

**Comments in response to 69 Federal Register 2969 (January 21, 2004)
Submitted Electronically to: [http:// dms.dot.gov](http://dms.dot.gov)**

**Establishment of Organization Designation
Authorization Procedures
Comments on the Notice of Proposed Rulemaking**

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Docket Management System
U.S. Department of Transportation
400 Seventh Street, SW
Room Plaza Level 401
Washington, DC 20590-0001

Docket No. FAA-2003-16685

Dear Sir or Madam:

Please accept these comments in response to the Federal Register Notice of Proposed Rulemaking published at 69 Federal Register 2969 (January 21, 2004) (Establishment of Organization Designation Authorization Procedures).

The comments focus on the Draft ODA Order, rather than on the amendments to Part 183, because the actual substantive information is all found within the Order.

We have divided these comments into two sections. The first section addresses the need for ODA for groups that would issue airworthiness approval tags in order to facilitate the sort of traceability documentation that the FAA has encouraged domestically and has pledged internationally. The second section addresses a recommendation for a detail change within the Order.

I. RECOMMENDED CHANGES TO FACILITATE ODA FOR AIRWORTHINESS APPROVALS

A. HISTORY

Throughout the discussions of the ARAC Group that recommended ODA to the FAA, there was discussion of ODA consultant-type groups of inspection personnel that would be permitted to form an organization that could be designated to act on behalf of

the FAA. One such organization that was anticipated by the ARAC group would inspect for airworthiness, and would document successful findings through the issuance of airworthiness approvals for demonstrably airworthy aircraft parts, components and articles.

At the time that the ARAC Working Group was working on draft materials, the subject of airworthiness approvals for demonstrably airworthy aircraft parts, components and articles was raised only in the context of export airworthiness approvals. The draft materials provided to the FAA provided a mechanism by which the FAA could authorize the formation of consultant ODAs for the purpose of issuing export airworthiness approvals.

Since that time, FAA Notices 8130.70 and 8130.71, and FAA Order 8130.21C Change two (adding an Appendix III) have made it clear that FAA designees also are needed to issue domestic airworthiness approvals, as well as export airworthiness approvals. That function is currently delegated to both manufacturing DARs and maintenance DARs.

B. CURRENT STATUS OF THE FAA PROPOSAL

True to the intent of the FAA and industry participants in the ARAC Working Group, the proposed rule permits a properly qualified consultant group to form an organization and apply to the FAA for recognition as an ODA, with attendant privileges and responsibilities.

In particular, the proposed subsection D of part 183 would include an eligibility regulation at section 183.47(b)(6) that expressly authorizes the FAA to issue delegated privileges to consultant groups (those without direct ties to a FAA certificate holder) that “[h]ave sufficient experience, as determined by the Administrator, in ... airworthiness inspection ... as appropriate for performing the **ODA** authorizations sought.” This seems to anticipate that persons who are capable for performing airworthiness inspections for aircraft and for aircraft parts (traditionally performed under DAR privileges today) might be permitted to band together into ODAs and better leverage their own talents, while at the same time permitting the FAA to more efficiently manage such delegated privileges.

The ODA Order, however, does not permit this sort of enterprise. Under that Proposed Order, a consultant group that desired to *** would be considered a “Major Repair, Alteration, and Airworthiness ODA.” See Draft Order at para. 2-5(e). Figure 2-2 of the Draft Order makes it clear that this is, in fact, one of the forms of ODAs available to a consultant ODA. However, figure 3-1 limits the functions that may be delegated to a consultant ODA only to those functions that are underlined in that table. Two of the five functions that are associated with Major Repair, Alteration, and Airworthiness ODAs are not underlined – they are issuance of airworthiness approvals and inspection of aging aircraft and their records. Furthermore, section 12-4 of the order references these two functions when it states that “[c]onsultant groups may not be authorized function codes 12060 or 12150.”

The order offers no explanation for why a consultant ODA would not be eligible to accomplish tasks under function code 12060 (issuance of airworthiness approvals, including the 8130-3 tag). Function 12060 is currently accomplished by consultant DARs, could be more efficiently accomplished in an ODA, and there is a need in the industry for more persons to undertake this task, so it does not make sense to restrict consultant ODAs from accomplishing tasks under this function code.

C. CURRENT NEED FOR FAA-ISSUED APPROVALS

The primary applicants for such airworthiness approvals are distributors, who lack any other mechanism for obtaining such documents for otherwise demonstrably airworthy parts that come into their possession. They generally make application for such approvals to DARs, who issue the tags after confirming the original source (a U.S. production approval holder) and the present airworthiness of the part.

