failed to show, or even attempt to show, good cause for its failure to file its appeal brief in a timely manner. Respondent's appeal is dismissed.

In the Matter of Ronald Stalling

Order No. 97-7 (2/20/97)

Late-filed Notice of Appeal.

Respondent's notice of appeal was late-filed. A late-filed notice of appeal will be accepted only if good cause for the lateness is shown. Respondent stated in his notice of appeal that until the date on which he prepared the notice, he had no idea that a communication with the agency attorney, with whom he was engaged in settlement talks, was not a direct communication with the law judge. Respondent is given an opportunity to explain why he filed the notice of appeal late.

Constructive Withdrawal of Request for Hearing. The law judge had issued an order to show cause why Respondent had filed to file an Answer. The envelope was sent certified mail and was returned marked "MLNF" (Moved, Left No Forwarding Address.) The law judge regarded the return of the envelope as constructive withdrawal of the request for hearing, and consequently, issued an Order Assessing Civil Penalty. The Order Assessing Civil Penalty was sent to the same address as the Order to Show Cause. The Order Assessing Civil Penalty was sent both certified and regular mail. The Order Assessing Civil Penalty sent by certified mail was returned marked "Unclaimed." Respondent must have received the envelope sent by regular mail because he filed a notice of appeal (discussed above.) Respondent is given an opportunity to present argument regarding whether the law judge was in error when he construed the return of the Order to Show Cause as constructive withdrawal of the request for hearing.

In the Matter of Pacific Aviation International, Inc. d/b/a Inter-Island Helicopters

Order No. 97-8 (2/20/97)

Respondent Responsible for Failure to Replace Part. Respondent argued that its mechanics and not Respondent were responsible for the violations involving the failure to replace a life-limited part. Respondent further argued that the particular mechanic who reported the problem to the FAA intentionally allowed the discrepancy to exist in order to blackmail Respondent.

Assuming that Respondent's claim is true, it does not relieve Respondent of responsibility for the violations. Other employees of Respondent certified the aircraft as airworthy during the period in question. Respondent has not alleged that its mechanic "covered up" the failure to replace the part. Respondent, like other air carriers, has a responsibility to supervise its mechanic employees adequately, which it failed to do.

Irrelevant that Respondent cannot recover from repair station. Respondent chose to hire its own mechanics to perform its maintenance. It was Respondent's responsibility to supervise their work adequately.

Arguments that \$7,000 civil penalty too high rejected. Respondent's claim that it committed fewer violations than the respondent in *In the Matter of Watts Agricultural, FAA Order No. 91-8* (April 11, 1991, review denied, 977 F.2d 594 (9th Cir. 1992), is inaccurate, given that Respondent operated its aircraft in an unairworthy condition on 70 separate days. Although Respondent argues that it operated the aircraft "only" 400 hours beyond the mandatory replacement time, the \$7,000 penalty already reflects the number of hours of operation of an unairworthy aircraft. Assuming that it is true, as Respondent asserts, that part in question has no history of failure in service on this type of aircraft, arguably that is because operators generally replace the part at the required time. Any suggestion on Respondent's part that it is a better judge of the operating limits of the part than the manufacturer must be rejected. Contrary to Respondent's claim that the "infractions charged did not threaten anyone," the violations threatened the safety of the passengers, the pilots, and persons and property on the ground.

Right to due process not violated. Law judge did not err in granting Complainant's motion for decision, obviating a hearing on the merits. A hearing is not required where there is no genuine issue of material fact and where it is clear that one party is entitled to a decision as a matter of law. Nor is due process offended by Respondent's lack of counsel prior to the appeal; there is no right to assigned counsel in FAA civil penalty proceedings.

No evidence of discriminatory treatment. Although Respondent claims there was a disparity in treatment and a discriminatory attempt to put Respondent out of business, Respondent has provided no evidence to support its claim. Respondent promised the law judge several times to provide evidence to support its claim of financial

hardship, but ultimately declined to do so.

In the Matter of Alphin Aircraft, Inc.

Order No. 97-9 (2/20/97)

No right to assigned counsel.

Respondent asks the Administrator to order a new hearing or to dismiss the case, stating that its financial conditions at the time forced it to defend itself without counsel. There is no due process right to assigned counsel in FAA civil penalty proceedings.

Airworthiness. Although Respondent argues that airworthiness was never a problem because the work it performed was not required by an Airworthiness Directive (AD), work must still be done properly, even if it is required by an AD. Respondent's work affected the structural integrity of the aircraft, creating the possibility of an in-flight breakup.

