News from the Hill

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European Aviation Safety Agency: How Does EASA 145 Differ from the FAA 145?

It was great to see you all at the AEA Annual Convention in Dallas. I hope you enjoyed it as much as I did. If you weren't able to make it, then you should pencil in one of the AEA Regional Meetings on your calendar for later this year so you can keep up with the fast pace of changes in the industry.

This is actually an article about aviation regulatory developments in Europe, but before we get to that, here are a few items to watch out for in the coming months on the American side of the Atlantic:

• Repair Station Ratings and Quality Assurance Notice of Proposed Rulemaking—and you thought the FAA was finished with Part 145 changes! This proposal spent the last month seeking necessary approvals, and it could be released to the public in the Federal Register before the end of the year. It addresses some elements of the original Part 145 proposal that were removed in order to permit the less divisive elements of the original proposal to go to a final rulemaking.

• False and Misleading Statements Final Rule—Repair stations will have to be extra careful with the language they use in their maintenance release tags after this rule becomes final. In its proposed form, the rule would have made any statement about the quality of a part subject to an onerous level of oversight, permitting the FAA to second-guess maintenance release tags and other documents they deemed to contain 'misleading language.' After significant negative industry comments on the original proposal, the FAA brought it back in-house and apparently they have made significant changes to the proposal in order to make it better fit into the norms of the American legal system.

• Enhanced Hazardous Materials Training Requirements Final Rule—By this time next year, all repair stations may be subject to enhanced training requirements that require (among other things) annual recurrent training for repair stations (instead of once every three years). AEA is offering hazmat classes in four different locations this year to help the membership meet its hazmat training obligations:

- May 5-6, Los Angeles, CA
- June 29-30, Miramar, FL
- September 15-16, Dallas, TX
- October 11-12, Reno, NV

You can find more information about these AEA-sponsored classes at http://www.washingtonaviation.com/hazmat.

• Repair Station Training Advisory Circular—the comment period closed on March 22, and the implementation date was postponed until April 6, 2006. Look carefully at this AC when it comes out, because compliance with the training manual requirements is likely to be a significant issue for repair stations in the near future.

• Manufacturing Rules Rewrite—Now scheduled for release in early 2006, the Part 21 NPRM will propose a significant revision and reorganization of the manufacturing rules for aircraft and aircraft components. One key feature of the proposal in an earlier draft was the requirement that all manufacturers issue airworthiness approval documentation with all new parts. This would harmonize an element of the U.S. system with the current standards found in the European aviation regulatory system, and provide a means of positive traceability to a production approval holder in support of the installer's duty to find the part airworthy at the time of installation (14 C.F.R. § 43.13(b). But, many people fear it may devalue the existing airworthy parts currently on our shelves that are not accompanied by the appropriate documentation under the new standard.

EASA: A True Regulatory Authority

The European Aviation Safety Agency is alive and well in Cologne, Germany. This entity is the European

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Community's answer to the FAA and although it resembles the FAA in many ways, it also has some unique characteristics that distinguish it.

In order to bridge the gap between the FAA and EASA systems, it is important to have an understanding of how the systems differ. To gain a perspective on the differences, though, we begin with an analysis of some of the similarities between the FAA and EASA.

First, both are regulatory bodies, in that they both are responsible for creating aviation safety regulations that are binding under the law. Both agencies are empowered to do this by legislation from legislative bodies—the U.S. Congress has passed laws authorizing the Department of Transportation and the FAA to promulgate regulations affecting aviation safety. Similarly, the European Aviation Safety Agency [EASA] was created by an act of the European Parliament, and EASA drafts regulations concerning aviation safety. A minor difference between the U.S. and European systems is that such EASA regulations are forwarded to the European Parliament, which has the formal responsibility for promulgating them.

In this way, EASA is significantly different from the Joint Airworthiness Authorities [JAA]. The JAA was an organization created by the treaty of Malta, and originally charged with harmonizing the airworthiness standards and regulations of Europe. Its mandate was later expanded to encompass harmonization of European regulations with those of other major powers, particularly the United States FAA. Although the JAA had its own regulations, its regulations were nonbinding in Europe; the JAA's regulatory language only became binding as various European nations adopted the JAA recommendations as their own law on a country-by-country basis.

Many people think of the JAA as the predecessor of EASA, and the JAA may certainly be thought of as a spiritual predecessor to EASA. JAA established the pattern of harmonization among the European aviation authorities. EASA has clearly relied on the harmonized standards established by JAA as the foundation for the EASA regulations. But the EASA regulations go well beyond the JAA regulations. A review of the regulatory standards of each entity demonstrates that the EASA regulations are more complete than the JAA standards, but this is not the most important improvement. The most important aspect of EASA is that it is an actual regulatory body that creates binding standards; whereas most of JAA's work was nonbinding—only adopted by its member states in a form and on the terms acceptable to each state. This lead one JAA representative to admit that, although JAA had been successful in harmonizing the words in the regulations of the major European aviation powers, JAA had been unsuccessful in harmonizing the interpretations from one European nation to the next.

