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The UPDATE Report

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8130-3 Instructions: Updated for the 21st Century

The FAA has released Order 8130.21F for public comment. FAA Order 8130.21 reflects the FAA's instructions for completing the 8130-3 tag. As that tag has grown in importance to the industry, and as the FAA has added additional functions and uses to that form, the FAA instructions for completing the form have continued to grow in volume.

The latest proposed revision of the Order fixes past problems and implements a host of new features and authorizations. It reflects a major revision to the Order designed to harmonize the instructions.

ASA is collecting comments from its members, and will aggregate the comments into a single unified comment. FAA employees have asked that we do this in order to reduce their burden in wading through duplicative comments from the distribution community. Members are free to file their own comments, but we ask that you provide us with your comments, issues, complaints and kudos for this draft order so that we can make ASA's comments as complete as possible.

This article provides an overview of some of the major features of the draft order, as well as a discussion of some of the specific issues that ASA has already identified as subjects for its comments.

History: Electronic Recordkeeping

The latest revisions to the 8130-3 instructions found their genesis in two separate but simultaneous changes being wrought in the world of airworthiness documentation.

The first change was the increasing reliance of the global community on electronic storage of documentation, and the desire to be able to pass airworthiness documentation electronically.

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INSIDE:

MESSAGE FROM ASA'S PRESIDENT

THE UPDATE Report

is the monthly newsletter of the Aviation Suppliers Association.

OUR COMMITMENT

ASA is committed to providing timely information to help members and other aviation professionals stay abreast of the changes within the aviation supplier industry.

The UPDATE Report is just one of the many benefits that ASA offers members. To learn more about our valuable educational programs, please contact ASA.

The UPDATE Report Staff

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Dear Members,

ASA is in the middle of a Board of Directors election. A ballot was emailed to all member companies. There are four Director seats up for election with eight nominees for those positions. Very few aviation associations allow their membership to chose the Board of Directors. ASA has always allowed for this, and it is an important element of being an active member. Please take the time to review the ballot and vote. If you need a new ballot, please email me.

It was nice to see so many members at the ASA Annual Conference. The conference opened with our largest attendance at the Quality Assurance Committee. With thanks to Dave Damron, Jason Lewis, Jason Dickstein, the FAA and Department of Commerce for their presentations at the QA Committee; the meeting was a success. The QA Committee meets twice a year with its next meeting scheduled for November. The Annual Conference was well attended, and the speaker reviews, as always, have been outstanding. The workshops were a huge success. Dan Hodge, Keynote speaker from American Airlines, opened the meeting and provided valuable insight into one of the largest and strongest U.S. air carriers. The closing panel presentation on Latin America reinforced the importance of not forgetting about our southern neighbors as their businesses are growing and their need for aircraft parts is increasing.

We hope to announce the date and location of the 2008 meeting shortly.

Best regards,
Michele Dickstein

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Today, many different forms of data are passed electronically. The Internet allows everything from music to love letters to be passed in the time it takes an electron to move from one point to another. Even critical and sensitive data is passed electronically. Banking data, for example, is passed electronically – the modern electronic communication of banking data permits checks to be cleared much faster (compare the rate at which checks clear today to the clearance time that was common just ten years ago).

With the public's increasing reliance on electronic exchange of sensitive data, it was only a matter of time before market forces compelled the aviation industry to establish protocols for passing airworthiness data in a safe and secure manner. ASA has been part of an Air Transport Association task force aimed at producing a standard for the passage of such data. Jason Lewis (M&M Aerospace Hardware, Inc.) and Brent Webb (Aircraft Inventory Management & Services, Ltd.) have been working with Jason Dickstein as part of the team protecting the interests of the distribution community in this effort. The protocols for passing electronic data have been established as a new chapter 16 to ATA SPEC 2000.

But recordkeeping is very closely tied to FAA regulations and policies. Even where the FAA does not have regulations on point, it has become common practice for air carriers to bind themselves to an 'approved' recordkeeping system through their manual system. Thus, for air carriers and other regulated bodies, it is important to have FAA acquiescence in any system designed to govern the passing of digital airworthiness data; and unless the FAA acquiesces in the electronic recordkeeping system for buyers of aircraft parts (like air carriers), sellers of aircraft parts will not have much luck in adopting a system for transmitting such data.

