DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 3

[Docket No.: FAA–2003–15062; Amendment No. 3–1]

RIN 2120–AG08

False and Misleading Statements Regarding Aircraft Products, Parts, Appliances and Materials

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends FAA regulations to create additional rules banning certain false or misleading statements about type-certificated products, and products, parts, appliances and materials that may be used on type-certificated products. This action is necessary to help prevent people from representing that these items are suitable for use on type-certificated products when in fact they may not be. These rules are intended to provide assurance that aircraft owners and operators, and persons who maintain aircraft, have factual information on which to determine whether a product, part, appliance or material may be used in a given type-certificated product application.

DATES: This amendment becomes effective October 17, 2005.

FOR FURTHER INFORMATION CONTACT: Beverly Sharkey, Suspected Unapproved Parts Program Office (AVR–20), Federal Aviation Administration, 13873 Park Center Road, Herndon, Virginia 20171–3223; telephone (703) 668–3720, facsimile (703) 481–3002, e-mail *beverly.j.sharkey@faa.gov*.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy of this final rule using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/regulations_policies/*; or

(3) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by putting in a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual filing the comment (or signing the comment, if filed for an association, business, labor union). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question about this document, you may contact your local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/*, or by e-mailing us at *9-AWA-SBREFA@faa.gov*.

I. Background

This final rule responds to a growing concern about how the aviation community represents products, parts, appliances and materials used on aircraft. This rule bans false or intentionally misleading statements about the airworthiness of type-certificated products and the acceptability of products, parts, appliances and materials for use on type-certificated products.

Under FAA regulations, the person installing a product, part or appliance on an aircraft is responsible for determining its airworthiness. Because these individuals cannot determine airworthiness simply by inspecting the item, they often rely on the information provided by whoever sold it to them to support their airworthiness decisions. This process ordinarily works well because most products, parts and appliances are of the quality and condition described in their records. However, there have been cases in which false or misleading statements have led a person installing a product, part or appliance to believe that it was suitable for a particular use when, in fact, it was not. This creates a safety risk.

A similar process applies to the use of materials. When materials are purchased, the buyer usually receives a certificate of conformance or similar document that shows what industry standard the material was produced to. In addition, these materials must meet the original engineering design data and quality requirements. Therefore, the records accompanying materials are critical for the buyer to determine whether the materials are fit for installation on or for fabrication of a product, part or appliance.

Currently, our regulations do not directly address false or intentionally misleading statements about products, parts, appliances and materials. In addition, it is difficult for the FAA to look into many seemingly false or misleading statements because the FAA does not regulate the distributors of products, parts, appliances and materials.

A. Summary of the NPRM

On May 5, 2003, the FAA published a notice of proposed rulemaking (NPRM) entitled ''False and Misleading Statements Regarding Aircraft Products, Parts and Materials'' (68 FR 23808; May 5, 2003). Of particular concern to the FAA was representations made by the distributors of products, parts, and materials marketed to the aircraft industry. Such distributors may not be subject to existing restrictions, because they may not possess a certificate or otherwise be situated in a manner that would permit the FAA to pursue enforcement action against them.

Records and representations related to the marketing of products, parts, and materials that are limited to certain experimental or military aircraft were not addressed by the NPRM. The FAA recognized that these types of aircraft do not necessarily require airworthiness certificates and that, to the extent such a certificate is not needed, the proposed rule could have a dampening effect on the development and continued operation of such aircraft.

In the NPRM, the FAA proposed additional rules that it argued would help prevent misleading statements by extending existing prohibitions on intentionally false or fraudulent statements currently addressed by 14 CFR 21.2, *Falsification of applications, reports, and records,* and 14 CFR 43.12, *Maintenance records: Falsification, reproduction, or alteration*, and by 18 U.S.C. 38 and 18 U.S.C. 1001.[1] The

[1] 49 U.S.C. 44726, also debars from FAA certification individuals convicted of engaging in fraudulent dealings. The statute also requires that current certificate holders who have been so convicted have their certificates revoked. The statute also permits the FAA to revoke a certificate absent a conviction if the agency determines that

NPRM also discussed the FAA's broad enforcement authority under 49 U.S.C. 40113.

The NPRM specifically proposed to prohibit false or misleading statements representing the airworthiness of a product for which the FAA has issued a type certificate, or the acceptability of any part or material for use on any product for which a type certificate has been issued. The FAA has been particularly concerned about misleading statements, *i.e.*, those that are not necessarily false, but which contain a material misrepresentation or omission that is likely to mislead a consumer acting reasonably under the circumstances. Such statements currently are not prohibited under the existing prohibitions discussed briefly above.

The scope of the proposed new prohibition would apply to any record transmitted to a potential consumer that made a representation as to the airworthiness or acceptability of a part or material on a type-certificated product. Such records most notably included advertisements in the printed or electronic media, but also included those records regularly relied upon by installers of equipment to ensure the continued airworthiness of an aircraft.

The NPRM also proposed a requirement that if a person were to express or imply that a product, part, or material met FAA airworthiness standards, it must ensure that the statement was true or else affirmatively state that the product, part, or material was not produced under an FAA production approval.

Finally, the NPRM proposed regulatory language that would permit the FAA to inspect aircraft and aircraft products, parts, or materials to determine compliance with the proposed prohibitions.

B. Summary of Comments

The FAA received twenty-one comments in response to the proposed rule. One comment was from a foreign regulatory body (Transport Canada), one from a commercial carrier (Delta Airlines), and five from private citizens in their own capacity. Additionally, eight comments were submitted by aircraft or aircraft parts manufacturers or distributors (Midcoast Aviation, Cougar Helicopters, Boeing, Skybolt Aeromotive Corp. (Skybolt), General Electric Aircraft Engines (GEAE), Cessna, Airbus, and United Technologies Corp. (UTC)), with the remaining six comments filed by various aviation-related trade associations (European Association of Aerospace Industries (AECMA), Regional Airline Association (RAA), Aerospace Industries Association (AIA), Aeronautical Repair Station Association (ARSA), Aviation Suppliers Association (ASA), and Aircraft Electronics Association (AEA)).

In general, the commenters expressed broad support for a prohibition against false statements regarding type-certificated products and parts and materials that may be used on type-certificated products. Fifteen of the commenters expressed general support for the efforts and objectives of the FAA in proposing the rule. Despite this support for the rule's objectives, most of these commenters also recommended specific changes to the final regulatory language. In particular, significant concern was raised about the aspect of the NPRM addressing statements that are misleading rather than factually false and enforcement action against statements made in advertisements. A more detailed discussion of the recommended changes is provided in the substantive discussion of today's rule.

