

Washington, DC 20230 in the Secretary's Conference Room, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Nancy Adams, Executive Director of the Commission on United States-Pacific Trade and Investment Policy, Room 400, 600 17th Street, NW., Washington, DC 20508, (202) 395-9679.

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Executive Director, Commission on United States-Pacific Trade and Investment Policy.

Charlene Barshefsky,

Acting United States Trade Representative.

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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. 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 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 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, 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

for 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 decision 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.
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.

Dates of quarter	Federal Register publication
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.

*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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Civil Penalty Actions—Orders Issued by the Administrator

Digests

(Current as of June 30, 1996)

The digests of the Administrator's final decisions and orders are arranged by order number, and briefly summarize key points of each decision. The following compilation of digests includes all final decisions and orders issued by the Administrator from April 1, 1996, to June 30, 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 Kenelm H. Winslow

Order No. 96-13 (4/19/96)

Appeal dismissed. Respondent Winslow failed to file an appeal brief. Consequently, Winslow's appeal is dismissed for failure to perfect.

In the Matter of Midtown Neon Sign Corporation

Order No. 96-14 (4/19/96)

Cross-appeal dismissed. Respondent Midtown Neon Sign Corp. has failed to show good cause for the untimeliness of its notice of appeal. As a result, Midtown's cross-appeal is dismissed.

In the Matter of Valley Air Services, Inc.

Order No. 96-15 (5/3/96)

Petition for Reconsideration Denied. The agency attorney filed a petition for reconsideration of FAA Order No. 95-27 (December 19, 1995), which affirmed the law judge's award to Valley Air of attorney fees and other expenses under the Equal Access to Justice Act. In the petition, the agency argued that Order No. 95-27 improperly equated the FAA's failure to prevail with a lack of substantial justification. The FAA is correct in stating that an agency may have been substantially justified even if it lost its case. However, Order No. 95-27 does not stand for the proposition that because the FAA lost on the merits, it must pay Valley Air's attorney fees. Rather, Order No. 95-27

found that not only had the FAA lost, but that it had also failed to provide even enough evidence to show that its positions were substantially justified. The petition for reconsideration is denied.

In the Matter of WestAir Commuter Airlines, Inc.

Order No. 96-16 (5/3/96)

Failure to Provide Ground Security Coordinator. WestAir has appealed from the law judge's decision assessing a \$6,500 civil penalty for WestAir's failure to provide a ground security coordinator for three WestAir flights. WestAir had entered into an agreement with United whereby United would provide complete station support, including a ground security coordinator, for each of WestAir's United Express flights leaving from John Wayne Airport. WestAir argued, as an affirmative defense, that it had no knowledge of United's failure to provide a ground security coordinator.

WestAir remains responsible for the security violations at issue. The record shows no attempt on WestAir's part to monitor whether United was keeping its agreement to provide trained ground security coordinators for WestAir's flights. An air carrier's responsibilities are too critical to permit it to transfer its obligations to another. Although WestAir argues that United has its own, more rigorous security program, this makes little difference if United's security program applies only to United flights and not to WestAir flights. Moreover, it appears that WestAir and United are partners. One characteristic of partnerships is joint and several liability.

Sanction. The \$6,500 civil penalty assessed by the law judge is affirmed. It highlights the serious nature of an air carrier's failure to ensure that the safeguards in its security program are in place.

In the Matter of Ramon C. Fenner

Order No. 96-17 (5/3/96)

Aircraft Owner Responsible for Pilot's Safety Violations. The pilot of a Cessna 182 owned by Mr. Fenner caused two near mid-air collisions. Mr. Fenner and his wife refused to disclose to FAA investigators the identity of the pilot of Mr. Fenner's airplane. A preponderance of the evidence indicated that the pilot had permission to fly the airplane.

The definition of "operate" in the Federal Aviation Act, as amended, specifically includes authorizing use of aircraft. Thus,

Mr. Fenner "operated" the aircraft within the meaning of the Act because he authorized the pilot to operate the aircraft. The law judge's assessment of a \$4,000 civil penalty is affirmed.

