

Docket No.: 28138.
Petitioner: Uyak Air Service, Inc.
Section of the FAR Affected: 14 CFR 43.3(g).

Description of Relief Sought/Disposition: To allow appropriately trained pilots employed by Uyak Air Service, Inc., (Uyak) to remove and reinstall the passenger seats in its aircraft that are type certificated for nine or fewer passenger seats and used in operations conducted by Uyak under part 135. *Grant, December 8, 1995, Exemption No. 6248.*

Docket No.: 28338.
Petitioner: Rich International Airways, Inc.
Section of the FAR Affected: 14 CFR 121.310(m).

Description of Relief Sought/Disposition: To permit Rich International Airways, Inc., to operate two Lockheed L-1011-385-3 aircraft (also known as L-1011-500 aircraft), serial Nos. 1183 and 1196, that have more than a 60-foot distance between emergency exits. *Denial, December 12, 1995, Exemption No. 6249.*

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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

Dates of quarter	Federal Register publication
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 22185; 4/29/94
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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

* 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.)

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- 95-2—Harry Allan Meronek
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- 95-3—Delta Air Lines
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- 95-4—Dean Hanson
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- 95-5—Abraham T. Araya
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- 95-6—Roger Lee Sutton
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- 95-8—Charter Airlines, James Walker & Larry Mort
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Civil Penalty Actions—Orders Issued by the Administrator Digests

(Current as of December 31, 1995)

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 October 1, 1995, to December 31, 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 Atlantic World Airways, Inc.

Order No. 95-23 (10/13/95)

Notice of Appeal Construed as Brief. Atlantic's notice of appeal contains Atlantic's specific objections to the initial decision and meets the requirements for an appeal brief. Agency counsel is given 35 days in which to file a reply brief and is asked to answer a few specific questions concerning whether agency counsel received a copy of Atlantic's answer to

the complaint, and if so, what was the mailing date.

In the Matter of Delta Air Lines, Inc.

Order No. 95-24 (11/7/95)

Appeal Dismissed. Delta has withdrawn its notice of appeal. Therefore, its appeal is dismissed.

In the Matter of Conquest Helicopters, Inc.

Order No. 95-25 (12/19/95)

Appeal Denied as Untimely. Conquest's appeal on the merits should have been filed within 10 days of the law judge's decision finding liability, but was not filed until about a year and half later. Conquest argues that the law changed during pendency of its appeal and that it did not have knowledge of basis for its appeal until the United States Court of Appeals for the Ninth Circuit issued its decision in the *Henderson* case, 733 F.3d 875 (9th Cir. 1993). However, the Ninth Circuit's decision in *Henderson* was based on NTSB case law. Each of the NTSB decisions that the Ninth Circuit Relied on in *Henderson* was issued well before Conquest's case even arose. Thus, Conquest lacks good cause for the untimeliness of its appeal on the merits, and its appeal should be dismissed. The law judge's assessment of a \$2,500 civil penalty is affirmed.

Even on Merits, Violation Still Appropriate. Even if it were necessary to reach the merits, a finding of violation would still be appropriate

because the NTSB cases on which *Henderson* was based did not correctly interpret the aerial photography exception. Any suggestion that an operator can perform an operation for which it is not certificated merely because the passenger has requested it flies in the face of reason and safety. In fact, the NTSB has itself questioned the viability of the cases at issue.

Proper Interpretation of Aerial Photography Exception. When a passenger on an aerial photography flight asks an operator without a Part 135 certificate to land at a site other than the departure point, the operator should inform the passenger that this cannot be done because the necessary certification is lacking. The operator should advise the passenger at that time that any landing other than at the departure point is impermissible.

In the Matter of Eric W. Hereth

Order No. 95-26 (12/19/95)

Preponderance of Evidence Supports ALJ's Decision. The law judge's assessment of a \$3,000 civil penalty is affirmed because a preponderance of the evidence supports the law judge's finding that an airplane crash was due to the pilot's fuel mismanagement rather than to a fuel leak. Mr. Hereth used the wrong flight manual in planning the flight; the manual that he consulted contained a significantly lower fuel burn rate than that of the aircraft which he was flying. FAA inspectors found no evidence of any fuel leak or mechanical

abnormalities. Mr. Hereth failed to provide any evidence of a fuel leak. Also, Mr. Hereth's testimony that the tanks were full at the beginning of the trip was based on nothing more than an assumption. Absent from Mr. Hereth's testimony was any indication that he insured that the tanks were full by some reliable method.

In the Matter of Valley Air Services, Inc.
Order No. 95-27 (12/19/95)

No Error in Accepting Supplement. In the initial application, Valley Air's counsel failed to itemize the attorney fees as required by the EAJA, but Valley Air later filed a supplement itemizing the fees requested. The law judge did not err in accepting Valley Air's supplement. The Federal courts have held that a failure to itemize may be corrected by later supplementation if the government has not shown prejudice.

No Single Position of Agency. Although the law judge stated that a single position of the government must be identified in making the substantial justification determination, the case law does not support this. In a case like this, where four separate regulations allegedly were violated, and the elements of the regulations are not identical, it is inappropriate to identify a single position of the government. The most sensible approach is to identify separate position of the government for each alleged regulatory violation.

Agency Not Substantially Justified. The agency attorney alleged a violation of four different regulations. The record is inadequate to show that the agency was substantially justified in alleging violations of any of the four regulations.

