

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Parts 21, 121, 135, 145, and 183**

[Docket No. FAA-2003-16685; Amendment Nos. 21-86, 121-311, 135-97, 145-23, and 183-12]

RIN 2120-AH79

**Establishment of Organization Designation Authorization Program**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes the Organization Designation Authorization (ODA) program. The ODA program expands the scope of approved tasks available to organizational designees; increases the number of organizations eligible for organizational designee authorizations; and establishes a more comprehensive, systems-based approach to managing designated organizations. This final rule also sets phaseout dates for the current organizational designee programs, the participants in which will be transitioned into the ODA program. This program is needed as the framework for the FAA to standardize the operation and oversight of organizational designees. The effect of this program will be to increase the efficiency with which the FAA appoints and oversees designee organizations, and allow the FAA to concentrate its resources on the most safety-critical matters.

**DATES:** This amendment becomes effective November 14, 2005. Affected parties, however, do not have to comply with the information collection requirements of §§ 183.43, 183.45, 183.53, 183.55, 183.57, 183.63, or 183.65 until the control number assigned by the Office of Management and Budget (OMB) for this information collection requirement is published in the **Federal Register**. Publication of the control number notifies the public that OMB has approved this information collection requirement under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** For technical issues, Ralph Meyer, Delegation and Airworthiness Programs Branch, Aircraft Engineering Division (AIR-140), Aircraft Certification Service, Federal Aviation Administration, 6500 S. MacArthur Blvd., ARB Room 308, Oklahoma City, OK, 73169; telephone (405) 954-7072; facsimile (405) 954-2209, e-mail [ralph.meyer@faa.gov](mailto:ralph.meyer@faa.gov). For legal issues, Karen Petronis, Office of the Chief

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**SUPPLEMENTARY INFORMATION:****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/regulationspolicies>; 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 amendment number or docket number of this rulemaking.

Anyone can search the electronic form of comments received into our dockets by the individual's name who sends the comment (or signs the comment, if sent for an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

**Small Business Regulatory Enforcement Fairness Act**

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question about this document, you may contact its local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at <http://www.faa.gov/avr/arm/sbrefa.cfm>.

**Authority for This Rulemaking**

The FAA's authority to issue rules about 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 scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Chapter 447—Safety

Regulation, Section 44702—Issuance of Certificates. Under paragraph 44702(d), the FAA Administrator may delegate to a qualified private person a matter related to issuing certificates, or related to the examination, testing, and inspection necessary to issue a certificate he is authorized by statute to issue under § 44702(a). Under paragraph (d), the Administrator is empowered to prescribe regulations and other materials necessary for the supervision of delegated persons. This regulation is within the scope of that authority in that it establishes a comprehensive program for the designation of organizations in 14 CFR part 183.

**Background***History of Designation Programs*

Since at least 1927, the federal government has used private persons to examine, test and inspect aircraft as part of the system for managing aviation safety. The current system of delegations has been evolving since the need for assistance by private persons was recognized over 70 years ago. Beginning in the 1940s, the FAA's predecessor agency, the Civil Aeronautics Administration (CAA) established programs to appoint designees to perform certain tasks for airman approvals, airworthiness approvals and certification approvals. These include the Designated Engineering Representative (DER), Designated Manufacturing Inspection Representative (DMIR), and Designated Pilot Examiner (DPE) programs.

In the 1950s, the rapid expansion of the aircraft industry led to the adoption of the Delegation Option Authorization (DOA) program to supplement the agency's limited resources for certification of small airplanes, engines and propellers. As the first program that delegated authority to an organization rather than an individual, DOA was intended to take advantage of the experience and knowledge inherent in a manufacturer's organization. Currently, DOAs are authorized for certification and airworthiness approvals for the products manufactured by the authorization holder.

The Federal Aviation Act of 1958 established the Federal Aviation Agency and codified the authority of the Administrator to delegate certain matters in section 314 of that Act. When that statute was recodified in the 1990s, the delegation authority was placed in 49 U.S.C. 44702(d) without substantive change to the authority of the Administrator.

The 1960s saw the creation of the Designated Alteration Station (DAS)

Program, which was intended to reduce delays in issuing supplemental type certificates (STCs) by allowing the approved engineering staffs of repair stations to issue STCs. As adopted, the DAS program allows eligible air carriers, commercial operators, domestic repair stations and product manufacturers to issue STCs and related airworthiness certificates.

In the 1970s the FAA reviewed its delegated organization programs, which then allowed the approval of major alteration data by a delegated organization, but not approval of major repair data. This review led to the adoption of Special Federal Aviation Regulation (SFAR) 36 in 1978 to allow eligible air carriers, commercial operators, and domestic repair stations to develop and use major repair data without FAA approval of the data.

In the 1980s, the FAA established the Designation Airworthiness Representative (DAR) program to expand the airworthiness certification functions that individual designees may perform. At the same time, we allowed for organizations to serve as DARs, in a program known as Organizational Designated Airworthiness Representatives (ODARs).

Since the formation of the first organizational designee programs, organizational designees have gained significant experience in aircraft certification matters, and the FAA has gained significant experience in managing these designee programs. We have found that the quality of the approvals processed by these organizations equals those processed by the FAA. Delegation of tasks to these organizations has allowed the FAA to focus our limited resources on more critical areas.

#### *Status of Designees*

In understanding these programs, we consider it essential to remember that designees have a unique status. While we refer to these persons and organizations informally as "designees", under part 183 they are referred to as "representatives of the Administrator."

When acting as a representative of the Administrator, these persons or organizations are required to perform in a manner consistent with the policies, guidelines, and directives of the Administrator. When performing a delegated function, designees are legally distinct from and act independent of the organizations that employ them. The authority of these representatives to act comes from an FAA delegation and not a certificate. As provided by statute, the Administrator may at any time and for any reason, suspend or revoke a

delegation. This is true even though some parts of the delegation regulations in part 183 and elsewhere refer to kinds of certificates that denote the authority granted.

An ODA issued under this program is a delegation made under section 44702(d), not a statutorily authorized certificate issued under section 44702(a). The authority of the Administrator to suspend, revoke, or withhold ODA authorization is not subject to appeal to the National Transportation Safety Board.

#### **ODA Program Overview**

The FAA is adopting the ODA program as a means to provide more effective certification services to its customers. This final rule adopts the regulatory basis of the ODA program. Companion FAA orders, similar to the draft Order made available for review, will describe the specifics of the program and provide guidance for FAA personnel and for organizations to which we grant an ODA. These orders will also provide information to FAA personnel on how to qualify, appoint, and oversee organizations in the ODA program.

