FAA Draft Order 8900.1 CHG Designee Policy

Comments on the Draft Order
published online for public comment

Submitted to the FAA via email at katie.ctr.bradford@faa.gov

Submitted by the
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February 9, 2013

Ms. Katie Bradford
1625 K Street NW
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Dear Ms. Bradford,

Please accept these comments in response to FAA Draft Order 8900.1 CHG Designee Policy, which was published online for public comment. The comment period for this Order closes February 10, 2013.

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Who is MARPA?

The Modification and Replacement Parts Association was founded to support PMA manufacturers and their customers. Aircraft parts are a vital sector of the aviation industry, and MARPA acts to represent the interests of the manufacturers of this vital resource before the FAA and other government agencies.

MARPA is a Washington, D.C.-based, non-profit association that supports its members' business efforts by promoting excellence in production standards for PMA parts. The Association represents its members before aviation policy makers, giving them a voice in Washington D.C. to prevent unnecessary or unfair regulatory burden while at the same time working with aviation authorities to help improve the aviation industry's already-impressive safety record.

Although MARPA members typically rely on designees with Aircraft Certification privileges, they often sell parts through distributors who must rely on Flight Standards designees to perform services like issuing 8130-3 tags for export purposes. In fact, many PMA holders do not have the infrastructure to issue 8130-3 tags for their parts, and so when a distributor exports those parts to a nation that enjoys a bilateral airworthiness safety agreement with the United States, that distributor must obtain the 8130-3 tag from a DAR (typically a Flight Standards Service DAR or DAR-T). For this reason, DAR-T guidance is very important to MARPA members.

Comments

Geographic Expansion within the United States

Issue

The draft guidance proposes significant new instructions for managing DAR applications to perform work outside the geographic boundaries of their managing office, while remaining inside their geographic region. The proposed guidance would establish a standard that would effectively preclude DARs from obtaining permission to work outside of the geographic boundaries of his or her managing office.

The proposed language states that when a DAR applies for permission to work outside the geographic boundaries of the managing office: "The geographically responsible office [in which the proposed activity will occur] should deny the request when a local inspector or designee can accomplish the work." Proposed § 13-409(A)(2).

Analysis

Because every geographic region has DARs that are capable of issuing 8130-3 tags, it is technically always possible for a local DAR to perform work in a proposed region. The proposed guidance can therefore be used in every case as a justification for denying an application for geographic expansion. Creating an "automatic no" in the guidance undermines the safety mission that DARs perform.

This proposed language would effectively preclude DARs from competing with other DARs in other regions. Competition is already limited by the small number of DARs that are eligible and available to issue 8130-3 tags for parts held by the industry. By further limiting competition, the natural result would be for patterns to emerge which cause pricing of DAR services to rise to monopolistic or oligopolistic levels. Current charges for DAR services are already out-of-line with costs for government services.

FAA employees are generally precluded from issuing 8130-3 tags for aircraft parts under the restrictive terms of FAA Order 8130.21G, see Order 8130.21G, Procedures for Completion and Use of the Authorized Release Certificate, FAA Form 8130-3, Airworthiness Approval Tag § 1-8, but the FAA has made these tags generally necessary for both domestic and international commerce (for example, FAA bilateral aviation safety agreements have committed to provision of these tags with US exports of aircraft parts). This means that FAA policy and executive agreements have made it commercially necessary to hire DARs to issue 8130-3 tags for demonstrably airworthy parts. By introducing policies that encourage monopolistic or oligopolistic pricing levels, the FAA is doing a disservice to the U.S. industry. In addition, the FAA is creating monopolies or oligopolies in situations where the FAA lacks statutory authority to create such limits on competition. Normally, if an agency has authority to limit competition or to permit combinations in restraint of trade, such authority will be explicit. Cf. 15 U.S.C. § 17 (exempting labor unions from the antitrust provisions of the Sherman Act and effectively overturning Loewe v. Lawlor, 208 U.S. 274 (1908) which had held that collective action by union members violated the antitrust law known as the Sherman Act).

Rather than following an "automatic no" policy, the FAA should encourage available DARs in a geographic region to perform work beyond the boundaries of their managing office. Allowing competition between DARs will benefit the industry by reducing delays for approvals and lowering the costs of DAR services.

Recommendation

Delete the instruction: "The geographically responsible office should deny the request when a local inspector or designee can accomplish the work." By eliminating the "automatic no" the FAA will encourage competition and increase efficiency within the industry. It will also avoid taking a step through policy that it would likely be precluded from taking through regulation.

