

exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration,  
National Headquarters, 800  
Independence Avenue, S.W., Room  
617, Washington, D.C. 20591

Federal Aviation Administration,  
Western-Pacific Region Office, 15000  
Aviation Boulevard, Room 3012,  
Hawthorne, California 90261

Mr. James J. McCue, A.A.E., Airport  
Manager, Glendale Municipal Airport,  
6801 North Glen Harbor Boulevard,  
Suite 201, Glendale, Arizona 85307

Questions may be directed to the  
individual named above under the  
heading, **FOR FURTHER INFORMATION  
CONTACT.**

Issued in Hawthorne, California on June  
30, 1995.

**Herman C. Bliss,**

Manager, Airports Division, Western-Pacific  
Region.

[FR Doc. 95-17591 Filed 7-17-95; 8:45 am]

BILLING CODE 4910-13-M

**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, 701  
Pennsylvania Avenue NW, Suite 925,  
Washington, DC 20004; telephone (202)  
376-6441.

**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.

Since that first index was issued on  
October 26, 1990 (55 FR 45984; October  
31, 1990), the FAA has issued  
supplementary notices containing the  
quarterly indexes of the Administrator's  
civil penalty decisions as follows:

Dates of quarter	Federal Register publication
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
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

Dates of quarter	Federal Register publication
1/1/95-3/31/95 .....	60 FR 19318; 4/17/95

\*Due to administrative oversight, the index  
for the third quarter of 1994, including information  
pertaining to the decisions and orders issued  
by the Administrator between July 1 and  
September 30, 1994, was not published on  
time. The information regarding the third  
quarter's decisions and orders, as well as the  
fourth quarter's decisions and orders in 1994,  
were included in the index published on January  
23, 1995.

In the notice published on January 19,  
1993, the Administrator announced that  
for the convenience of the users of these  
indexes, the order number index  
published at the end of the year would  
reflect all of the civil penalty decisions  
for that year. 58 FR 5044; 1/19/93. The  
order number indexes for the first,  
second, and third quarters would be  
non-cumulative.

The Administrator's final decisions  
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.)

Also, the Administrator's decisions  
and orders have been published by  
commercial publishers and are available  
on computer databases. (Information  
about these commercial publications  
and computer databases is provided 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  
April 1, 1995, to June 30, 1995.)

95-5, 4/26/95 ..	Abraham T. Araya, CP94EA0207
95-6, 4/26/95 ..	Roger Lee Sutton, CP93EA0370
95-7, 5/5/95 .....	Empire Airlines, CP94NM0064
95-8, 5/9/95 .....	Charter Airline, James Walker & Larry Mort, CP93WP0005, CP93WP0012, CP93WP0003
95-9, 5/9/95 .....	Mary Woodhouse, CP94WP0184, 94EJAWP0017
95-10, 5/10/95 .	Mark Steven Diamond, CP94NM0105
95-11, 5/10/95 .	Horizon Air Industries, Inc., CP93NM0329
95-12, 5/10/95 .	Toyota Motor Sales, USA, Inc., CP93SO0269
95-13, 6/16/95 .	Thomas Kilrain, CP94NE0268
95-14, 6/21/95 .	Charter Airlines, James Walker & Larry Mort, CP93WP0005, CP93WP0012, CP93WP0003

## Civil Penalty Actions—Orders Issued by the Administrator

## Subject Matter Index

(Current as of June 30, 1995)

