



The View from Washington

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Who said it?" "Do you have a copy?" Some of my favorite questions to ask members when they call with an issue are: "Who said it? Do you have a copy of whatever they are referencing? Have you talked to their supervisor?"

It seems that like news reporters these days, the regulatory authorities like to site some mystical source as the reference to support whatever action they are taking at the time. "Oh, FAA policy (supervisor's policy, Transport's policy, CAA's policy, JAA policy, etc.) says that you must..." Well, AEA is headquartered in Missouri, so SHOW ME!

I remember back in school when we would have exercises in group communication where one person would start by whispering a message to the person next to them and that person to the next and so on until the message had been whispered to each person in the group. Once completed, the last person would compare their message with the person who initiated the exercise to see how close the two messages were. Predictably, the message had changed significantly.

When I get a call about an issue, I like to get to the bottom of the issue; where did it originate?

When an issue arises because of a new policy or a change in regulations I try to follow up with, "Who wrote it? What was their intent?" In rulemaking, we usually have the preambles of the proposed regulation added to the final rule to help understand the intent of a rule. When policies are issued it becomes more difficult. Policies sel-

dom have a preamble, are usually written to resolve a concern with a specific issue and once they are distributed to the field, and interpreted by the various inspectors, they may or may not have retained their original intent.

Existing policies were often written by previous generations and have been interpreted and re-interpreted over time until the current interpretation of a policy has nothing to do with the original intent; it just works well for the person using it today.

Blindly accepting someone's interpretation of a policy without actually reading the policy yourself can be a very costly mistake.

Early last year we had an issue that arose where all of the sudden specific avionics systems were not being approved for installation. After a member called about the issue we started to chase down the cause. The first response from the local FAA inspector was that FAA headquarters had issued a policy that prohibited the inspector from approving the data to support these installations. As usual, my first response was, "Show me the policy."

To make a very long story short, there was no policy. It seemed that a local inspector had e-mailed a question to an inspector who happens to be assigned to FAA headquarters. This inspector answered the question via e-mail. This was not policy but an inspector's personal opinion. The fact that this inspector happens to be assigned to FAA headquarters does not make their personal opinion FAA pol-

icy. Only the FAA Administrator and those managers that she has delegated the authority to sign FAA orders, bulletins and memorandums may issue policy. The headquarters inspector's answer was not technically wrong; it just wasn't technically right either. Neither the field inspector nor the headquarters inspector bothered to research the source document in question. They never validated the source document and ended up answering the wrong question.

But this is not just a domestic issue.

In another instance, we have various policies from three different countries being sited to support what appears to be a personal agenda of an inspector. This inspector has taken their personal concern about the flammability of aircraft wire and used various policies, taken out of context, to support their concern.

This story begins a couple of years ago when the Civil Aviation Authority (CAA) for the United Kingdom raised a concern about the use of Military Specification wiring in an installation that had been approved by the FAA under a Supplement Type Certificate (STC). When the CAA questioned the aircraft manufacturer, the manufacturer confirmed that they did not use that type of wire in their aircraft and did not approve of the wire being used. And as a result, the UK CAA issued a general airworthiness notice which highlighted the need for installing agencies to ensure that the wire chosen for installations was appropriate to the aircraft and application at hand. Sound advice.

They did not site any failures of the wire type; they did not challenge its flammability characteristics; they did not accuse the wire of not conforming to the certification basis of the aircraft (in this case Part 25 of the Federal Aviation Regulations (FAR)); they simply made the statement that caution should be taken to ensure the right wire is being used in each application.

The UK CAA based their information on the fact that the aircraft manufacturer did not use this particular wire. For the issuance of a European STC this would be critical information. Under the various European National Aviation Authority (NAA) regulations, the original Type Certificate (TC) holder has to be consulted in order to receive approval for a STC. However, due to anti-competitive laws in the United States the blessing from the original TC holder is not a factor. Under the FARs, an applicant for a change to a type certificate must show that the changed product complies with the airworthiness requirements applicable to the category of the product being altered. In the case of the STC in question, all indications are that it did comply with the applicable airworthiness requirements.