ALJ's assessment of expert testimony. Respondent has offered no persuasive reason to disturb the law judge's assessment of the expert testimony in this case.

Double Jeopardy Clause. The Double Jeopardy Clause does not prohibit the law judge's finding of multiple violations. There was an additional required fact for each violation the law judge found.

In the Matter of Alphin Aircraft, Inc.

Order No. 97-10 (2/20/97)

Part 145 Requirements for Inspection System Apply to Holders of Repair Station Certificates as well as Applicants.

Respondent argues that the law judge erred in finding violations of 14 C.F.R. 145.45 (a) and (d) because these provisions expressly apply only to "applicants," and it has held a repair station certificate since 1972. The requirements in section 145.45 for an inspection system are continuing in nature. Respondent could not have reasonably believed that its obligation to have an effective inspection system ended in 1972 when it obtained its repair station certificate.

Respondent Must Comply With Inspection Procedures Manual.

Respondent argues that it need not comply with its Inspection Procedures Manual because there is no regulation expressly requiring it to do so. Though the requirement is implicit rather than explicit, it is clear.

Hidden Damage Inspection Not Limited to Post-Accident Situations.

Respondent contends that the requirement in its manual for a hidden damage inspection derives from section 145.45(e), which requires such an inspection only after an accident, and

no accident occurred here. Respondent's argument concerning the derivation of the requirement in its manual is speculative and unsupported. Nothing in Respondent's manual limits hidden damage inspections to post-accident situations.

No Error in Finding Discrepancy Existed When Respondent Released Aircraft. Circumstantial evidence may suffice to prove a violation. Respondent's witnesses conceded that they removed the mechanism and then reinstalled it. Testimony was that the rubbing was due to the manner in which the mechanism was installed. Respondent has offered no persuasive reason to disturb the law judge's assessment of the evidence.

Summary. Respondent's appeal is denied and the law judge's decision assessing a \$1,500 penalty is affirmed.

In the Matter of Hampton Air Transport Systems, Inc.

Order No. 97-11 (2/20/97)

No Error in Finding Glide Slope Inoperative. Complainant can use circumstantial evidence to sustain its burden of proof. The following evidence supports the law judge's finding that the glide slope was inoperative. Respondent does not dispute that the glide slope was placarded inoperative; Respondent's President testified that after performing an avionics check, he marked the glide slope inoperative and that at least two pilots advised him that glide slope was inoperative; Respondent's President advised Complainant in a letter that the glide slope was inoperative; a work order from an avionics repair shop lists the glide slope as inoperative. Even if glide slope worked intermittently, it could not be considered operable because it was unreliable.

No Error in Finding That It Was Insufficient to Placard Glide Slope. The law judge did not err in rejecting Respondent's argument that under Section 91.213, it could take off with an inoperative instrument as long as it placarded it as inoperative. Section 91.213 applies only to flights conducted under Part 91, whereas the flights at issue were passenger-carrying flights for compensation or hire conducted under Part 135. Section 135.411, which provides that aircraft type-certificated for nine or fewer seats shall be maintained under Part 91, does not apply. Operating without repair, as Respondent did here, does not constitute maintenance.

ALJ Erred in Declining to Assess Penalty. Contrary to the law judge's finding, it was clear from the regulations

that Hampton violated the regulations by operating an aircraft under Part 135 with an inoperative glide slope indicator but no Minimum Equipment List. Although the law judge stated that the flights did not implicate safety concerns, the margin of safety that glide slopes provide was reduced because on 56 flights, one of the glide slope indicators was inoperative. Weather can change abruptly, requiring use of instruments even where the operator intends VFR flight only. Even if it were true that neither airport had an Instrument Landing System, weather or other circumstances may require a pilot to divert to another airport. Moreover, even though the other glide slope indicator was apparently functioning, the margin of safety was still reduced. In many contexts, the regulations require redundancy to enhance safety.

Financial Hardship. Although Respondent alleged financial hardship, it failed to sustain its burden of proof. Its financial statement contains a prominent disclaimer indicating that management had elected to omit substantially all of the disclosures required by generally accepted accounting principles.

Summary. Law judge's determination that Respondent violated 14 CFR § 91.7 and 135.179 is affirmed, while his determination not to impose a penalty is reversed. Respondent is ordered to pay a \$5,000 civil penalty.

