

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Parts 21 and 91**

[Docket No. FAA-2003-14825; Notice No. 05-01]

RIN 2120-AH90

Standard Airworthiness Certification of New Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA seeks public comments on a proposal to amend the regulations for issuing a standard airworthiness certificate to certain new aircraft manufactured in the United States. The proposal addresses a concern that under the current regulations, certain new aircraft are eligible for a standard airworthiness certificate without meeting the requirements of a type certificate and without having been manufactured under an FAA production approval. The intended effect of this proposal is to ensure that new aircraft manufactured in the United States that receive a standard airworthiness certificate are type certificated and manufactured under an FAA production approval.

The FAA also proposes to incorporate requirements contained in laws recently passed by Congress. A holder of a type certificate or supplemental type certificate who allows another person to use the certificate would have to provide written permission to that person. In addition, any person who manufactures an aircraft, aircraft engine, or propeller based on a type certificate would have to either hold the type certificate or have a licensing agreement from the holder. The proposal would also prohibit a person from altering an aircraft based on a supplemental type certificate (STC) unless the owner or operator either holds the STC or has written permission from the holder. Additionally, it would require the owner or operator of an aircraft that has been altered based on written permission to use a supplemental type certificate to retain that permission and transfer it at the time the aircraft is sold.

DATES: Send comments to reach us before April 18, 2005.

ADDRESSES: You may send comments identified by Docket Number FAA-2003-14825, using any of the following methods:

- *DOT Docket Web Site:* Go to <http://dms.dot.gov> and follow the

instructions for sending your comments electronically.

- *Government-wide Rulemaking Web Site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.

- *Fax:* 1-202-493-2251.

- *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dan Hayworth, Airworthiness Certification Branch, AIR-220, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8449.

SUPPLEMENTARY INFORMATION:**Comments Invited**

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. We also invite comments about the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of this notice, explain the reason for any recommendation, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about this notice. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this notice. The

docket is open between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the Web address in the **ADDRESSES** section.

Before taking other rulemaking action we will consider all comments we receive before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal because of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this notice, include with your comments a preaddressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD ROM, mark the outside of the disk or CD ROM and also identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

- Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (<http://dms.dot.gov/search>);
- Visiting the Office of Rulemaking's Web page at <http://www.faa.gov/avr/arm/index.cfm>; or
- 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 sending 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 docket number, notice number, or amendment number of this rulemaking.

Background

This notice of proposed rulemaking (NPRM) addresses a concern that under the current regulations, certain new aircraft are eligible for a standard airworthiness certificate without meeting the requirements of a type certificate and without having been manufactured under an FAA production approval. The NPRM also proposes to incorporate requirements contained in laws recently passed by Congress. The requirements apply to holders and users of both type certificates and supplemental type certificates. We have divided the explanatory material that follows into three parts: Issuance of standard airworthiness certificates to used aircraft and surplus military aircraft; use of type certificates to manufacture new aircraft, aircraft engines, or propellers; and use of supplemental type certificates for alterations. Within each of the three parts, we provide both background information and a discussion of the specific amendatory language we are proposing.

1. Issuance of Standard Airworthiness Certificates to Used Aircraft and Surplus Military Aircraft

14 CFR 21.183 governs the issuance of standard airworthiness certificates. Section 21.183(a) applies to new aircraft manufactured under a production certificate, § 21.183(b) applies to new aircraft manufactured under type certificate only, and § 21.183(c) applies to import aircraft.

Section 21.183(d) of our current regulations applies to applicants for standard airworthiness certificates for aircraft not covered by § 21.183(a), (b), or (c). An applicant is entitled to a standard airworthiness certificate under § 21.183(d)(1) if he or she presents evidence the aircraft conforms to a type design approved under a type certificate or a supplemental type certificate and applicable Airworthiness Directives. The FAA must also find, after inspection, the aircraft conforms to the type design and is in condition for safe operation (14 CFR 21.183(d)(3)).

