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The UPDATE Report

CONGRATULATIONS TO THE FOLLOWING COMPANIES ON THEIR ACCREDITATION:

Skytower Aviation Services, Inc.
Fountain Valley, CA

B&V Aircraft Parts & Supply
Hawthorne, CA

SAS Aviation, Ltd.
Istanbul, Turkey

Global Parts, Inc.
Augusta, KS

• AND •

AOP Corporation
Houston, TX

Turbine Support Services
Windsor, CT

Essex Aero Service, LLC
East Hartford, CT

Turbine Kinetics
Glastonbury, CT

Airline Management Support, Ltd.
Lagos, Nigeria

Cornerstone International Aviation
Chicago, IL

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FAA Releases New Manufacturing Rule, With Likely Effects on Distributors

The FAA has released the new Part 21 manufacturing rule which has been in the works since the early 1990s.

There are a number of new regulatory hurdles imposed by this rule which could have an effect on ASA members. This article provides a brief description of only a few parts of the new rule. The complete rule is available online, with links from the ASA website, as well as in the October 16, 2009 Federal Register.

The new rule goes into effect April 14, 2010. The FAA has already begun to release advisory guidance, including an advisory circular that specifically addresses transition to the new rules. Another Advisory Circular that has been released provides public guidance on how to obtain export airworthiness approvals under the new regulations. More advisory guidance, including a major revision to Order 8130.21 (instructions for the 8130-3 tag) is expected soon.

There will be further discussion of this rule, and how it could affect distributors, during the upcoming ASA Workshops. See our website for more information on the workshop series.

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ASA
AVIATION SUPPLIERS ASSOCIATION

INSIDE:

MESSAGE FROM ASA'S PRESIDENT

THE UPDATE REPORT

is the newsletter of the Aviation Suppliers Association.

OUR COMMITMENT

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

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

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Dear Colleagues,

As you can tell from the top story, the FAA has released changes to Part 21 and other impacted regulations. The project was started in late 1992, finished in late 1998, presented by ARAC to the FAA in February 1999, predicted by Jason Dickstein to be released for 2007 and actually released late 2009. So in short, it has been a long time coming. I remember attending the ARAC meetings and there are very few attendees still working. It is an end of a process for the FAA, beginning of new rules, and an end of the long introduction during the ASA training workshops about the lengthy process that Part 21 has taken and what it will look like when published. For those of you attending the upcoming workshops, be prepared, as Jason will have to have a new leading introduction to Part 21. The pressure is on.

As Jason detailed in the article, the definition of commercial parts will be an issue for some distributors. ASA is also waiting to read some of the new guidance materials which include changes to Order 8130.21. Impact to the distributors from the changes will be discussed at the ASA QA Committee meeting, ASA workshops and in the newsletter. There are three scheduled workshops remaining for 2009. A detailed schedule is on Page 5. These workshops will be especially relevant for those of you who have followed the years of articles and commentary about the changes to Part 21.

ASA has updated our website and will be rolling out new functions over the next few months. Some of the new features will include online training including testing and certificates; discussion forums on technical issues; online registration and payments; two new databases and more.

Take care,
Michele

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FAA's Regulatory Reach Increases

One significant change that could have a secondary effect on distributors is the change in the standards for when a part must be produced under FAA approval. Under the old rules, a part needed to be produced under FAA approval (or under one of the listed exceptions) whenever the producer of the part intended the part to be offered for sale for installation in a type certificated product.

Previously, the regulations provided a loophole for parts that were produced for other industries, but used in aviation. This included everything from commutators to light bulbs to ("non-standard") hardware. For example, if a light bulb company makes a light bulb that is used in a variety of industries, and has no specific intent that the light bulbs be used in aviation, then the fact that a TC holder like Boeing selected that light bulb for use in its aircraft would not mean that the light bulb manufacturer needed to obtain a PMA.