1. FAA HAS ACTIVELY ENCOURAGED RELIANCE ON THE 8130-3

The recent history of the development of the need for airworthiness approval documentation is sufficiently complicated that it would be tedious to the reader to recount it here. It is sufficient to say that the FAA has actively encouraged commercial interests to make the 8130-3 tag a requirement of commerce through several means including:

- Exhortation and recommendation (e.g. public speeches by FAA employees, FAA guidance documents like Advisory Circular 20-62, Advisory Circular 00-56, etc);
- Regulatory compliance (e.g. clauses in FAA-approved manuals that require the 8130-3 tag as a condition of receipt – failure to comply with such manuals would often be a regulatory violation);
- Diplomatic (e.g. Bilateral Aviation Safety Agreements and implementation procedures that make the airworthiness approval tag a condition of import in foreign countries, like *FAA/DGAC BASA Implementation Procedures for Airworthiness* at 3.2.1.3, 3.2.1.5, 3.0.4.1 (August 24, 2001)).

The results of this active encouragement has been that many parties in the industry – both foreign and domestic – refuse to accept a part into inventory unless it is accompanied by an airworthiness approval tag (8130-3 tag). It is important to realize that this is not a purely commercial phenomenon – it has been actively encouraged by the FAA, and in some cases the FAA has constructed paradigms through international agreements and advisory guidance that make it impossible to conduct business without obtaining an airworthiness approval for the aircraft part intended to be sold.

One of the reasons for the success of the FAA efforts to promote traceability and documentation in the aviation industry is the movement in the aviation industry toward

‘systems approaches’ to problems. By adopting quality assurance paradigms, the industry is able to ensure safety throughout the process and through out the chain of commerce, rather than merely inspecting for it at the end of a process. This permits companies in the industry to better control quality by auditing processes to ensure that they continue to promote quality.

A systems approach to safety benefits the regulator (the FAA) as well. The better the process and its results are documented, the easier it is for the FAA to audit a process and truly get an idea of whether it is working. Through improved documentation schemes (the use of the 8130-3 tag), the chain of commerce becomes transparent and is more easily susceptible to audits by the FAA to ensure quality, and facilitates investigations in the event an audit yields results that suggest an unsafe condition may exist.

2. DISTRIBUTORS HAVE SUPPORTED THE FAA INITIATIVE, BUT TO DO SO MEANS THAT THEY MUST HAVE A SOURCE FOR DOCUMENTATION

Many distributors have actively supported the FAA’s documentation initiatives. In some cases they have done so for the good of the industry, and in other cases they have done so because FAA guidance, FAA-approved manuals, or FAA-negotiated agreements with foreign governments have made it a condition of continuing to do business in the industry. For whatever reason, distributors are active participants in the documentation paradigm, but to remain active participants means that they need to obtain the documentation that the FAA recommends. It is no longer enough to have a demonstrably airworthy part – the 8130-3 has become a requirement in many aircraft parts sales transactions.

This 8130-3 documentation is not available from many manufacturers. Even those that make it available to some customers are sometimes unwilling to provide it to distributors.

Often, distributors receive new parts that are not accompanied by airworthiness approval (8130-3) tags. This means that it becomes the responsibility of the distributor to obtain the airworthiness approval. One reason that parts are still found without adequate documentation is that many manufacturers do not issue these tags (via the manufacturer’s existing designee system) as a regular course of action.

For a distributor that is selling a new, demonstrably airworthy part from its own inventory, there is generally no other source of the airworthiness approval (8130-3) tag than to hire a FAA designee, like a DAR, to inspect the part and then issue the airworthiness approval documentation. An airworthiness approval ODA, obviously, could provide such a service as well.

D. CURRENT NEED FOR CONSULTANT ODAs FOR COMPONENT-LEVEL AIRWORTHINESS APPROVAL

In some parts of the country, there are sufficient DARs to meet the need of the public, but in other parts of the country, applicants are discouraged from applying for DAR status. They are told that there is insufficient FAA resources to provide FAA oversight of DARs. This same problem has been raised in meetings between ASA and FAA Management personnel, with FAA Management personnel explaining that in those parts of the country where there are inadequate DAR resources, the reason may be that inadequate FAA resources prohibit the FAA from supervising any more DARs in that area.

As a member of ARAC and a member of the ARAC ODA Working Group, it has always been the stated intention of ASA to help produce a solution to the problems associated with oversight of DARs who issue 8130-3 tags through the ODA process. The final product of ARAC was intended to remedy this problem, among others. The problem that cried out for ODAs qualified to issue 8130-3 tags has not been ameliorated – it still remains an issue.

