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December 23, 2019

Submitted per 14 CFR § 11.63(a)(1) to
Federal Aviation Administration's <http://www.regulations.gov/#!docketDetail;D=F>
"Shell" Docket [AA-2007-0001](http://www.regulations.gov/#!docketDetail;D=F)

U.S. Department of Transportation
Docket Operations
West Building Ground Floor
Room W12-140
1200 New Jersey Avenue, S.E.
Washington, DC 20003-3660

RE: Petition for Rulemaking to Amend 14 CFR § 145.109(d)

To Whom It May Concern:

The Aeronautical Repair Station Association (ARSA) respectfully submits this petition for rulemaking under Title 14 Code of Federal Regulations (CFR)¹ part 11.²

(1) Contact Information³

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(2) Explanation of Proposed Action and Its Purpose⁴

ARSA respectfully petitions for amendment of section 145.109(d) to eliminate the last sentence. This provision requires repair stations, and only repair stations, to maintain libraries of documents and data that are not required for the work they perform.⁵ The

¹ All regulatory references are to 14 CFR unless otherwise indicated.

² See § 11.61(a).

³ See § 11.71(a)(1).

⁴ See § 11.71(a)(2).

⁵ Recently, in denying a repair station's petition for exemption from § 145.109(d), the FAA stated, "the petitioner does not cite to any circumstances unique to it that would justify an exemption. Rather, the

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requirement is inconsistent with other applicable regulations, particularly sections 43.13(a) and 145.201(a)(1), (a)(3), and (c), and is redundant (and potentially contradictory) to section 145.205 when work is performed for air carriers or commercial operators. As a result, the last sentence of section 145.109(d) is unnecessary and it is a source of confusion and expense for both the agency and industry.

No other FAA-certificated maintenance provider is required to keep current documents and data they do not need; section 43.13(a) provides all others flexibility that is denied repair stations by the last sentence of section 145.109(d). There is no reason for this denial; FAA has repeatedly acknowledged that there is no safety benefit associated with the last sentence of section 145.109(d).⁶ As a result, costs associated with maintaining irrelevant documents and data are inherently unjustified and excessive.⁷

The flaws in the regulation are eliminated by amending section 145.109(d) as requested by this petition.

(3) Language to be Removed from the Current Rule⁸

ARSA petitions the FAA to amend section 145.109(d) by removing the last sentence and the associated list as follows:

- (d) A certificated repair station must maintain, in a format acceptable to the FAA, the documents and data required for the performance of maintenance, preventive maintenance, or alterations under its repair station certificate and operations specifications in accordance with part 43. ~~The following documents and data must be current and accessible when the relevant work is being done:~~

petitioner contends generally that the requirement in § 145.109(d) to maintain certain current documents and data is overly and unnecessarily burdensome on small-to-medium-sized enterprises and that relief would not adversely affect safety. There are no unique factors that would limit applicability of the exemption to the petitioner. Exemptions based on these broad requests would establish a generally applicable precedent that would amount to rulemaking by exemption. The more appropriate vehicle for the petitioner's request is with a petition for rulemaking in accordance with 14 CFR § 11.61 et seq." *In re Midwest Turbine Service*, Exemption No.18313, Regulatory Docket No. FAA-2018-1041, Denial of Exemption, at p.3 (August 27, 2019). ARSA is pleased to accept FAA's invitation.

⁶ See discussion of FAA Chief Counsel letters and Flight Standards Service's 2012 Notice of Proposed Rulemaking at pp.5-6, *infra*.

⁷ The U.S. Department of Justice reported that a rogue aviation safety inspector "provided improperly obtained aviation repair manuals from equipment manufacturers . . . saving [one repair station] from paying **vast sums of money for this proprietary information.**" (U.S. Department of Justice Press Release, "Former FAA Aviation Safety Inspector Sentenced to More Than 6 Years in Prison for Bribery and Fraud Scheme," December 5, 2019, *emphasis added*.) ARSA agrees that the costs to industry caused by the last sentence of section 145.109(d) are, indeed, "vast;" see paragraph 6 of this petition, "Additional Information and Data Available to the Petitioner," at p.7, *infra*.

⁸ See § 11.71(a)(3).

