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The Update Report

The Aviation Suppliers Association

Volume 12, Issue 7 July 2004

REGULATORY UPDATE

RSPA to Clarify Private Carriage Rules

If you ever deliver aircraft parts to a customer using a private or company-owned vehicle, then a proposed rule change could help protect you from running afoul of the hazmat regulations.

Earlier this year, ASA's Counsel Jason Dickstein had several conversations with RSPA personnel about the vagueness of the Materials of Trade exception. The problem was that some government employees were interpreting the hazmat regulations to apply to delivery of an aircraft part (containing hazmat) using a private automobile. We argued that such transportation should fall within the Materials of Trade Exception.

The Materials of Trade exception applies when a hazardous material is transported for the purpose of supporting the operations or maintenance of motor vehicle (e.g. spare oil), or when the material supports the health and safety of the passengers or crew (e.g. fire extinguishers). A third major Materials of Trade exception applies to carriage by private motor vehicle.

When the Materials of Trade Exception applies, it excepts the hazardous materials covered from compliance with the regulations. Such hazardous materials may be transported without strict hazmat regulatory compliance, when they are moved under certain circumstances. The exception is limited to only certain materials—but among them are the materials that ASA members are most likely to ship (see 49 CFR § 173.6(a) for the specific materials limitations). The exception is also limited to relatively small amounts (1 pound for packing group I materials and 66 pounds for other packing groups), so it would not include a large item like an engine.

But for small hazmat items that need to be delivered in a hurry, such as an AOG situation, the Materials of Trade Exception can be quite useful.

Have we mentioned how much we like RSPA—the Research and Special Programs Administration? Why do we like RSPA? Because they listen, and they act. We brought an interpretation problem to their attorneys—the issue of whether a delivery of part in a private automobile would be considered a regulated transportation activity. Based on our conversations with RSPA employees, RSPA has proposed to amend the regulations to clarify the point that we raised!

The proposal removes certain confusing language and makes it clear that materials of trade that are transported in private carriage (e.g. a personal vehicle or a company-owned vehicle) are excepted from the rules.

ASA will be filing comments to this proposal to support it and to recommend that the preamble clearly state the issue being clarified.

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Congratulations to the following companies:

Commercial Aviation International, LLC
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Western Aero Services, Inc.
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For their re-accreditation to the ASA-100 standard in accordance with the FAA's AC 00-56A Voluntary Industry Distributor Accreditation Program

A Message from ASA's President

Your vote counts! That is the message that both political parties have been promoting, but it is also an important message for ASA members, as we approach the final week of voting for the ASA Board of Directors.

There are many ways that trade associations elect or appoint their Board of Directors. Some are appointed; some are chosen by a nominating committee and the membership 'votes' - but only has one option on which to vote. ASA's goal has always been to represent you and your needs, so we have always believed in membership elections to select our Board.

The Board is often a thankless job—Board members (or their companies) pay their own way to four meetings per year, and they also participate in telephone conferences in between meetings. The Board plays an important role in the trade association's governance. They spend time analyzing the Association's budgets to make sure that we are using your dues effectively; they help plan the Annual Conference; they promote the Association domestically and internationally; and they represent the Association to their companies and to other sectors of the industry.

We have been lucky to have a Board with a variety of talents, from financial to administrative and from managerial to entrepreneurial. I have greatly appreciated the guidance that our Board provides—I find myself speaking to the Board members on a weekly or even daily basis in order to seek their guidance and assistance.

Completed ballots are due no later than 3:00 pm EDT on August 27. Please vote!

Best Regards,

Michele Dickstein

ASSOCIATION UPDATE

Elections!

The election for three seats on the ASA Board of Directors is currently taking place.

Votes may be submitted by facsimile transmission until August 27, 2004 at 3:00 pm EDT.

You can fax your completed ballot to (202) 347-6894.

Aviation Suppliers Association Officers:

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The Update Report
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The Update Report
provides timely information to help Association members and readers keep abreast of the changes within the aviation supply industry.

The Update Report
is just one of the many benefits that the Aviation Suppliers Association offers members. For information on ASA-100, the ASA Accreditation Program, Conferences, Workshops, FAA guidance like Advisory Circulars, Industry Memos, or services and benefits, contact the Association.

