

SERVED: August 17, 2011

NTSB Order No. EA-5594

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 17<sup>th</sup> day of August, 2011

_____	)	
J. RANDOLPH BABBITT,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-19120
v.	)	
	)	
BENJAMIN H. BRAUCLER,	)	
	)	
Respondent.	)	
_____	)	

**OPINION AND ORDER**

Respondent appeals the oral initial decision of  
Administrative Law Judge Alfonso J. Montano, issued July 19,  
2011.<sup>1</sup> By that decision, the law judge determined the

<sup>1</sup> A copy of the initial decision, an excerpt from the hearing transcript, is attached.

Administrator proved respondent violated 14 C.F.R. §§ 43.9(a)<sup>2</sup> and 43.12(a)(1).<sup>3</sup> The law judge denied respondent's appeal of the Administrator's emergency order,<sup>4</sup> in which the Administrator revoked respondent's mechanic certificate with Airframe and Powerplant (A&P) ratings and Inspection Authorization (IA), and any other certificates respondent holds. We deny respondent's appeal.

The Administrator issued an emergency revocation order, which became the complaint in this case, on June 15, 2011. The complaint alleged respondent falsified a Form 337 when he completed it to indicate he installed a Satloc system on a Grumman Agcat (hereinafter, "N8573H") on January 25, 2010, he placed a placard in the aircraft, and he included an entry in

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<sup>2</sup> Section 43.9(a) requires persons maintaining, performing preventative maintenance, rebuilding, or altering an aircraft to make entries in the maintenance record that contain a description of the work performed, the date of completion of the work performed, if the work performed on the aircraft has been performed satisfactorily, the signature, certificate number and kind of certificate held by the person approving the work, and the name of the person performing the work if other than the person approving the work.

<sup>3</sup> Section 43.12(a)(1) states that, "[n]o person may make or cause to be made ... [a]ny fraudulent or intentionally false entry in any record or report that is required to be made, kept, or used to show compliance with any requirement under this part."

<sup>4</sup> This case proceeds pursuant to the Administrator's authority to issue immediately effective orders under 49 U.S.C. §§ 44709 and 46105(c), and in accordance with the Board's Rules of Practice governing emergency proceedings, codified at 49 C.F.R. §§ 821.52-821.57.

the maintenance records about the installation. The Administrator's complaint stated the system, in fact, was not installed on January 25, 2010, no placard was placed in the aircraft, and no entry was made in the logbook about this maintenance. Therefore, the complaint alleged respondent's statements on the Form 337 were fraudulent or intentionally false. The complaint further alleged respondent violated § 43.9(a) for failing to make the required logbook entries containing a description of the installation of the Satloc system, the date the work was performed, whether the work was performed satisfactorily, and respondent's name, type certificate, certificate number, and signature. Respondent appealed the order and the case proceeded to hearing before the law judge on July 18-19, 2011.

In December 2009, Charlie Inderwiesen, owner of Southern Air Services, sought to obtain a 14 C.F.R. part 137 agricultural operations certificate from the Federal Aviation Administration (FAA). Mr. Inderwiesen sought to add his Grumman Agcat, N8573H, to the certificate. During the process of applying for this certificate, Mr. Inderwiesen contacted respondent for his assistance, as an A&P mechanic with IA, with installing a Satloc Litestar II system on N8573H.<sup>5</sup>

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<sup>5</sup> The Satloc Litestar II system is a positioning system that assists an agricultural operator in ensuring he or she does not

Because installation of this system resulted in a major alteration to the airframe of the aircraft, respondent, as the A&P mechanic, had to complete a copy of FAA Form 337 for the system. According to FAA Aviation Safety Inspector LeRoy Stromenger from the Orlando Flight Standards District Office (FSDO), the typical practice in completing a Form 337 was for a mechanic to seek FAA field approval of the installation of a system prior to actually installing a new system on an aircraft. By this process, the mechanic sends the Form 337 to the FSDO for approval; upon receiving the approval, performs the maintenance and returns the aircraft to service; signs the Form 337; and submits the form to the FAA at the Oklahoma City office for filing in the aircraft registry. Tr. at 49-50, 52. The field approval process helps avoid situations in which a mechanic would have to uninstall systems if the FAA fails to approve the installation. Tr. at 50, 53.

Without obtaining prior field approval from the FAA, respondent and Mr. Inderwiesen installed the Satloc system on N8573H on December 23, 2009. On that date, respondent also completed and signed the Form 337. Exh. R-8. He did not make

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(..continued)

overspray or miss a particular section of a field by determining which areas of the field have already been sprayed. The Satloc system cannot be used as a navigational global positioning system.

any maintenance entries about the installation in the aircraft's logbook. When Inspector Stromenger later contacted respondent about this maintenance, respondent claimed he did not have access to the aircraft logbook and therefore could not make the entries. Tr. at 50. However, at the hearing, respondent testified he refused to make the entries in the logbook until such time as the FAA gave field approval for the Form 337. Tr. at 99.

FAA Aviation Safety Inspector Theodore Rodriguez, also from the Orlando FSDO, received the signed Form 337 from Mr. Inderwiesen on December 29, 2009. He did not provide field approval of the Form 337 but instead returned it to Mr. Inderwiesen, stating the form needed further information. On January 8, 2010, Inspector Rodriguez inspected N8573H and noted, as a discrepancy, the aircraft was missing the Form 337 for the Satloc system. Exh. A-2.

Respondent reaccomplished the Form 337 on January 25, 2010, at the request of Mr. Inderwiesen. Exh. A-3. The new Form 337 indicated the Satloc system was installed on January 25, 2010. Id. at 3. It contained a statement that respondent installed a placard warning sign stating, "Satloc is Spray Position Aid and Not To Be Used For Navigation." Id. The form also stated, "17 ... This major alteration and ICA [instructions for continued airworthiness] is recorded in the aircraft maintenance records.

The ICA is now part of the aircraft inspection and maintenance records." Id. at 4. On January 25, 2010, respondent also signed Block 7 of the Form 337 approving the aircraft for return to service. Id. at 2. Respondent admitted he still made no maintenance entries in the aircraft logbook, but claimed he had affixed the placard to the aircraft and performed a weight and balance calculation, which he also did not record in the logbook. Tr. at 100-101.

Inspector Rodriguez reviewed the January 25, 2010 Form 337 as part of the part 137 certification process. The FAA ultimately issued Mr. Inderwiesen a part 137 certificate. Part 137 requires certificate holders undergo inspection every 90 days. Because Mr. Inderwiesen was routinely out of the state spraying crops, the FAA was unable to inspect N8573H until February 2011. At that time, Inspectors Rodriguez and Stromenger discovered the Satloc system was installed in the aircraft, but respondent had never submitted the Form 337 to the FAA aircraft registry in Oklahoma City, as required. They reviewed the logbooks, finding no entries from respondent regarding the installation of the Satloc system. They also did not find a placard warning card in the cockpit.

