

March 30, 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: Comments on Initial Regulatory Flexibility Analysis for 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 Initial Regulatory Flexibility Analysis (IRFA)¹ for the Federal Aviation Administration's (FAA's) *Proposed Production and Airworthiness Approvals, Parts Marking, and Miscellaneous Proposals Rule*.² While Advocacy previously submitted comments to FAA on the proposed rule;³ this letter focuses on the IRFA. Advocacy commends FAA for publishing the IRFA for additional public comment beyond publication of the proposed rule. However, Advocacy is concerned that the IRFA understates the cost and impact of the proposed rule on small businesses and fails to consider feasible alternatives that could make the rule less costly and burdensome to small business. In fact, Advocacy notes that the docket is replete with comments from small businesses indicating that they would prefer that FAA leave its current rules in place rather than adopting the proposed changes.

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

¹ 72 *Fed. Reg.* 6968 (February 14, 2007).

² 71 *Fed. Reg.* 58914 (October 5, 2007). (FAA's proposed rule would revise FAA's regulations governing the certification procedures for aviation parts and products, and to mandate new requirements for quality systems and the marking aviation parts and components.)

³ http://www.sba.gov/advo/laws/comments/faa07_0205.html. (Advocacy's letter expresses concern that the proposal would have a significant economic impact on a substantial number of small aviation parts manufacturers and small repair and maintenance facilities.)

SBA or the Administration. The Regulatory Flexibility Act (RFA),⁴ as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),⁵ 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 less burdensome alternatives. Moreover, on August 13, 2002, President Bush signed Executive Order 13272,⁶ 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.

The Initial Regulatory Flexibility Analysis

As indicated above, the RFA requires federal agencies to consider the impact of their regulatory proposals on small entities, analyze feasible alternatives that minimize those impacts, and publish their analyses for public comment.⁷ If an agency determines that a proposed rule may impose a significant economic impact on a substantial number of small entities, it must prepare an IRFA that assesses those impacts. The IRFA is designed to allow interested parties the opportunity to evaluate the proposed regulation and compare the impacts of various alternatives on entities of differing sizes and types.

FAA has determined that this proposed rule would have a significant economic impact on a substantial number of small entities.⁸ Among the small entities affected by the rule would be small aviation parts manufacturers, who would be particularly impacted by the provisions on parts marking, quality systems, and domestic conformity (Form 8130-3) (discussed below). In addition, depending on how the proposed rule is interpreted, it could also affect numerous small repair and maintenance facilities that are not included in the IRFA. Advocacy recommends that FAA assess the degree to which these additional small entities would be affected by the rule and to revise its analysis accordingly. Advocacy also recommends that FAA consider other, feasible alternatives that would minimize the impact of the rule on small businesses.

Concerns with the Initial Regulatory Flexibility Analysis

The IRFA assesses how many small entities would be affected by the proposed rule and how much it would cost them to implement the proposed changes. A number of small

⁴ 5 U.S.C. 601 et seq.

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

⁶ Executive Order 13272, *Proper Consideration of Small Entities in Agency Rulemaking* (67 *Fed. Reg.* 53461) (August 16, 2002).

⁷ See, *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act*, SBA Office of Advocacy, 2003 (<http://www.sba.gov/advo/laws/rfaguide.pdf>).

⁸ 72 *Fed. Reg.* 6968 (February 14, 2007).

businesses have contacted Advocacy and expressed serious concerns about the proposed rule, particularly with regard to the following issues:

1. **Cost of the Part Marking Provisions.** The proposed rule would impose additional requirements on aviation parts manufacturers for marking parts, including marking all subcomponents within an assembly. However, the IRFA indicates that there are no new costs for these requirements on parts manufacturing approval (PMA) holders. This seems unlikely. In fact, according to small manufacturers that have contacted Advocacy and placed comments in the docket, the new mandates for parts and subcomponent markings could force small manufacturers to hire additional staff and substantially increase the cost of their products. Advocacy notes that according to FAA there are approximately 1,700 PMAs that would be impacted by this rule, 92% of which are small businesses. Advocacy recommends that FAA re-assess whether the new requirements for parts and subcomponent marking would impose additional costs (including the cost to transition from the current regime to the new system) and to include such costs in the analysis. FAA should also consider whether retaining the existing parts marking requirements, as a number of commenters suggest, is a feasible alternative to the proposed rule.
2. **Quality Systems.** The proposed rule would require that aviation parts manufacturers develop and implement sophisticated quality systems composed of 15 specific elements. While the proposed rule does not specifically require certification under ISO-9001 or SAE-9100, the preamble specifically references those standards and the proposed rule mirrors their provisions.
 - a) **Cost of Implementing a Quality System.** FAA estimates that the cost for designing and implementing these quality systems is \$800 for each PMA holder (\$400 for design and \$400 for implementation). These figure stands in stark contrast to the estimates from the small businesses that have contacted Advocacy and placed comments in the docket. For example, one small manufacturer has estimated that the costs for developing and implementing a suitable quality system would be nearly \$397,000 in the first year and approximately \$242,000 per year thereafter. Other comments provided by the airline industry provide cost estimates of between \$30,000 and \$1.7 million.⁹ Regardless, Advocacy is concerned that FAA has dramatically understated the costs associated with developing and implementing these new quality systems, and recommends that FAA re-evaluate the projected cost and necessity of these provisions.