Then the message gets whispered to an accident investigation team in another country who ended up citing the British notice as not really being applicable to the cause of the accident but worth noting since the cause of the accident was wiring and since the British notice referenced wiring. The basic fact that the original notice said nothing about the flammability of the wire seems to have missed the authors of the accident investigator's final report.

Then the message finally gets whispered to a NAA engineer who then interprets the message to mean that the wire in question is flawed and a potential source of fire and ends up disrupt-

ing the avionics industry nationwide. The engineer summarily dismissed any reference documents that validated the use of the wire in question and blindly supported the misread British notice because it supported the engineer's basic assumption. Apparently, he never bothered to research the source document or seek out the author.

Each time this message has been passed down its meaning has changed. The original issue raised by the UK CAA was one of abrasion not flammability. But none of the individuals who referenced the notice ever bothered to research the original message. They took the message, interpreted it to best support their use of the information, and then used the notice to support their agenda. No one in the chain bothered to question the source. No one questioned the "expert."

Somehow, it has become common place that the engineers and inspectors that are employed by the various NAAs are now experts. How has this happened? Did industry bestow this title on them? Did they become self-anointed? I have yet to see an NAA notice of employment for an engineer or inspector that reads: "Wanted: aviation expert." In fact, most inspectors and engineers come from industry with the same background as you and I. They have the same basic qualifications, some certainly have more experience, and some less, but to say that all inspectors and engineers employed by the NAAs are automatically "experts" is a stretch. Like with industry, these inspectors have to earn the title of master mechanic, technician or engineer.

It is essential that the public holds the authorities accountable. When an inspector declares some new policy, question the source; ask for a copy; investigate the issue; call your association; do your homework; and make sure that the policy applies to you and your operation. This should not be

done antagonistically; you are not questioning their authority. The inquiry should be done for the basis of knowledge, how better to fully comply with the policy than seeing a copy for yourself. □

Regulatory Update

United States

Repair Stations: Service Difficulty Reporting

The Federal Aviation Administration has issued a final rule with a request for comments regarding Service Difficulty Reports reporting requirements for repair stations.

The final rule amends the regulations governing service difficulty reports (SDRs) submitted to the FAA by aeronautical repair stations. The FAA is clarifying which type of failures, malfunctions and defects repair stations must report. Finally, FAA is replacing certain section references with part references. This action will eliminate the need to revise repair station regulations if the FAA revises SDR rules.

On July 30, 2001, the FAA issued "Repair Stations; Final rule with request for comments and direct final rule with request for comments," (66 FR 41088; August 6, 2001). In that rulemaking action, FAA amended sections 145.63 and 145.79 by, among other changes, replacing the phrases "serious defect" and "other unairworthy condition" with the phrase "failure, malfunction or defect."

The FAA received extensive comments from repair station's expressing concern about FAA's removal in July 2001 of the word "serious" to describe the type of defect that must be reported. Repair stations contend the language in Sec. 145.221(a) requires them to report all failures, malfunctions, or defects, regardless of severity.

The FAA agreed with the repair station industry concerning the word "serious." It was not the agency's intent to require repair stations to report "any" failure, malfunction, or

defect. When the FAA combined Sec. 145.63 and Sec. 145.79 to create Sec. 145.221, the FAA standardized language in that section to match language in parts 121, 125 and 135, which do not include the word "serious." In doing so, FAA removed the word "serious" to describe the type of failures, malfunctions and defects repair stations must report. In the final rule the FAA's reiterates that it was not their intent to require repair stations to report all failures, malfunctions and defects and that repair stations are required to report only serious failures, malfunctions and defects. Therefore, the FAA is reinserting the word "serious" before the word "failure" in Sec. 145.211(a).

