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The UPDATE Report

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FOR THEIR REACCREDITATION TO THE ASA-100 STANDARD

US and EU Finally Implement Bilateral Safety Agreement

The aviation industry can expect greater trans-Atlantic regulatory cooperation following the long-awaited conclusion of a bilateral agreement covering safety certification between the FAA and its European counterpart, EASA. Under the terms of the Bilateral Aviation Safety Agreement (BASA), FAA and EASA safety certifications will be considered interchangeable by the two regulators.

Prior to the agreement, the United States maintained bilateral agreement with six European nations. Under those agreements, FAA-approved parts could be exported to those European countries and the FAA approval was legally assured of recognition in the importing nation.

The remaining EU (and EASA) members had informally adopted the terms of those bilateral agreements in order to import US parts; they relied on European legal standards that call for uniform foreign trade practices throughout the EU to apply the terms of those six bilateral agreements on a de facto basis in the other nations. A list of the EASA member nations can be found in the “PMA in Europe” article, later in this issue.

The new EASA/FAA BASA will now formally recognize the validity of the FAA certification in all 27 EASA member countries. This means that PC, PMA, and TSOA parts from the US will be considered approved in Europe. The agreement

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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,

The top article is the new US-EU BASA. The BASA has been years in the making and its release has been delayed through the years by political issues. Our European members have been vocal about the need for the document to be released to alleviate business issues. Another hotly debated topic is the FAA Re-Authorization Bill, which appears to be close to being finalized. The FAA will need to work under another extension, however, the House is debating their bill which then needs to be reconciled with the Senate's bill.

ASA will be promoting distributors as partners in the aviation supply chain. Stop by the ASA exhibit at the MRO US Convention in Miami and the Airline Purchasing and Maintenance Expo in London. In 2012, ASA will host a pavilion exhibit for its member at the Airline Purchasing and Maintenance Expo. If you are interested in being a participant in the pavilion please contact the Association.

ASA's annual conference is July 17-19 in Washington DC. Each year, the association recognizes a person for their contribution to ASA and the distribution community. Nominations for the Edward J. Glueckler Award are now being accepted. Information about criteria and nomination process are now available on the ASA website. Deadline for nominations are April 15th.

The ASA Quality Assurance Committee will meet on July 17th to start off the conference. The meeting is open to all members, however, advanced registration is required. Registration for the ASA Conference including the golf tournament, QA Committee meeting and AFRA Annual Meeting is now open and available online.

Take care, Michele

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also formally recognizes the approvals issued by designees, which means that there should be no dispute over 8130-3 tags issued by DARs.

The two authorities will also increase sharing of data, cutting costs by removing the need for duplication of many regulatory efforts.

In many cases, the dual recognition system will remove the need for US manufacturers to apply for EU (EASA) certification, often a costly and complicated process. Industry groups have welcomed the agreement as a way to simplify the safety approval process for international aircraft and aircraft parts sales.

Negotiations on the BASA had concluded in 2008, but the deal was stalled when EASA unilaterally issued a fees-and-charges rule to which the United States objected. Later the BASA continued to be stalled amid unsuccessful attempts in Congress to undermine the sharing of inspection and oversight data through contradictory legislation that would have required FAA to perform its own inspections in Europe, rather than permitting the sharing of those responsibilities.

EU regulators formally approved the deal on March 7, paving the way for a formal exchange of diplomatic notes on March 15. The agreement will come into force on May 1, 2011.

The US diplomatic mission to the EU released the government's only official announcement of the agreement's conclusion. According to the official press release, the BASA "allows the Federal Aviation Administration and European regulators to share aviation safety information and cooperate in the certification of civil aircraft, the US and European market for which is estimated to be worth $1.5 trillion through 2029."

ASA Files SMS Comments

ASA filed extensive comments with the FAA in response to the FAA's proposed air carrier SMS rule. The proposed rules would establish a significant new approach to management of safety data. It would require air carrier companies to affirmatively seek out safety data, analyze that data, predict potential future safety issues, and mitigate the issues that are predicted.

