

The Update Report

The Aviation Suppliers Association

Volume 12, Issue 8

August 2004

YOUR ASSOCIATION IN ACTION

ASA Files Petition for 8130s!

THE STORY

On August 26, the Aviation Suppliers Association filed a petition for rule-making, asking the FAA to implement a rule to restore fundamental fairness to international aircraft parts transactions.

The ASA proposal would permit all exporters – not just a select few - to apply to the Federal Aviation Administration (FAA) for export airworthiness approval. It would not change the current approval standards, which require the exporter to prove to the FAA (using common industry mechanisms) that the part in question is airworthy.

Current law imposes a severe restraint on the export of most aircraft parts. The current law permits manufacturers to obtain export airworthiness approvals for all aviation products, but it forbids other exporters from obtaining such documentation for class III products – a designation that covers most aircraft parts, but excludes complete aircraft and major components like engines, complete wings, or certain complex assemblies.

The reason for this disparity in the law was detailed in the Federal Register in 1963, when the FAA explained that such forms would not be necessary for most aircraft parts. Manufacturers were permitted to apply for such forms in 1965 based on the application of one manufacturing company. In the inter-

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THE STORY BEHIND THE STORY

Have you ever had trouble getting a part to another country because you didn't have the 'right' paperwork? You are not alone. Many ASA members have experienced trouble exporting a part because they could not get an 8130-3 tag, or because they could not get an 8130-3 tag with the 'right' language on it.

ASA has been battling 8130-3 tag issues since our inception. Every time it seems we are close to establishing a system that promotes safety while permitting safe parts to be easily transferred with the appropriate documentation, some other change in the system works to undercut the work we have performed in cooperation with the FAA. Recently, the FAA has entered into a series of executive agreements with other nations that could make it practically impossible for U.S. aircraft parts distributors to compete in the international marketplace. In the wake of these changes, many of our U.S. members have expressed their frustration with the inability to sell otherwise airworthy parts to their regular non-U.S. customers. ASA has finally concluded that we need a change to the FAA regulations in order to support distributor exports.

ASA submitted a proposal to the FAA for new language in the FAA regulations. The proposed language would

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Congratulations to the following companies:

Aircrafters, Inc.
Wilmington, DE

Aero Support, Inc.
Miami, FL

GE Aviation Materials, LP
Irving, TX

J&M Aircraft
North Hollywood, CA

Kellstrom Industries, Inc.
Miramar, FL

PAS, A Division of Russell Associates
New Port Richey, FL

Wilson Systems Enterprises, Inc.
Franklin, TN

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

The biggest news for the Association is the filing of the 8130-3 petition. The petition asks the FAA to amend the existing regulations to permit all exporters—including distributors—to obtain 8130-3 tags for any demonstrably airworthy class III part that was produced under a U.S. production approval.

This proposal remedies a problem that ASA members are currently having in getting parts to their non-U.S. customers.

If you haven't already read the entire article from the front page, then skip to page 91, where we have instructions on *phase one* of our effort to get our export 8130-3 proposal. **We need your help—we need every ASA member to write to the FAA-DOT docket and ask them to open a docket for the ASA petition.** Please send ASA a copy of your letter so that we can make sure that it gets seen by the FAA management.

Thanks

It is with a great deal of sadness that we wish a fond farewell to retiring ASA Board Member Bill Cote. Bill has been a friend and mentor for many years, and we have come to rely on his wisdom. He has also been a tireless supporter of ASA, introducing the Association to new business partners throughout the world.

2005 Conference

We are pleased to announce the Boca Raton Resort & Club in Boca Raton, FL, as the location for the 2005 Annual Conference. The conference will be held June 26-28, 2005.

As many of you know ASA put together an outstanding conference this past year in San Francisco. The main focus was on business opportunities with an emphasis on the ever growing MRO market.

In addition to our excellent educational

seminars the conference also allows networking opportunities to meet with colleagues and potential new customer. Several air carrier representatives commented on how much business they had accomplished at the Conference.

Need some additional corporate exposure? Consider a conference sponsorship opportunity. It's not too early to sign up for sponsorship. If you are interested, please contact Jeanne Meade via e-mail at Jeanne@aviationsuppliers.org or via telephone at (202) 347-6898. Preliminary details about the conference are available on our website.

