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When the Federal Aviation Regulations (FARs) have been violated, in its discretion, the Federal Aviation Administration (FAA) has the option, among other things, to revoke or suspend an individual's or company's certificate. Since certificate suspension or revocation prevents a company from operating its business and can irrevocably damage its reputation, at the preliminary stages of an enforcement action a certificate holder should contact aviation counsel.

One of the tools in the FAA's arsenal is the civil penalty, a monetary fine for violations of the FARs. The FAA can assess civil penalties at its discretion, subject to a maximum dollar amount per violation. Even with this cap, however, multiple violations can aggregate to large fines that could debilitating small to medium size businesses. For this reason, certificate holders should maintain a comprehensive regulatory compliance program.

The Letter of Investigation (LOI) is sent by a local FAA office conducting an investigation. It states the particulars of the incident under investigation as well as the FARs allegedly violated. With appropriate help from regulatory counsel, responding to an LOI provides a certificate holder the opportunity to work with the local office to reach an informal settlement.

Certificate holders are increasingly becoming targets of criminal investigation, subjecting them to the possibility of law enforcement officials executing search warrants on their business premises. All employees should be instructed on the proper and legal steps that should be taken when investigators arrive with a search warrant, which are described in this article.

Certificate holders must be aware of their rights and obligations when faced with the threat of an enforcement action. Depending on the situation, being too cooperative or too reticent can impede your ability to achieve a favorable resolution. In light of the complexity of the FARs and the outside factors that influence FAA actions, a certificate holder should seek at least some advice from aviation counsel.

The FAA's self disclosure program reflects a shift away from maximizing penalties for violators and towards increased aviation safety through collaboration with regulated parties. The success of the program results from a more open dialogue between the industry and the FAA, whereby violations are voluntarily reported to the FAA, and the FAA foregoes assessing civil penalties if proper remedial measures are taken.
Before There Was Self-Disclosure II

The FAA’s self disclosure policy can be beneficial to regulated parties provided that they self disclose in the proper manner. Failure to follow the proper process, as described in this article, can result in an ineffective self disclosure, leaving the certificate holder open to an FAA enforcement action.

Put It in Writing!

When dealing with the FAA, a certificate holder should not rely on verbal assurances. Any agreement with the FAA, particularly in regard to regulatory enforcement, should be reduced to writing and, if possible, signed by both the certificate holder and the FAA representative.

Interpretation of FAR 43.9

The FARs require that maintenance providers include an accurate description of work performed in maintenance records. When performing work according to a service bulletin that specifies use of an Original Equipment Manufacturer (OEM) part, if a maintenance provider substitutes a Parts Manufacturer Approval (PMA) part it must make a notation on the maintenance record to that effect.

Section 145.2: The Claws That Catch I

Repair stations that perform maintenance for a part 121 air carrier must be familiar with those portions of part 121 with which they are required to comply. This includes strict limitations on duty time for repair station personnel performing work on part 121 aircraft. These limitations can result in compliance problems for the unwary repair station.

Section 145.2: The Claws that Catch II

The FARs require repair stations that perform work for part 121 air carriers to maintain records in accordance with part 121. Part 121 imposes more stringent recordkeeping requirements, some with which the repair station must comply and some with which the repair station can contract with the customer to determine the party responsible for compliance.

In Accordance with the Carrier’s Manual

Repair stations must perform maintenance under part 121 in accordance with their customer, the air carrier’s maintenance manual. Because the air carrier’s maintenance manual may contain repairs different from those specified by the manufacturer, it is imperative that a repair station obtain and maintain the applicable portions of its air carrier customers’ maintenance manuals.

The Sum of the Parts

Complete and accurate maintenance records, while necessary to comply with the FARs, also benefit repair stations and their customers. When using a Parts Manufacturer Approval (PMA) part in a repair where the manufacturer’s maintenance manual specifies use of the Original Equipment Manufacturer (OEM) part, if the maintenance manual is referenced in the maintenance records, it may be necessary to note the use of the PMA part.
Filling the Black Holes

The FARs do not require that an aircraft part’s condition be documented when it is removed from a product, or that all aircraft parts produced under a production or type certificate have a “birth certificate”, i.e., are marked or accompanied by documents certifying their approval status. Increasing a part’s traceability, however, could prove beneficial to the aviation maintenance industry.

Overhaul Revisited

The FARs require specific procedures for work to be considered “overhaul,” including a requirement that the part be “tested.” In cases where no functional test or operational check is specified in the maintenance or overhaul manual, an inspection in accordance with the manual to determine a part’s airworthiness is sufficient to meet the FARs overhaul requirement.

When the Feds Knock

Federal investigations, including those regarding Suspected Unapproved Parts (SUPs), can have significant legal ramifications for a repair station. It is imperative that a repair station is aware of its rights and responsibilities with regard to an investigation, including the scope of material and records it is required to provide to the FAA and the Inspector General (IG) absent a subpoena.

I Know I Have to Drug-Test Them, But Just Who ARE My Safety Sensitive Personnel?

The FARs require that repair stations performing work for a part 121 air carrier or part 135 Operator test their “safety sensitive” employees for drugs and alcohol. This article helps identify which employees are safety sensitive personnel and explains why testing non-safety sensitive personnel may not be in a repair station’s best interest.

Drug Testing I: Medical Examinations, Drug Testing, and the ADA

Before a repair station expands its drug testing program beyond the safety sensitive personnel required by the FARs or begins requiring medical examinations of all its employees, it should carefully consider the legal ramifications. An employer must be aware that federal law restricts the purpose and scope of medical examinations, and some states’ laws restrict the use of random drug tests, except where federal law specifically requires it.

Drug Testing II: Segregate the Testing Pool

The FARs explicitly prohibit including a repair station’s non-safety sensitive employees as part of its FAA required drug testing program. Repair stations that choose to test non-safety sensitive employees must proceed with caution, since, among other things, the FAA requires the segregation of safety sensitive from the non-safety sensitive employees into different pools for purposes of random drug testing.
How Much Is Enough?
A repair station must consider the regulatory and commercial considerations in play when it performs work on a part that has not previously been maintained under the FARs part 43. While an overhaul of such a part would squarely bring it into compliance with part 43, a repair station is not necessarily required under the FARs to perform an overhaul in order to approve the part for return to service. However, this does not shield a repair station from negative business consequences when it provides an “underperformed” repair to its customers.

Fabricating Parts for Maintenance
When a mechanic fabricates a part for an owner, and the part is associated with a repair performed by the mechanic, the FARs do not require the mechanic to obtain a Parts Manufacturer Approval (PMA). The FARs manufacturing rules do not apply in cases where the fabricated part is provided as part of a repair, i.e., the performance of a service, since the PMA rules cover only parts fabricated for sale and subsequent installation in a type certificated product.

Approved by Whom?
There are several options available for the operator of a foreign-registered civil aircraft seeking to have work performed by a FAA certificated U.S. repair station using data approved by a foreign civil aviation authority (CAA). Determining the customer’s needs will help determine which option best suits the situation.

Ask ARSA
Repair station employees must comply with the duty time limitations in part 121 while performing work on parts or products for part 121 air carriers, regardless of the scope or amount of time the work takes. This means that an employee that performs mixed work, both part 121 work and other work, must still comply with the duty time limitations.

Defining Overhaul
The FARs specify the steps necessary for work to qualify as an “overhaul.” In cases where one of these steps, disassembly, is impossible or impractical, for instance a single piece part incapable of non-destructive disassembly, the part can still be overhauled, according to Federal Aviation Administration legal interpretations.

