



Regulatory Update

*Marshall S. Filler
Managing Director & General Counsel
Aeronautical Repair Station Association*

Gorham Conference - Atlanta, GA
March 27, 2014

About ARSA

ARSA is an Alexandria, Virginia-based trade association that represents aviation maintenance and manufacturing companies. Founded in 1984, the Association has a distinguished record of advocating for repair stations, providing regulatory compliance assistance to the industry, and representing repair stations on Capitol Hill and in the media. More information is available at www.arsa.org.

A member driven-organization, ARSA is governed by a Board of Directors that represents the diversity of the aviation maintenance industry. The Association's board consists of members representing the industry's various segments, including: engine maintenance; general aviation interests; companies that work on large aircraft; servicers of corporate, business, and airline maintenance; the helicopter industry; international maintenance providers; and, two members representing component maintenance since those companies make up the majority of ARSA's membership.

About the Speaker

Marshall S. Filler is the Managing Director & General Counsel of ARSA and a Managing Member of Obadal, Filler, MacLeod & Klein, PLC. He has been practicing aviation regulatory law for 40 years. Before entering private practice in 1985 he was an attorney in the litigation, regulations and enforcement divisions in the FAA's Office of the Chief Counsel.

Subsequently, he served as minority counsel to the U.S. House of Representatives' Aviation Subcommittee. Marshall represents domestic and international aviation clients in the areas of design, production, operations, maintenance, drug and alcohol and hazardous materials compliance.

Legal Disclaimer

This material is provided for educational and informational purposes only. It does not constitute legal, consulting, tax or any other type of professional advice. Law, regulations, guidance and government policies change frequently. While ARSA updates this material, we do not guarantee its accuracy. In addition, the application of this material to a particular situation is always dependent on the facts and circumstances involved. The use of this material is therefore at your own risk.

Overview

- Reciprocal repair data approvals
- Part 21 NPRM
- OEM competitive practices
- TSA repair station security rule
- AIR re-organization
- ANPRM on foreign drug and alcohol testing

Reciprocal Repair Data Approvals

- Addressed in the Technical Implementation Procedures (FAA-EASA) and Implementation Procedures for Airworthiness (FAA-TCCA)
- FAA-Transport Canada IPA (section 4.2)
 - Repair data approved by the exporting authority or its designees is approved by the importing authority when used on a product registered in the importing jurisdiction.
 - Each authority retains the right to review any data approved by the other authority.
 - Regardless of the State of Design for the product (as long as a TC has been issued by the importing country)

Reciprocal Repair Data Approvals

- FAA-EASA Technical Implementation Procedures (section 3.3.2)
 - Most EASA approved repair design data is approved by FAA without further showing unless the repair design involves (1) an area subject to an FAA AD, (2) or relates to a critical part and the data is developed by an entity other than the TC-STC holder
 - Most FAA approved repair data is approved by EASA unless it involves a critical part and the data is developed by an entity other than the TC/STC holder.

Critical Component

- “Critical Component” means a part identified as critical by the design approval holder during the product type validation process, or otherwise by the exporting authority. Typically, such components include parts for which a replacement time, inspection interval, or related procedure is specified in the Airworthiness Limitations section or certification maintenance requirements of the manufacturer’s maintenance manual or Instructions for Continued Airworthiness.

What ARSA is Hearing ...

- Many U.S. air carrier maintenance personnel and/or their assigned ASIs do not have a good understanding of the repair data provisions of the TIP.
- Results from the fact that the TIP is a certification agreement rather than a maintenance agreement (i.e., MIP).
- Therefore, when work is performed in the EU by an EASA/FAA approved AMO and the data is approved under EASA Part 21, subpart J the data is automatically approved by the FAA in most situations.

What ARSA is Hearing ...

- Industry and FAA ASIs are still requesting Form 8110-3s or other documentation of data approval from the EASA maintenance facility or operator.
- Defeats one of the fundamental reasons of the bilateral agreement, i.e., the elimination of redundant technical approvals.
- ARSA Action: Request FAA to issue a bulletin reminding air carriers and industry representatives of the repair data provisions of the TIP.

