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The UPDATE Report

CONGRATULATIONS TO THE FOLLOWING COMPANIES ON THEIR ASA-100 ACCREDITATION:

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Limerick, Ireland

AVECS Global
Muskegon, MI

Bay Aviation
San Leandro, CA

Howell Instruments, Inc. Turbine Services
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Lift Aerospace
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Pico Rivera, CA

Pacific Air Industries
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Prime Air, LLC
Skokie, IL; Miami, FL; & U.K.

Shey Systems
Hiawatha, IA

STS Component Solutions
Palm City, FL

FOR THEIR REACCREDITATION TO THE ASA-100 STANDARD

Late Hazmat Civil Penalty Payments Could Halt Your Business

One way the FAA enforces its regulatory authority is through the issuance of civil penalties. Sometimes the amount is low and a company will agree to pay the civil penalty even in cases where the penalty is undeserved. But what happens if you are late paying a civil penalty? In the past, the U.S. government would become a creditor like any other (albeit one with a lot of lawyers on staff); but after September 7, 2014, the regulations will prevent you from engaging in certain activities if you fail to pay your civil penalty in a timely fashion:

49 C.F.R. Sec. 109.101
* * *
(b) Failure to pay civil penalty in full. A respondent that fails to pay a hazardous material civil penalty in full within 90 days after the date specified for payment by an order of the … Federal Aviation Administration … is prohibited from conducting hazardous materials operations and shall immediately cease all hazardous materials operations beginning on the next day (i.e., the 91st). The prohibition shall continue until payment of the penalty has been made in full or at the discretion of the agency issuing the order an acceptable payment plan has been arranged.

This means that if you are late paying a civil penalty, shipping a hazmat aircraft part would become a violation that warrants a separate civil penalty (even if the shipment is otherwise proper)!

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ASA
AVIATION SUPPLIERS ASSOCIATION

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 annual ASA Board election is always a bittersweet time. I enjoy working with the current ASA Board of Directors. When a Board member leaves, I am saddened by the loss but glad to have fresh ideas from the new Board member.

I was particularly sad when outgoing Director Richard Levin told me that he would not be running for re-election this year.

Richard has been a constant voice of reason – a conservative, steadying factor on our Board. Yet despite his cautious and analytical nature, he was also a source of innovation. Once he was committed to an idea, his leadership was inspiring. This is the nature of the small business owner – urging caution with one hand while beckoning toward the future with the other.

I am honored to have had the opportunity to work with Richard, and pleased to have called him my friend.

His retirement left a clear opportunity for fresh ideas in this year's Board race. With Richard's retirement we needed someone who was a leader; someone who could provide both cautious analysis and also fresh and innovative ideas. We found that in all three of the newly elected Board members.

Returning to the Board after re-election, we welcome Bent Webb (AerSale) and Mitch Weinberg (International Aircraft Associates); and I am pleased to also announce that Lee Kapel (TSI Aviation), has been elected to the third Board seat that was open this election cycle. Lee is well-known in the industry for her dynamic personality, and we are very excited to work with her.

ASA will also welcome Edith Stein, who has been appointed to the Board using the Board's special appointment powers. Edith works for Southwest Airlines, and she brings an airline perspective that has been missing from the Board for several years. We've had a number of good conversations about ASA's future and I am sure that she will also be a positive force on the Board.

Take care, Michele

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broad indeed because many aircraft parts are regulated as hazmats. The preamble to the new rule clarifies that this is intended to halt any activity regulated under the hazardous materials regulations. This would include shipping of aircraft parts that are regulated as hazmats (also known as dangerous goods). This includes obvious hazmats like explosive squibs and chemical oxygen generators, but it also includes less obvious articles like:

- compressed gas cylinders
- engine and fuel system parts with fuel residue
- passenger service units with installed oxygen generators
- avionics or data recorders with back-up batteries
- batteries
- self-inflating articles like slides, rafts and life preservers
- many first aid kits

This highlights the importance of (1) mounting an effective defense to proposed hazmat civil penalties, and (2) paying civil penalties that have become final in a timely fashion. Note that appealing the ruling DOES NOT stay the enforcement of this provision, so if you appeal the ruling, then you will have to ask the appellate court to grant a stay.

> 49 C.F.R. Sec. 109.101
> * * *
> (d) Appeals to Federal Court. If the respondent appeals an agency order issued pursuant to Sec. 109.103 to a Federal Circuit Court of Appeals, the terms and payment due date of the order are not stayed unless the Court so specifies.

The new provisions were published in the Federal Register on August 7, 2014 at http://www.gpo.gov/fdsys/pkg/FR-2014-08-07/html/2014-18617.htm.

Dates on 8130-3 Tags

We have heard a number of complaints from people about rejected 8130-3 tags, where the sole reason for rejection is the date format.

Dates can be tricky when they are not clear. For example, 10/12/2012 is likely to be read as October 12, 2012 by the majority of US citizens, but 10/12/2012 is likely to be read as 10 December 2012 by the majority of EU citizens. This is a very real concern, because the 8130-3 tag started its life as an export tag, and export remains an important use of the tag. So for certain dates, it is especially important that the date format eliminate ambiguities both in the US and abroad.

