

directors and administration of its affairs as well as comply with the public and non-industry participant requirements of the Act. It is envisioned that these temporary rules and subsequent changes that may be implemented from time-to-time will enable the NASD to better comply with the requirements of Section 15A(b)(6) in particular and the Act in general.

The Commission finds good cause for temporarily approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in that accelerated approval will enhance the NASD's ability to carry out its regulatory obligations under the Act. The Commission believes that the proposed rule change is intended to accomplish certain allocations and delegations of authority necessary to reorganize the NASD, and establish as separate subsidiaries the NASDR and Nasdaq in accordance with the recommendations of The Select Committee on Structure and Governance in order to enable the NASD to meet its regulatory and business obligations. The Plan, which is part of this proposed rule change sets forth the purpose, functions, governance, procedures, and responsibilities of the NASD, the NASDR and Nasdaq following the reorganization of the NASD. The NASD's Board of Governors, which has been reorganized to be consistent with the proposed rule change, will hold its first meeting on April 11, 1996. The reorganization of the NASD Board of Governors is also reflected in proposed rule changes to the NASD By-Laws submitted in a separate rule filing and which the Commission is approving on an accelerated basis. Accordingly, the Commission believes that accelerating the approval of the proposed rule change will benefit members and the public interest by permitting the NASD Board of Governors to conduct business at its meeting on April 11, 1996.

#### V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by May 9, 1996.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved and effective through July 10, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 96-9512 Filed 4-17-96; 8:45 am]

BILLING CODE 8010-01-M

## 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. The FAA is publishing an index by order number, an index by subject matter, and case digests that contain identifying information about the final decisions and orders issued by the Administrator. Publication of these indexes and digests is intended to increase the public's awareness of these indexes and digests is intended to increase the public's awareness of the Administrator's decisions and orders. Also, the publication of these indexes and digests should assist litigants and practitioners in their research and review of decisions and orders that may have precedential value in a particular civil penalty action. Publication of the index by order number, as supplemented by the index by subject matter, ensures that the agency is in compliance with statutory indexing requirements.

**FOR FURTHER INFORMATION CONTACT:**

James S. Dillman, Assistant Chief Counsel for Litigation (AGC-400), Federal Aviation Administration, 701 Pennsylvania Avenue NW., Suite 925,

<sup>5</sup> 17 CFR 200.30-3(a)(12).

Washington, DC 20004; telephone (202) 376-6441.

**SUPPLEMENTARY INFORMATION:** The Administrative Procedure Act requires Federal agencies to maintain and make available for public inspection and copying current indexes containing identifying information regarding materials required to be made available or published. 5 U.S.C. 552(a)(2). In a notice issued on July 11, 1990, and published in the Federal Register (55 FR 29148; July 17, 1990), the FAA announced the public availability of several indexes and summaries that provide identifying information about the decisions and orders issued by the Administrator under the FAA's civil penalty assessment authority and the rules of practice governing hearings and appeals of civil penalty actions. 14 CFR Part 13, Subpart G.

The FAA maintains an index of the Administrator's decisions and orders in civil penalty actions organized by order number and containing identifying information about each decision or order. The FAA also maintains a subject-matter index, and digests organized by order number.

In a notice issued on October 26, 1990, the FAA published these indexes and digests for all decisions and orders issued by the Administrator through September 30, 1990. 55 FR 45984; October 31, 1990. The FAA announced in that notice that it would publish supplements to these indexes and digests on a quarterly basis (*i.e.*, in January, April, July, and October of each year). The FAA announced further in that notice that only the subject-matter index would be published cumulatively, and that both the order number index and the digests would be non-cumulative.

