UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of:	)	
	)	
Joseph Frantz Kall	)	Served: June 25, 2025
	)	
Docket No. D13-24-02	)	

HEARING OFFICER DECISION ON MOTION FOR SUMMARY DECISION

This decision concerns a Notice of Proposed Permanent Disqualification ("NPPD").[1] The January 11, 2024 notice seeks to permanently disqualify Respondent from performing safety-sensitive flight crewmember duties for an employer.[2] The NPPD follows an August 17, 2018, Order of Revocation issued by the FAA Administrator for the alleged violation of 14 CFR § 120.37(c)[3].

Following the NPPD, the parties engaged in a period of discovery, and on January 15, 2025, Complainant filed a Motion for Summary Decision in accordance with 14 CFR § 13.49(c).[4] Respondent timely filed a Response in Opposition to Complainant's Motion for Summary Decision.[5]

For the reasons discussed below, Complainant's motion is granted.

I. Procedural History

On August 2, 2017, Complainant issued a Notice of Proposed Certificate Action ("NPCA"), proposing to revoke Respondent's airline transport pilot certificate for his violation of 14 CFR § 120.37(c).[6] In response, on or about July 31, 2018, the parties signed a settlement agreement.[7] Consistent with the agreement, Complainant issued an Order of Revocation revoking Respondent's airline transport pilot

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[1] Notice of Proposed Permanent Disqualification (Jan. 11, 2025) ("NPPD").
[2] *Id.* at 1.
[3] *Id.*
[4] Complainant's Motion for Summary Decision ("MSD").
[5] Respondent's Response in Opposition to Complainant's Motion for Summary Decision ("Respondent's Opposition"). Respondent requested to be heard at oral argument. That request is denied. *See Jones v. Secord*, 684 F.3d 1, 5 (1st Cir. 2012) (Absent a showing of serious prejudice, it is not an abuse of discretion to deny oral argument on a summary judgment motion).
[6] MSD at 1.
[7] The Settlement Agreement was not provided by either party. Complainant did not object to the Respondent's characterization of the terms and conditions of the Agreement. Respondent's Opposition at 5, n.1.

certificate and allowing Respondent to apply for a new certificate nine months from the date of the Order.[8] The settlement agreement did not constitute an admission of the allegations contained in the NPCA or the Order of Revocation.[9] For reasons not explained by either party, and more than six years later, Complainant issued a NPPD, seeking to permanently disqualify Respondent from performing safety-sensitive flight crewmember duties pursuant to 14 CFR § 120.221(b)(1).[10] Neither party asserts that the settlement agreement prevented Complainant from moving forward with this action.[11]

II. Standard of Review

Section 13.49(c) in the subpart D procedural rules allows a party to file a motion for decision on the pleadings "in the manner provided by Rules 12 and 56 of the Federal Rules of Civil Procedure.[12] Federal Rule of Civil Procedure 56 states: "The court shall grant summary judgment if the movant shows there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."[13] In accordance with that rule, the factual allegations in the Notice are viewed in a light most favorable to the nonmoving party.[14] The moving party, here Complainant, has the burden of proof to show that those facts, if true, support the proposed violation.[15]

III. Discussion

Two critical questions will inform this decision. First, whether the record supports a finding that Respondent consumed alcohol while he was on hotel reserve duty, a purely factual question. Second, if so, whether Respondent was considered to be performing a safety-sensitive function while on hotel reserve duty, a purely legal question.[16]

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[8] *Id.* at 1-2.
[9] *Id.* at 1.
[10] NPPD at 1.
[11] Respondent notes that the Settlement Agreement did not address a permanent disqualification consequence. Respondent's Opposition at 5.
[12] 14 CFR § 13.49(c) (2025).
[13] Fed. R. Civ. P. 56(a).
[14] *Airborne Maintenance and Engineering Services*, FAA Order No. 2016-1 at 19 (Apr. 14, 2016) (quoting Baicker-McKee, FEDERAL CIVIL RULES HANDBOOK at 1135 (West 2012)).
[15] *In the Matter of Joseph Maridon, Sr.*, FAA 2014-0116, 2020 WL 6927292, n.2 (D.O.T.).
[16] *See generally* 14 CFR §120.37(c) (2025).

a. The record supports the conclusion that Respondent consumed alcohol while on reserve duty.