Unfortunately, while the US government has attempted to eliminate

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ambiguities, they have also changed formats over the years, which has tended to introduce opportunities for confusion within the industry.

A Fastball History of the 8130-3 Date Requirements

In the original version of the current airworthiness approval instructions, the FAA did not include a format for the date. The date could be either the date on which the form was signed OR the date of the conformity. That original guidance explicitly stated that the form could not be used for approval for return to service. FAA Order 8130.21 (June 21, 1991).

The "A" revision to the guidance added approval for return to service as an authorized function for the tag, but failed to explicitly provide a date format. That revision did provide a sample, though, and in the sample it was clear that the FAA was using month/day/year format. Compare FAA Order 8130.21A, para. 11(r,w) (January 3, 1994) with FAA Order 8130.21A, App'x 1 (January 3, 1994). It also clarified that the date was the date of the signature. Id. at para. 11(r,w).

By the "C" revision to the guidance, the FAA had finally offered explicit guidance stating that the date should be entered in the month/day/year format. FAA Order 8130.21C, para. 14(r,w) (June 1, 2001). The sample found in the appendix uses the date "8/1/00". Id. at App'x 2 (note that this was post Y2K guidance, but it nonetheless used a two-digit date format; the samples in the 2004 "D" revision would move to a four-digit format for the year).

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The "D" revision to the guidance retained the same month/day/year format but specified that the month should be indicated by its three letter designator (e.g. JAN, FEB, MAR, etc.), rather than a number. FAA Order 8130.21D, para. 14(r,w) (September 28, 2004). As of 2004, the order in which the components were written should have no longer mattered, because you cannot confuse the day with the month because the month is now represented by letters instead of a number.

Revision "E" changed the guidance by separating the export, domestic, and approval for return to service guidance into three separate chapters; but there was no substantial change to the date formatting. FAA Order 8130.21E (September 29, 2006).

In the "F" revision to the guidance, the FAA changed the guidance by stating that the date should be entered in the month day year format. E.g., FAA Order 8130.21F, para. 3-5(s) (May 30, 2008). Look! No slashes! The samples each use a slashless format (like Oct 23 2007). But a more substantial (though less noticeable) change was applied to the guidance for approval for return to service (right-side signatures). Previous guidance had always required the date to reflect the date of the signature (which may have been required to coincide with other tasks). This revision directed those using the 8130-3 as an approval for return to service (under 14 C.F.R. § 43.9) to use the date on which the original work was completed. Id. It explained that this date could be different than the date on which the 8130-3 tag was printed (and thus different from the date on which it was signed). Id.

The "G" revision to the guidance eased up on the draconian banning of slashes, and explained that "[t]he use or omission of slashes, hyphens, or spaces in the date does not matter." E.g., FAA Order 8130.21G, para. 3-5(s) (October 26, 2009). But it left the date instructions otherwise unchanged.

The Change-Up

After 22 years, the "H" revision threw us a curveball. It changed the date format to dd/mm/yyyy (yes, the slashes are back!). FAA Order 8130.21H, para. 1-5(a)(5) (August 1, 2013); e.g., id. at para. 3-6(r). The guidance directs that "[t]he date must be in the following format: two-digit day, first three letters of the month, and four-digit year, for example, 03 Feb 2008." (well, at last the slashes are an option, again). But this once again raises the question, why do we need to have the date in a particular order if the three components of the date are distinct, and cannot be confused?

Of course, the change is not perfectly uniform. Certain paragraphs still advise the public to use the "month day year" format for certain records. E.g., FAA Order 8130.21H, para. 2-7(c)(2) (August 1, 2013).

Another interesting detail of the "H" revision is that the dates for all of the sample 8130-3 tags predate the "H" revision (the latest of these samples is from 2011 but most are from 2005-2008). All of the samples use the new date format ('day month year') despite the fact that all of them bear dates that would have required them to conform to earlier guidance that mandated a 'month day year' format. So in an effort to create samples that conformed to the new guidance, the FAA created samples that were on their face inappropriate because they would have failed to conform to the guidance that was in effect when each of these forms appear to have been created!

The Problem with Dates

So the problem that we run into is that receiving inspectors may reject 8130-3 tags that are otherwise correct because of date formatting. Some of my readers will no doubt say "that is ridiculous – no one would really do that, would they?" Yes, they would. We have received emails from a number of trade association members

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who have encountered this phenomenon.

And the real problem arises when a receiving inspector rejects an older 8130-3 that was correctly created under a prior revision to the guidance, on the grounds that it does not conform to the current revision of the guidance (which was not effective when the 8130-3 tag was issued). This is very frustrating because if the 8130-3 was correctly formatted at the time it was produced, it should pass through the system unmolested by subsequent guidance changes.

It is important for receiving inspectors to remember that FAA Order 8130.21 is an internal FAA Order, which means that it provides binding guidance to FAA employees and designees, but that it is not binding when applied to industry. This means that it is useful guidance for repair stations that use the 8130-3 tag, but they are not required by law or regulation to follow that guidance. Thus, a receiving inspector should not reject a repair station's 8130-3 tag if the date is formatted incorrectly, but is otherwise unambiguous. Designees are required to follow the then-current FAA guidance when they complete an 8130-3 tag. This means that a tag completed by a designee before the effective date of Order 8130.21H should bear a date that complies with the old formatting rules – not the new formatting rules (the effective date was February 1, 2014); but it is possible that some designees may have complied early (the "H" revision was released six months early in order to facilitate implementation of the changes reflected by the revision).