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The Update Report
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Flame Retardant Parts Banned in Europe!

Are the parts you sell flame retardant? Parts like passenger or crew seats, cable bundles, or wire? If you sell any component that includes flame retardant plastic, then you need to pay attention to a newly-implemented European Directive that applies to certain flame retardants.

The Regulation

On February 6, 2003, the European Parliament promulgated Directive 2003/11/EC (6 February 2003). This Directive amends an earlier European Council Directive 76/769/EEC, which restricts the use and 'placing on the market' of certain chemicals. The 2003 amendment applied restrictions to pentabromodiphenyl ether and octabromodiphenyl ether. The new regulation applies not only to the chemicals themselves, but also to anything that includes one of the chemicals as a constituent. Each of these chemicals is used as an additive to plastics to make them flame retardant.

The Directive requires that the EC countries adopt and publish regulations to implement this Directive (deadline was Spring 2004) and that the regulations have an effective date of August 15, 2004.

The European Directive states that current technology (like gas chromatography) permits detection of these chemicals in concentrations of 0.1% by mass. As a consequence, the common implementation of the regulation in the EC member nations has been to only regulate the chemicals where they reflect 0.1% of the mass of the article in question. Thus, traces of these chemicals in quantities of less than 0.1% by mass will not generally be regulated under the European system.

Why Are They Regulated?

Pentabromodiphenyl ether and octabromodiphenyl ether [hereinafter "polybrominated flame retardants"]

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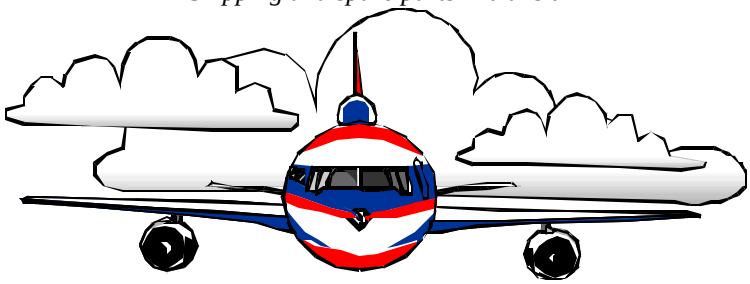

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MEMBER PROFILE *Written by Jeanne Meade*

Airline Spares America, Inc. – Quality Driven - Customer Focused

was founded on a quality driven model with attention to success and recognition in the global aviation community. They are dedicated to the highest quality standards and are committed to individualized customer service.

Airline Spares America was established in 1993 as a purchasing agent for international airlines. Since then, Airline Spares America has proudly served the airline industry for over 11 years acquiring packages of domestic and international airline surplus material. Having recently located to a new 20,000 square foot building, Airline Spares America now has the opportunity to expand and grow so they can continue to support their customers changing needs.

What was their path to success? Just ask Jeb Kalaf, President and CEO of Airline Spares America. Jeb truly believes that the foundation of a successful business starts with each relationship of both past and present business partners.

Jeb's experience stems from working as an airline pilot for both domestic and international airlines. He then worked as Vice President for an aftermarket supplier. Several years later, Jeb found himself in a unique position. With his past experience and background, as well as established relationships, Jeb was encouraged to form a new company and seized the opportunity.

Jeb's personal background has also played a significant role in Airline Spares America's achievements. His diverse upbringing and education has provided Jeb with a unique advantage: the ability to speak 5 different languages, thus allowing him to build a client base that is 75% international.

It's hasn't always been easy. Jeb shares many of the industry's concerns where documentation and traceability requirements of airlines evolve as their quality system develops. Jeb also commented, "As our airline customer's fleet expands, procuring material for the newly manufactured aircraft such as the new generation series has become our newest challenge." A more unique and personal challenge Airline Spares America faces is being able to find experienced multi-lingual sales personnel with knowledge of the international market to assist with their ever growing international customer base.

Since 9/11 Airline Spares America has adapted to the new reality the airlines face with regards to procurement as they continue to lower cost without compromising safety. Although Airline Spares America's business is primarily international, adequate cash flow planning and financing as well as Airline Spares America's continued commitment to safety and quality ensured customer loyalty and helped Airline Spares America to endure during the months following Sept. 11th.

