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Office of the Chief Counsel
Regulations Division, AGC-200
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FACSIMILE TRANSMITTAL SHEET

TO:

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FROM:

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RE:

YOUR REFERENCE NUMBER:

FOIA REQUEST 2006-2057

URGENT

FOR REVIEW

PLEASE COMMENT

PLEASE REPLY

PLEASE RECYCLE

NOTES/COMMENTS:

This fax replies to your FOIA Request letter (FOIA No. 2006-2057) requesting a copy of an FAA document dated August 5, 1993, regarding "Definition of Owner-Produced Part". The August 5, 1993, document is attached to this fax. Please call me if you have any trouble with the transmission of this fax. Nancy Molitor

AUG 5 1993

**INFORMATION: Definition of "Owner
Produced Part," FAR 21.303(b)(2)**

Assistant Chief Counsel for Regulations,
AGC-200

Manager, General Aviation and Commercial
Branch, AFS-340

This responds to your memorandum, dated April 8 to Senior Attorney Mardi Thompson, in which you asked for a definition of "owner [or operator] produced part," as described in Federal Aviation Regulations (FAR) Section 21.303(b)(2). You asked several questions in your memorandum. We answer your questions in the order you asked them. Attachment A provides a background foundation for our answers. The answers should frame a workable definition of how to determine if the exception in FAR 21.303(b)(2) applies.

We answer your questions as follows:

First question: Does the owner have to manufacture the part himself, in order for the part to be considered an "owner produced" part? **Answer:** No. An owner would be considered a producer of a part if the owner participated in controlling the design, manufacture, or quality of the part. We would look at many factors in determining whether a person participated in controlling the design, manufacture, or quality of a part. The following would tend to indicate that a person produced a part:

1. The owner provided the manufacturer with design or performance data from which to manufacture the part. (This may occur, for instance, where a person provided a part to the manufacturer and asked that the part be duplicated.)
2. The owner provided the manufacturer with materials from which to manufacture the part.
3. The owner provided the manufacturer with fabrication processes or assembly methods to be used in the manufacture of the part.
4. The owner provided the manufacturer with quality control procedures to be used in the manufacture of the part.
5. The owner supervised the manufacturer of the part.

We would not construe the ordering of a part, standing alone, as participating in controlling the design, manufacture, or quality of a part.

Second question: Can the owner contract for the manufacture of the part, and still have a part that is considered an "owner produced" part? Answer: Yes, in certain circumstances. The owner would still be considered a producer of the part if he participated in controlling the design, manufacture, or quality control of the part. Note that, as explained in Attachment A, the person with whom the owner contracted would also be a "producer."

Third question: Can the owner (merely) supervise or assume responsibility for a mechanic manufacturing the part for the owner, and still have a part that is considered an "owner produced" part? Answer: Yes, with respect to supervision. Owner supervision would indicate that the owner participated in controlling the design, manufacture, or quality of the part. A common example would be where an air carrier mechanic manufactured a part for installation on the air carrier's aircraft; the part produced would be owner or operator produced. We are not sure what you meant by the owner "assuming responsibility" for manufacture of a part. If your reference was to something other than participating in controlling the design, manufacture, or quality control of the part, our opinion is that the owner probably would not be determined to have produced the part.

Fourth question: Can an owner contract with a non-certificated individual to manufacture a part for use on the owner's aircraft, and still have a part that is considered an "owner produced" part? Answer: Yes, in certain circumstances. If the owner participated in controlling the design, manufacture, or quality of the part, the part would be considered to be produced by the owner. However, as explained in Attachment A, the non-certificated person would also be considered a "producer."

Fifth question: If a mechanic manufactured parts (e.g., wing ribs) for an owner, and the parts were associated with a repair the mechanic was performing, would manufacture of the parts be considered maintenance associated with the repair, or production of a part by the owner for maintaining the owner's aircraft? Answer: It could be one or the other; in neither case, however, would there necessarily be an FAR violation. If it was concluded that the owner participated in controlling the design, manufacture, or quality of the part, he would be a producer, and the exception in FAR 21.303(b)(2) would apply. Therefore, the mechanic would not be in violation of 21.303(a).

If it was concluded that the mechanic produced the part for the purpose of effectuating the repair, the question would remain whether the mechanic would be in violation of 21.303(a). We submit that the mechanic would not be in violation of 21.303(a), because, as explained in Attachment A, the mechanic did not produce the part for sale for installation on a type certificated product.

We hope the above answers respond to your needs. For further discussion, please telephone Carey Terasaki, AGC-210, at (202) 267-8018.