Since that first index was issued on October 26, 1990 (55 FR 45984; October 31, 1990), the FAA has issued supplementary notices containing the quarterly indexes of the Administrator's civil penalty decisions as follows:

Dates of quarter	Federal Register publication
10/1/90-12/31/90 ...	56 FR 44886; 2/6/91.
1/1/91-3/31/91 .....	56 FR 20250; 5/2/91.
4/1/91-6/30/91 .....	56 FR 31984; 7/12/91.
7/1/91-9/30/91 .....	56 FR 51735; 10/15/91.
10/1/91-12/31/91 ...	57 FR 2299; 1/21/92.
1/1/92-3/31/92 .....	57 FR 12359; 4/9/92.
4/1/92-6/30/92 .....	57 FR 32825; 7/23/92.
7/1/92-9/30/92 .....	57 FR 48255; 10/22/92.
10/1/92-12/31/92 ...	58 FR 5044; 1/19/93.
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.
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1/1/94-3/31/94 .....	59 FR 22196; 4/29/94.

Dates of quarter	Federal Register publication
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.

\*Due to administrative oversight, the index for the third quarter of 1994, including information pertaining to the decisions and orders issued by the Administrator between July 1 and September 30, 1994, was not published on time. The information regarding the third quarter's decisions and orders, as well as the fourth quarter's decisions and orders in 1994, were included in the index published on January 23, 1995.

In the notice published on January 19, 1993, the Administrator announced that for the convenience of the users of these indexes, the order number index published at the end of the year would reflect all of the civil penalty decisions

for that year. 58 FR 5044; 1/19/93. The order number indexes for the first, second, and third quarters would be non-cumulative.

The Administrator's final decisions and orders, indexes, and digests are available for public inspection and copying at all FAA legal offices. (The addresses of the FAA legal offices are listed at the end of this notice.)

Also, the Administrator's decisions and orders have been published by commercial publishers and are available on computer databases. (Information about these commercial publications and computer databases is provided at the end of this notice.)

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(This index includes all decisions and orders issued by the Administrator from January 1, 1996, to March 31, 1996.)

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*Digests*

(Current as of March 31, 1996)

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 January 1, 1996, to March 31, 1996. The FAA will publish noncumulative supplements to this compilation on a quarterly basis (e.g., April, July, October, and January of each year).

These digests do not constitute legal authority, and should not be cited or relied upon as such. The digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

*In the Matter of [Airport Operator]*

Order No. 96-1 (1/4/96)

*Vehicle Gates Must Control Pedestrian Access.* This case arose when FAA security inspectors found gaps, under or near two vehicle gates at the airport, that were large enough to permit unauthorized individuals to slip through into the air operations area. Despite repeated requests and warnings from the inspectors, the airport operator failed to correct the problem. The airport operator argued that it did not violate 14 CFR 107.13(a)(1), the regulation requiring it to control access to the air operations area, because the gates were vehicle gates. Contrary to the airport operator's arguments, the vehicle gates must control pedestrian access.

*Regulation Not Unconstitutional.*

Section 107.13(a)(1) is not unconstitutionally vague or overboard.

*Penalty.* The law judge's imposition of a \$1,000 civil penalty is affirmed.

*In the Matter of Skydiving Center of Washington, D.C.*

Order No. 96-2 (1/5/96)

*Appeal Dismissed.* Complainant has failed to perfect its appeal by filing an appeal brief, as required by the Rules of Practice. Therefore, its appeal is dismissed.

*In the Matter of America West Airlines*

Order No. 96-3 (2/13/96)

*Failure to use methods acceptable to the Administrator.* America West violated 14 CFR 43.13(a) when it repaired three Boeing 737s with speed

tape. It employed methods that were not in the Boeing Structural Repair Manual and had not been accepted or approved by the Administrator for this type and extent of damage to these aircraft.

America West failed to prove that it had used practices that were in keeping with those employed in the industry for this type of damage to these aircraft. Air carriers must use repair methods that have been approved or accepted by the Administrator even if the actual minor repair on a particular aircraft does not have to be inspected by a FAA representative before putting the aircraft back into service.