At the conclusion of the hearing, the law judge issued an oral initial decision. After providing detailed findings of fact based upon the testimony, the law judge found the two

inspectors' testimony credible and respondent's testimony not credible. He noted respondent provided inconsistent statements concerning whether respondent affixed the placard to the aircraft and presented no evidence to corroborate his version of the pertinent events, such as his belief that he need not document the alteration he performed on the aircraft until the FAA had approved the work. The law judge also stated respondent's initial telephonic response to the FAA regarding the events was inconsistent with his testimony at the hearing. The law judge provided detailed analysis of each of the three prongs of the test for falsification under Hart v. McLucas.<sup>6</sup> The law judge specifically rejected respondent's purported affirmative defenses that respondent relied on the advisory circular and relied on the Satloc system instructions for continued airworthiness, finding respondent failed to carry his burden of proof as to those defenses. The law judge noted, "[r]espondent does not claim that he was confused about what representations to make on the FAA Form 337 ... He does not cite any regulation or circular which indicates that it is appropriate not to make appropriate maintenance record entries about the installation of a Satloc system." Initial Decision at

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<sup>6</sup> 535 F.2d 516, 519 (9<sup>th</sup> Cir. 1976).

163-64. Pursuant to these findings, the law judge determined respondent's false statements on the FAA Form 337 resulted from an intentional falsification and respondent failed to make the necessary maintenance entries in the aircraft logbook. The law judge concluded the public interest in air transportation and safety required revocation of respondent's mechanic certificate with A&P ratings and IA for violations of 14 C.F.R. §§ 43.9(a) and 43.12(a)(1).

Respondent subsequently appealed the law judge's decision. On appeal, respondent raises several issues. He contends the evidence does not support a finding that he fraudulently or intentionally falsified entries submitted to the FAA or that those entries were relied upon by the FAA as material facts. He argues he never made a false statement because he never submitted the Form 337 to the FAA in Oklahoma City. He contends he did not need to make entries in the logbooks until after Mr. Inderwiesen obtained FAA approval for the Form 337. Finally, he asserts his testimony was credible. The Administrator disputes each of respondent's arguments, and urges us to affirm the law judge's decision.

Intentional Falsification (49 C.F.R. § 43.12(a)(1)):

In intentional falsification cases, we apply the three prong test for falsification from Hart v. McLucas, which requires the law judge find: a respondent (1) made a false

representation, (2) in reference to a material fact, and (3) with knowledge of the falsity of that fact.<sup>7</sup> In this case, we find the law judge provided detailed findings of fact based upon the evidence adduced at the hearing to support each prong of the Hart v. McLucas test. Respondent, in his brief, largely restates what he argued to the law judge at the hearing—factual arguments the law judge specifically rejected in his oral initial decision. Because the law judge’s findings were based on reliable, probative and substantial evidence, we find no reason to disturb the findings.

The law judge concluded respondent made a false representation on the Form 337 when respondent indicated the Satloc guidance system was installed on January 25, 2010 when it was not, the placard was permanently affixed to the aircraft frame when it was not, and the proper entries were made in the logbook when they were not. The law judge based this conclusion on respondent’s answer to the complaint in which respondent admitted he made no entries and failed to affix permanently the placard; respondent’s testimony at the hearing in which he admitted he did not perform the work on January 25, 2010, he made no entries in the logbook, and claimed he put the placard on the aircraft using a little glue; and the testimony of

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<sup>7</sup> Id.

Inspectors Rodriguez and Stromenger in which they stated they found no entries in the logbook and found no placard in the aircraft. Tr. at 157-59.

We have held a statement is false concerning a material fact if the alleged false fact could influence the Administrator's decision concerning the certificate or compliance with the regulations.<sup>8</sup> In this regard, the law judge stated:

Based on the testimony of [r]espondent, his statements under oath, and the testimony of Mr. Stromenger, I find that the Administrator has established that the false entries in the FAA Form 337 completed on January 25th, 2010 were material, as they could influence the Administrator's decision as to the airworthiness of the aircraft and its inclusion in the operating specification of Mr. Inderwiesen's agricultural aviation business. As has been indicated and argued by the Administrator, they did not have to prove specific reliance, only that it could influence the Administrator's decision.

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<sup>8</sup> Administrator v. Cooper, NTSB Order No. 5536 at 3 (2010); Administrator v. Magic Express Airlines, NTSB Order No. EA-5397 at 2 (2008); Administrator v. McGonegal, NTSB Order No. EA-5224 at 4 (2006); Administrator v. Reynolds, NTSB Order No. EA-5135 at 7 (2005); Administrator v. Anderson, NTSB Order No. EA-4564 (1997); Administrator v. Richards, NTSB Order No. EA-4813 (2000); see also Janka v. Dep't of Transp., 925 F.2d 1147, 1150 (9<sup>th</sup> Cir. 1991); Twoney v. NTSB, 821 F.2d 63, 66 (1<sup>st</sup> Cir. 1987)(finding a false backdate could influence the FAA's determination of whether a pilot was qualified to fly on a given date); Administrator v. Cassis, NTSB Order No. EA-1831 (1982), aff'd by Cassis v. Helms, 737 F.2d 545 (6<sup>th</sup> Cir. 1984)(finding FAA cannot meet its responsibility unless pilot logbooks are free of knowing misrepresentations of fact).

Initial decision at 160-61. The law judge based this conclusion on the testimony of Inspector Stromenger stating that the aircraft would be unairworthy absent proper FAA approval of the Form 337 and respondent's own testimony stating he did not make maintenance entries because without the Form 337, the aircraft would be unairworthy.

Specific to aircraft maintenance cases, we have held that entries in maintenance records are material because they could influence the FAA and others.<sup>9</sup> Related to this issue, we also have long held that records related to maintenance work performed on aircraft must be scrupulously accurate.<sup>10</sup> In Administrator v. Nunes, we stated,

FAR § 43.12(a)(1) "is concerned with insuring the truthfulness or accuracy of written information about an aircraft's maintenance history." If aircraft records cannot be relied on as accurate, the viability of the entire aircraft maintenance system is doubtful. Moreover, the necessity for truthfulness and the critical need for accuracy in these records is

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<sup>9</sup> Administrator v. Partington, NTSB Order No. EA-5453 at 3 (2009)(finding completed work cards when work, in fact, was not complete could lead another mechanic, the FAA, or owner to rely on those cards as indicating work was done); Administrator v. McCarthney, 7 NTSB 670, 671 (1990)(finding false logbook entries under § 61.51(a) material; "it is not immaterial simply because the airmen did not have to log it."); see also Administrator v. Gilliss, NTSB Order No. EA-5490 (2009)(finding material element met when the respondent claimed he never provided the endorsement sticker to a pilot whose flight review never occurred), pet. denied, No. 10-70185 (9<sup>th</sup> Cir. August 10, 2011).

