

NTSB Order No. EA-5128

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 10th day of December, 2004

Docket SE-16764

(2) of the Federal Aviation Regulations (FARs).<sup>2</sup> We deny

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<sup>2</sup> FAR section 43.3 (14 C.F.R. Part 43), and sections 91.405 and 91.407 (14 C.F.R. Part 91) state, in relevant part:

**Sec. 43.3 Persons authorized to perform maintenance, preventive maintenance, rebuilding, and alterations.**

(a) Except as provided in this section and Sec. 43.17, no person may maintain, rebuild, alter, or perform preventive maintenance on an aircraft, airframe, aircraft engine, propeller, appliance, or component part to which this part applies. Those items, the performance of which is a major alteration, a major repair, or preventive maintenance, are listed in appendix A.

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(d) 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.

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(g) The holder of a pilot certificate issued under Part 61 may perform preventive maintenance on any aircraft owned or operated by that pilot[.]

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**Sec. 91.405 Maintenance required.**

Each owner or operator of an aircraft--

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(b) Shall ensure that maintenance personnel make appropriate entries in the aircraft maintenance records indicating the aircraft has been approved for return to

respondent's appeal.

The Administrator's complaint made the following factual allegations:

1. You are now, and at all times mentioned herein were, the holder of Commercial Pilot Certificate No. 001574064. You do not hold a mechanic certificate.
2. On or about May 24, 2002, you operated a Grumman Mallard aircraft, N730RS, owned by you, on a flight departing from Boeing Field, Seattle Washington.
3. Prior to this flight, American Avionics, a certificated repair station, had performed maintenance on N730RS at Boeing Field, including various alterations to the aircraft's avionics.
4. Prior to this flight you also performed maintenance on N730RS that included installation of the radome and the flux gate for the directional gyro.
5. During your maintenance you were not working under the supervision of the

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(..continued)  
service;

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**Sec. 91.407      Operation after maintenance, preventive maintenance, rebuilding, or alteration.**

(a) No person may operate any aircraft that has undergone maintenance, preventive maintenance, rebuilding, or alteration unless—

- (1) It has been approved for return to service by a person authorized under Sec. 43.7 of this chapter; and
- (2) The maintenance record entry required by Sec. 43.9 or Sec. 43.11, as applicable, of this chapter has been made.

\* \* \* \* \*

holder of a mechanic or repairman certificate who personally observed your work in order to ensure that it was being done properly.

6. At the time of your flight, neither American Avionics nor any other authorized person had made the maintenance record entries required by FAR 43.9 for the above-described work, nor had anyone approved the aircraft for return to service for this maintenance that was performed.

Prior to the hearing, respondent admitted the allegations in paragraphs 1 through 3, and portions of paragraphs 4 (admitted "participat[ing] in the reinstallation of the radome by providing 'manpower'") and 6 (admitted "that American Avionics ... did not make required logbook entries documenting its work").

The hearing testimony showed that respondent contracted with American Avionics, and others, to do extensive work on his aircraft beginning in December 2001. Several times throughout the Spring of 2002, respondent cancelled work and made arrangements to be flown from Wyoming to pick up the aircraft after being told by American Avionics that the aircraft would be ready, only to be later informed by American Avionics that the aircraft would not be ready as originally predicted. Respondent was dissatisfied with American Avionics' temporal performance; he started to put more pressure on American Avionics to complete the work. Respondent was finally told, according to his unrebutted testimony, that the aircraft "would be ready, absolutely no question, ready to fly on May 15<sup>th</sup>." Transcript ("Tr.") at 142. He made arrangements to be flown to Boeing Field on May 22<sup>nd</sup>,

and, several days before departing Wyoming, called American Avionics to ensure that the aircraft would be ready, and was told, again according to his unrebutted testimony, that it would be ready, and that with "debugging" he could depart with it on May 24<sup>th</sup>. Id.

