

SERVED: February 19, 2014

NTSB Order No. EA-5703

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 19th day of February, 2014

_____)	
MICHAEL P. HUERTA,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-18805RM1
v.)	
)	
WAYNE ALLEN CARR,)	
)	
Respondent.)	
)	
_____)	

OPINION AND ORDER

1. Background

Respondent appeals the oral initial decision of Chief Administrative Law Judge Alfonso J. Montañó, issued April 18, 2013.¹ By that decision, the law judge affirmed the Administrator’s order, finding respondent violated 14 C.F.R. §§ 91.7(a),² 91.9(a),³ and 91.13(a)⁴ by operating an

¹ A copy of the law judge’s initial decision, an excerpt from the hearing transcript, is attached.

² Section 91.7(a) provides, “[n]o person may operate a civil aircraft unless it is in an airworthy condition.”

unairworthy aircraft outside the scope of the limitations of a special flight permit (SFP) applicable to the flight. The law judge imposed suspension of respondent's airline transport pilot (ATP) and airframe and powerplant mechanic certificates for a period of 30 days. We affirm the law judge's decision, to the extent it applies to the suspension of respondent's ATP certificate.

A. Facts

As discussed in our previous orders remanding this case for hearing and fact-gathering,⁵ the Administrator charged respondent, who owns Air Trek, an air taxi service specializing in aeromedical transports, with operating an aircraft when it was not in an airworthy condition. In particular, the Administrator alleged respondent violated the terms of a SFP when he terminated power to a navigation system twice. In February 2009, the Cessna CE-550 turbo-jet transport category aircraft (hereinafter, "N744AT") certificated under 14 C.F.R. part 25 underwent a conformity inspection; Inspector Delewski, who is a Principal Maintenance Inspector, conducted the inspection of N744AT in February 2009, after the Allegheny Flight Standards District Office (FSDO) in which she worked received a request from AeroNational president Thomas Pizzuti to add N744AT to the AeroNational Operations Specifications with an additional authorization to perform air ambulance transport. During the inspection, FAA inspectors discovered numerous maintenance discrepancies, including improperly installed seat tracks and other discrepancies

(continued..)

³ Section 91.9(a) provides, "no person may operate a civil aircraft without complying with the operating limitations specified in the approved Airplane or Rotorcraft Flight Manual, markings, and placards, or as otherwise prescribed by the certificating authority of the country of registry."

⁴ Section 91.13(a) provides, "No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another."

⁵ NTSB Order Nos. EA-5573 (2011) and EA-5635 (2012). All references to transcript pages and exhibits in this Opinion and Order refer only to evidence from the hearing Chief Administrative Law Judge Montañó conducted, on January 23-25 and March 27-28, 2013.

that rendered the aircraft unsafe for regular operation.⁶ Respondent agreed the aircraft required repair, and determined the aircraft should be repositioned from its location at AeroNational in Washington, Pennsylvania, to respondent's base of operations, in Punta Gorda, Florida, to undergo maintenance to resolve the numerous discrepancies. As a result, Mr. Pizzuti applied for an SFP to reposition the aircraft for maintenance purposes.⁷ Inspector Delewski issued the SFP to allow for repositioning of the aircraft.

Among the discrepancies was installation of a Garmin GNS-530WT/GPS navigation system with wide area augmentation system (WAAS). The GPS WAAS was installed in May 2008 pursuant to a supplemental type certificate (STC) that was inapplicable to an aircraft operated under part 25.⁸ As the discrepancy list indicated, the FAA became aware of this inappropriate installation when reviewing the various FAA Form 337s (Major Repair and Alteration (Airframe, Powerplant, Propeller, or Appliance)) applicable to the aircraft.⁹ In order to ensure the installation of the navigation system complied with FAA standards, respondent needed to fulfill some tests of the system. In particular, he needed to terminate power to the navigation system and conduct a specific type of approach for landing while operating the aircraft under instrument flight rules (IFR).

⁶ Tr. 82 (testimony of FAA Inspector Laura Delewski, who found between 50 and 75 discrepancies requiring attention); Exh. A-1 (letter dated March 28, 2009, listing all discrepancies, which Inspector Delewski attached to the SFP).

⁷ Tr. 90-91; Exh. A-6.

⁸ Tr. 81-82, 107.

⁹ As we stated in our first order remanding this case, mechanics must complete and submit FAA Form 337 in accordance with Advisory Circular 43.9-1E, for certain work performed. NTSB Order No. EA-5573 at 3 n.7 (2011).

On March 30, 2009, respondent flew the aircraft to Punta Gorda. During the repositioning flight, respondent decided to pull the circuit breaker twice to terminate power to the navigation system, which he acknowledged interfaced with the autopilot on the aircraft. In addition, respondent admitted terminating the power meant he had to switch to the back-up radio on the aircraft, because failing a GPS causes the primary radio to terminate.¹⁰ Respondent also conducted Localizer Performance with Vertical Guidance (LPV) approach while operating under IFR. Immediately after the flight, respondent entered information in, and signed a copy of, FAA Form 337.¹¹ In block 8 (Description of Work Accomplished), respondent provided the following information:

Certified for IFR flight a previously installed Garmin GNS-530W/T GPS navigation system shown on FAA Form 337 Dated 3-11-2009. The aircraft was test flown and found to meet the requirements for IFR, enroute, terminal and approach navigation per AC 20-138A, Par. 8a(2), (3), (4), 8c(2)(ii), 21(4), 22(5), 23 a, b, (1), (2), (3), (4), (i), (ii), (iii), (iv), (v), 5, 6, 7, c(1), 2(i), (ii), (iii), (iv).¹²

By including this notation on the March 30, 2009 copy of the Form 337, the Administrator believed respondent indicated his action of terminating the power to the GPS during the flight exceeded the limited scope of permissible operation described in the SFP. The Administrator sought suspension of respondent's ATP certificate based on his conduct during the flight to Punta Gorda, because the SFP only allowed for repositioning of the aircraft for maintenance purposes.

¹⁰ Tr. 556, 578.

¹¹ Major Repair and Alteration (Airframe, Powerplant, Propeller, or Appliance).

¹² Exh. A-8 at 3.

At the hearing, Inspector Delewski testified N744AT was unairworthy at the time respondent relocated it on March 30, 2009, due to its numerous discrepancies. As a result, the aircraft's standard airworthiness certificate was no longer effective;¹³ instead, the SFP was the only authority under which respondent could reposition the aircraft.¹⁴ Inspector Delewski opined the SFP precluded respondent from having authority to conduct flight tests on the aircraft.¹⁵ Therefore, she testified respondent's indication on the March 30, 2009 FAA Form 337 that he test flew the aircraft in accordance with Advisory Circular 20-138A (Airworthiness Approval of Global Navigation Satellite System (GNSS) Equipment), which ostensibly would allow for certification of the Garmin GNS-530WT/GPS navigation system, was a violation of 14 C.F.R. §§ 91.7(a), 91.9(a), and 91.13(a). In this regard, Inspector Delewski stated no one informed her prior to the March 30, 2009 flight that the aircraft would be test flown.

Joe Brownlee, a flight test pilot,¹⁶ opined respondent conducted a flight test when he pulled the circuit breaker to terminate power to the navigation system, which AC 20-138A required for approval of the GPS WAAS. Mr. Brownlee stated pulling circuit breakers exceeded the scope of authority provided in the SFP, and such operation is not considered normal operation of an aircraft.¹⁷

¹³ Tr. 305, 308 (opinion of Inspector Delewski, whom the law judge allowed to testify as an expert in the area of airworthiness and avionics).

¹⁴ Tr. 333 (Inspector Delewski's statement that the SFP only allowed the aircraft to be relocated for maintenance).

¹⁵ Tr. 140-41 (citing 14 C.F.R. § 91.407(b), which states aircraft must be airworthy before undergoing flight tests).

¹⁶ The law judge accepted Mr. Brownlee as an expert concerning GPS units, and allowed him to testify concerning operation of aircraft in connection with flight testing.

¹⁷ Tr. 382, 384, 395, 400.

In his defense, respondent testified and introduced several exhibits. Respondent provided detailed, lengthy testimony in narrative form, in which he theorized the FAA was “trying to hold [him] to a standard of a major type design change when [he] was not using that approval vehicle.”¹⁸ Respondent contended the FAA incorrectly pursued the case against him because Inspector Delewski presumed he sought approval of the navigation system under AC 20-138A by considering the installation of the system to be a “major design change.” Respondent stated Tim Emge, who operated the avionics business that installed the navigation system, incorrectly chose to install the system using the STC, rather than obtaining field approval and pursuing the “major alteration” course of action. In this regard, respondent’s testimony was replete with assertions that the appropriate “approval vehicle” for installation of the navigation system under AC 20-138A was the “major alteration” means of approval.¹⁹ Respondent believed he could operate the aircraft as though it were airworthy, provided he did so without exceeding the limitations listed in the SFP.

Based on this understanding, respondent contended his pulling of the circuit breakers twice during the flight to Punta Gorda did not violate the SFP. Respondent described, in detail, his actions in doing so, stating:

I continued due south to Rogan Intersection, which is shown on Exhibit 45. And while I was proceeding to Rogan, I was in the en route mode on the GPS and I cycled the GPS off to check the performance integrity of the unit, that it was within the guidance and the requirements of the AC 20-138A and paragraph 5 of FAA Order 8300.1.²⁰

¹⁸ Tr. 476.

¹⁹ Tr. 478, 488-89, 493, 542. Respondent also introduced into the record several exhibits regarding other aircraft in which the FAA had approved the navigation system in accordance with the “major alteration” approval process. Exhs. R-1, R-2, R-12, R-21.

²⁰ Tr. 555.

Respondent acknowledged he terminated power to the GPS and fulfilled the requirements that remained for obtaining approval of the installation of the navigation system. He compared the SFP to a minimum equipment list (MEL), which is a categorized list of systems, instruments and equipment on an aircraft that the FAA permits to be inoperative for flight.²¹ Respondent viewed the SFP to function as a return-to-service under limitations already placarded or in the aircraft's flight manual supplement.²² Respondent provided an example of an SFP applicable to another aircraft, which stated, "[n]o special tests or inspections incidental to the operation of this aircraft shall be conducted during the flight."²³ Respondent contended the absence of such a statement on the SFP applicable to N744AT on March 30, 2009 led him to believe he could perform the remaining tests needed for approval of the GPS installation via the 337 form.

B. Procedural Background

The Administrator issued an order, dated February 3, 2010, suspending respondent's ATP and mechanic certificates for a period of 60 days. The Administrator's order, which serves as the complaint in this case, alleged respondent violated 14 C.F.R. §§ 91.7(a), and 91.9(a), and 91.13(a).²⁴ After respondent filed his notice of appeal, the Administrator issued the order as the complaint, and later amended the complaint, to remove a total of four allegations. Respondent answered the complaint, and then submitted an amended answer, with admissions to several of the allegations and asserting several affirmative defenses. The parties engaged in discovery, after which the Administrator filed a motion for partial summary judgment, and respondent filed

²¹ See 14 C.F.R. § 91.213.

²² Tr. 627.

²³ Exh. R-23; Tr. 564.

²⁴ In addition, the order referenced 14 C.F.R. §§ 65.85(a), 65.87(a), and 183.29(h), which involve returning an aircraft to service and conducting flight tests.

a cross-motion for summary judgment. The first law judge assigned to the case granted summary judgment in favor of the Administrator with regard to 14 C.F.R. §§ 91.7(a), 91.9(a), and 91.13(a).²⁵ The law judge affirmed revocation of respondent's ATP certificate, but not his mechanic certificate. The Administrator did not appeal this finding.

Respondent appealed the law judge's order, arguing genuine issues of material fact existed. We granted respondent's appeal and ordered the law judge to hold a hearing to take evidence. The same law judge held an abbreviated hearing, only addressing the issues specifically listed in our opinion and order. We remanded the case again for a full hearing, at which time Chief Judge Montaña assigned the case to himself and ordered a hearing to receive evidence on all issues.

C. Law Judge Oral Initial Decision

Following the lengthy hearing, the law judge issued an oral initial decision. The law judge determined respondent's assertions concerning the "major alteration" approval process did not function to excuse his conduct on the March 30, 2009 flight, because he exceeded the scope of the SFP, which was intended only to allow repositioning of the aircraft for the purpose listed as "maintenance." The law judge made several findings in support of this decision. He noted respondent faulted Mr. Emge for pursuing approval of the navigation system in an incorrect manner, yet respondent did not call Mr. Emge to testify, or provide a reason why he did not seek Mr. Emge's testimony. The law judge also stated respondent faulted Mr. Emge for certifying the 337 form, yet the form contained respondent's signature.

²⁵ The law judge also narrowed the scope of the case by finding the Administrator did not present evidence concerning sections 65.85(a), 65.87(a), and 183.29(h). The Administrator did not appeal this finding; therefore, the case proceeded based on the three remaining operational violations.

The law judge determined respondent's testimony lacked credibility, given the evasive nature of several of his answers to questions on cross-examination. Based on this determination and a lack of supporting evidence, the law judge rejected respondent's assertion that an SFP is the same as an MEL.²⁶ The law judge also rejected as "wholly without merit" respondent's assertion that operators are permitted to operate an aircraft under an SFP in any manner they choose as long as the SFP does not specifically prohibit the operation.²⁷ Lastly, respondent's affirmative defense of reasonable reliance did not sway the law judge because respondent provided no witnesses or evidence to corroborate his assertion that he relied on anyone who knew more than he did about the operation of the aircraft.

The law judge declined to analyze respondent's argument that the regulations on which the Administrator based the case were unconstitutional, based on prior Board decisions holding it lacks jurisdiction to address claims alleging constitutional violations. In conclusion, the law judge reduced the sanction to a suspension of 30 days, because the Administrator only proceeded with three of the six charges originally listed in the complaint. The law judge ordered suspension of respondent's ATP and mechanic certificates.

D. Issues on Appeal

Respondent presents several arguments on appeal, primarily focused on his contention that his operation of the aircraft on March 30, 2009, did not exceed the scope of the SFP. Respondent focuses on the word "specified" in the text of the SFP: respondent states "[t]he purpose of an SFP is not an operating limitation *specified* in the SFP."²⁸ Respondent contends

²⁶ Initial Decision at 865 (citing 47 C.F.R. §§ 21.197 and 21.199).

²⁷ *Id.* at 871.

²⁸ Appeal Br. at 26.

the law judge erred in emphasizing the SFP stated the purpose of operation of the aircraft on March 30, 2009 was for maintenance; in this regard, respondent contends the law judge should not have determined respondent exceeded the scope of the SFP by pulling the circuit breakers, because respondent was merely performing an “operational check” for the purpose of maintenance.²⁹ Respondent further asserts no evidence exists to establish he conducted “flight testing” in violation of the SFP, because respondent only intended to perform an operation check to “confirm proper operation, functionality, and accuracy of the GPS.”³⁰

Respondent contends the law judge erred in basing his finding on credibility determinations, because the evidence showed respondent flew the most direct and expeditious route to Punta Gorda, as the SFP directed. Respondent also argues the testimony of Inspector Delewski and Mr. Brownlee did not support the law judge’s finding, and takes issue with the law judge’s qualification of the witnesses as experts. Respondent again raises the arguments he made on appeal to the law judge: he argues he reasonably relied on Mr. Emge’s repair station, FAA guidance, and the local FSDO, and that such reliance excuses his conduct. In addition, respondent contends the Administrator’s interpretation of § 91.9(a) in this case was unconstitutionally vague.

Lastly, respondent contends the law judge erred in suspending his mechanic certificate, as the Administrator had only pursued suspension of respondent’s ATP certificate. Respondent argues no sanction is appropriate because mitigating factors exist, and petitions for oral argument under our Rules of Practice.³¹

²⁹ Id. at 28.

³⁰ Id. at 30.

³¹ Having found the parties have exhaustively briefed these issues on appeal, we find no oral argument is necessary in this case.

2. *Decision*

On appeal, we review the law judge's decision *de novo*, as our precedent requires.³²

A. *Scope and Interpretation of SFP*

As stated above, 14 C.F.R. § 91.7(a) prohibits operation of an aircraft unless it is in an airworthy condition. Board jurisprudence consistently has utilized a two-prong standard for analyzing alleged violations of § 91.7(a). In order to prove the respondent operated an aircraft while it was in an unairworthy condition, the Administrator must prove either (1) the aircraft did not conform to its type certificate and applicable Airworthiness Directives; or (2) the aircraft was not in a condition for safe operation.³³ The Board has also stated, “the term ‘airworthiness’ is not synonymous with flyability.”³⁴ In determining whether an aircraft is airworthy, the Board considers whether the operator knew or should have known of any deviation of the aircraft's conformance with its type certificate.³⁵

1. *Limitations of the SFP*

a. *Regulations governing SFPs*

³² Administrator v. Smith, NTSB Order No. EA-5646 at 8 (2013); Administrator v. Frohmuth and Dworak, NTSB Order No. EA-3816 at 2 n.5 (1993); Administrator v. Wolf, NTSB Order No. EA-3450 (1991).

³³ Administrator v. Opat, NTSB Order No. EA-5290 (2007) (citing Administrator v. Doppes, 5 NTSB 50, 52 n.6 (1985); Administrator v. Anderson, NTSB Order No. EA-3976 at 2, (1993); Administrator v. Nielsen, NTSB Order No. EA-3755 at 4 (1992); Administrator v. Copsey, NTSB Order No. EA-3448 (1991)); see also, e.g., Administrator v. Haddock, NTSB Order No. EA-5539 (2010), aff'd Haddock v. Babbitt, 488 Fed.Appx. 686 (4th Cir. 2012).

³⁴ Doppes supra note 33, at 52 n.6.

³⁵ Administrator v. Smith, NTSB Order No. EA-5646 at 12-13 (2013) (citing Administrator v. Yialamas, NTSB Order No. EA-5111 (2004)); see also Administrator v. Bernstein, NTSB Order No. EA-4120 at 5 (1994).

