Manufacturing Distributors Distributors Maintenance Operations Distributors

The Update Report

The Airline Suppliers Association

Volume 7, Issue 7-8 July-August 1999

LAW YOU CAN USE

Implementing Airworthiness Directives

If you send a component to a repair stations for overhaul, is the repair station obliged to perform applicable airworthiness directives (ADs)? Not necessarily! In fact, if you ask a U.S. repair station to perform maintenance but to refrain from completing the AD work, the repair station has no regulatory basis to deny your request.

The standards vary among the United States, Canadian and JAA rules, but one thing is clear: if you send articles to repair stations for maintenance work, you need to exercise your commercial rights to make sure the repair station performs the work you expect. To be able to fully exercise your commercial rights with respect to the maintenance you need on your inventory, you must understand what an AD is, to whom it applies, and when a repair station is required to implement an AD. As the aviation industry increasingly becomes a global community, it is important to understand how these rules apply in Canada and the European nations that have adopted the JAA guidance, as well as in the United States.

What is an AD?

The FAA issues airworthiness directives to correct unsafe conditions in an aircraft, engine, propeller or any other aviation part.[1] Generally, these are unsafe conditions that were not discovered during design and manufacturing, but were discovered after the article was released for use by the aviation industry.

ADs are issued by the FAA as regulations.[2] They direct owners and operators of aircraft to undertake specific procedures designed to decrease the risk associated with an unsafe condition. No owner / operator may operate an aircraft to which an AD applies unless the conditions of the AD are met.[3] An AD may direct the owner / operator to conduct special inspections, or it may direct the owner / operator to replace an unsafe part with a safe one. The FAA issues ADs as regulations so that fixing the unsafe condition will be mandatory.

There is an obvious temptation in the private sector to use vehicles like ADs to promote commercial interests. Some manufacturers appear to have asked for ADs to be issued where there was no safety justification but plenty of commercial advantage involved (like requiring purchase of a replacement part despite a strong safety record behind the original part). To prevent the misuse of the AD system, the FAA carefully reviews proposed ADs to assure that they meet two conditions related to continuing aviation safety: (1) the FAA must show that the unsafe condition exists

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Inside this DOUBLE Issue:

Congratulations to:

Flight Logistics, Inc.
Davie, FL

G&H Aerospace, Inc.
Scottsdale, AZ

Interaero, Inc.
Westlake Village, CA

for their accreditation to the Airline Suppliers Association's Accreditation Program.

Keep monitoring,
http://www.airlinesuppliers.com
for a growing list of
FAA accredited distributors;
and see page 77 for a list of distributors who were reaccredited to ASA-100 this month.

ASA AIRLINE SUPPLIERS ASSOCIATION

A Message from ASA's President

By all accounts, this year's ASA Annual Conference was a success. The mixture of relevant information, great workshops and enjoyable social functions led to an all around success. The annual banquet was special due to the presentation of the 1999 Edward J. Glueckler Award to FAA National Resource Specialist Al Michaels, who was overjoyed with the recognition. You can learn more about Al on page 75, where we feature an article about Al as well as Al's own article thanking the ASA members for the honor.

The participants who hung in there through two days of intensive learning, the speakers who devoted their time to educating the attendees and the sponsors who helped to make this conference happen should all be commended for helping to make the 1999 Conference the best ASA conference yet. We are already working on the 2000 meeting and hope to announce the date and location in the next edition.

At the conference during the members-only meeting, ASA announced that we will be moving to another location in Washington, DC. The new location is in the heart of the business district and is only 2 metro stops from the FAA. Post cards, with our new contact information, have already been ordered and as soon as the renovations at the new facility are complete the postcards will be mailed.

For those of you who need two hands to hold this double issue, you can blame it on the move. The contractors have promised to complete their renovations between September 1st and 10th, after which we will be permitted to move into the new facility. This means that we will have to begin preparing to move at the end of August, when the August issue would normally be mailed. To make sure the August issue does not fall behind, Jason has worked extra hard to put twice as many articles as usual into this special double issue. He's gotten a little help from a few outside authors, including attorney Rick Durden, quality expert Roy Resto, and intelligence analyst Chad Bierman - who is clerking for ASA over the summer while he obtains his law degree.

ASA has tried to always follow publishing *The Update Report* on a monthly basis. For those of you who look forward each month to reading it, read this one slowly. The end of September is just two months away.

Best Regards

Michele Schweitzer

The Update Report
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The Update Report
provides timely information to help Association members and readers keep abreast of the changes within the aviation supply industry.

The Update Report
is just one of the many benefits that the Airline Suppliers Association offers members. For information on ASA-100, the ASA Accreditation Program, Conferences, Workshops, FAA guidance like Advisory Circulars, Industry Memos, or services and benefits, contact the Association.

The Update Report
For information on special package rates for advertising, contact the Association at 202-216-9140. Subscription cost is $120.00 US per year.

YOUR ASSOCIATION IN ACTION

1999 Conference Exceeds Expectations

This year's Annual Conference was full of highlights, but the highlight of the Monday night dinner was the presentation of the Edward J. Glueckler Award. Named for ASA's first President, this award is given annually to an individual who has who have made significant contributions to the Association and its members, in recognition of outstanding commitment, dedication and contribution to both the Association and the industry.

This year's recipient was Al Michaels of the FAA. Michaels is the FAA's National Resource Specialist for parts issues and for helicopter issues. He has been instrumental in the development and proliferation of the ASA accreditation program.

Most of the FAA guidance documents that affect aircraft parts are born on Michaels' desk. He is currently waiting for authorization to release important new guidance on Receiving Inspections, Military Surplus Parts and Disposition of Undocumented Parts. All three of these will be important to the aircraft parts distribution industry.

Many advisory circulars seem to assume that parts magically appear in an air carrier's inventory, borne on gossamer wings by parts-elves. Al Michaels understands how the real world works. His guidance recognizes the important role that distributors play in the aviation industry, and it accounts for the distributor's position in the industry.

Perhaps most importantly, Michaels has been an ASA supported from the start. When Ed Glueckler started ASA as a brand new association, Michaels offered moral support and expert guidance on aviation parts issues. He has attended every ASA Annual Conference since the Association's birth, and he was willing to lend ASA his own name and credentials when no one else was willing to take a chance on a fledgling Association.

