

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

In the Matter of: EASTERN AIR CENTER, INC.

FAA Order No. 2008-3

Docket No. CP05NE0003
FDMS No. FAA-2005-21756¹

Served: January 28, 2008

DECISION AND ORDER²

Complainant appealed the written initial decision issued by Administrative Law Judge (ALJ) Isaac D. Benkin on May 24, 2006.³ The ALJ held that Complainant proved that Eastern Air Center (“Eastern”) violated 14 C.F.R. §§ 91.203(a)(1)⁴ and 135.25(a)(1)⁵

¹ Materials filed in the FAA Hearing Docket (except for materials filed in security cases) are also available for viewing at <http://www.regulations.gov>. For additional information, see <http://dms.dot.gov>.

² The Administrator’s civil penalty decisions, along with indexes of the decisions, the rules of practice, and other information, are available on the Internet at the following address: http://www.faa.gov/about/office_org/headquarters_offices/agc/pol_adjudication/AGC400/Civil_Penalty. In addition, Thompson/West publishes Federal Aviation Decisions. Finally, the decisions are available through LEXIS (TRANS library) and WestLaw (FTRAN-FAA database). For additional information, see the Web site.

³ A copy of the ALJ’s written initial decision is attached. (The initial decision is not attached to the electronic versions of this decision and is not included on the FAA Web site.)

⁴ Section 91.203(a)(1) of the Federal Aviation Regulations, 14 C.F.R. § 91.203(a)(1), provides in pertinent part:

(a) [N]o person may operate a civil aircraft unless it has within it the following:

(1) An appropriate and current airworthiness certificate. Each U.S. airworthiness certificate used to comply with this subparagraph ... must have on it the registration number assigned to the aircraft under part 47 of this chapter. However, the airworthiness certificate need not have on it an assigned special identification number before 10 days after that number is first affixed to the aircraft. A revised airworthiness certificate having on it an assigned special

by operating 24 charter flights under 14 C.F.R. Part 135 without having a current and appropriate airworthiness certificate. The ALJ rejected the proposed \$6,000 civil penalty sought by Complainant and instead assessed a \$2,400 civil penalty. On appeal, Complainant argues that the ALJ's assessment of a \$2,400 civil penalty was arbitrary and capricious, inconsistent with the evidence, and contrary to the FAA's sanction guidance policy. Complainant's appeal is granted in that the ALJ did not follow agency sanction policy and incorrectly held that Eastern flew 24 flights between August 1 and 26, 2004. Nonetheless, as explained further in this decision, the \$6,000 civil penalty sought by Complainant is too high, and instead, a \$1,500 civil penalty is assessed.

Eastern also appealed the initial decision but to the National Transportation Safety Board (NTSB). The NTSB forwarded Eastern's notice of appeal and appeal brief to the FAA Hearing Docket. Although the Administrator could dismiss Eastern's appeal because Eastern failed to file its appeal under 14 C.F.R. § 13.233 properly, the Administrator will not do so because Eastern is *pro se* and Complainant was not prejudiced by Eastern's mistake. After reviewing Eastern's arguments on appeal, the Administrator finds that they lack merit, and as a result, Eastern's appeal is denied.

identification number, that has been affixed to an aircraft, may only be obtained upon application to an FAA Flight Standards district office.

⁵ Section 135.25(a)(1), 14 C.F.R. § 135.25(a)(1), provides in pertinent part:

(a) [N]o certificate holder may operate an aircraft under this part unless that aircraft –

(1) Is registered as a civil aircraft of the United States and carries an appropriate and current airworthiness certificate issued under this chapter.

I. Facts

The facts in this case are relatively simple. Eastern is an air carrier in Norwood, Massachusetts, operating under Part 135 of the Federal Aviation Regulations (FAR). Eastern operated four aircraft, including a Piper PA-31, which was assigned registration number N10MC. (Tr. 138.) Eastern applied to the FAA for a special registration number, N123EA, for that Piper PA-31. (FAA Exhibit 10A at 3.) On July 13, 2004, the FAA issued special registration number, N123EA, for the aircraft. (FAA Exhibits 1 and 10A at 1.) Eastern painted the new registration number, N123EA, on the aircraft on July 20, 2004. (Tr. 70, FAA Exhibit 1.)

