

SUMMARY: The FAA is considering a proposal that a portion of the airport (approximately 2 acres located on Sutton Street along the southwest corner of the airport) is not needed for aeronautical use, as shown on the Airport Layout Plan. There appear to be no impacts to the airport by allowing the airport the use of the land under a 45 year lease, for public self storage units. Approximately 20 percent of the land was acquired by the airport under FAA Project No. 9-19-007-0804 (parcel 9 and a portion of parcel 12).

In accordance with section 47107(h) of title 49, United States Code, the notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

The purpose of this lease is to make use of surplus land to generate needed revenue for the operations and maintenance of the airport.

DATES: Comments must be received on or before December 11, 2000.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. William Cronan, Special Projects Officer, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: William Cronan, Special Projects Officer, 12 New England Executive Park, Burlington, Massachusetts 01803. Telephone number 781-238-7610/Fax number 781-238-7608. Documents reflecting the FAA action may be reviewed at the 16 New England Executive Park, Burlington, Massachusetts 01803 or at the Lawrence Municipal Airport 492 Sutton Street, North Andover, Massachusetts 01845.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA intends to authorize the release of the subject airports property at the Lawrence Municipal Airport, North Andover, Massachusetts. The disposition of proceeds from the leasing of the airport property will be in accordance with FAA's policy and procedures concerning the use of the airport revenue, published in the **Federal Register** on February 16, 1999.

Issued in Burlington Massachusetts on October 30, 2000.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 00-28732 Filed 11-8-00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Index of Administrator's Decisions and Orders in Civil Penalty Actions; Publication

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of publication.

SUMMARY: This notice constitutes the required quarterly publication of an index of the Administrator's decisions and orders in civil penalty cases. This publication represents the quarter ending on September 30, 2000. 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.
1/1/94-3/31/94	59 FR 22196; 4/29/94.
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7/1/94-12/31/94	60 FR 4454; 1/23/95.
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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.
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10/1/96-12/31/96 ..	62 FR 2434; 1/16/97.
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7/1/97-9/30/97	62 FR 53856; 10/16/97.
10/1/97-12/31/97 ..	63 FR 3373; 1/22/98.
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.
7/1/99-9/30/99	64 FR 58879; 11/1/99.
10/1/99-12/31/99 ..	65 FR 1654; 1/11/00.
1/1/00-3/31/00	65 FR 35973; 6/6/00.
4/1/00-6/30/00	65 FR 47557; 8/2/00.

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 this 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*

(Issued between July 1, 2000, and September 30, 2000)

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 July 1, 2000, to September 30, 2000. The FAA will publish 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 David E. Everson, d/b/a North Valley Helicopters

Order No. 2000-15 (8/7/00)

Appeal Dismissed. Complaint withdrew its notice of appeal from the law judge's initial decision. Therefore, Complainant's appeal is dismissed.

In the Matter of Warbelow's Air Ventures, Inc.

Order No. 2000-16 (8/8/00)

Reconsideration Denied. Warbelow's filed a second, repetitive petition to reconsider FAA Order No. 2000-3. The Rules of Practice provide that the FAA decisionmaker will not consider repetitive petitions, and may summarily dismiss them. 14 CFR § 13.234(d). Warbelow's second petition to reconsider is summarily dismissed as repetitive.

In the Matter of Howard Gotbetter

Order No. 2000-17 (8/11/00)

Alleged Assault on Flight Attendant. On appeal, Gotbetter argues that the record does not support the law judge's finding that he assaulted a flight attendant in violation of 14 CFR 91.11.

Credibility findings. The law judge's credibility findings will not be overturned because Gotbetter has not given any persuasive reason to do so.

Alleged Bias. Gotbetter argues that the ALJ was biased against him. Gotbetter claims that the law judge is in essence "a puppet" of the FAA, and FAA is in turn a puppet of the airlines. Gotbetter is wrong; the law judge is not an

employee of the FAA. The United States Department of Transportation employs the law judge.

Gotbetter also contends that the law judge was improperly "cozy" with agency counsel because the law judge renewed his acquaintance with agency counsel after the hearing and discussed agency counsel's new baby. Merely making small talk with counsel does not rise to the level of a showing of bias.

"Guilt by Association." Gotbetter argues that the law judge unfairly penalized him for the actions of his traveling companion. This argument is rejected—the law judge specifically declined to hold Gotbetter responsible for his traveling companion's actions.

Conclusion. The law judge's decision assessing a \$500 civil penalty is affirmed.

In the Matter of California Helitech

Order No. 2000-18 (8/11/00)

Operating helicopters with open discrepancies on the squawk sheets. California Helitech, a helicopter pilot school certificated under Part 141, operated two helicopters with open maintenance discrepancies on the squawk sheets. The law judge held that California Helitech violated 14 CFR 91.405(a) and (b) and assessed a \$2,200 civil penalty.