Michaels has stood alongside ASA since its inception. He is a friend to the entire industry, and an important expert at the FAA. ASA was pleased to announce that he would receive the 1999 Edward J. Glueckler Award.

FAA Officials Bruce Kaplan (left) and Al Michaels (Right) were on hand again this year to let ASA know the latest changes in FAA policy

FIVE MINUTES FOR REBUTTAL

Al Michaels Responds

At the recent Airline Suppliers Association's banquet, you -- the Officers, Board of Directors and Members -- presented me the 1999 Edward J. Glueckler Award, an honor which I will forever cherish. Working so closely with your Association over the past 6-plus years has been a labor of love for me; this makes being the 1999 recipient even more meaningful. And talk about surprise - as ASA President Michele Schweitzer was reading the introduction to the then-unknown recipient, it suddenly dawned on me, "My God, I think that's me!" When she announced my name, I can't begin to express what I felt inside. I was especially moved that you not only recognized me, but also Nancy, my wife, partner and greatest supporter these past 35 years. We have made a special place in our home for the 1999 "EDDIE."

What your Association has accomplished in its few short years since incorporation in 1993 is truly astounding. I remember vividly those early days when Ed Glueckler roamed our FAA halls at 800 Independence Avenue looking for support for "his" parts distributors, when representation was vital for your survival. He set a standard for professionalism then, which you still maintain today. As was evident from the impressive list of speakers and attendees at your 1999 Conference, you now have a strong voice in Washington and globally. Your Association has achieved a tremendous increase in support, not only from industry and the FAA, but also this year you had representation from the DOT Office of the Inspector General and the Coast Guard. As distributors and suppliers of aviation parts, you work in a very difficult environment because many of you are unregulated. However, instead of sitting back and complaining, ASA has chosen a positive course by working in close coordination with industry and government agencies as a focused, cohesive team, to help ensure quality and safety. Also, you continue with your efforts to encourage more distributors to participate in the Voluntary Industry Distributor Accreditation Program.

We still have many challenges to address together; I look forward with enthusiasm to working with you for many years to come. Again, thank you for selecting me for this honor. Nancy and I are already planning to attend next year's ASA Conference.

1999 Annual Conference Exceeds Expectations

Bigger, better, and more productive. That should have been the title for the 1999 ASA Annual Conference.

The conference enjoyed increased attendance, more breakout sessions than ever before, and one of the best atmospheres in the industry for making new business contacts in a low-pressure environment.

This year's conference was opened by keynote speaker Carol Giles, who lauded the Association for its diligent work on distributor accreditation and other projects important to the industry. Giles is the Acting Manager of the FAA's Continuous Airworthiness Maintenance Division - the division that has jurisdiction over distributor accreditation, as well as all maintenance issues affecting aviation.

As always, ASA provided a heavy dose of quality assurance issues, from the specific like Electrostatic Discharge Protection to the general, like the Receiving Inspection Course. The Suspected Unapproved Parts session was so popular that people had to be turned away from the early session. For anyone who is unsure about the basis of the documentation that is used in the industry, FAA Trainer Brad Outlaw's presentation on designees included an excellent analysis of the background that every FAA designee needs to know to do the job. As if that weren't enough, the general session featured presentations on documentation, approved parts and even more guidance on receiving inspection.

Some business owners felt that past conferences focussed too heavily on quality assurance issues, so ASA developed a separate track specially designed for those who run the entire business. All-Hazards Risk Management provided managers and CEOs with a framework for assessing risk and for developing methods to address it properly. Strategies for Business Success addressed the questions "Where are we now?" "Where do we want to go" and "How are we going to get there?" Bob Klem of Soundair joined Pacific Aero Tech's Karen Borgnes in this presentation to also discuss strategies for valuing your inventory. No one ever can know too much about the rules that apply to our business, so Attorney Paul Lange's review of the legal pitfalls associated with part purchasing (and how to avoid these potential problems) was well attended. The ASA report on Y2K was also quite useful, as it explained how to take advantage of the new laws to protect your business from Y2K-related litigation.

Many of the presentations were useful to the entire industry: QA, sales, purchasing and even top management.

With the recent murder charges issued

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ASA President Michele Schweitzer Welcomes the 1999 ASA Annual Conference Participants

"Strategies for Success" Succeeds!

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against Sabretech for the Valujet disaster, it was not shocking to see the high level of interest in hazardous material training. Gary Richardson of Federal Express put on a very timely presentation on hazmats.

Attendance at this year's Annual Conference exceeded 260 this year - a 30% increase over last year's popular Conference in Dana Point. With spouses, ASA's dinner functions reached about 350: the largest functions ASA has ever hosted.

Next year's conference is expected to take place in Las Vegas, Nevada. The draw of a popular site like Nevada coupled with the best educational seminars in the industry should make the year 2000 Conference an even bigger hit!

ASA's Michele Schweitzer and Jason Dickstein thank keynote speaker Carol Giles

A special "Thank You" to the ASA 1999 Annual Conference Sponsors:

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Without the generous support of these companies, ASA would not be able to host its conference. Each of these companies has played an important role in making the 1999 ASA Annual Conference a reality.

Attorney Marshall Filler illustrates his point at the ASA Annual Conference

Missed the ASA Annual Conference?
You don't have to miss out on the Annual Conference Binder!

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Cary, IL

P&R Trading, Inc.
East Rutherford, NJ

for their reaccreditation to the Airline Suppliers Association's Accreditation Program.

These companies have successfully passed annual audits to ASA-100 and have been reaccredited to the ASA-100 standard for an additional two years. They will continue to be subject to annual audits.

All companies that are accredited to ASA-100 are eligible to be listed on the FAA's list of companies that have met the requirements of AC 00-56. This growing list may be viewed at: **http://www.airlinesuppliers.com**

AIRLINE SUPPLIERS ASSOCIATION

Unapproved Parts Related Convictions

Do you ever wonder why our government lets people get away with selling counterfeit and unsafe aviation parts? Well, wonder no longer, because ASA has uncovered the government's dirty little secret: they are NOT letting criminals get away with selling bad parts. In fact, the people who sell bad parts are paying fines, serving probation, and even going to jail.

