



February 5, 2007

BY ELECTRONIC MAIL

The Honorable Marion Clifton Blakey
Administrator, Federal Aviation Administration
U.S. Department of Transportation
400 Seventh Street, SW
Washington, DC 20590
Electronic Address: <http://www.dms.dot.gov> (RIN 2120-AI78; Docket No. FAA-2006-25877)

Re: Proposed Production and Airworthiness Approvals, Parts Marking, and Miscellaneous Proposals Rule

Dear Administrator Blakey:

The U.S. Small Business Administration's (SBA) Office of Advocacy (Advocacy) submits the following comments on the Federal Aviation Administration's (FAA's) *Proposed Production and Airworthiness Approvals, Parts Marking, and Miscellaneous Proposals Rule*.¹ The proposed rule would change the certification procedures and identification requirements for aeronautical products and parts, including standardizing the requirements for production approval holders, requiring production approval holders to issue airworthiness approvals, requiring manufacturers to mark all parts and components, and revising export airworthiness approval requirements to facilitate global harmonization.²

Office of Advocacy

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within SBA, so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA),³ as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),⁴ gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small business and to consider

¹ 71 Fed. Reg. 58914 (October 5, 2006).

² Id.

³ 5 U.S.C. § 601 et seq.

⁴ Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. § 601 et seq.).

less burdensome alternatives. Moreover, on August 13, 2002, President Bush signed Executive Order 13272,⁵ which requires federal agencies to notify Advocacy of any proposed rules that are expected to have a significant economic impact on a substantial number of small entities and to give every appropriate consideration to any comments on a proposed or final rule submitted by Advocacy. Further, the agency must include, in any explanation or discussion accompanying publication in the *Federal Register* of a final rule, the agency's response to any written comments submitted by Advocacy on the proposed rule.

Background

FAA's proposed rule is designed to improve aviation safety by revising FAA's regulations governing the certification procedures for aviation parts and products, and to mandate new requirements for marking aviation parts and components.⁶ FAA seeks to update its regulations to reflect the modern manufacturing environment, where many original equipment manufacturers have gone out of business and a new market for replacement and modified parts has arisen.⁷ FAA also seeks to promote a global marketplace in aircraft parts and products by harmonizing its regulations with more recent global standards.⁸ FAA's proposed rule emanates from the recommendations of two working groups of its Aviation Rulemaking Advisory Committee, which met during the 1993 - 1998 period. The proposed rule incorporates many of the recommendations of the working groups as well as other provisions developed by FAA that were not among the working groups' recommendations.⁹

Regulatory Flexibility Act Determination

FAA has determined that the proposed rule will "have a significant economic impact on a substantial number of small entities"¹⁰ (i.e., aviation parts manufacturers). Accordingly, the agency prepared an Initial Regulatory Flexibility Analysis (IRFA),¹¹ but did not publish the IRFA (or a summary thereof) in the *Federal Register* as required by the RFA.¹² However, since FAA has informed Advocacy that it plans to remedy this oversight by subsequently publishing the IRFA in the *Federal Register* for public comment, Advocacy will file additional comments specifically addressing the IRFA at that time. For now, Advocacy notes that several small parts manufacturers and other small business representatives have contacted Advocacy and expressed serious concerns with the proposed rule. Specifically, they have stated that some of the provisions (e.g., quality systems and shipping requirements) are so costly and onerous that they could be

⁵ Executive Order 13272, *Proper Consideration of Small Entities in Agency Rulemaking* (67 Fed. Reg. 53461) (August 16, 2002).

⁶ 71 Fed. Reg. 58915.

⁷ *Initial Regulatory Evaluation*, Office of Aviation Policy and Plans, Regulatory Analysis Division, March 2006, p.4 (available in the docket at http://dmses.dot.gov/docimages/pdf99/431897_web.pdf).

⁸ Id., Footnote 6.

⁹ 71 Fed. Reg. 58916.

¹⁰ 71 Fed. Reg. 58941.

¹¹ Id., Footnote 7 (The IRFA appears on pages 119-126 of the *Initial Regulatory Evaluation*).

