

# The UPDATE Report



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## Commercial Parts

The FAA has published new commercial parts guidance. This new law, and the new guidance that accompanies it, promises to pose new challenges to our industry as we seek out parts that will keep aircraft in the air, while at the same time meeting the FAA's increasingly arcane parts manufacturing regulations.

### The New Law

The guidance is necessary because of a change in the FAA's regulatory scope. In the past, the FAA required that parts manufactured "for sale for installation on type certificated products" be manufactured under FAA approval (unless they fit into one of the listed exceptions). This meant that a company that made articles for general use in many industries, without a specific intent at the time of manufacturing that the part be used in aviation, did not need to have a PMA. Such parts could be used on aircraft, subject to the installer's verification that the article would return the aircraft to a condition "at least equal to its original or properly altered condition." Thus, articles like reading-lamp light bulbs or curtain rings could be purchased without requiring the manufacturer to obtain PMA or other manufacturing approval from the FAA.

Under the new regulations, which go into effect April 16, 2011, any manufacturer who knows, or should know, that his article is reasonably likely to be installed on a type-certificated product must obtain FAA manufacturing approval. This expands the FAA's regulatory scope to a vast array of companies that were never previously subject to FAA oversight.

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## MESSAGE FROM ASA'S PRESIDENT

Dear Colleagues,

ASA is busy preparing for the upcoming Quality Assurance Committee Meeting and Board of Directors Meeting. The QA Committee will be meeting in November, and they will be discussing the impact of the Commercial Parts AC, proposed changes to ASA-100, Hazmat changes, risk analysis, and more. If you are interested in attending, prior registration is required. Please contact Stephanie Brown with any inquiries. ASA's Board of Directors will be holding its fall planning meeting. The Directors will be focusing on a three-year plan and budget allocation. Any comments or issues you want addressed should be sent to ASA or any of the Directors (their information is below).

One of the benefits of membership is reduced fees for training. ASA's dates for training through January 2011 have been announced, and trainings will be held in Miramar, Atlanta, Newark, Los Angeles and Seattle. Additional training dates will be announced in 2011.

ASA has announced that we have received ANAB accreditation for ISO 9001:2008 certification. ASA has been working on this project for several years, and this allows ASA to offer both ASA-100 audits and ISO 9001:2008 audits, both of which are recognized in FAA AC 00-56A. ASA is offering a combined ASA-100 and ISO 9001:2008 audit, a streamlined process which reduces cost of the audit as well as the downtime for audit preparation and overall support from employees. For those companies that are interested in AS 9100, 9110 and 9120 audits, ASA is working also towards providing an ANAB-accredited audit for those standards. If you have any questions regarding ASA Audit capabilities, please contact me.

The dates for the ASA 2011 Annual Conference are July 17-19, 2011, in Washington, DC. The AFRA 2011 Annual General Meeting will once again be held in conjunction with ASA 2011. Registration fees include attendance for both conferences.

Take care, Michele

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### An Example

Take a curtain ring as an example. Today, if a curtain ring manufacturer does not know that its curtain rings reasonably may end up on aircraft, then it is not required to obtain PMA. A repair station or air carrier that purchases such curtain rings will need to develop data to support their conformity to appropriate airworthiness standards (e.g. burn tests for interior parts), but if the repair station or air carrier performs these tests and verifies airworthiness, then it may install the parts.

Under the new rules, if the curtain ring manufacturer has any evidence to suggest that someone may be using their parts on aircraft, then that will put the company in the "reasonably should have known" category and the curtain ring manufacturer is now required to obtain PMA, even though the curtain rings are not intended to be installed in aircraft, and the aviation market represents an infinitesimally small proportion of their total market.

How does the curtain ring manufacturer protect himself from a PMA requirement? The only reasonable way to do so is to affirmatively prevent the parts from being used on aircraft. One way to do this might be to label all of the curtain ring packages "Not for aviation use - these parts are not airworthy." From the curtain ring manufacturer's perspective, the loss of aviation industry business in curtain rings is more than offset by the avoided cost of the PMA. But for distributors and installers, this creates a public relations nightmare. How can a distributor convince an air carrier that parts labeled "Not for aviation use - these parts are not airworthy" can be accepted through their receiving inspection system and used on their aircraft? Even if the part number is specifically called-out in the aircraft manufacturer's illustrated parts catalog, this legend is still likely to be a deal killer.