Although the program was originally billed as a tool that could be used to help companies select where to commit safety resources, the rule as proposed would have required mitigation of any safety issue that exceeded risk levels, and it would have permitted the FAA to establish new risk levels by policy (instead of requiring rulemaking). FAA inspectors could use the SMS rule to require companies to implement "risk controls" that their competitors are not required to implement. The preamble to the rule makes it clear that the FAA could use SMS to

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inhibit commercial relationships even when those commercial relationships were in compliance with the law, so long as an FAA inspector could make the claim that the commercial relationships increased a level of risk.

- ASA filed 40 pages of comments which addressed topics like:
- concerns over flow-down of the rule to distributors
- proposed improvements to the rule
- elements of the rule that needed to be removed
- problems associated with the FAA's cost-benefit assumptions

The complete ASA comments are available online on ASA's website.

Shipping PMA Parts to Europe

Association members have recently been asking us about the current legal status of PMA parts being shipped to Europe, and about the documentation that they should have when shipping parts to Europe.

For our purposes, Europe should be split into the EASA nations and the non-EASA nations. The EASA nations are made up of the members of the European Union and the four additional EASA adherents:

European Union members:
Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom

Additional EASA adherents:
Iceland, Liechtenstein, Norway, Switzerland

The non-EASA nations in Europe include:
Albania, Andorra, Belarus, Bosnia-Herzegovina, Croatia, Macedonia, Monaco, Moldova, Montenegro, Russia, San Marino, Serbia, Ukraine, Vatican City

The reason for splitting Europe into these two categories is because EASA has specific standards that apply uniformly throughout its membership. The first of these standards is that installing organizations (Part 145

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organizations) are required to receive documentation that accompanies the part (this is described in EASA 145.A.42). For FAA-PMA parts, this usually means a FAA 8130-3 tag.

EASA issued a Decision in 2007 that applies directly to the EASA member nations. The 2007 Decision explained that the design of aircraft parts must be approved under European law, and because of existing bilateral agreements with the United States, EASA has recognized that FAA-PMA parts are considered to be approved parts under European law.

The 2007 Decision represents an approval document for all PMA parts that meet the conditions specified. The first and most important condition of the 2007 Decision was that the part must be a FAA-PMA part. This means that the Decision offers no opinion concerning parts manufactured under approvals issued by government authorities other than the FAA.

In addition, the parts must fit into one of the following three categories.

The first category is parts that are not critical components. In this case, the word “critical” is used in the sense found in U.S. law at 14 C.F.R. § 45.14. This means that parts identified with a replacement time (life-limit), inspection interval, or related procedure specified in the Airworthiness Limitations section of the maintenance manual are critical. Note that this is a reference to the airworthiness limitations section of the PMA’s instructions for continued airworthiness - thus if the PMA part is not life limited but the OEM corollary part is life limited, then it is the PMA part’s limits that control the question of criticality for the PMA part. In order to be considered approved under the EASA Decision, such parts should be accompanied by 8130-3 tags that say the following in block 13:

“This PMA part is not a critical component”

It is important to distinguish this use of the term “critical” from the other definition of the word “critical” that is frequently used in aircraft part manufacturing. The FAA uses a different definition of the term “critical” for purposes of making certification decisions. That other definition is related to likelihood of adverse affect on flight in the event of failure, and it drives certification decisions like the use of designees in the certification process, and the amount of oversight that must be provided directly by an Aircraft Certification Office. While the use of the term “critical” in making certification decisions is an important use, it is a different use with a different definition from the definition that is used in this EASA Decision.

