

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. FAA-2003-14825; Notice No. 03-06]

RIN 2120-AH90

Standard Airworthiness Certification of New Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The FAA seeks public comments in advance of a specific proposal to amend the regulations for issuing a standard airworthiness certificate to certain new aircraft manufactured in the United States. The proposal would address a concern that under the current regulations, certain new aircraft are eligible for a standard airworthiness certificate without meeting the requirements of a type certificate and without having been manufactured under an FAA production approval. The intended effect is to increase efficiency by ensuring that all new aircraft manufactured in the United States receive a standard airworthiness certificate only after the aircraft have been type certificated and manufactured under an FAA production approval.

DATES: Send your comments to reach us by June 2, 2003.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 7th Street, SW., Washington, DC 20590-0001. You must identify the docket number at the beginning of your comments, and you should send two copies of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also send comments through the Internet to <http://dms.dot.gov>. You may review the public docket

containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Frank P. Paskiewicz, Production and Airworthiness Division, AIR-200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8361.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. We also invite comments about the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of this advance notice, explain the reason for any recommendation, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about this advance notice. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this advance notice. The docket is open between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Before issuing a notice of proposed rulemaking or taking other rulemaking action, we will consider all comments we receive before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal because of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this advance notice, include with your comments a preaddressed, stamped

postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

- Searching the Department of Transportation's electronic Docket Management System (DMS) web page (<http://dms.dot.gov/search>);
- Visiting the Office of Rulemaking's web page at <http://www.faa.gov/avr/arm/index.cfm>; or
- Accessing the Government Printing Office's web page at http://www.access.gpo.gov/su_docs/aces/aces140.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 docket number or notice number of this advance notice.

Background

14 CFR 21.183(d), Other aircraft

Section 21.183(d) applies to applicants for standard airworthiness certificates for aircraft not covered by § 21.183(a), (b), or (c). An applicant under § 21.183(d) is entitled to a standard airworthiness certificate if he or she presents evidence the aircraft conforms to a type design approved under a type certificate or a supplemental type certificate and to applicable Airworthiness Directives. The Administrator must also find, after inspection, that the aircraft conforms to the type design and is in condition for safe operation. The aircraft covered by paragraphs (a) and (b) of § 21.183 are (a) new aircraft manufactured under a production certificate and (b) new aircraft manufactured under a type certificate only.¹

The requirements of § 21.183(d) were originally adopted in 1959 as an amendment to § 1.67(d) of the Civil Air Regulations (CAR), which were issued by the FAA's predecessor, the Federal Aviation Agency. CAR Amendment 1-2,

¹ Section 21.183(c) applies to airworthiness certificates for import aircraft. Although such aircraft are not produced under a U.S. type certificate/production certificate process, they are produced under similar regulations and processes enacted by the countries in which the aircraft were manufactured, which establishes similar assurances of compliance with airworthiness standards.

dated September 1, 1959 (24 FR 7065), added a new paragraph (d), entitled "Other aircraft." Amendment 1-2 provided for the airworthiness certification of aircraft that were used in military service and later released for civil use, and for other aircraft that had not had their airworthiness status maintained. The amendment stated that the regulation was created for other than newly manufactured aircraft. Section 21.183(d) has remained substantially unchanged since 1959.

The plain language of the regulation, however, does not limit the applicability of § 21.183(d) to surplus military aircraft, aircraft that have not had their airworthiness status maintained, or other than newly manufactured aircraft. Limited data and historical records show that, until recently, only a few newly manufactured aircraft have received standard airworthiness certificates on a case-by-case basis under § 21.183(d). These newly manufactured aircraft "arrive" at the airworthiness certification process as new aircraft that were not produced under an FAA production approval. On the other hand, the practice of issuing standard airworthiness certificates to surplus military aircraft released for civil use and aircraft that have not had their airworthiness status maintained has been ongoing for many years. Surplus military aircraft and aircraft that have not had their airworthiness status maintained "arrive" at the airworthiness certification process as used aircraft (those that have had time in service).