For this reason, the FAA was invited to participate in the standard setting exercise, and was actively represented. The FAA had a number of reasons for participating. First, the agency recognizes the importance of having an effective standard that supports the FAA's safety goals. Second, the writing was on the virtual wall, and FAA management recognized that industry was quickly moving toward the passage of electronic airworthiness data with or without the FAA's participation – so it was only logical for the FAA to participate in a solution that enhanced safety and security. Finally, the FAA is subject to a law known as the Electronic Signatures in Global and National Commerce Act (E-SIGN), which requires the federal government to take steps to avoid and eliminate regulatory impediments to electronic commerce. The FAA's participation in this project helps to break down a regulatory impediment to electronic commerce by establishing an acceptable way of transmitting airworthiness data.

History: Global Harmonization

There was a second factor driving the FAA to revise the instructions for completing the 8130-3 tag: the effort represented the next step in global harmonization of airworthiness standards.

At about the same time as our efforts to draft a standard for electronic transmission of airworthiness data, there was also a desire among

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European (EASA), Canadian (TCCA) and U.S. (FAA) airworthiness authorities to take the next step in harmonizing the international airworthiness documentation that helps to facilitate export/import of aircraft parts.

In the 1990s, ASA worked with a team that harmonized the look and layout of the JAA Form One (a predecessor to the EASA Form One), the TCCA 24-0078 and the FAA 8130-3. All three of these forms served the same basic purposes, but all three had subtle differences that sometimes needlessly impeded international commerce. An examination of the original policies underlying the U.S. airworthiness approval (originally known as the Form 186, before it became the 8130-3) shows that its original purpose was to facilitate international commerce by asserting to foreign trading partners that the aircraft parts in question were airworthy and could therefore be safely imported. So it was only natural that the FAA should work to eliminate aspects of the form that impeded commerce. In recent years, the airworthiness forms have been recognized as important tools that support safety by encouraging airworthiness traceability. So facilitating their use increases safety as well. The results of the discussions in the 1990s were changes to all three forms that better harmonized them so that their layout would be familiar to the entire world, and layout issues would cause interpretation problems as importers interpreted the airworthiness meaning and significance of the forms.

But the intervening decade showed that merely harmonizing the forms was not enough. Even though the forms looked alike, they did not always mean the same things. Subtle differences in the regulatory structure of the authorities and in the completion instructions for the forms meant that an 8130-3 and an EASA Form One could be written identically, but could mean different things in their respective home nations.

This led to the next round of discussions in the middle part of this decade: discussions surrounding the harmonization of the instructions sets for completing these documents. These efforts also featured a more global cast of negotiators. The traditional crew of European, American and Canadian negotiators was joined by representatives from airworthiness authorities from around the globe, like the authorities of South Africa, Brazil and Taiwan. Industry was also invited to participate. The United States chose Pratt & Whitney's Andy Brindisi and ASA Counsel Jason Dickstein (with the able advice of Boeing's Ed Baynes) to represent the American industry's interests in this effort. Industry representatives from Europe, South America and Canada were also at the negotiating table.

The resulting instructions sets formed the core of what has become draft FAA Order 8130.21F. Parallel efforts to implement the harmonized instructions are taking place around the globe.

Major Features

Given the background of the current draft revisions, two features should be obvious. First, the draft provides specific guidance on electronic transmission of digital airworthiness data. Second, the draft takes specific steps designed to harmonize and simplify this order in a manner consistent with the guidance that will be published in other nations.

The FAA has added a chapter (chapter five) that specifically addresses the features of a system that would permit the electronic exchange of airworthiness data. The guidance is largely consistent with the ATA SPEC 2000 information on this subject. In fact, it specifically advises the public to adhere to the guidelines found in the ATA specification, and it describes the features of this specification.

The harmonization features of the draft are less obvious, but they permeate the draft nonetheless. Fundamentally, the basic instructions for completing the 8130-3 are harmonized with the draft instructions that will be proposed in Europe. In practice, this means that all jurisdictions are dropping the much-maligned eligibility block and will be renumbering their forms in a uniform fashion.

Details like the words permitted to be used in the status/work block (current block 12) are also being harmonized – the permitted words will be "new," "prototype," "overhauled," "repaired," "inspected/tested," "modified," or "see block 12." This last entry would be used when an item has been rebuilt or altered by the manufacturer under 14 C.F.R. § 43.3(j), and the specifics of the operation would be entered into the remarks block.

