The View from Washington

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Another Spring comes to the Washington area and as anyone following the weather here on the East Coast of the United States knows, it has been a snowy winter and so far a wet spring. But the shoveling and the umbrellas have also brought the end to a decade-long drought that suffocated the Washington area last summer. Like most things in life, there is always a price to pay for progress.

The Association has been quite active these past few months working with the FAA, Congress, other regulatory agencies and the aviation industry on behalf of its membership.

We were able to continue our efforts to support aviation small businesses. In April, the Association was invited to testify before the U.S. House of Representatives' Aviation Subcommittee where we focused on the excessive administrative burden initiated at the local FAA inspector level. The three areas the testimony focused on was the administrative burden of inappropriate repair station manual changes, the excessive use of Approved Aircraft Inspection Programs for aircraft avionics systems, and the inappropriate and unapproved uses of the FAA Form 337.

The repair station Inspection Procedures Manual (IPM) has long been an area of administrative abuse. The arbitrary inspector-induced changes are an area of great concern. Not that all changes identified by a new ASI are wrong, some regulations have changed over the years and some repair station manuals are outdated. Some repair stations no longer perform maintenance repair and overhaul the way their manuals indicate; their organizational structure may have changed or the chain of authority may be different. These are all valid reasons to require an IPM to be updated. However, some ASIs don't bother to link their concerns regarding deficiencies in the IPM to a specific regulatory requirement in Part 145. They may arbitrarily place IPM requirements on the repair station that only vaguely resembles the regulatory requirement. These inspectors require perfection of their repair stations while accepting shoddy work on their own part.

The IPM needs to describe the operation of the repair station and this operation needs to conform to the regulations. Any effort to word-smith a manual or require "nice to have" inspector recommendations is outside of the administrative burden approved as part of the original Part 145 rulemaking.

Another area of non-productive administrative burden has been the encouragement by local FAA offices over the past 12 months to have small repair stations waste precious resources in developing new repair station manuals before appropriate guidance had been issued. It was wrong for the local inspectors to mandate the rewrite of repair station manuals before the new repair station Advisory Circular (AC) was published. It was especially wrong to offer an internal draft of the AC as the public guidance document. In these cases, the inspector mandating an unapproved administrative requirement and offering an unapproved federal document for reference is actually in violation of Federal law.

The Association presented the abusive use of the Approved Aircraft Inspection Program (AAIP) provisions of Part 135 as another example of excessive administrative burden. The AAIP has two functions; one to allow a Part 135 operator who has the organization to document inspection and service history to develop their own unique inspection program applicable to their fleet. And, to allow the Administrator to require enhanced inspections for areas that are shown to be deficient in the OEM inspection program. These types of inspections are like enhanced corrosion inspection programs for float planes or aircraft operating in high corrosive environments such as the Gulf of Mexico or Caribbean areas.

The issue that was raised was that of using antiquated analog-equipment type inspection and calibration procedures for new, modern digital equipment. There are a number of avionics inspectors who have mandated extensive avionics equipment inspections that exceed those recommended by either the aircraft OEM in their ICAor the avionics OEM in the recommended maintenance and inspection manuals. Without data or documentation of any deficiency in these "acceptable" inspection programs, the individual avionics inspectors have arbitrarily determined that enhanced avionics inspections are mandatory. And to support the additional requirements,

some avionics inspectors have relied on outdated inspection procedures from "when they were in the industry" and, in some cases, from outdated military inspection procedures.

The last area of focus in the testimony was the abusive use of the FAA Form 337. That form has, over time, developed a life of its own. Originally approved to take only 30 minutes, the average completion time can now exceed four hours.

The FAA Form 337 was originally intended to document major repairs or major alterations to type-certificated products. The FAA's use of the form—like all paperwork requirements initiated by the federal government was—approved by the White House Office of Management and

Continued on following page

Frequently Asked Questions

Q: I just got an order from a non-U.S. person for components that are in my U.S. warehouse. With all of the new U.S. regulations concerning terrorism are there any limits on where I can send these components?