<sup>10</sup> Administrator v. Partington, NTSB Order No. EA-5453 at 9 (2009); Administrator v. Morse, NTSB Order No. EA-3766 (1992).

reflected clearly in our precedent, where we have consistently affirmed revocation as the only appropriate sanction in similar circumstances.<sup>11</sup>

Therefore, even setting aside the testimony of Inspector Stromenger and respondent on the issue of whether the FAA relied on these records in issuing the part 137 certificate, our precedent makes it clear that statements made on the Form 337 are material.<sup>12</sup> In this case, the Form 337 indicates the aircraft was returned to service on January 25<sup>th</sup>, 2010. If the FAA, the owner,<sup>13</sup> a pilot, or a mechanic viewed that document, they would assume the aircraft was airworthy. Likewise, if those same individuals reviewed the aircraft logbook, they would reach the conclusion the aircraft was airworthy as respondent made no entries to the contrary in the logbook.

Respondent also contends the evidence established the Satloc system was a "luxury" item on the aircraft, and therefore its installation would not influence the airworthiness of the

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<sup>11</sup> NTSB Order No. EA-4567 at 13-14 (1997)(quoting Administrator v. Anderson, NTSB Order No. EA-4564 at 6 n.7 (1997)).

<sup>12</sup> Administrator v. Wedding, NTSB Order No. EA-4994 at 10 (2002)(stating statements on Form 337 are material because they influence necessary FAA approval), pet. for rev. granted on other grounds, 96 Fed.Appx. 527 (9<sup>th</sup> Cir. 2004).

<sup>13</sup> As will be discussed below, respondent contends he informed the owner of the aircraft that it was not airworthy; however, he provided no evidence of the truth of that statement, and his own entry on the Form 337 directly contradicts his testimony.

aircraft. As such, respondent contends the Form 337 describing the installation of the system was not material under the Hart v. McLucas test. Although Inspector Rodriguez testified the Satloc system was not a "show stopper" with regard to whether the FAA would issue part 137 certification concerning the aircraft (tr. at 42), we also note Inspector Rodriguez stated, "[respondent] was still required to submit the appropriate paperwork and install the equipment once it was approved" (tr. at 37). The Administrator established that completion of a Form 337 was required in this case. Tr. at 51. Respondent provides no authority for his contention that luxury items are exempt from accurate, truthful entries on required paperwork. In this regard, respondent does not contend the installation of the Satloc system was not a "major alteration" or was otherwise not subject to the requirement that he complete a Form 337. Respondent's argument concerning airworthiness is therefore misplaced, as the Administrator does not allege that the aircraft was unairworthy, but only contends respondent failed to complete certain logbook entries, and intentionally falsified a copy of Form 337.

Furthermore, to the extent, on appeal, respondent argues the Administrator needed to prove he had knowledge that the information contained on the Form 337 was material, we reject this interpretation of the second prong of the Hart v. McLucas

standard. As discussed above, in Hart v. McLucas, the court stated the elements of intentional falsification are falsity, materiality, and knowledge. The court specifically explained, "the person making the false entry [or statement] must know of such falsity."<sup>14</sup> This statement clarified that the knowledge requirement applies only to falsity, not to both falsity and materiality. Subsequent to Hart, we specifically held a respondent's subjective belief of the materiality of his falsification was irrelevant.<sup>15</sup> Indeed, our precedent is consistent in that we do not apply the scienter requirement to both the falsity and materiality of the statement. As we find no basis in our precedent for this requirement, we reject the notion that the Administrator must prove a respondent had specific knowledge that a fact may be material to the Administrator.

As to the final element—knowledge of the falsity—the law judge found respondent admitted he knew the statements were false at the time he made them and did not claim to be confused about what representations to make on the Form 337. Therefore, the law judge determined respondent intentionally falsified the form. We agree with these determinations. Respondent completed

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<sup>14</sup> 535 F.2d at 519.

<sup>15</sup> Administrator v. Nunes, NTSB Order No. EA-4567 at 12 (1997).

the work in December 2009, yet dated the form January 25, 2010. He signed off on the Form 337, returning the aircraft to service, yet testified he did not return the aircraft to service. Respondent admitted during his testimony he never entered any of the maintenance in the aircraft logbook, but he represented on the Form 337 that he had done so. Respondent clearly had knowledge that the representations he made to the FAA on the Form 337 were not true statements.

This point leads us to respondent's next argument—that he never submitted the Form 337 to the FAA and therefore, no intentional falsification can exist. The evidence presented at the hearing, however, shows respondent clearly attempted to effectuate delivery of the Form 337 to the FAA through the owner of the aircraft, Mr. Inderwiesen. Respondent provided instruction to Mr. Inderwiesen to submit the form to the FAA and believed Mr. Inderwiesen would do so. We find this action suffices to prove the Administrator's charge that respondent intentionally falsified the form, even though respondent himself may not have personally presented it to the FAA.

In addition, we note under Hart v. McLucas, the Administrator does not have to prove intent or actual reliance; only that the statement was capable of influencing the Administrator's decision. In this case, despite the fact respondent never submitted the Form 337 for filing in the FAA

aircraft registry in Oklahoma City, we find respondent's actions clearly show he anticipated the form to be available to the FAA, and intentionally falsified it. Respondent informed Mr.

Inderwiesen it was "going to take a 337 to get [the aircraft] back [in service] and keep the aircraft certified." Tr. at 97-98. Yet, respondent repeatedly admitted he knew the information on the January 25, 2010 Form 337 was false. As to the issue of obtaining field approval for the Form 337, respondent told

Mr. Inderwiesen:

[T]his thing on the bottom calls for field approval ... what you are going to have to do is get ahold of the FAA and get a field approval as soon as we get it installed so that they will approve it, otherwise you can't license the airplane that way. And [Mr. Inderwiesen] agreed to that.

Tr. at 98. Respondent also informed Mr. Inderwiesen that the owner of the aircraft should obtain the field approval. Tr. 98-99. Respondent admitted Mr. Inderwiesen needed supervision of an A&P mechanic in order to install the Satloc system. Tr. at 111.

Inspector Rodriguez initially refused to issue the part 137 certificate to Mr. Inderwiesen, in part, because the Form 337 for the Satloc system was not correct. Tr. at 32; Exh. A-2. Inspector Stromenger testified the FAA did not expressly require a field inspection to approve a Form 337. He stated if the documentation that a person sent into the Orlando FSDO for a

field approval was correct—meaning the data, the return to service, and the airworthiness were present—the person could receive approval of the Form 337 from the FAA without the FAA actually observing the installation. Tr. 68. In this case, after Inspector Rodriguez reviewed the January 25, 2010 form, believing the errors on the form were corrected but not knowing respondent's representations on the form were false, the FAA issued Mr. Inderwiesen a part 137 certificate for N8573H. This alone establishes the importance of the accuracy of all entries on the form.

