UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of: AMERICAN AIR NETWORK, INC.
FAA Order No. 2008-10

Docket No. CP04WP0013
FDMS No. FAA-2004-17656[1]

Served: October 7, 2008

DECISION AND ORDER[2]

Respondent American Air Network, Inc., (AAN) has appealed the written initial decision issued by Administrative Law Judge Richard C. Goodwin on July 27, 2005. The ALJ held that Complainant proved that AAN, an air carrier operating under 14 C.F.R. Part 135,[3] violated 14 C.F.R. §§ 39.7,[4] 91.7,[5] 135.21(a),[6] and 135.419(g)[7] as alleged, and

---

[1] Materials filed in the FAA Hearing Docket (except for materials filed in security cases) are also available for viewing at the following Internet address: 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] An air carrier operating under Part 135 may fly passengers and property for compensation or hire. (Tr. 26.)

[4] Section 39.7 of the Federal Aviation Regulations (FAR) provides as follows:

> **What is the legal effect of failing to comply with an airworthiness directive?**
> Anyone who operates a product that does not meet the requirements of an applicable airworthiness directive is in violation of this section.

Section 39.7 was added to the Federal Aviation Regulations (FAR) when Part 39 was re-written in July 2002. 67 Fed. Reg. 48,003 (July 22, 2002). Before July 2002, there was no Section 39.7. As will be discussed further in this decision, AAN took this aircraft off its operations specifications in March 2002, and N700XJ's last flight, while on AAN's operations specifications

assessed a $49,000 civil penalty. Specifically, the ALJ held that Complainant proved by the preponderance of the evidence that AAN had violated these regulations as alleged in Counts 1 through 18 of the complaint.

In its appeal brief, AAN challenges the ALJ's determination that Complainant proved its case by the preponderance of the evidence regarding Counts 1 through 18. AAN also challenges the ALJ's assessment of a $49,000 civil penalty.

In this decision, the Administrator holds that Complainant proved the violations alleged in Counts 1 through 18. As a result, AAN's appeal is denied. A $49,000 civil penalty is assessed against AAN.

---

was on January 1, 2002. Hence, the alleged violations occurred before Part 39 was re-written and *before Section 39.7 was added to the FAR*.

Complainant could have alleged a violation of former Section 39.3, 14 C.F.R. § 39.3, which provided that "no person may operate a product to which an airworthiness directive applies except in accordance with the requirements of that airworthiness directive." However, Complainant failed to do so, and Complainant is bound by the allegations contained in its Amended Complaint. In the Matter of Webb, FAA Order No. 1990-10 (March 19, 1990). As a result, the Administrator reverses the ALJ's finding that AAN violated 14 C.F.R. § 39.7.

This determination will have no impact on the sanction in this case because the facts that were the basis of the alleged violation of Section 39.7 were also the basis of the alleged violation of Section 91.7(a). As will be discussed later in this decision, the Administrator affirms the ALJ's finding of the violation of Section 91.7.

No further substantive discussion concerning the alleged violation of Section 39.7 in this decision is necessary.

[5] Section 91.7(a) of the FAR provides as follows: "No person may operate a civil aircraft unless it is in an airworthy condition."

[6] Section 135.21(a) of the FAR provides as follows:

> Each certificate holder … shall prepare and keep current a manual setting forth the certificate holder's procedures and policies acceptable to the Administrator. This manual must be used by the certificate holder's flight, ground, and maintenance personnel in conducting its operations.

[7] Section 135.419(g) of the FAR provides as follows: "Each certificate holder who has an approved aircraft inspection program shall have each aircraft that is subject to the program inspected in accordance with the program."

I. The Pleadings.

Complainant alleged in the First Amended Complaint that on or about November 5, 2000, AAN added a Hawker 125-600A aircraft, registration number N700XJ, to its Approved Aircraft Inspection Program (AAIP). An AAIP is an FAA-approved maintenance program, developed by an operator for any make or model aircraft that it uses. 14 C.F.R. § 135.419. (Tr. 38.)

Complainant alleged that under AAN's operations specifications, AAN was required to inspect N700XJ in accordance with the AAIP. (Complaint ¶¶ 4 and 5.) It was alleged that AAN operated N700XJ from approximately November 7, 2000, through at least January 1, 2002. (Complaint ¶ 2, Tr. 7.) Complainant alleged further that:

- Count 1: AAN operated N700XJ for 582.7 hours in an unairworthy condition from March 6, 2001, to January 1, 2002,[8] by failing to comply with Airworthiness Directive (AD) 93-02-10, in violation of Sections 39.7[9] and 91.7;

- Counts 2 & 3: AAN violated Section 135.21(a) by failing to comply with its AAIP when it performed 150-hour engine and airframe inspections because AAN's employees did not complete a form required by its AAIP;

- Count 4: AAN violated Section 135.21(a) by failing to keep its AAIP and manual current;

- Counts 5-18: AAN violated Sections 135.21(a) and 135.419(g) by failing to perform inspections or overhauls required by its AAIP in a timely fashion.[10]

[8] Complainant alleged in Count 1 that AAN violated N700XJ from March 6, 2001 (rather than from November 7, 2000), to January 1, 2002, because of the stale complaint rule, 14 C.F.R. § 13.208(d)(1). The stale complaint rule provides that violations that occurred more than 2 years before the issuance of the notice of proposed civil penalty are subject to dismissal as stale.

[9] *See* n. 4, *supra*.

[10] Complainant alleged in each count that AAN operated N700XJ beyond the time for a required inspection or overhaul by a specific number of hours. For example, in Count 5, Complainant alleged that AAN operated N700XJ 747.5 hours beyond the mandatory overhaul time for the left hand airbrake jack component.

II. The Evidence

A. Background. AAN "is a self-described '[Part] 135 management company, tracking and fulfilling maintenance and other requirements for aircraft on its certificate." (Initial Decision at 1.) AAN had more than 30 aircraft on its certificate between November 2000 and March 2002. It conducted air carrier service for hire. (Tr. 27.) It was responsible for ensuring that maintenance was accomplished on all of those aircraft in a timely manner. (Tr. 315, 358.)

Jeffrey Borer, President of Xtrajet International, owned N700XJ, a British-built corporate jet that can hold up to nine passengers. (Tr. 76-77, 209; Exhibit C-28.) AAN added N700XJ to its AAIP on November 5, 2000,[11] under a management contract signed by Douglas P. Gilliland, President of AAN and Borer on behalf of Xtrajet. The contract provided that all maintenance would be performed under AAN's AAIP. AAN was responsible for tracking the hours and cycles of N700XJ's components and engines while N700XJ was on its operations specifications (Tr. 400), and for notifying Borer when maintenance was due. (Tr. 267.) Xtrajet remained responsible for paying for all maintenance costs. (Exhibit C-28, Tr. 266-267.)

Under its operations specifications, AAN was authorized to use N700XJ for operations under Part 135 provided that it inspected N700XJ in accordance with its AAIP and the Raytheon Maintenance Manual Series 125-600. (Exhibit C-3.) AAN adopted Chapter 5 of Raytheon's Aircraft 125 series, 600 Aircraft Maintenance Manual as its

[11] (Exhibit C-2.)

inspection program (AAIP), and included the AAIP in is maintenance manual. (Tr. 105, 106.) [12]

According to Josh Pobanz, AAN's maintenance data manager, when AAN added an aircraft to its certificate, AAN employees compared the aircraft's complete maintenance records against the manufacturer's maintenance program to determine whether the aircraft was current on its maintenance requirements. In this way, they determined whether the aircraft was current on its maintenance requirements. (Tr. 215, 216.) William Pobanz, AAN's manager of quality assurance, testified that he was involved in this process when N700XJ was added to AAN's certificate. He testified that he was satisfied at the time that there was adequate documentation to prove that N700XJ's inspections were current. (Tr. 244.)

N700XJ's last flight while on AAN's operations specifications was on January 1, 2002. It was taken off AAN's certificate on March 19, 2002. (Exhibit C-1; Tr. 33-34, 95, 196, 256, 339.) AAN witnesses testified that after N700XJ was taken off AAN's certificate, they forwarded the maintenance records that they had for N700XJ to the owner in accordance with FAA requirements. (Tr. 213, 372.)

Between November 5, 2000, and March 19, 2002, N700XJ accrued 828.9 hours flying time. (*See* Chart 1.)[13] Between March 6, 2001, and March 19, 2002, the time period involved in Count 1, N700XJ accrued 582.7 hours. (See Chart 1.)

[12] An air carrier operating under Part 135 must include its AAIP in its manual. 14 C.F.R. § 135.419(e). AAN's AAIP was included in its operations specifications (Tr. 38), which is incorporated in AAN's manual.