When respondent arrived at American Avionics on May 22<sup>nd</sup>, his aircraft was obviously not ready to fly. Respondent explained: "I looked at the airplane, and there was no interior in the airplane. There were wires hanging all over the place. There were people up in the bow compartments still hooking up things that hadn't been hooked up." Tr. at 143. As respondent testified, over the next several days, "[i]t was just a constant push to get everything put together and get it done, get the job done. I was there until 2:00 in the morning [on the first night]. I tried to keep them moving and get this plane put together so we could fly it and I could leave." Tr. at 144.

Testimony was presented at the hearing regarding respondent's alleged performance of unauthorized maintenance by installing the aircraft's radome. 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." Tr. at 73. Mr. Rulon Horsley, who was the supervisor of all work being performed at American Avionics, testified that he did not authorize any of

his personnel to supervise respondent's "repairs or maintenance," and would have been aware if anyone had "supervised and approved" respondent's work. Tr. at 36. An FAA Inspector testified that respondent's work constituted unauthorized maintenance in contravention of FAR section 43.3.

Respondent testified that he was unaware whether the technicians were qualified under FAA regulations to supervise any work he performed, and, more importantly, he did not claim that he discussed supervision of his work with anyone at American Avionics. Respondent also did not rebut the testimony that he was observed applying sealant unsupervised.<sup>3</sup>

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<sup>3</sup> Respondent testified that:

I said to the technician, "That radome's gotta go on." The technician went and got some silicone sealant and he said, "This is not a simple job. You need to get a big strap to put on here and that thing has to be held specially because it was custom fitted", and I said, "Fine. Do whatever you need to do." He went and got the strap, came back, put the strap on there, and I think there was three of us that were sitting there fitting this thing and putting the screws in. I didn't do that independently. I sat there and helped them install this by helping position the radome, but it's -- it's like an inspection panel. I mean, it's just a cover.... I might have put one or two of the screws in the holes. I didn't tighten them. But I was helping....I thought the silicone -- the silicone sealant made as much sense as using the ProSeal in that there was a good chance, since the radar wasn't working, even though they had finally pretty much given up on trying to get it to work, the radome had to come off. We used silicone sealant all over that airplane and I saw nothing wrong with it. I certainly didn't protest using it.

Respondent flew his aircraft back to Wyoming on May 24, 2002. It is undisputed that American Avionics personnel did not make maintenance entries in the aircraft logbooks for much of the avionics work performed, and that respondent did not review the aircraft logbooks prior to departing Boeing Field.<sup>4</sup>

The law judge affirmed all regulatory violations, but discounted as one basis for the FAR section 43.3 charge the allegations regarding the flux gate. The law judge affirmed the violations of FAR sections 91.405(b) and 91.407(a)(1), (a)(2), because, essentially, the required logbook entries were not entered in the logbooks prior to respondent's departure from

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(..continued)

Tr. at 146-148.

<sup>4</sup> Mr. Horsley testified that he felt the aircraft wasn't airworthy, and he claims to have mentioned this to respondent at some point during the few days that respondent was at American Avionics but his testimony was rather vague on this point. Tr. at 33; 42-43. "He was very adamant about leaving with that airplane, and we were just trying to make as much functional of what we considered crucial items, so that the airplane would actually fly." Tr. at 55. Respondent explained his perspective (and, although not relevant to our decision, appears to admit being put on notice that American Avionics had not completed all work on his aircraft):

It wasn't that I came up there and was going to rip it away from them at all costs. I came up there to pick up the airplane, and I became progressively more frustrated when I got there and it wasn't ready, but they were working to get it ready and they got it ready and they gave it to me ready and they stood there and, you know, helped me load it up, and as I taxied out, they waived. *They said, you know, you need to bring it back so we can finish the job.*

Tr. at 152 (emphasis added).

Boeing Field, the aircraft was, in fact, not returned to service in accordance with FAA maintenance regulations after the avionics work at American Avionics, and respondent admitted to having not reviewed the aircraft log books prior to his departure. The law judge affirmed the FAR section 43.3 charge, after concluding that respondent engaged in unauthorized maintenance when he took part in the reinstallation of the radome.