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One disappointment for some people in the industry is that the next revision continues to distinguish export 8130-3 tags from domestic 8130-3 tags. Airworthiness documentation from other parts of the world, like the EASA Form One from Europe, does not make this distinction, and it makes the documentation easier to read and to use. We expect that the next set of Part 21 revisions - known as "Part 21 phase II" – will eliminate this distinction in order to better harmonize U.S. airworthiness documentation standards with international airworthiness documentation standards.

Specific Issues

There are a number of issues on which ASA intends to comment. Following is a summary of just a few of them.

Obtaining Tags from DARs

Distributors have struggled in the past with incongruities among the FAA's various guidance documents that affect the issuance of 8130-3 tags. One of the most vexing problems arises where guidance permits a form to be issued, but the function codes fail to authorize appropriate designees to issue the documentation.

8103.21 has addressed this issue in the past by specifying that designees with particular function codes may issue 8130-3 tags notwithstanding the particular language of the function code. But the proposed revision "F" appears to create new problems in this area.

The proposed wording of paragraph 2-5(b) indicates that a manufacturing DAR with function code 8 privileges may issue an airworthiness tag at the facility of an accredited distributor, but a maintenance DAR with function code 23 privileges may only issue an airworthiness tag at a repair station or air carrier's facility. This would be opposite of previous guidance referencing cross utilization of designees.

This proposed language creates problems. Currently, the location limits on particular DARs do not exist. As a consequence, accredited distributors today are mostly relying on qualified maintenance DARs (with function code 23 privileges) to issue 8130-3 tags for demonstrably airworthy aircraft parts. Thus, the proposed new limitation on maintenance DARs which would permit them to issue domestic 8130-3 tags only at a repair station or air carrier's facility would terminate existing business relationships between distributors and maintenance DARs, and it would impose a limit that appears to support no reasonable policy rationale of the FAA.

Although a small number of accredited distributors use qualified manufacturing DARs (with function code 8 privileges) to issue 8130-3 tags for their demonstrably airworthy aircraft parts, this is a relatively rare practice because of the fact that there are very few independent manufacturing DARs – most of them work directly for manufacturing companies on a full-time basis and therefore do not have the time to issue such tags for distributors.

Signatures

The proposed language states that alternatives to a hand-written signature are only permitted when authorized by the FAA. See proposed section 3-5(n)(2). The FAA may not restrict signatures that are made by private persons by virtue of guidance found in an FAA Order. Such a restriction must be in an FAA regulation.

Such a proposed restriction is also inconsistent with E-SIGN, which prohibits the government from issuing regulations that unnecessarily impede electronic commerce.

The FAA does not have the specific statutory or regulatory authority to issue guidance defining a signature. The term "signature" is well understood under common law and under codified law, like the Uniform Commercial Code, to include a wide variety of forms and media so long as the person who applies the signature intends the mark to represent a signature. Thus, the FAA's efforts to restrict what constitutes a signature for private persons are inconsistent with existing law.

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The statement that alternative signatures are only permitted when authorized by the FAA is inconsistent with existing regulatory structure insofar as the FAA has no authority to approve nor authorize a form of signature (compare this to the existing authority under 14 C.F.R. § 21.305(d) under which the FAA may approve any part, material or process, but which does not give the FAA authority to approve a mechanism by which a private person applies a signature).

The FAA has much greater powers to restrict the application of a signature that is applied by an FAA employee or designee, and therefore a signature applied by such persons could potentially be restricted; however under the proposed guidance, signatures applied to airworthiness approvals may freely be applied electronically. E.g. proposed section 2-1(j-k). This is an inconsistency that remains unexplained. Such free use of alternative forms of signature should be extended to approval for return to service in order to meet the spirit and requirements of E-SIGN and to conform to the limits on the FAA's authority.

To correct these issues, we recommend that the restrictions on forms of signature be removed. We also suggest that a cross reference to the language proposed for section 2-1(j-k) may be appropriate, in order to make it clear that electronic signatures are permitted.

Replacement Tags

There are many situations in which an 8130-3 tag needs to be reissued. It may be reissued because the original was flawed (for example, the part number was copied onto the form incorrectly), or it may be reissued because the original form was lost or damaged and needs to be replaced.

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When a replacement 8130-3 is issued because the original was lost, the proposed guidance requires that the new tag bear the date on which it was issued. See section 3-6(b). This guidance is at odds with the regulatory requirements of 14 C.F.R. § 43.9, which require that the approval for return to service bear the date on which the work was completed. To correct this, the paragraph should be revised to indicate that the replacement 8130-3 tag should bear the date on which the original work was completed.

