News from the Hill

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Highlights of the FAA Reauthorization Bill

Periodically, Congress passes a major piece of legislation concerning the FAA. This year's FAA Reauthorization Bill includes some exciting proposals that could have a major effect on our industry.

The year's FAA Reauthorization Bill, H.R. 2115, addresses small business issues, maintenance manual issues, and technical training of A&Ps and FAA inspectors. It also proposed new ways of handling designee duties to improve the way that DERs service the industry.

The proposals described below are not yet law!

The language described here was passed unanimously by the House Transportation Committee, which is the first step to it becoming law. At the writing of this article, it still needs to be passed by the full House and then by the full Senate. There are many strategies for accomplishing this. One would to be to wait until the Senate passes its own, different version of the FAA Reauthorization Bill. When the House and Senate pass different versions of a major bill, representatives from both bodies meet in a Conference Committee in order to hammer out the differences. On the other hand, the House version may also be introduced in the Senate and passed as written or with minor changes.

Following are descriptions of some of the more interesting provisions of the House version. Some of these are clauses that the entire AEA community agrees on and others are the subjects of some debate. To the extent that there are provisions you feel strongly about, please let AEA and your Congressmen and Senators know how you feel.

Maintenance Manuals

Many AEA members have complained that they are not able to obtain maintenance manuals for certain products (these manuals are also known as "instructions for continued airworthiness"). This has been a continuing source of confusion for the industry, because there is a regulation that says that such manuals must be made available to those "required to comply with them" – however the FAA has simply not enforced this regulation. Adding complications to the FAA's position on this, the FAA has suggested that failure to provide manuals creates an artificial obstacle to ensuring that each aircraft is in an airworthy condition. The FAA Office of Chief Counsel issued a letter in 1999 in which they said that even when manuals technically do not fall within the scope of the regulation (those created for articles certificated before 1981), refusal to make them available "is inconsistent with the objectives of 21.50(b) and is not in the best interest of safety."

Despite the FAAlawyers'language, the FAA generally does not enforce the clause in 14 C.F.R. § 21.50(b) that seems to require making manuals available.

There are a number of arguments against this clause, making manuals available. First, manuals that were created before the new rule that took effect in 1981 are technically not covered by this regulation (although subsequent revisions would be subject to it). Many modern avionics equipment was certificated under a TSOA issued after 1981, so this may not be a significant issue for many avionics manufacturers.

More importantly, many manufacturers feel that the maintenance manuals represent valuable trade secrets that should not be shared with parties whom the manufacturers do not choose.

Congress appears to be stepping in to address this problem, but the solution appears to remain quite controversial among certain sectors of the industry.

The proposal is that the United States Code would confirm that all manufacturers "shall make the instructions [for continued airworthiness], and any changes thereto, available to any other person required by parts 1

through 199 of title 14, Code of Federal Regulations, to comply with any of the terms of the instructions."

Some of the terms used around such manuals would be defined. The term "make available" would mean providing at a cost not to exceed the cost of preparation and distribution. The term design approval would include TCs, amended TCs, STCs, PMAs and TSOAs, but it would not include anything else unless the FAA performed a separate rulemaking to expand this list. This means it would not apply to field approvals. The term "instructions for continued airworthiness" would include maintenance, repair and overhaul manuals, standard practice manuals, service bulletins, service letters, or similar documents.

One important clause in this proposed new law states that it shall not be "construed as requiring the holder of a design approval to make available proprietary information unless it is deemed essential to continued airworthiness." This is important to manufacturers, who fear that this law could be used to make them forfeit proprietary information.

Small Business Ombudsman

Several years ago, AEA lobbied for the FAA to establish a small business ombudsman. This was a major issue for AEA's past Technical Affairs representative, Terry Pearsall, and our current Vice President of Government Affairs, Ric Peri, has made it clear that small business issues are at the top of his agenda.

Congress has responded by proposing that the FAA hire a small business ombudsman, who would be appointed by the Administrator to serve as a liaison with small businesses in the aviation industry. The small business ombudsman would be consulted any time the FAA proposes regulations that may affect small businesses in the aviation industry. His (or her) job would also include assisting small businesses that have disputes with the FAA. The small business ombudsman would assist in resolving these disputes. To assure that the small business ombudsman has the ability to correct problems, rather than merely being a window-dressing to demonstrate an apparent concern for small business, the position would report directly to the FAAAdministrator.

In H.R. 2115, Congress recognizes the importance of small business to the industry while at the same time recognizing that small businesses often do not have the political or economic power to achieve solutions to their problems. A small business ombudsman has been sorely needed and AEA applauds Congress and the FAA for taking this step.

Made In America

The House is also proposing that air carriers disclose to the passengers (on an information placard available to each passenger on the aircraft) where the aircraft was finally assembled. This clearly means to promote sales of U.S.-assembled aircraft (e.g. Boeing) over non-U.S.-assembled aircraft (e.g. Airbus).

Although this clause does not affect many AEA members (if any) it is interesting because it sends a definite signal about marketing U.S. products in competition with non-U.S. products. The Europeans have been quite aggressive in marketing their airframes to U.S. customers, and this notice requirement seems to signal that Congress is ready to strike back. Whether the notice requirement will be effective is another question entirely.

Cross Atlantic Relations

It is common to type certificate an airframe or powerplant for use in both the United States (FAA type certificate) and Europe (type certification by one or more members of the JAA). The FAA and JAA have established programs where one airworthiness authority relies, to a certain extent, on the approvals of the other—the reliance is not blind: the second authority will validate the approval performed by the first. Validation of the other authority's prior approval is supposed to be much less onerous than going through the approval process. Lately, many manufacturers have complained that airframe and powerplant validations by the Europeans are taking as long or longer than straight approvals (starting from scratch) would have taken.