When asked about Airline Spares America's future growth potential, Jeb replied, "We believe the new frontier will be sourcing out the newly manufactured aircraft parts such as the B737NG series on the market. Albeit the task of sourcing these newly available parts on the market will prove challenging."

Despite old and new challenges Airline Spares America's is dedicated to two fundamental philosophies:

- Commitment to the highest level of quality standards pertaining to parts, providing proper FAA documentation, competitive pricing and consistent time delivery, and
- Commitment to a customer-focused management team which ensures the highest level of individualized attention and unique client solutions.

Airline Spares America is recognized by international, domestic and flag carriers worldwide.

Airline Spares America remains vigilant in developing strong client relationships that allows them to offer the best customized solutions with personal attention to detail. They continue to stay aligned with the latest industry trends and developments in order to target their sales effort in the most effective and efficient manner.

Airline Spares America is an accredited distributor under FAA 00-56A through the Aviation Suppliers Association ASA-100 Quality System Standard and has been a member of the Aviation Suppliers Association since 1995.

8130-3 Tags: International Q & A

Recently, one of ASA's non-U.S. members had some important questions about the use of the 8130-3 tag. We felt that the questions and answers would be useful to any ASA member who is either located outside the United States, or has customers outside the United States.

Each of the four questions reflects an issue about which ASA frequently receives inquiries. Each also reflects an issue important to importers of aircraft parts because of the interplay between United States law and the laws of other nations.

The answers in this document are based on United States law – it is possible for interpretations to vary by country based on another country's laws. In this answer, we use the term "article" to mean an aircraft, airframe, aircraft engine, propeller, appliance or component part.

QUESTION:

It is the understanding of our air carrier that the term "overhaul condition" means a no-use condition since the time of overhaul. Can you please explain the difference between the terms "overhauled" and "newly overhauled" condition.

ANSWER:

The only regulatory difference between the terms "overhauled" and "newly overhauled" is one of context.

Any entity that performs the six overhaul functions on an article is entitled to refer to the article as "overhauled." The six overhaul functions are described in the United States Federal Aviation Regulations at 14 C.F.R. § 43.2(a), and they are: (1) disassemble the article 2) clean the article, (3) inspect the article, (4) repair as necessary (5) reassemble the article, and (6) tested according to appropriate standards (e.g. the manufacturer's standards). Thus, a U.S. FAR 145 repair station may describe an article as "overhauled" after completing these six steps. The appropriate context for describing something as "overhauled" would be on an approval for return to service completed in accordance with 14 C.F.R. § 43.9.

The term "newly overhauled" describes an article that has been overhauled (as above) and that has zero time since the completion of the overhaul (testing time during the overhaul is not considered for these purposes). 14 C.F.R. § 21.321(b)(4). If an article is in "newly overhauled" condition, then the FAA (or a designee of the FAA) may be permitted to apply an airworthiness approval tag if the part meets the other regulatory requirements for such a tag.

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ASA Regulatory Workshops

The Intelligence Resource Serving the Aviation Parts Supplier Community

Achieving Improved Practices for Aircraft Parts Distribution

ASA's one-day continuing educational workshops focus on training members of the aviation community of the many confounding regulations and laws, as well as common industry practices to help you and your employees work more effectively. These one-day workshops are offered in member populated cities as an affordable means of formal training. Workshops are open to non-member companies.

	DATES AND LOCATIONS	
Sept. 14	Copenhagen, Denmark	Hosted by Scandinavian Airlines
Sept. 28	Dallas, TX	Marriott Courtyard Dallas DFW
Oct. 28	Chicago, IL	Hosted by AirLiance Materials
Nov. 5	Pheonix, Area, AZ	TBA
Nov. 30	Ft. Lauderdale/ Miami, FL	Ft. Lauderdale Marriott Marina
Dec. 2	Newark, NJ	Four Points Sheraton Hotel
Dec. 7	Seattle, WA	Marriott Courtyard SETAC Area
Dec. 9	Los Angeles Area, CA	Embassy Suites Arcadia

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Overtime Rules Clarified

After fifty-five years of using outdated standards for whether an employee qualifies as being a 'white collar' worker that would be exempt from minimum wage and overtime pay requirements according to the Fair Labor Standards Act (FLSA), the Department of Labor has issued a final rule that updates the standards. The final rule clarifies the exemptions for executive, administrative, professional, outside sales and computer employees.

