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Is Your FAA Inspector Asking for Hazmat Compliance?

Are you hazmat-compliant? This is the question you soon might be hearing from your principal avionics inspector.

On Aug. 20, the FAA issued a notice to the field requiring FAA inspectors to obtain letters verifying hazmat compliance from the repair stations they oversee. The notice applies to repair stations certificated before Nov. 7, 2005. Those certificated after that date already were required — by regulation — to provide this verification at the time of certification.

Under the terms of the notice, your principal maintenance inspector or principal avionics inspector must obtain a letter from your repair station certifying your hazmat employees (and employees of your contractors and subcontractors) have been trained in accordance with:

• Title 49 CFR, Part 172, Subpart H, for domestic repair stations, and/or

• ICAO "Technical Instructions for the Safe Transport of Dangerous Goods by Air" for repair stations outside the United States.

Letters of compliance are due by Aug. 20, 2010 for domestic repair stations, and upon the next renewal for non-U.S. repair stations.

Is This Request Legal?

For those with questions about the legality of this demand, here are the facts: Yes, the FAA is violating the law by demanding this verification letter. Because of this fact, the FAA cannot enforce your refusal to provide the letter.

> Just because this is an illegal end-run around the legal requirements for government action, it does not mean the local office won't make your life miserable if you refuse to provide the verification letter.

The reason for this is because the letter represents an information collection under the Paperwork Reduction Act, which specifies no agency can enforce an information collection of this sort unless the White House Office of Management and Budget approves it first.

Any information collection attempt is required to bear the OMB control number. Because there is no OMB approval and no OMB control number for this verification letter, a direct request would be illegal without OMB approval.

Instead, the FAA imposes an obligation on its employees to collect such a letter, which technically is not a requirement imposed on the public. Because it is not enforceable, it also cannot be disputed legally

Nonetheless, the request represents another example of rulemaking-by-policy in which the FAA uses a notice to the inspectors — instead of a requirement issued to the repair stations in the form of a regulation — to collect information without completing the OMB approval process.

Compliance Notwithstanding the Law

Just because this is an illegal end-run around the legal requirements for government action, it does not mean the local office won't make your life miserable if you refuse to provide the verification letter. Most repair stations will go ahead and provide the verification letter.

Let's talk about the standards for hazmat compliance so you know what you are certifying. Under Part 145, new repair stations are required to certify their compliance with the hazmat-training regulations. In addition, existing repair stations are required to make this certi-

fication upon application for a change in ratings.

The hazmat-training rules require an employer to be responsible for ensuring each hazmat employee is trained, tested and certified.

If your repair station knows it does not ship hazardous materials, it is not a hazmat employer. However, because there are so many hazardous materials on an aircraft, the FAA issued a bulletin 10 years ago declaring all repair stations were presumptively hazmat employers unless they could demonstrate otherwise.

Against this background, it usually is considered to be "safer" legally to ensure at least one employee responsible for shipping articles is hazmat-trained and is available to recognize and properly ship hazmats on an as-needed basis.

For cases in which the repair station is reasonably certain it is a hazmat employer, it usually is wise to train anyone who participates in shipping or makes decisions affecting shipping to the certification standards of the hazmat regulations.

Which Articles are Hazmat?

There are nine classes of hazmats, and almost all of them can be found in an aircraft.

Explosive actuators are found in the fire-suppression systems on jet engines. Compressed gasses can be found on the aircraft in the form of nitrogen bottles and oxygen bottles. Compressed gas also is used to inflate lifesaving equipment, such as rafts, slides and life preservers.

Aircraft are powered by fuel, and aircraft fuels are flammable liquids. Even residual fuel is considered a hazmat, which means engine parts with residual fuel in them are another example of hazmats found in the aviation system.

Radioactive materials can be hazmats when they appear in high enough activity levels. Historically, this used to include items such as depleted uranium counterweights used in transport-category aircraft. Avionics and instrument repair stations also need to be wary of instruments with radium paint (used to provide fluorescence).

Oxidizers, such as oxygen bottles and chemical oxygen generators, are hazmats, as are toxic items, such as certain greases and coatings. Corrosives are hazmat; the most common corrosive hazmat found in an aircraft is a battery.

Battery-powered equipment is considered a hazmat, which includes almost anything with a battery — even if the battery is used only for back-up power in the event of main power bus failure.

Who Needs to be Trained?

This brings us to the most important question: Who needs to be trained?

This is important for two reasons. Obviously, the people required to be trained must receive the training.

However, just as importantly, by identifying the hazmat employees (those required to be trained under the regulations), you also affirmatively demonstrate the repair station must be a hazmat employer by virtue of the fact it has hazmat employees.

The certification letter represents an admission that your repair station is a hazmat employer and it also certifies the appropriate employees have received the hazmat-certification training.

First and foremost, shipping personnel who participate in the shipment of hazmat are required to be hazmat-trained. This includes those who put the hazmat in the packaging; those who mark or label the packaging; those who complete the shipping documents; and those who close and seal the packaging.

It also includes anyone who makes decisions affecting the safe transportation of hazardous materials. A person who selects the carrier for hazmat shipments; a person who types hazmat shipping documents after someone else has handwritten the draft information; a person who decides which hazmat packaging to purchase — each of these represents a person who must be trained under the regulations because they are making decisions and taking actions affecting the safe transportation of hazmat.

Each person who is identified as needing training must be trained to a list of subjects found in the regulations, tested on those subjects and certified to have completed the training and testing.

Where Can I Get Training?

The AEA has been offering hazmat training for several years in cooperation with two other associations. This training is a two-day course designed to do more than just check a box; it is designed to make AEA members comfortable with their ability to comply with the hazmat laws.

Generally, at least three of these hazmat-certification classes are offered each year: one on the West Coast, one on the East Coast and one in the middle of the country (most recently, this class took place at the AEA Headquarters in Missouri).

The AEA will offer at least three of these classes again in 2010, and all should take place within the "compliance period" described by the FAA notice. So, there will be plenty of time to get your personnel trained and certified before the due date for the certification letter. ❑

If you have comments or questions about this article, send e-mails to avionicsnews@aea.net.