

Part A, Subpart III, Section 44701: General requirements.” Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a “significant regulatory action” under Executive Order 12866;
2. Is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Empresa Brasileira de Aeronautica S.A. (Embraer): Docket No. FAA-2009-0418; Directorate Identifier 2009-NM-020-AD.

Comments Due Date

- (a) We must receive comments by June 8, 2009.

Affected ADs

- (b) None.

Applicability

(c) This AD applies to EMBRAER Model ERJ 190–100 ECJ, -100 LR, -100 IGW, -100 STD, -200 STD, -200 LR, and -200 IGW airplanes, certificated in any category, serial numbers 19000002, 19000004, and 19000006 through 19000062 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

During routine inspection procedures on the wing assembly line it was identified the possibility of cracks and deformation developing during assembly on the internal wing spars and rib flanges, causing a safety margin reduction.

* * * * *

The unsafe condition is cracking and deformation of wing spar and rib flanges, which could result in loss of structural integrity of the wing. Corrective actions include performing a detailed inspection for damage on wing spar I, II, and III flanges and on certain rib flanges, and contacting Agência Nacional de Aviação Civil (ANAC) (or its delegated agent) and Embraer for an approved repair.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Before 5,000 total flight cycles on the airplane, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later: Perform a detailed inspection of the left and right wing rib and spars I, II, and III flanges, in accordance with the Accomplishment Instructions of Embraer Service Bulletin 190–57–0023, dated June 9, 2008.

(2) If any cracking or deformation is detected during the inspection required by paragraph (f)(1) of this AD, before further flight, send the inspection results and request for repair instructions to ANAC (or its delegated agent) and Embraer Technical Support; e-mail structure@embraer.com.br; and do the repair.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: Although the MCAI or service information allows further flight after cracks are found during compliance with the required action, paragraph (f)(2) of this AD requires that you repair the crack(s) before further flight.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Kenny Kaulia,

Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2848; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Brazilian Airworthiness Directive 2008–10–03, effective October 21, 2008; and Embraer Service Bulletin 190–57–0023, dated June 9, 2008; for related information.

Issued in Renton, Washington, on April 30, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–10624 Filed 5–6–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 145

[Docket No. FAA-2006-26408]

RIN 2120-AI53

Repair Stations; Withdrawal

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); withdrawal.

SUMMARY: The FAA is withdrawing a previously published NPRM that proposed to revise the system of ratings and require repair stations to establish a quality program. The NPRM also proposed to require each repair station to maintain a capability list, designate a chief inspector, and have permanent housing for facilities, equipment, materials, and personnel. The proposal would have specified additional instances where the FAA may deny a repair station certificate, and clarified some existing repair station regulations.

We are withdrawing the NPRM because we have determined that it does not adequately address the current repair station environment, and because of the significant issues commenters raised.

DATES: The proposed rule published on December 1, 2006 (71 FR 70254), is withdrawn as of May 7, 2009.

FOR FURTHER INFORMATION CONTACT:
George W. Bean, Repair Station Branch, AFS-340, Federal Aviation Administration, 955 L'Enfant Plaza, SW., Washington, DC 20024; telephone 202-385-6405; facsimile (202) 385-6474, e-mail george.w.bean@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

In 1989, the FAA held four public meetings to provide a forum for the public to comment on possible revisions to the rules governing repair stations.

After considering the comments and data collected from these meetings, the FAA published the Repair Stations notice of proposed rulemaking (NPRM) in June 1999.¹ Subsequently, in August 2001, the FAA published the Repair Stations; final rule with request for comments and direct final rule with request for comments; final rule.² The FAA requested comments on the paperwork burden and on removing appendix A³ from part 145, which the FAA had not originally proposed.

