FAA Draft Order 8130.21H
Procedures for Completion and Use of the Authorized Release Certificate, FAA Form 8130-3, Airworthiness Approval Tag

Comments on the Draft Order
published online for public comment

Submitted to the FAA via email at grant.schneemann@faa.gov

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Dear Mr. Schneeman:

Please accept these comments in response to the **FAA Draft Order 8130.21H, Procedures for Completion and Use of the Authorized Release Certificate, FAA Form 8130-3, Airworthiness Approval Tag**, which was announced for public comment on the FAA's website.

ASA continues to support strong guidance on the 8130-3 tag, and and welcomes the FAA's efforts to improve safety by establishing clear guidelines for the issue and use of the form. We have a number of recommendations that we hope will make this guidance stronger and more precise.

Contents

Who is ASA?

Founded in 1993, ASA represents the aviation parts distribution industry, and has become known as an organization that fights for safety in the aviation marketplace.

ASA and ASA's members are committed to safety and seek to give input to the United States Government regarding government policies so that the aviation industry and the government can work collaboratively to create the best possible guidance for the industry and the flying public.

ASA supports efforts to increase safety. ASA has a number of programs to support aviation safety, and ASA works with the FAA and other non-US regulatory authorities to develop and maintain programs designed to support safety as it relates to distribution, maintenance and installation of aircraft parts.

ASA Members' Interest in 8130-3 Tags

For many distributors, this is one of the most important guidance documents that the FAA publishes, because it includes the instructions for how Designated Airworthiness Representatives (DARs) issue 8130-3 tags at a distributor's facility, and provides other guidance on which both foreign and domestic customers rely in reviewing documentation during the receiving inspection process.

Continued access to 8130-3 tags remains an important safety issue as well as an important issue for U.S. trade.

Comments

Policy Issues

Issue One: Paragraph 2-3.c. The Change to "Cannot Be Used For Export Approval" From the Original Language of "Does Not Constitute Export Approval," is Causing Industry Confusion and Frustrating the Purpose of the Guidance

Draft Order 8130.21H, 2-3.c. reads: "An FAA Form 8130-3 for domestic shipments of products to identify airworthiness approval *cannot be used* as an export approval. Exporters must meet the applicable requirements of part 21, subpart L, Export Airworthiness Approvals (refer to chapter 4 of this order)." This language was also used in 8130.21G. Previous Orders used the language "Issuance of Form 8130-3 for domestic shipments of products to identify airworthiness approval *does not constitute* an export approval and is not a prerequisite or substitute for issuance of FAA Form 8130-4, Export Certificate of Airworthiness, for class I products." In version G, the language was changed to indicate an affirmative denial of the possible use of domestic 8130-3 tags for export. No explanation was given for this change in language.

We are raising this change now, rather than earlier (at the time of revision in version "G"), because experience has shown that this language creates an issue that must be corrected.

The prior language was more legally accurate, while the newer language is legally inaccurate. Although a domestic airworthiness tag does not constitute export airworthiness approval (as per the old language), export airworthiness approval is not required under FAA regulations in order to export an aircraft part.

Part of the reason that the new language is legal inaccurate is because the statement "Exporters must meet the applicable requirements of part 21, subpart L"

implies a legal requirement to obtain documents that are not legally required under U.S. law. The FAA has never established a requirement to use the 8130-3 tag for export purposes – it has merely made such tags available to facilitate commerce, as is evidence from a review of the history of the 8130-3 tag.

History of the 8130-3

Airworthiness certificates were originally conceived as a facilitating device for American commerce. In 1963, the FAA published a Notice of Proposed Rulemaking proposing an export airworthiness approval tag. In the original proposal, such certificates were available for class I or class II products, but not for class III products (most piece-parts fell into this latter category).[1] It was expected at that time that exporters of aircraft parts could issue their own certified statement concerning airworthiness.[2]

In the final rule, manufacturers were permitted to obtain export airworthiness approvals for class III products. It appears that they were permitted this privilege because one manufacturer asked for the privilege during the comment period (and the purpose of the rule was to facilitate commerce).