Two commenters, Delta Airlines and RAA, did not express support for the proposal one way or the other, but offered specific comments on limited aspects of the proposal. Cessna merely commented that it had no comments or recommendations on the proposal.

Two of the remaining commenters, both private citizens, generally opposed the rulemaking, averring that they believe the FAA could use its resources better and the proposed rule is not needed because other rules adequately address the prohibition of false and misleading statements. The sentiment that there was no need for the proposed rule was echoed by ASA and AEA.

Midcoast Aviation commented that the Civil Aviation Regulations already had a part 3, the part proposed to house this final rule. The Civil Aviation Regulations were recodified in the early 1960s as FAA regulations and were renumbered under the numbering system used in the new regulations. Accordingly, there is no conflict in adopting a new part 3, and this comment will not be discussed further.

II. Discussion of the Final Rule

A. Summary of the Final Rule

Today's final rule extends the prohibition on fraudulent or intentionally false statements beyond those now covered by Title 14, Code of Federal Regulations (14 CFR) parts 21 and 43. In addition, it provides a regulation prohibiting intentionally misleading statements that, if violated, can be addressed by FAA enforcement action.

As discussed more fully below, the FAA has decided against requiring a disclaimer that a particular product was not produced under an FAA production approval if the individual marketing the product does not have specific records specifying that a production approval was given. The FAA recognizes that this provision was unnecessarily burdensome. Likewise, the general applicability section has been dropped because it was unnecessary. Finally, the FAA has decided against adopting an inspection requirement, because the agency already has general inspection authority.

B. Need for the Final Rule

The FAA is issuing this final rule because it has determined that the installation of products, parts, appliances and materials that are mistakenly believed to be airworthy or suitable for installation on type-certificated products creates an unacceptable risk to aviation safety. The FAA believes that part 3 will improve safety because it:

(1) Fills gaps in the legal and regulatory structure by extending the prohibition on fraudulent or intentionally false statements beyond those now covered by parts 21 and 43;

(2) Creates a new standard to determine what constitutes ''misleading;'' and

(3) Provides a means for the FAA to investigate possible violations of part 3.

Two commenters, ASA and AEA, stated that the NPRM proposed new duties that the FAA will have difficulty meeting. They contended that this rule imposes a duty on the FAA to go after commercial speech violations that may have little or nothing to do with safety issues. They also argued that regulation of commercial speech is not within the FAA's core mandate and is duplicative of the Federal Trade Commission's (FTC) role.[2]

the individual has committed acts that would lead to a conviction if pursued criminally. This statutory provision was not discussed in the NPRM.

[2] The commenters argued that the FAA lacked the legislative mandate to duplicate the functions of the FTC, citing the requirement in 49 U.S.C. 44726 that the FAA automatically revoke the certification of a certificate-holder convicted of fraud in a criminal proceeding without additional hearing and subject to a limited request by law enforcement personnel. The FAA does not believe this example indicates any intent on the part of Congress to constrain the FAA in the manner suggested by ASA and AEA. This statutory provision applies only to individuals who have already been convicted of fraud by a court of competent jurisdiction and mandates that the FAA take certain action as a result of this conviction. By the same token the statute requires

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ASA and AEA suggested there are other administrative and law enforcement agencies, including the FTC, that address fraud adequately. ASA and AEA contended the FAA is ''ill-prepared'' to enforce rules that regulate commercial speech, as the FAA lacks the technical expertise to enforce commercial speech properly. They also pointed out the FAA has not shown that these agencies have failed to respond adequately to fraud and related issues in the aviation industry. Rather, they suggested that the creation of part 3 may divert the resources of these other agencies to non-aviation issues, potentially resulting in a diminution in aviation safety. ASA and AEA also stated there is no need for part 3 because 18 U.S.C. 38 already covers aircraft parts fraud.

Records containing false or intentionally misleading statements about the quality of aircraft products, parts, appliances and materials have a potentially large impact on the safety of the flying public. It is the FAA's responsibility to write and enforce rules, as needed, to ensure the aviation community upholds the highest levels of safety. The FAA has determined that existing laws and regulations only partially cover the problems addressed by this rule. Although the FTC and other administrative and law enforcement agencies have undoubtedly enforced their regulations against fraud, the FAA notes that part 3 is more comprehensive and believes it will be a greater deterrent against false and intentionally misleading statements affecting aviation.

The FAA acknowledges that 18 U.S.C. 38 covers aircraft parts fraud. However, part 3 goes further. It creates an administrative enforcement scheme similar to those in parts 21 and 43. The FAA believes this approach will better protect against a potential safety hazard because the FAA may seek to impose civil penalties rather than straining the limited resources of the Federal courts.

In the NPRM, the FAA discussed the possible compliance and enforcement action for violations of part 3. These actions range from counseling and corrective action, civil penalties, suspensions or revocation of an FAA certification, to criminal investigation. The action taken by the FAA will depend on all the circumstances of the violation. Each violation will be considered on a case-by-case basis and the FAA will decide at that time whether to pursue criminal prosecution.

It is important to note that the FAA cannot institute criminal charges. We refer a case to the Department of Transportation Office of the Inspector General or the appropriate law enforcement authorities when the circumstances warrant. The ultimate decision of whether to pursue criminal prosecution is solely up to the law enforcement authorities. The FAA uses criminal prosecution referrals as a means to enforce its regulations about suspected unapproved parts. Currently, 54 of the 236 open cases in this area (approximately 23%) are under review or investigation by law enforcement agencies. While not a direct correlation, we believe this shows how seriously we take violations in this area. The FAA intends to use criminal prosecution in much the same manner in enforcing the provisions of part 3.

The FAA has the expertise necessary to enforce this rule properly. The FAA modeled § 3.5(b) on false and fraudulent statements on similar rules elsewhere in the regulations (§§ 21.2, 43.12, 61.59, and 65.20). These rules have been in existence for some time and the FAA has had experience and success in enforcing these regulations. We are confident that we can apply the expertise we gained in enforcing these other regulations to effectively enforce § 3.5(b).