Donald P. Byrne

Attachment

Attachment ABackground

Section 21.303(a) of the Federal Aviation Regulations (FAR) states:

Except as provided in paragraph (b) of this section, no person may produce a modification or replacement part for sale for installation on a type certificated product unless it is produced pursuant to a Parts Manufacturer Approval issued under this subpart.

Section 21.303(a) appears to contemplate that more than one person can "produce" a modification or replacement part. We base this observation on the following:

1. The regulation proscribes certain behavior unless the part is produced pursuant to a PMA; it does not specifically state that each person who is producing the part must hold a PMA. In fact, prior to Amendment 21-41, FAR 21.303(a) prohibited each person producing a replacement or modification part for sale for installation on a type certificated product from doing so without holding a PMA. In Amendment 21-41, the FAA amended 21.303(a) to allow a PMA holder to contract with a subcontractor or supplier to manufacture a modification or replacement part under the holder's PMA. That amendment recognized that more than one person can participate in the production of a part.
2. The only meaningful interpretation of FAR 21.303(b)(2) accommodates the view that a modification or replacement part can be "produced" by more than one person. Section 21.303(b)(2) excepts from the PMA requirement of 21.303(a) "[p]arts produced by an owner or operator for maintaining or altering his own product." If the 21.303(b)(2) exception were to apply only when the owner or operator produces the part, it would only except from 21.303(a) the production of a part produced by the owner or operator for sale to himself. This result would be illogical. Thus, 21.303(b)(2) must be interpreted as addressing the situation where a part is produced by an owner (or operator) and also is produced by another person.

As noted above, prior to Amendment 21-41, FAR 21.303(a) prohibited each person producing a replacement or modification part for sale for installation on a type certificated product from doing so without holding a PMA. In Amendment 21-41, the FAA amended FAR 21.303(a) to allow a PMA holder to contract with a subcontractor or supplier to manufacture a modification or replacement part under the holder's PMA. In that amendment, the FAA recognized that a modification or replacement part can conform to the approved design data and be safe for installation on a type certificated product, as long as the part is produced under an approved fabrication inspection system (FIS).

Amendment 21-41 did not specifically address who "should have held the PMA" where the part was produced in the absence of a PMA. However, any interpretation of FAR 21.303(a) should be consistent with the focus in that amendment on the establishment and maintenance of the FIS; therefore, we submit that 21.303(a) creates liability for production of a modification or replacement part for sale for installation on a type certificated product for each person who:

1. Participates in controlling the design, manufacture, or quality of the part.
2. And does so with the intent that the part be sold for installation on a type certificated product.

We would look at many factors in determining whether a person participated in controlling the design, manufacture, or quality of a part. The following would tend to indicate that a person participated in controlling the design, manufacture, or quality of a part (i.e., "produced" the part):

1. The person provided the manufacturer with design or performance data from which to manufacture the part. (This may occur, for instance, where a person provided a part to a manufacturer and asked that the part be duplicated.)
2. The person provided the manufacturer with materials from which to manufacture the part.
3. The person provided the manufacturer with fabrication processes or assembly methods to be used in the manufacture of the part.
4. The person provided the manufacturer with quality control procedures to be used in the manufacture of the part.
5. The person supervised the manufacturer of the part.

We would not construe the ordering of a part, standing alone, as participating in controlling the design, manufacture, or quality of a part.

One other issue needs to be addressed. Section 21.303(a) prohibits a person from producing a part for sale for installation on a type certificated product when the part is not produced pursuant to a PMA. The general intent of the proscription in FAR 21.303(a) is to prevent the introduction of an unapproved part into the aviation stream of commerce, where it could be subsequently installed on a type certificated product(s). The terms of 21.303(a), including "for sale," are defined in that context.

Notwithstanding that repair stations and mechanics bill their customers for parts, along with the labor of installing the parts, those entities produce the parts for the purpose of accomplishing maintenance on products, limited to those products brought in by their customers. As described in Order No. 8000.50, a repair station may produce a replacement or modification part, under FAR Parts 43 and 145, for an STC modification or a field-approved repair or alteration, given certain circumstances that assure quality control of the part produced. Compliance with Part 43 gives the assurances of the quality control for a part produced by a Part 65 mechanic. In addition, compliance with the maintenance recordkeeping requirements memorializes the circumstances of production and installation of the part. Accordingly, the objectives of Subpart K are achieved when a part is produced by a repair station or mechanic for installation on a customer's product: the installed part is introduced into the aviation stream of commerce with the necessary evidence of the part's suitability. Thus, one can conclude, as a matter of law, that a repair station or mechanic has not produced the above-described part "for sale" for installation on a type certificated product, as defined in the context of 21.303(a).