As aviation industry needs continue to expand at a rate exceeding that of FAA resources, the need for the ODA program has become more apparent. According to a 1993 report by the General Accounting Office (GAO/RCED-93-155), the FAA's certification work has increased five-fold over the last 50 years. The ODA program is a consolidation and improvement of the piecemeal organizational delegations that have developed on an "as needed" basis over the last half century. As the FAA's dependence on designees has increased, so has the need to oversee designated organizations using a single, flexible set of procedures and a systems approach to management. Using our experience with both individual and organizational designees, we have designed the ODA program with these criteria in mind.

The ODA program improves the FAA's ability to respond to our steadily increasing workload by expanding the scope of authorized functions of FAA organizational designees, and by expanding eligibility for organizational designees. One way this program expands eligibility is by eliminating the requirement that an organization hold some type of FAA certificate before it would qualify for designation authorization.

The ODA program also allows the FAA to delegate any statutorily authorized functions to qualified organizations. Expansion of the

available authorized functions will reduce the time and cost for these certification activities.

While our current delegations are limited to such organizations as manufacturers, air carriers, commercial operators, and repair stations, this rule formalizes the delegation of functions to any qualified organization. Accordingly, an organization with demonstrated competence, integrity, and expertise in aircraft certification functions is eligible to apply for an ODA.

Creation of the ODA program aids the expansion of the designee system by addressing the delegation of more functions related to aircraft certification, and new functions pertaining to certification and authorization of airmen, operators, and air agencies. For general aviation operations, the rule allows an ODA Unit member to issue airman certificates or authorizations under 14 CFR parts 61, 63, or 91. Additionally, the rule allows designated organizations to find compliance or conduct functions leading to the issuance of certificates or authorizations for any statutorily authorized function, including—

- Rotorcraft external load operations under 14 CFR part 133;
- Agricultural operations under 14 CFR part 137;
- Air agencies operations under 14 CFR part 141; and
- Training centers operators under 14 CFR part 142 (air carrier functions excluded).

Nothing in the establishment of the ODA program changes any authority or responsibility for compliance with the certification, airworthiness or operational requirements currently in place, such as part 21 or part 121. No current safety requirements are being removed or relaxed. The ODA program does not introduce any type of self-certification.

An Organization Designation Authorization includes both an ODA Holder and an ODA Unit. The ODA Holder is the parent organization to which the FAA grants an ODA Letter of Designation. The ODA Unit is an identifiable unit of two or more individuals within the ODA Holder's organization that performs the authorized functions. The regulations specify separate requirements for the ODA Holder and the ODA Unit.

Because the ODA program eliminates the requirement that an applicant hold an FAA certificate, organizations consisting of consultant engineering and inspection personnel could be eligible for an ODA. Under such circumstances, it is possible the ODA Holder would

have the same composition as the ODA Unit.

#### *ODA Program Policy*

As noted earlier in this preamble, FAA orders will outline the specifics of the ODA program and provide guidance for both FAA personnel and for organizations that obtain an ODA. These orders will describe the authorized functions for aircraft-related approvals, such as type certificates and airworthiness certificates, and certain operations-related approvals like airman certificates. While the regulations contain the general requirements of the ODA program, the orders will provide the administrative details. Providing the specifics in orders allows for flexibility to expand or revise the details of the ODA program without further rulemaking, especially since every type of delegated function that may be appropriate for an ODA Unit cannot be foreseen.

In addition to approved delegated functions and the eligibility requirements for delegated functions, the orders address the specific selection, appointment, and oversight procedures the FAA will follow in managing ODA Holders. Additional ODA program details may be described in other FAA orders or policies.

#### *Application for ODA and Transition of Existing Delegation Holders*

This rule provides that existing Designated Alteration Station (DAS), Delegation Option Authorization (DOA) and Special Federal Aviation Regulation 36 (SFAR 36) authorization programs will be phased out over three years beginning November 14, 2006. Additionally, Organizational Designated Airworthiness Representatives (ODARs) will no longer be appointed under part 183 subpart A, and will have to apply for an ODA within the three-year phaseout period. The FAA's priority during the phaseout period will be the transition of existing organizations to ODA.

The FAA intends to appoint *new* ODA applicants based on the need for their services. The ability of a particular FAA field office to appoint new ODA Holders will depend on the number of existing delegated organizations in an office's jurisdiction. During the three-year phaseout period of the current delegated organization programs, the only new applicants (those with no existing organizational delegation) the FAA expects to appoint are those with a significant history of certification work and whose workload could be better managed under an ODA.

FAA Offices that manage existing delegated organizations will oversee the transition of those organizations using the following criteria:

- A need to delegate the authorized functions.
- An organization's level of certification activity.
- The number and need for new ODA organizations.

Priority will be given to existing delegated organizations that have and are expected to maintain a significant workload in new areas authorized under the ODA regulations. For example, an existing DAS that desires to have both STC and Parts Manufacturer Approval (PMA) functions under an ODA would be a higher transition priority than a DAS that would not be adding any new functions. Similarly, the FAA may find it of greater benefit to appoint a new ODA with a heavier workload than transition of an existing organization with a lighter workload.

Based on these considerations, each FAA field office will develop a strategy for managing the ODA applications it receives. We expect that existing delegated organizations will cooperate with their managing offices in submission of their ODA applications. The FAA managing offices will, to the extent possible, develop a transition schedule that meets the organization's needs. The FAA will not accept ODA applications until November 14, 2006 in order to establish a smooth transition in prioritizing and processing applications. We are not able to predict how long it will take the agency to act on an individual application. Existing delegated organizations should apply for ODA as requested by their managing office, but not later than 18 months after the application period begins to ensure that its application may be processed and fully considered before the end of the three-year phaseout period.

The FAA will provide transition training for existing DAS, DOA, and SFAR 36 administrators to address the differences between ODA and existing programs. This training is required for these organizations' administrators before they may be appointed under ODA. The FAA is planning similar training for new ODA applicants that will more comprehensively address all aspects of the ODA program. Because of the substantial differences between ODA and ODAR requirements, ODAR administrators will have to complete this more comprehensive training prior to appointment as an ODA.

It is expected that DAS, DOA and SFAR 36 organizations will be able to transition to an ODA program with minimal changes to their existing

procedures. These organizations will have to submit an application and make minimal changes to their procedures manuals in order to receive an ODA. The certification activity of existing organizations will also be reviewed to determine whether it is still in the FAA's interest to appoint the organization as an ODA. We expect that there will be greater impact to existing ODAR organizations, which will have to develop new procedures, such as internal evaluations and in-house training, which are not current ODAR requirements. Existing authorized representatives for all types of delegated organizations will be granted the same level of authority under the ODA program without additional review of their qualifications.

#### *Impact on Individual Designee Programs*

As noted in the NPRM, the FAA expects that a significant number of individual designees who work for larger organizations will become members of an ODA Unit and give up their individual designee status. The FAA may allow an ODA Unit staff member to remain a designee provided that there is a sufficient amount of designee work outside of his ODA activity to warrant continuation of the designee authority. The FAA applies this same philosophy to existing designees that are staff members for DAS, DOA, or SFAR 36 organizations. As commenters to the NPRM note, we do not expect that the ODA program will significantly reduce the number of consultant DERs, and the need for consultant DERs will remain dependent on their level of activity.