*Airworthiness.* There is a two-prong test for airworthiness: (1) the aircraft must conform to its type design or supplemental type design and to any applicable airworthiness directives, and (2) it must be in a condition for safe operation. In this case, the parties stipulated that the aircraft with the minor damage and temporary speed tape repairs did not present a safety problem. However, the aircraft with the minor damage (engine fan cowl puncture of a Boeing 737-300, and flap trailing edge delamination of a Boeing 737-200 and a Boeing 737-300) and the speed tape were not in conformity with their type designs. Although the type designed were not introduced into evidence, there was still sufficient circumstantial evidence to prove that the aircraft did not conform to their type designs. Consequently, America West violated 14 CFR 121.153 when it operated these aircraft in an unairworthy condition.

*Sanction.* The civil penalties totalling \$44,750, for these operational and maintenance violations are affirmed.

*In the Matter of South Aero*

Order No. 96-4 (2/13/96)

*Competency Check Flights.* Competency check flights administered by a company check pilot in a company plane occurred on duty time rather than rest time and therefore needed to be recorded on the company's flight and duty time records, even though the air carrier did not pay the pilots specifically for the time the pilots spent taking their competency checks.

*In the Matter of Alphin Aircraft, Inc.*

Order No. 96-5 (2/13/96)

*Petition for Modification Granted.* FAA Order No. 95-22 is modified in part to allow Alphin Aircraft to file an appeal brief within 30 days of service of FAA Order No. 96-5.

*In the Matter of Evgeniy V. Ignatov*

Order No. 96-6 (2/13/96)

*Assault and Interference with Crewmember.* Willful intent to injure need not be present to show assault under 14 CFR 91.11, which prohibits assaulting, intimidating, threatening, or interfering with a crewmember in the performance of the crewmember's duties. Under Section 91.11, assault includes the concept of battery. In the instant case, Respondent committed two separate violations of Section 91.11. The first violation, which consisted of interfering with a crewmember, occurred when Respondent refused to sit down in compliance with the seat belt light and the flight attendant's request, and when he blocked the flight attendant's passage as she was attempting to serve the passengers. The second violation, which consisted of assault, occurred when Respondent pushed past the flight attendant when there was not enough room to get by safely, grabbed the flight attendant's shoulders, and stepped on the flight attendant's foot, causing her sharp pain and a bruise.

*Sanction.* The civil penalty the law judge imposed, of \$750 for one violation and \$1,000 for the other, is not too severe. Although Respondent points out that in another case involving the same regulation, the civil penalty assessed was only \$1,000, that case involved only one violation of Section 91.11, while the instant case involves two separate violations.

*In the Matter of Delta Air Lines, Inc.*

Order No. 96-7 (2/15/96)

*Appeals Dismissed.* The parties have withdrawn their respective notices of appeal in this matter. Therefore, the cross-appeals are dismissed.

*In the Matter of Empire Airlines, Inc.*

Order No. 96-8 (2/29/96)

*Appeals Dismissed.* The parties have withdrawn their respective notices of appeal in this matter. Therefore, the cross-appeals are dismissed.

*In the Matter of [Airport Operator]*

Order No. 96-9 (3/5/96)

*Reconsideration Denied.* Nothing in the airport operator's petition for reconsideration warrants modification or reversal of Order No. 96-1. Notably absent from the petition is any case law or other legal authority to support the airport operator's contention that Order No. 96-1 was in error. Moreover, the principal arguments contained in the petition are not new. They have already been considered and rejected by the

Administrator. Section 13.234(d) of the Rules of Practice, 14 CFR 13.234(d), permits the Administrator to dismiss summarily petitions to reconsider that are repetitious.

*In the Matter of USAir, Inc.*

Order No. 96-10 (3/11/96)

*Appeals dismissed.* Complainant withdrew its appeal from the law judge's initial decision. Complainant's appeal is dismissed.

*In the Matter of USAir, Inc.*

Order No. 96-11 (3/19/96)

*Appeal dismissed.* Respondent withdrew its appeal from the law judge's initial decision. Respondent's appeal is dismissed.