FOIA: Holding the Agency Accountable
The Freedom of Information Act (FOIA) ensures accountability by requiring the federal government, including agencies like the FAA, to make documents available upon request. This article details the form and manner in which a member of the public should make a FOIA request of the FAA and the procedures to follow once a request is made.
The Empire Strikes Back

Though the Freedom of Information Act (FOIA) generally requires the government to make documents available upon request, there are exemptions from disclosure, some of which serve to protect proprietary, commercial, or financial information that certificate holders may provide to the FAA. Persons providing documents to the FAA should protect these documents from FOIA request by clearly identifying under which FOIA exemptions these documents fall.

Interacting with the FAA in an Enforcement Environment: Brevity is the Soul of Wit, but Specificity May Add Years to Your Life

A certificate holder must be aware of the scope of records or documents it must provide to the FAA during an investigation or inspection. Additionally, certificate holders have the right to be provided, in a specific and clear writing, any changes an FAA inspector requires as the result of an inspection. Certificate holders who are aware of their rights and responsibilities can more capably comply with the actual requirements of the FARs.

Service Bulletin Wonderland

While a manufacturer may refuse to provide an acceptable method for accomplishing maintenance, it does not mean that no method exists, and it does not preclude the FAA from accepting other methods for performing the maintenance. Keep in mind, however, that minor repairs must be performed using methods, practices, or techniques acceptable to the FAA, and major repairs must be performed using acceptable methods and using data approved by the FAA.

One Person’s Scrap...

Though generally not required by the FARs, parts documentation helps support the installer’s duty to ascertain airworthiness. Absent documentation, when using a replacement part in a larger assembly, a person performing the maintenance may have to perform inspections, tests, or measurements to determine whether the part meets airworthiness requirements.

145.2: Which Manuals?

A repair station performing work for a part 121 air carrier must only maintain copies of those portions of the air carrier’s general maintenance manual (GMM) that apply to the work the repair station performs for the air carrier. FAA “Orders” (e.g. Order 8300.10) represent internal guidance for the FAA. A certificate holder is only required to comply with an Order in so far as it reflects a requirement embodied in the FARs.

Beware the IPM Jabberwocky

Repair stations cannot rely on the assurances of FAA employees in determining what regulatory requirements and guidance to follow, particularly when such guidance has yet to be published. Reliance on unsubstantiated claims can result in compliance problems. Repair stations should, therefore, insist that any policy change be provided in writing before changing their operations to comply.
Hazmat I: Wake Up Out There

Hazardous material (hazmat) is governed by rules concerning its handling, packaging, labeling, and shipping. A repair station must be familiar with these regulations, must train their employees regarding the handling of hazmat, and must be aware of what materials the regulations consider hazmat.

Hazmat II: Packaging, Labeling and Shipping

To properly handle the transport of hazardous material (hazmat), a repair station must ascertain the legality of the hazmat shipment, prepare the necessary shipping papers, and label and mark the package in compliance with the regulations. A repair station is responsible for meeting all three requirements prior to shipping the hazmat.

Hazmat III: Investigations

Alleged violations of the hazardous material (hazmat) regulations can result in FAA or Department of Transportation (DOT) investigations. This article provides an overview of how these investigations proceed. Because fines in hazmat cases can be considerable, persons or companies under investigation are encouraged to contact regulatory counsel upon receiving a Letter of Investigation (LOI).

Airworthiness Directives Compliance

FARs make the owner/operator responsible for complying with an Airworthiness Directive (AD). However, various regulatory and commercial considerations can affect whether a repair station must, or should perform maintenance on a part or product in compliance with an AD.

The Numerous Steps

Federal law provides regulated parties the right and opportunity to comment on proposed changes to regulations, but provides fewer safeguards when changes are made to internal agency policy. As a result, the FAA too often changes internal policy without sufficient public comment, resulting in policies that contradict the regulations or pre-existing internal policies. Public participation helps to ensure the quality of any policy changes.

An Essential Link

Instructions for Continued Airworthiness (ICAs) establish an important safety and regulatory link between the design and production on one hand and the operation and maintenance on the other. Failure on the design and production sides to create or make available ICAs and failure of the FAA to enforce its own regulations make it difficult for the operation and maintenance sides to comply with the regulations.

Establishing the Parameters

The FAA’s attempt to develop guidance on ICAs related to engines is an opportunity for a consistently applied interpretation of the ICA requirements. Industry must engage the FAA in dialogue on the issue.
A Parts Approval by Any Other Name

Parts Manufacturer Approval (PMA) and Technical Standard Order Authorization (TSOA) are both used to establish that design and production of a replacement part has FAA approval. While the PMA specifies the products on which it is eligible for installation, a part with a TSOA must establish that it is eligible for installation, often through a product's type certificate or supplemental type certificate.

Instruction Continues

The FAA has clear regulatory authority to require Instructions for Continued Airworthiness from Type Certificate and Supplemental Type Certificate Holders. The FAA may also, however, have the authority to require Part Manufacturer Approval (PMA) holders and Technical Standard Order Authorization (TSOA) holders to provide ICAs.

Approved May Not Be Acceptable

FAA inspectors and industry representatives often fail to distinguish between approved technical data and acceptable methods, techniques, and practices for performing maintenance. Technical data are the drawings and specifications that describe the design features of a product or part. Methods, techniques, and practices are the “how-to instructions” for performing all maintenance and alterations on those parts and products.

Unapproved but Airworthy

The FARs prohibit a manufacturer from producing a part contrary to part 21. An installer of an “unapproved part,” however, does not violate the FARs if the part meets airworthiness standards. This means, if the unapproved part returns the article to its original or properly altered condition, the FAA has no basis for an enforcement action against the installer or the owner/operator.

Approved or Acceptable

A repair station may use its “best shop practices” rather than the practices recommended in the manufacturer’s maintenance manual. To use best shop practices, a repair station must carefully demonstrate that its methods would be acceptable to the FAA.

The Force of Law

The FAA has broad authority to ensure aviation safety, including issuing airworthiness alerts or bulletins. These advisory documents can have a devastating effect on a certificate holder’s business. The FAA, therefore, should be sensitive to the issues of fundamental fairness when evaluating the need for and drafting airworthiness alerts.

Part Substitutions

Substituting a part different from that originally installed in an aircraft is permissible if the aircraft is returned to its original or properly altered condition. A repair station that makes such a substitution should be prepared to show the FAA that it has a reasonable basis for determining that the part substitution does not affect the airworthiness of the aircraft.
Parts Substitution Revisited

Technical Standard Order Approval (TSOA) does not confer installation eligibility. When using a TSOA replacement or substitution part, the installer must be prepared to demonstrate that the part is acceptable or approved by the FAA.

Methods, Techniques and Practices vs. Technical Data

Methods, techniques, and practices are the “how-to instructions” for performing maintenance and alterations on a part or product. These are found in instructions for continued airworthiness (ICAs), service bulletins, advisory circulars, process specifications, industry standard practices, etc. Technical data is the engineering data or drawing and specifications that describe a product or parts design.

Approved by vs. Acceptable to

Many FAA inspectors and industry representatives are unclear about the difference between the regulatory requirements for “approved by” and “acceptable to” the FAA Administrator. Approved by requires that the certificate holder obtain the FAA’s approval before proceeding. Acceptable to does not require prior FAA approval, but only that the FAA would approve, if asked.

Approved Means Approved

An authorized Designated Engineering Representative (DER) may approve technical data for major repairs or alterations not related to critical or life-limited parts. An appropriately rated repair station can then perform that repair or alteration and approve the article for return to service. In this, and any other situation, the FAA cannot rely on an Order to create an obligation not already embodied in the FARs.

The God of Airworthiness

A part may be eligible for installation even in the absence of a production approval, provided the installer has a reasonable basis to believe it is airworthy. This means that use of used and foreign parts is permissible if the maintenance provider can determine that the part conforms to airworthiness standards.

