

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on December 9, 1999. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available at the FAA office listed above and at the administrative offices of the Tulsa Airports Improvement Trust, Tulsa International Airport Terminal, P.O. Box 58138, Tulsa, Oklahoma 74158.

Issued in Fort Worth, Texas, December 23, 1999.

**Joseph G. Washington,**

*Acting Manager, Airports Division.*

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**Index of Administrator's Decisions and Orders of 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. This publication represents the quarter ending on December 31, 1999. This publication 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 cumulative subject-matter index and digests organized by order number. The indexes are published on a quarterly basis (i.e., January, April, July, and October).

The FAA first 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 only the subject-matter index would be published cumulatively and that the order number index would be non-cumulative. The FAA announced in a later notice that 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 previous quarterly publications of these indexes have appeared in the **Federal Register** 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.
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.
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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.
1/1/97-3/31/97 .....	62 FR 24533; 5/2/97.
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1/1/98-3/31/98 .....	63 FR 19559; 4/20/98.
4/1/98-6/30/98 .....	63 FR 37914; 7/14/98.
7/1/98-9/30/98 .....	63 FR 57729; 10/28/98.
10/1/98-12/31/98 ..	64 FR 1855; 1/12/99.
1/1/99-3/31/99 .....	64 FR 24690; 5/7/99.
4/1/99-6/30/99 .....	64 FR 43236; 8/9/99.

Dates of quarter	Federal Register publication
7/1/99-9/30/99 .....	64 FR 58879; 11/1/99.

The civil penalty decisions and orders, and the indexes and digests are available in FAA offices. Also, the Administrator's civil penalty decisions have been published by commercial publishers (Hawkins Publishing Company and Clark Boardman Callaghan) and are available on computer on-line services (Westlaw, LEXIS, Compuserve and FedWorld).

A list of the addresses of the FAA offices where the civil penalty decisions may be reviewed and information regarding these commercial publications and computer databases are provided at the end of the notice. Information regarding the accessibility of materials filed in recently initiated civil penalty cases in FAA civil penalty cases at the DOT Docket and over the Internet also appears at the end of this notice.

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### Civil Penalty Actions—Orders Issued by the Administrator Digests

(This digest includes all decisions and orders issued by the Administrator from October 1, 1999, to December 31, 1999.)

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, 1999, to December 31, 1999. The FAA publishes non-cumulative 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 Trans World Airlines, Inc.*

Order No. 99-12 (10/7/99)

**Security Cases.** This is a consolidated appeal of two separate security cases against TWA. In each case, the law judge found that TWA violated one FAA security directive and several regulations. The law judge assessed a \$6,500 civil penalty in each case, for a total of \$13,000. In the first case, a TWA agent failed during check-in to ask an FAA inspector posing as a passenger if she had received anything from unknown persons. In the second case, the agent failed to ensure proper passenger/baggage checking. As a result, TWA transported the baggage aboard the airplane, even though the undercover agent never boarded. In each case, TWA admitted facts, but denied violations.

**Validity of the Security Directives.** On appeal, TWA challenges the validity of the FAA security directives on several fronts. The law judge, however, did not err in declining to consider issues involving the validity of the security directives. As previously held, the Federal courts provide a more appropriate forum for challenging the validity of FAA security directives.

**Non-Delegability of Air Carrier Responsibilities.** TWA argues it should not be held fully responsible for unauthorized omissions of its employees. It has been held repeatedly that air carriers are responsible for violations committed by their employees while acting within scope of employment. By holding air carriers responsible for violations committed by

their employees, the public is assured that air carriers will do everything in their power to ensure that their employees comply with the security and safety regulations. No one is in a better position to bring pressure to bear on air carrier employees to comply with the regulations than the air carriers themselves. It would be contrary to public interest to permit TWA and other air carriers to transfer away their crucial safety and security responsibilities.

**Sanction.** TWA argues that the law judge should have reduced the proposed sanctions more than he did. The law judge reduced the sanction in each case from \$7,500 to \$6,500. In setting the sanctions, however, the law judge carefully balanced the seriousness of the violations against any mitigating factors. He gave adequate weight to the mitigating factor of TWA's corrective action. Previous cases have held that simple reminders of pre-existing security responsibilities, standing alone, do not ordinarily justify a reduction in an otherwise reasonable civil penalty. The \$6,500 sanctions set by the law judge already take into account the inadvertent nature of the violations and TWA's compliance disposition. If the violations had been deliberate or if TWA had demonstrated a non-compliant disposition, higher penalties would have been appropriate.