Administrative Law Judges—Power and Authority:	
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.
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.
Initial Decision .....	92-1 Costello; 92-32 Barnhill.
Jurisdiction .....	90-20 Degenhardt; 90-33 Cato; 92-1 Costello; 92-32 Barnhill.
After order assessing civil penalty .....	94-37 Houston.
After complaint withdrawn .....	94-39 Kirola.
Motion for Decision .....	92-73 Wyatt; 92-75 Beck; 92-76 Safety Equipment; 93-11 Merkley.
Notice of Hearing .....	92-31 Eaddy.
Sanction .....	90-37 Northwest Airlines; 91-54 Alaska Airlines; 94-22 Harkins; 94-28 Toyota.
Vacating initial decision .....	90-20 Degenhardt; 92-32 Barnhill; 95-6 Sutton.
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.
Employee .....	93-18 Westair Commuter.
Aircraft Maintenance .....	90-11 Thunderbird Accessories; 91-8 Watts Agricultural Aviation; 93-36 & 94-3 Valley Air; 94-38 Bohan; 95-11 Horizon.
After certificate revocation .....	92-73 Wyatt.
Minimum Equipment List (MEL) .....	94-38 Bohan; 95-11 Horizon.
Aircraft Records:	
Aircraft Operation .....	91-8 Watts Agricultural Aviation.
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.
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.
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].
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]; 91-18 [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.
Airports	
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].
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.
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;
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.
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; 90-27 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.
Appeal dismissed as moot after complaint withdrawn .....	92-9 Griffin.
Motion to Vacate construed as a brief .....	91-11 Continental Airlines.
Perfecting an Appeal .....	92-17 Giuffrida; 92-19 Cornwall; 92-39 Beck; 94-23 Perez; 95-13 Kilrain.
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.
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.
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.
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 Kreamer; 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; 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.
"Attempt" .....	89-5 Schultz.
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.
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; 91-38 Esau; 92-5 Delta Air Lines.
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 .....	89-5 Schultz; 92-46 Sutton-Sautter; 92-51 Koblick.
Consolidation of Cases .....	90-12, 90-18 & 90-19 Continental Airlines.
Continuance of Hearing .....	90-25 Gabbert; 92-29 Haggland.
Corrective Action (See Sanction)	
Credibility of Witnesses:	
Deference to ALJ .....	90-21 Carroll; 92-3 Park; 93-17 Metcalf.
Expert witnesses (see also Witnesses) .....	90-27 Gabbert; 93-17 Metcalf.
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.
Discovery:	
Deliberative Process:	
Privilege .....	89-6 American Airlines; 90-12, 90-18 & 90-19 Continental Airlines.
Depositions .....	91-54 Alaska Airlines.
Notice of .....	91-54 Alaska Airlines.
Failure to Produce .....	90-18 & 90-19 Continental Airlines; 91-17 KDS Aviation; 93-10 Costello.
Of Investigative File in Unrelated Case .....	92-46 Sutton-Sautter.
Sanctions for .....	91-17 KDS Aviation; 91-54 Alaska Airlines.
Double Jeopardy .....	95-8 Charter Airlines.
Due Process:	
Before finding a violation .....	90-27 Gabbert.
Violation of .....	89-6 American Airlines; 90-12 Continental Airlines; 90-37 Northwest Airlines.
EAJA:	
Adversary Adjudication .....	90-17 Wilson; 91-17 & 91-52 KDS Aviation; 94-17 TCI; 95-12 Toyota.
Appeal from ALJ decision .....	95-9 Woodhouse.
Further proceedings .....	91-52 KDS Aviation.
Jurisdictional over appeal .....	92-74 Wendt.
Other expenses .....	93-29 Sweeney.
Prevailing party .....	91-52 KDS Aviation.
Substantial justification .....	91-52 & 92-71 KDS Aviation; 93-9 Wendt.
Ex Parte Communications .....	93-10 Costello.
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.
Federal Rules of Civil Procedure .....	91-17 KDS Aviation.
Final Oral Argument .....	92-3 Park.
Firearms (See Weapons):	
Ferry Flights .....	95-8 Charter Airlines.
Flight & Duty Time:	
Circumstances beyond control of the crew .....	95-8 Charter Airlines.
Foreseeability .....	95-8 Charter Airlines.
Late freight .....	95-8 Charter Airlines.
Weather .....	95-8 Charter Airlines.
Limitation of Duty Time .....	95-8 Charter Airlines.
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.
Guns (See Weapons):	
Hazardous Materials Transp. Act .....	90-37 Northwest Airlines; 92-76 Safety Equipment; 92-77 TCI; 94-19 Pony Express; 94-28 Toyota; 94-31 Smalling; 95-12 Toyota.
Civil Penalty .....	92-77 TCI; 94-28 Toyota; 94-31 Smalling.
Corrective Action .....	92-77 TCI; 94-28 Toyota.
Culpability .....	92-77 TCI; 94-28 Toyota; 94-31 Smalling.
