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Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 21

Type Certificates for Surplus Aircraft of the Armed Forces; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. 27699; Notice No. 94-12]

RIN 2120-AE41

Type Certificates for Surplus Aircraft of the Armed Forces

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to remove the regulations for issuing type certificates for surplus aircraft of the Armed Forces. The purpose of the proposed removal is to eliminate references to obsolete airworthiness standards that are no longer appropriate for type certification of surplus military aircraft. Surplus aircraft of the Armed Forces may still be certificated in the normal, utility, acrobatic, commuter, transport, and restricted categories when compliance with the applicable regulations is shown. This proposal if adopted as final would become effective on April 21, 1994 and is intended to provide a greater level of assurance that the appropriate airworthiness standards are met before standard airworthiness certificates are issued for surplus military aircraft.

DATES: Comments must be received on or before June 20, 1994.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 27699, 800 Independence Avenue SW., Washington, DC 20591. Comments may be examined in the Rules Docket, room 915-G, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: George Kaseote, Aircraft Engineering Division (AIR-100), Policy and Procedures Branch, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-8541.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on any portion of this rule by submitting written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document are invited. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking further rulemaking action. Anyone wishing the FAA to acknowledge receipt of their comments submitted in response to this proposed rule must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 27699." The postcard will be date/time stamped and returned to the commenter. All comments submitted will be available, both before and after the closing dates for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Inquiry Center (APA-430), 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRMs should also request a copy of Advisory Circular 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

The practice of issuing type certificates and airworthiness certificates for surplus aircraft of the Armed Forces became effective on November 21, 1946, with the adoption of Civil Air Regulation (CAR) Part 09 (later changed to Part 9), Aircraft Airworthiness, Limited Category. The promulgation of that rule occurred when there was a substantial number of surplus military airplanes being offered for sale to the public, accompanied by an increasing need for aircraft in civil use, but at a time when the civil aircraft industry was not capable of meeting those needs. CAR Part 9 permitted airworthiness certification of surplus military aircraft in the limited category only if the Administrator found that the aircraft's service history was satisfactory, the particular aircraft was in a good state of preservation and repair, and the aircraft was in a condition for safe operation. The carriage of cargo or passengers for hire was not permitted in these aircraft.

Because CAR Part 9 was based on conditions in the aviation industry in 1946 which were believed to be of a temporary nature, the regulations required that type certificate applications had to be made prior to December 31, 1947, and that no airworthiness certificates were to be issued after August 31, 1948. Those time limits were established so that the development of postwar civilian-type aircraft would not be stifled by an extended overloading of the market with surplus war aircraft. The August 31, 1948 time limit for the issuance of airworthiness certificates was removed on November 20, 1950, as a consequence of the increased demand for military-type aircraft (Korean War), with the resultant conversion of civilian aircraft manufacturing facilities to the production of military-type aircraft, and an increased demand for war surplus aircraft that could be used as executive-type transports.

Part 9 was amended on January 10, 1964, to reimpose a time limit for the issuance of airworthiness certificates in the limited category. The new time limit for issuance of "original" airworthiness certificates was June 30, 1965. That time limit was subsequently rescinded indefinitely on July 23, 1965, due to the interest of individuals and groups in surplus military aircraft (Warbirds) preservation. The term "original" airworthiness certificates was necessary because an aircraft that had a Limited airworthiness certificate could be issued another kind of airworthiness certificate ("experimental" or "restricted") and then be re-issued a limited airworthiness certificate.

Still, surplus military aircraft for which an application for a type certificate was made after 1947 were no longer eligible for certification under CAR Part 9. A purchaser of one of those aircraft was confronted with the fact that the only way to certificate the aircraft was in the normal, utility, acrobatic, and transport categories in accordance with the provisions of CAR Parts 3, 4b, 6 or 7, or in the restricted category under the provisions of CAR Part for special purpose operations only. The provisions of those parts prescribe that compliance be shown with the requirements of those parts effective on the date of application for the type certificate. Since the regulations are amended as the state of the art progresses in the aviation industry, demonstration of compliance with many of the current airworthiness requirements by an aircraft which was designed many years previously could

be prohibitively burdensome and costly. As a consequence, CAR Part 9a was adopted effective January 10, 1964. This allowed military aircraft to be certificated in the normal, utility, acrobatic, and transport categories if the aircraft was found to conform not to the certification requirements in effect on the date of application for a type certificate, but to specified earlier versions of CAR Parts 3, 4b, 6, or 7. Under CAR Part 9a, aircraft that were military models of previously type certificated civil aircraft could be certificated upon compliance with the regulations governing the original type certificate. These aircraft were eligible to conduct the same type of operations as other civil aircraft for which a standard type of airworthiness certificate had been issued; for example, they could be used to carry cargo and passengers for hire. CAR Part 9a made no mention of limited category aircraft. When the CAR was recodified in 1965, § 21.27 replaced CAR Part 9A.