**Financial Hardship.** TWA offered no witness who could testify to TWA's inability to absorb the proposed sanctions. Moreover, TWA's admission in its appeal briefs that the \$6,500 civil penalties "will certainly not drastically harm" it undercuts its financial hardship argument. Due to the seriousness of the violations, which left the system vulnerable to terrorist attack, the law judge did not err in assessing a \$6,500 in each case.

**Conclusion.** This decision denies TWA's appeal and affirms the ALJ's assessment of \$6,500 in each case, for a total of \$13,000.

*In the Matter of Falcon Air Express, Inc.*

Order No. 99-13 (12/22/99)

**Passenger List Requirement.** This case involves an alleged failure to keep an accurate list of passenger names. During a routine inspection, FAA inspectors found a discrepancy: although the weight and balance manifest said there were 135 passengers on a Falcon flight from the Dominican Republic to the U.S., the passenger list only contained 84 names.

Falcon's Operations director said he would obtain a complete list and fax it to the FAA in about 10 minutes. Falcon contacted Aerolineas, the carrier for

whom it conducted the flight, to obtain a complete list. The next day, the inspectors returned to Falcon to get the new list, which had 139 names—a different number than on either of the other 2 lists. Neither Falcon's President nor its Operations Director could explain the discrepancy, or say which individuals were actually on board. As it turned out, the list from Aerolineas was encoded. Some of the names were no-shows or duplicates.

**Accuracy of Weight and Balance Calculations.** On appeal, Falcon disputes the law judge's statement that the weight and balance calculations could have been inaccurate. It is true that the purser obtained the correct number of passengers by doing a head count. But there is evidence supporting the law judge's statement that the calculations could have been inaccurate: Falcon's own safety director testified that one reason for keeping the passenger list was for weight and balance calculations. In any event, safety is still at issue because Falcon was unable to tell inspectors the correct number of passengers. If the list contains too few names, rescuers could end a post-accident search prematurely. If it contains too many names, rescuers could be endangered while searching for passengers not on flight.

**Accuracy of Passenger List.** Falcon argues the list it obtained from Aerolineas was accurate because the codes indicated which passengers were on flight. But a passenger list, no matter how accurate, is of little use if the carrier cannot decode it without delay.

Also, Falcon argues that its President and Operations Director do not need to be able to explain technical matters, and that other personnel who knew the codes would have been involved in an emergency. But Falcon's management did not know the codes. Twice inspectors visited Falcon asking how many passengers were on board and twice they left without the information.

**Sanction.** Falcon argues no penalty should be assessed because it was a simple misunderstanding regarding the codes. But a civil penalty needs to be assessed to ensure that in an emergency, carriers able to provide an accurate number and the names of passengers without any confusion or delay.

Falcon also argues that the \$5,000 civil penalty should be reduced due to a typo on the complaint, which erroneously stated the maximum penalty as \$1,000 instead of \$10,000. But both the notice and the final notice of proposed civil penalty said the maximum was \$10,000. Moreover, even the complaint, even though it misstated the maximum, stated the agency was



seeking \$7,500. Falcon has not shown it was harmed. Falcon's appeal is denied and the \$5,000 civil penalty assessed by the law judge is affirmed.

*In the Matter of Alika Aviation, Inc.*

FAA Order No. 99-14 (12/22/99)

This case arises from a post-accident inspection of a Hughes 369D helicopter, operated by Alika Aviation, d/b/a Alexair, in which it was found that the N1 and N2 tach generators were each missing 2 opposing mounting nuts and the oil pressure regulating valve was missing its safety wire. The law judge held that it was demonstrated beyond mere probability that these defects existed at the time of the aircraft's last 100-hour inspection. Alexair operated the aircraft for 71 hours between the time of its last 100-hour inspection and the time of the accident that led to the inspection by the FAA inspectors. The law judge held that these discrepancies should have been discovered during the 100-hour inspection, and assessed a \$6,000 civil penalty.

*Settlement Offer.* Alexair argues on appeal that the law judge wrongly rejected evidence of the pre-hearing settlement offer made by Complainant, arguing that that evidence would have demonstrated the excessiveness of the \$10,000 civil penalty sought by Complainant at the hearing. This argument is rejected. The introduction of evidence of settlement offers is prohibited under Federal Rule of Evidence 408 when that evidence is sought to dispute the validity of the amount of the claim (or in this case, the appropriateness of the civil penalty.)