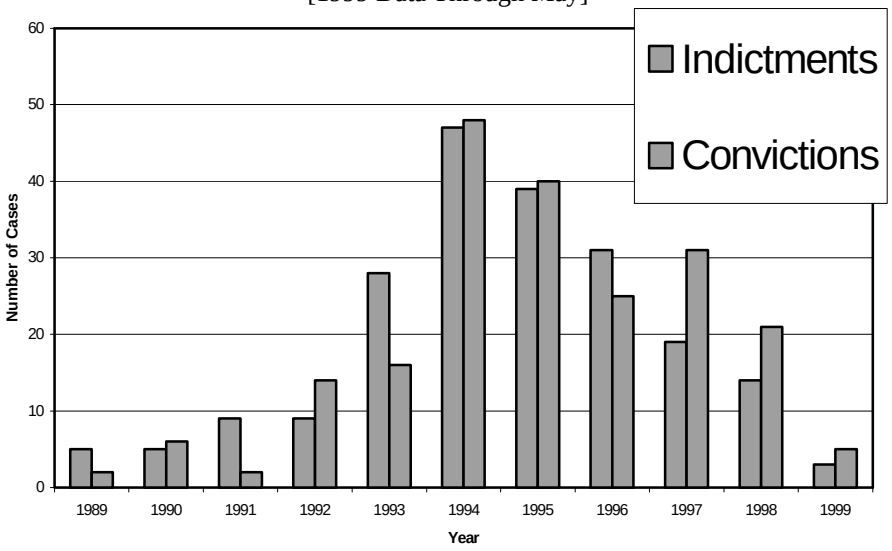
Recently, ASA used the Freedom of Information Act to obtain a list of the closed aircraft parts cases that were tracked by the DOT Office of the Inspector General (OIG) [only those that led to convictions]. The OIG tracks two separate categories of offenses that fall within the realm of substandard part cases. The OIG has a category for "Unapproved Parts Convictions." This is the database that lists most of the convictions; however a small number of them get tracked under a different category: FAA & SUP Related False Statement Convictions.

The two databases of convictions go back to 1990. The false statement database tracks only 13 convictions, but the larger database entitled "unapproved parts convictions" lists 210 convictions. The 223 convictions in these two databases represent over $15 million dollars in fines, almost $12 million in restitution.

An examination of the indictments and convictions tracked by OIG over the past ten years shows a spike about five years ago when parts approval issues became a truly 'hot' topic. The fact that this spike has decreased may be due to increased awareness of part issues, and increased compliance with the law. Readers interested in obtaining the full databases can find them both on ASA's website.

Unapproved Part Cases Tracked by DOT OIG

[1999 Data Through May]



KEEPING THE INDUSTRY CLEAN

Hazmat Fines Continue to Accrue

The FAA has issued Notices of Proposed Civil Penalties [NPCP] against several companies this summer for violations of the hazmat rules.

Fann Instruments of Houston, TX has been accused of improperly shipping five one-gallon metal containers of xylene, which is a flammable liquid. The liquid was discovered leaking out of the fiberboard box in which it was packaged. Fann is also accused of failure to properly train its employees in hazmat procedures. The fine proposed by the FAA is $70,000.

In a similar case, the FAA proposed a $50,000 fine against Global Graphics of Conyers, GA for shipping a one-gallon container of adhesive. The adhesive, a flammable liquid, was discovered by the cargo carrier's sort facility when the shipment leaked and emitted a strong odor.

In a third case, a shipment from Forsheda AB of Forsheda, Sweden was discovered leaking during flight on cargo aircraft, and the crew was forced to don oxygen masks. The FAA has proposed a fine of $87,500 in this case.

Any company that receives a NPCP from the FAA has the right to dispute the case, to discuss it with an FAA lawyer or to force the FAA to prove their case before a judge. Even if the company wins, though, it usually must expend time and money resources to defend itself. In the long run, effective hazardous materials training and control procedures represent a better allocation of resources. The Department of Transportation makes training materials available on the internet. These training materials may be accessed through ASA's website.

Proposed Rule: Repair Station Quality Systems

On June 26, the FAA released a Notice of Proposed Rulemaking [NPRM] that represents a major overhaul of the rules that apply to repair stations. Nearly every ASA member encounters repair stations in the course of business - repair stations may be customers, they may serve as maintenance facilities for inventory in need of repair, or the ASA member may, itself, hold a repair station certificate. As a consequence, the proposed revisions to the repair station rules should be vitally important to every ASA member.

In last month's issue of **The Update Report**, ASA analyzed some of the elements of the proposed rules that would have particularly striking impact on distributors that do business with repair stations. In this month's issue, ASA focuses on the changes that the proposal would make on a repair station's quality system, and on the effects this could have on distributors that do business with repair stations.

Repair stations today are not required to have a quality assurance system in place - instead, they are required to develop and follow an inspection procedures manual. Although it is not required, many repair stations have implemented quality assurance programs to ensure that maintenance is consistently performed according to the applicable standards; in fact, the Joint Aviation Authority has published Joint Aviation Regulations (JARs) that require that European repair stations (that meet the JARs) to have a quality assurance program in place. This means that United States repair stations that are JAR-accepted already are required to implement such a system.

The New Quality Assurance Program Proposal

The proposed rule would create a regulation that requires repair stations to implement a quality assurance [QA] program. In addition, repair stations would be required to develop an operations manual that describes this QA system. The inspection procedures would be just one part of this repair station manual.

The repair station's QA program would be responsible for more than just the work performed by the repair station; the proposed QA rule would also address the quality of any work performed by a contractor. This is a significant change to the current rules, because the current rules make a repair station responsible only for work that it approves for return to service.

The Current Rules on Subcontracted Maintenance

If a repair station contracts work out to a non-certificate holder, then the repair station is fully responsible for the work itself. The repair station will need to inspect the work to assure that it was performed in an airworthy manner, and it will need to document the work itself, in accordance with the maintenance documentation rule found at 14 C.F.R. § 43.9. If a second repair station performs the subcontracted work and approves it for return to service, though, then the primary repair station is not responsible for the work that it did not perform.