Procedures for Transportation Workplace Drug and Alcohol Testing

Programs: Drug and Alcohol Management Information System Reporting

Each of the Department of Transportation's drug and alcohol testing rules include requirements for select employers to submit drug and alcohol testing data to five Department of Transportation (DOT) agencies. In the past, these employers have been required to use agency-specific Management Information System (MIS) forms for this purpose, 21 different forms in all. The Department recently published a final rule revising these DOT agency MIS forms and transforming them into a single one-page form for use throughout all the DOT agencies. The requirement for use of the form is now in 49 CFR part 40. By this action, the DOT agencies endorse the use of this single form within their regulated industries, provide their regulated employers with guidance for submission of the form,

and amend their rules accordingly. The DOT agencies are: Federal Motor Carrier Safety Administration (FMCSA); Federal Aviation Administration (FAA); Federal Transit Administration (FTA); Federal Railroad Administration (FRA); and Research and Special Programs Administration (RSPA).

Certification Policy Notice for approving Complex Supplemental Type Certificates (STC)

The FAA has issued a notice announcing the availability of and requests comments on the issuance of a proposed Certification Policy Notice for approving Complex Supplemental Type Certificates (STC). The proposed Certification Policy Notice introduces a new classification of STCs, and instructs Aircraft Certification Office engineers, STC applicants, and STC installers how to manage STCs classified as complex.

The Agency typically issue STCs that permit installation on any aircraft of a specific type and model designation. Aircraft compatibility is addressed by the following limitation: "The installer is responsible for determining the compatibility of this STC with other previously approved modifications." Nevertheless, there have been installations made on inappropriate aircraft. These inappropriate installations could have been prevented if STC approvals were restricted to a specified baseline aircraft configuration that includes details of the STC physical and functional interfaces with the prototype aircraft.

The FAA argues that an applicant's installation drawings or other installation instructions have not always been detailed enough for accurate replication of the design. This is especially

true when follow-on STC installations occur at facilities other than that used by the STC holder for the prototype installation. The STC certification process does not adequately address how to evaluate the compatibility of an STC with other previously installed STCs, major alterations or repairs. The Agency contends that they need a more rigorous compatibility evaluation for certain STCs. This proposed policy will add a new level of administrative burden to STC applicants and installers.

You may get a copy of the proposed Certification Policy Notice via the Internet at, http://www.airweb.faa.gov/Regulatory_and_Guidance_Library/rPolicy.nsf/0/BCAE001D0AA7B3AF86256DF9004D8010?OpenDocument

Comments must be submitted by February 12, 2004.

Canada

Transport Canada proposes regulations for equipage of Terrain Awareness and Warning Systems (TAWS).

Transport Canada Civil Aviation (TCCA) has published a series of Notices of Proposed Amendment (NPA) to replace the existing regulations for equipage of Ground Proximity Warning Systems with regulations requiring equipage of TAWS. Except as noted below, TAWS shall meet the alerting criteria of the applicable version of TSO-C151 without any pilot action or input; be independent of altimeter setting on the altimeter(s); and be independent of temperature and pressure deviations from International Standard Atmosphere (ISA). For all equipages, the terrain and airport database must be suitable for the area of operation. TCCA anticipates that the new regulations will come into effect in 2005.

General Aviation Operations (CAR 605)

All turbine-engined aeroplanes configured with six or more passenger seats must be equipped with TSO-C151 or later TAWS Class A or B, except for operations in day VFR conditions. Equipage will be required for aircraft manufactured after the date of promulgation of the regulation, and two years after the date of promulgation for all other aircraft. Altitude correction becomes mandatory five years after the date of promulgation.

Private Operator Passenger Transportation (CAR 604)

All types of aeroplanes configured with six or more passenger seats must be equipped with TSO-C151a TAWS Class A or B, except for operations in day VFR conditions. Equipage will be required for aircraft manufactured after the date of promulgation of the regulation, and two years after the date of promulgation for all other aircraft.

