

(1) Why a re-designation and additional MAP eligible project funding is needed to accomplish the conversion to meet the civil role of the airport and the preferred time period for re-designation

(2) Why funding of eligible work under other categories of AIP or other sources of funding would not accomplish the development needs of the airport;

(3) Why, based on the previously funded MAP projects, the projects and/or funding level were insufficient to accomplish the airport conversion needs and development goals; and

(4) The term of the re-designation, not to exceed five years, for which the airport is applying.

This notice is issued pursuant to Title 49 U.S.C. 47118.

Issued at Washington, DC, on January 17th, 2001.

Catherine M. Lang,

Director, Office of Airport Planning and Programming.

[FR Doc. 01-2039 Filed 1-22-01; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of publication.

SUMMARY: This notice constitutes the required quarterly publication of an index of the Administrator's decisions and orders in civil penalty cases. This publication represents the quarter ending on December 31, 2000. This publication ensures that the agency is in compliance with statutory indexing requirements.

FOR FURTHER INFORMATION CONTACT:

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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
4/1/94-6/30/94	59 FR 39618; 8/3/94
7/1/94-12/31/94	60 FR 4454; 1/23/95
1/1/95-3/31/95	60 FR 19318; 4/17/95
4/1/95-6/30/95	60 FR 36854; 7/18/95
7/1/95-9/30/95	60 FR 53228; 10/12/95
10/1/95-12/31/95 ..	61 FR 1972; 1/24/96
1/1/96-3/31/96	61 FR 16955; 4/18/96
4/1/96-6/30/96	61 FR 37526; 7/18/96
7/1/96-9/30/96	61 FR 54833; 10/22/96
10/1/96-12/31/96 ..	62 FR 2434; 1/16/97
1/1/97-3/31/97	62 FR 24533; 5/2/97
4/1/97-6/30/97	62 FR 38339; 7/17/97
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

Dates of quarter	Federal Register publication
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
7/1/00-9/30/00	65 FR 67445; 11/9/00

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, and Compuserve).

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.

Civil Penalty Actions—Orders Issued by the Administrator

Order Number Index

(Includes all decisions and orders issued by the Administrator during calendar year 2000.)

2000-1—Ronald L. Gatewood
2/2/00—CP97EA0071, DMS No. FAA-1997-3292

2000-2—Ryan International Airlines
2/2/00—CP99GL0011, DMS No. FAA-1999-5805

2000-3—Warbelow's Air Ventures
2/2/00—CP97AL0012

2000-4—Ryan International Airlines
3/3/00—CP99GL0011, DMS No. FAA-1999-5805

2000-5—Blue Ridge Airlines
3/23/00—CP97NM0024

2000-6—Atlantic Coast Airlines
3/29/00—CP97SO0047

2000-7—Daniel A. Martinez
3/30/00—CP99NM0012, DMS No. FAA-1999-5984

2000-8—USA Jet Airlines
5/9/00—CP99SW0009, DMS No. FAA-1999-5783

2000-9—Tundra Copters
5/11/00—CP99AL0011, DMS No. FAA-1999-5983

2000-10—Johnny Johnson
5/11/2000—CP99SW0011, DMS No. FAA-1999-5821

2000-11—Europex
5/11/2000—CP98EA0042, DMS No.
FAA-1998-4676
2000-12—Evergreen Helicopters
6/8/2000—CP97AL0001
2000-13—Empire Airlines
6/8/2000—CP98NM0011
2000-14—Warbelow's Air Ventures
6/8/2000—CP97AL0012
2000-15—David E. Everson
8/7/2000—CP99WA0002, DMS No.
FAA-1999-5570
2000-16—Warbelow's Air Ventures
8/8/2000—CP97AL0012
2000-17—Howard Gotbetter
8/11/2000—CP98EA0051, DMS No.
FAA-1998-4691

2000-18—California Helitech
8/11/2000—CP98WP0035
2000-19—James J. Horner
8/11/2000—CP99NM0004
2000-20—Phillips Building Supply
8/11/2000—CP99SO0024, DMS No.
FAA-1999-5816
2000-21—Daniel A. Martinez
8/24/2000—CP99NM0012, DMS No.
FAA-1999-5984
2000-22—John Nelson Meyer
12/13/00—CP99SW0004
2000-23—Federal Express
12/13/00—CP99SO0037, DMS No.
FAA-2000-6732
2000-24—SONICO
12/21/00—CP98NM0018

2000-25—Riverdale Mills Corp.
12/21/00—CP98NE0017, DMS No.
FAA-1998-4931
2000-26—Aero National
12/21/00—CP99EA0016, DMS No.
FAA-1999-5449
2000-27—Phillips Building Supply
12/21/00—CP99SO0024, DMS No.
FAA-1999-5816
2000-28—Lifelite Medical Air
Transport
12/21/00—CP98WP0062
2000-29—William Stevenson
12/21/00—CP00NM0005

Civil Penalty Actions—Orders Issued by the Administrator

Subject Matter Index

(Current as of December 31, 2000)

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; 95-25 Conquest; 95-26 Hereth; 97-20 Werle; 97-30 Emery Worldwide Airlines; 97-32 Florida Propeller; 98-18 General Aviation; 99-6 Squire; 2000-3 Warbelow's; 2000-17 Gotbetter.
Default Judgment	91-11 Continental Airlines; 92-47 Cornwall; 94-8 Nunez; 94-22 Harkins; 94-28 Toyota; 95-10 Diamond; 97-28 Continental Airlines; 97-33 Rawlings; 98-13 Air St. Thomas.
Discovery	89-6 American Airlines; 91-17 KDS Aviation; 91-54 Alaska Airlines; 92-46 Sutton-Sautter; 93-10 Costello.
Expert Testimony	94-21 Sweeney.
Granting extensions of time	90-27 Gabbert.
Hearing location	92-50 Cullop.
Hearing request	93-12 Langton; 94-6 Strohl; 94-27 Larsen; 94-37 Houston; 95-19 Rayner.
Initial Decision	92-1 Costello; 92-32 Barnhill.
Lateness of	97-31 Sanford Air; 2000-19 Horner.
Should include requirement to file appeal brief	98-5 Squire.
Jurisdiction:	
Generally	90-20 Degenhardt; 90-33 Cato; 92-1 Costello; 92-32 Barnhill.
After issuance of order assessing civil penalty	94-37 Houston; 95-19 Rayner; 97-33 Rawlings.
When complaint is withdrawn	94-39 Kirola.
Motion for Decision	92-73 Wyatt; 92-75 Beck; 92-76 Safety Equipment; 93-11 Merkley; 96-24 Horizon; 98-20 Koenig.
No authority to extend due date for late Answer without showing of good cause. (See also Answer).	95-28 Atlantic World Airways; 97-18 Robinson; 98-4 Larry's Flying Service.
Notice of Hearing	92-31 Eaddy.
Regulate proceedings	97-20 Werle.
Sanction	90-37 Northwest Airlines; 91-54 Alaska Airlines; 94-22 Harkins; 94-28 Toyota.
Service of law judges by parties	97-18 Robinson.
Vacate initial decision	90-20 Degenhardt; 95-6 Sutton; 2000-24 SONICO.
Aerial Photography	95-25 Conquest Helicopters.
Agency Attorney	93-13 Medel.
Air Carrier/Aircraft Operator:	
Agent/independent contractor of	92-70 USAir; 2000-13 Empire Airlines.
Careless or Reckless	92-48 & 92-70 USAir; 93-18 Westair Commuter.
Duty of care: Non-delegable	92-70 USAir; 96-16 Westair Commuter; 96-24 Horizon; 97-8 Pacific Av. d/b/a Inter-Island Helicopters; 99-12 TWA; 2000-3 Warbelow's; 2000-13 Empire airlines.
Employee	93-18 Westair Commuter; 97-8 Pacific Av. d/b/a Inter-Island Helicopters; 99-12 TWA; 99-14 Alika Aviation; 2000-1 Gateway; 2000-3 Warbelow's.
Ground Security Coordinator, Failure to provide	96-16 WestAir Commuter.
Intoxicated Passenger:	
Allowing to board	98-11 TWA.
Serving alcohol to	98-11 TWA.
Liability for acts/omissions of employees in scope of employment.	98-11 TWA, 99-12 TWA; 99-14 Alika Aviation; 2000-1 Gateway; 2000-3 Warbelow's.
Liability for maintenance by independent repair station	2000-13 Empire Airlines.