The role of export airworthiness certificates has changed over the last fifty years. Where these certificates were once facilitators of commerce, they have become *de facto* requirements for export to certain countries, and are sometimes *de jure* requirements under foreign laws.

One reason that they have become de facto requirements is because the FAA actively promotes the idea that one should not accept an aircraft part or an aircraft product without documentation. This fact has been repeatedly confirmed to us when we have spoken with foreign airworthiness authorities and foreign operators.

Export airworthiness certificates have also become de jure requirements under foreign laws. This is often because the United States and the foreign nation have entered into a bilateral safety agreement under which the United States pledges to provide such airworthiness certificates for parts bound for that foreign nation.

In practice, foreign business partners have usually been willing to accept any 8130-3 tag issued by the FAA (or its designees) as sufficient proof of airworthiness of an aircraft part. This has included domestic 8130-3 tags. One reason for this is that foreign countries seldom (if ever) have unique special conditions that apply to a class III part.

[1] NPRM: Export Airworthiness Approval Procedures, 28 F.R. 3728, 3729 (April 17, 1963).
[2] Id.

The FAA published Notices 8130.70 and 8130.71 in order to permit DARs to issue 8130-3 tags for parts held by distributors. The result was that distributors were able to obtain the 8130-3 tags that the customers demanded. DARs were able to issue domestic 8130s and foreign users were able to accept them at will (as long as the part was demonstrably airworthy).

Many U.S. exporters found it convenient to use domestic 8130-3 tags, which certify only U.S. domestic airworthiness, for their foreign trading partners. There are several reasons. One is that foreign trading partners do not always require a specific export 8130-3 tag. This is especially true in nations that do not have a bilateral airworthiness agreement with the United States. The domestic airworthiness tag permits an exporter to obtain the tag from a DAR before knowing the final destination. This means that the part can be removed and exported immediately upon order, instead of waiting for a DAR to become available to issue a country-specific tag – this facilitate trade and it also facilitates airworthiness support and aviation safety by making such parts readily available to operators around the world.

The use of domestic tags for export to nations willing to accept them is also consistent with international practice. Most other nations make no distinction between a domestic and an export airworthiness tag.

Discussion

The use of the language "[a]n FAA Form 8130-3 for domestic shipments of products to identify airworthiness approval *cannot be used* as an export approval" has become a source of confusion for a number of participants in the industry. In version "F," the language in paragraph 2-3.c. followed the above-quoted form: "Issuance of Form 8130-3 for domestic shipments of products to identify airworthiness approval *does not constitute* an export approval and is not a prerequisite or substitute for issuance of FAA Form 8130-4, Export Certificate of Airworthiness, for class I products." The phrase "does not constitute" denoted that an additional step was required, but allowed, for export approval on top of domestic airworthiness approval. The same "does not constitute" language appeared in every prior version of the Order, including release "A."[3]

[3] Order 8130.21A, paragraph 7.b. reads "Issuance of the form for identification purposes does not constitute an export approval. The manufacturer must still meet the requirements, including application for export approval contained in Part 21, Subpart L, and described in [the following paragraphs]." Nearly identical language was used in version B under the heading "Domestic Use of FAA Form 8130-3" at paragraph 8.a.(2): "Issuance of Form 8130-3 for domestic shipments to identify airworthiness approval does not constitute an export approval and is not a prerequisite, or substitute, to issuance of FAA Form 8130-4, Export Certificate of Airworthiness. Each exporter must still meet the applicable requirements of part 21, subpart L, including issuance of a Form 8130-4."