*In the Matter of USAir, Inc.*

Order No. 96-12 (3/19/96)

*Appeal dismissed.* Respondent withdrew its appeal from the law judge's initial decision. Respondent's appeal is dismissed.

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

In June 1991, as a public service, the FAA began releasing to commercial publishers the Administrator's decisions and orders in civil penalty cases. The goal was to make these decisions and orders more accessible to the public. The Administrator's decisions and orders in civil penalty cases are now available in the following commercial publications:

*AvLex*, published by Aviation Daily, 1156 15th Street, NW, Washington, DC 20005, (202) 822-4669;

*Civil Penalty Cases Digest Service*, published by Hawkins Publishing Company, Inc., P.O. Box 480, Mayo, MD, 21106, (410) 798-1677;

*Federal Aviation Decisions*, Clark Boardman Callaghan, 50 Broad Street East, Rochester, NY 14694, (716) 546-1490.

The decisions and orders may be obtained on disk from Aviation Records, Inc., P.O. Box 172, Battle Ground, WA 98604, (206) 896-0376. Aeroflight Publications, P.O. Box 854, 433 Main Street, Gruver, TX 79040, (806) 733-2483, is placing the decisions on CD-ROM. Finally, the Administrator's decisions and orders in civil penalty cases are available on CompuServe and FedWorld.

The FAA has stated previously that publication of the subject-matter index and the digests may be discontinued once a commercial reporting service publishes similar information in a

timely and accurate manner. No decision has been made yet on this matter, and for the time being, the FAA will continue to prepare and publish the subject-matter index and digests.

FAA Offices

The Administrator's decisions and orders, indexes, and digests are available for public inspection and copying at the following location in FAA headquarters:

FAA Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., Room 924A, Washington, DC 20591; (202) 267-3641.

These materials are also available at all FAA regional and center legal offices at the following locations:

Office of the Assistant Chief Counsel for the Aeronautical Center (AMC-7), Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73125; (405) 954-3296.

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

Office of the Assistant Chief Counsel for the Central Region (ACE-7), Central Region Headquarters, 601 East 12th Street, Federal Building, Kansas City, MO 64106; (816) 426-5446.

Office of the Assistant Chief Counsel for the Eastern Region (AEA-7), Eastern Region Headquarters, JFK International Airport, Federal Building, Jamaica, NY 11430; (718) 553-3285.

Office of the Assistant Chief Counsel for the Great Lakes Region (AGL-7), 2300 East Devon Avenue, Suite 419, Des Plaines, IL 60018; (708) 294-7108.

Office of the Assistant Chief Counsel for the New England Region (ANE-7), New England Region Headquarters, 12 New England Executive Park, Room 401, Burlington, MA 01803-5299; (617) 238-7050.

Office of the Assistant Chief Counsel for the Northwest Mountain Region (ANM-7), Northwest Mountain Region Headquarters, 1601 Lind Avenue, SW, Renton, WA 98055-4056; (206) 227-2007.

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

Office of the Assistant Chief Counsel for the Southwest Region (ASW-7), Southwest Region Headquarters, 2601 Meacham Blvd., Fort Worth, TX 76137-4298; (817) 222-5087.

Office of the Assistant Chief Counsel for the Technical Center (ACT-7), Federal Aviation Administration Technical Center, Atlantic City International Airport, Atlantic City, NJ 08405; (609) 485-7087.

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

Issued in Washington, DC on April 11, 1996.

James S. Dillman,

*Assistant Chief Counsel for Litigation.*

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BILLING CODE 4910-13-M

[Summary Notice No. PE-96-20]

**Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion of omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before May 7, 1996.

**ADDRESSES:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-200), Petition Docket No. \_\_\_\_\_, 800 Independence Avenue, SW., Washington, DC 20591

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rule Docket (AGC-200), Room 915G, FAA Headquarters Building (FOB 10A),