

they have authorization from the original TC holder to use the TC in the manufacture of new aircraft. These people intend to build aircraft that match a type design under a previously approved TC, but without the permission of the TC holder to use the design, and without a PC.

Because 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 the 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. Even assuming 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 unworkable.

Also, since the builder does 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:

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

As a result, safety may be compromised, or an undue burden placed on the FAA to oversee or independently fulfill these functions which legitimately should remain with the builder of the aircraft.

Obtaining type and production certificates for manufacturing new products is a fundamental concept in the regulatory framework. Inherent in this concept is the entitlement for a PC holder to obtain a standard airworthiness certificate 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 under § 21.183(a), New aircraft manufactured under a production certificate or § 21.183(b), New aircraft manufactured under type certificate only.

As mentioned in the "Background" discussion, the FAA recognized this

issue in 1966 when it first proposed a change to § 21.183(d) to remove newly manufactured aircraft from its scope. In part, the FAA ended the 1966 rulemaking because the size of the problem was insignificant. But recent applications for standard airworthiness certificates for newly built aircraft under § 21.183(d) show that the FAA must now address the issue.

Lastly, another issue involves Annex 8 to the Convention on International Civil Aviation (ICAO Annex 8). Each standard airworthiness certificate issued to an aircraft contains the statement that the aircraft meets ICAO Annex 8 requirements allowing them to be eligible for export. ICAO Annex 8, Section 2.2.3, states, "When approving production of aircraft or aircraft parts, a Contracting State shall ensure that it is performed in a controlled manner including the use of a quality system so that construction and assembly are satisfactory." The FAA is considering whether production and standard airworthiness certification of new aircraft under § 21.183(d) meets ICAO quality system requirements. A change to § 21.183(d), using the formal FAA production approval process, might be necessary to definitively ensure new aircraft production tracks this ICAO provision and the aircraft produced are eligible for export.

Proposed Definitions, Regulations, and Policy Changes

This advance notice proposes the following new definitions and regulation and policy changes:

Definitions

The FAA seeks public comments on the definitions of the following terms:

Manufacturer means the person who holds (or has a license or similar rights to) the approved type certificate and who controls the quality of the product (aircraft, engine, propeller, or appliance) or article produced (or to be produced, in the case of an application), including the parts of them or any processes or services related to them that are procured from an outside source; and who holds a production approval issued by the FAA.

New aircraft means an aircraft may be considered new as long as the manufacturer, distributor, or dealer retains ownership; if there are no intervening private owner, lease, or time-sharing arrangements; and the aircraft has not been used in any Armed Force, pilot school, or air taxi operation. Aircraft operated for conducting flight tests to meet the requirements for production flight testing are considered new.

Spare part means an accessory, appurtenance, or part of an aircraft, aircraft engine, propeller, or appliance that is to be installed at a later time in an aircraft, aircraft engine, propeller, or appliance. An aircraft engine, propeller, or appliance is not considered a spare part to the next higher level assembly. A spare part must be produced under an appropriate FAA production approval.

Surplus part means an accessory, appurtenance, or part of an aircraft, aircraft engine, propeller, or appliance that has been released as surplus by the military, manufacturer, owner/operator, repair facility, or any other parts supplier. An aircraft engine, propeller, or appliance is not considered a surplus part to the next higher level assembly. A surplus part must be produced under an appropriate FAA production approval or have been produced under contract to the Armed Forces.

Used aircraft means aircraft with "time in service" that have held an airworthiness certificate or have been operated by the Armed Forces. "Time in service" does not include operations for the purpose of conducting production flight testing. Used aircraft do not include aircraft that have been classified as "demolished" on the National Transportation Safety Board (NTSB) Form 6120.1/2, Pilot/Operator Aircraft Accident Report.

Regulations and Policy Changes

The FAA seeks public comments on the following possible changes. The FAA also seeks suggestions on other methods to address the problem.

1. Amend 14 CFR part 21 to require a person to hold a TC (or license to it) and a production approval to be eligible for a standard airworthiness certificate for new aircraft manufactured in the United States. Standard airworthiness certificates will only be issued to these aircraft under existing § 21.183(a), New aircraft manufactured under a production certificate, or § 21.183(b), New aircraft manufactured under type certificate only.

2. Amend 14 CFR part 21 to specify that only used aircraft will be eligible for standard airworthiness certificates under § 21.183(d). Used aircraft that are eligible and would continue to be eligible under § 21.183(d) include: a. Surplus military aircraft; and b. Used aircraft that have not had their airworthiness status maintained, which includes aircraft reassembled from spare and surplus parts.

3. Revise the associated FAA policy and guidance to reflect the proposed changes in #1 and #2 above.

These proposed changes would ensure the proper assignment of type