Part 21 NPRM

(79 FR 11004, February 27, 2014)

- Identify an Accountable Manager for all PAHs
- Allow engine and propeller PC holders to manufacture and install interface components (IC) without an exemption
 - IC = functional interface between aircraft/engine and between engine/propeller (e.g., nacelle, engine mounts, piece parts for EBU, etc.)
 - Otherwise, engines have to be partially disassembled to install the IC
 - IC are designated by TC holder for the higher level product (aircraft or engine).

Part 21 NPRM

(79 FR 11004, February 27, 2014)

- Clarify supplier control procedures to focus on PAH's requirements and improve reporting on supplier non-conformities
- Allow (but do not require) PAHs to issue airworthiness approvals as birth certificates for new parts
- Remove requirement that fixed-pitch propellers be marked with a fireproof method
- Still in work: the NPRM relating to design organizations

Competition Issues: Legal Boxes

- Regulatory
 - ICA rules and related guidance
 - Anti-trust (i.e., DOJ, FTC, EC)
- Contract law
 - Airlines that agree to OEM terms are generally bound by those agreements.
 - Exception: Clauses that are contrary to public policy are unenforceable
- Private anti-trust litigation

Competition Issues

- Airlines are increasingly concerned about certain OEM practices that --
 - Limit their choices of MRO provider
 - Create barriers to using non-OEM maintenance providers, DER repairs and PMA parts.
- Affects spare parts, maintenance manuals, tooling and test equipment
- Government-sponsored “monopolies”
- Rules provide flexibility for use of equivalent items; however, the burden of demonstrating equivalence is generally on the user.

Specific Competitive Practices

- Differential OEM pricing policies between airlines working on their own fleet vs. those acting as a third party MRO and independent MROs.
- Exclusive use contracts (e.g., power by the hour maintenance contracts)
- Shrinking content of maintenance manuals
- Refusal to repair or install any LLP operated in an engine that included non-OEM approved DER repairs or PMA parts considered as LLP critical influencing parts.

FAA ICA Policy

PS-AIR-21.50-01, March 29, 2012

- FAA stated that the following restrictions were contrary to ? 21.50(b) --
 - Requiring the owner/operator to **only install DAH-produced or authorized replacement parts**, articles, appliances, or materials.
 - Requiring that **alterations or repairs must be provided or otherwise authorized by the DAH**.
 - Requiring the **use of only maintenance providers or other persons authorized by the DAH** to implement the ICA.
 - Establishing, or attempting to establish, **any restriction on the owner/operator to disclose or provide the ICA to persons authorized by the FAA** to implement the ICA.

Special Airworthiness Information Bulletin

(NE-08-40, August 8, 2008)

- Title: *Powerplant- Original Type and Production Certificate Holder Parts and Aftermarket Modification and Replacement Parts*
- Recognizes the commercial tension among product OEMs, operators and holders of alternate approved parts such as STC parts and PMAs.
- Acknowledges language in TC holder ICAs “limiting use” to OEM parts or policies that OEMs may not support their products with alternate parts installed.

Special Airworthiness Information Bulletin

(NE-08-40, August 8, 2008)

- Alternate approved parts are interchangeable with OEM parts.
- Unless otherwise specified TC holder life limits are unaffected.
- STC/PMA applicants requires an ICA evaluation and/or creation of supplemental ICAs.
- All approval holders are responsible for continued operational safety of their products and parts.

Repair Station Security Rule

(79 FR 2119, January 13, 2014)

- Effective February 27, 2014
- Lifts the statutory ban on the FAA certificating new foreign repair stations (in effect since Aug. 2008)
- All repair stations are subject to inspection by TSA if there is a security need
- All repair stations must comply with TSA security directives
- Security “measures” (not a security program) apply only to repair stations with large (12,500 lbs.) aircraft under their control that are on or adjacent to a commercial airport already under TSA regulation.