Respondent was employed as a pilot by NetJets Aviation, Inc. ("NetJets") on March 11 & 12, 2017 – the dates of the events in question.[17] On March 11, 2017, Respondent flew passengers to Glacier Park International Airport ("KGPI") in Kalispell, Montana.[18] Respondent was scheduled to fly a 2:00 pm positioning flight out of KGPI.[19] That flight did not occur as the relevant aircraft went out of service due to a mechanical issue.[20] Respondent was sent to his hotel at 4:00 pm and had a 12-hour rest period, starting at 10:00 pm local and ending at 11:00 am local on March 12, 2017.[21]

On March 12, 2017, Respondent checked in with NetJets at 10:32 am, and indicated he was at the hotel and ready to start reserve duty.[22] Respondent's maximum available duty period of 14 hours ran from 11:00 am to 1:00 am local time.[23] Immediately after checking in, (10:33 am), Respondent called the NetJets Operations Center and requested to go home a day early if he was not needed.[24] During that call, Respondent was informed that the Planning Group (Scheduling) was looking at getting another crew member, as his original partner was being airlined to San Francisco International Airport that afternoon.[25] In addition, NetJets had additional revenue trip flights scheduled to depart KGPI that afternoon/evening, all of which were being considered when evaluating whether Respondent could be sent home early.[26] At 4:27 pm local, the relevant aircraft was released from maintenance with Respondent having 8 hours and 33 minutes remaining of available duty.[27] No other crewmember was positioned into KGPI, and Respondent's duty period ended at 10:00 pm local time, after 11 hours of duty and 3 hours shy of his maximum duty period.[28]

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[17] MSD Ex. C-1 at 2; MSD Ex. C-2 at 1. The deposition transcript provided by the Complainant is not signed and affirmed to by the Respondent. Respondent did not object to its authenticity or accuracy.
[18] Respondent's Opposition at 3.
[19] *Id.*
[20] *Id.*
[21] MSD Ex. C-2 at 1,3. Note: the 13-hour local time difference is the result of daylight savings time adjustment – Zulu time was 0500Z to 1700Z for a total of 12 hours.
[22] *Id.*
[23] *Id.* Note: "Prior to this notification, the crewmember has no insight into the planned duty period length. They are aware they are available for 14 hours of duty once their duty time began but do not have insight into when their duty period may end." MSD Ex. C-2 at 3.
[24] MSD Ex. C-2 at 3.
[25] *Id.*; Respondent's Opposition at 3.
[26] MSD Ex. C-2 at 3.
[27] *Id.*
[28] *Id.* Note: Respondent had a maximum duty period of 14 hours, from 11:00 am to 1:00 am local time on March 12, 2017. MSD Ex. C-2 at 3.

At some point in the evening, Respondent went to the hotel restaurant/tavern.[29] Respondent ordered food while there, and before 9:00 pm, he purchased two beers.[30] The record irrefutably shows that Respondent purchased and consumed alcohol, specifically two beers, while on reserve duty.[31] The following excerpts from Respondent's deposition inform these determinations:

- Question: And did you pay your bill for that meal before getting anything else to drink?
  Answer: ... As far as the exact moment of when that payment and ordering of the beer was, it was before 9 ... And so I can guarantee you it was before 9, but it wasn't when I first came in. It was towards the end, when they're closing out and paying for bills.[32]

- Question: And how many beers did you have at the restaurant tavern?
  Answer: Two.[33]

- Question: When you ordered the beers, did you tell the bartender to leave the tab open?
  Answer: No. You couldn't. You know, it had to be closed by 9.[34]

- Question: And then, at some point during that CRB, did you disclose that you had had two beers while still on the reserve duty status?
  Answer: There was a statement made that I did have a couple beers, I believe that's the words I used, while on reserve duty at hotel.[35]

The record unequivocally establishes, in fact, Respondent admits both in his deposition and his Response to Complainant's Motion for Summary Decision, that he consumed alcohol while on reserve duty status.[36] As such, there are no genuine issues as to any material fact. Complainant has met its burden under Rule 56 of the Federal Rules of Civil Procedure. I now turn to the legal question of whether Respondent was performing a safety-sensitive function while on hotel reserve duty.

