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October 26, 2007

David Cann
Manager, Aircraft Maintenance Division (AFS-300)
Federal Aviation Administration
800 Independence Avenue, S.W.
Washington, DC 20591-0004

E-MAIL ADDRESS

Re: Contract Maintenance Functions

Dear Mr. Cann:

The Aeronautical Repair Station Association (ARSA) is writing to request the Federal Aviation Administration (FAA) clarify the subject of contracting maintenance functions. It has come to our attention that Aviation Safety Inspectors (ASIs) and the aviation industry may misunderstand the privileges afforded repair stations under 14 CFR¹ § 145.201(a)(2), provided the obligations of §§ 145.201, 145.209, 145.211 and 145.217 are met.

The misunderstanding may have been deepened by the FAA's policy of approving only those maintenance functions contracted to non-certificated sources. The regulation requires that certain contracted maintenance functions be approved regardless of whether the entity performing the work is certificated.

Therefore, we request:

- The FAA approve any maintenance function contracted to any source when the repair station exercises the privileges of its certificate by issuing an approval for return to service (via an FAA Form 8130-3 or other § 43.9 record) for maintenance functions performed by another entity.

This will cover situations where a repair station issues only an approval for return to service for an article other than a completed type-certificated product (i.e., "over-tagging").

- FAA guidance distinguish between contract maintenance functions requiring approval and purely commercial activities that are not subject to the rule, such as sales, exchanges and brokerage transactions.

¹ All citations are to Title 14 CFR except where otherwise noted,

- FAA provide consistent and more detailed guidance on this subject. Specifically we request:
 - That AC 145-9 and Order 8300.10 (now located under Order 8900.1—Flight Standards Information Management System (FSIMS)) be made consistent.
 - AC 145-9 is consistent with the regulation which states that all maintenance functions must be approved by the FAA, whether they are performed by certificated or non-certificated providers.
 - Order 8900.1 (formerly 8300.10) requires FAA approval only when the maintenance functions are contracted to non-certificated sources.
 - That the FAA distinguish between instances where repair stations are exercising the privileges of their certificates (by taking regulatory responsibility for another entity's work) from those instances where the repair station is acting as a broker or is subcontracting work to another certificated entity which will issue the approval for return to service.
 - The FAA make it clear that a repair station may issue an additional approval for return to service under its privileges, such as tagging a previously maintained or altered article as “inspected”, provided:
 - (1) The repair station has the appropriate rating for the article, and
 - (2) Conducts the maintenance, preventive maintenance, alteration, including an inspection in accordance with § 43.13 and part 145.

Background to Current Rule

We believe a review of why the FAA must approve maintenance functions would help clear up some of the misunderstanding.

In the previous part 145 rule, Appendix A listed general equipment and material requirements that an entity needed to obtain a particular rating. When the rule changed, the Appendix was replaced with the requirement that a repair station provide a list of the maintenance functions it would have to obtain by contract during the certification process. The purpose of providing the list was to afford the FAA an opportunity to determine whether the repair station had the capability (facilities, equipment, tooling and materials) to hold the rating sought. Once a rating was issued, the entity begins to exercise the privileges of that certificate.

Additionally, under the old rule, a type certificate holder was authorized to contract maintenance, preventive maintenance and alteration to its non-certificated original equipment manufacturers, bring that work through its quality system and issue an approval for return to service (“overtag”) for a complete work scope (up to and including overhaul).

In the new rule that privilege was extended to all repair stations with the sole limitation that the approval for return to service (only) could not be issued for a complete type certificate product (i.e., aircraft, aircraft engine or propeller). However, the approval for return to service could be issued for any work on any other article provided the originating repair station possessed the appropriate rating (see, § 145.201(a)(2)). To exercise this privilege the FAA must be afforded the opportunity to ensure the repair station has instituted the proper controls, including obtaining approval for contracting the functions that it wishes to approve for return to service under the privileges of its certificate.

Pertinent Regulations and Guidance

§ 145.201 Privileges and limitations of certificate.

(a) A certificated repair station may—

- (1) Perform maintenance, preventive maintenance, or alterations in accordance with part 43 on any article for which it is rated and within the limitations in its operations specifications.
- (2) Arrange for another person to perform the maintenance, preventive maintenance, or alterations of any article for which the certificated repair station is rated. **If** that person is not certificated under part 145, the certificated repair station must ensure that the non-certificated person follows a quality control system equivalent to the system followed by the certificated repair station. (Emphasis added.)
- (3) Approve for return to service any article for which it is rated after it has performed maintenance, preventive maintenance, or an alteration in accordance with part 43.

The preamble to the notice of proposed rulemaking and the final rule make clear that the FAA was allowing repair stations that wish to take responsibility for other entities' work (whether that second entity was certificated or not) to do so provided certain criteria were met. The criteria are set forth in the following regulations:

§ 145.209 Repair station manual contents.

(h) Procedures for—

- (1) Maintaining and revising the contract maintenance information required by §145.217(a)(2)(i), including submitting revisions to the certificate holding district office for approval; and
- (2) Maintaining and revising the contract maintenance information required by §145.217(a)(2)(ii) and notifying the certificate holding district office of revisions to this information, including how often the certificate holding district office will be notified of revisions;

* * *

§ 145.211 Quality control system.

