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Docket Number: FAA—2003—15062 - 10

Subject: Boeing Response to 14CFR3, False and Misleading Statements
Regarding Aircraft Products, Parts, and Materials; Proposed Rule

Boeing review of Proposed Rule 14CFR3, dated 5 May 2003 has resulted in several general and specific comments. When these comments are addressed, Boeing believes that adoption of the rules in proposed 14CFR3 will prove beneficial to safety and continued airworthiness of civil aviation products by helping to detect and prevent the further dispersion of suspected unapproved parts (SUPs) into the stream of commerce.

Boeing recommends that the following changes be incorporated into the proposed rule prior to publication:

Although the FAA has gone to some effort to define what they mean by the term "misleading", Boeing believes this term remains sufficiently vague for the purposes of regulatory enforcement, as opposed to "intentionally false representations". The term "misleading" seems to be essentially directed at "advertisements". Permitting "advertisements" to be the jurisdiction of the FAA, coupled with reliance upon the term "misleading", is not consistent with the regulatory mandate of the FAA. Moreover, installers of type certificate aircraft parts are not warranted to rely upon "advertisements" for their determination of conformance to type design and airworthiness. The NPRM makes repeated references to "Records", and what documents are considered "Records". These records constitute one of the long-standing categories of evidence that may be relied upon within the larger assessment of airworthiness. "Advertisements" have never been recognized, to the knowledge of Boeing, as legitimate evidence of airworthiness. Therefore, Boeing believes that this concern must be left to the FCC and the marketplace, and be excluded from this rulemaking.

On page 23813 of the NPRM, Illustrated Parts catalogues (IPC) are discussed in detail, especially in how they may mislead an installer with regard to the airworthiness status of a part. However, insofar as IPC documents are not FAA approved or regulated, Boeing believes it is not appropriate to imply FAA oversight of IPC content within this regulation.



On page 23810, the NPRM states: "This proposal does not cover statements regarding fluids...". Boeing believes this regulation should include fluids as improperly represented (e.g., mislabeled, contaminated, out-of-date) fluids could detrimentally affect the airworthiness of aircraft.

Under "Current Requirements" on page 23809, the NPRM states: "... must rely on representations made by others regarding the parts and materials." Boeing believes such reliance should be based upon certifications and other quality records recognized by the FAA as constituting at least partial evidence of conformance to type-design and airworthiness". The regulatory responsibility has always been on the certificated entity installing type-certificated aircraft parts to determine airworthiness. This NPRM seemingly tries to shift some of this responsibility to the murky world of "advertisers" which seems untenable for FAA resources and jurisdiction.

On page 23813 of the NPRM, supplier overruns are discussed. In controlled situations, supplier overruns are in some respects in the clear interest of PAHs, and poses a logistical issue upon which the industry relies. When suppliers manufacture more parts than a PAH purchase order specifies, those parts are routinely "brought back" into the PAH processes by the supplier upon receipt of additional purchase orders for the same part. In the interim, the parts are maintained as part of the supplier's inventory. While the intent of this provision is to prevent the supplier from selling that "overrun" as an approved part without the approval of the PAH, this provision seems to "outlaw" such production overruns from existing within a supplier's inventory. Boeing believes this prohibition may be a significant economic impediment to the cost structure of PAH suppliers.

On page 23810 of the NPRM, the FAA asks for comments on the sufficiency of the terms contained within the NPRM. The NPRM states: "'Approved,' under Part 1, means approved by the Administrator. And in this context, generally means the part was produced by a PAH or a PAH approved Supplier." Boeing believes this may be misleading or may send a mixed signal that an approved PAH supplier is considered to be a producer of FAA approved parts. This would not be true if the supplier sold/shipped production overruns, did not hold a separate approval, or otherwise bypassed an FAA approved quality control system. Such items would be identified as SUPs. Boeing recommends clarification of this statement in the rule to avoid confusing what entities may approve products and parts.

Additionally, the NPRM indicates the term "product" will be broadly interpreted to include aircraft parts, materials, etc. Boeing believes providing specific definitions in this rule, or in 14CFR1, to preclude any confusion and eliminate potential abuses or loopholes, will be beneficial to the public.

Within the "General Discussion of the Proposals", Boeing believes additional discussion and emphasis on the roles and responsibilities of distributors of aircraft parts should be included in this rulemaking proposal.

On page 23814, in the section titled "Relationship of Proposal to Compliance and Enforcement", Boeing believes additional commentary on the potential of the FAA

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recommending criminal prosecution pursuant to 18USC38 (cf. page 23809 of the NPRM in the section "Current Regulations and Laws"), as these provisions could also apply in an enforcement action.

On page 28317 of the NPRM, Boeing believes the proposed § 3.5(d) may be misconstrued as to include inadvertent quality escapes from manufacturers. Boeing believes the rule should clearly indicate quality escapes are not subject to this rule.



If I can be of further assistance, please contact me at the number below or contact W. K. Bowden, at wayne.k.bowden@boeing.com.

Very truly yours,

A handwritten signature in black ink, appearing to read "Scott G. Peterson".

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