Award Reduced. The award of fees is reduced because the law judge awarded fees stemming from the consolidation of the instant spinners case with another case involving governors in which Valley Air did not prevail. The award is also reduced because the law judge awarded Valley Air expert witness fees that were in excess of the statutory cap. Thus, the law judge's award of \$16,510.21 in attorney fees is reduced to \$14,998.59.

In the Matter of Atlantic World Airways, Inc.

Order No. 95-28 (12/19/95)

Showing a Good Cause Necessary to Excuse Default. A law judge does not have the authority to give a defaulting party additional time to file an answer to the complaint when the party has not provided any good reason for its lateness.

Law Judge's Default Judgment Affirmed. Atlantic World Airways made no showing of good cause for failing to file its answer by the deadline, and therefore the law judge's assessment of the \$3,000 civil penalty requested in the complaint is affirmed.

No Evidence Atlantic Filed Answer Even By Extended Deadline. Even if the law judge did have the authority to extend the deadline without a showing of good cause, the result would be same. There is no evidence in the record that Atlantic filed its answer even by the extended deadline set by the law judge.

Commercial Reporting Services of the Administrator's Civil Penalty Decision 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., PO 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., PO Box 172, Battle Ground, WA 98604, (206) 896-0376. Aeroflight Publications, PO 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, 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 January 17, 1996.

James S. Dillman,

Assistant Chief Counsel for Litigation.

[FR Doc. 96-991 Filed 1-23-96; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-96-1]

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.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 13, 1996.

ADDRESSES: 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: nprmts@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 Rule 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).

Issued in Washington, D.C. on January 18, 1996.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 25008, 25898, 25937, 26034, 26036, 26059, 26066, 26085, 26119, 26172, 26177, 26190, 26219, 26418, 26579, 26598, 26959, 26967, 26892, 26940, 26958, 26962, 26963, 26987, 26998, 27013, 27047, 27085, 27190, 27214, 27233, 27239, 27240, 27253, 27255, 27256, 27269, 27274, 27279, 27321, 27323, 27324, 27326, 27337, 27339, 27350, 27351, 27357, 27364, 27375, 27390, 27391, 27397, 38401, 27403, 27424, 27453, 27562, 27468, 27465, 27470, 27489, 27493, 27494, 27507, 27510, 27514, 27518, 27525, 27534, 27544, 27546, 27515, 27553, 27590, 27622, 27625, 27629, 27666, 27668, 27676, 27709, 27725, 27738, 27739, 27740, 27751, 27757, 27825, 27827, 27843, 27868, 27875, 27878, 27891, 27912, 27916, 27949, 27973, 27985, 27988, 28002, 28035, 28036, 28065, 28070, 28076, 28080, 28082, 28130, 28165, 28171, 28175, 28187, 28191, 28204, 28205, 28210, 28211, 28222, 28224, 28234, 28235, 28256, 28263, 38202, 28335, 28342, 28343, 28358, 28366, 28371, 28375, 28385.

Petitioner: Rood et al.

Sections of the FAR Affected: 14 CFR 121.383(c).

Description of Relief Sought/Disposition:

To permit exemption from § 121.383(c), commonly referred to as the Age 60 Rule. All of these petitions pertain to the same issue, and, therefore, are addressed here under one summary. *Denial, December 28, 1995, Exemption Nos. 6252 through 6358.*

[FR Doc. 96-992 Filed 1-23-96; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

[FHWA Docket No. 95-23]

Uniform Relocation Act, Certification Pilot Program in Florida

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: On August 10, 1995, FHWA published a Notice with request for comments concerning The Florida Department of Transportation's (FDOT) proposal to comply with the Uniform Relocation Assistance and Real Property

Acquisition Policies Act (Uniform Act) on Federal-aid highway projects in two of its districts through use of a certification procedure permitted by the Uniform Act. The FDOT proposed to comply with the Uniform Act by conducting its right-of-way program in accordance with State laws determined by the FHWA, the Federal lead agency for the Uniform Act, to have the same purpose and effect as the Uniform Act. This notice is to inform the public that FHWA has accepted FDOT's certification.

DATES: The certification became effective on October 1, 1995, and will run for a period of two years.

FOR FURTHER INFORMATION CONTACT: Marshall Schy, Office of Real Estate Services, HRW-10, (202) 366-2035; or Reid Alsop, Office of Chief Counsel, HCC-31, (202) 366-1371, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The Uniform Act (42 U.S.C. 4601-4655) provides relocation benefits to persons forced to move by Federal or federally-assisted programs or projects. It also establishes policies relating to the acquisition of real property for such programs or projects. The FHWA has been designated the Federal Government's lead agency for implementing the Uniform Act.

Sections 210 and 305 of the Uniform Act (42 U.S.C. 4630 and 4655) require State agencies that receive Federal financial assistance for programs or projects that will result in the acquisition of real property or the displacement of persons to provide "assurances" that they will comply with the Act's provisions. Section 103 of the Uniform Act (42 U.S.C. 4604) provides that, in lieu of those assurances, a State agency may comply by certifying (and receiving the FHWA's determination) that it will be operating under State laws that "will accomplish the purpose and effect" of the Uniform Act.

The FDOT applied for a certification pilot program that would cover Uniform Act compliance on Federal-aid highway projects for a period of two years. The FDOT proposed to limit the pilot program to its Districts 2 and 4. District 2 includes the area encompassed by the counties of Alachua, Baker, Bradford, Clay, Columbia, Dixie, Duvall, Gilchrist, Hamilton, Lafayette, Levy, Madison, Nassau, Putnam, St. Johns, Suwannee, Taylor, and Union. District 4 includes the area encompassed by the counties of