In 1966, the FAA proposed to amend § 21.183 by separating newly manufactured aircraft not manufactured under a type certificate or a production certificate from paragraph (d). See 31 FR 8075, June 8, 1966. Public comments received in response to the proposal showed a misunderstanding of the proposal's intent. Commenters mistakenly believed the FAA intended a broad change to past certification practices of issuing airworthiness certificates to surplus military aircraft and aircraft that had not had their airworthiness status maintained. Since the FAA did not intend such a broad change, and since few new aircraft fell within the intended scope of the change, the FAA decided to abandon the proposed change. See 32 FR 14925, Oct. 28, 1967. The FAA did state that although we would not adopt the proposed change, we would continue to issue standard airworthiness certificates to newly manufactured aircraft under § 21.183(d).

The System for Production of New Duplicate Aircraft

For the FAA to have confidence in the certification system of new aircraft manufactured in the United States, and the authenticity of their production, the FAA has created a three-step system of type certification, production certification, and airworthiness certification based on Title 49 of the United States Code. Type certification examines the basic design of the aircraft against the applicable airworthiness standards. Issuance of a type certificate (TC) is FAA approval that the design meets the applicable airworthiness standards of the Code of Federal Regulations. Production certification examines whether the system used to produce duplicate aircraft will result in products² that meet the design provisions of the pertinent TC. Issuance of a production certificate (PC) is a finding by the FAA that the quality control system of a manufacturer will reliably produce duplicate versions of a product that conforms to an approved type design. The FAA issues a standard airworthiness certificate to individual aircraft after finding that the aircraft conforms to the type design and is in condition for safe operation.

Safety Benefits Assumed by the Linkage of the Type Certificate and the Production Certificate

A connection between the TC and the PC provides an individual and a cumulative benefit. The individual benefit applies to an aircraft produced for initial airworthiness certification. For these aircraft, any deviation from the approved type design that is found during the conformity inspection can be evaluated by comparison to the supporting data that supports issuance of the TC and any changes made after the initial TC issuance. This evaluation assures the standard airworthiness certificate means the individual aircraft satisfies all the airworthiness standards identified by the TC.

The cumulative benefit applies to evaluating the cumulative effect of changes made after the initial issuance of the TC. The linkage of the PC to the TC supporting data enables the aircraft manufacturer to evaluate the cumulative effect of many changes made over time. The manufacturer can also determine that a changed aircraft presented for original airworthiness certification continues to comply with the airworthiness standards identified in the TC. The FAA requests comments from manufacturers on how, for an

aircraft presented for original standard airworthiness certification, they evaluate the interactive and cumulative effect of changes on the aircraft's compliance with all the airworthiness standards identified in the TC.

The Level of Safety Assumed for Newly Manufactured Aircraft

Nearly all new aircraft manufactured in the United States are eligible for airworthiness certificates since they are produced under the TC and PC processes that ensure the aircraft conform to a type design and are in condition for safe operation. The FAA, the manufacturer, civil aviation authorities of other countries, and the public rely on the TC and PC processes to accurately produce multiple copies of an aircraft that meet airworthiness standards. Paragraphs (a) and (b) of § 21.183 recognize this process in issuing standard airworthiness certificates to aircraft produced in this manner. Also, as stated in the next section of this advance notice, entitled "Discussion," the TC and PC holders have certain responsibilities connected with holding these privileges.

New aircraft presented for standard airworthiness certification under § 21.183(d) do not have the same level of certitude as newly manufactured aircraft produced under the TC and PC processes. Section 21.183(d) aircraft presented for airworthiness certification do not have the advantage of prior examination and approval by the FAA of a production quality system, and a finding by the FAA of accurate reproduction is difficult. The applicant for an airworthiness certificate must make a detailed, aircraft-by-aircraft showing to support the entitlement to individual airworthiness certificates, placing a great burden on both the applicant and the FAA.

