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BY ELECTRONIC MEANS TO: http://dms.dot.gov Docket Number 14825

Dan Hayworth
Airworthiness Certification Branch, AIR–220
Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591

Re: Docket Number FAA-2003-14825; Standard Airworthiness Certification of New Aircraft, 70 Fed. Reg. 7,830 (proposed February 15, 2005)(to be codified at 14 C.F.R. pts. 21 & 91)

Dear Mr. Hayworth:

The Aeronautical Repair Station Association (ARSA) is pleased to submit the following comments on the above referenced Notice of Proposed Rulemaking (NPRM).

ARSA represents entities certificated under Part 145 of the Federal Aviation Regulations (FARs) and similar regulations issued by National Aviation Authorities (NAAs) around the world. The Association membership includes entities that perform maintenance, preventive maintenance and alterations on type certificated and supplemental type certificated products and articles, as well as entities that hold type certificates (TC) and supplemental type certificates (STC). The membership also includes entities that manufacture aircraft from spare and surplus parts under the maintenance regulations. Many of these entities are directly impacted by the FAA's proposed rule changes.

Summary

The FAA has proposed regulations based on federal laws regarding the use of TC or STC data. Without the express permission of the design approval holder the regulations bar parties from using the TC or STC data under certain circumstances. Under the proposed rule, the FAA requires a "licensing agreement" between the TC holder and the user of the TC data; however, the FAA requires that the STC holder merely provide "written permission" to use the data. To provide consistency and avoid exalting form over substance, the FAA should adopt the "written permission" standard for both STCs and TCs.

The FAA also proposes to limit the issuance of standard airworthiness certificates for "new" aircraft to those situations where (1) the applicant is (a) the type certificate (TC) holder (or its licensee) and (b) holds a production approval

(production certificate or approved production inspection system), or (2) the aircraft is an import aircraft type certificated under section 21.29. Beyond those applicants described, the FAA would only issue a standard airworthiness certificate for used or surplus military aircraft.

The proposed regulation will restrict the issuance of standard airworthiness certificates to aircraft built from spare or surplus military parts or maintained parts approved for return to service by entities authorized under Part 43. This exceeds the measures necessary to address the FAA's expressed concern with oversight of aircraft manufacturing and should be addressed in the final regulation.

After due consideration of the NPRM, we submit the following section-by-section comments. Where appropriate, ARSA has recommended new language that would better serve the safety concerns of the FAA and the business realities confronting the regulated parties. Text of the proposed regulations is initially set forth in *italics*. Where applicable, ARSA's recommended changes or additions are set forth in **bold** and **underlined**.

Permission to Use Type Certificate and Supplemental Type Certificate Data

A. ***§ 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.

AND

§ 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.

ARSA opposes the wording and intent of §§ 21.6 and 21.55 to the extent that the sections require a license agreement rather than simply written permission.

The FAA's proposed regulations would require a licensing agreement between a TC holder and a party seeking to manufacture the product based on that TC. This regulation is authorized by 49 U.S.C. § 44704(a)(3), which Congress added in 2003 as part of the FAA reauthorization legislation. Vision 100 – Century of Aviation Reauthorization Act, Pub. L. No. 108-176. Proposed §§ 21.6 and 21.55,

however, create a more stringent standard than § 44704(a)(3) requires and Congress intended.

Section 44704(a)(3) states that, "the [TC] holder shall provide the person [to whom they have granted permission to use the TC] written evidence, in a form acceptable to the Administrator, of that agreement." The language of the statute grants the FAA the authority to choose any form for the agreement, including "written permission" or "license agreement."

The FAA should note, however, that in proposing § 44704(a)(3) the House of Representatives intended that the provision standardize treatment for TC and STC holders and users. The House Report on the reauthorization bill states that the provision is intended to "treat type certificates the same as supplemental type certificates for this purpose." H.R. Rep. No. 108-143, (2003).

The legislative history of the corresponding STC provision, which is codified at 49 U.S.C. § 44704(b)(3), supports the use of a "written permission" rather than "license agreement" requirement. In 1996 the House of Representatives included the STC provision in its version of the FAA reauthorization legislation. This provision was modeled after legislation proposed by Representative James Quillen (R-TN) a year earlier, entitled the Supplement Type Certificate (STC) Safeguards Act. This bill would have limited the use of an STC to its holder and persons with whom the holder had a *license agreement*. *See*, *Congressman Introduces Bill to Require FAA to Enforce Proprietary Rights*, ***the hotline*** (ARSA), Nov. 1995, at 7. Rather than adopt Representative Quillen's "license agreement" language, however, the House bill adopted a broader "written evidence" requirement. H.R. 3539 104th Cong. § 405 (1996).