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- ~~(1) Airworthiness directives,~~
- ~~(2) Instructions for continued airworthiness,~~
- ~~(3) Maintenance manuals,~~
- ~~(4) Overhaul manuals,~~
- ~~(5) Standard practice manuals,~~
- ~~(6) Service bulletins, and~~
- ~~(7) Other applicable data acceptable to or approved by the FAA.~~

(4) Why the Proposed Action is in the Public Interest⁹

The petition supports the Executive Branch's commitment to protect and strengthen public interest¹⁰ by eliminating unnecessary burdens on regulated parties, over 90% of which are small and medium sized businesses,¹¹ and in reducing duplicative and contradictory regulatory language and interpretations.

Under the current version of section 145.109(d), only repair stations are required to maintain documents and data irrelevant to the work performed. Other persons certificated by FAA and authorized to perform maintenance, preventive maintenance, rebuilding, or alteration exercise the privileges of their respective certificates under section 43.3,¹² pursuant to which the maintenance of "current" data is optional, not required, when appropriate alternatives exist. These other certificated persons are authorized to perform the same airworthiness operations, on the same aircraft, which subsequently fly the same

⁹ See § 11.71(a)(4).

¹⁰ See Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017), at section 1, which states: "It is the policy of the executive branch to be prudent and financially responsible in the expenditure of funds, from both public and private sources. In addition to the management of the direct expenditure of taxpayer dollars through the budgeting process, it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations."

¹¹ See Federal Aviation Administration, Office of Aviation Policy and Plans, Regulatory Analysis Division, "Initial Regulatory Evaluation, Notice of Proposed Rulemaking Part 145: Repair Stations" (January 2011)(the "Initial Regulatory Evaluation"), Table 1 at p.1, finding that over 90% of 3751 affected repair stations were small and medium sized entities per FAA definitions. FAA reported a total of 4940 repair stations holding FAA certificates on December 1, 2019. If ALL small and medium sized FAA-certificated repair stations were counted in the Initial Regulatory Evaluation, *id.*, fully 76% of FAA-certificated repair stations are small to medium sized businesses today. This is almost certainly an underestimate as it is highly unlikely that the Initial Regulatory Evaluation, *id.*, counted all small and medium sized repair stations that existed then or exist now. See also, U.S. Small Business Administration, Small Business Size Standards by NAICS Industry, at 13 CFR § 121.201, with reference to North American Industry Classification System (NAICS) codes 336411, 336412, 336413, and 488190, covering the range of repair station business operations.

¹² Under § 43.3, all persons authorized to perform maintenance, preventive maintenance and alterations are required to comply with § 43.13, which allows the use of "other methods, techniques and practices."

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routes, operate under the same regulations and carry the same passengers and cargo as aircraft maintained by repair stations, yet they are not required to maintain libraries of irrelevant documents and data. The burden of the last sentence of section 145.109(d) falls exclusively and unfairly on repair stations and serves no safety purpose.

By unnecessarily draining capital from repair stations, compliance with the last sentence of current section 145.109(d) reduces the industry's ability to invest in emerging technologies, processes, and personnel that have a positive impact on aviation safety. This adverse consequence is substantial for small and medium size repair stations that comprise the majority of FAA-certificated entities.¹³

Finally, the last sentence of current section 145.109(d) is inconsistent with other FAA regulations that apply to repair stations, including sections 43.13(a) and 145.201(a)(1), (a)(3), and (c). Even more important, it can be directly contrary to sections 121.1(b) and 145.205, which ensures repair stations meet the highest degree of safety in maintenance activities by following the air carrier or commercial operator requirements.¹⁴ Inconsistency creates ambiguity, which leads to erratic regulatory interpretation and application, and provokes costly and unnecessary actions by FAA personnel and affected repair stations to resolve the uncertainties.¹⁵

These adverse consequences will be eliminated when section 145.109(d) is amended pursuant to this petition. Eliminating these adverse consequences is in the public interest.

(5) Information and Arguments That Support the Proposed Action¹⁶

The deletion of the last sentence of section 145.109(d) will have no impact on civil aviation safety. The first sentence of that section would not change; it directs repair stations to perform work in accordance with part 43. Section 43.13(a) requires all maintenance providers to complete maintenance, preventive maintenance, and alteration using "methods, techniques, and practices acceptable to the Administrator" or those prescribed in "the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer." Sections 145.201(a)(1), (a)(3), and (c), and

¹³ See fn 10, *supra*, and paragraph (6) of this petition, *infra* at p.7.