The requirements of § 21.183(d) were originally adopted in 1959 as an amendment to § 1.67(d) of the Civil Air Regulations (CAR), which were issued by the FAA's predecessor, the Federal Aviation Agency. CAR Amendment 1-2, dated September 1, 1959 (24 FR 7065),

added a new paragraph (d), entitled "Other aircraft" to § 1.67. Amendment 1-2 provided for the airworthiness certification of aircraft that were used in military service and later released for civil use, and for other aircraft that had not had their airworthiness status maintained. The discussion of the amendment stated the regulation was created for other than newly manufactured aircraft. The requirements initially set forth in § 1.67(d) of the CAR, and now contained in § 21.183(d), have remained substantially unchanged since 1959.

The plain language of the regulation, however, does not limit the applicability of § 21.183(d) to surplus military aircraft, aircraft that have not had their airworthiness status maintained, or other than newly manufactured aircraft. Limited data and historical records show that, until recently, only a few newly manufactured aircraft have received standard airworthiness certificates on a case-by-case basis under § 21.183(d). These newly manufactured aircraft are presented for airworthiness certification as new aircraft that have not been produced under an FAA production approval. Also, the practice of issuing standard airworthiness certificates to surplus military aircraft released for civil use and aircraft that have not had their airworthiness status maintained has been ongoing for many years. Surplus military aircraft and aircraft that have not had their airworthiness status maintained are presented for airworthiness certifications as used aircraft (those that have had time in-service).

In 1966, the FAA proposed to amend § 21.183 by creating a separate paragraph for aircraft not manufactured under a type certificate or a production certificate. See 31 FR 8075, June 8, 1966. Public comments received in response to the proposal showed a misunderstanding of the proposal's intent. Commenters believed the FAA intended a broad change to the past certification practice of issuing airworthiness certificates to surplus military aircraft and aircraft that had not had their airworthiness status maintained. Since the FAA did not intend such a broad change, and since few new aircraft fell within the intended scope of the change, the FAA decided to abandon the proposal. The FAA stated that we would not adopt the proposed change, and we would continue to issue standard airworthiness certificates to newly manufactured aircraft under § 21.183(d). See 32 FR 14926, Oct. 28, 1967.

The System for Production of New Duplicate Aircraft Issued Standard Airworthiness Certificates

For the FAA to have confidence in the certification system for new aircraft manufactured in the United States and issued standard airworthiness certificates, the FAA has created a three-step system of type certification, production certification, and airworthiness certification. Type certification examines the basic design of the aircraft against the applicable airworthiness standards. Issuance of a type certificate (TC) for an aircraft is FAA approval that the design meets the applicable airworthiness standards of our regulations. Production certification for an aircraft examines whether the system produces duplicate aircraft that meet the design provisions of the pertinent TC. Issuance of a production certificate (PC) is a finding by the FAA that the quality control system of a manufacturer will permit it to produce duplicate versions of aircraft that conform to an approved type design. The FAA issues a standard airworthiness certificate to individual aircraft after finding that the aircraft conforms to the type design and is in condition for safe operation. The FAA relies heavily on the PC quality control system to make this finding.

Safety Benefits From the Linkage of the Type Certificate and the Production Certificate for Aircraft Issued Standard Airworthiness Certificates

A connection between the TC and the PC provides both an individual and a cumulative benefit. The individual benefit applies to an aircraft produced for initial airworthiness certification by a PC holder. For these aircraft, any deviation from the approved type design that is found during the conformity inspection can be evaluated by comparison to the data that supports issuance of the TC and any changes made after the initial TC issuance. This evaluation determines that the individual aircraft meets all the airworthiness standards identified by the TC.