On August 26, 2004, three FAA aviation safety inspectors visited Eastern to perform a base inspection. (Tr. 62.) Inspector Tony Accurso performed a ramp inspection of N123EA. He examined the registration and airworthiness certificates that were on board the aircraft and found that they had different registration numbers. The registration certificate reflected the new registration number, N123EA, while the airworthiness certificate reflected the former registration number, N10MC. (Tr. 65, FAA Exhibit 2.) The inspectors pointed the discrepancy out to Phil Finer, Eastern's Director of Operations, who wrote a letter, dated August 26, 2004, seeking a replacement airworthiness certificate for N123EA. (Tr. 75, FAA Exhibit 5.) Inspector Accurso issued the replacement airworthiness certificate for N123EA on the same day. (Tr. 75, FAA Exhibit 3.)

Complainant alleged that Eastern violated Sections 91.203(a)(1) and 135.25(a)(1) by operating 34 charter flights under Part 135 between August 1 and August 26, 2004, without a current and appropriate airworthiness certificate on board. (Complaint,

paragraph II.) Under Section 91.203(a)(1), no person may operate a civil aircraft unless an appropriate and current airworthiness certificate – stating the aircraft’s assigned registration number – is on board. Section 91.203 permits an operator to operate an aircraft under Part 91 for 10 days after affixing a special registration number to the aircraft without having an airworthiness certificate stating the special registration number. After the 10 day-period, the operator must carry a replacement airworthiness certificate stating the new special registration number on board the aircraft during flights. This 10-day grace period gives the operator time in which to obtain a replacement airworthiness certificate.

Section 135.25(a)(1) provides that no certificate holder may operate an aircraft under Part 135 unless the aircraft carries an appropriate and current airworthiness certificate. Section 135.25(a)(1) does not provide any grace period in which a carrier may continue to conduct Part 135 operations after affixing a special registration number to its aircraft while it seeks a replacement airworthiness certificate. Despite this, Complainant did not allege that Eastern violated Section 135.25(a)(1) by operating any charter flights during the 10-day period after Eastern painted the special registration number on the aircraft that is the subject of this case.⁶

At the hearing, Complainant introduced FAA Exhibit 4, an excerpt from N123EA’s Aircraft Flight Log and Maintenance Records, for July 30, 2004, through August 24, 2004, two days before the replacement airworthiness certificate was issued.

⁶ The evidence did show that Eastern flew some charter flights on July 30, 2004. Complainant did not allege in the complaint that any flights on July 30, 2004, constituted violations of Section 135.25(a)(1). As a result, the Administrator rejects Complainant’s suggestions on appeal that a civil penalty greater than \$2,400 was warranted because Section 135.25(a)(1) does not provide a grace period.

The log showed that Eastern operated N123EA on multiple charter flights under Part 135 during this period.

II. The Initial Decision

In his written initial decision, the ALJ held that Eastern violated Sections 91.203(a)(1) and 135.25(a)(1). Based on his review of the flight log, the ALJ concluded that Eastern flew 24 flight segments from August 1 (the first day after the grace period) through August 24 (two days before the issuance of the new airworthiness certificate.)

Regarding sanction, the ALJ held “that the \$6,000 penalty sought by the Complainant is too high and too arbitrary a figure to be appropriate in this case.” (Initial Decision at 8.) He explained that he considered a penalty of \$100 per flight as appropriate “as it should provide sufficient ‘sting’ to the Respondent and vindicate the public interest in strict compliance with the FARs.” (*Id.*) As a result, he assessed a \$2,400 civil penalty against Eastern.

III. Analysis

Eastern’s arguments on appeal are frivolous. It argues, for example, that the Assignment of Special Registration Number, AC Form 8050-64 (FAA Exhibit 1), which authorized Eastern to affix special registration number N123EA on one of its Piper aircraft, did not “impose” a specific number of days in which the owner must request a replacement airworthiness certificate.⁷ (Eastern’s Appeal Brief at 8.) Eastern argues

⁷ In a box on the right hand side of AC Form 8050-64, it states as follows:

This is your authority to change the United States registration number on the above described aircraft to the special registration number shown.