In such a "deal killer," we see the potential to ground aircraft over the least-safety-sensitive parts if these parts are unable to be accepted into the air carriers' inventories.

In order to create a new provision to address this potential issue, the FAA created the "commercial parts" category. This permits the industry to retain certain parts as "commercial" by explicitly designating them in that way. In order to designate parts as commercial, the designator must make a showing to the FAA that failure of the part would not affect safety (which is a different showing from demonstrating that the part, itself, is airworthy). The loophole is only available to design approval holders, so other parties in the industry, like air carriers and repair stations, must rely on design approval holders to secure commercial parts status for the parts that they need.

This new provision requires companies to affirmatively apply for commercial parts status, instead of merely excepting from oversight those parts not manufactured with intent for aircraft installation. Unlike the old regulations,

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which shifted the burden to assure airworthiness to the installer who chose the commercial part, the new regulatory scheme will permit design approval holders to serve as "gate-keepers," because it imposes the burden to affirmatively apply for exception on the design approval holders. This seemed like an unusual regulatory choice, because it is the installers who are most likely to know which 'commercial parts' are really used in the industry, and it is also the installers who have historically had to develop engineering data to support commercial parts installation (to meet their Part 43 obligations).

### *Adverse Consequence of the New Rule: Distribution*

The rule does not make it illegal to buy and sell parts that are not made under FAA approval; however, the FAA has issued Unapproved Parts Notices (UPNs) that vilify distributors for selling "unapproved parts." This means that even if there is nothing legally wrong with selling otherwise airworthy "unapproved" parts, and even though Part 43 permits an air carrier to install the parts after confirming airworthiness, selling such a part could still cause trouble.

Under the new rules, parts that were considered to fall outside the scope of the approval rules because they were made for general industry use will now be subject to the PMA rules.

Because a UPN is a "scarlet letter" in the industry, the effect of being accused of selling commercial parts in a UPN can be devastating to a business. FAA inspectors' guidance found in Order 8900.1 requires inspectors to fail an air carrier following any inspection where they find that the air carrier does not have a method for preventing unapproved parts from entering their inventories. That same guidance requires the removal of unapproved parts from aircraft.

Don't think that the FAA would issue a UPN against a commercial part? Don't bet on it! The FAA has issued a UPN against the brew trays from a coffee maker. This is just one of several UPNs that name a distributor and/or call out distribution activities. We have examined the FAA's record to support that UPN and the FAA explicitly found that there was no safety effect from the coffee brew tray. This sets the precedent for the FAA to issue UPNs on parts for which there is no safety effect, as well as to issue UPNs against distributors.

With the specter of the FAA unapproved parts program hanging over the heads of distributors, it is especially important for distributors to be careful of the new rule that changes the standards for which parts the FAA approves.

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### *Adverse Consequence of the New Rule: Manufacturing and Secondary Effect on Distribution*

Under the new rule, a company that knows or reasonably should know that parts they manufacture are getting used on aircraft is required to obtain production approval for those parts. This means that a company that makes LED lights for general use in all industries will also need to obtain a PMA (and be subject to the FAA's manufacturing regulations and oversight) for those lights used on an aircraft as reading lamps.

Many companies that make general industry items have no experience with obtaining PMAs, and will be loathe to enter such a highly regulated market without an expectation of return on investment. For many companies that make general industry items (not aviation-specific), the costs of a PMA will be greater than the potential revenues from the aviation industry, unless they charge prices that are out-of-line with historical prices for the same items. For such companies, the insurance consequences of a PMA will also likely be unjustified.

Thus, such companies are likely to take positive steps to prevent their parts from being used on aircraft, rather than face a new regulatory requirement to obtain a PMA. Smart general counsels in such companies will be crafting disclaimers that reasonably prevent their parts from being used on aircraft, like "Not for aviation use - this is not an airworthy part." Such a disclaimer is unlikely to affect sales of curtain rings to home builders and interior decorators, but try selling a part with that legend on it to an air carrier!

### *The New Guidance*

The new guidance imposes additional restrictions on the commercial parts paradigm.