The cumulative benefit applies to evaluating the total effect of any design change made after the initial issuance of the TC. The linkage of the PC to the data supporting the TC enables the aircraft manufacturer to evaluate the cumulative effect of design changes over time. The manufacturer can more readily determine whether a changed aircraft presented for original airworthiness certification continues to comply with the airworthiness standards identified in the TC.

The Level of Safety Assumed for Newly Manufactured Aircraft Issued Standard Airworthiness Certificates

Nearly all new aircraft manufactured in the United States are eligible for a standard airworthiness certificate if they are produced under the TC and PC processes. This ensures the aircraft conform to a type design and are in condition for safe operation. For aircraft issued standard airworthiness certificates, the FAA, the manufacturer, civil aviation authorities of other countries, and the public rely on the TC and PC processes to accurately produce multiple copies of an aircraft that meet airworthiness standards. Paragraphs (a) and (b) of § 21.183 recognize this process in issuing standard airworthiness certificates to aircraft produced in this manner. Also, as discussed in subsequent sections of this notice, TC and PC holders have certain responsibilities connected with holding these certificates.

Currently, new aircraft presented for standard airworthiness certification under § 21.183(d) do not have the same level of production oversight as newly manufactured aircraft produced under the TC and PC processes. Aircraft presented for airworthiness certification under § 21.183(d) do not have the advantage of prior examination and approval by the FAA of a production quality system, and a finding by the FAA of accurate reproduction to a type design is difficult. The applicant for an airworthiness certificate under § 21.183(d) must make a detailed aircraft-by-aircraft showing to support the entitlement to individual airworthiness certificates, placing a great burden on both the applicant and the FAA.

Advance Notice of Proposed Rulemaking (ANPRM)

The FAA published an ANPRM on this issue in the **Federal Register** on April 3, 2003 (68 FR 16217). We asked for public comments in advance of a specific proposal. The comment period closed June 6, 2003. We received four comments. Three of the four commenters, Cessna Aircraft, The New Piper Aircraft, Inc., and Air Transport Association of America, Inc., agreed with the concept expressed in the ANPRM, although one was concerned that the definitions of the terms “spare parts” and “surplus parts” were inadequate to meet current practices. The other commenter, Mr. Darrell A. Freeman, opposed the concept expressed in the ANPRM.

Mr. Freeman believed this change should be abandoned, as it was in 1966,

because of the minor number of aircraft involved. As discussed earlier, the FAA decided, in 1967, that adoption of a separate paragraph specifically addressing certification of new aircraft not manufactured under a TC or PC was not appropriate since few new aircraft fell within the intended scope of the change and these aircraft could be certificated under the existing regulation. Now, however, we have seen a recent increase in the number of applicants engaging in serial production of new aircraft without holding a type certificate or production certificate and seeking a standard airworthiness certificates under section 21.183(d). This recent development causes us to revisit the 1966 proposal.

A member of the Air Transport Association of America believed that strict application of the proposed definitions of “spare parts” and “surplus parts” would cause the FAA to not consider parts produced under 14 CFR 21.303(b)(2), 21.502, or 43.13(b) as “spare parts,” and might require a manufacturer to get FAA production approval for such parts. Also, the commenter believed it is not clear whether the FAA would consider “standard parts,” as defined in 14 CFR 21.303(b)(4), as “spare parts.” As a result of this comment, we reviewed all definitions set forth in the ANPRM and decided to exclude them from this NPRM.

Basis for the Proposal

Readers should note that we are directing the proposed changes to § 21.183(d) to applicants seeking issuance of standard airworthiness certificates. Aircraft that have received a standard airworthiness certificate prior to the final rule would not be affected by this proposal. We do not intend for this change to apply to the new category of light-sport aircraft, which is the subject of a recent final rule (69 FR 44772, July 27, 2004).

The FAA's Aircraft Certification Service has learned that people are, or plan to be, engaged in the manufacture or assembly of new aircraft, with the intent of obtaining standard airworthiness certificates under 14 CFR 21.183(d). These people intend to build aircraft that match a type design under a previously approved TC. The builders of these aircraft do not hold a TC, or a PC, nor do they have authorization from the original TC holder to use the TC in the manufacture of new aircraft.