[13] (Exhibits C-2 and C-9, Tr. 44, 60, 95-97.)

Chart 1: Flight Hours & Landings Accrued by N700XJ while on AAN's Operations Specifications

Dates	Hours	Landings
November 5, 2000	10,222.6 hours	8,232 landings[14]
March 6, 2001[15]	10,468.8 hours	8,401 landings[16]
March 19, 2002[17]	11,051.5 hours	8,784 landings[18]

B. Maintenance Tracking Systems. N700XJ's prior operator used a commercial program known as Computerized Aircraft Maintenance Program ("CAMP") [19] to track maintenance requirements and accomplishment. The CAMP system works as follows. A mechanic receives a "task card," directing the performance of a particular maintenance item, *i.e*., replace a life-limited part. The maintenance to be performed is indicated by a maintenance code. The mechanic looks up the code in the appropriate manual and then performs the required maintenance. After completing the maintenance, the mechanic signs the task card. The task card is then used to enter the maintenance information in the computerized tracking program. CAMP retains the task cards so that they can be made available for review by the FAA or others. (Tr. 188, 217, 240-242.)

[14] (Exhibit C-2; Tr. 44, 60.)

[15] *See* n.8, *supra*, regarding the stale complaint rule.

[16] (Exhibit C-6.)

[17] The aircraft had accrued 11.051.5 hours and 8,784 landings by January 1, 2002. The aircraft was dismantled subsequently and was still dismantled when it was taken off AAN's certificate on March 19, 2002. Thus, the aircraft's total hours and landings were identical on January 1, 2002, and March 19, 2002.

[18] (Exhibit C-9; Tr. 95-97.)

[19] (Tr. 112.)

A CAMP status report, dated September 2, 2000, less than 2 months before N700XJ was placed on AAN's operating specifications, was introduced into evidence as Exhibit C-15. A status report is a computer-generated document listing maintenance items by code number, and including the last time that the maintenance item was completed, how often the maintenance item must be performed, and when that maintenance is due to be repeated.[20]

According to the testimony, while widely used for tracking maintenance requirements, the CAMP system is not an FAA-approved maintenance recordkeeping system (Tr. 69). It does not satisfy FAA maintenance recordkeeping requirements[21] because it does not include detailed descriptions of the work performed or approvals for returning the aircraft to service. Also, while the mechanics sign the individual task cards, a CAMP status report does not contain the signatures and certificate numbers of the mechanics who performed the maintenance, and consequently does not satifisy FAA recordkeeping requirements. (Tr. 124; *see* Tr. 330, 331.)

After adding N700XJ to its operating specifications, AAN adopted its own tracking system to provide alerts when maintenance items came due. AAN witnesses

[20] For example, the left wing structural inspection referred to in the AAIP as Code Number 570016 – the subject of Count 14 – must be repeated every 4800 hours, or 8 years, whichever comes first. The CAMP entry for this inspection included the following information (although it was formatted differently):

Code No.	Description	Required Every	Last Compliance	Next Due
570116	Inspect Left Wing Struct	4800 hrs 96 mos	6775 hrs 8/13/93 5658 ldgs	11575 hrs 8/13/01

[21] 14 C.F.R. § 91.417 (maintenance records); *see also* 14 C.F.R. §§ 43.9 (maintenance records) and 43.11 (inspection records).

testified that when they adopted the new tracking system, they made manual entries into the system using maintenance records that complied with regulatory requirements (*i.e.*, logbook entries and approvals for return to service) as their sources of information. (Tr. 206, 207, 272-276.) Subsequently, they entered new information based on descriptions of work performed and signed by licensed mechanics, which they received electronically, or by mail or fax from the mechanic or repair station. (Tr. 207-208.)

Like CAMP, AAN's tracking system does not meet the regulatory requirements for maintenance records. For example, AAN's tracking system does not contain "sign offs" by maintenance personnel, including their certificate numbers, descriptions of the work that was performed, and approvals for returning the aircraft to service. Complainant introduced a printout from AAN's tracking system, dated February 26, 2002,[22] summarizing when maintenance items had been performed last and when they were next due, as Exhibit C-9.

C. The Investigation.

1. *The Tip*. On or about January 25, 2002, FAA Aviation Safety Inspector James Magill received a telephone call from an anonymous caller, who asserted that an XtraJet aircraft was operating in the Los Angeles, California, area with numerous discrepancies. (Tr. 30). According to the caller, the aircraft was not in compliance with an airworthiness directive, and was overdue for various inspections and overhauls. (Tr. 30.)

2. *Inspection at RoigWest on February 8, 2002*. On February 8, 2002, Inspector Magill and FAA Aviation Safety Inspector Gregory McDonald went to RoigWest Aviation, a maintenance facility in Van Nuys, California, where N700XJ was undergoing

[22] By the time that AAN made this printout from its tracking system, AAN had stopped using N700XJ.

a 48-month inspection. (Tr. 30, 31, 54, 86.) N700XJ was disassembled when the inspectors saw it. (Tr. 31.)[23]

RoigWest provided AAN's flight logs for N700XJ and other documents to the inspectors. Inspector Magill testified that RoigWest gave them numerous boxes of records and a copy of the AAIP. (Tr. 54.) Inspector Magill copied all the documents that RoigWest made available, including AAN's AAIP. (Tr. 54-55.)

3. *Meeting between FAA Inspectors and AAN Officials on February 27, 2002.* On February 27, 2002, Inspectors Magill and McDonald met with several AAN employees, including Stephen and Douglas Gilliland, and William Pobanz, in Van Nuys, California. (Tr. 53, 88, 248, 364.) Before the meeting, Inspector Magill requested that AAN make all of N700XJ's records available. (Tr. 87-88.) The AAN employees provided some additional records, which RoigWest had not given to the inspectors, including a printout from AAN's tracking system made on February 26. (Tr. 90, 366-367.) The AAN tracking system printout, purportedly reflecting the aircraft's status after its last flight while on AAN's certificate, was introduced into evidence as Exhibit C-9. The inspectors copied and returned all the records that the AAN officials brought to the meeting February 27. (Tr. 86, 89-90, 182-183.)

AAN's witnesses testified that AAN did not have a full set of records at the time of the meeting because they had sent records to Borer so that Borer could provide them to RoigWest for the 48-month inspection. (Tr. 54, 179, 209, 223, 365.) They testified that they sent the original records to Borer, and did not keep copies or a description of the

[23] N700XJ was in pieces in RoigWest's hangar between January 2, 2002, and March 2002. (Tr. 96.) It was still disassembled on March 19, 2002, when it was taken off AAN's operations specifications. (Tr. 257, 318.)

records that they sent. (Tr. 210, 365.) Joshua Pobanz said that he did not recall which records were sent to Borer, but that they only sent documents that were pertinent to the work that had to be done. (Tr. 209-211, 223-226.) The AAN officials did not specify which records would have been needed by RoigWest for the 48-month inspection.

4. *The Discrepancy List Prepared by FAA Inspector McDonald*. After the meeting, Inspector McDonald prepared a discrepancy list based upon a comparison of AAN's AAIP with the copies of the maintenance records that he had, including the records provided at the February 27th meeting. He wrote that he prepared the discrepancy list based upon his comparison of the AAIP with the following documents:

> 1. Airframe Log Book from 11-2-99 to the last completed page in the airframe log dated 4/04/01. No more current airframe records were available.[24]
>
> 2. A C.A.M.P Systems Aircraft Status Report dated 9/22/00, pages 1 through 71.
>
> 3. The Aircraft Modification Logbooks from date of manufacture to present.[25]
>
> 4. TFE731-3DR-1H, Engine Serial Number P-84317 Logbook from the most recent 4200 hour inspection dated 1/07/99 to present.
>
> 5. TRE7331-3DR-1H Engine Serial Number P-84316 Logbook from the most recent 4200 hour inspection dated 8/20/95 to present.
>
> 6. Numerous envelopes filled with return to service tags and FAA form 8130-3's.

(Exhibit C-7 at 1.)

In preparing the discrepancy list, Inspector McDonald used Exhibit C-9, the AAN tracking document produced on February 26, 2002, as a source for the number of hours

[24] The overhauls and inspections that were the subject of Counts 5 through 18 should have been documented in the airframe logbooks. However, when they prepared the discrepancy list, the FAA inspectors did not have access to the airframe logbooks prior November 2, 1999, or to the airframe logbooks after April 4, 2001.