On October 19, 2001, the FAA tasked the Aviation Rulemaking Advisory Committee (ARAC) to address ratings and quality assurance for repair stations.⁴ ARAC provided its recommendations in May 2002.⁵

On December 1, 2006, the FAA published the NPRM entitled Repair Stations⁶ that considered ARAC's recommendations. The comment period closed on March 1, 2007. However, the FAA received a request from the Aeronautical Repair Station Association (ARSA) to extend the comment period. In a notice published in the **Federal Register** on February 27, 2007, the FAA granted a 45-day comment period extension to April 16, 2007.⁷

The December 1, 2006 NPRM, applicable to repair station operators and applicants, proposed the following changes to part 145:

- Repair stations would establish and maintain a capability list of all articles

for which they are rated. The list would identify each article by manufacturer and the type, make, model, category or other nomenclature designated by the article's manufacturer. Repair stations with an Avionics or a Component rating would be required to organize their lists by category of the article.

- The FAA would revise the ratings and classes that may be issued to a certificated repair station. The proposed amendments included ones that would discontinue the issuance of limited ratings, and instead allow issuance of limitations to the rating the certificated repair station holds.

- The FAA would require repair stations to establish a quality system that includes an internal evaluation system that reviews the complete repair station once a year.

- Applicants for a repair station certificate would include a letter of compliance as part of their application.

- A certificate holder would be required to provide permanent housing for its facilities, equipment, materials, and personnel.

- Certificate holders would be required to designate a chief inspector.

- The FAA would use certification from an authority "acceptable to the FAA" as a basis for issuing a certificate to a person located outside the United States.

- The FAA would identify reasons it could use to deny the issuance of a repair station certificate.

Discussion of Comments

The FAA received more than 500 comments to the NPRM. While there was general support for the need to revise the repair station rules, several commenters asked us to withdraw the rule. Many other commenters expressed concerns related to ratings (particularly avionics rating), capability list, quality system, letter of compliance, chief inspector, housing and facilities, the FAA's denial of a repair station certificate, and some were out of scope.

Requests To Withdraw the NPRM

The ARSA, Aircraft Electronics Association (AEA), AGC Incorporated, Spirit Avionics, Ltd., Temple Electronics Company, and Lynden Air Cargo recommended withdrawal of the rule. While ARSA commended the FAA for attempting to clarify and simplify the rating system, it suggested the FAA issue a supplemental notice of proposed rulemaking that considers the comments to the NPRM. The other commenters recommended withdrawal because there has been too much regulation of repair stations within the past few years.

Oversight and Inconsistent Application

Comments received from the International Brotherhood of Teamsters, Professional Airways Systems Specialists, and Transportation Trades Department generally support the proposal. The unions did argue, however, that the agency did not go far enough in certain areas involving oversight and surveillance. While the issues they raised were outside the scope of the proposal, various legislative proposals under consideration by the Congress may address these issues in the future.

Ratings

Several commenters, including Southern Avionics & Communications, Executive AutoPilots, Inc., Genesis Aviation, Aircom Avionics, American Airlines, Turbine Weld, Inc., and others, expressed general disapproval of the proposed rating system.

Spirit Avionics, Ltd., believes to combine the proposed new avionics rating with current market forces will negatively affect the ability of avionics-only repair stations to remain viable. The commenter said the NPRM does not recognize that avionics service facilities are transitioning to flight line repairs and avionics upgrades as main sources of revenue. The commenter also said the NPRM does not recognize that avionics repair stations' ability to perform such services are based primarily on the avionics equipment onboard the aircraft rather than on the type, make, or model of the aircraft.

Midcoast Aviation said while it believes including electrical equipment as part of an avionics rating to be appropriate, it does not see legitimacy in removing those [electrical] systems/components from the aircraft or powerplant rating.

Goodrich Aviation Technical Services said the proposed rule does not adequately define the type of work required for the avionics rating. It said a repair station with an aircraft, powerplant, or propeller rating should not be required to obtain a separate avionics rating to maintain articles associated with its ratings and capabilities. Midcoast Aviation commented similarly.

