



# News from the Hill

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## *New Rules, Batteries, and International Regulation*

**N**ext month marks the 100th Anniversary of powered flight.

In 1903, at the time of the Wright Brothers historic flight, the law was a very different thing. There were no highly regulated industries. There was no DFA, NRC or FAA. The original Food and Drugs Act was still three years away. Nuclear power had not yet even been invented. And aviation was still two decades away from seeking Congressional regulation. In such an environment, surely no one could have foreseen what the aviation regulatory scheme would have become.

The laws that permitted the regulation of aviation were not passed until 1926, when Congress passed the Air Commerce Act at the request of the aviation community. At the time, the industry believed that federal regulation would help to show that aviation was a safe method of moving people and goods, thus allowing the industry to grow as a commercial endeavor. Who would have thought, at that time, that regulatory compliance would come to reflect such a significant expense?

Today, we know that regulatory compliance is a significant expense in terms of man-hours and other resources devoted to assuring compliance. Aviation has become one of the most highly regulated industries in the

world. The results, however, have been exactly what the original Air Commerce Act supporters intended. Our industry is one of the safest, and public confidence in commercial aviation remains high despite some devastating blows. This is particularly amazing when you consider that our industry expects commercial passengers to surrender all control over their lives to a pilot locked away in a separate compartment, who will then take them in a pressurized tube to an altitude at which no human being could otherwise survive. Public confidence in commercial aviation is important to the entire industry because it is the fascination with flying that leads others to take up private flying, leading to a constant influx of new general aviation pilots.

Regulations therefore represent both the bane, and the lifeblood, of our industry. This month, we are featuring a number of industry developments that cut to the core of what we do as AEA members.

### **Part 145**

One of the most important sets of regulations for AEA members is the new set of repair station regulations found in part 145. After several postponements, the new repair station regulations are now set to be implemented on January 31, 2004. This is likely

to be the last postponement, so make sure you are working NOW on your repair manual and quality system manual, pursuant to the new regulations. If you expect your local FAA office to assist you by reviewing or accepting the new manuals (any requirement for FAA to accept the manuals is explicitly eliminated by the new regulations) then you should time your manuals so that the local office has plenty of time to look them over and get you a response before the deadline. As always, communication with your principal maintenance inspector is important.

The new training regulation, section 145.163, is scheduled to be effective on April 6, 2005. The FAA should be publishing advisory guidance on training program requirements in 2004 in order to support this next effort.

### **New Hazardous Materials Training**

There are more immediate training concerns for many AEA members. The FAA published proposed hazardous materials training regulations that would greatly increase the number of companies required to provide hazmat training to their employees. Many AEA members WHO DO NOT handle hazmats would still be required to train their employees in hazardous materials transportation issues under

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this new rule. The new rule requires training of most repair stations doing business with Part 135 operators and/or Part 121 carriers. The reason for this is because the FAA wants to make sure that such companies do not inadvertently transfer unmarked hazmat to a commercial operator. The FAA has decided that even companies that traditionally do not handle hazmat will be required to train in some cases.

The proposal also requires covered repair stations with 121/135 customers to have separate training for each of the customers unless one customer agrees to certify that its training and procedures are substantially the same as the others (a claim that few operators are likely to be willing to make in the real world, because they are not in control of their competitors programs). This causes a very real potential for ridiculously redundant training.

These proposals could mean substantial new training requirements for AEA member companies. AEA submitted legal comments to the docket, seeking to narrow the scope of the training to exclude avionics repair stations that are unlikely to handle hazmat. AEA's comments also sought permission for repair stations with multiple 121/135 customers to conduct their own training, because otherwise the mechanism for avoiding redundant training is unwieldy. In addition, AEA has started to talk about developing and providing training programs in the event that there becomes a substantial need for AEA members to provide this sort of hazmat training to their employees.