Since these aircraft builders do not hold a PC, the FAA has no assurance preceding issuance of a standard airworthiness certificate that the individual aircraft produced conforms

to a type design. Each aircraft must be individually evaluated, compared to type design data, and determined to be in condition for safe operation, which is often difficult to do. If the builder can meet this burden for each aircraft produced, the resulting burden on the FAA to make the evaluations is significant. Given the limited resources available to the FAA, such a process is impractical.

Also, since these builders do not hold a TC, several of the regulatory responsibilities of a TC holder do not apply. For example, without a TC, builders of new aircraft who apply for standard airworthiness certificates under paragraph (d) do not have to:

- Have access to the supporting data originally used to show compliance to the airworthiness standards;
- Provide instructions for continued airworthiness;
- Establish and maintain an FAA production approval;
- Report failures, malfunctions, or defects; or
- Develop design changes to address safety issues identified by an Airworthiness Directive.

As a result, safety may be compromised, and an undue burden placed on the FAA to oversee or independently perform these functions, which legitimately should remain with the TC holder for the aircraft.

Obtaining type and production certificates for manufacturing new products is a fundamental concept in the regulatory framework for the issuance of a standard airworthiness certificate. Inherent in this concept is that a PC holder is entitled to obtain a standard airworthiness certificate for an aircraft without further showing to the FAA. However, building new aircraft for the issuance of standard airworthiness certificates under § 21.183(d) is not consistent with the regulatory framework or with the requirements for obtaining standard airworthiness certificates for new aircraft manufactured under a production certificate under § 21.183(a) or new aircraft manufactured under type certificate only under § 21.183(b).

Section-by-Section Analysis

The FAA proposes to amend the current § 21.183(d) to preclude standard airworthiness certification of new aircraft manufactured by persons who do not hold a type certificate (or license to it), and production approval. Specifically, paragraph (d) would apply only to used aircraft and surplus military aircraft. This would include used aircraft without a current airworthiness certificate, used aircraft

certificated under § 21.29, and U.S.-manufactured civil aircraft that were exported and later returned to the United States for FAA certification. Under this section, used aircraft are considered aircraft with time in service that have held an airworthiness certificate or have been operated by the U.S. Armed Forces. Time in service does not include aircraft operations for the purpose of conducting research and development or production flight testing.

Used aircraft do not include aircraft that have been classified as destroyed or demolished by the National Transportation Safety Board. Additionally, the term used aircraft does not include an aircraft damaged to the extent that it would be impracticable or unsafe to return it to an airworthy condition. Such an aircraft would be classified as destroyed. This action could be the result of occurrences such as tornados, hurricanes, floods, fires, or vandalism. Under current regulations, the FAA considers these aircraft as totally destroyed for the purposes of meeting the provisions of § 47.41(a)(3). Section 47.41 terminates the Certificate of Aircraft Registration once an aircraft is identified as destroyed. At that time the owner must return the Certificate of Aircraft Registration to the FAA Aircraft Registry per § 47.41(b)(3). With the Certificate of Aircraft Registration terminated, the standard airworthiness certificate is no longer effective per § 21.181(a)(1). Although these aircraft would not be entitled to a standard airworthiness certificate under § 21.183(d), an applicant, in special circumstances, may want to pursue issuance of a special airworthiness certificate.

This proposed amendment would ensure the proper assignment of type certificate and production approval holder responsibilities to manufacturers of new aircraft produced in the United States. We are not proposing any change to other paragraphs under § 21.183.

