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[Beyond] Aircraft Maintenance – Legal Lens

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Session Identification Information

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Presenter: Sarah MacLeod

Level: 1 - Introductory

Prerequisite: None

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About Obadal, Filler, MacLeod & Klein, P.L.C.

OFM&K is a boutique law firm based in Alexandria, Virginia (across the river from Washington, D.C.).

It provides management, government affairs and legal services to trade associations and transportation-centric companies with particular emphasis on international aviation safety regulations.

It helps clients navigate the maze of government mandates while enhancing safety, efficiency and productivity.

About the Presenter – Sarah MacLeod

[Sarah MacLeod](#) is managing member of [OFM&K](#) and a founder and executive director of the [Aeronautical Repair Station Association](#). She has advocated for individuals and companies on international aviation safety law, policy and compliance issues since the 1980s.

Ms. MacLeod obtained a bachelor's degree from Evergreen State College, Olympia, Washington and a law degree from Catholic University of America.

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In addition, the application of this material is always dependent on the particular facts and circumstances involved. The use of this material is therefore at your own risk.

Reference Material

References are available throughout the presentation as hyperlinks and in handouts or additional information provided.

The material is made available electronically in Adobe read-only format to registered participants.

If you did not receive this presentation or the reference material, contact the presenter or the provider.

Description

Conducting even a routine mission requires following an array of standards, procedures, and regulations.

Doing so without creating compliance problems requires understanding primary responsibilities for airworthiness under 14 CFR.

It All Starts with the Law

49 United States Code – Transportation

Subtitle I – Department of Transportation

Chapter 1 – Organization

§ 106 – Federal Aviation Administration

Subtitle VII – Aviation Programs

Part A – Air Commerce and Safety

Part B – Airport Development and Noise

Part C – Financing

Part D – Public Airports

Part E – Miscellaneous

It All Starts with the Law

49 United States Code – Transportation

Subtitle VII – Aviation Programs

Part A – Air Commerce and Safety

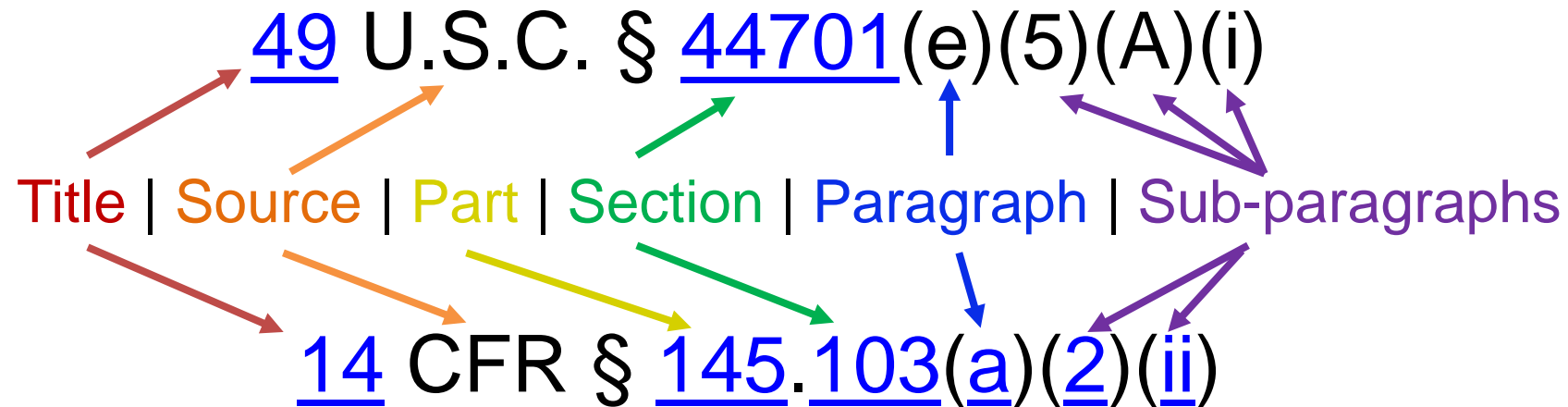
Subpart iii – Safety

§ 44701 – General requirements

§ 44701(a)(1): *“The Administrator of the Federal Aviation Administration shall promote safe flight of civil aircraft in air commerce by prescribing minimum standards required in the interest of safety for appliances and for the design, material, construction, quality of work, and performance of aircraft, aircraft engines, and propellers.”*