On the other hand, say the manufacturers, the FAA does not impose the same burdens on European companies seeking type certificate validation from the United States. Europe, Canada and the United States have spent a great deal of time and effort harmonizing the text of the certification standards. It seems, however, that many of the individuals implementing those harmonized rules feel that they nonetheless need to entirely repeat the original certification process to make sure no errors were made by the other authority.

Clearly, Congress has heard industry's cries. A clause in the proposed legislation would require that the FAA spend at least as much time and effort validating a prior foreign approval as the foreign government spends validating United States design approvals.

It is likely that the new European airworthiness authority, the European Aviation Safety Agency [EASA], will assist in harmonizing the effect of the rules concerning validation. JAA has been hamstrung in its efforts to equalize the validation process by its lack of political power and its 'lame duck status' as the world anticipates the burth of EASA.

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Type Certificate Protection

Many of us are familiar with the law that restricts the use of Supplemental Type Certificates to the holder of the STC and persons with the holder's written approval. Under that law, it is illegal to use someone else's STC to perform an alteration unless the owner of the STC has provided written approval for that use. A proposed law would extend similar protections to type certificates.

Under the proposal, no one would be allowed to manufacture a new aircraft, aircraft engine, propeller, or appliance based on a type certificate unless the holder of the type certificate provides written permission for such manufacturing activity.

The benefit of this new law would be that it would protect type certificate holder rights. One detriment, though, would be among those in the industry supporting older model aircraft where the type certificate holder is out of business or does not actively support the type certificate. In such cases, it has been necessary for the industry to take data in the public possession and use it to support the aircraft. Under intellectual property law, significant alterations to something like an aircraft can be recharacterized as manufacturing activities (this arises in the context of patent and trademark infringement, for example). Thus there is the possibility of unintended consequences associated with those who perform fabrication in the course of repairs and alterations to some aircraft.

Design Organization Certificates

Under this proposal, Congress would ask the FAA to provide a plan for certifying design organizations. Such organizations would certify compliance with the requirements and minimum standards prescribed under federal aviation regulations. This would be similar to the work done by DERs today.

There is a general recognition that the FAA cannot keep up with the design approval responsibilities—it just does not have the manpower or the budget. This has lead to increased reliance on DERs and other designees. AEA recently worked with the FAA on a demonstration project known as ADEOS in which a higher level of discretion was granted to certain DERs in approving data for field approvals and STCs. This higher level of discretion was closely monitored by the FAA and the results were quite positive.

Recent litigation has reiterated, though, that DERs hold their privileges at the discretion of the FAAand that they can be terminated for any disagreement with their FAA Advisor (even a non-technical one). The Courts have also explained that terminated DERs are not entitled to a hearing of the sort that one commonly expects under the law. This has put a bit of a chill on DER activity.

This Congressional proposal is a significant development for the industry. It would essentially take the DER function and make it a certificated function. The main benefit to DERs is that their privileges will only be terminable for just cause under the regulations and policies of the FAA at they will be entitled to a bona-fide hearing when their privileges are terminated.

It appears that Design Organization Certificates will be well protected. Under the proposed law, issuance by the FAA is still subject to FAA discretion so only qualified organization will get them. The FAA will be entitled to impose limitations on them. The FAA will also remain as the issuing authority for certificates, like type certificates.

Congress has not gone off half-cocked on this one. There is evidence of need. There is evidence that it can be done safely. And they have given the FAAthree years to come up with a plan and a total of seven years to implement it. This has the potential to be the underpinnings of very good policy.

Airman Certificate Revocation

AEA is also very proud of the language imposing due process on the airman certificate revocation provisions. Congress has tracked each of the issues raised by AEAand proposed a solution. For a complete analysis of these provisions, see AEA's Vice President of Governmental Affairs, Ric Peri's article on page 18 in this month's issue.

A&P Curriculum Updates

Congress has also directed the FAA to perform periodic review of the curriculum for A&Ps.

The proposed legislation directs the FAAto update curricula to more accurately reflect current technology and maintenance practices. As many AEA members will remember, AEA's Director of Training, Mike Adamson has been polling members to determine what the industry would like to see in A&P training to better emphasize the needs of the avionics shop. Membership response to this inquiry has been great. The proposed legislation provides a better vehicle for improving the A&P curricula to better reflect the changing needs of the industry for technologically savvy A&P mechanics.

Studying the FAA

Congress is also proposing two new studies of FAA inspectors. The first would analyze training and ways to improve inspector training. The sec-

ond would analyze workload, to assure that staffing standards are appropriate. In particular, the workload study would examine the needs for oversight of the designee program.

This call for particular studies and analysis was accompanied by a "sense of the House" statement:

(1) FAA inspectors should be encouraged to take the most up-to-date initial and recurrent training on the latest aviation technologies;

(2) FAA inspector training should have a direct relation to an individual's job requirements; and

(3) if possible, a FAA inspector should be allowed to take training at the location most convenient for the inspector.

This sense of the House parallel's AEA's own commitment to permitting (and encouraging) FAA Avionics Inspectors to attend AEA regional, national and international training in order to keep up with the state-of-the-art on avionics.

This article describes some of the provisions of the House legislation that are most likely to impact AEA members. AEA strongly encourages its members to speak out on these issues—whether you favor them or oppose them. Please let AEAand your Congressmen and Senators know how you feel. q

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