Manufacturing Distributors Distributors Maintenance Operations Distributors

The Update Report

The Airline Suppliers Association

Volume 9, Issue 6 June 2001

REGULATORY UPDATE

DARs May Sign Domestic 8130-3 Tags

The FAA has released advisory guidance permitting both maintenance DARs and manufacturing DARs to sign 8130-3 tags to reflect domestic airworthiness of a part held in the inventory of a distributor.

This issue began in September of 1999, when the FAA issued an internal memorandum prohibiting designees from issuing 8130-3 tags to indicate domestic airworthiness of parts held in the inventory of a distributor. Although the industry is not constrained by an internal memorandum, FAA designees are required to comply with such internal guidance. This memorandum ended a practice that had become well-entrenched in the existing FAA guidance. Many FAA documents permitted issuance of domestic 8130-3 tags and the FAA did not eliminate these documents.

ASA immediately set out on a year-and-a-half long mission to once again obtain permission for DARs to issue 8130-3 tags for parts held by distributors in the United States. ASA's arguments in favor of this practice were that:

1) If a DAR could find that a part meets US airworthiness standards for an export, then the DAR could make the same finding;
2) DARs had already performed this task without problems; and
3) The FAA itself had promoted the use of the 8130-3 tag as a domestic airworthiness tag, and failure to make the tag available to the distribution community undercut the FAA's own policies supporting documentation.

The FAA saw the logic in these arguments, and promised in April of 2000 to remedy the situation. Thus began the long process of writing guidance and processing it through the appropriate offices. Although the wheels of the US government move slowly, they do move forward. The new guidance was issued on June 15, 2001.

The new guidance imposes one important limit on this privilege. Only accredited distributors are eligible for this DAR service. ASA had argued in favor of all distributors who could demonstrate airworthiness being eligible for the privileges, but FAA management expressed discomfort with facilities that were not able to demonstrate an "FAA-acceptable" system.

Distributors still remain responsible for providing the DAR with proof that the part was manufactured by a FAA production approval holder (demonstration of initial airworthiness). The DAR will review the documentation, part markings, or other proof, and will also confirm that the part has not been subject to damage or degradation since leaving the production approval holder's facility (demonstration of current status) .

Notice 8130.70 is available on the internet at http://www.faa.gov/avr/air/air200/N8130-70.pdf

Inside this Issue:

Congratulations to:

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Keep watching http://www.airlinesuppliers.com for the ever-growing list of AC 00-56 accredited distributors

ASA AIRLINE SUPPLIERS ASSOCIATION

A Message from ASA's President

As announced in the April Update Report, Nick Sabatini has replaced Nick Lacey as the Director of Flight Standard Services. The change has been highly touted as a positive move by the FAA.

Nick Sabatini has a reputation for getting things done. He is well respected by his peers. While the industry notices problems in FAA policy, the FAA has bigger internal concerns with employee moral. The announcement of Nick Sabatini has elicited a positive reaction from FAA employees. The employees seem eager to have a new leader with a clear direction.

One of his first changes is appointing a new manager for the Continuous Airworthiness and Maintenance Division (AFS 300). Jim Ballough is replacing the current manager Angela Elgee. Jim worked with Nick Sabatini in the Eastern Regional Office. Angela will be returning to the Alaska Regional Office. There has been a steady flow of new managers in AFS 300; hopefully Jim's tenure will be longer than his recent predecessors' terms.

Carol Giles, the assistant division manager of the Continuous Airworthiness Maintenance Division is taking a one-year assignment with the National Transportation Safety Board. There has been no announcement as to who will be the acting assistant division manager in her absence. Carol is an asset to the FAA so her one-year assignment will be a loss. We hope that loss is offset by the positive effect she has on the dialogue between the NTSB and FAA on safety issues.

Gary Ramage has retired. Gary was an outside contractor that worked closely with the Continuous Airworthiness Maintenance Division. Most recently, he worked on editing and processing the draft Direct Ship Authority Advisory Circular that was prepared by ASA and the SUPs Industry Task Group (it provides assistance for those who receive such parts). His assistance in that project was invaluable. Gary was a consummate professional. His guidance on helicopter and maintenance issues will be missed.

