

**UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC**

**In the Matter of: ACE PILOT TRAINING**

FAA Order No. 2005-12

Docket No. CP02EA0017  
DMS No. FAA-2002-11975<sup>1</sup>

Served: August 17, 2005

**DECISION AND ORDER**<sup>2</sup>

Complainant Federal Aviation Administration (FAA) has appealed the decision of Administrative Law Judge (ALJ) Burton S. Kolko<sup>3</sup> assessing a \$500 civil penalty against Respondent Ace Pilot Training (Ace).<sup>4</sup> In that decision, the ALJ held that Ace violated

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<sup>1</sup> Materials filed in the FAA Hearing Docket (except for materials filed in security cases) are also available for viewing through the Department of Transportation's Docket Management System (DMS) at the following Internet address: <http://dms.dot.gov>.

<sup>2</sup> The Administrator's civil penalty decisions, along with indexes of the decisions, the rules of practice, and other information, are on the Internet at the following address: <http://www.faa.gov/agc/cpwebsite>. There are two reporters of the decisions: Hawkins' Civil Penalty Cases Digest Service and Clark Boardman Callaghan's Federal Aviation Decisions. Finally, the decisions are available through LEXIS and WestLaw. For more information, see the website.

<sup>3</sup> A copy of the ALJ's written decision is attached. (The ALJ's decision is not attached to the electronic versions of this decision nor is it included on the FAA website.)

<sup>4</sup> Ace filed a notice of appeal, but did not file an appeal brief. The rules require a party to file an appeal brief within 50 days of service of the ALJ's decision (14 C.F.R. § 13.233(c)), plus 5 days for service by mail (14 C.F.R. § 13.211(e)). The ALJ served his decision on February 28, 2003. As a result, Ace's appeal brief was due by April 24, 2003. Ace did not seek an extension of time to file its appeal brief, as required by 14 C.F.R. § 13.233(c)(2).

On May 19, 2003, the FAA moved to dismiss Ace's appeal because Ace had failed to perfect its appeal by filing an appeal brief. Ace's answer to the FAA's motion to dismiss was due within 10 days (14 C.F.R. § 13.218(d)), plus 5 days for service by mail (14 C.F.R. § 13.211(e)), or by June 3, 2003. Ace did not respond to the FAA's motion to dismiss, however, until July 3, 2003, a month after the deadline. Further, Ace did not explain in its response why it failed to file an appeal brief and why it filed its answer to the motion to dismiss late. Ace simply asked the Administrator to consider parts of its reply brief as its appeal brief.

Ace did not file a document explaining why it believed it had good cause for failing to file an appeal brief until July 31, 2003 – about 3 months after the deadline for filing the appeal

14 C.F.R. § 39.3 by operating one of its aircraft beyond the deadline for complying with a recurring Airworthiness Directive (AD), but that the FAA failed to prove that Ace committed other alleged violations of Section 39.3. The ALJ also held that the FAA failed to prove that Ace violated 14 C.F.R. § 91.13(a).

On appeal, the main issues are:

1. Is Ace responsible for operating aircraft that did not comply with all applicable ADs, or did Ace reasonably rely on its repair station to comply with the ADs?<sup>5</sup>
2. If Ace is indeed responsible, did its operation of aircraft that did not comply with ADs also violate the regulation prohibiting careless or reckless operation?<sup>6</sup>

This decision holds that Ace had a responsibility, independent of the repair station's responsibility, to know when the ADs were due and to ensure that they were completed on time. It also holds that, absent extraordinary circumstances, operating an aircraft out of compliance with an AD not only violates the regulation requiring compliance with ADs, but also violates the regulation prohibiting careless or reckless operation. Finally, this decision assesses an \$8,000 civil penalty against Ace.

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brief. According to Ace, it had good cause because its counsel had been moving after an unsuccessful, chaotic law firm merger. Further, Ace has not explained the reason for, or even acknowledged, the lateness of its answer to the FAA's motion to dismiss. Given Ace's multiple failures to follow the rules, its appeal is dismissed.

<sup>5</sup> 14 C.F.R. § 39.3 states: "No person may operate a product to which an airworthiness directive applies except in accordance with the requirements of that airworthiness directive."

<sup>6</sup> 14 C.F.R. § 91.13(a) states: "*Aircraft operations for the purpose of air navigation.* No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another."