Carry duplicate of this form in the aircraft together with the old registration certificate as interim authority to operate the aircraft pending receipt of revised certificate of

further that a reasonable owner could conclude that AC Form 8050-64 permits an owner to operate the aircraft with the special registration number for 90 days without a replacement airworthiness certificate.⁸ (*Id.*) Likewise, Eastern argues that the pertinent paragraph in Airworthiness Certification of Aircraft and Related Products, FAA Order No. 8130.2F,⁹ does not state a specific number of days in which the owner or operator must apply for a revised airworthiness certificate.

registration. *Obtain a revised certificate of airworthiness from your nearest Flight Standards District Office.*

(FAA Exhibit 1) (Emphasis added.) It is written in a separate box, entitled “INSTRUCTIONS,” in the lower half of the form, as follows:

SIGN AND RETURN THE ORIGINAL of this form to the Civil Aviation Registry, AFS-750, within 5 days after the special registration number is affixed on the aircraft. A revised certificate will then be issued. This authority is valid for 90 days from the issue date.

(FAA Exhibit 1.)

⁸ Eastern does not argue that it was misled by this form. Also, the 90-day period referred to in a paragraph in AC Form 8050-64 (*see* n.7, *supra*) pertains to the registration certificate, not to the time for obtaining a replacement airworthiness certificate.

⁹ As Inspector Stalzer explained at the hearing, this paragraph provides guidance to FAA inspectors regarding how to replace an airworthiness certificate; it is not intended for use by individual owners and operators. This paragraph states as follows:

(1) Aircraft owners must apply for a special registration number in writing to AFS-750 and describe the aircraft. Permission to place the special number on the aircraft will be given on Aeronautical Center Form 8050-64, Assignment of Special Registration Numbers. The owner must complete, sign, and return the original form to AFS-750 within 5 days after the special registration number is affixed to the aircraft. The duplicate of Form 8050-64 and the present airworthiness certificate must be presented to the FAA representative, who will issue a replacement airworthiness certificate showing the new registration number. The old Certificate of Registration and the duplicate Form 8050-64 must be carried in the aircraft until the new Certificate of Aircraft Registration is received....

(Respondent’s Exhibit 17.)

Form AC 8050-64 and FAA Order No. 8130.2F do not state how many days an operator has after affixing a special registration number to an aircraft before the operator must request a new airworthiness certificate.¹⁰ Be that as it may, Section 91.203(a)(1) of the FAR is sufficiently clear that an operator may operate an aircraft for only 10 days after affixing a special registration number to the aircraft without carrying on board a replacement airworthiness certificate (stating the new number). After that time, if the operator does not have a replacement airworthiness certificate, the operator may not fly the aircraft on any flights. Section 135.25, likewise, clearly provides that the operator may not operate any flights under Part 135 without a current and appropriate airworthiness certificate. The regulatory requirements are clear. It makes no difference that the regulatory requirements regarding the need for an operator to have a current and appropriate airworthiness certificate on board during flights were not included on AC Form 8050-64 or in FAA Order No. 8130.2F. Hence, the ALJ's findings that Eastern violated Sections 91.203 and 135.25 are affirmed.

Turning now to Complainant's appeal, Complainant argues in its appeal brief that the "ALJ's sanction reduction is arbitrary and capricious" because it is inconsistent with the FAA's sanction guidance and unsupported by the evidence in the record.

(Complainant's Appeal Brief at 4.)

Preliminarily, it should be noted that technically, the ALJ did not "reduce" the sanction because until the ALJ issued the initial decision, no civil penalty had been

¹⁰ The form does explain that an owner must sign the form and send the original to AFS-750 within 5 days after affixing the special number on the aircraft so that the Civil Aviation Registry, AFS-750, can send the owner a "revised certificate." By this, the FAA means that the Civil Aviation Registry will send a revised *registration* certificate.

assessed. The complaint is not an order¹¹ but a statement of the alleged violations of the Federal aviation statute or the Federal hazardous materials transportation statute.

14 C.F.R. § 13.202 (definition of complaint.) The sanction sought in the complaint is no more than a proposal or recommendation to the ALJ. Under 14 C.F.R. § 13.224,

Complainant has the burden of proving the appropriateness of the sanction that it seeks.

In the Matter of Toyota Motor Sales, USA, Inc., FAA Order No. 94-28 at 6-7

(September 30, 1994).

The evidence indicates that there were 32 flights – not 24 flights – starting on August 1 and ending on August 24,¹² and there is no evidence of any flights on

¹¹ This is in contrast with civil penalty cases before the NTSB. An individual acting as a pilot, mechanic, flight engineer or repairman may appeal to the NTSB from an Order of Assessment of a civil penalty issued by the FAA. 14 C.F.R. § 13.18(a), (f), and (g). Under the NTSB rules of practice, “[t]he order of the Administrator from which an appeal has been taken shall serve as the complaint.” 49 C.F.R. § 821.31(a).

