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Standard Airworthiness Certification of New Aircraft; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 91

[Docket No. FAA–2003–14825; Amendment No. 21–88]

RIN 2120–AH90

Standard Airworthiness Certification of New Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends FAA regulations for issuing airworthiness certificates to certain new aircraft manufactured in the United States. These changes are necessary because under the current regulations, certain new aircraft are eligible for a standard airworthiness certificate without meeting the requirements of a type certificate (TC) and without having been manufactured under an FAA production approval. These changes are intended to ensure that new aircraft manufactured in the United States and issued a standard airworthiness certificate are type certificated and manufactured under an FAA production approval. This final rule also incorporates requirements contained in laws recently passed by Congress. These changes ensure that any person who manufactures or alters an aircraft, aircraft engine, or propeller based on a TC or supplemental type certificate (STC) either holds the certificate or has permission from the certificate holder. This amendment also includes language that allows a person to manufacture one new aircraft based on a TC without holding the TC or having a licensing agreement from the TC holder, provided manufacture of the aircraft began before August 5, 2004.

DATES: These amendments become effective October 2, 2006.

FOR FURTHER INFORMATION CONTACT: Dan Hayworth, Airworthiness Certification Branch, AIR–230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8449.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/*; or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.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 amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact your local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/*.

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code (49 U.S.C.). Subtitle I, § 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, § 44701(a)(5). Under that section the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards for practices, methods, and procedures that the Administrator finds necessary for safety in air commerce.

Additionally, § 44704(a)(3) specifically mandates that ''if the holder of a TC 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 FAA, of that agreement. Such other person may manufacture a new aircraft, aircraft engine, propeller, or appliance based on a TC only if such other person is the holder of the TC or has permission from the holder.'' Paragraph (a)(4) of that section includes a limitation for aircraft manufactured before August 5, 2004 and states that ''paragraph (3) shall not apply to a person who began the manufacture of an aircraft before August 5, 2004, and who demonstrates to the satisfaction of the Administrator that such manufacture began before August 5, 2004.'' That paragraph further states ''a person is permitted to invoke this exception with regard to the manufacture of one aircraft.''

Similarly, § 44704(b)(3) mandates that if the holder of an STC agrees to permit another person to use the certificate to modify a product, the holder must provide the person with written evidence acceptable to the FAA of that agreement. That paragraph also mandates that a person may only change a product based on an STC if the person requesting the change is the holder of the STC or has permission for the holder to make the change.

By prescribing requirements for manufacturers of new aircraft, aircraft engines, and propellers, and for persons altering any product, this regulation is within the scope of the Administrator's general authority and fulfills the statutory mandates set forth in § 44704(a) and (b).

Background

FAA Concerns Regarding Standard Airworthiness Certification of Certain New Aircraft

This final rule responds to a concern that under the current regulations, certain new aircraft are eligible for standard airworthiness certification without meeting the requirements of a TC and without having been manufactured under an FAA production approval. The issuance of a standard airworthiness certificate for a particular aircraft indicates that the FAA has made a finding that the aircraft conforms to its type design and is in condition for safe operation. The FAA relies heavily on a manufacturer's production certificate (PC) quality control system.

The vast majority of aircraft issued standard airworthiness certificates have been produced in accordance with the FAA's system of type certification, production certification, and airworthiness certification. This system ensures an aircraft conforms to a type

design and is in condition for safe operation. It also helps to ensure the accurate production of multiple aircraft of the same design in accordance with applicable airworthiness standards. Through type certification, the FAA examines the basic design of the aircraft against the applicable airworthiness standards. The FAA issues a type certificate (TC) for an aircraft only after it has determined that the aircraft design meets applicable airworthiness standards. A PC is issued after the FAA has made a finding that the quality control system of a manufacturer will permit it to produce duplicate versions of an aircraft that conform to an approved type design.

The certification process provides numerous benefits. Any deviation from the approved type design that is found during a conformity inspection can be evaluated by comparison to TC data. This evaluation can readily determine whether an individual aircraft meets all the airworthiness standards identified by the TC. Additionally, PC holders can evaluate the cumulative effect of design changes over time and determine whether a changed aircraft presented for original airworthiness certification continues to comply with the airworthiness standards identified in the TC.

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 FAA's system of type and production certification.[1] An applicant for an airworthiness certificate under § 21.183(d) must make a detailed aircraft-by-aircraft showing to support the entitlement to an individual airworthiness certificate. This places a great burden on both the applicant and the FAA.

Recently, some manufacturers have engaged in the serial production of new aircraft and obtained standard airworthiness certification of these aircraft under § 21.183(d) without holding either a TC or PC. Frequently these manufacturers do not have authorization from the original TC holder to use the TC to manufacture the aircraft. These aircraft have been built to match a type design under a previously approved TC; however, since these builders do not hold a TC, they may not have access to the supporting data originally used to show compliance to the airworthiness standards. In addition, the FAA does not have any assurance preceding issuance of the standard airworthiness certificate that an individual aircraft conforms to a type design since it was not produced under a PC. Each aircraft produced must therefore be individually evaluated, compared to type design data, and determined to be in condition for safe operation. This process is frequently difficult, labor intensive, and time consuming.