With the regulatory power to issue uniform regulations, and to see them interpreted uniformly, EASA now is in a position to far outstrip the efforts of JAA by creating a set of pan-European aviation safety standards that will be harmonized in their implementation—not just in their language. In fact, one of the four major divisions of EASA will be the Quality and Standardization Directorate, which will be charged with maintaining internal quality and also with ensuring standardization of the rule interpretation and implementation among all of the European Community member states.

EASA: Separating Maintenance from Operations

Under the EASA system, maintenance is a separate function from operations. While this separation may seem obvious at first glance, it is important to recognize that FAA Part 121 certificate and Part 135 certificates (operating certificates) carry maintenance privileges with them. Thus, there are a variety of entities empowered to perform maintenance under the U.S. system but only one variety of entity (the Part 145 entity) is permitted to perform maintenance under the European system.

This streamlines the European approach to maintenance regulations, because it means that all maintenance regulations can be placed in one set of regulations—Part 145. In the United States, we have maintenance-related regulations in Part 43 (performance standards and other general-effect regulations), Part 145 (repair stations), Part 121 (air carriers), and Part 135 (air operators). So the European approach is effective in compartmentalizing maintenance into a single entity and is, therefore, able to compartmentalize the relevant regulations into a single, concise source.

Some Key Differences

There are many key differences between the EASA system and the FAA system. One important difference is the European reliance on paperwork. Under U.S. law, it is possible to bring in a part with no paperwork, and test and inspect the part based on its part-numbering identity to determine its current airworthiness state. This is not so in Europe.

EASA's receiving inspection regulation, EASA 145.A.42, requires that all incoming material be associated with the right form of documentation. Standard parts, for example, must be accompanied by certificates of conformance. Normal airworthy parts are expected to be accompanied by an EASA Form One or equivalent (under the existing bilateral agreements, EASA members—and by extension, EASA—have recognized the FAA 8130-3 tag as an

equivalent document for the purposes of EASA 145.A.42).

This means two things for U.S. repair stations doing business with European customers. First, if you are doing component-level work for a European customer, you need to use an EASA Form One or 8130-3 tag as your approval for return to service document. Anything else will be rejected by the customer. Second, if you are going to exercise EASA 145 privileges, then your own receiving inspection system must be modified to meet the European standards for documentation. This can be quite a burden for some repair stations, depending on the standard practices of your domestic clients. If you find it necessary to bifurcate your receiving system (applying differing standards to components destined for installation on European-registered aircraft than you apply to components destined for installation on U.S.-registered aircraft), then you must make sure that the two inventories are carefully segregated in order to make sure that you do not risk a potential violation of your EASA-145 quality system.

Enforcing EASA Regulations

Another important initiative in Europe is the enforcement of recent European legislation that requires all European Union-registered aircraft to be maintained according to EASA standards. This means your customers with European registrations will only be able to use EASA repair stations.

Many AEA members were already JAA repair stations and have been grandfathered into the EASA-145 program. Others may need to acquire EASA-145 acceptance in order to retain business from overseas customers. This is particularly important for component-level repair where components are shipped from and returned to Europe, with the expectation that they will be installed on European-registered aircraft.

EASA Part 145 for U.S. Repair Stations

While the individual members of the European Community are currently overseeing certification of repair stations within their borders, certification of EASA-145 repair stations located outside of the European Union is being performed centrally by EASA. All EASA-145 repair stations located in the United States are overseen by EASA, and EASA continues to recognize the Maintenance Implementation Procedures between the United States and several European Community nations, which permit EASA to rely on the FAA to perform the day-to-day certification and oversight functions for these repair stations.

The FAA oversees EASA repair stations according to the agreements between the United States and Europe. In order to maintain an EASA-145 acceptance at a U.S. repair station, the U.S. repair station must meet the following requirements:

(a) The repair station must have an FAA repair station certificate meeting current FAA regulations.

(b) If the repair station has an airframe/aircraft or limited airframe rating, then it must have at least one covered hangar for the base maintenance of aircraft. (Some U.S. repair stations have sought exemption from this requirement in the U.S. regulations.)

(c) The repair station shall pay EASA fees and charges (more on this below).

(d) The repair station must create an acceptable Repair Station Manual supplement explaining the procedures for operating under the EASA-145 acceptance. (As you might expect, this requirement is much more complicated than this one sentence makes it seem.)

(e) The EASA 145 privileges shall be no more extensive than the ratings and limitations of the FAR part 145 certificate.

(f) The repair station must permit audits and inspections by EASA or by FAA on EASA's behalf, and must cooperate with investigations. (Note that this is a difference from the US regulations, where access to facilities and records is required, but active cooperation with investigations is not a legal requirement.) Unlike JAA certificates, which expired after their term and needed to be reissued periodically, EASA certificates are 'permanent' once issued. But to keep them current, you will need to have the FAA conduct an audit on behalf of EASA to confirm compliance. You will also need to pay a fee to EASA. This fee has not yet been set, although EASA has predicted the fee will be set in June.

If you want to investigate the possibility of becoming an EASA-145 repair station, then the best place to start researching this option is the "Guidance material for the U.S. / European Bilateral Aviation Safety Agreement (BASA) and Maintenance Implementation Procedures (MIP)," known as MIP Guidance or MIP-G. This is available on the EASA website at http://www.easa.eu.int. ❑