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[29] MSD Ex. C-3 at 14, 23.
[30] *Id.* at 28, 35, 46-47.
[31] *Id.*
[32] *Id.* at 24-25.
[33] *Id.* at 28.
[34] *Id.* at 35.
[35] *Id.* at 46.
[36] *Id.* at 28, 35, 46-47; "But the fact that [Respondent] was admittedly in the final minutes of reserve duty when he **ordered and consumed** alcohol is far from dispositive of the ultimate issue, i.e. whether [Respondent] was performing safety-sensitive duties as that term is defined in the FAA's regulations at the time that he was purportedly using alcohol." (emphasis added). Respondent's Opposition at 6.

b. The record supports the conclusion that Respondent was performing a safety-sensitive function while on reserve duty.

To determine whether Respondent is subject to disqualification, I look to 14 CFR Part 120. Part 120, among other things, enumerates the restrictions and penalties regarding the use of alcohol while performing safety-sensitive functions. The following sections are relevant to my analysis:

- 14 CFR § 120.7(i) — Performing (a safety-sensitive function): an employee is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform such function.
- 14 CFR § 120.37(c) — No covered employee shall use alcohol while performing safety-sensitive functions. No certificate holder having actual knowledge that a covered employee is using alcohol while performing safety-sensitive functions shall permit the employee to perform or continue to perform safety-sensitive functions.
- 14 CFR § 120.221(b) — An employee who violates 14 CFR 120.19(c) or 120.37(c) is permanently precluded from performing for an employer the safety-sensitive duties the employee performed before such violation.

Proper interpretation of this regulation must be based on a thoughtful examination of the plain and ordinary meaning of its language.[37] When a term is undefined in a regulation, like statutory language, the term must be given its ordinary meaning.[38] The critical question here is: Whether Respondent was "ready to perform" or "immediately available to perform" a safety-sensitive function.[39] This is an issue of first impression; the parties provide differing analyses. To resolve this issue, I look first to whether Respondent was at work, and if so, was he "ready to perform" or "immediately available to perform" a safety-sensitive function.

Whether Respondent was "at work" is critical to resolving this matter as the regulation applies to employees who are "at work."[40] Complainant focuses on whether an employee is "on-call" and required to report to an assignment if notified,

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[37] *Food Marketing Institute v. Argus Leader Media*, 588 U.S. 427, 436 (2019).

[38] *Saginaw Chippewa Indian Tribe of Michigan v. Blue Cross Blue Shield of Michigan*, 32 F.4th 548, 559 (6th Cir. 2022) (quoting *Taniguchi v. Kan Pacific Saipan, Ltd.*, 566 U.S. 560, 566 (2012)).

[39] The record establishes that Respondent was not "actually performing" a safety-sensitive function. My analysis will focus on whether Respondent was "ready to perform" or "immediately available to perform."

[40] Alcohol Misuse Prevention Program for Personnel Engaged in Specified Aviation Activities, 59 Fed. Reg. 7380-01, 7382 (Feb. 15, 1994) (to be codified at 14 CFR pts. 61, 63, 65, 121, 135). ("This provision applies to any covered employee who, while not actually performing a safety-sensitive function, could be called at any time to perform. The FAA intends the provision to reach only employees who are at work . . .").

while Respondent asserts that the physical location is critical to determining whether an employee is "at work," and "ready to perform or "immediately available to perform" a safety-sensitive function. Respondent further argues that "at work" does not apply to a crewmember in a hotel or at home because they are not physically on site and available at any time to perform safety-sensitive functions.[41]