Best Regards

Michele Dickstein

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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 For information on special package rates for advertising, contact the Association at (202) 347-6899.

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ASA Election Results Av-Ex: New Relationship; New Employee

ASA is proud to announce the results of the recent election for the ASA Board of Directors. Richard Levin (A.J. Levin), Brent Webb (Aircraft Inventory Management and Services) and Mitch Weinberg (International Aircraft Associates) were all successful in their bid for the Board.

They join existing Board members Terry Bond (M&M Aerospace Hardware), Deb Maier (Boeing), Mike Molli (SAS), Karen Odegard (Pacific Aero Tech) and Roy Resto (Tracer).

ASA is also proud to announce that the Quality Assurance Committee has elected a new Vice Chair: Dan Von

AV-EX, Aviation Excellence, a factory authorized stocking distributor headquartered in Dallas, Texas, announced that they have been selected as a distributor for FreeFlight Systems line of GPS, GPS/WAAS systems, radar altimeters, and selective calling decoders.

Flue of Western Air International. Dan has been a long-time supporter of ASA and has been an active member of the QA Committee for many years. Dan joins Mark Jacobus, the Quality Assurance Committee Chair, on the ASA QA Committee Management Team.

Located in Waco, TX, FreeFlight Systems is a leader in satellite guidance and navigation, and is the first company to complete certification for GPS/WAAS for navigation and landing.

AV-EX Aviation Excellence also announce the staff addition of Nohelia Sotillo as an "Airline Sales Executive" responsible for sales to the Latin American market. Nohelia speaks native Spanish and fluent English, and has interest in international business. She is a native of Venezuela but she has lived in the US since 1995.

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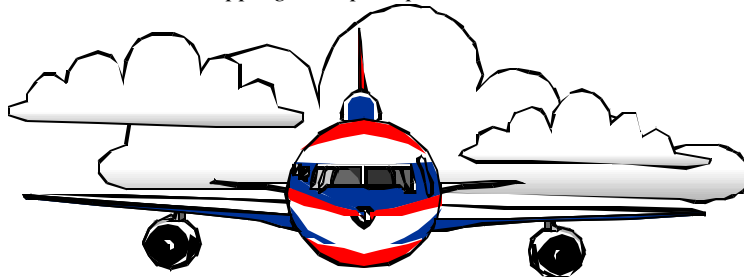
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The Unverified List

Are your exports in compliance with the export laws? In 2002, the Bureau of Industry and Security [“BIS”] (formerly the Bureau of Export Administration) added a new list to check known as the ‘unverified list.’

The ‘unverified list’ includes foreign persons involved in export transactions where the U.S. Government has been unable to verify their address or existence. This includes situations where BIS was unable to perform a pre-license check or a post-shipment verification for reasons outside of the U.S. Government's control (this can include lack of cooperation on the part of the other government, or lack of coopera-

tion on the part of parties to the transaction). It also includes situations where BIS was not able to verify the existence or authenticity of the end-user, intermediate consignee, ultimate consignee or other party to an export transaction.

ASA discussed this ‘unverified list’ at the Export presentation at the Annual Conference in San Francisco – several people expressed that they were unaware of this list. The list is not long, so it is easy to review.

The Unverified List includes names, countries, and last known addresses of the listed persons.

Any transaction to which a listed person is a party will be deemed by BIS to raise a ‘red flag’ with respect to that transaction. This means that the exporter has an affirmative obligation to investigate the red-flag and assure that the transaction does not violate U.S. export regulations before proceeding with the transaction. The red flag applies to the person on the Unverified List regardless of where the person is located.

The List has been updated twice in July 2004, so if you haven’t looked at it recently, make sure you look at it now!