Language on the 8130-3 Tag: "This PMA part is not a critical component"

An ASA member recently asked whether a DAR would be permitted to write "This PMA part is not a critical component," on the domestic 8130-3 tag for a PMA component.

Many of you will recognize this as the language requested by the EU on export 8130-3 tags that accompany FAA-PMA parts that are not critical components.

Does this sort of language have value in a domestic 8130-3 tag? It might. When a Maintenance DAR (DAR-T) produces an export 8130-3 tag for a non-critical PMA part that is destined for an EU member nation, the DAR-T

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may add language verifying that the PMA part is not a critical component. The DAR-T may need some basis to make this non-critical decision, though.

The determination of whether a PMA part is critical is made by the design approval holder (the FAA-PMA holder) and confirmed as part of the FAA approval. See Order 8130.21H Section 4.4(c). The PMA holder is thus in a prime position to inform the first DAR to issue an 8130-3 tag about whether the part is critical. Adding the language "This PMA part is not a critical component," on the domestic 8130-3 tag may support efficient issue of future export tags for the same article, when a later decision to export is made.

Is it permissible for the designee at the manufacturer's facility to place this PMA "criticality statement" on the domestic 8130-3 tags that accompany the PMA parts? Yes, because it is not prohibited.

Manufacturers typically rely on designees to issue its 8130-3 tags (such as a DMIR, DAR, or an organizational delegation known as an ODA). Each designee is required to follow the instructions in Order 8130.21 (latest revision, which is currently the "H" revision).

Originally, industry requested the "domestic 8130-3 tag" as a work-around to circumvent outdated rules that prevented anyone other than a manufacturer from requesting an export 8130-3 tag for a ("class III") aircraft part. These outdated rules were impeding US exports and undermining safety (because the 8130-3 tag is used to distinguish known airworthy parts). The "domestic 8130-3 tag" was proposed to the FAA as just this sort of work-around, after FAA management explained that they could not modify the regulations in a timely fashion to support exporters. As time went on, this tag quickly began to serve other uses (including documenting actual domestic shipments) and the FAA ultimately revised the regulations to permit any exporter to apply for an export 8130-3 tag for an aircraft part (which eliminated the original NEED for the tag as a work-around).

Critical Components and the EU Bilateral

The PMA "criticality statement" is something that is requested under the technical implementation procedures (TIPs) that accompany the US-EU bilateral aviation safety agreement (BASA). It is not intrinsically necessary for domestic shipments.

Under the US-EU TIP, a "Critical Component" is defined as:

> "a part identified as critical by the design approval holder during the product type validation process, or otherwise by the exporting authority. Typically, such components include parts for which a replacement time, inspection interval, or related procedure is specified in the Airworthiness Limitations section or certification maintenance requirements of the manufacturer's maintenance manual or Instructions for Continued Airworthiness."

The TIP directs that PMA parts being exported from the United States to the European Union bear appropriate language in block 12 (the remarks block). For a PMA part which is not a critical component, the remarks block of the 8130-3 should state:

> "This PMA part is not a critical component."

But if the PMA part is a critical component, then there are two options for the language in the remarks block. In the first option, if the PMA holder also holds an EASA STC design approval which incorporates the PMA part into an EASA certified or validated product, then the language should say:

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"Produced by the holder of the EASA STC number [INSERT THE FULL REFERENCE OF THE EASA STC INCORPORATING THE PMA]."

In the second option, if the PMA holder holds a licensing agreement from the TC or STC holder (giving the PMA holder the rights to use the TC/STC design for the PMA parts), then the following statement should be written in the remarks block:

"Produced under licensing agreement from the holder of [INSERT TC or STC NUMBER]."

These are the only two options for exporting FAA-PMA critical components from the US to the EU.

Who Determines Whether a Component is Critical?

Section 4.4(c) of Order 8130.21H states that "The determination of a PMA article's criticality, as required to be entered in Block 12 when exported, can only be determined by the actual design approval holder (that is, the FAA-PMA holder)." This is important language because certain parties (foreign governments and competitors) have attempted to gainsay the FAA-approved "critical part" decisions of the FAA-PMA holders.

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But this language is not meant to prevent a designee issuing an export 8130-3 tag from making a PMA "criticality statement" on the 8130-3 tag that is consistent with the determination of the design approval holder. Thus, any subsequent designee issuing an export 8130-3 tag for an FAA-PMA part may rely on the design approval holder's determination as to whether the PMA part is a critical component.

Can We Place this Language in Block 12?

Block 12 is a free-form remarks block. The specific instructions of the block are that the block should state any information "necessary for the user or installer to determine the airworthiness of the product or article." There is a list of examples in the FAA guidance, but this list is not exclusive. A replacement time, inspection interval, or related procedure specified in the Airworthiness Limitations section would certainly be necessary information, and the fact that there is no such limit (e.g. that the part is not critical) could likewise be useful to the installer.