With the release of version "G," the FAA eliminated from 8130.21 references to classes of products. One of the paragraphs affected by this change was section 2-3.c. The revision eliminated references to Form 8130-4 and to class I products. It also changed the paragraph, without explanation, to state that a domestic airworthiness approval "cannot be used as an export approval." However, the section retained the reference to satisfaction of part 21, subpart L, Export Airworthiness Approvals. This has created an internal inconsistency within the section that has caused significant confusion. It suggests both that a domestic approval forecloses any possibility of export approval while simultaneously pointing the reader at the prerequisites to obtain that same export approval. The section was carried forward in its entirety in version "H."[4]

The change in language from "does not constitute" to "cannot be used" has been a source of confusion among those issuing 8130-3 tags. Some PAHs, and some advisors in regional FAA offices, have read this language as forbidding a product with domestic airworthiness approval from also receiving export airworthiness approval. This cannot be the correct reading or intent of the guidance. The purpose of 8130-3 tags is to ease tracking of parts to promote both safety and commerce. It is absurd to suggest that a product that satisfies domestic airworthiness standards cannot also satisfy export airworthiness standards.

A product can certainly satisfy both the requirements for domestic 8130-3 tags and export tags … in fact in most cases the standards for issuance are identical, because very few parts have special import conditions applied against them.

Domestic and foreign approvals nearly always convey the exact same information. Additionally, countries with no bilateral agreement or no special requirements for import accept domestic approvals as valid. This is why the language "does not constitute" is appropriate – because the FAA is not issuing such tags as export approvals, but a foreign authority is permitted to rely on them to the extent that the foreign authority chooses to accept FAA findings.

Because the language "cannot be used for export approval" appeared without explanation, causes confusion, and is contrary to the purpose of 8130-3 tags, the FAA should revise the language in paragraph 2-3.c. to read "does not constitute an export approval." This is the original language, which has been changed without explanation, and is consistent with the purpose and intent of the documentation and traceability system.

[4] Section 2-3.c. in version H is not truly identical to version G because "14 CFR" has been removed for the most part from version H. The substantive text of the section remains unchanged.

Issue Two: Export Airworthiness Approvals Should Class Like Nations Together for Destination Purposes in Order to Facilitate Trade

As discussed in the history section above, the original purpose of the "export airworthiness approval" was to facilitate trade. One of the elements of 8130-3 tags today that impedes trade without offering any offsetting safety benefit is the requirement to assess the importing nation's special import conditions on a country-by-country basis.

The reason that this is a problem is that it impedes the free flow of aircraft parts that emanate from the United States and that may traverse through multiple nations before being installed. For example, an aircraft part may be exported from the United States to the United Kingdom, but it might not be installed in the United Kingdom. Instead, the owner of the part in the United Kingdom may recognize a need to ship the part to China to be installed.

This creates confusion in China, because the 8130-3 tag says that it is intended for use in the United Kingdom. We have answered many questions about such parts. The fact is that the part was produced under a U.S. production approval and so it is subject to the import terms of the U.S.-China bilateral agreement. But because the part's documentation is drafted for the United Kingdom as a final destination, and the U.S.-China Bilateral agreement suggests that the 8130-3 tag will specify China, this is a problem.

The fact that neither country has special import conditions for the part means that the same analysis should have been sufficient for both nations.

This paperwork disconnect causes perfectly airworthy parts to be rejected because of paperwork issues – issues that do not affect the actual airworthiness of the parts (especially in light of other records that clearly indicates that the parts are airworthy. Because other nations do not distinguish such special import conditions on the export tag, other nations have not put themselves at the same disadvantage into which the United States has put itself.

This impedes global safety, because we are permitting documentation issue stha are unrelated to safety to undermine acceptance of parts that have already been ascertained by the FAA to be safe.

For ease of identification, the FAA should consider classifying countries together in a table or appendix to identify them. For instance, all EC countries over which EASA has oversight, and therefore have the same standards, might be one group; all other countries with whom the U.S. has differing bilateral agreements might be a second

group; and countries with whom the U.S. has no bilateral agreements might be a third. The reason for this is because nations in each of these groups should have uniform standards for purposes of acceptance of aircraft articles.

Because so few nations have special import conditions that apply to aircraft articles (non-products), it would be easy to group nations together.

