



SAVVY

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September 24, 2024

Sent via USPS and email

Laura Jane Megan-Posch, Assistant Chief Counsel for Regulations
Regulation Law Division (AGC-200)
Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591

Re: Request for reconsideration of “Moss Interpretation” dated 9/3/2024

Dear Ms. Megan-Posch,

This letter is a formal request for the FAA Regulation Law Division (AGC-200) to reconsider and hopefully rescind or revise the legal interpretation set forth in the memorandum your office issued on September 3, 2024 in response to a request for interpretation of 14 CFR 43.3(d) by Johnathan Moss, Manager, Little Rock FSDO (AFG-600). This memorandum, which will herein be referred to as the “Moss Interpretation,” was prepared for your signature by Jacob Keohane, Attorney Advisor, AGC-210.

The undersigned believe that the Moss Interpretation, if permitted to stand as the Agency’s interpretation of the meaning of 14 CFR 43.3(d), would do irreparable harm to the ability of Repair Stations and other maintenance facilities to employ uncertificated mechanic-trainees or apprentices who are working to satisfy the 30-month practical experience requirement of 14 CFR 65.77(b) to qualify for the A&P certificate. We feel that this (presumably unintended) consequence of the Moss Interpretation would be particularly unfortunate given the critically acute shortage of A&P mechanics that the industry presently faces.

We also believe that the Moss Interpretation, as presently constituted, would have a devastatingly crippling effect on the ability of Repair Stations and other maintenance facilities that focus on small general aviation aircraft to allow their customers to participate in “owner-assisted” annual inspections. We think this would also be a very unfortunate consequence, because the owner-assisted annual is the best way for owners of small GA aircraft to learn firsthand about the airworthiness of their aircraft and to become knowledgeable about its various systems and components.

THE RULE

14 CFR 43.3(d) is a 60-year-old rule intended to make it possible for uncertificated mechanics to perform maintenance on certificated aircraft while working under the supervision of a certificated mechanic. The rule permits an uncertificated individual to perform the same work his certificated supervisor is authorized to perform (except for required inspections), provided that two commonsense conditions are met:

- (a) the supervisor personally observes the work being done to the extent necessary to ensure that it is being done properly ; and
- (b) the supervisor is readily available, in person, for consultation.

The first of these conditions requires proactive supervision by the supervisor in order to ensure that the work is being done properly, while the second condition addresses the supervisor's reactive availability in the event that the person being supervised needs to consult with the supervisor in the course of doing the work.

For the past 60 years, certificated mechanics who supervise uncertificated apprentices (including we, the undersigned) have universally understood the condition (a) phrase "personally observes the work" to mean that the proactive obligation of the supervisor could not be delegated to anyone else, and the condition (a) phrase "to the extent necessary to ensure that it is being done properly" as giving the supervisor broad discretion to determine precisely how much supervision is necessary, and what phases of the work require supervisory scrutiny.

For example, when supervising an apprentice who has been tasked with changing a cylinder on a reciprocating aircraft engine, relatively little supervision is needed during the process of cylinder removal (because that phase is fairly obvious and non-critical), while considerably more intense supervision is appropriate during the process of cylinder installation (because any missteps during this phase could result in catastrophic engine failure). Similarly, far more intense supervision is appropriate the first time an apprentice changes a cylinder than it is the 100th time that apprentice performs this task and the supervisor has become confident that the apprentice knows how to perform it properly.

The condition (a) phrase "personally observes" has never been understood to require a specific time duration of physical proximity on the part of the supervisor. Rather, it has been universally understood that the supervisor has broad discretion over both the timing and duration of supervisory observation of the work and the physical proximity necessary to ensure the work is being done properly.

It's important to recognize that the supervisor of an apprentice mechanic has a powerful incentive to provide adequate supervision of the apprentice in terms of timing, duration and proximity, since it is the supervisor who will be affixing his signature, certificate number and type to the 14 CFR 43.9 maintenance record entry approving the aircraft for

return to service with respect to the work performed. Indeed, it is the supervisor who will be held responsible for any adverse consequences if the work was not performed properly, both in terms of possible FAA certificate action and potential damages for civil negligence.

Also for the past 60 years, certificated mechanics who supervise uncertificated apprentices (including us) have universally understood the condition (b) phrase “readily available, in person, for consultation” to mean that the supervisor must be reasonably available when the apprentice doing the work has questions or gets stuck for some reason and asks for assistance. The words “readily available” have never been understood to mean “instantly available” or “continuously available.”

