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NTSB Order No. EA-5914

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 18th day of October, 2021

_____)	
STEPHEN M. DICKSON,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-30535
v.)	
)	
ADAM S. NORWITCH,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

1. Background

Respondent appeals the Oral Initial Decision and Order (Oral Initial Decision) of Chief Administrative Law Judge Alfonso J. Montano issued on November 4, 2019.¹ By that decision, the law judge affirmed the Administrator’s Order of Suspension, as amended at the hearing, finding that the Administrator proved by a preponderance of the evidence that respondent violated 14 C.F.R. §§ 91.13(a), 91.509(b), 91.509(d), 91.509(e), 119.5(g), 119.5(l), 135.117,

¹ A copy of the law judge’s Oral Initial Decision is attached.

135.167(a)(2), 135.293(b), 135.297, and 135.301(b).² Respondent timely appealed. For the reasons set forth below, we grant in part and deny in part respondent's appeal of the Administrator's Order of Suspension, as amended.³

A. Facts

Respondent holds an Airline Transport Pilot (ATP) certificate and serves as the Chief Pilot and Registered Agent of Great Flight, Inc., a Part 135 Operator.⁴ Respondent does not personally hold an air carrier certificate.⁵ On January 25 and January 31, 2017, respondent acted as pilot in command of aircraft N112CZ, a Cessna C411.⁶ The aircraft is owned by Oxbow Express, LLC.⁷ Respondent had not passed an instrument proficiency check in the Cessna 411 since the beginning of the sixth calendar month and had not passed a competency check since the beginning of the twelfth calendar month before these flights.⁸

The January 25th flight transported passengers from Key West, Florida (EWY) to Cabo San Lucas, Mexico (MMSD), and the January 31st flight returned the passengers to EWY.

² The allegations in the amended Order of Suspension can be grouped into four categories:

1) operating a flight without the required safety equipment and processes, *see* 14 C.F.R. §§ 91.509(b), (d)-(e), 135.117, 135.167(a)(2);

2) operating a Part 135 flight with a missed proficiency check, *see* 14 C.F.R. §§ 135.293(b), 135.297, 135.301(b);

3) conducting Part 135 operations without the required operating certificate, *see* 14 C.F.R. § 119.5(g), (l); and

4) operating an aircraft in a careless or reckless manner so as to endanger the life or property of another, *see* 14 C.F.R. § 91.13(a).

³ The Administrator initiated this case as an emergency under 49 U.S.C. §§ 44709 and 46105(c). Respondent waived the expedited procedures normally applicable to emergency cases. Appeal Br. at 4.

⁴ Compl. ¶¶ 1-2.

⁵ Tr. at 111.

⁶ Compl. ¶¶ 5, 15; Ex. A-12.

⁷ Compl. ¶ 4.

⁸ *Id.* at ¶¶ 27-28.

Wendy Fine arranged the flights through respondent, and the passengers included Ms. Fine, respondent's family, and several other guests.⁹ Respondent operated both flights over water for more than 30 minutes flying time or 100 nautical miles from the shore.¹⁰ The aircraft also did not have a liferaft or at least one pyrotechnic signaling device for each liferaft.¹¹

B. Procedural Background

On July 16, 2018, the Administrator issued an Order of Suspension, which became the complaint in this case, suspending respondent's ATP certificate for 210 days. The Administrator alleged twelve violations of Title 14 of the Code of Federal Regulations by operating the January 2017 flights for compensation or hire, failing to have required safety equipment on board, failing to have the proper certificates to operate a flight under Part 135, not having the required proficiency checks, and operating an aircraft in a careless or reckless manner. Respondent timely appealed the order and timely filed an answer with affirmative defenses.

Before the hearing in this case, the Administrator deposed respondent on November 7, 2018. Based on the deposition, the Administrator filed a motion for partial summary judgment.¹² Respondent failed to file a timely response to the Administrator's motion but subsequently filed two responses and a motion for leave to file out of time.¹³ The law judge found that neither response substantively addressed the Administrator's motion.¹⁴ The law judge granted the Administrator's motion with respect to violations regarding the operation of the flights without

⁹ Tr. at 161.

¹⁰ Compl. ¶¶ 9-11, 20-22; Tr. at 16-17.

¹¹ Compl. ¶¶ 13, 24.

¹² Oral Initial Decision at 525.

¹³ *Id.* at 525-26.

¹⁴ *Id.* at 526.

the required safety equipment alleged under Part 91 but denied the motion with respect to the alleged violations under Part 119 and Part 135.¹⁵

The law judge conducted a hearing on October 29 and 30, 2019. The hearing was limited to the issues regarding the remaining violations alleged under Parts 119 and 135, respondent's affirmative defenses, and the appropriate sanction based on the evidence presented at the hearing. At the start of the hearing, the Administrator withdrew certain paragraphs from the complaint and the alleged violation of 14 C.F.R. § 91.509(a).¹⁶ The Administrator also requested that the law judge take judicial notice of Federal Aviation Administration (FAA) Order 2150.3B and several Advisory Circulars.¹⁷ Respondent raised no objection to the Administrator's request that the law judge take judicial notice of these FAA documents.¹⁸

During the hearing, the Administrator called the following witnesses: respondent; Wendy Fine; Michael Wilson, Jr., an FAA operations aviation safety inspector at the Baton Rouge Flight Standards District Office; and Keith Kibodeaux, an FAA aviation maintenance inspector at the Baton Rouge Flight Standards District Office. Respondent testified on his own behalf and called Ms. Fine as a witness. Because the law judge had ruled on summary judgment regarding several issues, including the lack of required safety equipment, the primary focus of the hearing was whether respondent operated the flights for compensation or hire—an issue not on appeal.¹⁹

¹⁵ *Id.* (explaining that the law judge granted partial summary judgment for the Administrator on the violations of 14 C.F.R. §§ 91.509(b), (d)-(e)).

¹⁶ Tr. at 34-35.

¹⁷ *Id.* at 35.

¹⁸ *Id.* at 37.

¹⁹ The issues on appeal are narrow. Therefore, we have focused our discussion of the testimony as it relates to the remaining issues.

Respondent admitted that he holds an ATP certificate, is a certified flight instructor, and has over 8,500 hours of flight time.²⁰ Respondent is the president, owner, and chief pilot for Great Flight, which operates flights under Part 135.²¹ Respondent admitted that an ATP holder should review all aspects of a flight path, including all the relevant regulations, in preparation for a flight over water.²² Respondent testified that he did not have training in over water operations and did not review the regulations on over water operations before the January flights.²³

Respondent testified that he had flown Ms. Fine on several chartered flights prior to the January 2017 flights.²⁴ Ms. Fine arranged the flights through a series of text messages and phone calls.²⁵ Respondent admitted that he was flying for free because he was piloting the flights and that Ms. Fine paid for his family's accommodations while in Mexico.²⁶ Respondent admitted that he asked Ms. Fine to send a check made out to Oxbow Express, that the check be sent to respondent's home address, and that he told Ms. Fine he "would prefer not to get [the check] on flight day because it opens me up to questions from our side and Mexico."²⁷ He also testified that Ms. Fine never spoke to anyone at Oxbow Express about arranging the flights.²⁸ Respondent testified that there was a dry lease between Ms. Fine and Oxbow Express, but admitted that all of the terms of the lease were written on the check from Ms. Fine to Oxbow Express: the dollar amount, the name of the company leasing the aircraft, and the phrase "aircraft dry lease" written

²⁰ Tr. at 111.

²¹ *Id.* at 87.

²² *Id.* at 397.

²³ *Id.* at 116, 392-93.

²⁴ *Id.* at 58.

²⁵ *Id.* at 60-62.

²⁶ *Id.* at 66-67.

²⁷ *Id.* at 65; Ex. A-7.

²⁸ Tr. at 85-86.

on the memo line of the check.²⁹ Respondent also admitted that he saved money for his vacation because the flight and lodging were paid for by Ms. Fine and that the use of the Oxbow Express plane generated goodwill between respondent and Oxbow Express.³⁰

Respondent also testified that for the January 2017 flights, he did not have a liferaft that he was planning to take on board.³¹ He further testified that he could not have legally piloted a charter flight on January 25 or 31, 2017.³² Respondent was marked disapproved on a FAA Airman Competency/Proficiency Check on January 24, 2017, and respondent admitted he was aware of the fact during both flights.³³

Ms. Fine testified that she had worked for Fine Air, selling cargo space on cargo airplanes.³⁴ Her work did not involve interpretation of FAA regulations.³⁵ Ms. Fine estimated that she had flown three chartered flights with respondent before the January flights.³⁶ Ms. Fine testified that she had not originally planned the trips with respondent's family in mind, but invited his family on the trip during the planning of the flights.³⁷ She further testified that she never communicated with Oxbow Express about the flights and only spoke to respondent to make the arrangements.³⁸ Ms. Fine admitted that she had never entered a dry lease before these flights occurred, that she could not recall respondent explaining what a dry lease is, and that she

²⁹ *Id.* at 65, 168-69. For a dry lease, the aircraft owner provides the aircraft to the lessee without a flight crew.

³⁰ *Id.* at 174-77.

³¹ *Id.* at 120.

³² *Id.* at 121.

³³ *Id.* at 123-25; *see* Ex. A-12.

³⁴ Tr. at 202.

³⁵ *Id.* at 202.

³⁶ *Id.* at 203.

³⁷ *Id.* at 205-06.

³⁸ *Id.* at 208.

did not really know any of the terms of the lease for this flight.³⁹ Ms. Fine further explained that she did “not know what the term operational control means.”⁴⁰

In closing arguments, the Administrator asserted that the evidence proved that respondent should have conducted the operations on January 25 and 31, 2017, under Part 135, and thus violated sections of Part 119 and 135. The Administrator renewed the request for the law judge to take judicial notice of FAA Order 2150.3B and explained the justification for a 210-day suspension of respondent’s ATP certificate.⁴¹ The Administrator further argued that there were several aggravating factors and no mitigating factors that affect the sanction in this case.⁴² Respondent argued that mitigating factors were present and that the flight was properly conducted under Part 91.⁴³ Respondent did not object to the Administrator’s request for the law judge to take judicial notice of FAA Order 2150.3B.

C. Law Judge’s Oral Initial Decision

In the Oral Initial Decision, the law judge determined the Administrator proved the eleven allegations against respondent in the Amended Order of Suspension.⁴⁴ In making this determination, the law judge discussed the regulatory violations alleged in the amended complaint; noted respondent’s admissions and denials; discussed respondent’s affirmative defenses; noted the admitted exhibits; summarized witness testimony and relevant exhibits; assessed the credibility of the witnesses; discussed the granting of partial summary judgment;

³⁹ *Id.* at 208-09.

⁴⁰ *Id.* at 209.

⁴¹ *Id.* at 441-42.

⁴² *Id.* at 442-46.

⁴³ *Id.* at 447-48, 462-63.

⁴⁴ Oral Initial Decision at 556.

and explained his assessment of the evidence. The law judge found that respondent was not credible, whereas the remaining witnesses were all credible in their testimony.⁴⁵ He also found that respondent failed to prove any of the affirmative defenses.⁴⁶

The law judge specifically found that respondent “clearly operated as a common carrier transporting persons from place to place for compensation.”⁴⁷ After finding that the Administrator proved the eleven alleged violations by a preponderance of the evidence, the law judge considered the appropriate sanction. He discussed that having a spotless record was not a mitigating factor, but rather “what is expected” of certificate holders.⁴⁸ He also rejected the argument that respondent’s filing of a NASA report under the ASRS program should serve as a mitigating factor.⁴⁹ The law judge further noted several aggravating factors: that respondent is an ATP holder, that respondent is the president and chief pilot of a Part 135 operation, that there was a great degree of hazard in the case, and that respondent’s conduct was deliberate and intentional.⁵⁰ Based on these factors, the law judge affirmed the Amended Order of Suspension, suspending respondent’s ATP Certificate for 210 days.

D. Issues on Appeal

Respondent timely appealed the law judge’s Oral Initial Decision and filed a perfecting brief on January 30, 2020. The Administrator filed a reply brief on March 2, 2020. On appeal, the respondent argues that the law judge erred by: 1) finding respondent violated the regulations

⁴⁵ *Id.* at 523-24; 539-41.

⁴⁶ *Id.* at 547-53.

⁴⁷ *Id.* at 529.

⁴⁸ *Id.* at 557.

⁴⁹ *Id.* at 548-49, 557 (explaining that the NASA report was not authenticated, and the report does not demonstrate a compliance attitude).

⁵⁰ *Id.* at 557-58.

contained in Part 91, Subpart F; and 2) affirming the sanction in the Amended Order of Suspension. Respondent does not appeal the law judge's rulings with respect to the violations under Parts 119 or 135, or the law judge's findings regarding several aggravating factors.

2. Decision

While we give deference to our law judge's rulings on certain issues, such as credibility determinations,⁵¹ we review the case under *de novo* review.⁵²

A. Application of Part 91 Subpart F

The law judge granted partial summary judgement for the Administrator on the violations under 14 C.F.R. §§ 91.509(b), 91.509(d), and 91.509(e) before the hearing in this case.

Respondent asserts that these alleged violations under Part 91, Subpart F must fail because the regulations “are applicable only to large and turbojet-powered multiengine civil airplanes.”⁵³ In particular, respondent argues that the aircraft, N112CZ, is a “twin-engine turbo-prop airplane, which is not a large or turbojet-powered multiengine plane.”⁵⁴ The Administrator contends that respondent waived any affirmative defense related to violations under Subpart F because respondent “did not raise any affirmative defense regarding [its applicability] in his answer, did not dispute applicability of the regulation in response to the Administrator's motion for summary

⁵¹ *Administrator v. Porco*, NTSB Order No. EA-5591, at 13 (2011), *aff'd sub nom.*, *Porco v. Huerta*, 472 F. App'x 2 (D.C. Cir. 2012) (per curiam).

⁵² *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 NTSB LEXIS 256, at *11 (1991); *Administrator v. Schneider*, NTSB Order No. EA-324, 1 N.T.S.B. 1550, 1550 (1972) (in making factual findings, the Board carefully assesses “the pertinent evidence of record” and is not bound by the law judge's findings).

⁵³ Appeal Br. at 13. The Subpart F regulations, Large and Turbine-Powered Multiengine Airplanes and Fractional Ownership Program Aircraft, govern the alleged violations of 14 C.F.R. §§ 91.509(b), 91.509(d), 91.509(e).

⁵⁴ Appeal Br. at 13.

judgment, and did not touch on the issue at the hearing.”⁵⁵

We do not, however, need to determine whether respondent waived this argument or whether the aircraft is, or is not, a large or turbojet-powered multiengine plane. Section 91.501(a) of the Subpart F regulations is clear: “The operating rules in this subpart do not apply to those aircraft when they are required to be operated under parts 121, 125, 129, 135, and 137 of this chapter.”⁵⁶ The law judge found that respondent was required to operate the flights in question under Part 135, and respondent did not appeal this legal conclusion.⁵⁷ Therefore, the limiting language of Section 501(a) precludes the Administrator from establishing any violations under 14 C.F.R. § 91.509 because respondent was required to operate the flights in question under Part 135.⁵⁸ Thus, we find that the law judge erred in upholding these violations once the Administrator proved that the flights were required to be operated under Part 135.

Where there is uncertainty about whether flights must be operated under Part 91 or another Part, the Administrator may plead that a pilot either operated flights under Part 91 without the required safety equipment or operated the flights under Part 135 without the required safety equipment. In either case, the lack of required safety equipment raises a serious concern regarding air safety. But once the Administrator established that Part 135 applied to respondent’s flights, it is a legal impossibility for the Administrator to prove any violations alleged under

⁵⁵ Reply Br. at 17-18 (footnotes omitted).

⁵⁶ 14 C.F.R. § 91.501(a) (limiting the application of 14 C.F.R. Part 91, Subpart F where flight operations are subject to the requirements of Part 135).

⁵⁷ See Oral Initial Decision at 526-41 (explaining that compensation does not require a pilot profit from a flight, that the provision of an airplane and flight crew from a single source is generally conclusive evidence of a Part 135 flight, and that respondent arranged a sham lease (citing *Administrator v. Motley*, NTSB Order No. EA-450, 2 NTSB 178 (1973); *Administrator v. Nix*, NTSB Order No. EA-4825 (2000); FAA Advisory Circular 91-37B)).

⁵⁸ 14 C.F.R. § 91.501(a).

Subpart F of Part 91. Although we find that the law judge’s grant of partial summary judgment for the Subpart F violations is in error, for the reasons discussed below, this does not affect the validity of the sanction.

B. *Sanction*

We next address respondent’s arguments that the 210-day suspension is inappropriate in this case. In accordance with *Martin v. Occupational Safety and Health Review Commission*,⁵⁹ we apply principles of judicial deference to the Administrator’s interpretations of laws, regulations, and policies. In *Martin*, the United States Supreme Court emphasized the importance of the reasonableness inquiry when determining whether an agency’s statutory interpretation is entitled to deference.⁶⁰ We have emphasized that the determination of whether the Administrator’s choice of sanction is reasonable is case-specific and is based upon the facts and circumstances adduced at the hearing.⁶¹ Further, we will consider both aggravating and mitigating factors in evaluating the reasonableness of an imposed sanction.⁶²

1. *Judicial Notice of the FAA Order 2150.3B*

Respondent initially argues that “the record is devoid of any documentary evidence or testimony concerning the FAA’s proposed sanction,” and although the Administrator identified FAA Order 2150.3B—which includes the Sanctions Guidance Tables—as an exhibit, “the exhibit was never offered or otherwise received in evidence.”⁶³ The Administrator asserts that

⁵⁹ 499 U.S. 144 (1991).