EAJA, Applicability of .....	94-17 TCI; 95-12 Toyota.
First-time violation .....	92-77 TCI; 94-28 Toyota; 94-31 Smalling.
Gravity of the violation .....	92-77 TCI; 94-28 Toyota; 94-31 Smalling.
Criminal Penalty .....	92-77 TCI; 94-31 Smalling.
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 .....	92-3 Park.
Interlocutory Appeal .....	89-6 American Airlines; 91-54 Alaska Airlines; 93-37 Airspect; 94-32 Detroit Metropolitan.
Internal 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.
After withdrawal of complaint .....	94-39.
\$50,000 Limit .....	90-12 Continental Airlines.
EAJA cases .....	92-74 Wendt.
HazMat cases .....	92-76 Safety Equipment.
NTSB .....	90-11 Thunderbird Accessories.
Knowledge (See also Weapons Violations):	
Of concealed weapon .....	89-5 Schultz; 90-20 Degenhardt.
Laches (See Unreasonable Delay)	
Mailing Rule .....	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.
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 .....	91-12 & 91-31 Terry & Menne; 93-18 Westair Commuter.
Oral Argument:	
Decision to hold .....	92-16 Wendt.
Instructions for .....	92-27 Wendt.
Order Assessing Civil Penalty:	
Appeal from .....	92-1 Costello.
Withdrawal of .....	89-4 Metz; 90-16 Rocky Mountain; 90-22 USAir.
Parts Manufacturer Approval:	
Failure to obtain .....	93-19 Pacific Sky Supply.
Passenger Misconduct .....	92-3 Park.
Smoking .....	92-37 Giuffrida.
Penalty (See Sanction):	
Person .....	93-18 Westair Commuter.
Proof & 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.
Credibility (See Administrative Law Judges; Credibility of Witnesses)	
Criminal standard rejected .....	91-12 Terry & Menne.
Closing Arguments .....	94-20 Conquest Helicopters.
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.
Substantial evidence .....	92-72 Giuffrida.
Pro Se Parties:	
Special Considerations .....	90-11 Thunderbird Accessories; 90-3 Metz.
Prosecutorial Discretion .....	89-6 American Airlines; 90-23 Broyles; 90-38 Continental Airlines; 91-41 [Airport Operator]; 92-46 Sutton-Sautter; 92-73 Wyatt.
Reconsideration:	
Denied by ALJ .....	89-4 & 90-3 Metz.
Granted by ALJ .....	92-32 Barnhill.
Stay of Order Pending .....	90-31 Carroll; 90-32 Continental Airlines.
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.
Request for Hearing .....	94-37 Houston.
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.
Agency policy:	
ALJ Bound by .....	90-37 Northwest Airlines; 92-46 Sutton-Sautter.
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.
Corrective Action .....	91-18 [Airport Operator]; 91-40 [Airport Operator]; 91-41 [Airport Operator]; 92-5 Delta Airlines; 93-18 Westair Commuter; 94-28 Toyota.
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.
First-Time Offenders .....	89-5 Schultz; 92-5 Delta Airlines; 92-51 Koblick.
HazMat (See Hazardous Materials Transp. Act)	
Inexperience .....	92-10 Flight Unlimited.
Maintenance .....	95-11 Horizon.
Maximum .....	90-10 Webb; 91-53 Koller.
Modified .....	89-5 Schultz; 90-11 Thunderbird Accessories; 91-38 Esau; 92-10 Flight Unlimited; 92-13 Delta Airlines; 92-32 Barnhill.
Partial Dismissal of Complaint/Full Sanction (also see Complaint).	94-19 Pony Express; 94-40 Polynesian Airways.
Pilot Deviation .....	92-8 Watkins.
Test object detection .....	90-18 & 90-19 Continental Airlines.
Unauthorized access .....	90-19 Continental Airlines; 90-37 Northwest Airlines; 94-1 Delta Airlines.
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.
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):	
Of NPCP .....	90-22 USAir.
Of FNPCP .....	93-13 Medel.
Valid Service .....	92-18 Bargaen.
Settlement .....	91-50 & 92-1 Costello.
Smoking .....	92-37 Giuffrida; 94-18 Luxemburg.
Standard Security Program (SSP):	
Compliance with .....	90-12, 90-18 & 90-19 Continental Airlines; 91-33 Delta Airlines; 91-55 Continental Airlines; 92-13 & 94-1 Delta Airlines.
Stay of Orders .....	90-31 Carroll; 90-32 Continental Airlines.
Pending judicial review .....	95-14 Charter Airlines.
Strick 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.
Proof of violation .....	90-18, 90-19 & 91-9 Continental Airlines; 92-13 Delta Airlines.
Sanction .....	90-18 & 90-19 Continental Airlines.
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 request for hearing .....	93-12 Langton.
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 Airlines.
To Air Operations Area (AOA) .....	90-37 Northwest Airlines; 91-18 [Airport Operator]; 91-40 [Airport Operator]; 91-58 [Airport Operator]; 94-1 Delta Airlines.
Unreasonable Delay:	
In Initiating Action .....	90-21 Carroll.
Visual Cues Indicating Runway, Adequacy of .....	92-40 Wendt.
Weapons Violations .....	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.
Concealment (See Concealment)	
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:	
Absence of, Failure to subpoena .....	92-3 Park
Expert testimony (see also Credibility)	
Evaluation of .....	93-17 Metcalf; 94-3 Valley Air; 94-21 Sweeney.