2. Use of Type Certificates To Manufacture New Aircraft, Aircraft Engines, or Propellers

Vision 100—Century of Aviation Reauthorization Act of 2003 (Pub. L. 108–176, 117 Stat. 2490) was signed into law December 12, 2003. This Act amends 49 U.S.C. 44704(a) by adding a requirements paragraph to the section. This paragraph establishes a requirement for the type certificate holder to provide persons permitted to use its type certificate to manufacture a new aircraft, aircraft engine, or propeller with written evidence of that permission in a form and manner

acceptable to the FAA. In addition, the statute states that a person may manufacture a new aircraft, aircraft engine, or propeller based on a type certificate only if the person is the holder of the certificate, or has permission from the holder of the certificate.

Section-by-Section Analysis

The FAA proposes adding new § 21.6, titled “Manufacture of new aircraft, aircraft engines, and propellers.” This new section would prohibit a person from manufacturing a new aircraft, aircraft engine, or propeller based on a type certificate unless the person—

- Is the holder of the type certificate, or has a licensing agreement from the holder of the type certificate to manufacture the product; and
- Meets the requirements of subpart F or G of part 21.

The reference to subparts F and G means that the person would have to comply with our regulations governing production under a type certificate only or production certificates, respectively when manufacturing a new aircraft, aircraft engine, or propeller.

The FAA also proposes adding new § 21.55, titled “Responsibility of type certificate holders to provide written licensing agreements.” This new section would require a type certificate holder who agrees to permit another person to use a type certificate to manufacture a new aircraft, aircraft engine, or propeller to provide that person with a licensing agreement in a form and manner acceptable to the FAA. To be acceptable to the FAA, the licensing agreement should contain the following:

- A written statement of the agreement specifying product(s) to be manufactured;
- The model number; and
- The name of the person(s) who is being given consent to use the type certificate.

The type certificate holder may include more information, such as the effective date of the agreement or how long the type certificate may be used.

3. Use of Supplemental Type Certificates for Alterations

The Federal Aviation Reauthorization Act of 1996 (Pub. L. 104–264, 110 Stat. 3213) was signed into law on October 9, 1996. This Act amended 49 U.S.C. 44704 by establishing a requirement for a supplemental type certificate (STC) holder to provide to persons permitted to use the STC to alter an aircraft, aircraft engine, or propeller written evidence of the agreement in a form and manner acceptable to the FAA. In addition, a person may alter an aircraft,

aircraft engine, or propeller based on an STC only if the person requesting the change is the holder of the certificate, or has written permission from the holder of the certificate.

Section-by-Section Analysis

The FAA proposes adding new § 21.120, titled “Responsibility of supplemental type certificate holders to provide written permission for alterations.” This new section would require a supplemental type certificate holder who agrees to permit another person to use a supplemental type certificate to alter an aircraft, aircraft engine, or propeller to provide that person with written permission. This written permission would be known as the “permission statement.” The form of the permission statement, to be acceptable to the FAA, should contain at least the following:

- A written statement of the agreement specifying product(s) to be altered;
- The STC number; and
- The name of the person(s) who is being given consent to use the STC.

The STC holder may include more information, such as the effective date of the permission and how many times the STC may be used for fleets of aircraft.

The FAA also proposes adding a new § 91.403(d) that would establish a requirement that a person may only alter an aircraft based on a supplemental type certificate if the owner or operator of the aircraft is the holder of the supplemental type certificate or has written permission from the holder. After the effective date of the rule, any owner or operator of an aircraft who receives written permission to alter an aircraft based on a supplemental type certificate would be required to retain the written permission until the alteration is superceded. The owner or operator also would be required to transfer this written permission with the aircraft at the time the aircraft is sold.

In addition, when a person alters an aircraft by installing an aircraft engine or propeller that had previous alterations based on another person’s supplemental type certificate, under proposed § 91.403(d), the owner or operator would be required to retain the written permission used to alter each engine or propeller installed on the aircraft. If an STC holder is making alterations to an aircraft, aircraft engine, or propeller that the STC holder owns, the proposed provisions of § 91.403(d) would not apply. The FAA has determined that such provisions should not apply to STC holders because ownership is identified on the STC

document itself and the document is available for review.