⁶⁰ *Id.* at 145, 150-58.

⁶¹ *Administrator v. Jones*, NTSB Order No. EA-5647, at n.62 (2013); *see also Administrator v. Greene*, NTSB Order No. EA-5841, at 36-37 (2018).

⁶² *Id.*

⁶³ Appeal Br. at 9-10.

the law judge appropriately took judicial notice of FAA Order 2150.3B.⁶⁴ We will review a law judge's evidentiary rulings under an abuse of discretion standard, after a party can show such a ruling prejudiced him or her.⁶⁵

Under the Board's Rules of Practice, the law judges will apply the Federal Rules of Evidence "to the extent practicable."⁶⁶ When applied, under the Federal Rules of Evidence, a law judge "may judicially notice a fact that is not subject to reasonable dispute because it can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned."⁶⁷ Importantly, the law judge "may take judicial notice at any stage of the proceeding."⁶⁸ A law judge may take judicial notice of federal agency documents where they are "publicly available and [their] accuracy cannot reasonably be questioned."⁶⁹ Indeed, the Board has previously relied on the law judges' practice of taking judicial notice of the FAA's Sanction Guidance Tables in affirming the Administrator's proposed sanction.⁷⁰

Here, the Administrator twice asked the law judge to take judicial notice of FAA Order

⁶⁴ Reply Br. at 15-17.

⁶⁵ See, e.g., *Administrator v. Wright*, NTSB Order No. EA-5872, at 23 (2020); *Administrator v. Leyner*, NTSB Order No. EA-5732, at 8-9 & n.19 (2014) (citing *Administrator v. Walker*, NTSB Order No. EA-5656, at 15 n.39 (2013)).

⁶⁶ 49 C.F.R. § 821.38. We recently reaffirmed that the Federal Rules of Evidence are "non-binding guidance" in proceedings before the Board, and that we "assess the law judge's evidentiary rulings for prejudicial error and abuse of discretion." *Tushin v. Administrator*, NTSB Order No. EA-5902, at 43 (2021).

⁶⁷ Fed. R. Evid. 201(b)(2).

⁶⁸ *Id.* 201(d).

⁶⁹ See, e.g., *Apotex Inc. v. Acorda Therapeutics, Inc.*, 823 F.3d 51, 60 (2d Cir. 2016) (finding that a U.S. Food and Drug Administration policy document is appropriate for judicial notice (citing Fed. R. Evid. 201(b); *Staehr v. Hartford Fin. Servs. Grp., Inc.*, 547 F.3d 406, 425 (2d Cir. 2008))).

⁷⁰ See, e.g., *Administrator v. Jablon*, NTSB Order No. EA-5460, at 17 (2009) (affirming the Administrator's requested sanction where the law judge took judicial notice of the Sanction Guidance Tables); *Administrator v. Martz*, NTSB Order No. EA-5447, at 11 (2009) (same).

2150.3B. The Administrator first made a request for judicial notice before opening arguments while the parties addressed prehearing matters, including the Administrator's withdrawal of certain aspects of the complaint.⁷¹ The law judge noted the request and invited respondent to discuss the Administrator's requests.⁷² Respondent did not object to the request for judicial notice.⁷³ The Administrator again asked for the law judge to take judicial notice during closing arguments while discussing the sanction.⁷⁴ Again, respondent did not object.

Notably, there was an explicit request for the law judge to take judicial notice of FAA Order 2150.3B without objection from respondent during the hearing. On appeal, respondent suggests that it was not properly before the law judge because the Order was marked as an exhibit and then was never offered or received into evidence during the hearing.⁷⁵ But respondent failed to recognize the Administrator's requests to take judicial notice. Furthermore, respondent makes no argument regarding whether FAA Order 2150.3B could be "subject to reasonable dispute." Therefore, the Board finds that the sanctions guidance tables are regularly included as part of practice before the Board and that FAA Order 2150.3B is not subject to reasonable dispute; thus, it was properly before the law judge. Consequently, respondent's reliance on cases in which the Board had determined the Administrator failed to introduce any evidence regarding sanction guidance is unpersuasive.⁷⁶

⁷¹ Tr. at 35.

⁷² *Id.* at 35, 37.

⁷³ *Id.* at 37 ("That's the only thing I really had to clear up. As far as the other things, I'm fine.").

⁷⁴ *Id.* at 441 ("I've asked that Your Honor take judicial notice of FAA Order 2150.3B, which sets out the FAA's sanction guidance at the time of respondent's violation.").

⁷⁵ Appeal Br. at 10.

⁷⁶ *See, e.g.*, Appeal Br. at 16-17 (citing *Administrator v. Kimsey*, NTSB Order No. EA-4537, at 6 (1997) ("The law judge cannot be expected to abide by valid sanction guidelines if he is not advised of them, and nowhere in the transcript, before or after the judge's ruling, is there any

2. *Appropriate Sanction*

Although we reject the argument that the sanction guidance was not properly before the law judge, respondent offers several additional arguments that a 210-day sanction is inappropriate in this case: 1) the Administrator withdrew certain alleged violations in the complaint before the hearing began, which warrants a reduction in sanction;⁷⁷ 2) the withdrawal of a significant portion of the complaint serves as a mitigating factor;⁷⁸ and 3) the Administrator failed to establish that Board precedent supports the proposed sanction.⁷⁹ We must carefully review the Administrator's requested sanction to determine whether the inapplicability of the Part 91 Subpart F allegations would affect the sanction.

At the hearing, the Administrator clearly articulated the basis for the sanction. First, the Administrator noted that the alleged violations fell into three categories within the Sanction Guideline Tables.⁸⁰ This is consistent with the guidance where the certificate holder has multiple violations.⁸¹ The Administrator explained the sanction range for each of the three types of violations and that the total range of sanctions was between 105 and 330 days.⁸² The Administrator also explained that “[w]hile sanction determination is not a strict mathematical formula, it’s a judgment, typically, however, the FAA starts at the middle of the range, and may

mention by counsel for the Administrator of the basis for the proposed sanction.”); *Administrator v. Oliver*, NTSB Order No. EA-4505, at 6 (“However, the Administrator has introduced absolutely no evidence regarding any applicable or relevant sanction guidance that would contradict the law judge’s 7-day suspension.”).

⁷⁷ Appeal Br. at 25-26.

⁷⁸ *Id.* at 15.

⁷⁹ *Id.* at 15.

⁸⁰ Tr. at 441-42.

⁸¹ See FAA Order 2150.3B at 7-10 to -11.

⁸² Tr. at 442; see also FAA Order 2150.3B at B-17 (Fig. B-2-d(4)(g)), B-20 (Fig. B-2-e(7)(c)), B-28 (Fig. B-3-n(3)).

move higher or lower depending on aggravating and mitigating factors.”⁸³ The Administrator noted that the middle of the range for these violations would be 217.5 days and proposed a 210-day suspension based on the violations.⁸⁴ The Administrator was consistent with this proposed sanction in the reply brief on appeal, explaining that the “FAA does not impose a separate sanction for each regulatory violation cited . . . , but rather imposed a sanction equivalent to a single violation for each of the three categories.”⁸⁵

We have determined that the Subpart F violations are inapplicable to this case because the flights operated by respondent were subject to the requirements of Part 135. But the remaining violations, as detailed in Table 1 below, constitute seven violations across the same three categories of violations.

⁸³ Tr. at 442; *see also* FAA Order 2150.3B at 7-9.

⁸⁴ Tr. at 442.

⁸⁵ Reply Br. at 11-14.

Table 1: Sanctions Guidance for Proven Violations⁸⁶

Type of Violation	Sanction Table Reference	Violations	Sanction Range
Operating without required equipment	Fig. B-2-d(4)(g)	14 C.F.R. § 135.117 14 C.F.R. § 135.167(a)(2)	15 to 120 days
Missed proficiency check or line check	Fig. B-2-e(7)(c)	14 C.F.R. § 135.293(b) 14 C.F.R. § 135.297 14 C.F.R. § 135.301(b)	30 to 90 days
Conducting operations without required operating certificate	Fig. B-3-n(3)	14 C.F.R. § 119.5(g) 14 C.F.R. § 119.5(l)	60 to 120 days

The withdrawn violation and the remaining violations under Section 91.509 that are inapplicable would have fallen into the first category, regarding respondent's failure to have the proper safety equipment on board the flight. Neither the withdrawal of violations before the hearing nor our finding that the Subpart F violations are inapplicable alters the Administrator's proposed sanction. The law judge found that respondent violated seven regulations, and respondent does not appeal those conclusions. Moreover, the proposed 210-day sanction for the seven violations remains within the sanction range provided by the guidelines.⁸⁷ The Board will

⁸⁶ Although the law judge found that respondent violated 14 C.F.R. § 91.13(a), the Administrator did not argue that this should impact the sanction. This is consistent with the guidance offered in FAA Order 2150.3B:

When a person operates an aircraft in violation of a specific regulation other than 14 C.F.R. § 91.13, however, that violation constitutes a careless or reckless operation in and of itself. In these cases, the misconduct may also result in a violation of 14 C.F.R. § 91.13 if it actually or potentially endangers the lives or property of others. When calculating the amount of sanction based on this factor, a distinction generally is drawn between instances where 14 C.F.R. § 91.13 is an independent violation and those where it is residual to another violation. When a 14 C.F.R. § 91.13 violation is residual only, a higher sanction generally is not warranted unless the conduct is also reckless.

If the FAA had separately applied a sanction for each individual violation, the range of suspension would be between 240 days and 750 days, with a mid-range of 495 days of suspension.

⁸⁷ See *Administrator v. Phillips*, NTSB Order No. EA-5877, at 35 (2020) (affirming the law

give appropriate deference to the Sanction Guidance Table when determining the reasonableness of a sanction, in light of the mitigating and aggravating factors present in the case.⁸⁸

Second, respondent's contention that the withdrawal of alleged violations from the complaint, or the inapplicability of the Subpart F allegations, serves as a mitigation factor is without merit. We have consistently held that compliance with the regulations is expected of certificate holders and cannot serve as a mitigating factor.⁸⁹ Rather, compliance with the regulations is an expectation of all certificate holders.⁹⁰

Furthermore, respondent does not appeal the law judge's findings regarding any of the aggravating factors: that respondent had a high level of experience; that respondent holds an ATP certificate; that respondent "should have known the requirements that were necessary for his overwater flights"; that there was a great degree of hazard because respondent "conducted overwater flights without required safety equipment that he had been informed he must have on board"; and that respondent's conduct was deliberate and intentional.⁹¹ In this case, the Administrator has proven eight violations—including the residual violation under 14 C.F.R.

judge's 120-day suspension for violations where the sanction was "within the range of sanction for such violations").

⁸⁸ See *Administrator v. Street*, NTSB Order No. EA-5791, at 15, 18-19 (2016) (reversing the law judge's reduction in sanction because it fell well below the sanction ranges for the alleged violation and affirming the Administrator's proposed sanction because it was reasonable considering the balance of mitigating and aggravating factors); see also *Administrator v. Phillips*, NTSB Order No. EA-5877 (2020) (ordering a 240-day suspension after considering the sanction guidance table, as well the aggravating and mitigating factors).

⁸⁹ See, e.g., *Administrator v. Hunter*, NTSB Order No. EA-3721, at 5-7 (1992) (noting that the record presented no mitigating factors and that a clean record does not "permit sanction reduction").

⁹⁰ *Administrator v. Street*, NTSB Order No. EA-5791, at 17 ("[T]he Board's jurisprudence dictates that a good compliance attitude, with respect to the [Federal Aviation Regulations], and a violation-free history are expected to be the norm.").

⁹¹ Oral Initial Decision at 557-58.

§ 91.13(a)—and multiple aggravating factors, while respondent has offered no mitigating factors. Although the Administrator could have sought a higher sanction within the appropriate range based on the aggravating factors, the suggested sanction is nearly the middle of the range.

Respondent's remaining arguments suggest that the proposed sanction is not supported by established law, precedent, or policy, but these arguments are also unpersuasive. Respondent specifically argues that "not one case relied upon by the Administrator supports his proposed 210-day suspension for similar violations of the regulations." Respondent's argument suggests that the Administrator must cite to precedent that mirrors the alleged violations and balance of mitigating and aggravating factors in this case. Instead, we carefully examine whether the Administrator's choice of sanction is reasonable based upon the facts and circumstances adduced at the hearing, considering both aggravating and mitigating factors. All of the cases respondent discussed predate FAA Order 2150.3B, which was established in 2007.⁹² The Administrator is entitled to change FAA policy through regulatory processes, including by updating the sanction guidance, and the Board must consider its precedent in light of such policy changes.⁹³ Our precedent still remains relevant, and the cases respondent discusses are easily distinguishable. Although some cases have similar violations, none of the cases have violations of the variety or quantity that were proven in this case.⁹⁴ Several of those cases also involved mitigating factors

⁹² See FAA Order 2150.3B – FAA Compliance and Enforcement Program (with Change 13), available at https://www.faa.gov/regulations_policies/orders_notices/index.cfm/go/document.information/documentid/17213.

⁹³ See *Garvey v. NTSB*, 190 F.3d 571, 582 (D.C. Cir. 1999) ("Because the FAA is entitled to launch new policies through administrative adjudication, it may sometimes be necessary for the NTSB to accommodate such policies by changing its jurisprudential course.").

⁹⁴ See *Ferguson v. NTSB*, 678 F.2d 821 (9th Cir. 1982) (reviewing operation where pilot deviated from an air traffic control clearance and landing at an airport not certificated under Part

that affected the sanction.⁹⁵ Moreover, respondent's brief suggests that the Administrator relied on these cases for purposes of sanction, but the transcript is clear that these cases were relied on for specific legal holdings rather than to support the level of sanction.⁹⁶

Respondent has failed to demonstrate that the proposed sanction is not in accordance with established law or policy. Instead, respondent has rejected the applicability of the Sanctions Guidance Tables wholesale. Based upon our review, the Board finds that the Administrator's requested sanction of 210 days is reasonable.

139); *Administrator v. Nix*, NTSB Order No. EA-4825 (2000) (reviewing 48 flights where operations were conducted without required operating certificate and with a missed proficiency check); *Administrator v. Peacon*, NTSB Order No. EA-4607 (1997) (reviewing case involving allegations concerning operation in MNPS airspace without FAA approval and without approved long-range navigational equipment, carriage of unsecured cargo on board, and the failure to ensure that passengers received a full safety briefing, and a residual finding of a violation of Section 91.13(a)); *Administrator v. Davis*, NTSB Order No. EA-4255, 1994 NTSB LEXIS 268 (1994) (reviewing operations conducted without the required operating certificate and with a missed proficiency check); *Administrator v. Blackburn*, NTSB Order No. EA-1802, 1982 NTSB LEXIS 140 (1982) (reviewing four separate violations of operating a flight with a missed proficiency check and the failure to secure cargo); *Administrator v. Rountree*, NTSB Order No. EA-757, 2 NTSB 1712 (1975) (reviewing a single violation of operating a flight with a missed proficiency check); *Administrator v. Motley*, NTSB Order No. EA-450, 2 NTSB 178 (1973) (reviewing violations alleging the carrying of human remains for compensation or hire on five occasions without the proper certificate and allowing parachute jumping from the aircraft without establishing proper radio communications).

⁹⁵ See *Administrator v. Nix*, NTSB Order No. EA-4825, 2000 NTSB LEXIS 13, at *39-42 (2000); *Administrator v. Peacon*, NTSB Order No. EA-4607, at 13 (1997); *Administrator v. Davis*, NTSB Order No. EA-4255, 1994 NTSB LEXIS 268, *21-22 (1994); *Administrator v. Motley*, NTSB Order No. EA-450, 2 NTSB 178, at 181-82 (1973).

⁹⁶ See, e.g., Tr. at 422 (citing *Administrator v. Motley*, NTSB Order No. EA-450, 2 NTSB 178, 180 (1973), to demonstrate the broad interpretation the Board has given to compensation); Tr. at 445 (citing *Ferguson v. NTSB*, 678 F.2d 821, 828-29 (9th Cir. 1982), to discuss the legal standard for whether conduct is inadvertent and not deliberate).

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is granted in part and denied in part;
2. The law judge's Oral Initial Decision is reversed in part and affirmed in part;
3. The Administrator's Order of Suspension, as amended at the hearing, is reversed regarding the allegations of 14 C.F.R. §§ 91.509(b), 91.509(d), 91.509(e); and
4. The Administrator's Order of Suspension, as amended at the hearing, is affirmed regarding the violations of 14 C.F.R. §§ 91.13(a), 119.5(g), 119.5(l), 135.117, 135.167(a)(2), 35.293(b), 135.297, 135.301(b), and the suspension of respondent's ATP Certificate for 210 days is affirmed.

HOMENDY, Chair, LANDSBERG, Vice Chairman, GRAHAM and CHAPMAN,
Members of the Board, concurred in the above opinion and order.

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

* * * * *

In the matter of:

STEPHEN M. DICKSON,
ADMINISTRATOR,
FEDERAL AVIATION ADMINISTRATION,

Complainant,

v.

ADAM S. NORWITCH,

Respondent.