* * *

- (c) A certificated repair station must prepare and keep current a quality control manual in a format acceptable to the FAA that includes the following:
- (1) A description of the system and procedures used for—
 - (i) Inspecting incoming raw materials to ensure acceptable quality;
 - (ii) Performing preliminary inspection of all articles that are maintained;
 - (vi) Qualifying and surveilling non-certificated persons who perform maintenance, prevention maintenance, or alterations for the repair station;
 - (vii) Performing final inspection and return to service of maintained articles;

* * *

§ 145.217 Contract maintenance.

- (a) A certificated repair station may contract a maintenance function pertaining to an article to an outside source provided—
- (1) The FAA approves the maintenance function to be contracted to the outside source; and
 - (2) The repair station maintains and makes available to its certificate holding district office, in a format acceptable to the FAA, the following information:
 - (i) The maintenance functions contracted to each outside facility; and
 - (ii) The name of each outside facility to whom the repair station contracts maintenance functions and the type of certificate and ratings, if any, held by each facility.
- (b) A certificated repair station may contract a maintenance function pertaining to an article to a non-certificated person provided—
- (1) The non-certificated person follows a quality control system equivalent to the system followed by the certificated repair station;
 - (2) The certificated repair station remains directly in charge of the work performed by the non-certificated person; and
 - (3) The certificated repair station verifies, by test and/or inspection, that the work has been performed satisfactorily by the non-certificated person and that the article is airworthy before approving it for return to service.
- (c) A certificated repair station may not provide only approval for return to service of a complete type-certificated product following contract maintenance, preventive maintenance, or alterations.

Although not defined in Part 145, the term “maintenance function” is explained in AC 145-9 and Order 8900.1 (formerly Order 8300.10, Aviation Inspector’s Handbook).

- AC 145-9: A step or series of steps in the process of performing maintenance, preventative maintenance, or alterations, which result in approving an article for return to service. (Emphasis added)
- Order 8900.1 (8300.10): A step or series of steps in the process of performing maintenance, preventive maintenance, or alterations, which may result in approving an article for return to service. (emphasis added)

According to Order 8900.1/8300.10, Vol. 2, Chapter 161, a maintenance function must be approved by the FAA if it is (1) within the scope of the repair station's rating, and (2) is contracted out to a non-certificated provider.

In a June 23, 2005 E-mail to several industry representatives, the FAA stated that "[a] repair station may contract to an outside source only those articles for which it is rated." This statement could be misconstrued to suggest that a repair station that is not rated to perform certain work is prohibited from acting as a broker between the customer and a certificated entity. We do not believe the agency intended to prohibit these activities.

Contract Maintenance under Part 145

The simplest way to determine whether contracting is taking place under part 145 is to ascertain whether the repair station is exercising the privileges of its certificate. That is particularly clear if the repair station issues an approval for return to service for the same work performed by the contractor under § 43.9. The clearest example is when the repair station uses a non-certificated source for the maintenance function. These maintenance functions require FAA approval because the repair station is responsible for the airworthiness of the work performed. The contracting repair station must also comply with §§ 145.217(c) and 145.223.

Another situation occurs when the repair station does not possess the equipment and materials needed to perform certain maintenance steps under its rating on its premises. For example, a repair station with a limited powerplant rating is authorized to overhaul a particular make and model engine (see § 145.201(a)). To fulfill the obligations of a limited powerplant rating the ability to heat-treat is required, however, the certificate holder wishes to contract this function because it does not have the equipment and materials to perform it.

In this situation, the FAA may determine that the maintenance function does not need approval if the work is performed by a certificated source. While the contracting repair station needs the maintenance function performed for a higher level of maintenance under its rating and the FAA should be aware of the need for service, the FAA may decide that the repair station need not obtain approval of the maintenance function. In

other words, the originating repair station is not exercising the privileges of its certificate because it is neither performing the work nor issuing an approval for return to service for work performed under another entity's privileges.

The third scenario involves repair stations that have the capability to accomplish the work, but wish to contract to other entities to address short-term business needs, such as a customer's turn time requirements or because the repair station's equipment is malfunctioning. Again, the FAA should be aware of the activity but need not approve the contracted function, provided the originating repair station does not issue an approval for return to service for the same work performed by the contractor and the contractor is a certificated repair station.

The fourth situation arises when a repair station elects to issue only an approval for return to service for work performed by another certificated entity. This activity is only prohibited by § 145.217(c) if the article is a completed type certificated product; it is specifically allowed in all other situations (such as component maintenance). Since the FAA does not currently require the maintenance function to be approved (because the repair station that performed the work is certificated), the agency has no guidance for overseeing this activity. Consequently some repair stations are being told they cannot "overtag" at all, others are being told to issue an 8130-3 citing that they "inspected" the article but cannot issue an approval for return to service for the same workscope performed by the other repair station and others are allowed to comply with the regulations and issue an approval for return to service for the full scope of the contracted work (up to and including an overhaul).