The BIS Unverified List (as of July 28, 2004) http://www.bis.doc.gov/Enforcement/UnverifiedList/unverified_parties.html		
Name	Country	Last Known Address
Lucktrade International	Hong Kong Special Administrative Region	P.O. Box 91150, Tsim Sha Tsui, Hong Kong
Brilliant Intervest	Malaysia	14-1, Persian 65C, Jalan Pahang Barat, Kuala Lumpur, 53000
Dee Communications MSDN.BHD	Malaysia	G5/G6, Ground Floor, Jin Gereja, Johor Bahru
Peluang Teguh	Singapore	203 Henderson Road 09-05H, Henderson Industrial Park, Singapore
Lucktrade International PTE Ltd	Singapore	35 Tannery Road 01-07, Tannery Block, Ruby Industrial Complex, Singapore 347740
Arrow Electronics Industries	United Arab Emirates	204 Arbift Tower, Benyas Road, Dubai
Jetpower Industrial Ltd	Hong Kong Special Administrative Region	Room 311, 3rd Floor, Wing On Plaza, 62 Mody Road, Tsim Sha Tsui East, Kowloon
Onion Enterprises Ltd	Hong Kong Special Administrative Region	Room 311, 3rd Floor, Wing On Plaza, 62 Mody Road, Tsim Sha Tsui East, Kowloon
Lucktrade International	Hong Kong Special Administrative Region	Room 311, 3rd Floor, Wing On Plaza, 62 Mody Road, Tsim Sha Tsui East, Kowloon
Litchfield Co. Ltd	Hong Kong Special Administrative Region	Room 311, 3rd Floor, Wing On Plaza, 62 Mody Road, Tsim Sha Tsui East, Kowloon
Sunford Trading Ltd	Hong Kong Special Administrative Region	Unit 2208, 22/F, 118 Connaught Road West

ASA Files for 8130s!

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vening forty years, the global aviation marketplace has become more reliant on documentation and the FAA has entered into several international agreements that pledge export airworthiness approval documents to our foreign trading partners. This has 'changed the rules' and effectively halted many exports from U.S. aircraft parts distributors.

According to ASA President Michele Dickstein, "The ASA export proposal is a win-win situation for everyone. Distributors can apply for export approvals from the same places that they get domestic approvals today, so there is no additional burden on the government. The export approvals increase safety by tapping into a documentation system that is already recognized and accepted throughout the world. And the new eligibility means that U.S. distributors can once again compete with their foreign counterparts in markets that should never have been closed to U.S. distributors."

The typical U.S. aircraft parts distributor is a small business that purchases and resells aircraft parts. Their expertise in distribution permits manufacturers to concentrate on fabrication. Aircraft parts distributors provide competitive prices, quality assurance and immediate availability of aircraft parts in cases where a manufacturer may no longer have those parts in current inventory. Serving their needs is in the public interest.

The ASA proposal does not affect export restrictions on military products or other restricted exports – and it does not permit exports in violation of US export policies - it only permits U.S. exporters with aircraft parts inventories to compete on an even playing field with aircraft parts sellers around the world.

US Airways: Bankruptcy

One airline that every distributor has been watching is US Airways. US Airways, the seventh largest U.S. carrier, has been stating for months that unless they could obtain concessions from their labor unions, they intended to file for bankruptcy protection by September 30. That deadline was accelerated when failure to obtain labor concessions from the pilots' union signaled that other concessions would be practically impossible to obtain by September 30. US Airways filed for bankruptcy protection in the Eastern District of Virginia on Sunday, September 12, 2004.

This is US Airways' second bankruptcy filing in roughly two years – the first failing having been made in August 2002. The timing of this recent filing was not unanticipated. US Airways was scheduled to make a \$110 million pension contribution on Sep-

tember 15. Many journalists and industry analysts speculated that US Airways would choose to file Chapter 11 (reorganization) before that date to conserve US Airways' cash and make the reorganization possible.

US Airways had insisted that it needed concessions from its employees' unions in order to avoid the threatened September 30 bankruptcy filing. US Airways had made a proposal to the pilots' union. Under that proposal, the roughly 3000 pilots working for US Airways would take \$295 million in cuts from pilots' wages and benefits – this was merely 'step one' in the plan to obtain \$800 million in concessions from the unions, which in turn was an important part of US Airways' plan to cut \$1.5 billion in costs.

Members of the pilots' union have
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YOUR ASSOCIATION IN ACTION

2004 Workshop Schedule

ASA will be taking its show on the road this Fall!

In addition to bringing you the latest changes and standards on regulatory compliance, documentation, traceability and approved/unapproved parts, this year's Workshop will feature units on how to use commercial documents like your invoices and purchase orders to protect your rights, as well as an in depth look at export standards, and changes in export documentation expectations, and how these issues are affecting domestic markets as well.