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Docket No.: SE-30535
JUDGE MONTAÑO

Via Teleconference

National Transportation Safety Board
490 L'Enfant Plaza East, S.W.
Washington, D.C.

Monday,
November 4, 2019

The above-entitled matter came on for hearing,
pursuant to notice at 10:00 a.m. Eastern Time.

BEFORE: ALFONSO J. MONTAÑO
Chief Administrative Law Judge

APPEARANCES:

On behalf of the Administrator:

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On behalf of the Respondent:

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I N D E X

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(None.)		

P R O C E E D I N G S

(10:03 a.m.)

1 JUDGE MONTAÑO: All right. We are on the record.

2 I am Alfonso J. Montaña, the Chief Administrative Law Judge
3 for the National Transportation Safety Board. The purpose of this
4 conference call is to issue an Oral Initial Decision in the case
5 of the Administrator v. Adam Norwitch, NTSB Docket Number SE-
6 30535.

7 I'd like to have counsel identify themselves for the record
8 and tell me where they are located geographically and also who is
9 there with them in this call. Let me ask the Administrator to go
10 first.

11 MR. WEINGOLD: Brett Weingold for the FAA, Your Honor. I'm
12 in Washington, D.C. in the FAA offices there. I have no one else
13 with me.

14 JUDGE MONTAÑO: All right. Mr. Moulis.

15 MR. MOULIS: Yes, Judge. Mike Moulis. I'm in South Florida
16 in my office, and I'm here with Adam Norwitch.

17 JUDGE MONTAÑO: All right. Thank you. Thank you, all, very
18 much.

19 As I said, the reason we are proceeding or we are convening
20 this morning or this afternoon is so that I can issue an oral
21 decision, initial decision in this case.

22 It is a lengthy decision. I would like the parties to please
23 bear with me. I will take a break probably halfway through, and
24

1 at that time -- and then reconvene, if that's necessary. So I
2 will begin.

3 Can you hear me all right, Mr. Moulis and Mr. Norwitch?

4 MR. MOULIS: Yes, Your Honor.

5 MR. NORWITCH: Yes, Your Honor.

6 JUDGE MONTAÑO: All right. Mr. Weingold?

7 MR. WEINGOLD: Yes, Your Honor.

8 JUDGE MONTAÑO: All right. This is the Oral Initial Decision
9 and Order.

10 ORAL INITIAL DECISION AND ORDER

11 JUDGE MONTAÑO: This is a proceeding under the provisions of
12 49 U.S.C. Section 44709, formerly Section 609, of the Federal
13 Aviation Act and the provisions of the Rules of Practice in Air
14 Safety Proceedings of the National Labor Relations Board. This
15 matter has been heard before me as an administrative law judge
16 assigned to this case. As permitted by the regulations, I am
17 issuing an Oral Initial Decision.

18 Pursuant to notice, this matter came on for trial on October
19 29 to October 30, 2019, in Miami, Florida. The Administrator was
20 represented by one of his staff counsel, Brett D. Weingold,
21 Esquire, of the Enforcement Division, Southern Team, Federal
22 Aviation Administration. The Respondent was represented by
23 Michael Moulis, Esquire.

24 The parties were afforded a full opportunity to offer
25 evidence, to call, examine and cross-examine witnesses and make

1 arguments in support of their respective positions. I will not
2 discuss all of the evidence in detail. I have, however,
3 considered all of the evidence, both oral and documentary. That
4 which I do not specifically mention is viewed by me as either
5 being corroborative or as not materially affecting the outcome of
6 this decision.

7 The Respondent, Adam Norwitch, was in the courtroom the
8 entire trial and actively assisted his attorney, Mr. Moulis, in
9 this case.

10 The Respondent appealed the Administrator's Order of
11 Suspension dated July 16, 2018. The Order of Suspension was
12 subsequently filed as the complaint in this case on July 25, 2018.

13 The Administrator alleges that Mr. Norwitch violated a number
14 of sections of the Federal Aviation Regulations as a result of
15 flights he conducted as the pilot in command on January 25, 2017
16 and January 31, 2017. Those flights were from Florida to Cabo San
17 Lucas, Mexico, and return flights from Cabo San Lucas to Florida.

18 The Administrator alleges that during these flights
19 Respondent violated a number of the Federal Aviation Regulations,
20 which I will discuss in detail in this case, but for now, I will
21 state that the Administrator argues that Mr. Norwitch violated the
22 following aviation regulations: 14 C.F.R. 91.13(a); 14 C.F.R.
23 91.509(b) (2), (3) and (5); 14 C.F.R. 91.509(d); 14 C.F.R.
24 91.509(e); 14 C.F.R. 119.5(g); 14 C.F.R. 119.51(l); 14 C.F.R.
25 135.117; and 14 C.F.R. 135.167(a) (2); 14 C.F.R. 135.293(b); 14

1 C.F.R. 135.297; and 14 C.F.R. 135.301. The Administrator
2 subsequently amended the complaint, and I think I've described it
3 accurately at this point, but I will discuss that amendment later.

4 Respondent filed an answer to the complaint in which he
5 admitted some of the allegations but denied the majority of the
6 allegations in the complaint.

7 The Respondent also advanced four affirmative defenses:

8 One, the Administrator's complaint improperly stacks alleged
9 charges and violations.

10 The second affirmative defense is that Respondent filed a
11 NASA report under the ASRS program, thereby precluding the
12 Administrator from imposing a sanction other than establishing a
13 record of the alleged incident.

14 The third affirmative defense is that the FAA reporting
15 inspector, Mr. Rich Shore, abused the FAA's enforcement process
16 and the Administrator's process by retaliating against the
17 Respondent, his pilots, his clients, owners and potential buyers
18 of his aircraft, as a direct result of Mr. Norwitch's refusal to
19 provide free or reduced rate flights to Mr. Shore's brother at
20 Mr. Shore's request.

21 The fourth affirmative defense is that the inspectors
22 involved in this case conspired to permit and induce Mr. Norwitch
23 to violate Federal Aviation Regulations Parts 91.509(a) through
24 (e), and in the process of said inducement, violated mandates set
25 out in the agency's enforcement handbook.

1 The Administrator has the burden of proof in this case, and
2 they presented the testimony of Adam Norwitch, the Respondent in
3 this case. They provided the testimony of Ms. Wendy Fine, also
4 provided the testimony of aviation safety inspector Mike Wilson
5 and aviation safety inspector, Mr. Keith Kibodeaux.

6 Respondent, Adam Norwitch, was the first witness called by
7 the Administrator. On direct examination, he testified that he
8 knows Ms. Wendy Fine. He agreed that she was a passenger on a
9 flight in issue in this case. Mr. Norwitch testified that
10 Ms. Fine was introduced to him by a friend. He testified that she
11 flew quite a few charter flights with his company prior to the
12 flights in issue in this case. When asked if she had arranged for
13 another charter flight after the flights in issue in this case,
14 Mr. Norwitch first testified he could not recall, but then when
15 shown his sworn deposition testimony, agreed that he had testified
16 previously under oath that she had made such a flight. However,
17 despite being shown his sworn testimony, Mr. Norwitch again
18 testified that he did not have any present recollection if she had
19 arranged for a charter flight after the flights in issue in this
20 case.

21 Mr. Norwitch agreed that he and Ms. Fine exchanged text
22 messages relative to setting up the flights to Cabo San Lucas,
23 which are the subject matter in this case. He was shown
24 Administrator's Exhibit A-6, which included copies of telephone
25 texts. He testified that she had asked him for a price for the

1 proposed flights and he provided the prices to her. He provided
2 quotes for the price that it would cost to make these flights. He
3 testified that she had reviewed them and then asked him to book
4 the flight.

5 He testified to the telephone texts at Exhibit A-7, dated
6 January 22, 2017, and he agreed that from his review of the
7 contents of the text at A-7, it appeared that there had been some
8 additional texts that had been sent by him that were not included
9 in the exhibits. It appeared that there had been some gaps in the
10 documented exhibit texts at the exhibits at A-7.

11 When asked if he had provided the additional texts, he
12 testified that he sent all of the texts that he had. He could not
13 provide the texts he did not have. He then went on to expound on
14 how he and his lawyer had tried to get all of the telephone texts
15 between he and Ms. Fine. He testified he wanted to obtain all the
16 texts because the truth was on his side.

17 As to Exhibit A-7, he agreed that the texts indicated that he
18 informed Ms. Fine to make the check for the flights that had been
19 arranged out to Oxbow Express for the payments. But he also
20 indicated that the text indicated that the check, even though it's
21 made out to Oxbow Express, should be sent directly to Adam
22 Norwitch's home address. Mr. Norwitch agreed that in one of the
23 texts that he stated to Ms. Fine that he did not want to receive
24 the check on the day of the flight because it opens him up to
25 questions from our side and from Mexico.

1 Mr. Norwitch has testified that he told Ms. Fine that she
2 should indicate in the memo section of the check that it was for
3 an aircraft dry lease because, as he told her, this was
4 technically a dry lease. He testified that Ms. Fine never
5 arranged for a dry lease with him before. When asked what
6 questions he wanted to avoid from our side and Mexico that he had
7 referenced to Ms. Fine, Mr. Norwitch provided an answer that was
8 evasive and did not answer the question asked.

9 Mr. Norwitch agreed he was piloting the flights in this case
10 for free. When asked if Ms. Fine paid for the accommodations for
11 he and his family during these flights and during this trip, he
12 answered that Ms. Fine paid for lodging. When asked why he would
13 not agree that Ms. Fine paid for accommodations, but he would
14 rather agree that she paid for lodging, Mr. Norwich essentially
15 evaded the question.

16 Mr. Norwitch agreed that he benefited from the arrangement in
17 which Ms. Fine paid for the aircraft and lodging for he and his
18 family. He agreed that it saved him, as he stated, a bunch of
19 money. After a pause, he quickly added but he was not compensated
20 for the trip.

21 When Mr. Norwitch was asked about the telephone texts which
22 were in Exhibit A-9, he testified he did not recall writing those
23 texts. He said they looked like his texts, but then again stated
24 that he did not recall writing the texts in Exhibit A-9. He went
25 on to explain that he did not know when those specific texts in

1 the exhibit were sent, as they only contain one date, and that is
2 a date of March 19th. He testified that the texts in Exhibit A-9
3 were not from his phone and he assumed that they were from Wendy
4 Fine's phone. Mr. Norwitch then testified he did not doubt that
5 he had actually written the texts.

6 When asked if the texts had been sent to him from Ms. Fine on
7 March 19, 2019, he was not responsive and testified that sometimes
8 texts are not delivered when they're actually written and sent.

9 The text that he was questioned about reads specifically: Hi
10 Wendy, originally we had the trip scheduled for January 25th
11 through the 29th for \$22,350. The extra couple of days going to
12 the 31st will normally add extra cost. I don't mind the extra
13 time in Cabo by any means so I would like to hold the price at the
14 same number and have my two boys join us for the flight.

15 Mr. Norwitch agreed that he indicated the cost would be more
16 if Ms. Fine stayed in Cabo San Lucas longer than had previously
17 been arranged. Then he agreed, that the text indicated he would
18 keep the price the same if he could bring his two sons along for
19 the flight.

20 Despite just having read the text and agreeing with the
21 content of the text, Mr. Norwitch then testified that it was Wendy
22 Fine's idea to bring his two boys along on the trip. When asked
23 where that was indicated in the various text messages, he
24 responded by saying she told him that over the phone. When again
25 it was pointed out that he had stated he could keep the price at

1 the original quote if he could bring his two sons along,
2 Mr. Norwitch answered the question by testifying he agreed that
3 the text was relevant. That was his response.

4 When asked if, in fact, he did not preserve all of his texts
5 on his phone regarding the flights in issue, Mr. Norwitch evaded
6 the question by responding that the question was like asking, when
7 did you stop beating your wife? He then went into a discussion of
8 how he would have loved to have kept all the texts because the
9 truth was on his side. He testified it would have been much
10 better for him if he had saved all of his texts.

11 When again asked if he preserved all of his texts by stating
12 yes or no, a simply yes or no answer, Mr. Norwitch did not answer
13 the question but instead testified he did not destroy the texts in
14 issue in this case or destroy any texts.

15 Mr. Norwitch was then asked if he agreed to keep the price
16 low if his two boys went along for the flight. He responded that
17 the owner of the aircraft, Charles Smith, who owns Oxbow Express,
18 that it was he who agreed to lower the price.

19 Mr. Norwitch testified that he agreed that one of the texts
20 indicates that he remembered that Ms. Fine stated that the cost
21 would be her treat.

22 Mr. Norwitch was asked to compare his text at A-7 with the
23 texts at A-8, pages 5, 6 and 7, provided by Ms. Fine. He was then
24 asked if he agreed that the texts in A-8 from Ms. Fine's phone
25 provided more information about the arrangements for the flight in

1 issue than the text he provided from his phone.

2 Respondent disagreed that the texts from Ms. Fine provided
3 more information about the arrangements and the discussions about
4 the arrangements for the flights in issue in this case than the
5 texts that he provided from his phone. It is clear from just
6 reviewing the texts that Ms. Fine's texts at A-8 clearly provide
7 more information than the texts provided by Mr. Norwitch that he
8 had preserved and provided in this case.

9 When he was asked if this was the first time Ms. Fine had
10 entered into a dry lease agreement, Respondent said no. He had
11 previously testified that she had not entered into a dry lease
12 agreement in the past.

13 When asked if he explained the nature of the dry lease to
14 Ms. Fine, Mr. Norwitch testified he explained to Ms. Fine about
15 the nature of a dry lease over the telephone.

16 When asked if Ms. Fine contacted Oxbow Express about
17 obtaining a dry lease and arranging for the flight, Mr. Norwitch
18 evaded the question by stating that it was a ridiculous question
19 because it was obvious that she obtained an aircraft for the
20 flights in issue.

21 When asked again if Ms. Fine contacted Oxbow Express to
22 arrange for a dry lease or obtain the aircraft from Oxbow Express,
23 Mr. Norwitch testified that he relayed the message from Ms. Fine
24 regarding the aircraft to Oxbow Express, and he relayed the
25 messages from Oxbow back to Ms. Fine.

1 When asked if Ms. Fine ever spoke to Oxbow directly to
2 arrange for the flight or arrange for the dry lease, Mr. Norwitch
3 stated he did not contact Oxbow Express directly.

4 Mr. Norwitch testified that he is the owner of Great Flight,
5 which is a Part 135 on-demand air charter company. He is the
6 president and the chief pilot for the business. He agreed that as
7 a Part 135 operator he is held to a higher standard of safety.

8 When asked if he knew what operational control was, the term
9 operational control, he testified that he did. He testified Wendy
10 Fine had operational control over all the flights in this case
11 that are in issue.

12 Mr. Norwitch agreed that he filed flight plans in this case.
13 He decided where to stop for fuel. Mr. Norwitch agreed that
14 Ms. Fine was not responsible for paying for the fuel for the
15 flights in this case, for the flights in issue. He testified that
16 he did not pay for the fuel. He testified that fuel was paid by
17 Oxbow Express. Mr. Norwitch testified he could not remember if he
18 paid for the fuel with an Oxbow credit card or if he made a phone
19 call to arrange for the fuel to be paid.

20 When asked if he made arrangements for fueling the aircraft
21 during the flights, he responded, and I quote, "I ordered the
22 payment." Mr. Norwitch agreed that his signature appeared on a
23 fuel receipt for \$930, which is at Exhibit A-13. He agreed that
24 the card used to pay for that fuel was an American Express card.
25 Mr. Norwitch was evasive in his answers when asked about the

1 American Express card used for payment for the fuel.

2 When asked if he fueled the plane in Key West, he responded
3 he was sure that he did. He was shown a fuel receipt at A-14 and
4 admitted it was his signature on the fuel receipt. When it was
5 pointed out that the receipt indicated Great Flight was listed as
6 the customer for whom fuel was provided and the customer who paid
7 for the fuel, Mr. Norwitch testified, "They always indicate Great
8 Flight automatically even if the flight is a dry lease." He
9 agreed that the receipt for the fuel included his home address.

10 Mr. Norwitch agreed that the aircraft he uses in his Great
11 Flight 135 operation is leased from Oxbow Express. It is the same
12 aircraft that was used in this case for the flights in issue.

13 I believe Mr. Norwitch testified that Oxbow Express paid for
14 catering for the flight, fuel costs, and airport landing fees in
15 this case for the flights in issue.

16 When asked if Ms. Fine was responsible for maintenance costs
17 for the flights in issue, while his answer was initially evasive,
18 he subsequently testified that Ms. Fine would not be responsible
19 for normal maintenance costs of the aircraft.

20 Mr. Norwitch agreed he performed the preflight on the
21 aircraft. He agreed that he had to ensure that the flights in
22 issue were in compliance with the Federal Aviation Regulations.
23 He testified that Ms. Fine played no role in ensuring that the
24 flights in issue were in compliance with the Federal Aviation
25 Regulations.

1 Mr. Norwitch testified that he made the determinations as to
2 the fueling of the aircraft, and he was responsible for
3 researching the weather and planning for weather issues for the
4 flights in issue. He testified Ms. Fine played no role in this
5 planning.

6 When asked again if Ms. Fine paid for the accommodations for
7 he and his family, Mr. Norwitch responded to this question by
8 saying yes.