FLSA generally requires employers to pay employees at least the federal minimum wage ($5.15 per hour – some state minimum wages are higher) for all hours worked, and to pay overtime premium pay of time-and-one-half the regular rate of pay for all hours worked over 40 in a single workweek.

FLSA includes a number of exemptions from the minimum wage and overtime requirements. Employees who fall with in these exemptions are known as 'exempt employees' and are not entitled to the legal protections of FLSA.

Creating the New Rule

In revising the regulations and restructuring the exemptions to better accommodate today's workplace, the Department of Labor faced the challenge of addressing competing interests between employers who wanted to expand the white collar exemptions and employees that want to limit use of the exemptions.

The Department published proposed revisions to the regulations on March 31, 2003. In response to the proposal, the Department received 75,280 comments from a wide array of employees, employers, law firms, trade associations, labor unions, and Members of Congress during the 90-day comment period. Including the preamble, the final rule is approximately 153 pages long – most of that reflects a summary of the comments received, and describes how the Department took the comments into mind when formulating new definitions of critical terms.

The New Standards

The new regulations are designed to make it much easier for employers to know which of their employees are covered and which ones are exempt.

The first step under the new regulations is to apply a salary test. If the employee is paid on a salary basis and paid less than $455 per week ($23,660 per year), then the employee is always covered by FLSA and thus always entitled to overtime pay for hours worked over 40 during a week. This is a significant increase from the outdated standard, which guaranteed FLA protection to those making less than $155 per week ($8,060 per year). For ASA members, this means that all employees paid a salary less than $23,660 per year are entitled to overtime pay where appropriate.

There is also a highly-compensated employee rule, that states that employees paid $100,000 or more are considered "highly compensated" and are *not covered* under FLSA. Thus, the employer does not have to pay time-and-a-half for hours worked over 40 by a highly-compensated employee.

If your employee makes between $23,660 and $100,000 in salary, then the employee will generally be covered under FLSA (and entitled to overtime pay) unless the employee fits into one of the regulatory exceptions. There are exceptions for persons who are considered executives, administration, professionals, outside sale personnel, and computer programmers.

Outside Salesmen

The trickiest area of the law for some ASA members can be the rules for outside salesmen. Outside salesmen are considered to be exempt employees (not entitled to the protections of FLSA) no matter what their salary is (even if it is below the $23,660 threshold—outside sales is the only category in which the FLSA minimum salary test is ignored). Under the revised rules, an outside salesman is someone whose primary duty is making sales or obtaining orders. The outside salesman must be customarily and regularly engaged away from the employer's place of business in performing this primary duty. Incidental related duties, like delivering parts or collecting money owed on the parts, or writing sales reports, is still considered to be exempt outside sales work.

Conclusion

These overtime rules reflect the minimum legal requirements, but they do not prevent an employer from providing overtime pay or other benefits to those who are not entitle to them under the law – thus it is perfectly legal to agree (by contract or otherwise) to pay additional overtime compensation to an exempt employee.

This final rule is expected to protect more employees from being misclassified as exempt or non-exempt, and it is expected to reduce the potential for employer liability for misclassification of employees because both employees and employers will be better able to understand and follow the regulations.

The new rules are effective as of August 23, 2004.

Flame Retardant Parts Banned in Europe!

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have both been linked to liver and thyroid ailments. Also, both bear chemical similarities to suspected carcinogens like dioxins and PCBs, and are therefore suspected carcinogens themselves.

Polybrominated flame retardants are added to plastics. They are effective in retarding fire because they will lose bromine atoms when exposed to heat. The bromine atoms interfere with the oxygen consumption of the flames, retarding the spread of the flames. The danger associated with polybrominated flame retardants is that the same bromine atoms can leach out, into the environment. Because of the adverse effects on health, they are now forbidden in Europe.

California is also planning on banning polybrominated flame retardants – effective 2008 – and it is likely that the remainder of the country will follow California's lead within a decade after the California ban becomes effective.