September 14	Copenhagen, Denmark
September 28	Dallas, TX
October 28	Chicago, IL
November 5	Phoenix, AZ
November 30	Ft. Lauderdale, FL
December 2	Newark, NJ
December 7	Seattle, WA
December 9	Greater Los Angeles Area, CA

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or call us at (202) 347-6899.

Dedication to the Highest Quality of Work

Pacific Aero Tech, Inc. was founded in 1987 as a subsidiary of an aftermarket distribution company and focuses on providing outstanding service and value in the specialty niche of repairing and servicing aircraft windows, avionics, and instruments.

Pacific Aero Tech had only two significant customers and 4 employees in 1993 when Karen Odegard and Hugo Flinn, purchased the company. Karen assumed reigns as President of Pacific Aero Tech in 1993. Hugo resides in Europe where he is employed by Ernst and Young as a financial consultant. In the past ten years Pacific Aero Tech has grown to 20 employees and sales have increased almost twenty-fold.

Pacific Aero Tech's business philosophy is to combine an experienced dedicated team along with a focus on core competencies which equals' customer service - their number one objective. Pacific Aero Tech has the technical expertise and equipment to provide outstanding quality and value.

When asked how they maintain this philosophy, Karen Odegard responded, "We pride ourselves on the extra steps we take to satisfy customer requirements. If we say we are going to do something, we make every effort to deliver as promised. We also spend a lot of time communicating with our customers."

Pacific Aero Tech's average employee tenure is currently about 7 years and many employees have been

with them for over 10 years. Karen added, "Our employees are our most valuable asset. We provide excellent benefits and incentive programs. We all have a job to do but every effort is made to make Pacific Aero Tech's work environment as pleasant and flexible as possible." This stability creates outstanding technical expertise and a strong team approach to business. One result: their warranty return rate for the last 3 years was less than 0.2% (.002).

Dedication and hard work is not without its rewards. Pacific Aero Tech is honored to have received The Boeing Company's Suppliers of the Year Award for their perfect quality and delivery records in 2003. They were one of only 13 winners selected from a field of 10,600 companies in 66 countries.

When asked about challenging issues facing distributors and repair stations today, Karen commented, "I'd have to

say it is the weakened state of the aviation industry as a whole. Most airlines are struggling financially and it is up to our industry, the supporting structure of aviation, to keep trying to figure out ways to provide better service for less cost. Credit risk is another issue resulting from the weakened condition of airlines. With continued high fuel prices and labor issues, this risk is not going to decrease any time soon."

Strategy has played a key role in positioning Pacific Aero Tech's so as to remain strong during the volatile economy. To offset the down cycles, Pacific Aero Tech has successfully grown their business in the past by focusing on the international market. Karen truly believes there is continued opportunity overseas. Naturally, they will continue to pay attention to the North American market too.

Much of Pacific Aero Tech's recent growth has resulted from the establish-

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Pacific Aero Tech

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ment of strategic partnerships with other companies, particularly OEMs. These relationships, some formal and some informal, have resulted in business they could not have otherwise obtained. According to Karen, "It's all a matter of being creative and trying to craft a package of services that will add value to customers. When done properly: everyone wins."

In addition to marketing and partnership strategies, Pacific Aero Tech has consistently invested profits in capital equipment over the past 10 years. The machinery also contributes to the quality and productivity of their successful operation. The result: prudent attention to growth, cash management, credit, capital investments and the balance sheet demonstrates that Pacific Aero Tech's conservative financial management will provide plenty of fortitude toward continuing their success.

Pacific Aero Tech, Inc. has been a member of the Aviation Suppliers Association since 1994. Karen Odegard is an active participant as a member of the ASA Board of Directors where she originally served from July 1995 through March 1999 and was re-elected again in August 2003. She also serves as the ASA Corporate Treasurer.

Mark your Calendar!

**ASA 2005
Annual Conference
June 26-28, 2004**

**Boca Raton Resort & Club
Boca Raton, FL**

**Visit ASA's website at:
www.aviationsuppliers.org**

PMA Guidance Open to Comment

The FAA's latest revisions to the Parts Manufacturer Approval (PMA) directive are out for public comment. The FAA provides guidance to its own personnel about how to process PMA applications in FAA Order 8110.42. Although this Order has no legal effect on the public, the fact that it lays out standards in specific detail, and that fact that FAA employees will generally refuse to grant a PMA application that does not follow the restrictions of 8110.42, means that this order carries a great deal of weight in the industry

On August 20, the FAA placed a copy of its revised draft order – currently known as 8110.42X – on the FAA's website in order to solicit public comment on the draft. When finalized, the final version will be known as Order 8110.42B.

