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August 30, 2006 VIA E-MAIL TO: rebecca.macpherson@faa.gov

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(AGC-200)
Federal Aviation Administration
800 Independence Avenue, S.W.
Washington, D.C. 20591-0001

Re: Drug & Alcohol Rule Interpretation and Guidance

Dear Ms. MacPherson:

The Aeronautical Repair Station Association (ARSA) has reviewed the August 7, 2006 legal interpretation issued to Pratt & Whitney (Pratt & Whitney interpretation), as well as the Memorandum and Guidance Alert issued jointly by the Drug Abatement and Aircraft Maintenance Divisions of the Federal Aviation Administration (FAA). We are deeply concerned that these documents will fundamentally alter the definition of maintenance. Therefore, ARSA requests that you clarify the issues discussed below.

I. The Interpretation

The Pratt & Whitney interpretation addressed the question of whether fabrication of parts consumed in a repair ("maintenance fabrication") constitutes maintenance. The FAA concluded that it did not. Part of the agency's rationale was that it saw "no substantive difference in the fabrication of a part by a subcontractor under the quality controls specified in Advisory Circular (AC) 43-18 and a part produced by an OEM under the requirements specified in 14 CFR Part 21." ARSA agrees with this observation, as the stated purpose of AC 43-18 "is to ensure that parts fabricated during maintenance and alteration have an equivalent level of safety to those parts produced under the original design holder's production certificate."

However, the basis for the technical equivalency is that the maintenance fabrication occurred under the direction and control of a maintenance provider that possesses both the design data and the quality system needed to ensure the airworthiness of the part. Therefore, while the FAA indicated that maintenance fabrication was performed under § 21.305(d), it is also governed by parts 43 and 145 in that the quality system under the latter regulation is a required element.

Due to the quality system requirement, prior to the issuance of the FAA's drug and alcohol guidance, maintenance fabrication was considered a "maintenance function" under § 145.217(a)(1). However, if such fabrication does not constitute maintenance,

how can it be considered a maintenance function requiring approval under part 145? We ask that you specifically address this issue and provide written guidance to the industry and Aviation Safety Inspectors approving maintenance functions under § 145.217(a)(1).

II. FAA Guidance

a. Cleaning Aircraft and Other Articles

The FAA's August 15th Memorandum and Guidance Alert raises questions because it addresses whether specific activities constitute maintenance. One example, entitled "Building Parts," echoes the substance of the Pratt & Whitney interpretation. Several other examples are also of concern to the Association.

The section entitled "Cleaning the Aircraft" provides that "cleaning of seat cushions/covers would not be considered maintenance." The rationale for this statement (see, page 3-4) is that cleaning is a part of the overhaul process and because the overhaul, and not its individual elements, constitutes maintenance, cleaning is not maintenance.

While an overhaul is certainly maintenance, the fact that cleaning occurs during an overhaul is irrelevant to the question of whether cleaning is maintenance. (Indeed, an inspection is also part of an overhaul; however, it is clearly maintenance under part 1.1.) The reason that many maintenance providers and FAA inspectors believe that cleaning seat covers (and other internal fabric) constitutes maintenance is that cleaning must be made part of the maintenance record required by 14 CFR § 43.9. In addition, manufacturer maintenance manuals contain instructions for cleaning these articles.[1] Further, if the fabric is cleaned improperly, it affects the flammability requirements (i.e., the article will not be returned to the condition required by § 43.13(b)). As such, cleaning would be maintenance not because it is part of an overhaul, but because the provider must comply with part 43 when performing the activity.[2]

ARSA believes that the issue of seat cleaning illustrates why part 43 should be the starting point for any analysis of whether a function is maintenance, and not the nature of the action performed. Prior to the issuance of this guidance, maintenance providers could look to part 43 to determine their obligations. Section 43.1 states when the

[1] See the attached page from the Weber Component Maintenance Manual which calls out specific instructions for dry cleaning seat covers.
[2] ARSA does not suggest that all cleaning functions are maintenance. Vacuuming an aircraft or picking up litter after a flight would not be maintenance; this is because these activities do not require a maintenance record under § 43.9.

maintenance rules are applicable, and § 43.9 clearly requires that each person performing maintenance make a record. Therefore, if § 43.1 applies and a § 43.9 record is required, the action performed must be maintenance. By focusing solely on the action performed, the guidance ignores the requirements of part 43 which provide appropriate direction: If the activity is part of a maintenance record, it is maintenance.

