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Docket Operations—M-30  
U.S. Department of Transportation  
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Washington, DC 20590-0001

RE: Federal Register Volume 77, Number 219 (Tuesday, Nov. 13, 2012)  
Pages 67584-67593  
Docket No. FAA-2011-1136  
Air Carrier Contract Maintenance Requirements; Proposed Rule

The Aeronautical Repair Station Association (ARSA) respectfully submits the following comments to the above referenced notice of proposed rulemaking (NPRM).

ARSA represents persons certificated by the FAA and other national aviation authorities to design, produce, operate and maintain civil aviation products. The vast majority of ARSA members hold repair station certificates issued under Title 14 Code of Federal Regulations (14 CFR) part 145; most perform contract maintenance for 14 CFR parts 121 and 135 operators.<sup>1</sup> As a result, ARSA and its members are directly impacted by this NPRM.

The NPRM was issued as a result of section 319 of the FAA Modernization & Reform Act of 2012 (titled "maintenance providers").<sup>2</sup> That legislation was enacted following 24 short-term extensions of VISION-100,<sup>3</sup> more than six years after the expiration of the old law. During that lengthy period, ARSA was directly involved with obtaining improvements to the "maintenance providers" section of the legislation. The Association therefore has a unique perspective on Congress' intent when enacting this provision.

ARSA recommended narrowly targeted provisions to avoid confusion, and preserve operational flexibility for air carriers and repair stations. Ultimately, many of ARSA's improvements were adopted by Congress. Unfortunately, the NPRM includes language from prior legislative proposals that lawmakers did not include in the statute.<sup>4</sup>

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<sup>1</sup> Unless noted otherwise, all references are to 14 CFR

<sup>2</sup> Public Law 112-95 (February 14, 2012)

<sup>3</sup> Public Law 108-176 (December 12, 2003)

<sup>4</sup> See Sec. 310 "Noncertificated Maintenance Programs" of the FAA Reauthorization Act of 2009 (H.R. 915, 111<sup>th</sup> Congress). Language included in Sec. 310 was explicitly left out in the FAA Modernization & Reform Act, yet found its way into the agency's NPRM.

March 13, 2013  
Docket Operations  
U.S. Department of Transportation  
Page 2

RE: Federal Register Volume 77, Number 219 (Tuesday, Nov. 13, 2012)  
Docket No. FAA-2011-1136  
Aeronautical Repair Station Association Comments

For clarity, we have included a highlighted copy of section 319, with ARSA's comments, as [Appendix A](#).

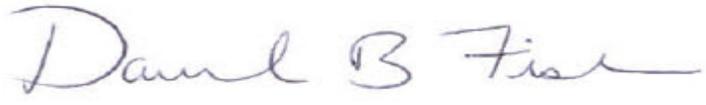
Unfortunately, the agency has missed the mark in its NPRM. Indeed, it appears to have misconstrued the plain language of the legislation in issuing a proposal that unnecessarily duplicates existing rules without any safety justification. The proposal causes undue confusion by ignoring definitions and requirements already contained in part 121.

The association's section-by-section comments are provided in [Appendix B](#), while [Appendix C](#) contains the association's alternative regulation.

Sincerely,



Craig L. Fabian  
Vice President of Regulatory Affairs  
& Assistant General Counsel



Daniel B. Fisher  
Vice President of Legislative Affairs

Attachments    Appendix A  
                      Appendix B  
                      Appendix C

March 13, 2013

Docket Operations

U.S. Department of Transportation

Federal Register Volume 77, Number 219 (Tuesday, Nov. 13, 2012)

Docket No. FAA-2011-1136

Aeronautical Repair Station Association Comments

**Appendix A**

Page 1

SEC. 319. MAINTENANCE PROVIDERS.