Such consultation can frequently be handled satisfactorily via phone call or text message (e.g., “should I apply sealant to the cylinder base O-ring?”), but there are certainly times when the supervisor’s physical presence is necessary (e.g., “hey boss, I think you’d better have a look at the threads on this through-bolt before I continue”), in which a supervisor’s physical availability response time measured in minutes or perhaps hours would be considered to meet the “readily available, in person” requirement of condition (b). Again, the supervisor typically has a strong incentive to be reasonably available in the event the apprentice feels the need for either remote or in-person consultation in order that the apprentice’s progress and the facility workflow is not unnecessarily disrupted.

THE MOSS INTERPRETATION

On July 8, 2022, Jonathan Moss, manager of the Little Rock FSDO (AFG-600) asked your office for an interpretation as to whether the condition (a) requirement for the supervisor to “personally observe” the work required the supervisor to be physically present at the work site, or if supervision could be performed remotely through Zoom, FaceTime, live feed TV, photographs, downloadable video, or other electronic means. Your office’s Moss Interpretation memorandum, issued 26 months later, started out by addressing this question head-on, stating unequivocally that the requirement for the supervisor to “personally observe” the work required physical presence on-site and could not be accomplished through electronic knowledge-projecting technologies.

We believe this to be an unfortunately conservative and regressive interpretation of the meaning of “personally observe” and probably not what the original authors of this rule would have intended the phrase to mean had they been able to foresee that 60 years in the future virtually every adult human would be carrying a high-definition camera that was able to instantly transmit still and video images to any other adult human on the planet at the speed of light. We think the rule authors intended the phrase “personally observe” to denote that the supervisor may not delegate his obligation to observe the work being performed, not to dictate any particular methodology of observing the work.

The present era is one in which robotic surgery is performed remotely, all sorts of telemedicine is routine, warfare is conducted half a world away using remote-piloted

vehicles, and a large percentage of the FAA workforce are working remotely. If the original authors of 14 CFR 43.3(d) were willing to grant the supervisor responsibility and authority to determine “the extent necessary to ensure the work is done properly,” wouldn’t it logically follow that those same original rule authors would also be willing to grant the supervisor responsibility and authority to determine the appropriate method for exercising that supervision, including the use of available technological means? We are convinced they would.

That said, we the undersigned would most likely not be requesting reconsideration of the Moss Interpretation if it had stopped at this point.

Unfortunately, on page 2 of the Moss Interpretation memo, the interpretation goes far beyond the question posed by Jonathan Moss when the memorandum stated:

The phrase “readily available, in person, for consultation” contemplates a physical, hands-on approach to supervision. The certificated mechanic must be available, not just to answer questions, but to notice mistakes and take over if necessary.

This two-sentence assertion of the Moss Interpretation appears to conflate the two conditions of 43.3(d) in a most unfortunate fashion. With respect to proactive condition (a), it appears to remove any discretion by the supervisor to determine the extent of supervision necessary to ensure that the work is performed properly, which (as discussed above) can vary widely depending on the kind and phase of work being performed and the amount of experience the supervised apprentice has performing it. Furthermore, with respect to reactive condition (b), it appears to transform the definition of “available for consultation” from a reactive requirement triggered by the apprentice into a proactive one in which the supervisor is required to continuously monitor the work from start to finish and be prepared to intervene at any point, and to transform the meaning of “readily available” from “reasonably available” into “continuously available.”

In short, the two-sentence assertion quoted above goes far beyond the original question for which interpretation was sought by the Little Rock FSDO, and literally turns 43.3(d) on its head, giving it a profoundly altered meaning from how the rule has been universally understood, and in a way that was almost certainly not intended by the folks who drafted the rule 60 years ago.

In support of the above-quoted assertion, the Moss Interpretation memorandum cites and quotes excerpts from NTSB Order No. EA-5128 (2004), which concerns itself with *Administrator v. Sugden*. However, that case had almost nothing to do with the issues addressed by the Moss Interpretation involving the extent to which a supervisor is obligated to supervise work done by an uncertificated mechanic, the extent to which the supervisor’s physical proximity is required, and whether technological means may be used.