A: Yes, there are a number of limits. First of all, the United States has various sanctions against countries, which may affect your transaction. The countries against whom the United States had Treasury Department sanctions at the time this article was drafted included: Angola (UNITA), The Balkans, Burma (Myanmar), Cuba, Iran, Iraq, Liberia, Libya, North Korea, Sierra Leone, Sudan, Syria, Yugoslavia (Serbia and Montenegro), and Zimbabwe.

Q: Should I avoid all contact with these countries?

A: Not all of these sanctions will apply to your transactions. For example, the sanctions against Liberia only apply to the import (into the United States) of rough diamonds that originated in Liberia. As long as you were not planning on taking your payment in diamonds, you may generally sell components to Liberian customers.

Even where the regulations appear to forbid a transaction, you can always apply for an exemption from the regulation if the purpose of the regulation is served (or at least not violated) by your transaction. For example, while transactions may generally be forbidden into certain countries, the U.S. government may permit certain limited transactions to human rights or assistance organizations (many of these organizations rely on their aircraft to make their humanitarian goods or services available to those who truly need them).

If you seek out an exemption, make sure you go to the right agency(ies). Sometimes, more than one regulation forbids the transaction; in that case you would need exemptions from each of the agencies having oversight. It is often a good idea to rely on the assistance of a lawyer or export professional in approaching such problems.

Q: Any other concerns?

A: Plenty. In addition to country-based prohibitions, there are a number of lists of denied persons with whom you should not do business—individuals as well as organizations. Some of these persons include universities and organizations that may appear charitable so be careful who you do business with!

Q: Where can I get more information?

A: The following websites include useful information about United States export prohibitions.

LISTS TO CHECK

Denied Persons List:
http://www.bxa.doc.gov/dpl/Default.shtm

Unverified List:
http://www.bxa.doc.gov/Enforcement/UnverifiedList/unverified_parties.html

Entities List:
http://www.bxa.doc.gov/Entities/Default.htmSpecially Designated

Nationals List:
http://www.ustreas.gov/offices/enforcement/ofac/sdn/index.html

Debarred List:
http://pmdtc.org/debar059.htm

FOR MORE INFORMATION

SNAPProgram:
http://www.bxa.doc.gov/SNAP/

Treasury Department Export Controls:
http://www.treas.gov/offices/enforcement/ofac/

Export Compliance Tips:
http://www.bxa.doc.gov/ComplianceAndEnforcement/index.htm#LTC

Note: AEA offers these Frequently Asked Questions (FAQs) in order to foster greater understanding of the rules that govern our industry. AEAstrives to make them as accurate as possible at the time they are written, but rules change so you should verify any information you receive from an AEA FAQ before you rely on it. AEA DISCLAIMS ANY WARRANTY FOR THE ACCURACY OF THE INFORMATION PROVIDED. This information is NOTmeant to serve as legal advice – if you have particular legal questions, you should contact an attorney.

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VIEW FROM WASHINGTON

Continued from page 23

Budget (OMB). To ensure that the public knew how to fill out and submit the form in the most efficient manner, the FAA published AC 43-9.

Some FAA inspectors require the form for much more than it was approved for. Some inspectors require it to "make a permanent record of minor alterations." There are a number of problems with this. First, the form is not approved for that purpose and it is a violation of regulations for a government official to mandate an administrative burden not approved by OMB. And second, the person submitting the form is declaring the alteration to be major and therefore the alteration and alteration data need to conform to the regulatory requirements of a major alteration. Add to that the lost administrative labor costs of managing the form that usually is not passed on to the customer.

The other area where the local inspector may be in violation of the regulations is requiring the use of FAA Form 337 as a cover sheet for the submittal of a Flight Manual Supplement. Again, the form has not been approved by the OMB for this use. In fact, AC 23-7 contains the proper procedures that should be followed when applying for a supplement to a flight manual.

Unfortunately, the issue cannot simply be resolved by focusing on the field inspector. There are policies that have been issued by FAAheadquarters that also violate the Paperwork Reduction Act and other laws. AFS-300 has a policy that prevents the local FAA inspector from approving the alteration data on a Form 337 without the inclusion of an ICA. However, for the local inspector to require the inclusion of the ICAon Form 337 places an unapproved administrative burden on the public making the individual inspector responsible for this violation of Federal law.

