

incorporates the appropriate normal category airworthiness standards of 14 CFR part 23, Airworthiness Standards: Normal, Utility, Acrobatic, and Commuter Category Airplanes. This material is neither mandatory nor regulatory in nature and does not constitute a regulation.

**DATE:** Advisory Circular 21.25-1 was issued by the Manager, Small Airplane Directorate, Aircraft Certification Service, ACE-100, on December 1, 1997.

**HOW TO OBTAIN COPIES:** A copy may be obtained by writing to the U.S. Department of Transportation, Subsequent Distribution Office, DOT Warehouse SVC-121.23, Ardmore East Business Center, 3341 Q 75th Avenue, Landover, MD 20785, or by faxing your request to that office at 301-386-5394.

Issued in Kansas City, Missouri, on April 9, 1998.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

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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, 1997. 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.) This publication represents the quarter ending on December 31, 1997.

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 these **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.

Dates of quarter	Federal Register publication
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 37526; 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.
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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.

The civil penalty decisions and orders, and the indexes and digests are available in FAA offices. In addition, the Administrator's civil penalty decisions have been published by commercial publishers (Hawkins Publishing Company and Clark Boardman Callahan) and are available on computer on-line services (Westlaw, LEXIS, Compuserve and FedWorld). (A list of the addresses of the FAA offices where the civil penalty decisions may be reviewed and information regarding these commercial publications and computer databases are provided at the end of this notice.)

Information regarding the accessibility of materials filed in recently initiated civil penalty cases in FAA civil penalty cases at the DOT Docket and over the Internet is also set forth at the end of this notice.

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### Civil Penalty Actions—Orders Issued by the Administrator Digests

(Current as of March 31, 1998)

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, 1998, to March 31, 1998. 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 Virginia Taylor*

[Order No. 98-1 (2/18/98)]

**Appeal Dismissed.** Taylor's notice of appeal was filed almost 8 months late. Taylor's counsel claimed that the notice of appeal had been filed previously but he failed to submit any evidence that the notice of appeal had been filed on time. The party filing a document has the burden of proving the date on which it filed the document. Taylor failed to prove that she filed the notice of appeal on time or that she had good cause for the failure to file the notice on time. Appeal dismissed.

#### *In the Matter of Paul A. Carr*

[Order No. 98-2 (3/12/98)]

**Hazardous materials.** Carr offered two boxes containing fireworks and some non-hazardous materials to Horizon Air for shipment. Carr did not indicate by marking, labeling, or by declaring on the shipping papers that he was shipping hazardous materials. Also, incorrect packaging was used by Carr to ship the fireworks. The boxes were opened subsequently, when they were transferred to another carrier, and the hazardous materials were discovered.

**Civil penalty reduced.** It is held that in this non-egregious case involving an individual not in the business of shipping hazardous materials, it is inappropriate to count each regulatory violation alleged and found—general and specific—as separate violations for sanction purposes. Due to the statutory minimum civil penalty provision, the consideration of duplicative regulatory violations as separate violations for sanction purposes in non-egregious cases against individuals not in the

business of shipping hazardous material may undermine the credibility of the enforcement program and result in excessive penalties under the statutory factors. (See 49 U.S.C. 5123.) Hence, in this case, there is no reason to count 49 CFR 171.2(a), 172.200(a), and 173.1(b), as separate violations for sanction purposes. Also, it is held that the separate violations of 49 CFR 172.202(a) and 172.202(c) are almost identical in this case and therefore, to count both separately for sanction purposes is unnecessary "piling on." Likewise, the violation of 49 CFR 172.304 should not count separately for sanction purposes because this regulation requires that the markings be durable, in English, and printed on or affixed to the package—but a separate violation has already been found because there were no markings at all. The civil penalty is reduced to \$2,000.

#### *In the Matter of Thomas Fedeles*

[Order No. 98-3 (3/12/98)]

**Parachuting Too Close to Clouds.** A preponderance of the reliable, probative, and substantial evidence in the record indicates that none of the skydivers could have jumped at the time and place in question without coming too close to clouds. Law judge's decision finding otherwise is reversed, and a \$500 civil penalty is assessed.