As to the enforcement of intentionally misleading statements, the FAA believes the FTC's regulatory approach to deceptive advertising provides an excellent model for § 3.5(c). Therefore, we will rely heavily on the precedents established by the FTC in resolving interpretative issues that may arise in enforcing this section. To ensure that the FAA's inspectors are fully versed in the FTC's regulatory approach to deceptive advertising, the FAA will develop guidance material and train its inspectors on the FTC's established criteria and precedents. By relying on the FTC's extensive background in this area, the FAA is confident that its personnel will be able to work efficiently and effectively with this new rule.

RAA and GEAE stated that part 3 will subject persons now covered by parts 21 and 43 to duplicative rulemaking. ARSA agreed, stating that §§ 21.2 and 43.12 already ban intentionally false and fraudulent statements by maintenance providers, design approval holders and production approval holders.

The FAA does not agree that part 3 creates duplicative rulemaking with parts 43 and 21. As for part 43, § 43.12 only bans fraudulent and intentionally false statements in records made to show compliance with part 43. There is no prohibition against misleading statements. The FAA recognizes the potential overlap between § 43.12 and § 3.5(b). This is why § 3.1 excludes records made under part 43 from the terms of § 3.5(b). As for part 21, § 21.2 bans fraudulent and intentional statements. However, § 21.2 limits this ban to applications for certificates or approvals under part 21, and on records that are kept, made, or used to show compliance with part 21. While § 21.2 does address some of the terms in § 3.5(b), it does not cover all records used by brokers, dealers, and other persons who are distributing and selling products, parts, appliances and materials, but who do not produce those items. Since § 21.2 only bans fraudulent and intentionally false statements, the prohibition against misleading statements in § 3.5(c) would not apply.

C. Applicability of the Final Rule

Today's rule is applicable to any person who makes a record that is conveyed to another person when there is an associated potential for compensation if the record relates to a type-certificated product or a product, part, appliance or material that may be used on a type-certificated product. It does not apply to those experimental aircraft or military aircraft that are not otherwise type certificated.

Originally, the FAA had proposed two applicability sections, one that generally related to persons ''engaged in aviation-related activities,'' and a second that applied to any records about type-certificated products or part and materials that may be used on certificated products. The intent behind two different applicability sections was to permit the addition of other general requirements into part 3 without amending the applicability section. Based on the comments to the NPRM, we have decided that the regulation would be clearer with a single applicability section. Accordingly, the final rule only adopts the narrower language proposed to address false and intentionally misleading statements.

We have, however, made several changes to that narrower applicability language. First, we have changed the section to reflect that the rule applies to persons who make certain records as opposed to the records themselves. Part 1 of the FAA regulations sets forth the general definitions that apply to Subchapters A through K of Chapter 1 of the FAA regulations. These definitions will apply to part 3. Under this section a ''[p]erson means an individual, firm, partnership,

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the Administrator to revoke a certificate if she determines that the certificate holder knowingly, and with the intent to defraud, engaged in conduct that rises to the level of a criminal act, even if no conviction results from that act.

corporation, company, association, joint-stock association, or governmental entity. It includes a trustee, receiver, assignee, or similar representative of any of them.'' In addition, the FAA intends to apply part 3 both to persons currently subject to FAA regulations and to those who are not currently directly regulated by the FAA. Second, we have added language to §§ 3.5(a) and 3.5(b) limiting the applicability of those sections to only those records conveyed to another person when there is a potential or actual sales transaction. This refinement has been added to address commenters' concerns that the rule could apply to in-house records with mistaken entries or related to internal investigations of parts, as well as records drafted in response to an FAA inquiry regarding new designs. The intention behind part 3 is not to penalize honest mistakes or to stifle internal investigations. It is to stop the practice of providing consumers with false or intentionally misleading statements that indicates a product, part, appliance or material is suitable for installation on a type-certificated aircraft when, in fact, it is not. We believe this refinement meets that need without unnecessarily restricting the communications of those persons engaged in the aviation business.

AEA, ASA, AECMA and Airbus had all suggested alternative language that would have limited part 3 to those records that could be reasonably relied upon by a person making a determination that could affect the airworthiness of the aircraft or other conformity to type design or the safety of flight. We decided against this approach because we believe it would prove overly restrictive. As discussed in greater detail below, we remain concerned that some individuals may rely on information conveyed in an advertisement to their detriment. We do not believe it would ever be reasonable for an installer to rely on an advertisement as evidence of airworthiness or suitability for installation on a type-certificated product. However, the individual purchasing a particular product may not be the installer of the product. Persons selling aviation products should not be allowed to prey upon the inexperience of these uninformed consumers.

GEAE commented that the rule should not apply only to type-certificated aircraft. GEAE suggested the rule apply to any aircraft, no matter what category or class, civil or public. In addition, GEAE expressed uncertainty about the rules applicability to amateur-built aircraft since amateur-built aircraft have both a type and airworthiness certificate. GEAE also noted there is no such type or class of aircraft as ''military aircraft.'' There are only civil aircraft and public aircraft. GEAE wanted the final rule to use the correct terminology.

Part 3 does not apply to any aircraft for which the FAA has issued an experimental airworthiness certificate, unless the FAA had previously issued a different airworthiness certificate for that aircraft. In addition, amateur-built aircraft do not have type certificates, only experimental airworthiness certificates. The NPRM contained a detailed discussion about the rationale for excluding experimental aircraft from this rule.

We recognize that military aircraft are public aircraft. However, unlike aircraft developed specifically for use by the military, other public aircraft are used much like civil aircraft. The distinction between the two lays not so much in their design and use characteristics as in their ownership status. We believe the aviation industry understands our distinction between military aircraft and other, type-certificated aircraft. Part 3 does not apply to products, parts, appliances and materials that are for military aircraft and are not represented to be acceptable for civil application. However, if records for a military product, part, appliance or material represent that they are acceptable for use in type-certificated products, part 3 would then apply.

Some former military aircraft have been put into civil use and are now operated on a special or standard airworthiness certificate. Some unique products, parts, appliances and materials that otherwise are only manufactured for military designed aircraft may be needed to maintain these aircraft. Records about these products, parts, appliances and materials should not state or imply that they are acceptable for use in type-certificated products, other than the product for which acceptability has been determined.

D. Lack of Specificity of Regulatory Terms

1. Record

The rule defines the term ''record'' broadly. We did this to include any means that communicates the airworthiness of a type-certificated product, or the acceptability of a product, part, appliance or material for use on type-certificated products. The FAA believes that a broad definition is the best means to ensure that aircraft owners, operators, producers, mechanics, and repairmen are relying on accurate information when making a determination about airworthiness.

