



News from the Hill

BY JASON DICKSTEIN
AEA GENERAL COUNSEL

New Ratings and Quality Systems Proposed for Part 145 Repair Stations

As many of you know, the FAA proposed a significant change in the repair station rules found in Part 145 in June 1999.¹ This notice of proposed rulemaking (NPRM) was the culmination of 25 years of FAA investigation, discussion and consideration about how to best update the repair station rules.

The 1999 proposed rule change featured a variety of modifications to Part 145 rules, ranging from scrapping the old inspection procedures manual in favor of two manuals (a repair station manual and a quality manual) to requiring each repair station to have an approved training program.

Also included among those proposals were changes to the ratings system and a new requirement for a quality assurance program. The FAA received a huge number of comments on these latter two proposals, and was unable to find a way to address the comments. As a consequence, although the FAA proposed a new ratings and class system in 1999, the final rule published in 2001 retained the pre-existing ratings and class system, and did not include a quality assurance program requirement.²

The FAA pledged to further consider the advice and recommendations it received, as well as address these two issues in a later rulemaking. Since that time, we have been warning AEA members they need to make sure the changes they made in response to the 2001 rule change left them the flexibility to accommodate whatever the FAA was planning to throw at them in the next major rulemaking activity.

New Ratings System

The FAA has proposed a new ratings system. The new ratings system includes five ratings: aircraft, powerplant, propeller, avionics and component. Capabilities lists would become mandatory under the new system.

The Avionics Rating

AEA members generally will be most interested in the avionics rating. Under the proposed rule, the new avionics rating would permit avionics repair stations to perform maintenance, preventive maintenance and alterations on aircraft electrical and electronic systems and components, instruments, radios, integrated modular systems, in-flight entertainment units, or other

electrical and electronic articles as long as those articles are listed on the repair station's capabilities list.³ Non-electrical/electronic items (many older instruments, for example) would fall under a component rating, which is discussed later in this article.

Under the proposal, a repair station with an avionics rating would be permitted to remove and reinstall access panels, brackets or clamps in accordance with the applicable maintenance instructions.⁴ Unfortunately, it would be too easy for some aviation safety inspectors (ASIs) to interpret this language to mean that if the manufacturer's maintenance instructions failed to provide instructions for removing and reinstalling the access panel, bracket or clamp you are looking at, then it would not be covered under your avionics rating (no matter how simple it would be to remove and reinstall without specific instructions).

The rule states an avionics repair station would be able to remove, replace, install and test the avionics equipment on an aircraft,⁵ but it would need a limited rating to perform any alteration (whether the alteration is major or minor).⁶ Most installations

¹ Repair Stations; Part 145 review; Notice of Proposed Rulemaking, 64 Fed. Reg. 33141 (June 21, 1999).

² Repair Stations; Final rule with request for comments and direct final rule with request for comments, 66 Fed. Reg. 41087, 41090-91 (Aug. 6, 2001).

³ Proposed rule at 145.59(d)(1).

⁴ Proposed rule at 145.59(d)(2).

⁵ Proposed rule at 145.59(d)(3).

⁶ Proposed rule at 145.59(d)(4).

represent, at the very least, a minor alteration to an aircraft (unless you are replacing something else that is identical), which means every avionics shop performing installations would need limited aircraft ratings in addition to their avionics ratings to perform the installations.

Component Rating

The component rating would permit a repair station to perform maintenance, preventive maintenance and alterations on articles listed on its capabilities list as long as the article is not installed on an aircraft, powerplant, propeller or avionics article. This essentially means bench work.

If a repair station wants to remove or install components, it must have a limited rating for the aircraft, powerplant or propeller from which the item would be removed — or into which it would be installed.

Capabilities List and the Aircraft Rating

In all cases, the work performed by a repair station would be limited to only the work permitted on the repair station's capabilities list.

A repair station would be able to amend its capabilities list in accordance with an FAA-approved amendment procedure. The FAA would approve this procedure in conjunction with the repair station manual.

In theory, this should allow a repair station to develop a procedure under which it performs a reasonable self-evaluation to assure it is capable of performing the work. Then, upon a successful conclusion of the self-evaluation, the repair station would amend its capabilities list.

Unfortunately, past experience in regulatory practice has shown many

things repair stations should be able to do without FAA approval become (as a matter of practice) subject to explicit FAA approval and intervention, which has a tendency to inhibit business.

For example, the old repair station regulations permitted a repair station to amend its own inspection procedures manual (IPM). Nonetheless, it became common practice for a repair station to write a clause into its own manual prohibiting the repair station from amending the manual without FAA approval of the amendment. This clause was largely a product of sample manual language found in the IPM advisory circular.

It will take a great deal of care and effort by the FAA to avoid falling into the same trap here — to avoid the command-and-control mentality that causes some FAA inspectors to require repair stations under their oversight to adopt restrictive clauses not sanctioned by either FAA regulations or FAA policy (or else the inspector will refuse to approve the manual), and which effectively require the inspector's approval of decisions outside the FAA's normal regulatory scope.

The capabilities list would need to be quite specific — delineated by manufacturer, type, make and model. In addition, an avionics repair station or component repair station would need to group items on its capabilities list by category. Officially, this is for the convenience of the customer, but really it is only for the convenience of the FAA inspector.

One of the problems with the capabilities list is the limits associated with the aircraft rating capabilities list (this includes avionics repair stations that would need limited aircraft ratings to perform installations or other alterations, including minor alterations).