Repair Station Security Rule

(79 FR 2119, January 13, 2014)

- Security “measures” include --
 - Securing flyable aircraft
 - Designating a 24-7 point of contact with TSA
 - Maintain records of all employees responsible for controlling keys or other means used to control access to aircraft
 - Maintain records of the background of the above individuals
 - Prevent unauthorized operation of unattended, large aircraft capable of flight

Repair Station Security Rule

(79 FR 2119, January 13, 2014)

- Background checks can be accomplished by one of the following --
 - Confirmation that the person holds a valid FAA airman certificate
 - Was subjected to a security threat assessment in the U.S. (e.g., holds a SIDA badge issued by an air carrier airport) or by comparable foreign authority
 - Other means approved in writing by the TSA
 - Validation of five-year employment history (unexplained gaps of six months or longer are unacceptable)

Repair Station Security Rule

(79 FR 2119, January 13, 2014)

- Security Directives – all repair stations must comply
- TSA inspection authority – extends to all repair stations
- Penalties for not correcting security deficiencies (certificate action)

AIR Reorganization

- Combined AIR-100 and AIR-200 into new AIR-100
 - Design, Manufacturing and Airworthiness: Jim Seipel, acting manager
- Directorate managers
 - Jeff Duven – Transport Airplane
 - Kim Smith – Rotorcraft, Engine and Propeller
 - Earl Lawrence – Small Airplane Directorate

AIR Reorganization

- AIR-100 branches
 - Certification procedures (-110)
 - Design
 - Production
 - Airworthiness
 - Technical and Administrative Support (-120)
 - Systems and Equipment Standards (-130)
 - Operational Oversight Policy (-140)
 - System Performance and Development (-150)

FAA Modernization and Reform Act

Section 308

(d) ALCOHOL AND CONTROLLED SUBSTANCES TESTING PROGRAM REQUIREMENTS.—

(1) IN GENERAL.—The Secretary of State and the Secretary of Transportation, acting jointly, shall request the governments of foreign countries that are members of the International Civil Aviation Organization to establish international standards* for alcohol and controlled substances testing of persons that perform safety-sensitive maintenance functions on commercial air carrier aircraft.

* Currently an ICAO recommended practice

FAA Modernization and Reform Act

Section 308

(d) ALCOHOL AND CONTROLLED SUBSTANCES TESTING PROGRAM REQUIREMENTS.—

(2) APPLICATION TO PART 121 AIRCRAFT WORK.—Not later than 1 year after the date of enactment of this section, the Administrator shall promulgate a proposed rule requiring that all part 145 repair station employees responsible for safety-sensitive maintenance functions on part 121 air carrier aircraft are subject to an alcohol and controlled substances testing program determined acceptable by the Administrator and consistent with the applicable laws of the country in which the repair station is located.

ANPRM on Foreign Drug & Alcohol Testing

- Which drugs are most misused in a particular country?
- If testing programs exist, are they administered by a national regulatory authority?
- Are industry participants required to establish such programs under the country's laws and regulations, or does industry do that voluntarily?
- Should the program require testing for the same drugs the FAA requires tests for in the United States?
- At what concentrations should alcohol and drug tests be considered "positive?"
- Does a particular country allow or require random drug and/or alcohol testing? If so, what is the process?

ANPRM on Foreign Drug & Alcohol Testing

- If a country does not allow or require random drug and/or alcohol testing, are there laws that prohibit random testing?
- What other methods might successfully deter employees from misusing drugs or alcohol while performing safety-sensitive duties, or within a certain period of time before performing such duties?
- How would such misuse be detected?
- What are the standards that employees who have violated drug and alcohol regulations should meet before they are allowed to return to performing safety-sensitive maintenance work?
- **Comments due: May 16, 2014**



Marshall S. Filler

Managing Director & General Counsel

121 North Henry Street
Tel. 703 739 9543
Alexandria, VA 22314-2903
Fax 703 739 9488
www.arsa.org
Marshall.Filler@arsa.org