#### *ODA Program Final Rule*

In addition to establishing the ODA program, this final rule also includes revisions that standardize the duration of certificates for aircraft certification and flight standards individual designees; the designation of these individuals continues under part 183, subparts B and C. This final rule creates a new subpart D in part 183 that contains the regulations applicable to all types of organizational designees. This rule replaces existing DAS, DOA, SFAR 36, and ODAR delegation programs with a single delegation program for organizations. The regulations governing those other programs, subparts J and M of part 21, and SFAR 36, are being phased out under this rule by placing a suspension date of (Insert date 4 years after the effective date of this rule) for functions performed under those programs.

## Disposition of Comments

The FAA received 40 comments to the NPRM from 36 commenters. Eleven of the 36 commenters, including the General Aviation Manufacturers Association (GAMA), Gulfstream Aerospace Corporation (Gulfstream Aerospace), the Aerospace Industries Association (AIA), and International Aero Engines (IAE), express general support for the rule. Fourteen commenters oppose the rule in general, with three of them adding specific comments, addressed below. Comments in opposition were received from United Airlines, the Professional Airways Systems Specialists, and the National Air Traffic Controllers Association. This discussion of comments is organized by each proposed rule topic or section for which we received comments.

Many of the general comments raise issues with material in the agency order that specifies certain details of the ODA program and application process. Most of those comments are considered outside the scope of this rulemaking since they do not address any part of the proposed rule language. A few of the comments regarding material in the draft order are addressed later in this section, but most will be addressed in the final version of the Order.

Similarly, some comments make suggestions beyond the scope of FAA authority, such as an investigation of designee fees by the Internal Revenue Service. While we have reviewed all of the material submitted, comments such as these that transcend FAA authority and the issues of the proposed rule will not be addressed individually.

### General Comments

Commenters that support the ODA rule state that it will result in more efficient and effective use of industry and FAA resources. They state that the ODA rule would lighten some of the FAA workload and allow the FAA to better meet industry demand for certification activities. General Electric Aircraft Engines (GE Aircraft Engines), a member of the Aviation Rulemaking Advisory Committee (ARAC) that developed recommendations for an ODA rule, noted that it was particularly satisfying to see that the FAA had left intact the spirit of the recommendations developed by the ARAC. Other commenters affirm that the ODA program will reduce the amount of FAA oversight needed for individual designees, while increasing the FAA's capacity to issue approvals. Commenters also note that an expected benefit is the increased flexibility that

will allow the FAA to establish additional delegation programs without needing to amend the rule.

Several opposing commenters assert that previous problems with designees or delegated organizations indicate that delegation is not beneficial. They state general opposition to the idea of delegation, or of expanding delegation to make it available to more organizations, and they generally do not think it is the most efficient use of FAA resources. Most commenters expressing opposition did not provide comments to any specific part of the proposed rule.

More than one commenter states that the FAA should be hiring more inspectors, not spending its limited resources creating an organizational designee system. Another common objection is that the proposed rule seeks to increase the number of designees used by the FAA.

In proposing this program, the FAA is not spending money that could be transferred to other unspecified programs such as 'hiring more inspectors', as suggested by commenters. The proposed ODA program is, at its simplest, a restatement of how we will be approving and overseeing organizational designees. The ODA program was not designed to increase the overall number of designees, but to increase the functions available to organizational designees. By doing so, the FAA hopes to reduce the number of individual designees and concentrate its oversight resources more effectively.

Many of the general opposing comments note a few specific instances in which the designee programs have experienced problems or been the subject of investigation. While the FAA does not dispute that some designee programs have experienced problems, we believe that the commenters are overstating their breadth because they are unfamiliar with the extent of the designee programs already in use compared to the number of problems reported. Today's rule phases out the assortment of delegated organization programs we currently manage in favor of a single system, and both the FAA and the affected organizations will be operating under organizational procedures that are familiar and effective. This rule will make the benefits of organizational delegation available to more types of organizations. Further, the FAA is always seeking to improve its designee programs, an example of which is the August 2002 implementation of new oversight processes that outline the participation of FAA offices involved in the oversight of delegated organizations. Included in

the oversight program are routine evaluations of the delegated organization's performance by FAA managing offices. This oversight feature is included in the ODA program.

The FAA continues to seek input on improvements in oversight and management procedures for all of its designee programs. The Government Accountability Office (GAO) completed a review of the FAA designee system (GAO 05-40, "FAA Needs to Strengthen the Management of its Designee Programs") in October 2004. The FAA is taking steps to address the GAO's recommended means of improving the designee programs.

Additionally, the FAA is implementing an internal quality management system that will help assess the performance of the delegation programs and implement any needed corrective action.

### Specific Comments

*Comment:* Chromalloy Gas Turbine Corporation opposes the rule because it has not been coordinated with foreign aviation authorities. The commenter notes that it worked with foreign authorities for years to gain acceptance of FAA-approved data (from designated engineering representatives (DERs)). Other commenters agree that it is important that foreign airworthiness authorities recognize approvals made by a designee. One commenter states that the FAA should pursue bilateral agreements to ensure mutual acceptance of FAA ODA and European Aviation Safety Agency Design Organization Approval (EASADOA) systems.

*Response:* Bilateral agreements are negotiated with individual countries, and an agreement may or may not provide for mutual acceptance of designee programs. The creation of ODA should not change acceptance of designee approvals where they already exist in a bilateral agreement. Nor does the ODA system prevent the use of DER approvals for organizations that prefer the DER system to support their certification activity. The FAA expects that, at a minimum, foreign authorities will be more accepting of ODA-approved repair data than they are of data developed under SFAR 36 since SFAR 36 data is not considered "FAA-approved."

Changing a domestic regulatory program is not, however, a means to presume acceptance of approved data under bilateral airworthiness agreements. Coordination and acceptance of such issues is neither simple nor accomplished quickly. The FAA has determined that it is better to put the ODA program in place for use

now and work out the more complex international acceptance issues over time.

As noted, we expect no impact to existing agreements regarding approvals performed by an ODA Holder. However, we do not currently plan to allow approvals issued by an EASADOA holder to be used within an ODA Holder's system (or vice-versa) without authority-to-authority coordination and agreement. No change to the rule has been made based on this comment.

*Comment:* One commenter does not support the rule because it is too costly to maintain and that the cost to the public is "double taxation." Another commenter notes that the public deserves the safest and not the cheapest service.