Write the Right Record

If a maintenance provider fails to note on maintenance records that it used a part different from that identified in the manufacturer’s maintenance or overhaul manual, it could be subject to an enforcement action of intentional falsification of maintenance records. This is true even for situations where the substituted part has a Parts Manufacturer Approval.

Calibration Requirements

The FARs require that inspection and test equipment used as the basis for a “return to service” statement must be calibrated either using a standard derived from the National Institute of Standards and Technology, a standard provided by the equipment manufacturer, or a standard of the country of manufacture, provided it is approved by the FAA.
The NIST

A domestic repair station may use calibration standards derived from the National Institute of Standards and Technology (NIST) for its inspection and test equipment. This means a repair station can send its equipment to outside laboratories that are NIST-accredited. These laboratories can either calibrate the equipment for the repair station or test the repair station’s own calibration equipment to make certain it conforms to NIST standards. A repair station may also perform all calibration in-house, provided it has the necessary facilities.

Calibration: The End Game

For administrative ease, foreign repair stations may wish to use their countries’ calibration standards. This requires a showing that those standards are derived from standards of the National Institute of Standards and Technology (NIST). Despite the existence of mutual-recognition agreements between NIST and many foreign countries, the process for demonstrating equivalence is complex.

Make It a Regulation

The aviation industry has the right to rely on longstanding FAA policy and interpretations of the regulations. If the FAA chooses to change a longstanding regulatory interpretation, such a change is tantamount to a rule change, and the FAA must provide a notice-and-comment period prior to the change.

Petitions For Exemption

Petitions for exemptions must specify the regulations from which an exemption is sought and the aircraft or persons covered by the exemption. The petition must have information and arguments supporting the assertion that the exemption is in the public interest and does not adversely affect aviation safety. A certificate holder who is granted an exemption must be aware that the exemption will expire.

Tools and Equipment

A repair station must have the tools and equipment necessary to perform the maintenance functions appropriate to its rating. As a general principle, a repair station should have on its premises, or at its disposal, the equipment and tools recommended in the manufacturer’s maintenance manual, or their equivalent. Equivalent equipment and tools are those that allow the repair station to consistently perform airworthy repairs.

Part Marking I: The Basics

The FARs require that manufacturers mark products, critical components, Parts Manufacturer Approval (PMA) parts, and Technical Standards Order Authorization (TSOA) articles. The majority of components, assemblies, and parts produced under a type and production certificate do not require marking.

Part Marking II: ID Plates & Other Markings

A repair station removing, changing, or installing identification plates or markings in the course of maintenance must be aware of the regulatory requirements related to products, technical standard order authorizations (TSOAs), and parts. Additionally, a repair station should be aware of criminal and commercial laws that affect parts and product marking.
Part Marking III: Un-Marked Parts

A repair station that receives a part whose markings are no longer legible may still use the part if it is determined airworthy. A repair station may also mark a part whose identification plate or marking is no longer legible either using a method described in the manufacturer’s maintenance manual or through the repair station’s established procedure. A repair station should be certain that its mark properly identified the part and does not compromise the part’s airworthiness.

Part Marking IV: Life-Limited Parts

The Federal Aviation Regulations permit a maintenance provider to re-mark a life-limited part that’s markings are no longer legible. Before a maintenance provider re-marks a life-limited part, it must verify that the owner or operator has ensured that the part is in fact the one to which the part and serial numbers apply.

The Battle of the Forms, Part One

Absent a Bilateral Aviation Safety Agreement (BASA) and Maintenance Implementation Procedures (MIP) where the U.S. and a foreign country agree to accept airworthiness certifications made in each country, a Joint Aviation Authority (JAA) Form One, by itself, is insufficient to constitute a valid approval for return to service under the FARs. A JAA-certificated repair station must also be an FAA-certificated repair station and reference FAR language on the JAA Form One for the return to service approval to be valid under the FARs.

Emergency Orders

Changes in federal law now permit the National Transportation Safety Board (NTSB) to review the emergency determination relating Federal Aviation Administration’s (FAA’s) emergency revocation of a certificate. This allows for an expedited and potentially more balanced review of the emergency underlying an emergency revocation.

The Bills on the Hill

Changes in federal law restrict the FAA from issuing a certificate to any person, including repair stations, convicted of a violation of federal law related to counterfeit or fraudulently represented aviation parts. Repair stations should be aware that they may have a regulatory and civil obligation to determine whether employees or owners of the repair station have been convicted of such crimes.

Is Silence Golden?

A recent trend towards criminally prosecuting individuals for aviation accidents is resulting in reluctance of witnesses to provide critical safety and accident information to the National Transportation Safety Board (NTSB). This trend could affect the NTSB’s ability to provide important safety recommendations in the wake of aviation incidents. Despite this, members of the aviation industry should be aware of their rights, particularly with regard to self-incrimination, before speaking to investigators.
Yellow Means WARNING!

A yellow “serviceable” tag or FAA Form 8130-3 does not automatically make an article eligible for installation on a type certificated product. It is the responsibility of the person who approves a product or article for return to service to make certain that the work performed returned the product or article to an airworthy condition.

Much Ado About Little

Regulated parties should be aware of the distinction between record keeping requirements based on the FARs and those based on policy that FAA enforces like regulation. Form 8130-3 Block 13 is regulation based. Form 8130-3 Block 12 is policy based.

Recording Major Repairs

Recordkeeping requirements for major repairs differ depending on the entity performing the repair and the entity for which the repair is being prepared. Regulated parties should be aware of all parts of the FARs that might apply to the work they perform.

Repair Station Records

FAA policy provides that absent manual or contract language to the contrary, a part 121 air carrier is responsible for retaining records per part 121. A repair station need only comply with part 145 recordkeeping requirements.

Hold the Phone

Regulated parties have a right to rely on longstanding FAA interpretations of regulations. Dramatic changes to these interpretations require a full notice and comment rulemaking. FAA attempts to change drug test policy for non-certificated subcontractors of air carriers without proper notice and comment.

Standing Up

While regulated parties often feel compelled to capitulate to FAA demands, even when not justified by regulation, if one is willing to expend the resources to fight it, there can be a positive result.

Subcontracting Saga

FAA reliance on an appendix to list job functions and equipment requirements for a particular rating is inappropriate since such a list becomes outdated quickly. This problem is exemplified by difficulties repair stations with Class 3 ratings have encountered with FAA trying to restrict the practice of contracting and heat treating.

The Complete Record

Form 8130-3 or the yellow tag does not constitute the complete maintenance records the regulations require. A repair station must identify all subcontractors it uses to perform any given maintenance, but it does not have to be recorded on Form 8130-3.
Keep ‘Em Busy

Despite assertions to the contrary by some FSDOs, a certified mechanic directly in charge of the maintenance functions of an instrument and propeller rated facility does not need to obtain a repairman certificate.

IPM Requirements

A repair station should have a clear understanding of what information the regulations require for the IPM and what information is “suggested” by the FAA or its inspectors. This article delineates the two. Failure to comply with information in the IPM can result in enforcement action against the repair station, even if the information is not required by the regulations.

IPM-Accepted or Approved?

A repair station must keep its IPM current, meaning that the manual must reflect the actual practices of the repair station. If it does not, it is not current. A manual “approved” by the FAA cannot be changed without prior authorization from the FAA. A manual “accepted” by the FAA can be changed without the FAA’s prior consent.

One Manual

A repair station can include its IPM as part of a larger manual that addresses requirements outside the FARs, such as other CAA regulations or ISO 9000. A manual that addresses multiple requirements outside the FARs should identify which of its sections comply with the requirements for an IPM.

The One Manual System

The repair station manual and quality control manual can be combined and may also be used to comply with foreign CAA or third party quality system requirements. The RSM and QCM are accepted by the FAA, meaning they can be changed without prior approval. The Approved Training Program should be a separate manual/document since it requires FAA approval before any change can be made.