⁹ As indicated in Advocacy's earlier comments, the small business representatives that we have spoken to stated that these quality system requirements would be 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. 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.

- b) Requirements of a Quality System.** Advocacy notes that without clear guidance on what the proposed quality systems must entail, small businesses could face conflicting interpretations from FAA inspectors as to what the quality systems must include. This could create a serious problem for small businesses. Further, if FAA does not intend to require an ISO or SAE-equivalent regime, then it should delete the references to those standards in the preamble since referencing them could make them *de-facto* regulatory requirements. FAA should also consider whether it would be feasible to exempt some small businesses from these requirements, or to adopt some type of tiered approach based on the size or volume of the business (since it appears that quality systems such as those envisioned by FAA are more appropriate for large companies than for smaller ones).
- c) Inconsistent or Conflicting Requirements.** Finally, Advocacy notes that FAA has another ongoing rulemaking on “Repair Stations”¹⁰ that includes requirements for quality programs that are different than those being proposed for parts manufacturers. While Advocacy recognizes that there are substantial differences between manufacturing and repair facilities, FAA should try to make its regulations as consistent as possible to avoid imposing conflicting or inconsistent regulations on the industry.
- 3. Form 8130-3 Conformity Statement.** The proposed rule would require that all domestic shipments of aviation parts be accompanied by a form 8130-3 (airworthiness approval tag). These parts “tags” are not currently required by FAA for either domestic or international shipments, even though some (but not all) foreign countries require them through trade agreements with FAA. Further, while FAA does not mandate 8130-3 forms for domestic shipments, they are commonly used domestically. However, many of the small manufacturers that have contacted Advocacy and placed comments in the docket have complained that mandating 8130-3 tags for all domestic shipments is a costly and redundant paperwork exercise, especially since their products are already designed and produced under FAA approval. FAA estimates that the cost of issuing 8130-3 tags for domestic shipments will be \$2,400 per year per small firm. However, this figure seems to significantly understate the cost of compliance, since 8130-3 forms must be signed by FAA or an FAA-approved designee inspector, which many small companies would have to hire (at a cost, Advocacy is told, of \$50 - \$300 per shipment). Other comments in the docket suggest that small manufacturers that choose to either hire inspectors as employees or train and certify current employees to perform these functions would face costs ranging from tens of thousands to hundreds of thousands of dollars annually (depending on the volume of shipments and the number of dedicated employees required).¹¹ Regardless, Advocacy is concerned that FAA has understated

¹⁰ 71 *Fed. Reg.* 70254 (December 1, 2006).

¹¹ Many small businesses we have spoken to have stated that they 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. 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

the costs of mandating 8130-3 tags for domestic shipments, and recommends that FAA re-evaluate the cost and necessity of these mandates (especially when it seems the market is already adjusting to this practice). Finally, FAA should consider how and to what degree its proposed rule would affect inventories of existing parts, which would likely be devalued by the new requirements.

4. **Impact on Small Repair or Maintenance Facilities.** There appears to be significant confusion over how and to what degree the proposed rule would affect small repair or maintenance facilities, particularly with respect to their use of fabricated and commercial parts. While the proposed rule is not specifically aimed at repair and maintenance facilities, it could have unintended impacts on the way these facilities operate. As Advocacy understands it, there are currently several types of "acceptable" aviation parts that can be installed on an aircraft. These include the various categories of parts authorized under an FAA approval (e.g., Production Certificates, PMAs, Technical Standard Order, etc.) as well as standard parts, commercial "off-the-shelf" parts, and fabricated parts. Industry representatives have stated that the proposed rule would change the way repair or maintenance facilities are allowed to operate with respect to fabricated and commercial parts.

- a) **Fabrication of Parts Incidental to Repair or Maintenance.** Industry representatives are concerned that the proposed rule would prohibit the fabrication of a part during repair or maintenance of an aircraft in certain instances where it is currently allowed. If that is the case, the proposed change would impact numerous repair or maintenance facilities that are not accounted for in the IRFA. For example, Advocacy understands that a repair or maintenance facility can currently fabricate a part (e.g., a metal bracket), validate its airworthiness (under 14 CFR 43.13), and install that fabricated part on an aircraft as part of the repair or maintenance of the aircraft - assuming the installation is not deemed to constitute "sale for installation" under 14 CFR 21.303(a). However, it is unclear whether this practice would still be allowed under the proposed rule because the proposed rule eliminates existing 14 CFR 21.303 and replaces it with 14 CFR 21.9, which omits the "sale for installation" language. Instead, repair or maintenance facilities would appear to be limited to installing only FAA-approved parts (as well as standard parts). Accordingly, Advocacy recommends that FAA revise this language to clarify that repair or maintenance facilities fall under one of the existing exemptions in 14 CFR 21.9, or that FAA add an additional exemption for "parts produced incidental to maintenance or alteration." Regardless, FAA should clarify whether repair and maintenance facilities can continue to fabricate parts under 43.13 in exactly the same manner they do today.