9 When asked if he agreed to not increase the costs of the
10 flights after Ms. Fine indicated she wanted to spend 2 more days
11 in Cabo San Lucas, Mr. Norwitch testified that Mr. Charles Smith,
12 the owner of the aircraft and the owner of Oxbow Express, decided
13 not to increase the price.

14 When asked again about the fact that the phone text at A-9,
15 page 1, indicated that he had indicated to Ms. Fine that the price
16 would stay the same if he could bring his two sons along for the
17 trip, Mr. Norwitch agreed that that is what the text indicated,
18 and then he stated that he took her up on the option she provided.
19 However, in reviewing the text, there's nothing in the text that
20 indicates that Ms. Fine provided Mr. Norwitch with any options.

21 Mr. Norwitch was then asked about his expenses for the flight
22 and accommodations and meals for the trip at issue in this case.
23 He testified he brought along \$4,000 and spent it on buying meals
24 for his family and for Ms. Fine. He testified that this was a
25 vacation among friends, and he and Ms. Fine had agreed to split

1 the costs. When asked about receipts to prove this point, he
2 testified he only had one receipt, but there must have been
3 others, he testified. The only receipt Respondent provided for
4 the trip is for \$434, which was not moved for admission into
5 evidence.

6 Mr. Norwitch then testified that he is an ATP pilot with
7 approximately 8,500 hours of flight time. He is a certified
8 flight instructor, and he is chief pilot and president and owner
9 of Great Flight.

10 He agreed he has no personal 135 certificate or personal
11 operations specifications to conduct flights under Part 135. He
12 testified he was familiar with Part 135 and Part 91 regulations,
13 but he does not know all of them. I believe he testified he
14 agreed it was important to know the regulations that related to
15 the flights in issue. He testified he did not read the
16 regulations prior to the flight that were relevant to the
17 requirements for the flight in this case over water.

18 Mr. Norwitch testified that during the ramp check in this
19 case, he was asked if he had a life raft on board the aircraft,
20 and he testified he told the inspectors he did not have one.

21 He then testified that after the ramp check, he flew from the
22 airfield in Louisiana to Cabo San Lucas. Mr. Norwitch testified
23 he did not check the regulations while in Cabo San Lucas about the
24 requirements of a life raft for the return flight over water. He
25 testified he wished that he had. He agreed that he was

1 responsible for the safety of the flight. He agreed that during
2 Great Flight charter flights he had piloted as a charter flight,
3 he had flown over water in the past. He testified that the
4 inspectors that conducted the ramp check in Louisiana did not tell
5 him what flight path to take when he took off.

6 Mr. Norwitch agreed that he was not legal to fly the flights
7 in issue as a Part 135 flight, as he had not passed his
8 proficiency check ride. Mr. Norwitch was shown his previous check
9 rides at A-12, although the document, pages 1 through 3, he agreed
10 that each of the check rides were flown during, as he termed it, a
11 grace month. He testified that there was an error in the date
12 relative to the expiration of his airman competency information
13 which included a December date, which I'll discuss later. He did
14 not explain why this error carried over to various check rides.

15 On cross-examination, Mr. Moulis conducted examination of his
16 client after completion of the direct examination by the
17 Administrator.

18 Mr. Norwitch testified that a typical charter flight can be
19 arranged through a broker who arranges for the flights with his
20 company, Great Flight, or it can be arranged directly with the
21 company, Great Flight, or it can also be arranged through email
22 through an internet connection. He testified that this process
23 requires that he calculate a quote and itemize the cost of the
24 proposed flight, and then he provides it to the prospective
25 customer.

1 He testified he leases the jet aircraft that he uses for his
2 charter company, Great Flight, from Oxbow Express and that for
3 each Great Flight charter flight using Oxbow aircraft, Oxbow
4 receives 90 percent of the revenue and Great Flight collects 10
5 percent. He testified that his Great Flight charter flights,
6 Oxbow pays for all of the expenses. Mr. Norwitch did not provide
7 any evidence to establish the existence of this purported business
8 arrangement. Nothing was admitted into evidence nor was he asked
9 questions other than his testimony I've described.

10 As to Part 91 flights, Mr. Norwitch testified he can fly
11 anywhere he wants. He testified that sometimes he flies with
12 Mr. Charles Smith, the owner of the aircraft in issue in this
13 case. He explained that Mr. Smith pays his own company, Oxbow
14 Express, for the use of his aircraft. Mr. Norwitch testified that
15 Mr. Smith chooses the pilot and pays the pilot separately from the
16 lease agreement or the rental agreement he has with his company,
17 Oxbow Express.

18 Mr. Norwitch testified that the flights in issue in this
19 case were Part 91 flights. Mr. Norwitch testified that the
20 ultimate test as to whether or not it is a Part 91 flight or Part
21 135 flight in this case, is that his company did not receive any
22 payment for the flight. He received no compensation, he
23 testified.

24 Mr. Norwitch testified that there are three factors to
25 determine that the flights in this case were Part 91 and not Part

1 135 flights. He said (1) he did not make any money on the flight;
2 (2) his entire family went on board with him on the flight; and
3 (3) he spent every minute with the passengers of the flight,
4 meaning Ms. Fine and those individuals that she brought with her
5 and discussed in her arrangements for the flights with
6 Mr. Norwitch.

7 Mr. Norwitch testified that Ms. Fine could have chosen any
8 pilot she wanted. He testified that on charter flights, he never
9 spends any time with the passengers.

10 Mr. Norwitch testified that the difference between a Part 91
11 and a Part 135 flight is operational control. He testified that
12 Wendy Fine had operational control of the flight and that is what
13 made it a Part 91 flight. He testified that Ms. Fine decided
14 where they would fly, where they would go and who would be the
15 pilot. He testified that Ms. Fine picked or decided everything
16 about the flights in issue in this case.

17 He testified that Ms. Fine initiated the flight and
18 terminated the flights. He testified she had operational control
19 over the entire flights in issue in this case. She could move the
20 plane anywhere she wanted to. Mr. Norwitch testified that
21 Ms. Fine paid for everything on the flight. He testified that the
22 only thing that Ms. Fine could not do on this flight was to
23 encumber the airplane.

24 Mr. Norwitch was shown, by his counsel, blown up photos which
25 depicted Respondent's son fishing and another showing Respondent

1 and two other individuals drinking what Respondent purported to be
2 tequila. Respondent was in the same picture. He testified that
3 what was depicted in the picture would not be done if the flight
4 was a charter flight. The photos were not moved into evidence by
5 the Respondent's lawyer. Mr. Norwitch testified he did not know
6 if any of the other passengers who came along for the flight had
7 paid any portion of the expenses for the trip.

8 On redirect by the Administrator's counsel, Mr. Norwitch
9 testified that Great Flight advertises and can be found on a
10 Google search. He testified that Great Flight advertises for
11 customers. He again testified that he made no money on this
12 flight, his family came on the trip and accommodations were paid
13 for by Ms. Fine, rendered these flights Part 91 flights.

14 I believe Mr. Norwitch testified that there was no provision
15 in Part 135 that indicated he could or could not hang out and
16 interact with the passengers of the 135 flight. As I stated, he
17 previously testified that he would not have been able to hang out
18 with those individuals who had made arrangements for a Part 135
19 flight; however, he cites or there's no citation as to any
20 regulation which allows or prohibits such conduct.

21 Mr. Norwitch testified that there was no formal lease in this
22 case. He testified this is not unusual. No written lease for an
23 aircraft of this size and weight is usually involved in these
24 types of flights. Mr. Norwitch testified that the actual terms of
25 the dry lease in this case consisted of the memo note on the check

1 that Ms. Fine made out for payment for the flight. The payment
2 was made to Oxbow Express. The memo line indicated that it was
3 for an aircraft dry lease. Mr. Norwitch testified that there was
4 no separate dry lease contract or agreement outlining Ms. Fine's
5 rights and obligations under the dry lease. Again, he testified
6 he discussed the dry lease by telephone with Ms. Fine.

7 There was no recross in this case.

8 In response to my questions, Mr. Norwitch testified that
9 Ms. Fine did not perform flight planning or file a flight plan in
10 this case. She had not made any decisions as to where to stop for
11 fuel or where to buy fuel. She did not pay for the fuel, he
12 testified. Mr. Norwitch testified Ms. Fine did not research
13 weather to determine if it was safe to fly. He testified that
14 Ms. Fine did not choose here to store the plane once they landed
15 in Cabo San Lucas, and she did no preflight inspections.

16 Again, he testified Ms. Fine had operational control because
17 she decided where to fly, when to fly, and how many stops to make.
18 He agreed that Ms. Fine essentially could make these same
19 decisions on a commercial flight if she had the money to pay for
20 the flight and the airlines actually made stops where she wanted
21 to fly. He agreed with that, but he said the difference here was
22 that she could not pick the pilot.

23 He testified she could have picked any pilot she wanted for
24 the flight, but he also indicated that he did not provide a list
25 of names of any other pilots that could be used in this case for

1 the flights in issue.

2 Mr. Norwitch agreed that he had received a benefit from
3 Ms. Fine by not having to pay for the flight, lodging and food in
4 this case; however, he quickly testified that he had lost money on
5 the vacation.

6 I asked if he believed using Oxbow aircraft in this flight in
7 issue created good will between he and Oxbow from whom he leases
8 the aircraft for his Part 135 operation. He testified he did not
9 believe so.

10 I then asked Mr. Norwitch about his text messages. He
11 responded by stating that he provided what he had and he didn't
12 have anything else to provide. He could not obtain copies of the
13 texts; however, he also testified that he did not keep texts
14 regarding things that he did not want to share with others, such
15 as texts about charity events, about texts with friends that might
16 have involved drinking or other matters that were personal. He
17 testified he kept the texts that he felt were relevant to this
18 case. He agreed that he decided what texts to keep and what texts
19 not to keep.

20 In follow up to my questions, the Administrator asked if
21 Respondent had ever told Ms. Fine she was in operational control
22 of the flight. Respondent answered no.

23 Ms. Wendy Fine next testified. Ms. Fine testified she was
24 appearing in this case under subpoena. She testified she is a
25 friend of the Respondent. Ms. Fine testified she is not a pilot

1 and has no other aviation experience.

2 She was asked what type of work she previously did for Fine
3 Air. She testified she sold cargo space on aircraft for that
4 company. Ms. Fine testified in that role she did not have to
5 interpret Federal Aviation Regulations.

6 Ms. Fine testified she knew Mr. Norwitch due to the fact that
7 she had used his company, Great Flight, for three or four previous
8 charter flights. She testified she called the Respondent
9 regarding the flights in issue in this case. She testified she
10 priced out first class tickets for the trip to Cabo San Lucas and
11 compared it to the cost of a charter flight. She testified she
12 found the charter flight cost to be less than the first class
13 flight.

14 She was asked whether she planned this flight to be anything
15 other than a charter flight. She responded by stating that the
16 Respondent was the pilot for the flight and she paid him for the
17 flights.

18 Ms. Fine could not recall when Respondent and his family were
19 invited to join in on the trip to Cabo San Lucas. She testified
20 it was our vacation from the beginning. However, she was shown
21 her sworn testimony in which she stated she could not recall when
22 Mr. Norwitch and his family were invited to stay at Cabo. She
23 testified that rather than pay for Respondent to fly back and
24 forth to take them on vacation and pick them up, it would be
25 better if Respondent would stay in Cabo San Lucas until the return

1 flight of she and her party.

2 She testified she made the same type of arrangements with
3 Respondent for the flights in issue in this case that she had made
4 in previous charter flights with Mr. Norwitch. She testified she
5 did nothing different.

6 Ms. Fine was shown Exhibit A-9, and testified that the
7 telephone texts in the exhibit all came from her phone.

8 Ms. Fine testified Mr. Norwitch provided the price for the
9 trip that she had requested he provide. She testified she spoke
10 only to Mr. Norwitch. She did not speak to anyone at Oxbow
11 Express.

12 When asked if she knew what a dry lease was, Ms. Fine
13 testified that it where she rents the airplane. She testified she
14 had never entered into a dry lease before. Ms. Fine testified
15 that Mr. Norwitch did not explain what a dry lease was to her.

16 When asked if Mr. Norwitch had ever suggested another pilot
17 for the flights in issue in this case, she said no. When asked if
18 she knew what operational control means or what it was, Ms. Fine
19 replied by stating no.

20 She testified she did not do any planning for the flights in
21 issue in this case. Ms. Fine testified she did not instruct
22 Mr. Norwitch as to how many stops the flight should make. When
23 asked if she told Mr. Norwitch which routes he should fly to Cabo
24 San Lucas and return, she replied no.

25 When asked if she arranged and paid for catering, she

1 answered no. When asked if she paid for fuel, she answered by
2 stating no. Ms. Fine answered no when asked if she paid for
3 airport fees or maintenance costs relative to the flights in
4 issue.

5 Ms. Fine testified that she believed that the aircraft
6 arrangements ended when she disembarked in Key West. Mr. Norwitch
7 then flew the aircraft to I believe West Palm Beach.

8 Ms. Fine testified she did not direct the preflight
9 inspection of the aircraft for the flights in issue in this case.
10 She testified she did not pay for fuel costs. She was not
11 involved in reviewing the weather conditions during the flights in
12 issue in this case. Ms. Fine testified she had no control as to
13 how Mr. Norwitch flew back to Palm Beach from Key West from where
14 she disembarked or where she deplaned.

15 On cross-examination, Ms. Fine testified that when she
16 chartered the flight from Mr. Norwitch, she was not provided a
17 charter flight contract to review and sign. She made payment for
18 her previous charter flights to Great Flight, she testified.

19 Ms. Fine was asked if she knew who Great Flight was, and she
20 testified, I don't know. She testified she did not receive a
21 contract for the flights in issue in this case. She testified she
22 wrote the check for payment to Oxbow Express.

23 Ms. Fine testified she did not know how to fly, did not know
24 how to change the oil on an airplane. She testified she did not
25 know what route to fly for the flights in issue in this case.

1 Ms. Fine testified she did not file flight plans for the flights
2 in issue in this case.

3 In response to Mr. Moulis's question, Ms. Fine testified that
4 she could buy an airplane if she wanted to. She testified she
5 never owned an airplane but her family did in the past. She
6 testified that she had flown in family aircraft in the past, and
7 when asked by Mr. Moulis that when she made such flights on the
8 family-owned aircraft if she could pick the designation, Ms. Fine
9 answered no.

10 There was no redirect, no recross, and no questions from the
11 Administrative Law Judge.

12 The next witness called by the Administrator was Mr. Michael
13 Wilson, Jr. He testified he is employed by the FAA as an aviation
14 safety inspector in the Baton Rouge Flight Standards District
15 Office. He has been employed in that position for the last 5
16 years. He is a rotorcraft air transport pilot, rotorcraft
17 certified flight instructor, and a rotorcraft certified instrument
18 flight instructor. He is also certified to fly multiengine land
19 aircraft.

20 Inspector Wilson testified he conducted a ramp check
21 inspection of Respondent and the aircraft in issue in this case on
22 January 25th in Louisiana. He testified that he conducted the
23 ramp inspection in Houma, Louisiana. Inspector Wilson testified
24 he spoke to the passengers on the flight. He testified that he
25 could not recall if he spoke to the passengers relative to the

1 route they had taken to come to Houma, Louisiana.

2 Inspector Wilson testified that he spoke to the Respondent,
3 Adam Norwitch. Mr. Norwitch told him that he had flown across the
4 Gulf of Mexico but he had stayed away from prohibited zones.

5 Inspector Wilson testified he asked Respondent if he had a
6 life raft on board, and he testified that Mr. Norwitch told him
7 that he was not required to have one on board because he had the
8 required floatation devices on board.

9 Inspector Wilson was asked if he knew that Respondent did not
10 have to have a life raft on board before the ramp inspection, and
11 he answered that he did not know that before he started the
12 inspection or asked Mr. Norwitch if he had a life raft.

13 Inspector Wilson testified that he did not know the flight
14 path that Respondent was going to take on the next leg of his
15 flight or when he took off.

16 Inspector Wilson testified on cross-examination that his
17 supervisor at the Baton Rouge FSDO, Flight Standards District
18 Office, sent him and Aviation Inspector Keith Kibodeaux to perform
19 the ramp inspection. He testified that random and planned ramp
20 inspections are conducted in the same way. He was asked if when
21 he performed the ramp check, had anyone told him to lie and state
22 that it was a random ramp check when in fact it was not a random
23 ramp check at all. Inspector Wilson testified he was not asked to
24 lie about the ramp check.

25 When asked if he knew Mr. Bateman, he testified that he did

1 not know Mr. Bateman prior to the hearing. He just met him the
2 day of his testimony.

3 Inspector Wilson was asked if when he conducted the ramp
4 check, he and Inspector Kibodeaux were told to lie by Mr. Bateman
5 as to what type of ramp check it was. He testified he was not
6 asked to lie. When asked if he knew that Mr. Bateman had lied,
7 Inspector Wilson testified he did not know that Mr. Bateman had
8 lied. There was no indication as to what he lied about, but
9 Mr. Wilson testified that he did not know that Mr. Bateman had
10 lied.

11 When asked if he lied to Mr. Norwitch, Inspector Wilson
12 seemed somewhat confused by the question and said that he didn't
13 lie to him to his knowledge.

14 Inspector Wilson was asked if during his training as an
15 aviation safety inspector in Oklahoma, if he was instructed that
16 an aviation safety inspector could lie and cheat. Inspector
17 Wilson testified no, that would not be professional.