*Response:* Neither commenter was specific in its criticism of the costs of the ODA program; most costs associated with the program will be borne by the ODA Holder, and may be passed on to its customers. No one is required to use the services of an ODA Holder; the FAA will continue to do approvals directly if requested. Nor is the goal of the ODA program to seek out the low bidder for services. The FAA will not make a decision to approve an ODA Holder simply because the applicant claims it can do the work cheaper. Those who use the services of an ODA Holder may incur costs that would not occur if the FAA did the approval. A user may nonetheless feel justified in incurring the cost of the service from the ODA Holder if, for example, the Holder can do it faster. The existence of ODA Holders is expected to free up more FAA resources by allowing non-critical tasks to be accomplished by the designee. None of the commenters gave any specific example of why the ODA program would be more costly to the agency than any of the current designee programs, and we have no reason to think it will be so. No change to the rule has been made based on this comment.

*Comment:* One commenter says the proposed ODA program significantly modifies the current regulatory oversight system, deteriorating the established technical FAA oversight by going to a "systems" oversight approach that would provide less specific and technical FAA oversight and would, in time, reduce safety.

*Response:* The FAA disagrees that a systems approach will provide less specific technical oversight, and believes it will increase safety. A systems approach is currently being used successfully to manage DAS and DOA organizations. The FAA has found that management of these organizations, rather than a number of individual

employees that they might employ, is more efficient for both the FAA and industry and results in approvals that comply with the regulations. The FAA anticipates that these more effective delegation programs will increase safety by freeing up FAA resources for tasks more critical to safety. Additionally, Congress has shown support for system-based certification programs by mandating the issuance of Design Organization Certificates in the 2003 reauthorization of the FAA. Design organization certificates would give the certificate holder privileges similar to delegated organizations, but would have the authority of a certificate rather than a delegation. No change to the rule has been made based on this comment.

*Comment:* One commenter asserts that while the quality of approvals by designees may be comparable for aircraft certification functions, it is not true for designees such as examiners. The commenter points out problems with specific examiner programs, which resulted in the re-examination of a number of airmen.

*Response:* The FAA acknowledges that problems have been identified in some designee programs. However, the FAA does not agree that this necessarily indicates that these approvals are not, as a whole, comparable to those performed by the FAA. Additionally, the FAA has taken steps to improve the oversight of its individual and organizational designees; the ODA program is expected to result in further improvements. By restructuring delegation programs toward organizations, oversight of individuals is reduced, allowing the FAA workforce to focus on individual designee oversight when needed. No change to the rule has been made based on this comment.

*Comment:* Many of the commenters, including Piper Aircraft, AIA, and Boeing Commercial Airplanes (Boeing) say FAA review of individual ODA Unit members contradicts the intent of a systems approach. They also note current delegation rules are not based on a systems approach because the FAA must approve the individuals within the organization.

*Response:* The FAA intends to allow ODA Holders that have had significant experience as a delegated organization to appoint ODA Unit members with a minimum level of FAA involvement. The process will require an ODA Holder to notify the FAA of the names of proposed staff members before the ODA Holder conducts a full internal evaluation. If the FAA has reason to object to the appointment of an individual, we will do so before the organization does its full evaluation.

The FAA anticipates that at some point experienced organizations may be able to select staff members without FAA review of the staff members' qualifications and authority. However, the FAA will review the ODA Unit member selection decisions made by ODA Holders until they demonstrate that they are capable of selecting qualified personnel for the ODA Unit. No change to the rule has been made based on this comment.

*Comment:* Several commenters, including IAE and United Technologies Corporation (United Technologies), recommend an additional ODA program type for airworthiness approvals. The commenters state that the programs, as defined, could restrict the ability of existing ODARs to obtain an ODA without obtaining additional engineering functions.

*Response:* We do not plan to have an ODA program specifically identified for airworthiness approvals. Although this specific program was not described in the draft order, the proposed functions will continue to be available as a delegated function under the ODA program. The ODA program structure allows an existing ODAR to obtain an ODA without requiring the addition of new functions or capabilities. No change to the rule has been made based on this comment.

*Comment:* IAE and United Technologies Corporation recommend that the FAA either set up an audit program that does not require an ODA Holder to report deficiencies that will result in enforcement actions, or create criteria for "safety-related" and "non-safety related" audit findings. Under such a proposal, the organization would only have to report safety-related findings.

*Response:* Under the FAA's compliance and enforcement program, voluntarily disclosed violations may not be subject to legal enforcement action. Requiring periodic audits by an organization is consistent with similar requirements imposed on certificate holders. The FAA expects ODA Holders to take an active role in the identification and resolution of deficiencies, including, non-compliances. No change to the rule has been made based on this comment.

*Comment:* GAMA, IAE, and United Technologies, among others, recommend that the FAA provide the public a chance to comment on whether a specific function should be delegated, and state that changes to the ODA program should be noted in the **Federal Register**. One commenter suggests that the public also be invited to comment on each applicant's qualifications.

*Response:* The FAA agrees that the public should be notified and given opportunity to provide input on proposed ODA programs. The FAA plans to continue its practice of publishing notice of proposed policies that implement new or changed programs such as ODA.

The FAA does not agree that it is appropriate to publish the names of applicants and request public comment on their qualifications. We do not have such a process for other designee programs, and decisions are based on the FAA's expertise and experience working with individual organizations. Public comment raises issues of bias against individuals and organizations and we would have to determine whether the person providing the comment was qualified to assess the applicant. The FAA is comfortable with its experience regarding determinations of an applicant's qualifications. No change to the rule has been made based on this comment.

*Comment:* IAE and United Technologies note that it would be a burden to industry if DMIRs and ODA Holders can't perform functions on the same project. They reference language in the NPRM preamble, which states that organizations that currently have individual designees could operate under both systems (but not on the same project or program).

*Response:* The FAA acknowledges that the NPRM language may have been confusing. The referenced language specifically applies to design approval projects, such as Type Certificate (TC) programs, issuing STCs, and developing PMA design approvals. For these types of projects, it is expected that all engineering and inspection functions related to the project would be performed under the ODA authority, rather than another designee program.

ODA Holders with DMIRs could continue to use both ODA and DMIR approvals on FAA-managed projects. All authorities and capabilities available in the ODAR system are available under the ODA program. The FAA anticipates that the need for separate DMIRs will decrease, since all delegated inspection and production functions are available under the ODA program. No change to the rule has been made based on this comment.

*Comment:* The United States Parachute Association (USPA) comments that parachute operations functions are not mentioned in the draft ODA order, but are provided for in the proposed rule language. The USPA fears that if the authority to issue parachute operations approvals is delegated, it could be held liable for issuing

certificates of authorization currently issued by the FAA. The USPA does not believe this delegation is appropriate.

*Response:* The FAA agrees that a delegation of the approvals could negatively impact the long-standing safety record of parachute operations by introducing less-experienced third parties into the process. Accordingly, the FAA has determined that authorizations or waivers related to parachute operations will not be delegated at this time. Based on this comment, we have changed the rule language to remove all references to part 105 or parachute operations.