Each person who alters an aircraft based on another person's STC, including a person making an alteration for a product owner or operator, should be aware of the statutory requirement for the person requesting the change to have the permission of the STC holder before performing the alteration. The statute also clearly prohibits a person from performing the alteration unless the person requesting the change has the permission of the STC holder. The mechanic, repair station, or other facility making the installation should, to ensure their own compliance with the statutory requirement, request to see a copy of the written permission provided by the STC holder to the person requesting the change. The installer, mechanic, or repair station who has obtained permission directly from the STC holder to use the STC should also furnish a copy of the STC holder's permission statement to the owner or operator of the modified product to ensure the owner's compliance with statutory and regulatory requirements.

The FAA is not proposing to apply the recordkeeping requirement retroactively to alterations made before the final rule becomes effective. STC holders who have obtained the STC by transfer after the final rule is issued would not be required to issue a retroactive permission statement for already installed STCs. The FAA notes, however, that compliance with the statutory requirements of 49 U.S.C. 44704(b)(3) is required. Compliance with these requirements is not dependent upon adoption of this proposal.

FAA responsibilities for certification activities would remain unchanged if we adopt this NPRM. The FAA, during the certification process, makes a finding that the applicable airworthiness requirements have been met (based on data submitted by an applicant). Once this finding has been made, the FAA issues a certificate to the applicant. The certificate is the means by which the FAA conveys its approval for the certificate holder to exercise the privileges of that certificate.

Paperwork Reduction Act

Information collection requirements associated with this NPRM have been approved previously by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and have been assigned OMB Control Number 2120-0005.

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 determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Economic Impact

Initial Economic Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall 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 of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531-2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires the consideration of international standards and, where appropriate, that they be the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of \$100 million or more annually (adjusted for inflation).

The FAA has determined that this proposed rule has minimal costs, and that it is neither "a significant regulatory action" as defined in Executive Order 12866, nor "significant" as defined in DOT's Regulatory Policies and Procedures. Further, this proposal would not have a significant economic impact on a substantial number of small entities, would not impact international trade, and would not impose an Unfunded Mandate on State, local, or tribal governments, or on the private sector.

DOT Order 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined the expected impact is so minimal the rule does not warrant a full evaluation, a statement to that effect and the basis for it is included in the regulation. Accordingly, the FAA has

determined the expected impact of this rule is so minimal the rule does not warrant a full evaluation. The basis for this determination is provided below.

Background

There are two Public Laws upon which this proposal is based: Vision 100—Century of Aviation Reauthorization Act of 2003 was signed into law on December 12, 2003. This Act amends Title 49 U.S.C. 44704(a)(3). It states:

If the holder of a type certificate agrees to permit another person to use the certificate to manufacture a new aircraft, aircraft engine, propeller, or appliance, the holder shall provide the other person with written evidence, in a form acceptable to the Administrator, of that agreement. Such other person may manufacture a new aircraft, aircraft engine, propeller, or appliance based on a type certificate only if the person is the holder of the type certificate or has permission from the holder.

The Federal Aviation Authorization Act of 1996 was signed into law on October 9, 1996. This Act amends Title 49 U.S.C. 44704(b). It states:

If the holder of a supplemental type certificate agrees to permit another person to use the certificate to modify an aircraft, aircraft engine, propeller, or appliance, the holder shall provide the other person with written evidence, in a form acceptable to the Administrator, of that agreement. A person may change an aircraft, aircraft engine, propeller, or appliance based on a supplemental type certificate only if the person requesting the change is the holder of the supplemental type certificate or has permission from the holder to make the change.

The FAA believes the economic impact of this proposal to be minimal because this proposed rule would establish a regulatory framework to ensure that the statutory requirements are met. It would also codify common industry business practice for the manufacture of new aircraft that are issued standard airworthiness certificates.