The new rules prohibit the production of parts unless they fit within more tightly defined guidelines. The new rule at 14 C.F.R. § 21.9(a) specifies that:

> *If a person knows, or should know, that a replacement or modification article is reasonably likely to be installed on a type-certificated product, the person may not produce that article unless it is—*
> *(1) Produced under a type certificate;*
> *(2) Produced under an FAA production approval;*
> *(3) A standard part (such as a nut or bolt) manufactured in compliance with a government or established industry specification;*
> *(4) A commercial part as defined in § 21.1 of this part;*

Let's return to the case of the light bulb manufacturer. The company can reasonably claim that they did not intend for any specific light bulb to end up in an aircraft, and thereby avoid FAA regulation under the old standards. But under the new standards, the producer has a much harder time arguing that they did not know of the reasonable likelihood that some light bulb among their production run could end up being installed on a type certificated aircraft. Therefore, all the FAA needs to do to force such a company into the requirement to have a PMA is to put them on notice that one of their parts was installed on an aircraft, and that there is a reasonable likelihood that this could happen again. In such a case, the light bulb producer has two options. The first option is to obtain FAA production approval, such as a PMA, but this is expensive and may not be worthwhile from a cost-benefit point of view (particularly for articles that are traditionally sold in the industry for a very low value). The second, more reasonable option, is for the manufacturer to take proactive steps to prevent its parts from being purchased for aviation use, like labeling the parts "not for aviation use" and refusing to sell to aviation industry companies.

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Hansair Logistics
Lake Forest, CA

Hawkeye Engine Services
Winfield, KS

Global Aviation Company
Norcross, GA

GRG Aircraft & Leasing
Agoura Hills, CA

Support Air, Inc.
Miamisburg, OH

Century Recycling Co.
Gardena, CA

S3 International
Milwaukee, WI

Spectrum Aerospace
Tempe, AZ

Air Land Turbine
Fort Worth, TX

Tristar Solution Technology, Inc.
South El Monte, CA

FOR THEIR REACCREDITATION
to the **ASA-100** standard
and the FAA's AC 00-56A
Voluntary Industry Distributor
Accreditation Program

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This could have an adverse effect on distributors who may find it far more difficult to obtain those parts at a reasonable cost. One of the other consequences of this is that a producer of articles that are used in aircraft may not represent the item as aviation quality or suitable for aviation unless they fit within one of the specific pigeon-holes established by section 21.9 of the new rules. As discussed further in this article, this could have an effect on availability of certain parts!

By taking these steps, the FAA has effectively granted a potential monopoly to Type Certificate holders, because many of these parts that were previously unregulated can now be monopolistically controlled by the Type Certificate holder. If the part is small or not very valuable, then it is unlikely to be economically reasonable to obtain a PMA on the part. The Type Certificate holder has the option of unilaterally refusing to place the parts on a commercial parts list (discussed further down in this article), making them the only source.

How is this provision likely to be interpreted? It is likely that it will NOT be interpreted uniformly. It cannot be. The FAA does not have the resources to bring enforcement actions against all of the companies that make parts that end up on aircraft, today, especially when you consider the vast number of companies that make parts for other industries that get used on older general aviation aircraft (particularly general aviation aircraft that are now out of production).

Consider Commercial Parts Carefully

With the new, tighter restrictions on who can produce parts, it is now necessary to have some way to designate what parts are commercial parts (and can therefore continue to be produced without PMA).

Under the new rules, design approval holders have the option (but not the obligation) to include a list of commercial parts in the instructions for continued airworthiness (in the manuals). Parts that are not included in this list are not considered commercial parts.

This new paradigm creates a number of new challenges for distributors.

First and foremost, the type certificate holders have been remarkably difficult about providing copies of these manuals to other companies. Part of the reason for this is because it reflects a competitive advantage to possess such manuals. But if the manuals are going to the new home of the commercial parts lists, then it may become impossible for a distributor to identify whether a manufacturer of items is a commercial parts

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producer or not, unless the design approval holder voluntarily releases the commercial parts list to the public as a separate document. Thus, commercial parts could become "hidden SUPs," with no reasonable way for a distributor to identify whether the manufacturer (and its part) is or is not on the commercial parts list.

Another problem is that there is no standard for entering or removing a company or its parts from the commercial parts list. A part could be on the commercial parts list one day and could be removed from it the next day (for purely commercial – non-safety – reasons). If parts are removed capriciously, or for purely commercial reasons, then a distributor could end up with an inventory of parts whose value has dropped significantly overnight due to commercial parts list activity beyond any distributor's control, and the distributor may have no recourse.