In fact, the primary repair station is forbidden from reissuing the approval for return to service under its own name. This is called over-tagging, and it is discouraged because it misrepresents the identity of the company that actually approved the work for return to service. The primary repair station would be permitted to perform a subsequent inspection, and to sign an approval for return to service indicating that the inspection was performed (of course, the primary repair station would have to identify the parameters to which it inspected the article); but in most cases this is not the sort of approval tag that the customer wants. The customer may want an overhaul tag, for example. If the subcontractor performed the overhaul and approved it for return to service, the primary repair station may not simply replace the subcontractor's approval tag with its own, because the primary repair station did not perform the overhaul.

The current system is simple - the repair station is only responsible for the work that it approves for return to service, and it may only approve for return to service work that was performed under the auspices of the repair certificate. The NPRM changes this, although it appears that overtagging remains discouraged, the new proposal would require a repair station's quality assurance program to take responsibility for the work performed by the repair station's subcontractors.

Auditing

The proposed QA program rule is analogous to the language that makes air carriers responsible for all maintenance performed on their aircraft. The air carrier rules do not explicitly require air carriers to perform audits on their maintenance providers and parts suppliers; however auditing has become the common practice for complying with the quality assurance requirements of the air carrier rules. It is quite likely that the proposed repair station language would also require repair stations to actively audit their

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REGULATORY UPDATE

FAA Proposes QA Systems for Repair Stations

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business partners who provide subcontracted maintenance. The NPRM recognizes that this would cost the industry some money, in fact, it estimates that this new proposal alone would cost the repair station industry 81 million dollars!

Guidance is Expected

As written, the QA system proposal appears to be a beneficial addition to repair station operation; however, the NPRM itself recognizes that a one-size-fits-all approach to QA systems would not work in the repair station industry. The NPRM explains that the QA system must be tailored to the individual repair station and it further promises that the FAA will issue an advisory circular to help provide guidance defining acceptable QA systems.

Given the problems the FAA has faced in the past with standardization (or lack thereof), it seems unlikely that the FAA will find it easy to strike the balance between "individualized service" in assessing QA systems, and assuring that the standards of assessment are fair and uniform. Because of the diverse nature of repair and alteration, production quality systems, with which the FAA is familiar, do not always translate well to the maintenance arena. Air carriers have been successful in developing individualized quality programs that are effective, but their systems are often quite different from one air carrier to another. That sort of individuality simply may not be practical for FAA oversight, but true uniformity may not be practical for diverse repair station operation.

It is easy to write a rule that requires a quality system. It is not overly difficult to establish an effective quality system - companies do it every day; but establishing a governmental system for assuring that all repair station quality assurance systems are uniformly acceptable to the FAA may prove to be a monumental task. The FAA faces an interesting challenge in developing the standards of review that will help it to implement this proposal.

ON THE HILL

Tax Cuts in Our Future?

Could you use an extra few bucks from Uncle Sam?

At press time, the Senate and House had agreed on a monumental tax cut designed to put money back in the pockets of the American taxpayer. Although the final version of the bill may be different (Congress still needs to negotiate with the President), it is clear that this legislation will be advantageous to the owners and employees of most ASA member companies. It is expected to be worth 792 billion dollars to the American people over the course of the next ten years.

Many of the tax changes would not take place until the year 2006. One of the most significant changes would be a decrease in tax rates. The proposal would be a 1% decrease in the marginal income tax rates. The lowest marginal rate would decrease from 15% to 14%, the next highest rate would decrease from 28% to 27%, and so on. In a related proposal, the breakpoint between the 14% and 28% tax brackets will be moved up by several thousand dollars, which means that more income will be taxed at the lower bracket. This set of tax bracket changes alone should lower the taxes of the average married taxpayer by over $500 per year.

Capitol Hill has been devoting serious attention to the estate tax system for about five years, now - ever since the 1994 "Republican Revolution" elevated the status of estate tax reform from 'pie-in-the-sky' to 'serious issue.' Many in the Capitol recognize that estate taxes represent a miniscule percentage of America's tax revenues, but at the same time they are a leading cause of the failure of family businesses. Many second generation business people find it difficult to shoulder the estate tax burden associated with the family business, so they are forced to liquidate their interests. It is clear that the latest efforts to make estate tax more fair will decrease the tax rates and also increase the amount that can be inherited "tax-free." There are still many people in Washington who want to see estate taxes eliminated; in fact, the current version of the tax bill eliminates estate taxes entirely within the next ten years. Whichever estate tax

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Congress Cuts Taxes, but will Clinton Veto?

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changes find their way into the final law, they will be especially important to the next generation of owners in ASA's family-owned members.

Another important change will affect personal capital gains taxes. Although the final compromise will not reduce corporate capital gains taxes rates, personal rate will decrease from 10 percent to 8 percent among lower-income individuals and from 20 percent to 18 percent among higher-income taxpayers.

The White House has pledged to oppose the tax cuts, believing that excess funds should be used to pay off the national debt more quickly and also used to expand social programs. Despite veto threats from the White House, Congress presses onward. It is likely that the President will make good on his veto threats, but a final tax compromise should nonetheless be ready by about October.

Industry Update

DaimlerChrysler Aerospace and France's **Aerospatiale Matra** are close to agreement on a merger deal that would create the world's biggest aerospace company after **Boeing**.

The Department of Justice charged **Michael Malagan** with heading an extensive narcotics organization. According to the Miami-Dade Herald, Malagan used his aviation parts business, **Q.E.C. Accessory Sales**, as a front for the operation. News reports also claim that federal agents seized $500,000 in stolen aviation parts at the Q.E.C. facility.

Dallas-based **Seven Q Seven** is pursuing certification of the **Pratt & Whitney JT8D-219** as a low-cost, highly efficient re-engining option for the **Boeing** 707 aircraft.

AT 800 INDEPENDENCE

Fazio is New FAA Rulemaking Chief

FAA Administrator Jane Garvey announced the appointment of Tony F. Fazio as Director of the Office of Rulemaking effective August 2. He will be responsible for developing national policies on rulemaking procedures and priorities.