Use of unqualified pilot	99-15 Blue Ridge; 99-11 Evergreen; 2000-12 Evergreen.
Aircraft Maintenance (See also Airworthiness, Maintenance Manual) Generally.	90-11 Thunderbird Accessories; 91-8 Watts Agricultural Aviation; 93-36 & 94-3 Valley Air; 94-38 Bohan; 95-11 Horizon; 96-3 America West Airlines; 97-8 Pacific Av. d/b/a Inter-Island Helicopters; 97-9 Alphin; 97-10 Alphin; 97-11 Hampton; 97-30 Emery Worldwide Airlines; 97-31 Sanford Air; 98-18 General Aviation; 99-5 Africa Air; 2000-13 Empire Airlines; 2000-14 Warbelow's 2000-18 California Helitech.
Acceptable methods, techniques, and practices	96-3 America West Airlines.
After certificate revocation	92-73 Wyatt.
Airworthiness Directive, compliance with	96-18 Kilrain; 97-9 Alphin.
Approved data for major repairs	2000-13 Empire Airlines.
Advisory Circular 43.13-1, Not approved data	2000-13 Empire Airlines.
Not necessarily approved for another aircraft	2000-13 Empire Airlines.
DER	2000-13 Empire Airlines.
Inspection	96-18 Kilrain; 97-10 Alphin; 99-14 Alike Aviation.
Major alterations:	
Failed to prove	99-5 Africa Air.
Major/minor repairs	96-3 America West Airlines.
Minimum Equipment List (MEL)	94-38 Bohan; 95-11 Horizon; 97-11 Hampton; 97-21 Delta; 97-30 Emery Worldwide Airlines; 2000-3 Warbelow's; 2000-1 Gatewood; 2000-18 California Helitech.
Operation no maintenance entries	2000-18 California Helitech.
Repairs between required inspections	2000-1 Gatewood.
Propellers	2000-1 Gatewood.
Aircraft Records:	
Aircraft Operation	91-8 Watts Agricultural Aviation; 2000-1 Gatewood.
Flight Duty Time	96-4 South Aero.
Maintenance Records	91-8 Watts Agricultural Aviation; 94-2 Woodhouse; 97-30 Emery Worldwide Airlines; 97-31 Sanford Air; 98-18 General Aviation; 2000-1 Gatewood; 2000-3 Warbelow's; 2000-18 California Helitech.
Description of maintenance	2000-1 Gatewood.
Squawk sheets	2000-18 California Helitech.
"Yellow tags"	91-8 Watts Agricultural Aviation.
Aircraft-Weight and Balance (See Weight and Balance)	
Airmen:	
Airline Transport Pilot certificates requirement in foreign aviation by Part 135 operator.	99-11 Evergreen Helicopters; 2000-12 Evergreen.
Altitude deviation	92-49 Richardson & Shimp.
Careless or Reckless	91-12 & 91-31 Terry & Menne; 92-8 Watkins; 92-49 Richardson & Shimp; 92-47 Cornwall; 93-17 Metcalf; 93-29 Sweeney; 96-17 Fenner.
Check airman:	
Competency test	2000-26 Aero National.
Proficiency test	2000-26 Aero National.
Flight time limitations	93-11 Merkley.
Flight Time records	99-7 Premier Jets.
Follow ATC Instruction	91-12 & 91-31 Terry & Menne; 92-8 Watkins; 92-49 Richardson & Shimp.
Low Flight	92-47 Cornwall; 93-17 Metcalf.
Owner's responsibility	96-17 Fenner; 2000-1 Gatewood.
Pilots	91-12 & 91-31 Terry & Menne; 92-8 Watkins; 92-49 Richardson & Shimp; 93-17 Metcalf.
See and Avoid	93-29 Sweeney.
Unqualified for Part 135 flight	99-15 Blue Ridge.
Air Operations Area (AOA):	
Air Carrier Responsibilities	90-19 Continental Airlines; 91-33 Delta Air Lines; 94-1 Delta Air Lines.
Airport Operator Responsibilities	90-19 Continental Airlines; 91-4 [Airport Operator]; 91-18 [Airport Operator]; 91-40 [Airport Operator]; 91-41 [Airport Operator]; 91-58 [Airport Operator]; 96-1 [Airport Operator]; 98-7 LAX.
Badge Display	91-4 [Airport Operator]; 91-33 Delta Air Lines; 99-1 American Airlines.
Definition of	90-19 Continental Airlines; 94-1 [Airport Operator]; 91-58 [Airport Operator].
Exclusive Areas	90-19 Continental Airlines; 91-4 [Airport Operator]; 91-58 [Airport Operator]; 98-7 LAX.
Airport Security Program (ASP):	
Compliance with	91-4 [Airport Operator]; 91-18 [Airport Operator]; 91-40 [Airport Operator]; 91-41 [Airport Operator]; 91-58 [Airport Operator]; 94-1 Delta Air Lines; 96-1 [Airport Operator]; 97-23 Detroit Metropolitan; 98-7 LAX; Airport Operator.
Responsibilities	90-12 Continental Airlines; 91-4 [Airport Operator]; 91-18 [Airport Operator]; 91-40 [Airport Operator]; 91-41 [Airport Operator]; 91-58 [Airport Operator]; 96-1 [Airport Operator]; 97-23 Detroit Metropolitan.

Air Traffic Control (ATC):	
Error as mitigating factor	91-12 & 91-31 Terry & Menne.
Error as exonerating factor	91-12 & 91-31 Terry & Menne; 92-40 Wendt.
Ground Control	91-12 Terry & Menne; 93-18 Westair Commuter.
Local Control	91-12 Terry & Menne.
Tapes & Transcripts	91-12 Terry & Menne; 92-49 Richardson & Shimp.
Airworthiness	91-8 Watts Agricultural Aviation; 92-10 Flight Unlimited; 92-48 & 92-70 USAir; 94-2 Woodhouse; 95-11 Horizon; 96-3 America West Airlines; 96-18 Kilrain; 94-25 USAir; 97-8 Pacific Av. d/b/a Inter-Island Helicopters; 97-9 Alphin; 97-10 Alphin; 97-11 Hampton; 97-21 Delta; 97-30 Emery Worldwide Airlines; 97-32 Florida Propeller; 98-18 General Aviation; 99-14 Alika Aviation; 2000-3 Warbelow's; 2000-13 Empire Airlines; 2000-14 Warbelow's; 2000-18 California Helitech.
Amicus Curiae Briefs	90-25 Gabbert.
Answer:	
Extension of due date for late Answer—good cause required	95-28 Atlantic World Airways; 97-18 Robinson; 97-33 Rawlings; 98-4 Larry's Flying Service; 2000-29 Stevenson.
Good cause Not shown for late answer	2000-29 Stevenson.
Reply to each numbered paragraph in complaint required	98-12 Blankson.
Timeliness of answer	90-3 Metz; 90-15 Playter; 92-32 Barnhill; 92-47 Cornwall; 92-75 Beck; 92-76 Safety Equipment; 94-5 Grant; 94-29 Sutton; 94-30 Columna; 94-43 Perez; 95-10 Diamond; 95-28 Atlantic World Airways; 97-18 Robinson; 97-19 Missirlan; 97-33 Rawlings; 97-38 Air St. Thomas; 98-4 Larry's Flying Service; 98-13 Air St. Thomas; 99-8 McDermott; 99-9 Lifeflite Medical Air Transport; 99-16 Dorfman; 2000-29 Stevenson.
Timeliness not an issue after hearing	99-16 Dorfman.
What constitutes	92-32 Barnhill; 92-75 Beck; 97-19 Missirlan.
What does Not constitute Response to pre-complaint	92-32 Barnhill; 2000-29 Stevenson.
Appeals (See also Filing; 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 Brief:	
Granted	93-6 Westair Commuter; 97-22 Sanford Air; 2000-23 Federal Express.
Denied/Struck	92-3 Park; 93-5 Wendt; 94-4 Northwest Aircraft; 94-18 Luxemburg; 97-34 Continental Airlines; 98-18 General Aviation.
Requested by Decisionmaker	93-28 Strohl; 94-29 Sutton; 97-38 Air St. Thomas; 99-11 Evergreen Helicopter, 2000-7 Martinez.
Appeal dismissed as premature	95-19 Rayner.
Appeal dismissed as moot after complaint withdrawn	92-9 Griffin.
Appellate arguments	92-70 USAir.
Court of Appeals, appeal to (See Federal Courts)	
Good Cause for Late-Filed Brief or Notice of Appeal	90-3 Metz; 90-27 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; 95-25 Conquest, 97-6 WRA Inc.; 97-7 Stalling; 97-28 Continental; 97-38 Air St. Thomas; 98-1 V. Taylor; 98-13 Air St. Thomas; 99-4 Warbelow's Air Ventures; 2000-11 Europex; 2000-21 Martinez.
Informal Conference Conduct of, not on appeal	99-14 Alika Aviation.
Motion to Vacate construed as a brief	91-11 Continental Airlines.
Perfecting an Appeal, generally	92-17 Giuffrida; 92-19 Cornwall; 92-39 Beck; 94-23 Perez; 95-13 Kilrain; 96-5 Alphin Aircraft; 98-20 Koeing.
Extension of Time for (good cause for)	89-8 Thunderbird Accessories; 91-26 Britt Airway ways; 91-32 Bergen; 91-50 Costello; 93-2 & 93-3 Wendt; 93-24 Steel City Aviation; 93-32 Nunez; 98-5 Squire; 98-15 Squire; 99-3 Justice; 99-4 Warbelow's Air Ventures.

Failure to	89-1 Gressani; 89-7 Zenkner; 90-11 Thunderbird Accessories; 90-35 P. Adams; 90-39 Hart; 91-7 Pardue; 91-10 Graham; 91-20 Bargaen; 91-43, 91-44, 91-46 & 91-47 Delta Air Lines; 92-11 Alilin; 92-15 Dillman; 92-18 Bargaen; 92-34 Carrell; 92-35 Bay Land Aviation; 92-36 Southwest Airlines; 92-45 O'Brien; 92-56 Montauk Caribbean Airways; 92-67 USAir; 92-68 Weintraub; 92-78 TWA; 93-7 Dunn; 93-8 Nunez; 93-20 Smith; 93-23 & 93-31 Allen; 93-34 Castle Aviation; 93-35 Steel City Aviation; 94-12 Bartusiak; 94-24 Page; 94-26 French Aircraft; 94-34 American International Airways; 94-35 American International Airways; 94-36 American International Airways; 95-4 Hanson; 95-22 & 96-5 Alphin Aircraft; 96-2 Skydiving Center; 96-13 Winslow; 97-3 [Airport Operator], 97-6 WRA, Inc.; 97-15 Houston & Johnson County; 97-35 Gordon Air Services; 97-36 Avcon; 97-37 Roush; 98-10 Rawlings; 99-2 Oxygen Systems; 2000-9 Tundra Copters; 2000-10 Johnson.
Notice of appeal construed as appeal brief	92-39 Beck; 94-15 Columna; 95-9 Woodhouse; 95-23 Atlantic World Airways; 96-20 Missirlian; 97-2 Sanford Air; 98-5 Squire; 98-17 Blue Ridge; 98-23 Instead Balloon Services; 99-3 Justice; 99-8 McDermott; 2000-7 Martinez.
What Constitutes	90-4 Metz; 90-27 Gabbert; 91-45 Park; 92-7 West; 91-17 Giuffrida; 92-39 Beck; 93-7 Dunn; 94-15 Columna; 94-23 Perez; 94-30 Columna; 95-9 Woodhouse; 95-23 Atlantic World Airways; 96-20 Missirlian; 97-2 Sanford Air.
Service of brief:	
Fail to serve other party	92-17 Giuffrida; 92-19 Cornwall.
Timeless of Notice of Appeal	90-3 Metz; 90-39 Hart; 91-50 Costello; 92-7 West; 92-69 McCabe; 93-27 Simmons; 95-2 Meronek; 95-9 Woodhouse; 95-15 Alphin Aviation; 96-14 Midtown Neon Sign Corp.; 97-7 & 97-17 Stallings; 97-28 Continental; 97-38 Air St. Thomas; 98-1 V. Taylor; 98-13 Air St. Thomas; 98-16 Blue Ridge; 98-17 Blue Ridge; 98-21 Blankson.
Withdrawal of	89-2 Lincoln-Wakler; 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 Rothegeb; 92-12 Bertetto; 92-20 Delta Air Lines; 92-21 Cronberg; 92-22, 92-23 92-24, 92-25, 92-26 & 92-28 Delta Air Lines; 92-33 Port Authority of NY & NJ; 92-42 Jayson; 92-43 Delta Air Lines; 92-44 Owens; 92-53 Humble; 92-54 & 92-55 Northwest Airlines; 92-60 Costello; 92-61 Romerdahl; 92-62 USAir; 92-63 Schaefer; 92-64 & 92-65 Delta Air Lines; 92-66 Sabre Associates & Moore; 92-79 Delta Air Lines; 93-1 Powell & Co.; 93-4 Harrah; 93-14 Fenske; 93-15 Brown; 93-21 Delta Air Lines; 93-22 Yannotone; 93-26 Delta Air Lines; 93-33 HPH Aviation; 94-9 B & G Instruments; 94-10 Boyle; 94-11 Pan American Airways; 94-13 Boyle; 94-14 B & G Instruments; 94-16 Ford; 94-33 Trans World Airlines; 94-41 Dewey Towner; 94-42 Taylor; 95-1 Diamond Aviation; 95-3 Delta Air Lines; 95-5 Araya; 95-6 Sutton; 95-7 Empire Airlines; 95-20 USAir; 95-21 Faisca; 95-24 Delta Air Lines; 96-7 Delta Air Lines; 96-8 Empire Airlines; 96-10 USAir; 96-11 USAir; 96-12 USAir; 96-21 Houseal; 97-4 [Airport Operator]; 97-5 WestAir; 97-25 Martin & Jaworski; 97-26 Delta Air Lines; 97-27 Lock haven; 97-39 Delta Air Lines; 98-9 Continental Express; 2000-8 USA Jet Airlines; 2000-15 Everson d/b/a North Valley Helicopters; 2000-22 Meyer; 2000 24 SONICO.
Assault (See also Battery, and Passenger Misconduct)	96-6 Ignatov; 97-12 Mayer; 99-16 Dorfman; 2000-17 Gotbetter.
"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.
Baggage Matching	98-6 Continental; 99-12 TWA.
Balloon (Hot Air)	94-2 Woodhouse.
Bankruptcy	91-2 Continental Airlines.
Battery (See also Assault and Passenger Misconduct)	96-6 Ignatov; 97-12 Mayer; 99-16 Dorfman; 2000-17 Gotbetter.
Certificates and Authorizations:	
Need for sanction despite surrender	2000-28 Lifeflite.
Surrender when revoked	92-73 Wyatt.