Is this Stuff in My Inventory?

Because these polybrominated diphenyls are added to plastics as flame retardants, there is a possibility that they exist in many components found in aircraft. This possibility is enhanced by the FAA fire test requirements, which cover cabin, cargo compartment and electrical system components (among others). The flame retardency elements of the FAA's fire test requirements essentially mandate some strategy for the use of flame retardants throughout the aircraft.

One class of products in which pentabromodiphenyl ether has been used as a flame retardant is flexible polyurethane foam. This is the sort of foam used as padding in furniture. The FAA recognized in Advisory Circular 25-853.1 that the foam material in aircraft seats represents a significant threat of fire propagation in the event of a cabin fire (which is the justification for the burn tests for seats). ASA members should pay careful attention to such foam when assessing polybrominated flame retardant content. ASA does not know whether any particular aircraft seat manufacturer has used polybrominated flame retardant foam in the seat cushions.

While examining the seats, ASA members may want to identify the flame retardants use in the seat upholstery. One strategy for decreasing the flammability of seat foam is to use a 'fireblocking layer' of highly fire-resistant material that serves as a barrier to flames in the event of a fire. In addition, the upholstery is subject to its own burn tests.

Another area where penta-bromodiphenyl ether is found is in carpet cushions - again, it is possible that it might be found in carpet cushions used in the interior of an aircraft but that possibility would have to be confirmed with the manufacturer of the cushion.

Yet another possible area of concern could be electronics. Pentabromodiphenyl ether has been used a flame retardant in wire and cable insulation, and has also been used in electrical and electronic connectors.

According to a recent letter from Honeywell, polybrominated flame retardants "have historically been used in paints, plastics, foams, and textiles as well as in electronic products. Specific materials of concern include, but are not limited to wiring harnesses,

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Polybrominated Flame Retardants

To assist ASA Members in assessing what components may contain poly-brominated flame retardants, we have compiled lists of other chemical names associated with the two restricted polybrominated flame retardants, and we have also compiled lists of trade names of flame retardants that may contain these restricted polybrominated flame retardants:

OTHER CHEMICAL NAMES for pentabromodiphenyl ether

Diphenyl ether, pentabromo derivative
Pentabromodiphenyl oxide
Pentabromodiphenyl ether
Pentabromophenoxybenzene

TRADE NAMES for pentabromodiphenyl ether

Bromkal G 1
DE 60FTM
Planelon PB 501
Saytex 125

OTHER CHEMICAL NAMES for octabromodiphenyl ether

Diphenyl ether, octabromo derivative
Octabromodiphenyl oxide
Octabromobiphenyl oxide
Octabromodiphenyl ether
Phenyl ether, octabromo derivative

TRADE NAMES for octabromodiphenyl ether

Bromkal 79-8DE
CD 79
DE 79
EB 8
FR 1208
FR 143
Tardex 80

8130-3 Tags: International Q & A

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The FAA (and its designees) generally only issue export 8130-3 tags for class II parts that are in new or newly overhauled condition. 14 C.F.R. § 21.331(a)(1). Thus the U.S. context of the term "newly overhauled" is generally related to an export airworthiness approval. Nonetheless, it usually is largely synonymous with the term 'overhauled' for all practical purposes, as long as the overhauled article has not yet been placed into service and remains at zero time since overhaul.

One reason that this is confusing is because the FAA 8130-3 tag is used for BOTH purposes – it is simply completed differently in each case (e.g. signed in different blocks).

QUESTION:

When may a FAR145 certified repair station identify an article as "newly overhauled?"

ANSWER:

A Part 145 repair station completing an approval for return to service on an overhauled article may identify it as overhauled in block 12.

If that same Part 145 repair station wants to obtain an 8130-3 for export purposes, then it would have to apply to a Designated Airworthiness Representative (DAR) who could issue an export 8130-3 tag if the other conditions for issuance were met (e.g. airworthiness, special conditions of the importing country, etc). That tag would be identified as "newly overhauled."

Many non-U.S. importers are willing to accept properly completed 8130-3 tags that are completed for purposes other than export, particularly on class II and class III parts, because such non-export 8130-3 tags may provide the same information and the same level of airworthiness assurance as an export 8130-3 tag. This is true in countries that have not issued any special conditions related to class II or class III parts, and that do not have any special restrictions on such parts when imported from the United States.