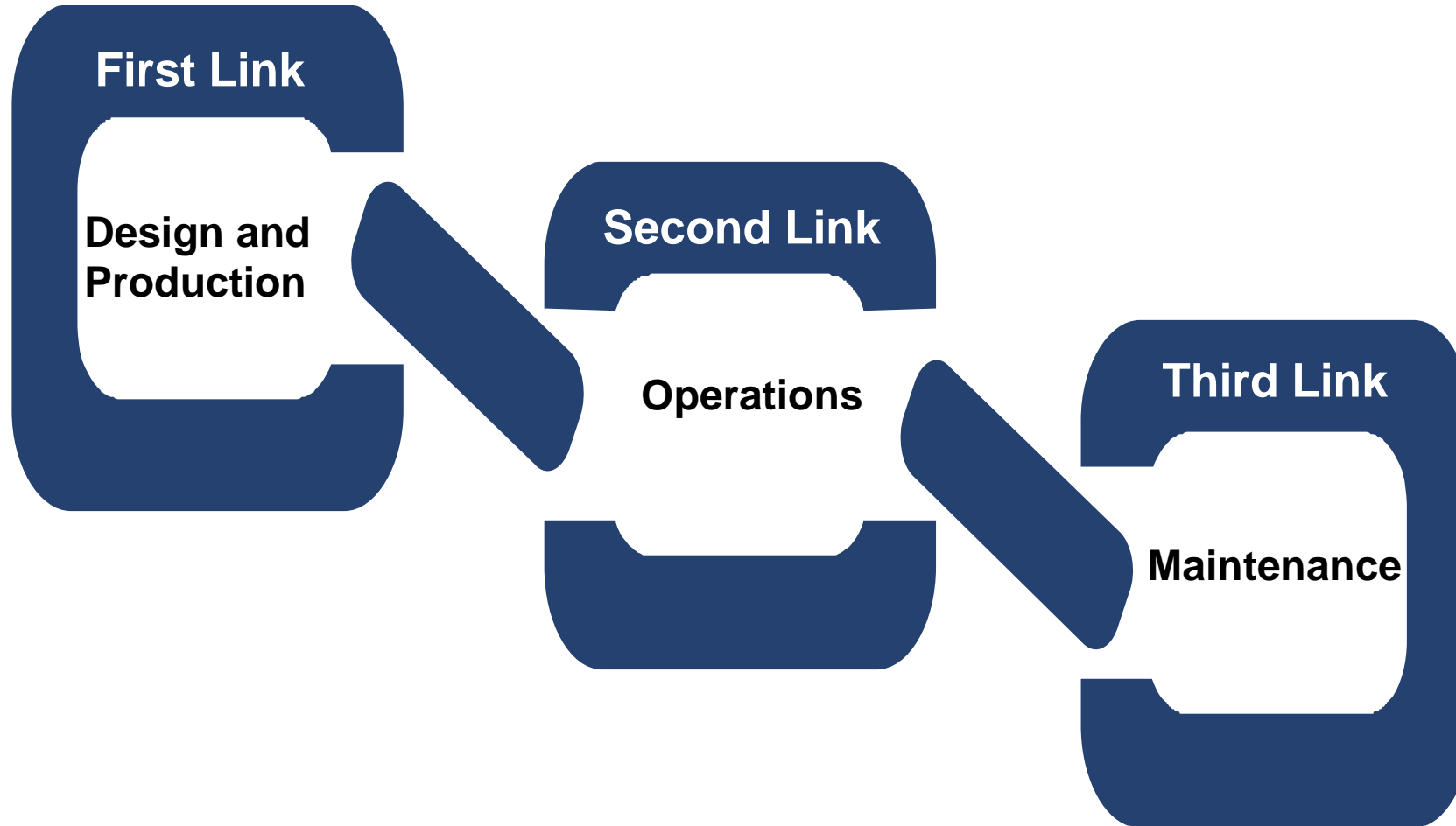
Finding & Citing U.S. Laws and Regulations

- Statute – The United States Code (U.S.C.):
uscode.house.gov.



- Rules – The Code of Federal Regulations (CFR):
www.ecfr.gov.

Lifecycle of Airworthiness



Lifecycle of Airworthiness

- **Design** elements must be shown to meet the airworthiness standards associated with the product, which include:
 - Operating limitations and flight manuals.
 - Maintenance requirements and the methods and techniques necessary for continued airworthiness.
- **Production** must ensure every part meets the design requirements and is in a condition for safe operation before release from the quality system.
- **Operations** must be with an airworthy aircraft and within the operating parameters of the design.
- **Maintenance** activities must return an article and therefore the aircraft to at least its original (or properly altered) condition.

Registered Owner/Operator Responsibilities

Standard airworthiness certificates, special airworthiness certificates—primary category, and airworthiness certificates issued for restricted or limited category aircraft issued under 14 CFR § 21.[181](#) remain “effective” ...if—

- The aircraft maintains its United States registration (see, 14 CFR part [47](#)).
- The maintenance, preventive maintenance, and alterations are performed in accordance with parts [43](#) and [91](#), and the aircraft are registered in the United States.