## **I. Background**

Ace runs a flight school under 14 C.F.R. Part 141<sup>7</sup> with about eight aircraft.<sup>8</sup> At times relevant to this appeal, Ace took its aircraft to a repair station, Piedmont Hawthorne, for maintenance and repair.<sup>9</sup>

During a routine inspection, an FAA inspector discovered that Ace had operated a Mooney Model M20C aircraft, with registration number N6887U, when the maintenance log did not show completion of two ADs. The purpose of one of these ADs was “[t]o prevent corrosion and/or misrigging in the flight control and landing gear systems which may result in binding or seizure of the joints and loss of flight control or collapse of the landing gear.” AD 73-21-01. The AD required lubrication of the flight control systems and landing gear system rod end bearings “at intervals not to exceed 12 calendar months from the last inspection or 100 hours time in service<sup>10</sup> from the last inspection, whichever comes first.”

The purpose of the second AD applicable to the Mooney aircraft, AD 76-07-12, was to detect a possible ignition switch malfunction. This AD required testing the Bendix ignition switch every 100 hours time in service.

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<sup>7</sup> As the ALJ noted, based on the testimony of the FAA inspector, “[a] Part 141 flight school operates under Part 91 for inspection and operation purposes.” Initial Decision at 4 n.3, citing Tr. 70.

<sup>8</sup> Tr. 33.

<sup>9</sup> Tr. 169-170.

<sup>10</sup> “Time in service” refers to the engine’s tachometer or “tach” time.

The inspector also found that Ace had operated two Piper Model PA28-140 aircraft, with registration numbers N44595 and N55165, when the logs did not show completion of AD 95-26-13. The purpose of this AD was “to prevent ... oil cooler hoses from failing or rupturing, which could result in engine stoppage and subsequent loss of control of the airplane.” AD-95-26-13. This AD required replacement of the oil cooler hose assemblies every 8 years or 1,000 hours time in service, whichever occurred first.

The table below contains details of each alleged violation.

<u>Aircraft Make &amp; Registration Number</u>	<u>AD Number</u>	<u>Tach Time When AD Due</u>	<u>Tach Time at Last Annual Inspection Before AD Overflown</u>	<u>Hours Until AD Due</u>	<u>Tach Time When Inspector Discovered Problem</u>	<u>Hours AD Overflown</u>
Mooney N6887U <sup>11</sup>	73-21-01	3404	3401.8	2.2	3451.6	47.6
Mooney N6887U <sup>12</sup>	76-07-12	3404	3401.8	2.2	3451.6	47.6
Piper N44595 <sup>13</sup>	95-26-13	6961.3	6873.71	87.59	6995.52	34.22
Piper N55165 <sup>14</sup>	95-26-13	3889.3	3843.44	45.86	3923.87	34.57

The FAA filed a complaint alleging that Ace violated 14 C.F.R. § 39.3, which prohibits operation of aircraft when ADs are incomplete, and 14 C.F.R. § 91.13(a), which prohibits careless or reckless operation of an aircraft. The FAA sought a \$30,000 civil

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<sup>11</sup> Exhibits A-1, A-4.

<sup>12</sup> Exhibits A-1, A-4.

<sup>13</sup> Exhibit A-8.

<sup>14</sup> Exhibit A-9.

penalty for the violations. Ace's defense was that the repair station was responsible for the violations.

After a hearing, the ALJ ruled that Ace committed only one violation of Section 39.3, by operating the Mooney aircraft beyond the deadline for complying with the AD involving the flight control and landing gear systems, AD 73-21-01. The repair station's maintenance director had testified – credibly, according to the ALJ – that he told Ace's owner that the AD involving the flight control and landing gear systems on the Mooney aircraft was due in only 2.2 operational hours. According to the ALJ, because Ace had been told, and therefore knew, it was about to operate the aircraft past the deadline for this AD, Ace violated 14 C.F.R. § 39.3, which prohibits operating an aircraft that does not comply with an AD. After finding that non-compliance with the AD could have caused the flight controls to seize up, with potentially catastrophic results, the ALJ assessed a \$5,000 civil penalty. The ALJ declined to find, however, that Ace also violated 14 C.F.R. § 91.13(a), prohibiting careless or reckless operation, because there was no evidence, other than the AD violation, that Ace operated the aircraft carelessly or recklessly.

As for the remaining allegations involving the failure to comply with an AD in violation of Section 39.3, the ALJ dismissed them on the ground that Ace did not have actual knowledge that it was about to operate the aircraft past the deadlines for the ADs. According to the ALJ, Ace had the right to conclude that if the repair station returned these aircraft to service after their annual inspections, they were airworthy. The ALJ held that Ace, as the operator, was only the custodian of the records, and that Ace reasonably relied on the repair station to check the ADs and complete them when due.

