Federal Aviation Administration

Memorandum

Date: AUG 24 2010

To: Carol E. Giles, Manager, Aircraft Maintenance Division, AFS-300

From: Rebecca B. MacPherson, Assistant Chief Counsel for Regulations, AGC-200

Prepared by: Edmund J. Averman, III, AGC-210

Subject: Request for Policy Interpretation of 14 C.F.R. Parts 43 and 145 for FAA-Certificated Repair Stations Working on Foreign-Registered Aircraft

This responds to your August 24, 2010, request for an interpretation responding to the June 8, 2010, memorandum from the Acting Manager, Flight Standards Division, AWP-230 (copy attached). In that memorandum, AWP-230 requested "policy interpretation and/or changes, if deemed appropriate" on the issue of FAA-certificated repair stations approving for return to service articles on which they performed maintenance when those articles are intended to be installed on foreign-registered aircraft not operating under 14 C.F.R. parts 121 or 135.

In the interest of maintaining aviation safety in the United States, the Congress has given the FAA oversight responsibility for the airworthiness and operation of U.S.-registered aircraft and the operation of foreign-registered aircraft operating to, from, or within the United States. To assist the FAA in carrying out these responsibilities, the agency has regulations it administers and enforces in areas such as aircraft certification, maintenance, and operation. Relevant here are the agency's regulations, found in 14 C.F.R. part 43, for maintaining U.S.-registered aircraft and foreign-registered aircraft if they are operated in common carriage or carriage of mail by United States air carriers under the provisions of 14 C.F.R. parts 121 and 135.[1] This includes the airframe, engines, propellers, appliances, and component parts of such aircraft. Section 43.3 provides for several categories of persons who may perform maintenance on those aircraft and aircraft parts. Among those authorized are holders of repair station certificates, as provided in 14 C.F.R. part 145.

[1] Additional maintenance and inspection rules that are supplemental to those in part 43 are found in the operating rules of 14 C.F.R. parts 91, 121, and 135.

Thus, repair stations are entities provided for by the FAA in part 43 to facilitate the accomplishment of maintenance on aircraft and parts of those aircraft in accordance with part 43. The applicability paragraph of part 145 provides that the part contains the rules that a repair station must follow when it performs maintenance on aircraft (and parts of aircraft) to which part 43 applies. Therefore, the repair station rules are circumscribed by the maintenance rules in part 43, which, by its own terms, is limited to aircraft having U.S. airworthiness certificates and foreign-registered aircraft used in common carriage (or the carriage of mail) by United States air carriers.[2]

In his June 8 request for interpretation, the AWP-230 Acting Manager suggested that the last sentence in **§ 145.1 Applicability,** which reads: "It [part 145] also applies to any person who holds, or is required to hold, a repair station certificate issued under this part," should be read to mean that a repair station that holds an FAA certificate must comply with all sections of part 145, unlimited by the applicability of part 43. Nothing in the regulatory history of part 145 suggests such an intent. (*See* the Notice of Proposed Rulemaking (64 FR 33142, June 21, 1999) and the Final Rule (66 FR 41088, August 6, 2001).) If any intent is to be taken from those documents, it is that the reference to part 43 was added with specific intent and to give it effect. Though the preambles were silent on why the last sentence was added to section 145.1, the purpose was to provide an enforcement "hook" (similar to that found in parts 121 and 135 ("each person who holds *or is required to hold* . . . " (emphasis added))) so that the agency could take appropriate action against a person who does not have a repair station certificate but who holds out to the public and performs work that would require the certificate.[3]

The language, "It also applies to any person who holds," was taken from parts 121 and 135 and incorporated into section 145.1 without any apparent consideration that the sentiment it expresses was already incorporated into the second sentence of the section. In other words, saying "this part also contains the rules a certificated repair station must follow...." is semantically similar to saying "this part also applies to any person who holds a repair station certificate." However, while section 145.1 is admittedly redundant in this regard, the last sentence in section 145.1 was intended to ensure that non-certificated persons understood that part 145 could also apply to them; it was not intended to expand the scope of part 145 as the June 8 inquiry suggested.

In sum, nothing in the part 145 applicability section was even remotely intended to address maintenance or alterations of aircraft and parts of those aircraft not within the FAA's jurisdiction. Clearly, part 145 applies to CAPSED, but only to the extent it performs work within the FAA's jurisdiction.