Thus, there seems to be no legal bar to adding this language to block 12 in a domestic 8130-3 tag (e.g. "This PMA part is not a critical component."). When such text is added to the first domestic 8130-3 tag that is generated at the production approval holder's facility, this would seem to be useful information that is preserved to support subsequent DARs who might later produce export airworthiness tags, which reflects additional value in the use of this language on a domestic 8130-3 tag.

Note that the language we are discussing, "This PMA part is not a critical component," is not required language on a domestic tag. Therefore, addition of this language to block 12 would be at the discretion of the designee, who is creating this tag. Thus, the designee would be within his or her rights to refuse to add this specific text to a domestic 8130-3 tag, to the same extent that he or she would be permitted to do so. It is simply a matter of discretion.

Why Does My Designee Have a New Number?

There may be some questions raised by ASA members when 8130-3 tags start showing up with unfamiliar (different) designee numbers. Not to worry: The FAA is switching all FAA-designees over to their new DMS system and all designees are being given new, unique, nine-digit identification numbers known as "designee numbers."

The DMS was announced in Order 8000.95, which is the FAA's Order on Designee Management Policy. DMS will collect, store and process data and information associated with designees and the designee management processes in accordance with FAA recordkeeping requirements. See Designee Management Policy, FAA Order 8000.95 (April 11, 2014). Designees should note that there is an explicit disclaimer of privacy, so designees are surrendering any expectations of privacy that they may have with respect to information stored in this system.

Manufacturing DARs are first to go through this process and many of them have already received their new numbers. The deadline for completing this process is ten days after the notification (which should have been received in June or early July), so if your manufacturing DAR is not yet registered properly in the DMS system, then please make sure he or she gets registered appropriately, ASAP; failure to renew through the DMS system could mean that the DAR loses his or her designee privileges!

The FAA intends for ALL manufacturing designees to be converted over to the DMS system by September. To that end, all new manufacturing DAR and DMIR applications after May 7, 2014 are being processed through the DMS.

Maintenance DARs (those with Flight Standards credentials) are expected to be added to the system next year.

Using Supplier Diversity in Air Carrier Supply

Are you a small business, woman-owned business, minority-owned business or veteran-owned business? If you are not making use of your customers' supplier diversity programs then you could be missing out!

I attended a great airline panel at this year's ACPC, and one of the topics discussed was supplier diversity programs. I have always known that falling into certain criteria can provide some contracting advantages, but I did not recognize some of the hidden value that can come from an airline's supplier diversity program.

Ruby McCleary spoke at the airline panel and I had an opportunity to chat with her about her job after the panel as well. Ruby is the Director of Supplier Diversity for United's procurement group. She explained that United has always sought diversity because it's the right thing to do, but that in the modern era, diversity also presents a competitive advantage. United seeks out relationships with large corporate buyers (IBM was the example she used in our discussion) in order to secure their transportation business, and those buyers have supplier diversity programs as well. United's diversity helps to give the air carrier a competitive advantage when marketing to those customers.

So diversity is more than just a good idea for an air carrier – there is pecuniary value as well.

Knowing that a company like United really wants to maintain their diverse supplier base, what are they doing to maintain it? New suppliers that meet a diversity criterion can contact Ruby. Her supplier diversity team will help guide the potential supplier through the ins-and-outs of United in order to make sure that you are speaking with the right people to get the business. But their involvement goes deeper than that. Because supplier diversity is part of United's strategy, Ruby revealed that it was a consideration during the recent merger with Continental. As the air carriers chose which suppliers to retain where there were multiple suppliers, they used a variety of factors to make initial cuts. Any companies that were proposed to be cut, and that were also part of the supplier diversity program, would be given a second look to see how their removal might affect supplier diversity. While this second look would not guarantee that a supplier might be retained, it at least gave the diverse supplier a second chance to be retained. Ruby explained that at the end of this process, the merged air carrier had a higher percentage of diversity than either of the predecessor air carriers had enjoyed because diverse suppliers from both carriers were retained in order to reach that higher percentage.

United uses the following categories when it is looking for supplier diversity:

- Women-owned business
- Minority-owned business
- Veteran and service disabled owned business
- Business enterprises owned by Persons with Disabilities
- Small business enterprises
- Lesbian-, gay-, bisexual- and transgender-owned businesses

A few of the supplier diversity programs in the air carrier industry include:

- American Airlines
- Delta Airlines
- Southwest Airlines
- United Airlines

Ruby McCleary, whose explanation of United's Supplier Diversity program was very helpful, can be reached at (872) 825-2684 or by email at ruby.mccleary@united.com.

ASA Social Media

: www.facebook.com/AviationSuppliersAssociation

: @aviationsupp

: www.linkedin.com/company/aviation-suppliers-association

EASA Drops Rulemaking!

The European Aviation Safety Agency (EASA) is new and improved!

On 1 September 2014, EASA announced a new organizational structure that should "prepar[e] the Agency for the challenges of the coming years."

The most salient change is that there is no longer a Rulemaking Directorate. I spoke with a number of EASA executives while this change was being planned and implemented and they felt that the separate Rulemaking Directorate was necessary while EASA was developing the large bodies of rules that would regulate the European aviation industry, but that such a directorate was no longer necessary now that the regulatory structure has been developed.

Many of you have heard me say that "regulators need to regulate." It is what they do. And if you have regulators whose job is to make new regulations, then they will make new regulations whether new regulations are needed or not. EASA has recognized this, and has removed the temptation to make rules for the sake of rules with this change.

