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RE: Docket Number FAA-2003-15062

August 4, 2003

The Aerospace Industries Association (AIA) would like to take this opportunity to offer comments to the FAA's proposed rulemaking establishing a new Part 3 to Chapter 1 of Title 14, Code of Federal Regulations. AIA endorses FAA efforts aimed at ensuring that only airworthy parts are installed on aircraft, engines or propellers and agree with the intent of this proposal. We understand and agree with the provisions in the proposal related to intentionally false and fraudulent statements. However, we do have severe concerns with the contents of the proposal related to misleading statements and statements regarding FAA airworthiness standards, particularly in relation to potential unintended consequences, not only for manufacturers, but for repair stations, brokers, and distributors as well.

Section 3.5(d) states: "Preventing misleading statements. No person in any record may express or imply, or cause to be expressed or implied, that a type certified product is airworthy, or that a part or material is acceptable for installation on type certificated product, unless the person can show with appropriate records that the product is airworthy or that the part or material is acceptable for installation on a type certificated product."

We also note that a "record" is very broadly defined in section 3.1 to include "all forms of records, including paper, microfilm," … "and electronic records. "Record" includes logbooks, inspection records, reports, advertisements, and labels." This definition should be revised to address in part the concerns outlined in this letter.

We also note that the preamble states that "[u]nlike the definition of an intentionally false statement, *there does not have to be knowledge that the statement would mislead; nor must there be an intent to deceive*." (Emphasis added.)

This can lead to several potential problems for manufacturers:

a) First, this text can be read that any escape from an FAA approved quality system could be viewed as a violation of section 3.5, and either the manufacturer or inspectors signing for acceptability could be subject to sanction from the FAA for legitimate mistakes.
b) Technical debate regarding acceptability of parts, both currently under manufacturer's quality control system and those in the field, may be viewed as a violation of section 3.5. Internal reports, correspondence, and presentation are often developed during Engineering review of parts acceptability at a manufacturer.
c) The proposal may reduce the quality of technical support provided to customers in the field. Since under the proposal, one must have a "demonstrable basis for stating or implying" that parts are acceptable or airworthy, manufacturers' technical support operations may not be able to provide requested assistance and opinions to customers without risking being cited for violations of section 3.5. An example of this may be a statement of "no technical objection" made to a customer pursuing an alternate repair procedure with the FAA.
d) Illustrated Parts Catalogs (IPCs) are not FAA approved documents nor are they intended to provide FAA approval status. They are prepared by manufacturers and provided to assist the customer in many roles. The preamble citation that current IPCs may contain misleading information that may violate section 3.5 is troubling for many manufacturers. IPCs are used to not only reference the currently available parts, they are often used to provide a historical reference of parts that have been or may be installed on products. Therefore, the implication that any older configuration parts listed in an IPC may constitute a violation of section 3.5 is contrary to one of the intents, and valuable services, of an IPC. We request that the FAA reconsider this position so that IPCs can continue to serve the full range of business needs of our customers. We also note that any user of an IPC may also be in violation of section 3.5 since under this proposed regulation they could be "relying" on the contents of that "misleading" IPC.

The net result of this confusion may lead to the result that many long-established, safe, and beneficial practices may be viewed as misleading by the authorities, or may be argued as misleading by plaintiffs in civil legal suits.

Section 3.5(e) appears to be related to the compliance of already manufactured parts to the applicable FAA design certification standards. However, we are concerned that this provision could be inappropriately applied to the process of certifying designs. This could manifest itself in two ways. First, it could result in rejection of many long-established means of compliance with the result of costly increases in certification test requirements. Secondly, since disagreement with an FAA position could be interpreted

as "misleading" the FAA, this proposed regulation could stifle legitimate technical debate either within a company or between an applicant and the FAA on whether or not new designs adequately comply with the requirements. Under this scenario if any FAA Designated Engineering Representative (DER) supplies a recommendation for FAA approval of data, and this approval is not granted, could be held in violation of section 3.5. We believe a minor modification of the text will clarify the intent of this section and, therefore, recommend the following:

(e) Compliance with FAA airworthiness standards for produced products, parts, or material. If a person expresses or implies, or causes to be expressed or implied, in any record that a produced product, part or material meets FAA airworthiness standards, the person…".

We note that the term "material" is not adequately defined either in the proposed rule or preamble, and therefore recommend that a appropriate definition be included. This definition should include fluids, as improperly represented fluids could detrimentally affect the airworthiness of an aircraft.

AIA is extremely concerned over the potential for misapplication of this new regulation, particularly with regard to misleading statements. We believe our areas of concern do lie with unintended application of this proposed regulation, i.e., we are concerned that actual application of this regulation will occur outside that originally intended. As such, we have outlined areas where clarification of the Part 3 requirements are required to ensure it is applied as intended. In addition to clarifying rule and preamble material, we suggest that a modification to the implied definition and scope of the term "misleading" be considered to require that the person intentionally or knowingly mislead in regards to *FAA approval status* only of specific products, parts or materials. Furthermore, as "advertisements" and other representations are not valid documents used to establish airworthiness, we believe the regulation should be applied only to those records that are used to constitute or establish FAA approval or acceptablilty of specific products, parts or materials for installation on type certified products. AIA is willing to assist the FAA in resolving these concerns. Please contact me if we can be of assistance.

Sincerely,

Michael C. Romanowski