Applicant Convenience and International Geographic Expansion

Issue

The proposed guidance includes new instructions for managing DAR applications to perform work outside of the United States. One of the proposed instructions would require the designee to adequately identify the reason for the performance of the activity outside of the United States, but goes on to state that "[a]pplicant convenience is not an adequate reason." Proposed § 13-409(B)(2)(e).

Analysis

In 2007, the FAA published a rule change to 14 C.F.R. § 21.325 to permit issue of an 8130-3 tag outside the United States. See Production and Airworthiness Approvals, Part Marking, and Miscellaneous Proposals, 72 Fed. Reg. 63797 (Nov. 13, 2007) (Final Rule). This was done because it was more convenient for certain types of international transactions, and the FAA had granted a number of exemptions in the past that allowed export airworthiness approvals to be issued for products located in other countries. See Production and Airworthiness Approvals, Part Marking, and Miscellaneous Proposals, 71 Fed. Reg. 58914, 58928 (Oct. 5, 2006) (Notice of proposed Rulemaking). The proposed guidance would undermine this 2007 rule change by proposing language that reads: "The designee has adequately identified the specific reasons for the performance of this activity outside the United States. *Applicant convenience is not an adequate reason*." Proposed § 13-409(B)(2)(e) (emphasis added).

Applicant convenience is, in fact, the real justification for the rule change (combined with a finding that applicant convenience does not undermine FAA safety goals). The following scenario provides an example.

Assume there is a large inventory of aircraft parts in a foreign nation. Each of these parts is well documented with traceability that makes it clear that they were produced under United States production approval, but the parts do not have FAA 8130-3 tags. The documents that do exist make it easy to issue the 8130-3 tags. The problem is that the inventory is significant and it is located outside of the United States. Although it would be possible to return the entire inventory to the United States for FAA 8130-3 tags, it would be economically impractical. Approving an application for a DAR to review the parts and issue 8130-3 tags outside of the United States is both more practical and more convenient. Thus, applicant convenience should be a valid rationale for international geographic expansion, as long as the international geographic expansion does not impose an undue burden on the FAA.

Recommendation

Delete the instruction: "Applicant convenience is not an adequate reason." Such language is in direct conflict with the rulemaking purpose behind the change to 14 C.F.R. § 21.325.

Inappropriate Use of the Term "Principal Inspector"

Issue

The guidance uses the term "Principal Inspector" or "PI" to refer to the FAA employee with direct supervision of the DAR. See, e.g., proposed 13-409(A)(1); 13-438(A). This appears to be an inadvertent misuse of the term in situations where the correct term should have been "FAA Advisor."

Analysis

Norms in the industry, as well as existing usage in FAA Order 8100.8D, use the term "Principal Inspector" or "PI" to reference the FAA employee with direct oversight over a certificated facility.

See, e.g., Order 8100.8D, Designee Management Handbook at § 902(b)(3). The term "FAA advisor" is generally used in reference to the FAA employee with direct supervision of a DAR. Notably, "FAA advisor" is the term used in Order 8100.8D. See id. at Appendix H.

Allowing multiple definitions of terms and ambiguity about the meaning of terms is an ongoing source of frustration in the industry. When a known and common use is used to mean one thing —such as in the case of "Principal Inspector" which is commonly understood to mean a certificated entity's principle assigned FAA aviation safety inspector —care should be taken to remain consistent in that usage to avoid possible confusion in the industry.

Furthermore, using the term "Principal Inspector" risks specific confusion in the context of the guidance in question. In cases where the client of the designee is a certificated entity that has a principal inspector who is a different person from the FAA employee who serves as the FAA Advisor of the designee, there is the potential for confusion as to which principle inspector is intended by the use of the term in the guidance.. For example, where a designee is seeking expanded geographic authority in order to issue export 8130-3 for an air carrier of repair station seeking issuance of 8130-3 tags for export articles from a remote inventory, the term "principle inspector" typically refers to the principle ASI for the certificate holder, but proposed section 13-409(A)(1) suggests using the same terminology for the designee's FAA Advisory.

Recommendation

The term "Principal Inspector" or "PI" should be replaced with "FAA Advisor" when referring to oversight of a designee, to remain consistent with existing FAA guidance, as well as with common FAA use of these two terms.

Conclusion

MARPA looks forward to working with the FAA to better improve aviation safety rules and policy. Your consideration of these comments is greatly appreciated.

Respectfully Submitted,

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