The regulations governing SFPs clearly indicate the permissible scope of operations a pilot may conduct when operating the aircraft. In this regard, 14 C.F.R. § 21.197 provides as follows:

- (a) A special flight permit may be issued for an aircraft that may not currently meet applicable airworthiness requirements but is capable of safe flight, for the following purposes:
- (1) Flying the aircraft to a base where repairs, alterations, or maintenance are to be performed, or to a point of storage.
 - (2) Delivering or exporting the aircraft.
 - (3) Production flight testing new production aircraft.
 - (4) Evacuating aircraft from areas of impending danger.
 - (5) Conducting customer demonstration flights in new production aircraft that have satisfactorily completed production flight tests.

Respondent admits the SFP issued for N744AT for his flight on March 30, 2009 was for the purpose of flying the aircraft to a base where repairs, alterations, or maintenance were to be performed.

Similarly, 14 C.F.R. § 21.199 requires the applicant for the SFP provide a statement to the FAA describing details, including: the purpose of the flight; the proposed itinerary; the crew required to operate the aircraft and its equipment; the ways, if any, in which the aircraft does not comply with the applicable airworthiness requirements; any restriction the applicant considers necessary for safe operation of the aircraft; and any other information the Administrator considers necessary for the purpose of prescribing operating limitations. This level of required specificity belies respondent's assumption that terminating the power source to the GPS twice during flight was within the scope of the SFP. Respondent testified Mr. Pizzuti applied for the SFP and discussed the need for the SFP with Inspector Delewski.³⁶ However, respondent did not

³⁶ Inspector Delewski's testimony corroborates this point. Tr. 89-91. Nevertheless, we note respondent did not call Mr. Pizzuti to testify at the hearing, nor did he provide a sworn statement or any evidence, other than his own testimony, to support his belief that terminating the power to the navigation system twice during the flight would have been permissible under the SFP.

contact anyone at the FAA to inquire about his plans to pull the circuit breaker during the flight, nor did he mention his desire to obtain approval of the GPS WAAS in accordance with AC 20-138A while operating the aircraft in accordance with an SFP.

b. *Express SFP provisions*

As discussed below, respondent contends flight checks are permissible when operating under an SFP. In support of this theory, respondent cites Administrator v. Barrie³⁷ and Administrator v. Barber.³⁸ Respondent cites both of these cases to show the Board's finding rested on the express limitations of the SFPs, rather than any inferred or implied limitations. We find neither of these cases supports respondent's contention that an operational flight check, performed for fulfilling the requirements of an Advisory Circular to accomplish approval of an avionics device, is permissible when operating under an SFP. In Barrie, the Board found the respondent exceeded the scope of his SFP when a mechanic flew with the respondent on a repositioning flight, because the SFP only allowed necessary crew. Likewise, in Barber, the Board determined the respondent exceeded the limitations of the SFP when he operated the aircraft under instrument flight rules (IFR) conditions, and transported a passenger who was not a crewmember; the SFP permitted operation only in visual flight rules (VFR) conditions, and allowed for the transport of only crew.

We agree express limitations of SFPs are paramount to ensuring safe, temporary operation of unairworthy aircraft. When respondent operated N744AT on March 30, 2009, the aircraft had numerous discrepancies. Although respondent now speculates many discrepancies may have been addressed and corrected at the time Inspector Delewski found them, respondent

³⁷ NTSB Order No. EA-4801 (1999).

³⁸ NTSB Order No. EA-4304 (1994).

presents no evidence for this contention. Respondent admitted the aircraft was unairworthy when he operated it on March 30, due to the many discrepancies;³⁹ in this regard, respondent does not deny the aircraft's numerous discrepancies indicated it did not comply with its type certificate.

c. SFPs v. MELs

We further note respondent's assertion that an SFP is similar to an MEL, in that the SFP should specifically list all prohibitions concerning operation of the aircraft, requires a leap in logic. An MEL serves a strikingly different purpose than an SFP; the MEL allows the aircraft to be considered *airworthy* notwithstanding certain deviations from the aircraft's type certificate. The need for an SFP, on the other hand, deems an aircraft *unairworthy*, but permitted to operate only for a certain flight, due to its lack of airworthiness.⁴⁰ Respondent does not present any authority for his argument that an SFP must include a list of specific prohibitions of all possible scenarios and manners by which the aircraft should not operate; such an approach would negatively affect safety by allowing operators to disregard an SFP under which they are operating, save for the few situations the Administrator may have listed.

In short, respondent's testimony establishes he exceeded the scope of the SFP on March 30, 2009, when he terminated the power to the navigation system twice while en route. The SFP functioned as a limitation on all regular operations of N744AT, and permitted only one

³⁹ Tr. 549 (respondent's testimony that he asked Mr. Pizzuti about whether the aircraft would need an SFP), 602 (respondent's testimony that he "sat in on" the meeting between Inspector Delewski and Mr. Pizzuti, in which they discussed the discrepancies), 614 (respondent's testimony that he saw letter from Inspector Delewski listing the numerous discrepancies) and 626 (respondent's statement that he knew the discrepancies affected the airworthiness of the aircraft).

⁴⁰ See 14 C.F.R. §§ 21.197, 21.199; Administrator v. Gibbs, NTSB Order No. EA-5638 (2012); Administrator v. Opat, NTSB Order No. EA-5290 at 3 n.4 (2007).

flight, in order to reposition the aircraft for maintenance. Based on this narrow scope of permissible operations, respondent violated § 91.9(a), which requires compliance with all limitations prescribed by the Administrator. In addition, respondent's operation of the aircraft as though it were airworthy amounts to a violation of § 91.7(a). Any other reading of the SFP would be contrary to the unambiguous intent of the Administrator's issuance of SFPs for unairworthy aircraft.

2. *"Flight Test" vs. "Flight Check"*

Respondent further contends he was conducting an operational flight check, rather than a flight test, and thus, did not exceed the scope of the SFP. We disagree. First, respondent does not dispute that an operational flight check would not require completion of a 337 form.⁴¹ Yet respondent completed and signed the 337 form and submitted it to the FAA immediately after arriving in Punta Gorda. In addition, respondent's entry on section 8 of the 337 form specifically uses the words "test flown." While we do not find persuasive respondent's fixation on nomenclature, we note respondent's defense of the term "test flown" lacks credibility, in that he stated he only used the term as "a standard wording, a generic wording, used to represent both checks of an airplane through § 91.407 and part 21,"⁴² while at the hearing, he vehemently denied he test flew the aircraft.

In his appeal brief, respondent asserts he merely performed an operational flight check of the navigation system, which was permitted under the SFP. Respondent describes his conduct as a "flight check" as opposed to "test flight" because the language of 14 C.F.R. § 91.407(b) provides:

⁴¹ Tr. 150.

⁴² Tr. 519.

No person may carry any person (other than crewmembers) in an aircraft that has been maintained, rebuilt, or altered in a manner that may have appreciably changed its flight characteristics or substantially affected its operation in flight until an appropriately rated pilot with at least a private pilot certificate flies the aircraft, makes an operational check of the maintenance performed or alteration made, and logs the flight in the aircraft records.

Respondent's argument that 14 C.F.R. § 91.407(b) excuses his conduct because the regulation permits operational flight checks is also unfounded.⁴³ We conclude § 91.407(b) applies to airworthy aircraft.

3. “Major Design Change” vs. “Major Alteration”

Respondent testified the main premise of the Administrator's case was he was pursuing the approval of installation of the navigation system as a “major alteration” instead of a “major design change.” Respondent fails, however, to explain how this fact would establish he did not exceed the limitations of the SFP. As discussed in the previous section, respondent bases his appeal on the argument that the plain language of the SFP did not prohibit flight checks. The SFP also did not include the terms or a discussion of flight testing, major alterations, major design changes, or any provisions of AC 20-138A. Indeed, the SFP states IFR operation of the “ferry flight for repairs, alterations, maintenance, or storage,” and cites 14 C.F.R. § 21.197(a)(1).⁴⁴ The law judge found, and we agree: the sole purpose of the one approved, special flight of N744AT on March 30, 2009 was to relocate the aircraft to Punta Gorda for maintenance. By attempting to fulfill the requirements of AC 20-138A to obtain approval of the

⁴³ Tr. 141, 325 (Inspector Delewski's testimony that an operational flight check may occur only after an aircraft has been returned to service under 14 C.F.R. § 43.7); see also Administrator v. Lackey, NTSB Order No. EA-5389 at 4 (2008) (summary of testimony from record indicating aircraft had undergone a flight check under § 91.407 prior to issuance of the SFP).

⁴⁴ Exh. A-6.

navigation system, respondent did more than relocate the aircraft when he twice pulled the circuit breaker.

Several times at the hearing, respondent acknowledged his purpose in pulling the circuit breaker twice was to achieve compliance with the requirements of AC 20-138A. Respondent agreed with Mr. Brownlee's testimony that if he had been pursuing a major design change under a process specified in an STC, he would have exceeded the limitations of the SFP issued to him.⁴⁵ As the law judge stated, this contention ignores the simple purpose of the SFP: to relocate the unairworthy aircraft for maintenance. AC 20-138A does not state an operator may pull the circuit breaker to the navigation system while operating the aircraft in accordance with an SFP. Indeed, AC 20-138A does not contemplate SFPs, but instead is based on the presumption the flight tests will occur while the aircraft is in an airworthy state. We find unpersuasive respondent's contention that the major alteration method of approval excuses his conduct.

B. *Witness Testimony*

1. *Expert Qualifications*

On appeal, respondent contends the law judge erred in accepting Inspector Delewski as an expert in navigation systems and avionics, and in accepting Mr. Brownlee as an expert in GPS units. Respondent cites Federal Rules of Evidence 403 and 703, as well as Daubert v. Merrell Dow Pharmaceuticals,⁴⁶ in support of his argument. Federal Rule of Evidence 403 calls for balancing the evidence, as follows: "[t]he court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting

⁴⁵ Tr. 522-23.

⁴⁶ 509 U.S. 579, 592 (1993).

cumulative evidence.” Federal Rule of Evidence 703 addresses the testimony of experts, as follows:

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

The Daubert case stands for the proposition that Federal Rule of Evidence 702⁴⁷ imposes a special obligation upon a judge to ensure scientific evidence is not only relevant, but also reliable. The Supreme Court set forth several factors in determining the degree of reliability. In Kumho Tire Company v. Carmichael,⁴⁸ the Court clarified the “general holding” of Daubert, which “[set] forth the trial judge’s general ‘gatekeeping’ obligation,” and indicated it should apply “not only to testimony based on ‘scientific’ knowledge, but also to testimony based on ‘technical’ and ‘other specialized’ knowledge.”⁴⁹ Recognizing many kinds of experts exist,⁵⁰ the

⁴⁷ Federal Rule of Evidence 702, titled “Testimony by Expert Witnesses,” provides as follows:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

⁴⁸ 526 U.S. 137 (1999).

⁴⁹ Id. at 141.

⁵⁰ The Court referenced “experts in drug terms, handwriting analysis, criminal *modus operandi*, land valuation, agricultural practices, railroad procedures, attorney’s fee valuation, and others.” Id. at 150.

Court concluded “the trial judge must have considerable leeway in deciding in a particular case how to go about determining whether particular expert testimony is reliable.”⁵¹

For purposes of the Federal Rules of Evidence, which NTSB administrative law judges have applied to all cases to the extent practicable since the passage of the Pilot’s Bill of Rights,⁵² we consider our law judges to function as the “trial judge.” In his role as the gatekeeper for expert testimony, the law judge permitted voir dire of Inspector Delewski, and considered both parties’ questions of the inspector in determining whether she qualified as an expert witness.⁵³ In addition, the law judge asked his own questions of the inspector regarding her expertise.⁵⁴

Inspector Delewski testified at the hearing concerning the improper installation of the Garmin GNS-530WT/GPS navigation system with WAAS in N744AT. Inspector Delewski is a principal maintenance inspector for the FAA, and she oversees two air carriers, five repair stations (two of which are avionics shops), a flight school, and a large-scale repair station. Prior to joining the FAA, Inspector Delewski was the assistant director for a repair station of Corporate Jets, Inc., which had a total of 138 different aircraft. Prior to joining Corporate Jets, Inspector Delewski was chief of maintenance for another aviation company. Inspector Delewski has considerable experience in avionics.⁵⁵ Similarly, Mr. Brownlee, who has been a test pilot for over 26 years, has several certificate ratings and privileges and several years of experience in the private sector before joining the FAA. Based on his considerable experience with navigation

⁵¹ Id. at 152.

⁵² Pub. L. 112-153, 126 Stat. 1159 (August 3, 2012).

⁵³ Tr. 49-62.

⁵⁴ Tr. 77.

⁵⁵ Tr. 49-51, 57-58; Exh. A-15.

systems (including Garmin 530 systems with WAAS capability) and human factors, Mr. Brownlee regularly assists FSDOs, test flies aircraft, and assists with rulemaking at the FAA.⁵⁶ In sum, the record does not indicate, in any way, that Inspector Delewski's or Mr. Brownlee's testimonies were irrelevant or unreliable.

Moreover, we have long held our law judges have significant discretion in making evidentiary rulings.⁵⁷ We find the law judge did not abuse his discretion in admitting the expert testimonies of Inspector Delewski and Mr. Brownlee.

Respondent contends both Inspector Delewski and Mr. Brownlee lack "personal knowledge of the facts."⁵⁸ Such an argument would be relevant to the weight of Inspector Delewski's and Mr. Brownlee's testimonies, rather than their admissibility. Based on respondent's argument, an FAA employee must personally accompany a respondent when the violation at issue occurs, or otherwise not be able to provide expert testimony at the hearing. Neither the Federal Rules of Evidence nor Supreme Court jurisprudence stands for such a proposition; many experts testify in Federal courts after only reviewing records relevant to the

⁵⁶ Tr. 351-55. Concerning his experience with human factors and navigation systems, at the hearing, Mr. Brownlee summarized his experience as follows:

I've determined whether basically a human being could fly an aircraft and operate these [navigation] systems and make these systems aid in the navigation of the aircraft. And by the way, when I say aircraft I'm talking about airplanes and helicopters. And I get into ergonomics, which means can you mechanically reach things, operate things, while flying? That's all part of the human factors subset issues you could say. I've been quite intimately involved.

Tr. 355.

⁵⁷ We review law judges' evidentiary rulings under an abuse of discretion standard, provided the respondent can also show he or she suffered prejudice as a result of the rulings at issue. See, e.g., Administrator v. Martz, NTSB Order No. EA-5352 (2008); Administrator v. Giffin, NTSB Order No. EA-5390 at 12 (2008); Administrator v. Zink, NTSB Order No. EA-5262 (2006); Administrator v. Van Dyke, NTSB Order No. EA-4883 (2001).

⁵⁸ Appeal Br. at 40-46.

case about which they are testifying. Personal knowledge may be expected of a percipient witness, but respondent can cite no authority indicating it is a requirement for expert testimony.

Furthermore, we find respondent's own admissions concerning his conduct functioned to prove the Administrator's case. As a result, we find no prejudice to respondent's case.

2. *Credibility Determinations*

Respondent does not argue the law judge's credibility determinations were arbitrary and capricious. Instead, he contends the law judge inappropriately considered credibility as a factor when making his determination that respondent violated 14 C.F.R. § 91.9(a). We find this argument lacks merit. Respondent, not the Administrator, introduced credibility as a factor for consideration when he raised the issue of his motive for terminating power during the March 30, 2009 flight. As summarized above, respondent claims he was conducting only a "flight check" for purposes of a "major alteration" regarding installation of the navigation system. Respondent asserts this motivation serves to excuse his conduct. As indicated in our jurisprudence, an argument that rests on a respondent's subjective motivation requires a credibility assessment.⁵⁹

In articulating this assessment, the law judge determined respondent's testimony lacked credibility, and that Inspector Delewski's testimony was credible. We will not overturn a law judge's credibility determination unless a party can establish the credibility determination was

⁵⁹ See Administrator v. Riques, NTSB Order No. EA-5666 at 15-17 (2013); Administrator v. Gibbs, NTSB Order No. EA-5638 at 6-7 (2012); Administrator v. Singleton, NTSB Order No. EA-5529 at 6-7 (2010).

arbitrary and capricious.⁶⁰ We find no evidence the law judge’s credibility determinations here were arbitrary and capricious;⁶¹ therefore, we give deference to such determinations.

Concerning alleged violations of 14 C.F.R. § 91.9(a), in accordance with the plain language of the regulation, the Board will examine the relevant operating limitations specified in the approved Airplane or Rotorcraft Flight Manual, markings, and placards, or as otherwise prescribed by the Administrator.⁶² Respondent argues the law judge improperly based his opinion of respondent’s violation of § 91.9(a) on a credibility determination. In accordance with the discussion that follows, we affirm the law judge’s credibility determinations, but also find respondent’s own testimony alone establishes he violated § 91.9(a).

C. Reasonable Reliance

As an affirmative defense, respondent asserted he reasonably relied upon “a certified repair station, FAA guidance, and the [FSDO] personnel.”⁶³ The doctrine of reasonable reliance is one of narrow applicability.⁶⁴ In Administrator v. Fay & Takacs,⁶⁵ the Board held if a particular task is the responsibility of another, and “if the [pilot-in-command] has no independent

⁶⁰ Administrator v. Porco, NTSB Order No. EA-5591 at 13 (2011), aff’d, 472 Fed.Appx. 2 (D.C. Cir. 2012).

⁶¹ At best, respondent obfuscated in response to questions on cross-examination; at worst, his testimony was untruthful. Compare tr. 496, 502-503, 510 (detailed testimony concerning respondent’s experiences with other aircraft and completing 337 forms for those aircraft) with tr. 593-96 (responses indicating respondent does not know whether he had previously he had flown under the authority of an SFP).

⁶² See generally, e.g., Administrator v. Kooistra, NTSB Order No. EA-5588 (2011).

⁶³ Appeal Br. at 47.

⁶⁴ Administrator v. Angstadt, NTSB Order No. EA-5421 at 18-19 (2008), aff’d Angstadt v. FAA, No. 09-1005, 348 Fed.Appx. 589 (D.C. Cir. Sept. 24, 2009) (per curiam); see also Administrator v. Kooistra, NTSB Order No. EA-5588 at 13 n.14 (2011).