Building new aircraft intended for standard airworthiness certification under § 21.183(d) is not consistent with the current regulatory framework for obtaining standard airworthiness certificates for new aircraft. This rule will ensure the proper assignment of type certificate and production approval holder responsibilities to manufacturers of new aircraft. Type and production certificates for manufacturing new products are fundamental to the regulatory framework for the issuance of a standard airworthiness certificate.

Congressional Action Regarding the Use of TCs and STCs

This rule also incorporates new requirements regarding the use of TCs and STCs mandated by Congress in the Federal Aviation Reauthorization Act of 1996 (Pub. L. 104–264; 110 Stat. 3213); Vision 100—Century of Aviation Reauthorization Act of 2003 (Vision 100) (Pub. L. 108–176; 117 Stat 2490); and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFTEA–LU) (Pub. L. 109–59; 119 Stat. 11441).

Congress enacted these statutes in response to the concerns of TC and STC holders that persons were manufacturing and altering products based on the data contained in these certificates without possessing any rights to the use of the certificates. The FAA historically has not inquired whether an applicant for an airworthiness certificate has the rights to the use of the type certificate on which the aircraft's design was based. Additionally, the agency has not inquired whether an applicant for an STC has the rights to the technical data used to obtain an STC or to alter a product.

Congress first addressed the issue of STC use in the Federal Aviation Reauthorization Act of 1996 by adding paragraph (b)(3) to 49 U.S.C. 44704(b)(3). That action requires holders of STCs to provide persons permitted to use those certificates to modify a product with written evidence acceptable to the FAA of that agreement. To preclude persons from performing alterations on products using STC data that they did not have rights to, Congress also imposed a requirement mandating that a person may only change a product based on an STC if the person requesting the change is the holder of the STC or has permission from the holder to make the change. Congress, at the time, did not specifically address the issue of whether one must possess rights to a TC in order to manufacture a product.

As a result of concerns that persons were manufacturing new aircraft for certification based on data contained in TCs to which they did not have rights, Congress again revised § 44704 in 2003. In Vision 100 Congress added paragraph (a)(3) to § 44704 specifically mandating that ''if the holder of a TC 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 FAA, of that agreement. Such other person may manufacture a new aircraft, aircraft engine, propeller, or appliance based on a TC only if such other person is the holder of the TC or has permission from the holder.''

In response to subsequent concerns that this action would preclude the certification of aircraft currently manufactured by individuals who did not have rights to the TCs on which their aircraft were based, Congress, in SAFETEA–LU, enacted an exception for aircraft whose manufacture began before August 5, 2004. The new provision provides a limited exception to the earlier statutory requirement and permits ''a person who began the manufacture of an aircraft before August 5, 2004, and who demonstrates to the satisfaction of the FAA that such manufacture began before August 5, 2004'' to manufacture a new aircraft without holding the rights to its TC. That paragraph further limited the exception by stating that ''a person is permitted to invoke this exception with regard to the manufacture of one aircraft.''

Prior Proposals

This amendment is based on a notice of proposed rulemaking (NPRM) published in the **Federal Register** on February 15, 2005 (70 FR 7829) and a supplemental notice of proposed rulemaking (SNPRM) published in the **Federal Register** on November 10, 2005 (70 FR 68374).

In the NPRM we proposed to revise our regulations to:

- Prohibit the manufacture of new aircraft, aircraft engines, and propellers based on a TC unless the person

[1] Until recently, only a few newly manufactured aircraft have been issued standard airworthiness certificates without beging manufactured under a production approval.

manufacturing the product holds the TC for the product (or has a licensing agreement) and an FAA production approval.

• Prohibit the issuance of standard airworthiness certificates for new aircraft that have not been manufactured under an FAA production approval or type certificated under Title 14 of the Code of Federal Regulations (CFR), § 21.29.

• Require TC holders who allow persons to manufacture products based on those certificates to provide the manufacturers with written licensing agreements.

• Require STC holders who allow persons to alter products based on those certificates to provide those persons with written evidence of the agreements.

These changes reflect the FAA's intent to preclude the issuance of standard airworthiness certificates for new aircraft that have not been produced under an FAA production approval or an approval issued by a foreign Civil Aviation Authority (CAA). They also reflect the statutory mandates set forth in Vision 100 and the Federal Aviation Reauthorization Act of 1996 regarding the use of TCs and STCs.

In the SNPRM we proposed to revise our original proposal to include an exception to the statutory mandate contained in Vision 100 requiring persons who manufacture a new aircraft based on a TC to hold the TC for the aircraft or have a licensing agreement to use the TC. This exception is set forth in section 811 of SAFTEA–LU. This law was enacted on August 10, 2005, approximately six months after publication of our original proposal. In the SNPRM we specifically revised our proposal to conform to the new law and included a provision to permit a person to manufacture one new aircraft for certification without holding the type certificate for the product (or a licensing agreement) and an FAA production approval. The person must, however, have begun the manufacture of the aircraft before August 5, 2004 to obtain airworthiness certification of the aircraft.

Both notices contain explanatory material describing the basis and rationale for this rule. The discussion in the NPRM specifically addresses three topic areas: the issuance of standard airworthiness certificates to used aircraft and surplus military aircraft; the use of TCs to manufacture new aircraft, aircraft engines, and propellers; and the use of STCs as the basis for alterations. The SNPRM discusses our proposed exception from the requirement that the manufacturer of a new aircraft based on a TC be the holder of the TC, or have the permission of the TC holder. Except where we have modified the proposal in this rule or specifically expanded on the background elsewhere in this preamble, the material contained in the NPRM and SNPRM supports this final rule.