¹² See, 5 U.S.C. 603 (a).

forced out of business. Further, Advocacy notes that the IRFA appears to miss several small business sectors that would be directly affected by the proposed rule, but are not included in the analysis. These include manufacturers of commercial parts who are not currently subject to FAA regulation; repair shops that perform maintenance activities; and parts distributors who sell, but do not manufacture, aviation parts. These issues are discussed below and will also be addressed in Advocacy's separate comments on the IRFA.

Small Entities Have Expressed Serious Concerns About The Proposed Rule

In response to the publication of the proposed rule, several small aviation parts manufactures and other small business representatives contacted Advocacy and expressed serious concerns with the proposed rule. In response, Advocacy hosted a conference call on January 26, 2007, for small business representatives to discuss these concerns. The following comments are reflective of the issues raised during that conference call, in subsequent conversations with these small business representatives, and in comments already submitted to the docket.

1. **Parts Marking and Marking Component Parts within an Assembly.** Several small business representatives stated that they would like FAA to clarify that the parts marking provisions of the proposed rule never require the marking of parts if it would be technically infeasible (e.g., because they are too small) or would cause a safety concern (e.g., because the parts are delicate or the ink could react negatively with, or impair the effectiveness of, glues or seals). Further, the small business representatives expressed concern over the provisions that require all component parts within an assembly (e.g., a muffler or hydraulic pump) to be individually marked. They stated that this would be confusing, time consuming, and unduly expensive with little added safety benefit. The representatives said that they would prefer that FAA leave the current interpretation and application of existing regulations in place (i.e., that only the top assembly needs to be marked) and allow manufacturers to determine how to best label their own products.
2. **Definition of "Commercial Parts."** Several small business representatives expressed concern over FAA's proposed definition of "commercial parts." Specifically, they stated that FAA appears regulating (i.e., asserting jurisdiction over) every conceivable manufacturer of goods regardless of whether those goods are intended for installation on an aircraft. Specifically, the proposed regulation states that if a manufacturer "knows, or should know, that a replacement or modification part is reasonably likely to be installed on a type-certificated product,"¹³ the manufacturer must obtain FAA production approval in order to produce it. These manufactured goods include everything from DVD players to coffee pots to curtain rings that can be used, but are not specifically intended for, an aircraft. According to the small business representatives, this means that a manufacturer could not even produce a commercial part that could be used on an aircraft unless it has complied with FAA's proposed rule. However, the representatives noted that these

¹³ 71 Fed. Reg. 58943.

manufacturers have no control over the use of their products and do not necessarily know who the end users are. The effect of this provision could be to subject innocent manufacturers to onerous FAA regulations without their knowledge. It could also lead to the creation of mini-monopolies in parts that have gone through the FAA approval process where it is too expensive and time-consuming to approve similar, competing goods. This could restrict the availability of parts, dramatically increase their price, and potentially impede safety upgrades. The small business representatives stated that they believe FAA should not regulate commercial parts, but rather limit its regulations to parts that are specifically designed for aircraft.

3. **Parts Produced Incidental to Maintenance.** Several small business representatives expressed concern over the proposed provisions that restrict the ability of a repair shops to produce a part during maintenance activities. For example, a repair shop can currently produce a bracket or bushing and install it on an aircraft as part of a maintenance activity.¹⁴ However, under the proposed regulation, repair shops would no longer be able to do this and would instead be restricted to using only parts that have been produced under an FAA approval process. This could increase costs and delay maintenance activities. The small business representatives stated that they would prefer that FAA leave the current “for sale” provisions in place and not require specific approval for routine parts produced during maintenance.
4. **Quality Systems.** Several small business representatives, particularly those involved in parts manufacturing, expressed serious reservations with the proposed requirements concerning quality systems. These requirements are being proposed in order to harmonize FAA regulations with certain international standards, particularly those of the European Union. While the regulations do not specifically require manufacturers to become certified under ISO-9001 or SAE-9100, they include requirements that are comparable to these standards. Small business manufacturers claim that these requirements are extremely costly and onerous and would require them to completely rewrite their production and quality manuals to incorporate complex management systems with little added safety benefit. They pointed out that there have been few, if any, accidents associated with parts produced under the current regulatory regime and that the benefits of global harmonization do not justify the cost of implementing these systems.¹⁵ Some said that the requirements would put them out of business because they would have to hire additional staff just to handle the added paperwork associated with process control, recordkeeping, audits, and other requirements. Advocacy believes FAA should carefully consider the impact of these requirements on small business and evaluate whether the provisions are warranted given the disproportionate impact they are like to have on small manufacturers.