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[2] Initially, we note that the part 43 applicability statement uses the airworthiness certification of a U.S. aircraft as a threshold concept. It does not use (and has not used) a concept like type certification to draw the line. Use of type certification would have at least implied that aircraft of the same model---whether U.S. or foreign-registered---were covered by part 43. We also note that the threshold for foreign-registered aircraft in section 43.1(b) is very specifically and narrowly drawn.

[3] The history of air carrier enforcement cases is replete with examples of non-certificated persons conducting operations that required FAA certification. Including the "or is required to hold . . . ." language in the applicability sections provided a means to hold those persons accountable for violating various safety regulations.

We refer to a December 17, 2003 interpretation issued by the Regulations Division (AGC-200) of the FAA's Office of the Chief Counsel, which clearly stated that a repair station that performs maintenance on a foreign-registered aircraft and returns the aircraft to service "using" its FAA repair station certificate number does not bring itself within the enforcement jurisdiction of the FAA for that maintenance.[4] Nevertheless, on page 2 of the June 8 AWP-230 memorandum, the Acting Manager refers to a "dual release" via an FAA Form 8130-3 (Authorized Release Certificate, also referred to as an Airworthiness Approval Tag) of aircraft parts that have been maintained. We presume that by "dual release," he means the same form that was discussed in the 2003 AGC-200 interpretation, *i.e.*, the use of one form (*e.g.*, Form 8130-3) for approving for return to service an aircraft or aircraft part following maintenance. In such a "dual release," it would not be known whether the part is destined for installation on a U.S.-or foreign-registered aircraft. That opinion was premised on **the assumption** that, in every such instance, the destination of the part is **unknown**. However, with respect to the seat assemblies referenced in the EIR at issue (the CAPSED case), all the available evidence indicated that the seat assemblies were removed from, were intended to be reinstalled on, and were reinstalled on a foreign-registered aircraft. Thus, even assuming the Forms 8130-3 CAPSED executed were "dual release," the evidence indicates that the seats were not "of" an aircraft described in § 43.1(a)(1) or (2).[5]

It is our opinion that a repair station is not exercising the privileges of its FAA repair station certificate when it performs work for which part 43 is not applicable, and this is so even if the person performing the maintenance believes the work is being done under the FAA's jurisdiction. No current regulation in part 145 prohibits a repair station from completing an FAA Form 8130-3, or any other form, to record activities that are not regulated by or under the jurisdiction of the FAA. Along these lines, as the June 10, 2010 Memorandum to AWP-230 from the Deputy Regional Counsel, AWP-7, stated, many foreign aviation authorities have a practice of instructing maintenance organizations that hold FAA certificates and also work on aircraft within the foreign authorities' jurisdictions to use their FAA certificate number and FAA forms in approving aircraft and parts for return to service. Indeed, this practice is what triggered the 2003 AGC-200 interpretation referred to above. The FAA has been aware of this practice for years and has not initiated rulemaking or taken other steps to curtail it.

In the CAPSED matter, the VNY FSDO may, and probably should, consider contacting the airworthiness authority of the Philippines to advise it of the potential seat discrepancies on the Philippine Airlines aircraft. Depending on the facts of the case, the FSDO also could consider whether the improper work warrants a reexamination under 49 U.S.C. 44709 of the qualifications of CAPSED to hold its air agency certificate.

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[4] Note: In a case where the repair station is also EASA-certificated, and it was doing work on an EASA-certificated aircraft, the FAA would advise EASA that the repair station did not follow the FAA's regulations, and EASA could take enforcement action based on its own regulations.

[5] We also note that, in an enforcement proceeding in which the maintenance organization had executed a dual release and the destination of the part was not known, the FAA would still have the burden of proving that the maintained part was "of" an aircraft having a U.S. airworthiness certificate or a foreign-registered aircraft used in common carriage (or the carriage of mail) under parts 121 or 135.

This response was prepared by Edmund Averman, an Attorney in the Regulations Division in the Office of the Chief Counsel, and coordinated with the Aircraft Maintenance Division (AFS-300) in the Office of Flight Standards. If you have any other questions regarding this matter, please contact us at your convenience at (202) 267-3073.