¹⁴ See also, § 121.368 requiring the air carrier to develop and implement "...policies, procedures, methods, and instructions for the accomplishment of all contracted maintenance, preventive maintenance, and alterations."

¹⁵ See, e.g., the numerous Legal Interpretations and Chief Counsel's Opinions provoked by the last sentence of section 145.109(d): *Letter to W. Harvey Cash* (July 5, 2017), *Letter to Charles Willette* (August 21, 2013), *Letter to Steven Tomer* (July 18, 2012), *Letter to Albert T. MacMillan* (April 22, 2011), *Letter to Paul N. Sissons* (August 13, 2010), *Memorandum to Manager, Sacramento FSDO* (August 13, 2010), *Letter to David M. Schultz* (March 25, 2009), *Letter to Christopher Witkowski* (March 26, 2008), *Letter to Andrew V. Cebula* (2006).

¹⁶ See § 11.71(a)(5).

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145.205 assure that work performed by repair stations is in accordance with part 43 or the air carrier's requirements.

The flexibility found in section 43.13(a) and (c) is necessary to maintain aviation safety. For example, a repair station recently reported to ARSA that, "[a manufacturer] revised their [repair] manual and removed schematics & parts lists of older manufactured circuit boards. However, there is [sic] still aircraft flying today . . . that have these older version circuit boards in them. The only way a repair station can support these units is to reference the older (Non-current) manual for those schematics and parts lists." Additionally, section 145.205 requires compliance with section 43.13(c), which may be earlier versions of manufacturer manuals or other methods, techniques and practices developed by the air carrier.

Under section 43.13(a) only two conditions exist: either current data is required to perform work, or it is not. The regulation does not support conditions in which current data "may" be required at some indeterminate time in the future. If current data is required, it must be obtained to perform the work; if current data is not required, all other the maintenance providers are spared the expense of obtaining it for no reason. The last sentence of section 145.109(d) defies logic by requiring repair stations, alone among aviation maintenance providers, to obtain current data for no reason, at significant expense.

As further discussed below, both the FAA Chief Counsel's Office¹⁷ and the Flight Standards Service¹⁸ have publicly acknowledged that the last sentence of current section 145.109(d) serves no safety interest. For example, in Legal Interpretation of the Term "Current" in 14 C.F.R. §§ 43.13(a) and 145.109(d) from Assistant Chief Counsel for Regulations, AGC-200, to Mr. Juan Pablo Cárcano, Accountable Manager, Swift Avionics Services, Inc. (October 25, 2017) (the Cárcano Letter),¹⁹ the Chief Counsel explained that—

As [Mr. Cárcano] correctly noted, our 2008 interpretation,²⁰ quoting a dictionary, stated that "the adjective 'current' means belonging to the present time." Accordingly, **a previous version of a manual is no longer "current," though, depending on the circumstances, it may be acceptable to use.**

¹⁷ See also cases cited at fn 14, *supra*.

¹⁸ See "Repair Stations," *Notice of Proposed Rulemaking*, 77 FR 30054, 30069 (May 21, 2012).

¹⁹ *Citing with approval*, at fn.1, Legal Interpretation of "Current" as it Applies to Maintenance Manuals and Other Documents Referenced in 14 C.F.R. §§ 43.13(a) and 145.109(d) from Assistant Chief Counsel for Regulations, AGC-200, to Manager, AWP-230 (August 13, 2010), and Legal Interpretation of 14 C.F.R. § 91.409(f)(3) from Assistant Chief Counsel for Regulations, AGC-200, to Manager, Aircraft Maintenance Division, AFS-300 (Dec. 5, 2008).

²⁰ Legal Interpretation of 14 C.F.R. § 91.409(f)(3) from Assistant Chief Counsel for Regulations, AGC-200, to Manager, Aircraft Maintenance Division, AFS-300 (Dec. 5, 2008).

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* * *

[A]s explained in our 2010 legal memorandum...²¹

Similarly, in the context of performing maintenance for a customer, if the repair station used a "prior" version of a manufacturer's maintenance manual that was applicable to the model of aircraft that was being maintained, and the FAA could not show how the prior version that was used was unacceptable, the repair station would not be in violation of § 43.13(a) or § 145.201 for following it. (Cárcano Letter, pp.2-4; *emphasis added*).