Check Airman: Proficiency and competence tests	2000-26 Aero National.
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.
Staleness (See Stale Complaint Rule)	
Statute of Limitations (See Statute of Limitations)	
Timeliness of complaint	91-51 Hagwood; 93-13 Medel; 94-7 Hereth; 94-5 Grant.
Withdrawal of	94-39 Kirola; 92-9 Griffin; 95-6 Sutton; 2000-24 SONICO.
Compliance & Enforcement Program:	
(FAA Order No. 2150.3A)	89-5 Schultz; 89-6 American Airlines; 91-38 Easu; 92-5 Delta Air Lines.
Compliance/Enforcement Bulletin 92-3	96-19 [Air Carrier].
Sanction Guidance Table	89-5 Schulta; 90-23 Broyles; 90-33 Cato; 90-37 Northwest Airlines; 91-3 Lewis; 92-5 Delta Air Lines; 98-18 General Aviation; 2000-3 Warbelow's.
Concealment of Weapons (See Weapons Violations)	
Consolidation of Cases	90-12, 90-18 & 90-19 Continental Airlines
Constitutionality of Regulations (See also Double Jeopardy)	90-12 Continental Airlines; 90-18 Continental Airlines; 90-19 Continental Airlines; 90-37 Northwest Airlines; 96-1 [Airport Operator]; 96-25 USAir; 97-16 Mauna Kea; 97-34 Continental Airlines; 98-6 Continental Airlines; 98-11 TWA; 99-1 American; 99-12 TWA; 2000-19 Horner.
Continuance of Hearing	90-25 Gabbert; 92-29 Haggland.
Corrective Action (See Sanction)	
Counsel:	
Leave to withdraw	97-24 Gordon.
No right to assigned counsel (See Due Process)	
Sanctions against	2000-17 Gotbetter.
Credibility of Witnesses:	
Generally	92-25 Conquest Helicopters; 95-26 Hereth; 97-32 Florida Propeller.
Bias	97-9 Alphin; 2000-18 Gotbetter.
Defer to ALJ determination of	90-21 Carroll; 92-3 Park; 93-17 Metcalf; 95-26 Hereth; 97-20 Werle; 97-30 Emery Worldwide Airlines; 97-32 Florida Propeller; 98-11 TWA; 98-18 General Aviation; 99-6 Squire; 2000-3 Warbelow's; 2000-14 Warbelow's; 2000-17 Gotbetter.
Experts (see also Witness)	90-27 Gabbert; 93-17 Metcalf; 96-3 America West Airlines.
Eyewitness identification:	
Reliability of	97-20 Werle.
Impeachment	94-4 Northwest Aircraft Rental.
De facto answer	92-32 Barnhill.
Delay in initiating action	90-21 Carroll.
Deliberative Process Privilege (See also Discovery)	89-6 American Airlines; 90-12, 90-18 & 90-19 Continental Airlines.
Deterrence (See also Sanction)	89-5 Schultz; 92-10 Flight Unlimited; 95-16 Mulhall; 95-17 Larry's Flying Service; 97-11 Hampton.
Discovery:	
Deliberative Process Privilege (See also Discovery)	89-6 American Airlines; 90-12, 90-18 & 90-19 Continental Airlines.
Depositions, generally	91-54 Alaska Airlines.
Notice of deposition	91-54 Alaska Airlines.
Evidence list	
Not duty to provide if not requested	2000-19 Horner.
Failure to produce	90-18 & 90-19 Continental Airlines; 91-17 KDS Aviation; 93-10 Costello.
Sanction for	91-17 KDS Aviation; 91-54 Alaska Airlines.
Regarding Unrelated Case	92-46 Sutton-Sautter.
Double Jeopardy	95-8 Charter Airlines; 96-26 Midtown.
Due Process:	
Generally	89-6 American Airlines; 90-12 Continental Airlines; 90-37 Northwest Airlines; 96-1 [Airport Operator]; 97-8 Pacific Av. d/b/a Inter-Island Helicopters; 99-12 TWA.
Before finding a violation	90-27 Gabbert.
Multiple violations	96-26 Midtown, 97-9 Alphin.
No right to assigned counsel	97-8 Pacific Av. d/b/a Inter-Island Helicopters; 97-9 Alphin; 99-6 Squire.
Violation of	89-6 American Airlines; 90-12 Continental Airlines; 90-37 Northwest Airlines; 96-1 [Airport Operator]; 97-8 Pacific Av. d/b/a Inter-Island Helicopters; 98-19 Martin & Jaworski.
EAJA:	
Adversary Adjudication	90-17 Wilson; 91-17 & 91-52 KDS Aviation; 94-17 TCI; 95-12 Toyota.

Amount of award	95-27 Valley Air.
Appeal from ALJ decision	95-9 Woodhouse.
Expert witness fees	95-27 Valley Air.
Final disposition	96-22 Woodhouse.
Further proceedings	91-52 KDS Aviation.
Jurisdiction over appeal	92-74 Wendt; 96-22 Woodhouse.
Late-filed application	96-22 Woodhouse.
Other expenses	93-29 Sweeney.
Position of agency	95-27 Valley Air.
Prevailing party	91-52 KDS Aviation.
Special circumstances	95-18 Pacific Sky.
Substantial justification	91-52 & 92-71 KDS Aviation; 93-9 Wendt; 95-18 Pacific Sky; 95-27 Valley Air; 96-15 Valley Air; 98-19 Martin & Jaworski.
Supplementation of application	95-27 Valley Air.
Evidence (See Proof & Evidence)	
Ex Parte Communications	93-10 Costello; 95-16 Mullhall; 95-19 Rayner.
Expert Witnesses (See Witness)	
Extension of Time (See also Answer):	
By Agreement of Parties	89-6 American Airlines; 92-41 Moore & Sabre Associates.
Dismissal by Decisionmaker	89-7 Zenkner; 90-39 Hart.
Good Cause for	89-8 Thunderbird Accessories.
Objection to	89-8 Thunderbird Accessories; 93-3 Wendt.
Who may grant	90-27 Gabbert.
Federal Courts	92-7 West; 97-1 Midtown Neon Sign; 98-8 Carr; 99-12 TWA.
Hazardous materials case appeals	97-1 Midtown Neon Sign; 98-8 Carr; 2004-4 Ryan International.
Federal Rules of Civil Procedure	91-17 KDS Aviation.
Federal Rules of Evidence (See also Proof & Evidence):	
Admissions	96-25 USAir, 99-5 Africa Air; 99-14 Alika Aviation.
Evidentiary admissions are rebuttable	99-5 Africa Air.
Settlement Offers (Rule 408)	95-16 Mulhall; 95-25 USAir; 99-5 Africa Air.
Exclusion of admissions in settlements offers	99-5 Africa Air; 99-14 Alika Aviation.
Statements against interest	2000-3 Warbelow's.
Subsequent Remedial Measures	96-24 Horizon; 96-25 USAir.
Final Oral Argument	92-3 Park.
Firearms (See Weapons)	
Ferry Flights	95-8 Charter Airlines.
Filing (See also Appeals; Timeliness):	
Burden to prove date of filing	97-11 Hampton Air; 98-1 V. Taylor.
Discrepancy between certificate of service and postmark	98-16 Blue Ridge.
Service on designated representative	98-19 Martin & Jaworski.
Flight & Duty Time:	
Circumstances beyond crew's control:	
Generally	95-8 Charter Airlines.
Foreseeability	95-8 Charter Airlines.
Late freight	95-8 Charter Airlines.
Weather	95-8 Charter Airlines.
Competency check flights	96-4 South Aero.
Limitation of Duty Time	95-8 Charter Airlines; 96-4 South Aero.
Limitation of Flight Time	95-8 Charter Airlines.
"Other commercial flying"	95-8 Charter Airlines.
Recordkeeping:	
Individual flight time records for each Part 135 pilot	99-7 Premier Jets.
Flights	94-20 Conquest Helicopters.
Freedom of Information Act	93-10 Costello.
Fuel Exhaustion	95-26 Hereth.
Guns (See Weapons):	
Ground Security Coordinator, (See also Air Carrier; Standard Security Program): Failure to provide	96-16 WestAir Commuter.
"Guilty by association"	2000-17 Gotbetter.
Hazardous Materials:	
Generally	90-37 Northwest Airlines; 92-76 Safety Equipment; 92-77 TCI; 94-19 Pony Express; 94-28 Toyota; 94-31 Smalling; 95-12 Toyota; 95-16 Mulhall; 96-26 Midtown; 2000-20 & 2000-27 Phillips Building Supply; 2000-25 Riverdale Mills.
Civil Penalty, generally	92-77 TCI; 94-28 Toyota; 94-31 Smalling; 95-16 Mulhall; 96-26 Midtown; 98-2 Carr; 2000-20 & 2000-27 Phillips Building Supply.
Corrective Action	92-77 TCI; 94-28 Toyota; 2000-20 Phillips Building Supply.
Culpability	92-77 TCI; 94-28 Toyota; 94-31 Smalling; 2000-27 Phillips Building Supply.
Financial hardship	95-16 Mulhall.
Installment plan	95-16 Mulhall.
First-time violation	92-77 TCI; 94-28 Toyota; 94-31 Smalling; 2000-20 Phillips Building Supply.
Gravity of violation	92-77 TCI; 94-28 Toyota; 94-31 Smalling; 96-26 Midtown; 98-2 Carr; 2000-20 Phillips Building Supply.