In this situation, ARSA believes the regulation requires the contracting repair station to treat the certificated entity that performed the work the same as it would treat a non-certificated source. The contracting repair station is undoubtedly exercising the privileges of its certificate when it elects to issue an approval for return to service for the same scope of work performed. Therefore, it should demonstrate that it conducted inspections or tests and complied with the other requirements applicable to non-certificated entities specified in §§ 145.201(a)(2), 145.209, 145.211, 145.217(c) and 145.223.

What Commercial Activities are not Subject to Part 145?

Finally, there are commercial transactions that are often confused with a contract maintenance function under part 145. In other words, there are situations where a repair station will contract for work, but will not be exercising any of the responsibilities or privileges of its certificate.

For example, a repair station that purchases a maintained or altered part (including one that will be exchanged for a customer's incoming part) is not contracting under part 145 regardless of whether it is rated to perform the maintenance function performed by the seller. The repair station is merely purchasing a component maintained or altered and approved for return to service by another certificated entity in the same manner as it might purchase a new part.

Another situation that is sometimes confused with contracting under part 145 is a brokerage transaction. This occurs when a repair station does not exercise the privileges of its certificate and acts solely as an intermediary to help a customer accomplish a requested workscope. The originating repair station arranges for another certificated entity to perform the work and approve it for return to service. The second repair station sends the article back to the originating entity, which returns it to the customer. Since the maintenance or alteration activity is not being performed under the originating repair station's certificate or ratings, this activity is not governed by part 145.

Finally, there is the situation where the work requested by a repair station is outside the scope of its rating. For example, an airframe repair station removes an engine from an aircraft and sends it to a repair station with an appropriate powerplant rating. The second repair station performs the maintenance, issues the approval for return to service and returns the engine to the first repair station. The first repair station reinstalls the engine. The removal and reinstallation is within the first repair station's rating, but the work on the engine is not. The work the second repair station performed is not contracting under part 145. The first repair station is not exercising the privileges of its certificate, it is merely requesting work be performed by a duly authorized repair station.

Summary

ARSA submits that the regulations allow a repair station to contract **any** maintenance, preventive maintenance or alteration for which it holds a rating. That work can be performed by certificated and non-certificated entities. After the work is performed the repair station can make the decision that it wishes to take responsibility for the entire workscope performed by issuing an approval for return for service. The only time this action is prohibited is when the work is performed on a complete type certificate product, e.g., on an aircraft, aircraft engine or propeller.

In order to exercise this privilege, the repair station must:

- (1) Make a list of the maintenance functions that it:
 - (a) Does not perform in-house; and,
 - (b) Takes regulatory responsibility by issuing an approval for return to service for the exact same work under its rating.

- (2) Obtain approval of the listed functions per § 145.217 and provide that list to the FAA per its procedures under § 145.209.
- (3) Ensure that it qualifies the sources to which it contracts those maintenance functions per § 145.201(a)(2) (quality system),
- (4) Maintain a current list of those contractors per § 145.217 and provide that list to the FAA per its procedures under § 145.209.
- (5) Ensure that it has procedures to perform the incoming inspection of articles, final inspection and approval for return to service per the pertinent subparagraphs of 145.211(c)(1).
- (6) Provide a procedure by which it confirms by inspection or test that the work was performed satisfactorily (which can be by review of the paperwork setting forth the exact steps performed and the inspections and tests performed) per the requirements of § 145.217.

Therefore, ARSA recommends that AC 145-9 and Order 8900.1/8300.10 be revised so they are consistent in their treatment of which contract maintenance functions require FAA approval.

- FAA approval of maintenance functions should be required whenever a repair station exercises the privileges of its certificate by issuing an approval for return to service (via an FAA Form 8130-3 or other § 43.9 record) for maintenance functions performed by another entity.

This will cover situations where the contracted maintenance function was performed and approved for return to service by one part 145 certificate holder and then another repair station with appropriate ratings and controls issues an approval for return to service for those maintenance functions.

- Purchases of maintained parts from other repair stations (including exchanges), brokerage and using another certificated repair station to perform work that is outside the originating repair station's rating are not maintenance functions requiring FAA approval. These are instances where the contracting repair station is not exercising the privileges of its certificate. Whenever a repair station requests work or sells a previously maintained article (including type certificated products) it is acting solely as a distributor. Although the purchasing repair station may induct the part through its receiving inspection process, it is merely relying on the work previously performed by another certificated entity. This is true even when the originating repair station does not have the in-house capability to perform the maintenance requested.

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- Make it clear that a repair station may issue an additional approval for return to service under its privileges, such as tagging a previously maintained or altered article as “inspected”, provided:
 - (1) The repair station has the appropriate rating for the article, and
 - (2) Conducts the maintenance, preventive maintenance, alteration, including an inspection in accordance with § 43.13 and part 145.

Please let us know if you have any questions or desire additional information.

Sincerely,

A handwritten signature in blue ink that reads "Sarah MacLeod". The signature is fluid and cursive, with the first name "Sarah" and the last name "MacLeod" clearly legible.

Sarah MacLeod
Executive Director

cc: Daniel Bachelder (AFS-340)
Rick Domingo
Rebecca MacPherson