To make this determination in the economic assessment, the FAA evaluates each section of the proposal and its relation to current public law or to current industry practice. The FAA seeks comments on its determination, and requests that all comments be accompanied by supporting data and additional documentation.

Standard Airworthiness Certificates (Used Aircraft and Surplus Military Aircraft)

The proposed change to § 21.183(d) would codify common industry practices for the manufacture of new

aircraft that are issued standard airworthiness certificates.

It would require airplane manufacturers to hold both a type certificate and production approval for all airplanes produced that are issued a standard airworthiness certificate. Current industry practice shows that TC holders who are involved in the serial production of aircraft, also hold production approval. Production approvals relieve manufacturers of the additional time required to have the FAA examine each aircraft prior to the issuance of its airworthiness certificate. The FAA believes the proposed requirement meets the statutory intent and codifies common industry practice for the manufacture of new aircraft that are issued standard airworthiness certificates. The FAA believes that this requirement would not result in significant additional cost to the industry.

Responsibility of Supplemental Type Certificate Holders

The FAA proposes § 21.120 to conform with 49 U.S.C. 44704(b), Supplemental Type Certificates. The proposal would require supplemental type certificate holders to provide written permission, when allowing use of a supplemental type certificate. The proposed change does not impose cost to the industry because it is a current statutory requirement for STC holders.

Alterations Based on Supplemental Type Certificates

The FAA proposes § 91.403(d) to conform with 49 U.S.C. 44704(b), Supplemental Type Certificates. It would require an owner or operator requesting that an aircraft be altered based on a supplemental type certificate to obtain written permission from the supplemental type certificate holder. The owner or operator of an aircraft who receives written permission to alter an aircraft based on a supplemental type certificate must retain the written permission until the alteration is superseded. The owner or operator must transfer this written permission with the aircraft at the time the aircraft is sold. Requiring the owner or operator to retain written permission provides a means to ensure compliance with the statute. The FAA believes that these records are retained by owners and operators as common industry practice and therefore would not impose additional cost to the industry.

Responsibility of Type Certificate Holder To Provide Written Licensing Agreements

The FAA proposes § 21.55 to conform with the statutory intent of 49 U.S.C. 44704(a)(3). The proposal would require a type certificate holder to provide a person with a licensing agreement when allowing use of a type certificate to manufacture an aircraft, aircraft engine, or propeller. The proposed change does not impose a cost to the industry because it is a current statutory requirement for TC holders to provide written evidence in a form acceptable to the Administrator of such an agreement.

Manufacture of New Aircraft, Aircraft Engines and Propellers

The FAA proposes § 21.6 to conform with 49 U.S.C. 44704(a)(3). It would preclude a person from manufacturing new aircraft, aircraft engines and propellers, based on a type certificate, without a licensing agreement from the type certificate holder. The proposed change does not impose a cost to the industry because it is a current statutory requirement that a person manufacturing a new aircraft, aircraft engine, or propeller based on a type certificate do so only if that person is the holder of the type certificate or has permission from the holder.

Economic Summary

The FAA believes the economic impacts of this proposal are minimal because the proposal would codify common industry business practice and is based upon current public law. The FAA requests comments regarding these findings and requests that these comments provide supporting documentation.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) 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 principle, 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 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 Act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Individuals affected by this proposal would include applicants for standard airworthiness certificates under § 21.183(d), supplemental type certificate holders, persons who alter aircraft, type certificate holders, and owners or operators of aircraft. Many of these would qualify as small businesses. Although the proposed rule could affect a substantial number of small businesses, the FAA believes there would be no small entity impact for the following reasons:

The proposed change to § 21.183(d) would codify common industry practices for the manufacture of new aircraft that are issued standard airworthiness certificates.