*Informal Conference.* Alexair argues on appeal that the agency attorney conducted the informal conference improperly. It is held that what happened at the informal is not at issue before the law judge at the hearing stage or the Administrator on appeal.

*Operator responsible for the acts and omissions of its employees.* A Part 135 operator is responsible for the acts and omissions of its employees in the scope of their employment and for the condition of its aircraft. Citing 14 CFR 135.413(a); *In the Matter of TWA*, FAA Order No. 98-11 (June 16, 1998); *In the Matter of USAir, Inc.*, FAA Order No. 92-48 at 7 (July 22, 1992), petition for reconsideration denied, FAA Order No. 92-70 at 5-6 (December 21, 1992); accord, *In the Matter of Pacific Aviation International*, FAA Order No. 97-11 at 5 (February 20, 1997); *In the Matter of Horizon Air Industries*, FAA Order 96-24 (August 13, 1996).

*Sanction.* The Administrator rejects Alexair's argument that the civil penalty

should be reduced based on the fact that Alexair fired the mechanic who performed the 100-hour inspection. Terminating an employee eliminates someone who made a mistake but it does nothing positive to ensure that other or future employees will not make that same mistake. The Administrator also is not persuaded that the civil penalty should be reduced in light of the low civil penalty assessed against the mechanic. The Administrator may assess a civil penalty of up to \$1,000 against an individual, but may assess a civil penalty up to \$10,000 against an operator, like Alexair, that transports passengers or property or compensation or hire. The Administrator affirmed the \$6,000 civil penalty assessed by the law judge.

*In the Matter of Blue Ridge Airlines*

Order No. 99-15 (12/22/99)

*Air Carrier Use of Unqualified Pilot.* In this case, the law judge found that Blue Ridge's President piloted a Blue Ridge flight even though he holds only a private pilot certificate. Blue Ridge is a small Part 135 air carrier. Its president and owner, Douglas Haynes, is not authorized to serve as pilot in command of Blue Ridge flights. It is undisputed that Haynes flew a plane with three passengers from Colorado to Kansas and back. Blue Ridge claims that the flights were cost-sharing flights in which the pilot and passengers had a common purpose, so they fall under Part 91 instead of Part 135. But the evidence at the hearing showed that Haynes charged the passengers \$800 for the flight. The law judge did not believe Haynes' unlikely story that it was just a coincidence that his passengers wanted to go to the same small town in Kansas on the very same day that he was already going there to visit his cousin.

*New Testimony.* On appeal, Blue Ridge asks the Administrator to send the case back to the law judge to permit the carrier to permit it to present new testimony. But Blue Ridge has not explained what the testimony would be, how it might change the outcome, nor has it presented supporting affidavits, which are normally required when a party asks to present new evidence. Also, Blue Ridge has not shown why it did not present the testimony at the hearing in the first place. The request to remand is denied.

*Sanction.* Complainant has also filed an appeal, arguing that the law judge improperly ignored the Enforcement Sanction Guidance Table. *Compliance and Enforcement Order*, FAA Order 2150.3A, Appendix 4. Complainant argues that under the table, the law

judge should have assessed \$5,000 instead of \$1,600. It is true that the sanction table does need to be followed to ensure fairness, and there is no support for the method the law judge used in setting the sanction—that is, multiplying by two the revenue Blue Ridge generated for the improper flights. Nevertheless, there is a valid basis in the table for reducing the \$5,000 sanction proposed by the agency—the violator's ability to absorb the proposed sanction. Blue Ridge's income is extremely limited—it operated only a couple of flights under Part 135 and is no longer operating. So even though the law judge used an unauthorized method, the error was harmless because he arrived at an appropriate sanction anyway.

*In the Matter of Sharon Dorfman*

FAA Order No. 99-16 (12/22/99)

Ms. Dorfman was a passenger on board an American Airlines flight in May 1997. At the conclusion of a hearing, the law judge held that Ms. Dorfman did not violate 14 CFR 91.11, 121.317(f) and 121.317(k).

*Late Answer.* Complainant argues that the law judge should have dismissed the request for hearing because Ms. Dorfman did not demonstrate good cause for failing to file her answer on time. The Administrator holds that the question of whether the law judge should have held a hearing on the merits was a moot question after the hearing was held and briefs on the merits filed.