---

**Regulations** (Title 14 CFR, unless otherwise noted)

---

1.1 (maintenance) .....	94-38 Bohan.
1.1 (operate) .....	91-12 & 91-31 Terry & Menne; 93-18 Westair Commuter.
1.1 (person) .....	93-18 Westair Commuter.
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.
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.
13.206 .....	
13.207 .....	94-39 Kirola.
13.208 .....	90-21 Carroll; 91-51 Hagwood; 92-73 Wyatt; 92-76 Safety Equipment; 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.
13.210 .....	92-19 Cornwall; 92-75 Beck; 92-76 Safety Equipment; 93-7 Dunn; 93-28 Strohl; 94-5 Grant; 94-30 Columna.
13.211 .....	89-6 American Airlines; 89-7 Zenkner; 90-3 Metz; 90-11 Thunderbird Accessories; 90-39 Hart; 91-24 Esau; 92-1 Costello; 92-9 Griffin; 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 Toyota.
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.

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 Sutton-Sautter.
13.221 .....	92-29 Haggland; 92-31 Eaddy; 92-52 Cullop.
13.222 .....	92-72 Giuffrida.
13.223 .....	91-12 & 91-31 Terry & Menne; 92-72 Giuffrida.
13.224 .....	90-26 Waddell; 91-4 [Airport Operator]; 92-72 Giuffrida; 94-18 Luxemburg; 94-28 Toyota.
13.225 .....	
13.226 .....	
13.227 .....	90-21 Carroll.
13.228 .....	92-3 Park.
13.229 .....	
13.230 .....	92-19 Cornwall.
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.
13.233 .....	89-1 Gressani; 89-4 Metz; 89-5 Schultz; 89-7 Zenkner; 89-8 Thunderbird 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 Cornwall; 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 Aircraft; 94-28 Toyota; 95-2 Meronek; 95-9 Woodhouse; 95-13 Kilrain.
13.234 .....	90-19 Continental Airlines; 90-31 Carroll; 90-32 & 90-38 Continental Airlines; 91-4 [Airport Operator]; 95-12 Toyota.
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.
14.01 .....	91-17 & 92-71 KDS Aviation.
14.04 .....	91-17, 91-52 & 92-71 KDS Aviation; 93-10 Costello.
14.05 .....	90-17 Wilson.
14.20 .....	91-52 KDS Aviation.
14.22 .....	93-29 Sweeney.
14.26 .....	91-52 KDS Aviation.
14.28 .....	95-9 Woodhouse.
21.303 .....	93-19 Pacific Sky Supply.
25.855 .....	92-37 Giuffrida.
39.3 .....	92-10 Flight Unlimited; 94-4 Northwest Aircraft Rental.
43.3 .....	92-73 Wyatt.
43.9 .....	91-8 Watts Agricultural Aviation.
43.13 .....	90-11 Thunderbird Accessories; 94-3 Valley Air; 94-38 Bohan.
43.15 .....	90-25 & 90-27 Gabbert; 91-8 Watts Agricultural Aviation; 94-2 Woodhouse.
65.15 .....	92-73 Wyatt.
65.92 .....	92-73 Wyatt.
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.
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.
91.75 (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.

