

October 10, 2024

Original Delivered by Electronic Mail: laura.j.megan-posch@faa.gov

Laura J. Megan-Posch, Esq.
Assistant Chief Counsel for Regulations
Office of the Chief Counsel
Federal Aviation Administration
800 Independence Avenue, S.W.
Washington, D.C. 20553-0002

RE: Moss Interpretation on Title 14 CFR¹ § 43.3(d)

Dear Ms. Megan-Posch,

The undersigned represent the worldwide civil aviation industry – from global corporations to small, independent businesses and including executive and technical professionals, particularly persons certificated under part [65](#), subparts [D](#) and [E](#).

For the reasons stated below, we ask that the [legal interpretation](#) answering questions from Little Rock Flight Standards District Office Manager Jonathan Moss on Sept. 3, 2024 regarding § 43.3(d) and the meaning of the requirement for a repairman supervisor to be “in person” (the Moss interpretation) be suspended until a meeting with the undersigned can be arranged and the discrepancies can be resolved.

Although the above referenced legal interpretation was directed at the obligation of mechanic or repairman certificate holders when supervising maintenance activities, its application to the term “in person” has had an immediate detrimental impact on all persons subject to 14 CFR, and the agency that oversees or enforces those regulations.

The interpretation goes beyond the simple questions asked and is replete with errors and inconsistencies. Most troubling is the fact that the case cited to support the memorandum had nothing to do with § 43.3(d). While the agency attempted to claim § 43.3(d) was violated, the court disagreed and dismissed the charge. In addition, the interpretation’s conclusion is contrary to the plain language of the regulation at issue and numerous agency policies regarding use of remote technology.²

The regulatory section at issue clearly states that the supervision need only be to the extent necessary to ensure the work is performed properly. Further, the supervisor need only be readily *available*³ for consultation; there is no requirement that the certificated

¹ All cites are to Title 14 Code of Federal Regulations (14 CFR) unless otherwise noted.

² See, e.g., *Use of Remote Technology During the Performance of Inspections and Tests (PS-AIR-21-1901 and AFS-23-00338-E)*, *Use of Remote On-Ground Ice Detection Systems (Advisory Circular 120-107)*, *In-Person Requirements and Use of Remote Technology for Administrative Airman Certification Functions (Notice 8900.689)*. For examples of the agency’s acceptance of remote technology for design, certification, operations, maintenance activities, and other discretionary functions, during the pandemic and beyond, see, [FAA Strategy](#) and Aviation Safety [Memorandum](#) to All Flight Standards Service Employees on the Subject: *Use of Video and Communication Technology (VCT)*, dated April 20, 2020.

³ The word’s performance-based meaning was highlighted in the 1996 rule that created § 43.3(i) allowing certain part [135](#) pilots to perform specific preventative maintenance tasks. Responding to comments after

October 10, 2024

Page 2

Laura J. Megan-Posch, Esq.

RE: Moss Interpretation on Title 14 CFR¹ § 43.3(d)

mechanic or repairman do the work for the non-certificated person.⁴ The interpretation goes well beyond the simple language in the rule.

The agency has successfully allowed the application of modern technology under its long-established performance-based regulations. It has determined that its aviation safety regulatory system accommodates advances in technology provided the aviation safety requirements are met. From borescoping aircraft engines to the 2020 pandemic, the agency readily adjusted its policies to accommodate personal presence using modern technology. The FAA correctly interpreted “in person” to mean having the same capability as if on premises. If the technology does not allow full access, the action ceases. To intimate what a term or phrase meant to the originators remains etched in stone ignores the plain language of the rules that have withstood the test of time.

Until the work performed by the maintenance provider has been approved for return to service, any mistake can be rectified.⁵ If a person needs supervision, the oversight takes place as “necessary to ensure that it is being done properly.” No matter the methodology or timing, if the supervisor can “personally observe the work”, the expectation of the regulation is fulfilled. If the supervisor cannot determine the work was performed correctly, an approval for return to service cannot be issued under § 43.9⁶ until on premises technical management is provided.

The only time a mechanic or repairman should be subject to enforcement is if the supervision was *insufficient* to determine the work was performed correctly. To presume that result before the work is approved for return to service is beyond the plain language of the regulations that allows the certificated person to determine the amount and extent of supervision required.