¹² FAA Exhibit 4, an excerpt from the Aircraft Flight Log and Maintenance Record, reveals that Eastern operated a total of 32 charter flights from August 1 and ending on August 24 as follows:

<u>Date</u>	<u>Flight Segments*</u>	<u>Logbook Page</u>
8/1/04	3	7774
8/2/04	3	7775
8/4/04	0	7776 (maintenance performed)
8/8/04	3	7777
8/9/04	2	7778
8/9-10/04	4	7779
8/10/04	3	7780
8/14/04	0	7781 & 7782 (maintenance performed)
8/18/04	2	7783
8/18/04	2	7784
8/20/04	3	7785
8/20/04	2	7786
8/22/04	2	7787
8/24/04	3	7788

Total: 32 flights segments*

* Each flight segment constitutes a separate flight.

August 25 or August 26, 2004, the day of the ramp inspection. Also, FAA sanction guidance does not provide for a \$100 civil penalty against an air carrier for a single violation arising from flying without a current and appropriate airworthiness certificate. Finally, under FAA sanction guidance, the computation of a civil penalty should not be done by multiplying the sanction for a single violation by the number of flights. Instead, “judgment should be exercised in determining the seriousness of the violations and applying a sanction that will deter future violations by the violator or others similarly situated, *i.e.*, the totality of the circumstances surrounding the case should be considered...” Compliance and Enforcement Program, FAA Order No. 2150.3A, Appendix 4 at 1-2.

When determining an appropriate civil penalty for a violation of the FAR, the ALJ should refer to the FAA’s Sanction Guidance Table, set forth in FAA Order No. 2150.3A, Appendix 4.¹³ The Sanction Guidance Table provides sanction ranges for various types of violations. The ranges are for a single, inadvertent violation.

Inspector Stalzer testified at the hearing that he referred to [Part I], section L.1 of the Sanction Guidance Table. (Tr. 137.) Under Part I, section L.1, a *minimum* sanction is appropriate when a carrier operates an *unairworthy* aircraft in light of a “technical non-conformity to type certificate, but no[t] likely to [have an] effect (potential or actual) on safe operation.” Appendix 4 at 6. This case does not involve the operation of an

See also FAA Exhibit 6 at 2, in which Inspector Martha Parish wrote that “[t]hirty-two revenue flights between August 1 and August 26, 2004, involving four pilots, were flown contrary to [Section] 91.203(a)(1).”

¹³ *See In the Matter of Northwest Airlines, Inc.*, FAA Order No. 1990-37 (November 7, 1990), in which it was held that the Administrator was not precluded from reversing on appeal an ALJ’s decision on sanction when the sanction imposed by the ALJ is inconsistent with agency policy set forth in the Sanction Guidance Table.

unairworthy aircraft or a technical non-conformity to type certificate. However, this guidance may be used to inform the selection of a civil penalty range for the violation in this case – flying without an appropriate and current airworthiness certificate. There is no reason to impose more than a minimum civil penalty in this case involving a paperwork discrepancy when that discrepancy did not affect safety.

The Administrator has provided guidance regarding the meaning of “minimum” civil penalties for different size operators in Compliance/Enforcement Bulletin No. 92-1.¹⁴ The bulletin establishes a system for classifying air carriers by size, and divides air carriers into four different size groups. The larger air carriers are included in Groups I and II,¹⁵ the smaller operators are included in Groups III and IV.¹⁶ Further, the bulletin provides maximum, moderate and minimum sanction ranges for each air carrier group.¹⁷

¹⁴ In the introduction to the Sanction Guidance Table, the FAA sets out minimum, moderate and maximum range sanctions for violations committed by air carriers. FAA Order No. 2150.3A, Appendix 4 at 3. These ranges do not take into account the differences in the sizes of air carriers. In Compliance/Enforcement Bulletin No. 92-1, issued on January 16, 1992, the FAA amended the sanction ranges for single violations committed by air carriers provided in the Sanction Guidance Table’s introduction. The amendment was designed as a “means of placing a relatively equivalent deterrent effect on each air carrier that violates the same FAR, by considering the size of the carrier in determining an appropriate amount of civil penalty.” Compliance/Enforcement Bulletin No. 92-1, FAA Order No. 2150.3A, Appendix 1, at 103. This Bulletin was not introduced or referred to at the hearing or in any of the briefs, and the ALJ did not mention it in his decision. Regardless, this bulletin is germane to the issues involved in this case, and the Administrator may rely upon it.

