

August 7, 2000

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Federal Aviation Administration
Office of Chief Counsel Room 915G
800 Independence Ave., SW
Washington, DC 20591

Attn: Rules Docket (AGC-200) Docket No. 28903 Amdts. No. 11-45, 21-77, 25-99

To Whom It May Concern:

The Aircraft Owners and Pilots Association (AOPA), representing the aviation interests of more than 360,000 pilots and aircraft owners, respectfully submits the following comments to the Federal Aviation Administration (FAA) apropos Docket No. 28903:

AOPA opposes the implementation of "Type Certification Procedures for Changed Products" final rule and petitions the FAA to not implement this rule for the following reasons -

The "Type Certification Procedures for Changed Products" final rule is not "data driven".

The FAA's assertion that there were changes that needed to be made regarding the certification of changed products is not based on any past, present, or foreseeable safety concerns. AOPA does not find any accident or incident data nor do we find any airworthiness concern data driving the need to change 14 C.F.R. (FARs) §21 and §25 as cited in Rules Docket No. 28903. In fact, the current method of changing or enhancing an aviation product using that product's original certification basis has a long and proven excellent safety record. In addition, the entire US fleet has been operating at an excellent level of safety using tried and true maintenance related FARs and through the use of "best practice" methods. Therefore, the safety related need for the "Type Certification Procedures for Changed Products" final rule is unfounded.

AOPA strongly believes that any need for changing the FARs in order to "harmonize" with the JAA regulations (JAR) must also be driven by airworthiness concern safety data. As a case in point, the Federal Air Surgeon, Dr. Jon Jordan, is on record as stating that the FAA's medical certification standards are more progressive and have a longer safety-related track record than that of the JAA (AOPA agrees). The data regarding the US safety record corroborates such categorization. Thus, Dr. Jordan states that there is no need to change FAA medical certification rules to "harmonize" with the JAR standards (AOPA also agrees).

Based on the absence of necessary airworthiness concern safety data, it appears that the sole reason for "Type Certification Procedures for Changed Products" final rule was to appease those JAA member countries that felt that their aircraft manufacturers were at a distinct disadvantage to US manufacturers using the current Federal Aviation Regulations (FAR). Instead of the JAA and its member countries amending their rules to parrot the United States' long-proven system, the FAA was clearly determined to adopt the JAA's system of certifying changes to a product. For many years, the United States has set the standard for product certification around the world. That leadership has been undermined by the "Type Certification Procedures for Changed Products" final rule.

The inception dates of this "Type Certification Procedures for Changed Products" final rule are unsubstantiated.

The inception and application of this final rule require the promulgation of two Advisory Circular (AC) documents as well as subsequent educational efforts. Both required AC documents are currently unavailable and the time frame for development, comment, acceptance and the edification of both ACs are unknown and cannot be reasonably predicted. Therefore, the inception dates of this final rule are unsubstantiated thus invalidating the "Type Certification Procedures for Changed Products" final rule.

"Type Certification Procedures for Changed Products" final rule infringes upon the intent and spirit of 1996 Small Business Regulatory Enforcement Fairness Act (SBREFA).

SBREFA requires any regulatory process to encourage the effective participation of small business. NPRM 97-7 stated that "The proposed amendments would not have a significant economic impact on a substantial number of small entities". In the final rule, the FAA stated that this rule could impact a substantial number of small entities but decided to proceed with due diligence. In addition, the FAA has not established a mechanism by which small entities may easily obtain guidance to understand and comply with this new rule.

AOPA asserts that this rule will impact a substantial number of small entities unfairly. It is Small Business that develops a majority of the safety enhancing product changes for the General Aviation fleet. Many times, these product changes don't meet the latest certification standards but still significantly enhance the safety of General Aviation aircraft. The additional costs associated with the development of engineering data to determine the need for compliance to the "Type Certification Procedures for Changed Products" final rule will rise considerably more than the FAA's stated projections.

Some associations who represent FAA certificated repair stations estimate the increase cost associated with this new rule will be at least 30% to perform the necessary findings under the new rule when alterations are intended. Since there will be a substantial additional cost burden placed upon Small Business to convince the FAA that compliance with the latest regulations would be impracticable, most safety enhancing changes for the General Aviation fleet will not be produced by the Small Business segment. It will no longer be viable for Small Business, that traditionally perform safety enhancing modifications for General Aviation aircraft fleet such as FAA certificated repair stations, to continue to do so.