## II. Discussion

The ALJ erred in finding that Ace was not responsible for operating the aircraft past the deadlines for the ADs.<sup>15</sup> Ace had a responsibility, independent of the repair station's responsibility,<sup>16</sup> to know when its ADs were due<sup>17</sup> and to make sure they were completed on time and were properly recorded. While *both* the operator and the repair station may be liable in any given case for the failure to complete an AD on time, the regulations expressly state that the operator's responsibility for AD compliance is *primary*. 14 C.F.R. § 91.403(a) states, “[t]he owner or operator of an aircraft is *primarily responsible* for maintaining that aircraft in an airworthy condition, including compliance with part 39 of this chapter” (emphasis added). Part 39 (specifically, 14 C.F.R. § 39.7) prohibits operating aircraft that do not comply with ADs.

FAA guidance states, “[t]he owner or operator remains fully responsible for AD compliance.” Advisory Circular (AC) 39-7C, entitled “Airworthiness Directives,” at 5 (emphasis in original). The operator's role is to “*ensure*[ ] that ... maintenance person(s) accomplish [an] ... AD and properly record this action in the appropriate maintenance

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<sup>15</sup> Ace contends that the repair station likely completed all the AD work, even if it did not record it, because the checklists most likely used for the annual inspections probably included an item asking, “Are all applicable ADs complied with?” Further, Ace argues, the manufacturers may have revised the annual inspection checklists to include the work required by the ADs. The short answer is that the completed checklists are not in the record, and their contents are unknown. Maintenance records are deemed accurate, absent adequate evidence to the contrary. In the Matter of Delaware Skyways, FAA Order No. 2005-5 at 7 (March 10, 2005). Here the records fail to show completion of the work.

<sup>16</sup> Ace complains that the FAA took no action against the repair station. Assuming, *arguendo*, that this is true, the FAA's decision not to prosecute involves prosecutorial discretion and, as a result, is presumptively immune from review. In the Matter of High Exposure, FAA Order No. 2001-2 at 7 (May 16, 2001). Moreover, when the repair station performed the annual inspections, the ADs were not yet due.

<sup>17</sup> This is particularly important concerning ADs that are due at a particular tachometer time, as opposed to those that are due only at the next annual inspection.

records.” *Id.* (Emphasis added.)

In addition, the regulations required Ace to keep records showing the status of applicable ADs, including the AD number and the time and date of the next required action. 14 C.F.R. § 91.417(a)(2)(v) states:

Each registered owner or operator shall keep ... (2) Records containing ...: (v) ***The current status of applicable airworthiness directives (AD)*** including, for each, the method of compliance, the AD number, and revision date. ***If the AD involves recurring action, the time and date when the next action is required.***

(Emphasis added.)

Given Ace’s duty to monitor its own records, any failure of the repair station to advise Ace at the Mooney’s annual inspection that there were only 2.2 hours remaining on one of the ADs does not absolve Ace of responsibility. Ace should have seen from a brief examination of its AD compliance sheets that the AD would be due shortly.

Regarding the two Piper aircraft, the last annual inspections before Ace overflew the oil cooler hose AD, AD 95-26-13, took place so long before the AD deadlines that it would be unreasonable in any event to absolve Ace of responsibility for the overflights. At the time of the last annual inspection before the overflights, one of the Piper aircraft had 87.59 hours remaining before the AD was due, and the other had 45.86 hours remaining. Although the ALJ dismissed these violations, even he acknowledged that “[t]he owner/operator is responsible for ... bringing the aircraft in at the proper time.”

(Initial Decision at 6.)

To support his point that it would be unfair to place a duty on an owner or operator to review all ADs, the ALJ stated that aircraft buyers have no way of knowing about ADs that the FAA has already issued unless the seller happens to provide the ADs.

(Initial Decision at 7-8.) This is incorrect. ADs are publicly available, free of charge, on the FAA Internet website.<sup>18</sup> Requiring owners and operators to know which ADs apply to their aircraft and to bear primary responsibility for timely AD compliance is not an unfair burden.

The ALJ also stated that a repair station's return to service at the annual inspection without a discrepancy list permitted Ace to infer that the repair station had completed any applicable ADs. (Initial Decision at 4.) For each aircraft, however, the AD had not yet expired at the time of the last annual inspection before the overflights. Thus, each aircraft was, in fact, airworthy when the repair station returned it to service. Regardless, as discussed above, Ace had an independent responsibility to monitor the status of applicable ADs.