The second category of parts that are considered approved under the EASA Decision is parts that conform to design data that was obtained by licensing agreement from the holder of a type certificate. In order to be considered approved under the EASA Decision, such parts should be accompanied by 8130-3 tags that say the following in block 13:

“Produced under licensing agreement from the FAA design approval holder”

Generally, non-critical parts are annotated as such, but it is possible for a part to be both non-critical and also conform to design data that was obtained by licensing agreement. In such a case, either statement would be acceptable on the 8130-3 tag (it would not be necessary to include both statements on the 8130-3 tag).

If a PMA part is critical (e.g. life-limited) and is also produced under a non-licensing PMA (e.g. a test-and-computation PMA), then it cannot meet either of the first categories. In such case, the third category of FAA-PMA parts considered to be approved under the EASA Decision is PMA parts explicitly approved by EASA by means of a design change approval or a supplemental type certificate. This provision also incorporates a grandfather clause which includes approvals issued by EASA member nations before September 28, 2003.

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Where such an approval exists, there should be a reference to the approval in block 13 of the 8130-3 tag.

The EASA Decision has represented European policy concerning PMA parts for many years. It was European policy during the JAA years (before EASA existed), and it was published on the EASA website as a "Frequently-Asked-Question" before EASA issued the 2007 Decision. Because the acceptance of PMA parts has reflected a long-standing position of the European authorities, non-EASA nations have begun to use it for their own acceptance of PMAs.

We recently encountered a situation where one of the air carriers from a non-EASA nation in Europe demanded that PMA parts sent to them meet the terms of the 2007 EASA Decision on PMAs.

The United States has only one bilateral airworthiness safety agreement with any of the fourteen non-EASA nations in Europe - that is the agreement with Russia. The other nations do not have bilateral agreements so there is no clear set path for acceptance of FAA-PMA parts in these nations. Nonetheless, PMA parts have become very popular throughout the world, so it is understandable that airlines in these nations are starting to seek PMA parts for their own aircraft.

Because the non-EASA nations are not members of the European Union and they are not members of EASA, they are not legally bound by the 2007 EASA Decision on PMAs. They are free to accept aircraft parts pursuant to their own domestic laws.

But there are several reasons why such nations might start to rely on the 2007 EASA Decision on PMAs as the basis for their own acceptance of PMA parts. First, use of this procedure is expedient - it provides a simple mechanism that has been used successfully throughout the EASA nations. Second, it is not unusual to see leased aircraft registered in a country other than the operator's and Ireland is a very popular country for registration of leased aircraft due to their favorable laws. In such cases, the law of the country of registry is the law that applies for purposes of determining maintenance requirements (including installation requirements). Thus, nations with leased aircraft that are registered in places like Ireland may need to follow EASA requirements in order to maintain compliance.

LAN-TAM Merger Makes Progress

The proposed merger between South American airline giants LAN of Chile and TAM of Brazil won crucial approval from ANAC, Brazil's civil aviation authority, on March 4. The merger, which would create the largest air carrier in Latin America, still requires approval from Brazilian and Chilean antitrust regulators.

Rather than having one company envelop the other, the two airlines plan to operate separately under a new umbrella company, LATAM Airlines. According to a January press release, LAN's CEO, Enrique Cueto, will assume the same role in LATAM, while Mauricio Rolim Amaro, currently vice-chairman at TAM, will serve as LATAM's chairman. The combined company will have around 40,000 employees and will service 23 countries.

Brazilian foreign ownership restrictions were the centerpiece of ANAC's inquiry and limited what might have otherwise been a full takeover by LAN, which will instead own the maximum 20% share of TAM's voting shares. It will, however, own 70% of LATAM, which, in turn, will own essentially all of TAM's preferred stock. The plan will ultimately de-list TAM shares. The decision by ANAC essentially decided that the complex arrangement adheres to the spirit of the foreign ownership restrictions.

Now that ANAC has endorsed the merger, the matter will proceed to the Brazilian antitrust authority.

