SERVED: December 12, 2002

NTSB Order No. EA-5008

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 4th day of December, 2002

MARION C. BLAKEY, Administrator, Federal Aviation Administration, Complainant, v. BRUCE B. VOGEL, Respondent.	Docket SE-16444

OPINION AND ORDER

The Administrator has appealed from the oral initial decision of Administrative Law Judge Patrick G. Geraghty, issued on March 6, 2002, following an evidentiary hearing.[1] The law judge affirmed an order of the Administrator, on finding that respondent had violated 14 C.F.R. § 91.13(a) of the Federal Aviation Regulations (FARs, 14 C.F.R. Part 91), but reduced the

[1] The initial decision, an excerpt from the transcript, is attached.

proposed license suspension from 120 to 15 days.[2] The Administrator seeks a 60-day suspension. We grant the appeal.

Respondent, an airline transport pilot, was the flight instructor on a flight that resulted in a gear-up landing and total destruction of the aircraft. The amended complaint charged violations of §§ 91.7(a) and 91.405(a), as well as 91.13(a), and sought a suspension, as noted, of 120 days.

The law judge dismissed the first two charges, thus prompting a reduction in the sanction amount. On appeal, however, the Administrator claims that the law judge exceeded his discretion when he reduced the sanction to a 15-day suspension.

We agree. With enactment of the FAA Civil Penalty Administrative Assessment Act of 1992, P.L. No. 102-345 (CP Act), the Board, including its law judges, is bound by validly adopted written FAA policy guidelines unless they are arbitrary, capricious, or not in accordance with law. 49 U.S.C. 44709(d)(3); Hinson v. NTSB, 57 F.3d 1144, 1151 (D.C. Cir. 1995). The Administrator introduced the sanction guidance table (Exhibit C-10), which provides a suspension of from 30 to 60 days for a violation of § 91.13(a) in connection with a wheels-up landing. The sanction guidance table is such validly adopted policy.

It was, therefore, clear error for the law judge to modify the sanction to a period of 15 days absent a finding, for which we perceive no basis, that the range of suspension established by

[2] Section 91.13(a) prohibits careless or reckless operations that endanger the life or property of another.

the Administrator in the sanction guidance table for the putative conduct was arbitrary, capricious, or not in accordance with law. That standard was not met by the law judge's assessment that Board precedent "generally" supported a lower sanction or by his personal opinion that a 15-day suspension would be "sufficient to assuage the public interest in air safety and to act as a deterrent" (initial decision at 263),[3] for the CP Act, at least with respect to cases for which there is written policy guidance, substantially circumscribed the Board's discretion to substitute its judgment on sanction for that of the Administrator. None of the cases cited by respondent support his view that the law judge's decision was consistent with this revised statutory context.

The question thus becomes where within the range of 30-60 days should the sanction fall. The Administrator urges a 60-day sanction based on two factors: respondent's great experience (22,000 hours, Tr. at 185), and the degree of hazard created by his carelessness. Respondent suggests 30 days, and argues that no more has been justified.

We cannot disagree with the Administrator's conclusion, based on the facts of the accident, that the longest suspension period provided in the guidelines should be applied to

[3] We note, in this connection, that the law judge made no attempt to determine whether the specific circumstances of this matter would actually have warranted a lesser sanction under Board precedent.

respondent. Respondent's experience; his responsibility for the safety of the two paying students, the aircraft, and everyone and everything on the ground; and the unnecessary danger created by his carelessness support a finding that a 60-day suspension would not be arbitrary, capricious, or contrary to law. Indeed, Administrator v. Karns, NTSB Order No. EA-4604 (1997), cited by respondent, supports the Administrator's choice. Although that case involved two violations and the issue of how to combine separate guidance in the sanction guidance table and is not otherwise on point, the FAA witness there testified that, where gear-up landings involved aggravating factors, 60 days was standard for airline transport pilots. Id. at 3. Thus, the Administrator's position here is consistent with past practice.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and

2. The 60-day suspension of respondent's certificate shall begin 30 days after the service date indicated on this opinion and order.[4]

CARMODY, Acting Chairman, and HAMMERSCHMIDT and BLACK, Members of the Board, concurred in the above opinion and order. GOGLIA, Member, did not concur, and did not submit a dissenting statement.

[4] For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. 61.19(f).