The wording of proposed sections 2-9(b) and 3-6(b) seems to anticipate that a replacement 8130-3 tag may only be issued when requested by the original recipient. It is possible that the part may have been transacted to a third part before the documentation was lost or destroyed. There is no policy reason why a subsequent holder of the article who can verify that he or she owns the article should not be able to request a replacement 8130-3 when there is a need for such a document. The policy should be changed to permit subsequent holders to request such documentation. It may be changed simply by removing the words "by the original client" from proposed sections 2-9(b) and 3-6(b).

Similarly, there is unfortunate wording that inappropriately limits the reissuance of 8130-3 tags that have errors. Under the current draft language, only an end-user who finds an error may request reissuance. Sometimes, though, the owner of the part is a distributor. Distributors are not end-users. Nonetheless, it makes good sense for the distributor to be able to work with the repair facility to correct the errors in the tag before the part is to be transmitted to an end-user. To correct this, the phrase "end-user" in sections 2-11(1) and 3-7(a) should be changed to "recipient."

It is normal practice in the industry to correct clear errors by issuing a brand new tag and destroying the old tag. The replacement process in sections 2-11 and 3-7, which involves retaining the tag with the error and attaching an amendment tag that purports to correct the error, creates a number of potential problems. The retention of the erroneous tag is likely to cause confusion. People in the industry may act quickly and may rely on the errant tag, without realizing that the additional tag is a correction, thus allowing the error to propagate. Because of the recommended language on the replacement tag, it is not a record that will fall neatly within the FAA's regulatory purview – in proposed section 3-7, the fact that the second tag states that it does not cover release to service means that it is not a 14 C.F.R. § 43.9 record, which means that it does not fall under the regulatory document retention requirements (despite the advice in the proposed guidance to retain both documents for the document retention period). It would be less confusing, and less likely to lead to potential airworthiness problems, if the issuer was allowed to correct clear errors with a new tag and then simply confirm the destruction of the old (erroneous) tag.

Recurrent 8130-3 Tags

The guidance in proposed sections 4-1(o) describing 'recurrent' 8130-3 tags should be modified to reflect standards established in past FAA guidance.

It is important to remember that the 8130-3 is merely the documentation of a finding. When issued as an airworthiness approval, it documents the finding of airworthiness. When issued as an approval for return to service, it documents the conclusion that the article is airworthy with respect to the work performed. With this in mind, the so-called recurrent 8130-3 should be thought of as a tag issued to document a finding of airworthiness that is subsequent to the original finding of airworthiness that took place at the facility of the production approval holder immediately before the part was released from the PAH's quality system. The recurrent airworthiness document may be contrasted against the original airworthiness finding, which may or may not have been recorded on an 8130-3 tag.

This is an important distinction, because today there are many parts for which no original 8130-3 tag was ever issued. Despite the fact that there was no original 8130-3, there was an original finding of airworthiness by the production approval holder. See 14 C.F.R. § 21.165(b). So it is possible to have a recurrent finding of airworthiness despite the fact that there was no 8130-3 issued to document the original finding of airworthiness.

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Thus, the language of 4-4(o) should be changed to read "A Form 8130-3 issued subsequent to the original finding of airworthiness is considered to be a recurrent airworthiness approval."

Technical and Security Details

Chapter five, section 5-3 of the draft FAA Order specifies technical details currently found in the ATA Specification addressing electronic transmission of airworthiness data. In doing so, it locks the specification to the order and vice versa. This makes it difficult to update the specification to reflect changes in technology. For example, it describes the digital security regime of the ATA Specification. Security protocols change, and sometimes change rapidly. There may come a time where the interests of security demand that the specification be updated to reflect new security paradigms.

The Order admits that past restrictions on electronic signatures were rooted in a time when neither the FAA nor the industry anticipated the need for electronic signatures. Now, the aviation industry finds itself 'late to the game' in adopting protocols for the safe and secure transmission of airworthiness data – the aviation industry has found it difficult to keep up with other industries because of a regulatory structure that impeded use of electronic signatures. By rooting its guidance to current technologies, the FAA establishes a paradigm that will almost definitely become outdated – and probably become rapidly outdated. Security is an important feature of digital data, and the industry should be left free to update the security standards found in its standards without being tied to security technologies that are likely to become obsolete.

ASA recommends that technical and security details for transmission of data be left to the ATA

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specification, and ASA further recommends that these details be neither repeated nor summarized by the Order, so that the Order will not serve as an anchor on the industry's efforts to keep its standards current relative to changes in technologies.