Dick Nowak, Aviation Safety Inspector has retired. He was the FAA point-person for AC 00-56, Voluntary Industry Accreditation Program and was responsible for the rewrite of part 145. The new contact for the AC is Al Michaels—a recipient of the Edward J. Glueckler Award for outstanding service to the aviation distribution industry. Al will be at ASA's annual conference again this year.

We expect more changes at the FAA, and we'll keep you informed.

The conference is only a few weeks away, don't forget to send in your registration form!

See you there!

Michele Schweitzer

The Update Report
is a monthly newsletter of the Airline Suppliers Association. Questions/ comments should be addressed to:

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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 Airline 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.

The Update Report
For information on special package rates for advertising, contact the Association at (202) 730-0270.

Your Rights in Inventory: New Secured Transaction Laws

This is part three of a series on the new laws concerning secured transactions.

The April **Update Report** described how states across the country are in the process of revising the laws that govern commercial transactions involving "secured transactions." Last month's article described changes in these rules affecting consignments.

This month's article discusses additional technical changes that could affect a company's security interests. This article continues to focus on rules concerning security interests in "tangible collateral," such as business inventory and equipment.

The new laws establish rules governing the transition from the old system to the new. Secured parties will need to confirm that the security interests they perfected by filing under the old rules, will remain "perfected" under the new filing requirements.

New Filing Requirements

The new rules require the use of the UCC-1 form. The UCC-1 is a standard form for financing statements for most types of collateral. It was previously optional, although most companies used it for their financing statements. Use of the form becomes mandatory with the changes to laws.

An important change for some will be the change in the location for filing UCC-1 statements. Under the old rules, financing statements perfecting an interest in "tangible collateral," such as inventory and equipment, had to be filed in the state where the collateral was located. This used to require filing in multiple states when the debtor had inventory or equipment in more than one state, and in the case of movable items, often led to lenders imposing burdensome notification requirements on debtors whenever the debtor moved the collateral item across state lines.

The new rules simplify this process. Lenders perfect their security interests by filing in the state where the debtor is located, regardless of the type of collateral. The new rules also require "central," or state-level, filing for most types of collateral, eliminating the dual state- and county-level filing requirements in some states. The debtor's location is considered the state of residence for an individual debtor, or, in the case of an unincorporated business, the state where the chief executive office is located.

If the debtor is a corporation, limited liability corporation or limited partnership, then the debtor is considered a "registered organization." Registered organizations are considered to be located in the state where they were *organized*. Thus, a financing statement for collateral held by a company that was incorporated in Delaware would be filed in Delaware, regardless of where the company, its headquarters, or its property are actually located. This can require some careful homework for creditors to assure that they have properly identified the true state of organization. When a distributor wishes to retain a security interest in inventory sold on credit, the distributor will be responsible for properly identifying the buyer's true state of incorporation for filing purposes!

Parties must exercise care when filling out the financing statement. The new rules place the burden on the secured party to ensure that the debtor's exact, full, legal name is accurately represented on the form. Failing to do so can mean the financing statement could be considered "seriously misleading" and could render it invalid. The description of collateral in a financing statement must also be more precise in many cases – be sure to check local state law before filing.

Secured parties also have an enhanced duty to "clear the books" by filing a termination statement once the financing statement terminates, usually after five years, unless renewed. Secured parties who fail to do so under the new rules can be fined. The new rules also allow debtors, for the first time, to file a termination statement when the secured party fails to do so.

Signature Requirements

The new secured transaction laws are now "medium neutral," meaning they apply to documents or records in either paper or electronic format. Both parties are required to sign or otherwise authenticate the security agreement, but once they have done so, the new rules no longer require that the debtor sign the financing statement filed with the state. The secured party also has the option of filing the financing statement electronically, if local filing rules permit.

Transition Issues

Security interests that were perfected under current laws will continue to be valid for one year following the effective date of the new laws – in most cases, until July 1, 2002. After that date, security interests will only be perfected if they comply with the new rules, notably the new requirements concerning where financing statements must be filed. Secured parties who have security interests that are likely to last beyond this transition period should review their financing statements and/or consult with local counsel to ensure that do not lose their rights to existing collateral.