Missing Logbook Entries (49 C.F.R. § 43.9(a)):

As mentioned above, we have long held that records related to maintenance work performed on an aircraft must be scrupulously accurate.<sup>16</sup> Respondent failed to produce any evidence in the form of a document, a regulation, or testimony from another A&P mechanic to support his contention that he did not have to make any entries in the aircraft logbook until after the FAA approved the Form 337. In his appeal brief, respondent simply asserts, "[r]egardless of whether or not inspectors or the Court agreed with [respondent's] legal interpretations of his obligation to make entries in the aircraft maintenance

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<sup>16</sup> See, e.g., Administrator v. Partington, NTSB Order No. EA-5453 at 3 (2009); Administrator v. Morse, NTSB Order No. EA-3766 (1992).

records, [respondent's] explanation is plausible and acceptable." Appeal Br. at 18. However, respondent's argument completely overlooks the fact that the law judge, not respondent, formulates conclusions of law, such as whether respondent was required to make entries in the logbook before the FAA approved a copy of the Form 337. In addition to providing no support, other than respondent's own bald assertions, for the position that respondent need not enter the maintenance in the logbook, we find such a practice would cause the viability of the entire aircraft maintenance system to become doubtful, as the Board found in Administrator v. Nunes. In this case, respondent provided Mr. Inderwiesen with a Form 337, dated January 25, 2010, indicating respondent returned the aircraft to service. Respondent did not make any entry in the logbook showing what work he performed on the aircraft in December 2009 or make any entry indicating to the owner, the FAA, potential pilots, or other maintenance personnel that the aircraft was not, in fact, returned to service. While respondent contends he informed Mr. Inderwiesen the aircraft was not returned to service, we agree with the law judge that this testimony is a self-serving attempt to shift responsibility to Mr. Inderwiesen, as owner of the aircraft, notably without calling Mr. Inderwiesen as a witness. We find respondent provided Mr. Inderwiesen with the Form 337 indicating the

aircraft was returned to service. Likewise, respondent's reliance on FAA Advisory Circular (AC) 43-9C placing responsibility on the owner of the aircraft to keep and maintain maintenance records, disregards the very next sentence of the AC, which states that maintenance personnel "are required to make the record entries" under 14 C.F.R. § 43.9.<sup>17</sup> As the law judge noted, respondent did not call Mr. Inderwiesen as a witness to corroborate respondent's contention that Mr. Inderwiesen knew the aircraft was not returned to service. Therefore, we reject respondent's argument that he did not need to make maintenance entries in the logbook until after such time as the FAA approved the Form 337.

Credibility findings:

Finally, respondent asserts his testimony was credible and the law judge erred in finding otherwise. Recently, in Administrator v. Porco,<sup>18</sup> we reaffirmed our long-held standard of review regarding deference to our law judges' credibility findings: we will defer to the credibility findings of law

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<sup>17</sup> FAA Advisory Circular 43-9C at ¶ 5.a. (June 8, 1998), available at [http://rgl.faa.gov/Regulatory\\_and\\_Guidance\\_Library/rgAdvisoryCircular.nsf/0/cfb1221d9b8038b9862569c40075c77f/\\$FILE/AC43-9C.pdf](http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/cfb1221d9b8038b9862569c40075c77f/$FILE/AC43-9C.pdf).

<sup>18</sup> NTSB Order No. EA-5591 (2011).

judges in the absence of a showing that such findings are arbitrary and capricious.<sup>19</sup>

We agree with the law judge's credibility determination in this case. As the law judge pointed out in support of his credibility determination, the evidence clearly showed respondent provided inconsistent testimony and statements regarding whether he affixed a placard to the aircraft frame. Respondent also initially informed the FAA inspectors he had not made entries in the logbook because the owner failed to provide him access to the logbooks. Yet, at the hearing, respondent asserted he had not made the entries because he did not have to make them until after the FAA approved the Form 337. The law judge also properly noted respondent provided no corroborating testimony from Mr. Inderwiesen or a mechanic supporting his arguments. In this case, the law judge found the inspectors' testimony credible and respondent's testimony not credible. Given the evidence presented at the hearing and the well-articulated findings of the law judge in his decision based upon that evidence, we do not find the law judge's finding that respondent's testimony was not credible to be arbitrary and capricious.

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<sup>19</sup> Id. at 20; see also Administrator v. Smith, 5 NTSB 1560, 1563 (1986); Administrator v. Jones, 3 NTSB 3649 (1981).

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied;
2. The law judge's decision is affirmed; and
3. The Administrator's emergency revocation of respondent's mechanic certificate with A&P ratings and IA, and any other mechanic certificates respondent holds, is affirmed.

HERSMAN, Chairman, HART, Vice Chairman, and SUMWALT, ROSEKIND, and WEENER, Members of the Board, concurred in the above opinion and order.



## APPEARANCES:

On behalf of the Administrator:

CHRIS STEVENSON, ESQ.  
Federal Aviation Administration  
Southern Region  
Office of the Regional Counsel  
P.O. Box 20636  
Atlanta, Georgia 30320  
Tel: (404) 305-5200  
Fax: (404) 305) 5223  
Chris.stevenson@faa.gov

On behalf of the Respondent:

DAVID McDONALD, ESQ.  
McDonald & McDonald Attorneys at Law  
1393 S.W. 1st Street  
Suite 200  
Miami, Florida 33135  
Tel: (305) 643-5313  
Fax: (305) 643-4990  
dm@mcdonaldattorneys.com

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ORAL INITIAL DECISION AND ORDER

ADMINISTRATIVE LAW JUDGE MONTAÑO: This is a proceeding under the provisions of 49 USC 44709, formerly Section 609, of the Federal Aviation Act and the provisions and the Rules of Practice in Air Safety Proceedings of the National Transportation Safety Board. This matter has been heard before me as an Administrative Law Judge and, as provided by the Board's Rules and the regulations in emergency cases, I am issuing an Oral Initial Decision in this case.

Pursuant to notice, this matter came on for hearing in Orlando, Florida on the 18th and 19th of July. Ben H. Brauchler, the Respondent, appealed the Administrator's Emergency Order of Revocation, dated June 15th, 2011, which pursuant to 821.31(a) (sic) of the Board Rules, serves as the complaint. The Administrator ordered the revocation of Mr. Brauchler's mechanic

1 certificate because he is alleged to have violated Section 43.9(a)  
2 of the Federal Aviation Regulations, which provides that each  
3 person who maintains, performs preventative maintenance, rebuilds  
4 or alters an aircraft airframe, aircraft engine, propeller,  
5 appliance or component shall make an entry in the maintenance  
6 records of that equipment containing the following information: a  
7 description or reference to data acceptable to the Administrator  
8 of work performed; the date of completion of the work performed;  
9 if the work performed on the aircraft, the airframe and aircraft  
10 engine, propeller, appliance or component part has been performed  
11 satisfactorily; the signature certificate number and kind of  
12 certificate held by the person approving the work; and the name of  
13 the person performing the work if other than the person specified  
14 in paragraph (a)(4) of the section.

15           The Administrator also alleged that Mr. Brauchler  
16 violated section 43.12(a)(1) of the Federal Aviation Regulations,  
17 which provides that no person may make or cause to be made any  
18 fraudulent or intentionally false entry in any record or report  
19 that is required to be made, kept or used to show compliance with  
20 any requirement of this party.

21           As I have indicated, I have heard the evidence in this  
22 case and I'm issuing an oral bench decision in this case.

23           The Respondent has raised affirmative defenses asserting  
24 that he relied on the provisions of AC 43-9C, that he relied upon  
25 the instructions provided by the manufacturer's installation



1 Respondent. Respondent moved for admission of Exhibit R-1-A, R-6-  
2 D and R-8 with no objection from the Administrator.