The website states Sept. 10th, as deadline for comments, however this is being changed to the 24th according to FAA 8110.42B Revision team leader John Milewski. The website includes instructions on how to comment and where to send comments:

<http://www.faa.gov/certification/aircraft/DraftDoc/CommOrders.htm>

Don't forget! A limited number of binders containing the complete proceedings of the 2004 ASA Annual Conference are still available for just \$75 apiece. Contact ASA's Jeanne Meade at (202) 347-6898 for details.

Have you written your letter in support of the ASA 8130-3 Tag Petition for Rulemaking?

If not, then see page 91 of this issue for instructions!!

We need your help!

US Airways Files for Bankruptcy Protection

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complained that the \$295 million proposal was not necessary to the continued survival of US Airways. The union's master executive council voted NOT to put the proposal to a vote before the union membership – a move that effectively prevents the proposal from being accepted. This vote was deeply divided, and Union Chief Bill Pollock was one of those opposed to the ruling. Pollock said the pilots should have been permitted to vote on the proposal, despite the fact that he found it objectionable.

Pollock has issued a video for the union members last week telling them to expect bankruptcy. Pollock predicted that the union would be "at the mercy of the courts" if US Airways followed through on its threat to seek Chapter 11 protection.

Last week, Jack Stephan of the Air Line Pilots Association called Pollock's video a pessimistic analysis. Stephan said it was based on the analysis from the Union's financial advisers, who told the union's board last Monday that "it likely won't get any better" than the concessions deal rejected by the union's board, and that there is a "large likelihood that it could get worse" for the pilots in a second bankruptcy. Obviously, Pollock's analysis now seems more on target.

US Airways Transformation

US Airways has announced a plan – their "Transformation Plan" – in which a new, leaner US Airways will emerge from bankruptcy. The new US Airways will be built on lower costs, a simplified fare structure, and expanded service in the eastern U.S., Europe, the Caribbean and Latin America.

Not mentioned in the US Airways press releases, but key to their success, will

be significant cuts to the wages that the air carrier pays to its employees.

In light of this "Transformation Plan," it is clear that the management of US Airways would like the air carrier to continue as a viable enterprise. Whether they are successful, though, is still a question that needs to be answered.

Doing Business with US Airways

There are a number of different scenarios concerning debt, distributors and US Airways:

- A distributor who is owed unsecured debt from US Airways may be in trouble, now that US Airways has made good on its threats to file for bankruptcy. Virtually all of the airline's assets are pledged as collateral to secure government loan guarantees that formed the basis of its earlier restructuring.
- A distributor who owes money to US Airways, or who has a contractual obligation to US Airways, must honor those obligations. Where there are offsetting obligations, the distributor cannot always negotiate an offset (sometimes known as a 'contra'), although these sort of offsets can sometimes be negotiated with the bankruptcy trustee by a company with appropriate leverage.
- If US Airways owes you money, then the recent filing puts an end to litigation, collection actions, etc. Your debt will go into the bankruptcy court and may be wiped out entirely, depending on the needs of the estate.

- If US Airways has paid you within the 90 days preceding the bankruptcy filing, then this payment will generally be called back by the trustee as a 'preference.' A payment that was made within the 90 day window before the filing is presumed to be a preference, but a presumption is different than a proven fact. This means that it is possible to dispute the preference presumption, or to negotiate a settlement for a percentage of the alleged preference. Appropriate legal counsel may be necessary to take full advantage of the rules and opportunities.

You should consult a bankruptcy lawyer if you have a substantial financial interest that could be affected by US Airways' bankruptcy filing.

Emerging from their current troubled times may mean more than just achieving the \$800 million in pay cuts that US Airways was originally seeking. It will be difficult for US Airways to obtain financing. So there is no guarantee that US Airways will be successful in its restructuring.

While they are in restructuring, though, the bankruptcy trustee will do his (or her) best to make sure that new debts incurred after the filing are paid as an incentive to tempt companies to continue doing business with US Airways. Such debts are normally paid in the ordinary course of business.