Spirit Avionics, Ltd., and Griffin Avionics, Inc., commented the change from an airframe to an aircraft rating is ambiguous and completely unnecessary. These commenters argued that this change is unwarranted and would result in dramatic increases in administrative costs, without improving aircraft maintenance safety or capability.

ARSA said since all ratings would require a capabilities list under the

¹ 64 FR 33142; June 21, 1999.

² 66 FR 41088; August 6, 2001.

³ This Appendix set forth job functions and equipment requirements for repair stations.

⁴ 66 FR 53281; October 19, 2001.

⁵ http://www.faa.gov/regulations_policies/rulemaking/committees/arac/.

⁶ 71 FR 70254; December 1, 2006.

⁷ 72 FR 8641; February 27, 2007.

proposal, there does not appear to be a need for class ratings. It also said it does not agree with the limitations of some of the ratings or the proposed requirement for capabilities listing. Other commenters expressed a similar disagreement with the limitations and privileges of some ratings, stating the limitations do not appear consistent.

Capability List

Eighteen commenters, including Chromalloy Connecticut, Southern Avionics and Communication, Avionics Shop, Inc., Turbine Weld, Inc., Association of Asia Pacific Airlines, National Air Transportation Association (NATA), and others, stated strong opposition to the proposed capability list requirement. These commenters expressed concern that the proposed requirement would cause chaos and bankruptcy. They said such requirements are not justified, are unnecessary, are irrelevant, and are economically punitive, without offering further safety benefits.

Boeing believes the capability list would require a significant amount of administrative resources to be kept current and would require excessive amounts of information to be documented and tracked, particularly for larger repair stations. Boeing sees minimal to no safety benefits from these proposed requirements.

Airbus believes the requirement for a capability list is implicitly included in § 145.211. While it fully understands the need for a standardized format for such a list, the details as proposed in § 145.215 seem to go beyond a practical documentation under an approved system.

A number of commenters, including United Airlines, Turbine Weld, Inc., Griffin Avionics, Inc., AEA, and Temple Electronics Company object to the proposed capability list because it could require having several hundred types of ratings attached to a single repair station aircraft rating.

Quality System

ARSA commented that the majority of repair stations have not instituted quality assurance systems and most do not use computers. Therefore, reviewing, changing, and maintaining the proposed quality system would be expensive. Also, ARSA said repair stations cannot be held responsible for compliance with all part 145 regulations. But, can be held accountable only for ensuring compliance with those requirements under their specific responsibility and control.

AEA and Temple Electronics Company believe the stated benefit of the quality system requirements is based on "false premises" because the FAA cited different cost-benefit estimates in prior repair station rules. They commented that the FAA removed the quality assurance requirements proposed in the 1999 NPRM from the subsequent 2001 final rule because the requirements were overly burdensome and not cost effective. The commenters further said that, despite removal of these requirements from the 2001 final rule, the FAA introduced similar requirements in the 2006 NPRM, without taking time to assess whether the prior rule had proven successful.

Spirit Avionics, Ltd., Weld Avionics, Inc., Southern Avionics & Communications, Executive AutoPilots, Inc., Vero Beach Avionics, Inc., Aircraft Owners and Pilots Association, and two individual commenters said if a repair station properly performs maintenance according to FAA-approved processes, maintaining a Quality Assurance System would be extremely burdensome and would have little merit.

Letter of Compliance

ARSA, AEA, Temple Electronics Company, and Aeropro, Inc., said a mandatory Letter of Compliance would be burdensome, unnecessary, and redundant. AEA said the letter is a carryover from the period when the repair station manual was simply a statement of commitment to comply with the regulations. Aeropro, Inc., commented that because something has been a long standing practice is not sufficient reason to include it as a mandatory provision in the rule. It said including language similar to that in § 119.35, for certificate applications, would be more appropriate.