QUESTION:

What type of qualified person can certify in FAA 8130-3 Block 14 that a part is newly overhauled?

ANSWER:

Until recently, block 14 included two check blocks – one was for 'new' parts and one was for 'newly overhauled' parts. This has been changed. As of June 1, 2002, all persons were required to use the new version of the 8130-3 (published as of June 1, 2001). In the new version, block 14 no longer has an option for 'new' or 'newly overhauled' - instead it has options for conformity to 'approved design data' or 'non-approved design data.' It is possible that the FAA may have issued written exemptions permitting continued use of the 1993 version of the form; however I am not aware of any such exemptions.

Older 8130-3 tags that were issued on or before June 1, 2002 and signed on the left side (in block 15) would have been issued by the FAA or by FAA designees, such as DARs, ODARs, DOAs or DMIRs.

Today, the designation "newly overhauled" would be written in the remarks block - block 13 – if the article in question was in newly overhauled condition. If "newly overhauled" is written in block 13, then there is a presumption under existing FAA advisory guidance that the 8130-3 is being completed by the FAA or by a FAA designee.

QUESTION:

Can a FAR 145 certified repair station (not an OEM or PAH) complete an 8130-3 tag, certifying a part as "newly overhauled" and signing the 8130-3 tag in Block 15?

ANSWER:

No, the left side of the 8130-3 (block 15) is reserved only for the signature of the FAA or a FAA designee. There is a common misconception that American manufacturers can sign the 8130-3 tag in block 15 – this is not true in the United States. Most large U.S. aviation manufacturers maintain FAA designees in-house to sign 8130-3 tags in block 15. That signature specifically reflects the approval of the FAA.

A U.S. FAR 145 repair station is not entitled to sign an 8130-3 tag in block 15. A U.S. FAR 145 repair station might employ a FAA designee to sign such a form on their behalf, but the signature represents the FAA's approval – and not the repair station's approval. If the repair station (or anyone else) obtains an 8130-3 tag signed in block 15 by a FAA designee (e.g. for export purposes) then the repair station will be listed in block 4 of the 8130-3 tag as the applicant.

U.S. FAR 145 repair stations generally sign an 8130-3 tag in block 19, to reflect approval for return to service following maintenance, preventative maintenance, or alteration. This is a function delegated to repair stations under their certificate privileges under Part 145 of the Federal Aviation regulations in the U.S.

Flame Retardant Parts Banned in Europe!

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epoxy resins of printed circuit boards, potting compounds, sealants, adhesives, resins, paints, plastics for electrical components and fabrics."

How Do We Assess Compliance?

Unfortunately, there is often no easy way to quickly and confidently assess whether the plastic in an aircraft part contains polybrominated flame retardants.

We can eliminate from consideration articles that clearly do not contain polybrominated flame retardants (e.g. all-metal parts). For most of the remainder, though, the only source of information is the manufacturer themselves.

In some rare cases, there may be a material safety data sheet published on the article in question; however most of the parts and materials that are likely to contain polybrominated flame retardants are also the sort of parts and materials that are unlikely to be accompanied by material safety data sheets.

This means contacting the manufacturers directly. Manufacturers are currently under no legal obligation to disclose the content of their products. To the extent that a polybromodiphenyl ether is used as a flame retardant, the actual use or formulation may be considered a trade secret by the manufacturer, so they may refuse to share this information. For some manufacturers of aircraft parts, the actual constituent formula may reside with *their* supplier, so the production-approval holding manufacturer may not have the information themselves. This fact is underscored by the fact that at least two major manufacturers – Honeywell and Pratt & Whitney – have sent letters to their suppliers asking them to identify whether the products they sell to Honeywell and Pratt & Whitney (and that Honeywell and Pratt & Whitney sell to their European customers) contain polybrominated flame retardants.

Domestic Impact

ASA members doing business directly into Europe will see the obvious potential impact on their business from these new European regulations; however there is also a potential impact on ASA members whose business is limited to domestic transactions.