You can follow the bankruptcy proceedings by reviewing the documents filed by the lawyers. You can follow this information by getting a Pacer account (Pacer is a system in which federal court filings are placed on-line – it is frequently used by lawyers in federal court). For more information, see <http://pacer.psc.uscourts.gov>.

ASA Petition to Make Export 8130-3 Tags Available to Distributors

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permit all exporters – including distributors – to apply for export airworthiness approvals for Class III parts. It would not change the standards that apply to the conditions under which the FAA will issue such export airworthiness approval – the tag-applicant would still need to demonstrate the airworthiness of the article (e.g. through documentation).

This article explains the history behind the export airworthiness approval tag, and the reasoning behind the ASA petition. At the end of the article, we explain how you can help by sending your letters of support to the government. If your customers are demanding 8130-3 tags with your exports, then YOU need this regulatory change – so please take a few moments to draft a letter of support and to file it with the government, in order to secure your right to obtain 8130-3 tags for your exports.

The Problem

Aviation parts distributors in the United States have been prevented from selling certain aircraft parts overseas because they are unable to obtain export airworthiness approvals for Class III products. Although not a legal requirement for export, these documents have become de facto export requirements because of FAA promotion of the 8130-3 as an airworthiness document, including the FAA's actions in signing bilateral airworthiness safety agreements in which the United States pledges to provide such documentation to our foreign trading partners. This petition for rulemaking asks the FAA to provide the foundational support for the promises it has made in its bilateral agreements, by making export airworthiness documentation available to exporters of demonstrably airworthy

parts.

Under the current restrictive regulations, domestic sellers are unable to sell to customers outside the U.S. the very same airworthy parts they sell to domestic customers. The Bilateral Aviation Safety Agreements the United States has concluded with its principal trading partners require U.S. exporters of Class III products, such as aircraft parts, to provide an FAA Form 8130-3 as the export airworthiness approval for every such product they export. Yet under current FAA regulations, only *manufacturers* may obtain an export airworthiness approval for Class III products. There is no regulatory mechanism by which distributors can obtain an 8130-3 tag for use as an export airworthiness approval for aviation parts.

Until recently, distributors were able to work around this legal and regulatory conundrum because they were able, under certain circumstances, to obtain 8130-3 tags for domestic transactions, and foreign airworthiness authorities were often willing to accept these “domestic” 8130-3 tags as being equivalent to export airworthiness approvals. Recent revisions to FAA guidance, however, now require that all 8130-3 tags issued for parts held by distributors bear the notation “for domestic shipment only.” Some foreign airworthiness authorities are understandably reticent to accept an 8130-3 tag endorsed in this manner as a substitute for an export airworthiness approval. Distributors are thus barred from further international sales of aviation parts, and face severe economic consequences as a result.

History

Export airworthiness approvals were originally conceived as a means to fa-

cilitate United States commerce in aviation products. In 1963, the FAA published a Notice of Proposed Rulemaking proposing new rules and procedures for governing the issuance of export certificates of airworthiness and other export airworthiness approvals. *NPRM: Export Airworthiness Approval Procedures*, 28 Fed. Reg. 3728 (Feb. 17, 1963). The original proposal provided for the issuance of Export Certificates of Airworthiness for Class I products (aircraft, engines and propellers) and Airworthiness Approval Tags for Class II products (major assemblies and TSOA articles). Class III products were not to be eligible for export airworthiness approvals “because of the nature of these products.” The preamble to the NPRM explained:

In lieu of such an approval for Class III products, exporters may use a certified statement, packing sheet, invoice, or bill of lading containing information required by the particular country. This exporter's certificate is acceptable in many foreign countries.

The final rule, published in 1965, modified this approach. One manufacturer responded during the comment period that it could foresee a need in the future for airworthiness approval documents for class III parts. As a consequence of this one manufacturer's comments, the new 14 C.F.R. § 21.323(b) provided for the issuance of an export airworthiness approval for a Class III product to any manufacturer where that manufacturer holds a production approval for the Class III product in question and has in its employ a designated representative of the FAA Administrator authorized to issue that approval. The approval was to be issued in the form of an Airworthiness Approval Tag, the same form used for Class II products. *Final Rule: Export*
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ASA Petition Would Make Export Tags Available to Distributors

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Airworthiness Approval Procedures, 30 Fed. Reg. 8464, 8465 (July 2, 1965). There was no additional text belying the previous premise – that most importing countries would not ask exporters to provide separate airworthiness approval documentation for class III products. The rule remains unchanged today.