ODA provides an opportunity to leverage the FAA's resources to continue improving traceability and documentation in the industry.

E. SAFETY AND COMMERCIAL BENEFITS OF CONSULTANT ODAs FOR COMPONENT-LEVEL AIRWORTHINESS APPROVAL

This ASA proposal would enhance safety by (1) providing greater potential for oversight and standardization among airworthiness approvals, while decreasing the FAA's burden in providing this oversight; (2) allowing the FAA to better distribute its increasingly scarce certification and inspection resources; and (3) improving the traceability and documentation of aircraft parts, thus permitting those who install the parts with which such documentation is associated to have a documented and reliable foundation upon which to base airworthiness decisions.

Although great strides have been made to address this issue in the past decade, the issue of unapproved parts remains as a specter hanging over the shoulder of the industry. This is partly due to the fact that with each new advancement in the industry comes those who would misuse the advancement to their own purposes, as well as those who misunderstand the advancement and mistakenly misidentify some aircraft part.

One way that the industry has greatly reduced the potential for unapproved parts to jeopardize safety has been to embrace documentation and traceability as the tools of safety. Much of the acceptance of the notion of traceability may be attributed to the FAA's valiant efforts to promote this paradigm through the increased use and acceptance of the 8130-3 tag. Documentation and traceability have provided admirable support to the FAA's efforts to improve assurance of airworthiness.

One significant problem with documentation and traceability is that there is no root – no firm foundation – upon which it can be reliably based. There is no requirement for production approval holders to obtain airworthiness approval documentation for

aircraft parts and therefore many manufacturers simply do not obtain such documentation from the FAA (or its designees).

In order to provide a source of such documentation, the FAA has empowered certain individuals, DARs, to issue airworthiness approvals for demonstrably airworthy aircraft parts.

The net effect of the issuance of airworthiness approvals for aircraft parts has been to provide receiving inspectors with a uniform mechanism for judging certain airworthiness questions. The standardization of the 8130-3 tag has provide uniformity in the documentation – the fact that the FAA’s designees issue the documentation under powers delegated to them by the FAA and according to strict standards published by the FAA provides the level of airworthiness assurance sought by those who rely upon such documentation,

People rely on DARs to use their experience to validly confirm the current airworthiness of an aircraft part. Thus, the use of DARs to issue 8130-3 tags to support current paradigms of documentation and traceability has been acknowledged by many to be a positive step in airworthiness assurance.

Nonetheless, there is a problem with the current DAR system – namely, that the individual DARs must each be separately managed by an FAA Advisor. This means that FAA resources, while well-leveraged through the DAR system, are nonetheless still utilized for the oversight of the DARs. At the same time, the fact that individual FAA-Advisors are assigned to work with individual DARs provides much opportunity for incongruities in the system.

Using ODAs to manage teams of DARs would have many advantages. The use of ODA Administrators to manage teams of DARs could help to better harmonize the procedures by which these individuals work, because the ODA, as a commercial enterprise, would have a greater incentive to harmonize (to enhance business efficiency and assure strict regulatory compliance) and greater means by which to accomplish harmonization many of the obstacles that naturally arise in government do not exist in the private sector.

In addition, ODAs are managed by manuals, which help to enhance uniformity within the ODA and also permit a greater level of comparison between separate ODAs to confirm that they are operating in a reasonably harmonized manner.

ODAs will also serve to better leverage the scant resources of the FAA, because a single FAA-Advisor could interact with a single ODA Administrator, leaving time in the day to attend to other pressing duties meant to enhance safety (many of which still cannot be delegated). This additional time that becomes available to the FAA employees can be used to accomplish the other tasks that the FAA is expected to accomplish.

Finally, ODAs that are authorized to issue airworthiness approval tags for demonstrably airworthy aircraft parts would serve the FAA's airworthiness goals particularly well in that they could improve the traceability and documentation of aircraft parts, thus permitting those who install the parts with which such documentation is associated to have a documented and reliable foundation upon which to base airworthiness decisions.

Many manufacturers of aircraft parts do not issue 8130-3 tags for new parts destined for initial shipment in the United States. There are many reasons for this, including the fact that such initial documentation is not required to be issued by manufacturers, the issuance of such documentation requires a system that some manufacturers are unwilling to pay for, and manufacturers generally know that such documentation may be obtained from DARs in the stream of commerce. Generally, only DARs issue airworthiness approvals for otherwise new and unused aircraft parts that are already in the stream of commerce, but that lack an original 8130-3 tag that had been issued at the manufacturer's facility.