- (a) REGULATIONS.—Not later than 3 years after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall issue regulations requiring that covered work on an aircraft used to provide air transportation under part 121 of title 14, Code of Federal Regulations, be performed by persons in accordance with subsection (b).
- (b) PERSONS AUTHORIZED TO PERFORM CERTAIN WORK.—A person may perform covered work on aircraft used to provide air transportation under part 121 of title 14, Code of Federal Regulations, only if the person is employed by—
- (1) a part 121 air carrier;
  - (2) a part 145 repair station or a person authorized under section 43.17 of title 14, Code of Federal Regulations (or any successor regulation); or
  - (3) subject to subsection (c), a person that—
    - (A) provides contract maintenance workers, services, or maintenance functions to a part 121 air carrier or part 145 repair station; and
    - (B) meets the requirements of the part 121 air carrier or the part 145 repair station, as appropriate.
- (c) TERMS AND CONDITIONS.—Covered work performed by a person who is employed by a person described in subsection (b)(3) shall be subject to the following terms and conditions:
- (1) The applicable part 121 air carrier shall be directly in charge of the covered work being performed.
  - (2) The covered work shall be carried out in accordance with the part 121 air carrier's maintenance manual.
  - (3) The person shall carry out the covered work under the supervision and control of the part 121 air carrier directly in charge of the covered work being performed on its aircraft.

“Covered work” can be performed by a part 121 air carrier, a part 145 repair station and Canadian persons as set forth in 14 CFR § 43.17 without limitation, terms or conditions.

The terms and conditions in section (c) **do not apply** to a part 121 air carrier or a part 145 repair station.

Section (c) terms and conditions only apply to section (b)(3) persons **not** to the air carrier, repair station or persons authorized under 14 CFR § 43.17.

March 13, 2013

Docket Operations

U.S. Department of Transportation

Federal Register Volume 77, Number 219 (Tuesday, Nov. 13, 2012)

Docket No. FAA-2011-1136

Aeronautical Repair Station Association Comments

**Appendix A**

Page 2

(d) DEFINITIONS.—In this section, the following definitions apply:

- (1) COVERED WORK.—The term “covered work” means any of the following:
  - (A) **Essential maintenance** that could result in a failure, malfunction, or defect endangering the safe operation of an aircraft if not performed properly or if improper parts or materials are used.
  - (B) **Regularly scheduled maintenance.**
  - (C) A required inspection item (as defined by the Administrator).
- (2) PART 121 AIR CARRIER.—The term “part 121 air carrier” means an air carrier that holds a certificate issued under part 121 of title 14, Code of Federal Regulations.
- (3) PART 145 REPAIR STATION.—The term “part 145 repair station” means a repair station that holds a certificate issued under part 145 of title 14, Code of Federal Regulations.
- (4) PERSON.—The term “person” means an individual, firm, partnership, corporation, company, or association that performs maintenance, preventative maintenance, or alterations.

“Essential maintenance” equates to regulations for required inspection items and is intended to capture the most critical maintenance tasks.

“Regularly scheduled maintenance” describes an air carrier’s in-depth maintenance visits that take an aircraft out of service for a planned and predetermined amount of time.

Due to the conflicting terminology used by the FAA and industry -- such as “C-check,” “heavy check,” “heavy maintenance” -- the term “regularly scheduled maintenance” was used.

March 13, 2013

Docket Operations

U.S. Department of Transportation

Federal Register Volume 77, Number 219 (Tuesday, Nov. 13, 2012)

Docket No. FAA-2011-1136

Aeronautical Repair Station Association Comments

## **Appendix B**

Page 1

To facilitate assessment of ARSA's analysis, the FAA's proposal is reproduced in *italics*, followed by the association's observations in **bold**. ARSA's alternative proposal is contained in [Appendix C](#).

### **General Observation**

Congress directed the regulation only to aircraft operated by part 121 air carriers; while the agency can incorporate other certificate holders using the FAA's general rulemaking power, it cannot justify the change under the congressional mandate. Since the agency provided no safety justification for the action being contemplated, part 135 air carriers should be excluded from the rulemaking.

