



News from the Hill

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Training Manuals, Other Manuals Multiplying

We live in a world of manuals, and they are multiplying like rabbits. This column examines some of the tricks and traps associated with manuals, including quality manuals, employee manuals and training manuals developed to meet the regulatory requirements of 14 C.F.R. § 145.163.

It was not long ago when all you needed was an Inspection Procedures Manual (IPM) and to copy the sample text provided by the FAA in its advisory circular (AC 145-3, which was cancelled in 2003). That wasn't too difficult to do, but there was a problem. Everyone seemed to have a different idea as to what was required in the manual.

It has become a common matter in my law practice to field calls from repair stations explaining they had added text to a manual to satisfy a prior principle maintenance inspector (PMI) or principle avionics inspector (PAI), but the prior inspector had been replaced and the new inspector insists the language in the manual violates one or more FAA regulations. When this happens, sometimes the old inspector was correct and sometimes the new inspector is correct. Occasionally, both inspectors are correct (for example, when a supervening rule amendment has changed the regulatory requirements). But it always spells difficulties for the repair station.

These days, we seem to need a wide variety of manuals, but they are

not helping us satisfy an increasingly subjective range of FAA employee "requests." In one case, a repair station occasionally leased equipment it needed for specialized jobs. The manuals dictated that the repair station would lease the equipment on an as-needed basis and the checklists effectively precluded the repair station from doing the work unless appropriate equipment with proof of calibration had been obtained first.

The inspector, however, demanded the repair station specify from whom each such piece of equipment would be leased and under what terms. This would have required the repair station to apply to change its manual every time it leased equipment from a new source. That sort of requirement could make effective contract negotiations with lessors particularly difficult.

It is easy to see how an increase in the number of subjectively reviewed manuals increases the likelihood of potential conflicts with local inspectors, as well as the likelihood that different regions will effectively operate under different de facto rules based on the subjective standards applied to manuals in that part of the country — this, in turn, can lead to obvious competitiveness problems.

The regulations now require repair station operations manuals, quality control manuals and training manuals. In addition, it is becoming common practice for repair stations to develop other types of manuals.

Quality Manuals

Quality assurance manuals are one example of a separate manual commonly produced in the industry. These are used for those quality system elements that go beyond the regulatory requirements.

For example, explicit steps involved in obtaining customer feedback concerning satisfaction and quality may be an important part of a continuous improvement quality assurance system, but it is not required by the regulations.

Many repair stations wisely put these types of provisions in a separate manual so improvement of the additional quality elements can be treated as an internal company matter without involving the FAA. In a continuous quality improvement environment, such as the environment fostered by well-run ISO 9000 quality systems, avoiding the necessity of FAA approval of the quality system improvements can greatly improve the rate at which quality improvements can be realized.

Of course, this practice of keeping additional quality assurance provisions in a separate manual also means non-compliance with the additional elements will not reflect a regulatory violation (assuming there is no concurrent violation of some other regulatory provision); whereas placing the additional provisions in the required quality manual could have meant a regulatory violation for non-compliance. It is clear from this example

the inconvenience of multiple separate manuals can have some benefits.

The industry has long recognized the difference between quality control (in which the uniform quality of the end product is confirmed so it meets requirements and expectations) and quality assurance (in which the focus is on the quality of the processes by which the end product is reached). Quality assurance systems can be useful tools in any aviation business (particularly in larger businesses, but I have seen quality assurance systems used to good advantage in small businesses as well) as they can help focus the business on the sort of improvements that keep customers happy, enhance aviation safety and improve profitability.

The FAA also has long recognized the safety advantages of a well-written quality assurance system. Quality assurance was part of the Part 145 proposal a few years ago, and while it was pulled from the final rule, the FAA pledged to return to the issue of quality assurance as a stand-alone rulemaking project. The aim was to devote resources to study quality assurance so the FAA could develop a cogent regulatory system that would mandate quality assurance elements without undercutting the efficiencies and improvements associated with quality assurance through bureaucracy.

This is a more difficult aim than it might seem at first glance because the greatest advantages to quality assurance systems are recognized in systems that are dynamic (able to change to reflect the ever-changing needs of the industry) and unique (able to reflect and amplify the particular strengths of the business in question while supporting and lessening the weaknesses). Generally speaking, it is difficult to write a regulation that will promote a dynamic system unique in nature.

The FAA intends to continue on this quest, however, and AEA members should expect to see another proposed regulation on quality assurance sys-

tems sometime before the end of the year.

Employee Manuals

It is popular for all sorts of businesses to have employee manuals that specify the rights and responsibilities of the employees. Employee manuals may include:

- Company guidelines concerning behavior.
- Specify the functions associated with each job in the business.
- Dictate terms of employment and compensation.
- Explain vacation time or sick leave policies.