Fazio succeeds Joseph Hawkins who has been selected as deputy associate administrator for commercial space transportation.

Fazio reports to Tom McSweeney, the Associate Administrator for Regulation and Certification. In addition to setting national policies on rulemaking, his duties include implementing plans consistent with these policies. He will also ensure existing rules, regulations, standards, policies, procedures, and program performance are consistent with FAA goals and objectives.

A native Washingtonian, Fazio joined the FAA in 1982 as an economist in the Office of Environment and Energy. In 1991 he was appointed supervisory environmental specialist for that office. A year later he was promoted to manager of the FAA's international operations and organizations division in the Office of International Aviation. Since 1995, he has been the FAA's senior representative in the Europe, Africa and Middle East Office in Paris, France.

If You Send a Part for Repair, Does the Repair Station Check

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in the article in question, and (2) the FAA must show that the condition is likely to exist or develop in other articles of the same design.

If the FAA makes these two determinations, then it publishes the AD in the Federal Register as a Notice of Proposed Rulemaking (NPRM).[4] This gives the public an opportunity to respond to the FAA's proposal and offer constructive suggestions.[5] In some cases, proposed ADs may be significantly modified or even rescinded based on public comments that suggest better ways to accomplish the FAA's safety goals, or that prove that the AD will not promote safety in the way that it is intended. Because the AD is published as a rule, the FAA is required by law to read every comment and to take appropriate action (denial of a commenter's proposal is considered to be acceptable, as long as the FAA is not abusing its discretion).

Who Must Comply with an AD?

AD compliance is generally the responsibility of the owner / operator and not of any other party.[6] For example, if an AD requires that an engine be subject to nondestructive testing every 1000 cycles, then the engine owner / operator would be responsible for having the inspection conducted. If the engine was operated for 1002 cycles without getting the appropriate testing required by the AD, then the owner / operator would be guilty of a violation for failure to comply with the AD.

In this hypothetical, the owner / operator might use a repair station to conduct the required testing. To meet the requirements of the AD, the repair station would be required to perform the required testing described in the AD; however, the repair station does not have any legal obligation to perform the AD work, and the repair station is legally permitted to refuse to do the AD work. For example, a repair station that was not rated appropriately to perform the testing in question would not be in violation of the law if it refused to perform the testing.

It is important to remember, though, that if a repair station fails to perform AD work but signs an approval for return to service that states that the work had been completed, then that would constitute a false statement in violation of the regulations.

What if the aforementioned engine is sent to a repair station for repair work? Imagine that the engine to be repaired

A repair station only signs-off for the work it actually performed, and takes no regulatory responsibility for work it

has reached exactly 1000 cycles (the AD now requires testing before the engine is operated again). It seems logical that the repair station would perform the nondestructive testing required by the AD during this shop visit. Many people mistakenly believe that the repair station is *required* to perform the applicable ADs under these circumstances. This is not the case! Although the owner / operator is precluded from using that engine again until AD compliance is attained, the repair station bears no explicit AD compliance responsibilities under the regulations. This means that if the repair station fails to perform the AD work, it has not violated any FAA regulation (unless, of course, it claims to have performed the work, in which case the false statement could represent one or more violations). In short, the repair station only signs-off for the work it actually performed, and takes no regulatory responsibility for work it does not claim to have performed.[7]

While the repair station bears no AD compliance responsibilities, many repair stations will track applicable ADs and will inform the owner / operator of the article that ADs apply to the article. If you want to be sure that the AD is performed during this shop visit, though, then it is important to make sure that you list AD compliance as a task in the work order. You should also look carefully at the description of the work performed in the approval for return to service, because that ought to indicate which ADs were performed.

What about work performed in Canada?

Transport Canada (the Canadian equivalent to the United States' Department of Transportation) is the organization that regulates aviation in Canada. Transport Canada publishes the Canadian Aviation Regulations.

The Canadian Aviation Regulations make it quite plain that the primary responsibility for AD compliance rests with the owner / operator of the aircraft.[8] In fact, the guidance material issued by Transport Canada explains that some inspection checklists include a check box for certifying that all applicable ADs have been completed. Because this language transfers the responsibility for AD compliance from the owner /operator to the mechanic, Transport Canada recommends that this sort of language be deleted from inspection checklists.[9]

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... The Answer May Depend on Your Contracts

(Continued from page 82)

This doesn't mean that the responsibility cannot be shared by contract; it only means that the contractual arrangement should be clear. Where an owner / operator wants the repair station or mechanic to perform the necessary AD research for the article or aircraft, the Canadian Government recommends that such a task be raised as a separate line-item on the applicable work order.[10]

U.S. and Canadian Advice

The Canadian advice is well stated. Whether the article is being sent to an FAA repair station or a Canadian repair station, there is no regulatory requirement for that facility to implement applicable ADs. To make sure that applicable ADs are applied to the articles you send to a repair station for maintenance or alteration, you should make AD compliance a part of the work order that accompanies the article. This can include AD research to determine what ADs are applicable, although you should ask the repair station what it charges for AD research, because sometimes it can be more economical to perform the AD research at your own facility, and to provide the repair station only with a list of the ADs that apply and are to be implemented during this shop visit.

Europe and the JAA

The Joint Aviation Authorities (JAA) is a non-governmental organization that was founded in 1970 to harmonize aviation regulations throughout Europe. The JAA develops harmonized regulations, known as Joint Aviation Regulations (JARs), that are then adopted by the JAA member nations.

The JAA has a uniform set of rules that apply to repair stations, known as JAR 145. European repair stations will generally be issued JAR 145 certificates, although they may also hold FAA repair station certificates. Similarly, U.S. repair stations may be 'accepted' by the JAA, and thereby enjoy the privileges of both a FAA and a JAA repair station certificate.

JAA rules concerning responsibility for AD compliance are a little less black-and-white than their US and Canadian counterparts. The JARs make it clear that someone who applies for an Export Certificate of Airworthiness must provide evidence of compliance with the applicable Air-

Any part exported under a JAA One Form (issued for export purposes) may be presumed AD compliant unless the JAA One Form

worthiness Directives to the government that issues the certificate.[11] If the article will be exported without full AD compliance, then the export certificate must disclose this fact specifically.[12] So any part exported under a JAA One Form (issued for export purposes) may be presumed AD compliant unless the JAA One Form says otherwise.