The remaining directorates will still be able to develop rules as they are needed, but they will primarily focus their resources on regulating the industry under the rules that currently exist, and limit rulemaking activities to situations that require such activities.

EASA's press release announced that "[t]he new organisation will enable the Agency to engage more pragmatically with the aviation industry. A strategy and safety management directorate has been created in order to strengthen EASA's overall strategy and to promote a data driven and performance-based approach to managing safety. All regulatory functions have been integrated across the different aviation domains and more homogeneity has been introduced to better enable the Agency to speak with one voice."

Setting aside the rhetoric, EASA's reorganization reflects a strategic recognition of what EASA wants to do to support safety as well as a pragmatic recognition that rulemaking should be driven by need, and not by a coincidental prior commitment of resources. It is a bold move, but one that should be applauded by anyone who cares about the integrity of the regulatory regime.

The new EASA organization chart can be found online.

No, Aircraft Disassembly is Not a Maintenance Activity Under the FAA Regulations

Many ASA members have entered the exciting world of aircraft disassembly. A member recently reported that he has encountered some customers who believe that aircraft disassembly can only be performed by a repair station under FAA regulations. This belief is untrue.

Part 43 of the FAA's regulations requires that alteration, rebuilding, maintenance, and preventative maintenance be performed only by parties authorized to do so under the regulations 14 C.F.R. § 43.3(a). Other functions that are not specifically regulated by the FAA remain unregulated functions.

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Aircraft Disassembly is Not Regulated Under Part 43 nor Part 145

It should be obvious that disassembly of an aircraft does not constitute alteration or rebuilding. But could it be a maintenance or preventative maintenance task?

Maintenance is defined in the regulations to be "inspection, overhaul, repair, preservation, and the replacement of parts…." 14 C.F.R. § 1.1 (definition of "maintenance"). This definition also specifically excludes preventive maintenance, which is defined separately.

Aircraft disassembly is different from inspection, overhaul, repair, preservation, and the replacement of parts, so aircraft disassembly is not a species of maintenance under U.S. law.

Preventative maintenance is defined in the regulations to mean "simple or minor preservation operations and the replacement of small standard parts not involving complex assembly operations." 14 C.F.R. § 1.1 (definition of "preventative maintenance"). This definition is further refined in Appendix A to Part 43. That appendix limits the scope of preventive maintenance only to certain listed functions (this is explicitly described as a limitation so it cannot expand the definition of preventative maintenance). It clarifies that the removal, installation and repair of landing gear tires is a preventative maintenance function (but this only applies in the context of simple or minor preservation operations, and disassembly alone is not a preservation operation). So removal alone, without any effort to preserve, is not a preventative maintenance function.

Aircraft disassembly is neither a preservation operation nor the replacement of small standard parts, so aircraft disassembly is not a species of preventative maintenance under U.S. law. Similarly, aircraft disassembly is not alteration, rebuilding, maintenance, nor preventative maintenance; it is not regulated under Part 43, and therefore is not one of the functions reserved to only certain certificate holders.

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Thus, it is clear that the FAA Part 43 regulations (and by extension the Part 145 regulations) do not apply to disassembly of aircraft.

The unregulated nature of disassembly is one of the reasons that the Aircraft Fleet Recycling Association (AFRA) stepped in and offered their Best Management Practices (BMP) for disassembly of aircraft in order to encourage practices designed to preserve airworthiness as well as to guard the environment. The AFRA BMP provides guidance and the AFRA auditing program supports compliance to the standard.

This does not mean that repair stations are prevented from disassembling aircraft for parts. Because this is an unregulated function, repair stations may also perform the disassembly function if they wish.

No Obligation Imposed by Advisory Circular

Some have taken text from FAA's AC 20-62 out of context and suggested that it might impose restrictions on removal of parts. The text in question (taken alone and out of context) states: "Parts with removal records showing traceability to a U.S. certificated aircraft, signed by an appropriately certificated person." But look at this text in its full context and you see a different picture:

> **"8. INFORMATION RELEVANT TO USED PARTS.** The following information may be useful when assessing maintenance records and part status.
> **d. Seller's Designation.** The seller may be able to provide documentation that shows traceability to an FAA-approved manufacturing procedure for one of the following:
> (1) Parts produced by an FAA-PAH by TC, PC, PMA, TSOA.
> (2) Parts produced by a foreign manufacturer (in accordance with part 21 subpart N).
> (3) Standard parts produced by a named manufacturer.
> (4) Parts distributed with direct ship authority.
> (5) Parts produced, for the work being accomplished, by a repair station to accomplish a repair or alteration on a specific TC'd product.
> (6) Parts produced by an owner or operator for installation on the owner's or operator's aircraft (i.e., by a certificated air carrier).
> (7) Parts with removal records showing traceability to a U.S. certificated aircraft, signed by an appropriately certificated person."
>
> Eligibility, Quality, and Identification of Aeronautical Replacement Parts, FAA AC 20-62E, para 8(d) (December 23, 2010).