Honeywell and Pratt & Whitney are currently sending letters to their suppliers asking them to certify that the articles they sell do not contain polybrominated flame retardants, or in the alternative to identify the polybrominated flame retardant content. They are insisting that their suppliers 'flow-down' this information gathering requirement to their own suppliers. And they are insisting on obtaining answers several days before the August 15, 2004 deadline for implementation of these new regulations. This deadline is backed-up by thinly-veiled threats of discontinuation of business for those who do not, or who cannot, comply.

In addition to the flow-down element of the Honeywell and Pratt & Whitney requests, other manufacturers may also follow the initiative of these two industry leaders, so this is potentially a far-reaching set of requests.

The problem for many ASA members is that they are often not the manufacturers of the articles in question (even our production-approval holding members often purchase already-fabricated components from other suppliers and assemble them in to aircraft components). The bulk of ASA's membership is made up of distributors who have no control over formulation of plastics, and who have little leverage to force a plastics manufacturer to disclose a proprietary formula. This can make it difficult or even impossible for ASA members to meet the information demands of companies like Honeywell and Pratt & Whitney.

ASA distributor members should remember that they are not under any legal obligation to answer the Honeywell and Pratt & Whitney requests. In the name of continued good relations with these companies, though, the distributors should open the lines of communication and be cooperative. Let these companies know the impossibility of a response from a company in your position (rather than simply ignoring the letters as some ASA members have threatened to do). ASA members communicating with domestic customers requesting 'reasonably unobtainable information' about polybrominated flame retardants can be helpful by identifying the manufacturers of materials where the manufacturer is known. It would also be wise to point out to your business partners that by asking their distributors to undertake this obligation, they are requesting a tremendous duplication of effort that could be avoided by going directly to the manufacturers of each component that they use.

The Honeywell and Pratt & Whitney requests are entirely appropriate when aimed at supplier-manufacturers, but the short time frame they have provided makes their requests unreasonable when directed to

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Flame Retardant Parts Banned in Europe!

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distributors of many different aircraft parts, components and articles. ASA members who have significant variety to their product lines and who do not have to gather polybrominated flame retardant information for their own exports to Europe may want to ask business partners who direct their information requests to the distributor, to redirect them to the manufacturers of the articles. Where the ultimate information requestor is a production approval holder, like Honeywell or Pratt & Whitney, their quality assurance system should identify the original suppliers of components that go into their own FAA-approved parts (they still may have questions about components used by their repair stations operations, but such questions can always be directed to the holders of the FAA-approval for such parts).

A Technical Defense (Not)

The language of the European Directive limits its application to forbidding (1) the use of polybrominated flame retardants (and components that have polybrominated flame retardants in them), and (2) the 'placing on the market' of such retardants and components. Some have suggested that the term 'placing on the market' might mean that a distributor is exempt from the scope of the Directive, because it is the manufacturer who places the articles on the market and not the Distributor. While this is an appealing semantic argument, we do not recommend relying on it because it may not be a *successful* argument.

There are European cases in which the term "placing on the market" was interpreted to mean sales by *the producer* of a good; however the cases in which this interpretation was made involved specific laws that were explicitly limited to producers (and not distributors), so this interpretation may be inapplicable to interpretations of the polybrominated flame retardant Directive.

Although this issue has not been directly tested in court, ASA believes that European courts could view an importation from the United States of a polybromodiphenyl-impregnated plastic as being placed on the market *when it was offered for sale in Europe*. This would be based on a market definition limited to the European market (which is the only market protected by this Directive). Any other view might undermine the plain intent of the Directive.

This is supported by European case law that suggests that when they speak of "placing on the market," they are speaking of placement on the European market. In one European case interpreting the chemical prohibitions that include the aforementioned-prohibition against polybrominated flame retardants, the European Court of Justice ruled that shipping goods to a location outside Europe for sale outside Europe is not violative of the Directive, because it did not constitute a "placing on the market" of goods *in the European Community*. By extension of this logic, it appears that goods shipped into Europe might be considered to be placed on the European market when imported.

Thus, it is safest to take a conservative approach to the European Directive and to consider parts exported to Europe to be 'placed on the market' in Europe when imported into Europe.