Administrator v. Sugden involved a commercial pilot who took it upon himself to go to an avionics repair station where his airplane was being worked on, to re-install the radome on that airplane, and then proceeded to fly the airplane without obtaining the necessary maintenance record entry from the avionics repair station approving the aircraft for return to service with respect to the work performed. The FAA ordered the pilot's certificate suspended for 75 days, and the suspension was appealed first to an NTSB ALJ and ultimately to the full NTSB. The NTSB order, which affirmed the certificate suspension, focused primarily on the pilot's decision to fly the aircraft without approval for return to service by an authorized person in violation of 14 CFR 91.405, and only secondarily on the pilot's decision to perform maintenance without any supervision. The NTSB Order neither addressed the discretion of a supervisor to determine the extent of supervision necessary to ensure the work is done properly, nor a supervisor's response time in responding to requests for consultation by an uncertificated mechanic. The pilot installed the radome without requesting or receiving any supervision. In short, we believe that NTSB Order EA-5128 in no way supports the above-quoted assertion of the Moss Interpretation to which we take strong exception.

CONSEQUENCES OF THE MOSS INTERPRETATION

The majority of Part 145 Repair Stations and other aircraft maintenance facilities presently employ uncertificated mechanic-apprentices who work under supervision to fulfill the 30-month practical experience requirement of 14 CFR 65.77(b) to qualify for the A&P certificate. If the Moss Interpretation is permitted to stand as the Agency's interpretation of the meaning of 14 CFR 43.3(d), then each such mechanic-apprentice would require full-time supervision by a certificated mechanic who would be required to continuously watch every phase of the trainee's work and be prepared to intervene at any moment. The supervisor would be precluded from using any electronic means to perform this surveillance, so would literally have to be physically looking over the apprentice's shoulder. This kind of continuous in-person surveillance would be economically unsustainable. Therefore, the result is that the Moss Interpretation would make it economically infeasible for Repair Stations and other maintenance facilities to employ mechanic-apprentices, and would make it nearly impossible for an uncertificated mechanic to obtain the 30 hours of practical experience required to become eligible for an A&P mechanic certificate.

Similarly, Repair Stations and other maintenance facilities could no longer supervise owner-assisted annual inspections or other owner-performed maintenance, because the full-time on-site surveillance required by the Moss Interpretation would effectively preclude the certificated mechanic from doing anything else while he was charged with supervising the aircraft owner. The seemingly straightforward language of 14 CFR 43.3(d) has been universally understood for the past 60 years to grant supervising mechanics broad discretion to determine the extent of supervision necessary to ensure that the work of the uncertificated person is done properly. In most cases, such supervision takes the form "call me when you're done so I can inspect your work" or "call me when you're ready

to persorm _____ so I can watch.” The Moss Interpretation would put an end to this, and make owner-performed maintenance under supervision a thing of the past.

Given the present acute shortage of certificated mechanics, particularly in General Aviation, it would be extremely unfortunate to put an end to the ability of Repair Stations and other maintenance facilities to employ mechanic-trainees who are working to gain the experience necessary to obtain A&P mechanic certification, and to put an end to owner-assisted annual inspections and other owner-performed maintenance under A&P supervision. This would be the impact of the Moss Interpretation if it is permitted to stand as the Agency’s position on the meaning of 14 CFR 43.3(d) which represents a drastic change to what that rule has been understood to mean for the past 60 years.

REQUESTED REMEDY

We, the undersigned, hereby formally request reconsideration of the Moss Interpretation by AGC-200, and issuance of a superseding revised interpretation of 14 CFR 43.3(d) that restores a supervisor’s discretion to determine the extent of supervision necessary to ensure that the work being supervised is done properly, discretion that has been eviscerated by the Moss Interpretation. We also request reconsideration of the Moss Interpretation’s total ban on using electronic means by a supervisor to satisfy the 14 CFR 43.3(d) requirement to “personally observe” the work performed. In short, we request that AGC-200 withdraw the Moss Interpretation or amend or supersede it with an interpretation that conforms with the plain-language meaning of 14 CFR 43.3(d) as it has been universally understood throughout the industry for the past 60 years.

We believe that the September 3, 2024 Moss Interpretation of 14 CFR 43.3(d) represents an arbitrary and capricious reinterpretation of a universally-accepted, well-settled longstanding industry practice, and is therefore impermissible under the Administrative Procedures Act without formal rulemaking action including notice-and-comment.