[25] William Pobanz testified that the modification book is part of an aircraft's permanent maintenance records. (Tr. 274.)

and landings that N700XJ had accrued by that date. (Tr. 177-178.) He did not use AAN's tracking document to determine whether or when inspections and overhauls, required under the AAIP, had been made. (Tr. 177.)

Inspector McGill sent the discrepancy list to the FAA's flight standards district office (FSDO) in St. Louis, Missouri, and requested that the maintenance inspectors at that office try to obtain from AAN the records that were necessary to resolve the discrepancies. (Tr. 56-57, 92.) Inspector McDonald received an annotated copy of the discrepancy list from the inspectors at the St. Louis FSDO, indicating that some of the overhauls and inspections were "open." The annotated discrepancy list[26] was introduced into evidence as Exhibit C-7.

5. *AAN's Response, Dated April 2, 2002, to the Discrepancy List*. AAN responded to the list of discrepancies by letter dated April 2, 2002. Complainant introduced AAN's written response into evidence as Exhibit C-8. (Tr. 92-94.) AAN referred to airframe logbook records purportedly showing the accomplishment of particular maintenance items as early as March 22, 1995, and as late as December 24, 2001, in this letter. (Tr. 94, Exhibit C-8 at 2, 4, and 5.)[27] Regarding some of the listed discrepancies, AAN wrote that the maintenance had been performed but that the company could not account for the records at that time. (Exhibit C-8.)

The responses in the April 2, 2002, letter resolved some but not all of the issues raised by the inspectors in the discrepancy list. This action followed.

[26] The discrepancy list is undated. (Exhibit C-7.)

[27] The letter indicates that airframe records were attached, but the copy of the letter introduced into evidence had no attachments.

Count I: Airworthiness Directive 93-02-10.

AD 93-02-10 requires that the operator inspect the battery cables for chafing or damage at intervals not to exceed one year. If chafing or damage is found, then the battery cables must be replaced.[28] Under the AD, the operator does not have to repeat the annual inspections if it modifies the wiring in accordance with the instructions in British Aerospace Service Bulletin SB 24-261-3204A and B. (Exhibit C-4.) In other words, modification of the wiring in accordance with the service bulletin terminates the requirement for annual inspections. (Exhibit C-4; Tr. 45.)

Aircraft Modification Record. Inspector Magill checked the aircraft's modification records and found an entry certifying that on August 25, 1995, the cables were *inspected* in accordance with AD 93-02-10. (Exhibit C-5; Tr. 47.) The entry was signed on August 25, 1995, by a Garrett Aviation mechanic. (Exhibit C-5; Tr. 48-49.)

Inspector Magill testified that this entry did not indicate that the AD was terminated by modification. (Tr. 50.) He explained that if the AD had been terminated by modification, the entry would have indicated that the rewiring called for in the service bulletin had been completed. (Tr. 51.)

He testified further that if the inspection called for by this AD was performed on August 25, 1995, the next inspection should have been completed by August 25, 1996. (Tr. 50.) He stated that he did not find any records indicating compliance with this AD after August 25, 1995, or any record indicating that the wiring was modified so as to terminate the AD's recurrent inspection requirement. (Tr. 47, 69.)

[28] This AD was issued to prevent circuits on this type of aircraft from overheating and causing a fire. (Exhibit C-4; Tr. 45.)

Inspector Magill requested that AAN provide documents regarding compliance with AD 93-02-10. In its letter dated April 2, 2002, AAN responded as follows: "See modification book entry dated 1-24-94, A.D. no longer recurring." (Exhibit C-8, at 2, item 2A.) Inspector Magill checked the AD modification logbook,[29] but did not find an entry for January 24, 1994, indicating that the cables had been modified in accordance with the service bulletin. (Tr. 58-59.)

Examination of N700XJ by FAA Inspector. Inspector Magill subsequently inspected the aircraft and determined that the wiring had not been re-routed so as to terminate the AD. (Tr. 59.)

CAMP Status Report. The CAMP status report, dated September 22, 2000, contains an entry indicating that AD 93-02-10 and SB 24-A261 were not applicable by modification, and that compliance with the AD was last accomplished on August 21, 1995. (Exhibit C-15 at 69.) William Pobanz testified that he interpreted this entry as meaning that the repetitive inspections called for in the AD were not required because the wiring had been modified. (Tr. 269-270.)[30] William Pobanz explained that if the CAMP status report was the only evidence that an operator had that the modification had been made, the operator would most likely reinspect the cables. (Tr. 271.) He testified that "in all probability" that is what happened in this case – that the operator inspected the cables to determine if the modification had been accomplished. (Tr. 271.)

[29] The FAA inspectors had access to a complete set of the aircraft modification logbooks, from the date of manufacture to the time of the investigation. (Exhibit C-7 at 1.)

[30] He testified that he would not have accepted this CAMP entry as evidence that N700XJ was compliant and airworthy for purposes of adding the aircraft onto AAN's certificate. (Tr. 331.)

AAN Tracking Document. AD 93-02-10 is not included in AAN's tracking system's list of repetitive inspections required by ADs dated February 26, 2002. (Exhibit C-9 at 5.) William Pobanz surmised from the absence of AD 93-02-10 from this list that the modification had been made and repetitive inspections were not necessary. (Tr. 274.)

Counts 2 and 3: 150-Hour Engine and Airframe Inspections.

The Evidence. Under AAN's AAIP, a form entitled "Inspection Coversheet & Approval for Return to Service" must be completed after each inspection. (Exhibit C-10, page 1.) A blank copy of the form appears at page xiii of the AAIP. (Exhibit C-10, page 2.) The form has blanks for the date, the aircraft's total time, and the mechanic's signature, certificate type and number.

Inspector McDonald could not locate the completed forms (page xiii) for the required 150-hour inspections of N700XJ's engines and airframe.[31] He opined that AAN violated 14 C.F.R. § 135.21(a) by failing to use AAIP page xiii to return N700XJ to service after these inspections. (Tr. 104-105.)

Count 4: Revision 4 of the Raytheon Maintenance Manual.

The Evidence. AAN's AAIP provided that "the Director of Maintenance will be responsible for keeping this AAIP current and revised, as the Raytheon Aircraft 125 Series, 600 Aircraft Maintenance Manual inspection program changes." (Exhibit C-12, Tr. 105-106.)

Inspector McDonald testified that in February 2002, the AAIP should have contained revision 4, dated August 2001, of the Raytheon Aircraft Maintenance

[31] Inspector McDonald was concerned that AAN had not performed the required 150-hour inspections on N700XJ's engines and airframe. He included these inspections on the discrepancy list. In response, AAN provided a copy of a different form signed by the mechanic who performed these 150-hour inspections on December 24, 2001. (Exhibit C-11.) After reviewing the submission, the inspector was satisfied that the 150-hour inspections had been performed.

Schedule. (Exhibits C-14 and C-14a; Tr. 107.) However, the AAIP that he obtained from RoigWest on February 8, 2002, contained revision 3, dated October 2000. (Revision 3 should have been replaced by revision 4.) (Exhibit C-13, Tr. 106-107.) Inspector McDonald testified that when the inspectors informed AAN that it was using an out-of-date revision, AAN responded that it would change the manual. (Tr. 109.)

William Pobanz testified that once AAN receives a revision from Raytheon, AAN must request FAA approval to amend their manual to include the revision. He said AAN was within the "period it normally takes to get a manual revised." (Tr. 284.) He testified that in his experience, it takes approximately 60 days "to be able to extract a revision out of Raytheon Aircraft, incorporate it into a[n] AAIP, submit to a Flight Standards District Office, and receive an approval, and then receive it back, and then get it disseminated out into the system." (Tr. 343.) AAN did not introduce any evidence that it submitted the revision to the local FAA office. Pobanz acknowledged on cross-examination, however, that more than 60 days had elapsed between revision 4's issuance in August 2001, and February 8, 2002, when RoigWest gave the inspectors the copy of the AAIP. (Tr. 344.)

Counts 5 -18: Periodic Overhauls or Inspections

The Evidence**.** Counts 5 through 18 pertained to overhauls or inspections of parts of the airframe required periodically under the Raytheon 125 Series 600 Aircraft Maintenance Schedule.[32] Inspector McDonald used the information in the CAMP status report as a "starting point" in his records search to determine if the subsequent overhauls or inspections were conducted as required in the AAIP. In so doing, he testified, he gave AAN the "benefit of the doubt" that the inspections were conducted at the times indicated

[32] A detailed count-by-count summary of the evidence is presented in the ALJ's written initial decision.

on the CAMP status report. (Tr. 126.) He stated that he could not find any maintenance records meeting FAA requirements that indicated that the overhauls and inspections referred to in Counts 5 through 18 had been performed on the dates indicated in the CAMP report. Inspector McDonald did not consider the CAMP status report as reliable evidence that an overhaul or inspection had been made. (*E.g.*, Tr. 112, 124-125.)

