



LEGAL EASE

AVIATION LAW MADE SIMPLE

BY JASON DICKSTEIN
AEA GENERAL COUNSEL

Does Your Repair Station Have the Right Ratings?

In this month's column, there are promises of ratings and a tale of underhanded politics. I realize you can get the same thing out of the front page of *The Washington Post* most mornings, but this article is dealing with "repair station ratings."

We've been seeing an increasing number of questions raised about the ratings held by AEA members. In some cases, members clearly have worked outside the scope of their ratings. But in others, they have not. Two lessons have become clear from these recent cases.

First, it is important to check your ratings — right now. No, really, I mean right now. Stop reading this article and pull out your certificate and op specs — take a good look at them. Are you sure everything you approve for return-to-service under your repair station certificate falls squarely within the limits of your ratings and op specs?

If you are certain today, how do you continue to be sure tomorrow? Too many repair stations have inadequate systems for ensuring the work they perform falls within their ratings. We tend to be very strong on ensuring we have the right personnel, data, tooling, equipment and facilities to do the job right. But too many of us look at the ratings as unimportant. However, even if the work is otherwise performed correctly, a violation of your ratings

can lead to a revocation of your repair station certificate.

Second, be certain you really understand what your ratings cover, because the FAA is publishing confusing guidance — and this confusion appears to be part of a concerted effort to circumvent the law.

It's a strong allegation, isn't it? Sounds like the start of spy novel or perhaps a conspiracy theory.

When most older repair stations' ratings were issued, before 2001, Appendix A to Part 145 provided guidance as to the scope of repair station ratings. Thus, the ratings were issued in the context of the guidance of that appendix. The appendix made it clear radio and instrument ratings included installation privileges for the repair stations that were granted those ratings. But it appears the FAA is trying to change this — it tried to use the law to change the rules, but it did not work. When it did not work, the FAA began to change the rules through policies designed to undermine the letter of the law.

It All Starts with Appendix A

Until 2001, Appendix A to the repair station rules (Part 145) provided a list of functions a repair station must be able to support to possess certain ratings. For the radio and instrument ratings, a repair station needed to have sufficient equipment and materials to

accomplish all of the listed tasks to qualify for a class rating.

Prior to its removal, Appendix A made it clear a repair station with a radio rating or with an instrument rating must have the equipment and materials necessary for efficiently performing installations of radios and instruments respectively.

Specifically, the radio ratings in Appendix A included language specifying radio-rated repair stations must have:

The equipment and materials necessary for efficiently performing the following job functions...Install and repair aircraft antennas...Install complete radio systems in aircraft and prepare weight and balance reports.

The instrument ratings in Appendix A included language specifying instrument-rated repair stations must be have:

Equipment and material necessary for efficiently performing...Maintain and alter instruments, including installation and replacement of parts...The function of installation includes fabrication of instrument panels and other installation structural components. The repair station should be equipped to perform this function.

It would be ludicrous to believe the Administrator would require applicants for ratings to have equipment and materials to support installation functions if those repair stations did not, in

fact, have installation privileges under the radio and instrument ratings.

The FAA Tries to Change the Ratings System

The FAA has published no guidance to contradict this obvious prior intent to include installation as a function of radio and instrument ratings.

The FAA did publish a proposed rule in 1999, which would have explicitly removed the installation privileges from radio and instrument ratings. As proposed, the revised Appendix A would have explicitly included such installations as a function of the revised aircraft rating and would have established a two-year transition period to issue aircraft ratings to repair stations needing them under the new system. However, negative comments caused the FAA to withdraw this element of the proposed rule — the ratings change was explicitly dropped from the final rule.

Thus, the attempt to strip installation privileges from the radio and instrument ratings was unsuccessful, or at least postponed, while the FAA reconsidered how it wanted to handle ratings, which means the prior inclusion of installation privileges never was really changed.