91.173 (91.417 as of 8/18/90) .....	91-8 Watts Agricultural Aviation.
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].
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.
107.25 .....	94-31 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.
108.7 .....	90-18 & 90-19 Continental Airlines.
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.
121.317 .....	92-37 Giuffrida; 94-18 Luxemburg.
121.318 .....	92-37 Giuffrida.
121.367 .....	90-12 Continental Airlines.
121.571 .....	92-37 Giuffrida.
121.628 .....	95-11 Horizon.
135.1 .....	95-8 Charter Airlines.
135.5 .....	94-3 Valley Air; 94-20 Conquest Helicopters.
135.25 .....	92-10 Flight Unlimited; 94-3 Valley Air.
135.63 .....	94-40 Polynesian Airways.
135.87 .....	90-21 Carroll.
135.185 .....	94-40 Polynesian Airways.
135.263 .....	95-9 Charter Airlines.
135.267 .....	95-8 Charter Airlines.
135.413 .....	94-3 Valley Air.
135.421 .....	93-36 Valley Air; 94-3 Valley Air.
135.437 .....	94-3 Valley Air.
145.53 .....	90-11 Thunderbird Accessories.
145.57 .....	94-2 Woodhouse.
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.
171.8 .....	92-77 TCI.
172.101 .....	92-77 TCI; 94-28 Toyota; 94-31 Smalling.
172.200 .....	92-77 TCI; 94-28 Toyota.
172.202 .....	92-77 TCI; 94-28 Toyota; 94-31 Smalling.
172.203 .....	94-28 Toyota.
172.204 .....	92-77 TCI; 94-28 Toyota; 94-31 Smalling.
172.300 .....	94-31 Smalling.
172.301 .....	94-31 Smalling.
172.304 .....	92-77 TCI; 94-31 Smalling.
172.400 .....	92-77 TCI; 94-28 Toyota; 94-31 Smalling.
172.402 .....	94-28 Toyota.
172.406 .....	92-77 TCI.
173.1 .....	92-77 TCI; 94-28 Toyota; 94-31 Smalling.
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.
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.
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.
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.
11U.S.C.	
362 .....	91-2 Continental Airlines.
28 U.S.C.:	
2412 .....	93-10 Costello.
2462 .....	90-21 Carroll.
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.
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.
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 June 30, 1995)

The digests of the Administrator's final decisions and orders are arranged by order number, and briefly summarize key points of each decision. The following compilation of digests includes all final decisions and orders issued by the Administrator from April 1, 1995, to June 30, 1995. The FAA will publish noncumulative supplements to this compilation on a quarterly basis (e.g. April, July, October, and January of each year).

*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 a 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 Abraham T. Araya*

[Order No. 95-5 (4/26/95)]

*Appeal Dismissed.* complainant withdrew its notice of appeal. The appeal is dismissed.

*In the Matter of Roger Lee Sutton*

[Order No. 95-6 (4/26/95)]

*Appeal Dismissed, Order Assessing Civil Penalty Vacated, and Complaint Dismissed.* Respondent filed an appeal from the law judge's written initial decision assessing a \$1,000 civil penalty against Respondent based on his failure to file an answer to the complaint. Subsequently, however, the parties filed a "Joint Notice of Settlement" advising the Administrator that the case had been settled, and that both Respondent's appeal and the agency's complaint had been withdrawn. As a result, Respondent's appeal is dismissed, the law judge's order assessing a \$1,000 civil penalty is vacated, and the complaint is dismissed with prejudice.

*In the Matter of Empire Airlines*

[Order No. 95-7 (5/5/95)]

*Appeal Dismissed.* Complainant withdrew its notice of appeal. The appeal is dismissed.

*In the Matter of Charter Airlines, James Walker and Larry Mort*

[Order No. 95-8 (5/9/95)]

*Flight and Duty Time Limitations.*

Charter Airlines is the holder of an air taxi operator certificate issued under 14 CFR Part 135. Mr. Walker is the chief pilot and director of operations. Mr. Mort is a pilot employed by Charter Airlines. On all of the flights involved in this case, Mr. Walker was the captain and Mr. Mort was the co-pilot. It is held that Charter Airlines, Mr. Walker and Mr. Mort violated the flight and duty time regulations set forth in 14 CFR 135.263(a), 135.267(b) and 135.267(d) as alleged.

*Flight time restriction, generally.*

Under Section 135.267(b)(2), when two flight crewmembers are required, the total flight time of an assigned flight, when added to any other commercial flying by that crew, may not exceed 10 hours during any 24-hour period.

*Duty time restriction, generally.* Under Section 135.267(d) provides that "each assignment . . . must provide for at least 10 consecutive hours of rest during the 24-hour period that precedes the planned completion time of the

assignment." Hence, the planned completion time of the assignment should be no later than 14 hours after the time that the pilots report for duty. However, if the original planning was realistic, but was upset due to circumstances beyond the control of the pilots and operator, the flight may be conducted even though the crew duty time may exceed 14 hours. The key to interpreting Section 135.267(d) is to look at the original planning. Duty time includes more than a pilot's flight time. Duty time is any time that is not a rest period.

*Circumstances beyond the control of the crew and the operator not proven.* On a series of flights begun on August 2, 1990, and ending on August 3, 1990, Respondents flew over 18 hours. Part way through their duty day, Charter Airlines amended the crew's assignment, adding an assignment to pick up freight in St. Mary's and transport it to El Paso. The crew accepted this amendment. Respondents claim that they had to wait 10 hours for the freight to be delivered at St. Mary's, and that the late delivery of the freight constitutes a circumstance beyond the control of the operator and the crew.