3           As to the testimony in this case the Administrator  
4 presented the testimony of Mr. Theodore Rodriguez, aviation safety  
5 inspector from the Federal Aviation Administration, Orlando Flight  
6 Services District Office. The relevant parts of Mr. Rodriguez'  
7 testimony is that he testified that he did not rely on the FAA 337  
8 relative to the Satloc guidance system to issue the 137  
9 agricultural business certificate in this case. He testified that  
10 the Satloc system is a luxury item and the certification did not  
11 depend on the FAA Form 337. The plane can be used without it.

12           He testified that the owner indicated that the plane,  
13 when he had spoken to him, had not been used with the Satloc  
14 system. He indicated that Mr. Brauchler had signed the form FAA  
15 337 that was submitted in December of 2009 and that he also  
16 admitted on cross-examination that Mr. Brauchler is supposed to  
17 file a completed 337 with the FAA offices in Oklahoma and that  
18 there is no record that he did that.

19           Mr. Rodriguez also testified that he did not believe  
20 that the FAA Form 337 regarding the Satloc guidance system had  
21 ever been approved in this case. I do not believe he testified  
22 that he relied on the 337 to find that the aircraft was  
23 unairworthy. As I indicated, he testified that the airplane could  
24 be used without the Satloc guidance system.

25           I find Mr. Rodriguez' testimony to be credible. He

1 seemed straightforward and candid in his responses to both direct  
2 and cross-examination.

3           The Administrator then presented the testimony of  
4 Mr. LeRoy Stromenger, who is the aviation safety inspector for the  
5 FAA Orlando FSDO. He participated in the February 2011 inspection  
6 of aircraft N8573H. He testified that during the February 2011  
7 inspection of that aircraft he saw that the Satloc system had been  
8 installed. He did not see the appropriate placards placed in the  
9 aircraft and he noted that there were no maintenance record  
10 entries. He testified that if the Satloc system had been taken  
11 off and on as had been alleged in this case, the aircraft logbook  
12 entries would have to be made each time the Satloc system was  
13 installed and removed.

14           He testified that there is no Federal Aviation  
15 Regulation that requires that a form FAA 337 be approved before a  
16 major alteration is made, but it is the policy of the FAA that an  
17 FAA 337 approval should be obtained first to avoid having  
18 unnecessary work performed or equipment removed if it is not  
19 approved.

20           This witness testified that he spoke to Mr. Brauchler by  
21 phone after sending the initial letter of investigation. He said  
22 that Mr. Brauchler told him that he did not make any logbook  
23 entries because he did not have access to the logbooks. Mr.  
24 Stromenger testified that Mr. Brauchler did not tell him at that  
25 time that he had refused to make entries into the maintenance

1 record for this aircraft.

2           On cross-examination he testified it is the owner's  
3 responsibility to make sure logbook entries are complete, but he  
4 also testified that it is also required that anyone performing the  
5 maintenance make the entries in the maintenance record books. He  
6 also testified that a mechanic is responsible for sending the  
7 final FAA Form 337 to Oklahoma City to be part of the record. The  
8 usual course of action would be a Form 337 is filed, approved by  
9 the FSDO, the item is installed, a field inspection completed, and  
10 approval is made of the installation. The Administrator would  
11 then return the 337 to the mechanic to be sent to Oklahoma City to  
12 become part of the record for this aircraft.

13           On redirect Mr. Stromenger testified that if an entry in  
14 a logbook or a maintenance record had been made prior to the FAA  
15 337 approval, and that the alteration was not approved, then the  
16 logbook should have an entry indicating that the FAA Form 337 had  
17 not been approved. If the equipment was removed the maintenance  
18 records would have to indicate that.

19           On recross he testified that the Form 337 had never been  
20 approved regarding the Satloc system in this case. He testified  
21 that if the aircraft had not been flown with the Satloc system,  
22 which had not been approved, that would be a problem. He did not  
23 know if the plane had been flown since February 2011; however, on  
24 the Administrator's rebuttal case he testified that the  
25 maintenance records indicate that the aircraft had been flown

1 since the alleged installation of the Satloc system in December of  
2 2009.

3 In response to my questions he testified he cannot say  
4 that as to who specifically is right on the FAA 337 for approval  
5 of the 137 certificate in this case, the agricultural business  
6 certificate. He testified that the aircraft would be unairworthy  
7 if it had been flown with the Satloc system in the aircraft and  
8 that installation had not been approved by the FAA.

9 I found Mr. Stromenger's testimony to be credible as  
10 well. He was responsive to questions both on direct, cross and to  
11 the questions I asked.

12 Those were the witnesses provided by the Administrator  
13 to prove his case in this matter.

14 The Respondent testified on his own behalf and did not  
15 call any other witnesses. He testified that he was approached by  
16 Mr. Inderwiesen, who is the owner of the aircraft, and was asked  
17 to assist him in installing a Satloc system in Aircraft N8573H.  
18 They installed the system and the Respondent filled out an FAA  
19 Form 337 describing what had been done. He signed the Form 337  
20 and gave it to Mr. Inderwiesen to provide to the FAA for field  
21 approval of the installation of the system.

22 He testified that he would not make entries in the  
23 aircraft maintenance records because it required field inspections  
24 before he could make those entries. He gave the FAA Form 337 to  
25 Mr. Inderwiesen to submit to the FAA for approval and told

1 Mr. Inderwiesen that when it was approved to let him know so that  
2 he could make the appropriate entries in the maintenance records.  
3 He testified that if he signed off on the maintenance records  
4 before field approval of the aircraft, then the aircraft would not  
5 be airworthy. This, what I have just described, apparently took  
6 place in December of 2009, according to the testimony in this  
7 case.

8 Respondent testified that he was later approached by  
9 Mr. Inderwiesen in January of 2010 and at that time he informed  
10 him that they needed to prepare another FAA Form 337. The  
11 Respondent testified that he understood that the initial 337 filed  
12 in December was not approved, but he also testified that he was  
13 not really clear as to why Mr. Inderwiesen needed another FAA Form  
14 337.

15 Respondent indicated that he filled out a new FAA Form  
16 337 and signed it on January 25th, 2010. He indicated that the  
17 work was done on January 25th, 2010 because, as he testified, he  
18 thought the December 2009 337 was not valid. So he signed the  
19 form, dated the form, and dated the work, as the work done on the  
20 date that he signed the form.

21 He testified that when he filled out the January 25th,  
22 2010 FAA Form 337 he did not intend to misrepresent anything nor  
23 did he intend to defraud the FAA. He testified he signed it  
24 because based on his belief that he should sign the form with the  
25 date that he had filled out the form. He testified that it is a

1 mechanic's duty to finalize an FAA Form 337 and send it to  
2 Oklahoma City. He testified that he did not do that in this case.  
3 He also testified that he did not think that the FAA Form 337 for  
4 the Satloc system had ever been approved for the system that was  
5 installed in this case.

6           On cross-examination he testified that at the time he  
7 filled out the Form 337 in January 25th, 2010, he knew that he  
8 indicated that the work had been performed on January 25th, 2010  
9 even though he knew that was not correct. He testified that he  
10 signed the FAA Form 337 and gave it to Mr. Inderwiesen to get the  
11 approval of the FAA, knowing that it would be submitted to the FAA  
12 for approval.