In its full context, it is obvious that this text is just one of a list of types of parts that are considered acceptable. Most parts removed from aircraft that are intended for reuse will fit into category one (TC, PC, PMA, TSOA), and therefore the analysis will never get to category seven. That category exists for articles that do not fit within one of the first six categories. Note also that this text harkens back to the time when it was assumed that any part removed from an aircraft was a good part – modern practice recognizes that mistakes are made at installation and therefore modern disassembly procedure scrutinizes each part and its records to properly identify it without making unsubstantiated assumptions.

Further, the FAA does not have any removal record, and has no regulations reflecting removal records. For this reason, no certificate is necessary in order to sign a removal record.

Yes, You Can Still (Get a License to) Sell Aircraft Parts to Iran

The program that permitted aircraft parts to be sold to Iran has been extended through November 24, 2014. This program is based on an agreement among China, France, Germany, Russia, United Kingdom, United States and Iran known as the Joint Plan of Action (JPOA).

Sellers subject to U.S. law still need to obtain a license from the Treasury Department. The license will be considered to be a "transactional license." You can apply for the license on the Treasury Department's Office of Foreign Asset Control website at: https://licensing.ofac.treas.gov/Apply/Introduction.aspx.

The Agreement between the United States and Iran provides that the U.S. would license (i) the supply and installation in Iran of spare parts for safety of flight for Iranian civil aviation and associated services and (ii) safety related inspections and repairs in Iran as well as associated services. License applications will be reviewed on a case-by-case basis, though, and there is no guarantee that a license will be issued in any case.

OFAC policy suggests that applications should provide complete details of all transactions for which authorization is sought, including U.S. Department of Commerce Export Control Classification Numbers (ECCN) as well as evidence that the proposed transactions are for safety of flight.

This includes aircraft parts and some services but it does not include complete aircraft. The "goods" provision is limited to "spare parts for safety of flight for Iranian civil aviation."

Unless an extension is negotiated, all licenses issued pursuant to this program will expire on November 24, 2014. Therefore distributors should plan on completing all activities related to the licenses by that date … including payment! OFAC has pledged that it will not impose any sanctions on banks that facilitate the fund transfers for these licensed transactions during the relevant period, but that promise appears to end after November 24, 2014.

Related Documents:
Joint Plan of Action (JPOA) between the P5 + 1 and the Islamic Republic of Iran:
http://www.state.gov/p/nea/rls/220042.htm

Guidance on the Extended Program: http://www.treasury.gov/resource center/sanctions/Programs/Documents/jpoa_guidance_ext.pdf

Iran JPOA FAQs (see FAQ #10): http://www.treasury.gov/resource-center/sanctions/Programs/Documents/jpoa_faqs_ext.pdf

Amended Statement of Licensing Policy on Activities Related to the Safety Of Iran's Civil Aviation Industry:
http://www.treasury.gov/resource-center/sanctions/Programs/Documents/civil_aviation_slp_iran_ext.pdf

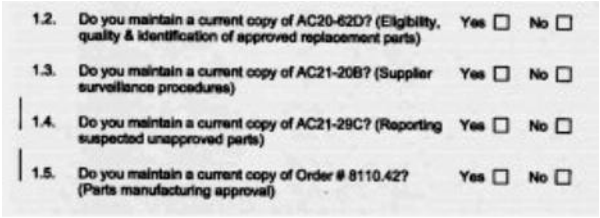
ASA is blogging!

Check out the two blogs on the ASA website:

- **Cavu Café: Royboy's Prose & Cons**
  and the
- **ASA Web Log by Jason Dickstein**

Distributor Quality Questionnaire: Questions About Your Library

I recently heard from an ASA member who had received a distributor quality questionnaire. The questionnaire asked whether the company maintained current copies of certain documents in their files. The documents requested were:



1.2.	Do you maintain a current copy of AC20-62D? (Eligibility, quality & identification of approved replacement parts)	Yes ☐	No ☐
1.3.	Do you maintain a current copy of AC21-20B? (Supplier surveillance procedures)	Yes ☐	No ☐
1.4.	Do you maintain a current copy of AC21-29C? (Reporting suspected unapproved parts)	Yes ☐	No ☐
1.5.	Do you maintain a current copy of Order # 8110.42? (Parts manufacturing approval)	Yes ☐	No ☐

Questions from Supplier Questionnaire

- AC 20-62D
- AC 21-20B
- AC 21-29C
- Order 8110.42

While it is useful for distributors to draw upon FAA guidance documents for reference, it is important to make sure you are referencing documents that are useful to your business, and that reflect current guidance. All of the documents requested in this distributor questionnaire are documents listed in FAA AC 00-56 under Related Reading Materials.

It is also useful to remember that so much guidance is readily available online, and it is normal for distributor personnel to have internet access today, that it may no longer be necessary for businesses to maintain actual paper libraries. Knowing where to access these documents online or maintaining electronic copies may be adequate for many distribution businesses, especially if that is part of your method for ensuring that you are relying on the most recent revision levels of the guidance. We have included a list of the relevant documents, below (NOTE: for some businesses, the easiest course of action in responding to a question like this is to simply download the documents and then check “Yes” on the form).