18 Inspector Wilson testified he did not recall telling
19 Mr. Norwitch he needed a life raft on the aircraft, but he
20 believed that Inspector Kibodeaux told Mr. Norwitch that he needed
21 a life raft. He testified that Mr. Norwitch told him that he did
22 not need a life raft, again, because he had enough personal
23 floatation devices.

24 Inspector Wilson was asked if he told Mr. Norwitch he needed
25 a life raft for his next flight, to which he responded he had no

1 idea as to where Mr. Norwitch was going to fly. Mr. Norwitch had
2 not told him where he was going to fly, so he could not tell him
3 that he needed a life raft on the next flight or leg of his
4 flight.

5 When asked if he had communicated with Mr. Bateman, Inspector
6 Wilson testified that he provided his statement to Mr. Bateman but
7 he had never spoken to him before sending that statement.
8 Inspector Wilson was again asked how many total times he
9 communicated with Mr. Bateman, and he again testified he only
10 communicated with him once.

11 He was asked if he was copied on emails from Mr. Bateman, to
12 which Inspector Wilson testified he did not know. He was then
13 shown a number of documents for the purpose of refreshing his
14 recollection. He was not asked about any specific emails or any
15 specific communications or asked if he recalled any specific
16 communications or emails. Inspector Wilson testified that the
17 documents he were shown were all about the ramp check inspection
18 that Mr. Bateman wanted conducted in this case. He testified that
19 he and Inspector Kibodeaux conducted the ramp inspection they were
20 instructed to perform by their manager at the Baton Rouge Flight
21 Standards District Office.

22 There was no redirect or recross, and there were no questions
23 from me as the Administrative Law Judge.

24 Keith Kibodeaux was next called to testify. He's an aviation
25 maintenance inspector and has been employed by the FAA for 8

1 years. He is an A&P mechanic. He was a commercial pilot. He has
2 a commercial pilot rating in rotorcraft and fixed wing aircraft.
3 He is also instrument rated for airplanes, he testified.

4 Inspector Kibodeaux testified that he conducted a ramp
5 inspection on January 25, 2017. He testified he spoke to
6 Mr. Norwitch and asked him about his route of flight to Houma,
7 Louisiana, where the ramp check took place. Inspector Kibodeaux
8 testified that Mr. Norwitch told him that he had flown along the
9 coast from Florida. And he was asked if Mr. Norwitch at that
10 time, if he had had a life raft on board. He testified that
11 Mr. Norwitch told him that he did not need one because he did not
12 fly far enough away from the coast to require one. Inspector
13 Kibodeaux then testified that he told Mr. Norwitch that if he
14 conducted overwater operations, he would need a life raft on the
15 aircraft. According to Inspector Kibodeaux, Mr. Norwitch told him
16 that he would rent a life raft if he flew over water or conducted
17 overwater operations.

18 Inspector Kibodeaux testified Mr. Norwitch did not tell him
19 where he was going to or if he was taking off or to where he was
20 flying after Inspector Kibodeaux completed the ramp check.

21 On cross, Inspector Kibodeaux again testified that the
22 Respondent told him that he did not have a life raft because he
23 flew only so many miles off the coast. Inspector Kibodeaux
24 testified that he believed Mr. Norwitch's statement, but told him
25 he needed a life raft just in case he flew or conducted overwater

1 operations where a life raft was required.

2 Inspector Kibodeaux testified that he took no action against
3 Mr. Norwitch because he believed what Mr. Norwitch had told him,
4 that he had not flown far enough from the coast to require a life
5 raft. Mr. Norwitch had told him that he was within the
6 regulations and was not flying far enough from the coast to
7 require a life raft.

8 He testified that his frontline manager instructed him to
9 conduct the ramp inspection in this case. Inspector Kibodeaux
10 testified he did not know what caused his manager to instruct him
11 to conduct the ramp check. He testified that he was informed that
12 there was a possible 135 flight that they should inspect when it
13 landed.

14 Inspector Kibodeaux testified that no one had asked him to
15 look for the absence of a life raft. He asked about it of his own
16 accord based on Mr. Norwitch's statement about his route of flight
17 from Florida to Houma, Louisiana.

18 Inspector Kibodeaux was asked if he knew how far Respondent
19 had flown off the coast. Inspector Kibodeaux stated that he did
20 not know, but again Mr. Norwitch told him he had flown close
21 enough to the coast to not need a life raft. He was asked if, in
22 fact, he believed Mr. Norwitch, why then would he inform
23 Mr. Norwitch that he would need a life raft for operations over
24 water. Again, Inspector Kibodeaux testified he told Mr. Norwitch
25 he would need one if he flew far enough offshore where he would

1 need such a life raft. He was asked how many miles a flight off
2 the coast would require the inclusion of a life raft on board, and
3 Inspector Kibodeaux testified that he could not state from memory
4 without the regulation in front of him. No regulation was
5 provided to him to review.

6 He was asked if the two inspectors discussed the case during
7 the 2-hour drive back from the ramp check. Inspector Kibodeaux
8 testified he did not recall if they discussed it because it was 2½
9 years ago.

10 When Inspector Kibodeaux was asked why Mr. Wilson would
11 testify that Mr. Norwitch told him he flew directly over the Gulf
12 of Mexico, Inspector Kibodeaux testified that they each wrote
13 their own reports of what occurred. He wrote his report as
14 required, and Inspector Wilson wrote his own report. He testified
15 he wrote down what Mr. Norwitch told him and he believed, again,
16 what Mr. Norwitch told him.

17 He was asked again how many miles does a flight have to be
18 before a life raft is required. Again, he said he would not like
19 to speculate because of the risk of misstating the distance.
20 Again, he was not shown the regulation.

21 A copy of the regulation was not provided to him, but he was
22 told by Respondent's counsel that he should know, in fact, how far
23 a flight off the coast would require a life raft. Inspector
24 Kibodeaux responded that Mr. Norwitch should know how far that
25 distance is because it was he who was the pilot flying off the

1 coast.

2 Inspector Kibodeaux was then asked what he did to inform
3 Mr. Norwitch that he was in violation of the regulations. Again,
4 Inspector Kibodeaux responded that Mr. Norwitch was not in
5 violation of any regulations as far as he was concerned because he
6 believed what Inspector Kibodeaux told him.

7 He was then asked if his statement and his PTRS statement
8 were the same. He testified he would have to look at both of them
9 side by side to be able to testify that they were identical. When
10 asked if he would intentionally write conflicting statements,
11 Inspector Kibodeaux vehemently responded by saying, no, sir.

12 He was asked if he indicated the ramp check was a random ramp
13 check in his statement, and he testified that he may have, and if
14 had, he had misspoken. He was then asked if Mr. Bateman advised
15 him to say it was a random ramp check inspection when in fact it
16 was not, and Inspector Kibodeaux responded no, that no one told
17 him to say it was a random check.

18 He was then asked if he was aware if he saw certain
19 violations, he was required to stop the flight. Inspector
20 Kibodeaux responded that he was aware, but again there was no
21 violation in this case because he believed what the Respondent
22 told him. He then was asked what he would do if he found a
23 violation, and he responded by describing the process he would
24 take to identify a violation. Again, he was asked why he did not
25 stop the flight in this case, and the Inspector responded, why

1 should I stop the flight? He believed what the Respondent had
2 told him as to the route of flight so he did not find a violation
3 had taken place or a violation that would require him to stop the
4 flight.

5 On redirect, he testified that the ramp inspection was not a
6 planned ramp inspection. He did the ramp inspection because his
7 manager told him to conduct the ramp inspection. He testified
8 there was no difference between how a random inspection and a
9 planned inspection are conducted.

10 He was then asked if his report indicated he conducted a ramp
11 inspection, and he responded that he did not remember. He was
12 shown his report. He testified that in fact his report did not
13 say it was a random ramp inspection. He testified that the report
14 indicated that he had said that it was a random ramp inspection to
15 a passenger, but his report does not indicate anywhere else that
16 it was a random ramp inspection. Again, he testified that he did
17 not see any violations during the ramp inspection.

18 In response to my questions, Inspector Kibodeaux testified
19 that he told Respondent that if he flew off the coast he would
20 need a life raft on board for the passengers and crew. When I
21 asked if he was told where Mr. Norwitch was going after the ramp
22 check, Inspector Kibodeaux testified that he believed the
23 Respondent said that they were going fishing. He testified that
24 he did not recall if Respondent told him where he was going to fly
25 to from the airport at Houma.

1 The Administrator rested his case.

2 The Respondent then started his case. Respondent called as
3 his first witness, Inspector Brooks Bateman. The Administrator
4 objected and argued that Inspector Bateman was not on the
5 Respondent's witness list. The Administrator further argued that
6 the Administrator had not called Inspector Bateman in his case in
7 chief.

8 The Respondent asserted that he reserved the right to call
9 all of the Administrator's witnesses on the Administrator's
10 witness list, and he said he had reserved this right in a sentence
11 in the submission of his witness list in this proceeding. A
12 review of the Respondent's initial witness list and amended
13 witness list indicated that there was no such reservation in the
14 filings.

15 Respondent argued that they had a right to question Inspector
16 Bateman, to attack his credibility; however, Inspector Bateman was
17 not called as a witness and his credibility was not an issue in
18 the Administrator's case in chief. The Administrator had
19 presented as his case the testimony of Ms. Fine, the testimony of
20 the Respondent, and the testimony of the two aviation inspectors I
21 have just discussed.

22 I informed the parties that the Administrator's case will
23 rest on the witnesses he called and the exhibits he entered into
24 evidence in this case. The Administrator chose to call those
25 witnesses to prove his case. I informed the Respondent I could

1 not order the Administrator how to prove his case nor could I
2 force the Respondent to call witnesses or tell him how to prove
3 his case.

4 Respondent argued that there should be some adverse inference
5 made or something because the Administrator did not call
6 Mr. Bateman. Again, Respondent did not list Inspector Bateman as
7 a witness. He did not reserve the right to call the
8 Administrator's witnesses in his witness list. Furthermore, he
9 did not subpoena Inspector Bateman. Respondent subpoenaed the two
10 other inspectors who just testified, who performed the ramp check
11 in this case, but he did not subpoena Inspector Bateman. Because
12 of this, I ruled that Mr. Bateman could not be called as a
13 witness.

14 Respondent then moved to have a proffer made on the record.
15 He argued that he would simply rely on the deposition of Inspector
16 Bateman. The Administrator objected, stating that the deposition
17 was not in evidence in this case and an out-of-court statement and
18 therefore included hearsay statements.

19 The Respondent did not make a legal argument why the
20 deposition was not hearsay evidence and should be admitted. The
21 deposition the Respondent wished to rely upon for his proffer is
22 the same deposition that was unfinished of Inspector Bateman that
23 was terminated due to the disruptive and unprofessional conduct of
24 Mr. Moulis. The Respondent did not file a responsive brief to
25 rebut the Administrator's arguments, which were supported by

1 documentation of the transcript of the deposition as to why the
2 deposition should be terminated. Thus, the motion that the
3 deposition be terminated as unfinished was granted, and that
4 ruling was placed on the record at the beginning of this hearing.

5 The Respondent was informed he could make an oral proffer and
6 he proceeded to make a lengthy proffer for the record.

7 Respondent's counsel also attempted to admit exhibits during
8 the proffer to which the Administrator objected. The Respondent
9 could not articulate any provision of the Federal Rules of
10 Evidence which would allow him to admit exhibits in a proffer.
11 The objection was sustained.

12 Respondent next called Mr. Christopher Hite as a witness.
13 The Administrator objected to the testimony of Mr. Hite, arguing
14 that he was not a fact witness to any issues relative to the
15 flights in this case.

16 The Respondent argued that Mr. Hite was going to testify as
17 to the credibility of Inspector Bateman and Inspector Shore.
18 Again, neither Inspector Shore or Inspector Bateman testified in
19 this case, in the Administrator's case in chief, and their
20 credibility was not an issue in this case. What is in issue are
21 the witnesses that were called by the Administrator; their
22 credibility is in issue.

23 Respondent also argued that Mr. Hite was going to testify
24 that he worked for the Respondent and that he understood the
25 Respondent was on vacation during the flight in issue. However,

1 the issue was not whether the Respondent was or was not on
2 vacation. The question before me is whether or not the flight was
3 a Part 135 operation.

4 The description of Mr. Hite's testimony in Respondent's fact
5 witness list indicated he was to testify concerning demands to
6 place Post-Its on air traffic control monitors apparently to track
7 Respondent's flight. When I asked Respondent's counsel if
8 Mr. Hite could testify from personal knowledge as to those facts,
9 Respondent's counsel stated he would testify that he had been told
10 about the alleged Post-It notes from another individual. This is
11 hearsay testimony, as objected to by the Administrator.

12 Based on the arguments of the parties and responses to my
13 questions, it's clear that Mr. Hite's testimony was not based on
14 any personal knowledge of fact in this case, nor was it
15 demonstrated that his testimony would be relevant to any issues
16 that I must decide. He was therefore excluded from testifying in
17 this case.

18 After my ruling, Mr. Moulis asked as afterthought,
19 apparently, how about if he's offered as a character witness?
20 Mr. Hite was not identified as a character witness in the pre-
21 hearing witness list, and was only brought up as a character
22 witness in this post-ruling offered by Mr. Moulis. I informed the
23 parties that my ruling remained the same. Mr. Hite did not
24 testify.

25 Respondent then called Ms. Wendy Fine to testify in his case.

1 Ms. Fine was asked if she offered copies of her texts relative to
2 this case to Mr. Weingold during the deposition. She responded,
3 yes, she had. When asked if she felt Respondent was a good pilot,
4 she responded, yes. When asked if she felt Respondent was a safe
5 pilot, she responded, yes. When she was asked if she could have
6 hired any pilot for the flights in issue in this case, she
7 responded, yes. When asked if she knew other pilots who she could
8 have hired for the flight, she responded, yes.

9 On cross-examination, Ms. Fine was asked if Mr. Norwitch
10 suggested any other pilots for the flights in issue in this case,
11 and she responded, no. When asked if there were any other pilots
12 involved in the flights in issue in this case, she responded, no.

13 There was no redirect. I had no questions for Ms. Fine.

14 Adam Norwitch then testified in his case. He testified he
15 had been a pilot since 2004. He is a commercial pilot. When
16 asked if his training included training on dry lease, he responded
17 -- he was asked this by his attorney, Mr. Moulis -- he responded
18 not necessarily. When he was asked what he believed constituted a
19 dry lease, he replied leasing an aircraft with no crewmember
20 provided. He testified that in that type of lease the crew is
21 hired separately.

22 He then described the pilot requirements or certifications
23 for a pilot to hold before he or she could fly such a flight under
24 a dry lease. When he was asked if he was qualified to fly the
25 flights in issue in this case, he testified he was qualified and

1 legal to fly as a commercial pilot under Part 91 and as a private
2 pilot. He testified he surpassed the qualification requirements
3 for the flight in issue.

4 When asked about his failed check ride in this case, he
5 responded his flight check was not a failure but was marked as
6 unsatisfactory. He did not explain how that was different from a
7 failed check ride from a material standpoint. He testified that
8 the flights in issue in this case were Part 91 flights because
9 Ms. Fine could have hired any pilot she wanted.

10 When asked if he had any problems with his certificates when
11 he made the flights in issue or any problems prior to the flights
12 in issue relative to his good moral character, he testified he did
13 not have problems nor had a question ever been raised about his
14 good moral character at the time of the flights.

15 He was asked if he had any previous problems with the FAA and
16 he testified he did not, and then added he had only had problems
17 with a few rotten apples at the Flight Standards District Office.

18 He stated that he had received a previous letter of
19 investigation from the FAA but it was dropped because, as he said,
20 it was insane. He offered no details as to why the letter of
21 investigation was insane.

22 He was asked what relationship Aviation Safety Inspector
23 Shore had to the Respondent's business. Mr. Norwitch testified he
24 was the principal operations inspector for his business. He
25 asserted Mr. Shore asked him to start his own 135 business to

1 drive another 135 operator out of business.

2 He testified he believed the FAA was tracking his aircraft.

3 He was then asked on direct examination if he had ever
4 violated a Federal Aviation Regulation prior to this case, and he
5 stated he had not.

6 The Respondent then testified that when he was ramp checked
7 in Louisiana, he was asked if he had a life raft on board. He
8 testified he responded that he did not need one. When he
9 responded that he did not need one, Mr. Norwitch testified that
10 the inspector said okay. He then in the same answer went on to
11 say the inspector replied, that's right, and then in the same
12 answer, he went on to say that the inspector, and I quote,
13 "answered in the affirmative."

14 He testified that when he was met by Inspector Bateman in Key
15 West, Florida, that he was again asked if he had a life raft on
16 board, and he responded he did not. He testified he stated he did
17 not need one. He testified Bateman then handed him a sheet of
18 paper saying this is a violation or a letter of investigation.
19 Mr. Norwitch testified actually it was a hotel receipt.
20 Mr. Norwitch testified that he later received a letter of
21 investigation and then a second letter of investigation regarding
22 the issues of the Part 135 flight.