13           He also testified that when he indicated on the FAA Form  
14 337 on January 25th, 2010 that he had made an entry on the  
15 aircraft maintenance logs, that he knew that that was not correct.  
16 He testified that he did place the appropriate placard relative to  
17 the Satloc system in the aircraft.

18           Now, having discussed the testimony in this case what I  
19 will now talk about the application of that testimony to the legal  
20 standards that I have to decide in this case.

21           The Board has adhered to a three-prong standard to prove  
22 falsification claims and that is the major claim that the  
23 Administrator is bringing forth in this case. The Administrator  
24 must prove by a preponderance of reliable, probative and credible  
25 evidence that a mechanic (1) made a false representation, (2) in

1 reference to a material fact, and (3) with knowledge of the  
2 falsity of that fact. The Board has also held that a statement is  
3 false concerning a material fact under the standard if the alleged  
4 false fact could influence the Administrator's decision concerning  
5 a certificate, or approving a 337 as specifically indicated in  
6 this case. As the Administrator has argued, all the Administrator  
7 has to show is that the falsity must have the capacity to  
8 influence the Administrator's decision-making process on an issue.

9           So the first question I must address is did the  
10 Respondent make a false representation to the FAA on Form 337 that  
11 was completed on January 25th, 2010? Respondent represented on  
12 that form that the Satloc guidance system was installed on January  
13 25th, 2010, that a placard had been placed in the aircraft and  
14 that an entry had been made in the aircraft's maintenance manual.

15           In his answers to the complaint in this case he admitted  
16 that a Satloc system was installed in aircraft N8573H prior to  
17 January 25th, 2010. He admits in his response to the complaint  
18 that no entry was made in the aircraft maintenance record  
19 reflecting the installation of the Satloc guidance system. And he  
20 admitted that the appropriate placard was not permanently affixed  
21 to the aircraft panel.

22           At hearing he also testified that he made no entries in  
23 the maintenance record reflecting the installation of the Satloc  
24 guidance system. He also testified that the installation of the  
25 Satloc guidance system was completed in December of 2009 and not

1 January 25th, 2011. At hearing Respondent's counsel indicated  
2 that there was no dispute that the appropriate Satloc placard had  
3 not been attached to the aircraft. Respondent later testified  
4 under oath that he did affix the appropriate placard relative to  
5 the Satloc guidance system in the aircraft.

6 Both Inspector Rodriguez and Inspector Stromenger  
7 testified that there was no entry in the maintenance records  
8 reflecting the installation of the Satloc guidance system during  
9 their February 2011 inspection. They both testified that they did  
10 not see the required placard for the installation of the Satloc  
11 system in the aircraft.

12 As I indicated, both Inspector Rodriguez and Inspector  
13 Stromenger testified that there was no entry in the maintenance  
14 records reflecting the installation of the Satloc guidance system  
15 during their February 2011 inspection. They both testified that  
16 they did not see the required placard for the installation of the  
17 Satloc guidance system in the aircraft.

18 I found Inspector Rodriguez' and Inspector Stromenger's  
19 testimony to be credible on this matter. And I find that based on  
20 their testimony, I give their testimony the greater weight and  
21 find that the appropriate placard had not been permanently  
22 attached to the aircraft relative to the Satloc guidance system  
23 that had been installed.

24 Based on the Respondent's admission and the testimony of  
25 the Administrator's witnesses I find that the Respondent did make

1 false representations on FAA Form 337 completed on January 25th,  
2 2010. Those false representations were that the Satloc guidance  
3 system was installed on January 25th, 2010, that the appropriate  
4 Satloc placard had been placed in the aircraft when it had not,  
5 that an entry had been made in the aircraft maintenance records  
6 when, in fact, no entries had been made relative to the  
7 installation of the Satloc guidance system.

8           The second question that I have to address then is  
9 whether or not those entries were material. As I noted, the Board  
10 has held that the statement is false concerning a material fact if  
11 the alleged fact could influence the Administrator's decision.  
12 There has been substantial discussion relative to this issue at  
13 hearing. The Respondent moved for a dismissal at the close of the  
14 Administrator's case arguing that the Administrator had not  
15 established that the alleged falsification was material.

16           Inspector Rodriguez testified that the 137 agricultural  
17 business certification was not dependent on the statement on the  
18 FAA 337 form. And he testified that the Satloc was a luxury item  
19 and that the aircraft in this case could be operated without it.

20           Inspector Stromenger, as I have indicated, testified  
21 that if the aircraft had a Satloc guidance system installed  
22 without a proper 337 approval, the aircraft would be unairworthy.

23           Respondent testified that he did not make the  
24 maintenance record entries regarding the installation of the  
25 Satloc system because without proper FAA Form 337 field approval

1 of the installation of the Satloc system the aircraft would be  
2 unairworthy. He testified that he told the owner Mr. Inderwiesen  
3 that he could not make the maintenance record entry until  
4 Mr. Inderwiesen had obtained field approval of the FAA Form 337.  
5 On cross-examination he testified that the aircraft was not ready  
6 to go, was not airworthy or ready to be flown without the FAA Form  
7 337 field approval in this case.

8           The Administrator argues that the Respondent's own  
9 testimony about the lack of airworthiness of the aircraft unless  
10 the FAA Form 337 field approval was obtained establishes that a  
11 misrepresentation on the 337 completed on January 25th, 2010 was  
12 material, that it would affect the Administrator's decision as to  
13 whether the Administrator would find the aircraft airworthy for  
14 the inclusion in the operations specifications for the  
15 agricultural business certification.

16           Based on the testimony of the Respondent, his statements  
17 under oath, and the testimony of Mr. Stromenger, I find that the  
18 Administrator has established that the false entries in the FAA  
19 Form 337 completed on January 25th, 2010 were material, as they  
20 could influence the Administrator's decision as to the  
21 airworthiness of the aircraft and its inclusion in the operating  
22 specification of Mr. Inderwiesen's agricultural aviation business.  
23 As has been indicated and argued by the Administrator, they did  
24 not have to prove specific reliance, only that it could influence  
25 the Administrator's decision.

1           The third prong that I must address is dealing with the  
2 knowledge of the falsity on the FAA Form 337. As I indicated, on  
3 cross-examination the Respondent admitted at the time he made the  
4 entries on the FAA Form 337 completed on January 25th, 2010, he  
5 knew that he had not made entries in the maintenance records for  
6 Aircraft N8573H which reflected the installation of the Satloc  
7 system. He also testified that he knew at the time that he made  
8 the entries in the FAA Form 337 indicating that the work was  
9 completed on the installation of the Satloc system on January  
10 25th, 2010 was not a true statement.

11           He also admitted that at the time he prepared the  
12 January 25th, 2010 FAA Form 337 the aircraft could "not go". That  
13 is to say, that it could not be flown without the proper 337 field  
14 inspection and approval. Respondent also admitted that he gave  
15 the FAA Form 337 with his signature representing the work was  
16 completed and certifying that he completed an inspection and thus  
17 releasing the aircraft to Mr. Inderwiesen and Mr. Inderwiesen was  
18 to present that form to the FAA to obtain field approval.