On appeal, respondent contends that the law judge erred in finding that respondent had performed unsupervised maintenance on the radome in violation of FAR section 43.3.<sup>5</sup> Respondent admits that "he did not affirmatively inspect the aircraft logs prior to ... departure," but, he also argues (but does not explain the relevance) that there is "insufficient credible testimony or inferences ... to establish that American Avionics ever advised him that the aircraft was not airworthy or otherwise unsafe for flight prior to [departing Boeing Field]." Respondent's Appeal Brief at 14. Finally, respondent argues, with regard to sanction, that he was "operating under the basic, albeit mistaken, assumption that American Avionics would take responsibility for putting the aircraft in airworthy

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<sup>5</sup> Alternatively, respondent argues that the radome installation was preventative maintenance that respondent was permitted by FAR section 43.3 to perform. Respondent, however, does not provide a sufficient basis to overturn the law judge's finding in this regard. See 49 U.S.C. § 44709(d)(3) (the Board is "bound by all validly adopted interpretations of laws and regulations the Administrator carries out ... unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law."); Tr. at 114-115, 119-120, 125-126 (explanation by FAA Inspector why respondent's application of sealant was not preventative maintenance).



condition[,]" and argues that his "penalty should be reduced to a civil penalty, or at most a minimal suspension."<sup>6</sup> Resp. Br. at 23. The Administrator urges us to affirm the law judge's decision.

We need look no further than our decision in Administrator v. Easton, NTSB Order No. EA-4732 (1998), to determine that this record supports the Administrator's allegation that respondent violated FAR sections 91.405(b) and 91.407(a). Respondent failed to independently ensure that the required maintenance entries were recorded in the logbook and departed Boeing Field when, in fact, the required entries had not been made. See, e.g., Easton at 5-6; Cf. Administrator v. Haney, NTSB Order No. EA-3832 at 3 (1993) (stating, in context of pilot accused of failing to discover gear pin during pre-flight check, "[t]hat maintenance personnel also failed in their duties illustrates the importance of respondent's function; it does not excuse his conduct.").

Turning to the FAR section 43.3 violation, respondent has not demonstrated that the law judge erred in affirming the Administrator's allegation. The relevant basis for the law judge's decision was that there's no indication that "anybody was supervising [respondent or the American Avionics personnel he allegedly assisted] while they were doing the work." Tr. at 208. Contrary to respondent's argument, the law judge did not

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<sup>6</sup> We cannot accede to respondent's request that we impose a civil penalty or minimum sanction. We are bound to defer to the Administrator's choice of sanction, unless shown to be arbitrary, capricious, or otherwise not according to law. 49 U.S.C. § 44709.

improperly shift the burden to respondent to prove his compliance with the FARs. We think the record is clear that the Administrator presented a prima facie case in support of her section 43.3 allegation that respondent performed maintenance that was not properly supervised. The burden properly shifted to respondent to present specific evidence that he was in fact supervised, and, as the law judge noted, he presented no such evidence to rebut the Administrator's prima facie case.<sup>7</sup>

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied;
2. The law judge's decision and the Administrator's Order of Suspension (as modified by the law judge's decision) are affirmed; and
3. The 75-day suspension of respondent's certificate shall begin 30 days after the service date indicated on this opinion and order.<sup>8</sup>

ENGLEMAN CONNERS, Chairman, ROSENKER, Vice Chairman, and CARMODY, HEALING, and HERSMAN, Members of the Board, concurred in the above opinion and order.

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<sup>7</sup> Respondent, of course, could have communicated with American Avionics personnel about his endeavors and therefore ensured that Mr. Horsley, or some other qualified certificate holder, in the words of the regulation, "personally observe[d] the work being done to the extent necessary to ensure that it is being done properly" and that a qualified "supervisor [was] readily available, in person, for consultation." Respondent's assumption that he was being supervised does not advance his cause (where no evidence demonstrates that, in fact, he was properly supervised).

<sup>8</sup> 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(g).