In the Matter of David Mayer

Order No. 97-12 (2/20/97)

Passenger Misconduct. The law judge held that Respondent violated 14 CFR 91.11 and 121.589(e), and assessed a \$1,000 civil penalty for the 14 CFR 91.11 violation but only a \$150 civil penalty for the 14 CFR 121.589(e) violation. Both parties appealed to the Administrator. Respondents' appeal is denied, and Complainant's appeal is granted in part. The Administrator assessed a \$1,500 civil penalty.

Assault/Interference With Performance of Flight Crewmember's Duties. Respondent shoved a sandwich down the back of a flight attendant's blouse during a flight. He argued that he had not assaulted the flight attendant and, therefore, had not violated Section 91.11. The Administrator rejected that argument. Section 91.11 prohibits assaulting a flight crewmember or interfering in the performance of the flight crewmember's duties. The Administrator has interpreted the term "assault" as used in Section 91.11 as including both an assault (the apprehension of an unwanted touching) and a battery (the actual unwanted

touching.) In the Matter of Ignatov, FAA Order No. 96-6 (2/13/96). Moreover, Respondent interfered with the flight attendant's performance of her duties when he put the sandwich down her back and when he put his trash on the beverage cart. Also, by demanding to talk with the pilot, Respondent interfered with the performance of the pilot's duties. The Administrator held further that a \$1,000 civil penalty was not excessive for the outrageous and unjustified conduct that resulted in the violation(s) of Section 91.11.

Refusal to Stow Carry-on Item.

Respondent did not stow his carry-on item despite three requests to do so by the flight attendant. The flight attendant went to get another flight attendant, the "A" flight attendant, who had been stationed beside the open aircraft door. By the time that the "A" flight attendant got back to see Respondent, he had stowed his carry-on item. The law judge held that this was a mere technical violation of 14 CFR 121.598(e) and that \$150 was the appropriate penalty. Complainant appealed. The Administrator held that this was more than a mere technical violation because Respondent had refused to stow his carry-on item after multiple requests, and he only stowed after the flight attendant had gone to get the "A" flight attendant. However, the Administrator found that a \$500 civil penalty would be adequate to deter Respondent and others from such similar violations.

In the Matter of Westair Commuter Airlines

Order No. 97-13 (2/26/97)

Record Sealed. Complainant requested the removal from the record of a letter accompanying Respondent's notice of withdrawal of its appeal. One reason given by Complainant to justify removal of the letter from the record was that the letter contained sensitive security information. The Administration found that the record contained equally sensitive security information and sealed the record under 14 C.F.R. Part 191, explaining that if a member of the public requests access to the record, the sensitive portions would then be redacted in accordance with 14 C.F.R. 191.7.

Commercial Reporting Services of the Administrator's Civil Penalty Decisions and Orders

1. *Commercial Publications:* The Administrator's decisions and orders in civil penalty cases are now available in the following commercial publications:

Civil Penalty Cases Digest Service, published by Hawkins Publishing

Company, Inc., P.O. Box 480, Mayo, MD, 21106, (410) 798-1677;

Federal Aviation Decisions, Clark Boardman Callaghan, a subsidiary of West Information Publishing Company, 50 Broad Street East, Rochester, NY 14694, 1-800-221-9428.

2. *CD-ROM*. The Administrator's orders and decisions are available on CD-ROM through Aeroflight Publications, P.O. Box 854, 433 Main Street, Gruver, TX 70940, (806) 733-2483.

3. *On-Line Services*. The Administrator's decisions and orders in civil penalty cases are available on the following on-services:

- Compuserve
- FedWorld
- Westlaw (the Database ID is FTRAN-FAA)
- LEXIS [Transportation (TRANS) Library, FAA file.]

The FAA has stated previously that publication of the subject-matter index and the digests may be discontinued once a commercial reporting service publishes similar information in a timely and accurate manner. The publication of the digests will be discontinued as of the next quarterly publication.

FAA Offices

The Administrator's decisions and orders, indexes, and digests are available for public inspection and copying at the following location in FAA headquarters: FAA Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., Room 924A, Washington, DC 20591; (202) 267-3641.

These materials are also available at all FAA regional and center legal offices at the following locations:

Office of the Assistant Chief Counsel for the Aeronautical Center (AMC-7), Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73125; (405) 954-3296.

Office of the Assistant Chief Counsel for the Alaskan Region (AAL-7), Alaskan Region Headquarters, 222 West 7th Avenue, Anchorage, AL 99513; (907) 271-5269.