Unintended Consequences

To subcontract to a non-certificated organization, a repair station must (1) require the non-certificated subcontractor to have a quality control system equivalent to its own, (2) remain directly in charge of work, (3) perform inspections and/or tests to determine the non-certificated subcontractor performed the work properly, (4) have a contract with the subcontractor that states that the subcontractor will allow FAA inspection of its facilities, and (5) Not approve an article for return to service if the subcontractor refuses to allow FAA inspections.

Maintenance Function

Part 145 permits repair stations to contract out any maintenance within its ratings, whether to a certificated or non-certificated source. Part 145 prohibits “overtagging,” or only providing approval for return to service for maintenance a subcontractor performed, but only for completed type certificated products (i.e. aircraft, engine or propeller).
Contracting Out

Some transactions are “clear cut” examples of parts brokerage and others of contracting out of maintenance. For situations that may not be as clear, a repair station should keep in mind that it is contracting out when it receives a request to perform maintenance from a third party, then requests another source to perform some part of that maintenance while it performs another part of that maintenance itself, and the repair station approves the completed workscope for return to service. Using these guidelines can help a repair station navigate this complex area of the Federal Aviation Regulations.

Disposition Of Life-Limited Parts

While regulations regarding disposition of life-limited parts track closely the practices of the industry, repair stations should be aware of the recordkeeping requirements that do and do not apply to them.

Parts Involved In “Accidents”

Commercial certification regarding a part’s involvement in an accident is of little value. A repair station should establish a part’s eligibility for installation based on its airworthiness, as determined by the work scope performed by the repair station that originally repaired the damaged part.

Airworthiness Directives

Repair stations do not have a regulatory responsibility to comply with Airworthiness Directives (ADs). As a business consideration, they should, nonetheless, have a monitoring system to track the issuance of ADs for products on which they perform work. A repair station should always inquire to determine if its customers want the repair station to maintain the product in accordance with the AD. In a case where the customer instructs it not to comply with an AD, the repair station should record this instruction in the maintenance records.

Certificate Revocation Under AIR-21

Under legislation reauthorizing the FAA, known as AIR-21, the FAA may not issue certificates to any person convicted of a counterfeit aircraft parts crime or repair station owned by such a person. The law also requires the revocation of existing certificates issued to persons convicted of such a crime, and restricts a repair station’s right to employ a person convicted of such crimes.

Contract Maintenance Liability

A repair station that contracts out maintenance to a non-certificated source is responsible under the regulations for all work performed. Federal Aviation Administration policy and inconsistent regulatory requirements make it unclear whether a repair station is responsible under the regulations for the acts or omissions of its certificated contractors.

Fabrication During Maintenance

The FAA permits the fabrication of parts without a Parts Manufacturer Approval (PMA) pursuant to a repair or alteration, if the part is used in that repair or alteration, is produced in accordance with FAA-approved or acceptable design data, and is produced under an acceptable quality control system.
Backward Thinking
A limited specialized service rating is only required when a repair station only engages in that one specialized service and that service requires equipment and skills not ordinarily found in regular repair stations. While limited specialized service rated repair stations must list their process specifications on their operations specifications, repair stations that develop their own process specifications but are not engaged only in that service, do not need to have a limited specialized service rating, nor do they need to list their process specifications on their operations specifications.

ICAO Revisited
The International Civil Aviation Organization (ICAO) apportions international regulatory responsibility among an aircraft’s State of Design, State of Manufacture, State of Operator, and State of Registry. The most fundamental rule of international aviation maintenance is that the State of Registry is the controlling regulatory authority for maintenance and alterations performed on the aircraft, engine, or related components. The State of Registry issues certificates of airworthiness and is responsible for continued airworthiness for aircraft bearing its registration mark.

Major International Differences in Repair Station Responsibilities
International Civil Aviation Organization (ICAO) and bilateral agreement requirements control the manner in which a repair station performs maintenance or alterations on a foreign-registered aircraft. It is important for repair stations that perform on foreign-registered aircraft (or related articles) to be aware of which National Aviation Authority’s regulations apply.

International Import and Export Requirements
The import and export of new engines and propellers are subject to different rules than new parts, materials, or appliances for installation in an aircraft registered in the import state. Differences in import and export regulations also exist depending upon the bilateral aviation safety agreements that exist between the importing and exporting countries. A repair station seeking to install an imported product or other article should be aware of these nuances.

Food for Thought
A reasonable interpretation of the FARs could require any inspection associated with an Airworthiness Directive (AD) to be accompanied by an explicit disapproval for return to service if an uncorrected discrepancy is not addressed. This reading of the regulations serves a strong public policy interest in making certain that maintenance or alteration necessary to airworthiness is performed before a product or article is approved for return to service.

Rubber Stamp?
Changes in federal aviation law now allow the expedited appeal of an FAA emergency revocation or suspension of a certificate. The change, part of Congress’s 2000 legislation reauthorizing the FAA (known as AIR-21) provides a person the right to appeal a revocation or suspension to the National Transportation Safety Board (NTSB) within two days. It also requires the NTSB to make its determination regarding the appeal within five days.
ICAs: An Essential Link

The FARs requirement that approved design holders prepare and make available and certificated repair stations obtain and maintain in current condition Instructions for Continued Airworthiness (ICAs) help to ensure aviation safety. Currently, because the FAA has failed to require approved design holders to make ICAs available to repair stations, an essential link in the regulatory chain is missing. The FAA must understand the entire regulatory regime related to ICAs and produce guidance for FAA personnel and the general public to ensure that the intent and requirements of the regulations are realized.

Trucks, Planes and Automobiles

The Environmental Protection Agency (EPA) has issued rules to require manufacturers of automobiles and light-duty trucks to make service information available to those who repair their products. Despite some differences, the aviation maintenance industry can look to the EPA regulatory regime as a model if congressional intervention in the ICA debate becomes necessary.

Contracting Under the New Part 145

New part 145 allows a repair station to contract out maintenance functions the FAA approves when the repair station does not have the tools, equipment, or materials available, or when workload constraints or emergency situations warrant it. A repair station can only contract out to non-certificated sources if certain conditions are met. One of these conditions requires certain agreements between the repair station and the non-certificated source.

Contracting Out Revisited

By not defining "contracting out," the FAA has created uncertainty about when a business arrangement requires the repair station to obtain FAA approval for the contract maintenance function. A standard to consider for determining whether a function is being contracted out is whether the repair station would be exercising the privileges of its certificate, but opts to have another source perform the maintenance because the repair station cannot, due to a lack of tools, equipment, and materials or because of an inability to meet the customer’s deadlines.

Contract Maintenance: Episode V

This Legal Brief provides examples to help clarify what situations require FAA approval of the contracted maintenance functions and what situations do not represent contracting out under the FARs. Repair stations are reminded to have all contracted maintenance functions approved by the FAA prior to sending contract work to a source.

Complaining Formally

A person filing a part 13 complaint alleging a violation of the FARs regarding Instructions for Continued Airworthiness (ICAs) must include certain essential elements to avoid dismissal of the complaint by the FAA. Even if a complaint is filed properly, part 13 complaints are an imperfect vehicle for affecting change in this area, since it does not require the FAA to take any action or make any determination.
**The Double Whammy**

In addition to Coordinating Agency Supplier Evaluation (C.A.S.E.) audits, repair stations that provide substantial maintenance (i.e. heavy airframe maintenance, disassembly of engines, or work on certain items of emergency equipment) must undergo annual FAA audits of specific maintenance program issues between the provider and carriers. Though repair stations that are not substantial maintenance providers are not subject to these audits, the air carrier must still make certain of a proper interface between its maintenance program and the repair stations’ operations.