In the Matter of Thomas Kilrain

Order No. 96-18 (5/3/96)

Violations of 14 CFR §§ 43.5(a) and 43.15(a) Affirmed. The Administrator rejected Mr. Kilrain's interpretation of AD 89-18-08. The Administrator held that the subject Airworthiness Directive, as it incorporated Service Bulletin No. 176, required that the fuel tanks, fuel system, and electric fuel pump filter be inspected for fuel tank contamination, and that the fuel tank access covers be resealed using a high-octane fuel resistant sealant. The Administrator rejected Mr. Kilrain's interpretation that the tank access covers did not have to be resealed unless fuel tank contamination was found. Because neither Mr. Kilrain nor the repair facility which had previously worked on this aircraft had conducted a complete inspection and then resealed the tanks in accordance with the Airworthiness Directive, Mr. Kilrain violated 14 CFR § 43.5(a) and 43.15(a) when he returned the aircraft to service after an annual inspection.

In the Matter of [Air Carrier]

Order No. 96-19 (6/4/96)

Failure to Detect Test Object during Screening—Sanction. During a screening system operator test, the air carrier's contract employee screener failed to detect a test object in a handbag of an FAA employee which had been submitted for x-ray screening. The screener was looking at and talking to an associate throughout the test. The law judge held that the air carrier had violated 14 C.F.R. § 108.5(a)(1). The law judge applied a superseded FAA sanction policy and assessed a \$1000 civil penalty.

The Administrator held that the law judge was subject to agency policy. Therefore, the law judge should have followed the new—and current—agency sanction policy regarding civil penalty ranging from \$7500 to \$10,000 is appropriate when egregious circumstances, including serious neglect of duties by a screener (such as deliberate or gross lack of attention to assigned tasks) are present.

The Administrator held that in this case, egregious circumstances were present. The test failure was a direct result of the inexcusable inattentiveness of the screener

when there was light traffic at the checkpoint and when the screener and when the screener had only been at her station for 10 minutes. At the same time, the aggravating factors present did not warrant the imposition of the \$10,000 maximum civil penalty. It was held that \$7,500 was an appropriate penalty based upon the totality of the circumstances, including the air carrier's success rate at detecting test objects at that checkpoint before this incident as well as the screener's serious neglect of duties.

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 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) 798-1577;

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

2. *Disks/CD-ROM*. 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.

3. *On-Line Services*. The Administrator's decisions and orders in civil penalty cases are available on CompuServe, FedWorld, and Westlaw. The Database ID for Westlaw is FTRAN-FAA.

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 decisions 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 Regional (AAL-7), Alaskan Region Headquarters, 222 West 7th Avenue, Anchorage, AK 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 July 10, 1996.
James S. Dillman,
Assistant Chief Counsel for Litigation.

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BILLING CODE 4910-13-M

Notice of Finding of No Significant Impact

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Federal Aviation Administration (FAA) has made a finding of no significant impact (FONSI) with respect to the potential programmatic environmental impacts related to the construction and operation of its proposed Wide Area Augmentation System (WAAS).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Burmester, Federal Aviation Administration, (202) 358-5408.

SUPPLEMENTARY INFORMATION:

Proposed Action

The Federal Aviation Administration (FAA) is proposing to construct and operate an enhanced aircraft navigation system consisting of a nationwide system of hardware and software and four transmitting antenna sites known as ground earth stations (GESs). The collective system is known as the Wide Area Augmentation System (WAAS). The WAAS would augment existing Department of Defense (DoD)-provided Global Positioning System (GPS) navigational information for civil aviation use. The WAAS would receive, process, and correct data from existing GPS satellites and transmit navigation corrections to existing communications satellites. The communications satellites would transmit enhanced GPS information to aircraft that would be equipped with WAAS receivers to use this information for navigation. This satellite-based system would be used to supplement the existing navigation system, providing better navigational information to aircraft and thus enhancing safety.

In order to implement WAAS, the FAA would use existing GPS satellites and geostationary earth orbiting (GEO) communication satellites, construct wide area reference stations (WRSSs) and wide area master stations (WMSs), and lease GES transmitting antenna facilities to provide additional accuracy, availability, and integrity of information provided by the existing civilian available GPS. The 29 WRSSs and WMSs to be constructed would each consist of three 32 inch diameter receiving antennas on 6 foot supports with attached weather sensors. These antennas would be mounted on existing FAA facilities and connected by cable to additional interior equipment. The four