Chief Inspector

ARSA asked the FAA to withdraw the proposed requirement for a chief inspector, unless the agency can provide a specific definition of the position and justify the position's expenses against an increase in safety. Similarly, Aerospace Industries Association of America commented that its member companies cannot support the proposed requirement to create a chief inspector post in every repair station. The NPRM does not clearly define the functional responsibilities, accountability, and authority of the position, nor are the benefits of having such a position clearly defined.

Several other commenters, including Chromalloy Gas Turbine Corp., Boeing, TCI Inc., Aeropro, Inc., British Airways, Vero Beach Avionics, Inc., Marshall

Aerospace, and several individual commenters expressed support for the above sentiments.

Housing and Facilities

The NATA, Midcoast Aviation, and Spirit Avionics, Ltd., said if the aircraft and personnel are protected during the repair or maintenance process, there is no need to build or lease an expensive hangar, which may prove to be financially unsound.

United Airlines and Islip Avionics, Inc., disagreed with the proposed permanent housing provision. They said they disagreed because not all repair or maintenance work requires a fully enclosed facility as some operations can be performed at the maintenance terminal, instead of at the hangar. Also, they said that some repair stations are located at airports that are publicly owned.

General Electric Company, Aviation Services, Boeing, and Aerospace Industries commented that repair stations holding aircraft ratings with limitations must not be subject to the undue burden of obtaining permanent housing. These commenters said the housing requirements should be in line with the appropriate ratings limitations.

Denial of a Repair Station Certificate

Aviation Services, Inc., (ASI) does not agree that a person who has had a repair station certificate revoked and met the other applicable conditions should be permanently ineligible for issuance of a repair station certificate, as proposed in § 145.53. ASI expressed concern that the primary basis for the FAA's proposed permanent revocation is based on one incident that ASI believes is not representative. It said if a permanent revocation is appropriate, it should apply only to repair stations that perform work for persons who operate under parts 121 and 135.

Aviation Suppliers Association (ASA), AEA, Temple Electronics Company, and Aeropro, Inc., believe proposed § 145.53(c) would apply overly severe punishment. AEA and Temple Electronics Company suggested that any revocation should be bound by some time frame and should be included as part of the enforcement action that revoked the certificate.

An individual commenter said, while the rule punishes inappropriate behavior, it does little to positively reinforce the safety culture created and sustained by top management.

Reason for Withdrawal

We are withdrawing the December 2006 Repair Station NPRM because it does not adequately address the current

repair station operating environment. Also, we are withdrawing it because of the many significant issues commenters to the NPRM raised, which the FAA needs to consider in developing a better proposal.

The current NPRM is based on recommendations developed in 2001 by ARAC. At that time, air carriers performed the majority of their maintenance work in-house. Since then, air carriers have increasingly contracted their maintenance. According to an analysis by the Office of Inspector General in 2003, the nine major air carriers were contracting 34 percent of their heavy airframe maintenance checks to repair stations. By 2007, this figure had increased to 71 percent.⁸ The NPRM as written does not address this changing operational dynamic.

In their comments to the NPRM, many small repair station operators said the proposal takes a “one-size-fits-all” approach. This approach, they argue, does not adequately address the operational differences between large and small repair stations. As a result, the commenters said, the NPRM would place a substantial economic and administrative burden on their operations.

Many commenters, as noted in the Discussion of Comments section of this document, argued against adopting key portions of the NPRM for a variety of reasons. Several commenters asked us to withdraw the NPRM in its entirety. For the reasons we have discussed, we believe the best course of action is to withdraw the NPRM. Withdrawal will give us time to thoroughly review and properly address the substantial changes in the repair station operating environment and the many issues raised by commenters.

Conclusion

Withdrawal of the December 1, 2006, Repair Stations; Proposed Rule does not preclude the FAA from issuing another proposal on the subject. In fact, we have initiated rulemaking to update and revise the regulations for repair stations to more fully address the significant changes in the repair station business model. The new proposed rule will address concerns from the 2006 NPRM, as well as other issues related to bringing the repair station regulations up-to-date with industry practice. The public will be provided the opportunity for public comment on this rulemaking through the NPRM process.