The comment period for the NPRM closed on April 18, 2005, and we received comments from 46 commenters. Most of the commenters had objections to at least one of the proposed changes. Four commenters were opposed to the entire proposal and five commenters supported the proposal. A number of commenters also suggested rulemaking actions not addressed by the proposal.

The comment period for the SNPRM closed on December 12, 2005. We received no comments on that SNPRM.

Manufacture of New Aircraft, Aircraft Engines, and Propellers

Section 21.6 is a new section that sets forth restrictions on the manufacture of new aircraft, aircraft engines, and propellers. That section has been adopted as proposed, except that a revision was made to clarify that the rule does not require imported products to be produced under an FAA production approval.

As adopted, § 21.6(a) prohibits a person from manufacturing a new aircraft, aircraft engine, or propeller based on a TC unless the person—

• Is the holder of the TC, or has a licensing agreement from the holder of the TC to manufacture the product; and

• Meets the requirements of subpart F or G of part 21.

Our reference to subparts F and G in the regulation means that the person manufacturing the product has to comply with our regulations governing production under a TC only or a PC, respectively, when manufacturing a new aircraft, aircraft engine, or propeller based on a TC. Although not specifically discussed in the NPRM, we note that this requirement applies to all type-certificated aircraft regardless of the category of TC issued. This requirement therefore applies to type-certificated aircraft that may be issued other than standard airworthiness certificates (*e.g.*, aircraft with primary or restricted category TCs).

There are two exceptions to the general requirement set forth in § 21.6(a). The first exception is set forth in § 21.6(b) and allows a person to manufacture one new aircraft without meeting the requirements of paragraph (a), provided that person can provide evidence acceptable to the FAA that he or she began manufacturing the aircraft before August 5, 2004. As proposed in the SNPRM, § 21.6(b) addressed the manufacturing of these ''grandfathered'' aircraft, but did not provide a means for them to be certificated. To correct this oversight and permit those aircraft to be certificated, we have added new paragraph (h) to § 21.183. That paragraph permits these aircraft to receive a standard airworthiness certificate subject to conditions that mirror those of § 21.183(d).

We note that the exception for a person who began to manufacture an aircraft before August 5, 2004 applies only to aircraft, not to aircraft engines or propellers. This provision is based on the language of section 811 of SAFETEA–LU, which refers only to aircraft.

A person seeking to manufacture a new aircraft under this exception will have to demonstrate to the FAA that manufacturing began before August 5, 2004. Documents that could prove manufacturing began before August 5, 2004 include items such as receipts for the purchase of parts or materials, dated photographs, and dated information received from the FAA related to the manufacturing or certification process for the specific aircraft. This information must be provided to the FAA no later than the time of application for an original airworthiness certificate.

The second exception to § 21.6(a) is contained in paragraph (c) which states that the requirements of § 21.6 do not apply to new aircraft imported under the provisions of §§ 21.183(c), 21.184(b), or 21.185(c); and new aircraft engines or propellers imported under the provisions of § 21.500. These products are manufactured under the regulatory authority of countries other than the United States. Although the FAA did not propose this exception in the NPRM or SNPRM, its inclusion is necessary to clarify the FAA's intent not to change existing requirements for new aircraft, aircraft engines, and propellers imported to the United States. This exception is discussed in detail in the section below.

Imported Aircraft, Aircraft Kits, and Major Assemblies

The Aircraft Owners and Pilots Association (AOPA) and Monocoupe Club (MCC) were concerned that the proposed rule was unclear as to whether foreign manufacturers who hold a TC for imported products under § 21.29 would be required to hold a U.S. PC. These commenters believe that manufacturers who assemble foreign-made aircraft kits or major assemblies in the United States, in some instances, without a PC, would now be required to

hold a U.S. PC. Such a requirement could increase the cost of an aircraft to purchasers. Commenters requested that the FAA clarify that the practice of assembling imported aircraft kits and major assemblies, without necessarily holding a PC, will be allowed to continue.

The FAA concurs with the comment and has added § 21.6(c) to clarify our intent. Foreign manufacturers holding a § 21.29 TC for the import of their products into the United States are not required to hold any form of FAA production approval (*i.e.*, PC or Approved Production and Inspection System (APIS)). The regulatory responsibility for the fabrication, assembly, test, and final determination of airworthiness of product issued a TC under § 21.29 rests with the Civil Aviation Authority (CAA) of the country in which the product was manufactured, not the FAA.

In some instances, the CAA of the country of manufacture may allow these production activities to occur outside their country (*i.e.*, even within the United States, when agreed to by the FAA), but only under a production approval issued and overseen by that responsible CAA. Completed products are then exported to the United States with an Export Certificate of Airworthiness attesting to their conformity to the § 21.29 TC, that they are in a condition for safe operation, and are eligible for a standard airworthiness certificate. The FAA did not intend to impose additional requirements on foreign manufacturers of aircraft imported into the United States under § 21.183(c).

Manufacture of Older Aircraft Based on ''Orphaned'' TCs

Three individual commenters believe this proposal fails to address and make allowance for the manufacture of older aircraft based on an ''orphaned'' TC.[2]

The commenters are correct that a person may not ''manufacture'' an aircraft, as opposed to ''restoring'' or ''remanufacturing'' an aircraft (discussed below), unless the person holds a TC or license to it. Under the final rule, new aircraft may receive a standard airworthiness certificate under existing § 21.183(a), (b), or (c) and the limited circumstances in new paragraph (h).