As the FAA stated in Notice 8110.69, entitled *Supplemental Type Certificate Requirements,* § 44704(b)(3) "was designed to put the least amount of burden on the FAA, the STC owner, an installer, or an authorized STC user by requiring a simple statement of permission be generated." The notice requires that a permission statement identify the product, the STC number and the person being given permission to use the STC. In Notice 8110.69, the FAA adopts the position that this simple statement effectively addresses the concerns behind the legislation. Accordingly, the FAA should adopt the same interpretation and requirements for § 44704(a)(3), given that the identical "written evidence" language is employed for both provisions.

In addition to furthering congressional intent and its own interpretation of a nearly identical provision in the statute, adopting a written permission requirement would help the FAA avoid complex intellectual property law issues that it is not equipped to resolve. In enforcing the license agreement requirement, the FAA would need to determine what formalities or language transforms a document

from a written statement of permission into a license agreement. This would not further Congress' intent nor would it increase aviation safety.

Given that the TC provision uses the same language as the STC provision, and Congress explicitly intended for the two provisions to be enforced in a similar manner, the FAA should adopt one standard for both design approvals. A "written permission" standard relieves the administrative burden related to adjudicating intellectual property issues. It retains the FAA's prior position, protects regulated entities that have relied on that position and provides for the same degree of safety and oversight.

ARSA recommends the following to replace the current version of § 21.6:

> **A person may manufacture a new aircraft, aircraft engine, or propeller based on a type certificate if the person—**
> **(a) Is the holder of the type certificate or has written permission acceptable to the FAA from the holder of the type certificate to manufacture the product; and**
> **(b) Meets the requirements of subparts F or G of this part.**

ARSA recommends the following changes to the current version of § 21.55:

> **(a) 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 written permission acceptable to the FAA.**
> **(b) Written permission acceptable to the FAA shall include the following information:**
> **(1) specific product(s) to be manufactured;**
> **(2) the TC Number;**
> **(3) the person(s) who is being given permission to use the TC.**

B. ***§ 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.

For the reasons explained in Section A above, ARSA supports the language and intent of § 21.120, with the following additions:

> **(a) 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.**

(b) Written permission acceptable to the FAA shall include the following information:
(1) specific product(s) to be altered;
(2) the STC Number;
(3) the person(s) who is being given permission to use the STC.

C. ***§ 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 OFTHE 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.

ARSA supports this provision provided it imposes an affirmative duty on the owner/operator to provide the installer with written permission to use the STC.

ARSA recognizes that for the FAA to effectively implement regulations based on § 44704(b)(3), it must hold accountable the party that performs the work. With the limited resources of the FAA, § 91.403 offers an opportunity for the agency and those who make alterations based on STCs to partner in an effort to ensure regulatory compliance. As written, however, the section creates strict liability for installers, regardless of their good faith efforts to comply.

Under proposed § 91.403(d), an installer is prohibited from performing alterations on an aircraft based on an STC unless the owner or operator has obtained written permission from the STC holder. The result is that the party performing alterations could be subject to an enforcement action in cases where the owner/operator fraudulently represents that it has obtained written permission or the permission is revoked prior to the alteration without the installer's knowledge. This is an unfair and unacceptable outcome.

As currently formulated, the regulations do not require an owner/operator to provide written permission to the installer. This arrangement fails to ensure that all regulated parties have the resources necessary to comply with the regulations.

The FAA should require that the owner/operator provide the installer a copy of the STC holder's written permission. To further ensure that regulatory responsibility lies with the party in the best position to comply, the FAA should permit the party performing an alteration to rely on the document provided by the owner/operator. These changes to § 91.403(d) will protect persons making

alterations from the fraudulent or otherwise improper behavior of another. It will also further the FAA's objectives to enhance regulatory compliance.

ARSA recommends the following to replace the current version of §91.403(d).

> **(d) A person must not alter an aircraft based on a supplemental type certificate unless the owner or operator of the aircraft provides evidence that it is the holder of the supplemental type certificate, or has written permission from the holder. If the owner or operator is the holder, it shall provide a copy of the supplemental type certificate to the person performing the alteration. Otherwise the owner or operator will provide a copy of the written permission from the holder.**
> **After (INSERT EFFECTIVE DATE OFTHE 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.**

Standard Airworthiness Certificates

D. ***§ 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—

ARSA supports the general intent of the proposed change to § 21.183(d); however we suggest that the FAA clarify the use of spare or surplus military parts or maintained parts approved for return to service by entities authorized under Part 43 ("used, airworthy parts") in the production of new aircraft under § 21.183(a) and (b).

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 system.

The FAA proposes to limit the issuance of standard airworthiness certificates for "new" aircraft to those situations where (1) the applicant is (a) the type certificate (TC) holder (or its licensee) and (b) holds a production approval (production certificate or approved production inspection system), or (2) the aircraft is an import aircraft type certificated under section 21.29. These situations are

currently described in § 21.183 (a), (b) and (c) and would be unaffected by the FAA's proposal.

For applicants that did not comply with the above requirements, under proposed § 21.183(d), the FAA would only issue a standard airworthiness certificate for used or surplus military aircraft. Currently, this subsection provides for the issuance of standard airworthiness certificates for "all other" aircraft besides those described in subsections (a), (b) and (c). Section 21.183 presently describes three categories of aircraft seeking standard airworthiness certification: new, import and other. The rule change would create four categories: new, import, used and surplus military.