- b) **Impact of the Designation of "Commercial Parts."** As a related issue, industry representatives are also concerned that the proposed rule would change existing

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.

practices with respect to installing commercial parts (commonly referred to as commercial "off-the-shelf" parts) on an aircraft. As Advocacy understands it, the term "commercial parts" does not currently exist in FAA regulations, but this term and these parts are widely utilized in practice. For example, repair and maintenance facilities routinely install commercial "off-the-shelf" parts on aircraft and validate the airworthiness of the aircraft under the provisions of 14 CFR 43.13. However, it is unclear how this practice would change with the adoption of new section 14 CFR 21.9. Specifically, it is unclear whether FAA intends to restrict the utilization of "commercial parts" to only those parts designated by the design holder or approved by FAA, or whether repair or maintenance facilities can still utilize the 14 CFR 43.13 procedure for commercial parts in exactly the same manner they do today. If the latter is the case, Advocacy recommends that FAA clarify this language and explain how commercial parts could be utilized under the proposed rule. However, FAA should be aware that a strict reading of the proposed rule seems to suggest that once a manufacturer knows or has reason to know that a repair or maintenance facility is installing its product on an aircraft, that manufacturer would have a legal obligation to obtain the approval of either the design holder or FAA (through a PMA or TSO) for that part. This would extend the reach of FAA's rule to a vast universe of manufacturers, none of whom are included in FAA's economic analysis.¹²

The confusion over the meaning of the provisions related to fabricated and commercial parts (and the degree to which repair and maintenance facilities and commercial product manufacturers would be affected by the proposed rule) appears to stem from inconsistencies in FAA regulations as they apply to the production (i.e., manufacture and aircraft certification) versus the maintenance (i.e., airworthiness and flight standards) sides of the industry. Advocacy recommends that FAA review and clarify the regulatory language to make its regulations as clear and consistent as possible across the industry.

- 5. Data Quality and Transparency.** Advocacy notes that much of the cost data contained in the Initial Regulatory Evaluation¹³ and IRFA does not include source information other than references to "information received from industry representatives." This makes it impossible to verify much of the cost data contained in the IRFA. Advocacy notes that the Office of Management and Budget and the Department of Transportation have issued new guidelines establishing quality

¹² Advocacy notes that limiting the use of commercial parts raises several significant issues, including situations where the aircraft manufacturer is out of business (and cannot designate a commercial part) and situations where designated parts or technology are outdated or obsolete. In these situations, it may be impossible or impracticable to get the original manufacturer to designate a commercial part, and it may be prohibitively expensive for a manufacturer to obtain a PMA. Thus, restrictions could limit innovation and impose significant costs on small repair and maintenance facilities that will have to purchase more expensive parts (or be unable to repair an aircraft). Further, the limitations would have the effect of creating mini-monopolies in designated parts, impacting the price and efficiency of the market. Advocacy observes that many manufacturers would never go through the expensive and time-consuming process of having a product approved through the FAA approval process if it is only going to represent a small percent of its sales.

¹³ http://dmses.dot.gov/docimages/pdf99/431897_web.pdf.

standards for information used or relied upon by federal agencies.¹⁴ Of note, those guidelines require that influential financial or statistic information is sufficiently transparent to ensure its reproducibility by third parties. Advocacy recommends that FAA ensure that its Regulatory Evaluation and IRFA comply with these new standards.

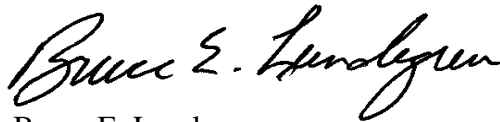
Conclusion

Advocacy appreciates the opportunity to comment on the IRFA for FAA's *Proposed Production and Airworthiness Approvals, Parts Marking, and Miscellaneous Proposals Rule*. Advocacy commends FAA for publishing the IRFA for additional public comment, but is concerned that the IRFA understates the cost and impact of the proposed rule and fails to consider additional alternatives that would make the rule less costly and burdensome to small businesses. 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,



Thomas M. Sullivan
Chief Counsel for Advocacy



Bruce E. Lundegren
Assistant Chief Counsel for Advocacy

Copy to: Steven D. Aitken, Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget

¹⁴ 67 *Fed. Reg.* 8452 (February 22, 2002) (<http://www.whitehouse.gov/omb/fedreg/reproducible2.pdf>).