In many cases, the first document a new employee receives from the business is a copy of the employee manual.

Different jurisdictions have treated these types of manuals in different ways, but it is important to bear in mind that sometimes these manuals can cause difficulties for the businesses that write them.

Some courts have recognized employee manuals as a form of contract with the employee. If you include procedures in your employee manual for handling matters such as grievances, then it is highly advisable you follow them. This means you should give some thought to these procedures to make sure they work for you. It is important to follow your own procedures because failure to do so can lead to liability in a number of ways.

Here is just one example: A company decides to terminate an employee for cause. The cause given is the employee was late to work. In an at-will employment state, this would normally be adequate justification for termination.

Now, let's imagine the employee is a member of a minority group and claims the termination was actually an example of illegal discrimination. Ordinarily, the company would be required to describe its legally correct reasons, and the plaintiff (the former

employee) would need to demonstrate the alleged reasons were pretextual — that is, they were reasons given to cover up the otherwise illegal discrimination but they were not the true motivation for the action.

A plaintiff's case is helped tremendously if the company's employee manual explains that the penalty for the first instance of lateness is a written warning and that the written warning will be kept in the employee's file. Unless there is a written warning already in the file, the failure to follow written procedures suggests the termination was not an ordinary reaction to tardiness. Of course, the tardiness could have been the 20th instance over a period of four weeks, but failure to follow the employee manual provisions for documentation of tardiness could spell disaster for the defendant in this case.

If you have an employee manual, take a look at the procedures described in the manual. Does your company follow every procedure faithfully, or do you have procedures you "let slide" because they are not really necessary to your business?

The Importance of Following the Written Word

A more dire example is one of a quality assurance procedure that was not followed in the repair station (for example, initialing the right boxes on the work order or traveler). If an accident occurs, the trial lawyers may well pull your records, and if your written system dictates certain procedures were not followed, the trial lawyers may well accuse your company of failing to perform the procedures or of performing them incorrectly. The lawyers may claim the failures led to dire consequences (the accident or other event that precipitated the lawsuit).

It is important to periodically review your manuals to make certain they genuinely reflect the way you actually

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do business. Remove procedures that do not accurately reflect your way of doing business or that do not add value.

Training Manuals

14 C.F.R. § 145.163 now requires repair stations to develop training manuals. But remember, the training manual required by the regulations is not your training program. It is a manual required by the regulations to meet certain specific regulatory elements.

Just as there is a reason to distinguish your quality control manual from your additional quality procedures, there may be a variety of good reasons to distinguish your 14 C.F.R. § 145.163 training manual from the additional training guidance and materials you prepare for your business.

Repair stations are in the middle of submitting their manuals to the FAA for approval under 14 C.F.R. § 145.163. Many AEA members have called with questions about these manuals and what should be found within them. Ric Peri, AEA's vice president of government and industry affairs, came up with the best advice: Follow the FAA's advisory guidance.

AEA has made it easy to follow the FAA's template by using the AEA online template, found on Resource One (www.aea.net/R1). On the website, you can plug in your company's particular information and easily print a manual for your company that follows the FAA template.

Two pieces of FAA published guidance are important. One of them is an advisory circular, which represents one way — but not the only way — to meet the requirements of the regulations. The other document is the FAA's internal guidance explaining how to review a repair station's proposed training manual once it has been submitted.

The FAA published information

guiding FAA employees as to what they should look for in training manuals. This guidance is internal FAA guidance — neither a regulation nor even advisory guidance designed to be used by the public. Nonetheless, it is important to know this guidance if you are preparing a training manual. The FAA readily admits its own sample manual would not pass muster under the terms of the existing guidance. This guidance is found in the "Aviation Safety Inspectors' Handbook" (FAA Order 8300.10; Volume 2, Chapter 160).

The FAA guidance for approving a training manual includes procedures such as interviewing the employees in order to identify whether the employees believe the program improves their ability to do their job and whether they believe the setting for training is appropriate.

As with other examples of FAA manual review guidance, the parameters for approving training manuals are extremely subjective — so subjective that the enforcement of the 145.163 requirements might potentially be construed as arbitrary and capricious, and such subjectivity provides fertile ground for the propagation of mischief.

How do we avoid the mischief? The FAA has offered sample training manual provisions, which are part of the FAA's public guidance, "Repair Station Training Program, FAA Advisory Circular 145-10."

The best advice we can give for assuring your company's training manual will be acceptable to the FAA is to follow the FAA's recommended format for the training manual. This recommended format can be found in the appendices of AC 145-10. The recommended manual format represents "a possible way to structure a training program that meets the requirements of the regulations."

Thus, slavish adherence to the FAA's

published recommendations effectively neutralizes the subjective analysis found in the "Inspectors' Handbook," because the FAA already has determined the samples found in AC 145-10 meet the requirements of the FAA's regulations. □