New Hazardous Materials Regulations Proposed

The Department of Transportation has proposed revised regulations that are designed to make it much more clear when hazardous materials transportation regulations apply, and when they do not apply.

Many of these proposals would represent beneficial interpretive changes to the regulations. For example, the proposed regulations would better indicate the scope of the regulatory authority exercised by the United States government. One good exmple of the changes is found in the description of what sort of transportation is included in the definition of "commerce" that limits the scope of the government's regulatory jurisdication.

ASA has taught in its HazMat course that motor vehicle movements of a hazardous material within a contiguous facility boundary, where public access is restricted, is generally not considered to fall within the scope of the regulations. On the other hand, if that movement crosses a public road, then it falls within the scope of regulated movements. This has been based on court interpretations of the Commerce Clause of the Constitution.

The proposed regulations would state these rules explicitly, to make it clear to the public when a transport is regulated, and when it is outside the scope of regulation. The public would no longer be required to infer the jurisdictional scope from existing case law – the regulations would neatly summarize the conclusions drawn by the courts.

The proposed regulations would also make it clear that transportation of a hazardous material by an individual in a private motor vehicle on a public road is usually considered in commerce (and therefore regulated) but transportation for non-commercial purposes (such as personal use) under those circumstances would not be covered by the regulations. This is an important distinction, because the commerce clause could be interpreted to cover all transportation using "instrumentalities of commerce" (like public roads). This is also important because sometimes ASA members use their own vehicles to transport AOG material to the customer. If that AOG part represents a hazardous material, then it is likely to be considered a commercial-purpose transport that is subject to the hazardous materials transportation rules. Be careful if you are driving a part with residual hazmat inside because it must comply with the regulations!

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Proposed Hazmat Definitions

These are just two of the many new definitions that are being proposed for inclusion in the hazardous materials regulations. These two are noted because they have the potential to make subtle changes in the legal landscape that could put distributors of aircraft parts at a disadvantage.

Commerce means trade or transportation in the jurisdiction of the United States between a place in a state and a place outside of the state; or that affects trade or transportation between a place in a state and place outside of the state.

Consignee means the person or place shown on a shipping document, package marking, or other media as the location to which a carrier is directed to transport a hazardous material.

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Proposed in 66 Federal Register 32419 (June 14 2001).

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Making appropriate guidance explicit to the public who reads the regulations may be more important than some people think! ASA has already encountered discrepancies in interpretation, particularly among people who do not spend a great deal of time interpreting hazmat regulations, like FAA inspectors. The improved explanations may eliminate some of the problems that some ASA members have had in the past with over-zealous regulators.

While the bulk of the regulatory proposal is beneficial, there are two proposals that may actually serve to impede effective regulation of hazardous materials. They are both proposed definitions: "commerce," and "consignee."

The definition of "commerce" is a very traditional one. In fact, it is so traditional that it fails to include some of the transactions that modern jurisprudence has included within the scope of the Constitutional Commerce Clause (it would set the United States back almost seventy years in its approach to what the government can regulate). In particular, the definition of "commerce" fails to include some transactions using instrumentalities of interstate commerce. It would impose on the government the obligation to demonstrate that something "affects trade or transportation between a place in a state and place outside of the state." This could be tough to demonstrate in the case of a hazmat shipment that uses state roads and that does not have an actual affect on interstate trade or transportation.

This is tough for distributors. Sometimes, the only way a distributor knows what is in a container is to review the paperwork and examine the contents. Although identification strategies are becoming more sophisticated, distributors frequently rely on the incoming documentation to help identify hazardous materials.

Where hazmat is contained in a component (or is an integral part of the component), it can be possible for a distributor to miss the hazmat nature of the component, if the paperwork does not indicate that a shipment contains hazmat, and a visual inspection would not provide any clues to an unsuspecting distributor. Ignorance of the nature of the part, though, is no excuse in court when the distributor is accused of violating the hazmat transportation rules.

Distributors will be much more likely to identify a hazmat article as hazardous if the original shipper remains responsible for proper identification of the hazards. For that reason, it is

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AIRWORTHINESS UPDATE

Water Boiler, Coffee Maker, and Beverage Maker AD

The FAA has adopted a new airworthiness directive (AD) that is applicable to certain "Britax Sell Gmbh & Co. OHG" water boilers, coffee makers, and beverage makers. The AD requires owner/operators to inspect wire terminals on temperature limiters and replace wires if the inspection reveals that the terminal insulation is discolored or melted.