The owner, operator, or bailee of the aircraft must, upon request, make the certificate available for inspection by the FAA.

Registered Owner/Operator Responsibilities

- Section 91.[401](#) governs the maintenance, preventive maintenance and alteration of all U.S.-registered civil aircraft.
 - Sections 91.[405](#), 91.[409](#), 91.[411](#), 91.[417](#), and 91.[419](#) of subpart [E](#) *do not* apply to an aircraft maintained in accordance with a continuous airworthiness maintenance program (CAMP) under part [121](#), [129](#), or sections 91.[1411](#) (fractional owners) or 135.411(a)([2](#)) (9 or more) of this chapter.
 - Sections 91.[405](#) and 91.[409](#) of this part *do not* apply to an airplane inspected in accordance with part [125](#) of this chapter.
- The sections that “do not apply” are those that are specifically covered in the “higher standards” required for air carriers and commercial operators.
- *Any* owner or operator can *choose* to follow a higher standard.

Registered Owner/Operator Responsibilities

- Section 91.[403](#) makes it clear that each owner or operator is *primarily responsible* for ensuring that aircraft is in an airworthy condition, including—
 - AD compliance—no person may operate an aircraft contrary to an airworthiness directive (§§ 91.403([a](#)) and 39.[7](#)).
 - Complying with airworthiness limitations (§ 91.403([c](#)) shared with maintenance providers under section 43.[16](#)).
 - Ensuring written permission of supplemental type certificate holder (STC) holder before alterations are performed (§ 91.403([d](#))).
- This general responsibility is reinforced in other operating regulations, e.g., §§ 121.1([b](#)), 121.[363](#), 125.[243](#), and 135.[413](#).

Registered Owner/Operator Responsibilities

- Section 91.[405](#) requires every owner or operator to ensure:
 - Appropriate inspections and maintenance are performed (§ 91.405([a](#))).
 - Appropriate entries are made in the maintenance records to indicate that the work on the aircraft, its installed products, appliances and articles has been *approved for return to service* (§ 91.405([b](#))).
 - Inoperative equipment (that is allowed to be inoperative) is placarded (§ 91.405([d](#))) and taken care of at the next required inspection (§ 91.405([c](#))).
 - An *inspection* program is chosen under section 91.[409](#)—a complex regulation.

Registered Owner/Operator Responsibilities

- A § 91.[409](#) inspection program must be chosen by the owner/operator unless the aircraft has a special flight permit, a current experimental certificate, or a light-sport or provisional airworthiness certificate (§ 91.409(c)([1](#))).
- Section 91.[409](#) inspection programs include—
 - Annual inspections (the minimum standard) (§ 91.409([a](#))).
 - Another program (§ 91.409([c](#)) ([2](#)), ([3](#)) and ([4](#))).
- Section 91.409([b](#)) applies when carrying persons (other than crewmembers) or giving flight instruction for hire.

Registered Owner/Operator Responsibilities

- Under § 91.409([b](#)), when carrying persons (other than crewmembers) or giving flight instruction for hire, the owner/operator must elect—
 - To perform an annual inspection every 100 hours or establish a 100-hour inspection program (§§ 91.409(c)([3](#)) and 91.409([d](#))), or
 - An approved aircraft inspection program under parts [125](#) or [135](#) (§ 91.409(c)([2](#))), or
 - A progressive inspection program (§§ 91.409(c)([2](#)) and 91.409([d](#))).
- Owner/operators of large airplanes (except those subject to part 125), turbojet multiengine and turbopropeller-powered multiengine airplanes must choose and record an inspection program under 91.409([f](#)).
- Owner/operators of turbine-powered rotorcraft can elect an inspection program under §§ 91.409([a](#)) (only if not used for hire), [\(b\)](#) (if for hire), [\(c\)](#) or [\(d\)](#) (see above) in lieu of an inspection option of § 91.409([f](#)) (§§ 91.409(c)([4](#))).

Registered Owner/Operator Responsibilities

- Owner/operators of large, turbojet and turbopropeller multi-engine airplanes must choose *and* identify in the aircraft maintenance records an inspection program under section 91.409(f).
- Owner/operators of turbine-powered rotorcraft that elect to use an inspection program under section 91.409(f) must also identify in the aircraft maintenance records the chosen inspection program.

