



LEGAL EASE

Aviation Law Made Simple

BY JASON DICKSTEIN
AEA GENERAL COUNSEL

FAA Releases New Manufacturing Rule Impacting Distributors

The FAA has released the new Part 21 manufacturing rule, which has been in the works since the early 1990s. This rule imposes a number of new regulatory hurdles, which could have an impact on AEA members.

The complete rule is available online at www.gpoaccess.gov. It can be found in the Federal Register, Oct. 16, 2009.

The new rule goes into effect April 14, 2010. The FAA already has begun to release advisory guidance, including an advisory circular specifically addressing transition to the new rules. Another advisory circular provides public guidance regarding how to obtain export airworthiness approvals under the new regulations. More advisory guidance is expected.

Throughout December, January and February, the FAA will host training sessions designed to explain the new rule to the industry. Training sessions are expected to be scheduled for Atlanta, Dallas, Indianapolis, Kansas City, Mo., Los Angeles, Phoenix, San Antonio, Seattle, Washington, D.C., and Windsor Locks, Conn.

FAA's Regulatory Reach Increases

One significant change that could have a secondary effect on distributors is the change in the standards for when a part

must be produced under FAA approval. Under the old rules, a part needed to be produced under FAA approval (or under one of the listed exceptions) whenever the producer of the part intended the part to be offered for sale for installation in a type-certificated product.

Previously, the regulations provided a loophole for parts produced for other industries but used in aviation. This included everything from commutators and light bulbs to non-standard hardware. For example, an LCD screen manufactured for general industry use was not considered to be a FAA-regulated item, even if companies subsequently bought the LCD screens for aviation use.

The new rule prohibits the production of parts unless they fit within more tightly defined guidelines. The new rule at 14 CFR, Section 21.9(a), specifies:

If a person knows, or should know, that a replacement or modification article is reasonably likely to be installed on a type-certificated product, the person may not produce that article unless it is—

- Produced under a type certificate.
- Produced under an FAA production approval.
- A standard part (such as a nut or bolt) manufactured in compliance with a government or established industry specification.

- A commercial part as defined in Section 21.1 of this part.

Let's return to the case of the LCD manufacturer. The company can reasonably claim it did not intend for any specific LCD screen to end up in an aircraft and, thereby, avoid FAA regulation under the old standards. Under the new standards, however, the producer might have a more difficult time arguing it did not know of the reasonable likelihood that some LCD screens among their production run could end up being installed on a type-certificated aircraft. Therefore, all the FAA needs to do to force such a company into the requirement to have a PMA is to put them on notice that one of their parts was installed on an aircraft and there is a reasonable likelihood this could happen again.

In such a case, the LCD producer has two options. The first option is to obtain FAA production approval, such as a PMA. But this is expensive and might not be worthwhile from a cost/benefit point-of-view (particularly for articles traditionally sold in the industry for a relatively low value).

The second, more reasonable option is for the manufacturer to take proactive steps to prevent its parts from being purchased for aviation use, such as labeling the parts "not for aviation use" and refus-

ing to sell to aviation industry companies. This could have an adverse effect on repair stations that might find it more difficult to obtain those parts at a reasonable cost.

For parts intended to go into out-of-production general aviation aircraft where there might not be an "OEM" source for such parts, an impediment to buying the part could be a real hurdle to maintaining the airworthiness of an aircraft.

Be Wary of Your Own Representations

The preamble to the rule makes it clear, under the new regulatory construction, a producer of articles used in aircraft cannot represent the items as aviation quality or suitable for aviation unless they fit within one of the specific pigeonholes established by Section 21.9 of the new rules. Such a declaration now is considered equivalent to a statement that the article is suitable for type-certificated aircraft.

This means, a producer of parts/articles for experimental aircraft now must be careful to clearly indicate the intended installation limits and not leave any room for doubt about the fact the articles are intended for non-type-certificated aircraft.

This imposes new burdens on the producer, but an installer still is permitted to develop data showing the standards of Part 43 are met and perform an installation. However, the new regulatory standards might make it more difficult to get parts not issued by the FAA production approval holder.

Monopolies and Commercial Parts

Under the old rules, the parts the manufacturer did not intend to be used on aircraft, but which qualified for use on aircraft by the installer's own data, were called "commercial parts."

With the new, tighter restrictions on who can produce parts, it now is necessary to have some way to designate what parts are commercial parts and, therefore,

can continue to be produced without a specific FAA production approval.

Under the new rules, design approval holders have the option (but not the obligation) to include a list of commercial parts in the instructions for continued airworthiness (in the manuals). Parts not included in this list are not considered commercial parts.

By taking these steps, the FAA has effectively granted a potential monopoly to type-certificate holders because many of these previously unregulated parts now can be monopolistically controlled by the type-certificate holder. If the part is small or not very valuable, it is unlikely to be economically reasonable to obtain a PMA on the part.

The type-certificate holder has the option of unilaterally refusing to place the parts on a commercial parts list, making the type certificate holder the only reasonable source.

This new rule presents a real challenge for repair stations supporting out-of-production aircraft. Such aircraft are unlikely to get commercial parts lists, which might make it impossible to support such aircraft.

Everyone in the industry knows a story of manuals and catalogues that were not kept up-to-date. For certain types of special purpose and military surplus aircraft, this could be a significant concern.

Repair Station-Produced Parts

One piece of good news is, the regulations now explicitly confirm repair stations can produce parts in support of repairs or alterations as long as those parts are consumed in the course of the repair or alteration. AC 43-18 confirmed this practice, but now that it is explicitly stated in the regulations, it should give AEA members a greater feeling of comfort when fabricating parts to be consumed in support of repairs or alterations.

The new rule specifies the production privilege is limited to repair organizations with quality systems. Under the current version of Part 145, every FAA Part 145 repair station has a quality system, as described in its quality manual.

It is important to note: Individuals operating under their Part 65 certificates (A&P certificates) will not be permitted to produce parts for type-certificated aircraft and install them in the course of maintenance, unless they develop a quality system meeting FAA requirements under 14 CFR, Section 21.9(a)(6) (new).

New Inspection Privileges

The new rule also adds new inspection privileges for manufacturers. It permits them to perform Part 91 inspection on aircraft they have manufactured.

The inspections required under Part 91 include the altimeter and transponder checks that traditionally have been performed by repair stations. These inspections now can be performed by the aircraft manufacturer in competition with repair stations, and the manufacturer will not need any special ratings to perform these avionics checks.

More Rules to Read

These are just short descriptions of some of the provisions of the new rule impacting repair stations. While the new rules could have an adverse effect on the availability of certain parts that traditionally have been considered commercial parts, the new rule also clarifies repair stations that produce parts in the course of their repairs or alterations are acting within the bounds of the regulations.

Clearly, the new rule will present challenges to the avionics community; however, we have every confidence the AEA and its members, working together with the FAA, can overcome these challenges and continue to make the aviation industry the safest industry in the world. □