23 ON cross-examination, he affirmed that he testified that he
24 was familiar with the dry lease on direct examination. When asked
25 if he was familiar with the advisory circular entitled Truth in

1 Lending, which relates to dry leases, he testified he was not.

2 He agreed he testified he was qualified in excess for flying
3 the Part 91 flights in this case. When asked about his excessive
4 qualifications as he testified, he was asked why he did not know
5 about the requirements of a life raft on board for the flights in
6 issue. Mr. Norwitch testified he was not familiar with the
7 regulations relative to overwater operations. He did not review
8 the regulations, he said, before the flight in issue in this case.

9 In response to my questions, he testified that he was an ATP
10 pilot. He had a commercial certificate. He was a certified
11 flight instructor. He had approximately 1,800 hours of flight
12 time. He was the president, owner and chief pilot of Great
13 Flight, a Part 135 on-demand charter company.

14 When I asked if had flown overwater operations in his Part
15 135 charter flights, he testified that he had. I asked him during
16 those flights, did you carry a life raft? He testified he did
17 when he flew 50 miles off the coast.

18 I asked if, as a pilot, he is required to be familiar with
19 all aspects of the planning of a flight, such as weather, possible
20 emergency landing sites, airports, and anything else that may
21 affect the flight and the course of the flight. He agreed that he
22 was required to do. He testified he wished that he had become
23 familiar with overwater flight regulations. He testified he did
24 not do that in this case because he was not familiar with the
25 regulations, despite the fact he just testified he had to have a

1 life raft on board if he flew 50 miles from the coast. He said he
2 did not know what he did not know.

3 He then testified he realizes he made a mistake and that's
4 while he filed a NASA report. Respondent's counsel then moved to
5 have the NASA forms admitted into evidence. The Administrator
6 objected stating it should have been admitted during the
7 Respondent's case and not in response to my questions. I had not
8 asked any questions about the NASA form. Mr. Norwitch brought it
9 up in his discussions on testimony under questioning from
10 Mr. Moulis. I admitted the NASA form over the Administrator's
11 objection.

12 The Administrator requested an opportunity to ask questions
13 about the form. Respondent objected, stating the FAA was not
14 allowed to ask questions about the form. The Administrator argued
15 he could ask questions as to whether or not the basis for the
16 filing of the NASA form was inadvertent or non-intentional. I
17 allowed the questioning.

18 Mr. Norwitch was asked what he meant when he stated in the
19 report that he was unaware he needed a life raft because he
20 thought he was within time from the shore required for the
21 operation he was conducting without needing a life raft.
22 Mr. Norwitch did not answer the question but instead evaded it
23 with a lengthy non-responsive answer. He testified he was unaware
24 of the regulations requiring a life raft.

25 When asked the same question again, Mr. Norwitch was again

1 evasive and then became argumentative. He again stated he did not
2 know of the regulations he was accused of violating regarding
3 operation over water.

4 On redirect, he simply again stated he admitted he violated
5 the regulations.

6 In response to my questions, I asked him if in fact the
7 wording on the NASA form was simply blaming the FAA for what
8 occurred. He testified, no, he was not blaming the entire FAA,
9 just the inspectors on the ramp check.

10 I asked him if he flew over water, after stating in his
11 narrative that the aviation safety inspector acknowledged, and
12 then in parentheses he wrote "didn't disagree." He testified that
13 he thought that he did not need a life raft, so he assumed that he
14 was correct in his interpretation that he did not need a life
15 raft. He testified he interpreted what he said, the aviation
16 safety inspector acknowledged and then in parentheses "didn't
17 disagree" with his response that he did not need a life raft.

18 He went on to testify he did inadvertently fly overwater
19 operations. He testified he did this because he assumed the fact
20 that he did not need a life raft based on what the aviation safety
21 inspector had basically acknowledged and then didn't disagree, and
22 therefore he thought he was correct. So the flight over water was
23 not intentional but was rather inadvertent.

24 That completed the testimony presented in this case. I note
25 for the record at this point, that I found the testimony of

1 Ms. Fine, both in the Administrator's case and the Respondent's
2 case to be credible, both on direct and cross-examination. I also
3 found the testimony of Aviation Safety Inspector Wilson and
4 Aviation Safety Inspector Kibodeaux to be credible, both on direct
5 and cross-examination as well as providing answers to my
6 questions. Since the Respondent's -- much of this case rests on
7 his credibility, I will discuss the Respondent's credibility in my
8 discussion portion of this case.

9 (Off the record at 2:23 p.m.)

10 (On the record at 2:32 p.m.)

11 JUDGE MONTAÑO: Now I will move on to the discussion phase of
12 this decision. I will now apply this testimony that I've just put
13 into the record and the evidence I've discussed to address the
14 issues of the alleged violations that I have to decide.

15 I will first determine whether the Administrator has proven
16 its prima facie case by a preponderance of the evidence.

17 The Administrator has cited the Respondent with violating
18 specific provisions of Part 119, Part 135 and Part 91 for flights
19 which the Respondent acted as the pilot in command, transporting
20 passengers on January 25, 2017 and January 31, 2017. The January
21 25, 2017 flight started I believe in West Palm Beach, Florida,
22 with the final destination of Cabo San Lucas, Mexico. On January
23 31, 2017, the Respondent flew the return trip from Cabo San Lucas,
24 Mexico to West Palm Beach, Florida. Ms. Wendy Fine was deplaned
25 in Key West.

1 The Administrator alleges that the operated these flights for
2 compensation or hire under Part 135 without an appropriate
3 certificate or operation specifications. The Administrator also
4 alleges that the Respondent made these flights as pilot in command
5 after he had failed his most recent check ride. The Administrator
6 also alleged that the Respondent violated both Part 135 and Part
7 91 regulations, in that he operated these specific flights without
8 appropriate survival equipment on board for extended overwater
9 operations.

10 First, I'll talk about the partial summary judgment. It must
11 be noted the Respondent has argued in this case that the flights
12 in issue were not flown under the requirements of Part 119 and
13 Part 135 but were in fact Part 91 flights. The charged violations
14 under Part 119 and Part 135 and Part 91 all arose from the same
15 set of core facts. It only involves the flights in issue in this
16 case.

17 As I noted during the first day of hearing in this case, the
18 Administrator filed a Motion for Partial Summary Judgment relative
19 to some of the violations charged in this case.

20 I granted partial summary judgment as to certain Part 91
21 violations in this case. I noted in my description of the
22 procedural background relative to that motion, that the Respondent
23 had not filed a timely response to the Administrator's motion. He
24 subsequently filed two responses to the Administrator's motion
25 which I indicated I would accept and consider after Respondent

1 filed a motion for leave to file out of time. Neither of these
2 documents filed by the Respondent address the merits of the
3 Administrator's Motion for Partial Summary Judgment in any
4 substantive way.

5 As noted in my ruling placed on the record the first day of
6 the hearing, I did not grant the Administrator's Motion for
7 Partial Summary Judgment relative to Part 119 and Part 135 alleged
8 violations.

9 As to the alleged Part 91 violations, I found that based upon
10 the Respondent's admission in his deposition, he admitted to all
11 of the elements of the violations of 14 C.F.R. 91.509(b), 14
12 C.F.R. 91.509(d) and 14 C.F.R. 92.509(e). I also found that the
13 Administrator, by establishing these operational violations, that
14 the Respondent also violated 14 C.F.R. 91.13(a), which states that
15 no person may operate an aircraft in a careless or reckless manner
16 so as to endanger the life or property of another.

17 I ruled therefore, that the Administrator would not be
18 required to present evidence to prove his prima facie case related
19 to the violations of 91.509(b), 91.509(d) and 91.509(e) at the
20 hearing in this case. I further ruled that the Respondent would
21 be provided the opportunity to present his affirmative defenses as
22 to those violations as well as evidence of mitigation relative to
23 sanction.

24 So I will first address the Administrator's Part 135
25 allegation. Again, it is important to note that Part 119 and 135

1 alleged violations in this case are based upon the same facts as
2 the charged violations under Part 91. The Respondent asserts that
3 the flights in issue in this case were Part 91 and not Part 119
4 and Part 135. I will therefore address whether the Administrator
5 has proven by a preponderance of the evidence that the flights in
6 issue in this case were conducted subject to the requirements of
7 Part 119 and Part 135.

8 The Administrator alleges that the flights in issue were
9 subject to the requirements of Part 119 and Part 135 because the
10 Respondent operated as a direct air carrier without holding an air
11 carrier certificate or operation specifications in violation of 14
12 C.F.R. 119.5(g). It is also the Administrator's assertion that
13 the Respondent served as the pilot in command for the flights in
14 issue in this case when he was not competent to do so pursuant to
15 the pilot testing requirements under Part 135. The Administrator
16 also argues that the Respondent has already admitted in his
17 deposition that he failed to have on board a life raft for
18 overwater operations under Part 91 as well as under Part 135.

19 The Administrator alleges that the evidence in this case
20 establishes that the Respondent was an air carrier for the flights
21 in issue in this case. He argues that Part 119 and Part 135 apply
22 to any individual who operates as an air carrier conducting
23 commuter or on-demand operations. Congress has defined an air
24 carrier as any person who undertakes by any means, directly or
25 indirectly, to provide transportation of passengers or property by

1 aircraft as a common carrier for compensation.

2 According to the Administrator, the FAA has interpreted the
3 term air carrier to be any person who (1) holds out to the public
4 or a segment of the public a willingness to (2) transport persons
5 or property (3) for compensation. This, according to the
6 Administrator, is outlined in Advisory Circular No. 120-12A.

7 Mr. Norwitch testified during the Administrator's case that
8 he is the chief pilot, registered agent, president and owner of
9 Great Flight, Inc., a certificated on-demand air charter company
10 that operates air charter flights under Part 135. His company,
11 Great Flight, also has the operating specifications to fly as a
12 Part 135 carrier.

13 Mr. Norwitch testified he advertises as an on-demand carrier
14 and charter company. He acknowledged during his testimony that he
15 has a reputation as being able to provide on-demand air carrier
16 services. Mr. Norwitch testified that Ms. Wendy Fine came to him
17 for air carrier charter services after she was referred to him by
18 a friend of hers. He testified that he has provided air charter
19 services for Ms. Fine and other individuals for compensation.
20 This evidence clearly establishes that the Respondent has operated
21 as a common carrier and held out his willingness to furnish air
22 transportation.

23 Ms. Fine testified in the Administrator's case, that she has
24 used the services of Mr. Norwitch and his company, Great Flight,
25 in the past. She testified she usually calls him up, she tells

1 him where she wants to go, and he quotes her a price. She
2 testified that she has booked flights with Mr. Norwitch in the
3 past, and Mr. Norwitch has provided the aircraft and the pilot for
4 the arranged flight. Ms. Fine testified that he takes care of
5 everything, every aspect of the flight. She simply writes him a
6 check. The evidence clearly establishes that the Respondent
7 clearly operated as a common carrier transporting persons from
8 place to place for compensation.

9 As to the arrangements for the flights in issue in this case,
10 Ms. Fine testified she contacted Mr. Norwitch in the same manner
11 that she had previously done so: first to get a quote for the
12 flight to Key West, from Key West, Florida to Cabo San Lucas,
13 Mexico. He informed her of the cost and she told him to book the
14 flights. She testified that in order to avoid the extra cost for
15 the aircraft to be piloted back to Key West, she asked him if he
16 was willing to remain in Cabo San Lucas during her time there in
17 order to essentially avoid two roundtrips from Key West to Cabo
18 San Lucas. The evidence in this case indicates that she indicated
19 that she would pay for his food and accommodations while he was in
20 Cabo San Lucas. He agreed, and booked the flights requested by
21 Ms. Fine and Ms. Fine agreed to the price.

22 The evidence admitted in this case established that Ms. Fine
23 subsequently contacted Mr. Norwitch and informed him she wanted to
24 remain in Cabo San Lucas for 2 additional days, and was asked
25 about the cost increase. She was shown the texts at Exhibit A-9,

1 which she identified as texts from her phone. The text at A-9
2 indicates that Mr. Norwitch indicated, on page 1, that he would
3 keep the price the same, at \$22,350, if he were allowed to bring
4 his two sons along. On page 4 of the exhibit, Mr. Norwitch
5 reduced the price to \$20,850, as Ms. Fine had indicated that she
6 would pay for he and his family's accommodations, so he backed out
7 the cost he budgeted for the room. And that's in quotes, that he,
8 quote, "backed out the price I budgeted for the room."

9 Ms. Fine made payment for the arranged flights as directed by
10 Mr. Norwitch at A-9, page 6, in which Mr. Norwitch instructed
11 Ms. Fine that payment by check is fine but he states, "I prefer
12 not to get the check the day of the flight because it opens me up
13 to questions from our side and Mexico." He further instructed her
14 to make the check out to Oxbow Express, and he directed her to
15 send it to his, Mr. Norwitch's home address. He instructed her to
16 indicate in the memo line of the check that she should write
17 "Aircraft Dry Lease." He informed her that this flight was
18 technically a dry lease, and that she can hire any pilot she
19 chose. However, in that text he immediately goes on to say, I
20 happen to be available to fly for free since my family is going
21 along with me. "This saves you a bunch of money," quote, "and it
22 saves me a bunch of money and paperwork."

23 The Administrator argues that despite the Respondent's
24 assertions he was piloting the flights in issue for free, in fact
25 he was compensated for the flights in issue. The Administrator

1 argues that no actual profit need be shown to show that there was
2 compensation for hire, and he cites the case of *Administrator v.*
3 *Motley*, 2 NTSB page 178. Further, the Administrator argues that
4 the NTSB consistently interprets compensation broadly to mean that
5 the pilot is furthering his economic interest through the
6 operation.

7 Mr. Norwitch, in his testimony in the Administrator's case,
8 testified that he did not make any money on the trip. It is his
9 testimony, that in order to render the flights in issue in this
10 case subject to Part 119 and Part 135, he had to make money on the
11 trip. He had to be compensated, he testified. He also testified
12 that the facts clearly established that the flights were not Part
13 119 flights and Part 135 flights because his family would not have
14 been allowed to come with him on the flight and interact with the
15 individuals who had chartered the flight. He testified he was
16 simply on vacation with this friend, Ms. Fine. Ms. Fine dry
17 leased the aircraft, she had operational control of the aircraft
18 and he flew the flights for free.

19 Ms. Fine testified both for the Administrator's case in chief
20 and was called by the Respondent to testify in his case as well.
21 During her entire testimony, on direct and cross-examination in
22 this case, she did not testify that the purpose of the flights in
23 issue were for a vacation with Mr. Norwitch and his family. The
24 telephone texts between she and Mr. Norwitch clearly establish a
25 business arrangement.

1 The clear preponderance of the evidence in this case
2 establishes that she arranged for Respondent to remain in Cabo San
3 Lucas to avoid the additional roundtrip, the return flight from
4 Cabo and then the return flight from Florida to Cabo for the
5 return flight. Basically the purpose is to avoid unnecessary
6 flights in an empty aircraft.

7 Clearly Mr. Norwitch negotiated with Ms. Fine to keep the
8 price the same when Ms. Fine requested additional days in Cabo San
9 Lucas, if he could, in exchange, bring his two sons along and he
10 would keep the price the same. Mr. Norwitch went so far as to
11 reduce the price, as Ms. Fine was paying for the accommodations
12 for Mr. Norwitch and his family. This flies in the fact of the
13 Respondent's assertion that he shared costs for the trip with
14 Ms. Fine. He could only provide one solitary receipt for the trip
15 and provided no corroborating testimony that the expense on that
16 receipt was for shared costs. Clearly Ms. Fine was never asked by
17 Respondent's counsel, and she did not testify of her own volition,
18 that they was any type of sharing of costs between she and the
19 Respondent.

20 Respondent presents photos of his son fishing and a photo of
21 he, Ms. Fine, and another individual drinking some substance,
22 which he described as tequila, to prove the fact that it was a
23 joint vacation and not a Part 135 charter flight. Ms. Fine was
24 not shown those photos during her testimony. The photos were not
25 admitted into evidence, and if indeed they had been, they prove

1 absolutely nothing relative to the issues in this case.

2 Mr. Norwitch agreed that he and his family had essentially
3 obtained a free vacation from the arrangements in this case. It
4 is undisputed that Ms. Fine paid for meals, accommodations for
5 Mr. Norwitch and his family. Ms. Fine paid for the flights in
6 this case, in which Mr. Norwitch and his family made up half of
7 the passengers on board. If in deed it was a vacation with
8 friends, where the expenses would be shared, Respondent would have
9 had to have paid over \$10,000 for his share and his family's share
10 of the cost of the airfare.

11 During this testimony, the Respondent admitted that he and
12 his family essentially received a free flight but argues he
13 received no compensation because he lost money on the trip in that
14 he had to spend over \$4,000 he took along for the trip. Of
15 course, Respondent provides no proof of that assertion nor
16 provides proof that money was expended for shared costs for this
17 purported friends vacation.

18 Ms. Fine testified that she had chartered subsequent flights
19 through Respondent's Great Flight after the flights at issue in
20 this case. This fact makes it apparent that his negotiation to
21 keep the price the same for extended days in Cabo San Lucas and
22 for reducing the cost because Ms. Fine paid for the accommodations
23 for he and his family, that that did not garner any bad will
24 between he and Ms. Fine. In fact, that evidence shows that it
25 created good will between he and Ms. Fine as she had subsequently,

1 to the flights in issue, booked other flights with him.