Ace elicited general testimony from its expert witness at the hearing that he recalled several entries in the logbooks for the three aircraft that said ADs were complied with or checked. (Tr. 280.) As noted above, in instances where compliance with a particular AD is not yet due, such a logbook notation may be literally true; but absent a corresponding record of timely AD compliance, such a notation does not satisfy an owner or operator's regulatory responsibility for compliance. In only one instance did Ace deliver its aircraft for an annual inspection *after* the required time for AD compliance. In that instance, the record, viewed in the light most favorable to Ace, reflects that Piper N44595 was inspected at 6969.83 hours and that the repair station recorded that it had "checked" all ADs, even though it did not record the completion of work for any AD. (Exhibits A-8; R-1.) It is unnecessary to reach the issue of whether Ace reasonably relied

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<sup>18</sup> <http://www.faa.gov/certification/aircraft/>.

on the repair station's logbook notation that it had "checked" the ADs because Ace had already overflown AD 95-26-13 by 8.53 hours. Thus, the violation had occurred before the annual inspection at 6969.83 hours.

As for the alleged violations involving 14 C.F.R. § 91.13(a) (operating in a careless or reckless manner), the ALJ declined to find this violation because there was no evidence, other than that of AD-noncompliance, of carelessness or recklessness. The ALJ cited In the Matter of Carr, FAA Order No. 1998-2 at 11-12 (March 12, 1998), for the proposition that finding multiple violations for the same offense would constitute "piling on" [that] should be avoided except under the most egregious circumstances." (Initial Decision at 4.) The Carr decision, however, involved whether violations of separate regulations counted *for sanction purposes*. FAA Order No. 1998-2 at 11-12. The decision stated: "It would be a fiction to say that Mr. Carr did not violate each and every regulation ... alleged in the complaint.... However, there is no reason to count each separately for sanction purposes in this non-egregious case ...." *Id.* at 11 n.14.

The ALJ overlooked the "[a]mple legal authority ... indicating that absent extraordinary circumstances, careless or reckless operation of an aircraft follows as a residual violation [once the agency establishes operation of an unairworthy<sup>19</sup> aircraft]." In the Matter of USAir, Inc., FAA Order No. 1992-70 at 6 (December 21, 1992). The record in this case does not show any extraordinary circumstances justifying a finding that Ace did not violate 14 C.F.R. § 91.13(a) as well. Indeed, Ace acted in a careless or reckless manner in this case, jeopardizing the safety of both its student pilots and others

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<sup>19</sup> "To be airworthy, an aircraft must: (1) conform to a type design approved under a type certificate or supplemental type certificate *and to applicable Airworthiness Directives*; and (2) be in a condition for safe operation." In the Matter of California Helitech, FAA Order No. 2000-18 at 3 n.7 (Aug. 11, 2000) (emphasis added).

by operating its aircraft without complying with ADs.

In summary, Ace committed all of the alleged violations. The FAA issued the ADs to prevent serious safety problems – loss of flight control and collapse of the landing gear (flight control and landing gear system AD), injuries from a propeller strike (ignition switch AD), and engine stoppage (oil cooler hose AD).<sup>20</sup> The results of non-compliance could have been tragic. Further, there was not just one isolated incident of operating when an AD was past due, but several, indicating a systemic problem.<sup>21</sup> This problem is particularly serious because Ace was a commercial operator, and its customers were student pilots, for whom it would likely be more difficult to manage a maintenance-related emergency than for experienced pilots.

Nevertheless, a \$30,000 civil penalty is higher than necessary to impress upon this operator that it must monitor its records to make sure that all applicable ADs are current. In addition, there is no reason to assess a separate civil penalty for the violations of 14 C.F.R. § 91.13(a) in this case. A civil penalty of \$8,000, given Ace's size, should have sufficient deterrent effect.<sup>22</sup>

For the foregoing reasons, this decision grants the FAA's appeal, finds that Ace committed all of the violations alleged in the complaint, and assesses an \$8,000 civil

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<sup>20</sup> Exhibits A-2, A-3, and A-7.

<sup>21</sup> Indeed, the FAA inspector testified that compliance had been an “ongoing problem” with Ace. Tr. 63. The inspector testified that although Ace's owner responded immediately once the inspector brought problems to his attention, nevertheless the inspector was finding problems at Ace that “should be easily recognized by someone who is paying attention to the workings of the flight school ....” *Id.*

<sup>22</sup> Any arguments not discussed have been considered and rejected.

penalty.<sup>23</sup>

MARION C. BLAKEY, ADMINISTRATOR  
Federal Aviation Administration

Issued this 15<sup>th</sup> day of August, 2005.

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<sup>23</sup> Under the Rules of Practice, unless Respondent files a petition for review with a Court of Appeals of the United States under 49 U.S.C. § 46110 within 60 days of service of this decision, this decision is an order assessing civil penalty. 14 C.F.R. §§ 13.16(d)(4) and 13.233(j)(2) (2005).