**Function at the Junction**

Revised FAA guidance clarifies that approval is not required for maintenance functions performed by certificated sources included on the contract maintenance list or certificated or non-certificated sources performing maintenance for which the repair station is not rated. Despite a prohibition against overtagging of all articles in the guidance, the regulations only prohibit overtagging of complete type certificated products. When a regulation and guidance conflict, the regulation trumps; therefore, overtagging of components is still permissible.

**Drug and Alcohol Testing Redux**

The FAA has issued final rules that embody major changes to its drug and alcohol testing program for parts 121 and 135 air carriers and their direct contractors. The new rule changes requirements related to pre-employment drug screening, the elimination of the periodic testing requirement for pilots, and the removal of the “moonlighting” provision. A proposal to require drug and alcohol screening for contractors at all tiers has been delayed pending a Supplemental Notice of Proposed Rulemaking.

**Drug and Alcohol Testing: Date of Hire**

The new pre-employment screening requirements for the drug and alcohol testing programs under the FARs mean that a person cannot be hired to perform a safety sensitive function until receiving a negative result on a pre-employment drug test. A person can be hired as a trainee if there is a clear distinction between the trainee status and the safety sensitive employee status.

**IRAN?**

“Inspect and repair as necessary” (IRAN) is an ambiguous instruction that can open a repair station to legal action based on the FARs contracts and torts. It makes good commercial sense to require that customers provide a detailed description of the discrepancy to be repaired in an IRAN maintenance request or provide the repair station the contractual authority to perform a complete overhaul.

**Customer Service Initiative**

The Customer Service Initiative (CSI) is an attempt to ensure that the FAA enforces its regulations rather than the opinions of particular FAA inspectors or managers. Through the CSI, senior leadership in the Regulation and Certification organization encourage low and mid-level FAA managers to support Aviation Safety Inspectors while insisting that all actions or requests the inspectors make have a regulatory basis.
Customer Service Initiative II

The Customer Service Initiative (CSI) checklist is a necessary component to a certificate holder’s ability to avail itself of the benefits of the CSI. Reducing to writing the issues, facts, and regulations related to a CSI request will help the certificate holder to communicate its position and better achieve a favorable outcome. This article provides a step-by-step guide to that checklist.

Drug and Alcohol Revisited

In evaluating the proposal to expand its drug and alcohol testing program, the FAA underestimated the economic impact of the rule change on the industry and overstated its safety benefits. The new drug and alcohol rule will not increase the safety of aviation maintenance but rather represents “regulation for the sake of regulation.”

C.A.S.E.

Coordinating Agency for Supplier Evaluation (C.A.S.E.) audits provide value to its participating air carriers as well their vendors and suppliers. To maintain that value, C.A.S.E. audit standards must remain grounded in the regulations and focus on issues that will enhance the relationship between air carriers and organizations that perform work on their behalf.

Regulatory Flexibility Act: What it Is, Why it Matters

The Regulatory Flexibility Act (RFA) provides small businesses some protection against federal regulations that increase their cost of doing business. The RFA requires federal agencies to consider the economic impact of their rulemakings on small entities, including an evaluation of alternatives that would lessen the impact of the proposal.

The New World of Contracting

Air carriers are increasingly contracting the performance of their maintenance to part 145 repair stations. In recognition of this trend and the FAA’s Special Emphasis Surveillance Program, air carriers and their maintenance providers must evaluate the way they manage their relationship. This article provides a regulatory introduction into the contracting of air carrier maintenance.

The New World of Contracting: Clarifying Applicable Policies

To ensure regulatory compliance, maintenance organizations must follow the maintenance programs of their customers—air carriers. It is therefore important to understand what constitutes an air carrier’s maintenance programs. The FAA has recently recognized the importance of contracts between air carriers and maintenance providers in ensuring regulatory compliance. The FAA also emphasizes that the air carrier must provide its maintenance contractors with the information necessary to ensure compliance with the regulations.
The New World of Contracting: Internal Air Carrier Assessments

Air carriers must determine which provisions of its maintenance program and manual apply to work a maintenance provider performs. Once it has made this determination, the air carrier must make certain that the necessary information is flowed down to the maintenance provider.

The New World of Contracting: Internal Air Carrier Assessments and Air Carrier—Maintenance Provider Contracts

Each part 121 air carrier should evaluate its maintenance organizations and its General Maintenance Manual (GMM) to determine what information regarding maintenance performed by contract should be flowed down to the repair station and the manner in which the operator will communicate its requirements to the repair station. Air carriers and the repair stations with which they contract should use the contract as a means to facilitate regulatory compliance. Though commercial considerations are the focus of most maintenance contracts, it is in both parties' interests to draft a contract that compliments the GMM and helps ensure that the specific air carrier requirements are followed.

The New World of Contracting: The Business of Regulation

A General Terms Agreement (GTA) usually covers the commercial aspects of a business relationship and is a good vehicle to address important aspects of the interaction between operators and their maintenance providers. This article reviews important topics to cover in a GTA including definitions and how to deal with life-limited parts.

The New World of Contracting: The Business of Regulation II

General Terms Agreements (GTAs) should document how the operator and maintenance provider will handle important issues during the contract. This article reviews how GTAs should differ depending on the type of work performed. Contracts for substantial maintenance, line maintenance, component maintenance, or specialized services should cover the specific information needed in each kind of maintenance relationship.

The New World of Contracting: Revisiting Audits

Repair stations are subject to audits from a long list of entities. Although the quantity of audits does not guarantee quality, the responsibility for regulatory compliance ultimately rests on the repair station. The FAA is focusing more on system safety during audits and now teaches this approach to FAA inspectors in Oklahoma City.

The New World of Contracting: Auditing Substantial Maintenance Providers

Air carriers will no longer be able to rely exclusively on the Coordinating Agency for Supplier Evaluation (C.A.S.E.) to fulfill their Continuous Analysis and Surveillance audit obligations under 14 CFR parts 121 and 135. Carriers must now conduct their own regular audits of “substantial maintenance providers.”
The New World of Contracting: Auditing Non-Substantial Maintenance Providers

We conclude our series on maintenance contracting by examining the process for auditing component repair stations, entities performing specialized services, and facilities performing line maintenance. Audits of specialized service providers may not be as extensive as those of component repair stations because the specialized nature of the work generally requires a more targeted audit. Audits of line maintenance providers will share many of the same attributes as audits performed on substantial airframe maintenance providers with some unique issues.

In Accordance with What?

"In accordance with" (IAW) is one of the most common abbreviations used in maintenance records. If you use IAW, be sure to include the exact guidance referenced in the repair. If not, make additional notes of any deviations from that authority. Careful attention to this entry may avoid an intentional falsification charge.

Records: Proof of Compliance

Section 43.9 is one of the primary means by which your customer and the aviation authorities evaluate the airworthiness of articles installed on type certificated products. This article analyzes who this regulation applies to, how to meet the requirements for describing work accomplished, important tips for tracking dates of work, what names need to be recorded, who needs to sign the maintenance record, and what records need to be retained and for how long.

Lost in Translation

This article addresses when repair station maintenance records under the jurisdiction of the Federal Aviation Administration (FAA) must be prepared in the English language. For U.S. and non-EU FAA-certificated repair stations, §§ 145.219(a) and 43.9(a) require the description of work performed or reference to data acceptable to the Administrator be in English. Repair stations located in the EU are subject to similar requirements based on EASA part 145 and the Maintenance Implementation Procedures (MIP) between the FAA and certain EU members.

Scrubs

This article tells the tale of ARSA’s Managing Director & General Counsel becoming desperately ill on a trans-Atlantic flight. While the CFRs can be frustrating and burdensome, the FAA rules requiring certain onboard medicine and medical equipment saved this traveler. In addition to the regulations requiring equipment and medicine, the Aviation Medical Assistance Act of 1998, P.L. 105-170, 49 U.S.C. § 44701 encourages traveling physicians to aid sick fellow passengers. Thankfully, this law includes Good Samaritan provisions that protect those rendering emergency medical assistance in an aircraft from liability for “ordinary negligence.”