Thank you in advance for your expeditious consideration of this request.

Michael D. Busch, A&P/IA



President, Savvy Aviation, Inc.

Tom Lopes, A&P/IA



President, TDL Aero Enterprises, Inc. (CFR #7TLR012B)
Merced, California

Paul New, A&P/IA



President, Tennessee Aircraft Services, Inc. (CRS #FR6R545N)
Jackson, Tennessee

Ryan Dickerson, A&P/IA



Accountable Manager, Western Skyways, Inc. (CRS #WS9R575J)
Montrose, Colorado

Randall Ells, A&P/IA



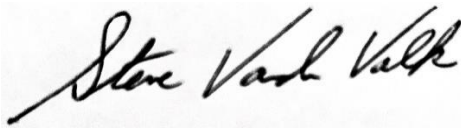
Director of Maintenance, Emerald Coast Aviation (CRS #9MSR836B)
Crestview, Florida

James Watson, A&P/IA

A handwritten signature in blue ink that reads "James Watson".

Managing Member, Watson Aero LLC
Louisville, Georgia

Steve Vander Valk, A&P/IA

A handwritten signature in black ink that reads "Steve Vander Valk".

Director of Maintenance, Paragon Aircraft Service, Inc.
Fairfield, New Jersey

Brandon Thompson, A&P/IA

A handwritten signature in black ink that reads "Brandon Thompson".

Director of Maintenance, Absolute Aero Maintenance
Hayward, California

Colleen Sterling, A&P/IA

A handwritten signature in black ink that reads "Colleen Sterling".

Instructor, San Diego Miramar College (Part 147 program)
San Diego, California

David Pasquale, A&P/IA

A handwritten signature in blue ink, appearing to read 'David Pasquale', written in a cursive style.

President, Pasquale Aviation LLC
Pottstown, Pennsylvania

Attachment: Moss Interpretation memorandum (September 3, 2024)



Federal Aviation Administration

Memorandum

Date: September 3, 2024

To: Jonathan Moss, Manager, Little Rock FSDO, AFG-600

From: Laura Megan-Posch, Assistant Chief Counsel for Regulations,
Regulation Law Division, AGC-200

Prepared by: Jacob Keohane, Attorney Advisor, AGC-210

Subject: Response to request for interpretation for 14 CFR §43.3(d) and the
meaning of the requirement for a repairman supervisor to be “in person.”

This letter responds to your July 8, 2022, request for interpretation of the phrase “in person” under 14 CFR § 43.3(d), which states:

A person working under the supervision of a holder of a mechanic or repairman certificate may perform the maintenance, preventive maintenance, and alterations that his supervisor is authorized to perform, if the supervisor personally observes the work being done to the extent necessary to ensure that it is being done properly and if the supervisor is readily available, *in person*, for consultation. However, this paragraph does not authorize the performance of any inspection required by Part 91 or Part 125 of this chapter or any inspection performed after a major repair or alteration.

(Emphasis added)

You asked whether a supervisor must be physically present at the site of the maintenance, or if he may supervise remotely, through Zoom, FaceTime, live feed TV, photographs, downloadable video, or other electronic means. Assuming remote supervision is allowed, you then asked if the supervising mechanic would be allowed to provide the documentation for return to service electronically.

The Office of the Chief Counsel finds that the phrase “in person” explicitly requires physical presence. Virtual presence, through a live video feed or other technological means, cannot replace the physical presence of a supervising mechanic.

The term “in person” is typically used to distinguish physical presence from mere virtual or remote presence, *e.g.* “Are we meeting in person today?”¹ Interpreting § 43.3(d) to allow supervision by Zoom or FaceTime would render the phrase “in person” redundant, but all parts of binding legal text must be given effect.²

This interpretation is consistent with previous administrative rulings. In Exemption No. 5139 (January 22, 1990), a petitioner asked to be allowed to train its own “workers” to perform preventative maintenance. This petition was denied. The FAA noted that:

[I]t is not clear why the petitioner states that a non-certificated “worker” need not be physically observed by the certificated person “directly in charge” when maintenance is performed by the non-certificated worker. Section 43.3(d) states, in essence, that a certificated mechanic or repairman must be readily available, in person, when he is supervising maintenance performed by a non-certificated person.