⁶⁵ NTSB Order No. EA-3501 (1992).

obligation (e.g., based on operating procedures or manuals) *or* ability to ascertain the information, and if the captain has no reason to question the other's performance, then and only then will no violation be found.”⁶⁶ The doctrine may apply to cases “involving specialized, technical expertise where a flight crew member could not be expected to have the necessary knowledge.”⁶⁷ In Administrator v. Haddock, we held our jurisprudence requires considering all facts and circumstances relevant to the reliance respondent demonstrated.⁶⁸ In Haddock, we also stated a principal duty of the pilot-in-command is to ensure the aircraft is in a condition for safe operation before taking off.

We find respondent did not reasonably rely on Mr. Emge or anyone else at Nebo Aviation to excuse respondent’s decision to terminate power to the navigation system on N744AT when respondent knew the aircraft was unairworthy. First, respondent did not call Mr. Emge to testify at the hearing, and did not present any evidence to demonstrate the decisions Mr. Emge made regarding the installation of the GPS. In addition, respondent’s reliance is premised in his theoretical view that the correct method of approval for the installation of the navigation system was under this “major alteration” means of approval, and therefore Mr. Emge’s choice to pursue the incorrect process of approval somehow excuses his conduct on March 30, 2009. As discussed above, respondent’s argument concerning the means of approval he pursued under AC 20-138A does not excuse his operation of the aircraft outside the scope of the terms of the SFP. With regard to FAA guidance and FSDO personnel, respondent does not identify which guidance or personnel indicated it would be appropriate to terminate power to the

⁶⁶ Id. at 10 (emphasis in original).

⁶⁷ Id. at 9.

⁶⁸ NTSB Order No. EA-5596 at 11-12 (2011).

navigation system and fulfill the obligations of AC 20-138A while operating the aircraft on an SFP. We agree with the law judge that respondent's affirmative defense lacks merit.

D. Constitutionality

Respondent further argues the Administrator's interpretation of 14 C.F.R. § 91.9(a) in this case is unconstitutionally vague, and we should therefore consider it void. Respondent contends the regulation, as written, encourages arbitrary and capricious enforcement. The law judge correctly stated the NTSB does not have jurisdiction to entertain questions of constitutionality of FAA regulations.⁶⁹ The NTSB's jurisdiction in considering appeals of aviation certificate enforcement actions is limited to the authority provided in 49 U.S.C. § 1133.

E. Sanction

Lastly, respondent argues the law judge inappropriately ordered suspension of both his mechanic and pilot certificates. At the hearing, the Administrator's attorney mentioned the Administrator only sought to suspend respondent's pilot certificate, and not his mechanic certificate.⁷⁰ The Administrator's response to respondent's appeal is consistent with this statement: the Administrator did not, and does not now, pursue enforcement action against respondent's mechanic certificate.⁷¹ Therefore, we only affirm the law judge's suspension of respondent's ATP certificate.

⁶⁹ See, e.g., Administrator v. Bosela, NTSB Order No. EA-4928 at 5 n.5 (2001) (citing Administrator v. Lloyd, 1 NTSB 1826, 1828 (1972)); Administrator v. Boardman, NTSB Order No. EA-3523 at 10 (1992) (stating the Board lacks authority to rule on constitutional validity of regulations promulgated by the Administrator); see also Watson v. NTSB, 513 F.2d 1081 (9th Cir. 1975).

⁷⁰ Tr. 185, 698-99.

⁷¹ Reply Br. at 52-53.

Respondent also argues mitigating factors exist to favor reducing the period of suspension. Although under our jurisprudence, we will consider aggravating and mitigating factors in examining sanction,⁷² we disagree this case merits further reduction in sanction beyond that which the law judge already provided. Respondent sought to substitute his own judgment for that of the Administrator when he interpreted the SFP in such a way to justify his termination of power to the navigation system while repositioning the aircraft. Respondent's testimony and conduct at the hearing buttresses our assessment that respondent proceeded in a manner indicating he believed he was free to interpret the Federal Aviation Regulations in a manner contrary to their plain meaning and long-held interpretation. We find no evidence in the record to merit a further reduction in the sanction.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied, in part;
2. The law judge's oral initial decision is affirmed, except with regard to the suspension of respondent's mechanic certificate; and
3. The 30-day suspension of respondent's ATP certificate shall begin 30 days after the service date indicated on this opinion and order.⁷³

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

⁷² See Administrator v. Hackshaw, NTSB Order No. EA-5501 (2010) (recon. denied, NTSB Order No. EA-5522 (2010)) and Administrator v. Simmons, NTSB Order No. EA-5535 (2010).

⁷³ For the purpose of this order, respondent must physically surrender his ATP certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. § 61.19(g).

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
OFFICE OF ADMINISTRATIVE LAW JUDGES

* * * * *

In the matter of: *

MICHAEL P. HUERTA, *

ADMINISTRATOR, *

FEDERAL AVIATION ADMINISTRATION, *

Complainant, *

v. * Docket No.: SE-18805RM1

WAYNE ALLEN CARR, * JUDGE MONTAÑO

Respondent. *

* * * * *

Office of Administrative Law Judges
490 L'Enfant Plaza East, S.W.
Room 4704
Washington, D.C. 20594

Thursday,
April 18, 2013

The above-entitled matter came on for hearing, pursuant
to Notice, at 2:00 p.m.

BEFORE: ALFONSO J. MONTAÑO,
Chief Administrative Law Judge

On behalf of the Administrator:

CHRISTIAN LEWERENZ, Esq.
Office of the Regional Counsel
Federal Aviation Administration
Eastern Region AEA-7
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718-553-3285

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ORAL INITIAL DECISION AND ORDER

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ADMINISTRATIVE LAW JUDGE MONTAÑO: This is a proceeding under the provisions of 49 U.S.C. Section 44709, formerly Section 609 of the Federal Aviation Act, and the provisions of the Rules of Practice in Air Safety Proceedings of the National Transportation Safety Board.

This matter has been heard before me as the Administrative Law Judge that has been assigned to this case, and as provided by the Board's Rules, I have elected to issue an Oral Initial Decision in this matter.

The case was initially assigned to Judge Pope who retired. The case was then assigned to Judge Geraghty for hearing and decision. Judge Geraghty made a dispositive ruling on a

1 motion for summary judgment in favor of the Administrator in the
2 first hearing in this case. That decision was appealed by the
3 Respondent and the full Board remanded the case for hearing on the
4 merits of the matter.

5 Judge Geraghty then conducted an abbreviated hearing on
6 what he understood were the Board's instructions that were
7 included in the Remand Order. That decision in favor of the
8 Administrator was appealed by the Respondent and the full Board
9 again remanded the case with instructions to hold a full
10 evidentiary hearing.

11 The Board also suggested the case could be reassigned to
12 another Administrative Law Judge, and Judge Geraghty agreed that
13 it would be best to have another Administrative Law Judge look at
14 the case anew and basically make an independent decision based on
15 the evidence that was submitted before him. This case was
16 subsequently, assigned to me for hearing and decision.

17 Pursuant to notice, this matter came on for hearing on
18 January 23rd through the 25th in Washington, D.C.

19 The Administrator is represented by one on his staff
20 counsel, Mr. Christian Lewerenz, of the Eastern Region, Federal
21 Aviation Administration. Respondent is represented by Gregory S.
22 Winton, Esq. along with his co-counsel, Jared Allen, Esq.

23 The hearing was continued at the close of January 25th
24 for the purpose of reconvening at a later time for closing

1 arguments which were to take place March 27 and 28 of 2013.

2 We did meet on March 27th for closing arguments. At the
3 conclusion of the closing arguments, this matter was continued
4 after both parties provided extensive, unsolicited findings of
5 facts and conclusions of law which I was not able to review prior
6 to the hearing on March 27th and to analyze and digest before
7 issuing an oral decision. I felt that in order to fully analyze
8 the findings of facts and conclusions of law and the parties'
9 arguments, that I should take time to review them carefully.

10 The Oral Initial Decision was then scheduled for April
11 11th but then was subsequently rescheduled, due to a death in my
12 family for today, April 18, 2013. I'd like to thank the parties
13 for their cooperation in the scheduling and rescheduling of this
14 case. I certainly appreciate your cooperation with me. Some of
15 the circumstances were certainly beyond my control, but I want to
16 extend my thanks to the parties for being cooperative in
17 scheduling the Oral Initial Decision for today.

18 During the course of these proceedings, the parties were
19 afforded a full opportunity to offer evidence, to call, examine
20 and cross-examine witnesses and to make arguments in support of
21 their respective positions.

22 I will not discuss all of the evidence in detail, but I
23 have, however, considered all the evidence, both oral and
24 documentary. That which I do not specifically mention is viewed

1 by me as being corroborative or as not materially affecting the
2 outcome of the decision.

3 Mr. Wayne Allen Carr, the Respondent, appealed the
4 Administrator's Order of Suspension dated February 3, 2010.
5 Pursuant to Section 821.31(a) of the Board's Rules, the
6 Administrator filed a copy of the Order of Suspension which serves
7 as the complaint in this case, and that was filed on February 18,
8 2010.

9 The Administrator ordered the 60-day suspension of any
10 airman certificate held by Mr. Carr, including his airline
11 transport pilot certificate. The Administrator further ordered a
12 60-day suspension of Mr. Carr's airframe and powerplant mechanic
13 certificate.

14 The Administrator alleged that the Respondent violated
15 Section 91.7(a), Section 91.9(a) and Section 91.13(a) of the
16 Federal Aviation Regulations. The initial complaint in this
17 matter also cited violations of Sections 65.85(a), 65.87(a) and
18 Section 183.29(h).

19 Before the case was assigned to me, Judge Geraghty had
20 dismissed the Administrator's allegations of violations of
21 Sections 65.85(a), 65.87(a) and 183.29(h) in his Order of Partial
22 Summary Judgment which he issued in favor of the Respondent on
23 August 3, 2010.

24 The Administrator subsequently filed an amended

1 complaint deleting paragraphs 17 and 21 of his initial complaint
2 on June 24, 2011. Thus, the only remaining alleged regulatory
3 violations before me are violations of Sections 91.9(a), 91.7(a)
4 and 91.13(a).

5 In his answer to the Administrator's complaint, the
6 Respondent admitted to paragraphs 1 through 4 and paragraphs 10
7 through 12. As the Respondent has admitted to those allegations,
8 they are deemed as established for the purpose of this decision.

9 The Respondent has denied the allegations in paragraphs
10 5, 9, 13, 19 and 20. He indicated that he did not possess
11 sufficient knowledge to answer the allegations in paragraphs 6, 7,
12 14, 15, 16, 18, 22 and 23.

13 During the course of this hearing, the Administrator
14 moved for the admission of Exhibits A-1 through A-8, A-10 through
15 A-18, which were admitted into evidence. Respondent moved for the
16 admission of Exhibits R-1, R-2, R-10, 11, 12, 13, 20, 21, 23, 24,
17 25, 26, 27, 28, 38, 39, 44 and 45. The parties submitted a Joint
18 exhibit which was marked as Exhibit J-12 and admitted into
19 evidence. I also admitted the airworthiness certificate for the
20 aircraft in issue in this case as Exhibit ALJ-1.

21 What I plan to do, and I'll ask for the parties'
22 patience, is to go through first the testimony of the witnesses,
23 and then what I will do is talk about how I will apply that
24 testimony to the issues and the violations alleged and what

1 determinations or what decisions I make relative to those
2 violations.

3 The Administrator, of course, has the burden of proof in
4 this case, and he provided the testimony first of Inspector Laura
5 Delewski. Ms. Delewski is a principal maintenance aviation
6 inspector with the Allegheny Flight Standards District Office.
7 She is a principal maintenance inspector for various Part 135 on-
8 demand air carriers, aviation technical schools under Part 141,
9 and repair station certificate holders under Part 145. She is the
10 principal maintenance inspector for a Part 135 helicopter
11 emergency medical operation. She holds an airframe and powerplant
12 mechanic certificate with inspection authority.

13 She testified that she is an aviation inspector, that as
14 an aviation inspector, her training is essentially the same as
15 aviation inspectors receive who are subsequently designated as
16 avionics aviation inspectors. She testified that she had
17 experience with the FAA on matters dealing with airworthiness
18 which involved avionics issues. She has been employed with the
19 FAA since August 2003.

20 Before joining the FAA, she was an assistant to the
21 director of maintenance to a large Part 145 repair station. She
22 testified that she's been the chief of maintenance for a Part 135
23 helicopter emergency medical service, and she has been a lead
24 mechanic and maintenance manager for a Part 135 helicopter

1 emergency medical service.

2 She was tendered and qualified as an expert as an
3 aviation inspector on airworthiness and avionics. She was also
4 qualified as an expert in air ambulance operations. She was
5 qualified as an expert in these areas over the objection of the
6 Respondent. Her CV is included in what has been marked as A-15.

7 The Respondent had submitted motions *in limine* which
8 were discussed during the course of the *voir dire* and questioning
9 of Inspector Delewski, and in so qualifying Ms. Delewski, I
10 overruled the motions *in limine* that were submitted by the
11 Respondent.

12 Inspector Delewski testified that she is the principal
13 maintenance inspector for Aero National which is based in
14 Washington County, Pennsylvania. Aero National had intended, she
15 testified, to lease a Cessna Citation 550, tail number N744AT from
16 an air ambulance company called Air Trek.

17 The Cessna Citation N744AT was presented to the FAA for
18 a conformity inspection. The Cessna Citation is a Part 25
19 transport category airplane. The conformity inspection was
20 requested so that Aero National could add the aircraft to its
21 operating specifications for use in its air ambulance operation.

22 The aircraft was subsequently inspected at the
23 Washington County Airport and the maintenance records were
24 reviewed as well. That inspection was perform by Inspector

1 Delewski. She noted discrepancies which she reported to Thomas
2 Pizzuti, who is the president of Aero National Incorporated. She
3 reported the discrepancies to Mr. Pizzuti in a letter dated March
4 28, 2009, which has been admitted as A-1.

5 One of the problems or discrepancies noted was an
6 unapproved installation or an incorrect installation of a Garmin
7 530 GNS Wide Area Augmentation System, upgrade dated May 5, 2008.
8 That is at Exhibit A-2.

9 The record indicates that Nebo Aviation Service, the
10 installing repair station, used a supplemental type certificate,
11 or an STC, with the number SA01933LA which was issued by Garmin as
12 the approved documentation for the installation. The STC does not
13 apply to the installation of a WAAS upgrade in the Cessna 550 or
14 any other Part 25 transport category airplane on the approved
15 model list, which is at Exhibit A-3.

16 Inspector Delewski testified that the installation of
17 the WAAS also involved the interfacing of the WAAS with the
18 autopilot installed in N744AT, which was not approved under the
19 STC in this case, and the instructions which Nebo claimed to have
20 followed were not applicable, she testified, to Part 25 transport,
21 aircraft specifically N744AT in this case.

22 Inspector Delewski notified the Flight Standards
23 District Office in Tampa, Florida, which has oversight over Nebo
24 Aviation. Corrective action was taken by limiting the WAAS

1 installation to VFR use only. A FAA Form 337 was prepared by Nebo
2 and signed by David E. Cole as the designated FAA engineer who
3 approved the data that was returned to service by Timothy E. Emge,
4 and that is Exhibit A-5.

5 As to the other discrepancies noted from the conformity
6 inspection, Inspector Delewski testified that there were a number
7 of discrepancies, and that Air Trek decided that it would perform
8 those repairs at its base in Punta Gorda, Florida. Mr. Pizzuti
9 submitted an application for an airworthiness certificate for the
10 aircraft on behalf of Air Trek, requesting a special flight permit
11 for the purpose of repositioning the aircraft for repairs.

12 She went over the application at Exhibit A-6 with
13 Mr. Pizzuti, and in working with him, she filled out the form and
14 the limitations that are noted on that special flight permit. She
15 issued the special flight permit along with specific limitations
16 to the special flight permit, which is at Exhibit A-7.

17 Inspector Delewski testified that there was never any
18 discussion between Mr. Pizzuti that flight testing of the GPS WAAS
19 system would be conducted while the plane flew from Pennsylvania
20 to Punta Gorda, Florida. If that purpose, flight testing, had
21 been revealed to her, Inspector Delewski testified that she would
22 not have issued the special flight permit. She testified that she
23 would have informed Mr. Pizzuti that she did not have the
24 authority to provide authority to conduct a flight testing. She

1 testified that she would have informed Mr. Pizzuti and Mr. Carr as
2 to the proper manner in which to have the GPS installed approved
3 for IFR operations with the Aircraft Certification Office for Part
4 25 airplanes.

5 Inspector Delewski testified that during the flight from
6 Washington County Airport, Pennsylvania to Punta Gorda, Florida,
7 under the special flight permit, the aircraft was unairworthy for
8 any other purpose other than repositioning the aircraft. Because
9 of the discrepancies she noted in the aircraft, it did not meet
10 its type certificate, and because of those discrepancies the
11 aircraft did not meet its airworthiness standards.

12 She testified that the aircraft, after inspection by a
13 mechanic, an A&P mechanic, was determined to be safe to fly from
14 Washington County to Punta Gorda, Florida; however, she testified
15 that while the aircraft was safe to fly from Point A to Point B,
16 it was still unairworthy because of the various discrepancies that
17 were identified in her conformity inspection. In her conformity
18 inspection, as she noted, there was a large number of
19 discrepancies noted and are identified in the letter which was
20 attached to the special flight permit in this case.

21 She testified that the flight, under the special flight
22 permit, was made on March 30, 2009, and was flown by Respondent
23 and his brother, Lester Carr. Subsequent to the flight, she
24 testified she received a letter and an e-mail which indicated that

1 Aero National was no longer interested in adding N744AT to its
2 operation specification.

3 Inspector Delewski testified she then sent a letter of
4 investigation to Nebo Aviation, to the attention of the
5 accountable manager, relative to the installation of the GPS on
6 N744AT. She subsequently received a response from Nebo, which is
7 at Exhibit A-8. It is a letter from Mr. Timothy E. Emge, which
8 indicated that on March 30, 2009, N744AT flew from Washington
9 County, Pennsylvania direct to Punta Gorda, Florida and made an
10 LPV coupled approach to Runway 22. An FAA 337 for certification
11 for Instrument Flight Rules (IFR) had been filled out and
12 certified by Mr. Carr, but as of that time the FMS had not been
13 submitted for approval.