In the testimony before Congress, the Association estimated that the administrative burden of federal regulations to aviation small businesses is two to three times greater than the federal regulatory burden to general industry. This burden is seldom safety related or mandated by the Federal Aviation Regulations. These burdens are often placed on aviation small businesses at the discretion of the local FAAinspector either through misinterpretation of regulations, misapplication of authority or errors.

The FAA inspectors have an extremely onerous responsibility. Not only are they expected to be the resident aviation safety expert but because they are a representative of the federal government, they are required to enforce the FARs while personally complying with federal laws issued by Congress, the White House and the Department of Transportation.

Professional businesses, especially those in aviation, appreciate the accountability to the Federal Aviation Regulations that the FAA inspector provides. However, when the FAA inspector took their oath of office they committed to performing their job in accordance with the laws and regulations of this land. The performance of federal employees and representatives of federal agencies is not contained in the FARs. The administrative burden contained within the FARs has been approved by the offices responsible for agency oversight. For a federal employee of any federal agency to mandate a greater administrative burden than that which has been approved is wrong.

The Association is committed to identifying excessive administrative burdens that are arbitrarily being placed on aviation small businesses and raising these violations of federal law to the highest levels of both the specific agency and to Congress. q

Regulatory Update

United States

The Part 145 effective date has been corrected.

The FAA has extended the effective date of the Part 145 final rule 180 days as petitioned for by AEA. On March 14, 2003, the FAA published the revised effective date as October 6, 2003, which was technically 183 days. Therefore the FAA has published a correction to this notice that sets the new effective date for the FAR Part 145 final rule as October 3, 2003. Sec. 145.163 which applies to the approved training program requirements remains effective through April 6, 2005.

Repair Station Training

The first of 11 AEA and industry sponsored FAA-conducted regional training sessions was held at the AEA Convention last month. The training program contains two four-hour sessions, one on the new Part 145 Advisory Circular and the second four-hour training program on Field Approvals. These sessions will be held in each domestic FAA region with two programs in the Western Pacific region and one in Europe. While the AEA and industry are sponsoring these programs they are being taught by FAA headquarters person-

nel. These programs are intended to train both the FAA workforce and industry in the same venue so that both industry and the FAA will start on the new Part 145 with the same understanding. Every repair station should commit to sending at least one person to one of these sessions. The entire schedule can be found on AEA's website at www.aea.net including the foreign repair station training program that will be held in conjunction with the European regional meeting.

GPS Installations

Progress is being made on GPS installations. We have been committing lots of hours in support of the FAA's efforts to revise AC 20-138 regarding GPS design, certification and installations. Progress is being made but it is slow and painful with lots of debates and an overwhelming amount of opinions on both sides of the issue.

The first big step was finding the 1997 FAA policy that allowed for VFR GPSs to be evaluated and installed as minor alterations with acceptable data without the requirement to document the installation on a FAA form 337. Each installation needs to be evaluated in its own right but most VFR GPS installations should be a minor alteration to the aircraft.

While the early philosophy was one that since GPS technology is new all GPS installations required approved data with a few exceptions, the latest thinking recognizes that GPS is now a proven technology and that most installations may not be major. In the future, GPS systems, like any alteration, may be able to be evaluated independently for its affect on the airframe, electrical system, and other accessories and based on the results of this analysis then make a determination of the degree of the alteration to the aircraft.

FAA Published Final TCAS Rule for Large Transport Aircraft

The FAAis revising the applicability of certain collision avoidance system requirements for airplanes. The current rules are based on passenger seating configuration and therefore exclude all-cargo airplanes. This final rule uses airplane weight and performance characteristics as the basis for collision avoidance system requirements.

FAA Publishes FAA Writing Standard

The Administrator has published FAA Order 1000.36 that is applicable to ANYONE who writes or reviews FAA written documents intended for internal or external distribution.

This order, like all FAA orders, establishes the acceptable performance of FAApersonnel. Therefore, the new FAA writing standard should not affect how a repair station writes but rather how the inspector communicates in writing with the repair station. According to the FAA this order is being issued since the FAA's mission is so critical to both the safety and economy of the nation, the FAA must strive to communicate clearly with their customers and with other FAA employees. q

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