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Julia Lutz  
Federal Aviation Administration  
800 Independence Avenue SW  
Washington, D.C. 20024-0001

RE: Comments on Draft Advisory Circular 120-78B

Dear Ms. Lutz,

The Aeronautical Repair Station Association and Aircraft Electronics Association represent persons authorized by [14](#) CFR part [43](#)<sup>1</sup> to perform maintenance, preventive maintenance, and alterations. ARSA and AEA work with their members and industry colleagues, particularly those certificated as individuals under part [65](#) or air agencies under part [145](#), to establish and maintain recordkeeping procedures compliant with the aviation safety rules.

Based on its industry representation and experience, the associations provide the following joint comments on FAA Advisory Circular 120-78B, Electronic Signatures, Electronic Recordkeeping, and Electronic Manuals.

### **Overview**

The draft AC confuses the agency's limited authority to *approve* electronic recordkeeping systems of certain certificate holders with a guidance-created requirement for FAA "acceptance of"<sup>2</sup> those systems where there is no regulatory basis or need.

The term "acceptance of" where approval is not required (*see*, paragraph 1.9.2) creates an obligation to wait for agency action when none is mandated. The term becomes a mechanism for FAA representatives to impose requirements for submission and review of electronic recordkeeping systems on certificate holders. This places an unnecessary burden on both the agency and the industry without support in law or safety.

### **No Regulatory Requirement**

The draft AC correctly notes there is no requirement for issuance of an Operations Specifications paragraph to allow use of electronic records by part [145](#) applicants and certificate holders. The recordkeeping requirements for repair stations, in particular §§ [145.209](#), [145.211](#), and [145.219](#) as well as those found in part [43](#), are agnostic as to the media utilized for creating, validating, communicating, and storing records or manuals. In

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<sup>1</sup> Unless otherwise noted, all regulatory references are to Title [14](#) of the Code of Federal Regulations.

<sup>2</sup> FAA Order 8900.1, Flight Standards Information Management System, Vol. 3, Ch. 1, Sec. [1](#) explains the term "accepted by," which requires "the item at issue must be submitted to the FAA for review and acceptance prior to use," appears "infrequently in the FAA's regulations." The term is not used in part [145](#).

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fact, the agency's rulemaking on the subject in [2001](#) specifically recognized all matter of media for the making, keeping, and retrieval of required documents.

Finally, imposing additional requirements is contrary to several statutes. For example, the [Paperwork Reduction Act](#) requires the agency to differentiate between documents that are required to be submitted from those that are voluntary (see, 5 CFR § 1320.5(d)). Similarly, the Electronic Signatures in Global and National Commerce ([E-SIGN](#)) Act establishes the requirement for federal agencies to accept electronic signatures on records provided they meet a minimum standard (see, 15 U.S.C. § 7001(a)). Those laws are not mentioned or recognized by the draft AC.

### **Agency Latitude to Impose Burden**

Absent statutory or regulatory authority, the AC provides inspectors with broad latitude to create requirements for certificate holders. Paragraph 1.9.5 states:

If a required signature, record, or manual provided in an electronic format or application does not contain the key elements or does not follow the guidelines set forth in this AC, the FAA may question its validity. If the FAA determines that an electronic signature, record, or manual is missing key elements, does not follow the guidelines, or is otherwise unacceptable, the FAA office with oversight responsibility will notify the certificate holder in writing. Upon receiving notification, it is incumbent upon the certificate holder to make appropriate corrections. (Emphasis added.)

Tying an "incumbency" for action by a certificate holder because of variation from *guidance* is contrary to the plain words in the regulations, the current DOT [order](#) on development of guidance, and the Administrative Procedures Act.

Paragraph 2.1.3 mandates that an electronic signature on a record "will require a certificate holder to have an FAA-approved or FAA-accepted (depending on the regulatory requirement) electronic recordkeeping system." The agency can only sustain a violation and demand corrective action regarding a record's compliance with the plain language of the regulation. The AC ignores the absence of regulatory requirements for approval *or* acceptance of the certificate holder's recordkeeping methodology.