The FAA recognizes that a person wishing to manufacture a new aircraft based on an ''orphaned'' TC may be unable to locate the holder of the TC to obtain a licensing agreement. However, the statute clearly prohibits the manufacture of any new aircraft based on an existing TC without obtaining permission of the TC holder and makes no provision for the inability of the potential manufacturer to locate the TC holder.

TC and STC Holder Responsibilities

Section 21.55 requires a TC holder who agrees to permit another person to use that TC to manufacture a new aircraft, aircraft engine, or propeller to provide that person with a written licensing agreement acceptable to the FAA. Section 21.120 requires an STC holder who allows another person to use that STC to alter an aircraft, aircraft engine, or propeller to provide that person with written permission acceptable to the FAA. Both of these sections were adopted in response to Congressional mandates and have been adopted as proposed.

The Aircraft Industries Association (AIA), Aeronautical Repair Station Association (ARSA), and General Aviation Manufacturers Association (GAMA) believe that the language in proposed §§ 21.6 and 21.55 should be synchronized with the language in proposed § 21.120. The commenters asserted that the proposed language, which currently refers to ''licensing agreement'' and ''written permission,'' should be consistent with the language used in the legislation. The commenters believe the language used in the proposed regulations should be identical regardless of the type of design approval (TC or STC).

In addition, General Electric Transportation Aircraft Engines (GE) believes that the focus in the NPRM on the term ''licensing agreement'' was inappropriate because a licensing agreement is a business arrangement that does not have an impact on operational safety. GE recommended the FAA focus on ensuring a link between production and design organizations to document responsibilities for transfer of up-to-date airworthiness data and operational safety.

The FAA notes that 49 U.S.C. 44704(a)(3) states that ''if the holder of a TC agrees to permit another person to use the certificate to manufacture a new aircraft, aircraft engine, propeller, or appliance, the holder shall provide the person with written evidence, in a form acceptable to the Administrator, of that agreement.'' Current FAA regulations require persons who exercise the rights to the benefits of a TC to either hold the TC or have a licensing agreement from the TC holder. The FAA considers the requirement for a person to have a licensing agreement to manufacture an aircraft based on a TC to be consistent with the language of the statute.

The FAA considers use of the term ''licensing agreement'' appropriate to maintain consistency with existing regulations that specify the privileges of TC holders and their licensees. With respect to STCs, the FAA believes use of the less formal term ''written permission'' provides the flexibility necessary to accommodate the wide variability in the type of work undertaken when altering a product. For these reasons, the FAA is not changing the proposal in response to these comments.

The FAA notes that an acceptable written licensing agreement should contain: A statement of the agreement specifying the 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 TC holder may include more information, such as the effective date of the agreement, how long the TC may be used, or other terms and conditions to ensure compliance with part 21.

The FAA also notes that an acceptable permission statement should contain: A statement specifying the product(s) to be altered; the STC number; and the name of the person(s) to whom consent is being given to use the STC. The STC holder may also include more information, such as the effective date of the permission and how many times the STC may be used.

Standard Airworthiness Certification of Used Aircraft and Surplus Aircraft of the U.S. Armed Forces

Section 21.183 currently establishes four methods to obtain a standard airworthiness certificate, the first three of which are not affected by this final rule.[3] The fourth method to obtain a standard airworthiness certificate applies to existing aircraft, including those manufactured from spare and surplus parts, and is set forth in § 21.183(d).

In the NPRM the FAA proposed that paragraph (d) be revised to apply only to used aircraft and surplus military aircraft. That paragraph has been revised in this final rule to apply only to used aircraft and surplus aircraft of the U.S. Armed Forces. As adopted, this section precludes standard

[2] The term ''orphaned,'' with respect to a TC or STC, is not found in our regulations. We believe that commenters are using the term to refer to the situation where a TC or STC holder no longer exists or cannot be located.

[3] Currently, § 21.183 (a) and (b) apply to manufacturers of new aircraft produced under a PC or TC only, respectively. Section 183(c) applies to importers of aircraft that are type certificated under § 21.29 and imported from the country in which they were manufactured. The FAA did not propose to revise these paragraphs.

airworthiness certification of new aircraft manufactured in the U.S. by persons who do not hold a TC (or license to it) and a production approval. Aside from those aircraft that can be certificated under the limited exception of § 21.183(h), aircraft manufactured from spare and surplus parts must now be manufactured in accordance with the requirements of § 21.183(a), (b) or (c) in order to receive a standard airworthiness certificate.

The FAA has replaced the term ''surplus military aircraft'' with ''surplus aircraft of the U.S. Armed Forces'' to clarify our original intent to preclude the standard airworthiness certification of foreign surplus military aircraft under the provisions of this paragraph.

Classification of New and Used Aircraft

ARSA and the Professional Airways Systems Specialists-Manufacturing Inspection District Office (PASS–MIDO) requested the FAA clarify how we make a distinction between ''new'' and ''used'' aircraft in proposed § 21.183(d).