EASA Repair Data Revisited

This article explains the foundation of international aviation law as established at The Chicago Convention, and reviews the status of negotiations between the European Aviation Safety Agency (EASA) and the FAA. As EASA and the FAA negotiate a bilateral agreement that will replace the individual ones negotiated with EU members, ARSA works closely with both agencies to develop a matrix-type document that will explain and facilitate the process for approving repair data under EASA rules.
You’re on Notice
The FAA issued a final rule on hazardous materials (hazmat) training requirements and the notice requirements pose some problems. The relevant provisions in parts 121 and 135 require that air carriers give notice of their hazmat status only to repair stations who are regulated by 49 CFR parts 171 through 180 (i.e., hazmat employers). However, the notice provisions for repair stations in § 145.206 apply to “each repair station” that receives a notice.

A Rose by Any Other Name
The term “overhaul” has a very specific meaning under the Code of Federal Regulations (CFR). Unless work performed fulfills all the requirements needed to characterize it as an overhaul, a repair station must not include the term in any required maintenance records. Use of overhaul in an inappropriate context on required maintenance records can lead to certificate revocation and possible criminal prosecution.

Pass the Bottle: The New Drug & Alcohol Testing Rule
The FAA issued its final rule requiring drug testing for employees performing safety-sensitive functions at all tiers of maintenance. ARSA believes that if an employee is performing maintenance or preventive maintenance as defined in the CFR, he or she must be tested. If your business uses subcontractors, you are responsible for ensuring all tiers of subcontractors are in compliance with the new rule.

The Die Is Cast
ARSA decided to bring a legal challenge to the new drug and alcohol testing rule. On March 10, 2006, ARSA took the first step to overturn this rule and filed a Petition for Review of an Agency Action with the Court of Appeals and served copies of the Petition on various officials at the FAA and the Department of Transportation.

Fabrication of Parts for Maintenance
AC 43-18, “Fabrication of Aircraft Parts by Maintenance Personnel,” clarifies that in order for an activity to qualify as maintenance fabrication, the part created must be used or consumed as part of a repair process and not sold separately. The AC also provides detailed instructions on what a repair station should have in its Fabrication Quality Control System to ensure that the parts conform to the design data and are in condition for safe operation.

Previously Accomplished Repairs
What are maintenance providers’ responsibilities if they discover a previous repair not accomplished in accordance with a method described in the manufacturer’s manual? Based on the guidance of part 43 of Title 14 of the Code of Federal Regulations, a provider’s options include replacing the previous repair, verifying the earlier work, refuse the work, or disclaiming responsibility by specifically excluding it from the approval for return to service.
Mandatory for Some

An owner/operator is only required to follow a “mandatory service bulletin” (MSB) when it is incorporated by reference into an Airworthiness Directive or the change in the MSB is required by airworthiness standards. The MSB may also be mandatory if the operator uses the manufacturer’s maintenance program or an approved aircraft inspection program. Absent one of these conditions, the regulations do not require the owner/operator or a maintenance provider to follow the MSB.

Repair Station Training Programs

Part 145 includes a training program regulation for repair station employees who perform maintenance, preventive maintenance, alterations, and inspections. The FAA suggests that each repair station’s training program include indoctrination and recurrent, specialized, and remedial training. ARSA provides a template to help get you started at http://www.arsa.org/TrainingProgramWorkbook.

Human Factors 101

Many FAA-certificated repair stations are required to have a human factors training program under certificates or approvals from other national aviation authorities or through the air carrier customer’s maintenance program. ARSA provides guidance and training materials on its web site at http://www.arsa.org/HumanFactorsTrainingMaterials.

Drug & Alcohol Redux

The FAA issued a “Guidance Alert” for the new drug and alcohol testing rule for repair stations. Unfortunately, the guidance did little to help repair stations. Issues that remain vague include how to decide which employees to test, what audits, if any, are required of lower tier providers, and how the FAA will handle enforcement. Meanwhile, ARSA filed an Emergency Motion to Stay the final rule in the U.S. Court of Appeals for the District of Columbia Circuit and received a ten-day delay in the compliance date.

Going Paperless

To comply with the Electronic Signatures in Global and National Commerce Act, the FAA established acceptable methods for the use of electronic systems to create, disseminate, and store vital records. Advisory Circular (AC) 120-78, provides general guidelines on the development and use of such systems. A company wishing to use electronic signatures or institute electronic recordkeeping may wish to consult with its local flight standards district office (FSDO) or certificate-holding district office (CHDO) before implementation. The company must submit a letter to the FSDO or CHDO describing the proposed system.

Going Paperless, Part II

Part 21 contains significant record creation, submission, and ergo storage (recordkeeping) requirements for entities involved in the design and production of aviation products and parts. In this second in a series on electronic records, we review those records required to be created and kept for type certificates, supplemental type certificates, production certificates, parts manufacturer approvals, technical standard order authorizations, and instructions for continued airworthiness.
Going Paperless, Part III

This concludes the series on the FAA’s effort to go paperless with a review of how to create and use electronic manuals. Companies must have electronic manual contents approved or accepted by the FAA. Advisory Circular (AC) 120-78 lists the elements that companies should address when constructing these manuals. Next, we will see the FAA move towards accepting forms by electronic submission.

EASA Repair Data Re-Revisited

EASA and FAA will further liberalize the requirements for mutual acceptance of repair data on or around April 1, 2007. Under the new agreement, with the exception of critical parts, all repair data approved or acceptable under the FAA system will generally be approved in the EU without further showing, regardless of the State of Design (SOD) of the product or the kind of certificate holder that obtains approval of the data. Similarly, repair data approved by EASA or one of the six countries that have Bilateral Aviation Safety Agreements (BASA) with the U.S. will generally be approved by the FAA in the same manner.

A New Home for Form 337

In an effort to centralize its collection of aviation maintenance records and facilitate electronic submissions, the FAA made a “minor technical” amendment to the requirements for submitting Form 337. Since November 3, 2006, each person performing a major repair or alteration who uses the 337 must forward one copy, either paper copy or electronic form, to the FAA Aircraft Registration Branch in Oklahoma City, Oklahoma, instead of their local FSDO. This procedure means the submitter is solely responsible for ensuring that the 337 is complete and conforms to all the regulatory requirements.

ARSA Comments on Part 145 NPRM

On April 18, 2007, ARSA filed comments on the FAA’s notice of proposed rulemaking (NPRM) to 14 CFR part 145. This Legal Brief provides an overview of our most significant comments on important member issues including application requirements, issuance of certificates, ratings, and operating rules.

Anti-Drug and Alcohol Program Registration

The final rule for the Anti-drug and Alcohol Misuse Prevention Programs states that a part 145 repair station must have such a program in its Operations Specifications. However, internal FAA guidance allows a repair station the option of registering its program with the Drug Abatement Division. To protect members’ interests, ARSA requested an official affirmation from the Drug Abatement Division that a part 145 repair station meets the regulatory requirements through registration of its Anti-Drug and Alcohol Misuse Prevention Program.

Recordkeeping and Form 8130-3

The controlling regulation for recording maintenance, preventive maintenance, rebuilding, and alteration is Title 14 CFR § 43.9. Accurately completing Form 8130-3 fulfills a portion of these record keeping requirements; however, the complete § 43.9 record extends beyond the 8130-3 to include any referenced work orders and all the records that describe exactly what was accomplished and by whom.
Big Win for Small Business

In a July 17, 2007 two-to-one decision, the U.S. Court of Appeals for the District of Columbia Circuit agreed with ARSA that the agency did not properly consider the impact of its drug testing rule on small businesses. While upholding the new testing requirements, the Court remanded and directed the FAA to conduct the proper Regulatory Flexibility Act (RFA) analysis. This article details the arguments made by ARSA and the FAA. While this remand means the FAA must conduct the proper analysis, any entity performing a safety-sensitive function—maintenance—for an air carrier at any tier must continue to comply with the drug and alcohol testing requirements of 14 CFR part 121.