Maintenance Provider Responsibilities

- Know and follow the owner/operator's inspection and maintenance program.
 - Check aircraft records (should be the logbook)
 - If the product is a large, turbojet or turbopropeller multi-engine airplane which § 91.409(f) program was chosen?
 - A continuous airworthiness inspection program that is part of a part 121 or 135 continuous airworthiness maintenance program (CAMP) (§ 91.409(f)(1))?
 - » Is the CAMP currently in use by the part 121 or 135 operator?
 - » Does the operator maintain the same ten seat or more make/model (§ 135.411(a)(2)), e.g., are the aircraft on its operations specifications?

Maintenance Provider Responsibilities

- If the product is a large, turbo-jet and turbo-propeller multi-engine airplane which § 91.409(f) program was chosen?
 - An approved aircraft inspection program (AAIP) approved under § 135.419 of this chapter and currently in use by a person holding the part 135 operating certificate for 9 seats or less (§§ 135.411(a)(1) and 91.409(f)(2)).
 - An inspection program recommended by the manufacturer (§ 91.409(f)(3)).
 - Any other inspection program established by the registered owner or operator of that airplane or turbine-powered rotorcraft and approved by the Administrator under paragraph (g) of § 91.409.
- Comply with the owner/operators' chosen program—some require more than inspections that are recorded under § 43.11.

Maintenance Provider Responsibilities

- Comply with part [43](#) *and the owner/operator's program*—
 - If performing an inspection (a “find it” activity), remember the record of that action is to be made under section [43.11](#) and can result in either approval or *disapproval* for return to service.
 - If performing maintenance (a “fix it” activity), results in an *approval for return to service only for the work performed*.

Often the activities are performed together, so there is always an “approval for return to service”, but that is not how the regulations were written, because it is the owner/operator's responsibility to ensure airworthiness of the entire aircraft or fleet.

Maintenance Provider Responsibilities

- To emphasize the different regulatory responsibilities between the owner/operator and the maintenance provider—
 - Inspections are to find discrepancies and unairworthy conditions.
 - If discrepancies exist, it is the owner/operator's responsibility to ensure the aircraft is airworthy in spite or despite the flaws (not every scratch, dent, pinhole of corrosion, missing screw, or other defect...makes the aircraft no longer conform to its design (*Administrator v. Calavaero, Inc. NTSB Order No EA-2321 (Apr. 17, 1986)*)).
 - In other words, the maintenance provider finds the discrepancies and unairworthy conditions and the owner/operator is to determine what must be fixed, what can be deferred, and what doesn't have to be fixed.
 - The maintenance provider is responsible for fixing the condition and making a record that complies with the owner/operator's program.

Staying out of trouble

Professionals must have tools to understand—

- How the government runs—remember your civics.
- When your interest is piqued, or the law has passed, and you want to read its language, HAI [Advocacy Resources](#) points you to legislation, past, pending, and enacted.
- Code of Federal Regulation ([CFR](#)) references—while anyone in aviation should have [14](#) CFR bookmarked, there are other titles that impact aviation.

What is a “legal question”?

- When dealing with the U.S. government there are:
 - Aviation safety regulations that require both technical and “legal” expertise.
 - Many, many, many other regulations covering—
 - Safety rules—driving, drug, and hazardous materials regulations in [49](#) CFR. Safety and health under [29](#) CFR, with the Occupational Safety and Health (OSHA), wage and hour, and a host of others that apply to every business, not just those of us in “aviation”.
 - Federal government procurement requirements—in the federal *acquisition* regulations (the “real FARs”) system under [48](#) CFR.
- International laws and regulations when operating in foreign countries.





Do you need a “lawyer” or an “expert”...or both?

- What’s the problem?
- Is it an industry problem? Is HAI or another trade association or group pursuing a solution or offering immediate help? Are colleagues openly discussing the issue?
 - Is it about regulations?
 - Contract or contract terms?
 - Personnel?
- Do you just know *your* problem, and are just trying to find out if a lawyer or “expert” help is needed?

Start with your own research with HAI resources

- What legislative solutions or problems are being addressed: skim the [Government Affairs & Advocacy: Resource Library - Helicopter Association International \(rotor.org\)](#)
- Can a colleague help? Check out who is on the Board of Directors and risk a phone call or email: [About - Helicopter Association International \(rotor.org\)](#) or use the membership directory search engine for similar businesses: [HAI Membership Directory \(rotor.org\)](#)
- Finally, check out [Legal Resources - Helicopter Association International \(rotor.org\)](#)

Start with your own research with HAI resources

Expert Guidance	Downloadable Guide	Searchable Directory	Educational Sessions
Stay informed with articles and webinars provided by legal experts.	Get the list of tools the pros use for regulations, flight standards, cases, and more	Find HAI-member legal professionals* by state or practice area.	Attend legal sessions at HAI HELI-EXPO or stream later when you're ready.
			

Questions?



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