The ASA member asked whether, as a distributor of aircraft parts, his/her company was obliged to comply with the four guidance documents listed. The short answer that I gave the ASA member was that an aircraft parts distributor who does not possess any additional FAA certificates is not required to comply with any of them, but some of them may be useful to a distributor. Others, however, do not apply to a distributor’s business model and are useful only for achieving a better understanding of other sectors of the industry. Here is some more specific information on each of the four documents:

AC 20-62D: First, the most current revision level is AC 20-62E, so that is the version that should be referenced. While this guidance is not mandatory, AC 20-62E does provide some useful information about identifying replacement parts (e.g. by documentation or by parts marking), which is especially useful for a distributor’s receiving inspectors and quality department. I recommend that this be part of a distributor’s library and also be used as part of the internal training program.

AC 21-20B: This advisory circular was meant to provide guidance for production approval holders who perform supplier surveillance. While you might glean some ideas from it, it is outdated – it was supplanted

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by the "C" revision in 1996 and the "C" revision was cancelled in 2009 when the new quality assurance regulations were published (the current version of 14 C.F.R. 21.137 establishes a different model for supplier oversight). Today, you can find supplier oversight discussions in AC 21-43. Distributors who are supplying material to production approval holders may want to read AC 21-43 in order to better understand the obligations imposed on their business partner.

AC 21-29C: This advisory circular provides guidance distinguishing approved parts from unapproved parts. This can help in distinguishing parts that are considered acceptable by the FAA from unacceptable ones, but you should remember that these distinctions are not always perfectly aligned with the regulations. Nonetheless, this was originally written by the FAA as a tool to assist industry in identifying aircraft parts that the FAA considers to be categorically acceptable for installation, and it remains an excellent tool.

Order 8110.42: This is the FAA's Order explaining how to process PMA applications. The current revision level is 8110.42D. Prior revision levels had included guidance that was really aimed at industry, but this Order has been redrafted to separate out the industry guidance and move it to advisory circulars. If you want to learn more about test-and-computation PMA applications from the applicant's side, then you should first study AC 21.303-4. But Order 8110-42 guidance, per se, does not apply to a distributor – it is meant for the FAA employees who interact with PMA applicants.

Given the fact that many years have passed since some of these documents were superseded, it appears that the questionnaire that was sent to this member may need to be updated. A safer way to reference FAA guidance is to drop the revision letter and simply ask for the current revision level (so when a revision level changes, the document may not need to be changed). But this does not mean that you should ignore a periodic review of your questionnaires! AC references can change, especially when there are major changes in the underlying regulations. For example, AC 21-20C was cancelled and replaced by AC 21-43 after major changes in part 21 (AC 21-43 pulled together a set of guidance and took the place of several different guidance documents). So this underscores the importance of checking your distributor quality questionnaires, to make sure they remain current!

Have questions about the FAA's regulations and policy? Want to make sure you are keeping safe and compliant? Attend one of the ASA Regulatory Workshops! We have regulatory workshops coming up in South Florida (October 14), Los Angeles (October 16) and Dallas (December 4). The agenda is available online and you can register on ASA's website. These classes are an inexpensive way to train your staff about the changes in regulations and policy that affect your business. I hope that I will see you there!

Exporting under Russia-Ukraine Sanctions

Recently, we have had several questions from members regarding export of aircraft parts to Russia and the Ukraine. As most readers no doubt know, the United States and the EU, in response to the conflict in eastern Ukraine, have imposed various economic sanctions on certain persons and businesses in Russia. When sanctions like these are imposed, those companies doing business with customers in Russia and Ukraine wisely want to know whether and what type of affect these sanctions may have on their business.

Questions regarding business relations in Russian and Ukraine typically take one of two forms: The first, can I do business with the customer at all? The second, can I export this particular part to the customer?

To answer these questions, we first need to know what sanctions have been imposed and to whom they apply. We then need to recall our basic export compliance principles and apply those principles to determine

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whether the part itself can be exported. Those who have attended ASA workshops in the past may recognize these steps as part of the process of export compliance.

The United States, through the Treasury Department, has issued several rounds of sanctions directed at specific industries and parties. For the most part, the targeted industries have been companies in the Russian financial and energy sectors, while the individuals are mainly officials and individuals with ties to Vladimir Putin.

However, companies in the financial and energy sectors are not the only ones that have been targeted. Importantly, Avia Group and Avia Group Nord, business aviation groups, were also targeted with U.S. sanctions. This means that although not yet a focal point, the aviation industry can be targeted if the United States deems it necessary, and this is a good reminder that exporters of aircraft parts need to be aware. The Treasury Department maintains an up to date list of Ukraine-related sanctions on its website.

Although it appears that the Russian aviation sector has not been highly targeted by the United States yet, these sanctions illustrate the importance of knowing your customer. Further, simply because the United States has not sanctioned an organization does not mean they may not be sanctioned by another body. For instance, the EU recently issued sanctions against Dobrolet, a low-cost Russian carrier. If you are based in the EU, you should review the European Union's restrictive measures in force to ensure you remain compliant with EU sanctions.

As our industry well knows, wealthy entities and individuals, such as those named in sanctions, frequently own or operate their own aircraft. Given the wealth and high-ranking status of individuals and companies named, it is important to review the Treasury Department Office of Foreign Asset Control's Specially Designated Nationals list. Furthermore, it is important to take this step with every transaction, because new individuals and entities can be added at any time, whether announced as a new round of sanctions or not.