14 Attached to the letter is the FAA Form 337 dated
15 3/30/2009, and signed by the Respondent as the repair station
16 representative certifying that the IFR accuracy requirements were
17 met. Mr. Carr signed the document with both his ATP and A&P
18 certificate numbers.

19 Mr. Carr certified that the aircraft was test flown and
20 found to meet the requirements for IFR en route, terminal and
21 approach navigation per AC 20-138A, and specifically identified
22 paragraphs 8(a)(2)(ii); 21(4); 22(5); 23(a), (b)(1),(2),(3),
23 (4),(i),(ii),(iii),(iv) and (v), and also (5), (6) and (7); as
24 well as (c)(1), (2)(i),(ii),(iii) and (iv). Those specific

1 citations are on the second page of the March 30th FAA Form 337
2 and were certified to have been performed by Mr. Carr.

3 Ms. Delewski testified that the special flight permit
4 limited N744AT to fly from Washington County, Pennsylvania to
5 Punta Gorda, Florida. It did not authorize flight testing or the
6 LPV approach to Runway 22. She testified that there was no reason
7 to test fly the GPS until it was correctly installed for IFR
8 flight. The GPS system, she testified, was not certified for IFR
9 flight before the flight on March 30, 2009.

10 She testified that if she had been notified of the
11 planned test flight during the flight on March 30, 2009, she would
12 not have approved the flight permit. She was never informed a
13 repair person would certify the GPS for IFR requirements when the
14 aircraft was flown from Washington County, Pennsylvania to Punta
15 Gorda, Florida on March 30, 2009.

16 She further testified she was never provided any
17 information which indicated Mr. Carr had not performed the test
18 flight as identified in the March 30, 2009 FAA Form 337 which he
19 signed and certified. She did testify that there was an alternate
20 explanation that was provided by Mr. Carr. She testified that he
21 had indicated in his deposition that he had conducted the test
22 flights which were noted on the 337 over a period from May 5, 2008
23 to March 30, 2009, and only had two or three things left to finish
24 on March 30, 2009. However, Respondent provided no specific dates

1 or documentation which indicated he complied with what he
2 documented on the March 30, 2009 Form 337.

3 She again testified and rendered an opinion that the
4 flight test could not have been performed on the Garmin GPS
5 because the aircraft was not airworthy because of the GPS and
6 because of a number of other discrepancies noted that resulted
7 from her conformance inspection. She testified that the aircraft
8 would have had to have been returned to service before it could be
9 test flown or any of the components of that aircraft could be test
10 flown.

11 Inspector Delewski further testified that she checked
12 the flight logs for the aircraft to determine if it had been flown
13 over a period of time to conduct flight tests as Mr. Carr
14 indicated. She testified that the flight logs at A-12 do not
15 support Mr. Carr's alternative explanation. The records have no
16 documentation to establish the alleged test flights took place
17 over the period of May 5, 2008 to March 30, 2009.

18 She testified that she had been informed that an
19 operational check of the GPS system under VFR had been conducted,
20 as the GPS had been limited and placarded for VFR use only. If
21 she had been informed that this testing would have been done, she
22 testified that she would not, again, have issued the special
23 flight permit.

24 Inspector Delewski also testified as to Mr. Carr's

1 deposition in which he indicated he did fly an LPV approach to
2 Runway 22 at Punta Gorda, Florida and he pulled circuit breakers
3 to simulate a power outage on the GPS. She testified that in his
4 deposition he testified that he had pulled the circuit breakers on
5 other test flights but could not provide dates or documentation to
6 establish he had actually performed the pulling of circuit
7 breakers on other flights.

8 On page 79 of the deposition, Respondent testified that
9 his signature on the March 30, 2009 FAA Form 337 was the
10 requirement for an IFR en route, terminal and approach navigation
11 IFR accuracy requirement. He indicated that he was not certifying
12 that he performed all of the tests listed on the March 30, 2009
13 337. He stated that he had only checked the IFR accuracy
14 requirements.

15 The specific wording of the 337 states that the aircraft
16 was test flown and found to meet the requirements for IFR en
17 route, terminal and approach navigation per AC 20-138A, and it
18 goes through the paragraphs starting with (a)(2) and covers all of
19 the other sections identified in the second page of the FAA Form
20 337 that is dated on March 30, 2009.

21 In response to the question as to whether she would have
22 issued the special flight permit if she had been informed the
23 Respondent was going to perform tests or to certify the IFR
24 accuracy requirements, she testified that she would not have

1 issued the special flight permit. She stated she could not say if
2 the flight was under IFR conditions at the time the GPS GNS 530
3 was tested on March 30, 2009; however, if the GPS was used for IFR
4 purposes, that would be inappropriate as it had been placarded for
5 VFR use only.

6 Inspector Delewski testified that she had not been
7 provided information alleging or substantiating the test was
8 conducted under VFR or IFR or under flight following. However,
9 she testified she could not testify as to whether or not the
10 testing of the GPS 530 was under IFR or VFR conditions.

11 I asked Ms. Delowski if the aircraft had been flown and
12 the GPS tested under VFR conditions, if it would have been a
13 violation or if it would have exceeded the special flight permit.
14 She could not answer that question but suggested that I ask a
15 pilot that question. She testified that in her opinion,
16 Mr. Carr's theory that he only performed an operational flight
17 check to test VFR functionality on the flight on March 30, 2009
18 was not believable.

19 She testified that there was no need to test the GPS VFR
20 functionality as it had already been approved for VFR, albeit only
21 through ground check and performed by flight engineers. The GPS
22 was specifically placarded for VFR use only, as noted in Exhibit
23 A-10. She testified that there was no evidence to suggest that
24 the placard had been removed on March 30th, when the flight under

1 the special flight permit was made.

2 She testified that the aircraft was unairworthy during
3 the flight from Washington County to Punta Gorda, Florida. It was
4 only airworthy for the repositioning and nothing else. It was
5 airworthy for the flight from Point A to Point B. While the
6 limitations for the flight does not specifically indicate
7 Respondent could not perform the GPS test alleged, she testified
8 it would still be a violation because the aircraft was
9 unairworthy. It did not meet its type certificate or its
10 airworthiness standards. Finally, she testified that the aircraft
11 had not traveled on any other special flight plan.

12 She was of the opinion that based on her investigation,
13 she concluded that the Respondent had violated Sections 91.9(a),
14 91.7(a) and 91.13(a). She testified she recommended a 60-day
15 suspension which she said was appropriate under the FAA Sanction
16 Guidelines, which is at 2150.3B.

17 On cross-examination, she testified that the standard
18 airworthiness certificate for aircraft N744AT had not been
19 suspended, revoked or terminated. She testified that her
20 recommendation for a 60-day suspension was made when there were
21 six regulatory violations alleged. Three of those six violations
22 were dismissed. However, she did not believe that the 60-day
23 suspension should be reduced.

24 She testified that she had referred to the installation

1 of the WAA or WAAS upgrade to the GPS in this case to be a major
2 alteration on three occasions during her deposition. However, she
3 testified that she had misspoken and now called the installation
4 of the WAAS upgrade, not as a major alteration, but as a major
5 design change, and that is in the transcript at 189.

6 She testified that at the time of the investigation she
7 had only been employed by the FAA for 4 years during the
8 investigation of Mr. Carr's case. She testified relative to
9 Exhibit R-10, a letter from Mr. James Davidson, the North Flight
10 Standards District Office of the FAA, which stated that the
11 installation of the Garmin 530 GPS is placarded for VFR use only
12 and is a valid installation in that aircraft.

13 She testified that she did not agree with that letter,
14 and that it was a generalization and that she knew the specifics
15 of the installation and had what she called carnal knowledge of
16 the facts in this specific case. She testified the letter was
17 addressed to Mr. Carr, and that letter had not been withdrawn by
18 the FAA.

19 She testified a pilot is authorized on a special flight
20 permit to check to see if his equipment is operating and
21 functioning properly. She also testified on cross-examination
22 that the special flight permit listed specific limitations, and it
23 also provided two additional limitations which are for authorized
24 fuel stops and IFR flight.

1 She testified on cross-examination that Mr. Emge had
2 sent her a letter in response to her letter of investigation
3 relative to the issues in this case, and Mr. Emge indicated that
4 Mr. Carr had test flown the aircraft. She testified that the 337
5 that had been attached to the letter indicated that Mr. Carr had
6 test flown the aircraft on March 30, 2009, Exhibit A-8, as
7 previously noted.

8 When it was noted that A-8 as not signed by Mr. Emge,
9 she testified that she had seen a signed copy of the 337. This
10 prompted a long discussion relative to whether the signed copy of
11 the 337 should be admitted into evidence.

12 In subsequent testimony on the same issue, Inspector
13 Delewski contradicted earlier testimony when she testified that
14 she did not see a signed and dated Form 337 for March 30, 2009.

15 She also testified that the FAA Form 337 had not been
16 submitted to the FAA for approval, and that was indicated as well
17 in Mr. Emge's cover letter.

18 She testified that she reviewed the FAA Order 8130.29A
19 as part of her investigation but did not make it a part of her
20 investigative report. She agreed that the order indicated that
21 after an aircraft is returned to service, the standard
22 airworthiness certificate is effective, and that there is no need
23 for an experimental airworthiness certificate to be issued for an
24 operational flight check.

1 She testified that Exhibit A-5 has a return to service
2 signature dated March 11, 2009, signed by Mr. Emge for the Garmin
3 GNS 530. She testified that this is the type of return to service
4 that was described in FAA Order 8130.29. She testified that was
5 the type of return to service that was described in that order,
6 only if there was no other discrepancies or problems with the
7 aircraft. She agreed that the FAA Bulletin 8300.10, Exhibit 28, is
8 complicated.

9 In response to questions regarding the specific
10 limitations in the special flight permit, she testified that
11 Mr. Carr violated Limitation Number 1 of the special flight permit
12 because he did not make the flight by the most direct and
13 expeditious route from Washington County, Pennsylvania to Punta
14 Gorda, Florida. However, she also testified that Mr. Carr
15 violated the special flight permit because he violated Limitation
16 Number 1 because Limitation Number 1 did not authorize testing of
17 the aircraft along the most direct and expeditious route.

18 On redirect, she testified that her conformity
19 inspection identified a number of discrepancies besides the GPS
20 issue. She testified that while Exhibit A-5 had indicated the GPS
21 had been returned to service on March 11, 2009 relative to the GPS
22 for VFR use only, the aircraft had other discrepancies that were
23 yet unresolved and the aircraft in its entirety remained
24 unairworthy. She testified at the time of the issuance of the

1 special flight permit, that there were unresolved discrepancies
2 which rendered the aircraft, again, unairworthy.

3 She again testified that because the aircraft was
4 unairworthy at the time of the issuance of the special flight
5 permit, the standard airworthiness certificate was not effective.
6 She testified that the reason a special flight permit was
7 requested and issued was because the standard airworthiness
8 certificate was not effective because of the unresolved
9 discrepancies in the aircraft which were separate and distinct
10 from the problems with the Garmin GPS.

11 On recross, she was asked about a minimum equipment
12 list. She testified that an aircraft could have discrepancies and
13 still have flown under a standard airworthiness certificate if
14 that minimum equipment list provided for that.

15 That completed Ms. Delewski's testimony.

16 Mr. Joe Allen Brownlee then testified for the
17 Administrator. Mr. Joe Allen Brownlee is a flight test pilot who
18 has worked for the FAA for 27 years. He's been a test pilot for
19 26½ of those years. He has an ATP rating and a commercial rating.
20 He has a single engine land certificate, a multi-engine land
21 certificate. He has type ratings in the Gulfstream II, III, IV
22 and V business jets. He has type rating in de Havilland Dash-8
23 series aircraft, Boeing 737 aircraft and Airbus A320 aircraft. He
24 has a commercial helicopter, and helicopter and gyroplane

1 instrument rating. He also has a glider commercial certificate.

2 He testified he's flown approximately 6,000 hours. He
3 is familiar with the Garmin GPS system device and has done work on
4 the Garmin 530 GPS with WAAS capability.

5 He was qualified as an expert in flight testing and the
6 operation of aircraft in connection with flight testing. He was
7 qualified again over the objection of counsel raised at hearing
8 and relative to the motion *in limine* that was filed prior to the
9 hearing. That motion *in limine* was addressed during the *voir dire*
10 during the hearing, and I, by qualifying Mr. Brownlee as an expert
11 in the areas I've indicated, overruled the motion *in limine*.

12 He testified that he reviewed the special flight permit
13 in this case, the deposition of Mr. Carr, the written transcript
14 of the deposition of Mr. Carr, Ms. Delewski, and he reviewed that
15 FAA Form 337s that were part of this case. He also reviewed FAA
16 documents, rules, orders and advisory circulars that pertain to
17 this case. He also reviewed the FAA Form 337 signed by Mr. Carr,
18 which is at A-8.

19 He testified he reviewed Exhibit A-8, the 337 signed by
20 Mr. Carr. He indicated that based on his review, he saw that the
21 text indicated that N744AT was certified for IFR flight, a
22 previously installed Garmin GNS 530 WAAS system, shown on Form 337
23 dated March 11, 2009. The text of the form indicates that the
24 aircraft was test flown and found to meet the requirements of the

1 IFR en route, terminal and approach navigation per AC 20-138A, and
2 the specific paragraphs listed on that second page of the March
3 30, 2009, Form 337.

4 The form included a flight manual supplement that was
5 undated and indicated that a placard stating GPS limited to VFR
6 use only is to be removed upon FAA approval instructions for
7 continuing airworthiness of this installation, as described in the
8 337 dated March 11, 2009. He testified that because the 337 dated
9 March 30, 2009 indicated that the date the test was flown was
10 March 30, 2009, that flight occurred during the time the aircraft
11 was flying under its special flight permit.

12 Mr. Carr had made a declaration on the form which said
13 that the aircraft was test flown and found to meet the standards
14 and attested to certifying the GPS for IFR accuracy. This was
15 done while the aircraft was under a special flight permit and the
16 standard airworthiness certificate was not valid and/or was not
17 effective.

18 Mr. Brownlee therefore testified that Mr. Carr did not
19 comply with the terms of the special flight permit and did not fly
20 within the limitations noted in that special flight permit.

21 Mr. Brownlee testified that the special flight permit
22 was clear and that it was allowing for flight from Point A to
23 Point B for the purpose of repositioning the flight. He testified
24 that Mr. Carr did not comply with the special flight permit

1 because he test flew the aircraft. He pulled circuit breakers and
2 evaluated the effects. In doing so, that constitutes a flight
3 test in his expert opinion as a test pilot.

4 He testified he understood that Mr. Carr had proposed an
5 alternative explanation in his deposition, which he indicated that
6 the March 30 test was only the last part of the testing process
7 and that other testing had occurred over a period of time. He
8 testified that if Mr. Carr had performed the test in good weather
9 with the runway in sight and the LPV approach coupled on the glide
10 path and pulled the circuit breakers, he could have simply
11 continued to land and it would not be a deviation from the special
12 flight permit which required him to fly from Point A to Point B.

13 However, he also testified that because Mr. Carr pulled
14 the circuit breakers and evaluated the system performance during
15 the approach, that constituted a test evaluation. He testified
16 that that test evaluation was a violation of the special flight
17 permit because the special flight permit did not allow for any
18 type of testing when the aircraft was flown by the most direct and
19 expeditious route from Washington County, Pennsylvania to Punta
20 Gorda, Florida.

21 Mr. Brownlee testified relative to each of the
22 paragraphs cited in the March 30, 2009 FAA Form 337 signed by
23 Mr. Carr, which indicated that he, Mr. Carr, performed those
24 specific tests described in the specific paragraphs. Mr. Brownlee

1 testified about each one, but it was not clear if they were beyond
2 the special flight permit, if indeed they had been performed as
3 certified by Mr. Carr on March 30, 2009.

4 He was asked questions that called for a narrative
5 answer, and he basically responded a number of times that he did
6 not know the answer to the questions that had been asked.

7 On cross-examination, he was asked to review the
8 FlightAware data relative to the flight in issue in this case. He
9 testified that when FlightAware stopped tracking, the aircraft
10 could have performed a 360-degree turn. He testified he was not
11 familiar with how FlightAware tracks aircraft and thus did not
12 know if the flight from Washington County, Pennsylvania to Punta
13 Gorda, Florida took 2 hours and 31 minutes. When shown the flight
14 log, he agreed that a flight time of 2 hours and 42 minutes was
15 indicated for the flight, leaving 11 minutes unaccounted for in
16 the flight time. Mr. Brownlee admitted that he didn't know what
17 Mr. Carr did during the 11-minute time lapse.

18 In response to my questions, Mr. Brownlee testified that
19 if Mr. Carr had indeed performed all of the tests indicated on the
20 FAA Form 337 over a period of time and finished the testing on the
21 flight of March 30, 2009, he stated there would be some
22 documentation that the tests were performed.

23 He also testified that even if Mr. Carr had performed
24 the test flights on March 30, 2009 under VFR conditions, it would

1 still be a violation of the special flight permit, again because
2 the special flight permit did not allow for any type of testing
3 along the most expeditious and direct route from Point A, being
4 Washington County, Pennsylvania, to Punta Gorda, Florida, being
5 Point B.

6 After his testimony, the Administrator rested his case.

7 The Respondent had initially planned to testify on his
8 own behalf and call two expert witnesses; however, Mr. Carr was
9 the only witness who testified in his case in chief.

10 Mr. Wayne Allen Carr owns a 135 air taxi company
11 specializing in medical transport. The company is called Air Trek
12 and has been in business for 35 years. His brother, Lester, is
13 the director of maintenance and another brother by the name of
14 Dana is the director of operations.

15 Mr. Carr serves as the president and chief pilot of the
16 company. He also has served in the past as the director of
17 maintenance. He has a check airman authority for the Westwind
18 aircraft, Citation and twin engine Cessna aircraft. After high
19 school, he was in the military, obtained a private and commercial
20 flight instructor rating while he was in the service. Once he
21 left the service, he became a flight instructor for a flight
22 school and ended up owning the company where he worked. He became
23 a designated FAA flight examiner while he was employed at the
24 flight school.

1 Mr. Carr's company grew and expanded and he was
2 successful in that expansion and had the authority for jet
3 aircraft to fly in Europe, fly to Europe, to Australia. He stated
4 that the company still has authority to fly the aircraft owned by
5 his company into Cuba and into deep South America.