Respondent acknowledges that the regulation (§120.37(c)) is violated when an employee uses alcohol during any period they are "ready to perform or immediately available to perform a safety-sensitive function."[42] Respondent, however, disagrees that he was "ready to perform or "immediately available to perform," denies he engaged in prohibited conduct, and thus concludes he should not be permanently disqualified from flight crewmember duties.[43] Respondent argues that his physical location informs as to whether he was "at work," using the examples of a pilot waiting in an employee lounge or an employee on-site in their office, concluding that Respondent must be on site and ready to perform, versus an employee who is on call in a reserve location.[44]

Complainant argues that Reserve Duty/On-Call status is exactly what was intended by the regulation text "ready to perform" or "immediately available to perform" safety-sensitive functions.[45] To support its argument, Complainant notes the "Discussion of Comments and Final Rule" section of the Final Rule's Preamble to provide clarification as to the meaning and scope of "performing safety sensitive functions." The Preamble to the Final Rule stated:

> On-duty Use: A number of commenters expressed concern that the FAA's proposed definition of "performing safety-sensitive functions" could result in the application of the on-duty use prohibition to employees who might be at home on reserve status for days at a time. Given the dramatic effect of a violation of this provision (i.e., it invokes the permanent bar addressed below), these commenters requested clarification of this provision.
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> This provision applies to any covered employee who, while not actually performing a safety-sensitive function, could be called at any time to perform. The FAA intends the provision to reach only employees *who are at work.* Affected employees include, for example, a maintenance supervisor who is in her

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[41] Respondent's Reply at 7.
[42] Opposition Response at 6.
[43] *Id.*
[44] *Id.* at 6-8. Respondent relies for support on the NetJets Alcohol Misuse Prevention Program ("AMPP"). The Hearing Officer recognizes the AMPP outlines NetJets' policy on alcohol; however, the AMPP cannot supersede nor be inconsistent with federal regulations. I do note that the AMPP prohibition on the consumption of alcohol includes employees immediately available to perform safety-sensitive functions. Respondent's Opposition, Ex. R-A at 6-7.
[45] MSD at 5.

office who could be called at any time to take over on a maintenance task. Such employees would have to refrain from using alcohol or would be in violation of the on-duty use provision. On-call or reserve employees who are *not at work*, such as those mentioned above, will, however, be subject to the prohibitions on pre-duty use of alcohol."[46]

The application example contained in the Preamble Discussion and Comments concerns an employee who is physically located in his/her office. However, it does not specifically include nor exclude other categories of employees.

To resolve this issue, I look to whether Respondent was in work status. The term "work" is not defined in the relevant regulations. However, when looking at interpretations of what constitutes "rest", what constitutes work becomes obvious.

> [T]he FAA has consistently interpreted the term rest to mean that a flight crewmember is *free from actual work from the air carrier or from present responsibility for work should the occasion arise*. Thus, the FAA previously has determined that a flight crewmember on reserve was not at rest if the flight crewmember had a present responsibility for work in that the flight crewmember had to be available for the carrier to notify of a flight assignment.[47]

Respondent's deposition testimony establishes that Respondent was actively aware that he was required to be immediately available for work and that he was required to be ready to pilot an aircraft, and if notified, to report for duty.

- Question: And what was your understanding of your kind of obligations or responsibilities during a reserve duty time at a hotel like that?
  Answer: Well, reserve duty at a hotel is specifically you've got to be at the hotel and you have to be contactable, so you have to – the company has to be able to get ahold of you. And then the only other obligation is that if you were contacted, that you could be ready to go, check out, you know, waiting for a cab or a taxi, what have you, in 30 minutes. So the objective is not to be greatly delayed in your ability to leave the hotel.[48]

- Question: Okay. And in a reserve duty at hotel status like this, would you ever, I guess, clock out early from that status before the scheduled end time?

