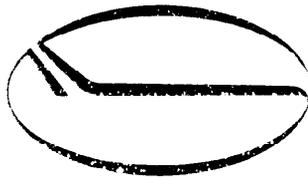


129678



Air Transport Association

FAA-01-8994-19

(12)

September 2, 1997

Federal Aviation Administration
Office of the Chief Counsel
Attention: Rules Docket (AGC 200)
Docket No. 28903
800 Independence Avenue SW
Washington DC 20591

1997 SEP - 3 A 10:51
OFFICE OF THE
CHIEF COUNSEL
RULES DOCKET

Subject: Notice No. 97-7, **Type Certification Procedures for Changed Products**,⁶²
Fed. Reg. 24288, May 2, 1997

Ladies/Gentlemen:

The following comments are submitted on behalf of the member airlines of the Air Transport Association of America.¹ ATA members provide over 95 percent of commercial passenger air traffic service in the United States, as well as a substantial majority of express package, cargo and airmail shipping services. ATA members purchase, operate and maintain the vast majority of transport category airplanes in the United States that would be subject to the proposed amendment.

FAA issued Notice 97-7 to propose amending the procedural regulations for the certification of changes to type certificated products. The amendment is intended to address the trend of decreasing numbers of products that are "new types" - and thus subject to the latest safety standards - and increasing numbers of products that are derivatives of previous designs that were originally certified to older standards. FAA intends that the result of this amendment is the application of the latest standards of airworthiness to more new products than otherwise would be the case.

The members of ATA applaud the efforts of FAA to establish reasonable tools for enhancing the airworthiness of the airplanes we operate. ATA is, in fact, a founding member of a new industry organization attempting to identify and implement voluntary measures to enhance safety. Such enhancements will be undertaken with a view of the real potential for improving the accident record.

¹ATA's members are Alaska Airlines, Aloha Airlines, American Airlines, American Trans Air, America West Airlines, Continental Airlines, Delta Air Lines, DHL Airways, Emery Worldwide, Evergreen International Airlines, Federal Express, Hawaiian Airlines, Kiwi Air Lines, Midwest Express Airlines, Northwest Airlines, Pacific Air Cargo, Reeve Aleutian Airways, Southwest Airlines, Trans World Airlines, United Airlines, United Parcel Service and US Airways. Our associate members are Air Canada, Canadian Airlines International and KLM Royal Dutch Airlines.

Due Process Concerns

The approach taken by FAA in this proposed rule, however, raises certain concerns about due process. The safety standards that would come into play under this rule are in large part a certain number of requirements under Part 25 that are currently applicable only to new type designs. Each of those standards when previously adopted by FAA received a thorough analysis of costs and benefits that applied not only to new types, but also to new derivatives, new production units of approved designs, and airplanes already in operation. In the final analysis of each of these standards, FAA justified Part 25 amendments applicable to new types, but failed to satisfy reasonable cost-benefit criteria essential to making them applicable to derivatives, new production units or the existing fleet. While ATA does not hold the traditional cost-benefit test as the sole determinant of a reasonable rule, we do endorse the cost-benefit analysis as a valid method of prioritizing the large number of safety enhancements under consideration by government and industry at any given time.

In the instant proposal, FAA states that "...the FAA can describe, but it is not able to quantify, the costs and benefits of the proposal" (Proposal, p. 24297). This statement in itself is a concern to ATA, inasmuch as, in general, we hold that government should not adopt regulations for which the costs and benefits have not been quantified. This statement also calls into question the conclusion of FAA, stated elsewhere, that the proposed rule "... would generate benefits exceeding its costs..." (proposal, p. 24297). Based on the foregoing paragraph, we have serious doubts that the benefits of the proposal exceed the costs. The standards brought into play by the proposal, as aforesaid, are those that passed cost-benefit muster only as standards for new types. They failed to pass cost-benefit muster for pre-existing types at the time Part 25 was amended for each of the standards, and there is no obvious reason to believe that – reassessed today – any one of the standards would show a different cost-benefit outcome than the original assessment. If our doubts hold true for individual standards, it must also be true for the accumulation of standards that the proposed rule would incorporate.

The proposed rule would authorize "blanket" applicability of later design standards to new products, regardless of the cost-benefit determination for each. Each standard would take on equal importance, and there would be no prioritization of the most important standards. We fear that such an approach would unduly inflate the cost of transportation to the traveling and shipping public, and act as a deterrent to the incorporation of changes that would make gains on specific airworthiness fronts. If, for example, the airlines were to voluntarily initiate an incorporation of predictive windshear systems, the proposed rule could invoke the requirement to meet other "modern" airworthiness criteria that individually do not satisfy airline criteria for voluntary action. In such a case, the existence of a rule such as the one proposed would tend to deter voluntary airline improvements.

ATA members have uniformly and consistently supported the implementation of reasonable airworthiness enhancements for new type designs. This position is based on:

- new standards can be incorporated more efficiently into new designs than into existing designs;

- collateral airworthiness concerns that sometimes are inadvertently introduced with a “product improvement” are easier to spot and prevent in a new aircraft design;
- changes made on new type designs are typically made at a less demanding pace than retrofit changes, and consequently are less susceptible to human errors;
- costs of changes made on new designs are often distributed over a larger, worldwide fleet than a retrofit rule applicable to only US operators, and lower unit costs result; and
- retrofit installations are extremely difficult to schedule unless they fit into a fixed maintenance schedule, and they invariably affect some operators more adversely than others.

Accordingly, we have supported many Part 25 amendments, even when the FAA-estimated cost-benefit ratio was not highly in support of a requirement, while not supporting corresponding retrofit proposals. We are concerned that the proposed rule, as it may affect future STCs – and as it may re-introduce the specter of retrofit requirements – would ignore these principles.

ATA members often issue STCs under DAS-STC delegated authority from FAA. Generally speaking, STCs are issued as a result of a logic process that classifies the project as a major alteration. The purpose of the STC is to demonstrate and ensure that changes to the aircraft design are airworthy. These projects are often justified because they provide improved reliability, functionality or economic competitiveness. They are always designed to meet certification levels consistent with the type certification basis of the airplane, unless an airworthiness directive or Part 121 amendment requires compliance with a more recent Part 25 amendment. We believe that this is the appropriate approach to incorporating amendments to FARs after certification of a product. A process that is based on artificially elevated amendment levels will work as a deterrent to innovation and progress, especially if a cumbersome process – such as the proposed process to require the applicant to prove that a proposed change does not invoke a new safety standard - must be followed to relieve this requirement. The proposed process will consume time and resources for no visible improvement to airworthiness.

Conclusion

Parts 11 and 21 today provide FAA and the public all the tools necessary for evaluation and promulgation of needed safety standards for application to new designs, derivative models, new production airplanes and the existing fleet. While the regulatory system may appear cumbersome to some, it has all the due process safeguards intended by Congress and the Judiciary. The proposed amendment, by providing an umbrella authorization to mandate unnamed airworthiness standards against groups of airplanes not specifically justified by due process criteria, fails to protect all parties. Moreover, by shifting the burden to applicants to establish the adequacy of the original standards for their changes, FAA would effectively abandon its duty to demonstrate the need for regulations.

We urge FAA to exclude STCs from the proposed rule.

Sincerely,

A handwritten signature in black ink, appearing to read "Phil Boughton". The signature is stylized and cursive.

Phil Boughton
Vice President
Engineering, Maintenance & Materiel