6 Mr. Carr is an ATP pilot. He has a single and multi-
7 engine certificate. He has a multi-engine land and sea
8 certificate. He holds ratings, as I said, in the Westwind and
9 Citation which are owned by his company and is type rated in the
10 DC-4. He also has a single engine sea commercial rating, a glider
11 and helicopter rating certificate as well. He testified that he
12 is an instructor in those specific aircraft. He also stated that
13 he has an A&P certificate with inspection authority, the
14 inspection authority which he obtained 3 years ago.

15 He testified he was awarded a safe pilot award from the
16 National Aviation Business Association. He received a 30-year
17 maintenance safety award from the National Aviation Business
18 Association and received a flight safety award from the FAA. He
19 has 19,000 hours of flight time; 6,000 of that flight time is in
20 Cessna Citations.

21 He testified that he vehemently disagreed with the
22 position of the Administrator that he violated Section 91.9(a) in
23 that he failed to comply with the limitations of the special
24 flight permit that was issued on March 30, 2009.

1 He testified that the FAA position is flawed, and he
2 referenced AC 20-138A. He testified that there are specifically
3 three approval vehicles for the purpose of certification of the
4 installation of Garmin GPS in aircraft specifically in this case.
5 The first is a major change in type design which requires that a
6 supplemental type certificate be obtained. The second is a major
7 alteration via the field approval process, which involves the FAA
8 Form 337. And the third is a minor alteration that is noted in
9 the aircraft logbooks.

10 He testified that an airplane installation performance
11 test in paragraph 22 and 23 of AC 20-138 must be successfully
12 completed on any type of installation using any type of approval
13 vehicle. He testified that the GPS equipment cannot be used for
14 flight under instrument flight rules until the flight check has
15 been made and accomplished during a time which the GPS is
16 placarded for VFR use only.

17 He testified the problem with the FAA's case is that
18 they're trying to hold him to a standard of a major type design
19 change when he was not using that approval vehicle. He was using
20 the FAA Form 337 vehicle to certify the GPS system in the aircraft
21 in this case.

22 He clarified upon further questioning by his counsel,
23 that Nebo Avionics was the applicant for the FAA Form 337 vehicle
24 issued in the case to certify the Garmin 530 for instrument flight

1 rule use. He testified that Nebo Avionics prepared that FAA Form
2 337 in conjunction with the FAA. It was not his decision to
3 prepare the FAA Form 337 and he did not request that it be
4 prepared.

5 He testified that Exhibit A-5 was the original field
6 approval by Nebo of the GPS system that was made in conjunction
7 with the approval data from the FAA. He testified that Exhibit
8 A-5 was considered a return to service for the installation of the
9 Garmin GNS 530 WAAS system. A-5 is the field approval that was
10 dated March 11, 2009.

11 He testified that it was that return to service under
12 which he was operating during the flight of March 30, 2009. He
13 testified that the FAA Form 337 at A-5 comports to the major
14 alteration approval vehicle.

15 He further testified that FAA inspector in this case had
16 testified three times that the installation of the GPS in this
17 case was a major alteration but then changed her testimony to
18 state it was a major design change.

19 He then testified about Section 21.191(b) relative to
20 the requirement of an experimental airworthiness certificate when
21 a major design change is made in an aircraft.

22 Mr. Winton ask me to admit Section 21.191 into evidence
23 as Exhibit R-35 or to take judicial notice of that regulation
24 because the complaint in paragraph 16 mimics the language of the

1 regulation. The Administrator objected saying that it was not
2 applicable to this case because the Administrator withdrew the
3 allegations in reference to 21.191(b). I ruled that because the
4 Administrator had withdrawn the allegations in reference to that
5 section, it would not be admitted into evidence, but certainly I
6 would take judicial notice of that section of the FAA regulations.

7 Mr. Carr testified he had experience in the installation
8 of GPS systems in a number of Part 25 jet aircraft. He testified
9 that the GPS is initially installed using a Form 337 which is
10 submitted and approved by the FAA. The GPS is certified first for
11 VFR use only. Subsequently, another 337 is prepared for the IFR
12 approval of the same GPS after he flight checked the airplane for
13 approval under 91.407.

14 He testified he followed the same procedure for such
15 installation in a number of aircraft. He used the same vehicle,
16 the FAA Form 337, and the same procedure in all of those
17 instances. He testified that that was in accordance with AC 20-
18 138 and was also using the guidance from the FAA Order 8300.10.

19 He then testified about the approval process for several
20 aircraft that required the two-step Form 337 approval process for
21 installation of the Garmin GNS 530. Again, he testified that it's
22 a two-step process. He went into specific detail about a number
23 of flights in which he followed the process and had certified GPS
24 in other aircraft.

1 He testified that an operational flight check is a
2 flight test. The meaning of the word flight test depends on the
3 regulation that governs the flight test. He testified that the
4 Administrator took his words "test flown" from the March 30, 2009
5 FAA Form 337 to somehow misconstrue the Form 337 approval process
6 that he was using and erroneously considered it to be a Part 21
7 major design change requiring a supplemental type certificate. He
8 stated that the FAA alleged he flew the flight in question for an
9 STC approval and that he had done so nefariously.

10 He testified that on every one of the flights he
11 described, where he was certifying the aircraft operation flight
12 checks for IFR flight, he was performing a flight check. He was
13 able to do so because the avionics company that prepared the 337
14 and the controlling FSDO for the avionics company had approved the
15 process.

16 He testified he was flying N744AT on March 30, 2009, in
17 accordance with 91.407(b) which provides that an operational
18 flight check, when required, are performed under the current
19 airworthiness certificate. He testified that the original
20 airworthiness certificate for N744AT was current on March 30, 2009
21 because it had not been suspended, revoked or terminated.

22 When he flew aircraft N744AT on March 30, 2009, he
23 conducted an operational flight check to check the installation
24 and/or operation of FAA-approved data after the GPS installation

1 had been made and returned to service on March 11, 2009.

2 He testified that the Garmin GNS 530 unit in N744AT had
3 been returned to service on March 11, 2009, before the March 30,
4 2009 special flight permit flight. He testified that FAA
5 Inspector Cole approved the data, and that it was returned to
6 service as indicated in Exhibit A-5 and placarded for VFR use
7 only.

8 Mr. Carr testified that when the conformity check was
9 conducted, Inspector Delewski found that the GPS system in N744AT
10 had been improperly installed. He testified that Nebo Avionics
11 had installed the GPS using a supplemental type certificate that
12 did not include or was not applicable to the Cessna 550 as an
13 approved aircraft model under the applicable supplemental type
14 certificate.

15 He testified that subsequent to Inspector Delewski's
16 discovery, Mr. Emge of Nebo Avionics, in conjunction with Mr. Cole
17 from the FAA, coordinated the FAA Form 337 application for the
18 approval of the data for installation of a GPS in N744AT on March
19 11, 2009. He testified that it was field approved by Mr. Emge,
20 and Mr. Emge signed the conformity statement because it did not
21 require him to remove the GPS system. He was only simply required
22 to indicate that the installation conformed to the installation
23 data.

24 He testified that Mr. Emge signed the form indicating

1 that the GPS complied with the approved data. He testified that
2 he believe the GPS was returned to service on March 11, 2009, and
3 he testified that Walter Cole of the FAA approved the data for the
4 GPS on the FAA Form 337.

5 Mr. Carr then testified as to a certification that
6 appears on Exhibit A-8, the FAA Form 337, at issue in this case,
7 dated March 30, 2009. He testified that prior to the aircraft
8 delivery to Aero National and Ms. Delewski for a conformity check,
9 he had flown 10 hours in it prior to perform operations,
10 maintenance checks because he knew it was going to have to have a
11 conformity check.

12 He testified that on January 3, 2009, he did 1.2 hours
13 in the airplane and did the vast majority of the requirements of
14 paragraph 25 of the advisory circular in this case. I understood
15 his testimony to be that he had performed these checks but he did
16 not know he was completing those tests at the time he performed
17 them. When I asked him to repeat the answer, he stated, and I
18 quote, "I did what would be considered the requirements of those
19 although I didn't know I was completing them at the time."

20 When I asked for confirmation as to what he testified
21 to, he said, and I quote, "I knew exactly what I was
22 accomplishing. I knew the flight parameters I had done and let me
23 move on." So he essentially evaded the question.

24 He then testified as to what occurred after Inspector

1 Delewski identified that the GPS in N744AT had been installed in
2 error using the wrong STC and how that issue had been corrected
3 through a 337 dated March 11, 2009.

4 He testified that he brought aircraft N744AT back to
5 Punta Gorda because his previous FAA suspension had been reversed
6 and that his company was pending compliance. He therefore needed
7 the plane back in Florida to show his company met all of the
8 standards for 135 operation. He also decided to bring it back to
9 make repairs and for a conformity inspection by his local Flight
10 Standards District Office for issuance of his 135 certificate.

11 He asked Mr. Pizzuti, the president of Aero National if
12 the aircraft would need a ferry permit to relocate it to Punta
13 Gorda, Florida. Mr. Pizzuti, Mr. Carr testified, told him that it
14 did require a special flight permit. Mr. Carr testified that he
15 asked Mr. Pizzuti to obtain that special flight permit for the
16 trip from Washington County, Pennsylvania to Punta Gorda, Florida.

17 He testified that he reviewed the special flight permit
18 carefully, and saw no limitation that would prevent him, to his
19 knowledge, of completing his operational flight check of the GPS.
20 He testified that he could do it as long as he flew the most
21 direct and expeditious route to Punta Gorda. He testified he
22 complied explicitly with each and every limitation in the special
23 flight permit.

24 He testified that he approached the end of flight on

1 March 30, 2009. He terminated IFR flight and continued under
2 visual flight rules. As he was en route, he cycled the GPS off to
3 check the performance integrity of the unit. He testified that
4 that was in compliance with AC 20-138A and paragraph 5 of FAA
5 Order 8300.10. He testified that failing the GPS was not an
6 evaluation of power failure, as Mr. Brownlee testified, but it was
7 a maintenance check under 91.407.

8 He turned the GPS back on and coupled it with the
9 approach and failed the circuit breaker again because the
10 maintenance check has to be done in various modes. He then let
11 the GPS off and navigated using visual flight rules.

12 When asked if he confirmed the performance integrity of
13 the GPS unit both for the en route portion and for the LPV
14 approach portion of the flight, he testified he had completed both
15 of them. Those performance integrity tests were the final
16 portions of the AC 20-138A which needed to be completed for a
17 formal certification of the GPS for IFR use, he testified. He
18 testified the check met the requirements for IFR certification.

19 He then signed off on the FAA Form 337 and took it to
20 Mr. Emge at Nebo Aviation. He testified that the Form 337 was
21 subsequently denied and he received a letter of investigation
22 alleging he had flown outside of his certification, as he put it.
23 He did not know what the letter of investigation was about, and
24 then he asked Mr. Winton to represent him.

1 He testified that the FAA then set a date for his
2 deposition, and he testified that he testified at the deposition
3 and that his deposition was accurate and complete.

4 He testified that he was in compliance with the special
5 flight permit, specifically Limitation Number 1. He did not
6 violate the special flight permit as Mr. Brownlee testified
7 because Mr. Brownlee was under the misconception as to the type of
8 operation approval vehicle that Mr. Carr was using. The
9 Administrator thought that Mr. Carr should have been using a major
10 design change vehicle which required a supplemental type
11 certificate. The use of the word "flight test flown" on the
12 document he signed confused the FAA.

13 Mr. Carr testified he believed he could perform the
14 operational flight checks in the GPS 530 WAAS unit during the
15 flight when he was under a special flight permit because the four
16 corners of the special flight permit did not prohibit him
17 performing any type of testing.

18 He testified he believed 8900 to mean that if a
19 regulation doesn't say you can't do something, then you can. He
20 then went on to say that 8900 states that a regulation should be
21 interpreted precisely as written.

22 In response to questions by his counsel, which were
23 leading in nature, he testified that he relied on procedures that
24 he was instructed to follow from Nebo Aviation and other repair

1 stations concerning the appropriate vehicle to use to obtain IFR
2 approval for GPS units for Part 25 aircraft.

3 In response to other questions, leading in nature,
4 regarding his reliance, he testified he also relied on FAA policy
5 procedures that had been published and that he had followed for
6 years in certifying GPS units for IFR approval.

7 He testified that he was unfamiliar with all of these
8 procedures from a technical standpoint before the case was
9 initiated. He testified that he had to educate himself and is
10 now, at the time of the hearing, very familiar with the rules and
11 regulations.

12 He testified that he reasonably relied on the FAA
13 policy, and he relied on procedures used by certified repair
14 stations, various avionics stations, and various FAA FSDOs to seek
15 and grant approval of GPS systems in Part 25 aircraft.

16 On cross-examination, he admitted that he was a Nebo
17 Aviation repair station representative and was a designee to
18 perform the flight check at issue in this case which was done on
19 March 30, 2009. He was asked if on the third page of A-8, the
20 second page of the FAA Form 337 he signed and dated was certifying
21 the requirements in paragraph 25 of AC 20-138. He testified he
22 was not certifying that he had performed all of those sections
23 listed, that he only performed the flight portion. He testified
24 that he believed Mr. Emge may have signed the conformity and done

1 some of the other items through ground testing.

2 When asked how the form explains or differentiates
3 between what he performed as to AC 20-138A and what Mr. Emge
4 performed, Mr. Carr testified he could not speak to that, as to
5 how the form differentiated what he had performed and what he
6 represented Mr. Emge had performed.

7 He testified he had been a mechanic for over 30 years
8 and was an A&P in 2009. He testified he did not question the
9 authenticity of Exhibit A-8, the second and third pages of FAA
10 Form 337 he signed. When he was asked to explain why he signed
11 the Form 337 in this case, when in previous Form 337s he had
12 signed it after the FAA had filled out the data box, he testified
13 it was an FAA mistake and a mistake made by Mr. Emge. He
14 testified he signed the FAA Form 337 because he was told to sign
15 it by Mr. Emge.

16 When asked to confirm that his test flying information
17 on the form would be submitted to the FAA to get approval for the
18 Form 337, Mr. Carr indicated he could not speak to any of that but
19 that when Mr. Emge would sign the form, it would be to show
20 conformity for all of the things that he and Mr. Carr would have
21 completed. He agreed that Mr. Emge's signature did not appear in
22 Block 8 of Exhibit A-8.

23 He testified that he had been in aviation for 35 years
24 and again an A&P mechanic for 30 years and signed other Form 337s

1 since as far back as 1997. When asked if he had, in fact, signed
2 the Form 337 before 1997, he responded he assumed so, but he had
3 no recollection of anything specific. He agreed that Block 8 did
4 not change in Form 337 from 1997 to March 30, 2009, when he signed
5 the 337 in issue.

6 When counsel for the Administrator asked why Mr. Winton
7 was referring to him as Captain Carr and asked what he had done or
8 what he accomplished to warrant the honorific title of Captain,
9 Mr. Carr testified he could not speak to that. When asked how
10 much time it would cost to operate a Cessna 550 per hour of
11 flight, Mr. Carr responded he didn't know.

12 When asked if he ever applied for a special flight
13 permit in his career, he responded that he had flown several in
14 his career but had no recollection of applying for a special
15 flight permit. In response to whether he had ever been involved
16 in the process of requesting a special flight permit, including
17 telephone calls, faxes, e-mails, or any other way, he replied
18 "possibly".

19 When asked how often he had flown under a special flight
20 permit, he responded "probably two, less than five; I really can't
21 say". He testified that he could not say how often he had flown
22 under a special flight permit before March 30, 2009. He testified
23 that he had no recollection when he did or didn't fly under a
24 special flight permit. He only knew that he had. When asked if

1 he had flown flights under special flight permits after March 30,
2 2009, he testified he could not speak to that either.

3 He was asked about his flight log from his company and
4 testified that they were true and accurate copies to the best of
5 his knowledge. He acknowledged that the flight logs recorded only
6 the flights performed in his aircraft.

7 When he was asked if the flight logs for N744AT
8 documented any of the flight tests he claimed that he performed,
9 as documented on the second page of the 337 dated March 30, 2009,
10 he testified that he had no recordation of that at all, that no
11 recordation of those tests was required as the FAA Form 337 is a
12 permanent record.

13 When asked again about his signature on A-8, he
14 testified that he had certified that he test flew the aircraft and
15 it met the requirements for IFR en route, terminal and approach
16 navigation, and then skipped all of the other citations on the
17 page and then stated he performed number 25. He again testified
18 that Mr. Emge would have had to certify those other sections and
19 again Mr. Emge's signature did not appear on the form as to the
20 performance of any tests listed on page 2 of the 337.

21 He was asked if he could recall a business or legal
22 agreement he entered into or contract on his own or on behalf of
23 his company, and he said, no. When pressed further, he testified
24 that he had no current recollection without having a contract

1 before him. He testified he could not specifically recall any
2 specific contract or agreement he had entered into.

3 When asked if he had ever bought a house, he said, yes,
4 and as to whether or not he signed the contract, he testified he
5 assumed so. He gave similar responses as to whether he had
6 subsequently bought a car and signed the contract for that. He
7 testified he usually reads contracts, but he has signed some
8 things that he has not read, but he could not recall what those
9 documents were.

10 As to the special flight permit in this case, he
11 testified he read it carefully and he knew that there were
12 discrepancies in the aircraft because a list was attached to the
13 special flight permit.

14 He testified that in all of the other instances, where
15 he was involved in the installation and certification of GPS
16 units, that none of them involved special flight permits.

17 In response to my questions, I asked him what a special
18 flight permit means to him as an A&P mechanic, and he testified he
19 thought it was similar to a minimum equipment list, but again he
20 testified he was not an expert relative to special flight permits.
21 When I asked him when a principal inspection officer for the FAA
22 decides that an aircraft is unairworthy and can only be flown from
23 Point A to Point B, that if that determination was like a minimum
24 equipment list, he testified that that was his understanding.

1 He testified that the only thing he actually performed,
2 again, listed on the FAA Form 337 dated March 30, 2009, was in
3 23(a) and the other section he referred to in his earlier
4 testimony.