### **Recommendations**

The AC contains valuable technical instruction in Chapters 2-4. To ensure the guidance may be utilized by industry without imposing any additional requirements, the FAA should amend the following paragraphs:

#### Current

**1.9 Approval, Acceptance, and Authorization.** There are many 14 CFR part regulations that address electronic signatures, records/recordkeeping, and manuals. There are varying requirements between the many 14 CFR parts for approval, acceptance, and authorization. The FAA explains these terms in FAA Order 8900.1, Volume 3, Chapter 1, Section 1, General.

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Amend to

**1.9 Approval, Acceptance, and Authorization.** Wherever 14 CFR requires approval, acceptance, and/or authorization of electronic signatures, records/recordkeeping, and manuals, certificate holders may utilize the procedures described in this AC to show compliance. When the regulations contain no requirements for approval, acceptance, or authorization to use electronic signatures, records/recordkeeping, and manuals, this guidance shall not be used to require approval, acceptance, or authorization.

Current

**1.9.2 FAA Acceptance.** With the exception of the items that require FAA approval (see paragraph 1.9.1 above), FAA acceptance will be used for certificate holders to use electronic signatures, electronic recordkeeping systems, and electronic manual systems to satisfy the requirements of 14 CFR parts 91K, 121, 125, 133, 135, and 145. FAA acceptance will also be used for certificate holders who use electronic records, and the electronic signatures associated with those records, to satisfy the requirements of 14 CFR parts 141 and 142.

Amend to

**1.9.2 FAA Acceptance.** Except for the items that require FAA approval (see paragraph 1.9.1 above), FAA will find the methodology chosen by the applicant or certificate holders acceptable for use of electronic signatures, electronic recordkeeping systems, and electronic manual systems provided the elements of 14 CFR parts 91K, 121, 125, 133, 135, 141, 142, and 145 are satisfied.

Current

**1.9.5 There is No Requirement for the Issuance of OpSpec A025 for 14 CFR Part 61, 63, 65, 91 (Excluding 91K), 129, 137, 145, or 147.** OpSpec/MSpec/TSpec/LOA A025 does not apply to operations under these parts. However, the FAA recommends that all certificate holders follow the guidelines for electronic signatures, records, and manuals as set forth in the AC, regardless of whether or not approval, acceptance, or authorization is required. If a required signature, record, or manual provided in an electronic format or application does not contain the key elements or does not follow the guidelines set forth in this AC, the FAA may question its validity. If the FAA determines that an electronic signature, record, or manual is missing key elements, does not follow the guidelines, or is otherwise unacceptable, the FAA office with oversight responsibility will notify the certificate holder in writing. Upon receiving notification, it is incumbent upon the certificate holder to make the appropriate corrections.

Amend to

**1.9.5 There is No Requirement for the Issuance of OpSpec A025 for 14 CFR Part 61, 63, 65, 91 (Excluding 91K), 129, 137, 145, or 147.** OpSpec/MSpec/TSpec/LOA A025 does not apply to operations under these parts. However, the FAA

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recommends that all certificate holders follow the guidelines for electronic signatures, records, and manuals as set forth in the AC, regardless of whether approval, acceptance, or authorization is sought.

Current

**2.1.3 Electronic Signatures on Regulatory Records.** An electronic signature that is affixed to any record required by 14 CFR part 91K, 121, 125, 133, 135, 141, 142, 145, or 147 will require a certificate holder to have an FAA-approved or FAA-accepted (depending on the regulatory requirement) electronic recordkeeping system. These systems are discussed in detail later in this AC.

Amend to

**2.1.3 Electronic Signatures on Regulatory Records.** An electronic signature that is affixed to any record required by 14 CFR part 91K, 121, 125, 133, 135, 141, 142, 145, or 147 must provide the information required by the relevant 14 CFR part; however, no acceptance, approval, or authorization is required.

**Conclusion**

Advisory circulars are tools to provide compliance assistance for certificate holders. As written, Draft AC 120-78B provides useful technical instruction for persons required or choosing to establish electronic recordkeeping systems and submit their related procedures to the FAA. The draft must be amended to avoid *creating* any requirement for action by certificate holders, e.g., part 145 repair stations, or the FAA.

The ARSA and AEA teams look forward to assisting the government in its updates to the AC.

Sincerely,

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