Airworthiness. Complainant did not allege that the helicopters were unairworthy. The law judge precluded the introduction of testimony regarding whether the helicopters were airworthy at the hearing. Nonetheless, he held in the initial decision that California Helitech operated the helicopters in an unairworthy condition. The Administrator reversed the law judge's ruling that the helicopters were unairworthy. The Administrator held the finding was unfair in light of the preclusion of evidence at the hearing, and it was unnecessary in light of the absence of any allegation that the helicopters were operated in an unairworthy condition.

The Administrator rejected California Helitech's argument that there should have been no finding of violations because the squawk sheets are required under Part 141 but Complainant did not prove that the flights were conducted under Part 141. The Administrator held that while the squawk sheet is a Part 141 form, the requirement to repair and make appropriate entries in maintenance records arose under Part 91. Regardless of the format of the discrepancy listing, Section 91.405's requirements still apply.

Sequestering of Witnesses. The law judge granted the motion to sequester

the witnesses at the beginning of the hearing. Complainant's witness, Inspector Magill, testified during Complainant's case-in-chief, and again as a rebuttal witness, but he was not sequestered during the testimony of the other witnesses. The Administrator held that California Helitech should have objected at the hearing so that the law judge would have had an opportunity to bar the inspector from retaking the witness stand. Moreover, there was little, if any, need to sequester Inspector Magill because on rebuttal he testified primarily as an expert, not a percipient witness.

Civil Penalty Appropriate Despite California Helitech's Surrender of its Part 141 Certificate. The need for a sanction with a punitive and deterrent effect is not obviated by California Helitech's voluntary surrender of its pilot school certificate.

Sanction. The Administrator affirmed the \$2,200 civil penalty, finding it to be reasonable in light of the proven violations.

In the Matter of James J. Horner

Order No. 2000-19 (8/11/00)

Alleged entering of sterile area without submitting to screening. Horner was late for a flight. He presented his carry-on bag for x-ray inspection at the security checkpoint. The screener, who was unable to determine the nature of one of the objects inside the bag, handed it to a bag checker for a physical search. Horner "grabbed" the bag from the bag checker even though the search was not finished and set off for the gate. The supervisor called out to Horner to stop, but he did not. A screener followed him to the gate and told the ticket agent not to let him board because his bag had not been searched thoroughly. The screener asked Horner if he could search the bag, and Horner agreed, but he threw it on the ground and kicked it. He was verbally abusive appeared extremely angry and scary. The screener searched the bag and found nothing threatening. The law judge held that Horner violated 14 CFR 107.20 and assessed a \$750 civil penalty.

Alleged Lack of Fair Hearing. On appeal, Horner argued that the agency attorney violated FRCP Rule 26 by failing to provide him, within 30 days before the hearing, a list of evidence the agency might introduce at the hearing. Horner contends he did not present any witnesses because he thought the agency would not present any evidence. The FRCP do not apply in FAA civil penalty proceedings, and the FAA civil penalty rules of practice do not contain a provision that mandates disclosure

without a discovery request. Horner was free to submit discovery requests to the agency attorney, but he failed to do so. His claim that he was denied a fair hearing is rejected.

Lateness of Initial Decision. Horner also argued that the case against him should have been dismissed because the law judge failed to issue a decision within 30 days after the hearing, as required by 14 CFR 13.232(c). The law judge's decision was issued approximately 3 months late. Horner has neither asserted nor shown any prejudice resulting from the delay. He could have moved to compel the law judge to issue the decision, but did not.

Conclusion. The Administrator affirmed law judge's decision assessing a \$750 civil penalty.

In the Matter of Phillips Building Supply
Order No. 2000-20 (8/11/00)

Hazardous Materials. In this case, five 1-gallon cans of Formica glue were shipped aboard a UPS cargo plane without proper packaging, labeling, marking, and without complying with other requirements of the Hazardous Materials Regulations. The shipment was found leaking in a UPS facility. The agency attorney sought a \$20,000 civil penalty, but the law judge reduced it to \$9,000, and the agency attorney appealed.

Sanction. The law judge improperly used a mathematical, formulaic approach of multiplying the number of violations by a set dollar amount. This was not appropriate, as a violation of one regulation may be more or less serious than of another.

The law judge improperly reduced the \$20,000 proposed civil penalty to \$9,000 because of Phillips' first effort at training. While it was a corrective measure justifying a reduction, it deserves only a minor one. Phillips' own witness characterized the training as "cursory."

Further, the law judge improperly reduced the civil penalty based on Phillips' attorney's statement that he advised his client of the need for further training. There was no indication that Phillips accepted its attorney's advice. Moreover, further training after a hearing would be so long after the incident that it could not be regarded as a mitigating factor. Also, it is beyond the authority of the law judge to impose a training requirement as part of the sanction; the law judge's authority is limited to imposing a civil penalty.