For the purpose of issuing a standard airworthiness certificate under § 21.183, the FAA interprets ''used aircraft'' to mean aircraft with time in service for other than production flight testing, including aircraft type certificated under § 21.29, but not eligible for certification under § 21.183(c), and U.S.-manufactured civil aircraft that were exported and later returned to the United States for FAA certification. Except for surplus aircraft of the U.S. Armed Forces, aircraft that do not meet the definition of ''used aircraft'' specified above are considered ''new aircraft.''

Classification of Destroyed and Demolished Aircraft

The Experimental Aircraft Association (EAA), International Birddog Association (IBDA), GAMA, AAA, AOPA, MCC, and ten individual commenters believe that if the FAA excludes aircraft classified as destroyed or demolished by the National Transportation Safety Board (NTSB) from the term ''used aircraft,'' they would no longer be eligible for a standard airworthiness certificate. The commenters stated that there have been many aircraft that insurance companies or the NTSB have identified as destroyed or demolished that were later reassembled or rebuilt using spare and surplus parts. This is particularly true for antique and surplus military aircraft. Commenters recommended that the FAA modify the proposed rule by adding language that protects the legitimate restoration of used aircraft that may have been classified as destroyed or demolished by the NTSB.

Based on the number of comments, the FAA has reconsidered its position of excluding aircraft identified as destroyed or demolished from the term ''used aircraft.'' All previous references to aircraft identified by the NTSB as destroyed, and references to aircraft damaged to the extent that it would be impracticable or unsafe to repair, are not included in this final rule. At this time the FAA will continue to rely on the existing process for deregistering totally destroyed or scrapped aircraft found in § 47.41. This section requires the holder of the Certificate of Aircraft Registration to return it to the FAA Aircraft Registry when an aircraft is totally destroyed or scrapped. This action terminates the aircraft airworthiness certificate in accordance with the requirements of existing § 21.181(a)(1). That section specifies that an aircraft's standard airworthiness certificate is effective only if the aircraft is registered in the United States.

Effect of the Proposal on Persons Currently Manufacturing New Aircraft for Certification Under § 21.183(d)

Although the FAA received no comments on the November 10, 2005 SNPRM that proposed to include a provision from the recently enacted SAFETEA–LU, an individual commenter on the NPRM believes that the proposed rule would adversely affect many individuals who began building aircraft from spare and surplus parts as allowed by FAA regulations before enactment of Vision 100. He stated that individuals are currently in the process of building aircraft based on TCs, without the TC holders' permission, using new and approved parts and that they have a considerable amount of time and money invested in these aircraft. The commenter believes these aircraft meet and exceed all applicable safety standards. The commenter further believes that changing the rules without a ''grandfather clause'' to protect those working on their projects is unfair treatment under the law.

As discussed above, § 21.6(b) provides an exception from the requirement to have written permission from the TC holder. That paragraph allows a person to manufacture one new aircraft based on a TC without holding the TC or having a licensing agreement from the TC holder provided the manufacturing began before August 5, 2004. The exception contained in § 21.6(b) was proposed in the November 10, 2005 SNPRM and incorporates the statutory provision from SAFETEA–LU that specifically addresses the commenter's concern. Additionally, the FAA has added new § 21.183(h) to provide a means for these aircraft to be eligible for the issuance of a standard airworthiness certificate in accordance with provisions largely identical to those found in existing § 21.183(d).

Airworthiness Certification of Manned Free Balloons Under § 21.183(d)

PASS–MIDO believes the proposed regulation would prevent an owner of a manned free balloon from presenting the balloon to the FAA for standard airworthiness certification under § 21.183(d) whenever the owner replaces the balloon envelope. This would result in a loss of approximately one million dollars a year in balloon envelope production. The commenter believes that this impact was not factored into the economic assessment of the NPRM. Although each manned free balloon component is produced under an FAA production approval, the owner completes the final assembly of the balloon basket, envelope, and burner without a PC and prior to obtaining a standard airworthiness certificate. The commenter asserted that, under this proposal, balloons assembled in this manner could not receive a standard airworthiness certificate.

The FAA recognizes that manufacturers have been directed in the past to ship balloon envelopes to owners with an Airworthiness Approval Tag (FAA Form 8130–3), but without a standard airworthiness certificate. To address this practice and misunderstanding of current regulations and policy, the FAA issued an Information Memorandum dated August 5, 2005 on the subject. The memorandum clarified the policy for certification of manned free balloons and the delivery of a balloon envelope when the balloon envelope is the only component ordered from a manufacturer. Under current FAA policy a manned free balloon may be issued a standard airworthiness certificate under existing § 21.183(a) or (b) after the envelope has been flight-tested with a burner and basket. The envelope, along with the standard airworthiness certificate and the logbook, may be shipped without the burner and basket. The envelope may then be assembled to a different burner and basket in accordance with the TC. An appropriately certificated person may accomplish the interchange of the basket and burner as a preventive maintenance task. Balloons assembled with imported envelopes may obtain standard airworthiness certification under existing § 21.183(c).

Performance of Aircraft Maintenance and Alterations Based on TCs and STCs

In the NPRM the FAA proposed to revise § 91.403(d) to preclude a person from altering an aircraft based on an STC unless the owner or operator of the aircraft is the holder of the STC or has written permission from the holder. This change was made in response to a Congressional mandate and has been adopted as proposed. Additionally, the FAA proposed to require any owner or operator of an aircraft who receives written permission to alter an aircraft based on an STC to retain that written permission until the alteration is superseded and to transfer the document with the aircraft at the time the aircraft is sold. Based on the concerns of commenters and a review of the costs of compliance with the proposal, the FAA has chosen not to adopt that proposed requirement.