But what about JAA One Forms issued for approval for return to service? Can a repair station perform work under the scope of JAR 145, and sign an approval for return to service, without performing all of the applicable ADs? This is a question that is becoming more important to U.S. distributors as they find that their repair station business partners are acquiring JAR 145 acceptance. Many distributors want these JAR 145-accepted repair stations to complete an "FAA" approval for return to service that features a "JAA" endorsement, indicating that the work performed meets the standards of both the FAA and the JAA. This increases the market to which the repaired part may be sold, because the maintenance work becomes acceptable to both United States and European customers.

The general rule under the JARs, that the owner / operator remains responsible for compliance with all ADs, is quite similar to the general rule found in U.S. and Canadian law; however, the guidance material associated with this rule is not quite as clear-cut as its North American counterparts.

The JAA system relies heavily on the contract between an air carrier and its maintenance providers. Several JAA Temporary Guidance Leaflets require that the relationship between an air

(Continued on page 85)

USING FAA/JAA REPAIR STATIONS

Some distributors who use repair stations with both FAA and JAA licenses to perform their work have found that the repair station does not always place the JAA endorsement on the approval for return to service. There is no legal requirement that a FAA/JAA certificated repair station must do any particular job under the authority of BOTH certificates. If you want both an FAA approval and a JAA endorsement, then make it clear in your work order that you expect the work completed to be performed according to both FAR and JAR standards, and that you expect the approval for return to service to be completed on an 8130-3 with the JAA endorsement.

Ask for the Repair Station to Implement Appropriate ADs

(Continued from page 83)

carrier and a repair station shall be dictated by a contract.[13] In fact, JAA guidance provides a model with very specific parameters for that contract.[14] The model calls for an exposition of the methods of AD compliance, and a disposition of the AD compliance responsibilities. Therefore, there will be many circumstances where the JAA repair station bears the responsibility to perform AD work due to a prior contract that governs all work performed by the repair station.

The ambiguity in the JAA system arises out of JAA Temporary Guidance Leaflet No.11, which imposes some AD responsibility on a repair station that receives aircraft components and material that are meant to be installed on an aircraft or on a subassembly.[15] Additional ambiguity arises out of JAA Temporary Guidance Leaflet No.12, which requires the repair station to disclose to the customer when defects are discovered during the course of maintenance.[16] If the customer chooses not have the defects corrected, the repair station is responsible for listing them on the approval for return to service,[17] unless the problem represents a serious hazard to flight safety, in which case the repair station is precluded from completing an approval for return to service.[18] By definition, an AD represents a serious hazard to flight safety, so it seems that a JAA repair station may not be permitted to approve an article for return to service following maintenance if there is an outstanding AD.

Conclusion

The JAA regulations do not anticipate the use of JAA maintenance facilities by distributors; they mostly focus on the relationship between a repair station and an air carrier. As a consequence, there is no specific guidance on whether a repair station performing work for a distributor is legally obliged to determine AD applicability and assure AD compliance. In light of the JAA silence on distributor issues, and the obvious incongruities exhibited by the JAA leaflets, a wise distributor will protect himself when sending work to a repair station by making it clear in the work order whether the repair station is required to research and implement applicable ADs in the scope of the work that is to be performed on the article.

ENDNOTES

1. 14 C.F.R. § 39.1.
2. See, e.g., 14 C.F.R. § 39.13 (incorporating by reference all ADs issued prior to the codification of the current rules).
3. 14 C.F.R. § 39.3.
4. See 5 U.S.C. § 552(a)(1) (requiring publication of rules).
5. See 5 U.S.C. § 553(b) (requiring that interested persons be afforded an opportunity to participate in the rulemaking). The Notice of Proposed Rulemaking "must be sufficient to fairly apprise interested parties of the issue involved, so that they may present responsive data or argument." Legislative History of the Administrative Procedure Act, S. Doc. No. 248, 79th Congress, 2d Sess. 200 (1946).
6. 14 C.F.R. § 39.3.
7. See 14 C.F.R. § 43.13(b) (limiting the scope of the performance rules to the work actually performed).
8. Canadian Aviation Regulation 605.84(1)(b).
9. Airworthiness Manual, Chapter 571 - Maintenance § 571.10(3)(i) (Transport Canada October 10, 1996).
10. Airworthiness Manual, Chapter 571 - Maintenance § 571.10(3)(ii) (Transport Canada October 10, 1996).
11. JAR §§ 21.327(b)(4) and 21.329(a)(5).
12. JAR § 21.327(b)(4).
13. JAA Temporary Guidance Leaflet No.12: JAR-145 Release to Service after Incomplete Maintenance ¶ 4.1 ("It is ... essential that the aircraft rated JAR-145 approved maintenance organisation [sic] has received clear work instructions such as a work order from the aircraft operator. The work instructions should include the specific maintenance check from the aircraft maintenance programme [sic], airworthiness directives, repairs, modifications, replacements and defects to be rectified").
14. JAA Temporary Guidance Leaflet No. 19: Operator's Maintenance Management Exposition, Example 1A, ¶ 6.4.
15. JAA Temporary Guidance Leaflet No.11: JAR-145 Acceptance of Aircraft Components & Material ¶ 4.3.2 ("Care should also be exercised in ensuring compliance with applicable Airworthiness Directives ... fitted to the aircraft component").
16. JAA Temporary Guidance Leaflet No.12: JAR-145 Release to Service after Incomplete Maintenance ¶ 4.5.
17. Id.
18. Id. at 5.1.

The General Aviation Revitalization Act at Five

Product Liability is always a concern for distributors. Current laws permit plaintiffs to sue distributors even though a defect may have clearly been attributable to the manufacturer. Attorney Rick Durden has been handling product liability cases in the aviation world and was willing to share his impressions based on the cases he's been handling.