When an operator adds a flight(s) to an assignment, the operator must determine whether the extra flight(s) can be completed in accordance with the requirement that the two-person crew receive at least 10 consecutive hours of rest during the 24-hour period preceding the planned completion time of the amended assignment. In addition, the flight crewmembers, before accepting an extra flight(s) as part of an assignment, must determine whether they will be able to complete the amended assignment and still comply with the rest requirement of Section 135.267(d). Hence, it must be determined whether at the time Charter Airlines assigned the trip to carry freight from St. Mary's to El Paso, Charter Airlines had reason to believe that the assignment, as amended, would provide the crew with at least 10 consecutive hours of rest during the 24-hour period preceding the planned completion time of the assignment. Likewise, it must be determined whether Mr. Walker and Mr. Mort reasonably believed, when they accepted the extra flights, that the amended assignment provided for at least 10 consecutive hours of rest during the 24-hour period preceding the planned completion time of the amended assignment.

The evidence is very confusing and in conflict regarding when they expected the freight to arrive in St. Mary's. What appears most likely is that when Charter Airlines assigned this trip to fly freight

from St. Mary's to El Paso and when Mr. Walker and Mr. Mort accepted it, there was no planned completion time. If a planned completion time for the assignment to fly freight from St. Mary's to El Paso was not formulated when that assignment was made and accepted, Respondents cannot argue that the late freight delivery upset the original planning. Therefore, the protection offered by Section 135.263(d) in the event of circumstances beyond the control of the flight crew is unavailable to Respondents.

*Circumstances beyond the control of the crew and the operator not proven.* On October 25, 1990, the crew was on duty for 14 hours and 48 minutes. Respondents argued that the thunderstorm that they encountered in Provo, Utah, while they were visiting Mr. Walker's son, constituted circumstances beyond their control. Considering the totality of the circumstances, it was not the adverse weather that prevented Respondents from completing the duty day as planned. Instead, the planned schedule was upset by Respondents' plan to stop at Provo, visit Mr. Walker's son, and still get to Scottsdale in time to pick up the passenger as scheduled. By the time that they arrived in Provo, there was little time left, realistically, to secure the aircraft, leave the airport, visit Mr. Walker's son, return to the airport, prepare for takeoff and fly to Scottsdale, Arizona. The further delay caused by the adverse weather, which Respondents have not even attempted to show was unforeseeable, only made matters worse. Inherent in the concept of circumstances beyond the control of the operator and crew is the element of unforeseeability. If thunderstorms were forecast for the early afternoon, then Respondents should have departed from Provo much earlier than they did, if necessary skipping the visit with Mr. Walker's son. Also, the trip to Provo was a pleasure trip, and therefore, completely within the control of Respondents.

*Other commercial flying.* On appeal, the question regarding the flights on September 12-13, 1990, is whether Respondents flew more than 10 hours of commercial flying in a 24-hour period. Between 0947 on September 12, 1990, and 0947 on September 13, 1990, Respondents' flying time totaled 10 hours and 27 minutes.

A flight conducted under Part 91 as a ferry flight may be considered as "other commercial flying." The issue in this case is not whether the ferry flights were conducted pursuant to Part 135, but whether those flights constituted

commercial flying. Section 135.267(b)(2) provides in pertinent part that ". . . during any 24 consecutive hours the total flight time of the assigned flight when added to any other commercial flying by that flight crewmember may not exceed . . . 10 hours for a flight crew consisting of two pilots." 14 CFR 135.267(b)(2) (emphasis added.) While ferry flights themselves are not operated pursuant to Part 135's limitations, the pilots flying flights for compensation or hire and the operators assigning those flights are subject to Part 135.

The general rule with respect to flight time limitations is that "any other commercial flying (e.g., flights conducted under Part 91) must be counted against the daily flight time limitations of Part 135 if it precedes the flight conducted under Part 135. If the Part 91 flight occurs after the Part 135 flying, the Part 91 flight is not counted against the daily flight time limitations of Part 135.

Respondents delivered freight in Detroit. Then, intending to fly home, they departed from Detroit, stopping in Amarillo for fuel. After learning of a flight for compensation out of Winslow, they flew from Amarillo to Winslow. The flight from Amarillo to Winslow, preceding a flight to carry freight for compensation out of Winslow, was a commercial flight. Although that flight from Amarillo to Winslow itself may not have been for compensation, it put Respondents in a position to pick up freight and deliver it for remuneration.