ARSA submits that in order to obtain a standard airworthiness certificate, an aircraft must be produced using airworthy parts and assemblies. This may be accomplished with a combination of any airworthy spare, surplus or properly maintained parts. The regulations do not provide an unequivocal definition of "new" aircraft. Nor do the regulations explicitly define the terms "import," "used" or "military surplus", creating further uncertainty. The proposal would cripple many successful businesses that have produced airworthy aircraft from spare, surplus and properly maintained parts. In particular, it would eliminate much of the value and benefits associated with holding the TC.

If the FAA believes that a production approval results in a higher level of safety, the agency should encourage entities that desire to manufacture aircraft using spare, surplus and appropriately maintained parts to apply for a production certificate or an APIS. This would allow these entities to continue their eligibility for standard airworthiness certificates provided they have an acceptable quality system that produces airworthy aircraft.

ARSA recommends the FAA clarify that under Title 14, including § 21.183, "new aircraft" include aircraft which are produced using spare, surplus and/or used, airworthy parts and to which the TC holder or its licensee affixes a new, original identification plate per § 45.11. This would allow the FAA to issue standard airworthiness certificates to such aircraft, provided the TC holder has a production approval.

An applicant for a production certificate (PC) must demonstrate "inspection procedures for raw materials, purchased items, and parts and assemblies produced by manufacturers' suppliers." § 21.143(a)(2). An applicant for an approved production inspection system (APIS) must also demonstrate quality controls for "incoming materials and bought or subcontracted parts." § 21.125(b)(1). Thus, in order to obtain either a PC or APIS, the regulations require a TC holder, including one producing aircraft with spare, surplus or used, airworthy parts, to demonstrate a level of quality control for the parts used in assembling the completed product.

For spare, surplus or appropriately maintained parts, the requisite quality control is accomplished by the required documentation equal to that required under § 91.417. These records ensure that required maintenance and build documentation will be available, including the time in service for the airframe and engine, propeller and rotor if appropriate, the life status of life-limited parts, the inspection and overhaul records and schedules, the status of applicable airworthiness directives (AD), and records for major alterations.

Based on the information required under § 91.417, a TC holder would be capable of ensuring that the articles used in the production of aircraft "conform to the type design and [are] in a condition for safe operation [i.e., airworthy]." § 21.143(a). This is the equivalent level of safety required for new parts. As a result, if the TC holder can provide the documentation required under § 91.417, there would be no difference in the quality or safety of aircraft produced exclusively with new parts and aircraft produced with spare, surplus and appropriately maintained parts.

ARSA recommends the following revisions to § 21.183 in addition to those proposed for § 21.183(d):

(a) New aircraft manufactured under a production certificate.
(1) An applicant for a standard airworthiness certificate for a new aircraft manufactured under a production certificate is entitled to a standard airworthiness certificate without further showing, except that the Administrator may inspect the aircraft to determine conformity to the type design and condition for safe operation.
(2) New aircraft include those aircraft with original identification plates per § 45.11 that are produced using spare and surplus parts, and parts maintained and approved for return to service by entities authorized under Part 43, provided that such parts are accompanied by maintenance records sufficient to satisfy the requirements of § 91.417.

(b) New aircraft manufactured under type certificate only.
(1) An applicant for a standard airworthiness certificate for a new aircraft manufactured under a type certificate only is entitled to a standard airworthiness certificate upon presentation, by the holder or licensee of the type certificate, of the statement of conformity prescribed in §21.130 if the Administrator finds after inspection that the aircraft conforms to the type design and is in condition for safe operation.
(2) New aircraft include those aircraft with original identification plates per § 45.11 that are produced using spare and surplus parts, and parts maintained and approved for return to service by entities authorized

under Part 43, provided that such parts are accompanies by maintenance records sufficient to satisfy the requirements of § 91.417.

Conclusion

The Association supports the FAA's decision to codify in the FARs the requirements set forth in 49 U.S.C. § 44704(a)(3) and (b)(3). This provides the industry an understanding of how the FAA interprets and plans to enforce the statute. ARSA recommends, however, that the FAA alter its proposed regulations to better reflect Congressional intent and to create consistency in the treatment of users of TC and STC data. This can be accomplished through the adoption of a "written permission" requirement for both design approvals.

In addition, ARSA urges the FAA to avoid the unintended consequence of restricting standard airworthiness certification for aircraft produced with airworthy spare, surplus and appropriately maintained parts. The FAA should expressly allow for the use of such parts provided the TC holder also holds a production approval. The FAA can then set forth the specific quality control requirements for these aircraft and make certain that the parts used to produce them conform to the type design and are in a condition for safe operation.

Thank you for considering our views on this important proposal. Please contact the undersigned, at 703.299.0784 if you have any questions or require additional information.

Respectfully submitted,

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