Purpose of the Existing Rule

The existing rule in Subpart L was originally proposed in order to implement the reciprocal agreements in place at the time between the United States and a number of foreign countries governing the import and export of aeronautical products. These agreements provided in particular for the mutual validation or acceptance of export certificates of airworthiness issued for aeronautical products that are manufactured in and meet the airworthiness requirements of the country of export and any special requirements of the importing country.

Many of the bilateral agreements between the United States and its principal trading partners have been updated by the conclusion of Bilateral Aviation Safety Agreements (BASAs). To date, the United States has concluded BASAs with Canada, France, Germany, Israel, Italy, Malaysia, the Netherlands, New Zealand, Romania, Russia, Sweden, and the United Kingdom. The United States plans to conclude a BASA with the European Community in the next several years that will encompass over 25 European countries. The Implementation Procedures for Airworthiness (IPA) portion of each BASA specifically requires the use of the FAA Form 8130-3, Airworthiness Approval Tag, as the export airworthiness approval that must accompany any Class III product exported from the United States. The language of the

BASA between the United States and France (which is similar to the language of the other country's agreements) is illustrative:

3.2.1.3 New JTSO/QAC Parts and Appliances. Each new part or appliance exported to France with an FAA airworthiness approval will have an FAA Form 8130-3, *Airworthiness Approval Tag*.

3.2.1.5 New Parts, Including Modification and/or Replacement Parts. Each new part exported to France with an FAA airworthiness approval will have an FAA Form 8130-3, *Airworthiness Approval Tag*.

In concluding these agreements, the United States promised its BASA trading partners that U.S. exporters of Class III products would provide an 8130-3 tag to attest to the airworthiness of the product. The national airworthiness authorities of BASA countries would thereafter require the form as a condition of import into their countries of Class III products. The 8130-3 tag thereby became a *de jure* requirement for the export of Class III products from the United States in many instances.

In the years since Subpart L was originally published, the aviation industry has evolved considerably. Recent decades have seen the rise of a robust aftermarket in new and used aviation parts and the concomitant rise of aviation parts distributors as significant participants in that market. Almost all purchasers of aftermarket parts, however, demand documentation confirming the airworthiness of the parts they are buying. In recent years, the 8130-3 tag has become the most widely recognized and frequently requested airwor-

thiness approval document in the U.S. market.

Distributors may obtain domestic 8130-3 tags for parts in their inventory that do not already have one (a not uncommon occurrence because many manufacturers do not issue 8130-3 tags for new parts they produce). They may only do this under carefully defined circumstances. The current policy, as set forth in 2001 in FAA Notice 8130.70 (extended the following year in FAA Notice 8130.71, and committed to permanent guidance in 8130.21C change 2, appendix 3), authorizes Designated Airworthiness Representatives (DARs) to issue 8130-3 tags for parts held by a distributor as long as two conditions are met. First, the products or parts involved must have positive traceability to a production approval holder via acceptable documentation or part markings. Second, the distributor must be accredited under the FAA's Voluntary Industry Distributor Accreditation Program described in FAA Advisory Circular (AC) 00-56.

The importance of this policy for distributors can scarcely be overstated. An ASA survey of distributors conducted in 2002 found that fully 50% of the parts currently held by accredited distributors did not have an airworthiness approval tag of any kind. Most of these parts bear a packing slip, a SPEC 106 tag, or some form of part or material certification. The total value of this inventory is enormous. Individual distributors reported holdings of anywhere from \$500,000 to \$90 million in parts and products without 8130-3 airworthiness approval tags – the value of the entire affected inventory could range in the billions. Distributors have actively sought to remedy this traceability failure by obtaining domestic 8130-3 tags at their own cost.

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ASA Petition Maintains Airworthiness Standards for 8130-3 Tags

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The 8130-3 tags issued in this manner were intended to facilitate *domestic* transactions; under 14 C.F.R. § 21.323(b), distributors were not eligible to obtain an 8130-3 tag as an export airworthiness approval. Nevertheless, nothing on the 8130-3 tag itself in any way limited the DAR's airworthiness finding to domestic uses. As a result, distributors were often able to export Class III products to BASA countries. The foreign airworthiness authorities involved were generally willing to accept these products because they were accompanied by 8130-3 tags confirming airworthiness. The tags contain all of the information required by the importing authorities. Few, if any, BASA countries impose any unique special requirements on Class III products (aside from those already agreed-upon in the BASA IPAs). Over time, this came to constitute a substantial volume of business for distributors.