The inspector tried to determine from the records whether these recurrent overhauls and inspections were repeated after the dates on the CAMP status report. He testified that regarding each of the overhauls and inspections and x-rays referred to in Counts 5 through 18, he had found no maintenance record meeting regulatory requirements showing that the required maintenance had been performed in a timely fashion while N700XJ was on AAN's certificate. He concluded that each of the overhauls and inspections referred to in Counts 5 through 18 should have been repeated, but that neither the previous owner nor AAN had had those overhauls or inspections accomplished. Thus, according to Inspector McDonald, these overhauls and inspections were overdue, as summarized in the following chart.

Chart 2: Summary of Inspector McDonald's Conclusions Regarding Counts 5 – 18.

Count	When last performed according to CAMP report	When next due according to CAMP report	Time when N700XJ was last operated	Overflown by
# 5: Overhaul of left hand airbrake jack every 3,000 hrs	7,304 hrs (on 8/9/94)	10,304 hrs	11,051.5 hrs	747.5 hrs
# 6: Overhaul of left hand outboard maxaret every 3,000 landings	5,602 landings (on 1/6/93)	8,602 landings	8,784 landings	182 landings
# 7 & 8: Structural inspection & x-ray of ailerons every 2,400 hrs or 4 yrs - whichever comes first	8,340 hrs (on 12/12/97)	10,740 hrs or by 12/12/01	11,051.5 hrs	311.5 hrs

# 9 & 10: Structural inspection & x-ray of flaps & flap vanes every 2,400 hrs or 4 yrs - whichever comes first	8,340 hrs (on 12/12/97)	10,740 hrs or by 12/12/01	11,051.5 hrs	311.5 hrs
# 11: Cabin structural inspection & x-ray every 8 yrs.	8/13/93	8/13/01	1/1/02	Over 4 months
# 12 & 13: Inspection & x-ray every 8 yrs of horizontal and vertical stabilizers	8/13/93	8/13/01	1/1/02	Over 4 months
# 14: Inspection of left hand wing structure every 4,800 hrs or 8 yrs – whichever comes first	6,775 hrs on 8/13/93	8/13/01 or 11,575 hrs	1/1/02	Over 4 months
# 15 & 18: Inspection of left hand & right hand lower wing stringers every 2 yrs	10/19/99	10/19/01	1/1/02	Over 2 months
# 16 & 17: Tests of left & right horizontal stabilizers every 8 yrs	8/13/93	8/13/01	1/1/02	Over 4 months

For each of these overhauls and inspections (except for the inspection referred to in Count 14), AAN responded in its April 2, 2002, letter that the work had been performed on a particular date but that the "records [were] not accounted for at this time." (*See* Chart 3.) Inspector McDonald could not locate any documents meeting regulatory requirements to substantiate any of the information provided by AAN in this letter regarding the repetition of the overhauls and inspections that were the subject of Counts 5 through 18. The inspector said that he did not consider any of the entries in AAN's tracking document regarding these overhauls and inspections because AAN's tracking document did not meet regulatory requirements.

William Pobanz testified at the hearing that AAN's tracking data indicated that the overhauls or inspections had been repeated on April 30, 1999, March 30, 2000, February 1, 2001, or September 18, 2001. (*See* Chart 3.) Based upon AAN's tracking report entries, William Pobanz testified that the overhauls and inspections were not due to be repeated before N700XJ was taken off AAN's certificate on March 19, 2002.

For example, as explained in Count 5, the left hand airbrake jack must be overhauled every 3,000 hours under the AAIP. William Pobanz testified that the AAN tracking document indicated that the last airbrake jack overhaul had been on September 18, 2001, when the aircraft had 10,837.8 hours, and was next due on 13,837.8 hours. N700XJ, however, was taken off AAN's certificate at 11,051.5 hours. He concluded, therefore, that this overhaul was not overdue. (Tr. 284-286.) Nevertheless, in this as well as in all of the other instances, AAN was not able to produce any record meeting regulatory requirements showing the required inspection had been accomplished.

The evidence regarding Counts 5 through 18 is summarized in Chart 3.

Chart 3: Summary of the Evidence Pertaining to Counts 5 – 18.

Count # & Inspection or Overhaul Description	When last performed according to CAMP report dated 9/22/00	When due according to CAMP report dated 9/22/00	When performed according to AAN letter dated 4/2/02	When performed according to AAN tracking data dated 2/26/02	Comments
# 5: Overhaul of left hand airbrake jack every 3,000 hrs	7,304 hrs on 8/9/94	10,304 hrs	12/23/00; "Records not accounted for at this time"	10,837.8 hrs on 9/18/01	Comparing CAMP & AAN tracking data: Overhaul was performed 533.8 hrs late AAN's 4/2/02 response differs from its tracking data AAN tracking data does not distinguish between right & left.
# 6: Overhaul of left hand outboard maxaret every 3,000 landings	5,602 landings on 1/6/93	8,602 landings	3/30/00; "records not accounted for at this time"	"gear maxaret unit" overhauled at 6,021 landings on 3/30/00	AAN tracking data does not distinguish between right & left On time if performed at 6,021 landings, but if performed at 6,021 landings on 3/30/00, then should have been in CAMP report & airframe logbook for 11/2/99-4/4/01. CAMP report indicates right inboard & outboard maxarets overhauled at 6,021 landings on 6/20/94, & other maintenance performed on right inboard maxaret on 3/30/00. CAMP report shows 6,021 landings on 6/20/94 – not on 3/30/00, as indicated in AAN tracking data.
# 7 & 8: Structural inspection & x-ray of ailerons every 2,400 hrs or 4 yrs – whichever comes first	8,340 hrs on 12/12/97	10,740 hrs or on 12/21/01	9/18/01; "records not accounted for at this time"	10,837.8 hrs on 9/18/01 (AAIP code 57-00-15)	Comparing CAMP & AAN tracking data, inspections performed 97.8 hrs late Wm. Pobanz testified inspections might have been under code 57-00-16, performed on 2/1/01 at 10,398.6 hrs. If so, inspections were on time, but *should* have been in airframe logbook for 11/2/99 – 4/4/01.

Count # & Inspection or Overhaul Description	When last performed according to CAMP report dated 9/22/00	When due according to CAMP report dated 9/22/00	When performed according to AAN letter dated 4/2/02	When performed according to AAN tracking data dated 2/26/02	Comments
# 9 & 10: Structural inspection & x-rays of flaps & flap vanes every 2,400 hrs or 4 yrs – whichever comes first.	8,340 hrs on 12/12/97	10,740 hrs or 12/12/01	2/1/01; "records not accounted for at this time"	Performed on one flap at 10,398.6 hrs on 2/1/01, & on other flap at 10,837.8 hrs on 9/18/01.	AAN tracking data does not distinguish between right & left Comparing CAMP & AAN data, work on time for one flap & 97.8 hrs late on the other
# 11: Cabin structural inspection & x-ray every 8 yrs	8/13/93	8/13/01	3/30/00; "records not accounted for at this time"	Wm. Pobanz testified that he has no way of correlating inspection in Count 11 with AAN data. Might have been performed on 3/30/00 or 9/18/01	If performed on 3/30/00, then, comparing CAMP and AAN data, work performed on time. But if work performed on 3/30/00, then *should* have been in the airframe logbook for 11/2/99 to 4/4/01 & CAMP report. If performed on 9/18/01, then more than 1 month late.
# 12: Inspection & x-ray of horizontal stabilizers every 8 yrs	8/13/93	8/13/01	3/30/00 "records not accounted for at this time"	Wm. Pobanz testified that inspection "most likely" occurred on 3/30/00	Comparing CAMP & AAN data, work performed on time. But if work performed on 3/30/00, then *should* have been in the airframe logbook for 11/2/99 – 4/4/01 & CAMP report.
# 13: Inspection& x-ray of vertical stabilizer every 8 yrs.	8/13/93	8/13/01	3/30/00 "records not accounted for at this time"	3/30/00	Comparing CAMP & AAN data, work performed on time. But if work performed on 3/3/00, then should have been in the airframe logbook for 11/2/99 – 4/4/01 & CAMP report.
# 14: Inspection of left hand wing structure every 4,800 hrs or 8 yrs – whichever comes first	6,775 hrs on 8/13/93	11,575 hrs or 8/13/01	"Review of current data does not justify this call out."	9,015.9 hrs on 4/30/99	If performed on 4/30/99, then on time. .