2 Respondent argues it was not he who negotiated to keep the
3 same price for additional days nor was it he who lowered the price
4 because of the provision of accommodation. It was Oxbow Express
5 that made those decisions through the owner of Oxbow, Mr. Charles
6 Smith. Mr. Norwitch provided no evidence to establish this
7 assertion. No witness testified from Oxbow Express. Mr. Smith
8 was not called by Respondent. Ms. Fine testified under oath that
9 she never spoke to anyone at Oxbow Express regarding any aspects
10 of the flight in issue.

11 Respondent further argued that he made no money on the flight
12 in this case since the check was made payable to Oxbow Express.
13 Ms. Fine testified she made out the check to Oxbow Express as
14 directed by the Respondent and, as directed by the Respondent, she
15 sent it not to Oxbow Express, but to Mr. Norwitch's home address.

16 Despite the assertion by Mr. Norwitch that he received no
17 payment for the flights, he offered no evidence or testimony from
18 Oxbow Express that they received full payment and corroboration of
19 the Respondent's claim that he received no payment for the
20 flights. The payment check was sent directly to Mr. Norwitch's
21 address.

22 Based on the evidence before me, I must find that the
23 Administrator has established by a preponderance of the evidence
24 that Respondent, Mr. Norwitch, received compensation for the
25 January 25th and 31st, 2017 flights in the form of a free vacation

1 for he and his family, thereby advancing his economic interests.
2 Further, he garnered good will with Ms. Fine in keeping the price
3 the same for more days in Cabo San Lucas and reducing the cost, as
4 Ms. Fine was paying for the accommodations for he and his family.

5 I will now address the purported dry lease in this case. The
6 Administrator argues that a dry lease exists when an aircraft is
7 leased without any crew. Mr. Norwitch testified in the same way.

8 This is defined in FAA Advisory Circular 91-37B. In a
9 legitimate dry lease, the lessee maintains operational control. A
10 wet lease is any leasing arrangement whereby a person agrees to
11 provide an entire aircraft and at least one crewmember. In a wet
12 lease, the party providing the aircraft and crewmembers retains
13 operational control.

14 Respondent maintains that the flights in issue in this case
15 were not subject to Part 119 and Part 135 regulations because
16 Ms. Fine entered into a dry lease with Oxbow Express to lease the
17 airplane in this case and then separately choose Respondent,
18 Mr. Norwitch, as the pilot from numerous other pilots to actually
19 pilot the flights in issue. Therefore, he maintains that he was
20 essentially a pilot hired to fly a Part 91 flight.

21 Respondent maintains that Ms. Fine leased the airplane
22 directly from Oxbow Express, and under the arrangements, Ms. Fine
23 retained operational control of the entire flight. When asked on
24 direct examination by the Administrator as to proof of the dry
25 lease arrangement, Mr. Norwitch testified that the memo line on

1 the check that Ms. Fine wrote to Oxbow Express, that that forms
2 the entirety of a dry lease agreement.

3 When confronted with the fact that there was no documentary
4 evidence or evidence in the texts that Ms. Fine was seeking and
5 understood that she was entering into a dry lease, Respondent
6 testified he spoke to her over the phone about it.

7 Similarly, there was no evidence presented by Respondent that
8 Ms. Fine understood she was in operational control of the flights
9 in issue in this case. Here again, Mr. Norwitch testified he
10 discussed the operational control and what that entailed with
11 Ms. Fine over the telephone.

12 Mr. Norwitch testified that the difference between a Part 91
13 and Part 135 flight is operational control. Again, he testified
14 that Wendy Fine had operational control over every aspect of the
15 flight and that made it a Part 91 flight. He testified that
16 Ms. Fine decided where they would fly, when they would go, who
17 would be the pilot. He testified that Ms. Fine would pick the
18 pilot and order him to fly the airplane, and that she was the
19 person who made all of the decisions regarding the flights, so
20 therefore she had operational control.

21 Mr. Norwitch testified that Ms. Fine initiated the flights
22 and terminated the flights in this case. He testified she had
23 operational control over the entirety of all of the flights. She
24 could move the plane wherever she decided. Mr. Norwitch testified
25 that Ms. Fine paid for everything on the flight. He testified

1 that the only thing Ms. Fine could not do was encumber the
2 airplane under the dry lease agreement.

3 The Administrator maintains that there was no dry lease in
4 this case, that Ms. Fine did not have operational control of the
5 flight. The Administrator asserts that Mr. Norwitch was the
6 single source for both the aircraft and the piloting services in
7 this case.

8 The Administrator cites NTSB precedent which provides that
9 the provision of both an airplane and flight crew from a single
10 source is generally considered conclusive evidence of a Part 135
11 flight, necessitating a Part 135 certificate. That is the case of
12 *Administrator v. Nix*, NTSB Order No. EA-4825. Mr. Norwitch
13 testified that he essentially acted as the middle man and the go-
14 between, between Ms. Fine and Oxbow Express in dealing with the
15 lease.

16 Ms. Fine testified she made the arrangements for the flights
17 in this case the same way she made arrangements in the past for
18 the charter flights with Mr. Norwitch's company, Great Flight.
19 Ms. Fine testified that she never spoke to anyone at Oxbow Express
20 relative to leasing the plane in this case. She said she
21 understood that she could hire any pilot she wanted, but she
22 testified that Mr. Norwitch never gave her the option to select
23 any other pilot for the flights in issue. That is indicted on
24 Exhibit A-9, page 7. Respondent basically told Ms. Fine that she
25 could hire any pilot she wanted, but he was available to fly the

1 flights for free. Ms. Fine testified that Respondent provided no
2 other names of pilots from which she could choose, and she further
3 agreed on direct testimony that there are no other pilots
4 mentioned in the record in this case in connection with the
5 flights in issue.

6 When asked by the Administrator if Mr. Norwitch explained the
7 nature of a dry lease to Ms. Fine, she testified that he did not.
8 She testified he asked her to write "Aircraft Dry Lease" on the
9 memo line of her personal check. She testified she had never
10 entered into a dry lease before and has not entered into a dry
11 lease subsequent to the flights in issue in this case. Ms. Fine
12 testified that Mr. Norwitch did not explain to her what
13 operational control was, nor did he tell her that she had
14 operational control in the flights in issue in this case.

15 During the direct testimony, Ms. Fine testified she did not
16 pay for fuel, did not pay for airport fees, hangar costs, did not
17 determine weather or fuel requirements, and did not initiate or
18 terminate the flights. She testified on the return trip, she
19 deplaned in Key West and Respondent flew to West Palm Beach. She
20 had no control over that.

21 Respondent testified on direct examination for the
22 Administrator that he facilitated fueling the plane but maintains
23 that he did not pay for the fuel. Oxbow Express, he testified,
24 paid for the fuel. Exhibit A-14 indicates that the fuel was
25 billed to Mr. Norwitch's Great Flight. Mr. Norwitch maintains

1 that it was an error, but he did not explain how such an error
2 would occur on this alleged dry lease flight. Mr. Norwitch also
3 testified that the other fuel expenses were paid with another
4 credit card but it remains unclear based on the testimony if that
5 credit card actually belongs to Oxbow Express. The receipt does
6 not indicate the bill was paid on the Oxbow credit card. Again,
7 Respondent provides no corroborating documentary evidence or
8 testimonial evidence from anyone from Oxbow Express to corroborate
9 his contentions as to who paid for the fuel for the flights in
10 issue.

11 Mr. Norwitch testified Ms. Fine did not assist him in weather
12 and fuel planning. He testified he did not pay for airport fees
13 and hangar costs, but he did not testify that Ms. Fine paid for
14 those costs.

15 In evaluating the evidence as to this issue, as to whether or
16 not there was a dry lease in this case, I give the testimony of
17 Ms. Fine greater weight. I found her testimony to be
18 straightforward and credible. She knows nothing about dry leases
19 or operational control in this case. I further find her credible
20 in that Mr. Norwitch did not explain what a dry lease was or what
21 operational control meant.

22 I do not find Mr. Norwitch to be a credible witness as to
23 this issue, nor do I find his testimony relative to any other
24 issue in this case to be credible. Mr. Norwitch is not a credible
25 witness. Throughout his testimony on direct during the

1 Administrator's case and on cross-examination during his own case,
2 his responses to questions were evasive, unresponsive, and at
3 times argumentative. In many cases, his answers to questions
4 contained two or three variations in the same answer. Stated
5 plainly, Mr. Norwitch could not be pinned down to one clear
6 answer. He refused to answer questions asked, but instead went
7 into self-promoting narratives. He refused to answer yes or no
8 questions despite being instructed by me to do so.

9 Mr. Norwitch refused to follow instructions to stop talking
10 when an objection was made even after being admonished more than
11 once. At least twice I informed him that his failure to respond
12 to questions asked and his argumentative responses negatively
13 affected his credibility. Even after such admonishments,
14 Mr. Norwitch refused to comply with my instructions.

15 As to the allegations by the Administrator that the
16 Respondent destroyed or intentionally failed to retain his
17 telephone texts to Ms. Fine and others that were not helpful or
18 damaging to his case, I find that that the preponderance of the
19 evidence in this case establishes that he destroyed or
20 intentionally failed to retain those texts. He admitted in
21 response to my questions that he had complete control over the
22 texts he kept and which ones he did not. His pronouncements that
23 he wished he could have kept all of the texts because the truth
24 was on his side is wholly without credibility. The fact that
25 Ms. Fine offered all of her texts to the Administrator is not

1 relevant to this issue as to whether or not the Respondent
2 intentionally deleted or failed to maintain his relevant telephone
3 texts.

4 His testimony is clearly contradicted by Ms. Fine and other
5 witnesses who will be discussed later in this decision. His
6 defenses as to the issue and all of the issues in this case rests
7 upon nothing but his own uncorroborated assertions and
8 pronouncements. To be clear, I do not believe the testimony of
9 Mr. Norwitch in this case.

10 Based on the evidence before me, I find that the
11 Administrator has established through documentary evidence and the
12 testimony of Ms. Fine that she did not enter into a dry lease in
13 this case, and thus she could not and did not have operational
14 control of the flights at issue in this case. Respondent arranged
15 a sham lease in this case, which was in fact a wet lease subject
16 to the requirements of Part 135.

17 I further find that based on the documentary and testimonial
18 evidence presented in this case, the Administrator has established
19 by a preponderance of the evidence, that the Respondent's flight
20 operations on January 25, 2017 and January 31, 2017, were subject
21 to the requirements of 14 C.F.R. Part 119 and Part 135 because he
22 operated those flights as an air carrier. The preponderance of
23 the evidence establishes that for the flights in issue, Respondent
24 held himself out to the public or a segment of the public a
25 willingness, in this case a willingness to Ms. Fine, to transport

1 persons or property, in this case Ms. Fine and her guests,
2 excluding the Respondent and his family, and three, Respondent
3 received compensation in the form of economic advancement and good
4 will. He made these flights without a personal Part 135
5 certification or a personal Part 135 operations specification.

6 I now turn to the issue about the failed check ride. Having
7 found that the flights in issue were subject to Part 119 and Part
8 135, I now address the issue of whether Respondent violated 14
9 C.F.R. 135.301(b), which states, if a pilot being checked under
10 this subpart fails any of the required maneuvers and is unable to
11 demonstrate satisfactory performance to the person conducting the
12 check, the certificate holder may not use the pilot, nor may the
13 pilot serve, as a flight crewmember in operations under this part
14 until the pilot has satisfactorily completed the check.

15 There is no dispute that the Respondent acted as the pilot in
16 command for the flights on January 25, 2017 and January 31, 2017.
17 Respondent has maintained that he was not piloting the flight
18 under a Part 135 certificate or under the operations
19 specifications of Great Flight, Inc. He testified in the
20 Administrator's case that he does not have a personal 135
21 certificate nor does he possess a personal operations
22 specification for Part 135 operations.

23 The Administrator admitted Exhibit A-12. At page 1, it
24 documents the fact that Respondent failed his Part 135 check ride
25 on January 24, 2017. His previous check ride documents, at A-12,

1 page 2, indicate that his demonstrated current knowledge for
2 Sections 135.293, 135.297 and 135.299 expired on December 31,
3 2016. Therefore, Respondent could not serve as a pilot or
4 crewmember under Part 135 for the flights on January 25, 2017 and
5 January 31, 2017.

6 Respondent maintained that the expiration date of December
7 31, 2016 for his demonstrated knowledge that appeared on Exhibit
8 A-12, page 2 is a mistake. However, he presented no evidence to
9 establish that the expiration date in this case is in error or on
10 those documents is in error. Thus, it is clear that the
11 Respondent was not qualified to serve as a pilot or crewmember
12 under Part 135 flights that took place in this case.

13 Respondent admitted he failed the check ride in his
14 deposition in this case. Respondent's deposition at page 135,
15 lines 19 through 23. That deposition is part of the record as an
16 exhibit in the Administrator's Motion for Partial Summary Judgment
17 in this case. Further, the Respondent did not dispute that he
18 failed the check ride on the witness stand. That deposition is
19 part of the record, again, relative to the Administrator's Motion
20 for Partial Summary Judgment. Mr. Norwitch testified that he did
21 not fail the check ride, he was only disapproved. Semantics
22 aside, Respondent failed the check ride and was unqualified to fly
23 the 135 flights in issue.

24 I find the Administrator has establish by a preponderance of
25 the evidence that Respondent violated 14 C.F.R. 135.301(b).

1 The violations at 14 C.F.R. 135.167(a)(2), the Administrator
2 argues that the Respondent operated an aircraft in extended
3 overwater operations without the necessary equipment, to wit:
4 enough approved life rafts of a rated capacity and buoyancy to
5 accommodate the occupants of the aircraft.

6 The Respondent admitted he did not have enough approved life
7 rafts of a rated capacity and buoyancy to accommodate the
8 occupants of the aircraft in his deposition in this case.
9 Respondent's deposition, page 222, lines 11 through 15; page 225,
10 lines 2 through 7. That deposition is part of the record as an
11 exhibit in the Administrator's Motion for Partial Summary Judgment
12 in this case.

13 The Respondent did not dispute this admission on the witness
14 stand at the hearing in this case, nor did Mr. Norwitch dispute
15 that he operated the aircraft in this case, N112CZ, at a distance
16 of more than 50 nautical miles from the nearest shoreline, both on
17 January 25th and January 31st, 2017. That is at Respondent's
18 deposition, page 281, lines 6 through 17.

19 As the Respondent has admitted that he did not have enough
20 approved life rafts on board, he could not orally brief the
21 passengers of the location of the survival equipment, and in
22 overwater operations ditching procedure and the use of the
23 required floatation equipment. Thus, the Administrator has proven
24 the violation of 14 C.F.R. 135.117 as well. The Respondent did
25 not dispute that he did not brief his passengers related to the

1 equipment when he testified in the Administrator's case and in his
2 own case at trial.

3 While the Respondent does not dispute these violations, he
4 argues the affirmative defense that the two aviation safety
5 inspectors who conducted the ramp check in Houma, Louisiana
6 conspired to permit and induce Mr. Norwitch to violate the
7 applicable regulations. Respondent testified that when he was
8 ramp checked in Houma, Louisiana, he was asked if he had a life
9 raft on board. He testified he responded he did not need one.
10 Mr. Norwitch then testified that the inspector said okay.

11 Mr. Norwitch then in the same answer stated the inspector had
12 replied, that's right. Again, in the same answer, Mr. Norwitch
13 also testified that the inspector answered in the affirmative.

14 The Administrator presented the testimony of Aviation Safety
15 Inspector Mike Wilson and Aviation Safety Inspector Keith
16 Kibodeaux, who testified about what occurred during the ramp check
17 in Houma, Louisiana.

18 Inspector Wilson testified he asked Respondent if he had a
19 life raft and Respondent indicated he did not. He testified he
20 did not tell Mr. Norwitch he was required to have a life raft, but
21 Inspector Kibodeaux did. He recalled that the Respondent told him
22 that he had flown a flight path that had been from Key West,
23 Florida over the Gulf of Mexico to Houma, Louisiana.

24 Inspector Kibodeaux testified he asked Respondent about
25 whether he had a life raft on board. The Respondent replied that

1 he had flown just off the coast, and he understood that he did not
2 need one because he did not fly that far off the coast where he
3 would be required to do so. Inspector Kibodeaux testified that he
4 had believed the Respondent's statement. However, he told the
5 Respondent if he would indeed conduct overwater operations he
6 would need a life raft on board. Inspector Kibodeaux testified
7 the Respondent told him that he would rent a life raft if
8 conducting overwater operation if he needed one.

9 The Respondent has admitted to conducting overwater
10 operations over 50 miles from the shore in his deposition.
11 Respondent's deposition, page 218, lines 6 through 17. Thus, his
12 testimony on this issue is contradictory to his testimony at
13 trial. Mr. Norwitch did not testify or try to clarify this
14 inconsistency at hearing.

15 This testimony by the Respondent did not establish the
16 Respondent's affirmative defense of a conspiracy by the aviation
17 safety inspectors to induce him to violate the regulations.
18 Respondent alleges that the aviation safety inspectors should have
19 prevented him from taking off and violating the regulations, but
20 neither aviation safety inspector cited the Respondent with any
21 violations of the Federal Aviation Regulations in Houma,
22 Louisiana. Therefore, they would not have had a basis on which to
23 take any actions against the Respondent.