Discussion

Readers should note that we are directing this Discussion section and the issues and proposals described in this advance notice at aircraft that are issued standard airworthiness certificates. We do not intend for this advance notice to apply to the proposed category of light-sport aircraft, which is the subject of a recent notice of proposed rulemaking (67 FR 5368, February 5, 2002).

The FAA's Aircraft Certification Service has recently learned that people are, or plan to be, engaged in manufacture or assembly of new aircraft, intending to obtain standard airworthiness certificates under 14 CFR 21.183(d). The builders of these aircraft do not hold a TC, supplemental type certificate (STC), or a PC, nor would

² The term "products" means aircraft, engines, propellers, or appliances.

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

certificate and production approval holder responsibilities to the manufacturers of new aircraft produced in the United States. This advance notice does not propose any changes to § 21.183(a), New aircraft manufactured under a production certificate, § 21.183(b), New aircraft manufactured under type certificate only, or § 21.183(c), Import aircraft.

Economic Impact

Proposed changes to Federal regulations must undergo several economic analyses. Executive Order 12866 directs each Federal agency to propose or adopt a regulation only if the agency makes a reasoned determination that the benefits of the intended regulations justify its cost. In addition, the Regulatory Flexibility Act of 1980, as amended, required agencies to analyze the economic impact of regulatory changes on small entities. Other analyses are also required.

To aid the FAA in performing these analyses in the event that we propose a regulation, we request responses to the following questions:

1. If you are manufacturing or assembling in the United States new aircraft that received standard airworthiness certification under § 21.183(d), or if you expect to apply for airworthiness certification under § 21.183(d) to produce new aircraft'

- What is the name of your company?
- How many people does your company employ?
- How many new aircraft certificated under § 21.183(d) do you expect to produce in the future? If possible, give annual production estimates.

2. If you are producing or plan to produce new aircraft that are or would be airworthiness certificated under § 21.183(d), what do you estimate the cost of airworthiness certification under § 21.183(a) or (b) would be relative to airworthiness certification under § 21.183(d)? Please be as specific as possible in identifying additional required tests, analyses, and demonstrations and their estimated costs.

3. If you are producing or plan to produce new aircraft airworthiness certificated under § 21.183(d), what do you estimate the cost of manufacture (per aircraft) would be if the aircraft were airworthiness certificated under § 21.183(a) or (b) compared with airworthiness certification under § 21.183(d)? Please be as specific as possible in identifying required changes in equipment, materials, and manufacturing methods and their estimated costs.

4. If you are producing or plan to produce new aircraft airworthiness certificated under § 21.183(d), and you had to wait for the FAA to issue the airworthiness certificate for each aircraft, what do you estimate the cost would be (per day) once the aircraft was ready for certification?

5. Please provide any other specific information, data, or analyses that you believe may be useful in estimating the costs associated with a potential rulemaking action to preclude the standard airworthiness certification of new aircraft under § 21.183(d).

Issued in Washington, DC, on March 31, 2003.

John J. Hickey,

Director, Aircraft Certification Service, AIR-1.

[FR Doc. 03-8124 Filed 4-2-03; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003-CE-11-AD]

RIN 2120-AA64

Airworthiness Directives; Iniziative Industriali Italiane S.p.A. Models Sky Arrow 650 TC and 650 TCN Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Iniziative Industriali Italiane S.p.A. (3I) Models Sky Arrow 650 TC and 650 TCN airplanes. This proposed AD would require you to modify the nose gear support bulkhead (STA600). This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by this proposed AD are intended to prevent failure of the nose gear support bulkhead (STA600). Such failure could lead to loss of control of the airplane during landing or take-off.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before May 9, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003-CE-11-AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location

between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: 9-ACE-7-Docket@faa.gov. Comments sent electronically must contain "Docket No. 2003-CE-11-AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Iniziative Industriali Italiane S.p.A., Corso Trieste, n. 150, 00198 Rome, Italy; telephone: 06 84.15.821; facsimile: 06 855.71.62. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT:

Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4059; facsimile: (816) 329-4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the proposed rule. You may view all comments we receive before and after the closing date of the proposed rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you