

Dated: November 3, 2005.

Hector V. Barreto,

Administrator.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. FAA-2003-14825; Notice No. 05-13]

RIN 2120-AH90

Standard Airworthiness Certification of New Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The FAA is proposing language to supplement a proposal published in the **Federal Register** on February 15, 2005. This action is necessary to include in the proposal a provision from the recently enacted Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users. The supplemental language allows a person to manufacture one new aircraft based on a type certificate without holding the type certificate or having a licensing agreement from the type certificate holder, provided the manufacturing began before August 5, 2004.

DATE: Send your comments on or before December 12, 2005.

ADDRESSES: You may send comments identified by Docket Number FAA-2003-14825 using any of the following methods:

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.
 - *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.
 - *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.
 - *Fax:* 1-202-493-2251.
 - *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- For more information on the rulemaking process, see the

SUPPLEMENTARY INFORMATION section of this document.

Privacy: We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to 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 the proposal, explain the reason for any recommended change, 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 concerning this proposed rulemaking. 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 preamble 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.

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment 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 (65 FR 19477-78) or you may visit <http://dms.dot.gov>.

Before acting on this proposal, we will consider all comments we receive

on or 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 in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD ROM, mark the outside of the disk or CD ROM and also identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

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 docket number, notice number, or amendment number of this rulemaking.

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 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, section 44701(a)(5). Under that section the FAA is charged to promote 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 a "person may manufacture a new aircraft, aircraft engine, propeller, or appliance based on a type certificate (TC) only if such other person is the holder of the type certificate 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 that "a person is permitted to invoke this exception with regard to the manufacture of one aircraft." By prescribing requirements for manufacturers of new aircraft, this proposed regulation is within the scope of the Administrator's general authority and fulfills the statutory mandate set forth in § 44704(a).

Background

On February 15, 2005, the FAA published in the **Federal Register** a proposal that, among other things, would incorporate into our regulations requirements contained in laws recently passed by Congress. See 70 FR 7829. One portion of the proposal would incorporate a provision enacted as part of Vision 100—Century of Aviation Reauthorization Act of 2003 (Pub. L. 108–176, 117 Stat. 2490). Section 811 of that Act states that "a person may manufacture a new aircraft, aircraft engine, propeller, or appliance based on a type certificate (TC) only if such other person is the holder of the type certificate or has permission from the holder." Accordingly, our proposal was to add a new section to our regulations, 14 CFR 21.6, which would prohibit manufacture of a new aircraft, aircraft engine, or propeller based on a TC

unless the manufacturer is the holder of the TC or has a licensing agreement from the holder to manufacture the product. The comment period on the proposal closed on April 18, 2005.

The New Proposal

The Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109–59, which was signed into law on August 10, 2005, contains an 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. This exception is available with regard to the manufacture of only one aircraft, which the person seeking the exception must have begun manufacturing before August 5, 2004.

In light of this development, we are requesting public comment on the corresponding language we are proposing as a supplement to the original proposal (discussed below). We are not requesting comment on other portions of the original proposal at this time. The comments we received in response to the original proposal are posted in the electronic docket for public information purposes. We plan to respond to the issues raised by the commenters on the original proposal in the final rule document. We will also respond to any comments we receive in response to this supplementary proposal at that time.

Section 21.6 Manufacture of New Aircraft, Aircraft Engines, and Propellers

The FAA proposes adding new § 21.6(a) that would prohibit a person from manufacturing a new aircraft, aircraft engine, or propeller based on a type certificate unless the person:

- Is the holder of the type certificate, or has a licensing agreement from the holder of the type certificate to manufacture the product; and
- Meets the requirements of subpart F or G of part 21.

The reference to subparts F and G means that the person would have to comply with our regulations governing production under a type certificate only or a production certificate, respectively, when manufacturing a new aircraft, aircraft engine, or propeller based on a type certificate. Proposed paragraph (a) is identical in content to § 21.6 in the original proposal.

Proposed § 21.6(b) would allow a person to manufacture one aircraft without meeting the requirements of paragraph (a), provided that person can provide evidence acceptable to the Administrator that he or she began

manufacturing the aircraft before August 5, 2004.

The exception for a person who began to manufacture an aircraft before August 5, 2004 would apply only to aircraft, not to aircraft engines or propellers. This is based on the specific language of SAFETEA-LU, which specifically refers to aircraft, but not aircraft engines or propellers. The person seeking to manufacture a new aircraft under this exception would have to demonstrate to FAA's satisfaction that manufacturing began before August 5, 2004. Documentation that could be used to demonstrate manufacture of the aircraft prior to that date would include items such as: Receipts for 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.

Paperwork Reduction Act

Information collection requirements in proposed § 21.6 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

The FAA has determined that a review of the Convention on International Civil Aviation (ICAO) Standards and Recommended Practices is not warranted because there are no Standards and Recommended Practices that correspond to these proposed regulations.

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, Regulatory Planning and Review, directs the FAA to assess both the costs and benefits of a regulatory change. We are not allowed to propose or adopt a regulation unless we make a reasoned determination that the benefits of the intended regulation justify the costs. Our assessment of this proposal indicates that its economic impact is minimal. Since its costs and benefits do not make it a "significant regulatory action" as defined in the Order, we have not prepared a "regulatory evaluation," which is the written cost/benefit analysis ordinarily required for rulemaking proposals under the DOT Regulatory Policies and Procedures. We do not need to do the latter analysis where the economic impact of a proposal is minimal.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980, (5 U.S.C. 601 *et seq.*) directs the FAA to fit regulatory requirements to the scale of the business, organizations, and governmental jurisdictions subject to the regulation. We are required to perform a review when a proposed or final action will have a significant impact on a substantial number of "small entities" as defined by the Act. If we find that the action will have a significant impact, we must do a "regulatory flexibility analysis."

This proposed rule implements a one-aircraft exception to the requirement to obtain the TC holder's permission for a person building a new aircraft based on a TC when that person's manufacture of the aircraft began before August 5, 2004. Its economic impact is minimal. Therefore, we certify that this proposed action would not have a significant economic impact on a substantial number of small entities.

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. The FAA has assessed the potential effect of this proposed rule and has determined that it will impose the same costs on domestic and international entities and thus has a neutral trade impact.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104-4 on March 22, 1995, 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 a \$100 million or more expenditure (adjusted annually for inflation) 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 \$120.7 million in lieu of \$100 million.

The proposed rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded

Mandates Reform Act of 1995 do not apply.

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 Title 14 of the CFR 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 such regulatory distinctions as he or she considers appropriate. Because this proposed rule would apply to the certification of aircraft built by individuals or small businesses and their subsequent operation, it could, if adopted, affect intrastate aviation in Alaska. The FAA therefore specifically requests comments on whether there is justification for applying the proposed rule differently in intrastate operations in Alaska.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this proposed rule does not have federalism implications.

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 proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 308(c)(1) and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this SNPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, 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 Proposed Amendment

For the reasons stated above, the FAA proposes to amend part 21 of Title 14, Code of Federal Regulations as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

1. The authority citation for part 21 continues 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 paragraph (b) 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 Administrator that the manufacture of the aircraft by that person began before August 5, 2004.

Issued in Washington, DC, on November 4, 2005.

John J. Hickey,

Director, Aircraft Certification Service.

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