Although this AD does not directly affect distributors, many distributors may wish to take action as a customer service. Distributors with these parts in their inventory may wish to either have a repair station perform the inspection, or may wish to attach an appropriate notice concerning the applicable AD for the benefit of the customer.

The FAA has published a partial list of aircraft on which these components are installed: Airbus A319, A320, A330, AVRO RJ, Boeing 717, 737, 747, 757, 767, 777, and Bombardier RJs. This is a partial list only!

Because the AD is not published with a complete reference to type, and because these components may not be identified to a particular type upon receipt, this is an AD that could be missed by distributors handling these components. Distributors with galley parts of these sort in inventory should review the entire AD, which provides a complete reference by part number to the affected articles. The complete citation is 66 Federal Register 29467 (May 31, 2001).

REGULATORY UPDATE

HazMat Reg Changes Could Affect Distributors

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important to make sure that everyone who uses some instrumentality of commerce is subject to the same legal requirements for hazmat identification. ASA plans to suggest to the Department of Commerce that it either drop this definition or expand it to include all aspects of commerce currently regulated by the United States government.

The other definition that is somewhat troublesome is that of the term "consignee." In the proposed definition, the consignee would be anyone whose name and address is shown as the package as a destination.

The regulations require that either the consignor or the consignee be specified in the hazmat marking. Currently, those regulations anticipate that the consignee is the party to whom the hazmat is meant to be delivered.

By defining "consignee" to include any destination shown on the package (including an improper destination), the Department of Transportation makes it possible for an unscrupulous company to send unwanted hazmat to a company that is not prepared to accept hazmat. This is dangerous for the company that receives the hazmat, because that company could inadvertently release it or otherwise expose persons or property to harm in the course of the handling. It is also unfair to the unexpected consignee, because the sender would be permitted to provide no return address. More importantly, though, it is dangerous to the entire system, as it would eliminate the regulatory condemnation inherent in placing the name of a recipient who does not expect to receive hazardous materials, and would redefine such persons as consignees.

Two of the proposed changes could actually decrease safety, and leave distributors in the position of being vulnerable to those decreases

Taken as a whole, the hazmat regulatory proposals reflect an important step in making a good body of regulations even better. ASA is hopeful that we can influence the government to make small modifications in the proposals that stand to cause more harm than good.

ASA members wishing to review and comment on the proposed regulations can find them at 66 Federal Register 32419 (June 14 2001). Comments are due to the government by October 12, 2001. Please feel free to contact the Association if you identify additional aspects of the rule that could adversely affect distributors.

Don't forget that ASA Hazmat Training is available on the United States West Coast in August, in Chicago in September, and will return to the East Coast (including Florida) early in 2002. This course addresses the elements of the Federal Regulations that you need to know, and explains how the Federal Regulations interact with the ICAO Technical Instructions and the IATA Dangerous Goods Regs.

REGULATORY UPDATE

Committee to Analyze Whether Foreign Repair is OK

If you do business with repair stations, then a new Washington, DC Committee could affect your business.

The committee's work could affect distributors who send parts to repair stations for repair or overhaul, and it could also affect distributors whose businesses include repair stations (about 25% of ASA's membership).

The Congressionally-created Aviation Repair and Maintenance Advisory Committee (ARMAC) met in Washington, DC for the first time on June 12. The Committee was formed to address a variety of issues concerning foreign and domestic maintenance facilities (including repair stations and air carrier facilities):

- Use and oversight of maintenance facilities
- Amount and type of work performed by repair stations
- FAA staffing needs for proper oversight
- Balance of trade issues
- Safety issues

One of the primary motivating issues underlying the creation of this Committee was a lingering question concerning work performed by non-U.S. repair stations. Prior to 1988, non-U. S. repair stations were only permitted to work on U.S.-registered aircraft that were flown wholly or partly outside the United States. This precluded these repair stations from competing for maintenance business on U. S.-registered aircraft flown in the United States.

