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AVIATION LAW MADE SIMPLE

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A Global Aviation Community: Facilitating International Cooperation to Ensure World Safety

This month, I want to address two issues that stand in sharp contrast to one another. The first issue is contract maintenance, or maintenance outsourcing, which continues to receive a great deal of attention in the media. The second issue is the increasing globalization of the aviation community and some of the steps the regulatory authorities are taking to facilitate international cooperation and trade.

Outsourcing: How Broad Do We Cast the Net?

On Feb. 12, the Teamsters Union and the Business Travelers Coalition co-sponsored the Aircraft Maintenance Outsourcing Summit in Washington, D.C.

Outsourcing, more accurately described as contract maintenance, occurs any time a party enters into a contract for the performance of maintenance services. This happens when an air carrier contracts for maintenance services with a repair station, or when one repair station contracts specialized maintenance to a different, more qualified repair station — such as a facility with a general focus contracting out avionics work to an avionics shop.

The summit organizers called for a moratorium on contract maintenance

with non-U.S. repair stations until there are uniform maintenance standards and FAA oversight of repair stations.

Participants in the panel discussions debated the current state of contract maintenance and were urged to discuss possible solutions.

Some of the ideas presented include:

- Increasing frequency and depth of FAA inspections of both domestic and foreign repair stations.
- Requiring criminal background checks for repair station employees.
- Mandating drug and alcohol screenings for all repair stations (currently, some foreign repair stations and some general aviation repair stations are not required to perform drug testing).
- Harmonizing the manner in which U.S. airlines contract-out maintenance to repair stations.

At the conference, Kevin Mitchell, chairman of the Business Travelers Coalition, introduced his aircraft maintenance outsourcing reform principles:

- A single and highest maintenance standard should be emplaced for airlines' in-house facilities and domestic-U.S. and foreign repair facilities.
- FAA oversight of domestic-U.S.

and foreign repair facilities should be increased to a level that is commensurate with the volume and complexity of current outsourcing practices.

- The fully burdened costs of FAA inspections and audits should be borne by airlines that choose to outsource to overseas repair facilities.

- Airlines that outsource to overseas repair facilities should hold such facilities to high environmental standards with respect to disposal of toxic waste and other processes associated with aircraft maintenance.

- Domestic-U.S. and foreign repair facilities should have adequate safeguards in place regarding personnel backgrounds, aircraft access and parts inventory to frustrate terrorists who might exploit an opportunity to do harm to the U.S. or other countries.

The FAA Reauthorization Act of 2007 (HR 2881) would require the FAA to perform two inspections per year on each FAA-certificated repair station outside the United States. Presently, the U.S. has agreements with France, Germany and Ireland to perform repair station inspections on behalf of the FAA, with similar agreements being negotiated with EASA, Australia, China and New Zealand.

In return, the FAA oversees 1,200 repair stations in the U.S. on behalf of

foreign regulatory authorities. These arrangements create efficiencies by permitting one authority's inspectors to audit each relevant authority's regulatory standards in a single visit.

Those who oppose contact maintenance do so for different reasons. Some people see it as a jobs issue, believing outsourcing diverts work overseas. Other people see it as a safety issue, claiming different countries enjoy different safety standards.

Many opponents of contract maintenance who are serious about safety are calling for higher levels of inspection. The FAA already enjoys a larger cadre of inspectors than any other national aviation authority.

National aviation authorities all over the world have been cooperating to find ways to better leverage their work forces to provide maximum safety benefits. One of the initiatives is found in the guise of safety management systems (SMS). Under an SMS paradigm, regulated parties optimize their record-keeping and quality-assurance programs to support government oversight, and civil aviation authorities (such as FAA, EASA, CTA, Transport Canada, etc.) use risk-management algorithms to focus their resources where they are most needed.

Prior to the passage of HR 2881 in the House of Representatives, the White House issued a statement of administrative policy in which it condemned the bill for falling short of reforms proposed by the administration.

The administration opposes the provision requiring additional FAA inspections of foreign repair stations and additional safety-related provisions, which the White House statement claims would divert resources from ongoing safety projects and the "overall safety agenda, which has resulted in the safest period in aviation history."

According to the White House statement, the bill's language would prohibit the administration from taking advantage of the reciprocal agreements with other governments to oversee repair stations. It also states the bill would "make the status quo worse" by defeating progress made in prior Congresses and, if presented to the president in its current state, his senior advisors would recommend a veto.

The effort by Congress to micro-manage FAA resources undercuts the FAA's current efforts to use risk-based analysis to assign its resources to the projects representing the highest levels of safety risk. The risk-based approach to regulation and enforcement is consistent with recent international recommendations from the International Civil Aviation Organization (ICAO).

While the media has no problem finding reasons to criticize the Bush White House, its support of the FAA's efforts to implement risk-based safety management (without Congressional interference) is one reason to praise the White House.