¹⁵ Group I carriers are air carriers operating under Part 121 or Part 135 of the FAR with annual operating revenue of \$100,000,000 or more. Group II air carriers include air carriers that hold Part 121 operations specifications and large Part 135 operators (50 or more pilots or 25 or more aircraft) with annual operating revenue of less than \$100,000,000. FAA Order No. 2150.3A, Appendix I at 105-106.

¹⁶ See text, *infra*, at 11.

¹⁷ The Bulletin provides the following sanction ranges for Group I through Group IV carriers:

	Maximum	Moderate	Minimum
Group I	\$7,500 to 10,000	\$4,000 to \$7,500	\$1,000 to \$4,000
Group II	\$6,500 to \$10,000	\$3,500 to \$6,500	\$850 to \$3,500
Group III	\$5,500 to \$10,000	\$3,000 to \$5,500	\$750 to \$3,000

Eastern's operation is too small to constitute either a Group I or Group II air carrier under Bulletin No. 92-1.¹⁸ The distinction between Groups III and IV, as explained in Bulletin No. 92-1, is as follows:

Groups III and IV comprise Part 135 operators distinguished by the number of pilots employed and the number and variety of aircraft used. Group III consists of Part 135 operators with 6 to 49 pilots; or 6 to 24 aircraft; or any number of aircraft of 4 or more different types. Group IV consists of all Part 135 operators that do not meet the criteria for Group II or Group III, *i.e.*, that have fewer than 6 aircraft or no more than 3 different types, and that employ fewer than 6 pilots.

FAA Order No. 2150.3A, Appendix 1 at 104-105.

Complainant presented meager evidence about Eastern's size. Inspector Stalzer testified that the company has "four aircraft and I believe around 24 personnel, it could have been more than that." (Tr. 138.) Stalzer did not testify about the types of aircraft that Eastern operated or how many of its personnel are pilots. Thus, the evidence does not establish that Eastern was a Group III carrier.¹⁹ As a result, for purposes of applying Bulletin No. 92-1's guidance in this case, Eastern will be regarded as a Group IV carrier.

Under Bulletin No. 92-1, the minimum sanction range for a single violation for Group IV operators is \$500 to \$2,000. In this case, a separate violation occurred on each of the 32 flights. However, because the violations did not create a hazard to aviation safety, there is no need to assess a minimum range sanction for each of the 32 flights.

Group IV	\$4,000 to \$10,000	\$2,000 to \$4,000	\$500 to \$2,000
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FAA Order No. 2150.3A, Appendix I, at 106.

¹⁸ See n.15, *supra*.

¹⁹ Complainant failed to prove that Eastern met the criteria for a Group III carrier because it did not introduce any evidence to establish that Eastern employed 6 or more pilots. Complainant wrote in its brief that at the time of the violation, Eastern employed approximately 19 pilots and several mechanics. (Complainant's Appeal Brief at 3.) Complainant's assertion, however, is not supported by any evidence in the record.

Indeed, due to the lack of impact on safety, a sanction at the higher end of the range for a single, inadvertent violation will have sufficient punitive effect and should deter Eastern and others from committing similar violations in the future. A \$1,500 civil penalty is appropriate in this case in light of agency sanction policy, the evidence in the record, and the totality of the circumstances, *i.e.*, nature of the violation (operational violation), multiple flights, no hazard posed, and Eastern's size.²⁰

For the foregoing reasons, Eastern's appeal is denied, and Complainant's appeal is granted to the extent that Complainant challenges the methodology that the ALJ used to assess a civil penalty. A \$1,500 civil penalty is assessed.²¹

[Original signed by Robert A. Sturgell]

ROBERT A. STURGELL
ACTING ADMINISTRATOR
Federal Aviation Administration

²⁰ A \$1,500 civil penalty also falls within the minimum range for a Group III air carrier. *See* n.17 *supra*.

²¹ This decision shall be considered an order assessing civil penalty unless Respondent files a petition for review within 60 days of service of this decision with the U.S. Court of Appeals for the District of Columbia Circuit or the U.S. court of appeals for the circuit in which the respondent resides or has its principal place of business. 14 C.F.R. §§ 13.16(d)(4), 13.233(j)(2), 13.235 (2007). *See* 71 Fed. Reg. 70460 (December 5, 2006) (regarding petitions for review of final agency decisions in civil penalty cases.)