Office of the Assistant Chief Counsel for the Central Region (ACE-7), Central Region Headquarters, 601 East 12th Street, Federal Building, Kansas City, MO 64106; (816) 426-5446.

Office of the Assistant Chief Counsel for the Eastern Region (AEA-7), Eastern Region Headquarters, JFK International Airport, Federal Building, Jamaica, NY 11430; (718) 553-3285.

Office of the Assistant Chief Counsel for the Great Lakes Region (AGL-7), 2300 East Devon Avenue, Suite 419, Des Plaines, IL 60018, (708) 294-7108.

Office of the Assistant Chief Counsel for the New England Region (ANE-7), New England Region Headquarters, 12 New England Executive Park, Room 401, Burlington, MA 01803-5299; (617) 238-7050.

Office of the Assistant Chief Counsel for the Northwest Mountain Region (ANM-7), Northwest Mountain Region Headquarters, 1601 Lind Avenue, SW, Renton, WA 98055-4056; (206) 227-2007.

Office of the Assistant Chief Counsel for the Southern Region (ASO-7), Southern Region Headquarters, 1701 Columbia Avenue, College Park, GA 30337; (404) 305-5200.

Office of the Assistant Chief Counsel for the Southwest Region (ASW-7), Southwest Region Headquarters, 2601 Meacham Blvd., Fort Worth, TX 76137-4298; (817) 222-5087.

Office of the Assistant Chief Counsel for the Technical Center (ACT-7), Federal Aviation Administration Technical Center, Atlantic City International Airport, Atlantic City, NJ 08405; (609) 485-7087.

Office of the Assistant Chief Counsel for the Western-Pacific Region (AWP-7), Western-Pacific Region Headquarters, 15000 Aviation Boulevard, Lawndale, CA 90261; (310) 725-7100.

Issued in Washington, DC on April 28, 1997.

James S. Dillman,

Assistant Chief Counsel for Litigation.

[FR Doc. 97-11662 Filed 5-2-97; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Notice No. 97-3]

Safety Advisory: Unauthorized Marking of Compressed Gas Cylinders

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Safety advisory notice.

SUMMARY: This is to notify the public that RSPA is investigating the unauthorized marking of high-pressure compressed gas cylinders. On May 21, 1996, a RSPA inspector conducted a compliance inspection at American Oxygen Company, 609 East 2nd Street, Roswell, New Mexico. Numerous compressed gas cylinders were observed, and it was discovered that significant numbers were marked with

an expired Retester Identification Number (RIN). Based on that RIN marking and the inspector's observations, RSPA believes that many of these cylinders may not have been retested in accordance with the Hazardous Materials Regulations (49 CFR parts 171-180) (HMR).

Failure to properly conduct a hydrostatic retest can result in cylinders which otherwise should be condemned being returned to service. The HMR require that properly tested cylinders which exceed the allowable 10 percent permanent expansion must be condemned and removed from service (49 CFR 173.34(e)(6)(I)(D)). Serious personal injury, death, and property damage could result from the rupture of a cylinder. Cylinders which have not been retested in accordance with the HMR may not be charged or filled with a hazardous material.

FOR FURTHER INFORMATION CONTACT: David Roberson, Hazardous Materials Enforcement Specialist, Western Region, telephone (909) 483-5624, Fax (909) 483-5636, Office of Hazardous Materials Enforcement, Research and Special Programs Administration, Department of Transportation, 3200 Inland Empire Boulevard, Suite 230, Ontario, CA 91764.

SUPPLEMENTARY INFORMATION: On Thursday, May 21, 1996, a RSPA inspector conducted a compliance inspection at American Oxygen Company (AOC), in Roswell, New Mexico. The inspector observed a large number of cylinders marked with the following RIN:

C	1
X	Y
0	7

Where
X=month of retest
Y=year of retest

On October 15, 1987, RSPA issued RIN C170 for a 5-year period to AOC. AOC did not renew its RIN and was no longer authorized to mark cylinders. Thus, the RIN expired on October 15, 1992, and after that date, persons are not authorized to mark any cylinders with that RIN. Any cylinder marked with RIN C170 and a test date later than "11 92" is not in compliance with the HMR. Under the HMR, hydrostatic retesting is required to verify a cylinder's structural integrity. Thus, persons who have a cylinder marked with this RIN and a date after October 1992 may not charge or fill the cylinder without first having