In addition, the law judge improperly based his sanction determination in part on Phillips' promise not to ship hazardous materials any more. The case

law indicates that a promise not to ship hazardous materials in the future does not represent the type of positive corrective action that warrants consideration in determining the penalty. Such a company policy may be changed at any time.

After considering all the factors required by the statute—

1. the nature, circumstances, extent, and gravity of the violation (undeclared shipments pose a special risk and are extremely dangerous; FAA inspector's testimony that given the closed ventilation system, if the glue leaked, vapors could cause crew to succumb; the package actually leaked, and onto some food, which could have caused people to get sick if they ingested it; on the other hand, it was a relatively small shipment; it was not flammable, corrosive, or radioactive);

2. the violator's degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue to do business (Phillips is a business rather than an individual; while it is not a manufacturer, it regularly handles hazardous materials; prior violations are not present; and Phillips has not alleged financial hardship); and

3. other matters that justice requires (Phillips did take some corrective action—i.e., two employees participated in a UPS training course; this doesn't justify a large adjustment, but it is still mitigating).

Conclusion. Based on the statutory factors, the \$9,000 civil penalty assessed by the law judge is too low, but the \$20,000 sought by Complainant is excessive. A \$14,000 civil penalty is imposed.

In the Matter of Daniel A. Martinez
Order No. 2000-21 (8/11/00)

Untimely Supplemental Brief Rejected. Order No. 2000-7 directed Martinez to file a supplemental brief explaining why he failed to answer the complaint and the law judge's order to show cause. Martinez lacked good cause for failing to file his supplemental brief by the deadline. Thus, his supplemental brief is rejected.

Community Service. In any event, the relief Martinez sought on appeal—to substitute community service for the civil penalty—is not available. The governing statute and regulations provide only for monetary penalties in FAA civil penalty actions; they do not provide for community service as a possible penalty.

Conclusion. Martinez's appeal is dismissed, the law judge's initial decision is affirmed, and a civil penalty of \$2,200 is assessed.

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

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, 1-800-211-9428.

2. **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 docket 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, Suite PL-401, Washington, DC, 20590, (tel. no. 202-366-9329.) While the originals are retained in the FAA Hearing Docket, the DOT Docket scans 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), 1 Aviation Plaza, 159-30 Rockaway Blvd., Springfield Gardens, NY 11434; (718) 533-3285

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 60019; (847) 294-7085

Office of the Regional Counsel for the New England Region (ANE-7), New England Regional 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 08405; (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) 725-71000

Issued in Washington, DC on October 31, 2000.

James S. Dillman,

Assistant Chief Counsel for Litigation.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-2000-62]

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 Part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, 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 November 29, 2000.

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, DC 20591.

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, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267-8033, or Vanessa Wilkins (202) 267-8029, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to §§ 11.85 and 11.91 of part 11 of 14 CFR.

Issued in Washington, DC, on November 3, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 28530.
Petitioner: Mr. John A. Porter.
Section of the 14 CFR Affected: 14 CFR 91.109(a) and (b)(3).

Description of Relief Sought/Disposition: To allow Mr. Porter to conduct certain flight instruction and simulated instrument flights to meet recent instrument experience requirements, in certain Beechcraft airplanes equipped with a functioning throwover control wheel in place of functioning dual controls.

Grant, 10/06/00, Exemption No. 6521B.

Docket No.: 28514.
Petitioner: Mr. Henry D. Canterbury.
Section of the 14 CFR Affected: 14 CFR 91.109(a) and (b)(3).

Description of Relief Sought/Disposition: To allow Mr. Canterbury to conduct certain flight instruction and simulated instrument flights to meet recent instrument experience requirements in certain Beechcraft airplanes equipped with a functioning throwover control wheel in place of functioning dual controls.

Grant, 10/05/00, Exemption No. 6520B.

Docket No.: 29922.
Petitioner: Mr. Richard E. Druschel.
Section of the 14 CFR Affected: 14 CFR 91.109(a) and (b)(3).

Description of Relief Sought/Disposition: To allow Mr. Druschel to conduct certain flight instruction and simulated instrument flights to meet recent instrument experience requirements in certain Beechcraft airplanes equipped with a functioning throwover control wheel in lieu of functioning dual controls.

Grant, 10/06/00, Exemption No. 7367.

Docket No.: 29937.
Petitioner: Southern California Aviation, Inc.
Section of the 14 CFR Affected: 14 CFR 145.35 and 145.37(b).

Description of Relief Sought/Disposition: To permit SCAI to add transport category airplanes up to and including the Boeing 747-400 airplane to its FAA-certificated repair station limited airframe rating without completely meeting the housing and facility requirements for such airplanes.

Grant, 10/06/00, Exemption No. 7364.

[FR Doc. 00-28738 Filed 11-8-00; 8:45 am]

BILLING CODE 4910-13-M