STC Record Retention and Transfer Requirements

The ARSA and GE, as well as two individual commenters, were opposed to proposed § 91.403(d). These commenters stated that the proposal is unmanageable, cost prohibitive, and of questionable value.

The FAA agrees with the commenters in part and is therefore not including the proposed record retention and transfer requirements in this final rule. However, § 91.403(d) retains language based on the statutory requirement that persons altering an aircraft based on an STC must ensure that the owner or operator of the aircraft holds the STC or has written permission from the STC holder.

''Remanufacture,'' ''Restoration,'' Maintenance, and Alteration of Older Aircraft Based on ''Orphaned'' TCs and STCs

The Aviation Foundation of America (AFA), AOPA, and MCC as well as seven individual commenters believe this proposal fails to address and make allowance for the ''remanufacture,'' ''restoration,'' and maintenance of older aircraft based on an ''orphaned'' TC or STC. Commenters recommended that the FAA revise proposed §§ 21.6(a) and 91.403(d) to allow for the ''remanufacture,'' ''restoration,'' and maintenance of older aircraft based on orphaned TCs and STCs.

Similarly, the AAA, AOPA, and MCC, as well as six individual commenters believe this proposal fails to address and make allowance for the alteration of older aircraft based on ''orphaned'' STCs.

There are a number of issues raised by these comments. The first concerns the meaning of the terms ''remanufacture'' and ''restoration.'' The second concerns obtaining permission from the TC or STC holder for performing maintenance or preventive maintenance. The third is availability of data for use during maintenance and preventive maintenance.

In addressing the first issue, the FAA notes that the commenters use the terms ''remanufacture'' and ''restoration,'' which are not found in our regulations. Based on the agency's understanding of the common usage of these terms, the FAA considers ''remanufacture'' and ''restoration'' to be included under the terms maintenance, preventive maintenance, or rebuilding.

Section 1.1 states ''Maintenance means inspection, overhaul, repair, preservation, and the replacement of parts, but excludes preventive maintenance.'' It also states ''Preventive maintenance means simple or minor preservation operations and the replacement of small standard parts not involving complex assembly operations.'' Preventive maintenance tasks are listed in paragraph (c) of Appendix A to 14 CFR part 43.

To be considered rebuilt, § 43.2(b) requires that the product, appliance or component part be ''disassembled, cleaned, inspected, repaired as necessary, reassembled, and tested to the same tolerances and limits as a new item, using either new or used parts that conform to new part tolerances and limits or to approved oversize or undersized dimensions.'' We note that under existing § 43.3, only the manufacturer may rebuild an aircraft, aircraft engine, propeller or appliance it manufactured under a TC, PC, Parts Manufacturer Approval (PMA), Technical Standard Order Authorization (TSOA), or Product and Process Specification.

To address the second issue, the FAA notes that once a product has been manufactured and has received its original airworthiness approval, permission from the owner to use TC or STC data is not required for maintenance, preventive maintenance, or rebuilding of the product under our regulations. For this reason, neither the final rule nor the underlying statute affects persons performing these actions. Therefore, based on the agency's understanding of the common usage of these terms, this rule does not affect the re-manufacture, rebuilding, or restoration of an aircraft.

Third, the FAA recognizes that a person performing maintenance or preventive maintenance has a need for TC or STC data to support the continued airworthiness of a product. The FAA agrees that the inability to locate the holder of a TC or STC may adversely affect a person's ability to obtain the necessary TC or STC data. This final rule does not address this issue as it is beyond the scope of both the original and supplemental proposals.

Under the statute, a person must hold an STC or have written permission from the holder of the STC in order to alter a product based on that STC. This requirement is specified in § 91.403(d). The FAA recognizes that a person wishing to alter a product based on an ''orphaned'' STC may be unable to locate the holder of the STC to obtain written permission from the holder.

Intellectual Property Rights

One individual commenter believes that the proposed requirements pertaining to the use of TCs and STCs do not have a safety purpose. The commenter believes that the proposed changes address intellectual property rights which are protected in the commercial code through patents, trademarks, and copyrights. The commenter believes that the proposed changes are unnecessary because an owner of a TC or STC can seek satisfaction through the existing legal system if his rights to the TC or STC are violated.

In response to the commenter's concerns the FAA notes that the changes made in this rule reflect statutory changes mandated by Congress in The Federal Aviation Reauthorization Act of 1996, Vision 100, and SAFETEA–LU. In those statutes, Congress specifically revised the provisions of 49 U.S.C. 44704 that address the use of TCs and STCs. This rule does not alter the property rights of the holders of those certificates or the remedies they may seek for violation of those rights. The rule serves only to codify statutory mandates.

The FAA has historically not inquired into whether a person has permission to use specific data to certificate an aircraft under § 21.183(d), and we recognize that this policy may have facilitated the use of data by persons who did not have legitimate rights to its use. Recent revisions by Congress to the U.S. Code have attempted to remedy this situation. These statutory revisions, however, have not altered the property rights of the owners of the technical data or other information that forms a part of these certificates. This data and information could never be used without the permission of the TC or STC holder, however there was no statutory requirement for a person to receive evidence of this permission from the TC holder. The enactment of the regulations

contained in this rule reflects current statutory mandates, and serves to carry out the clear intent of Congress.