In the summer of 1994 Congress passed and the President signed into law the General Aviation Revitalization Act which provided an eighteen year statute of repose for manufacturers of general aviation aircraft, engines and components. Enough time has passed to assess the impact of the Act on the industry. Overall the number of lawsuits against airframe and engine manufacturers has dropped radically. To that extent the Act has been successful. It has survived at least one attack on its constitutionality at the trial court level although no appellate court has examined it. A case this writer is defending is the first in which a judge has declared the Act constitutional and it is expected that an appellate court will decide the issue in the next year or two.

Interestingly, with "tort reform" and the slight reduction in accidents, the overall number of aviation-related lawsuits has dropped.

The GARA has led to two important developments. The first is a move away from lawsuits targeted at the airframe and engine manufacturers, in favor of those who have handled the installed components.

Component manufacturers have not historically been a major target in aviation lawsuits. Thus they do not seem to have been a beneficiary of the Act, having seen only a modest drop, if any, in frequency of suits. As components are replaced, the eighteen year limitation of the GARA starts counting all over again, so it provides less effective protection to those manufacturers than to airframe builders.

Despite the dropping accident rate, there are still crashes. The aviation plaintiff bar is actively seeking defendants to replace the manufacturers that had been its previous targets. The result has been that repair facilities, aircraft owners and operators are increasingly in the sights of the plaintiffs' lawyers. Informal inquiries indicate that component manufacturers and small repair shops which had never been thought to be targets are now being sued by injured parties following a crash. Many of these companies have either carried no insurance or very little. At least one has looked at bankruptcy after discovering its insurance was inadequate when suit was filed.

At least one [company] has looked at bankruptcy after discovering its insurance was inadequate when suit was filed.... For the future it is anticipated that insurance premiums will get even higher.

The second development is that a soft aviation insurance market is tightening up. Despite complaints by operators, aviation insurance has been quite inexpensive for at least the last twenty years. Operators are finding that the cost of premiums is rising or that they cannot buy the level of coverage they had in past years. Other operators have discovered that their policy containing per person sublimits proved to be nearly worthless when suit was filed.

Interestingly, component manufacturers that supply the bizjet industry face very little risk of suit because of the extremely low accident rate among corporate turbine aircraft.

For the future it is anticipated that insurance premiums will get higher and suppliers and repair facilities that serve the piston-engine aircraft market will face higher insurance rates along with increased risk of suit following an accident. A number of repair shops have started using more detailed maintenance agreements which specify not only the work done, but needed work that the customer refused to allow the facility to repair. The increased risk of suit against repair stations combined with the mechanic shortage is expected to drive maintenance costs up noticeably.

- Rick Durden

Rick Durden has an aviation law practice with the firm of Tolley, VandenBosch, Walton, Korelewicz & Brengle in Grand Rapids, Michigan where he moved after several years in Chicago, Illinois and seven years as in-house counsel with a major general aviation manufacturer. He holds an Airline Transport Pilot certificate with a Cessna Citation type rating. He can be reached at 616/447-1800 or rdurden@compuserve.com or snail mail at 1700 E. Beltline, Suite 200, Grand Rapids, Michigan, 49525.

Kosovo Diary: Our Parts in Action

QMSLP Chief Operating Officer Roy Resto was one of the men and women who helped keep our Air Force in the air during the Kosovo crisis. His reserve unit, a KC-135R Refueling Squadron, was activated to deploy to Europe to support the NATO mission. Many ASA members had good wishes for Roy both during his service in Europe and upon his return; he wanted to return the favor by giving us a page out of his diary; to let the ASA members see their parts in action.

The time is 1845 as we arrive on the flight line and spend the next 15 minutes getting a turnover from day shift on open maintenance items and gossip over coffee and cigarettes. Mail is distributed, and care-package cookies, under threat of bodily harm, are quickly passed around. Following a crew meeting, the NATO tasking orders for the next 24 hours are posted. I write down the schedule so I can coordinate the 'redball' crews.

A redball crew consists of a truck loaded with tools, a hydraulic specialist, an electrical / environmental specialist, and two avionics specialists. Typically the redball crew arrives ship side with the flight crew one hour before the mission, and stands by to fix any problems the flight crew might encounter in preparing the aircraft for the mission. A redball crew is tasked with marshalling any resources necessary to assure the mission is not jeopardized. Tonight we will launch 6 missions and recover 4 that took off on day shift. Planes returning from missions are required to radio in a half hour before arrival to advise on the status of the aircraft.

Our first recovery, call sign 'Dixie 21,' calls in and advises that there will be a hydraulic and UHF radio writeup in the forms. The specialist supervisor will assure that a hydraulic and avionics person is present at the mission debriefing. Since I'm the avionics specialist, I volunteer to be there. We start to assemble the Maintenance Manual instructions (called Technical Orders or TOs) and tools in anticipation of Dixie 21's problem, as are the hydraulics people. Simultaneously, the first redball crew is assembling to launch the night's first mission.

The Dixie 21 crew gives us the details of the problems they encountered. After their departure we check in with the flight line Chief to ask when she wants us at the aircraft to fix the writeups. Normally we have to wait until the aircraft has been refueled, but tonight in anticipation of having to order parts, she makes an exception and dispatches us immediately. Within a half hour we have isolated the problem to the UHF receiver/transmitter, and quickly order another one. Supply advises they have the part in stock and brings the part out to us shipside - a welcome departure from the days when you either picked up the parts yourself, or they only brought them to the shop (hey, this 'customer' thing works in the Air Force, too). Parts support was superb! We radio in 'job complete', the plane is refueled, and the aircraft is returned to Fully Mission Capable, FMC, status.

Parts support was superb! We radio in 'job complete', the plane is refueled, and the aircraft is returned to Fully Mission Capable, FMC, status.

After the paperwork is completed, I go out with the next redball crew. At great personal sacrifice we decide to order box meals since we will again miss midnight chow due to the workload. On every launch I use a portable test set to check the integrity of the aircraft's IFF system, Identify Friend or Foe. With it, aircraft interrogate each other electronically to ascertain that they are 'friendlies' and not get shot down by ones own fighters!

Its 0130 and I've been on the redball truck for two hours when I encounter bladder chatter. I rush over to the darkest fence line when I notice an armed cop and his dog pop out of nowhere and start towards me. I quickly decide to protect my Air Force assets and return to the truck just in case that menacing dog also had a box meal.