Further, it is clear from the plain language of the statute that Congress intended the rule apply only to "covered work on aircraft."<sup>5</sup> As provided in § 1.1: "*Aircraft* means a device that is used or intended to be used for flight in the air." The agency should explicitly state that the regulation does not apply to "articles" or other "products" as those terms are defined in § 21.1<sup>6</sup> and/or § 145.3(b).<sup>7</sup>

*Sec. 121.368 Contract maintenance.*

*(a) A certificate holder may arrange with another person for the performance of maintenance, preventive maintenance, and alterations as authorized in Sec. 121.379(a) only if all the requirements in this section are met. For purposes of this section—*

**This proposed section is overbroad; the legislation only applies to "covered maintenance", not *all* maintenance, preventive maintenance and alteration authorized under § 121.379(a). Congress made clear it had no intention that part 121 air carriers or part 145 repair stations (or any person authorized under § 43.17) be covered by the legislative mandate.**

**The association's recommended alternative regulatory language in [Appendix C](#) distinguishes between the items in the congressional mandate and those actions that "any person" chosen by the air carrier may undertake. Additionally, the application of this section should be limited to "aircraft" maintenance, as the legislation requires.**

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<sup>5</sup> See section 319(b) which states, "covered work on aircraft used to provide air transportation."

<sup>6</sup> Specifically, § 21.1(b)(2) states that, "*Article* means a material, part, component, process, or appliance"; § 21.1(b)(5) provides that "*Product* means an aircraft, aircraft engine, or propeller."

<sup>7</sup> Section 145.3(b) states: "Article means an aircraft, airframe, aircraft engine, propeller, appliance, or component part."

March 13, 2013

Docket Operations

U.S. Department of Transportation

Federal Register Volume 77, Number 219 (Tuesday, Nov. 13, 2012)

Docket No. FAA-2011-1136

Aeronautical Repair Station Association Comments

**Appendix B**

Page 2

*(1) A maintenance provider is any person who performs maintenance, preventive maintenance, or an alteration for a certificate holder other than a person who is trained by and employed directly by that certificate holder.*

**As mentioned above, the FAA Modernization & Reform Act clearly differentiates between persons authorized to perform “covered work” and other providers of maintenance, preventive maintenance and alterations. Therefore, this definition is unnecessary and should be deleted. Also, the section does not limit its application to “aircraft” maintenance, as the legislative language clearly states.**

**The term “employed...by” is ambiguous and will cause confusion among and between other aviation safety mandates. Specifically, when maintenance, preventive maintenance or alteration is performed “under contract” by another “person”, the requirements in 14 CFR part 120 apply (see § 120.1). Part 120 includes a different use of the term “maintenance provider” (see §§ 120.35 and 120.39), which relates directly to specific definitions for persons within the scope of the proposed paragraph (see § 120.7). Further, the similar provisions in part 120 extend to any tier of the contracting chain (see §§ 120.105 and 120.215), while this proposal does not. If adopted as proposed, the rule would further complicate the interpretation and enforcement of these inter-related safety requirements.**

**Consequently, the definition of “maintenance provider” should be deleted.**

*(2) Covered work means any of the following:*

- (i) Essential maintenance that could result in a failure, malfunction, or defect endangering the safe operation of an aircraft if not performed properly or if improper materials are used;*
- (ii) Regularly scheduled maintenance; or*
- (iii) A required inspection item on an aircraft.*

**Where the terms are not defined by the legislation, the agency must rely upon current usage. To that end, “essential maintenance” was defined by Congress and is currently captured in paragraph D-091 of an air carrier’s Operations Specifications. Likewise, required inspection item designations are covered by § 121.369(a)(2).**

**The term “regularly scheduled maintenance” must capture “heavy maintenance” events as anticipated by lawmakers; otherwise, it will incorrectly be construed to include simple line checks or other similarly routine inspections.**

**ARSA’s suggested use of these terms is reflected in [Appendix C](#).**

March 13, 2013

Docket Operations

U.S. Department of Transportation

Federal Register Volume 77, Number 219 (Tuesday, Nov. 13, 2012)