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[46] 59 Fed. Reg. 7380-01 at 7382 (emphasis added).
[47] *Aviators for a Safe and Fairer Regulation, Inc. v. F.A.A.*, 221 F.3d 222, 226, (1st Cir. 2000) (citing FAA Notice of Enforcement Policy, 64 Fed. Reg. 32176, 32176 (1999) (emphasis added).
[48] MSD Ex. C-3 at 10-11.

Answer: I'm unable to personally clock out. Either you run the clock out and just because you run the clock out doesn't mean that you're officially a change of duty status.[49]

I note also the "Summary of Duty Time" provided by the NetJets Director of Contract Compliance and Operational Performance:

> "The crewmember is still considered on duty when this message[50] is received. It is sent 5 minutes in advance, and until the current time matches the end time provided in the message, the crewmember can be contacted and briefed to remain on duty."[51]

The above record examples are contrasted with a "flight crewmember in a rest period [who] must be free of present responsibility for work should the occasion arise."[52] I also note the clarification, discussed above in the Final Rule's preamble (supra at 7), distinguishes employees by work status: "On-call or reserve employees who are not at work, *such as those mentioned above*, will, however, be subject to the prohibitions on pre-duty use of alcohol." The phrase "*such as those mentioned above*" tracks to the clarification regarding "On-duty use" [of alcohol] to employees at home and on reserve status for days at a time. This clarification distinguishes the class of employees at home and on reserve status for days at a time, from those who could be called upon at any time, and with a present responsibility to report and perform a safety-sensitive function such as piloting an aircraft.

The record clearly and unequivocally establishes that Respondent was at work, on paid time, and required to remain available for immediate assignment. Respondent was required to check in with his employer and indicate he was ready to start his duty period, depart for his duty assignment within 30 minutes of notification, and notify NetJets if he left the hotel premises.[53] In addition, Respondent was not free to travel home or to another work site.[54] In fact, Respondent requested to be relieved of duty to travel home, but that request was denied by NetJets.[55]

The relevant testimony and exhibits establish that Respondent had a present responsibility for work; he was required to be available for a flight assignment at any point up to the point his duty period ended, and he was not at liberty to refuse such assignment.[56] Although I agree with Respondent's assertion that the specific

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[49] *Id.* at 20.
[50] The referenced message is part of the crewmember shutoff process. MSD Ex. C-2 at 7.
[51] *Id.* at 8.
[52] *Aviators*, supra, at n.4. *Id.* at 227 (emphasis added). *See also* 14 CFR Part 117 (chapter 1, subchapter G).
[53] MSD Ex. C-3 at 10, 12, 16-17, 48.
[54] *Id.* at 16-17.
[55] MSD at 2; MSD Ex. C-2 at 3; MSD Ex. C-3 at 10, 16-17.
[56] *Id.* at 20-21.

facts and circumstances of a safety-sensitive employee's reserve duty status are important, here the relevant facts force the conclusion that Respondent was at work and required to be available for immediate assignment. I reject Respondent's arguments that because Respondent was not physically at an airport, he was not in work status, i.e. "at work." The record establishes that Respondent had a present, non-rejectable responsibility to pilot an aircraft (a safety-sensitive function) when called. I find Respondent was at work while on hotel reserve duty.

c. The meaning of the phrases "ready to perform" and "immediately available to perform" as contained in the regulation are clear.

The relevant regulation, 14 CFR § 120.7(i), states:

> Performing (a safety-sensitive function): an employee is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform such function.

I now look to the meaning of the phrases "ready to perform and "immediately available to perform."

- Ready: prepared mentally or physically for some experience or action, or immediately available,[57]
- Perform: to carry out or do or fulfill,[58]
- Immediately: without interval of time,[59] and,
- Available: present or ready for immediate use, or qualified and willing to do something, or to assume a responsibility.[60]

In this context, "ready to perform" means immediately available to carry out an action, and "immediately available to perform" means to carry out an action without an intervening interval of time. I find very little linguistic distinction between these two definitions.