The MCC, AOPA, AAA, and AFA, as well as eleven individual commenters believe there are hundreds of TCs and STCs that no longer have owners and are, thus, considered ''orphaned'' and in the public domain. In their opinion, the public owns these TCs and STCs, and anyone should be able to use them.

The fact that the original holder of a TC or STC no longer exists, or that the FAA may not be able to locate the holder, does not automatically sever the rights of that certificate holder with regard to the contents of the TC or STC. These TCs and STCs, including their supporting technical data, are not automatically transferred into the public domain. Absent a surrender, suspension, or revocation of the certificate, the FAA cannot sever the rights of a holder to the privileges of a TC or STC, and the FAA cannot unilaterally extinguish any intellectual property rights that a person may have to the technical data or other contents of a certificate.

Although the original holder of a certificate may no longer exist, the holder's intellectual property rights are not automatically extinguished, but rather are passed to the legitimate successors or heirs of the holder by operation of law. They do not automatically revert to the public domain. The holder of a TC or STC, or its legitimate successors or heirs, may choose to make the technical data or other contents of a certificate available to the public, however a person may neither infringe upon, nor otherwise exercise, the rights of the owner of this property without that person's consent.

Miscellaneous Issues

Continued Airworthiness

An individual commenter believes that § 1.1 should be amended to include a definition of ''Instructions for Continued Airworthiness.'' The commenter also recommends that the FAA amend § 21.50(b) to include a clause that manufacturers' maintenance documents will be made available to anyone needing access for safety purposes and that the manufacturer cannot charge more than the cost of reproduction for these documents.

The FAA did not propose a definition of ''Instructions for Continued Airworthiness,'' nor did the agency propose a revision to § 21.50(b) to address the availability of manufacturers' maintenance manuals. Taking such action in this final rule would not afford affected parties an opportunity to effectively comment on the changes and would be beyond the scope of the notice. The FAA notes that 14 CFR part 11 provides the commenters with a mechanism for recommending that such changes be made to the regulations.

Quality Assurance Systems

An individual commenter believes that the FAA should adopt a policy where the complexity of the required quality assurance system is commensurate with the level of production. The commenter stated that current FAA guidance allows production for a 6-month period under an approved production inspection system (APIS), after which an applicant must meet the requirements for the issuance of a PC. The commenter believes the FAA should base quality system requirements on the applicant's number of employees, number of units, or sales, rather than a period of time.

This comment is outside the scope of the proposal. Possession of an APIS or PC is based on the ability to replicate an aircraft to its type design. The complexity of the quality control system is determined by the facility, products, processes, and procedures required to replicate these aircraft.

Additionally, the FAA notes that a person may produce a product under an APIS for a period longer than six months. In accordance with existing § 21.123 processes are in place to extend an APIS for more than six-months after the date of issuance of a TC in cases where a production inspection system cannot be established due to the complexity of a product.

Harmonization With European Aviation Safety Agency Regulations

The AIA and GE recommended FAA take an approach similar to that used by the European Aviation Safety Agency (EASA) for establishing production approval requirements.

The commenters recommended that the FAA consider harmonization of the proposed rule language with existing EASA regulations 21A.131 and 21A.133. They noted that both regulations consistently use the word ''design'' with respect to obtaining a Production Organization Approval, the EASA equivalent of a PC. Further, EASA Acceptable Means of Compliance for 21A.131 and 21A.133 consistently refers to the applicable design data when formulating an agreement between the design approval holder and the production organization.

Although the FAA recognizes the benefits that may be obtained as a result of harmonization, the FAA did not propose any such requirements in the NPRM. The FAA considers such changes to be outside the scope of the NPRM and therefore inappropriate for inclusion in the final rule. However, we may consider this comment in a future rulemaking.

FAA Resources and Delegation

Two commenters asserted the FAA's reliance on ''limited resources'' as a justification for revising the rules is inappropriate. One commenter urged the FAA to rely more on designees for certification projects under § 21.183(d) to reduce the FAA's workload.

The FAA often considers the level of agency resources available to conduct oversight in establishing regulatory requirements. In an effort to conserve resources, the FAA has relied extensively on the use of designees for standard airworthiness certification of used aircraft under § 21.183(d).

Before this final rule, new aircraft could be presented for airworthiness certification under § 21.183(d) without the benefit of being manufactured under a production quality system. These aircraft did not have the same level of production oversight as newly manufactured aircraft certificated under § 21.183(a), (b), or (c), and a finding of accurate reproduction to a type design was difficult. An increased level of delegation would not address this underlying problem.

Comments on the Initial Economic Assessment

GE believes that the Initial Economic Assessment in the NPRM is inconsistent with current 14 CFR part 21 and other language in the NPRM discussion. The Assessment states that the proposed rule would require airplane manufacturers to hold both a TC and a production approval for all airplanes produced that are issued a standard airworthiness certificate.

The commenter is correct, and we have revised the economic analysis of the final rule to reflect that the type certificate and production approval holder do not have to be the same person.

Additionally PASS–MIDO recommended that the FAA Civil Aircraft Registry begin tracking the number of ''new'' aircraft certificated under § 21.183(d) to understand the scope of the number of aircraft presently certificated under these rules. This commenter believes that more than 100 aircraft a year are certificated under this regulation, and the economic impact of not being able to certificate these aircraft under this regulation would have a large impact on the flying community.