FAR Section 21.27 allows compliance with the applicable certification requirements of either the CAR or FAR that was appropriate on the date the aircraft was accepted for operational use by the Armed Forces of the United States. Since § 21.27 was first adopted, changes have been made to the FAR to upgrade the level of safety required for civilian aircraft and to incorporate certification standards for modern state-of-the-art technology. Consequently, the CAR's are obsolete and no longer appropriate as certification standards for the issuance of new type certificates for modern aircraft.

Discussion

This proposed rulemaking is intended to remove § 21.27, "Issue of type certificate: surplus aircraft of the Armed Forces." This action would not preclude a surplus military aircraft of the Armed Forces from being type certificated under the provisions of § 21.21, "Issue of type certificate: normal, utility, acrobatic, commuter, and transport category aircraft; manned free balloons; special classes of aircraft; aircraft engines; propellers," or § 21.25, "Issue of type certificate: Restricted category aircraft."

Currently, to obtain a type certificate for an aircraft under § 21.21, an applicant must apply for the certificate and submit descriptive data, substantiating data, and test results that show compliance with the appropriate regulations governing the type of certificate for which he or she is applying, i.e., normal, utility, acrobatic, commuter, or transport. The FAA then evaluates that data and may conduct additional testing. After all data are submitted and tests are completed, and if the results show compliance with the regulations, then a type certificate is issued. This practice assures that the aircraft is thoroughly evaluated and meets the appropriate safety standards. On the other hand, § 21.27 is less stringent and allows a greater degree of flexibility in the application of the rules. It provides for relief from strict compliance with specific provisions of the applicable requirements if the alternative method of compliance proposed by the applicant provides substantially the same level of airworthiness and if a severe burden would otherwise be incurred. Since military aircraft have become increasingly complex and sophisticated, the practice of allowing normal or transport category certification under § 21.27 (relief from strict compliance) is no longer acceptable for military surplus aircraft. It is the FAA's position that surplus military aircraft should be certificated only under the provisions of § 21.21 or § 21.25.

Accordingly, the FAA has determined that § 21.27 has outlived its intent and usefulness. Since § 21.27 does not provide an adequate level of certitude that the appropriate airworthiness standards have been met for the different categories of airworthiness certification, the FAA is proposing that it be removed, effective April 21, 1994. The FAA specifically request comments on the proposed effective date for the removal of § 21.27. Also, the proposed removal of § 21.27 from the FAR affects § 21.21. That section would be revised to accommodate the removal of § 21.27. Aircraft that have existing type certificates and those that have applications for type certificates based on § 21.27 dated as of April 21, 1994 would not be affected. Also, aircraft in the limited category would not be affected by this rulemaking action.

Preliminary Regulatory Evaluation, Initial Regulatory Flexibility Determination, and Trade Impact Assessment

Proposed 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 Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule: (1) Would generate benefits that justify its costs and is not a "significant regulatory action" as defined in the Executive Order; (2) is not "significant" as defined in DOT's Regulatory policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; and (4) would not constitute a barrier to international trade. These analyses, available in the docket, are summarized below.

Costs and Benefits

A. Costs

The incremental costs of the proposed rule would consist of the difference between the costs to certificate aircraft under FAR § 21.21 or § 21.25 as opposed to those under § 21.27. As a basis for evaluating this differential, the FAA examined certification records for the past 10 years. This examination revealed that only one type certification was completed by the FAA pursuant to § 21.27 (in 1983). The costs expended by the applicant to certify the military transport airplane under § 21.27 essentially equaled the costs typically incurred for certification under § 21.21 or § 21.25. If this experience were to continue, the proposed rule would impose no incremental costs.