Another challenge is presented by the fact that there is no obligation to create a commercial parts list. If a manufacturer does not create such a list, or if a manufacturer omits certain important parts, then the manufacturer has the ability to create a monopoly over the parts. For example, imagine that an indicator light is manufactured by company X. X sells a small number of light bulbs to type certificate holder AB for use in new aircraft, but X mostly sells the light bulbs to the automotive industry and to the aftermarket for automotive parts. If the part has the same part number in all applications, and AB does not perform any special inspections or alterations to distinguish the parts it uses from common commercial stock, then such a light bulb is likely to fall outside of the FAA's production regulations (because it was intended for use as a replacement part in aircraft at the time of manufacture). An installer could buy the commercially available part today, test it to confirm airworthiness, and then install it. But under the new rules, the original producer has an incentive to prevent sales to the aviation community in order to avoid 14 C.F.R. § 21.9 liability. This means that the original source manufacturer may forbid sales of this part to aircraft parts distributors.

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Under such a scenario, if the original source producer refuses to sell to aircraft parts distributors, then the only legal source of the part becomes the design approval holder for the product, who now can charge monopolistic prices for the part.

Finally, there is a real challenge for distributors who support out-of-production aircraft. If there is no commercial parts list for an out-of-production aircraft, and if the producers of parts that were being used on such aircraft begin to refuse to sell to aviation companies (or begin to label their parts "not for aviation use" in order to defend against potential FAA claims of violation of the new 14 C.F.R. § 21.9, then it may become impossible to support such aircraft.

Distributors should actively encourage their OEM manufacturing business partners to make expansive lists of commercial parts that encompass the widest possible variety of parts and sources.

Be Wary of Military Surplus

Another important new rule is the one that forbids the distribution of certain types of parts for military surplus aircraft.

The rule specifically says

> *14 C.F.R. § 21.9(c) Except as provided in paragraphs (a)(1) through (a)(4) of this section, a person may not sell or represent an article as suitable for installation on an aircraft type-certificated under Sec. Sec. 21.25(a)(2) or 21.27 unless that article--*
> *(1) Was declared surplus by the U.S. Armed Forces, and*
> *(2) Was intended for use on that aircraft model by the U.S. Armed Forces.*

Sections 21.25(a)(2) and 21.27 describe special purpose operations aircraft and military surplus aircraft.

This rule can be tricky because sometimes, "everyone knows" through tradition or practice that a particular part was appropriate for use in a particular aircraft particularly in military surplus aircraft, but if no authoritative published source ever got around to stating that the part was appropriate for that use, this new rule could forbid sales of that part for the intended use. We ran into an example of this in a case in which a World War II-era engine used in military surplus aircraft used a particular type of spring. The last manual for the engine was published in 1944. The manufacturer upgraded the springs after that date.

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"Everyone" in the warbird community knows that this upgrade spring was the right spring to use. But it was not the spring described in the "now outdated" manual because the manual was never updated. There may be no way to prove that this upgraded spring was intended for use in the engine, because nothing was ever published in the manuals!

Everyone in the industry knows a story of manuals and catalogues that were not kept up-to-date. For certain types of special purpose and military surplus aircraft, this could be a significant concern.

Conclusions

This is just a short description of some of the provisions of the new rule that could affect distributors.

Clearly, the new rule will present challenges to the distribution industry, but we have every confidence that ASA and its members, working together with the FAA, can overcome these challenges and continue to make the aviation industry the safest industry in the world.

Safety Management Systems

ASA filed formal comments with the FAA on the FAA's Safety Management Systems (SMS) proposal.

The essence of ASA's comments was that ASA welcomed the FAA's efforts to continuously support and improve safety. ASA recommended that SMS be implemented initially through voluntary compliance mechanisms, similar to the very successful AC 00-56 program.

Implementation through voluntary compliance mechanisms would permit the FAA to better judge what elements of SMS are essential to safety, and to potentially impose them through future regulations. The FAA could also identify SMS elements that may be beneficial, but not essential, to safety, and could continue to encourage those elements through voluntary accreditation programs and through education. Finally, the FAA could identify those elements that may actually be harmful to achieving the industry's safety goals, and could alter or eliminate them in order to make sure that they do not impede the industry from pursuing the highest safety goals.

ASA Comments (and the comments of other organizations and persons) can be found on line at http://wwww.regulations.gov, using docket number FAA-2009-0671.

Distinguish Your Independent Contractors from Your Employees!