5 When I asked him based on the fact that he had indicated
6 that he had relied on Mr. Emge and had signed the FAA Form 337
7 based on Mr. Emge's instructions, why he did not call Mr. Emge to
8 corroborate his testimony, Mr. Carr's testimony, or support his
9 testimony that he relied upon Mr. Emge and the FAA, Mr. Carr
10 testified that he could not speak to that.

11 That concluded the testimony of Mr. Carr.

12 Having discussed the testimony of the witnesses, I will
13 now discuss how that testimony relates to the issues I must
14 decide.

15 I will first address the issue of whether Respondent
16 violated 14 C.F.R. Section 91.7(a) which provides that no person
17 may operate a civil aircraft unless it is in an airworthy
18 condition.

19 The facts indicate in this case that Mr. Carr wanted to
20 lease his company's aircraft N744AT to Aero National for use as an
21 air ambulance. Respondent flew the aircraft to Washington,
22 Pennsylvania where Aero National was located in order for Aero
23 National to be able to add aircraft N744AT to its carrier
24 operation certificate. The FAA would have to perform a conformity

1 inspection.

2 The inspection was conducted by Inspector Delewski who
3 is the principal maintenance inspector for Aero National.
4 Inspector Delewski's conformity inspection revealed 50 to 75
5 issues with the aircraft that needed to be addressed. Those
6 issues were described as discrepancies. The aircraft was kept in
7 the Aero National hangar from February 11 to March 30, 2009.

8 One of the conformity issues she identified was problems
9 with the aircraft's seat tracks which were too complicated to be
10 repaired at Aero National, and there was a request by Aero
11 National to relocate the aircraft to Punta Gorda, Florida because
12 Mr. Carr's company, Air Trek, would be better equipped to handle
13 the complex repair that was required.

14 Inspector Delewski also identified specific problems
15 with the installation of the Garmin GNS 530 GPS in N744AT.
16 Exhibit A-2 is the original FAA Form 337 which documents the
17 installation of the GNS 530 WAAS GPS into aircraft N744AT using a
18 supplemental type certificate number SA01933LA which did not cover
19 the Part 25 aircraft in this case. The supplement type
20 certificate is only applicable to Part 23 aircraft as Inspector
21 Delewski testified. Exhibit A-3 is a list of the models of
22 aircraft on which the supplemental type certificate can be
23 utilized. N744AT is not included on that list because it is a
24 Part 25 aircraft.

1 Inspector Delewski testified that the properly installed
2 GPS was interfaced with the aircraft autopilot. The original FAA
3 Form 337 indicated that the aircraft had a WAAS installation done
4 in accordance with the invalid STC, supplemental type certificate.
5 She testified that she was familiar with that supplemental type
6 certificate from her experience with the WAAS installation in Part
7 29 helicopters and the problems created with vertical coupling and
8 guidance.

9 Inspector Delewski informed Mr. Pizzuti of the problems
10 that were identified in the conformity inspection and specifically
11 had also informed him of the problems with the installation of the
12 GPS in aircraft N744AT.

13 Inspector Delewski then contacted the FAA principal
14 avionics inspector for Nebo Aviation, the repair station which
15 performed the installation of the GPS in the aircraft, and
16 informed them that Nebo was improperly performing supplemental
17 type certificate installations in Part 25 aircraft.

18 Ms. Delewski testified that on March 11, 2009, after her
19 final discussed with the principal avionics inspector in Florida,
20 she received a fax, Form 337, from the principal avionics
21 inspector with a field approval for the GPS which limited it to
22 VFR use only.

23 Inspector Delewski testified that despite the receipt of
24 the March 11, 2009 Form 337, she still believed that the GPS

1 installation needed to be corrected because the GPS was interfaced
2 with the autopilot and could create problems with vertical
3 coupling and guidance. That interface was accomplished through
4 the use of an invalid or improper STC.

5 She also testified that the March 11, 2009, Form 337
6 which was created in Florida referenced Part 25 certifications and
7 no evaluation had been performed on the GPS which was in
8 Washington, Pennsylvania and had been there for quite some time.
9 She testified that any GPS installation in a Part 25 aircraft had
10 to be evaluated for function, installation, equipment systems,
11 electrical wiring, interfaces, interfaces between the GPS and the
12 autopilot and navigation and communication systems. As I stated,
13 her opinion was that even after the March 11, 2009 Form 337, the
14 GPS installation still needed to be corrected.

15 She testified that she was asked for a ferry permit or
16 special flight permit by Aero National through Mr. Pizzuti.
17 Mr. Pizzuti met with her and helped her prepare the ferry permit
18 or special flight permit.

19 She testified she prepared a letter documenting all of
20 the discrepancies that were found during the conformity inspection
21 and attached it to the special flight permit. The letter was
22 admitted into evidence as Exhibit A-1 and identifies numerous
23 discrepancies in the cockpit, cabin and fuselage. It also lists
24 the issues of no documentation of compliance with possibly six

1 airworthiness directives.

2 The issue of installation of the GNS 530 GPS is also
3 identified on the third page of A-1 and states that specifically
4 the installation of the GNS 530 may need to be evaluated to ensure
5 appropriate installation.

6 FAA Form 337 dated May 5th indicates installation of the
7 GNS 530 TAWS WAAS in accordance with STC SA01933LA. A review of
8 the STC database reveals that the STC SA01933LA is not authorized
9 for installation in the Citation CE550, and that is in this case
10 aircraft N744AT.

11 The amended FAA Form 337 dated March 11, 2009, submitted
12 by Nebo Aviation Services, the original installer, to correct the
13 installation appears to only limit the utilization of the GNS 530
14 to VFR use only, but it does not take into account the interface
15 performed by the repair station in accordance with STC SA01933LA.
16 That may be completely inappropriate for an aircraft of this
17 model.

18 Inspector Delewski testified that based on her
19 inspection and the discrepancies she noted, she determined that it
20 affected the airworthiness of the aircraft. She testified that
21 based on her conformity inspection of the aircraft, the aircraft
22 did not meet its type design and was therefore not in compliance
23 with 14 C.F.R. Part 43 and 91, and the aircraft was therefore
24 unairworthy. She testified that the original airworthiness

1 certificate for N744AT was no longer effective until the
2 discrepancies she identified in the conformity inspection had been
3 corrected and the aircraft had been returned to service.

4 She testified that she therefore issued the special
5 flight permit for the flight from Washington, Pennsylvania to
6 Punta Gorda, Florida. Mr. Carr testified that he brought the
7 aircraft back to Punta Gorda, Florida, because his previous FAA
8 suspension had been reversed, as has previously been indicated,
9 and he therefore needed the plane back in Florida to show that his
10 company met all of the standards for a 135 operation.

11 As noted, Mr. Carr asked Mr. Pizzuti of Aero National if
12 the aircraft would need a ferry permit, and Mr. Pizzuti indicated
13 that it would. Mr. Carr testified that he asked Mr. Pizzuti to
14 obtain the ferry permit, and he testified that he reviewed the
15 special flight permit very carefully before flying the aircraft to
16 Florida.

17 Mr. Carr did not testify that he disagreed with
18 Inspector Delewski's determination that the aircraft was
19 unairworthy based on the findings of her conformity inspection.
20 He did not challenge the determination that, when he asked if the
21 special flight permit was necessary, and Mr. Pizzuti told him that
22 it was necessary.

23 Mr. Carr has presented no testimony or evidence at
24 hearing to argue that all of the discrepancies noted in the letter

1 attached to the special flight permit, which he indicated he read,
2 were incorrect or did not render the aircraft unairworthy. If he
3 believed, as he has testified that he believed, that the aircraft
4 was still airworthy under its original airworthiness certificate,
5 there would be no reason for him to have Mr. Pizzuti obtain a
6 special flight permit for the transfer of his company's aircraft
7 from Pennsylvania to Punta Gorda.

8 Mr. Carr testified he vehemently disagreed with the
9 position that he violated Section 91.9(a) in that he failed to
10 comply with the limitations of the special flight permit that was
11 issued on March 30, 2009. He did not testify that he disagreed to
12 any degree with Inspector Delewski's determination that N744AT was
13 unairworthy. Instead, Mr. Carr testified that he believed the
14 aircraft was airworthy based on the fact that the original
15 certificate of airworthiness for N744AT was still in existence.
16 It had not been revoked. It had not been suspended. It had not
17 been destroyed.

18 As to the significance of the special flight permit
19 during his March 30th flight from Pennsylvania to Florida, he
20 testified he thought the special flight permit was the equivalent
21 of a minimum equipment list. He testified that he believed the
22 original airworthiness certificate took precedence or superseded
23 the special flight permit. He provided no evidence to support
24 that position.

1 It was only in the unsolicited proposed findings of
2 facts and conclusions of law Respondent provided in which he
3 provides what he believes supports Respondent's theory in the form
4 of a letter to the FAA chief counsel for an opinion. That letter
5 has not been admitted into evidence, and Respondent was not
6 questioned or cross-examined about it. Even if it were part of
7 the record, I would not find that it supported Mr. Carr's opinion
8 that the original airworthiness certificate supersedes the special
9 flight permit. If that was the case, there would be no need for a
10 special flight permit.

11 Respondent also argues that he believes that the Garmin
12 530 GPS was placed back in service on March 11, 2009 through the
13 FAA Form 337 and therefore the aircraft was airworthy. However,
14 even if I were to credit his testimony as to whether the Garmin
15 530 GPS was returned to service, that does not correct all of the
16 discrepancies noted in Inspector Delewski's letter which was
17 attached to the special flight permit, which he testified he read
18 and he read the special flight permit carefully.

19 Respondent in his unsolicited findings of fact and
20 conclusions of law uses an excerpt from Inspector Delewski's
21 testimony from the second remand hearing in this case to argue
22 that the aircraft was airworthy. That excerpt of the testimony is
23 not a part of the record in the hearing before me. It was not
24 offered into evidence, and Inspector Delewski was never asked such

1 questions during cross-examination of her. I find that such
2 edited previous testimony outside of the record to be unreliable
3 without seeing all of the testimony, and it is suspect at best.

4 No testimony was solicited from Mr. Carr to rebut
5 Inspector Delewski's determination that N744AT was unairworthy
6 after her conformity inspection. Respondent did not call any
7 expert witnesses to rebut Inspector Delewski's testimony even
8 though two experts were identified and sat at the hearing during
9 the first day.

10 However, in closing arguments, Respondent argues that
11 the Administrator has not sustained his burden of proving that
12 aircraft N744AT was unairworthy when the special flight permit was
13 issued. He cites Board authority to argue that in order to prove
14 that an aircraft does not meet its type design, the record must
15 contain documents with which the Administrator maintains the
16 Respondent did not comply. Such documents may include the type
17 certificate, a type certificate data sheet, applicable
18 airworthiness directive or STCs, supplementary type certificates.
19 He cites Administrator v. Smith, NTSB EA-5646, decided 2013.

20 Inspector Delewski testified that the Garmin 530 GPS was
21 installed using a wrong supplemental type certificate which was to
22 be used in a Part 23 aircraft and not Part 25 aircraft. She
23 specifically identified the incorrect STC by number. Certainly, a
24 Part 25 aircraft containing an incorrectly installed GPS using an

1 incorrect, invalid and inapplicable supplemental type certificate
2 limited to Part 23 aircraft could not be found to meet its type
3 certificate. That type of GPS installation does not belong in the
4 aircraft in this case.

5 Furthermore, she testified that the March 11, 2009 FAA
6 Form 337 did not correct the faulty installation because the GPS
7 was still interfaced with the autopilot and other systems.

8 Inspector Delewski's letter, which is attached to the
9 special flight permit, lists multiple discrepancies and
10 specifically indicates that she specifically reviewed the
11 airworthiness directive compliance record for N744AT and could not
12 locate the right-hand engine airworthiness directive compliance
13 record. She also cited airworthiness directives which she
14 indicated may or may not be applicable to N744AT which are not
15 documented as complied with in the compliance records. She
16 indicated that it is imperative that the airworthiness directives
17 as well as any other appliance installation be reviewed for
18 applicability and appropriate action be taken prior to further
19 flight.

20 Respondent has provided no testimony during his time on
21 the witness stand to challenge Inspector Delewski's finding that
22 based on her inspection, N744AT was unairworthy nor did he provide
23 testimony from the two experts he identified as witnesses to rebut
24 Ms. Delewski's testimony.

1 I found Inspector Delewski's testimony to be credible.
2 Her testimony on this issue is unrebutted by witness testimony or
3 documentary evidence. She is a principal maintenance inspector
4 and was qualified as an expert as a principal investigator for air
5 ambulance operation, and she was also qualified as an aviation
6 inspector for airworthiness with an expertise in avionics.

7 On the other hand, Mr. Carr testified that he has been
8 an A&P mechanic for over 30 years. He has been the director of
9 maintenance for his company as well as an accomplished ATP pilot.
10 He started in aviation as a flight instructor, bought the company
11 he worked for, and it appears he has built a successful and
12 profitable company or companies.

13 I found his testimony on cross-examination,
14 unfortunately, to be evasive, nonresponsive and, quite frankly,
15 there were a great number of important facts that he simply stated
16 he could not speak to. Unfortunately, I do not find his
17 understanding of the significance of a special flight permit as
18 being akin to a minimum equipment list to be credible. He
19 provides no support or corroboration to support that view, nor do
20 I find credible his uncorroborated view that an original
21 airworthiness certificate supersedes a special flight permit. If
22 that indeed were the case, why would Mr. Carr have asked
23 Mr. Pizzuti for a special flight permit? It would not have been
24 necessary if indeed Mr. Carr's theory that the original

1 airworthiness certificate supersedes a special flight permit.

2 Based on the evidence before me, I find that the
3 Administrator has proven by a preponderance of reliable, credible
4 evidence that Mr. Carr violated Section 91.7(a). Again, I find
5 that based on the unrebutted testimony of Ms. Delewski, her
6 reference to the STC that was used to improperly install the GPS
7 in this case and also the identification of airworthiness
8 directives that do not appear to have been complied with or there
9 is no record of compliance with those airworthiness directives.

10 I now turn to the issue of whether Mr. Carr violated
11 Section 91.9(a). That section states that except as provided in
12 paragraph (d) of this section, no person may operate a civil
13 aircraft without complying with the operating limitations
14 specified in the approved airplane or rotorcraft flight manual,
15 markings and placards, or as otherwise prescribed by the
16 certificating authority of the country of registry.

17 The issue before me is whether Mr. Carr operated
18 aircraft N744AT without complying with the operating limitations
19 specified in the special flight permit issued on March 30, 2009.

20 The FAA argues that the case is simple. As previously
21 noted, the aircraft N744AT was found unairworthy due to
22 discrepancies identified during the conformity inspection by
23 Inspector Delewski which disclosed 60 to 70 discrepancies,
24 including discrepancies relative to the installation of the Garmin

1 GNS 530 GPS system.

2 As previously noted, Mr. Carr asked Mr. Pizzuti,
3 president of Aero National, to obtain a special flight permit to
4 transport N744AT from Washington County, Pennsylvania to Punta
5 Gorda, Florida. Mr. Pizzuti requested the special flight permit
6 and met and worked with Inspector Delewski to prepare the special
7 flight permit. The special flight permit was issued on March 30,
8 2009 and is one of Respondent's exhibits, R-22.

9 At the top of the special flight permit there is a
10 statement that reads: "This special airworthiness certificate is
11 issued under the authority of Title 49 U.S.C. and Title 14 C.F.R.
12 Chapter 1. This airworthiness certificate authorizes the flight
13 specified for the following aircraft," and then it subsequently
14 identifies N744AT, "for the purpose of," and then in capital
15 letters indicates, "MAINTENANCE."

16 The special flight permit was for the specific and
17 exclusive purpose of flying the aircraft from Washington County,
18 Pennsylvania to Punta Gorda, Florida, to correct maintenance
19 discrepancies.

20 Inspector Delewski testified that in order to approve
21 the special flight permit, a mechanic with an airframe and
22 powerplant rating must inspect the aircraft and ensure that the
23 aircraft is indeed safe to fly.

24 The discrepancies which she identified, which were the

1 basis for the special flight permit, had not been corrected or
2 approved when an A&P mechanic inspected the aircraft and
3 determined that it was safe for flight. She testified that the
4 aircraft remained unairworthy and would remain unairworthy until
5 all of the discrepancies are corrected and the aircraft is
6 returned to service.

7 Inspector Delewski testified that the special flight
8 permit provided the flight be made by the most direct and
9 expeditious route consistent with the aircraft operating
10 limitations and general operating rules of Federal Aviation
11 Regulations Part 91 and the additional limitations therein. She
12 testified that because the aircraft was not airworthy and only
13 determined safe for the specific direct flight, the flight had to
14 be made by the most expeditious and direct route from Washington
15 County, Pennsylvania to Punta Gorda, Florida to have the
16 maintenance performed.

17 The application for a special flight permit and its
18 issuance are made under 47 C.F.R. 21.197 and 21.199. Section
19 21.197(a)(1) provides that a special flight permit may be issued
20 for an aircraft that may not currently meet applicable
21 airworthiness regulations but is capable of safe flight for
22 (1) flying the aircraft to a base where repairs, alterations or
23 maintenance are to be performed or to a point of storage.

24 Inspector Delewski testified that she sent a letter of

1 investigation to Nebo Aviation, the repair station that initially
2 installed the Garmin GNS 530 because it was improperly installed
3 by Nebo using STC SA01933LA. She testified that she subsequently
4 received a letter in response from Nebo which indicated that the
5 aircraft N744AT was test flown during the special flight permit
6 from Washington to Punta Gorda, Florida. The letter is at Exhibit
7 A-8, which indicates that on March 30, 2009, N744AT flew from
8 Pennsylvania direct to Port Gorda, Florida, and made a LPV coupled
9 approach to Runway 22. The FAA Form 337 for certification for IFR
10 had been filled out, but at that time it and the FMS had not been
11 submitted for approval.

12 On page 2 of the Form 337, there's a paragraph which
13 I've already read, which indicates that Mr. Carr had certified
14 that certain specific tests were performed. It specifically
15 states: "Certified for IFR flight, a previously installed Garmin
16 GNS 530 W/T navigation system shown on FAA Form 337 dated March
17 11, 2009. The aircraft was test flown and found to meet the
18 requirements of IFR en route, terminal and approach navigation per
19 AC 20-138," and describes the paragraphs that I've already
20 discussed and described in this decision. The repair station
21 representative line was signed by Mr. Carr, and he included his
22 ATP and A&P certificate numbers, and he dated that March 30, '09.