In Re New Creations, Inc., FAA Exemption No. 5139, Jan. 22, 1990, at 3.

The phrase “readily available, in person, for consultation” contemplates a physical, hands-on approach to supervision. The certificated mechanic must be available, not just to answer questions, but to notice mistakes and take over if necessary. In *Blakey v. Sugen*, National Transportation Safety Board (NTSB) Order No. EA-5128 (December 10, 2004), the NTSB upheld the suspension of the respondent’s Commercial Pilot Certificate for performing unsupervised maintenance—specifically, for performing some maintenance tasks while in earshot of certificated mechanics, but without any mechanic directly watching him. “One American Avionics employee testified, essentially, that he *observed respondent applying sealant* to the radome on his own, but this witness also conceded that he *didn’t physically observe the installation* itself and ‘assum[ed] he [respondent] probably had to have somebody [from American Avionics] over there to help him out.’” NTSB Order EA-5128 (2004), 5 (emphasis added, alternations in the original). In other words, mechanics must be able to physically intervene at every step of the process.

A live video feed does not allow for this level of supervision. A remote supervisor cannot take over maintenance and can only see what the camera is pointed at. Anything out of frame will go unnoticed by even the most experienced mechanic. In *Blakely*, the respondent was surrounded by mechanics and could have asked them to step in at any time, but nevertheless had his certificate suspended. This circumstance is similar to remote supervision. In the best-case scenario, a remotely supervising mechanic would be

¹ Cf. MERRIAM-WEBSTER.COM, available at <https://www.merriam-webster.com/dictionary/in%20person> (defining “in person” as “in one’s bodily presence”).

² This common-sense proposition is commonly known as the “Canon Against Surplusage” or the “Surplusage Canon.” See, *e.g.*, BRYAN A. GARNER & ANTONIN SCALIA, *A Dozen Canons of Statutory and Constitutional Text Construction*, 99 JUDICATURE 2 (2015), available at <https://judicature.duke.edu/articles/a-dozen-canons-of-statutory-and-constitutional-text-construction/>.

available for questions at any time and could remotely observe most steps of the work, but crucial details might remain out of frame and the supervisor would have no power to step in if necessary. That best-case scenario still would not be enough under § 43.3(d).

Finally, § 43.3(d)'s "in person" language has remained consistent since its enactment in 1964.³ It is worth noting that "in person," to the rule drafters of the late fifties and early sixties, could only have meant physical presence. Interpreting "in person" to mean something other than physical presence would therefore be a significant departure from the original meaning of the text. Interpretative rules issued pursuant to section 553(b)(A) of the Administrative Procedure Act (APA), such as this one, serve merely to "advise the public of the agency's construction of the rules and statutes which it administers."⁴ They cannot change the meaning of the underlying substantive rules they construe.⁵

For these reasons, the Office of Chief Counsel finds that 14 CFR 43.3(d) does not allow for remote supervision of maintenance. Because remote supervision is not allowed, the question of electronically documenting the return to service is not raised and therefore is not addressed by this interpretation.

We appreciate your patience and trust that the above responds to your inquiry.

³ The language that now makes up 14 CFR 43.3(d) comes from Civil Aeronautics Manual (CAM) § 18.10-1 (December 15, 1959). Compare § 43.3(d) ("...if the supervisor personally observes the work being done to the extent necessary to ensure that it is being done properly and if the supervisor is readily available, in person, for consultation.") with CAM 18.10-1 ("*Direct supervision* means that the supervising mechanic personally maintains such observation of the work being performed as is necessary to insure [*sic*] that the work is being performed properly, and the supervising mechanic is readily available in person for consultation with the person performing the work."). In 1961, the FAA announced that it was consolidating Civil Aeronautics Board regulations, Civil Aeronautics Manuals, and other authorities into one unified chapter of Title 14. 26 FR 10698, November 16, 1961. Part 43 was added to the CFR on April 23, 1964, 29 FR 5451, as part of that consolidation project. The "in person" language has remained ever since.

⁴ ATTORNEY GENERAL'S MANUAL ON THE ADMINISTRATIVE PROCEDURE ACT (1947), 30 n.3, available at <http://library.law.fsu.edu/Digital-Collections/ABA-AdminProcedureArchive/AttorneyGeneralsManual.pdf> (explaining the difference between "substantive rules," "interpretative rules," and "general statements of policy").

⁵ See *id.*