Current industry practice shows that TC holders, who are involved in the serial production of aircraft, also hold production approvals. Because all new aircraft intended for standard airworthiness certification are type certificated and are either manufactured or intended to be manufactured under a production approval, there are no resulting costs to small entities.

In addition, supplemental type certificate holders, persons who alter aircraft, type certificate holders, manufacturers of new aircraft, and owners or operators of aircraft would be affected by this proposal. Although many are small businesses, they would not be adversely affected by the proposed rule because the proposal would establish a regulatory framework to ensure that the existing statutory requirements are met.

Consequently, the FAA certifies that the rule would not have a significant economic impact on a substantial number of small entities. The FAA invites comments on this determination and requests all comments be accompanied by clear and detailed supporting documentation.

Initial 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.

This proposed rule considers and incorporates existing public laws and common industry practices as the basis of an FAA regulation. Thus, the FAA believes that the proposed rule would not create obstacles to international trade.

Initial Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104-4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a \$100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. Such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of \$120.7 million in lieu of \$100 million.

This proposed rule does not contain such a mandate. 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 proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on 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 would 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 proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?

- Do the proposed 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 proposed regulations?

Please send your comments to the address specified in the **ADDRESSES** section.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment of environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 308c(1) and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM 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 it is not a "significant regulatory action" under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

14 CFR Part 21

Aircraft, Aviation safety, Exports, Imports, Reporting and recordkeeping requirements.

14 CFR Part 91

Aircraft, Airmen, Airports, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the FAA proposes to amend chapter I of Title 14, Code of Federal Regulations, as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

1. The authority citation for part 21 is revised to read as follows:

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44704, 44707, 44709, 44711, 44713, 44715, 45303.

2. Add new § 21.6 to read as follows:

§ 21.6 Manufacture of new aircraft, aircraft engines, and propellers.

A person must not manufacture a new aircraft, aircraft engine, or propeller based on a type certificate unless the person—

- (a) Is the holder of the type certificate or has a licensing agreement from the holder of the type certificate to manufacture the product; and
- (b) Meets the requirements of subparts F or G of this part.

3. Add new § 21.55 to read as follows:

§ 21.55 Responsibility of type certificate holders to provide written licensing agreements.

A type certificate holder who allows another person to use the type certificate to manufacture a new aircraft, aircraft engine, or propeller must provide that person with a written licensing agreement acceptable to the FAA.

4. Add new § 21.120 to read as follows:

§ 21.120 Responsibility of supplemental type certificate holders to provide written permission for alterations.

A supplemental type certificate holder who allows another person to use the supplemental type certificate to alter an aircraft, aircraft engine, or propeller must provide that person with written permission acceptable to the FAA.

5. Amend § 21.183 by revising paragraph (d) introductory text to read as follows:

§ 21.183 Issue of standard airworthiness certificates for normal, utility, acrobatic, commuter, and transport category aircraft; manned free balloons; and special classes of aircraft.

* * * * *

(d) *Used aircraft and surplus military aircraft.* An applicant for a standard airworthiness certificate for a used aircraft or surplus military aircraft is entitled to a standard airworthiness certificate if—

* * * * *

PART 91—GENERAL OPERATING AND FLIGHT RULES

6. The authority citation for part 91 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180).

7. Add new paragraph (d) to § 91.403 to read as follows:

§ 91.403 General.

* * * * *

(d) A person must not alter an aircraft based on a supplemental type certificate unless the owner or operator of the aircraft is the holder of the supplemental type certificate, or has written permission from the holder.

After (INSERT EFFECTIVE DATE OF THE FINAL RULE), any owner or operator of an aircraft who receives written permission to alter the aircraft based on a supplemental type certificate must retain the written permission until the alteration is superseded. The owner or operator must transfer this written

permission with the aircraft at the time the aircraft is sold.

Issued in Washington, DC, on February 7, 2005.

Nicholas A. Sabatini,

Associate Administrator for Aviation Safety.

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