

(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 Planing and Programming.

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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 December 31, 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
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
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1/1/98-3/31/98	63 FR 19559; 4/20/98

Dates of quarter	Federal Register publication
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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.

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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.