Under the regulation, an employee is considered to be performing a safety-sensitive function during any period in which he or she is required to be available to perform said function without delay. Respondent was at work with a present responsibility to perform a safety-sensitive function, and consumed alcohol in the

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[57] *Ready*, Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/ready (last visited June 24, 2025).
[58] *Perform*, Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/perform (last visited June 24, 2025).
[59] *Immediately*, Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/immediately (last visited June 24, 2025).
[60] *Available*, Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/available (last visited June 24, 2025).

last hour or so of his duty period.[61] This is the very situation the regulation is designed to protect against.

Although, this is a matter of first impression for the FAA, I note the National Transportation Safety Board ("NTSB") has addressed this issue.[62] In a non-precedential bench decision[63] appealing an emergency revocation order issued by the FAA Administrator, an NTSB Administrative Law Judge held that an off-site Omni Air employee, who tested positive for marijuana in the last hours of his reserve status, was subject to revocation of his airman and medical certificates.[64]

There, the ALJ stated:

> And [Respondent] has admitted that he tested positive for marijuana, ... And his position has been, here today, that he was in the last hours of reserve status and there's no way he would have been called.[65]
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> So, in other words, the testimony from [Omni Air Senior Director of Operations] was even though it didn't happen very often, if ever, if a pilot was on reserve, he could be placed on a trip and then placed in holdover status if he was at his end of his tour or period of – I want to say active duty but – not active duty, but active employment.
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> [w]hether he had an hour left or ten days left. As far as the Regulation is concerned, it really doesn't make any difference. The fact that Omni Air International has never called anybody to go to work who's on the last hour of their reserve status just doesn't have any persuasive element for this case. And the fact that it has never happened before is not at all to suggest that it might happen this afternoon or tomorrow. And that's the very thing that the Regulation is designed to protect against.
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> And therefore, although drug tests and medical cases are the ones that I always regret having to hear, because the result is extremely harsh, in this case the evidence certainly supports the Administrator's order of revocation.[66]

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[61] MSD Ex. C-2 at 3.
[62] *Sturgell v. Kasper*, 2008 WL 4143474 (N.T.S.B.). Although NTSB decisions are not binding on the FAA Administrator, they do provide guidance. *Michael Edward Wendt*, FAA Order No. 93-9 at 2 (Mar. 24, 1993) (citing *Terry and Menne*, FAA Order No. 91-12 at 3 n.6 (Apr. 10, 1991)).
[63] If no appeal from the law judge's initial decision or appealable order is timely filed, the initial decision or order shall become final with respect to the parties, but shall not be binding precedent for the board. 49 CFR § 821.43 (2025).
[64] *Sturgell* at 1, 3.
[65] *Id.* at 1.
[66] *Sturgell* at 3.

Finally, I reject Respondent's argument, that an intoxicated pilot's only obligation is to turn down a flight duty when called.[67] I also reject Respondent's assertion that these actions are simply an internal human resources issue, that if a pilot continuously reports for duty intoxicated, the remedy should be between the pilot and their employer.[68] To validate these arguments would create a framework that allows inebriated, cognitively altered, safety-sensitive employees to self-police whether to accept an assignment. That conclusion is contrary to Part 120's purpose to prevent accidents and injuries resulting from the use of prohibited drugs or alcohol [69]

IV. Conclusion

I find Respondent violated 14 CFR § 120.7(i), and Complainant is entitled to a decision as a matter of law. Complainant's Motion for Summary Decision is granted. This decision shall be considered final unless either party files a notice of appeal to the FAA Administrator within 20 days after the issuance date.[70]

Diana Rabinowitz

DIANA R. RABINOWITZ
Hearing Officer and Administrative Judge
June 25, 2025

SERVICE LIST

The foregoing Hearing Officer Decision on Motion for Summary Decision was served by email on June 25, 2025, to the following parties or organizations:

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[67] Respondent's Opposition at 10-11.
[68] Respondent's Opposition at 10.
[69] 14 CFR § 120.3 (2025).
[70] 14 CFR § 13.65(a) (2025).

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