The FAA recognizes the potential for increased type certification applications for surplus military aircraft in the future, due to possible downsizing of the nation's investment in military equipment and other factors. However, future applications may not increase to any great extent despite the potential downsizing of the military. The substantial surplus of military aircraft following World War II and the Korean War occurred at a time when the civilian aircraft industry was not capable of meeting the increased need for civilian aircraft. Industrial capacity had been shifted to military production in a relatively short time period. However, the military buildup of the 1980's occurred over a longer period of time and did not significantly affect the nation's capacity to produce civilian aircraft. Consequently, future type certifications of surplus military aircraft may not approach the levels reached following World War II and the Korean war. Nevertheless, the FAA is unable to reasonably forecast the future number of type certifications of surplus military aircraft and the potential variability in costs from case to case. Therefore, the FAA invites interested persons to submit such estimates during the public

comment period specified in this NPRM.

B. Benefits

The benefits of this proposed rule would be the accident risk differential between aircraft certificated to the more stringent standards of §§ 21.21 and 21.25 as compared to the standards of § 21.27. While the FAA is not aware of any surplus military aircraft that has experienced certification-related safety problems, it believes that continued certification to the less stringent requirements of § 21.27 is unacceptable. Based on the continuance of negligible incremental costs to certificate aircraft under §§ 21.21 and 21.25, the benefits associated with the prevention of only one accident would easily make this proposed rule cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a proposed rule would have "a significant economic impact on a substantial number of small entities." FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, outlines FAA's procedures and criteria for implementing the RFA.

The small entities potentially affected by the proposed rule are operators that own 9 or few aircraft, which is the size threshold for aircraft operators. The cost thresholds (in 1993 dollars) are approximately $119,500 for scheduled operators whose entire fleets have a seating capacity of over 60; $66,800 for other scheduled operators; and $4,700 for unscheduled operators. A substantial number of small entities is a number which is not less than 11 and which is more than one-third of the small entities subject to the rule. Given the historically small number of applications for certification under § 21.27 and the finding of no incremental costs incurred by operators certificating surplus military aircraft under § 21.21 or § 21.25 compared to certification under § 21.27, the FAA does not expect that 11 or more entities would experience a significant economic impact in any one year. Therefore, the proposed rule would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The proposed rule would not constitute a barrier to international trade, including the export of American goods and services to foreign countries and the import of foreign goods and services to the United States. This assessment is based on the finding of no incremental costs as well as the small number of applications for type certification pursuant to § 21.27.

Federalism Implications

The regulations proposed herein would not have substantial direct effects 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, in accordance with Executive Order 12866, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation in not major under Executive Order 12866. In addition, the FAA certifies that this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered not significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). A draft regulatory evaluation of the proposal, including an initial Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under FOR FURTHER INFORMATION CONTACT.

List of Subjects in 14 CFR Part 21

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

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 21 of the Federal Aviation Regulations (14 CFR part 21) as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

1. The authority citation for part 21 continues to read as follows:

Authority: 49 U.S.C. App. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 7572; E.O. 11514, 35 FR 4247, 3 CFR 1966–1970 Comp., p. 902; 49 U.S.C. 106(g).

2. Section 21.21 is revised to read as follows:

§ 21.21 Issue of type certificate: normal, utility, acrobatic, commuter, and transport category aircraft; manned free balloons; special classes of aircraft; aircraft engines; and propellers.

An applicant is entitled to a type certificate for an aircraft in the normal, utility, acrobatic, commuter, or transport category, or for a manned free balloon, special class of aircraft, or an aircraft engine or propeller, if the applicant submits the type design, test reports, and computations necessary to show that the product to be certificated meets the applicable airworthiness, aircraft noise, fuel venting, and exhaust emission requirements of the Federal Aviation Regulations and any special conditions prescribed by the Administrator, and the Administrator finds—

(a) Upon examination of the type design, and after completing all tests and inspections, that the type design and the product meet the applicable aircraft noise, fuel venting, and emissions requirements of the Federal Aviation Regulations, and further finds that they meet the applicable airworthiness requirements of the Federal Aviation Regulations or that any airworthiness provisions not complied with are compensated for by factors that provide an equivalent level of safety; and

(b) For an aircraft, that no feature or characteristic makes it unsafe for the category in which certification is requested.

§ 21.27 [Removed]

3. Section 21.27 is removed and reserved.

Issued in Washington, DC, on April 11, 1994.

Thomas E. McSweeny,

Director, Aircraft Certification Service.

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