Once it was decided that they would carry freight from Winslow to Youngstown, the character of the flight from Detroit to Amarillo changed. That is, even if the Detroit to Amarillo flight was once "other than commercial," it could no longer be considered so once the decision was made to move on from Amarillo to Winslow to pick up the cargo for carriage to Youngstown. At that point, Respondents should have recomputed their flight times to determine whether accepting the Winslow-Youngstown assignment was consistent with the requirements of Section 135.267(b)

While some ferry flights would not be regarded as commercial flying, such as a flight back to base after the completion of an assignment, other ferry flights for the purpose of positioning an aircraft for a flight for compensation or hire would constitute commercial flying.

It is held that the law judge correctly found that the ferry flights on September 12, 1990, constituted "other commercial flying" for purposes of determining compliance with 14 CFR 135.267(b).

*Other commercial flying.* Within a 24-hour period, starting from 2200 on

November 5, 1990, and ending at 2200 on November 6, 1990, Respondents accumulated 11.3 flight hours. The law judge held that Respondent violated Section 135.267(b), finding that the three ferry flights during this period constituted "other commercial flying" and therefore, should be counted toward the total flying time. The law judge's finding is affirmed.

The Las Vegas-Brownsville leg on November 5, 1990, preceded the freight-carrying flight for compensation under Part 135 from Brownsville to Mesa. It was part of the assignment to get and transport the freight. As a result, it should be regarded as "other commercial flying."

The flight from Mesa to Milwaukee also must be considered as a commercial flight at least because it was for the purpose of getting contract fuel. Also, this flight leg from Mesa to Milwaukee was one of two legs to reposition the aircraft to pick up freight in Mosinee, Wisconsin.

The repositioning flight from Milwaukee to Mosinee preceded the flight for compensation from Mosinee to Brownsville, and therefore, it too should be considered other commercial flying.

**Section 135.263.** Assigning and accepting a prohibited flight are violations separate and distinct from operating a prohibited flight. Hence, the law judge's finding of no violation of 14 CFR 135.263(a) is reversed.

**Double Jeopardy.** The issue of whether a finding of multiple violations in this case would run afoul of the Double Jeopardy Clause is more academic than real. Whether the Double Jeopardy Clause applies to such civil money penalties has not been established.

**Sanction.** To justify the \$10,000 civil penalty against Charter Airlines, and the \$2000 civil penalties against Mr. Walker and Mr. Mort, it is not necessary to give separate effect to the alleged violations of Section 135.263(a). Respondents violated Section 135.267(b) on September 13 and November 6, 1990, and Section 135.267(d) on August 3, and October 25, 1990. Since a commercial operator may be assessed \$10,000 per violation, a \$10,000 civil penalty against Charter Airlines for its conduct contrary to the flight and duty time regulations on those four sets of flights is reasonable and well below the maximum allowable civil penalty. Likewise, because a pilot may be assessed a \$1000 civil penalty for each violation, \$2000 civil penalties against Mr. Walker and Mr. Mort for violations of the flight and duty time regulations on these four sets of flights are reasonable and well below the

maximum allowable civil penalty. Such significant penalties are justified not only by the numerous violations committed by Respondents, but by the cavalier attitude displayed by Respondents toward the flight and duty time restrictions.

*In the Matter of Mary Woodhouse*  
[Order No. 95-9 (5/9/95)]

**Good cause for late-filed notice of appeal.** The law judge denied Ms. Woodhouse's application for attorney's fees and costs under the Equal Access to Justice Act (EAJA) on December 7, 1994. Ms. Woodhouse filed an appeal document on January 3, 1995. Ms. Woodhouse's appeal was late. Under Section 14.28 of the FAA's rules implementing the EAJA, 14 CFR 14.28, and Section 13.233(a) of the Rules of Practice in Civil Penalty Proceedings, 14 CFR 13.233(a), Ms. Woodhouse had 10 days to file a notice of appeal from the law judge's denial. Good cause exists to excuse the lateness of Ms. Woodhouse's appeal because the law judge had written in his denial that Ms. Woodhouse had 30 days in which to file an appeal.

Detailed appeal document satisfies the requirements for an appeal brief and is construed as an appeal brief. Agency counsel is given 35 days in which to file a reply brief.

*In the Matter of Mark Steven Diamond*  
[Order No. 95-10 (5/10/95)]

**No Good Cause for Failure to File Answer.** In this case involving alleged hazardous materials violations, Respondent appealed from the law judge's order assessing a \$3,000 civil penalty against him after Respondent fails to file an answer to the complaint. Respondent's counsel requests another opportunity to file an answer, explaining that he is not familiar with administrative proceedings and the failure to file was simply an oversight on his part.