Docket No. FAA-2011-1136

Aeronautical Repair Station Association Comments

**Appendix B**

Page 3

(3) *Directly in charge means having responsibility for covered work performed by a maintenance provider. A representative of the certificate holder directly in charge of covered work does not need to physically observe and direct each maintenance provider constantly, but must be available for consultation on matters requiring instruction or decision.*

**To avoid confusion with current regulations, this paragraph must be deleted. The term “directly in charge” is already defined by § 121.378(b).<sup>8</sup>**

**ARSA’s suggested language in [Appendix C](#) specifically references § 121.378(b) and will maintain consistency with the existing regulation.**

(4) *Supervision and control means that a representative of the certificate holder must be available to personally observe the covered work being done to the extent necessary to ensure it is being done properly, and when the representative is not physically present to observe the work, the representative must be available for consultation on matters requiring instruction or decision.*

**“Supervision and control” was not defined in the FAA Modernization & Reform Act, but existing rules use the terminology in a similar context (see § 121.371(b)).<sup>9</sup>**

**To avoid confusion with existing regulations, the paragraph should be restructured and changed as provided in [Appendix C](#).**

(b) *Each certificate holder must be directly in charge of all covered work done for it by a maintenance provider.*

**This proposed section is overbroad and contrary to the statute; the legislation only applies to “covered maintenance”, not *all* maintenance, preventive maintenance and alteration authorized under 121.379(a) (see [Appendix A](#)).**

**The proposed section is contrary to the intent of Congress and the agency hasn’t articulated a clear safety justification for expanding the scope of its proposal beyond the purview of the legislation.**

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<sup>8</sup> § 121.378(b) reads, “a person *directly in charge* is each person assigned to a position in which he is responsible for the work of a shop or station that performs maintenance, preventive maintenance, alterations, or other functions affecting aircraft airworthiness. A person who is *directly in charge* need not physically observe and direct each worker constantly but must be available for consultation and decision on matters requiring instruction or decision from higher authority than that of the persons performing the work.”

<sup>9</sup> § 121.371(b) states, “No person may allow any person to perform a required inspection unless, at that time, the person performing that inspection is under the supervision and control of an inspection unit.”

March 13, 2013

Docket Operations

U.S. Department of Transportation

Federal Register Volume 77, Number 219 (Tuesday, Nov. 13, 2012)

Docket No. FAA-2011-1136

Aeronautical Repair Station Association Comments

## Appendix B

Page 4

**Therefore, this paragraph should be restructured to align with the limitations intended by lawmakers. See [Appendix C](#) for ARSA's suggested changes.**

*(c) All covered work must be carried out in accordance with the certificate holder's maintenance manual.*

**Existing regulations mandate that all maintenance, preventive maintenance and alteration be carried out according to the certificate holder's maintenance manual (see § 121.363(a)(2)).<sup>10</sup>**

**Therefore, this proposed section is redundant and should be eliminated.**

*(d) No covered work may be performed by a maintenance provider unless that work is carried out under the supervision and control of the certificate holder.*

**This section also doesn't differentiate among the types of maintenance providers. The legislation clearly applied to a limited number of maintenance providers, i.e., those described in paragraph (b)(3) of Sec. 319 (see [Appendix A](#)). Further, the legislation is limited to covered work on aircraft, not all articles.**

**The proposed regulatory language would force an air carrier to micromanage part 145 certificated repair stations. That result is contrary to the intent of Congress and the agency has not articulated a clear safety justification for expanding the scope of the regulation well beyond the purview of the legislation. As a result, this section should be revised according to [Appendix C](#).**

*(e) Each certificate holder who contracts for maintenance, preventive maintenance, or alterations to be carried out by a maintenance provider must develop policies, procedures, methods, and instructions for the accomplishment of all such maintenance, preventive maintenance, and alterations, and these policies, procedures, methods, and instructions must ensure that, if they are followed, the maintenance, preventive maintenance, and alterations are performed in accordance with the certificate holder's maintenance program and maintenance manual.*

*(f) Each certificate holder who contracts for maintenance, preventive maintenance, or alterations to be carried out by a maintenance provider must ensure that its system for the continuing analysis and surveillance of the maintenance, preventive maintenance, and alterations carried out by the maintenance provider, as required by Sec. 121.373(a), contains procedures for oversight of all contracted covered work.*

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<sup>10</sup> § 121.363(a)(2) states, "The performance of the maintenance, preventive maintenance, and alteration of its aircraft, including airframes, aircraft engines, propellers, appliances, emergency equipment, and parts thereof, in accordance with its manual and the regulations of this chapter."