In 1988 the Federal Aviation Regulations began to permit foreign repair stations to work on the same range of products as similarly rated and qualified domestic repair stations. Among other changes, the change in the regulations permitted increased component maintenance by foreign repair stations on United States components. The U.S. Department of Commerce indicated that this was a necessary change to prevent our European trading partners from imposing limits on the use of United States facilities for maintenance of European-registered aircraft. The result has been an exchange of maintenance business that reflects a positive balance of trade for the United States, and that reflects satisfied customers on both sides of the ocean.

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ARMAC Studies Repair Stations

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The net effect of this arrangement has also been that some maintenance on U.S.-registered aircraft has been perfomed overseas (the United States maintains a 3-1 positive trade ratio, though). This has lead some among the Organized Labor Community to oppose regulations that permit aircraft and components to be maintained outside the United States by FAA-certificated foreign repair stations. Organized Labor has also claimed that there are safety problems with foreign repair stations. ARMAC was created, in part, to allow Organized Labor to substantiate these claims.

The current regulations allows distributors to hire FAA-certificated repair stations all over the world to perform component-level maintenance on a wide range of aircraft parts from their inventories. Under the prior regulations, distributors would be limited (and possibly precluded) in their use of non-U.S. repair stations for overhaul and repair of parts. Because foreign facilities are sometimes better situated to perform the work, it is in the best interests of the distribution community to assure that non-U.S. repair stations continue to perform maintenance under their FAA foreign repair station licenses. It is also in the best interests of distributors for FAA oversight of such facilities to continue to assure the highest levels of safety in their maintenance work (some foreign repair stations are known to perform maintenance of a quality that far exceeds the average maintenance quality in the United States).

ARMAC will analyze safety issues that could arise due to differences between domestic and foreign repair stations, and will also collect information about trade and financial issues to assist the FAA in determining whether an equivalent level of safety may be assured.

The Committee will report its findings to the Secretary of Transportation. Under the law that created this Committee, it expires at the end of the 2001 calendar year. Because the process for forming the Committee was more protracted than Congress originally expected, the Committee expects to request an extension to permit itself greater time to collect data and develop advice and conclusions.

ASA Annual Meeting

The 2001 Annual Meeting of the Members of the Airline Suppliers Association will be held in conjunction with the ASA Annual Conference. This is the customary practice for the Association.

The Association's annual meeting of the membership will be held at The Breakers Hotel in West Palm Beach, FL on Tuesday, June 10, 2001 at 7:30 a.m. It will be a breakfast meeting.

The Association shall provide the members with a briefing on the Association activities, and the Association also expects to place issues before the membership for voting. Details on such issues shall be made available to the membership.

If you have any other questions, please call ASA at (202) 730-0270.

INTERNATIONAL UPDATE

Part 129 Parts

The April issue of The Update Report featured an article providing basic background information on Part 129 air carriers. The April article represented part one of a series discussing traceability to Part 129 air carriers – what it means and when it may be appropriate for a variety of different circumstances.

This month's article briefly addresses the maintenance standards commonly used by non-US air carriers. This month's analysis will provide the foundation necessary to begin analyzing the actual traceability in next month's installment of this series.

Foreign Operators in the US

A non-U.S. air carrier wishing to obtain permission to engage in regular operations into the United States needs to obtain a US "Part 129" operating certificate from the FAA.

A foreign air carrier's fleet may be made up of aircraft that are registered in a variety of countries. It is not unusual to see aircraft from a foreign air carrier's fleet with "N" numbers on their rear fuselage. A registry number that starts with "N" indicates United States registry. Other countries identify their registries with other characters, like "G" for the United Kingdom, "HS" for Thailand and "C6" for the Bahamas.

Six of the thirty 747s operated by Saudi Arabian Airlines bear US registry. N-numbered aircraft in foreign fleets may be registered in the United States by a leasing company that owns the aircraft, or the air carrier may own the aircraft and may have chosen to register the aircraft in the United States for economic or other strategic reasons.

Maintenance Jurisdiction

One of the basic tenets of international aviation law is that a country retains jurisdiction and responsibility over the maintenance performed on aircraft that are registered under that country's aircraft registry. The United States, for example, has jurisdiction over maintenance performed on aircraft of United States registry, but not over maintenance performed on aircraft registered in other countries (the country of registry has this oversight duty). Thus, when a foreign air carrier leases US-registered aircraft for operation in its fleet, those aircraft are remain subject to US jurisdiction over the maintenance.

