

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of:

ALPHIN AIRCRAFT, INC.

FAA Order No. 96-5

Served: February 13, 1996

Docket No. CP93EA0334

**ORDER MODIFYING FAA ORDER NO. 95-22 IN PART, AND SETTING
DATE FOR THE FILING OF RESPONDENT'S APPEAL BRIEF**

In FAA Order No. 95-22, it was held that Respondent Alphin Aircraft had filed a timely notice of appeal in this action, but had failed to perfect its appeal by filing an appeal brief. Consequently, Alphin Aircraft's appeal was dismissed. Alphin Aircraft, by counsel, has filed a document entitled "Petition to Reconsider/Modify," in which it requests that the Administrator reconsider FAA Order No. 95-22 and grant Alphin Aircraft an additional 30 days in which to file an appeal brief. Complainant has filed a response, opposing any modification of FAA Order No. 95-22. After consideration of the arguments of both parties and the pertinent facts, Alphin Aviation's petition is granted, and Alphin Aircraft is granted 30 days from the date of service of this order in which to file its appeal brief.

The pertinent procedural history in this matter is as follows:

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| 1/18-19/95 | Hearing held in FAA Docket No. CP93EA0334 before Administrative Law Judge Ronnie Yoder. |
| 6/16/95 | Law Judge issues a written initial decision in FAA Docket No. CP93EA0334, finding that Alphin Aircraft violated |

- 49 C.F.R. §§ 43.13(a) and (b) and imposing a \$6000 civil penalty.
- 6/23/95 Alphin Aircraft files a notice of appeal from the initial decision in FAA Docket No. CP93EA03~~24~~.¹
- 7/19/95 FAA Order No. 95-15 issued, dismissing Alphin Aviation's notice of appeal in FAA Docket No. CP93EA03~~24~~ as late-filed.
- 7/25/95 Letter from Thurman Alphin explaining that he had inadvertently written FAA Docket No. CP93EA03~~24~~ on the notice of appeal dated 6/23/95, rather than FAA Docket No. CP93EA03~~34~~, and requesting that the notice of appeal dated 6/23/95 be considered as a notice of appeal from the law judge's written initial decision in FAA Docket No. CP93EA03~~34~~.
- 10/13/95 FAA Order No. 95-22 issued, holding that Alphin Aircraft had filed a timely notice of appeal in FAA Docket No. CP93EA03~~34~~, but dismissing that notice of appeal because Alphin Aircraft had failed to file an appeal brief.

Alphin Aircraft, by counsel, argues in its Petition to Reconsider/Modify that the letter dated July 25, 1995, should be considered a petition for reconsideration of FAA Order No. 95-15; and that the time for filing an appeal brief should have been stayed pending resolution of the petition for reconsideration.

Fairness dictates that Alphin Aircraft's appeal in FAA Docket No. CP93EA03~~34~~ should not have been dismissed.² When FAA Order No. 95-22 was issued, granting Alphin Aircraft's request to consider the notice of appeal dated

¹ Complainant brought two separate civil penalty actions against Alphin Aircraft: FAA Docket Nos. CP93EA03~~24~~ and CP93EA03~~34~~. The hearings in these two cases were held over a 3-day period, January 18-20, 1995.

The hearing in Docket No. CP93EA03~~34~~ (which is the subject of this order) was held on January 18-19, 1995. A written initial decision was issued by Judge Yoder on June 16, 1995.

The hearing in Docket No. CP93EA03~~24~~ began during the afternoon of January 19, 1995, and ended on January 20, 1995. The law judge rendered an oral initial decision on January 20, 1995, at the conclusion of that hearing.

² Due to the disposition of this matter, it is not necessary to resolve the issues raised in Alphin Aviation's Petition to Reconsider/Modify regarding whether the July 25, 1995, letter should be construed as a petition to reconsider.

June 23, 1995, as the notice of appeal in this case (FAA Docket CP93EA0334), Alphin Aircraft should have been given additional time to file its brief. Until Order No. 95-22 was issued, Alphin Aircraft had no way of knowing whether its notice of appeal which had the wrong docket number on it, would be construed as the notice of appeal in this case. Therefore, while it would have been better practice to prepare and file an appeal brief, it is understandable that Alphin Aircraft did not do so. Consequently, FAA Order No. 95-22 is reversed to the extent that it dismissed Alphin Aircraft's appeal in FAA Docket No. CP93EA0334 for failure to perfect and modified to grant Alphin Aircraft additional time in which to file its appeal brief.

THEREFORE, IT IS ORDERED THAT:

1. FAA Order No. 95-22 is reversed in part in accordance with this Order, and
2. Alphin Aircraft is granted 30 days from the date of service of this Order in which to file its appeal brief.



DAVID R. HINSON, ADMINISTRATOR
Federal Aviation Administration

Issued this 13 day of February, 1996.