Regulatory Flexibility Act: What it Is, Why it Matters

The U.S. Court of Appeals for the District of Columbia Circuit agreed with ARSA that the FAA did not consider the impact of its drug testing rule on small businesses as required by the Regulatory Flexibility Act (RFA). The RFA includes steps an agency must comply with when conducting rulemaking. As an ARSA member, your participation in surveys helps us make grounded comments during rulemaking and set the stage to protect the rights of small businesses under the RFA.

Congress and TSA—Damn the Torpedoes

Section 1616 of Public Law 110–53 directs the Transportation Security Administration (TSA) to adopt final repair station security regulations within one year—by August 3, 2008—and to complete audits in accordance with those regulations within six months. If the TSA does not meet those deadlines, the FAA Administrator cannot certify any foreign repair station unless an existing repair station is being re-certificated or a new application is in process. ARSA will keep its members up-to-date on what may become a rushed rulemaking to meet this deadline.

Airworthiness Directives Compliance

Under 14 C.F.R. § 39.7, the responsibility to comply with an Airworthiness Directive (AD) rests with the operator of the affected product—not the designer, manufacturer or the installer. Although the regulations may not require a repair station to comply with an AD, a station should track applicable ADs, notify all customers about them, and either accomplish them or specifically indicate that the customer directed otherwise.

Keeping It on the Record

The FAA uses records as the primary means of determining compliance with the regulations. This article, the first in a multi-part series, provides an overview of the types of records that can be generated under parts 21, 43, and 145 their applicable retention requirements.

Keeping It on the Record, Part II

To ensure that certificated repair station personnel are qualified to perform services, part 145 requires FAA approval of a repair station’s training program and establishes personnel performance standards. Additionally, part 145 requires certificated repair stations to maintain records of an individual’s training. Although repair stations’ training programs vary, part 145 sets forth both general and subject-specific training requirements and guidelines.
Keeping It on the Record, Part III
Facilities subject to Department of Transportation (DOT) anti-drug and alcohol misuse testing requirements—those performing maintenance or preventive maintenance for a part 121, part 135 or § 91.147 operator in the U.S. —must maintain certain testing and training records. The anti-drug and alcohol misuse tests have similar but separate recordkeeping requirements. Anti-drug test documentation requirements are contained in 49 CFR § 40.333. Employers must maintain records of drug tests and training and may also be required to submit annual testing reports to the FAA. Section 40.333 also details how long drug-testing records must be kept and how employers should handle requests for a release of such records.

Keeping It on the Record, Part IV
The recordkeeping requirements for alcohol misuse tests under the DOT anti-drug and alcohol misuse program are also contained in 49 CFR § 40.333. Similar to the requirements for anti-drug tests, an employer must take certain pre-employment actions and maintain records of those actions. An employer should be aware of the testing requirements of employees and the actions it is required to take if an alcohol misuse test is positive. Records must be kept of the tests, training, and education programs, and an employer may be required to submit annual testing reports to the FAA. Section 40.333 also details how long drug-testing records must be kept and how employers should handle requests for a release of such records.

Keeping It on the Record, Part V
Although Congress has enacted legislation to promote federal agency use of electronic recordkeeping, the FAA is still largely permitted to use its discretion when choosing what form to accept documents or signatures. Most Title 14 references to records do not specifically identify the form a document must take and are subject to the standard FAA language that a record is “in a format acceptable to the FAA.” FAA Advisory Circular (AC) 120-78 provides general guidelines for the development and use of electronic signatures and recordkeeping systems in certain circumstances. The guidelines aim to promote the security, effectiveness, and accuracy of electronic signatures and records.

Keeping It on the Record, Part VI
The recordkeeping rule for those performing maintenance, preventive maintenance, rebuilding, or alterations under part 43 is located in 43.9. When major repairs or major alterations are made, 43.9(d) requires that they be documented according to Appendix B of part 43, which generally requires that a Form 337 be filled out and executed by the person who made the major repair or alteration. Repair stations performing major repairs in accordance with a manual or specification acceptable to the Administrator may use the customer's work order rather than Form 337. Air carriers with a continuous airworthiness maintenance program may also use their maintenance/alteration records rather than Form 337.

Keeping It on the Record, Part VII
Employers should carefully choose and monitor Medical Review Officers (MROs) and Substance Abuse Professionals (SAPs) that handle employees’ sensitive information obtained under the DOT anti-drug and alcohol abuse program. Regulations require these types of service agents to carefully handle and protect the sensitive information, but employers should be aware of these regulations and ensure service agent compliance with them to avoid potential liability for a service agent’s actions.
Keeping It on the Record, Part VIII
Under the FAA’s Voluntary Disclosure Reporting Program (VDRP), the FAA will forgo legal enforcement action against a repair station, air carrier, or other eligible FAA-regulated entity if the entity voluntarily reports an inadvertent regulatory violation. VDRP promotes the voluntary identification and correction of regulatory violations, but is limited to certain conditions and reporting requirements. In general, if the violation is inadvertent and the entity promptly informs the FAA and corrects the violation to the FAA’s satisfaction (detailed in the article), the VDRP requirements will be met.

Keeping It on the Record, Part IX
Repair stations generate and keep large amounts of documents to comply with FAA recordkeeping regulations, and it is imperative to understand when documents containing sensitive information may be at risk of improper disclosure. Not only should repair stations caution against service agent disclosure of employee drug and alcohol abuse tests, as discussed in part VII of this series, but they should also be aware that proprietary or other sensitive information submitted to the FAA could be publicly disclosed through a Freedom of Information Act (FOIA) request. To avoid accidental release of documents exempt from FOIA requests, repair stations should identify and label documents it believes are exempt when submitting them to the FAA.

Keeping It on the Record, Part X
All repair stations are required to maintain and make available to the FAA rosters and personnel records of key employees according to § 145.161. The FAA requires repair stations to assign a certain number of qualified employees to specific management, supervisory, and service roles described in the article. Personnel records, such as resumes, applications, and job descriptions, can be used to demonstrate that employees meet the experience requirements for these roles as well as any general qualification guidelines required by the FAA.

Keeping It on the Record, Part XI
Maintenance providers can obtain clearer and more thorough regulatory information from operators by addressing regulatory policy and procedural issues in a contract, such as a General Terms Agreement (GTA). A GTA that identifies the location and scope of work to be provided helps to establish key regulatory definitions and authority and to identify specific, applicable provisions of the operator’s General Maintenance Manual (GMM). Similar agreements between maintenance providers and sub-contractors are equally effective in facilitating compliance with sub-contractor regulations.

Voluntary Disclosure: Is It for You?
Prior to disclosing under the FAA’s voluntary disclosure program, potential participants should consider whether the main criteria of the program are satisfied. First, there must be a potential violation, and if so, the violation must be disclosed to the FAA in a timely manner. Additionally, the violation must have been inadvertent and cannot indicate a lack of basic qualifications. Furthermore, immediate action must be taken to cease any continuing or repeating violation, and further remedial action satisfactory to the FAA must be taken to prevent future occurrences. Disclosure under the program only applies to civil penalties and not to certificate actions. To lessen the likelihood of problems later in the disclosure process, consider consulting counsel before disclosing.
Voluntary Disclosure: Get It Filed
This article assumes that you have weighed the pros and cons of voluntary disclosures and have decided to proceed with the process. As a reminder, here are the five elements a participant must meet in order to take advantage of the VDRP and the situations when the program is not available.