In fact, after further review, the FAA believes the definition proposed in the NPRM is not broad enough. The technologies used to convey information are constantly changing and the proposed language is presented as a list. Therefore, any item not on this list would not be a ''record'' under part 3. Finally, the proposed definition of ''record'' is confusing because it presents two separate definitions.

Based on the comments received and the FAA's further review of part 3, we changed the final rule to include a definition of the word ''record'' to capture all existing and future means of communications. The definition now reads as follows:

> ''Record means any writing, drawing, map, recording, tape, film, photograph or other documentary material by which information is preserved or conveyed in any format, including, but not limited to, paper, microfilm, identification plates, stamped marks, bar codes or electronic format, and can either be separate from, attached to or inscribed on any product, part, appliance or material.''

AIA believes the broad definition of a ''record'' may reduce the quality of technical support provided to customers in the field. AIA believes that technical support personnel may limit their help and opinions for fear the FAA may cite them for violating § 3.5.

In analyzing the commenter's position, the FAA cannot understand how the prohibition against fraudulent or intentionally false statements might ''reduce the quality of technical support provided to customers in the field.'' No one should encourage technical support personnel to make fraudulent or intentionally false statements. This rule only codifies what should be a common and accepted practice within the technical support field.

As for intentionally misleading statements, the FAA understands that this definition could constrain technical support personnel from offering pure opinions about the airworthiness or acceptability of products, parts, appliances and materials. However, this is not necessarily a negative result. Technical support personnel should not make claims about their products, parts, appliances and materials unless appropriate records support these claims. These individuals should only state known facts about their products, parts, appliances and materials. These individuals should avoid unsupported opinions to eliminate the potential for the improper use of their products, parts, appliances and materials.

2. Airworthy

ASA and AEA noted that the rule contains no clear description of what ''airworthy'' means. According to these commenters, this lack of specificity rendered the proposed regulation unconstitutionally broad. We are adopting a definition of airworthy that is consistent with the FAA's existing position and with the criteria established by the NTSB, namely that an aircraft is unairworthy if ''the airframe [is] not in its original certificated or properly altered condition.'' Under the definition adopted today, an aircraft must conform to its type design and be in a condition for safe operation in order to be airworthy.

3. Acceptable for Installation

ASA and AEA assert there is even less certainty about the meaning of ''acceptable for installation.'' UTC echoed this concern.

There are various ways to prove that a product, part, appliance or material is ''acceptable.'' The most common is for it to be an approved product, part, appliance or material. Under part 1, the term ''approved'' means approved by the Administrator and, in this context, means a production approval holder (PAH) or a PAH approved supplier produced the product, part, appliance or material.

Used products, parts and appliances must be maintained in accordance with FAA regulations to be acceptable. This arises from § 43.13, which requires the condition of the product, part or appliance used in maintenance is at least equal to its original or properly altered condition. In many instances, it will be quite easy for a regulated party to demonstrate that a product, part or appliance is suitable for installation. This is because many of these items are already required to be marked. For those items for which no FAA marking is available, a regulated party could still argue that the item is acceptable for installation and provide whatever documentation it has to support its argument.

4. Material

AIA, Transport Canada and UTC requested the FAA add a definition of the word ''material'' to the rule. GEAE likewise requested clarification that the term did not refer to specific metallurgical properties. The aviation industry normally uses the word ''material'' to refer to the substances of which something is made or composed. This includes such things as sheet metal, unformed wood and bolts of fabric. For purposes of part 3, the FAA intends for the word ''material'' to be used in a manner consistent with the FAA's enabling statute, the FAA regulations, and with common industry practice.

5. Parts

Transport Canada and UTC also requested the FAA include a definition of the word ''parts.'' Transport Canada recommended we use the same definition that is in § 21.1(b). As we explained in the NPRM, there are various words and phrases used to describe ''parts'' throughout the FAA's enabling statute and regulations. Some of these words and phrases include appliance, equipment, apparatus, component, accessory, assembly, airframe, and appurtenance. The aviation industry often uses the term ''part'' broadly to refer to anything that is, or could be, used as a piece of an aircraft, aircraft engine, or propeller, including appliances and component parts. However, the FAA recognizes that the word ''part'' is also listed as a subpart of the term ''appliance'' in § 1.1. This section sets forth the general definitions that are used in Subchapters A through K of Chapter I of the FAA's regulations. Based on this, someone could make the argument that part 3 does not apply to an ''appliance'' or any of the other items listed in the definition of the word ''appliance.'' Therefore, we changed § 3.1 to reflect that part 3 also applies to appliances.

E. Application of the Final Rule on Advertisements

We have decided to retain the proposed prohibition against false or intentionally misleading statements in advertisements. The application of today's rule to such commercial speech was the subject of considerable comment on the NPRM.

While Boeing and the AIA did not question the general authority of the FAA to impose and enforce this rule, they questioned the jurisdiction of the FAA over advertisements. Boeing stated its belief that advertisements are not within the FAA's jurisdiction. Since advertisements have never been recognized as legitimate evidence of airworthiness, Boeing believes that the FTC and the marketplace should continue to regulate advertisements.

UTC raised a concern about defining a ''record'' to include advertisements. UTC averred that this will lead to many subjective judgments when applying the terms of part 3 to advertisements. Boeing, AIA, and one individual commenter argued that FAA should exclude advertisements from the definition of a ''record'' because advertisements are invalid documents for showing airworthiness.

Under 49 U.S.C. 44701, the Administrator has the authority to prescribe those regulations and minimum standards for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This legislative authority and the meaning of air commerce are broad enough to give the FAA the power to issue rules that affect commercial speech, including advertisements, if that speech threatens to have an adverse impact on aviation safety.

We agree that aircraft parts installers should not rely on advertisements in determining whether a particular product is airworthy or appropriate for installation on type-certificated aircraft. However, we are also aware of instances where products have been purchased because of false or misleading advertisements and have subsequently been installed on aircraft. The risk of improper installation is particularly high when the product is shipped without the appropriate documentation or with no information as to suitability other than a series of numbers, the accuracy or presence of which could be easily overlooked.

The FAA's approach to aviation safety must, of necessity, be multi-faceted. While it is possible that the inappropriate part may be discovered during an inspection of a particular aircraft, it is also quite likely that it will not. Even if discovered, the aircraft may have been in operation with the inappropriate part for some time. If the FAA can prevent the sale of inappropriate products though enforcement action against false or intentionally misleading advertisements, then it logically will reduce the likelihood that the product will ever be installed on a type-certificated aircraft.