March 13, 2013

Docket Operations

U.S. Department of Transportation

Federal Register Volume 77, Number 219 (Tuesday, Nov. 13, 2012)

Docket No. FAA-2011-1136

Aeronautical Repair Station Association Comments

## **Appendix B**

Page 5

*(g) The policies, procedures, methods, and instructions required by paragraph (e) and (f) of this section must be acceptable to the FAA and included in the certificate holder's maintenance manual as provided in Sec. 121.369(b)(10).*

**While air carriers should clearly delineate the technical instructions its maintenance providers must follow, there are no benefit from these additional proposed paragraphs. The language is ambiguous; it is unclear exactly what “policies, procedures, methods and instructions” entails. The air carrier already is required to provide that information to its own employees as well as any person doing work for it (see § 121.369).**

**Furthermore, § 121.373(a) already mandates continuing analysis and surveillance “regardless of whether those programs are carried out by the certificate holder or by another person.”<sup>11</sup>**

**The agency must determine exactly which portion of its current manual requirements would need amendment or additions and whether the “new” “policies, procedures, methods and instructions” would be more “acceptable” than the current manual requirements for the certificate holder. The agency should also make clear that the section is limited to “aircraft” maintenance, as Congress unmistakably mandated.**

**Finally, the verbiage is inconsistent with other requirements that the air carrier’s maintenance, preventive maintenance and alteration instructions be followed. Specifically, any additions or changes to part 121 in this area must be coordinated with part 43 (particularly § 43.13(c)) and any contemplated revisions to part 145. Therefore, it should be deleted from this rulemaking.**

**Instead, the FAA should refocus on existing rules. Specifically, the agency should determine the current availability of the actual work instructions, and clarify that only the aspects of an air carrier’s maintenance program and manual which are related to accomplishing those instructions are relevant to maintenance providers. An overly broad, all-inclusive approach with an overabundance of unnecessary administrative provisions shifts focus away from properly accomplishing maintenance tasks. That concept is decidedly contrary to safety and should be laid to rest.**

*(h) Each certificate holder who contracts for maintenance, preventive maintenance, or alterations to be carried out by a maintenance provider must provide to its FAA Certificate Holding District Office, in a format acceptable to the FAA, a list that includes the name and*

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<sup>11</sup> § 121.373(a) states, “Each certificate holder shall establish and maintain a system for the continuing analysis and surveillance of the performance and effectiveness of its inspection program and the program covering other maintenance, preventive maintenance, and alterations and for the correction of any deficiency in those programs, regardless of whether those programs are carried out by the certificate holder or by another person.”

March 13, 2013

Docket Operations

U.S. Department of Transportation

Federal Register Volume 77, Number 219 (Tuesday, Nov. 13, 2012)

Docket No. FAA-2011-1136

Aeronautical Repair Station Association Comments

**Appendix B**

Page 6

*physical (street) address, or addresses, where the work is carried out for each maintenance provider that performs work for the certificate holder, and a description of the type of maintenance, preventive maintenance, or alteration that is to be performed at each location. The list must be updated with any changes, including additions or deletions, and the updated list provided to the FAA in a format acceptable to the FAA by the last day of each calendar month.*

**This section goes well beyond the scope required by Congress in the FAA Modernization & Reform Act and should be removed.**