*Assault on the flight attendant not found.* Complainant argued that the law judge should have found that the preponderance of the evidence supported a finding that Ms. Dorfman pushed the flight attendant into a closet in violation of 14 CFR 91.11. Because Complainant failed to mention this incident in the complaint, the law judge correctly held that Complainant was precluded from arguing at the hearing that this incident amounted to a violation of Section 91.11. See 14 CFR 13.208(c). Moreover, the law judge found that Ms. Dorfman accidentally jostled the flight attendant. Accidental jostling does not amount to a battery, which is an intentional tort. The law judge's finding was reasonable in light of the evidence.

*Interference with the flight attendant no found.* Ms. Dorfman had her legs stretched across the aisle, and ignored the flight attendant's requests to move her legs. The flight attendant moved Ms. Dorfman's legs out of the way with her cart. The law judge held that this momentary and inconsequential

interference was too insignificant to rise to the level of a violation of 14 C.F.R. § 91.11. The Administrator agrees that this behavior did not amount to a violation of Section 91.11.

*Interference with the captain not found.* The captain testified that he was told that Ms. Dorfman would not stow her luggage and sit down. The law judge found credible Ms. Dorfman's testimony that she never carries her own luggage because she has a bad back, and therefore, she could not have been the person who did not stow her luggage. The administrator sees no reason to disturb this credibility finding by the law judge.

*Violations of seat belt regulations not found.* The law judge held that there was no evidence that Ms. Dorfman stood for more than a moment during the climb out, and he found the evidence that she stood up in response to the instruction to remain seated not to be compelling. The law judge wrote that Ms. Dorfman's demeanor did not suggest that she would flout flight attendant instructions. The Administrator sees no reason to disturb this credibility decision.

Complainant's appeal is denied and the law judge's decision is affirmed.

### 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 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 79040, (806) 733-2483.

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

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

### Docket

The FAA Hearing Docket is located at FAA Headquarters, 800 Independence Avenue, SW, Room 926A, Washington, DC, 20591 (tel. no. 202-267-3641.) The clerk of the FAA Hearing Docket is Ms. Stephanie McClain. All documents that are required to be filed in civil penalty proceedings must be filed with the FAA Hearing Docket Clerk at the FAA Hearing Docket. (See 14 CFR 13.210.) Materials contained in the dockets of any case not containing sensitive security information (protected by 14 CFR Part 191) may be viewed at the FAA Hearing Docket.

In addition, materials filed in the FAA Hearing Docket in non-security cases in which the complaints were filed on or after December 1, 1997, are available for inspection at the Department of Transportation Docket, located at 400 7th Street, SW, Room PL-401, Washington, DC, 20590, (tel. no. 202-366-9329.) While the originals will be retained in the FAA Hearing Docket, the DOT Docket will scan copies of documents in non-security cases in which the complaint was filed after December 1, 1997, into their computer database. Individuals who have access to the Internet can view the materials in these dockets using the following Internet address: <http://dms.dot.gov>.

### 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 926A, 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 Regional Counsel for the Aeronautical Center (AMC-7), Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169; (405) 954-3296.

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

Office of the Regional 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 Regional Counsel for the Eastern Region (AEA-7), Eastern Region Headquarters, JFK International Airport, Fitzgerald

Federal Building, Jamaica, NY 11430; (718) 553-3285.

Office of the Regional Counsel for the Great Lakes Region (AGL-7), Great Lakes Region Headquarters, O'Hare Lake Office Center, 2300 East Devon Avenue, Suite 419, Des Plaines, IL 60018; (847) 294-7085.

Office of the Regional Counsel for the New England Region (ANE-7), New England Region Headquarters, 12 New England Executive Park, Room 401, Burlington, MA 01803; (781) 238-7040.

Office of the Regional Counsel for the Northwest Mountain Region (ANM-7), Northwest Mountain Region Headquarters, 1601 Lind Avenue, SW, Renton, WA 98055; (425) 227-2007.

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

Office of the Regional Counsel for the Southwest Region (ASW-7), Southwest Region Headquarters, 2601 Meacham Blvd., Fort Worth, TX 76137; (817) 222-5064.

Office of the Regional Counsel for the Technical Center (ACT-7), William J. Hughes Technical Center, Atlantic City International Airport, Atlantic City, NJ 0845; (609) 485-7088.

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

Issued in Washington, DC on January 5, 2000.

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## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

#### Transfer of Federally Assisted Land or Facility

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of intent to transfer Federally assisted land or facility.

**SUMMARY:** Section 5334(g) of the Federal Transit Laws, as codified, 49 U.S.C. § 5301, *et seq.*, permits the Administrator of the Federal Transit Administration (FTA) to authorize a recipient of FTA funds to transfer land or a facility to a public body for any public purpose with no further obligation to the Federal Government if,