Count # & Inspection or Overhaul Description	When last performed according to CAMP report dated 9/22/00	When due according to CAMP report dated 9/22/00	When performed according to AAN letter dated 4/2/02	When performed according to AAN tracking data dated 2/26/02	Comments
# 15: Inspection of the left hand lower wing stringers every 2 yrs.	10/19/99	10/19/01	2/1/01; "records not accounted for at this time"	2/1/01 for "wing bottom skin"	AAN entry did not distinguish between right & left. Comparing CAMP & AAN data, work performed on time. But if work performed on 2/1/01, then should have been in airframe logbook for 11/2/99 – 4/4/01.
# 16 & 17: Inspection of left and right hand stabilizers every 8 yrs	8/13/93	8/13/01	3/30/00; "records not accounted for at this time"	Wm. Pobanz testified that there were 3 entries for inspections performed on 3/30/00 that "could" relate to these inspections	Comparing CAMP and AAN data, if work performed on 3/30/00, then performed on time. If work performed on 3/30/00, then *should* have been in airframe logbook for 11/2/99 – 4/4/01 and in CAMP report. AAN data does not distinguish between right & left parts.
# 18: Inspection of right hand wing bottom skin/stringers every 2 yrs.	10/19/99	10/19/01	2/1/01 "records not accounted for at this time"	2/1/01 for "wing bottom skin"	AAN entry did not distinguish between right & left. Comparing CAMP and AAN data, if work performed on 2/1/01, then performed on time. If work performed on 2/1/01, then should have been in airframe logbook for 11/2/99 – 4/4/01.

The Initial Decision

The ALJ held that Complainant proved by a preponderance of the evidence that AAN failed to comply with AD 93-02-10 after March 6, 2001, and consequently, overflew the AD. (Initial Decision at 6.) He explained that the FAA inspectors had been

unable to find a maintenance record showing an inspection in accordance with the AD after August 25, 1995, or any record of modification terminating the AD's requirement for recurrent inspections despite their requests for all of the AD records. (Initial Decision at 5.) The ALJ found that the CAMP status report and AAN's tracking printout did not meet regulatory requirements for maintenance entries and consequently, did not prove that maintenance had been performed. (Initial Decision at 5.) He also rejected AAN's contention that the absence of AD 93-02-10 from AAN's tracking system's list of recurring inspections proved that the AD had been terminated by modification. The ALJ wrote, "[t]ermination must be reflected in a valid entry," but "AAN could not point to such a record." (Initial Decision at 5.)

Regarding Counts 2 and 3, the ALJ found that AAN violated Section 135.21(a) because it failed to fulfill its AAIP requirements by documenting the 150-hour inspections on the proper form. (Initial Decision at 6.)

The ALJ found that Complainant carried its burden of proving a violation of Section 135.21(a) as alleged in Count 4. He wrote, "Even under a scenario most favorable to the carrier, it employed a maintenance manual at least four months out of date." (Initial Decision at 7.)

The ALJ held that Complainant met its burden of proving that AAN violated Sections 135.21(a) and 135.419(g) as alleged in Counts 5 through 18. The ALJ held that the CAMP status report, while not proving that work had actually been accomplished, could be used as a starting point to determine when the next inspections or overhauls were due. (Initial Decision at 7, n.7.) The ALJ held further that AAN's tracking data, did not prove that the required recurrent overhauls or inspections were repeated in a

timely fashion. The ALJ explained that, like the CAMP entries, AAN's tracking document did not constitute probative evidence. He held that only valid logbook entries would constitute probative evidence (Initial Decision at 8), and AAN did not introduce any valid logbook entries to demonstrate that the inspections referred to in Counts 5 through 18 were accomplished as required in the AAIP's inspection schedule. Regarding each count, he held that because AAN's only evidence – its tracking notations – did not constitute proper maintenance record entries, it was insufficient to counter the agency's assertion that the overhauls or inspections had not been accomplished within limits. (Initial Decision at 8-13.) The ALJ concluded that the overhauls and inspections were overdue, as Inspector McDonald had testified. (*See* Chart 2.)

The ALJ noted, moreover, that AAN's tracking system was confusing because it did not distinguish between right and left parts, and because William Pobanz at times could not determine from the notations when or whether a particular procedure had been performed. ((Initial Decision at 8 (re: Count 5), 11 (re: Counts 12 and 13), and 13 (re: Counts 16 and 17.) Regarding Counts 7, 8, 9, 10, and 11, the ALJ held that AAN's evidence indicated that the overhauls or inspections were performed late. (*See* Chart 3.)

Regarding the maintenance records, the ALJ wrote as follows:

> Where were the maintenance records? The carrier explained that it had earlier shipped many of them to the aircraft's then-owner, Borer, at the maintenance facility Borer had designated in order to facilitate a procedure known as a 48-month inspection. (Tr. 179, 209, 221-24, 232, 365). But AAN apparently failed to retain copies. Nor did it maintain a list of records sent (Tr. 211, 365). In fact it had "no idea" what it sent (Tr. 211). *AAN may or may not have sent to Borer maintenance records pertinent to this case* (Tr. 226). Joshua Pobanz stated that "there were no specific procedures on copying or retaining what we sent them" (Tr. 210).
>
> Nor was the carrier successful in retrieving all the records, or copies of them when the agency undertook its records review….

(Initial Decision at 13-14) (emphasis added.)

The ALJ rejected the various defenses that AAN presented to explain away the missing records. The ALJ wrote:

> A carrier is responsible under the FARs for ensuring that required maintenance is accomplished for all aircraft like N700XJ on its certificate. AAN had a duty to see that all maintenance responsibilities for aircraft listed in its operations specifications were carried out under the AAIP, its agency-accepted maintenance program. Carrier officials in fact acknowledged this obligation numerous times (Tr. 221, 267, 315, 400). ….
>
> AAN had a concomitant responsibility to retain its records and to make them available to the FAA upon request (Tr. 163; 14 C.F.R. § 91.417). Maintenance records, as the Administrator has stated, are the linchpin of the agency's enforcement efforts. Agency inspectors must be able to inspect and evaluate such records in order to fulfill their responsibility to determine whether required maintenance has been performed. Without effective oversight the agency's Congressional mandate to ensure and promote safety in air travel would be unacceptably compromised. AAN acknowledged these responsibilities. William Pobanz agreed that all records necessary for the certificate holder to show FAR compliance – specifically including repair entries, records of compliance with recurring inspections, and AD notes – must be kept. But Respondent in the many instances cited utterly failed to do so (Tr. 169-70, 174, 178).

(Initial Decision at 14.)

AAN's Appeal

I. The ALJ correctly decided that the preponderance of the evidence showed that AAN violated Section 91.7(a).

AAN argued that the Administrator should reverse the finding that AAN violated 14 C.F.R. § 91.7(a), as alleged in Count 1, because Complainant failed to prove that AAN "operated" N700XJ.[33] According to AAN, it never flew N700XJ and, therefore,

[33] Complainant alleged that AAN violated Section 135.21(a) in Counts 2 through 18, and that AAN also violated Section 135.419(g) in Counts 5 through 18. Neither section requires a finding that AAN operated the aircraft. Section 135.21(a) requires a certificate holder to prepare a manual, use that manual, and keep it current. Section 135.419(g) requires a certificate holder to have each aircraft subject to its AAIP inspected in accordance with that AAIP.

AAN did not operate it. (Appeal Brief at 12.) AAN argued further that there is no evidence that N700XJ was flown under 14 C.F.R. Part 135. "It appears that all of its flights were for the business activities of Jeff Borer under Part 91 which governs the non-commercial operation of such aircraft." (Appeal Brief at 10-11.)[34]

Complainant acknowledged that it did not prove that AAN "ever operated N700XJ under part 135." (Reply Brief at 14.) However, as Complainant correctly pointed out, a violation of 14 C.F.R. § 91.7(a) does not require a finding that the aircraft was flown under Part 135. Section 91.7(a) provides simply that "no person may operate a civil aircraft unless it is an unairworthy condition." Also, AD 93-02-10 is not limited to aircraft flying under Part 135.[35]

Moreover, AAN's narrow definition of the term "operate" is at odds with the statutory and regulatory definitions of that term. The Federal aviation statute defines "operate aircraft" and "operation of aircraft" as "using aircraft for the purpose of air navigation, including – (A) the navigation of aircraft; and (B) causing or *authorizing the operation of aircraft with or without the right of legal control of the aircraft*.

Further, to prove the violations alleged in Counts 5 through 18, Complainant only had to show that due to N700XJ's accrual of time (*i.e.*, hours, landings), AAN should have, but failed to, ensure that required overhauls and inspections were performed in accordance with its AAIP.