Additionally, as discussed above, the purchasers of these products may be insufficiently informed to understand that certain representations made in advertisements may be misleading. Thus, they may purchase a product, not knowing what additional documentation is needed to ensure the product is appropriate for use on their aircraft. While an installer may refuse to install a product because it is not accompanied by the appropriate documentation, thus diminishing the safety risk, the aircraft would remain out of service until an appropriate product was procured.

The standards for reviewing a potential violation of part 3 in an advertisement will be the same as the

standard applied to a review of any other ''record.'' As stated above, the FAA believes the FTC's regulatory approach to deceptive advertising is an excellent model for this proposal. Therefore, we will rely heavily on the precedents established by the FTC in resolving interpretative issues that may arise when applying this rule. To ensure that FAA inspectors are fully versed in the FTC's regulatory approach to deceptive advertising, the FAA will develop guidance material and train its inspectors on the FTC's established criteria and precedents. By relying on the well-established foundation provided by the FTC, the FAA is confident that its personnel will be able to apply the standards of this rule uniformly.

F. Prohibition on False and Fraudulent Statements

Other than arguing that there was no need for additional regulations governing false and fraudulent statements and the applicability of any prohibition to advertisements, the commenters generally supported the FAA's proposal to prohibit such statements. We have already addressed both of these objections, and have decided to adopt the prohibition as proposed.

One individual commenter did suggest that any fraudulent statement is intentionally false by definition, and recommended the FAA drop ''fraudulent'' from the regulatory language. We have decided against this recommendation because retaining the term provides us with greater flexibility in pursuing enforcement actions.

As we explained in greater detail in the NPRM, an intentionally false statement consists of (1) a false representation, (2) in reference to a material fact, (3) made with knowledge of its falsity. A fraudulent statement consists of these three elements, plus (4) it was made with the intent to deceive, and (5) action was taken in reliance upon the representation. For purposes of part 3, the FAA considers ''intentionally false'' and ''fraudulent'' statements to be two separate categories.

UTC wanted the standard the FAA uses to determine ''fraud'' to stress a knowing and willful intent to deceive or trick. As discussed above, for a statement to be fraudulent under § 3.5(b)(2), it must meet five criteria, one of which is the intent to deceive. The FAA agrees with the commenter that intent to deceive is a critical element of fraud. However, the FAA will not stress this over any of the other four requirements. All five must be present for the FAA to find that a fraudulent statement has been made.

G. Prohibition on Intentionally Misleading Statements

The FAA believes statements that meet the rule's criteria for being ''misleading'' under this rule are just as likely to adversely impact aviation safety as false statements. Based on this conclusion, the FAA has decided to adopt the prohibition against misleading statements with certain changes. First, we have adopted a scienter requirement. Second, we have omitted the requirement that airworthiness or suitability for installation be demonstrated through the presentation of acceptable records. Third, we have replaced the specification that a statement be express or implied by simply prohibiting a material representation or omission, either of which could mislead through an express or implied statement. Finally, we have added the legal requirement for demonstrating a misleading statement to the regulatory text. As drafted, the proposed text did not directly link the regulated party's action to a misleading statement.

ASA and AEA stated that the reliance on records in these sections is problematic, because the FAA has published no clear standard about what records are sufficient. They added that the FAA compounds this problem by not having any general requirements for parts documentation, and by not publishing standards for what is acceptable or not acceptable among commercial documents. In addition, ASA and AEA pointed out there is no FAA regulation or uniform industry standard for what must be included in commercial documentation about parts. The commenters argued that this lack of specific guidance renders the prohibition against misleading statements overbroad.

Several commenters raised issues about the term ''misleading.'' Boeing averred that ''misleading'' is vague for regulatory enforcement. In a similar vein, GEAE and UTC posited that the FAA could use the proposed rule against people who make ''honest'' or ''legitimate'' mistakes. AIA recommended this section only apply when a person intentionally or knowingly misleads. UTC agreed with AIA, while requesting the additional requirement of willfulness. UTC would further restrict this standard to records relating to FAA approval status.

ARSA stated that evaluating whether a statement is misleading injects a far greater degree of subjectivity into the determination, resulting in an ambiguous and poorly defined standard. Therefore, ARSA recommended withdrawing this section and limiting part 3 to only a prohibition of conduct that is intentionally false or fraudulent.

ASA and the AEA objected to the proposed language stating that the misleading statement could be the result of an express representation or could be through implication. They argued that no objective standard exists for industry to know when a communication is considered to ''imply'' a fact.

In the NPRM, we discussed how we consulted with the FTC in developing § 3.5(c). We also set forth the rationale underlying the standard the FAA will use to determine if a record is ''misleading.'' For purposes of this rule, a misleading statement requires:

(1) A material representation or omission;

(2) That is likely to mislead the consumer; and

(3) The consumer is acting reasonably under the circumstances.

The FAA does not believe that this standard is vague, ambiguous or poorly defined for enforcement purposes. The FTC has successfully enforced its misleading statement terms [3] for years using this same standard. While it is true that there is no established aviation-specific caselaw on the prohibition against misleading statements, the existing FTC caselaw provides ample fact-scenarios that are comparable to what one would see in the aviation community. Equally important, enforcement actions are undertaken by attorneys capable of applying the legal standard.

We believe much of the concern over the proposed standard arose from our assessment that the proposed prohibition lacked a scienter requirement. While an intentionally false statement requires knowledge of its falsity, we posited that a misleading statement does not require knowledge that it is misleading. In addition, under the proposal, there was no requirement that there be an intent to deceive when making misleading statements.

The FAA is concerned whether a representation is likely to mislead rather

[3] The term ''false advertisement'' is defined at 15 U.S.C. 55(a)(1) as ''an advertisement, other than labeling, which is misleading in a material respect, and in determining whether any advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the commodity to which the advertisement relates under the conditions prescribed in said advertisement, or under such conditions as are customary or usual.''

than whether it causes actual deception. Accordingly, we argued in the NPRM that there was no need to show actual intent in taking an enforcement action. We have reevaluated our position. We believe the burden of showing that a person intentionally made a statement knowing it could be misleading to a reasonable person is one that should be borne by the enforcement agency. The ultimate assessment of whether the requisite intent exists lies with the finder of fact. While this change in position adds significantly to the FAA's enforcement burden, our previous position arguably amounted to a strict liability standard in which ambiguous statements automatically exposed one to an enforcement action.