#### *Comments on Specific Proposed Rule Language*

Section titles are those from the proposed rule, and may differ from those in the final rule.

#### Section 183.1 Scope

*Comment:* Several commenters request clarification of the term "private organization" as used in § 183.1(b), since the introductory text of that section uses the term "private persons." One commenter suggests including a definition of "private organization" in the introductory text of § 183.1 or in § 183.41 (Applicability and definitions).

*Response:* As defined in 14 CFR part 1, "person" includes both an individual and an organization. Section 183.1 seeks to distinguish an individual from an organization for purposes of designation under part 183. Both individuals and organizations may receive a designation, but the ODA rule only applies to organizations. No change to the rule has been made based on this comment.

#### Section 183.15 Duration of Certificates

*Comment:* Two commenters, including IAE and United Technologies, ask if the duration and renewal of certificates as proposed under this section are applicable to individual ODA Unit members.

*Response:* The language in § 183.15 only applies to individual designees under other programs, not to the individuals within the ODA Unit. ODA Unit members are not considered appointed by the FAA and their appointment is not subject to renewal by the FAA. However, the ODA Holder will have to periodically assess the individuals within their ODA Unit. No change to the rule has been made based on this comment.

#### Section 183.41 Applicability and Definitions

*Comment:* IAE and United Technologies state that the current ODAR program only requires one focal

point. They propose that ODA should also allow a single focal point.

*Response:* The commenters misunderstood the proposed rule. Proposed § 183.41(b)(1) defines the authorized representatives within the ODA Unit. While there must be at least two authorized individuals within an ODA Holder's organization, only one ODA administrator is required. No change to the rule has been made based on this comment. Section 183.41 has been reformatted, and the definition of "ODA Unit" in paragraph (b) has been clarified.

#### Section 183.47 Eligibility (Now Titled Qualifications)

*Comment:* Many commenters, including GE Aircraft Engines, Gulfstream Aerospace, and Raytheon Aircraft Company (Raytheon Aircraft) recommend that the FAA permit foreign organizations located in foreign countries to obtain ODAs. They note that the FAA could use its "no undue burden" concept to determine eligibility for foreign organizations, and that such organizations would help enhance the relationship between the United States and foreign countries.

*Response:* The FAA agrees in part. Although DERs currently must be located within the United States, the FAA has appointed a limited number of airworthiness and manufacturing designees that are located in foreign countries. We agree that the regulatory language should not prevent foreign eligibility, and we have removed the phrase, "located within the United States", from proposed § 183.47(a)(1). The regulations for the individual designee programs do not restrict eligibility to persons in the United States. The limitations for each designee type are included in the policies for managing these programs. Similarly, the FAA might place a limitation on appointing ODA Holders in foreign countries in the associated FAA policy. The rule has been changed as noted to reflect this comment.

*Comment:* Texas Air Composites states that the FAA should revise § 183.47(a) to state that the applicant has "personnel with sufficient experience", rather than the organization. Otherwise, it could be misconstrued that the organization must have the experience. This could result in start-up or recently formed companies with qualified personnel not being granted an ODA because the organization is new.

*Response:* The experience requirement is meant to apply to the organization. Although an organization may have experienced individuals, that

group of individuals must have experience working with each other and with the FAA as an organization. This is the only way for the FAA to determine that they are qualified, and whether there is a need for the authorization. Recently formed companies would not be eligible until they gain the necessary experience and demonstrate that, historically, they have sufficient workload to justify the authorization. No change to the rule has been made based on this comment.

*Comment:* IAE and United Technologies state that the FAA must identify the criteria the agency will use to determine when a qualified organization will not be granted an ODA. Texas Air Composites further notes that not granting an ODA to a qualified applicant could result in a financial disadvantage.

*Response:* A fundamental principle of delegation is the FAA's discretion in appointing designees and delegated organizations. Even if qualified, an organization is not entitled to an authorization, and the FAA does not make delegation decisions based solely on an applicant's desire to have an authorization. Authorizations will be based on the need for the functions requested. Thus, we expect to give priority to organizations with demonstrated expertise and a large workload. In some cases, we expect it may be beneficial for the FAA to manage an organization's activity using individual designees. It is not possible to state all the reasons that the FAA might have to deny an application. The primary considerations will always be the need for the authorization and the ability of the FAA to oversee the organization's activity. No change to the rule has been made based on this comment.

*Comment:* Regarding proposed § 183.47(b)(1), IAE and United Technologies state the FAA should include Production Certificate and Technical Standard Order Authorization to the list of certificates used to establish eligibility. Also, regarding proposed § 183.47(d), a commenter believes the proposed regulatory language could be interpreted to deny an ODA to a company that holds a type certificate that was transferred into the company. The commenter suggests the FAA revise the language to clarify that those companies holding a transferred type certificate are eligible for an ODA.

*Response:* The FAA agrees that the proposed language of this section could be misinterpreted. Section 183.47 has been significantly modified to clarify that eligibility is based solely on experience performing the functions

sought, and the title of the section changed to Qualifications. The proposed language identified many different certificate holders as eligible for ODA, but did not specify the authority available for each type of certificate holder.

Holding a certificate is not an eligibility requirement for ODA. However, most functions authorized under the ODA program require the applicant to have been issued and hold a certificate related to the function. The only aircraft certification functions currently anticipated for non-certificate holders are the approval of major alteration and major repair data. Our draft order states that functions such as issuing STCs or PMA supplements require the applicant to have previously obtained such certificates from the FAA. The language in § 183.47 has been revised to require only experience performing the desired function and experience with related FAA procedures and policies. The list of certificates has been removed from the rule language. The specific eligibility requirements for the available programs and functions are described in the associated FAA policy.

*Comment:* Several commenters, including IAE, United Technologies, Matsushita Avionics System Corporation and Gulfstream Aerospace recommend that the FAA make holders of PMAs that were granted by license eligible for an ODA. They state that PMA holders seeking production approval functions should not be required to have experience in both design and production approval to obtain an ODA. This would be an additional requirement from the ODA system. The commenters recommend proposed § 183.47(c) be reworded as follows: "An applicant seeking function in the area of production must have for the product, components, parts, or appliances for which the applicant is seeking designation authorization, a current PC, TSOA or PMA issued under Part 21 of this chapter."

*Response:* The FAA agrees. A PMA holder may apply for an ODA to perform production and airworthiness functions even if it does not have any engineering design experience. As noted above, the qualification requirement has been revised to require only experience performing the desired function and experience with related FAA procedures and policies. The details of the specific eligibility requirements for the available programs and functions will be more fully described in the associated policy.

#### Section 183.49 Authorized Functions

*Comment:* Electronic Cable Specialists comments that the preamble

language indicates that the FAA is not considering delegation of PMAs. The commenter states that design approvals for PMAs should be a part of the ODA program.

*Response:* The FAA agrees that an ODA Holder may issue PMA supplements. However, the FAA has never delegated the issuance of an original PMA, and we do not intend to do so under ODA. No change to the rule has been made based on this comment.