The legal interpretation ignores the realities expressed by signers of the September 14, 2024, Savvy Aviation, Inc. *Request for reconsideration of “Moss Interpretation” dated 9/3/2024*. The Office of Chief Counsel’s interpretation is being read in the way feared; if the supervisor is “not within earshot” of the non-certificated person, no matter how experienced the latter may be, a violation is possible. The Memorandum’s “best case scenario” is far from that description. Multi-camera video technology allows extremely

extensively deliberating the meaning of the word “available”, the FAA allowed pilots to perform the preventive maintenance in all situations, not just when certificated maintenance providers were unavailable. See, 61 FR [19500](#), Docket No. 28273, Amendment No. 43–36, May 1, 1996.

⁴ Under § 43.13, “each [person](#)” performing maintenance, preventive maintenance, and alterations has an obligation to perform the work properly; in such a manner as to return the article to at least its original or properly altered condition.

⁵ See, [Richards v. Dale E. Halter](#), NTSB Order [3666](#), Sept. 1, 1992 in which the National Transportation Safety Board (NTSB) noted the mechanic had not approved the work performed for return to service and cited [Administrator v. Aircraft Engine Maintenance](#), 3 NTSB 3051 (1980) in which the NTSB declined to hold a mechanic liable under § 43.13(a) for an error made but corrected. See, also, Chief Counsel Office legal interpretation to [Randy Romigh](#) issued March 20, 2014 stating “each person” is responsible for performing maintenance properly under §§ 43.13(a) and (b).

⁶ See, § 43.9(a)(4) where the person approving the work for return to service must certify that it was “performed satisfactorily.”

October 10, 2024

Page 3

Laura J. Megan-Posch, Esq.

RE: Moss Interpretation on Title 14 CFR¹ § 43.3(d)

close, indeed better, visual acumen than human eyes can detect. Audio quality is equally capable and microphone set ups allow recording and replay of the action that does not depend upon memory.

The performance-based regulations are clear and have withstood the test of time. The mechanic or repairman has the discretion to determine the amount of supervision required; if oversight is necessary, it can be provided in any manner that ensures the work is performed correctly.

Since the Office of Chief Counsel's memorandum does not evaluate all applicable requirements in part [43](#) and is not based upon facts, we believe the best course of action is to suspend the opinion until the issues can be fully vetted.

We request an in-person meeting by remote technology or on your premises at your earliest convenience.

Sincerely,

Sarah MacLeod
Executive Director
Aeronautical Repair Station Association
703.785.6605
sarah.macleod@arsa.org

Chad Kirk
Senior Director, Civil Aviation
Aerospace Industries Association
202.834.9100
chad.kirk@aia-aerospace.org

Ric Peri
Vice President, Government & Industry
Affairs
Aircraft Electronics Association
202.589.1144
ricp@aea.net

Jim Coon
Senior Vice President, Government
Affairs & Advocacy
Aircraft Owners & Pilots Association
202.905.0975
jim.coon@aopa.org

Michele Dickstein
President
Aviation Suppliers Association
202.347.6896
michele@aviationsuppliers.org

Crystal Maguire
Executive Director
Aviation Technician Education Council
703.548.2030
crystal.maguire@atec-amt.org

Jennifer Thibodeau
Managing Director, Safety and Regulatory
Policy
Cargo Airline Association
202.293.1032
jthibodeau@cargoair.org

David Oliver
Interim President & CEO
Commemorative Air Force
630.853.9624
doliver@cafhq.org

October 10, 2024

Page 4

Laura J. Megan-Posch, Esq.

RE: Moss Interpretation on Title 14 CFR¹ § 43.3(d)

Jack J. Pelton
CEO and Chairman of the Board
Experimental Aircraft Association
920.426.4800
jpelton@eaa.org

Pete Bunce
President
General Aviation Manufacturers
Association
202.393.1500
pbunce@gama.aero

Douglas E. Lavin
Vice President, Member and External
Relations – North America
International Air Transport Association
202.628.9443
lavind@iata.org

Jason Dickstein
President
Modification and Replacement Parts
Association
202.628.6777
jason@washingtonaviation.com

George Paul
Vice President, Technical Services
National Air Carrier Association
703.358.8063
gpaul@naca.aero

Jenny Ann Urban
Managing Director, Air Charter and
Maintenance
National Air Transportation Association
202.604.8950
jurban@nata.aero

Stewart D'Leon
Director, Environmental & Technical
Operations
National Business Aviation Association
202.361.6435
sdleon@nbaa.org

Nobuyo Reinsch
Senior Vice President, Safety &
Regulatory Affairs
Regional Airline Association
202.367.1170
reinsch@raa.org