The new guidance restricts Technical Standard Order Authorization (TSOA) holders from applying for commercial parts lists. No policy reason is given in the order for this decision, and the decision appears to

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contradict the plain language of the regulations, which permits any design approval holder to make application for a commercial parts list (design approval is defined in the regulations to include " TSO authorization, letter of TSO design approval, or other approved design ").

The new guidance makes it clear that commercial parts are only eligible for the product on which they are designated by the commercial parts list. Thus, if Boeing issues a commercial parts list for the 737-700 that lists a particular commercial part but that commercial part is not listed on the commercial parts list for the 737-800, then it is not eligible for the 737-800. More realistically, if the identical part was also used in the 757, but Boeing chooses not to issue a commercial parts list for the 757 because it is out of production, then that part will not be deemed eligible for the 757, according to the advisory circular.

### *You Won't Know If You are Infringing the Standards*

The commercial parts lists will be published as part of the instructions for continued airworthiness (ICAs). ICAs are extremely expensive and they usually are not available for sale to distributors. Despite multiple industry requests to make commercial parts lists available to distributors, the FAA refused to provide a mechanism for making commercial parts lists available to distributors. This means that distributors will have no way of knowing whether the parts that their customers request are listed on commercial parts lists, or not.

### *Living Under the New Rule*

As anticipated, the new guidance provides that companies may start applying for approval of commercial parts lists on April 16, 2011. This means that in theory a company could submit a commercial parts list to the FAA for approval on that date; but don't count on it. We have informally polled many of the major type certificate holders. Some have said that they will not apply for commercial parts lists at all, while others have said that they will not begin working on commercial parts lists until and unless their major air carrier customers insist on it.

This means that as a practical matter, there will be NO commercial parts manufactured after April 15, 2011. At least not until companies start getting commercial parts lists. ASA members who deal in parts that are legally made before April 16, 2011, but that will no longer be legal for manufacture as of April 16, 2011, will want to continue supporting their customers, so they should consider following these protocols:

- Stock up on such parts before the new rule change becomes effective (April 16, 2011);
- Maintain documentation to demonstrate that your inventory of commercial parts was obtained (or was manufactured) before April 16, 2011;
- Maintain segregation controls, separating pre-April 16, 2011 inventories of commercial parts from other after-acquired inventories, so that you can demonstrate that all parts in "pre-April 16, 2011 commercial parts bins" were manufactured under the old rule;
- If you purchase an inventory of parts that were legal under the old rule but are not legal under the new rule, then be sure to obtain adequate documentation that they were manufactured before the effective date of the new rule.
- Confirm that any of the parts you purchase on or after April 16, 2011 will meet the new regulatory requirements.

Where air carriers find that they need minor parts for their aircraft, like reading lamp light bulbs and curtain rings, they are likely to find that some parts can now only be obtained through the Type Certificate Holder. This could have a noticeable effect on the air carrier's costs of operation.

Resolutions may include development of PMAs for these non-complex parts (which may reduce the pricing of such parts from monopolistic levels but will not cause pricing to return to prior pricing levels). It is also possible that commercial parts lists will eventually be developed, but such lists are highly unlikely for out-of-production aircraft, and we do not see significant and comprehensive lists being developed until long after the April 16, 2011 effective date of the rule.

## New Law Provides Small Business Export Support

It can be quite difficult for small businesses to make sense of the confusing morass of export regulations – this is especially true for aircraft parts, where the State Department and Commerce Department have wrangled over jurisdiction, leaving an uncertain minefield of ambiguity concerning the treatment of dual-use aircraft parts.

ASA has done its part by providing export-focused training for the industry, but the regulations remain complicated. There has been discussion in Washington, D.C. of the possibility of making these regulations less complicated; but truly untangling the regulations is an unlikely pipe dream. What is the next best thing? How about an agency whose job is to help us make sense of these regulations?

Subtitle B of the Small Business Jobs Act is known as the Small Business Export Enhancement and International Trade Act of 2010. That provision establishes additional infrastructure within the Small Business Administration to support exporting by small businesses. While this may not provide direct support to the aerospace community, it promises to reflect a long-term investment that could prove quite useful to aircraft parts distributors and other companies that export aircraft parts.