It is not unusual to see companies try to add staff as independent contractors in order to avoid the burdens and liabilities associated with employees. Independent contractor status can be particularly useful for outside sales personnel and others who might represent your business on a part time basis but might also represent other businesses as well.

Whether you hire people as independent contractors or as employees will impact how you pay taxes and/or withhold wages, how much you pay in taxes, and what sort of paperwork you need to complete for the worker.

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Silver Eagle Agency

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This new program is available on a nationwide basis and specifically tailored to meet the needs of the Aviation Suppliers Association membership. Silver Eagle is a specialty insurance agency working solely in the aviation marketplace. With access to every insurance market providing this coverage worldwide, we are pleased to have secured Allianz Global Risks U.S. as underwriter for this specialized market.

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- *Property damage*
- *Personal injury*
- *Advertising injury*
- *Compensatory and general damages*

For additional information, call John Howard at **847-229-1500** or by email **John@silvereagleagency.com**. For a free, no obligation quote, visit our Web site at **www.silvereagleagency.com**.

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But characterizing your worker in the wrong category (independent contractors vs. employee) can lead to costs, liabilities and headaches for the business.

The IRS has published the following "top ten" list in order to assist business owners in distinguishing independent contractors from employees. It should be read in order, as it is not a list of independent elements. The original list may be found in IRS Tax Tip 2009-20.

1. Three characteristics are used by the IRS to determine the relationship between businesses and workers: Behavioral Control, Financial Control, and the Type of Relationship.

2. Behavioral Control covers facts that show whether the business has a right to direct or control how the work is done through instructions, training or other means.

3. Financial Control covers facts that show whether the business has a right to direct or control the financial and business aspects of the worker's job.

4. The Type of Relationship factor relates to how the workers and the business owner perceive their relationship.

5. If you have the right to control or direct not only what is to be done, but also how it is to be done, then your workers are most likely employees.

6. If you can direct or control only the result of the work done -- and not the means and methods of accomplishing the result -- then your workers are probably independent contractors.

7. Employers who misclassify workers as independent contractors can end up with substantial tax bills. Additionally, they can face penalties for failing to pay employment taxes and for failing to file required tax forms.

8. Workers can avoid higher tax bills and lost benefits if they know their proper status.

9. Both employers and workers can ask the IRS to make a determination on whether a specific individual is an independent contractor or an employee by filing a Form SS-8 – Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding – with the IRS.

10. You can learn more about the critical determination of a worker's status as an Independent Contractor or Employee at IRS.gov in IRS Publication 15-A, Employer's Supplemental Tax Guide, Publication 1779, Independent Contractor or Employee, and Publication 1976, Do You Qualify for Relief under Section 530? These publications and Form SS-8 are available on the IRS Web site (www.irs.gov) or by calling the IRS at 800-829-3676 (800-TAX-FORM).

New Hazmat Rule on Emergency Response Phone Numbers

The Pipeline and Hazardous Materials Safety Administration (PHMSA) has published a new rule setting new standards for emergency response telephone numbers. It addresses a number of important changes,

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including new rules for those using contractors to provide emergency response information services, new rules for making telephone numbers obvious, and new rules affecting international numbers.

Under the hazmat regulations, a shipper is required to include a telephone number on its hazmat shipping papers. This telephone number must be staffed 24 hours a day so long as there is a hazmat shipment in transit. The person who answers the phone must be an authority on the hazardous material in the shipment, able to answer questions about emergency response and accident mitigation.

Emergency Response Service Providers

Under the current rules, a shipper is permitted to use an emergency response service provider, like CHEMTREC, ChemTel or INFOTRAC. In such a case, the shipper uses the service provider's phone number (usually an 800 number) and is also responsible for ensuring the service provider has current information on the hazardous material.

Under the new rules, if the shipper uses a third-party service for emergency response, then the shipping paper must also identify the person who has the contractual agreement with the service provider. This permits the service provider to specifically identify their responsibility for the shipment. The identification can be by name (e.g. the corporation's name) or by a contract number.

This addition is particularly useful when the shipper reflects one out of a series of interconnected companies. The contract might be signed by the parent company but the subsidiary's name or division's name may be on the shipment. In such a case, the new addition will permit more ready – access to the records associated with that shipment as well as permitting better identification of the service provider's responsibility.