23 The Administrator alleges that the Respondent exceeded
24 the specific limitations of the special flight permit because it

1 did not allow for flight testing for certification of the Garmin
2 GNS 530 GPS to meet the requirements for IFR en route, terminal
3 and approach navigation. The Administrator argues that the
4 special flight permit did not allow for any type of testing but
5 only allowed for flight by the most direct and expeditious route
6 from Pennsylvania to Florida.

7 Inspector Delewski testified that the only date which
8 the flight testing could have been done was March 30th because
9 prior to February 11, 2009, the installation of the GPS was
10 considered to have been properly performed in accordance with the
11 invalid supplemental type certificate, and there would have been
12 no reason to test fly the aircraft prior to February 11, 2009.

13 Inspector Delewski also testified that even if the
14 flight testing could have been considered an operational check
15 rather than a flight test under 14 C.F.R. 91.407(b), the aircraft
16 would have had to have been in an airworthy condition prior to
17 performing any testing or operational checks. She testified that
18 Section 91.407 provides that no person may operate an aircraft
19 that has been maintained, operated or rebuilt or altered unless it
20 has been returned to service and the appropriate maintenance
21 records have been made.

22 At the time of the March 30, 2009 special flight permit
23 flight, the aircraft was unairworthy and had not been returned to
24 service. She testified that if she had been told during the

1 discussion of the flight permit with Mr. Pizzuti that there would
2 be testing to certify for IFR flight of the GPS system in the
3 aircraft in this case, she would not have authorized the special
4 flight permit.

5 If she would have been told that the aircraft would be
6 test flown as represented in A-8 and signed by Mr. Carr, she would
7 not have issued the special flight permit. She testified that she
8 would have denied the special flight permit if she had been told
9 the aircraft would be flown to meet the requirements of IFR en
10 route, terminal and approach navigation per AC 20-138A.

11 Inspector Delewski also testified that during Mr. Carr's
12 deposition, he indicated that he had only certified for IFR
13 accuracy on the March 30, 2009 FAA Form 337 and did not attest to
14 any of the other enumerated sections listed on page 2 of that
15 form.

16 Again, Mr. Carr had also indicated that he had performed
17 test flying described on the FAA Form 337 over a period of 9
18 months, spanning from the initial installation of the GPS on May
19 5, 2008 to March 30, 2009. He testified in his deposition that he
20 looked over Advisory Circular 20-138 and went over it in his mind
21 and stated that he believed he had complied during that span of
22 time with all of the requirements of that advisory circular.
23 Therefore, he signed the 337 attesting to the performance of those
24 tests based on his recollection of what he had performed during

1 past flights.

2 She testified that neither she nor FAA were provided any
3 evidence or information which documented or substantiated the
4 flight testing Mr. Carr claimed that he performed from May 5, 2008
5 to March 30, 2009. Inspector Delewski testified that there would
6 have been no reason to conduct flight tests prior to February 11,
7 2009 because, again, before that time it was believed that the GPS
8 had been properly installed.

9 Respondent testified, she said, that he only had a
10 couple of things left to do in order to certify the GPS for IFR.
11 One of them was to pull circuit breakers during his LPV coupled
12 approach to Punta Gorda.

13 She also testified that Mr. Carr was representing that
14 they did not really do flight testing but rather an operational
15 flight check of the GPS installation recorded on the March 11,
16 2009 FAA Form 337 which had been placarded for GPS for VFR only.
17 However, she testified that in order to perform an operational
18 flight check, the aircraft has to be airworthy. At the time of
19 the March 30, 2009 flight, the aircraft was on a special flight
20 permit because it was unairworthy and had not been returned to
21 service as required before the operational flight checks can be
22 performed.

23 Inspector Delewski testified that the FlightAware
24 information indicated that the Respondent had flown the most

1 direct and expeditious route from Washington County, Pennsylvania
2 to Punta Gorda, Florida. However, she went on to testify in her
3 deposition and at hearing, that Mr. Carr violated the special
4 flight permit because the special flight permit did not allow
5 flight testing to be conducted during that most direct and
6 expeditious flight from Pennsylvania to Florida. She testified
7 that the March 30, 2009 FAA Form 337 did not document that
8 Mr. Carr had only performed an operational flight check of the GPS
9 limited to VFR use only.

10 She testified that based on her investigation, she
11 concluded that Mr. Carr violated Section 91.9(a) as well as
12 91.7(a) and 93.13(a).

13 Joe Allen Brownlee testified as a FAA test pilot and was
14 qualified as an expert in aircraft in connection with flight
15 testing. As noted, he testified that Respondent's 3/30/2009
16 flight was under a special flight permit which was clear in his
17 opinion that the flight was for the specific purpose of flying the
18 aircraft from Point A to Point B and was a repositioning flight
19 for maintenance.

20 He testified the Garmin GNS 530 GPS was limited to VFR
21 use only during the March 30, 2009 flight. He testified that it
22 was his opinion that when Mr. Carr used the wording on the March
23 30, 2009 FAA Form 337 that the aircraft was test flown, it
24 indicated that Mr. Carr conducted an evaluation and not an

1 operational flight check. He testified that when Mr. Carr
2 performed the LPV approach and pulled circuit breaks, he was
3 evaluating what the effect of pulling circuit breakers would have
4 on the GPS system. That, in his opinion as a test pilot,
5 constitutes a flight test. Pulling the circuit breakers and
6 evaluating the effects is not an operationally normal thing to do.

7 Mr. Carr, according to Mr. Brownlee, was looking for
8 annunciations from the system when he pulled the circuit breakers.
9 Mr. Brownlee also testified that the coupled LPV approach, when
10 Mr. Carr pulled the circuit breakers, that Mr. Carr was also
11 evaluating the autopilot and other systems such as communication
12 systems and navigation systems connected or interfaced with the
13 GPS systems. Once again, he testified that those are not
14 operational flight checks. Those are evaluations and in his
15 expert opinion as a test pilot, those were flight tests.

16 Mr. Brownlee also testified that paragraph 23(b)(3) in
17 Exhibit A-14 and included in Exhibit A-8, page 2, which Mr. Carr
18 certified he performed, required the evaluation of flight
19 technical error, and which is not an operational flight check and
20 is outside of the special flight permit limitations as well.
21 Mr. Carr also evaluated the effects of the GPS when switching from
22 one nav system source to another nav source while en route, which
23 is again an evaluation flight test and was in violation of the
24 special flight permit.

1 Mr. Brownlee testified that while there may not have
2 been a course deviation from the flight path from Washington
3 County to Punta Gorda, Florida, however, the act of the pulling
4 the circuit breaker and evaluating the system's performance during
5 the LPV approach constituted a flight test which was beyond the
6 special flight permit limitations. He also testified that even if
7 the test and evaluations performed by Mr. Carr during the LPV
8 coupled approach and pulling of circuit breakers was performed
9 under VFR conditions, that it would not change his opinion because
10 even under VFR the pulling of circuit breakers and the evaluation
11 of the performance of a power failure of the GPS system would be a
12 violation of the special flight permit.

13 Finally he testified that if Mr. Carr would have
14 performed some of the other tests he certified he performed on the
15 March 30, 2009 FAA Form 337 over a period of time, there would
16 have been some documentation to show that he specifically
17 performed the tests cited in the paragraphs of AC 20-138 on the
18 FAA Form 337 dated March 30, 2009.

19 Respondent on the other hand argues that he did not
20 exceed the scope of the special flight permit because he did not
21 violate any of the limitations contained within the four corners
22 of the special flight permit. Respondent asserts that the FAA did
23 not specifically or otherwise prescribe operating limitations in
24 the special flight permit prohibiting the performance of

1 operational flight checks of approved equipment.

2 Respondent argues that based on FAA Order 8900.1, if a
3 regulation does not say a person cannot do something -- I'm
4 paraphrasing -- then a person can. I find this argument to be
5 wholly without merit. This case does not involve the
6 interpretation of whether a regulation is permissive or
7 restrictive or it tells a person or pilot or an airman what he can
8 or cannot do. This case involves limitations in a special flight
9 permit created by Inspector Delewski with the assistance of Mr.
10 Pizzuti who was instructed by Mr. Carr to obtain that specific
11 flight permit for an aircraft owned by Mr. Carr's own company.

12 A special flight permit was prepared for the specific
13 circumstances in this case. Mr. Carr could have rejected the
14 special flight permit and requested that the flight testing of the
15 GPS system be included in the special flight permit that covered
16 his own aircraft. Mr. Carr could have been involved in the
17 process to help formulate the special flight permit and its
18 limitations to his liking, or he could have instructed Mr. Pizzuti
19 to request certain provisions that he wanted in that flight
20 permit.

21 A flight permit request was made; a flight permit
22 request was discussed; a flight permit was formulated and a flight
23 permit was issued. Instead of being involved in the formulation
24 of the limitations of the special flight permit, Mr. Carr waited

1 until the flight permit was issued so that he could interpret the
2 document and its limitations apparently to his advantage.

3 If Mr. Carr were to have his way, the special flight
4 permit in this case would have had to specifically prohibit any
5 type of conduct that could be performed in that aircraft.
6 Specifically, it would have had to specifically prohibit the
7 performance of a LPV approach on Runway 22 in Punta Gorda,
8 Florida, as well as specifically prohibiting all of the tests and
9 evaluations he claimed he performed on the March 30, 2009 FAA Form
10 337.

11 Mr. Carr testified more than once that he had read the
12 special flight permit very carefully. He testified that he read
13 the attached document, the attached letter which listed all of the
14 discrepancies in the aircraft. He also testified more than once
15 that he was not an expert on special flight permits. Furthermore,
16 Mr. Carr could not provide a straight or credible answer when
17 asked if he had ever been involved in creating a special flight
18 permit. He could not give a definitive answer as to whether he
19 had ever flown under a special flight permit.

20 Mr. Carr also asserts that FAA Order 8900.1 provides
21 that inspectors can only require compliance with the minimum rule
22 precisely as written. Again, the special flight permit
23 specifically indicates at the top of the page, within the four
24 corners of the special flight permit, and states plainly and

1 precisely that this airworthiness certificate authorizes the
2 flight specific for the following aircraft for the purpose of, and
3 then in capital letters again spells out, MAINTENANCE.

4 Applying this statement precisely as written, the flight
5 from Washington County, Pennsylvania to Punta Gorda, Florida by
6 the most direct and expeditious route for the purpose of
7 maintenance, is for the purpose of maintenance, not for flight
8 testing of a GPS system for IFR certification.

9 Respondent maintains that he only performed an
10 operational check flight. He argues that operational check
11 flights include flight tests performed to check installation or
12 operation of FAA-approved data or return to service. That is in
13 FAA Order 8130.29(a).

14 When I asked the Respondent what constituted an
15 operational flight check, he responded it depends on the
16 regulation that's being applied. Thus the only definitive and
17 credible expert testimony on this issue came from FAA expert,
18 Mr. Brownlee, who testified credibly, that the description
19 provided by the Respondent as to what he did during the LPV
20 approach and the pulling of circuit breakers was not an
21 operational check flight but was instead, and in his expert
22 opinion as a test pilot, a flight test. Mr. Brownlee, of course,
23 testified that the flight test performed by Mr. Carr exceeded the
24 limitations of the special flight permit.

1 Mr. Carr testified that he believed that the March 11,
2 2009 Form 337 returned the GPS system back to service and
3 therefore he could perform the operational check flights or flight
4 tests. Inspector Delewski testified that despite the March 11,
5 2009 Form 337, that the GNS 530 was still not correct and due to
6 the autopilot interface and other problems, in her view, was not
7 returned to service. Respondent argues that Inspector Delewski's
8 opinion as to the March 11, 2009 FAA Form 337 is a lone wolf
9 opinion because others at the FAA did not agree with her and her
10 testimony should be given no weight.

11 I disagree. Inspector Delewski is a lone wolf to the
12 extent that she's the only expert and qualified person who
13 testified on this issue during the course of the hearing. Her
14 testimony that the GPS still required corrective action even after
15 the March 11, 2009, Form 337 is unrebutted. Respondent provided
16 no expert testimony to rebut her opinion.

17 The fact that she was honest enough during her
18 deposition to testify under oath that others in the FAA may have
19 disagreed with her does not diminish her opinion. She is the only
20 aviation inspector who actually examined the GPS on site and
21 reviewed the installation documentation and is explicitly
22 knowledgeable of the facts in this case relative to the GPS system
23 in this aircraft. I found her testimony to be credible on this
24 issue.

1 Even if I found that the GPS system had indeed been
2 returned to service by the March 11, 2009 Form 337, the fact
3 remains that the aircraft was not airworthy and had not been
4 returned to service when Mr. Carr performed the tests on March 30,
5 2009. The flight testing performed by Mr. Carr on March 30, 2009
6 exceeded the limitations of the special flight permit, whether it
7 was done under VFR or IFR conditions, as was established by the
8 FAA through the testimony of Mr. Brownlee.

9 As previously discussed, Mr. Carr testified that he
10 believed the original airworthiness certificate superseded the
11 special flight permit. As previously noted, he offers no
12 corroboration or support for that belief or the belief that the
13 special flight permit was akin to a minimum equipment list. If
14 that view was shared by the A&P mechanics in the community or
15 airline transport pilot community, certainly a witness could have
16 been produced to corroborate that his view was the correct view
17 and the view of Inspector Delewski was incorrect. As previously
18 noted, I do not find his testimony to be credible or to be
19 corroborated by persuasive evidence in the record in this case.

20 As to the issue of what flight testing Mr. Carr
21 certified he performed, is documented on the March 30, 2009 FAA
22 Form 337. Again, he testified he did not perform all of those
23 tests. He testified he only did the flight testing and that
24 Mr. Emge of Nebo avionics had performed other tests listed on the

1 form which he certified had been performed with his A&P and ATP
2 certificate number. Mr. Emge's signature as to those tests he
3 performed is not documented anywhere on the FAA Form 337 dated
4 March 30, 2009. He testified Mr. Emge and the FAA prepared the
5 Form 337 and he just signed where he was told to sign and was not
6 certifying that he performed all the tests.

7 Mr. Carr is an accomplished businessman. He's an ATP
8 and an A&P mechanic. When questioned on cross-examination as to
9 what contracts he had signed in the past and his practice of
10 reading documents before he signs and certifies that he has done
11 certain things, Mr. Carr's testimony unfortunately again was
12 evasive, it was nonresponsive, it was flippant, he gave different
13 answers to the same question. I cannot give Mr. Carr's testimony
14 any credibility on this issue.

15 He further testified that he had performed some of the
16 flight tests prior to March 30, 2009 before the special flight
17 permit flight. Even though he could not remember specific dates
18 as to when those tests were performed and what specific tests were
19 performed, he testified no documentation is required for those
20 tests as the FAA Form 337 is the permanent record documenting all
21 of that. He testified that he performed these tests but did not
22 know he was performing the tests at the time he performed them.
23 When I asked him to repeat his answer, he simply evaded the
24 question and chose to move on to something else. I found that

1 answer troubling, to put it mildly. I found his testimony on that
2 issue is not logical and I find it is devoid of credibility
3 relative to the issue.

4 Mr. Brownlee testified that if Mr. Carr had indeed
5 performed the flight test prior to March 30, 2009, there would
6 have been documentation of the performance of those tests.

7 Mr. Carr also included in his arguments that he is being
8 held to a different standard and that he believes the FAA required
9 him to use the procedure for a major design change relative to
10 certifying the GPS in this case. He argues that field testing it
11 through the use of a FAA Form 337 is the way he had always done it
12 in the past. He testified that the FAA and Nebo and other
13 aviation repair stations prepared the FAA Form 337 and he
14 performed the test flight and certified the GPS. He testified at
15 length giving examples of instances in other aircraft where he
16 used the FAA Form 337 as the approval vehicle for certification of
17 certain GPS devices.

18 When I asked him if anyone at the FAA had told him he
19 was being held to a different standard, he replied that he had
20 figured that out for himself during his deposition.

21 The FAA argues that the Respondent's testimony and the
22 evidence is irrelevant and is essentially a sideshow because the
23 Administrator's not alleging Mr. Carr used the wrong approval
24 vehicle. The Administrator is simply alleging Mr. Carr flew

1 aircraft N744AT beyond the limits of the special flight permit on
2 March 30, 2009. The Administrator further argues that the
3 testimony and evidence is irrelevant because none of the flights
4 Mr. Carr described at length were flown under a special flight
5 permit. I am persuaded by the Administrator's arguments and I
6 find that the Respondent's testimony and exhibits on this matter
7 are not relevant to the issue on the cited violation in this case
8 and I give them no weight.

9 As to the credibility of the witnesses that testified in
10 this case, Respondent argues that Mr. Brownlee's testimony on
11 cross included numerous instances where he answered to cross-
12 examination questions with "I don't know." Respondent further
13 argues that Mr. Brownlee's opinion is a lone wolf opinion and
14 should be given little weight, if any weight.

15 Mr. Brownlee was qualified as an expert and he testified
16 credibly both on direct and cross-examination. His testimony was
17 unrebutted by any form of contrary expert opinion by Respondent.

18 Respondent further argues that Mr. Brownlee's testimony
19 is ipse dixit, which translated means that he's testifying because
20 he says so, that his testimony is true because he said so. I
21 found Mr. Brownlee's testimony to be solidly based on the evidence
22 and the facts in this case and I found it to be persuasive.

23 Respondent also argues that the expert testimony of
24 Inspector Delewski lacked logic, depth and persuasion and was not

1 persuasive. Again, I disagree. I found the testimony of both the
2 Administrator's experts to be credible, persuasive and helpful to
3 me in understanding the issues in this case.

4 While Respondent points out Inspector Delewski
5 contradicted her previous testimony as to whether GPS installation
6 was a major alteration at hearing, but then testified that it was
7 a major design change, Respondent argues that that difference is
8 significant but presents no arguments or evidence as to how the
9 Administrator used that inconsistency to his advantage or how it
10 affected the issue in this case to the detriment of Mr. Carr. The
11 FAA never mentioned any approval vehicle in its case in chief in
12 this case.