Thus, the FAA will consider all factors before deciding what enforcement action is necessary. Generally, we would first contact the person and discuss why the statement in question appears to be misleading. If the person who made the record in question can show a mistake was made, and such mistake was honest or legitimate, the FAA will not take enforcement action. However, if the statement is not corrected so as to remove its misleading character, or the mistake is one in a series of such mistakes, the FAA will presume knowledge on the part of the person sufficient to take enforcement action.

We have also removed the proposed requirement that an individual demonstrate to the FAA the airworthiness or suitability for installation on a type-certificated product through records. We recognize that there may be other ways to demonstrate airworthiness or suitability and that there is no clear standard regarding what types of records are acceptable. The basis for showing airworthiness or suitability for installation is one of the factors that would be considered by the finder of fact in making a determination that a statement is misleading.

The word ''imply'' and its variations are used in law to contrast the term ''express.'' An implication occurs where the intent of the communication about the subject matter is not expressed by clear and direct words. Instead, the intent of the communication is determined by implication or necessary deduction from the circumstances, the general language or the conduct of the parties.

However, we believe it is clearer to refer to the actual representation that is made rather than arguing over whether such representation was express or implied. In most cases, the aspect of the representation that is misleading will be implicit rather than explicit. Explicit statements may be more likely to be outright false rather than misleading. Accordingly, we have changed the language of § 3.5(c) to prohibit a person from representing that a product is airworthy or suitable for installation on a type-certificated product unless that person can demonstrate airworthiness or suitability of the particular product in question.

H. Statements Regarding FAA Airworthiness Standards

The FAA has decided against adopting the proposed restrictions on statements that a product, part or material meets FAA airworthiness standards. We had proposed that such statements must be supported by the appropriate documentation. In the absence of such documentation, the person holding out the product would be required to state that the product was not produced under an FAA production approval or, if a standard part, the part conformed to established industry or United States specifications.

The FAA received numerous objections to this proposed requirement. Two major areas of concern were owner-operator produced parts and foreign-manufactured products regulated by the FAA via bilateral agreements. Since neither of these categories of products are ''FAA approved,'' commenters, including Delta Airlines, ARSA, Airbus, AECMA, and Transport Canada, noted that a declaration that there was no approval would be both misleading and detrimental to the sale of these parts.

ASA and AEA argued that the proposed requirement created vague standards and required reliance on historical information concerning production approval that is not uniformly maintained and which is not otherwise legally required. In addition, they stated that the proposed requirement relied on airworthiness as a standard for demonstration when the term airworthy remains undefined in the regulations.

Transport Canada noted that the statement that a part is not produced under a production approval provides no indication of the consequences of that statement. Transport Canada wanted the FAA to identify the consequences and require that the consequences are part of the statement required under the proposed requirement.

Based on these comments, the FAA has decided not to adopt the proposed requirement. Part of the problem is that the proposed regulatory language did not cover all the means by which a product, part, appliance or material can meet FAA airworthiness standards.

The FAA has tried to redraft this section's language and has considered many options. However, none of these fix the problem. The goal of part 3 is to prevent certain false and misleading statements. The removal of this proposed requirement does not affect the ability of part 3 to achieve this goal effectively and efficiently. The proposed rule included the requirement to provide some guidance on what the FAA might look for when enforcing part 3. However, the FAA recognizes that this guidance was confusing, was not complete, and detracts from the other terms of part 3. Therefore, it has been removed from the final rule.

Several of the comments expressed the need for clarification about the applicability of part 3 to products, parts, appliances and materials imported to the U.S. under part 21, subpart N and to owner-operator produced products, parts, appliances and materials. The FAA wants to clarify that part 3 applies to all products, parts, appliances and materials imported to the U.S. under part 21, subpart N and all owner-operator produced products, parts, appliances and materials. While the FAA recognizes the difficulty in enforcing part 3 against foreign entities, the FAA believes that no product, part, appliance or material, regardless of its origin, should be excluded from the terms of part 3. By the same token, persons selling these products should be able to rely on the provenance created by bilateral agreements to defend themselves against any claims that they misrepresented that products were airworthy or suitable for installation on a type-certificated product.

I. FAA Authority To Investigate

ASA and AEA averred that the proposed inspection requirement, which stated that each person for whom the FAA could seek enforcement action for a misleading statement would have to make all records and product available for inspection violates the Fourth Amendment prohibition against unreasonable searches. They each argued that this prohibition precludes warrantless intrusions pursuant to civil or criminal investigations unless some recognized exception to the warrant process applies. Since the FAA has failed to identify an exception to the standard warrant process, ASA and AEA object to this section, arguing it allows unconstitutional searches.

We have decided against adopting the proposed investigatory language because we have determined that the FAA's existing authority to issue a

subpoena is sufficient to conduct investigations under this rule. Additionally, the FAA has determined the inclusion of the proposed language could be interpreted as an attempt by the FAA to extend its investigatory authority through regulation beyond any statutory constraints.

Under 49 U.S.C. 40113, the Administrator has authority to conduct investigations that she considers necessary to carry out her duties relating to air commerce and safety. Also, 49 U.S.C. 46101(a)(2) grants the Administrator authority to conduct an investigation about a person violating the air commerce and safety provisions of Title 49 if reasonable grounds appear for the investigation. These provisions give the FAA authority to conduct investigations against all persons, even non-certificate holders.

The purpose of this rule is to improve air safety by preventing people from representing that any product, part, appliance or material is suitable for use on any type-certificated product when, in fact, the product, part, appliance or material may not be. Therefore, under the above sections of the United States Code, the FAA has authority to conduct investigations when it becomes aware of possible violations of this rule.

The FAA is not asserting that it has the right to enter these businesses and inspect products, parts, appliances, materials and their records at will or by force. If a person fails to comply voluntarily with a request to produce records or a request to permit an inspection of a product, part, appliance or material, the FAA may get a subpoena to compel compliance.

UTC raised a concern that the proposed language would have allowed the FAA to copy any records, including valuable commercial documents. UTC is concerned that these documents would then be available to UTC's competition through a filing under the Freedom of Information Act (FOIA).