#### *In the Matter of Larry's Flying Service, Inc.*

[Order No. 98-4 (3/12/98)]

**No Good Cause for Failure to File Timely Answer.** Larry's argues that confusion of its counsel was the reason for its lateness in filing its answer. Counsel allegedly thought that the copy of the complaint he received was only a courtesy copy because it did not contain the case number or the law judge's name. No good cause has been shown. Any confusion on counsel's part was unwarranted.

**\$20,000 Penalty Assessed.** Although \$20,000 may seem severe, Larry's was no stranger to the answer requirement, having narrowly escaped a default judgment in two previous cases. In addition, Larry's has a history of prior violation, an aggravating factor.

**Financial Hardship.** Larry's waived the affirmative defense of financial hardship when it failed to file a timely answer without good cause and again when it failed to raise the issue in its appeal brief.

#### *In the Matter of James K. Squire*

[Order No. 98-5 (3/19/98)]

**Additional Time to File Appeal Brief Granted.** After rendering his oral initial

decision, the law judge informed Squire of his option to file a notice of appeal within 10 days, but neglected to mention the requirement to perfect a notice of appeal within 50 days of the issuance of the initial decision by filing an appeal brief. It is held that this omission constitutes good cause for granting additional time to file an appeal brief.

### 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 Broad Street East, Rochester, NY 14694, 1-800-221-9428.

2. **CD-ROM.** The Administrator's orders and decisions are available on CD-ROM through Aeroflight Publications, P.O. Box 854, 433 Main Street, Gruver, TX 79040, (806) 733-2483.

3. **On-Line Services.** The Administrator's decisions and orders in civil penalty cases are available through the following on-line services:

- Westlaw (the Database ID is FTRAN-FAA).
- LEXIS [Transportation (TRANS) Library, FAA file.]
- Compuserve.
- FedWorld.

### Docket

The FAA Civil Penalty 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 Civil Penalty Docket is Ms. Stephanie McClain. Materials contained in the dockets of any case not containing sensitive security information (protected by 14 CFR Part 191) may be viewed at the FAA Civil Penalty Docket. All documents 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.)

In addition, materials filed in the FAA Civil Penalty Docket in non-security cases in which the complaints were filed on or after December 1, 1997, will also be available for viewing at the Department of Transportation Docket, located at 400 7th Street, SW, Room PL-401, Washington, DC, 20509, (tel. no.

202-366-9329.) While the originals will be retained in the FAA Civil Penalty Docket, the DOT Docket will scan 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 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 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) 207-2007.

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; (301) 725-7100.

Issued in Washington, DC on April 9th, 1998.

**James S. Dillman,**

*Assistant Chief Counsel for Litigation.*

[FR Doc. 98-10300 Filed 4-17-98; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Notice of Intent to Rule on Application (98-03-C-00-BGM) to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Binghamton Regional Airport, Binghamton, NY

**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 Binghamton Regional 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 May 20, 1998.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Philip Brito, Manager, New York Airports District Office, 600 Old County Road, Suite 446, Garden City, New York 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Carl G. Olson Commissioner of Aviation for the Broome County Department of Aviation at the following address: Broome County Department of Aviation, Binghamton Regional Airport/Edwin A. Link Field, Box 16, Johnson City, New York 13790.

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

**FOR FURTHER INFORMATION CONTACT:** Mr. Philip Brito, Manager, New York Airports District Office, 600 Old County

Road, Suite 446, Garden City, New York 11530 (Telephone 516-227-3800). 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 Binghamton Regional 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).

On March 18, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Broome County Department of Aviation was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 26, 1998.

The following is a brief overview of the application:

*Application number:* 98-03-C-00-BGM

*Level of the proposed PFC:* \$3.00

*Proposed charge effective date:* July 1, 1998

*Proposed charge expiration date:*

December 31, 2001

*Total estimated PFC revenue:*

\$1,289,201

*Brief description of proposed projects:*

*Impose & Use Projects*

—Rehabilitate and Overlay Runway 10/28

—Purchase Snow Removal Equipment

—Passenger Terminal Refurbishment—Design Phase

*Impose Only Projects*

—Passenger Terminal Refurbishment—Construction Phase

—Rehabilitate Taxiway

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) filing FAA Form 1800-31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the offices of the Broome County Department of Aviation.