[34] There is no evidence in the record to substantiate AAN's claim that N700XJ was only operated under Part 91 by Borer to conduct his personal business during the relevant time period.

[35] 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 Ace Pilot Training, FAA Order No. 2005-12 at 9-10 and n.19 (August 17, 2005) (respondent acted in a careless or reckless manner by operating an unairworthy aircraft; aircraft was unairworthy because actions required by two ADs were not accomplished); In the Matter of Kilrain, FAA Order No. 1996-18 at 10 (May 3, 1996), *reconsideration denied*, FAA Order No. 1996-23 (August 13, 1996), *petition for review denied*, Kilrain v. FAA, No. 96-3587 (3rd Cir. May 1, 1997) (mechanic returned aircraft to service when it was in an unairworthy condition; aircraft was unairworthy because requirements of an AD were not met.)

49 U.S.C. § 40102(32) (2002) (currently § 40102(35)) (emphasis added). The term "operate" is defined in the regulations as follows: "use, cause to use, or *authorize to use* aircraft, for the purpose … of air navigation including the piloting of aircraft, with or without the right of legal control (as owner, lessee, or otherwise." 14 C.F.R. § 1.1 (operate) (emphasis added.)

Under these definitions, it was not necessary for Complainant to prove that AAN, rather than Borer, flew N700XJ between March 6, 2001, and March 19, 2002. During this period, N700XJ accrued 582.7 hours. (*See* Chart 1.) As long as AAN authorized the use of N700XJ during this period, then AAN was the person operating the aircraft for purposes of a violation of Section 91.7.

Under AAN's management contract with Borer:

> All flights will be dispatched through our St. Louis office. Prior to departure, the captain will fax a completed company preflight dispatch sheet and weight and balance. All changes in aircraft/itinerary will be immediately reported to the St. Louis office.

(Exhibit C-28.) In exercising its dispatch responsibility, AAN authorized all flights by N700XJ. Thus, under the terms of its contract, AAN operated all flights made by N700XJ during the period of March 6, 2001, through March 19, 2002, for purposes of a violation of Section 91.7(a).

The Administrator has held that the person who operated an aircraft can be someone other than the individual who flew the aircraft. In <u>In the Matter of Fenner</u>, FAA Order No. 1996-17, an unidentified pilot flew a Cessna 182 underneath a National Guard helicopter and created a collision hazard by flying the Cessna 182 too close to the helicopter. Fenner owned the Cessna 182, but he was not on board the aircraft during those flights. The Administrator held that Fenner was the person who operated the

aircraft for purposes of violations of 14 C.F.R. §§ 91.13, 91.111 and 91.113 because the evidence showed that Fenner had given the pilot permission to use the aircraft. The Administrator based this decision upon the statutory definition of "operate aircraft" and the regulatory definition of "operate." In the Matter of Fenner, FAA Order No. 1996-17 (May 3, 1996), *aff'd* Fenner v. FAA, 113 F.3d 1251 (11th Cir. 1997).

AAN argued further on appeal regarding Count 1 that "there are sufficient maintenance notations in the record to show that AAN, as well as the owner, Jeff Borer, acted reasonably in relying on the fact that the AD modification had been complied with and, therefore, no recurring inspection is required." (Appeal Brief at 9.)[36] Whether AAN acted reasonably in making this assumption is not the issue; the issue is whether the modification had been made, and the preponderance of the evidence presented at the hearing did not support a finding that the modification had been made.

The latest record of compliance with AD 93-02-10 that the inspectors found was Exhibit C-5, a page from the aircraft's modification logbooks. (Tr. 47, 69.) The mechanic who performed the work wrote in the modification logbook entry that he complied with the AD by inspecting the cables – not that he complied with the AD by modifying the cables. Also, the mechanic did not write in the entry that he inspected the cables and found that they had been modified previously.

AAN wrote in its letter dated April 2, 2002, that the AD had been terminated by modification on January 24, 1994. Specifically, it wrote in its letter, "See modification

[36] The inspectors did not find any evidence of inspections in compliance with this AD following the August 25, 1995, entry in the modification logbook. (Tr. 47, 69.) AAN did not contend that annual inspections of the cables had been made in accordance with the AD. It took the position that the AD had been terminated by modification, and no inspections were required after January 24, 1994.

book entry dated 1-24-94, A.D. no longer recurring." (Exhibit C-8 at 2.) The inspector looked through the copy of the modification logbooks that he had, extending back to the manufacture of the aircraft, but did not find such an entry. (Tr. 58.)

There was an entry in the CAMP status report that indicated that AD 93-02-10 and the referenced service bulletin were no longer applicable due to modification performed on August 25, 1995. However, this entry in the CAMP status report indicating that the cables had been *modified* was less probative than the entry in the modification log for the same date indicating that the cables had been *inspected*. The CAMP status report entry was made by a data entry clerk who reviewed information summarized on a task card, unlike the modification book entry which was signed by the mechanic who performed the work on that date.

William Pobanz speculated that "in all probability," the mechanic inspected the cables on August 25, 1995, to determine whether the modification had been accomplished. (Tr. 271.) That is, however, mere speculation.

Inspector Magill testified that he had observed the aircraft and found that the cables had not been re-routed. AAN wrote that Inspector Magill "offered no photographic or descriptive proof of" his observation. Indeed, Inspector Magill's testimony was rather "thin" and was conclusory in nature. If he had supported his conclusion with photographic evidence or with a fuller description of the wiring, *i.e.*, where the wires should have been routed and where they were actually routed when he observed them, his testimony may have had greater value. Nonetheless, even as it was, Inspector Magill's testimony confirmed that the AD had not been terminated by modification.

None of AAN's witnesses examined the aircraft wiring. William Pobanz testified that he did not examine this area of N700XJ to determine whether the wiring modification had been made and that he could not determine from the FAA's photographs[37] of the battery cables whether the wiring had been modified. (Tr. 264, 265, 318-319, 354.) Pobanz testified that he showed the photographs to an associate, and that the associate said that he could not determine from those photographs whether the modification had been made. (Tr. 265.) This inconclusive hearsay evidence did not rebut the evidence pertaining to the inspector's observation.

In light of the above, AAN's appeal of the ALJ's finding that it violated Section 91.7(a), as alleged in Count 1, is denied.

II. The ALJ properly found that Complainant sustained its burden of proof that AAN violated Sections 135.21(a) and 135.419(g) as alleged in Counts 5 through 18.

AAN argues that the ALJ misplaced the burden of proof. According to AAN, neither party had "official" records to show when the recurrent inspections were performed, and, as a result, neither could "absolutely prove the status of specific inspections" between January and March, 2002. (Appeal Brief at 5.) It argues that the ALJ found that Complainant made a *prima facie* case based upon the CAMP report, but that the ALJ held that AAN's tracking document did not rebut that *prima facie* case. It contends that its tracking document was the best available evidence that the recurrent inspections had been performed in a timely fashion. AAN objects to the ALJ's insistence that AAN could only prove the status of the inspections through the introduction of "official" records because it had given some records to Borer for the 48-month inspection and forwarded its remaining records for this aircraft to the new owner after March 19,

[37] No photographs were introduced at the hearing.

2002. AAN argues, therefore, that the ALJ's findings that it violated Sections 135.21(a) and 135.419(g), as alleged in Counts 5-18, should be reversed.

Preliminarily, it should be pointed out that in FAA civil penalty cases, Complainant has the burden of proving its case by the preponderance of the reliable, probative, and substantial evidence. 14 C.F.R. §§ 13.223 and 13.224(a). The respondent has the burden of proving any affirmative defense by the preponderance of the reliable, probative, and substantial evidence. 14 C.F.R. §§ 13.233 and 13.224(c). The "beyond a reasonable doubt" standard to which the government is held in criminal cases does not apply to FAA civil penalty cases. *E.g.*, In the Matter of Envirosolve, LLC, FAA Order No. 2006-2 at 9 (February 7, 2006), *petition for review dismissed* Envirosolve, LLC v. FAA, Docket No. 06-1127, 2007 WL 273780 (D.C. Cir. January 20, 2007). Hence, contrary to what AAN appears to argue in its brief, neither party was required to "absolutely prove the status of the inspections."

AAN did not define the term "official records." It is assumed in this decision that by this term, AAN meant records, such as logbook records, containing a description of the work performed, the date of completion of the work, and the signature and certificate number of the individual who approved the aircraft for return to service. AAN's Joshua Pobanz acknowledged that "I must have the log book entry with the mechanic's signature on it for it to be a valid piece of information." (Tr. 217.) He testified further that an operator cannot assume that work has been done if it does not have a maintenance record meeting FAA requirements showing that the work has been completed. (Tr. 230.) He acknowledged that mistakes could be made when data is entered in a tracking system,

and that is why an operator needs a maintenance record meeting regulatory standards rather than just a tracking document. (Tr. 230.)