Record Retention

Section 5-5 of the draft FAA Order requires participants in electronic transmission of data to maintain copies of documentation for at least five years. This recommendation is at odds with regulatory requirements for shorter retention periods for records. It has become standard in the legal system for records to be treated in uniform fashions whenever possible, no matter what form they take. For example, under the recent revisions to the Uniform Commercial Code (UCC), the prior requirements for written documents have largely been supplanted by a requirement for a record, and the definition of record has been drafted to include electronic records, paper records, and records fixed in any other media. These changes to the UCC are being rapidly adopted by the states.

To remain consistent with current legal standards, the FAA should continue to enforce its existing record retention standards, and should remove the longer record retention standards found in section 5-5. The guidance that specifies that electronic records should be retained for the period specified in the party's own manuals and guidance documents is good guidance and should be retained, because it emphasizes that electronic records are records to be retained just as paper records must be retained.

User/Installer Guidance

Subsection 5-7(b) reminds recipients that if they are subject to the jurisdiction of an airworthiness authority other than the authority that appears in block one, then the user/installer should be sure that its "civil aviation authority accepts products, parts and appliances from the civil aviation authority specified in block one." This is an incorrectly limited statement for several reasons. First, the 8130-3 is used to approve work for return to service. When used in this fashion, it is the work that must be tested for acceptability. For example, the U.S. is willing to accept new products exported from Japan when they are exported in accordance with the U.S.-Japanese bilateral agreement; but the U.S. does not recognize repair work performed solely under Japanese maintenance regulatory authority.

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ASA recommends that the language of this section be changed to remind the recipient that if it is subject to the jurisdiction of an airworthiness authority other than the authority that appears in block one, then it should be sure that its "civil aviation authority accepts approvals of this sort issued under the legal authority of the civil aviation authority specified in block one."

Glossary

The proposed draft includes a glossary (appendix B). This glossary defines a significant number of terms that have already been defined in other publications, and it offers definitions that are different than the definitions found in the other publications. In general, we recommend that the FAA should rely on and reproduce the definitions that have already been issued rather than creating new and often inconsistent definitions.

Conclusion

The foregoing represents just a few of the issues that we have identified as targets for improvement in the draft 8130.21F.

ASA will be filing its complete comments in support of the "F" revision to 8130.21 at the end of August; public comments are due to the FAA not later than August 31.

The current draft proposal is available online at http://www.faa.gov/aircraft/draft_docs/media/DRAFT-Order-8130.21F.pdf.

Several ASA members have already called and emailed us with their early comments on the draft. ASA members should carefully review the draft document to see how it may affect them and to identify language that could be strengthened or that needs to be altered or updated. Please share your proposed changes with ASA by emailing them to ASA's General Counsel at jason@washingtonaviation.com. This will allow us to reflect the comments of our members in the final comments that we submit to the FAA.

Pratt & Whitney Gets its First PMA

Following a two-year push to provide parts for the CFM56-3 turbofan engine, Pratt & Whitney received PMA approval from the FAA in July. The move marks the first foray for the OEM engine manufacturer into the PMA parts world.

Under the certification, Pratt & Whitney's Global Material Solutions business will produce replacement parts for the engine's high pressure turbine shroud. This is the first of 48 life-limited and gas-path replacement parts for the CFM56-3 engine for which Pratt intends to obtain PMA.

United Airlines has already signed on as the launch customer for the U.S., with Jet2.com as the European launch customer and an undisclosed Chinese airline as the Asia-Pacific launch customer. Pratt may be pursuing European Aviation Safety Agency authority and Civil Aviation Administration of China authority for the parts made under US PMA.

The CFM56-3 is manufactured as a joint venture between Snecma Moteurs of France and General Electric in the U.S.A. Pratt &Whitney has provided maintenance for the CFM56-3 engine for several years, and the company will now also be providing components for its competitor's product.

The 2006 announcement that the engine firm would step into the PMA realm came as a surprise to many groups in the industry. Pratt &Whitney had previously been a vocal opponent of PMA parts. Pratt & Whitney said it was urged by customer demand to use their turbofan experience to provide low-cost, high-quality parts for the popular narrow-body aircraft engine.

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September 17-19.....SpeedNews 8th Annual Aviation Industry Suppliers Conference
Toulouse (AISCT), Hotel Palladia, Toulouse, France

November 4-6.....SpeedNews 12th Annual Regional & Business Aviation
Industry Suppliers Conference, Location TBA