Minimum penalty	95-16 Mulhall; 98-2 Carr.
Number of violations	95-16 Mulhall; 96-26 Midtown Neon Sign; 98-2 Carr; 2000-20 Phillips Building Supply.
Redundant violations	95-16 Mulhall; 96-26 Midtown Neon Sign; 98-2 Carr.
Criminal Penalty	92-77 TCI; 94-31 Smalling.
EAJA, applicability of	94-17 TCI; 95-12 Toyota.
Individual violations	95-16 Mulhall.
Judicial review under 49 U.S.C. 5123	97-1 Midtown Neon Sign; 98-8 Carr; 2000-4 Ryan International.
Knowingly	92-77 TCI; 94-19 Pony Express; 94-31 Smalling.
Remand to ALJ	2000-25 Riverdale Mills.
Shipping name contested	2000-25 Riverdale Mills.
Specific hazard class transported:	
Combustible Paint	95-16 Mulhall.
Corrosive:	
Wet Battery	94-28 Toyota Motor Sales.
Other	92-77 TCI.
Explosive Fireworks	94-31 Smalling; 98-2 Carr.
Flammable Paint	96-26 Midtown Neon Sign.
Proper shipping name contested	2000-25 Riverdale Mills.
Turpentine	95-16 Mulhall.
Noxious Fumes	2000-20 Phillips Building Supply.
Radioactive	94-19 Pony Express.
Hearing:	
Failure of party to attend	98-23 Instead Balloon Services.
Informal Conference	94-4 Northwest Aircraft Rental.
Initial Decision:	
What constitutes	92-32 Barnhill.
Motion to vacate denied	2000-24 SONICO.
Interference with crewmembers (See also Passenger Misconduct; Assault).	92-3 Park; 96-6 Ignatov; 97-12 Mayer; 98-11 TWA; 98-12 Stout; 2000-17 Gotbetter.
Interlocutory Appeal	89-6 American Airlines; 91-54 Alaska Airlines; 93-37 Airspect; 94-32 Detroit Metropolitan; 98-25 Gotbetter.
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; 95-19 Rayner.
After withdrawal of complaint	94-39 Kirola.
\$50,000 Limit	90-12 Continental Airlines.
EAJA cases	92-74 Wendt; 96-22 Woodhouse.
HazMat cases	92-76 Safety Equipment.
NTSB	90-11 Thunderbird Accessories.
Statutory authority to regulate flights entirely outside of U.S. questioned.	99-11 Evergreen Helicopters; 2000-12 Evergreen.
Knowledge of concealed weapon (See also Weapons Violation)	89-5 Schultz; 90-20 Degenhardt.
Laches (See Delay in initiating action):	
Mailing Rule, generally	89-7 Zenkner; 90-3 Metz; 90-11 Thunderbird Accessories; 90-39 Hart; 98-20 Koenig.
Does not extend time for filing a request for hearing	2000-2 Ryan International.
Overnight express delivery	89-6 American Airlines.
Maintenance (See Aircraft Maintenance):	
Maintenance Instruction	93-36 Valley Air.
Maintenance Manual	90-11 Thunderbird Accessories; 96-25 US Air.
Air carrier maintenance manual	96-3 America West Airlines.
Approved/accepted repairs	96-3 America West Airlines; 2000-13 Empire Airlines.
Manufacturer's maintenance manual	96-3 America West Airlines; 97-31 Sanford Air; 97-32 Florida Propeller; 2000-3 Warbelow's; 2000-13 Empire Airlines.
Minimum Equipment List (MEL) (See Aircraft Maintenance):	
Motion to Dismiss:	
Burden of proof	200-28 Lifeflite.
Standard	2000-25 Riverdale Mills.
Mootness, appeal dismissed as moot	92-9 Griffin; 94-17 TCI.
National Aviation Safety Inspection Program (NASIP)	90-16 Rocky Mountain
National Transportation Safety Board:	
Administrator not bound by NTSB case law	91-12 Terry & Menne; 92-49 Richardson & Shimp; 93-18 Westair Commuter.
Lack of Jurisdiction	90-11 Thunderbird Accessories; 90-17 Wilson; 92-74 Wendt.
Notice of Hearing: Receipt	92-31 Eaddy.
Notice of Proposed Civil Penalty:	
Initiates Action	91-9 Continental Airlines.
Signature of agency attorney	93-12 Langton.
Withdrawal of	90-17 Wilson.
Operate, generally	91-12 & 91-31 Terry & Menne; 93-18 Westair Commuter; 96-17 Fenner.
Responsibility of aircraft owner/operator for actions of pilot	96-17 Fenner; 2000-1 Gatewood.
Responsibility of aircraft owner/operator for employee's flying unairworthy aircraft.	2000-1 Gatewood.

Oral Argument before Administrator on appeal:	
Decision to hold	92-16 Wendt.
Instructions for	92-27 Wendt.
Order Assessing Civil Penalty:	
Appeal from	92-1 Costello; 95-19 Rayner.
Timeliness of request for hearing	95-19 Rayner.
Withdrawal of	89-4 Metz; 90-16 Rocky Mountain; 90-22 USAir; 95-19 Rayner; 97-7 Stalling.
Parachuting	98-3 Fedele
Parts Manufacturer Approval (PMA) Failure to obtain	93-19 Pacific Sky Supply.
Passenger List	99-13 Falcon Air Express.
Passenger Misconduct	92-3 Park.
Alcoholic beverages	2000-29 Stevenson.
Assault/Battery	96-6 Ignatov; 97-12 Mayer; 98-11 TWA; 99-16 Dorfman.
Compliance with Fasten Seat Belt Sign	99-16 Alika Aviation.
Interference with a crewmember	96-6 Ignatov; 97-12 Mayer; 98-11 TWA; 98-12 Stout; 99-16 Dorfman; 2000-29 Stevenson.
Smoking	92-37 Giuffrida; 99-6 Squire Claimed unable to hear "No Smoking" instruction; 99-6 Squire.
Stowing carry-on items	97-12 Mayer; 99-16.
Penalty (See Sanction; Hazardous Materials):	
Person	93-18 Westair Commuter.
Prima Facie Case (See also Proof & Evidence)	95-26 Hereth; 96-3 America West Airlines.
Proof & Evidence (See also Federal Rules of Evidence):	
Admissions	99-5 Africa Air; 2000-3 Warbelow's.
Evidentiary admission is rebuttable	99-5 Africa Air.
Affirmative Defense	92-13 Delta Air Lines; 92-72 Giuffrida; 98-6 Continental Airlines.
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; 97-32 Florida Propeller; 2000-3 Warbelow's.
Circumstantial Evidence	90-12, 90-19 & 91-9 Continental Airlines; 93-29 Sweeney; 96-3 America West Airlines; 97-10 Alphin; 97-11 Hampton; 97-32 Florida Propeller; 98-6 Continental Airlines.
Credibility (See Administrative Law Judges; Credibility of Witnesses):	
Criminal standard rejected	91-12 Terry & Menne; 2000-3 Warbelow's.
Closing Arguments (See also Final Oral Argument)	94-20 Conquest Helicopters.
Extra-record material	95-26 Hereth; 96-24 Horizon.
Hearsay	92-72 Giuffrida; 97-30 Emery Worldwide Airlines; 98-11 TWA.
Motion to dismiss	2000-25 Riverdale Mills; 2000-28 Lifeflite.
New evidence 94-4 Northwest Aircraft Rental; 96-23 Kilrain; 99-15 blue Ridge.	
Offer of Proof	97-32 Florida Propeller.
Preponderance of evidence	90-11 Thunderbird Accessories; 90-12 Continental Airlines; 91-12 & 91-31 Terry & Menne; 92-72 Giuffrida; 97-30 Emery World- wide Airlines; 97-31 Sanford Air; 97-32 Florida Propeller; 98-3 Fedele; 98-6 Continental Airlines; 98-11 TWA.
Presumption that message on ATC tape is received as trans- mitted.	91-12 Terry & Menne; 92-49 Richardson & Shimp.
Presumption that a gun is deadly or dangerous	90-26 Waddell; 92-30 Trujillo.
Presumption that owner gave pilot permission	96-17 Fenner.
Prima facie case	95-26 Hereth, 96-3 America West; 98-6 Continental Airlines.
Settlement offer	95-16 Mulhall; 96-25 USAir; 99-5 Africa Air.
Admission as part of settlement offer excluded	99-5 Africa Air; 99-14 Alika Aviation.
Subsequent remedial measures	96-24 Horizon; 96-25 USAir.
Substantial evidence	92-72 Giuffrida Pro Se Parties.
Special Considerations	90-11 Thunderbird Accessories; 90-3 Metz; 95-25 Conquest.
Prosecutorial discretion	89-6 American Airlines; 90-23 Broyles; 90-38 Continental Airlines; 91-41 [Airport Operator]; 92-46 Sutton-Sautter; 92-73 Wyatt; 95- 17 Larry's Flying Service.
Administrator does not review Complainant's decision not to bring action against anyone but respondent.	98-2 Carr.
Reconsideration;	
Denied by ALJ	89-4 90-3 Metz.
Denied by Administrator	2000-5 Blue Ridge; 2000-14 and 2000-16 Warbelow's; 2000-27 Phillips Building Supply.
Granted by ALJ	92-32 Barnhill.
Late request for	97-14 Pacific Aviation; 98-14 Larry's Flying Service; 2000-5 Blue Ridge.
Petition based on new material	96-23 Kilrain; 2000-14 Warbelow's.
Repetitious petitions	96-9 [Airport Operator]; 2000-5 Blue Ridge; 2000-14 Warbelow's; 2000-16 Warbelow's.
Stay of order pending	90-31 Carroll; 90-32 Continental Airlines; 2000-14 Warbelow's.
Redundancy, enhancing safety	97-11 Hampton.