While not proving that work has been accomplished, tracking records can be useful "starting points" for research in logbooks or other records that do meet regulatory standards. Joshua Pobanz testified that an entry in AAN's tracking system "would be very useful as a reference point" because it would tell you where to look in the logbook records. (Tr. 228.) Inspector McDonald made a similar point about the value of the CAMP status report. He said that an entry in a CAMP status report is not the same as a maintenance entry that approves an aircraft for return to service. He insisted that a CAMP entry does not document performance of maintenance under the FAR.[38] He testified that an entry in the CAMP report served as a "good starting point for the records review." He said that he used the information in the CAMP status report and the AAIP, and then examined the maintenance records. (Tr. 125.) He specifically stated that he did not accept the information contained in the CAMP status report as reliable information. (Tr. 125.)

The problem here was that the CAMP printout referred to dates in logbooks that were not provided to Complainant. Consequently, despite their protestations to the contrary, Complainant and the ALJ both relied upon the information in the CAMP

[38] Inspector McDonald quite colorfully testified as follows about the CAMP status report:

> This is a tracking document that basically says – it's not a regulatory document. It just says this is the part, this is when it's due, this is when it's next due. The interesting thing about this document, speaking of computers, garbage in/garbage out. So you can tell in CAMP systems that this is when something was done. It may or may not have been done at that time, but it is documented on this report.

(Tr. 112.)

printout not as a starting point in the records search, but for proof of the dates that the overhauls and inspections were performed.

Nonetheless, Complainant proved its case by the preponderance of the evidence. Complainant made a *prima facie* case by introducing evidence that the inspectors had requested on several occasions that AAN provide them with copies of N700XJ's records to show that N700XJ's maintenance was up-to-date. (Tr. 164.) Inspector McDonald testified that under its operating certificate and operations specifications, AAN was required to make maintenance records for aircraft listed on its operations specifications available to the FAA upon request. (Tr. 163.) This was a 30-year old aircraft, but AAN was not able to provide anything other than the tracking records to show that the periodic overhauls and inspections referred to in Counts 5 through 18 had *ever* been performed. That was all that Complainant needed to make a *prima facie* case that required maintenance had not been performed. The burden of persuasion then shifted to AAN to prove otherwise.

AAN's defense regarding the "missing" records was not compelling. AAN's witnesses testified that they gave some of the records to Borer prior to the 48-month inspection. But the FAA inspectors copied all of the boxes of records that RoigWest had. There is no reason to believe that Borer gave RoigWest less than a complete set of the records that AAN gave him.

Also, there is no way to know whether AAN gave Borer any records that were pertinent to any of the inspections referred to in Counts 5 through 18. AAN's witnesses testified that AAN shipped "partial records" to Borer for the 48-month inspection but did not keep copies of the records or a list of which records had been sent. (Tr. 209-211, 223,

365.) Josh Pobanz testified that he did not know whether they had shipped the overhaul or the inspection records to Borer. (Tr. 225-226.)

Stephen Gilliland testified that Borer did not return any of the records. (Tr. 366.) This testimony was contradicted by Josh Pobanz who testified that Borer returned "partial records" but since they did not keep a detailed account of what was sent, he could not say whether Borer returned everything to AAN. (Tr. 211.) Even if Borer retained some of the records, there is no way to know whether he retained any of the records that related to the inspections and overhauls in Counts 5 through 18.

Stephen Gilliland testified that he had no reason to retain any records after the aircraft was removed from AAN's certificate, and indeed was obligated to transfer all of the records to the new owner under the regulations. The ALJ correctly found this testimony to be "disingenuous"[39] because AAN officials knew about the FAA's concerns at least three weeks earlier by February 26, and probably even as early as February 8.[40] The inspectors first requested all of the records after they visited RoigWest on February 8, 2002. They made additional requests prior to the aircraft's transfer on March 19.

[39] To the extent that the ALJ's finding that Gilliland's claim was disingenuous was based upon a credibility determination, it should be noted that an ALJ's credibility findings are not overturned lightly on appeal. As has been held in the past, an ALJ's credibility findings are entitled to special deference on appeal because the ALJ is in the best position to observe the witness's demeanor. *E.g.,* In the Matter of Conger, FAA Order No. 2007-8 at 13 (August 2, 2007.)

[40] This case is similar to the High Exposure decision. In that case, the owner testified that he did not have records to provide to the FAA inspectors because he had given them to the insurance company after the aircraft was involved in an accident. However, the owner did not know the exact date on which he had given the records to the insurance company, and on re-direct examination, he acknowledged that the FAA had requested the records before he had turned them over to the insurance company. In the Matter of High Exposure, FAA Order No. 2003-7 at 11-12 (September 12, 2003).

Finally, Gilliland's claim is contradicted by the testimony of William Pobanz. Pobanz testified that he did logbook research to help prepare AAN's April 2, 2002, letter in response to the discrepancy list. (Tr. 320.)

AAN argues that the Complainant "had the full authority to obtain and copy all the records from any of the new owners, in order to prove their allegations," but "chose not to do so" relying instead upon the inspector's examination of incomplete records. (Appeal Brief at 12.) AAN, however, was required under its operations specifications to provide the records to the FAA upon request.[41] (Tr. 163.)

AAN argues that in the absence of "official records," the ALJ should have found that the entries in its tracking document were the best available evidence and that they rebutted Complainant's *prima facie* case. However, there was ample evidence to show that the entries in AAN's tracking records were not reliable.

AAN's system did not track right and left hand parts separately. For example, regarding the structural inspections of the right hand and left hand flap vanes, AAN's tracking document has two entries for inspections of the "flaps." (Exhibit C-9 at 7, code no. 57-00-17). The entry does not differentiate between the right and left hand flap vane inspections. This inspection was required every 2,400 hours or every 4 years, whichever came first. According to one entry for "flaps", the last inspection was performed on February 1, 2001, at 10,398.6 hours, and was due to be repeated by 12,798.6 hours. The

[41] The Administrator rejected a similar argument in the High Exposure case. High Exposure argued on appeal that Complainant should have contacted the several shops that had performed maintenance on this aircraft in the past to see if they had any documents that would show that the work required by the airworthiness directives had been performed in a timely fashion. The Administrator rejected the argument, explaining that "Complainant was not obligated to represent at the hearing that it had contacted each maintenance shop but found no records" because Complainant only had to prove its case by the preponderance of the evidence, not beyond a reasonable doubt. FAA Order No. 2003-7 at 13.

other entry indicated that the inspection was last completed on September 18, 2001, at 10,837.8 hours, and was due to be repeated no later than September 30, 2005. A mechanic would not be able to tell from these entries which flap vane had been inspected on February 1, 2001, and which had been inspected on September 18, 2001. (See Chart 3 regarding Counts 5, 6, 9, 10, 15, 16, 16, 18.)

William Pobanz was uncertain about which AAN tracking document entries correlated with some of the inspections required by the AAIP and referred to in the amended complaint. Regarding Count 12, Pobanz testified that the inspection of the horizontal stabilizer was "most likely" reflected in an entry for "Horiz Stab NTD" on March 30, 2000. (Tr. 293.) He was also unsure regarding the inspections referred to in Counts 16 and 17. (Tr. 297.) He testified that there were three entries relating to the horizontal stabilizer in AAN's tracking document that "could" relate to the inspections referred to in Counts 16 and 17. (Tr. 297; Exhibit C-9 at 7, entries for code no. 55-00-09, 55-00-14, and 55-00-10.) (See Chart 3.) He was also tentative about the inspections of the ailerons referred to in Counts 7 and 8.

The entry in AAN's tracking system for the overhaul of the gear maxaret unit illustrates the error-prone nature of tracking documents. Count 6 refers to the required overhaul of the left hand outboard maxaret every 3,000 landings. The entry in AAN's tracking system that, according to William Pobanz, correlated with that inspection was an entry for the gear maxaret unit completed on March 30, 2000, at 6,021 landings. The entry does not distinguish between the right and left or the inboard and outboard maxarets. The entry for the gear maxaret unit overhaul at 6,021 landings on March 30, 2000, is obviously in error in light of the fact that the aircraft had accrued many more

landings by March 30, 2000. When N700XJ was added to AAN's certificate on November 5, 2000, the aircraft had accrued 8,232 landings. (Exhibit C-2.) Also, the CAMP report indicated that the right inboard maxaret and the right outboard maxaret (not the left outboard maxaret which is the subject of Count 6) were overhauled on June 20, 1994, at 6,021 landings. The CAMP report also indicates that other work – not the overhaul referred to in Count 6 – was performed on the right inboard maxaret on March 30, 2000.