A repair station with an aircraft rating may not perform a self-evaluation to add a different type of aircraft to its aircraft rating, and a repair station with a powerplant rating may not perform a self-evaluation to add a different class powerplant to its powerplant rating. This could be particularly onerous for avionics repair stations needing the aircraft rating only for their installations (especially in the general aviation community). It means, when a customer shows up with an unusual aircraft, a mere self-evaluation would not permit the repair station to amend its capabilities list — no matter how similar the installation on that aircraft is to installations on other aircraft.

How would you add new types to your aircraft rating? Although the regulations specify how you cannot do it (by self-evaluation), they do not specify a way to do it. There is no procedure in the proposed regulation for adding a new type to one's aircraft rating.

Because there is no regulatory mechanism for amending the aircraft capabilities list to include a new type, the question of whether or not to grant the additional type becomes a matter of pure discretion for the aviation safety inspector, and the ASI would be able to withhold such amendment privileges on a whim. This is exactly what the capabilities list provisions were meant to avoid.

The only guidance on how to amend an aircraft capabilities list comes in the preamble, which states, "The aircraft rating, along with the types of aircraft the repair station may maintain, constitutes its rating."⁷

Thus, it appears the FAA intends for the repair station to apply for a new rating each time it intends to work on a new type. In the general aviation com-

Continued on following page

⁷ Repair Stations; Proposed Rule, 71 Fed. Reg. 70253, 70259 (Dec. 1, 2006).

NEWS FROM THE HILL

Continued from page 37

munity, with the myriad of types, this application process would be onerous and unnecessary in most general-aviation business models.

This interpretation is based on the preamble, not the rule. It is also possible for an inspector reading only the rule to be inclined to deny an application for a new rating (including the additional type) on the grounds the existing ratings already cover the additional type — it is only the capabilities list that is deficient.

It is also important to recognize that this has the effect of turning all existing airframe class ratings into limited aircraft ratings because it no longer would be possible to have a class rating without the capabilities list limitation.

Regulating Removal

There has long been a debate about the status of removal in the regulations. Some people claim the regulations implicitly regulate removal by defining maintenance to include the replacement of parts.⁸ Others point to the fact that removal is not explicitly regulated as evidence that it is not.

Whichever way you lean in the argument, the fact is, the United States government currently does not prevent unregulated persons from removing aircraft parts during parting-out operations, and does not treat removal (taken alone, with no intent to replace or reinstall) as a maintenance activity.

Under the proposed regulations, however, when a repair station removes a component, it would need to be appropriately rated to remove the component.⁹ Avionics-rated and component-rated repair stations would need limited airframe and/or powerplant and/or propeller ratings to perform removals. Thus, even if other parties were not regulated when they remove parts from aircraft, a repair

station would be regulated when it performs such an activity.

An End to Independence Means Trouble for Manufacturers

The preamble to this proposed rule states, in several places, “The rule requires repair stations to use the data, tools, test apparatus and equipment recommended by the manufacturer.”

It is difficult to see exactly where the new Part 145 imposes that requirement. However, if the FAA intends to implement this limitation as a new policy, it would mean an end to independent DER-approved repairs and alterations, independent tooling manufacturing, and independent test equipment manufacturing.

It would provide manufacturers with a great deal of power over the aftermarket, but it also would provide them with significant (and unwanted) potential for antitrust liability under the doctrine established by the Ninth Circuit in the *Kodak v. Imaging Technical Services*. That case held that a manufacturer does not necessarily control the maintenance aftermarket, and that attempts to control the maintenance aftermarket by restricting essential items for work (and FAA-required data, tools, etc. would be essential items) will be considered violations of the law.

In the long run, this sort of legal structure would work to the disadvantage of the AEA’s manufacturers because it would actually diminish their ability to control certain aspects of service quality. This interpretation by the FAA makes it difficult for manufacturers to restrict their sales of data and tooling to only authorized repair stations.

Your Comments are Important

The proposed rule shows clear evidence the FAA did not put enough thought or care into its effort.

In 2005, the FAA modified section 145.53 to require repair station certificate applicants to certify their employees had met the hazardous materials training requirements.¹⁰ It also included a requirement in 145.57 for existing repair stations applying for ratings changes to certify compliance with the sections in 145.53 related to hazmat certification (subsections (c) and (d)).

In the current proposed rule change, the two subsections of 145.53 related to hazmat training are dropped. At first blush, this could have been an unannounced change-of-heart about the importance of hazmat training; however, this justification is contradicted by the fact the proposed rule leaves 145.57 untouched — which means the existing rule still requires certification with sections 145.53(c) and 145.53(d) even though the proposal has changed (c) to a list of reasons the FAA may deny an applicant, and has dropped (d) entirely.

The only logical conclusion is, the FAA failed to update its rule template to reflect the current rule.

This shows the FAA is not being careful in the way it drafts its rules. Why is this startling revelation important to the repair station community? Because this proposed rule, if implemented, would have a tremendous effect on the way we all do business. And, if the FAA is not being careful, then it is incumbent on us, as a community, to hold our government accountable.

The only way we can accomplish

Continued on page 41

⁸ 14 CFR § 1.1

⁹ E.g. proposed rule at sections 145.59(d)(2), (d)(3), and (e)(2).

¹⁰ Hazardous Materials Training Requirements; Final Rule, 70 Fed. Reg. 58795, 58831 (Oct. 7, 2005).

NEWS FROM THE HILL

Continued from page 38

this is to read the proposed rule carefully — very carefully — and to be sure we all file our comments with the FAA to make sure we get the best rule possible.

The FAA currently is accepting comments on this proposed rule. Comments are due to the FAA on or before March 1, 2007. □



*Jason Dickstein
AEA General Counsel
The Washington Aviation Group
734 15th St. NW, Suite 705
Washington, D.C. 20005
Phone: 202-628-6776
Fax: 202-628-8948*