19           Respondent has admitted that he knew the entries and  
20 representations he made on the FAA Form 337 prepared on January  
21 25th, 2010 were false when he made them; however, Respondent  
22 maintains that he did not intend to defraud or intentionally  
23 mislead anyone. However, as Administrator's counsel points out,  
24 intent is not one of the elements that has to be proven in this  
25 case. All that has to be proven is that the entry was made with

1 knowledge that it was false at the time that it was made. As I  
2 have indicated, Respondent has admitted that specifically.

3           The Respondent testified that he refused to make the  
4 appropriate maintenance record entries because he would release  
5 the aircraft when the installation of the Satloc guidance system  
6 had not been approved by the FAA. He testified that he would make  
7 the appropriate maintenance record entries once the FAA approved  
8 the FAA Form 337 relative to the installation of the Satloc  
9 system. He argues that he did not file any Form 337 with the FAA;  
10 however, he does admit that he instructed Mr. Inderwiesen to  
11 present the form to the FAA.

12           He testified that it is the aircraft owner's  
13 responsibility to ensure that the aircraft maintenance records are  
14 accurate and up to date. However, he does admit and did admit  
15 during testimony that it is also his responsibility to make the  
16 required entries in the aircraft maintenance records. He approved  
17 the installation of the Satloc system and supervised the  
18 installation of the Satloc system in this case.

19           In his affirmative defenses identified in his answer to  
20 the complaint he asserts that he relied upon AC 43-9C. That  
21 advisory circular provides that an aircraft owner/operator shall  
22 keep and maintain aircraft maintenance records. However, the  
23 circular also states that maintenance personnel are required to  
24 make record entries. Respondent has admitted that he did not make  
25 the maintenance record entries for the installation of the Satloc

1 system. Thus Respondent has not established how reliance on this  
2 advisory circular provides an affirmative defense in this case.

3 Respondent also raises the affirmative defense that he  
4 relied on the instructions provided with the manufacturer's manual  
5 pertaining to the Satloc guidance system. Respondent testified  
6 that the instructions for the installation of the Satloc system  
7 included instructions for continued airworthiness. However,  
8 Respondent did not demonstrate how reliance on the instructions  
9 led him not to make appropriate maintenance record entries or  
10 truthfully represent when the installation of the Satloc system  
11 was completed. There is no indication, in the record that that is  
12 what the instructions from the Satloc, the manufacturer of the  
13 Satloc guidance system instructs its mechanics or the mechanics to  
14 do.

15 Respondent does not claim that he was confused about  
16 what representations to make on the FAA Form 337. He testified  
17 that he followed the procedure he has always used for the past 50  
18 years as a mechanic. He does not cite any regulation or circular  
19 which indicates that it is appropriate not to make appropriate  
20 maintenance record entries about the installation of a Satloc  
21 system or any other major alteration. Nor did he cite any  
22 regulation, circular or instruction which indicates a mechanic can  
23 represent the work was accomplished on a date when, in fact, it  
24 was not accomplished on that date but on another date.

25 While Mr. Stromenger testified that he was not aware of

1 any FAA regulations that required a mechanic to obtain FAA  
2 approval before making a major alteration, that testimony does not  
3 absolve Respondent from making appropriate entries in the aircraft  
4 maintenance record or accurately reporting that the work was  
5 performed and when the work was performed on the FAA form.

6 Based on the evidence before me, I find that the  
7 Respondent has not proven his affirmative defenses by a  
8 preponderance of the evidence.

9 Finally, it is with great regret that I must say that I  
10 find it difficult to find Mr. Brauchler's testimony to be reliable  
11 or credible. I listened very intently to his testimony. I wanted  
12 to, and as with all witnesses I give the witnesses every benefit  
13 of the doubt as they are testifying under oath. His testimony has  
14 not been consistent relative as to whether he permanently affixed  
15 the appropriate Satloc placard in the aircraft or had not. There  
16 was no testimony or affidavit from Mr. Inderwiesen or any other  
17 witness to corroborate his assertion as to the events and warnings  
18 as to the events relative to this case. Mr. Inderwiesen was an  
19 integral part of the factual situation in this case but he did not  
20 testify. He does not have an affidavit in the file that supports  
21 the Respondent in any way.

22 There is no other testimony from any other aircraft  
23 mechanic which would support the Respondent's claim that his  
24 practice of not documenting the maintenance records until FAA  
25 approval was obtained is the appropriate and customary way of

1 dealing with the installation of the Satloc guidance system.

2           His initial response to the first letter of  
3 investigation by the FAA indicates that he told Mr. Stromenger  
4 that the records for the Satloc guidance system were not completed  
5 because he did not have access to them is also inconsistent with  
6 his current position here at this hearing. I do note that  
7 Mr. Brauchler's telephone response was to a letter of  
8 investigation that did not specifically cite an allegation of  
9 misrepresentation, as the Administrator's counsel points out.  
10 Administrator's counsel points out that there was a subsequent  
11 letter of investigation which specifically identified that there  
12 was issue of misrepresentation in the case.

13           Based on my review of the evidence and my assessment of  
14 the credibility of the witness, I find that the Administrator has  
15 established that Respondent's entries in the FAA Form 337 were  
16 false and that he knew that they were false when he made those  
17 entries.

18           It is not an easy decision to make relative to this  
19 falsification claim and Mr. Brauchler's case. I admire and I  
20 respect the long service that he has provided over decades.  
21 However, while I consider that fact, I am bound by the facts and  
22 the law in the case before me and I must decide this case based on  
23 the law and the facts. Mr. Brauchler has made admissions which I  
24 certainly have to give weight to and, as I have indicated, I have  
25 considered all the evidence in this case.

1           Therefore, based on all of the evidence before me, I  
2 find that the Administrator has established by preponderance of  
3 reliable, probative and credible evidence the Respondent violated  
4 section 43.12(a)(1) of the Federal Aviation Regulations. He made  
5 or caused to be made a fraudulent or intentionally false entry in  
6 any record or report that is required to be made, kept or used to  
7 show compliance with any requirement under this part.

8           As to whether the issue the Respondent violated Section  
9 43.9(a), the Respondent does not dispute that he did not make any  
10 entries in the aircraft maintenance records for aircraft N8537H.  
11 He testified that he was waiting for approval of the FAA Form 337  
12 by the FSDO before he made the entries in the records. The  
13 regulation does not indicate that a mechanic or any other person  
14 must wait for FAA approval of work performed before an entry is  
15 made in the aircraft maintenance records. And as I indicated,  
16 Respondent has admitted that he has not made those entries in the  
17 maintenance records because he did not wish to release the  
18 aircraft for use. However, the Form 337 filed in December and  
19 January included Mr. Brauchler's signature certifying that the  
20 work was performed and that he certified that he inspected the  
21 work and approved it and he released the aircraft at that time.  
22 This was all done without any entry in the maintenance, aircraft  
23 maintenance record.