¹⁴ Other examples cited include “consuming” a product or finishing and installing an “unfinished” part.

¹⁵ One small business representative noted that the European Union’s regulatory system does not permit independent aircraft parts manufacturing in the way that U.S. regulations do. Therefore, FAA’s proposal to harmonize its regulations with Europe’s will require small U.S. manufactures to implement rigorous “management standards” that go well beyond safety and that only large European companies have to adopt.

5. **Form 8130-3 Conformity Statement.** Several small business representatives, particularly those involved in parts manufacturing, expressed serious concerns with the proposed revisions to the Form 8130-3 process. Specifically, they said these requirements would mandate that they duplicate the parts and conformity information that they are already providing to FAA through the domestic design and approval process.¹⁶ They believe that requiring Form 8130-3 for domestic use is redundant and unnecessary. The 8130-3 form is a signed statement of “airworthiness” by FAA or a FAA approved designee inspector. A few companies which routinely export parts presently have designee inspectors and processes in place. The majority of small businesses, however, do not have the personnel, provision in their existing quality control system, or the time or budget to establish and maintain a Designee Inspection process. These manufactures would have to take the time and expense of establishing a Designee Inspection process that may require hiring additional personnel, or to hire the services of designee inspectors at great expense. A few representatives stated they would go out of business if the proposed regulations are implemented because they have neither the time nor money to implement such changes. Further, they stated that requiring this form for domestic shipments would do nothing to improve aviation safety, but would simply impose overlapping paperwork burdens and costly staffing requirements on small manufacturers. They believe that FAA should abandon these provisions and simply require that parts manufacturers provide assurances that the parts were produced under appropriate production approvals using existing language in the current regulations.
6. **Distribution of Parts.** Several small business representatives expressed concern that the proposed regulation will alter the current system of aircraft parts sales and distribution. Specifically, they stated that the proposed rules will forbid anyone from selling civil aircraft parts unless they are the manufacturer of the part, essentially forcing current parts distributors out of business.¹⁷ For example, many design approval holders for older aircraft are no longer operating or are not in a position to designate commercial parts, which would make it impossible for anyone to find permissible parts that could be sold in compliance with the proposed rule. Advocacy recommends that FAA carefully consider whether the proposed restrictions on parts distribution will have safety benefits that justify the potential disruption to the current parts distribution system.
7. **Existing Parts Inventories.** Finally, several small business representatives were concerned that the proposed regulation does not contain express provisions concerning inventories of existing parts. They recommended that FAA clarify that any new production requirements on parts or products will apply only to parts manufactured after a date certain and that any new regulations will not render current parts or products unusable.

¹⁶ Presently codified at 14 C.F.R. 45.15.

¹⁷ There may also be a significant impact on aviation repair stations, which both buy and sell parts.

Conclusion

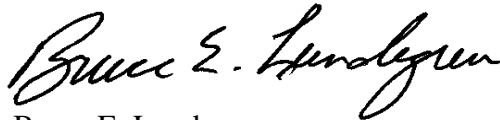
Advocacy appreciates the opportunity to comment on FAA's *Proposed Production and Airworthiness Approvals, Parts Marking, and Miscellaneous Proposals Rule*. Advocacy notes that many of the small business representatives we spoke to support many of the provisions in the proposed rule, but they expressed concern that other requirements would have a negative impact on small domestic manufacturers. Further, several stated that FAA should base its regulations on safety concerns rather than on global harmonization. Advocacy believes these are legitimate issues that FAA should consider carefully before proceeding with this rule.

Thank you again for the opportunity to comment on this proposed rule. Please feel free to contact me or Bruce Lundegren at (202) 205-6144 (or bruce.lundegren@sba.gov) if you have any questions or require additional information.

Sincerely,



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Copy to: Steven D. Aitken, Acting Administrator
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