Exemption 4 of FOIA protects ''trade secrets and commercial or financial information from a person that is privileged or confidential.'' The intent of this exemption is to protect the interests of both the FAA and the owners of such information. To the extent a FOIA request is received for any information that may be proprietary in nature, the FAA routinely asks the affected business to review the FOIA request and assert any privilege that may apply under exemption 4. The process would be no different for these records.

J. FAA Resources To Investigate

ASA and AEA argued the FAA is ''ill-prepared'' to enforce regulations that regulate commercial speech because of a lack of resources. Both commenters contended this rule will create a significant resource allocation problem since the FAA does not have enough resources to perform its current tasks.

Another commenter, an individual, agreed with ASA and AEA. This commenter stated the FAA would use its resources better by conducting surveillance on installers and manufacturers.

The FAA has the resources necessary to enforce this rule properly. The FAA expects that most violations of part 3 will arise as a result of:

(1) Reports made to the FAA by parties who relied on a false or misleading statement in the purchase or installation of a product, part, appliance or material; or

(2) Findings resulting from an FAA inspection or investigation that FAA conducted for other purposes.

We already receive these kinds of complaints and make findings based on the results of our investigations. Therefore, the resources needed to look into these cases will not be significant. In addition, the FAA believes that, with time, the existence of part 3 will effectively deter most people from issuing records that violate part 3.

Finally, the FAA does not believe that FAA surveillance of installers and manufacturers for violations of part 3 would be a good use of its resources. Surveillance for violations would require significantly more resources than enforcing part 3. In addition, the commenter has not provided any data to indicate that this approach would be more effective in addressing the issues covered by part 3.

K. Miscellaneous Items

1. Inclusion of Fluids

The proposed rule did not cover records about fluids. As part of the NPRM, the FAA sought comments on whether there is a significant problem with false or misleading records about fluids used in aviation. In addition, the FAA sought comments about whether the final rule should apply these records.

In response to this request, the FAA received three comments and all supported including fluids in the final rule. GEAE noted there is not a significant problem with records on fluids. However, GEAE believed the final rule should cover these records to be proactive. Boeing and AIA each stated the final rule should cover fluids since improperly represented fluids could detrimentally affect the airworthiness of aircraft.

The FAA thanks those commenters that supplied comments about including fluids in the final rule. The FAA recognizes that false or misleading records about fluids could have a harmful affect on safety. Therefore, the FAA is considering the issues raised by these comments and the choices available to regulate these records. However, because of the complexities of these issues, the FAA does not want to delay issuing this final rule while the FAA analyzes these issues. Therefore, the final rule will not cover records about fluids.

2. Quality Escapes and Production Overruns

GEAE and AIA raised concerns about the impact of this rule on quality escapes. Boeing had a similar concern about production overruns. These commenters worried that the intent of this rule is to ''outlaw'' production overruns and to penalize those individuals associated with quality escapes.

For purposes of this rule, the FAA is not concerned with how a product, part, appliance or material was produced or entered the pool of available products, parts, appliances or materials. Other FAA regulations address the implications of and ramifications arising from quality escapes and production overruns. This rule only applies to what is in the records that go with such products, parts, appliances or materials. If any record is false or intentionally misleading, a violation of this rule will occur as long as the record is disseminated for the purpose of supporting or effecting a commercial sale of a covered product, part, appliance, or material. The history of the item in question is irrelevant.

3. Increased Costs Associated With Compliance

ASA and AEA contend the records requirement of § 3.5 will have a tremendous financial impact. ASA and AEA believe that many parts in current inventories do not have records. In these cases, an installer is able to make a determination about airworthiness based on the testable physical characteristics of the part. ASA and AEA believe that these ''record-less'' parts could not be sold according to part 3.

Part 3 does not create record requirements for selling products, parts, appliances and materials. These standards exist in other FAA regulations. This rule only sets forth

standards about the contents of the records for products, parts, appliances and materials. Therefore, part 3 does not govern the possible sale of ''record-less parts.'' However, once these products, parts, appliances and materials have records, these records must comply with part 3. We note that any concerns about ''record-less parts'' should be further eased by the removal of the requirement that indicia of airworthiness or suitability for installation in § 3.5(d) be demonstrated through records.

4. Illustrated Parts Catalogues (IPCs)

GEAE recommends the FAA define a ''record'' to exclude IPCs. Boeing agrees, stating that it is not correct to imply FAA oversight of IPC content within this regulation. AIA and UTC also want to exclude IPCs from the definition to allow IPCs to continue to service the full range of business needs of customers.

The FAA believes that IPCs should remain within the scope of the rule. While the FAA recognizes IPCs are not FAA approved, this should not be a reason to exclude these documents from this rule. IPCs are integral to ordering products, parts, appliances and materials. IPCs communicate to aircraft owners, operators, producers, mechanics, and repairmen the acceptability of a product, part, appliance or material for use on type-certificated products. While the FAA does not see why a manufacturer would put a false or intentionally misleading statement in an IPC, the FAA does not want to create a possible loophole for future abuse. Therefore, part 3 covers IPCs.[4]

5. Clarifying Changes to Regulatory Text

When reviewing the proposed rule language, the FAA found some minor technical errors which are corrected here.

(1) A ''product'' includes aircraft, engines and propellers. Since someone can install an engine or propeller on an aircraft, a ''product'' can technically be installed on a ''product''. Therefore, the FAA changed § 3.5(c) to insert the word ''product'' into the language covering the acceptability of products, parts and materials for installation on products.

(2) We changed the heading of § 3.5(a) from ''(P)rohibition preventing misleading statements'' to ''(P)rohibition against misleading statements.'' We did this to be consistent with the heading for § 3.5(b).

(3) Based on the change to § 3.1 adding the word ''appliance,'' we added the term ''appliance'' to § 3.5(c) where appropriate.

(4) The proposed language of § 3.5 covers statements about the acceptability of any product, part, appliance or material for ''use'' on products. Elsewhere in the regulation, the word ''installation'' is used. The FAA believes the word ''installation'' covers the intent of part 3. Therefore, §§ 3.5(b)(1) and 3.5(b)(2) are changed to delete the word ''use'' and replace it with ''installation.''

6. Effective Date

There are no compliance dates or reporting requirements in this rule. The rule will take effect 30 days from the date of publication in the **Federal Register**.

III. Regulatory Notices and Analyses

Statement of Statutory Authority

This rulemaking is promulgated under the authority described in Subtitle VII, part A, Section 40113, Administrative, Section 44701, General requirements, and Section 44704, Type certificates, production certificates, and airworthiness certificates. Under these sections, the FAA has been authorized to issue and enforce regulations governing the safety of aircraft products and the parts, appliances and material used on such products.

