

Comments on Organizational Designation Authorization (ODA) NPRM and draft ODA Order  
(reference NPRM Docket No. FAA-2003-16685)

1. Safety

a. Legally and historically, the Aviation industry has always been regulated differently than other modes of transportation because it is inherently more dangerous. As stated by an FAA manager in a FAA-sponsored conference this year, "The regulations are written in blood." The proposed ODA NPRM and Order significantly modify the current regulatory oversight system by deteriorating the established technical FAA oversight by going to a "systems" oversight approach that provides less specific and technical FAA oversight and therefore would in time lower the safety of the flying public. The proposed ODA NPRM and Order are in fact in violation of Public Law 103-272 (i.e. Sections 40101 and 44701) because they do not "further the highest degree of safety in air transportation" nor "maintain the safety vigilance that has evolved in air transportation" nor "carry out this chapter in a way that best tends to reduce or eliminate the possibility or recurrence of accidents in air transportation". Legally, the FAA should indefinitely suspend the proposed ODA NPRM and Order since they are not in compliance with all applicable public law.

b. The facts when viewed in terms of number of fatalities are startlingly clear (ref. Administrator's Fact Books of May 2002 and December 2003 and remove fatalities due to 9/11) that the current Aviation regulatory system has the fewest amounts of fatalities in relationship to the other three significant modes of transportation (Highway, Rail, Marine). It has been shown to be a 100 times safer than the Highway transportation system over a three year time period (based upon NTSB data for 1999-2002, as ref. in Fact book). Bottomline, the current Aviation regulatory system is doing fine and should not be significantly change. The FAA must suspend the proposed ODA NPRM and Order. An alternative suggestion for a simple, yet historically logical, change to the current regulations are (a) modify 14 CFR part 21 concerning "DAS" to allow for repair approvals (thus allowing the removal of SFAR-36), and (b) to continue to allow the current DDS Order (with the SFAR-36 information moved to the DAS section) to be used. Thereafter, the FAA must pursue documenting technically significant data (based upon at least a ten year study of the FAA technical audit results from the current DDS Order and not upon an overly simplified phone study) before allowing any further expansion to the limits as currently noted under FAR 21.

c. The ODA NPRM and Order must be suspended until the following studies have been conducted and properly evaluated:

- i. Studies need to be done to if that a majority of ADs written today are indeed on aircraft that have had delegation done. What went "wrong" in the engineering that prompted the AD because it is clear that delegation did not prevent the AD. In the study, breakout how many aircraft were approved under a DOA system vs usage of DERs vs "non-delegated" aircraft (maybe even to see if a DAS was involved). Remove any foreign aircraft and study them separately to understand how other CAAs delegate and to see if the FAA did

- a type-validation without any significant engineering tests or analysis being required (by the FAA) prior to FAA TC issuance. It is clear that delegation doesn't prevent an AD being written on an aircraft (that had been delegated).
- ii. Studies need to be done to see how much of today's certification projects (TC vs Amended TC vs STC vs Amended STC vs PMA vs FAA Form 337 vs TSO vs major design changes vs minor design changes vs product improvements vs service document approvals) involve delegation. The FAA's ACOS system is a good place to look for significant projects and then check with ACOs on how many involved delegation. Also, looking at ACOS, one can get timeframes for each project. Therefore, a good estimate of how long the FAA has been delegating can be documented. Delegation is involved in all major projects done today by the FAA, so is FAA management wanting to delegate "more" (of what?) or (as is feared) truly pushing the FAA employees to basically abdicate their inherently governmental safety responsibilities?
  - iii. Historically, all FAA offices have had problems with delegation. When Cessna was granted its DOA in June of 1951, the FAA approval document (reference FAA Memorandum of June 11, 1951, Subject "Delegation Option for Certification of Small Airplanes.") is reported to have noted several concerns over the company's ability to comply with the regulations and with the lead engineer's questionable belief in the regulations. However, the types of aircraft Cessna was working on at the time were of commonly understood configurations and engineering concepts and are still flying today. Prior to the August 2002 release of the DDS Order, the Wichita ACO (which currently oversees several significant business jet and general aviation companies) was reported to have released a document within the FAA that looked back over organizational delegations (in response to the DDS Order) and noted several safety issues and regulatory failures that were clearly common to the FAA's concerns back to the early 1950's. So, delegation clearly has not matured, as the FAA's top management would like the Congress and the public to perceive it has. The FAA must contact an independent agency (such as the GAO and/or the NTSB) to conduct a thorough investigation of delegation concerns raised over the years by any ACO or FAA employee prior to any further new delegation program or any further delegation in general. This is especially true in light of the current military investigations of unethical aerospace business contracts, illegal hiring of federal employees overseeing aircraft contracts, and alleged stealing of competitor's data.

