# News from the Hill

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## Time Zones, Timeliness, and Time for Payment

This month's article addresses a recent change in airworthiness approval tags used to record airworthiness for export purposes (export 8130-3 tags), provides some advice about regulatory deadlines, and continues our series on how to protect your right to get paid for the services you render and the components you sell.

### 8130-3 Tags

A number of AEA members have complained about the difficulty in shipping goods overseas because of the export 8130-3 tag rules. A new FAA policy may make it easier to ship goods overseas using domestic airworthiness documentation, instead.

Under United States law, an exporter of civil aviation components is not required to obtain an FAA export airworthiness approval tag (8130-3 tag) as a condition of export. Nonetheless, it is common practice for U.S. exporters to obtain 8130-3 tags for their exports of aviation components. This practice has become much more commonplace in recent years for several reasons:

Increased reliance on paper traceability in the aviation industry;

U.S. bilateral airworthiness safety agreements with major trading partners pledge to provide such documentation; and

Europe promulgated new regulations (EASA 145.A.42) that require such documentation as a condition of receipt.

A significant problem in this documentation paradigm is that exporters are generally not eligible to apply for export 8130-3 tags on class III parts. Avionics manufactured under TSOA are considered to be class II (eligible for export 8130-3), but piece parts as well as components manufactured under PMA or other approval (other than TSOA) are all generally class III components (class III may be thought of as everything that is not a complete aircraft, airframe, engine, propeller, or a major components of one of these, or a TSOd article).

Companies that participate in the FAA's accredited distributor program (under Advisory Circular 00-56) are eligible to apply for domestic 8130-3 tags for class III parts. Many companies found that foreign buyers (and their governments) were willing to accept U.S. domestic 8130-3 tags for class III parts because:

The sole legal difference between a domestic 8130-3 tag and an export 8130-3 tag for a class III part is the designation of importing country's special conditions

Generally, no importing nation imposes a 'special condition' on the import of class III parts (there is standardized language, related to PMA parts, that is now added to U.S. bilateral agreements to protect foreign buyers but this language does not constitute a "special condition" of the importing nation).

Where there are no special conditions to address, the airworthiness information found in a domestic 8130-3 tags is practically identical to that found in export 8130-3 tags.

Recent FAA guidance has caused problems in this otherwise smooth use of 8130-3 tags for export purposes. Change two to FAA Order 8130.21C imposed a requirement that FAA DARs completing domestic airworthiness approval tags for airworthy parts must include the text "FOR DOMESTIC SHIPMENTS ONLY."

On May 12, 2005, the FAA signed a memorandum rescinding the requirement to add the text "FOR DOMESTIC SHIPMENTS ONLY" to domestic 8130-3 tags.

This FAA memo is step one in a process designed to eliminate the difference between domestic and export airworthiness approval tags. The Inited States has a long-term goal to harmonize our practices to those of Europe, where there is only one airworthiness approval tag, and the exporter is responsible to for checking the special import conditions (of the importing nation) that may be imposed on class III parts.

### Get It Done On Time

This year, the industry has passed

several major deadlines that affect avionics, including the January 31 RVSM implementation date (which required new equipment or at least software upgrades for many customers who want to fly in RVSM space) and the March 29 TAWS deadline. As those dates approached, several companies in the industry petitioned the FAA for extensions when they found themselves unable to get appropriate equipment installed in time.

The FAA has made a practice of denying those petitions (except in those rare cases where the applicant was able to show how a grant of exemption would be in the public interest and would maintain a level of safety equivalent to that provided by the regulation). This practice should send an important message to your customers—if they do not meet a regulatory deadline there is likely to be no relief granted by the FAA. The next time a regulatory deadline looms, be sure to remind your customers that the FAA regularly denies extension requests—even those based on the unavailability of the relevant avionics—so it is important to schedule installations early enough to account for uncontrollable delays like manufacturing delays, unforeseen airspace limitations, etc.

## Tips on Getting Paid

If you perform installation, alteration or repair services on an aircraft and the owner refuses to pay you, then can you keep the aircraft pending payment? Can you sue? Can you win a lawsuit?

Last month we began our series of tips on protecting your right to get paid by discussing the latest changes in the bankruptcy laws. To recap, beginning October 17 (180 days after the day the bill was signed into law on April 20), the bankruptcy preference rules will change in favor of small business. Payments made pursuant to ordinary business terms (e.g. a written arrangement that conforms to the norms of the industry) will be exempt from the preference rules. Also, payments of less than $5,000 will also be exempt from the preference rules.

***For those performing installations, it is important to have a good understanding of your state's lien laws. Many states have aircraft-specific lien laws.***

These changes are important because under current bankruptcy law, if your customer pays you within 90 days before filing for bankruptcy, the bankruptcy trustee may be able to recall that payment as a "preference." The changes that go into effect on October 17 will take tremendous strides in favor of protecting the interests of innocent small businessmen from customers who seek the protections of the bankruptcy system.

But what can you do to protect your rights to get paid in the meantime? There's plenty of work to be done this summer and October 17 is a long way (and many transactions) away.

One excellent suggestion for those of you selling components is to confirm (in writing) that your customer is solvent. If your customer confirms solvency within 90 days before the sales transaction, then you may reclaim goods sold on credit (where the payment has not been sent), so long as they can be identified. Normal practice, without the written confirmation of solvency, would require the seller to reclaim the goods with 10 days of delivery, but after learning of the customer's insolvency (a near impossibility when standard credit terms in the industry tend to be longer than 10 days).

For those performing installations, it is important to have a good understanding of your state's lien laws. Many states have aircraft-specific lien laws. Others states have lien laws that apply to maintenance (or modification) of any item (including an aircraft). These lien laws generally provide a repair station with the right to attach a lien to an aircraft for the value of the service provided, and to enforce this lien through judicial sale as necessary. In some states, you may be required to retain possession of the aircraft in order to enforce your right to the lien (generally, where the state requires retention of the aircraft, the repair station is also entitled by the law to retain possession).

AEA often answers questions on lien laws for its members, and we shall begin addressing lien laws in more depth in next month's column. ❑