Part Marking...Part I
Generally, the FAA requires four categories of manufactured articles to be marked at the time of production: products, critical components, Parts Manufacturer Approval (PMA) parts, and Technical Standard Order Authorization (TSOA) articles. Each category has specific marking requirements, and items within an article may also have varying marking requirements according to specific regulations. This article identifies the particular regulations and varying marking requirements for each category.

Part Marking...Part II
Maintenance providers routinely remove, change, or install identification plates or markings when the marking is not legible, the part is being modified, or to indicate a particular repair or alteration was performed. Specific regulations detail the marking requirements and procedures for altering the markings of products, and within products there is additional guidance for engines, and TSOA articles. Other parts, including critical parts and PMA parts, are not subject to particular regulations prohibiting a maintenance provider from removing, changing, or placing identification markings.

Part Marking...Part III
The majority of parts are not required to be marked at the time of production and some parts that must be marked at production have no specific regulations for identification or other markings during maintenance. A part is not necessarily unairworthy solely because its original marking or other identification mark is missing or no longer legible. Section 43.13(a) sets forth maintenance performance requirements and this article examines the options and guidelines it provides.

Part Marking...Part IV
Section 43.10 requires the current life status of a life-limited part, whether controlled using permanent or non-permanent markings, be legibly marked on the part and updated each time the part is removed from a type certificated product. The actual task of marking the part is detailed in § 45.16.

What It Means to Be “Current”
In a legal interpretation released by the FAA, the FAA concluded that “current,” within the context of the phrase “current inspection program recommended by the manufacturer” located in 14 CFR § 91.409(f)(3), does not mean “as of today,” but rather as of the time the operator “adopts” the inspection program.
Rulemaking: A Primer

When rulemaking, the FAA must follow the guidelines and requirements of the Administrative Procedures Act (APA). Legislative rules—substantive rules that implement a statute—must be developed through the APA’s “informal rulemaking” process which is often referred to as notice-and-comment rulemaking. The process requires that the FAA give notice of the proposed rule and opportunity for the public to comment. The FAA must then consider and respond to the comments received before deciding to finalize, modify, or withdraw the proposed rule. Once a rule is final, it is published in the Federal Register and typically, it is not effective until 30 days after the publication date.

Providing Effective Comments on Proposed Rules

Effective comments either challenge or support an agency’s proposal by expanding an agency’s knowledge of the issues addressed by the proposal. Taking the time to submit a clear, organized, and developed comment will enhance its impact on an agency and the clarity of the final rule. ARSA has successfully utilized the comment period by providing the FAA with useful data, alternatives to proposed rules, and specific examples of how proposed rules will impact ARSA members.

What Is An Overhaul?

“Overhaul” refers only to an aircraft or part that has been disassembled, cleaned, inspected, repaired, and reassembled using acceptable methods, techniques, and practices and then tested in accordance with approved or currently acceptable standards and technical data. Improper use of the term overhaul on maintenance records can lead to criminal indictments. Overhaul is not strictly defined by the plain language of the rule, and the FAA often interprets the rule in light of practical concerns; however, current accepted industry practices may not always be in harmony with the rules in place.

Voluntary Disclosure: Reporting

The FAA currently only authorizes air carriers to use the web-based VDRP system, but according to AC 00-58B, use of the web-based system should expand to other regulated entities. Under non-web-based submission guidelines, communication, written or oral, of the apparent violation should be made within 24-hours of the discovery. ARSA has developed a template to assist in reporting apparent violations and highlights the requirements and necessary details of reporting.

Determine the AD Status

According to a recent FAA announcement, a person performing and completing an inspection required under 14 CFR part 91 must determine the status of all applicable airworthiness directives (ADs) even when a manufacturer’s inspection program does not require the determination.

Start (and End) with the Basics

The FAA’s basic maintenance record requirement, contained in 14 CFR § 43.9, is refreshingly clear in what it requires. Each person who maintains, performs preventive maintenance, rebuilds, or alters an aircraft, airframe, aircraft engine, propeller, appliance, or component part must make an entry in that equipment’s maintenance record. The entry must contain a description of work performed, the date of completion, and the name and certificate information of the person performing the work.
Re-Examining the Fundamentals: Description of the Work Performed

The description of work performed included in the maintenance record should be specific enough to allow a person unfamiliar with the work to know what was done, but it should use specific terms that include work that was not performed. Further clarification and guidance of a description’s requirements can be found in Advisory Circular (AC) 43-9C and NTSB cases.

Re-Examining the Fundamentals: Date of Completion of the Work Performed

The date of completion of the work performed included in the maintenance record is the date that all work described was completed and ready to be approved for return to service. Cases show that the requirement is straightforward and that violations should be obvious.

Re-Examining the Fundamentals: The § 43.9 Maintenance Entry, Part 3

Section 43.9 requires each person to record in the maintenance record the work that person performed. Additionally, that person must include the date of the entry, his or her name and certificate number, and signature. Under the regulations, a repair station is a person, but because each person must make an entry in the maintenance record, a repair station must specify the individuals that performed the work.

Re-Examining the Fundamentals: The § 43.9 Maintenance Entry, Part 4

A person’s signature of an entry in the maintenance record only constitutes approval for the work performed that is specified in the entry; it is not an approval on any other work performed. A signature of an entry does not certify anything beyond what is included in that specific entry.

Introduction to the New Maintenance Annex Guidance: The Agreement

The new Maintenance Annex Guidance (MAG) between the FAA and the European Aviation Safety Agency (EASA) provides the framework for U.S.-based repair stations certificated by the FAA under part 145 to obtain EASA part 145 approval. It is based on the “Agreement Between the United States of America and the European Community on the Cooperation in the Regulation of Civil Aviation Safety.” The MAG also provides for a European Community-based (EC) EASA part 145 approved maintenance organization to obtain FAA certification. Before discussing the MAG in further detail, a brief introduction and background are provided.

Introduction to the New Maintenance Annex Guidance: The Authorities

Under the MAG and the Agreement, an “aviation authority” (AA) includes the FAA and EASA as well as the aviation regulatory body of a particular European country that works under the EASA umbrella. Section A of the MAG is particularly relevant to repair stations because it details how AAs will interact with one another to ensure repair station compliance with each AA’s requirements and proper enforcement by the relevant AA.
Introduction to the New Maintenance Annex Guidance: U.S.-Based Repair Stations

Section B of the MAG details the process to obtain EASA approval for U.S.-based repair stations certificated by the FAA under part 145. The framework is similar to the previous approval process outlined in MIP-G, but the section handling "release of components after maintenance" differs significantly. Under the MAG, used components fitted during maintenance "must," rather than the MIP-G language "should," be accompanied by a dual-release 8130-3 tag before installation. Although the requirements under the MAG remain largely the same, repair stations should begin developing a new supplement for renewals.

Introduction to the New Maintenance Annex Guidance: EC-Based Repair Stations

Section C of the MAG details the process to obtain FAA repair station certification for certain EASA part 145 approval holders. Although the Agreement broadens the scope of reciprocity between the EC and the U.S., the U.S. Congress has prohibited the FAA from issuing new foreign repair station certificates until the Transportation Security Administration (TSA) issues a final rule regarding repair station security. Despite the ban, applications should be submitted so that processing can begin as soon as it is lifted.

FAA/DOT Drug and Alcohol Testing: Catch and release?

Familiarity with a regulation is not a substitute for reading an entire regulation and its important details. For example, most employers are familiar with the general rule that an employee’s drug test cannot be released to a third party without the employee’s written consent. The rule, however, has important exceptions that permit release without written consent in specific situations, such as release to state agency during an unemployment compensation hearing as a result of a positive drug test.