The deal was recently delayed after a Chilean antitrust court suspended the deal so it can review a consumer group's complaint that the deal would have a negative impact on competition. The inquiry is expected to last about eight months and result in some minor route restrictions.

The airlines announced plans to merge in a 2010 non-binding memorandum of understanding. They followed up in January 2011 with a binding agreement between the companies and their shareholders, which details the terms of the combination.

US Government Grants Itself the Power to Seize Hazmat Shipments

Department of Transportation agents now have the authority to remove packages from transit, open them to inspect for hazardous materials, and take remedial action against companies that violate packaging and labeling standards. A new final rule, announced in the March 2 edition of the Federal Register, grants sweeping new authorities to agents in the Pipeline and Hazardous Materials Safety Administration (PHMSA) as well as the Federal Aviation Administration (FAA), Federal Railroad Administration (FRA), and Federal Motor Carrier Safety Administration (FMCSA).

These changes were made to address concerns over undeclared hazardous materials shipments. The powers associated with the new rule will likely be granted to all FAA inspectors with hazmat oversight, and may be extended to all FAA inspectors.

Beginning May 2 of this year, agents will be able to open packages when they have reason to believe a package contains hazardous materials. Aside from a reasonable belief that the package contains hazmat (this would include properly labeled hazmat packages), the only other condition that will apply to this power is that the agent must have a reasonable belief that the package violates Title 49 Chapter I (this means the hazmat regulations as well as the pipeline regulations).

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The "objectively reasonable and articulable belief" standard used in this rule is an extremely low standard - lower than any standard search and seizure that appears to be known. It is possible that this standard might not withstand a court challenge, but court challenges tend to be expensive so it is also possible that it may never get a reasonable in-court dispute.

Under the new rules, an agent may also remove a package from circulation for 48 hours if the agent believes that the package might pose an imminent hazard (e.g. is improperly packaged or otherwise out of compliance with a safety regulation).

If an agent decides to use the 48-hour seizure rule, then the agent must record the basis of the "objectively reasonable and articulable belief" and he or she must notify the person in possession of the package. The agent is not required to inform the owner of the article - only the carrier.

A determination that an undeclared package poses a threat will result in an out of service order, which prohibits continued shipment until the package conforms to hazardous material requirements.

More importantly, the rule gives the Department greater authority to use search and seizure to investigate companies that are suspected of not complying with hazardous material shipment requirements. Agents can

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now issue emergency orders to temporarily shut down all shipment activity or otherwise impose restrictions, prohibitions, and recalls on existing and future shipments. Such orders are supposed to be narrowly tailored to combat a specific problem arising during an inspection, but whether they will really be narrowly tailored is a question that can only be answered in practice. Emergency orders may be appealed through a petition to PHMSA's Chief Safety Officer.

According to the agency's press release, Department of Transportation inspectors will have the power to close down shipping companies with poor safety records.

The rule also permits the Department of Transportation to issue an emergency recall order, requiring the recall of items whose use would allegedly constitute an imminent hazard.

The rule also grants special powers to the Administrators of these Department of Transportation agencies. Specifically, PHMSA, FAA, FRA, and FMCSA Administrators may request the Attorney General to bring an action seeking temporary or permanent injunctive relief, punitive damages, or assessment of civil penalties under 49 U.S.C. 5122(a).

The new rule can be found online at http://edocket.access.gpo.gov/2011/pdf/2011-4270.pdf

Taken as a whole, the new rule underscores the importance of properly packaging and labeling all hazardous material shipments to avoid severe interruptions and expenses. It also illustrates the extreme penalties that a company could face if it improperly ships hazmat.

ASA will be offering hazmat training March 28-29 in Los Angeles and May 25-26 in South Florida - see ASA's website for more details.

CALENDAR OF EVENTS

ASA 2011 Annual Conference

July 17-19, 2011 . . . . . Washington, DC

Industry Events

October 26-28, 2011 . . . . . **AP&M EXPO USA –** Hollywood, FL

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

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