Remand	89-6 American Airlines; 90-16 Rocky Mountain; 90-24 Bayer; 91-51 Hagwood; 91-54 Alaska Airlines; 92-1 Costello; 92-76 Safety Equipment; 94-37 Houston; 2000-5 Blue Ridge; 2000-25 Riverdale Mills; 2000-28 Lifeflite.
Repair Station	90-11 Thunderbird Accessories; 92-10 Flight Unlimited; 94-2 Woodhouse; 97-9 Alphin; 97-10 Alphin; 97-31 Sanford Air; 97-32 Florida Propeller; 2000-1 Gatewood.
Request for Hearing	94-37 Houston; 95-19 Rayner.
Constructive withdrawal of	97-7 Stalling; 98-23 Instead Balloon Services.
Timeliness of request	93-12 Langton; 95-19 Rayner; 2000-2 Ryan International.
Untimely request for hearing will be excused for good cause	94-27 Larsen; 93-12 Langton; 2000-2 Ryan International.
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 and 90-19 Continental Airlines; 90-21 Carroll; 90-37 Northwest Airlines.
Effect of Changes in	90-21 Carroll; 90-22 USAir; 90-38 Continental Airlines.
Initiation of Action	91-9 Continental Airlines.
Runway incursions	92-40 Wendt; 93-18 Westair Commuter Sanction.
Ability to Pay	89-5 Schultz; 90-10 Webb; 91-3 Lewis; 91-38 Esau; 92-10 Flight Unlimited; 92-32 Barnhill; 92-37 & 92-72 Giuffrida; 92-38 Cronberg; 92-46 Sutton-Sautter; 92-51 Koblick; 93-10 Costello; 94-4 Northwest Aircraft Rental; 94-20 Conquest Helicopters; 95-16 Mulhall; 95-17 Larry's Flying Service; 97-8 Pacific Av. d/b/a/ Inter-Island Helicopters; 97-11 Hampton; 97-16 Mauna Kea; 98-4 Larry's Flying Service; 98-11 TWA; 99-12 TWA; 99-15 Blue Ridge; 2000-3 Warbelow's; 2000-28 Lifeflite.
Agency policy:	
ALJ bound by	90-37 Northwest Airlines; 92-46 Sutton-Sautter; 96-19 [Air Carrier]; 2000-3 Warbelow's.
Changes after complaint	97-7 & 97-17 Stallings.
Statements of (e.g., FAA Order 2150.3A, Sanction Guidance Table, memoranda pertaining to)	90-19 Continental Airlines; 90-23 Broyles; 90-33 Cato; 90-37 Northwest Airlines; 92-46 Sutton-Sautter; 96-4 South Aero; 96-19 [Air Carrier]; 96-25 USAir.
Community Service	2000-21 Martinez.
Compliance Disposition	97-23 Detroit Metropolitan.
Consistency with Precedent	96-6 Ignatov; 96-26 Midtown; 97-30 Emery Worldwide Airlines; 98-12 Stout; 98-18 General Aviation.
But when precedent is based on superceded sanction policy	96-19 [Air Carrier].
Corrective Action	91-18 [Airport Operator]; 91-40 [Airport Operator]; 91-41 [Airport Operator]; 92-5 Delta Air Lines; 93-18 Westair Commuter; 94-28 Toyota; 96-4 South Aero; 96-19 [Air Carrier]; 97-16 Mauna Kea; 97-23 Detroit Metropolitan; 98-6 Continental Airlines; 98-22 Northwest Airlines; 99-12 TWA; 99-14 Alika Aviation; 2000-20 Phillips Building Supply.
Discovery (See Discovery).	
Factors to consider	89-5 Schultz; 90-23 Broyles; 90-37 Northwest Airlines; 91-3 Lewis; 91-18 [Airport Operator]; 91-40 [Airport Operator]; 91-41 [Airport Operator]; 92-10 Flight Unlimited; 92-46 Sutton-Sautter; 92-51 Koblick; 94-28 Toyota; 95-11 Horizon; 96-19 [Air Carrier]; 96-26 Midtown; 97-16 Mauna Kea; 98-2 Carr; 99-15 Blue Ridge; 2000-3 Warbelow's.
First-Time Offenders	89-5 Schultz; 92-5 Delta Air Lines; 92-51 Koblick.
HazMat (See Hazardous Materials).	
Inexperience	92-10 Flight Unlimited.
Installment Payments	95-16 Mulhall; 95-17 Larry's Flying Service.
Maintenance	95-11 Horizon; 96-3 America West Airlines; 97-8 Pacific Av. d/b/a Inter-Island Helicopters; 97-9 Alphin; 97-10 Alphin; 97-11 Hampton; 97-30 Emery Worldwide Airlines; 99-14 Alika Aviation; 2000-3 Warbelow's.
Maximum	90-10 Webb; 91-53 Koller; 96-19 [Air Carrier].
Minimum (HazMat)	95-16 Mulhall; 96-26 Midtown; 98-2 Carr.
Modified	89-5 Schultz; 90-11 Thunderbird Accessories; 91-38 Esau; 92-10 Flight Unlimited; 92-13 Delta Air Lines; 92-32 Barnhill.
Partial Dismissal of Complaint/Full Sanction (See also Complaint).	94-19 Pony Express; 94-40 Polynesian Airways.
Sanctions in specific cases:	
Failed to comply with Security Directives	98-6 Continental Airlines; 99-12 TWA.
Passenger/bag match	98-6 Continental Airlines; 99-12 TWA.
Passenger misconduct	97-12 Mayer; 98-12 Stout; 2000-17 Gotbetter.
Person evading screening (See also Screening)	97-20 Werle; 2000-19 Horner.
Pilot Deviation	92-8 Watkins.
Test object detection	90-18 & 90-19 Continental Airlines; 96-19 [Air Carrier].
Unairworthy aircraft	97-8 Pacific Av. d/b/a Inter-Island Helicopters; 97-9 Alphin; 98-18 General Aviation; 99-14 Alika Aviation; 2000-3 Warbelow's.
Unauthorized access	90-19 Continental Airlines; 90-37 Northwest Airlines; 94-1 Delta Air Lines; 98-7 LAX.

Unqualified pilot	99-15 Blue Ridge.
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; 97-7 & 97-17 Stallings.
Surrender of certificate (See also Certificates and Authoriza- tions).	2000-28 Lifeflite.
Screening of Persons and Carry-on Items (See also Test Object Detec- tion):	
Air carrier failure to detect weapon Sanction	94-44 American Airlines.
Air carrier failure to match bag with passenger	98-6 Continental Airlines; 99-12 TWA.
Carry-on item from person passenger does not know	2000-6 Atlantic Coast Aviation.
Entering sterile areas	90-24 Bayer; 92-58 Hoedl; 97-20 Werle; 98-20 Koenig; 2000-19 Horner.
Sanction for evading screening (See also Sanction)	97-20 Werle; 98-20 Koenig; 2000-19 Horner.
Security (See also Screening of Persons and Carry-on Items; Stand- ard Security Program; Test Object Detection; Unauthorized Access; Weapons Violations:	
Agency directives, violations of	99-12 TWA.
False information about carrying weapon or explosive	98-24 Stevens.
Sealing of Record	97-13 Westair Commuter; 97-28 Continental Airlines.
Separation of Functions	90-12 Continental Airlines; 90-18 Continental Airlines; 90-19 Con- tinental Airlines; 90-21 Carroll; 90-38 Continental Airlines; 93- 13 Medel.
Service (See also Mailing Rule; Receipt):	
Of NPCP	90-22 USAir; 97-20 Werle.
Of FNPCP	93-13 Medel.
Receipt of document sent by mail	92-31 Eaddy; 2000-5 Blue Ridge.
Return of certified mail	97-7 & 97-17 Stallings; 2000-5 Blue Ridge.
Valid Service	92-18 Bargaen; 98-19 Martin & Jaworski.
When no certificate of service	2000-2 Ryan International.
Settlement	91-50 & 92-1 Costello; 95-16 Mulhall; 99-10 Azteca; 2000-24 SONICO.
Request for hearing not withdrawn	99-10 Azteca.
Skydiving	98-3 Fedele.
Smoking	92-37 Giuffrida; 94-18 Luxemburg; 99-6 Squire.
"Squawk sheets"	2000-18 California Helitech.
Stale Complaint Rule:	
If NPCP not sent	97-20 Werle.
Standard Security Program (SSP):	
Compliance with	90-12, 90-18 & 90-19 Continental Airlines; 91-33 Delta Air Lines; 91-55 Continental Airlines; 92-13 & 94-1 Delta Air lines; 96-19 [Air Carrier]; 98-22 Northwest Airlines; 99-1 American.
Checkpoint Security Coordinator	98-22 Northwest Airlines.
Ground Security Coordinator	96-16 Westair Commuter.
When airline required to have security program	2000-6 Atlantic Coast Aviation.
Statute of Limitations	97-20 Werle.
Stay of Orders	90-31 Carroll; 90-32 Continental Airlines.
Pending judicial review	95-14 Charter Airlines.
Strict Liability	89-5 Schultz; 90-27 Gabbert; 91-18 [Airport Operator]; 91-40 [Air- port Operator]; 91-58 [Airport Operator]; 97-23 Detroit Metropoli- tan; 98-7 LAX; 2000-3 Warbelow's.
Test Object Detection	90-12, 90-18, 90-19, 91-9 & 91-55 Continental Airlines; 92-13 Delta Air Lines; 96-19 [Air Carrier].
Proof of violation	90-18, 90-19 & 91-9 Continental Airlines; 92-13 Delta Air Lines.
Sanction	90-18 & 90-19 Continental Airlines; 96-19 [Air Carrier].
Timeliness (See also Complaint; Filing; Mailing Rule; and Appeals):	
Burden to prove date of filing	97-11 Hampton Air; 98-1 V. Taylor.
Of response to NPCP	90-22 USAir.
Of complaint	91-51 Hagwood; 93-13 Medel; 94-7 Hereth.
Of initial decision	97-31 Sanford Air.
Of NPCP	92-73 Wyatt.
Of petition to reconsider	2000-5 Blue Ridge.
Of additional brief	2000-21 Martinez.
Of reply brief	97-11 Hampton.
Of request for hearing	93-12 Langton; 95-19 Rayner; 2000-2 Ryan International.
Of EAJA application (See EAJA-Final disposition, EAJA-Jurisdic- tion)	
Unapproved Parts (See also Parts Manufacturer Approval)	93-19 Pacific Sky Supply.
Unauthorized Access:	
To aircraft	90-12 & 90-19 Continental Airlines; 94-1 Delta Air Lines.
To Air Operations Area (AOA)	90-37 Northwest Airlines; 91-18 [Airport Operator]; 91-40 [Airport Operator]; 91-58 [Airport Operator]; 94-1 Delta Air Lines.
Vacating Initial Decision	2000-24 SONICO.
Visual Cues Indicating Runway, Adequacy of	92-40 Wendt.