24           Based on the admissions of the Respondent and the  
25 evidence before me, I find that the Administrator has proven by a

1 preponderance of the evidence that the Respondent violated section  
2 43.9(a).

3           Having discussed the evidence and the testimony in this  
4 case I make the following findings of fact and conclusions of law.

5                           FINDINGS OF FACT AND CONCLUSIONS OF LAW

6           As previously noted, Respondent has admitted allegations  
7 in paragraph 1 and 2.

8           As to paragraph 2(a), he denied that he represented that  
9 the Satloc guidance system was installed on January 25th, 2010. I  
10 find that the Administrator has proven by a preponderance of  
11 reliable, probative and credible evidence that the Satloc system  
12 was not installed on January 25th, 2010. And in that sense, by  
13 indicating that the Satloc guidance system was not installed on  
14 January 25th, 2010, the Respondent admits that he made a false  
15 entry in the FAA Form 337.

16           As to paragraph 4(a) the Respondent has admitted that a  
17 placard was not permanently affixed to the aircraft and, as I have  
18 indicated, I found the Administrator has established that a Satloc  
19 guidance system placard was not affixed to the aircraft in this  
20 case.

21           The Respondent has denied paragraph 5, and I find that  
22 the Administrator has proven by a preponderance of reliable,  
23 probative, and credible evidence that -- and I'll read directly  
24 from the complaint -- the Respondent's statement that the Satloc  
25 guidance system was installed on January 25th, 2010 was fraudulent

1 or intentionally false.

2 I find that the Administrator has proven by a  
3 preponderance of reliable, probative and credible evidence that  
4 Respondent's statement that a placard had been placed in the  
5 aircraft was fraudulent or intentionally false and I also find  
6 that Respondent's statement that an entry had been made in the  
7 aircraft's maintenance records was fraudulent or intentionally  
8 false.

9 Respondent has denied that he has violated the Federal  
10 Aviation Regulations and I find that the Administrator has proven  
11 by a preponderance of probative, reliable, and credible evidence  
12 that the Respondent has violated Section 43.9(a), which indicates  
13 that a person who maintains, performs preventive maintenance,  
14 rebuilds or alters an aircraft airframe, aircraft engine,  
15 propeller, appliance or component parts shall make an entry in the  
16 maintenance record of that equipment containing the following  
17 information: a description or reference to data acceptable to the  
18 Administrator of work performed; the date of completion of work  
19 performed; if the work performed on the aircraft airframe,  
20 aircraft engine or propeller, appliance or component part has been  
21 performed satisfactorily; the signature, certificate number and  
22 kind of certificate held by the person approving the work; and the  
23 name of the person performing the work if other than the person  
24 specified in paragraph 8.4 of this section.

25 I also find that the Administrator has proven by

1 preponderance of reliable, probative and credible evidence that  
2 Respondent violated Section 43.12(a)(1) which states that no  
3 person may make or cause to be made any fraudulent or  
4 intentionally false entry in any record or report that is required  
5 to be kept or used to show compliance with any requirement under  
6 this part.

7           In conclusion, having found that the Administrator has  
8 proven all of the allegations in the Administrator's complaint by  
9 a preponderance of the reliable, probative and credible evidence  
10 in this case, I now turn to the sanction imposed by the  
11 Administrator. As to the appropriate sanction in this case, by  
12 statute, deference is to be shown to the choice of sanction chosen  
13 by the Administrator in the absence of any showing that that  
14 deference is to an interpretation which is arbitrary or capricious  
15 or not in compliance with the law.

16           There has been no such showing in this case. I find,  
17 therefore, that the sanction sought by the Administrator is  
18 appropriate and warranted in the public interest in air commerce  
19 and air safety. Therefore, I find that the emergency order, the  
20 complaint therein, must and shall be affirmed as issued.

21           I will ask the court reporter to have a separate page,  
22 which indicates order.

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ORDER

I ORDER that the Emergency Order of Revocation, the complaint herein, be, and is hereby, affirmed as issued.

The Respondent's airman mechanic's certificate number (omitted) with airframe and powerplant ratings and inspection authorization held by him be, and hereby is, revoked.

This order is entered on the 19th day of July 2011 in Orlando, Florida.



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ALFONSO J. MONTAÑO

Administrative Law Judge

EDITED ON  
JULY 22, 2011

## 1 APPEAL

2 JUDGE MONTAÑO: As to the appeal rights in this case,  
3 this is an emergency case so the time frame for appeal of my  
4 decision is limited. The time in which to file the notice of  
5 appeal, the party may appeal the Law Judge's initial decision or  
6 applicable order by filing with the Board and simultaneously  
7 serving on the other party a notice of appeal within 2 days after  
8 the date of which the initial decision was orally rendered. So in  
9 this case, the Respondent has 2 days in which to file an appeal  
10 from the oral decision that I'm issuing today, and that appeal  
11 should be mailed or faxed or both to the Office of Administrative  
12 Law Judges at 490 L'Enfant Plaza East S.W., Room 4704 Washington,  
13 D.C. 20594. And as I indicated, that should be done within 2  
14 days.

15 I will also have my office fax to both parties copies of  
16 the appeal procedures to their offices that specify what procedure  
17 has to be followed specifically to address the appeal in this  
18 case.

19 Certainly, I find as Administrative Law Judge, as an  
20 attorney that beauty of the American judicial system is that there  
21 is an appeal. If the Respondent feels my decision is not in  
22 accordance with the law, is arbitrary and capricious, or should be  
23 reversed or remanded, they have the opportunity to make that  
24 argument before the full Board and the full Board may either  
25 affirm my decision, reverse my decision, or remand the case for

1 further proceedings. In any event, I will certainly do whatever  
2 the Board requires me to do in this case.

3           However, my decision that I have read into the record  
4 had been made based on this evidence before me. I have weighed  
5 the evidence, considered all of the evidence. I have objectively  
6 looked at the facts and I have been objective and I have tried to  
7 be fair to both parties. However, based on this evidence this is  
8 the decision that I have to issue in this case.

9           With that said, what I am going to do is ask the parties  
10 if there is any corrections or is there anything that they want to  
11 add to the record before I go off the record? Let me ask the  
12 Administrator first.

13           MR. STEVENSON: No, your Honor.

14           JUDGE MONTAÑO: Mr. McDonald, any?

15           MR. McDONALD: I have nothing.

16           JUDGE MONTAÑO: All right. I want to thank the parties'  
17 counsel for their advocacy in this case. They have served their  
18 clients well. And I appreciate the respect they have shown to  
19 this forum. And if there's nothing else, then I will end these  
20 proceedings at this time and thank you all very much.

21           We will go off the record.

22           (Whereupon, at 9:28 a.m., the hearing in the above-  
23 entitled matter was adjourned.)

24

25

CERTIFICATE

This is to certify that the attached proceeding before the

NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: Ben H. Brauchler

DOCKET NUMBER: SE-19120

PLACE: Orlando, Florida

DATE: July 19, 2011

was held according to the record, and that this is the original, complete, true and accurate transcript which has been compared to the recording accomplished at the hearing.

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Letha J. Wheeler  
Official Reporter