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NTSB Order No. EA-4667

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 28th day of May, 1998

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JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-14798
v.)	
)	
CHRISTOPHER LACY WATKINS,)	
)	
Respondent.)	
)	
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OPINION AND ORDER

The respondent has appealed from the oral initial decision of Administrative Law Judge William R. Mullins rendered on August 14, 1997, at the conclusion of an evidentiary hearing.¹ By that

¹The initial decision is attached. Respondent filed a brief on appeal; the Administrator filed a reply. Respondent then filed a response to the Administrator's reply. We will grant the Administrator's motion to strike this supplemental brief. Under the Board's rules, supplemental briefs may not be filed, except with specific permission of the Board and after a showing of good cause. 49 C.F.R. § 821.48(e). No such showing was made and no permission was granted.

decision, the law judge affirmed the Administrator's order alleging that respondent violated sections 135.227(e) and 91.13(a) of the Federal Aviation Regulations (FARs), 49 C.F.R. Parts 91 and 135, by taking off into an area of forecast severe icing in an aircraft that did not have the ice protection provisions set forth in 14 C.F.R. Part 135, Appendix A, section 34.² The law judge also waived sanction under the provisions of the Aviation Safety Reporting Program (ASRP).³ As explained below, we affirm the initial decision.

The Administrator's allegations centered on a cargo-carrying, Part 135 flight that respondent operated on February 14, 1995, under instrument flight rules from Wichita, Kansas to Great Bend, Kansas. It is undisputed that the aircraft, a Cessna Model 402-B, did not encounter severe icing conditions. Nonetheless, as the Administrator alleged and the law judge

(..continued)

²The cited regulations state, in pertinent part:

§ 135.227 Icing conditions: Operating limitations.

* * * * *

(e) Except for an airplane that has ice protection provisions that meet section 34 of appendix A, or those for transport category airplane type certification, no pilot may fly an aircraft into known or forecast severe icing conditions.

§ 91.13 Careless or reckless operation.

(a) Aircraft operations for the purpose of air navigation. No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

³The Administrator did not appeal the sanction waiver.

found, the forecast was for isolated severe icing.

On appeal, respondent argues that the law judge's findings are contrary to the factual evidence and, further, that the forecast for severe icing was invalid because it was contained in an AIRMET rather than a SIGMET (significant meteorological bulletin).⁴ He also contends that even if the AIRMET calling for isolated severe icing was to be believed, it was supplemented with subsequent information which, under FAR section 135.227(f), allowed him to take off.⁵

Before he took off, respondent obtained weather information via telephone from a weather briefer with the Wichita Automated Flight Service Station, from a Direct User Access System (DUATS) report, and through a United Parcel Service weather reporting system. The forecast for the area over which respondent operated the aircraft included an AIRMET for isolated severe mixed icing below 6,000 feet in light freezing drizzle, light freezing rain over Kansas and southwestern Missouri, with conditions spreading northeastward. (Tr. at 42; Ex. A-4.) After being told by the

⁴SIGMETs "advise of non-convective weather that is potentially hazardous to all aircraft" and are issued when certain weather phenomena, including severe icing, occur or are expected to occur. Exhibit (Ex.) A-5, U.S. Weather Service Advisory Manual, AC0045, at 4-11. AIRMETS are "advisories of significant weather phenomena but describe conditions at intensities lower than those which trigger SIGMETs." Id. at 4-12. This includes moderate icing. Id.

⁵Subsection (f) states that the restrictions on operations in certain icing conditions do not apply if current weather reports and briefing information relied on by the pilot-in-command (PIC) indicate that weather conditions have changed and the originally-forecast icing conditions will not be encountered during the flight.

weather briefer that the AIRMET included a forecast of severe icing, respondent asked specifically whether any SIGMETs had been issued. (Tr. at 103.) None had.

Respondent argues that he was justified in his assumption that the forecast was wrong because SIGMETs are used for severe icing, while AIRMETs are utilized for less serious weather, such as moderate icing. The regulation, however, prohibits operating an aircraft into an area of known or forecast severe icing -- not into an area affected by a SIGMET. The forecast warned of isolated severe icing and the weather briefer alerted respondent to "severe icing." While he may have been confused over the AIRMET/SIGMET issue, the warnings of severe icing were clear and the regulatory prohibition against operating an aircraft without certain ice protection provisions into an area of forecast severe icing is also clear.⁶ The law judge did not err in finding that respondent operated the aircraft into an area of forecast severe icing.⁷

Under FAR section 135.227(f), a PIC may rely on weather reports and briefing information that update earlier forecasts of

⁶FAA Inspector Jaderborg testified that respondent's aircraft was not equipped with the "anti-ice [or] de-icing" equipment specified in Section 34, Appendix A. (Tr. at 55.)

⁷Respondent also attempts to argue that because the forecast of severe icing was qualified with "isolated," it implies that a pilot could easily maneuver around any area of severe icing, and that the forecast was confusing and misleading. This argument too is unavailing. It appears that respondent is trying to over-analyze the requirement of the regulation. Since respondent's aircraft was not equipped with ice protection provisions that meet section 34 of appendix A, he was prohibited from flying into an area of forecast severe icing, isolated or otherwise.

severe icing. Respondent argues that he was thus permitted to rely on pilot reports (PIREPs) that he received from the Wichita control tower and weather reports from Great Bend and other locations along his route to assess whether the forecast of severe icing was incorrect. Because none of the reports was for severe icing, he maintains that the original forecast and weather briefing were superceded. The absence of PIREPs indicating severe icing, however, is not sufficient to negate an official forecast. Accord Administrator v. Groszer, NTSB Order No. EA-3770 at 5 (1993); Administrator v. Bowen, 2 NTSB 940, 943 (1974).⁸

In sum, respondent has not identified a basis upon which we should overturn the decision of the law judge.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The initial decision is affirmed.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

⁸In Groszer, we faced a similar issue. There we stated, "[t]hat the SIGMET warned against 'occasional' icing does not make the icing any less 'known.' Moreover, the icing threat need not be blanketing the entire area at every altitude for it to be either known or dangerous...." Id. at 5.