⁸ Air Carriers’ Outsourcing of Aircraft Maintenance, OIG Report Number: AV-2008-090, September 30, 2008—<http://www.oig.dot.gov/item.jsp?id=2364>.

Issued in Washington, DC, on April 30, 2009.

Chester D. Dalbey,
Deputy Director, Flight Standards Service.
[FR Doc. E9-10638 Filed 5-6-09; 8:45 am]
BILLING CODE 4910-13-P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038-AC66

Revised Adjusted Net Capital Requirements for Futures Commission Merchants and Introducing Brokers

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Commodity Futures Trading Commission (“Commission”) proposes to amend its regulations that prescribe minimum adjusted net capital (“ANC”) requirements for futures commission merchants (“FCMs”) and introducing brokers (“IBs”). The proposed amendments would increase the required minimum dollar amount of ANC, as defined in the regulations, that an FCM must maintain from \$250,000 to \$1,000,000. The proposed amendments also would increase the required minimum dollar amount of ANC that IBs must maintain from \$30,000 to \$45,000. The Commission also is proposing to amend the computation of an FCM’s margin-based minimum ANC requirement to incorporate into the calculation customer and noncustomer positions in over-the-counter derivative instruments that are submitted for clearing by the FCM to derivatives clearing organizations (“DCOs”) or other clearing organizations (“cleared OTC derivative positions”). In addition, the Commission is proposing to amend the regulations to require that FCM proprietary cleared OTC derivative positions be subject to capital deductions in a manner that is consistent with the capital deductions required by the Commission’s regulations for FCM proprietary positions in exchange-traded futures contracts and options contracts. Further, the Commission proposes to amend the FCM capital computation to increase the applicable percentage of the total margin-based requirement for futures, options and cleared OTC derivative positions in customer accounts from eight percent to ten percent and in noncustomer accounts from four percent to ten percent. Lastly, the Commission solicits public comments on the

advisability of increasing the ANC requirement for FCMs that are also securities brokers and dealers by the amount of net capital required by the Securities and Exchange Commission (“SEC”) Rule 15c3-1(a).

DATES: Submit comments on or before July 6, 2009.

ADDRESSES: You may submit comments, identified by RIN number, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Agency Web Site:* <http://www.cftc.gov>. Follow the instructions for submitting comments on the Web site.

- *E-mail:* secretary@cftc.gov. Include the RIN number in the subject line of the message.

- *Fax:* 202-418-5521.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

Hand Delivery/Courier: Same as mail above.

FOR FURTHER INFORMATION CONTACT:

Thelma Diaz, Associate Director, Division of Clearing and Intermediary Oversight, 1155 21st Street, NW., Washington, DC 20581. Telephone number: 202-418-5137; facsimile number: 202-418-5547; and electronic mail: tdiaz@cftc.gov or Mark Bretscher, Special Counsel, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 525 W. Monroe, Suite 1100, Chicago, Illinois 60661. Telephone number: 312-596-0529; facsimile number: 312-596-0714; and electronic mail: mbretscher@cftc.gov.

SUPPLEMENTARY INFORMATION:

I. Minimum Financial Requirements for FCMs and IBs

Section 4f(b) of the Commodity Exchange Act (“Act”) provides that FCMs and IBs must meet the minimum financial requirements that the Commission “may by regulation prescribe as necessary to insure” that FCMs and IBs meet their obligations as registrants.¹ FCMs are subject to higher capital requirements than IBs because the Act permits FCMs, but not IBs, to hold funds of customers trading on designated contract markets and to clear such positions with a DCO. In addition, Section 4d of the Act and the Commission’s regulations provide

¹ The Act is codified at 7 U.S.C. 1 *et seq.* The Commission regulations cited herein may be found at 17 CFR Ch. I (2008).