Once we have determined whether sanctions apply to our prospective customer, we can rely on our export compliance program to take us the rest of the way. The exporter must determine whether the article it plans to export is ITAR or EAR controlled. Once the appropriate export regime is determined the exporter must determine whether an export license is required for the particular part or whether any license exceptions apply.

If a license is required, the exporter should apply as usual. Be aware that both the State Department DDTC and the Commerce Department BIS may deny export license applications for high-tech items that could contribute to Russian military capability. In most cases, however, articles for civil aviation may still be exported.

The highly publicized nature of these sanctions rightfully causes many companies to hesitate before undertaking an export transaction to the listed countries. This hesitation is appropriate, given the already complex nature of export compliance. But these delays can also help the exporter to ensure that the transaction is undertaken correctly and legally.

The good news is that an effective export compliance system will enable you to easily comply with whatever sanctions and restrictions are enacted. An effective compliance system should find the exporter following the same steps, reviewing the same lists, and performing the same analyses with every export transaction. An export compliance program that is second nature to the exporter's employees will ensure that no matter what sanctions are issued, or against whom, your company will remain compliant. Our law firm has helped many companies establish effective export compliance programs. If you have questions regarding export compliance, please feel free to contact us.

Changes to Export License Exceptions Demand Caution by Industry

Subtle changes to the export license exceptions that are frequently used by the aviation industry could harm your business if you do not ensure continued compliance with the standards as they are evolving.

Many parties in the aviation industry have noticed and used the license exception for servicing and replacement of parts and equipment. This exception is known as the "RPL" exception, because that is the code used in the electronic export information (EEI) filing to indicate use of the exception. This exception generally applies to articles that would require an export license, and it permits those articles to be exported without a license when they have been brought into the U.S. for servicing and are then exported to their original owners (the transaction must also meet certain other criteria). It is therefore highly useful to U.S. repair stations that are servicing parts for non-U.S. customers, and also to U.S. distributors that manage repairs for non-U.S. customers.

The old scope clause read like this:

> (1) *Scope*. The provisions of this paragraph (b) authorize the export and reexport of items that were returned to the United States for servicing and the replacement of defective or unacceptable U.S.-origin commodities and software.
>
> 15 CFR 740.10(b)(1) (2013).

The new scope clause reads like this:

> (1) The provisions of this paragraph (b) authorize the export and reexport to any destination, except for 9×515 or "600 series" items to destinations identified in Country Group D:5 (see Supplement No. 1 to this part) or otherwise prohibited under the EAR, of commodities and software that were sent to the United States or to a foreign party for servicing and replacement of commodities and software "subject to the EAR" (see Sec. 734.2(a) of the EAR) that are defective or that an end user or ultimate consignee has found unacceptable.
>
> Corrections and Clarifications to the Export Administration Regulations; Correction, 79 Fed. Reg. 48660-48661 (August 18, 2014); 15 CFR 740.10(b)(1) (effective August 18, 2014).

This new text confirms certain limitations on the use of the RPL exception. It may not be used for article bearing ECCN 9×515 or any "600 series" ECCN if the article is destined for Group D:5 country.

The new text also adds the detail that if the article is not defective, then the end-user or ultimate consignee must have found the article to be unacceptable. Articles that are not defective may be overhauled or tested to confirm their airworthiness – this may be accomplished by a non-U.S. distributor. The term "ultimate consignee" is defined in 15 C.F.R. 748.5(e):

> (e) *Ultimate consignee.* The principal party in interest located abroad who receives the exported or reexported items. The ultimate consignee is not a forwarding agent or other intermediary, but may be the end-user.

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When the non-U.S. distributor is the party that determined the need for servicing of a non-defective article, the non-U.S. distributor must remain the ultimate consignee in the transaction. When might the non-U.S. distributor become something other than the ultimate consignee? When the unit is sold to a third party and the US person holding the serviced unit is directed to drop ship it to the third party buyer. In any other unlicensed transaction, this should be fine (assuming no other laws are implicated by the transaction), but in an RPL transaction, this can cause a problem if the conditions of RPL are no longer met by the transaction model. To clarify, if a non-defective unit is sent to the US for servicing (like calibration, or confirmation of airworthiness), then the person who found it unacceptable (the one who found it in need of servicing) must remain either the end user or the ultimate consignee. If that person was a non-U.S. distributor, then the non-U.S. distributor must remain as the ultimate consignee to continue to meet the requirements of RPL.

Remember, RPL is an exception – you always have the option of obtaining a license for the export. And luckily, most civil aviation articles exported from the U.S. do not require export licenses from BIS.

CALENDAR OF EVENTS

ASA Workshop Series/Training

October 14, 2014 . . . . . **Regulatory Workshop** • *Miramar, FL*
October 16, 2014 . . . . . **Regulatory Workshop** • *Los Angeles, CA*
November 11-12, 2014 . . . . . **Hazmat Training** • *ONLINE*
December 4, 2014 . . . . . **Regulatory Workshop** • *Dallas, TX*
December 5, 2014 . . . . . **Quality Committee Meeting** • *Dallas, TX*

ASA 2015 Annual Conference

June 7-9, 2015 . . . . . *Hyatt Regency at Gainey Ranch Resort – Scottsdale, AZ*

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