*Comment:* One commenter states that proposed § 183.49(c)(1) and (c)(3) appear to duplicate the provisions of § 183.29. The commenter believes that allowing DERs and ODA Unit members to perform the same functions would double the FAA's oversight workload.

*Response:* The FAA disagrees. The commenter presumes that a DER and ODA Unit member would be performing the same function. Although these proposed sections provide for functions similar to those performed by a DER, the performance of a function under an ODA is separate and distinct from a function performed by an individual designee. As such, oversight of ODA functions is separate from any individual designee oversight. No change to the rule has been made based on this comment.

*Comment:* One commenter recommends that the rule should have a subparagraph to denote inherently governmental functions that may not be delegated.

*Response:* Listing inherently governmental functions is not consistent with accepted regulatory drafting, or with the intent of this rule. The FAA's delegation regulations define only those functions that may be accomplished by designees. We have revised proposed § 183.49 by removing any reference to specific functions. The ODA rule allows the delegation of any function allowed by 49 U.S.C. 44702(d). No change to the rule has been made based on this comment.

*Comment:* AIA and Boeing note that the proposal does not indicate whether the ODA program will apply to part 34 (emissions) or part 36 (aircraft noise) standards. The commenters state that delegation in these areas would be a significant opportunity to gain efficiency in the certification process with no associated safety risk. They request that the rule state that parts 34 and 36 are included.

*Response:* The FAA does not agree that the rule should specifically note application to parts 34 and 36. As revised, the rule allows designees to make findings of compliance with any FAA requirements. The FAA anticipates that ODA Holders may perform noise

and emission-related functions to the extent currently performed by DERs, but does not expect an expansion of the authorized functions under the ODA program. No change to the rule has been made based on this comment.

#### Section 183.51 ODA Unit Personnel (Proposed § 183.51 Personnel)

*Comment:* Piper Aircraft recommends a provision in the rule or FAA policy requiring that ODA Unit members receive training similar to that of FAA personnel.

*Response:* The FAA disagrees that ODA Unit members need the same training as FAA personnel. Training requirements may not be appropriate for all types of ODA Unit members that may exist under an ODA program. For example, engineers may perform limited functions of a repetitive nature, such as burn test approvals, for which there is no associated FAA training. When appropriate, the training requirements for ODA Unit members will be defined in the FAA policy, but they are not appropriate to include in the rule language. No change to the rule has been made based on this comment.

*Comment:* One commenter states that the rule should specify that ODA staff members and ODA Unit Members must be United States citizens, must be subjected to the same background check as FAA employees, and must live in the United States.

*Response:* The FAA disagrees. Neither United States citizenship nor a federal employee background check are qualifications currently imposed on individual designees. Further, staff members of delegated organizations are not required to be United States citizens, nor are they subject to background checks by the FAA. The FAA expects that some ODA Holders will have staff members in foreign countries performing functions for them. The associated FAA orders will include any limitations regarding staff members in foreign countries. No change to the rule has been made based on this comment.

*Comment:* IAE and United Technologies state that the experience for determining conformity and issuing airworthiness approvals should be in inspection, not aircraft certification.

*Response:* The FAA agrees that inspection and related experience is appropriate for conformity and airworthiness approvals. Accordingly, we have removed the phrase "in aircraft certification" from § 183.51(b).

*Comment:* One commenter notes that the terms "qualified" and "experienced" are subject to many interpretations. The rule should be more

specific in explaining what these terms mean.

*Response:* The FAA disagrees. Specifying what qualified and experienced means in the many possible types of administrators and personnel that might be needed in an ODA organization is inappropriate for regulatory standards. The language is consistent with other designee rules currently used by the FAA, and delegation remains at the discretion of the FAA. More detail regarding qualifications for ODA positions can be found in the associated FAA orders. No change to the rule has been made based on this comment.

#### Section 183.53 Procedures Manual

*Comment:* IAE and United Technologies state that the continued airworthiness requirements in proposed § 183.53(n) (revised as § 183.53(b)(13)) should be applicable only to engineering functions, and not to production approval holders.

*Response:* The FAA disagrees. The procedures manual requirement applies to ODA Holders performing either engineering design or manufacturing-related approvals. Manufacturing issues not specifically related to the engineering or type design functions may lead to service difficulties and require investigation by an ODA holder. While no change to the rule has been made based on this comment, the proposed requirement is now contained in § 183.53(c)(13) referencing continued responsibilities.

*Comment:* IAE and United Technologies recommend rewording the last sentence of the introductory text of § 183.53 regarding changes to the procedures manual, stating that there may be instances when the FAA will authorize an ODA Holder to implement minor changes to the manual without FAA approval. They suggest revising the sentence to state "Changes may be implemented prior to FAA approval in accordance with the change procedure in the manual."

*Response:* The FAA agrees that certain minor changes to the manual may be made without prior approval. However, the procedures manual must specify the types of changes that may be adopted without FAA approval. Proposed § 183.53 has been revised and its paragraphs redesignated. Section 183.53(b) allows certain changes to be made to the manual, and to require that the manual describe the types of changes that may be incorporated without specific FAA approval.

*Comment:* IAE and United Technologies state that the regulation is too detailed regarding the content of the

procedures manual. The commenters fear that stating the content as a minimum requirement will discourage the adoption of industry practices that exceed the requirements in the regulation. They note that the details of procedures manuals are usually in Orders and advisory circulars.

*Response:* The FAA has determined that it is appropriate to specify procedures manual requirements in the regulation. Since this section of the rule defines only the required content of the manual, rather than how to perform authorized functions, ODA Holders will still be free to introduce good practices that satisfy the requirements. No change to the rule has been made based on this comment.

#### Section 183.55 Limitations

*Comment:* IAE and United Technologies Corporation suggest changing § 183.55(b) to add the term "significant," since minor changes within an ODA Unit may not affect the Unit's qualifications.

*Response:* The FAA disagrees. The addition of the term "significant" would have no impact on the requirements of this paragraph. If changes within the ODA Unit or ODA Holder do not affect the qualifications of the ODA Unit or Holder, or the ability of the ODA Unit to perform authorized functions, then they do not have to be reported. No change to the rule has been made based on this comment.

#### Section 183.57 Responsibilities of an ODA Holder

*Comment:* Raytheon Aircraft and GAMA comment on the language of proposed § 183.57(c), which specifies that the ODA Holder must "Ensure that no interference or conflicting restraints are placed on the ODA Unit or on the personnel performing the designated functions while complying with this part and the approved procedures manual." They state that the proposed language is not consistent with existing wording used in FAA Order 8100.9, paragraph 3-3(a). The commenters question why this section is different from the language of the existing order. Since the intent is the same, one commenter recommends that the FAA adopt wording similar to that in Order 8100.9. That Order states "The authorization holder must ensure that the administrator and ARs [Authorized Representatives] remain free of any restraints that would limit the DOA's, DAS's, or SFAR 36's ability to ensure that authorized functions are performed in compliance with FAA regulations."