The Chief Counsel continued, further quoting the 2010 memorandum:²²

The obligation imposed by § 145.109(d) is different. That section requires that a repair station must maintain certain specified documents and data, and that the listed documents and data must be current and accessible when the relevant work is being performed.... **[T]his is essentially a paperwork requirement** to keep the specified documents up to date. (Cárcano Letter at p.4; *emphasis added*.)

The agency echoed the Chief Counsel's analysis in its 2012 notice of proposed rulemaking at page 30069:²³

Currently, § 145.109(d) lists certain documents that repair stations must keep that are necessary for performing maintenance, preventive maintenance, or alterations. It requires that the documents be "current and accessible when the relevant work is being done."

A strict reading of the requirement that these documents be current has created unnecessary compliance and enforcement issues.... This is a paperwork requirement only, as the same interpretation made clear that if a maintenance provider used a prior version/revision of a manual in performing maintenance, there would be no violation of the maintenance performance rules unless the FAA could show that the data used was no longer acceptable.... (*Emphasis added*.)

²¹ *Legal Interpretation of "Current" as it Applies to Maintenance Manuals and Other Documents Referenced in 14 C.F.R. §§ 43.13(a) and 145.109(d)* from Assistant Chief Counsel for Regulations, AGC-200, to Manager, AWP-230 (August 13, 2010).

²² *Id.*

²³ "Repair Stations," *Notice of Proposed Rulemaking*, 77 FR 30054, 30069 (May 21, 2012). FAA subsequently withdrew most of this NPRM for reasons unrelated to the deficiencies in the last sentence of section 145.109(d). See, "Repair Stations," 79 FR 46971, 46972 (August 12, 2014).

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(6) Other Information and Data Available to the Petitioner²⁴

The United States Attorney's Office for the Southern District of Florida has characterized the cost of maintaining libraries of current documents and data as "vast."²⁵ Reports by ARSA member repair stations support this characterization. For example, one repair station, a small business with average annual revenue of \$2,500,000, reports being quoted the price of \$731,251 per year to maintain the currency of its repair manual library, a cost that represents over 29% of the repair station's average annual revenue.²⁶

(7) Conclusion

The last sentence of section 145.109(d), applies only to repair stations, the vast majority of which are small-to-medium-sized enterprises. The requirement to maintain current and accessible documents and data irrelevant to the work performed provides no safety benefit. The costs cannot be justified and the unnecessary sentence causes substantial confusion and expense for the agency. The requested amendment of section 145.109(d) will eliminate needless and discriminatory burdens.

The requested amendment of section 145.109(d) also will conform it to—

- ✓ Part 43, the performance standards applicable to all persons authorized to perform maintenance, preventive maintenance, rebuilding, and alteration of civilian aircraft.
- ✓ Other sections of part 145, including:
 - Sections 145.201(a)(1), (a)(3), and (c) relating to the privilege of a repair station to "[p]erform maintenance, preventive maintenance, or alterations" on, and "[a]pprove for return to service any article for which it is rated...**in accordance with part 43.**" (*Emphasis added.*)
 - Section 145.205 requiring compliance with the air carrier or commercial operator's policies and procedures, thus assuring the "highest degree" of safety as required by the law.
 - Section 145.219(a), relating to the requirement that a repair station "retain records in English that demonstrate compliance with **the requirements of part 43.**" (*Emphasis added.*)

²⁴ See § 11.71(b).

²⁵ See fn 7, *supra*.

²⁶ If deemed necessary, ARSA can provide more information regarding costs and benefits of the proposed action in general, and within identifiable groups in the aviation maintenance industry; the regulatory burden on small businesses, small organizations, and small governmental jurisdictions and the recordkeeping and reporting as provided in section 11.71(b).

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- ✓ The FAA Chief Counsel's interpretations of section 43.13.²⁷
- ✓ The Executive Branch policy on public interest in rulemaking and regulatory burdens.²⁸

For the reasons discussed above, the Aeronautical Repair Station Association respectfully petitions the Administrator to amend section 145.109(d) as stated in this petition for rulemaking.

Sincerely,



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²⁷ See, Legal Interpretation of the Term "Current" in 14 C.F.R. §§ 43.13(a) and 145.109(d) from Assistant Chief Counsel for Regulations, AGC-200, to Mr. Juan Pablo Cárcano, Accountable Manager, Swift Avionics Services, Inc. (October 25, 2017), *supra*, and additional letters of the Chief Counsel, discussed *supra* at pp.5-6.

²⁸ Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017), at Section 1.