This would permit issue of 8130-3 tags that are known to meet the special import requirements of a set of nations. 8130-3 tags could then be more efficiently issued as airworthiness is found, instead of waiting until the ultimate destination of the part is identified. U.S.-produced articles could also more effectively be transferred from place-to-place in order to support aviation safety because there would no longer be an artificial impediment to transfer of otherwise airworthy articles.

Issue Three: Reference to "a specific country's special import requirements" may become a future source of confusion due to the implementation of the U.S.-EU bilateral agreement because specific country standards in the EU have been superseded by uniform EASA standards.

Paragraph 2-4.d. maintains the language "Issuance of FAA Form 8130-3 as an airworthiness approval does not constitute an export approval, because compliance with a specific country's special import requirements may not have been verified." This language has the potential to become a source of confusion with the passage of the U.S.-EU bilateral agreement and corresponding Technical Implementation Procedures.

Under European Community law, EC member states have ceded administration of aircraft article import requirements to EASA. The language "specific country," standing alone, has the potential to create confusion for those attempting to ascertain the special requirements of countries in the European Union because those individual countries no longer have their own special requirements. Moreover, the EASA-governed countries that formerly had individual bilateral agreements with the United States still appear in Appendix 2 of AC 21-2, creating another potential source of confusion.

We suggest that paragraph 2-4.d. be amended to read "compliance with a specific *airworthiness authority's* import requirements" to offer guidance in this case. An individual seeking to satisfy a specific country's requirements in the EC will be unable to satisfy a requirement that has become illusory with respect to those countries governed by EASA. Under the system that Europe has adopted, in which a single agency exercises import oversight over aircraft articles imported into numerous countries, the potential for confusion abounds.

The suggested additional language is consistent with other updates made in version "H." New paragraph 3-5 "Approval for Return to Service Information Relevant to the European Union" specifically refers to EASA part 145 authority. The paragraph also addresses the U.S.-EC bilateral agreement and corresponding Technical Implementation Procedures. It is important for this new paradigm of broad EASA authority to be recognized throughout version "H." By inserting the language "or agency's" into paragraph 2-4.d., version "H" will more accurately reflect the current structure and variation of global aviation authorities. It will also, importantly, reduce the potential confusion that may occur as a result of the illusory nature of "a specific country's" import requirements in the EC.

Issue Four: The New Guidance Regarding Rebuilt Engines in the European Union [sic] Creates a Safety Concern and Harms Small Businesses

Order 8130.21H inserts a new paragraph addressing Rebuilt Engines in the European Union. Paragraph 3-5.b changes the way that we document Rebuilt Engines. It first explains that EASA now recognizes the term "Rebuilt Engine" as a manufacturing certification. Rebuilt engines have traditionally been deemed maintenance releases. This is because the privilege to rebuild engines is found in sections 43.3 and 43.7 of Part 43 (the maintenance provisions of the regulations).

The instructions for completing form 8130-3, as proposed, command the authorized person at the PAH facility to sign on the left-hand side of the form, for airworthiness approval.

The first problem with this proposed guidance is that it creates confusion in the industry. The left-hand side of the form has traditionally been reserved to only FAA use (FAA employees or designees authorized to sign on behalf of the FAA). Permitting private certificate holders to issue a signature on the left side dilutes the value of the form and also will cause confusion about what the signature means.

The second problem is that the FAA proposed to permit private certificate holders to enjoy the privilege of signing the left-hand side of the 8130-3 tag[5] and then affirmatively decided not to authorize this practice, in the face of negative comments from both industry and other government agencies.[6] This would permit by policy a function that the FAA affirmatively decided not to permit in the context of a regulatory

[5] Production and Airworthiness Approvals, Part Marking, and Miscellaneous Proposals, NPRM, 71 F. Reg. 58914 (October 5, 2006) (proposed section 21.146(d) would have required manufacturers to issue 8130-3 tags).
[6] Production and Airworthiness Approvals, Part Marking, and Miscellaneous Proposals, Final Rule, 74 F. Reg. 53368, 53371 (October 16, 2009) (deciding not to permit manufacturers to issue 8130-3 tags).

implementation. The FAA should not implement by policy a function that has been proposed though regulations and then rescinded in the face of negative comments.