*Response:* The FAA agrees that the intent of the proposed language is



similar to that stated in Order 8100.9. However, we have determined that the language used in the rule is preferable for the purpose of regulation since it also prohibits interference with the ODA Unit by the ODA Holder. No change to the rule has been made based on this comment.

#### Section 183.63 Records and Reports (Proposed § 183.61)

*Comment:* Two commenters state that the requirement to submit data in the proposed § 183.63(b)(3) should not apply to airworthiness certificates, export approvals, the production limitation records or “any other approval authorized under this subpart.” One commenter points out that production limitation record requirements are already addressed in the proposed § 183.63(b)(2), and that the retention requirements for airworthiness certificates and approvals should be consistent with record retention requirements imposed on other designees. The commenters recommend deletion of proposed § 183.63(b)(6) for the same reasons. The same commenters recommend conformity inspection records and airworthiness approvals be maintained for two years rather than indefinitely as proposed.

*Response:* The FAA agrees in part. Airworthiness certificates or approvals are generally maintained for two years by most types of designees. The final rule adopts a two-year requirement for those ODA Holders that only issue these types of certificates or approvals. However, ODA Holders that perform type design approvals, such as TC and STC programs, are required to maintain records typically submitted to and maintained by the FAA as part of standard certification projects. The airworthiness certificates or approvals associated with such design approval projects must be maintained indefinitely. As revised, § 183.61(a)(2) requires indefinite retention of airworthiness certificates or approvals performed as part of type design programs, and revised § 183.61(c) requires retention of other airworthiness approvals or certificates for two years. The FAA agrees that reference to production limitation record data in the proposed section § 183.63(b)(3) duplicated the requirement for the production certificate in the proposed § 183.63(b)(2). The requirement for production related records has also been incorporated in revised 183.61(a)(2). The retention requirement of proposed § 183.63(b)(6) is also incorporated in the revised 183.61(a)(2) as a general requirement for all approvals, rather than a stand-alone requirement.

*Comment:* Two commenters recommend retaining the periodic audit and records of corrective action required under proposed § 183.63(b)(9) for two years rather than indefinitely.

*Response:* The FAA agrees that these records need not be retained indefinitely. However, we consider periodic audit records an important means to document an organization’s continued compliance with the requirements for the authorization. Two years may not be adequate in all cases, since the planned oversight evaluation interval of two years could result in the development and destruction of these records before review of the corrective action by the FAA. To ensure adequate documentation for oversight of the ODA Holder, § 183.61(b) requires these records be maintained for five years.

*Comment:* IAE and United Technologies state that the two year record retention requirements in proposed § 183.63(c)(1) should not be applied to a production approval holder (PAH) that holds an ODA since it is not required for an FAA inspector or designee. They add that part 21 already specifies the inspection data requirement for PAHs.

*Response:* The FAA agrees. While such requirements are not imposed on individual designees, the requirement is contained in the existing DOA rules. While necessary under the DOA rule, the FAA agrees that it is not necessary under the ODA program since the other production approval holder requirements in part 21 apply. The requirement proposed in § 183.63(c)(1) has been removed.

*Comment:* IAE and United Technologies state that the requirement of proposed § 183.63(b)(4) for an ODA Holder to maintain a list of products on which it has performed an authorized function should apply only to “authorized engineering functions.” The commenter points out that records retention for manufacturing functions should be the same as for other designees.

*Response:* The FAA disagrees that the list requirement should apply only to engineering functions. The purpose of this requirement is to maintain a list of the specific products for which the ODA holder issues approvals. For example, a manufacturer authorized to issue airworthiness certificates is required to maintain a list of the aircraft for which it issued airworthiness certificates, and a repair station authorized to approve alteration data is required to maintain a list of the aircraft for which it has approved alteration data. We have removed the proposed language specifying the means of identification,

but no change to the rule has been made based on this comment.

#### Section 183.65 Data Review and Service Experience (Now § 183.63 Continuing Requirements: Products, Parts or Appliances)

*Comment:* AIA states that proposed § 183.65(b) would require an ODA Unit to submit information necessary for the FAA to implement corrective action. The ODA Unit is the interface between the ODA Holder and the FAA. A certificate holder’s obligation to develop and submit information under § 21.99 and § 21.277(b) remains in effect. Several commenters note that the responsibility to investigate safety concerns should be directed toward the ODA Holder, not the ODA Unit.

*Response:* The FAA agrees that § 21.99 applies, but only to certificate holders. Further, § 21.277(b) applies only to Delegation Option Authorization holders, which are being phased out as part of this rulemaking. The language of proposed § 183.65(b) was intended to impose similar requirements on ODA Holders. We note that while the proposed rule would have imposed the information submission requirement on the ODA Unit, we agree that investigation of service problems is a responsibility of the ODA Holder. An ODA Unit would be involved only in determining whether any proposed solution or design change is in compliance with the regulations. Accordingly, the language in § 183.63 has been revised to indicate that it applies to the ODA Holder rather than the ODA Unit. We also note that in those cases where the ODA Holder is not the certificate holder, this section requires the ODA Holder to conduct investigation into potentially unsafe conditions or non-compliant conditions for those certificates they issued to another holder. Unlike § 21.99, this section introduces the requirement for investigating non-compliant conditions, while § 21.99 applies only to unsafe conditions. The rule has been revised as noted above as a result of this comment.

*Comment:* AIA states that § 183.65(a) requires that investigations into potentially unsafe conditions must take priority over all other delegated activities. The commenter is concerned that this text may be misinterpreted or misapplied in practice. The commenter states that organizations may have the capability to perform parallel activities on different projects, and does not want the requirement misapplied to affect ongoing projects. The commenter would like the preamble of the final rule to clarify the priority clause and the two purposes it says the clause serves.

*Response:* The FAA agrees that the text regarding priority of investigation into unsafe conditions may be misinterpreted, and that the language in the proposed rule is not appropriate. The investigation into unsafe conditions is an activity that is inherent upon the ODA Holder and not something the FAA delegates. We agree that it might be feasible for an ODA holder to adequately perform an investigation while certification activity continues. Since the FAA will continue to manage the ODA Holder's delegated activity, the FAA will determine whether an ODA Holder is placing sufficient emphasis on the investigation of service problems. We could restrict the ODA Holder's authority until its performance improves. The language regarding priority of the investigation has been deleted.

*Comment:* IAE and United Technologies state that the proposed rule would require an ODA Unit to investigate safety concerns that it or the FAA identifies. This is not a responsibility of current ODAR holders, and should not be imposed on ODA Holders that only have manufacturing inspection responsibilities. An ODA Unit may not have personnel with the expertise to conduct these investigations. If imposed, this requirement should be on the ODA Holder. The commenter also states that the responsibility to investigate is already covered under § 21.3. The language in the proposed rule would limit the FAA's ability to conduct investigations.