The relevant part of the new rule reads as follows:

> *(d) Emergency response telephone number. Except as provided in Sec. 172.604(c), a shipping paper must contain an emergency response telephone number and, if utilizing an emergency response information telephone number service provider, identify the person (by name or contract number) who has a contractual agreement with the service provider, as prescribed in subpart G of this part.*

Highlight Your Telephone Number

The new regulations are also more specific about the proposition that the emergency response telephone number must be clearly visible. The old regulation merely required the entry to be clearly visible, which could mean "not obscured." The new regulations require the phone number to be made obvious using one of the following methods:

- Highlighting;
- Larger font;
- Different color from other text;
- Any other method intended to facilitate quick and easy recognition.

Non-US Dangerous Goods Shippers Beware

The new emergency response telephone number requirements for hazardous materials have a special nuance that will affect anyone using a non-US phone number.

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Those shipping hazardous materials (called dangerous goods outside the United States) from a non-US site, or those whose central emergency response center is outside the United States, may find themselves using a non-US phone number as the emergency response telephone number. Non-US phone numbers must be preceded either by the international dialing access code (011 followed by the country code, and a city code if necessary) or a plus sign ("+"). This is a new element of the regulations at 49 C.F.R. § 172.604.

Emergency Response Conclusions

The effective date of this final rule concerning emergency response telephone numbers is November 18, 2009. Many of the issues addressed by ASA in our comments on the proposed rule were addressed in this final rule.

The amendments in this final rule will help to ensure that emergency response personnel can be provided with accurate and timely information about the hazardous materials involved in a transportation accident or other emergency. This new rule should also eliminate certain delays in transportation due to lack of such information, and eliminate problems created when compliance personnel are not able to verify emergency response telephone numbers.

Your Opportunity to Weigh–In on Hazmat Rules

The Department of Transportation will be participating in an international dangerous goods meeting later this year, and they plan to hold a public meeting on November 10 in order to discuss their policy plans with the public. If you have ever wanted to influence the international and domestic rules related to hazardous materials, this is your opportunity.

The Pipeline and Hazardous Materials Safety Administration (PHMSA) is the agency that sets standards for hazardous materials shipment in the United States.

The meeting for which PHMSA is preparing is the meeting of the United Nations Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE TDG) to be held November 30-December 9, 2009 in Geneva, Switzerland.

Topics on the agenda for the UNSCOE TDG meeting include:

- Explosives and related matters.
- Listing, classification and packing.
- Electric storage systems.
- Miscellaneous proposals of amendments to the Model Regulations on the Transport of Dangerous Goods.
- Electronic data interchange (EDI) for documentation purposes.
- Cooperation with the International Atomic Energy Agency (IAEA).
- Global harmonization of transport of dangerous goods regulations with the Model Regulations.
- Guiding principles for the Model Regulations.
- Issues relating to the Globally Harmonized System of Classification and Labeling of Chemicals (GHS).

PHMSA's Strategic Plan can be found online at: http://www.phmsa.dot.gov/hazmat/regs/international.

PHMSA is also seeking ideas about new work items that ought to be included in the international agenda.

The meeting will be held at the DOT Headquarters, West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590. Additional information is available from Duane Pfund or Shane Kelley from the Office of Hazardous Materials Safety. They can be reached by phone at (202) 366-0656. The announcement of the meeting was published on page 53579 of the Federal Register on October 19.

FAA Has Released New Documents

The FAA has released new UPNs. Below is a list of companies associated with the UPN. Click on each company name below to read more. CLICK HERE for a link to the FAA homepage regarding all UPNs.

Weatherly Aircraft Nevada
http://www.faa.gov/aircraft/safety/programs/sups/upn/media/2009/upn_2009-20090512001.pdf

Watson's Profiling Corporation
http://www.faa.gov/aircraft/safety/programs/sups/upn/media/2009/upn_2009-20080703001.pdf

CALENDAR OF EVENTS!

Industry Events

November 11-12, 2009 . . . . . ***AMUSA Expo***
Hollywood, FL

Workshops

November 10, 2009 . . . . . ***REGULATORY WORKSHOP***
Hollywood, FL

November 12, 2009 . . . . . ***EXPORT WORKSHOP***
Newark, NJ

November 18, 2009 . . . . . ***REGULATORY WORKSHOP***
Seattle, WA

CONTACT US!

ASA Staff is always interested in your feedback. Please contact us with any comments or suggestions.

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