

Moonlighting

The 1980s' hit show "Moonlighting" brought mystery and charm to the small screen while propelling Hollywood icon Bruce Willis to the big one and cementing Cybil Shepherd's performance legacy. Much like Willis and Shepherd's private investigators, modern aerospace technicians can work a different job every day. An in-demand certificated mechanic produces great personal value and fills personnel gaps by using that certificate on behalf of multiple employers.

"Maintenance moonlighting" may make for a compelling hour of television, which would of course include sexy regulatory compliance issues. Aviation takes guts and brains, without any glory. Not only must each technician be aware of the certificate under which work is being performed (and/or approved for return to service), but the individual must also understand the business contracts involved to ensure proper coverage by drug testing programs when work is performed for air carriers. Obtaining the knowledge will take some detective work.

The drug and alcohol testing program requirements in 14 CFR part 120 apply whenever a safety-sensitive function is performed in the United States for a part 121 or 135 air carrier or a § 91.147 sightseeing operator. Note that a 2024 rulemaking expanded applicability worldwide for FAA-certificated repair stations effective Dec. 2027.

Importantly, §§ 120.105 and 120.215 mandate that individuals performing safety-sensitive functions be covered by an anti-drug and alcohol program when performing such work directly or by contract including subcontracting at any tier. Any individual performing, ready to perform, or immediately available to perform maintenance or preventive maintenance on an aircraft or component of that aircraft subject to part 120 must comply with the drug and alcohol testing program requirements for each employer.

"An employer may use a contract employee who is not included under that employer's FAA-mandated drug and alcohol testing program to perform a safety-sensitive function only if that contract employee is included under the contractor's FAA-mandated drug and alcohol testing program and is performing a safety-sensitive function on behalf of the contractor (i.e., within the scope of employment of that contractor)," the definition of "employer" in § 120.7 states. Any contractor — even an individual certificate holder contracted to perform covered work on a "moonlighting" basis — must participate in an FAA-mandated testing program.

Maintenance functions subject to part 120 include inspection,

overhaul, repair, preservation, and the replacement of parts. The FAA has opined that any step or series of steps in the disassembly, cleaning, inspection, repair, replacement of parts, reassembly, and testing process is maintenance. Repair functions include specialized services as well as methods, techniques, and practices acceptable to the FAA under § 43.13(a): work steps included in a CMM, traveler, router, task card, etc. There are also many activities performed in repair stations and other facilities that are not subject to D&A requirements, including receiving inspections, tool/equipment restoration, calibration, and engineering functions. Fabrication for maintenance, which is performed as allowed by § 21.9(a)(6), is not a safety-sensitive function.

Determining coverage, when in doubt, depends on whether the activity is required to be documented on a §§ 43.9 or 43.11 record. If yes, it is safety-sensitive and the individual's performance of the task will be obvious to an FAA inspector when reviewing maintenance or inspection releases ... like shooting fish in a barrel.

This applicability along with the expansive definition of "performing" to include those ready and immediately available provides flexibility while demanding compliance attention of maintenance providers. The expectation that an individual will be called upon to "perform" must be included in planning, clear to human resources and contracting personnel, and stipulated by any individual accepting safety-sensitive work.

The skills of an aviation technician, regardless of certificate, are extremely valuable. As with all aviation safety rules, part 120 demands careful planning and attention to details, such as the definitions. Failure to do so during "maintenance moonlighting" can result in an outcome more painful than the cancelation of a television show. **AM**

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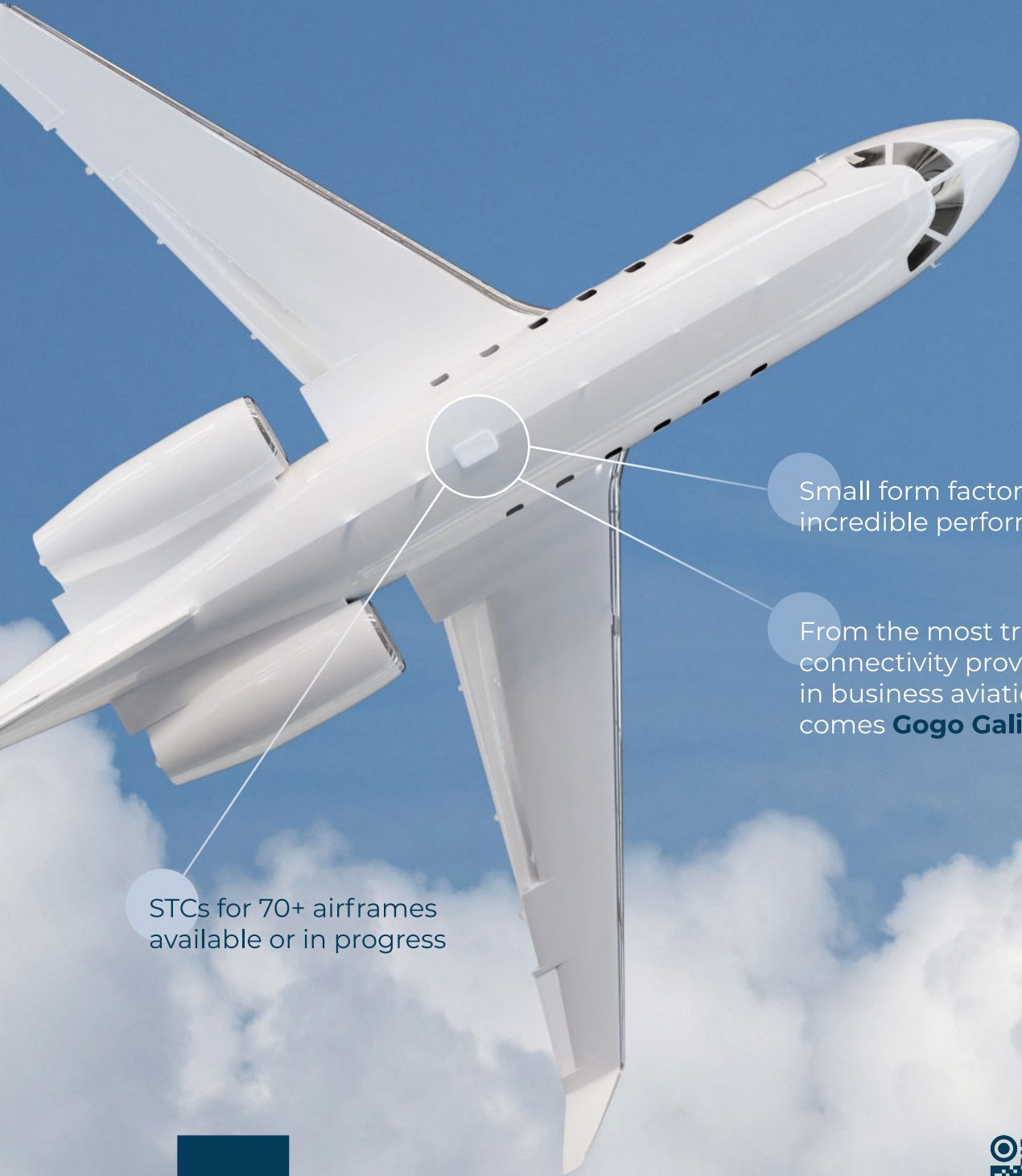
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