Weapons Violations, generally	89-5 Schultz; 90-10 Webb; 90-20 Degenhardt; 90-23 Broyles; 90-33 Cato; 90-26 & 90-43 Waddell; 91-3 Lewis; 91-30 Trujillo; 91-38 Esau; 91-53 Koller; 92-32 Barnhill; 92-46 Sutton-Sauter; 92-51 Koblick; 92-59 Petek-Jackson; 94-5 Grant; 94-44 American Airlines.
Concealed weapon	89-5 Schultz; 92-46 Sutton-Sautter, 92-51 Koblick.
"Deadly or Dangerous"	90-26 & 90-43 Waddell; 91-30 Trujillo; 91-38 Esau.
First-time Offenders	89-5 Schultz.
Intent to commit violation	89-5 Schultz; 90-20 Degenhardt; 90-23 Broyles; 90-26 Waddell; 91-3 Lewis; 91-53 Koller.
Knowledge Of Weapon Concealment (See also Knowledge)	89-5 Schultz; 90-20 Degenhardt.
Sanction (See Sanction)	
Weight and Balance	94-40 Polynesian Airways.
Passenger list	99-13 Falcon Air Express.
Witnesses (See also Credibility):	
Absence of, Failure to subpoena	92-3 Park; 98-2 Carr.
Expert testimony Evaluation of	93-17 Metcalf; 94-3 Valley Air; 94-21 Sweeney; 96-3 America West Airlines; 96-15 Valley Air; 97-9 Alphin; 97-32 Florida Propeller.
Expert witness fees (See EAJA)	
Sequester order	2000-18 California Helitech.

Regulations (Title 14 CFR, unless otherwise noted)

1.1(maintenance)	94-38 Bohan; 97-11 Hampton.
1.1(major alteration)	99-5 Africa Air.
1.1(major repair)	96-3 America West Airlines.
1.1(minor repair)	96-3 America West Airlines.
1.1(operate)	91-12 91-31 Terry & Menne; 93-18 Westair Commuter; 96-17 Fenner.
1.1(person)	93-18 Westair Commuter.
1.1(propeller)	96-15 Valley Air.
3.16	90-16 Rocky Mountain; 90-22 USAir; 90-37 Northwest Airlines; 90-38 & 91-9 Continental Airlines; 91-18 [Airport Operator]; 91-51 Hagwood; 92-1 Costello; 92-46 Sutton-Sautter; 93-13 Medel; 93-28 Strohl; 94-27 Larsen; 94-37 Houston; 94-31 Smalling; 95-19 Rayner; 96-26 Midtown Neon Sign; 97-1 Midtown Neon Sign; 97-9 Alphin; 98-18 General Aviation; 2000-2 Ryan International; 2000-3 Warbelow's; 2000-24 SONICO.
13.201	90-12 Continental Airlines; 2000-24 SONICO.
13.202	90-6 American Airlines; 92-76 Safety Equipment.
13.203	90-12 Continental Airlines; 90-21 Carroll; 90-38 Continental Airlines.
13.204	
13.205	90-20 Degenhardt; 91-17 KDS Aviation; 91-54 Alaska Airlines; 92-32 Barnhill; 94-32 Detroit Metropolitan; 94-39 Kirola; 95-16 Mulhall; 97-20 Werle; 2000-17 Gotbetter; 2000-20 Phillips Building Supply.
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; 97-20 Werle; 98-4 Larry's.
13.209	90-3 Metz; 90-15 Playter; 91-18 [Airport Operator]; 92-32 Barnhill; 92-47 Cornwall; 92-75 Beck; 92-76 Safety Equipment; 94-8 Nunez; 94-5 Grant; 94-22 Harkins; 94-29 Sutton; 94-30 Columna; 95-10 Diamond; 95-28 Atlantic World Airways; 97-7 Stalling; 97-18 Robinson; 97-33 Rawlings; 98-21 Blankson.
13.210	92-19 Cornwall; 92-75 Beck; 92-76 Safety Equipment; 93-7 Dunn; 92-28 Strohl; 94-5 Grant; 94-30 Columna; 95-28 Atlantic World Airways; 96-17 Fenner; 97-11 Hampton; 97-18 Robinson; 97-38 Air St. Thomas; 98-16 Blue Ridge.
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; 95-28 Valley Air; 97-7 Stalling; 97-11 Hampton; 98-4 Larry's Flying Service; 98-19 Martin & Jaworski; 98-20 Koenig; 99-2 Oxygen Systems; 2000-2 Ryan International; 2000-5 Blue Ridge.
13.212	90-11 Thunderbird Accessories; 91-2 Continental Airlines; 99-2 Oxygen Systems.
13.213	
13.214	91-3 Lewis.
13.215	93-28 Strohl; 94-39 Kirola; 2000-24 SONICO.
13.216	

13.217	91-17 KDS Aviation.
13.218	89-6 American Airlines; 90-11 Thunderbird Accessories; 90-39 Hart; 92-9 Griffin; 92-73 Wyatt; 93-19 Pacific Sky Supply; 94-6 Strohl; 94-27 Larsen; 94-37 Houston; 95-18 Rayner; 96-16 WestAir; 96-24 Horizon; 98-20 Koenig.
13.219	89-6 American Airlines; 91-2 Continental; 91-54 Alaska Airlines; 93-37 Airspect; 94-32 Detroit Metro. Wayne County Airport; 98-25 Gotbetter.
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; Horner 2000-19.
13.221	92-29 Haggland; 92-31 Eaddy; 92-52 Cullop.
13.222	92-72 Giuffrida; 96-15 Valley Air.
13.223	91-12 & 91-31 Terry & Menne; 92-72 Giuffrida; 95-26 Hereth; 96-15 Valley Air; 97-11 Hampton; 97-31 Sanford Air; 97-32 Florida Propeller; 98-3 Fedele; 98-6 Continental Airlines; 2000-3 Warbelow's.
13.224	90-26 Waddell; 91-4 [Airport Operator]; 92-72 Giuffrida; 94-18 Luxemburg; 94-28 Toyota; 95-25 Conquest; 96-17 Fenner; 97-32 Florida Propeller; 98-6 Continental Airlines; 2000-3 Warbelow's 2000-20 Phillips Building Supply.
13.225	97-32 Florida Propeller.
13.226	
13.227	90-21 Carroll; 95-26 Hereth.
13.228	92-3 Park.
13.229	
13.230	92-19 Cornwall; 95-26 Hereth; 96-24 Horizon.
13.231	92-3 Park.
13.232	89-5 Schultz; 90-20 Degenhardt; 92-1 Costello; 92-18 Bargaen; 92-32 Barnhill; 93-28 Strohl; 94-28 Toyota; 95-12 Toyota; 95-16 Mulhall; 96-6 Ignatov; 98-18 General Aviation; 2000-19 Horner.
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; 95-23 Atlantic World Airways; 95-25 Conquest; 95-26 Hereth; 96-1 [Airport Operator]; 96-2 Skydiving Center; 97-1 Midtown Neon Sign; 97-2 Sanford Air; 97-7 Stalling; 97-22 Sanford Air; 97-24 Gordon Air; 97-31 Sanford Air; 97-33 Rawlings; 97-38 Air St. Thomas; 98-4 Larry's Flying Service; 98-3 Fedele; Continental Airlines 98-6; LAX 98-7; 98-10 Rawlings; 98-15 Squire; 98-18 General Aviation; 98-19 Martin & Jaworski; 98-20 Koenig; 99-2 Oxygen Systems; 99-11 Evergreen Helicopters; 2000-23 Federal Express; 2000-24 SONICO.
13.234	90-19 Continental Airlines; 90-31 Carroll; 90-32 & 90-38 Continental Airlines; 91-4 [Airport Operator]; 95-12 Toyota; 96-9 [Airport Operator]; 96-23 Kilrain; 2000-5 Blue Ridge; Warbelow's 2000-16.
13.235	90-11 Thunderbird Accessories; 90-12 Continental Airlines; 90-15 Playter; 90-17 Wilson; 92-7 West.
Part 14	92-74 & 93-2 Wendt; 95-18 Pacific Sky Supply.
14.01	91-17 & 92-71 KDS Aviation.
14.04	91-17, 91-52 & 92-71 KDS Aviation; 93-10 Costello; 95-27 Valley Air.
14.05	90-17 Wilson.
14.12	95-27 Valley Air
14.20	91-52 KDS Aviation; 96-22 Woodhouse.
14.22	93-29 Sweeney.
14.23	98-19 Martin & Jaworski.

14.26	91-52 KDS Aviation; 95-27 Valley Air.
14.28	95-9 Woodhouse.
21.181	96-25 USAir.
21.303	93-19 Pacific Sky Supply; 95-18 Pacific Sky Supply.
25.787	97-30 Emery Worldwide Airlines.
25.855	92-37 Giuffrida; 97-30 Emery Worldwide Airlines.
39.3	92-10 Flight Unlimited; 94-4 Northwest Aircraft Rental.
43.3	92-73 Wyatt; 97-31 Sanford Air; 98-18 General Aviation; 2000-1 Gatewood.
43.5	96-18 Kilrain; 97-31 Sanford Air.
43.9	91-8 Watts Agricultural Aviation; 97-31 Sanford Air; 98-4 Larry's Flying Service.
43.13	90-11 Thunderbird Accessories; 94-3 Valley Air; 94-38 Bohan; 96-3 America West Airlines; 96-25 USAir; 97-9 Alphin; 97-10 Alphin; 97-30 Emery Worldwide Airlines; 97-31 Sanford Air; 97-32 Florida Propeller; 2000-13 Empire Airlines.
43.15	90-25 & 90-27 Gabbert; 91-8 Watts Agricultural Aviation; 94-2 Woodhouse; 96-18 Kilrain.
61.3	99-11 Evergreen Helicopters; 2000-12 Evergreen.
65.15	92-73 Wyatt.
65.81	2000-1 Gatewood.
65.92	92-73 Wyatt.
91.7	97-8 Pacific Av. d/b/a Inter-Island Helicopters; 97-16 Mauna Kea; 98-18 General Aviation; 99-5 Africa Air; 2000-1 Gatewood; 2000-3 Warbelow's; 2000-14 Warbelow's.
91.8 (91.11 as of 8/18/90)	92-3 Park.
91.9 (91.13 as of 8/18/90)	90-15 Playter; 91-12 & 91-31 Terry & Menne; 92-8 Watkins; 92-40 Wendt; 92-48 USAir; 92-49 Richardson & Shimp; 92-47 Cornwall; 92-70 USAir; 93-9 Wendt; 93-17 Metcalf; 93-18 Westair Commuter; 93-29 Sweeney; 94-29 Sutton; 95-26 Hereth; 96-17 Fenner.
91.11	96-6 Ignatov; 97-12 Mayer; 98-12 Stout; 99-16 Dorfman; 2000-17 Gotbetter.
91.29 (91.7 as of 8/18/90)	91-8 Watts Agricultural Aviation; 92-10 Flight Unlimited; 94-4 Northwest Aircraft Rental.
91.65 (91.111 as of 8/18/90)	91-29 Sweeney; 94-21 Sweeney.
91.67 (91.113 as of 8/18/90)	91-29 Sweeney.
91.71	97-11 Hampton.
91.75 (91.123 as of 8/18/90)	91-12 & 91-31 Terry & Menne; 92-8 Watkins; 92-40 Wendt; 92-49 Richardson & Shimp; 93-9 Wendt.
91.79 (91.119 as of 8/18/90)	90-15 Playter; 92-47 Cornwall; 93-17 Metcalf.
91.87 (91.129 as of 8/18/90)	91-12 & 91-31 Terry & Menne; 92-8 Watkins.
91.103	95-26 Hereth.
91.111	96-17 Fenner.
91.113	96-17 Fenner.
91.151	95-26 Hereth.
91.173 (91.417 as of 8/18/90)	91-8 Watts Agricultural Aviation.
91.203	99-5 Africa Air.
91.205	98-18 General Aviation.
91.213	97-11 Hampton.
91.403	97-8 Pacific Av. d/b/a Inter-Island Helicopters; 98-31 Sanford Air.
91.405	97-16 Mauna Kea; 98-4 Larry's Flying Service; 98-18 General Aviation; 99-5 Africa Air; 2000-1 Gatewood; 2000-18 California Helitech.
91.407	98-4 Larry's Flying Service; 99-5 Africa Air; 2000-1 Gatewood.
91.417	98-18 General Aviation.
91.517	98-12 Stout.
91.703	94-29 Sutton.
105.29	98-3 Fedele; 98-19 Martin & Jaworski.
107.1	90-19 Continental Airlines; 90-20 Degenhardt; 91-4 [Airport Operator]; 91-58 [Airport Operator]; 98-7 LAX; 2000-19 Horner.
107.9	98-7 LAX.
107.13	90-12 & 90-19 Continental Airlines; 91-4 [Airport Operator]; 91-18 [Airport Operator]; 91-40 [Airport Operator]; 91-41 [Airport Operator]; 91-58 [Airport Operator]; 96-1 [Airport Operator]; 97-23 Detroit Metropolitan; 98-7 LAX.
107.20	90-24 Bayer; 92-58 Hoedl; 97-20 Werle; 98-20 Koenig; 2000-19 Horner.
107.21	89-5 Schultz; 90-10 Webb; 90-22 Degenhardt; 90-23 Broyles; 90-26 & 90-43 Waddell; 90-33 Cato; 90-39 Hart; 91-3 Lewis; 91-10 Graham; 91-30 Trujillo; 91-38 Esau; 91-53 Koller; 92-32 Barnhill; 92-38 Cronberg; 92-46 Sutton-Sautter; 92-51 Koblick; 92-59 Petek-Jackson; 94-5 Grant; 94-31 Smalling; 97-7 Stalling.
107.25	94-30 Columna.