**It duplicates existing requirements in § 121.369(a),<sup>12</sup> as well as operations specifications requirements for identifying persons who perform essential maintenance (see Operations Specifications paragraph D091). The burden for both the air carrier, and the FAA, in maintaining the list in a specified format is greatly underestimated, and the proposed language will provide no additional safety benefit over existing requirements.**

**Indeed, requiring such a list has been rejected by Congress. During the 111<sup>th</sup> Congress, the House of Representative's approved H.R. 915, the FAA Reauthorization Act of 2009. Section 310 of that legislation mandated "air carriers to identify and provide to the Administrator a complete listing of all noncertificated maintenance providers that perform...covered maintenance work on aircraft used to provide air transportation under part 121." The fact that the requirement was dropped in subsequent FAA reauthorization proposals is clear evidence of congressional intent.**

**Finally, the proposed section does not limit its application to "aircraft" maintenance, as Congress clearly intended.**

*3. Amend Sec. . 121.369 by adding paragraph (b)(10) as follows:*

*Sec. . 121.369 Manual requirements.*

*\* \* \* \* \**

*(b) \* \* \**

*(10) Policies, procedures, methods, and instructions for the accomplishment of all maintenance, preventive maintenance, and alterations carried out by a maintenance provider. These policies, procedures, methods, and instructions must be acceptable to the FAA and ensure that, when followed by the maintenance provider, the maintenance, preventive*

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<sup>12</sup> § 121.369(a) specifies, "The certificate holder shall put in its manual a chart or description of the certificate holder's organization required by § 121.365 and a list of persons with whom it has arranged for the performance of any of its required inspections, other maintenance, preventive maintenance, or alterations, including a general description of that work.

March 13, 2013

Docket Operations

U.S. Department of Transportation

Federal Register Volume 77, Number 219 (Tuesday, Nov. 13, 2012)

Docket No. FAA-2011-1136

Aeronautical Repair Station Association Comments

**Appendix B**

Page 7

*maintenance, and alterations are performed in accordance with the certificate holder's maintenance program and maintenance manual.*

**This provision is duplicative of § 121.368(e) of this proposal and should be deleted for the reasons described in the above comments to that section.**

March 13, 2013

Docket Operations

U.S. Department of Transportation

Federal Register Volume 77, Number 219 (Tuesday, Nov. 13, 2012)

Docket No. FAA-2011-1136

Aeronautical Repair Station Association Comments

**Appendix C**

Page 1

**§ 121.368 Contract maintenance.**

- (a) A certificate holder can make arrangements with other persons to perform maintenance, preventive maintenance, and alterations as provided in § 121.379(a).
- (b) A certificate holder may only make arrangements with the following persons for the performance of required inspection items, essential maintenance, or regularly scheduled maintenance for aircraft--
  - (1) Another part 121 certificate holder
  - (2) A repair station certificated under part 145, or a person authorized under § 43.17, or
  - (3) In accordance with paragraph (c) of this section, a person providing contract maintenance workers, services, or maintenance functions to a part 121 air carrier or part 145 repair station.
- (c) Persons performing required inspection item tasks, essential maintenance, or regularly scheduled maintenance on aircraft under paragraph (b)(3) of this section must meet the requirements of the part 121 air carrier or part 145 repair station and--
  - (1) The contracting part 121 certificate holder must be directly in charge of the work performed
  - (2) The work must be performed in accordance with the air carrier's maintenance manual
  - (3) The work must be performed under the supervision and control of the air carrier directly in charge.
- (d) For purposes of this section—
  - (1) Essential maintenance means aircraft maintenance that could result in a failure, malfunction, or defect endangering the safe operation of an aircraft if not performed properly or if improper parts or materials are used.
  - (2) Required inspection items are designated under § 121.369(a)(2).
  - (3) Regularly scheduled maintenance means a planned aircraft maintenance visit that requires removal of the aircraft from service for an extended period.
  - (4) Directly in charge means a person with the responsibilities defined in § 121.378(b).
  - (5) A contracting part 121 certificate holder directly in charge exercises supervision and control when it can observe the work being performed to the extent necessary to ensure it is done properly.