And so it goes, we repeat the cycle of launch, recover, fix, and paperwork all night. It's 0600 with the sun in the sky, and we look up and see B-52's and B-1's on final to a nearby base after their missions. We are tired, yawning and hungry. We put on fresh pots of coffee for our relief crews. Another night has ended.

- Roy Resto

Roy Resto is the Chief Operating Officer of Quality Management Services, LP. QMSLP provides a variety of quality-related services to the aviation community, including auditing and consulting. Roy and QMSLP can be reached at (414) 523-4004.

New Law to Prevent Explosion of Y2K-Related Lawsuits

This month's Y2K Update comes from the desk of Chad Bierman, who is working with ASA for the summer. After a successful career as a intelligence analyst with the Department of Defense, Bierman chose to attend law school. Before coming to ASA, he worked for the Office of the Legal Adviser at the State Department. He is interested in pursuing a career in the international aspects of aviation law when he finishes his degree work.

The recent passage of the Y2K Readiness and Responsibility Act, alternatively known simply as the Y2K Act, promises to make it considerably more difficult to bring a lawsuit over Y2K-related computer problems. That's good news to the information technology industry and anyone else who purveys products that might not function correctly after December 31, 1999. It is not such good news if your business has been hurt by Y2K problems that your IT and software providers or business partners led you to believe would not occur. How has the new law changed the rules?

Congress passed the Y2K Act in an effort to forestall a feared avalanche of frivolous Y2K-related lawsuits. One way the Act is designed to accomplish this is to encourage parties to resolve problems out of court. Under the Y2K Act, before filing a lawsuit for monetary damages, you must send the potential defendant written notice describing the problem you have encountered, how it has harmed you, and how you want the problem remedied. The other party then has thirty days in which to respond, and if they propose a solution to the problem, they have another sixty days to implement it. If you are still unsatisfied after ninety days, you may then file suit. This limitation only applies to suits for money, however. A lawsuit to force a vendor to stop selling noncompliant products could be filed without delay.

The Y2K Act provides another layer of defense against lawsuits by mandating the strict enforcement of any contract or warranty terms such as liability exclusions or disclaimers. Thus, a court will lend tremendous weight to any language in a warranty, contract, or license agreement that in any way limits liability or the types of damages a party is willing to accept. The only exceptions apply where the court determines that the contract or agreement in question is grossly unfair or one-sided.

Even if a successful suit can be brought, the sky is not the limit. The Act places new caps on the damages a plaintiff can recover. Punitive damages are limited to $250,000 or three times the amount of actual damages, whichever is less, for defendant companies with less than 50 employees or for individual defendants with a net worth less than $500,000 (but note that larger companies or wealthier individuals could still face much greater liability). The Act also introduces a proportionate liability scheme whereby defendants are only liable for the portion of the damages for which they are responsible. Moreover, the amount of any damages awarded will be reduced to the extent that the person filing the suit fails to make reasonable efforts to minimize his or her own losses.

It is also important to note that the Y2K Act in many ways sets only a minimum standard of protection against Y2K lawsuits. It specifically does not supercede any state or local laws that provide greater protection to Y2K defendants or place stricter limits on damages or liability. To date, some 28 states have enacted Y2K laws of varying degrees of comprehensiveness.

The Y2K Act does not affect all potential lawsuits, however. Its primary purpose is to preclude suits over warranty or contract terms, disruptions of business, lost data, or similar economic issues. It does not apply to lawsuits alleging personal injury or wrongful death. Thus, someone injured as a result of a Y2K-related equipment failure could still potentially sue the manufacturer of the equipment in question, as could the relatives of someone who lost their life owing to such a failure. The Act also does not apply to claims made under securities laws, as long as it can be proved that the parties being sued knew of or recklessly disregarded the potential for Y2K problems. The Act also provides no refuge for a scoundrel -- its protections and liability limits do not apply where it can be shown that the defendant committed fraud or acted with intent to cause harm.

The Y2K Act will undoubtedly reduce the number of Y2K lawsuits clogging the court system in the next few years, but it will hardly eliminate them. Should an aircraft go down as the result of the Y2K-related failure of a critical component, the Act will not stand in the way of lawsuits brought by those who have suffered genuine harm. The amount of litigation that occurs will ultimately be determined by the kinds of problems that arise when the Millennium Bug finally bites.

- Chad Bierman

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UPCOMING EVENTS

**** = ASA will be speaking there***

Aug. 14-17	**Air Carrier Purchasing Conference**, San Antonio, TX. Call (561) 434-1512 for details.
Sept. 7-9	**MRO Europe**, University of Limerick, Shannon, Ireland. Fax for details (212) 904-3334.
Sept. 12-14	**Aircraft Valuation and Asset Management**, Washington, DC. Contact Carol Everest in the United Kingdom at 44 1892 51 5364 for more details.
Sept. 13-14	*** 1999 ASA Workshop Series**, Minneapolis MN. Back by popular demand! A special session of the ASA members-only workshop hosted by Northwest Airlines. Space is extremely limited and is reserved on a first-come, first-served basis. Call Bill Tipton, who is coordinating this session: (612) 726-3831.
Sept. 19-22	*** CQCA/Int'l Maintenance Symposium**, Dallas, TX. Phone (254) 776-3550 for additional information.
Sept. 22-24	*** Airline Inventory, Component Management & Overhaul Conference**, Crowne Plaza Union Square Hotel, San Francisco, CA. Call (44) 171 931 7072 for information.
Oct. 12-14	**NBAA 52nd Annual Meeting & Convention**, Atlanta, GA. Fax for details: (202) 862-5552.
Oct. 24-26	**Association of European Airlines**, Glasgow, Scotland. Call (32) 2 640-3175 for details.
Oct. 24-26	**Speednews Regional & Corporate Suppliers Conference**, Rancho Mirage, CA. Call (310) 203-9603.
Nov. 4-5	**SPEC 2000 Forum**, Hyatt Westshore, Tampa, FL. For details call (202) 626-4039 or check out their website at http://www.spec2000.com
Dec. 7-9	**Aircraft Heavy Maintenance Conference,** The Forum Hotel, UK. Call (44) 171 931 7072 for information.
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