Air Taxi Operations (CAR 703)

All types of aeroplanes configured with six or more passenger seats must be equipped with TSO-C151a TAWS Class A or B, except for operations in day VFR conditions. Equipage will be required upon promulgation for aeroplanes manufactured after March 29, 2002. After March 29, 2005, equipage will be required for all aeroplanes.

Commuter Operations (CAR 704)

All types of aeroplanes configured with 6 to 9 passenger seats must be equipped with TSO-C151a TAWS Class A or B. Aeroplanes configured with 10 or more passenger seats will be required to be equipped with TSO-C151a TAWS Class A with terrain situational awareness display. Equipage will be required upon promulgation for aeroplanes manufactured after

March 29, 2002. After March 29, 2005, equipage will be required for all aeroplanes.

Airline Operations (CAR 705)

All types of aeroplanes must be equipped with TSO-C151a TAWS Class A with terrain situational awareness display. Equipage will be required upon promulgation for aeroplanes manufactured after 29 March 2002. After 29 March 2005, equipage will be required for all aeroplanes.

Transport Canada proposes regulations for equipage of Airborne Collision Avoidance Systems (ACAS).

TCCA has published a series of NPAs for the introduction of regulations for equipage of ACAS. The required ACAS equipment standards are those of FAA TSO-C118 or later version (TCAS I), or TSO-C119a or later version (TCAS II) as indicated below. Flight operations in RVSM airspace will require equipage with ACAS per TSO-C119b (TCAS II Software 7.0) and TSO-C112 Mode S Transponder. Equipage will be required for aircraft manufactured after the date of promulgation, and after January 1, 2005 for all other aircraft. TCCA anticipates the new regulations will come into effect in 2004.

All Operations except Airline Operations (CAR 604, 605, 702, 703, 704)

All aeroplanes greater than 12,500 lb must be equipped with TCAS I (or TCAS II). All turbine-powered aeroplanes greater than 33,000 lb will be required to be equipped with TCAS II. Air Taxi Operations (CAR 703) only require TCAS I (or TCAS II) for all types of aeroplanes.

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Frequently Asked Questions

TOPIC: Equivalency of Test Equipment

QUESTION:

What FAA guidance is available regarding the equivalency of test equipment?

ANSWER:

FAA Order 8300.10 Chapter 85. EVALUATE SPECIAL EQUIPMENT OR TEST APPARATUS contains the information that the FAA inspector should be looking for when they accept your analysis of equivalency.

In general, 14 Code of Federal Regulations (CFR) part 43 section 43.13 requires that each person performing maintenance, alteration or preventive maintenance on an aircraft, engine, propeller or appliance shall use the tools, equipment and test apparatus necessary to assure completion of the work in accordance with accepted industry practices. If special equipment or test apparatus is recommended by the manufacturer involved, he must use that equipment or apparatus or its equivalent acceptable to the Administrator.

FAA Order 8300.10 explains that a finding of equivalency can only be made based on an evaluation of a technical data file. And that a technical data file may include, but is not limited to, data, drawings, specifications, instructions, photographs, templates, certificates, and reports.

Equipment that is not "special" in nature only needs to be designed and calibrated to make measurements within the specific manufacturer's tolerances to be considered equivalent for those tests or measurements. If the OEM technical data is not available, then the certificate holder must perform an evaluation to make a determination of functional equivalency.

FAA Order 8300.10 Chapter 85 provides the criteria that an FAA inspector should be looking for when evaluating a repair station's alternative test equipment. This policy will serve as a good checklist for repair stations that choose to not use the test equipment recommended by the manufacturer but rather rely on generic test sets. A complete review of this policy is recommended for all repair stations.

Note: AEA offers these Frequently Asked Questions (FAQs) in order to foster greater understanding of the rules that govern our industry. AEA strives 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 NOT meant to serve as legal advice – if you have particular legal questions, you should contact an attorney.

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REGULATORY UPDATE

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Airline Operations (CAR 705)

All piston-engined aeroplanes must be equipped with TCAS I (or TCAS II). All turbine-powered aeroplanes will be required to be equipped with TCAS II.