Another reason that AAN's tracking document appears unreliable is because it has a number of entries for overhauls and inspections that were made on March 30, 2000, and February 1, 2001, but there are no corresponding entries in the airframe logbook dated November 2, 1999, through April 4, 2001, for that work. (*See* Chart 3, regarding Counts 6, 9, 10, 11, 12, 13, 15, 16, 17, 18.) According to the discrepancy list, Exhibit C-7, the inspectors had access to the airframe logbook for the time period of November 2, 1999, through April 4, 2001.

AAN argued that a negative inference should be drawn against Complainant because it objected to AAN's discovery request for records. As the agency attorney explained in its reply brief, Complainant objected to the request for records because the request was untimely. (Reply Brief at 16.) AAN did not file its request for production until after the date that the ALJ had set for the completion of discovery. AAN could have, but failed to, file a motion to compel production of the records. At no time did the ALJ issue an order compelling production of those records. AAN failed to protect its own interests by filing a timely request for discovery or by seeking an order to compel production.

As a result of the foregoing, AAN's appeal regarding the ALJ's findings that AAN violated Sections 135.21(a) and 135.419(g) is denied.

III. Complainant proved by the preponderance of the evidence that AAN violated Section 135.21(a) regarding Count 4 by failing to incorporate revision 4 of the Raytheon Aircraft Maintenance Schedule in its manual.

Regarding Count 4, AAN argues as follows:

- Neither party introduced "*any … probative evidence* as to the industry standard for accomplishing amendments and obtaining FSDO … approval."
- Neither party introduced a copy of revision 4;
- "The FAA could not point to any substantive changes which caused this aircraft to be unairworthy during what FAA characterized as excessive time to accomplish the paperwork revision and approval by the FAA."

(Appeal Brief at 9.)

These arguments can be disposed of easily. Preliminarily, it should be noted that AAN did not present any evidence to show that it had taken *any* steps to incorporate revision 4 into its manual. Revision 4 was issued in August 2001 – 6 months before the inspectors obtained a copy of the AAIP from RoigWest in February 2002. William Pobanz testified that it usually took about 60 days to obtain a revision from Raytheon and FAA approval to change its manual by incorporating a revision. Even if that evidence is accepted as true, the manual should have been updated about 4 months earlier.

AAN's argument that there was no evidence that its failure to update its manual led to improper maintenance causing the aircraft to be unairworthy is also rejected. Section 135.21(a) only requires that the certificate holder keep its manual current. No

finding of unairworthiness, as a result of the out-of-date manual, is necessary under Section 135.21(a).[42]

Finally, there was no need for Complainant to introduce a copy of revision 4. All that was necessary was for Complainant to introduce evidence that the AAIP that it received from RoigWest contained revision 3, not revision 4, and proof of the issuance date of revision 4. Complainant introduced this evidence.

IV. No reason has been presented to disturb the ALJ's finding that Complainant proved by the preponderance of the evidence that AAN violated Section 135.21(a) regarding Counts 2 and 3.

On appeal, AAN does not make any arguments pertaining specifically to the ALJ's findings that it violated Section 135.21(a) as alleged in Counts 2 and 3. AAN only argues generally, as it did regarding the findings of violations alleged in Counts 5 through 18, that records were missing because it had given some records to Borer for the 48-month inspection and had forwarded records to the new owner after N700XJ was taken off its air carrier certificate. As discussed previously, AAN's vague excuses for not having the records are not compelling. Consequently, AAN's arguments do not warrant reversing the ALJ's finding that AAN violated Section 135.21(a) as alleged in Counts 2 and 3.

V. The $49,000 civil penalty is appropriate in light of the multiple violations and FAA sanction policy guidance.

AAN argues that the $49,000 civil penalty assessed by the ALJ was too high. AAN argues that it is a small company "which has only recently been able to afford its twelve employees." It argues that a $49,000 civil penalty is excessive when compared to

[42] However, if the aircraft was unairworthy as a result of the certificate holder's failure to update its maintenance manual, then a higher sanction would be appropriate.

the $33,000 civil penalty that the FAA sought against the City of Chicago for destroying a Federally funded airport.[43] (Appeal Brief at 13.)

AAN's argument is rejected. As previously stated, "it is often difficult to compare sanctions across cases because there are so many variables involved in each case." In the Matter of Pacific Aviation International, FAA Order No. 1997-8 at 3 (February 20, 1997), *dismissed for lack of prosecution*, Pacific Aviation International v. FAA, No. 97-1298 (9th Cir. June 11, 1997). The two cases are simply not comparable; the violations and the authority to assess civil penalties for such violations could not be more different.[44]

The sanction sought by Complainant and assessed by the ALJ, importantly, is consistent with guidance provided in the Compliance and Enforcement Program, FAA Order No. 2150.3A. Under the Sanction Guidance Table, the following sanctions are appropriate against an air carrier for a single violation:

- A maximum civil penalty to a 7-day suspension for failure to comply with inspection and overhaul time limitations.[45]
- A moderate to maximum civil penalty for failure to comply with airworthiness directives.[46]

[43] The case to which AAN refers, In the Matter of the City of Chicago, FAA Docket No. CP05GL0014, was dismissed by the ALJ by order dated September 25, 2006, after the parties reached a settlement, and withdrew the request for hearing and the complaint.

[44] In the City of Chicago case, the Complainant alleged that the City violated 14 C.F.R. § 157.5(b)(2) by failing to give the FAA 30 days prior notice before deactivating an airport. Complainant sought a $33,000 civil penalty. Under 49 U.S.C. § 46301(a)(1), the City of Chicago was subject to a civil penalty not to exceed $1,100 for each regulatory violation, and under 49 U.S.C. § 46301(a)(4), a separate violation occurred each day that the violation continued. Consequently, each day that the City of Chicago failed to provide notice of the deactivation constituted a separate violation. Complainant sought the maximum civil penalty: $1,100 for each of the 30 days that the City failed to provide advance notice.

[45] FAA Order No. 2150.3A, Appendix 4, at page 4 (I)(C)(1).

[46] FAA Order No. 2150.3A, Appendix 4, at page 4 (I)(B).

- A maximum civil penalty for operation of an unairworthy aircraft with a non-conformity which has an adverse effect (actual or potential) on safe operation.[47]

- A suspension until manuals are made current, to a 7-day suspension and continuing thereafter until manuals are made current.[48]

A maximum civil penalty for an air carrier of AAN's size at the time of these violations ranged from $6,500 to 11,000 per violation.[49] In this case, significantly, N700XJ was overdue for 14 overhauls and inspections and was not in compliance with an airworthiness directive. In light of AAN's multiple, serious violations and the agency's applicable sanction guidance, the $49,000 civil penalty assessed by the ALJ is reasonable. As the ALJ quite aptly wrote, the $49,000 civil penalty "is commensurate with the gravity and pervasive character of the violations." (Initial Decision at 15.)

Conclusion

For the foregoing reasons, AAN's appeal is denied. This decision affirms the findings of violations made by the ALJ (except for the violation of 14 C.F.R. § 39.7),

[47] FAA Order No. 2150.3A, Appendix 4, at page 6 (I)(L)(3).

[48] FAA Order No. 2150.3A, Appendix 4, at page 4 (I)(A)(1).

[49] With more than 30 aircraft on its certificate and an annual net income in 2002 of $287,062, AAN was a Group II air carrier for sanction purposes. *See* Compliance and Enforcement Bulletin No. 92-1 (January 16, 1992), included in FAA Order No. 2150.3A, Appendix 1, at page 103-105. (A Group II air carrier is defined in Appendix 1 at page 106, as "All air carriers that hold Part 121 operations specifications and large Part 135 operators (50 or more pilots or 25 or more aircraft on operations specifications), with annual operating revenue of less than $100,000,000.")
The maximum civil penalty range for a single violation for a Group II air carrier was $6,500 to 11,000, and the moderate civil penalty range was $3,500 to $6,500. *See* Compliance and Enforcement Bulletin No. 92-1 at page 106 and 14 C.F.R. Part 13, Subpart H (2002) (entitled "Civil Monetary Penalty Inflation Adjustment.")

although the Administrator does not, as explained in this decision, adopt all of the ALJ's reasoning. A $49,000 civil penalty is assessed.[50]

[Original signed by Robert A. Sturgell]

ROBERT A. STURGELL
ACTING ADMINISTRATOR
Federal Aviation Administration

[50] 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 of 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.)