Parties may not avoid default merely by claiming unfamiliarity with the rules of practice. Counsel for Respondent had the benefit of two specific written reminders to file the complaint, but failed to do so. Good cause has not been shown, and therefore the law judge's assessment of a \$3,000 civil penalty is affirmed.

*In the Matter of Horizon Air Industries, Inc.*  
[Order No. 95-11 (5/10/95)]

**Minimum Equipment List Violation.** On several occasions, Respondent cleared the Minimum Equipment List entry and returned the aircraft to revenue service without a reasonable basis for concluding that the altitude warning system was repaired. Where

there is a pattern of discrepancies indicating that the existing diagnostic test may be unreliable, an air carrier must take further steps to ensure that the aircraft is truly repaired. In this case, Respondent should have: (1) performed a flight test; (2) checked with its pilots to see which air data computer was in use when the malfunctions occurred; and (3) called in the manufacturer of the malfunctioning system sooner. Safety was compromised to the extent that the captain or first officer reading the erroneous display would have required additional time and concentration to determine the aircraft's actual altitude by alternate means.

**Sanction Reduced.** The sanction imposed by the law judge is reduced from \$8,000 to \$5,000 on the ground that this was an exceptionally difficult maintenance problem to solve and Respondent did make many attempts to repair the system.

*In the Matter of Toyota Motor Sales, USA, Inc.*  
[Order No. 95-12 (5/10/95)]

**Previous Order Clarified.** Complainant has petitioned for modification of the earlier order issued in this case, Order No. 94-28. Complainant submits that Order No. 94-28 may imply erroneously that hearings conducted under Section 110 of the Hazardous Materials Act (HMTA) must be conducted under Section 5 of the Administrative Procedure Act (APA), 5 U.S.C. 554. Order No. 94-28 did not address or decide this issue. It explained only what is required of law judges under 14 CFR 13.232, the particular rule of practice that addresses what a law judge must include in the initial decision. Moreover, regardless of whether Section 5 of the APA applies to hearings under the HMTA, the Administrator has the authority to impose, through adjudication, the common-sense requirement that law judges articulate the reasons for their sanction decision.

*In the Matter of Thomas Kilrain*  
[Order No. 95-13 (6/16/95)]

**Appeal Perfected.** Mr. Kilrain's very short appeal brief merely sets forth the issues. Based upon the proceedings below, there can be no doubt about what Mr. Kilrain is arguing on appeal. It appears that Mr. Kilrain, who is *pro se*, is making the same arguments that he raised before the law judge at the prehearing conference and the hearing. Mr. Kilrain's appeal brief, despite its obvious deficiencies, is sufficient because he is simply renewing arguments raised below. Consequently, Complainant's motion to dismiss Mr.

Kilrain's appeal with prejudice is denied.

*In the Matter of Charter Airlines, James Walker and Larry Mort*

[Order No. 95-14 (6/21/95)]

*Stay Pending Judicial Review.*

Respondents requested a stay for 60 days pending the filing of a petition for review of Order 95-8. Stay granted.

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

In June 1991, as a public service, the FAA began releasing to commercial publishers the Administrator's decisions and orders in civil penalty cases. The goal was to make these decisions and orders more accessible to the public. The Administrator's decisions and orders in civil penalty cases are now available in the following commercial publications:

*AvLex*, published by Aviation Daily, 1156 15th Street, NW, Washington, DC 20005, (202) 822-4669;

*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, 50 Broad Street East, Rochester, NY 14694, (716) 546-1490.

The decisions and orders may be obtained on disk from Aviation Records, Inc., P.O. Box 172, Battle Ground, WA 98604, (206) 896-0376. Aeroflight Publications, P.O. Box 854, 433 Main Street, Gruver, TX 79040 (806) 733-2483, is placing the decisions on CD-ROM. Finally, the Administrator's decisions and orders in civil penalty cases are available on Compuserve and FedWorld.

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. No decision has been made yet on this matter, and for the time being, the FAA will continue to prepare and publish the subject-matter index and digests.

### 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, AK 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) 297-1270.

Issued in Washington, DC on July 10, 1995.

**James S. Dillman,**

*Assistant Chief Counsel for Litigation.*

[FR Doc. 95-17587 Filed 7-17-95; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-95-25]

### Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

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

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATE:** Comments on petitions received must identify the petition docket number involved and must be received on or before August 7, 1995.

**ADDRESS:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-200), Petition Docket No. \_\_\_\_, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267-3132.

### FOR FURTHER INFORMATION CONTACT:

Mr. D. Michael Smith, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).