It is already recognized that the current supply of DARs is stretched thin, and that although industry would prefer an increase in the number of DARs, the FAA is unable to provide such an increase in many parts of the country because inadequate resources exist to oversee the work of such individual DARs. We know this is true because many qualified individuals who have sought delegated privileges have been dissuaded from application for DAR privileges on the claim from FAA offices that they have inadequate resources to manage additional DARs. Furthermore, ASA has been told this same thing by FAA Management.

By permitting groups of DARs to operate together under an ODA, the FAA would streamline its own oversight responsibilities over the persons who operated under the ODA, thus permitting the ODA to accomplish more than a single DAR would accomplish without appreciably more oversight needed than a single DAR would require. This neatly meets the problem created by the current increased need for documentation issued by DARs without appreciably increasing the oversight burden of the FAA.

One could imagine rare counter-examples where an ODA would require significantly more resources, but of course, the FAA would only permit Airworthiness Approval ODAs to exist where their existence permitted an increased volume of airworthiness inspection to be accomplished without appreciably impacting the resources of the FAA's local offices. ODAs that did not serve this purpose would be disbanded through the existing mechanisms for rescinding delegated privileges, and this could be performed for a single organization more easily than it could have been accomplished for several individual DARs.

The net result of this exercise is that an Airworthiness Approval ODA would be in a position to inspect parts and issue 8130-3 tags for demonstrably airworthy parts to allow this state of airworthiness to be documented in a way that meshes well with the current systems approach favored by many aviation quality assurance experts. They

would likewise be in a position to refuse to document parts that are not appropriate for use on the civil aviation fleet (including unapproved parts). With the increased availability of such documentation, the current trend of requiring an audit trail for parts will continue, which permits a greater level of safety to be assured.

F. RECOMMENDATION

ASA recommends that the following changes be made in the Draft Order, 8100.ODA, to permit consultant ODAs to accomplish functions currently accomplished by individual DARs.

1. In Figure 3-1, under the column labeled “Chapter 12 MRA ODA,” underline the function code 12060.
2. In the initial paragraph of section 12-4, amend the sentence “Consultant groups may not be authorized function codes 12060 or 12150.” By removing the function code 12060, so that it reads: “Consultant groups may not be authorized function code 12150.”
3. In subsection 12-4(c) replace the text “Commercial operators and air carriers with MRA functions,” with the text “Organizations with MRA functions.”

These changes would permit Airworthiness Approval ODAs to exist, where such a structure would benefit the FAA.

II. RECOMMENDED DETAIL CHANGES TO THE ORDER

A. CHANGE TO SECTION 3-12 b.

1. CURRENT LANGUAGE

3-12 b. Change in Ownership. A change in ownership of the ODA holder which results only in a name change with no change in organizational structure, etc., may be executed by reissuing the ODA Letter of Designation, the MOU, along with revising the procedures manual to reflect the new name.

2. PROPOSED LANGUAGE

3-12 b. ODA Name Change. Any change in the ODA holder that results in a change in the name of the ODA holder, but that does not include a change in organizational structure that would affect the operation of the ODA, may be executed by reissuing the ODA Letter of Designation, the MOU, along with revising the procedures manual to reflect the new name.

3. EXPLANATION

The current draft language implies that all changes in ownership are of some consequence to the ODA, and that it is effecting an exception for those that reflect name changes only. This, in turn, implies that the exception does not apply where a change in ownership, and that therefore there must be some (unnamed) process for handling changes in ownership that do not reflect a name change.

In fact, the ownership change of an ODA holder should not have any *intrinsic* affect on the relationship between the ODA and the FAA. Publicly traded companies have ownership changes on a daily basis that do not affect internal operations. If the ownership change affects the ODA in a material manner, then there are already clauses in the ODA Draft Order to address such changes (for example, if the change in ownership affects the independent judgment of the ODA unit's personnel, then this change in the independent judgment must be addressed as a consequence of the requirement for independent judgment – not as a consequence of the ownership change).

Instead, this clause should be focusing on the issue of a name change, because the logical consequence of this clause is to easily permit a replacement certificate to be issued when a name change occurs (assuming that the ODA operations remain uninterrupted and unimpeded).

Also, some name changes may be effected without a change in ownership (e.g. if the company decides to change its name, or if the company engages in a merger permutation that leaves it in possession of the purchased company's name – this has occurred among certain air carriers in the past). For this reason, the limitation of the operation of this clause to situations where there has been a change in ownership is inappropriately limiting.

Thank your for your consideration of these comments.

Respectfully Submitted,

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