108.5	90-12, 90-18, 90-19, 91-2 & 91-9 Continental Airlines; 91-33 Delta Air Lines; 91-54 Alaska Airlines; 91-55 Continental Airlines; 92-13 & 94-1 Delta Air Lines; 94-44 American Airlines; 96-16 WestAir; 96-19 [Air Carrier]; 98-22 Northwest Airlines; 99-1 American; 99-12 TWA; 2000-6 Atlantic Coast Aviation.
108.7	90-18 & 90-19 Continental Airlines; 99-1 American.
108.9	98-22 Northwest Airlines; 2000-19 Horner.
10810	96-16 WestAir.
108.11	90-23 Broyles; 90-26 Waddell; 91-3 Lewis; 92-46 Sutton-Sautter; 94-44 American Airlines.
108.13	90-12 & 90-19 Continental Airlines; 90-37 Northwest Airlines.
108.18	98-6 Continental Airlines; 99-12 TWA; 2000-6 Atlantic Coast Aviation.
121.133	90-18 Continental Airlines.
121.153	92-48 & 92-70 USAir; 95-11 Horizon; 96-3 America West Airlines; 96-24 Horizon; 96-25 USAir; 97-21 Delta; 97-30 Emery Worldwide Airlines.
121.221	97-30 Emery Worldwide Airlines.
121.317	92-37 Giuffrida; 94-18 Luxemburg; 99-6 Squire; 99-16 Dorfman.
212.318	92-37 Giuffrida.
121.363	2000-13 Empire Airlines.
121.367	90-12 Continental Airlines; 96-25 USAir.
121.379	2000-13 Empire Airlines.
121.571	92-37 Giuffrida.
121.575	98-11 TWA.
121.577	98-11 TWA.
121.589	97-12 Mayer.
121.628	95-11 Horizon; 97-21 Delta; 97-30 Emery Worldwide Airlines.
121.693	99-12 Falcon Air Express.
121.697	99-13 Falcon Air Express.
135.1	95-8 Charter Airlines; 95-25 Conquest.
135.3	99-15 Blue Ridge; 2000-5 Blue Ridge.
135.5	94-3 Valley Air; 94-20 Conquest Helicopters; 95-25 Conquest; 95-27 Valley Air; 96-15 Valley Air.
135.25	92-10 Flight Unlimited; 94-3 Valley Air; 95-27 Valley Air; 96-15 Valley Air; 2000-3 Warbelow's; 2000-14 Warbelow's.
135.63	94-40 Polynesian Airways; 95-17 Larry's Flying Service; 95-28 Atlantic; 96-4 South Aero; 99-7 Premier Jets.
135.87	90-21 Carroll.
135.95	95-17 Larry's Flying Service; 99-15 Blue Ridge; 2000-5 Blue Ridge.
135.179	97-11 Hampton; 2000-3 Warbelow's; 2000-14 Warbelow's.
135.185	94-40 Polynesian Airways.
135.234	99-15 Blue Ridge; 2000-14 Warbelow's.
135.243	99-11 Evergreen Helicopters; 99-15 Blue Ridge; 2000-5 Blue Ridge; 2000-12 Evergreen.
135.263	95-9 Charter Airlines; 96-4 South Aero.
135.267	95-8 Charter Airlines; 95-17 Larry's Flying Service; 96-4 South Aero.
135.293	95-17 Larry's Flying Service; 96-4 South Aero; 99-15 Blue Ridge; 2000-5 Blue Ridge.
135.299	99-15 Blue Ridge; 2000-5 Blue Ridge.
135.337	2000-26 Aero National.
135.343	95-17 Larry's Flying Service; 99-15 Blue Ridge; 2000-5 Blue Ridge.
135.411	97-11 Hampton.
135.413	94-3 Valley Air; 96-15 Valley Air; 97-8 Pacific Av. d/b/a Inter-Island Helicopters; 97-16 Mauna Kea; 99-14 Alika Aviation.
135.421	93-36 Valley Air; 94-3 Valley Air; 96-15 Valley Air; 99-14 Alika Aviation.
135.437	94-3 Valley Air; 96-15 Valley Air.
137.19	2000-12 Evergreen.
141.101	98-18 General Aviation.
145.1	97-10 Alphin.
145.3	97-10 Alphin.
145.25	97-10 Alphin.
145.45	97-10 Alphin.
145.47	97-10 Alphin.
145.49	97-10 Alphin.
145.51	2000-1 Gatewood.
145.53	90-11 Thunderbird Accessories.
145.57	94-2 Woodhouse; 97-9 Alphin; 97-32 Florida Propeller.
145.61	90-11 Thunderbird Accessories.
191	90-12 & 90-19 Continental Airlines; 90-37 Northwest Airlines; 98-6 Continental Airlines; 99-12 TWA.
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; 2000-20 Phillips Building Supply.
171.2	92-77 TCI; 94-28 Toyota; 94-31 Smalling; 95-16 Mulhall; 96-26 Midtown; 98-2 Carr.
171.8	92-77 TCI.
172.101	92-77 TCI; 94-28 Toyota; 94-31 Smalling; 96-26 Midtown.
172.200	92-77 TCI; 94-28 Toyota; 95-16 Mulhall; 96-26 Midtown; 98-2 Carr.
172.202	92-77 TCI; 94-28 Toyota; 94-31 Smalling; 95-16 Mulhall; 98-2 Carr.
172.203	94-28 Toyota.
172.204	92-77 TCI; 94-28 Toyota; 94-31 Smalling; 95-16 Mulhall; 98-2 Carr.
172.300	94-31 Smalling; 95-16 Mulhall; 96-26 Midtown; 98-2 Carr.
172.301	94-31 Smalling; 95-16 Mulhall; 98-2 Carr.
172.304	92-77 TCI; 94-31 Smalling; 95-16 Mulhall, 98-2 Carr.
172.400	92-77 TCI; 94-28 Toyota; 94-31 Smalling; 95-16 Mulhall; 98-2 Carr.
172.402	94-28 Toyota.
172.406	92-77 TCI.
173.1	92-77 TCI; 94-28 Toyota; 94-31 Smalling; 95-16 Mulhall; 98-2 Carr.
173.3	94-28 Toyota; 94-31 Smalling; 98-2 Carr.
173.6	94-28 Toyota.
173.22(a)	94-28 Toyota; 94-31 Smalling; 98-2 Carr.
173.24	94-28 Toyota; 95-16 Mulhall.
173.25	94-28 Toyota.
173.27	92-77 TCI.
173.62	98-2 Carr.
173.115	92-77 TCI.
173.240	92-77 TCI.
173.243	94-28 Toyota.
173.260	94-28 Toyota.
173.266	94-28 Toyota, 94-31 Smalling.
175.25	94-31 Smalling.
191.5	97-13 Westair Commuter.
191.7	97-13 Westair Commuter.
821.30	92-73 Wyatt.
821.33	90-21 Carroll.

STATUTES

5 U.S.C.:	
504	90-17 Wilson; 91-17 & 92-71 KDS Aviation; 92-74, 93-2 & 93-9 Wendt; 93-29 Sweeney; 94-17 TCI; 95-27 Valley Air; 96-22 Woodhouse; 98-19 Martin & Jaworski.
552	90-12, 90-18 & 90-19 Continental Airlines; 93-10 Costello.
554	90-18 Continental Airlines; 90-21 Carroll; 95-12 Toyota.
556	90-21 Carroll; 91-54 Alaska Airlines.
557	90-20 Degenhardt; 90-21 Carroll; 90-37 Northwest Airlines; 94-28 Toyota.
705	95-14 Charter Airlines.
5332	95-27 Valley Air.
11 U.S.C.:	
362	91-2 Continental Airlines.
28 U.S.C.:	
2412	93-10 Costello; 96-22 Woodhouse.
2462	90-21 Carroll.
49 U.S.C.:	
5123	95-16 Mulhall; 96-26 & 97-1 Midtown Neon Sign; 98-2 Carr; 2000-20 Phillips Building Supply.
40102	96-17 Fenner.
41706	99-6 Squire.
44701	99-6 Ignatov; 96-17 Fenner; 99-12 TWA; 2000-3 Warbelow's.
44704	96-3 America West Airlines; 96-15 Valley Air.
46110	96-22 Woodhouse; 97-1 Midtown Neon Sign.
46301	97-1 Midtown Neon Sign; 97-16 Mauna Kea; 97-20 Werle; 99-15 Blue Ridge; 2000-3 Warbelow's.
46302	98-24 Stevens.
46303	97-7 Stalling.
49 U.S.C. App.:	
1301(31) (operate)	93-18 Westair Commuter.
(32) (person)	93-18 Westair Commuter.
1356	90-18 & 90-19, 91-2 Continental Airlines.