The third set of problems are derived from the fact that the regulatory authority for rebuild continues to be a maintenance privilege. The authority provided in this draft appears to be based on the creation of a legal fiction that the rebuild privilege is a privilege permitted under the fabrication authority of Part 21. The fiction that a rebuilt engine is not issued under a maintenance release but is rather under a manufacturing certification is quite simply a violation of existing FAA regulations, which clearly define rebuild as a Part 43 function that must be approved for return to service according to 14 C.F.R. § 43.9. The manufacturing certification language on the left-hand side of the 8130-3 tag fails to meet the maintenance release language requirements of Part 43 and it also mis-describes the function that is authorized under 14 C.F.R. § 43.3.

The regulatory incongruity described here is not saved by the fact that the proposal is congruous with the bilateral agreement, in light of the fact that it is incongruous with the regulations. The bilateral agreement is an executive agreement that is implemented through the FAA's regulations (it is not a treaty and has not been approved by the Senate as such). Its power is limited to the power given it by the implementing regulations found in Part 21 Subpart L. Those regulations do not permit alteration of the manner of approval for return to service, nor do they permit misleading characterizations of such approval for return to service.

This proposal also creates a potential safety issue. The proposal would suggest that the rebuilt engine is a new engine. Traditionally, European companies have been hesitant to accept U.S. rebuilds as being equivalent to new products because of the nature of the practice. Engine rebuilds are allowed to be zero-timed, essentially creating the appearance of a new engine. However, used parts are still retained in the rebuilt engine.

This creates the obvious safety hazard if the operator assumes that the entire engine (and all of its parts) are new. There is the possibility of unexpected fatigue because the operator of the engine assumed a zero timed engine had a certain life expectancy, when in reality the used part had only a fraction of that expectancy (as a consequence of accumulated fatigue). The possible safety issue caused by the misdirection has not been addressed by this policy change. Rather than harmonize the requirements for rebuilt engines in the U.S. and EU, this proposal would have rebuilt engines simply be documented in a misleading fashion – a fashion that explicitly suggests that rebuilt engines are new engines.

By classifying an engine rebuild as a manufacturing certification rather than a maintenance practice, we are potentially misleading the industry about the actual condition of the engine. This distinction is made even starker by the requirement that all other rebuilt products and articles will continue to be classified as maintenance releases.

The reclassification of rebuilt engines also harms small businesses in the United States. Engine rebuilds may be conducted only by manufacturers. Many smaller businesses like repair stations provide a substantially similar service by overhauling engines. These small businesses have the additional expense of obtaining a designated airworthiness representative (DAR) approval in order to export their overhauls, where the manufacturer will be able to avoid such expense by issuing their own 8130-3 with a left-hand signature without recourse to a designee. Where there is work that has been classified as a manufacturing function, and that work is compared with work that has been classified as a maintenance function, some customers may be hesitant to accept work classified as maintenance (like an overhaul) when it is compared to work that can now be characterized as a manufacturing function (even though the regulatory authority for performing rebuilds remains within the maintenance regulations).

Not only does paragraph 3.5.b. harm small businesses with respect to the characterization of their overhaul work as compared to the characterization of rebuilds, but it also violates the Equal Protection Clause of the Constitution. 14 CFR § 43.9 governs content, form, and disposition of maintenance, preventative maintenance, rebuilding, and alteration records. The regulation makes no distinction between rebuilds and overhauls for the purpose of approval for return to service; however, the effect of paragraph 3-5.b. is to create an artificial distinction. The new guidance effectively divides approvals for return to service for engine work into two classes, which § 43.9 does not recognize. This classification gives large manufactures an approval for return to service privilege that is not enjoyed by their overhauling competitors despite the fact that the regulation that applies to their approval for return to service is the same. Small businesses that perform overhauls—an equally acceptable approval for return to service—are thereby denied an equal opportunity to provide their services to consumer markets. While the FAA does not have a statutory obligation to promote aviation, it also does not have a statutory permission to draw artificial commercial distinctions within the industry.