Appendix A was removed from the rules in 2001 as a direct final rule. The Federal Register notice removing it explained the FAA feared it would not be able to keep the appendix up-to-date in the face of new technologies. Because the FAA wanted to make sure the appendix did not inhibit repair stations' ability to adapt to new technologies, it was decided the appendix should be removed. There was never any allegation the FAA disagreed with the elements of Appendix A. The only problem cited was a belief changing technologies would cause the appendix to become outdated.

Therefore, although Appendix A

was removed from the regulations, there was never any suggestion the FAA intended to change the scope of the ratings previously issued.

What does this mean for repair stations with radio and instrument ratings predating 2001? It means those ratings should continue to include installation privileges because the ratings have not been changed by either adjudication or rule change (assuming, of course, the repair station has not voluntarily accepted a limit on its ratings).

The Drama

So, where's the drama? Where's the conspiracy theory?

The conflict comes when you look at the FAA's own guidance. In the Inspectors Handbook, which is supposed to tell the FAA employees how to enforce the rules, there is a note (not even a full sentence — just a note) under the radio and instrument rating provision, stating:

A repair station with a radio rating must also have a limited airframe rating if it removes or installs components, or alters the aircraft. (Underlines added.)

This language is being interpreted by some to mean the radio rating (and, for some, the instrument rating, too) does not include installation privileges. The result is, many repair stations are being told they must get airframe ratings to perform installations.

There is some logic to holding an airframe rating.

If you need to perform an alteration to an airframe, such as perforating the skin of pressurized aircraft to install an antenna with a different footprint, you ought to either have an airframe rating or have the work performed and approved for return-to-service by a properly rated mechanic with appropriate authorizations. I am not opposed to the acquisition of such a rating, but the rating carries with it certain

expenses some repair stations really do not need to bear.

The regulations previously endorsed installation privileges for radio and instrument ratings. Those regulations previously explicitly endorsed installation privileges were removed only because of a belief the FAA could not maintain the currency of those regulations in the face of changing technologies. The FAA failed to promulgate a rule to change this earlier endorsement of installation privileges for radio and instrument ratings.

Therefore, it would be arbitrary and capricious for the FAA to decide as a matter of policy that radio and instrument ratings issued before 2001, when such ratings included installation privileges, should suddenly and without warning (and without due process) no longer include installation privileges.

If the FAA was allowed to remove installation privileges from radio and instrument ratings and require airframe ratings to be obtained, the FAA would be accomplishing through tacit policy something it explicitly withdrew from rulemaking in the face of negative public comments — thus, subverting the notice and comment principles of the Administrative Procedures Act.

What Does It All Mean?

The FAA does not have the power to unilaterally change a repair station's certificate ratings without going through the formal processes provided for in 49 U.S.C. § 44709 (requiring a formal certificate action to amend a repair station's certificate, which includes its ratings) or explicitly changing the regulations.

With neither an adjudicative nor a regulatory change to modify pre-2001 ratings, it would be arbitrary and capricious for the FAA to find those ratings had changed from the time they were issued.

Continued on following page

LEGAL EASE

Continued from page 37

For these reasons, repair stations with pre-2001 radio and/or instrument class ratings should continue to enjoy installation privileges under those ratings.

However, be forewarned. Under the current environment, if you exercise your rated privileges, rather than capitulating to this effort to implement the failed rule change through policy, there is a chance your local inspector could choose to send a message about your choice by “investigating” your facility. With the current ambiguities in the rules, it is very difficult today for a repair station to insulate itself from all forms of technical violations.

Which gets us back to Point No. 1. Look at your ratings. Make certain you are operating under them. And, if you are offered work falling outside of your ratings, make certain you know how to make appropriate use of properly rating partners to accomplish the work and approve it correctly. In addition, make certain it is characterized correctly so it does not fall under your own (inadequate) ratings.

I will be providing a Fast-Trak session on contract maintenance, which will address some of these issues, at this month’s annual AEA Convention in Washington, D.C. □

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