TCCA NPAs for TAWS and ACAS may be viewed at:

<http://www.tc.gc.ca/civilaviation/RegServ/Affairs/carac/NPAs/GOFR/deco3/menu.htm>

Europe

On the November 25, 2003, the European Aviation Safety Agency (EASA) became a member of the Joint Aviation Authorities (JAA), an associated body of the European Civil Aviation Conference (ECAC), demonstrating stronger co-operation between the organizations.

Under the patronage of the European Civil Aviation Conference (ECAC), the European Aviation Safety Agency signed the JAA arrangements. These so-called "Cyprus Arrangements" focus on the development, the acceptance and the implementation of common aviation safety rules in Europe. This important step ensures continuity in the high-level pan-European co-operative framework during the transition from JAA to EASA and allows both organizations to work together whilst each fulfils its obligations to its respective constituency, namely non-EASA States for the former and EU and associated States for the latter.

EASA will be able to participate, as a full member, in the work of JAA. It will represent the EU Member States in the field of certification and maintenance. The Protocol provides for the full involvement of non-EASA authorities in matters prior to their submission to JAA for its consideration.

EASA:

EASA asked national authorities to assist with the transition of the EASA responsibilities and has therefore authorized National Aviation Authorities of the Member States and the JAA to perform tasks in regards to the organizational and technical assessment leading to approvals of organizations and minor changes on its behalf.

On November 28, the EU issued EC 2042/2003 which put Part M, 66, 145 and 147 into force. On the same day EASA issued the Executive Director (ED) Decision No 2003/19/RM to the EU containing the agreed version of Alternate means of compliance (AMC) and Guidance material (GM) for Part M, 66, 145 and 147. This follows the earlier issued ED Decision No 2003/01/RM which is addressed to AMC and GM for Part 21.

In the meantime EASA also published most of the new Certification Specifications (CS) on their website. Among them are CS 23 and 25. Another document issued is the General Acceptable Means of Compliance for Airworthiness of Products, Parts and Appliances AMC-20, which forms the EASA equivalent to the GAI-20 issued by JAA. This document includes important issues such as B-RNAV and ETOPS requirements as well as a new guidance for occurrence reporting for accidents and incidents as applicable for Maintenance-, Design- and Production Organizations as well as Operators.

All comment periods for Certification Specifications (CS) are closed by now. EASA is presently reviewing and releasing all new CS.

JAA:

A few NPA's are presently out for comment:

NPA OPS-29 rev. 1: Single-engine Commercial Operations at Night and/or in IMC

NPA OPS-35: Flight Data Monitoring

Australia

CASA's new broad air safety review

A special review of the safety of Australia's aviation system is being conducted by the Civil Aviation Safety Authority. The six month review will identify the major risks to air safety in each sector of operations by examining information from accidents. CASA will look at the causes of accidents to identify trends and potential problems in the aviation system.

CASA's chief executive officer, Bruce Byron, announced the review recently during a major speech to a Melbourne university aviation forum. Byron said a key part of the review will be testing CASA's activities against the risks to safety. He said this would make sure air safety rules, as well as CASA's compliance and enforcement actions, address real safety issues. "The first module of this review I have in mind is an analysis of the historical data on the findings related to general aviation fatal accidents, to check trends and make sure we have not overlooked systemic issues," Byron said. "There is a tendency to focus on accident rates rather than probable cause, that enable us to look behind the statistics. This ties in with the idea that the regulations we develop need to be more focused on identifiable safety issues. There is clearly diminished value in devoting resources to making and enforcing regulations which may have theoretical appeal, but in practice do little for safety. The same could be said for our compliance activity."

Byron said the review will use data supplied by the Australian Transport Safety Bureau and the aviation industry. People from the industry will also be invited to participate in the analysis. He added that it was critically important for the future of Australian aviation to get the best possible set of safety rules.

Full details of Byron's speech to Swinburne University's aviation post graduate seminar is available on the CASA website. □

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