The "Type Certification Procedures for Changed Products" final rule will adversely impact the General Aviation fleet and some critical FAA initiatives.

Shifting the burden of assessing the need for compliance of this final rule from the applicant to the FAA for "small-aircraft" (airplanes 6,000 pounds and under and non-turbine rotorcraft 3,000 pounds and under) does not change or reduce the regulatory and cost impact. The definitions for the terms "minor", "major", "significant", and "insignificant" with regards to this new final rule are very uncertain based on the FAA's historic inability to capture and uniformly apply these terms in other applications. AOPA is certain that, in a majority of situations, the FAA will always favor the latest certification rule basis for a changed product.

Excerpting from the FAA's explanation regarding the cost impact upon the smaller aircraft fleet: "...assumes the applicant will always forego their opportunities to convince the FAA that compliance with the <new rule> would be impractical or would not contribute materially to the level of safety... Only when the applicant has decided that compliance costs are likely to exceed administrative costs, will the applicant choose to expend the resources to make the <related> arguments...". If a proposed change that significantly enhances the safety of a General Aviation aircraft does not meet the latest FAA certification standards then that change will most likely not occur due to additional cost burdens placed upon the Small Business applicant seeking the change.

Communication and Navigation Systems (CNS) equipage upgrades will increase by at least 30% effectively stifling FAA Administrator Garvey's "Safer Skies" initiatives that rely on the General Aviation community's economic ability to adopt the necessary CNS equipage. In addition, the General Aviation community will not be able to reap the benefits derived from Administrator Garvey's RTCA Task Force 4 Certification Select Committee (tasked with streamlining CNS certification) due to significant resultant increase in certification compliance costs. The increase costs of determining the need to comply with the latest certification standards will definitely stifle development of safety enhancing product changes for General Aviation as well as make any General Aviation safety enhancing product changes cost prohibitive.

"Type Certification Procedures for Changed Products" final rule is not valid since it creates another class of aircraft that was not proposed in the Notice of Proposed Rule Making 97-7.

Though the FAA has attempted to give very questionable relief to a segment of the General Aviation community, it also failed to properly notify the public of its intent to create a new class of aircraft and rotorcraft. AOPA contends that the establishment of a new class of aircraft rule must be done through appropriate rule making procedures. The "small-aircraft exception" class of aircraft as stated in the "Type Certification Procedures for Changed Products" final rule was not properly promulgated.

Though AOPA opposes this rule in its final form, AOPA also believes that the "public comment period" for this final rule should be extended.

The "public comment period" of 60 days is inadequate. This final rule requires the development, distribution, and requisite educational efforts of two Advisory Circular (AC) documents that have not been promulgated. The public cannot substantively or appropriately comment on a final rule that requires the acceptance of other public documents (ACs) that have not yet been made available for comment. In addition, the impact to Small Business must be reasonably ascertained by a forthright effort on the part of the FAA. Since the FAA's only public notice of the impact to Small Business was made in the final rule, the affected public cannot be expected to provide meaningful comments regarding the impact upon Small Business (per SBREFA) in such a short time frame.

AOPA requests that the comment period be extended until such time as both ACs have been undergone the appropriate development and promulgation process and that SBREFA has been fully and appropriately addressed.

Conclusion

There are many changes to General Aviation aircraft that substantially enhance overall safety but do not currently meet the latest certification standard. AOPA believes that requiring a aircraft product change meet latest certification standards, instead of the earlier certification basis standards of the affected product, *does not mean a more safe condition will prevail*. In addition, the economic burden placed upon small business and the majority of small aircraft owners (which comprises the majority of the entire US aircraft fleet) will only serve to considerably stifle and suppress the cause of safety. There is no data driving any airworthiness or safety concerns by using the current system of changing aviation products.

Based upon the aforementioned reasoning, AOPA requests that the FAA not adopt the "Type Certification Procedures for Changed Products" final rule.

AOPA thanks the FAA for allowing us the opportunity to provide our comments and insight.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Lance Nuckolls". The signature is fluid and cursive, with a long horizontal stroke at the end.

R. Lance Nuckolls
Director – Regulatory and Certification Policy
Aircraft Owners and Pilots Association