Paperwork Reduction Act

There are no current or new requirements for information collection associated with this amendment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

Economic Assessment, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal Regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency should propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act requires agencies to analyze the economic effect of regulatory changes on small businesses and other small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule:

(1) Will generate benefits that justify its additional costs, yet is a ''significant regulatory action'' as defined in the Executive Order due to the potential public interest in the regulation;

(2) Is significant as defined in the Department of Transportation's Regulatory Policies and Procedures;

(3) Would not have a significant impact on a substantial number of small entities;

(4) Would not constitute a barrier to international trade; and

(5) Would not contain any Federal intergovernmental or private sector mandate.

These analyses are summarized here in the preamble, and the full Regulatory Evaluation is in the docket.

Total Costs and Benefits of This Rulemaking

The estimated quantifiable net cost of this rulemaking is $1.1 million ($0.8 million, discounted) over the next ten years. The benefits of this rulemaking are unquantifiable and cannot be estimated.

Who is Potentially Affected by This Rulemaking

This rulemaking affects anyone engaged in aviation-related activities, such as manufacturers, repair stations and mechanics, air carriers or other aircraft operators, including part distributors and part brokers.

Our Cost Assumptions and Sources of Information

(1) Discount rate—7%.

(2) Period of analysis—2004–2013.

(3) Monetary values expressed in 2003 dollars.

(4) Loaded wage rate of an FG–13 Step 5—$47.64.

Alternatives We Considered

No alternatives were considered in this rulemaking analysis.

Benefits of This Rulemaking

Lack of relevant data prevents the FAA from quantifying the benefit analysis. However, the unquantifiable benefit is enhanced safety to the aviation community and flying public by ensuring that aircraft owners, aircraft operators and persons who maintain

[4] Delta Airlines requests the rulemaking include a new requirement for IPCs. Delta asks the FAA to require manufacturers to list only FAA approved parts and suppliers in their IPCs. It is not the intent of this rule to create a standard for what must be in IPCs. However, part 3 applies to IPCs, and manufacturers should take proper steps to ensure that their IPCs do not violate the terms of part 3.

aircraft have factual information on which to determine whether a product, part, appliance or material may be used in a given civil aircraft.

Costs of This Rulemaking

The FAA will incur costs of $1.1 million ($0.8 million, discounted), and the entities affected by this rulemaking will not incur any costs.

Changes From the NPRM to the Final Rule

The FAA did not receive any comments that either questioned our analysis, or provided suggestions to consider altering our initial analysis. The only changes made in the analysis were that the loaded wage rate of a FG–13, step 5 employee was increased from $40.16 to $47.64.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes:

''* * * as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.''

To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule will establish rules related to false and intentionally misleading statements about products, parts, appliances and materials that may be used on type-certificated aircraft. For the entities affected by this final rule, the FAA expects the annualized compliance costs to be minimal. Therefore, these small entities should incur only minimal additional costs as a result of the final rule. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

The final rule will not affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 0104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for these small governments to provide input in the development of regulatory proposals.

This final rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications.

Plain English

Executive Order 12866 (58 FR 51735, Oct. 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the regulations clearly stated?
- Do the regulations contain unnecessary technical language or jargon that interferes with their clarity?
- Would the regulations be easier to understand if they were divided into more (but shorter) sections?
- Is the description in the preamble helpful in understanding the final rule? Please send your comments to the address specified in the **ADDRESSES** section.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the FAA, when modifying its regulations in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinctions. In the NPRM, we requested comments on whether the proposed rule should apply differently to intrastate operations in Alaska. We didn't receive any comments, and we have determined, based on the administrative record of this rulemaking, that there is no need to make any regulatory distinctions applicable to intrastate aviation in Alaska.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312d and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because:

(1) It is not a ''significant regulatory action'' under Executive Order 12866; and

(2) It is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 14 CFR Part 3

Aircraft, Aviation safety, False, Fraud, Misleading.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations as follows:

■ 1. Add part 3 to read as follows:

PART 3—GENERAL REQUIREMENTS

Sec.

Authority: 49 U.S.C. 106(g), 40113, 44701, and 44704.

§ 3.1 Applicability.

(a) This part applies to any person who makes a record regarding:

(1) A type-certificated product, or

(2) A product, part, appliance or material that may be used on a type-certificated product.

(b) Section 3.5(b) does not apply to records made under part 43 of this chapter.

§ 3.5 Statements about products, parts, appliances and materials.

(a) *Definitions.* The following terms will have the stated meanings when used in this section:

Airworthy means the aircraft conforms to its type design and is in a condition for safe operation.

Product means an aircraft, aircraft engine, or aircraft propeller.

Record means any writing, drawing, map, recording, tape, film, photograph or other documentary material by which information is preserved or conveyed in any format, including, but not limited to, paper, microfilm, identification plates, stamped marks, bar codes or electronic format, and can either be separate from, attached to or inscribed on any product, part, appliance or material.

(b) *Prohibition against fraudulent and intentionally false statements.* When conveying information related to an advertisement or sales transaction, no person may make or cause to be made:

(1) Any fraudulent or intentionally false statement in any record about the airworthiness of a type-certificated product, or the acceptability of any product, part, appliance, or material for installation on a type-certificated product.

(2) Any fraudulent or intentionally false reproduction or alteration of any record about the airworthiness of any type-certificated product, or the acceptability of any product, part, appliance, or material for installation on a type-certificated product.

(c) *Prohibition against intentionally misleading statements.*

(1) When conveying information related to an advertisement or sales transaction, no person may make, or cause to be made, a material representation that a type-certificated product is airworthy, or that a product, part, appliance, or material is acceptable for installation on a type-certificated product in any record if that representation is likely to mislead a consumer acting reasonably under the circumstances.

(2) When conveying information related to an advertisement or sales transaction, no person may make, or cause to be made, through the omission of material information, a representation that a type-certificated product is airworthy, or that a product, part, appliance, or material is acceptable for installation on a type-certificated product in any record if that representation is likely to mislead a consumer acting reasonably under the circumstances.

(d) The provisions of § 3.5(b) and § 3.5(c) shall not apply if a person can show that the product is airworthy or that the product, part, appliance or material is acceptable for installation on a type-certificated product.

Issued in Washington, DC, on September 9, 2005.

Marion C. Blakey,

Administrator.

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