The real problem with the "maintenance outsourcing" debate is, at its core, it assumes operators know more about maintenance than maintenance professionals do; and this is a dangerous assumption to make. While some operators know a great deal about maintaining their own products, their primary focus is on operations, which means it is more efficient for them to rely on repair stations to be the experts in specialized repair and alteration.

While the world community debates the pros and cons of contract maintenance, the regulatory authorities are taking steps to improve international cooperation and ensure global safety. One important aspect of global safety is found in the proliferation of airworthiness documentation, which facilitates safety auditing and supports the risk-management approach to aviation regulation.

FAA Facilitates Trade

Companies selling avionics know the importance of documentation. Avionics often are accompanied by airworthiness documentation, such as the 8130-3 tag from the United States, the EASA Form One from the European community, or the TC 24-0078 from Canada.

Such a tag can be issued with a new article (usually signed on the left side of the form) or can be issued as an approval for return-to-service following maintenance (usually signed on the right side of the form).

Historically, airworthiness approval tags (those signed on the left side of the form) are issued only in the jurisdiction under whose regulatory authority the tag is issued. This precedent has been changed under new FAA policy. The FAA issued a new regulatory change authorizing issuance of 8130-3 tags outside the U.S., and recently revised its advisory guidance to permit 8130-3 tags to be issued outside the U.S.

Order 8130.21E is the U.S. guidance providing instructions for the issuance of 8130-3 tags. The most recent revision to this guidance — Order 8130.21E, Change 2 — adds new language to explicitly permit designated airworthiness representatives (DARs) to issue 8130-3 tags outside the U.S. DARs are private persons granted the privilege to issue certain types of certificates and approvals on behalf of the FAA.

Before this year, 8130-3 tags could not be issued outside the United States unless the applicant had obtained a special exemption from the regulations. Such exemptions had been issued to a number of large companies. The FAA decided to eliminate this limitation in light of the wide range of exemptions being issued.

Under the new guidance, DARs still would need to apply for geographic

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expansion to obtain the privilege of issuing 8130-3 tags outside the U.S. This would require the designee and/or the 8130-3 applicant to file for a no-undue-burden finding with the FAA. The FAA has published parameters for making such a finding in certain types of cases.

This change could be a tremendous benefit for companies seeking to obtain replacement 8130-3 tags for new avionics manufactured in the United States but which now are located outside the U.S. The new standard means these items do not have to be returned to the U.S. if their documentation is lost or damaged.

Harmonizing Instruction Sets

Many of the world's aviation authorities have been working together for several years to harmonize the instruction sets for the issuance of their airworthiness authorization documentation (8130-3, EASA Form One, TC 24-0078, etc.).

EASA soon will release a new rule with instructions for completing the EASA Form One. These instructions will be harmonized with the FAA guidance, which will be issued as FAA Order 8130.21F.

The reason for harmonized instructions for completing these forms is so the forms have roughly the same meaning no matter where they are received. The authorities have taken great pains to try to use harmonized terms that will mean the same things throughout the world, rather than using terms that

have different or contrary meanings in various parts of the world.

Look for these harmonized instructions to be issued by the U.S. and Europe this summer, with other regulatory authorities issuing their revisions not far behind.

Russian Aviation Seeks a Renaissance

The next decade could bring a new participant to the international safety efforts. Russia recently announced a plan to revitalize its aviation industry.

Since the collapse of the Soviet Union in 1991, Russia's commercial aviation industry has slowed dramatically, going from producing 100-plus commercial aircraft per year to fewer than 10 per year.

In an effort to revive the flagging industry, outgoing Russian President Vladimir Putin (and soon-to-be prime minister under the Medvedev administration) has ordered the creation of an aviation "industrial cluster" with an estimated cost exceeding \$1 billion.

The plan to resurrect Russia's aviation sector includes the formation of a national aviation center in Zhukovsky, for designing, testing, building and marketing aircraft. The goal is to build 5,800 new civilian and military planes by 2025, and win 15 percent of the world market.

To win such a large part of the market, Russia likely will need to investigate the general aviation market as well.

"It will require a lot of resources, and we can afford it," Putin said.

Putin is expected to further dis-

cuss joint venture projects in aircraft production, as well as helicopter and aircraft engines and components, with his Ukrainian counterpart, Yulia Tymoshenko.

The maintenance community will need to watch the Russian entry into the marketplace with interest because the traditional Russian aviation model has focused more on use-and-replace components, rather than supporting a Western-style maintenance regime. We can only hope the new Russian paradigms will recognize robust support for aircraft maintenance provides long-term value to the aircraft purchasers.

Challenges Ahead

The world poses some interesting challenges in the future for the maintenance community. Among all of the competing paradigms on maintenance oversight, integration of safety management systems into the repair station environment likely will pose the next major regulatory hurdle for certificate holders.

Despite all of the rhetoric in the media, it is unlikely we will see significant prohibitions against contract maintenance. SMS offers an opportunity for the FAA and other regulatory authorities to target their resources to better ensure the highest levels of safety.

International harmonization efforts, such as the efforts to develop international guidance for airworthiness documentation, are a sure sign globalization in the aviation community is here to stay. □