### **Batteries ARE Included**

Probably the most likely hazardous material that might be seen in some AEA facilities would be batteries. There are a number of exceptions that permit batteries to be shipped as non-hazardous material; however there are

details to each of these exceptions that are frequently ignored by those that are unfamiliar with the hazmat regulations. AEA members who receive avionics for repair and then subsequently ship them back to the customer should be careful to make sure that any batteries in the equipment meet the terms of an appropriate shipping exception. Some avionics include back-up batteries. These are often installed to provide emergency power to the avionics components in the event of a power failure in the aircraft. While these are often dry-cell batteries that can be considered excluded from the regulations under the right circumstances, they may also be lithium ion batteries that are subject to their own list of exceptions.

Dry cell batteries may be excluded from the regulations, but only if they are packed in a manner that prevents the dangerous evolution of heat as a consequence of a short circuit. The FAA has documented cases of circuit boards smoking in aircraft as a result of unusual circumstances. The power source for this heat generation was the battery and this was considered to be a hazmat shipment situation. Dry cell batteries that are allowed to remain in their equipment have any exposed terminals insulated during shipment to prevent possible short-circuits or other unintentional discharges (remember to advise your customer of this shipment policy, so that the insulation can be removed before installation).

### **FAA Reauthorization**

This year's FAA Reauthorization will increase the maximum civil penalty for a regulatory violation to \$400,000 per incident. This makes it particularly valuable to ascertain your compliance—and also particularly valuable to join AEA in opposing unreasonable regulatory proposals and promoting reasonable ones.

The new FAA Reauthorization Bill is known as "Vision 100," and it is a

\$59 billion bill that provides authorization for funding the FAA, establishes priorities for the FAA for the next four years, and changes many of the laws affecting the aviation industry including a number that may affect AEA members.

This bill has become the focus of an intense debate that could delay the bill's enactment. At issue is a provision that would allow the FAA to use private-sector contract controllers to staff 69 additional VFR control towers at small airports—a move that is hotly contested by the controllers' union.

### **Significant Changes Over the Horizon**

Assuming this Reauthorization Bill can move past this last-minute hiccup and become law, there are plenty of new clauses to interest repair stations, like increased civil penalties (making 100 percent compliance even more important and making it even more important to protect your rights when you know that you are already in compliance); Design Organization Certificates that permit the FAA to use the model established by ADEOS to make more services available through designees; minor revisions to the fraudulent parts rules aimed at preventing individuals convicted of parts fraud from ever working in the industry again; A&P curriculum updates (an important issue for many AEA member shops eager to see 147 school curricula brought into the 21st century); FAA inspector training studies and a sense of the Congress statement that supports the sort of training that AEA has always provided in its regional meetings; and foreign repair station security program rules that could be a real burden on AEA's non-U.S. members unless they get started addressing these concerns as soon as the new law is passed. As soon as the FAA Reauthorization is passed in its final

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form (once the controllers issue is resolved), AEA will publish a comprehensive analysis of the changes embodied in the new law.

### **Changes Across the See**

Meanwhile, aviation regulation in Europe entered a new era on September 28, 2003 with the official establishment of the European Aviation Safety Agency, or EASA. The European Commission, the executive body of the European Union [EU], has been actively working to establish EASA since 1998. The goal has been to create an EU-wide regulatory body that can establish uniform aviation safety regulations throughout the EU. Unlike the JAA's Joint Aviation Requirements, the regula-

tions promulgated by EASA are expected to be binding on the EU's member states.

While EASA still has many political hurdles to overcome, it is impressive to see that they are establishing deadlines and sticking to them.

Initially, EASA has assumed responsibility for the certification of aeronautical products, parts and appliances and the approval of organizations and personnel engaged in the maintenance of these products. In time, its competencies will expand to include the regulation of maintenance, air operations, and flight crew licensing. The agency is slated to be fully operational by 2006.

The FAA already had a good working relationship with the JAA, and the advent of the new EASA should permit the FAA to continue to maintain

close ties with their European counterparts. AEA members should expect coordination between EASA and the United States that should make it easier to export and import avionics, helping to turn the fledgling 1903 dream of powered flight into a 21st century marketplace of truly global proportions. □

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