### SBA Export Resources

SBA is no novice when it comes to export. SBA already provides support and information to promote small business exports. But under the new program, SBA will be required to establish a formal network to provide export assistance to the small business community. Some of the important tasks that this network may tackle include:

- (A) trade promotion (promoting the ideas of export, and promoting American imports, abroad);
- (B) trade finance (such as steering businesses to the Ex-Im export finance assistance programs);
- (C) trade adjustment assistance (helping those who lose jobs to imports/exports);
- (D) trade remedy assistance (help when you are treated unfairly by a foreign government); and
- (E) trade data collection (the information you need to identify markets).

It is this last element that we find particularly intriguing. On its face, trade data collection is meant to reflect data about foreign markets, in order to help U.S. companies identify where to target marketing efforts. But there seems to be no reason why this office wouldn't assist in identifying export classifications for parts, as well. One of the oft-repeated complaints about the current law is that it can be very difficult for independent distributors to confidently identify whether a particular aircraft part is subject to the ITARs, and if not, then what its ECCN might be. Some original equipment manufacturers are very good at sharing this data in order to help

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## REGULATORY UPDATE

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support compliance, but others have refused to share it. In some cases, we have even been told that such data (which is necessary to export compliance) is "proprietary." If SBA can help small businesses by compiling and making available this sort of data (for example, from existing electronic export information filings), then this could provide a tremendous resource that will really aid in de-mystifying the export process and in making export law compliance "accessible" to business people.

In the long term, this new SBA focus means that there will be dedicated professionals in the U.S. government whose mission will be to support small business exports. This is important because much of the exporting focus tends to be aimed at large exporters (more bang for the buck). This new office at SBA could provide tremendous value to aircraft parts distributors.

The new Associate Administrator will have a number of reporting obligations. In periodic reports to Congress, the Associate Administrator will be required to report on the Office's progress in establishing the infrastructure to promote and support small business exports, as well as SBA's efforts to promote exports, and the results of those efforts. This demonstrates that Congress will be holding the office accountable for real results.

This is supposed to be a jobs bill, so SBA will also be required to estimate the total number of jobs created or retained as a result of the export assistance provided by the SBA and its network of partners.

In many ways, this data has the potential to duplicate some of the work performed by the International Trade Administration (ITA). ITA does some excellent work in these areas; but while the potential exists, significant duplication is unlikely. The reason for this optimistic view is because SBA and ITA already have a good working relationship (for example, ITA's Fred Elliott, who has attended the ASA Conference in the past, is a

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regular participant in SBA transportation meetings, and ITA has demonstrated a commitment to promoting exports by aerospace small business), so it is likely that this relationship will continue and the additional resources of SBA will permit some small-business-targeted resources while at the same time expanding the existing reach – including the aerospace reach – of ITA.

The final issue, of course, will be funding. If this office receives adequate funding, then it could do some real good. But if SBA assigns an Associate Administrator and then provides him or her with inadequate staff and resources, then the best intentions could fall flat. 

## Another Change for Limited Quantities

It is no wonder that people think that hazmat rules are difficult to follow. One of the things that makes compliance particularly difficult is the frequency with which the regulations change, and the apparent capriciousness of the changes.

About two years ago, ICAO had announced impending changes to the way that limited quantities of hazardous materials would be identified - these were made authorized methods of identification under the IATA Dangerous Goods Regulations that are commonly used in the aviation industry. The 2009-2010 authorized identification method involved putting the item's UN identification number in a diamond shape. The prior revisions stated that this would become the mandatory way to mark limited quantity packages starting in 2011.



Beginning in 2011, there will be new, different, identification protocols for identifying limited quantities of hazardous materials. Instead of placing the UN identification number in the diamond shape, shippers will be required to place a "Y" in the diamond shape and to include broad black stripes above and below that "Y."

The diamond shape is required to be 100 mm by 100 mm (so it cannot be hand-drawn ... it must be purchased like other labels). There is special authority to use a 50 mm X 50 mm diamond if the regular sized marking will not fit on the package.



This diamond shape will no longer take the place of the proper shipping name and UN number on a package. Thus a limited quantity of acetone would look like the illustration identified as "2011-2012 Limited Quantity Marking."

Packages marked with the 2009-2010 markings before January 1, 2011, may be offered for transport through March 31, 2011 with the old markings. All limited quantity packages prepared for shipment after December 31, 2010 must be prepared under the new regulations.

The United States has initiated a rulemaking effort to bring its own regulations into compliance with the latest ICAO specifications for limited quantity packages. 



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