## 2. Abdication vs Delegation

In light of recent aircraft accidents (Swiss Air 111, American Airlines 587, and AirMidwest 587, to name a few) where lack of FAA oversight and poor delegated design approvals are suspected to be contributors, the FAA must not continue down the path of further reduced technical oversight and expanded delegation (or as commonly referred to as abdication). There is a clear need for the FAA to convert the SFAR-36 requirements into a stand alone set of regulations (which it has been unable to do over the past few decades), so the following changes at a minimum must be made to the ODA NPRM and Order:

a. Since the Public Law allows Delegation, FAA safety employees may delegate, but should not be forced to abdicate their safety oversight responsibilities. Public Law 103-272, Section 44702 states that:“the Administrator may delegate to a qualified private person.” The FAA cannot (through the ODA Order, reference pages 20 and 32) abdicate its legal responsibility by delegating the ability to delegate. Therefore, any person that applies to be a delegee can only be approved by the FAA and cannot be approved by a delegated organization (nor delegated individual). The ODA regulations/NPRM (ref. 183.55“Limitations”) and Order must be rewritten to clearly state that any delegation to a qualified private person (especially any person being added to an ODA staff) can only be approved by the FAA. The ODA Order must also have forms added to it to allow ODA staff to file complaints against the ODA Holder and/or ODA Unit and to allow any person that leaves an ODA staff the ability to explain why they left. The forms can be used by the FAA as a basis for an immediate investigation of the ODA and the ODA staff must be given legal coverage that they can use the forms without fear of reprisal.

b. Delegation does not increase the safety of the flying public. While delegation has been in existence since the 1950s, the need for airworthiness directives (ADs are safety laws) has continued and the number of ADs has overall steadily increased over the years. It is sad to note that while regulations and sparse policy on delegations have existed back into the 1950s, it wasn't until September of 2002 (more than 50 years later) that the DOA/DAS/SFAR-36 Order 8100.9 (referred to as DDS Order) was approved that created the first national and comprehensive FAA policy on delegated organizations. During the time of the development of the DDS Order, there was a significant drop in the number of ADs issued (reference Administrator's Fact Book: 509 ADs in FY 00, 529 in FY 01, 389 in FY 02) which is viewed as partly due to aircraft certification engineers being taken away from their focus on working safety issues and being mandated by FAA management to make the lead priority to prototype, develop, and transition delegated organizations to comply with the DDS Order (ref. Order 8100-9). Today, basically all current type certification programs have delegation involved in some form or function, yet ADs continued to be issued on type certified aircraft that were approved with the assistance of delegees. Delegation is truly another type of privatization that at best helps to reduce the administrative paperwork and time associated with of type certification. When delegees and/or organizational delegations do not comply with current FAA policy, this has commonly created an endangerment to the safety of the flying public by failing to comply with the safety regulations, ignoring current policies and procedures, and creating the need for the FAA to conduct special certification reviews that take time away from

accident/incident safety investigations. To reduce the time and cost of compliance to the regulations, the agency should be increasing its aircraft certification field office engineering staffs by a total of 300 engineers over the next few years (which is of course in addition to the current staff of engineers). Congress has taken a step in this direction and increased the effective aircraft certification workforce from 580 to 660 employees in the last two years. The 300-engineer increase would at least double the approval output and safety oversight of the FAA. Please note that the current trend of hiring more FAA managers does not increase the number of safety approvals issued by the FAA. Only an increase in the effective aircraft certification workforce (certification engineers, flight test pilots, and technical/administrative support) will increase the number of approvals and be able to handle a gradual increase in delegated organizations (beyond the current 80).

- c. As was evident in the Swiss Air 111 accident, the delegated organization (DAS) that was involved purposefully ignored safety practices and procedures when trying to install an in-flight entertainment system. The current NPRM and Order does not increase the FAA's ability to oversee a DAS but instead relaxes the requirement for who can apply for a delegation which will increase the number of organization delegations in existence. Any increase over the current 80 delegated organizations will further erode the FAA safety employee's ability to conduct proper and technically in-depth oversight. It is necessary that the ODA Order comply with current FAA policies on DERs (such as in Order 8110.37) and be rewritten to reference current policies on DERs as the means to approve, renew, and oversee ODA Airworthiness Representative (AR). It is also necessary that the ODA NPRM be modified to comply with current regulatory limitations (as noted in FAR 21 for DDS organizations) concerning who may be allowed to apply for an organizational delegation.
- d. As stated above, the prototyping and transition to the DDS Order 8100.9 policy allowed a decrease in safety since the critical FAA safety employees now have less time to work ADs (which by public law should be the first priority). So, instead of now rushing into another new delegation system, the industry and the FAA should allow the current policy to be tested over time via per project reviews and technically audits. Please note that the DDS Order was issued in Aug of 2002, but only after at least 2 yrs of prototyping and at least 2 years of development before the prototyping. In light of this, the FAA must not rush to implement an ODA system. As stated earlier, the FAA should suspend the current ODA NPRM and Order for at least ten years in order to allow the current DDS system to mature and be FAA technically audited to determine if further expansion of organizational delegation is allowable. If the FAA chooses to ignore this recommendation, then it must continue to comply with its legal priority to focus on safety and expand the initial compliance timeframe (for only current DDS organizations) to at least 6 years. At the same time, no applications should be allowed to be submitted to

the FAA during the six years the FAA is juggling safety and the “switchover” for current DDS organizations.