Finally, the guidance draws an absurd distinction in that domestic rebuilds would normally continue to be approved for return to service with a left-hand signature, but those performed with the intent that the engine be exported would be permitted to be signed-off on the left-hand signature as if the company were its own designee. This

distinction does not make sense because regardless of the destination, the function remains the same (and the authority for the function remains the same) under Part 43.

Please note that the proposal is effectively a delegation of the privilege of issuing an export airworthiness approval to non-designees (certificate holders). Once again, whereas this has been rebuffed in a regulatory proposal, it should not be accomplished through guidance. Doing so violates the Administrative Procedures Act and the FAA's own rulemaking regulations.

Given the above mentioned regulatory incongruity, safety issues, competition issues, and violations of the Administrative procedures Act and the FAA's own regulations, we respectfully request that the FAA continue to have rebuilds approved for return to service according to the traditional mode of approval (right-hand signature).

Issue Five: References to the European Union Should be Amended to Reflect the European Community

The European bilateral agreement was entered into between the United States and the European Community.

The source of confusion might be the fact that the Technical Implementation Procedures make reference to the "European Aviation Safety Agency of the European Union." This document is merely an implementation document; the actual agreement on Cooperation in Civil Aviation was made between the United States and the European Community.

Therefore, in order to be correct, the references to the European Union throughout Order 8130.21H should be amended to make reference to the European Community.

Minor Corrections

Please find below a list of typographical and other minor errors identified in Order 8130.21H.

- Page 2-4. 2-6.d.(4): A comma and the word "and" at the end of the sentence appear to be superfluous
- Page 2-6. 2-7.c.(2): In line two there appears a widowed bracket ("]") following the word "attached"

- Page 2-6. 2-7.c.(2): In line six the example number “[S1-054321]” is not underline. We suggest underlining to maintain consistency with other example numbers in the paragraph
- Page 2-11. 2-10.b.(2): In line three a reference is made to “Block 13.” This should be corrected to read “Block 12”
- Page 3-9. 3-6.n.: In line three a reference is made to “Block 13.” This should be corrected to read “Block 12”
- Page 4-5. 4-4.h.: At the end of line two a second period appears. This should be deleted
- Page 4-8. 4-5.m.: In line seven a reference is made to “Block 12.” This should be corrected to read “Block 11”
- Page 5-6. 5-6.c.: In line one a reference is made to “Statements made in Blocks 14a and 14e.” 14e is a date box and therefore this reference appears incorrect. Perhaps the reference intended is to Blocks 13a and 14a. Unclear.
- Page A-4. Figure A-4 sample form appears to have a date discrepancy. Blocks 5 and 12 make reference to the date “12 Oct 2005,” but Block 13e refers “12 Oct 2007.” It is unclear whether this discrepancy is intentional.
- Page A-10. Figure A-10 sample form Block 11 states “See Block 13.” This should be corrected to “See Block 12”
- Page A-13. Figure A-13 sample form Block 12 states “work specified in Blocks 12/13 . . . .” This should be corrected to “work specified in Blocks 11/12 . . . .”
- Page A-20. Figure A-20 sample form Block 12 states “The installed is responsible . . . .” This likely should read “The installer is responsible . . . .” and should therefore be corrected.

Conclusion

The 8130-3 tags have become very important to the industry. They have become de facto transaction requirements even where they are not legally required. Therefore precision in the way that they are described is important.

Given the form's original purpose – to facilitate trade- it is also important that the 8130-3 forms not be permitted to create impediments to trade that do not fulfill a safety purpose.

Your consideration of these comments is greatly appreciated.

Respectfully Submitted,

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