The policy authorizing DARs to issue 8130-3 tags for distributors was due to

lapse in June 2003, when FAA Notice 8130.71 expired. In recognition of the importance of this policy to distributors, the FAA agreed to make the policy permanent by incorporating it into the upcoming "D" revision to Order 8130-21. In the interim, the FAA published Change 2 to Order 8130.21C, which incorporated the 8130.70 / 8130.71 DAR policy as Appendix 3. In so doing, however, the FAA modified the language of Notices 8130.70 and 8130.71 in a way that made it impossible for distributors to export Class III parts. Change 2 requires DARs to put the words "For Domestic Shipments Only" into block 13 of every 8130-3 tag issued for parts held by an accredited distributor.

The change had an immediate effect. A number of ASA members have reported that the addition of this statement on the 8130-3 tag has led foreign airworthiness authorities to reject shipments of Class III products from distributors. Distributors have found it far more difficult to convince foreign air-

worthiness authorities to accept 8130-3 tags that are clearly limited by their own terms to domestic use. The result is that some distributors' exports of Class III products have been impeded since June 2003, and more and more are being impeded as more foreign customers realize what the current bilateral agreements require.

The Solution

This situation can be resolved by bringing the eligibility requirements for obtaining export airworthiness approvals for Class III products into line with the corresponding requirements for Class I and II products: that is, by making all exporters eligible to obtain export airworthiness approvals for Class III products upon a demonstration of airworthiness (including manufacture under a FAA-PAH system) and compliance with any special requirements of the importing country. This simple change would allow distributors that are able to meet FAA requirements for obtaining 8130-3 tags domestically to sell aircraft parts to customers outside the United States as well. In doing so, it would do more than restore the international competitiveness of an important and vibrant segment of the aviation industry – it would once again place the United States in a leadership role in promoting international airworthiness standards, by providing a uniform level of airworthiness assurance to the global aviation community.

The assumptions that underlay the original distinction in eligibility requirements no longer apply in today's commercial environment. Moreover, existing safeguards surrounding the issue of 8130-3 tags for parts held by distributors would ensure that this change entails no adverse effect on safety.

How Can You Help Make Export 8130-3 Tags Available to All Distributors?

First Step: Write to the FAA Docket Office now and ask them to open up a docket for comments on the "August 26, 2004 ASA Proposed Rule for Export Airworthiness Approvals." If you have a story to tell in support of the rule that is great, but if you just write a one-line letter asking them to open up a docket then that is enough.

Mail your letters to: DOT Docket Office, 400 7th Street, SW, PL-401, Washington, DC 20590

Please send a copy of your letter to ASA, 734 15th Street, NW, Suite 620, Washington, DC 20005 — we will make sure copies of your letter go to FAA decision makers.

Read The Update Report next month for a report on our progress, and for our "Second Step" in this fight.

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Back issues of the Update Report are now on-line! Missing a prior issue? Issues of the Update Report are being added to the ASA web site shortly after they are published.

UPCOMING EVENTS * = Look for ASA Personnel on the speaking program or on the Trade Floor.
(For additional information on each event, click on the appropriate link below.)

2004

- 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.
- Nov 7- 9** * **MARPA Annual Conference**, Phoenix, AZ. See <http://www.pmamarpa.com>
- Nov. 30** * **ASA Regulatory Workshop**, Ft. Lauderdale/Miami, FL. See <http://www.aviationsuppliers.org> for details.
- Dec. 2** * **ASA Regulatory Workshop**, Newark, NJ. See <http://www.aviationsuppliers.org> for details.
- Dec. 7** * **ASA Regulatory Workshop**, Seattle, WA. See <http://www.aviationsuppliers.org> for details.
- Dec. 9** * **ASA Regulatory Workshop**, Los Angeles Area, CA. See <http://www.aviationsuppliers.org> for details.

2005

- June 26-28** * **ASA Annual Conference**, Boca Raton Resort & Club, Boca Raton, FL
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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