The FAA notes that its Aircraft Registry does not track the number of aircraft certificated under § 21.183(d). Since there is no data in the Aircraft Registry that indicates if an aircraft was certificated under § 21.183(d) and the commenter provided no data to substantiate its claim, we have no empirical basis for revising the economic analysis to reflect the commenter's concerns.

Regulatory Notices and Analyses

Paperwork Reduction Act

Information collection requirements in this rule have previously been approved 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 regulations.

Final 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. 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 final 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 rule will not have a significant economic impact on a substantial number of small entities, will not impact international trade, and will 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 that a rule does not warrant a full evaluation, a statement to that effect and the basis for it is included in the regulation.

The FAA has evaluated each section of the rule and its relation to current public law and current industry practice. Section 21.6 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 TC do so only if that person is the holder of the TC or has permission from the holder (except for those aircraft manufactured under the limited exception of 49 U.S.C. 44704(a)(4) as set forth in § 21.6(b)). Sections 21.55 and 21.120 also do not impose costs on the industry because it is a current statutory requirement for TC and STC holders to provide written evidence in a form acceptable to the FAA of an agreement to use those certificates. Additionally, § 91.403 does not impose costs on the industry because it is a current statutory requirement that persons may not alter an aircraft based on an STC unless the owner or operator holds the STC or has the written permission of the holder. Furthermore, the revisions to § 21.183(d) also will not result in significant additional cost to the industry. Current industry practice shows that TC holders or licensees of TC holders who are involved in the serial production of aircraft also hold production approval. We note that the economic evaluation for the NPRM stated that only one company was engaged in the serial production of new aircraft intended for standard airworthiness certification without holding either a TC or PC. Since the publication of that NPRM, this company has obtained a TC for the aircraft.

The FAA believes the economic impacts of this final rule are minimal because this final rule codifies common industry business practices, and conforms to an existing statutory requirement. Accordingly, the FAA has determined the expected impact of this final rule is so minimal the rule does not warrant a full evaluation.

Final 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.

The changes contained in this rule codify industry practices for the manufacture of new aircraft that are issued standard airworthiness certificates. Current industry practice shows that a TC holder or licensee, involved in the serial production of aircraft issued standard airworthiness certificates, also holds a production approval. Because all new aircraft intended for standard airworthiness certification are type certificated and are manufactured under a production approval, there are no resulting costs.

Individuals and firms affected by this rule will include applicants for standard airworthiness certificates for new aircraft, STC holders, TC holders, licensees of TC holders, manufacturers, and maintenance providers. Many of these qualify as small businesses. Although the rule could affect a substantial number of small entities, the FAA believes there will be no small entity impact because the rule will establish a regulatory framework to ensure that the existing statutory

requirements are met. Consequently, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

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 rule incorporates existing public laws and common industry practices and thus imposes no additional cost to industry. This final rule will not create obstacles to international trade.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (the Act) 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 an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) 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 $128.1 million in lieu of $100 million.

This 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 final rule under the principles and criteria of Executive Order 13132, Federalism. We have determined that this action will not have a substantial direct effect on the States, or 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 does not have federalism implications.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinctions. We believe that the relief provided to manufactures of new aircraft as specified in §§ 21.6(b) and 21.183(h) sufficiently address the concerns of persons currently manufacturing new aircraft in Alaska for certification under § 21.183. We have determined that there is no need to make any regulatory distinctions applicable to intrastate aviation in Alaska.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule 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 in 14 CFR Part 21

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

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 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) Except as specified in paragraphs (b) and (c) of this section, no person may manufacture a new aircraft, aircraft engine, or propeller based on a type certificate unless the person—

(1) Is the holder of the type certificate or has a licensing agreement from the holder of the type certificate to manufacture the product; and

(2) Meets the requirements of subpart F or G of this part.

(b) A person may manufacture one new aircraft based on a type certificate without meeting the requirements of paragraph (a) of this section if that person can provide evidence acceptable to the FAA that the manufacture of the aircraft by that person began before August 5, 2004.

(c) The requirements of this section do not apply to—

(1) New aircraft imported under the provisions of §§ 21.183(c), 21.184(b), or 21.185(c); and

(2) New aircraft engines or propellers imported under the provisions of § 21.500.

■ 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 a 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 a 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 the introductory text of paragraph (d) and adding paragraph (h) 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 aircraft of the U.S. Armed Forces.* An applicant for a standard airworthiness certificate for a used aircraft or surplus aircraft of the U.S. Armed Forces is entitled to a standard airworthiness certificate if—

* * * * *

(h) *New aircraft manufactured under the provisions of § 21.6(b).* An applicant for a standard airworthiness certificate for a new aircraft manufactured under the provisions of § 21.6(b) is entitled to a standard airworthiness certificate if—

(1) The applicant presents evidence to the FAA that the aircraft conforms to a type design approved under a type certificate or supplemental type certificate and to applicable Airworthiness Directives;

(2) The aircraft has been inspected in accordance with the performance rules for a 100-hour inspections set forth in § 43.15 of this chapter and found airworthy by a person specified in paragraph (d)(2) of this section; and

(3) The FAA finds after inspection, that the aircraft conforms to the type design, and is in condition for safe operation.

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.

Issued in Washington, DC, on August 18, 2006.

Marion C. Blakey,

Administrator.

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