13 Inspector Delewski testified she misspoke in her earlier
14 deposition testimony. I find that credible especially since the
15 FAA has not argued that Mr. Carr should have used the procedure
16 for a major design change in the presentation of their case. The
17 FAA simply argues that Mr. Carr exceeded the limits of the special
18 flight permit.

19 Respondent also points out that Inspector Delewski
20 contradicted herself in her testimony that she had seen a signed
21 FAA Form 337 prepared on March 30, 2009, but then later testified
22 in the same hearing that she had not seen a signed FAA Form 337.
23 This inconsistency does not detract from Ms. Delewski's testimony,
24 opinion or credibility. The issue is not whether or not a signed

1 337 was received by the FAA. Mr. Carr himself testified that he
2 did not have a problem or questioned the authenticity of the FAA
3 Form 337 that was completed on March 30, 2009 and has been the
4 subject of this litigation since its beginning. The inconsistency
5 relates to a matter that is not a material issue in this case.

6 As to the credibility of Mr. Carr, again, I found his
7 testimony on issues that I've discussed not to be credible. I
8 wish I could find otherwise. Certainly he is an accomplished
9 businessman and he has accomplished a lot during the course of his
10 life. Unfortunately, his testimony was evasive, nonresponsive,
11 flippant and not persuasive.

12 On direct examination, his testimony appeared well
13 rehearsed. He testified that he was not familiar with applicable
14 rules or regulations at the time of the flight, but certainly was
15 familiar with them now. I got the distinct impression that that
16 knowledge was now used to look backward to fill in, in his view,
17 what was acceptable conduct at the time of the flight.

18 He testified that he was not an expert on special flight
19 permits despite the fact he is an A&P mechanic and has been one
20 for 30 years. His recollection was weak on questions that would
21 damage his case but strong on questions that helped his case. He
22 testified a number of times that he could not speak to certain
23 questions. I found this troubling, that responses applied to a
24 number of questions to the extent that when he was asked why his

1 lawyer was referring to him as Captain Carr, he responded he could
2 not speak to that. I found that to be very troubling in this
3 case. Again, I wish I could find otherwise. Unfortunately, that
4 is the record before me.

5 I give the testimony of the Administrator's witnesses
6 the greater weight in this case and I find their testimony to be
7 credible based on the evidence, and certainly I give their
8 testimony more weight over the testimony of the Respondent's only
9 witness, his own self-serving testimony.

10 Based on the evidence before me, I find the
11 Administrator has proven by a preponderance of probative, credible
12 and persuasive evidence that Mr. Carr violated the limitations of
13 the special flight permit during his flight on March 30, 2009. I
14 therefore find the Administrator has proven by a preponderance of
15 credible, probative and persuasive evidence that Mr. Carr violated
16 Section 91.9(a).

17 As to the violation 91.13(a), the Administrator argues
18 that a finding of the operational violations of 91.7(a) or 91.9(a)
19 would lead to the conclusion that Section 91.13(a) was also
20 violated. The Respondent has not argued against such a finding.
21 I therefore find that having found that the Respondent has
22 committed operational violations of Section 91.7(a) and 91.9(a),
23 that he has also violated Section 91.13(a) of the Federal Aviation
24 Regulations.

1 I will now address the Respondent's affirmative
2 defenses. Respondent argues that he reasonably relied on the
3 FAA's certified repair station, FAA guidance and the Flight
4 Standards District Office personnel. He testified that Mr. Emge
5 and the FAA prepared the March 30, 2009 FAA Form 337, and he
6 relied upon Mr. Emge's instruction to sign the form which
7 certified the tests that he claimed he conducted.

8 Unfortunately, Respondent provided no witnesses to
9 corroborate what he has testified to relative to his reliance on
10 the FAA, Mr. Emge, or the Flight Standards District Office. When
11 I asked Mr. Carr, that since he has indicated that he relied upon
12 Mr. Emge when he signed the FAA Form 337, I asked him why Mr. Emge
13 was not testifying and he again responded, "I can't speak to
14 that."

15 Thus, the only evidence I have before me as to
16 Mr. Carr's affirmative defense that he relied upon the FAA
17 certified repair station, FAA guidance and the Flight Standards
18 District Office personnel, is Mr. Carr's own self-serving
19 testimony which is not corroborated and which again I do not find
20 credible and cannot give any weight.

21 As to his affirmative defense of the
22 unconstitutionality, of the regulative I do not have the authority
23 to rule on the constitutionality of the regulations as to whether
24 the regulations are unconstitutionally vague to the extent that it

1 deprives the Respondent of his due process rights. I, however,
2 cannot find that the FAA interpretation of Section 91.9(a) to be
3 arbitrary, capricious, an abuse of discretion or otherwise not in
4 accordance of the law, based on the evidence before me. I find
5 that the Administrator's interpretation of 91.9(a) and the other
6 violations cited in this case to be legally sound and not
7 arbitrary, capricious, an abuse of discretion or not otherwise in
8 accordance with the law.

9 In conclusion, I have found that the Administrator has
10 proven Mr. Carr violated Sections 91.7(a), 91.9(a) and 91.13(a) by
11 a preponderance of reliable, probative and credible evidence.
12 Having found that, I now turn to the sanction imposed by the
13 Administrator in this case.

14 On August 3, 2011, Public Law 112-153, known as the
15 Pilot's Bill of Rights, was signed into law by the President of
16 the United States. The law applies to all cases before the
17 National Transportation Safety Board involving reviews of actions
18 by the Administrator of the Federal Aviation Administration to
19 deny airman medical certificates under 49 U.S.C. Section 44703, or
20 amend, modify, suspend or revoke airman certificates under 49
21 U.S.C. Section 44709. The law became effective immediately upon
22 its enactment.

23 The Pilot's Bill of Rights specifically strikes from 49
24 U.S.C. Section 44703 language that provides, in cases involving

1 airman certificate denials, the Board is bound by all validly
2 adopted interpretations of law and regulations the Administrator
3 carries out unless the Board finds the interpretation is
4 arbitrary, capricious or otherwise not in accordance with the law.

5 The Pilot's Bill of Rights also strikes from 49 U.S.C.
6 Sections 44709 and 44710 language, in cases involving amendments,
7 modifications, suspensions or revocation of airman certificates,
8 that the Board is bound by all validly adopted interpretations of
9 law and regulation the Administrator carries out and of written
10 Agency policy guidance available to the public relating to
11 sanctions to be imposed under the section unless the Board finds
12 the interpretation is arbitrary, capricious or otherwise not in
13 accordance with the law.

14 While I am no longer bound to give deference to the
15 Federal Aviation Administrator by statute, the Agency is entitled
16 to judicial deference due all other federal administrative
17 agencies under the Supreme Court decision of Martin vs.
18 Occupational Safety and Health Review Commission, et al., at 499
19 U.S. 144, 111; S.Ct. 1171. In applying the principles of judicial
20 deference to the interpretations of law, regulations and policies
21 that the Acting Administrator carries out, I must analyze and
22 weight the facts and circumstances in each case to determine if
23 the sanction selected by the Administrator is appropriate.

24 In the case before me, the FAA argues that he is

1 entitled to the same deference afforded other agencies under the
2 case of Martin vs. Occupational Safety and Health Review
3 Commission case. The Administrator argues that because the
4 statutory authority vested in the FAA as a policymaker and
5 enforcer of the regulations, the NTSB should defer to the FAA
6 selected sanction as did the Supreme Court in the case of Butz v.
7 Glover Livestock Commission Company, Inc., 411 U.S. 182 and 185,
8 and that's a 1973 case. The Administrator also argues that I
9 should give deference to his experience in the imposition of
10 sanctions and its sanction guidelines that have been noted in this
11 case through the testimony of Inspector Delewski.

12 The Respondent contends that there are mitigating
13 circumstances in this case. He testified he reasonably relied
14 upon erroneous information from Nebo Aviation. As previously
15 noted, I do not find that Mr. Carr has proven he relied upon
16 erroneous information from Nebo Aviation or anyone else in this
17 case. I do not find this to be a mitigating factor.

18 Respondent argues the FAA guidance is complex and
19 confusing. Respondent used the testimony of Inspector Delewski in
20 which she testified that the guidance is complicated to prove this
21 point. Respondent never testified the guidance was complex and
22 confusing. He testified he was not an expert regarding special
23 flight permits despite the fact that he's been an A&P mechanic for
24 over 30 years. There's nothing complex or confusing relative to

1 the enumerated limitation within the four corners of the special
2 flight permit. I do not find this argument to be a mitigating
3 factor.

4 The Respondent's counsel argues that Mr. Carr made a
5 good faith effort to comply with the special flight permit. I do
6 not find this to be a mitigating factor because the evidence
7 before me does not demonstrate or come close to establishing that
8 Mr. Carr acted in good faith in complying with the special flight
9 permit. I am convinced by his testimony and the evidence in this
10 case that he was not acting in good faith or trying to comply with
11 the special flight permit. The evidence shows he was attempting
12 to circumvent the special flight permit.

13 I do not find the facts that there were no damages or
14 injury resulting from his flight or the fact that this was not a
15 passenger-carrying flight to be mitigating circumstances in this
16 case. In fact, Respondent's brother accompanied Mr. Carr during
17 the special flight permit flight on March 30, 2009, and he too
18 could have possibly corroborated Mr. Carr's testimony but he was
19 not called as a witness on behalf of Mr. Carr.

20 Respondent argues that because three of the original six
21 alleged violations were dismissed, the sanctions should be
22 reduced. The Administrator has argued that deference should be
23 afforded the Administrator's choice of sanction, that I should
24 give deference to the sanction guidelines and the testimony of

1 Inspector Delewski. However, there is no evidence before me that
2 I believe indicates that the dismissal of three of the total six
3 violations still warranted a 60-day suspension, and that a 60-day
4 suspension is warranted entirely based on the three remaining
5 violations.

6 Based on the evidence before me, and weighing the
7 arguments as to the appropriateness of the sanction before me, I
8 find that Respondent's arguments that the sanction should be
9 reduced because of the dismissal of three of the six violations
10 originally cited to be persuasive. I therefore find, based on the
11 evidence and arguments before me, that the reduction of the
12 Administrator's sanction from 60 to 30 days is warranted and
13 appropriate in this case.

14 Having made the foregoing decision as to the violations
15 and the sanction in this case, I have to now make specific
16 findings of fact and conclusions of law, and to do that, I will
17 use the Administrator's complaint and his amended complaint and I
18 ask the parties to bear with me.

19 FINDINGS OF FACT AND CONCLUSIONS OF LAW

20 As to the Administrator's complaint, the Respondent
21 admitted to paragraphs 1, 2, 3 and 4 of the Order of Suspension
22 which was subsequently admitted as the complaint in this case.

23 As to paragraph (d), I find that the Administrator has
24 proven by a preponderance of evidence that at the time of the

1 operation described above, aircraft N744AT was not airworthy due
2 to maintenance discrepancies that had been identified through a
3 conformity inspection that took place during February and March of
4 2009.

5 As to paragraph 6, I find the Administrator has proven
6 by a preponderance of evidence that the operation of aircraft
7 N744AT from Washington County, Pennsylvania to Punta Gorda,
8 Florida in an unairworthy condition was authorized by a special
9 flight permit with operating limitations issued March 30, 2009 by
10 the Allegheny Flight Standards Office.

11 I find that the Administrator has proven the allegations
12 in paragraph 7, that the special flight permit with operating
13 limitations described in preceding paragraph was issued pursuant
14 to 14 C.F.R. 21.197(a)(1), to relocate aircraft N744AT from
15 Washington County Airport to Charlotte County Airport in Punta
16 Gorda, Florida, to correct maintenance discrepancies. The
17 Administrator's proven this allegation by a preponderance of
18 evidence.

19 I find that the Administrator has proven by a
20 preponderance of evidence that at the time of the flight described
21 above, installed in aircraft N744AT was a Garmin GNS 530 Global
22 Positioning System that incorporated an upgrade for employing a
23 Wide Area Augmentation System, the WAAS system, procedure for
24 visual flight rules, VFR operation only.

1 I also find that the Administrator's proven by a
2 preponderance of evidence the allegations in paragraph 9, that
3 you, Mr. Carr, provided information to the Federal Aviation
4 Administration that during the flight described above, you
5 conducted flight testing to develop data to support certifying the
6 Garmin GNS 530 installed on the aircraft N744AT was for WAAS
7 procedures while operating under instrument flight rules, IFR. As
8 has been noted throughout the course of this proceeding, Mr. Carr
9 certified that he performed all of the tests in the March 30, 2009
10 FAA Form 337 relative to certifying the GPS for IFR use.

11 Mr. Carr admitted paragraph 10, paragraph 11 and
12 paragraph 12.

13 I find that based on the evidence before me, the
14 Administrator has proven by a preponderance of evidence that as
15 described in the preceding two paragraphs, you prepared or
16 approved both flight test information related to compliance with
17 the regulations of Chapter 1, Title 14 of the Code of Federal
18 Regulations.

19 I also find that the Administrator has proven by a
20 preponderance of evidence that at the time of the flight on March
21 30, 2009, described above, you did not hold any designation from
22 the FAA to make flight tests as the FAA's representative pursuant
23 to Part 183 of the Federal Aviation Regulations (sic). To correct
24 myself, there was not any evidence presented relative to whether

1 or not Mr. Carr was designated by the FAA as the FAA's
2 representative pursuant to Part 183. Therefore, I cannot find
3 that the Administrator has proven by a preponderance of the
4 evidence that paragraph.

5 I find that the Administrator has proven by a
6 preponderance of evidence paragraph 13. The operating limitations
7 of the special ferry permit issued March 30, 2009 for the
8 operation of aircraft N744AT as described above, authorized the
9 flight from Washington County, Pennsylvania to Punta Gorda,
10 Florida to be conducted utilizing the most direct and expeditious
11 route consistent with aircraft operating limitations.

12 I find the Administrator has proven by a preponderance
13 of evidence that paragraph 16, that the special flight permit
14 described above did not authorize the performance of any flight
15 testing or the demonstration of compliance with function and
16 reliability requirements of the Federal Aviation Regulations to
17 substantiate the proper operation of the GNS 530 WAAS as installed
18 in aircraft N744AT.

19 As to paragraph 17, the Administrator withdrew that.

20 As to Paragraph 18, I find the Administrator has proven
21 by a preponderance of evidence, that the special flight permit
22 described above did not authorize any person to generate and
23 approve the data of the installation of aircraft N744AT of the
24 WAAS upgrade for the Garmin GNS 530 GPS for instrument flight rule

1 operation.

2 As to paragraph 19, I find the Administrator's proven by
3 a preponderance of evidence that by operating aircraft N744AT
4 outside of the operating limitations of the special flight permit
5 issued on or about March 30, 2009, as described above, you
6 operated aircraft N744AT when it was not in airworthy condition.

7 I have found by a preponderance of evidence that the
8 allegations in paragraph 20, that by operating aircraft N744AT
9 contrary to the operating requirements contained in Part 91 of the
10 Federal Aviation Regulations, you operated the aircraft in a
11 careless and reckless manner so as to endanger the life and
12 property of another.

13 Paragraph 21 was withdrawn by the Administrator.

14 As to paragraph 22, the allegation as to the aircraft
15 rating for your mechanic certificate does not authorize you to
16 generate and approve data for major alterations, no evidence had
17 been presented relative to that issue; therefore, I cannot find
18 that that allegation has been proven.

19 As far as paragraph 23, I cannot find the powerplant
20 rating of your mechanic certificate does not authorize you to
21 generate and approve data for major alteration. I do not find
22 that that has been proven by a preponderance of the evidence.

23 As I have indicated, I have found that Mr. Carr did
24 violate Sections 91.7(a), 91.9(a) and 91.13(a).

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ORDER

IT IS ORDERED that the Order of Suspension, the complaint herein, be, and is hereby, affirmed as issued as to the violations of Sections 91.7(a), 91.9(a) and 91.13(a).

However, the period of suspension is reduced from 60 to 30 days based on the evidence and the arguments of the parties before me.

The Respondent's airline transport pilot certificate number (omitted) and his mechanic's certificate (omitted) are hereby suspended for a period of 30 days.

Entered this 18th day of April, 2013, at Washington, D.C.

EDITED ON
JUNE 3, 2013

ALFONSO J. MONTAÑO
Chief Administrative Law Judge

APPEAL

ADMINISTRATIVE LAW JUDGE MONTAÑO: That concludes my Oral Initial Decision. As to the appeal rights of the parties, during our last meeting in this case, I had handed out to the parties or had the court reporter hand out to the parties, a written statement describing -- or written page describing the appeal rights that are appropriate in this case to which the

1 parties can afford themselves.

2 Mr. Winton and Mr. Lewerenz are both experienced
3 aviation lawyers and are familiar with the client's appeal rights
4 from my decision and I trust that they will exercise those appeal
5 rights accordingly.

6 As I stated, that unfortunately is the decision that I
7 must issue in this case based on the evidence as it appeared
8 before me. I take no pleasure in making the findings that I have.
9 Unfortunately, my hands are tied by the law and the evidence
10 before me, and that is the decision that I have to issue in this
11 case.

12 Again, the parties have appeal rights in this case.
13 They may both exercise them. That is the beauty of the American
14 judicial system is that my word is not the final word, and
15 certainly, as Mr. Carr is aware, there is the appeal rights, and
16 he has exercised that in the past. And if that is the road he
17 chooses in this case, then that the road that is before him and is
18 available for him to take.

19 That completes my Oral Initial Decision. I appreciate
20 the parties' patience in sitting through this lengthy Oral Initial
21 Decision. With that, I again thank the parties for their
22 cooperation and the respect they've shown to each other and to me
23 during the course of these proceedings.

24 I will conclude the proceedings on my Oral Initial

1 Decision, and we will go off the record at this point, and we will
2 go off the conference call.

3 Thank you all very much.

4 (Whereupon, at 5:03 p.m., the hearing in the above-
5 entitled matter was adjourned.)

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CERTIFICATE

This is to certify that the attached proceeding before the

NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: Wayne Allen Carr

DOCKET NUMBER: SE-18805RM1

PLACE: Washington, D.C.

DATE: April 18, 2013

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.

Michael Gilman
Official Reporter