Conclusion

There are a great many possible uses of these prohibited polybrominated flame retardant substances in aircraft, from interior seat cushions, carpets and fabrics to wiring and electronics (including both cable bundles and components within the avionics). Until manufacturers begin to share formulation in formation, though, the uses remain possible and cannot be confirmed.

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Contact ASA's Jeanne Meade at (202) 347-6898 for details!

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UNAPPROVED PARTS NOTIFICATION

SUSPECTED UNAPPROVED PARTS PROGRAM OFFICE, AVR-20
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HERNDON, VA 20171

U.S. Department
of Transportation
Federal Aviation Administration

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AFFECTED PARTS

Life rafts and life vests approved for return to service by Inflatable Services, Inc.

PURPOSE

The purpose of this notification is to advise all aircraft owners, operators, manufacturers, maintenance organizations, and parts distributors regarding improper maintenance performed on life rafts and life vests by Inflatable Services, Inc.

BACKGROUND

Information received during a Federal Aviation Administration (FAA) suspected unapproved parts (SUP) investigation revealed that Inflatable Services, Inc. (Inflatable Services), may have improperly approved life rafts and life vests for return to service between October 2000 and May 2002. Inflatable Services, located at 990 W. State Road 84, Fort Lauderdale, FL 33315, previously held Air Agency Certificate No. LE4R333M.

Evidence indicated that Inflatable Services failed to accomplish maintenance in accordance with the manufacturers' maintenance manuals; Instructions for Continued Airworthiness; or other methods, techniques, and practices acceptable to the FAA. Discrepancies noted on a life raft included excessive air leakage, a non-conforming inflation cylinder, and non-conforming survival kit contents. The FAA has been unable to determine all the life rafts and life vests affected; therefore, those approved for return to service during the time frame specified above should be considered suspect.

RECOMMENDATIONS

Regulations require that type-certificated products conform to their type design and be properly maintained using current data, required equipment, and appropriately trained personnel. Aircraft owners, operators, manufacturers, maintenance organizations, and parts distributors should inspect their aircraft and/or parts inventory for any parts approved for return to service by Inflatable Services during the time frame specified above. Appropriate action should be taken if any of these parts have been installed on an aircraft. If any existing inventory includes these parts, the FAA recommends that you quarantine the parts to prevent installation on an aircraft until a determination can be made regarding each part's eligibility for installation.

FURTHER INFORMATION

Further information may be obtained from the FAA Flight Standards District Office (FSDO) shown below. The FAA would appreciate any information regarding the discovery of the above-referenced parts from any source and the action taken to remove them from inventory or service. This notice originated from the Fort Lauderdale FSDO, 1050 Lee Wagener Blvd., Fort Lauderdale, FL 33315, telephone (954) 356-7520, fax (954) 356-7531; and was published through the FAA Suspected Unapproved Parts Program Office, AVR-20, telephone (703) 668-3720, fax (703) 481-3002.

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UPCOMING EVENTS **** = Look for ASA Personnel on the speaking program or on the Trade Floor***

2004

Aug. 21-24	*** ACPC**, Marriott Marquis Hotel, New York, NY. See http://www.acpc.com for details.
Sept. 8-9	**Commercial Aviation Safety Symposium**, Dallas, TX. See http://www.asdnet.org/cass
Sept. 14	*** ASA Regulatory Workshop**, Copenhagen, Denmark. See http://www.aviationsuppliers.org for details
Sept. 14-16	*** MRO Europe**, Copenhagen, Denmark. See http://www.awgnet.com/conferences/meumain.htm
Sept. 28	*** ASA Regulatory Workshop**, Dallas, TX. See http://www.aviationsuppliers.org for details
Oct. 28	*** ASA Regulatory Workshop**, Chicago, IL. See http://www.aviationsuppliers.org for details
Nov. 5	*** ASA Regulatory Workshop**, Phoenix, AZ. See http://www.aviationsuppliers.org for details
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Dec. 9	*** ASA Regulatory Workshop**, Los Angeles Area, CA. See http://www.aviationsuppliers.org for details

ASA Workshops are coming up this Fall – topics will include
supporting the customers' regulatory obligations, documentation,
traceability, approved/unapproved parts and export issues.
Have you reserved your seat yet by registering?

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