24 The affirmative defense in this case rests on the credibility
25 of those involved in the ramp check in Houma, Louisiana. As

1 previously noted, I found both Inspector Wilson and Inspector
2 Kibodeaux to be credible. As I have previously found, I do not
3 find Mr. Norwitch to be a credible witness. I do not find his
4 testimony as to what occurred in Houma, Louisiana to be credible.
5 His testimony and his version of events relative to his
6 conversations with Inspector Kibodeaux and Inspector Wilson are
7 uncorroborated. Respondent's testimony is the foundation for this
8 affirmative defense. As I do not find Mr. Norwitch is credible, I
9 cannot find his affirmative defense to be believable nor can I
10 find it to have been established by a preponderance of the
11 evidence.

12 I therefore find that the Administrator has established by a
13 preponderance of the evidence that Mr. Norwitch violated 14 C.F.R.
14 135.167(a) (2) and 14 C.F.R. 135.117.

15 Based on all of the evidence before me, I find that the
16 Administrator has proven all of the alleged violations on the
17 Federal Aviation Regulations in the Administrator's Amended Order
18 of Suspension, by a preponderance of the evidence.

19 Having made these findings, I now turn to the Respondent's
20 affirmative defenses.

21 As I mentioned previously, the Respondent has listed four
22 affirmative defenses in his answer to the complaint, the first one
23 being that the Administrator's complaint improperly stacks alleged
24 charges and violations. The Respondent presented no evidence
25 relative to this affirmative defense. Therefore, I find that the

1 Respondent has not proven this affirmative defense by a
2 preponderance of the evidence.

3 As to the second affirmative defense, the Respondent argues
4 that he filed a NASA report, which I will discuss in a few
5 moments. So I'll move on to the third affirmative defense.

6 His third affirmative defense is the FAA's reporting
7 inspector, Rich Shore, abused the FAA enforcement process and the
8 administrative process by retaliating against the Respondent, his
9 pilots, his clients, owners, and potential buyers of his aircraft
10 as a direct result of Mr. Norwitch's refusing to provide a free or
11 reduced rate of flight for Mr. Shore's brother. Here, I find
12 there's been no evidence to establish that affirmative defense in
13 this case. Therefore, I cannot find that that has been proven by
14 a preponderance of the evidence.

15 The fourth affirmative defense, the inspectors involved in
16 this case conspired to permit and induce Mr. Norwitch to violate
17 the Federal Aviation Regulations Parts 91.509(a) through (e), and
18 in the process of said inducement violated mandates set out in the
19 agency's enforcement handbook. As I've indicated, I discussed
20 what occurred during the ramp check in Houma, Louisiana, and I
21 find that the Respondent has not proven this affirmative defense
22 by a preponderance of the evidence.

23 I'll now turn to the NASA report as an affirmative defense.
24 Mr. Norwitch raised the affirmative defense that he filed a NASA
25 report under the ASRS program, thereby precluding the

1 Administrator from imposing a sanction other than establishing a
2 record of the alleged incident.

3 The Respondent moved for the admission of the NASA report in
4 this case. It was admitted over the Administrator's objection.
5 It was admitted into evidence as Respondent's Exhibit 11, the only
6 exhibit that the Respondent moved into evidence. The document
7 consists of three pages. On page 3 of the document, under the
8 paragraph that begins with Section 91.25, the third sentence
9 reads, "Your identity strip, stamped by NASA, is proof that you
10 have submitted a report to the Aviation Safety Reporting System."
11 The Respondent did not produce or offer any evidence of a stamped
12 identity strip to prove that he actually submitted the report to
13 NASA.

14 The three pages, R-11, do not have a NASA stamp on them in
15 any location, nor do any of the pages indicate that the three-page
16 document was sent or received by NASA. Without proof that the
17 Respondent's purported NASA report was submitted to NASA, I cannot
18 find that Exhibit 11 is, in fact, an authentic NASA report that
19 was actually submitted to NASA. Therefore, I find that I cannot
20 give this unauthenticated NASA report any weight in these
21 proceedings.

22 Even if this purported NASA report were considered in this
23 case, it would not negate the imposition of sanctions in this
24 case. The ASRP program does not apply in all situations. The
25 form itself that was submitted at R-11 indicates the sanction

1 waiver will not be available when (1)the report was not filed
2 within 10 days of the incident -- again, there's no proof it was
3 filed at all; (2) if the violation was deliberate or intentional;
4 and (3) the ASRP filing arose out of an accident; or (4) the
5 conduct of the airman giving rise to the violation exhibited
6 incompetence or lack of qualification.

7 I will first address the issue of whether Mr. Norwitch's
8 conduct was deliberate or intentional. The description of events
9 described by Mr. Norwitch in the event section of this purported
10 NASA form is nothing more than an attempt to blame the FAA
11 inspectors who conducted the ramp check inspection in Houma,
12 Louisiana for his conduct and his violations of the regulations.
13 In the form, he asserts the FAA inspector, and I quote, "asked
14 about a raft. I explained that I didn't think I needed it based
15 on it being a 91 flight. He acknowledged (didn't disagree) so I
16 assumed I was correct." That is what it says on the narrative of
17 the NASA form.

18 At trial, Mr. Norwitch testified under oath that when he was
19 ramp checked in Louisiana, he was asked if he had a life raft on
20 board. He testified the responded that he did not need one.
21 Mr. Norwitch then testified that the inspector said okay. In the
22 same breath he went on to say the inspector had replied, "That's
23 right." and then in the same answer stated that the inspector
24 answered in the affirmative. Thus, Mr. Norwitch's stating that
25 when he told the ramp inspector he did not need a life raft, the

1 inspector responded by stating that (1) either the inspector
2 acknowledged or (2) didn't disagree or said "okay" or said "that's
3 right" or "answered in the affirmative" or all of the above.
4 Clearly Mr. Norwitch cannot get his story straight as to how the
5 aviation safety inspector responded to his statement. I do not
6 find any of these assertions by Mr. Norwitch to be credible.

7 Inspector Kibodeaux was the aviation safety inspector who
8 conducted the ramp check in Houma, Louisiana. He testified he
9 spoke to Mr. Norwitch, asked him about his route of flight. He
10 testified Mr. Norwitch told him that he had flown along the coast.
11 He then asked Mr. Norwitch if he had a life raft on board, and he
12 testified that Mr. Norwitch told him that he did not need one only
13 because he did not fly far enough from the coast to require one.
14 Inspector Kibodeaux testified that he told Mr. Norwitch that if he
15 conducted overwater operations, he would need a life raft on the
16 aircraft. According to Inspector Kibodeaux, Mr. Norwitch told him
17 that he would rent a life raft if he flew over water.

18 I found Inspector Kibodeaux's testimony to be credible, and I
19 must find that he informed the Respondent that if he conducted
20 overwater operations, he must have a life raft on board. I find
21 his testimony credible and that Mr. Norwitch told him he would
22 rent one if he needed it.

23 The Respondent admitted he did not have enough approved life
24 rafts of a rated capacity and buoyancy to accommodate the
25 occupants of the aircraft in his deposition in this case.

1 Mr. Norwitch admitted the he operated the aircraft in this case at
2 a distance of more than 50 nautical miles from the nearest
3 shoreline both on January 25, 2017 and January 31, 2017. That is
4 in his deposition which was part of the Administrator's Motion for
5 Partial Summary Judgment.

6 After being informed by Inspector Kibodeaux that he would
7 have to have a life raft on board for extended overwater
8 operations, Respondent flew extended overwater operations to Cabo
9 San Lucas on January 25th and on the return trip to Key West on
10 January 31, 2017, without the required life raft on board that he
11 was told by Inspector Kibodeaux that he was required to have.
12 Therefore, I must find that the Respondent's conduct of making
13 those flights without a life raft on board was intentional and
14 deliberate. So I must find that the NASA ASRP report, even if it
15 were admitted into evidence and proven to have been submitted to
16 NASA, is not applicable in this case because the conduct was
17 intentional and deliberate.

18 Finally, if I believe Respondent's testimony that he simply
19 made a mistake and did not research what overwater equipment was
20 necessary for the flight in issue, or which Federal Aviation
21 Regulations applied, I would still find that the NASA ASRP
22 protection would not apply. I would have to find that his
23 testimony established that as an ATP pilot, certified flight
24 instructor with approximately 8,500 hours of flight time, a Part
25 135 operator and chief pilot, in possessing all of those

1 certificates and experience, he should have known he had to
2 research all aspects of his flight plan along the planned routes.
3 If I found his testimony credible, I would have to find that his
4 conduct exhibited incompetence and he lacked qualification, which
5 again would establish that the NASA report would not be applicable
6 in this case.

7 Therefore, I must find that the Respondent has not
8 established any of his affirmative defenses by a preponderance of
9 the evidence.

10 I have to make findings of fact and conclusions of law, and
11 in doing so, I will use the Administrator's complaint, Order of
12 Suspension, in this case.

13 The Respondent has admitted to the allegations in paragraph 1
14 and paragraph 2.

15 He has denied that Great Flight, Inc. operations
16 specification lists aircraft with registration number N112CZ and
17 N53LB. During the course of the hearing, the Respondent did not
18 present any evidence to deny this allegation. The Administrator,
19 and through the testimony of Mr. Norwitch, has indicated that he
20 does lease the aircraft in issue in this case, N112CZ, from Oxbow
21 Express, and therefore I find that the Administrator has
22 established the allegations paragraph 3.

23 Respondent admits paragraph 4 and paragraph 5.

24 I find that the Administrator has proven the allegations in
25 paragraph 6, that on January 25, 2017, you operated a flight into

1 an area outside the authorized area as set forth in your
2 operations specifications.

3 I find that the Administrator has established the allegations
4 in paragraph 7. I find the Administrator has proven the
5 allegations in paragraph 8 by a preponderance of evidence as well.
6 I find that the Administrator has proven by a preponderance of the
7 evidence the allegations in paragraph 9, in paragraph 10 and in
8 paragraph 11. Those have been established for purpose of the
9 hearing.

10 The Administrator withdrew his allegations in paragraph 12.

11 As to paragraph 13, I find that the Administrator has proven
12 the allegations in paragraph 13, that he did not have on board
13 N112CZ, the aircraft in issue in this case, and 13(b) enough life
14 rafts, each equipped with an approved survival locator light of a
15 rating capacity and buoyancy to accommodate the occupants in the
16 airplane, and (c) at least one pyrotechnic signaling device for
17 each life raft. Since he did not have the life rafts required in
18 this case, I find that the Administrator has proven the
19 allegations of 13(b) and (c), and subdivision (e) as well, that a
20 life line stored in accordance with 14 C.F.R. 25.1411(g).

21 I find that the Administrator has proven the allegations in
22 paragraph 14. I find that he has proven the allegations in
23 paragraph 15, 16, 17, 18, 19, 20, 21 and 22 by a preponderance of
24 the evidence.

25 The Administrator has withdrawn paragraph 23.

1 I find the Administrator has proven the allegations in
2 paragraph 24, subdivisions (b), (c) and (e). I find the
3 Administrator has proven the allegations in paragraphs 25, 26, 27,
4 28 and 29 by a preponderance of the evidence. I find the
5 Administrator has proven the allegations in paragraph 30 by a
6 preponderance of the evidence.

7 Therefore I find that the Respondent has violated 14 C.F.R.
8 91.13(a) in that he operated an aircraft in a careless and
9 reckless manner so as to endanger the life and property of
10 another. I find he has violated 14 C.F.R. 91.509(b) in that you
11 took off in an airplane for flight over water, more than 30
12 minutes flying time or 100 nautical miles from the nearest shore,
13 and did not have on board, subparagraph (2), enough life rafts,
14 (3) at least one pyrotechnic signaling device for each life raft,
15 (5) life line stored in accordance with 14 C.F.R. 25.114.

16 I find that the Administrator's proven again by a
17 preponderance of the evidence the violations of 14 C.F.R. 91.509.
18 The allegations in 14 C.F.R. 91.509(e), he has proven by a
19 preponderance of the evidence.

20 The violations of 14 C.F.R. 119.5(g), the Administrator has
21 proven those allegations by a preponderance of the evidence. And
22 I find the Administrator's proven the allegations that he violated
23 14 C.F.R. 119.5(l) and 14 C.F.R. 135.117, by a preponderance of
24 the evidence. I find the Administrator has also proven the
25 violations of 14 C.F.R. 135.167(a) (2), 14 C.F.R. 135.293(b), 14

1 C.F.R. 135.297 and 14 C.F.R. 135.301(b) by a preponderance of the
2 evidence.

3 Those are the specific findings of facts and conclusions of
4 law, that the Administrator has proven those specific allegations
5 in his complaint, the Order of Suspension in this case.

6 Based on all of the evidence before me, I have found that the
7 Administrator has proven all of the alleged violations of the
8 Federal Aviation Regulations in the Administrator's Amended Order
9 of Suspension by a preponderance of the reliable, probative and
10 credible evidence.

11 I now turn to the sanction imposed by the Administrator in
12 this case. As to the sanction, on August 3, 2011, Public Law 112-
13 153, known as the Pilot's Bill of Rights was signed into law by
14 the President of the United States. The Pilot's Bill of Rights
15 strikes from 49 U.S.C. Sections 44709 and 44710 language that in
16 cases involving amendments, modifications, suspensions or
17 revocations of an airman's certificate, the Board is bound by all
18 validly adopted interpretations of laws and regulations the
19 Administrator carries out and of written agency policy guidance
20 available to the public relating to sanctions to be imposed under
21 this section unless the Board finds an interpretation is
22 arbitrary, capricious, or otherwise not according to law.

23 While I am no longer bound to give deference to the Federal
24 Aviation Administration by statute, the agency is entitled to the
25 judicial deference due all other federal administrative agencies

1 under the Supreme Court decision in *Martin v. Occupational Safety*
2 *and Health Review Commission et al.*, 499 U.S. 144, 111 S. Ct.
3 1171.

4 In applying the principles of deference to the interpretation
5 of laws, regulations and policies that the Administrator carries
6 out, I must analyze and weigh the facts and circumstances in each
7 case to determine if the sanction selected by the Administrator is
8 appropriate.

9 In the case before me, the Respondent argues that it should
10 be considered mitigating that Respondent has had a spotless record
11 prior to this action. However, NTSB clearly states that that is
12 what is expected, a clean record. It's expected of all airmen.
13 Therefore I cannot find that the fact that the Respondent has a
14 previously spotless record to be mitigating.

15 Respondent argues that the fact that Mr. Norwitch filed a
16 NASA report shows a compliance attitude. As I have previously
17 found, Respondent has not established he filed a NASA report.
18 Even if I found he filed a NASA report, I have found his conduct
19 was deliberate and intentional. The narrative in the purported
20 NASA report is nothing more than an attempt to blame FAA
21 inspectors for his violations of the Federal Aviation Regulations.
22 This is in no way indicative of a compliance attitude.

23 I give Respondent's arguments no weight. I find no
24 mitigating factors in this case.

25 The Administrator argues that there are aggravating

1 circumstances in the level of Respondent's experience. He is an
2 ATP, airline transport pilot. He is a certified flight
3 instructor. He is the owner and president and chief pilot of his
4 own 135 operation, Great Flight. Based on Respondent's training
5 and operations under Part 135 and in Part 91, this all clearly
6 establishes that he should have known the requirements that were
7 necessary for his overwater flights. Respondent was acting as an
8 air carrier and is held to a higher safety standard. That is what
9 is required by the law and expected by the flying public.

10 The Administrator argues that there is a great degree of
11 hazard in this case. Respondent conducted extended overwater
12 flights without required safety equipment that he had been
13 informed he must have on board. The Administrator argues the fact
14 that Respondent refused to secure a life raft after the ramp
15 inspection shows a noncompliance attitude and that is an
16 aggravating factor.

17 The Administrator also argues the Respondent's conduct in
18 violation of the Federal Aviation Regulations, in his view, was
19 deliberate and intentional. I have found that his conduct was
20 deliberate and intentional.

21 I find that Administrator's arguments to be compelling. I
22 find Respondent's arguments to be wholly without merit.
23 Respondent is not credible in his testimony.

24 I therefore find that the sanction sought by the
25 Administrator is appropriate and warranted in the public interest

1 in air commerce and in the interest of air safety. Therefore I
2 find that the Administrator's Amended Order of Suspension, the
3 complaint herein, must be and shall be affirmed as issued.

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ORDER

IT IS THEREFORE ORDERED:

1. The Administrator's Order of Suspension, the complaint herein, be, and is hereby, affirmed as amended at trial.

2. The Respondent's Airline Transport Pilot Certificate No. 2928541 is suspended for a period of 210 days.

Entered this 4th day of November 2019, in Washington, D.C.

ALFONSO J. MONTAÑO

Chief Administrative Law Judge

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APPEAL

JUDGE MONTAÑO: I have provided the parties with their appeal rights. I explained the appeal rights at the end of the hearing which was completed on October 30th, and I advised them as to their appeal rights.

Again, I would ask the parties to pay very careful attention to the time frame in which they have to file their appeals, so that they make sure they file their appeals before the Board. The Board is very strict in that appeals must be filed within the specified time frame. So both parties, please be aware of it.

That completes my Oral Initial Decision. I will therefore thank the parties for their patience and their time, and I will end the conversation at this point. Thank you and good-bye.

(Whereupon, at 12:53 p.m., the hearing in the above-entitled matter was adjourned.)

CERTIFICATE

This is to certify that the attached proceeding before the
NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: Adam S. Norwitch

DOCKET NUMBER: SE-30535

PLACE: Via Telephone

DATE: November 4, 2019

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.



Natasha Bachman
Official Reporter



Katherine A. Mirfin
Transcriber