- e. Stop trying to dummy down (ref. Order, Chapt 5) the aircraft certification engineers by creating a “systems approach” to performing oversight. This is in direct violation of Public Law (as stated earlier), in violation of the requirement of the aircraft certification engineers to find compliance to the safety regulations, and in violation of the current delegation procedures and policies. A systems approach to oversight would never have prevented the Swiss Air 111 accident and will create further similar accidents in the future. The ODA Order and NPRM must be rewritten in order for a certification engineer to verify that an ODA staff member (airworthiness representative, AR) has acted within their scope of authority, the certification engineer must perform a technical review of the data approved by the AR and should concur with the approved data (in accordance with similar procedures in Order 8110.37). After establishing a history of satisfactory submittals (which is dependent on the number of submittals over time period of three years, in order to establish FAA need for the delegation) in a denoted FAR(s) specific technical area(s), then the FAA certification engineer may modify the ODA procedures to allow for auditing of the approved data (at least yearly).
- f. Please note that the FAA’s current attempt to create policy that will prioritize aircraft certification regulations (such as FAR 21, 23, 25, etc) will also dummy down the importance of these safety regulations. Prioritizing regulations via an Order has no legal basis and is in fact an illegal rule making action. The time wasted by the FAA on this effort must be stopped immediately. If the FAA has a rule it thinks is of “low priority”, then it should conduct rulemaking (via the NPRM process) to remove the rule.
- g. The NPRM provides no clear data in regards to any future increase in workload. As noted earlier, there is an increase in the effective FAA workforce that will only need about 1-3 more years of training and experience to significantly increase the amount of safety approvals issued by the FAA, so this should effectively deal with the future perceived increase in workload and there is no need to create an ODA NPRM (or Order). In discussions with FAA employees, it is clear that there is a backload of work that needs to be done (for example, several hundred ADs in the Transport Directorate are awaiting prioritization and resolution). Changing the focus of our Aircraft Certification employees toward dealing with another delegation Order would further aggravate this safety backload. Instead, it is proposed that the agency delegate “within” the FAA through the use of signature authority for all qualified journey-level employees. Once the employees have made a decision, then they should be allowed to approve (or disapprove) a safety/certification project without management re-evaluating the employee’s decision (the management review is normally an administrative review and adds nothing technically). This would reduce the final certification approval process from weeks to days. Please note that the FAA employees are a highly competent and focused workforce that daily work on getting the job done technically correct with minimal administrative procedures/burden to the

- applicant. The FAA employees should be rewarded yearly and congratulated publicly congratulated on increasing the number of safety approvals (ref. Administrator's Fact book) while at the same time dealing with increases in FAA employee duties over the past fifteen years and current increase in non-technical demands (feed the LDR computer, work load indicators, ACSEP, ACOS, PSP, etc.) that delay employees from getting the basic job done.
- h. The ODA NPRM and Order must clearly state that the ODA staff/ARs must be US citizens and have the same background checks as FAA employees. It also must be clear that delegees must live in the US.
  - i. The ODA NPRM and Order must have clear language that a delegation is a privilege and not a right. Delegation only works with the FAA employee knows (through years of a positive relationship) that the delegee is technically competent and trustworthy. The ODA Order must add language that there must be ARs that can conduct technical (as well as procedural) internal audits. Meanwhile, the ODA Order must change the make-up of the appeal panel so that it is composed of two managers (outside of the approving ACO) and three technically competent employees and that appeals are only decided by a full majority.
  - j. The FAA, of course, cannot delegate its inherently governmental functions. The ODA NPRM must be rewritten to add a subparagraph in the proposed FAR 183.49 to denote the inherently governmental functions that are currently documented in section 3-8 of the Order. Please note that section 3-8 is some and note all of the inherently governmental functions and add the approval of deviations to ADs (such as AMOCs or time extensions to ADs). Language should also be added to clarify that it is not an all-encompassing regulation on inherently government functions. It is not clear why the FAA would allow the delegation of the signing of an STC since it does not delegate the signing of a TC (especially in the wake of the Swiss Air accident and subsequent DAS investigation), so it is necessary for the FAA to investigate and explain why STC signatures are delegated since no public law appears to support this type of delegated function.

Sincerely,

[signed on 05/20/04]

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