1357	90-18, 90-19 & 91-2 Continental Airlines; 91-41 [Airport Operator]; 91-58 [Airport Operator].
1421	92-10 Flight Unlimited; 92-48 USAir; 92-70 USAir; 93-9 Wendt.
1429	92-73 Wyatt.
1471	89-5 Schultz; 90-10 Webb; 90-20 Degenhardt; 90-12, 90-18 & 90-19 Continental Airlines; 90-23 Broyles; 90-26 & 90-43 Waddell; 90-33 Cato; 90-37 Northwest Airlines; 90-39 Hart; 91-2 Continental Airlines; 90-18, 90-198 91-1 Continental Airlines;/ 91-3 Lewis; 91-18 [Airport Operator]; 91-53 Koller; 92-5 Delta Air Lines; 92-10 Flight Unlimited; 92-46 Sutton-Sautter; 92-51 Koblick; 92-74 Wendt; 92-76 Safety Equipment; 94-20 Conquest Helicopters; 94-40 Polynesian Airways; 96-6 Ignatov; 97-7 Stalling.
1472	96-6 Ignatov.
1475	90-20 Degenhardt; 90-12 Continental Airlines; 91-3 Lewis; 91-18 [Airport Operator]; 94-40 Polynesian Airways.
1486	90-21 Carroll; 96-22 Woodhouse.
1809	92-77 TCI; 94-19 Pony Express; 94-28 Toyota; 94-31 Smalling; 95-12 Toyota.
<i>FRCP:</i>	
Rule 11	2000-17 Gottbetter.
Rule 26	2000-19 Horner.

Civil Penalty Actions—Orders Issued by the Administrator

Digests

(Current as of December 31, 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 John Nelson Meyer

Order No. 2000-22 (12/13/00)

Appeal dismissed. Complainant's appeal was dismissed as a result of its withdrawal of its notice of appeal.

In the Matter of Federal Express Corporation

Order No. 2000-23 (12/13/00)

Leave to file an additional brief granted. Federal Express demonstrated good cause to file an additional brief addressing the issue of whether the shipment involved in this case constituted an interline shipment, and as a result, whether Federal Express should be held to the higher standard of care to which air carriers are held. This is a new issue, raised for the first time

in Complainant's reply brief. Federal Express was granted 30 days from the date of service of this order in which to file its additional brief, and Complainant was granted 30 days from the date of service of the additional brief to file a reply.

In the Matter of SONICO, Inc.

Order No. 2000-24 (12/21/00)

Cross-appeals dismissed. As a result of a settlement agreement, the parties withdrew their cross-appeals before filing their reply briefs. The parties' notices of appeal were dismissed.

Motion to vacate the law judge's decision denied. Complainant withdrew the complaint, and SONICO withdrew the answer. The parties requested by motion that the Administrator vacate the law judge's initial decision.

Once the complaint is withdrawn, there is no jurisdictional basis for the law judge's decision. The initial decision, then, has no force and effect, and Complainant cannot collect any civil penalty assessed by the law judge.

The parties' request that the Administrator vacate the law judge's initial decision was denied because it was unclear whether the Administrator has the authority to vacate an initial decision, because to do so would be inconsistent with Federal precedent. See *U.S. Bancorp. Mortgage Co. v. Bonner Mall Partnership*, 513 U.S. 18, 25 (1994), holding that "[w]here mootness results from settlement, * * * the losing party has voluntarily forfeited his legal remedy by the ordinary processes of appeal or certiorari, thereby surrendering his claim to the equitable remedy of vacatur."

In the Matter of Riverdale Mills

Order No. 2000-25 (12/21/00)

Order dismissing the case reversed. At the beginning of the hearing, the agency attorney moved to amend the complaint. The agency attorney explained that Complainant had just learned that the correct proper shipping name and number for the substance that was shipped were Adhesives, UN 1133, not Methyl Ethyl Ketone, UN 1193, as alleged in the complaint. The law judge denied the motion to amend the complaint, and subsequently granted Riverdale's motion to dismiss.

The law judge failed to accept as true all the material allegations of the complaint when ruling on the motion to dismiss. Regardless of the proper shipping name, the complaint alleged that the substance in the cans was a hazardous material and that Riverdale violated the Hazardous Materials Regulations by failing to package, mark, and label the boxes properly, and to provide shipping papers and emergency response information. If the law judge had accepted these allegations as true, the only logical conclusion would have been that the complaint stated a valid cause of action.

Even if the wrong shipping name was alleged in the complaint, Riverdale had adequate notice of the charges against it. The allegation that Riverdale improperly shipping a flammable hazardous material still applies, as do all the same regulations allegedly violated. The issue is not whether Riverdale shipped Methyl Ethyl Ketone or Adhesives, but whether the substance it shipped was a hazardous material, and whether Riverdale complied with the regulations pertaining to packaging, marking, labeling, shipping papers, and emergency response information.

Further, no prejudice to Riverdale was shown.

The Administrator reversed the order of dismissal, and remanded the case to the law judge for a hearing.

In the Matter of Aero National, Inc.

Order No. 2000-26 (12/21/00)

Competency and proficiency checks. Aero National used a check airman to administer an instrument proficiency test to another pilot when the check airman was not current on his own instrument proficiency tests. The law judge held that this was a violation of 14 CFR 135.337(b).

A competency test is a demonstration by an airman that he is able to fly a specific make and model of aircraft. A proficiency check is a test of a pilot's capability to fly on instruments and is not aircraft-specific.

On appeal, Aero National argued that 14 CFR 135.337(b) required only that the check airman be current on either his competency or proficiency test, and that the check airman, in this instance, was current on his competency test (although not on his instrument proficiency test). The Administrator rejected this argument.

The Administrator held that Aero National's interpretation of 14 CFR 135.337(b) was flawed because it focused on the word "or," ignoring the language "that are required to serve as a pilot in command in operations under this part" that modifies proficiency or competency checks. The use of the disjunctive "or" is appropriate because it indicates that there are times when the check airman must have satisfactorily passed in a timely fashion either only the appropriate competency check (to fly VFR-only flights), or both the competency and instrument proficiency checks (to fly IFR and VFR flights). Under this regulation, the Part 135 operator may not use a check airman to perform flight checks for operations in which the check airman himself would not be qualified to serve as pilot in command.

Civil Penalty. The \$3,300 civil penalty is appropriate in light of the potential hazards that could result when a check airman performs checks that he is not qualified to perform.

In the Matter of Phillips Buildings Supply

Order No. 2000-27 (12/21/00)

Reconsideration denied. Phillips' argument that the Administrator in FAA Order No. 2000-20 (August 11, 2000) used a mathematical formula in determining to assess a \$14,000 civil penalty. The law judge considered the

factors that are required to be considered by 49 U.S.C. § 5123(c). The Administrator did not intend to criticize Phillips for training its employees after the incident concerning the transportation of hazardous materials. However, the training was not intensive or timely enough to constitute a significant mitigating factor. By informing the UPS driver that the shipment contained Formica glue, Phillips' clerk did not shift responsibility for the violation to UPS. The clerk did not contact the UPS employees who had expertise in hazardous materials and ask for advice regarding how to package and ship the Formica glue properly. It was reasonable for the Administrator to assume that Phillips regularly handles hazardous materials in light of the fact that hardware stores commonly stock many items that are regulated under the Hazardous Materials Regulations, such as paint, turpentine, and paint thinner.

In the Matter of Lifeflite Medical Air Transport

Order No. 2000-28 (12/21/00)

Lifeflite filed a motion, requesting that the law judge dismiss the case because Lifeflite had surrendered its operating certificate, closed its business, and had no staff, money or assets. The law judge canceled the hearing and dismissed the complaint with prejudice, finding that "further proceedings, even if successful, would amount to * * * beating * * * a dead horse."

Reversed and remanded. The Administrator granted Complainant's appeal, finding that Lifeflite had failed to sustain its burden to prove that it had no assets. The Administrator held that Lifeflite's surrender of its certificate did not obviate the need for a punitive sanction. A civil penalty would deter others similarly situated, and itself, if recertificated. The law judge's decision was reversed, and the case remanded to the Office of Hearings.

In the Matter of William Stevenson

Order No. 2000-29 (12/21/00)

The law judge construed Stevenson's failure to file an answer and to respond to an order to show cause as both a constructive withdrawal of his request for a hearing, and as an admission of the complaint's allegations.

Good cause not shown for failure to file an answer and response to order to show cause. Stevenson's argument on appeal that these failures were attributable to the use of the agency attorney and the law judge of the wrong address is rejected. Stevenson had actual notice of the requirement to file

an answer because he did receive the complaint, which included information about that requirement. Also, Stevenson never supplied his new address to the agency attorney or to the law judge.

Penalty. The law judge's assessment of a \$3,300 civil penalty is warranted in light of Stevenson's (1) drinking an alcoholic beverage not served to him by a flight crewmember; (2) threatening and intimidating a flight attendant, and (3) interfering with the duties of the pilot. The law judge's order was 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 Board Street East, Rochester, NY 14694, 1-800-221-9428.

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

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-40, 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) 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 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 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; (301) 725-7100.

Dated: Issued in Washington, DC, on January 11th, 2001.

James S. Dillman,

Assistant Chief Counsel for Litigation.

[FR Doc. 01-1675 Filed 1-22-01; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Ford Airport, Iron Mountain, Michigan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Ford Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). **DATES:** Comments must be received on or before February 22, 2001.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. William H. Marchetti of Dickinson County at the following address: Dickinson County Court House, P.O. Box 609, Iron Mountain, Michigan 49801.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Dickinson County under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Gilbert, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (734-487-7281). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Ford Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On December 28, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by Dickinson County was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 4, 2001.

The following is a brief overview of the application.

PFC Application No.: 01-04-C-00-IMT.

Level of the proposed PFC: \$3.00.

Proposed charge effective date: March 1, 2001.

Proposed charge expiration date: December 1, 2003.

Total estimated PFC revenue: \$73,815.00.

Brief description of proposed projects:
Impose and Use: Rehabilitate Runway 01/19 and Runway 31.

Impose Only: Rehabilitate Runway 13.
Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice, and other documents germane to the application in person at the Dickinson County Airport.

Issued in Des Plaines, Illinois, on January 2, 2001.

Robert Benko,

Acting Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 01-2042 Filed 1-22-01; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 01-04-C-00-ISP To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Long Island MacArthur Airport, Ronkonkoma, New York

AGENCY: Federal Aviation Administration (FAA), DOT.