Maintenance manuals also provided clear guidance for the industry: if one must follow the manufacturer's instructions, the activity in question must be covered by part 43. The guidance material also puts this basic tenet in jeopardy. Maintenance providers and the FAA may no longer look to the regulations and the manufacturer's instructions to determine what constitutes maintenance. Instead, they must monitor the FAA's Web site for updates on what is or is not maintenance and under what specific circumstances (the guidance states that cleaning engine parts is maintenance).[3]

We request the regulatory basis be provided for each example currently in the guidance material and on the Web site, and further, that all other examples be supported by a regulatory interpretation.

b. Testing of Components by Manufacturers

Another problematic illustration in the guidance involves manufacturers. The FAA's example describes a manufacturer that performs a test on a component to determine whether repairs are necessary. According to the guidance, because "the testing standard may be part of an inspection requirement in the technical data used in the testing process," this constitutes maintenance.

ARSA is puzzled by this explanation. If a manufacturer (i.e., production approval holder) is performing a test on an article that was previously released from its quality system, placed into service and returned to the manufacturer for repair, that test constitutes maintenance (see Order 8130.21D). Under § 43.3, repair stations and air carriers may perform maintenance, while manufacturers have no such privilege. Manufacturers may only rebuild or alter their own articles under their production approval (see § 43.3(j)).

A manufacturer may only perform maintenance under § 43.3 if it also possesses a repair station certificate or employs persons certificated under part 65. The FAA's

[3] This problem is illustrated in AC 43-205, which states that when cleaning an aircraft or aviation product, if the person performing the activity wishes to use a cleaner not specified in the maintenance manual, it "must be approved by the FAA" per § 43.13. If part 43 applies and the alternative cleaning product must be approved, how can this not constitute maintenance? Indeed, this suggests that the activity is maintenance precisely because the maintenance manual calls out specific products and procedures to be used in cleaning the aircraft.

example did not make clear whether this was the case. ARSA therefore requests that the FAA clarify this statement because it appears to grant privileges to manufacturers that they do not have under the current regulations.

c. Drug Program Options

The guidance material also references the choices a repair station may make to comply with the Drug & Alcohol testing requirements in part 121, Appendices I and J. It may include its employees in an air carrier's program; obtain its own program; or it "may choose to have a program registration obtained from the Drug Abatement Division that may cover multiple certificates, locations, or functions for the same company."

This is the first mention ARSA has seen of repair stations registering their testing programs with the Drug Abatement Division. Previously, the FAA stated that a repair station was required to obtain paragraph A449 in its Operations Specifications if it elected to have its own FAA-regulated program. Is the FAA now saying that a company with multiple repair station certificates must register with the Drug Abatement Division if it elects to have a single program covering all of its entities? It seems to us that paragraph A449 can also be used in this situation. This issue is important to ARSA members, as current industry practice for verifying a repair station's Drug & Alcohol testing compliance is by asking for a copy of its paragraph A449.

Finally, ARSA would like to register its grave concern over the way in which the Drug Abatement and Aircraft Maintenance Divisions have chosen to inform the public about the ever-shifting definition of maintenance. The Memorandum states that these guidance documents "will…attempt to convey a **general sense of direction**" to persons endeavoring to determine whether a particular activity is subject to the testing programs. Unfortunately, the documents contain vague explanations and even contradictory statements about several common aviation activities. More importantly, some of the FAA's statements are cannot be supported by the regulations.

This guidance and future updates to the FAA's Web site will be relied upon by FAA inspectors, repair stations and air carriers when determining whether employees are performing a safety-sensitive function subject to the drug and alcohol testing rules. An incorrect determination can lead to significant problems. The FAA has made clear that the inclusion of employees that do not perform safety sensitive functions in a testing pool is just as serious a violation as not including those who do.

ARSA is committed to working with the FAA to ensure that the industry has clear and useful guidance as it attempts to comply with the new Drug & Alcohol testing regulation

before October 10, 2006. The clarifications and requested regulatory substantiation will assist the industry in understanding the government's expectations and requirements. We recognize that your office endeavors to respond to legal interpretation requests within one hundred twenty (120) days. However, this situation is urgent and therefore, we request that you expedite our request for clarification and interpretations of existing guidance. Further, we urge your office to ensure that future directions be provided only if it can be supported by the plain language of the regulations governing maintenance and previously issued interpretations and/or guidance. Please let me know if you have any questions or desire additional information.

Sincerely,

Marshall S. Filler
Managing Director & General Counsel

Attachment

cc: Rick Domingo, AFS-300 Diane Wood, AAM-800