Like all laws, there are exceptions to these basic principles. There is a provision of international law that permits nations to agree to transfer such oversight. This provision is attracting increased attention in the international aviation law community, and it is likely that in the coming decade there will be increased attention paid to the transfer of maintenance responsibilities among nations.

One of the requirements to acquire Part 129 certification in the United States is that the applicant must demonstrate that it has a maintenance system that is *acceptable* to the FAA for any US-registered aircraft in the operator's fleet.

Acceptable to the FAA

What sort of maintenance system is acceptable to the FAA? The FAA has stated that a foreign air carrier that is required to have an acceptable maintenance system must have a system that meets the recommendations of the International Civil Aviation Organization [ICAO]. ICAO is a part of the United Nations. ICAO helps to negotiate treaties concerning aviation. ICAO also develops and publishes instructions to help countries comply with these treaties.

The Convention on International Civil Aviation [Convention] is a multilateral treaty concerning aviation safety. Annex 6 to that treaty includes provisions for oversight of air carriers, including specific maintenance oversight requirements. A review of these provisions shows that they are similar to the United States domestic requirements for maintenance.

ICAO Oversight

ICAO performs periodic auditing of government oversight systems to determine whether they remain in full compliance with the requirements of the Convention. Because of ICAO's continuous involvement in this process, the FAA refers to foreign air carrier as ICAO-compliant. This really means that they have a maintenance program that complies with the requirements of the Convention. Such maintenance programs are considered acceptable to the FAA.

No US Jurisdiction

Where an air carrier has no US-registered aircraft in its fleet, the United States has no jurisdiction over the maintenance of that fleet. Nonetheless, if a country has signed the Convention and is in full compliance, then its air carriers will be compelled to meet the requirements of the Convention. Such compliance has already been described as acceptable to the United States for a Part 129 carrier.

Conclusion

Foreign air carriers who come from regulatory systems that meet the ICAO Category One (full compliance) requirements are basically FAA-acceptable, although the specific maintenance they perform may not be acceptable for Part 43 compliance. This means that their aircraft are acceptable to fly into the United States. In practice, this commonality has been sufficient to permit parts pooling among air carriers of various nations, and has also served as the foundation for bilateral agreements. Next month, we will analyze what these similarities mean for US distributors accepting parts from foreign air carriers

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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 about one month after they are published. Complete sets of volumes six through eight are now on-line!

UPCOMING EVENTS

**** = Schweitzer, Lewis or Dickstein will be speaking there***

July 8-10	*** Airline Suppliers Association Annual Conference**, The Breakers, Palm Beach, FL. Call ASA at (202) 730-0270 for more information, or send email to conference@airlinesuppliers.com.
Aug. 20-21	*** ASA Hazmat Training**, Los Angeles, CA. Embassy Suites, Arcadia, CA. See Page 34 for details.
Aug. 22-23	*** ASA Hazmat Training**, Seattle, WA. Hosted by Avolo! See Page 34 for details.
Sept. 8-11	*** Air Carrier Purchasing Conference**, New Orleans, LA. Details at http://www.acpc.org
Sept. 13-14	*** ASA Hazmat Training**, Chicago, IL. Hosted by Airliance! See Page 34 for details.
Sept. 18-20	**Aviation Indus. Suppliers Conf. (AISCE)**, Hotel Palladia, Toulouse, France. Call (310) 203-9603.
October 3-5	**Cargo Facts 2001**, Seattle, WA. Contact Kristy Koch at (206) 587-6537 or e-mail kkoch@cargofacts.com
Nov. 7-9	**Regional & Corporate Aviation Indus. Suppliers Conf.**, Rancho Mirage, CA. Call (310) 203-9603.

Don't forget to register for the 2001 ASA Annual Conference at the Breakers in Palm Beach, Florida. It will be held July 8-10, 2001. Registration materials are available on the ASA Website, or call (202) 730-0270. Make Hotel Reservations at the Breakers by calling 888-273-2537. The ASA Conference Attendee Room Rate at the Breakers is $130+tax/night.

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