*Response:* The FAA agrees that an ODA Holder is responsible for investigation of service difficulties, and has revised the rule language accordingly. However, while the requirement may be redundant to § 21.3 for an ODAR, some ODA Holders might issue certificates to other persons, and the requirement to investigate safety concerns does not duplicate the requirements of part 21. The FAA does not agree that the proposed language would limit our ability to conduct investigations. The rule has been revised as noted above as a result of this comment.

#### Section 183.67 Transferability and Duration

*Comment:* Several commenters, including GE Aircraft Engines, Gulfstream, and Boeing, state that the authorization should not have an expiration date and should remain effective until the FAA revokes it or the applicant surrenders it. The commenters state that renewing authorizations is an unnecessary step and will only increase

the FAA's workload. They also note that the rule does not specify the maximum duration of the ODA or how the FAA will determine individual expiration dates.

*Response:* The FAA disagrees; all FAA individual designee programs have expiration dates. The FAA determines expiration dates based on the experience and history of the organization and the functions they perform. Renewal of the authorization allows the FAA to periodically assess an organization's performance and determine whether the workload of the organization justifies continuing the authorization. No change to the rule has been made based on this comment.

#### *Comments on the Proposed Regulatory Evaluation*

*Comment:* United Airlines, which holds current DAS and SFAR 36 authorizations, opposes the rule because it would have to reapply under ODA to continue using its current authority. United Airlines comments that as proposed, an ODA would increase its administrative workload when compared to the current delegation program.

*Response:* As noted in the Initial Regulatory Evaluation, the FAA expects that the initial administrative burden will be slightly greater than that under the current programs. However, we expect that the annual administration costs will be about the same as the annual administration costs under its existing designation programs. As other commenters noted, the ODA program will provide organizations with greater work scheduling flexibility and the overall cost of their work will decrease because they can use their resources more efficiently. The ODA is also designed to streamline the process when an organization seeks to add to its designated functions. No change to the rule has been made based on this comment.

*Comment:* Boeing comments that our estimated ODA costs were an order of magnitude too low. In a telephone conversation (a summary of which is in the docket), a Boeing representative clarified that its written comment was based on the *total* cost to move from a DOA, DAS, or SFAR 36 designation to an ODA and not based on the *incremental* cost to move from a DDS to an ODA. The Boeing representative reported that the cost of going from a DDS to an ODA would be about 10 percent of the total cost that it had included in its comment. He concluded that FAA estimates in the Initial Regulatory Evaluation of the unit costs of moving from a DDS to an ODA (an

initial cost of \$13,480 for a large organization and \$7,980 for a small organization and an annual cost of \$13,450 for a large organization and \$6,850 for a small organization) were reasonable.

*Response:* We agree and use those same unit cost values in the Final Regulatory Evaluation.

*Comment:* In the Initial Regulatory Evaluation, we estimated that the initial cost to obtain an ODA would be \$7,320 for a large ODAR and \$5,780 for a small ODAR. The IAE comments that its large manufacturing ODAR initial cost would be \$7,260. Pratt and Whitney commented that its large manufacturing ODAR initial cost would be \$12,020.

*Response:* Based on these responses, the Final Regulatory Evaluation uses an average of these costs resulting in an initial cost of \$9,640 for the typical large ODAR that transitions to an ODA.

*Comment:* In the Initial Regulatory Evaluation, we estimated that the average annual cost for a large ODAR would be \$6,410 and the annual cost for a small ODAR would be \$5,310. In its comment, IAE reports that it currently spend \$29,870 every two years for the oversight/audit for their ODAR.

International Aero Engines estimates that the total cost of this annual requirement would be \$56,660 over two years. Thus, their annual incremental compliance costs for an ODA would be \$26,790 more (over two years) than their current ODAR costs, or \$13,395 in additional annual costs.

*Response:* We used the IAE estimate of \$13,395 as the annual cost in the Final Regulatory Evaluation for a large ODAR annual cost.

*Comment:* Pratt and Whitney estimated an annual cost of \$138,900 for their ODA.

*Response:* It was not clear whether this estimate is the incremental cost of going from its current authorization or whether it is the total cost of operating an ODA. Consequently, in light of the Boeing and IAE comments, we determined that the IAE estimate was the appropriate estimate of the annual cost of a large ODAR.

#### *Discussion of Changes and Clarifications to the Proposed Requirements*

As noted above, we have significantly changed the format of the final rule language to simplify it and increase its readability. In some cases, text has been moved or regrouped into more intuitive sections and paragraphs, and the heading changed to better reflect the content of the section. Any substantive changes, of which there were few, are noted here. This section will not discuss

language changes made to clarify the intent or format of the rule.

#### Section 21.230 Compliance Dates

Proposed § 21.230 has been eliminated; it did not contain compliance dates as the title suggested. The expiration of DOA has been added to § 21.235. No reference to part 183 is included since a reference to ODA is not necessary. The proposed phrase “no person may apply for” is incorrect and has been revised to read “the Administrator will no longer accept.”

#### Section 21.430 Compliance Dates

Proposed 21.430 has been eliminated; it did not contain compliance dates as the title suggested. The expiration of DAS has been added to § 21.435. No reference to part 183 is included since a reference to ODA is not necessary. The phrase “no person may apply for” is incorrect and has been changed to “the Administrator will no longer accept.”

### SFAR 36

The proposed revision to SFAR 36 section 4 has been revised to incorporate language from the current rule regarding the certificate holding district office that was inadvertently left out of the proposed rule revision. The language addressing application for an ODA under part 183 has been removed, since it is outside the scope of SFAR 36 and is not regulatory in nature.

A new expiration date for SFAR 36 has been incorporated into the text.

#### Section 183.1 Scope

The word “private” has been deleted from paragraphs (a) and (b) because it is unnecessary. The introductory text of this section contains the term “private person,” while paragraphs (a) and (b) are intended to distinguish designations granted to individuals from those granted to organizations.

#### Section 183.15 Duration of Certificates

Proposed paragraph 183.15(b) used the term “Certificate of Authority;” we have replaced it with the more generic term “proof of authorization.” Certificates of Authority are specific to certain types of designees, while the expiration date described in this section will be included on all types of documentation used to identify representatives of the Administrator.

#### Section 183.41 Applicability and Definitions

Proposed paragraph (a)(2) has been removed. The definitions in § 183.41(b) have been reordered in a more logical sequence. The definition of ODA Unit has been revised to prevent an

interpretation that unit members are performing functions on “behalf of the administrator.” This definition implied that the ODA Unit members were the “designees,” when, in fact, the ODA Holder is the designated organization that is authorized to perform the functions on behalf of the Administrator. The ODA Unit is defined as the identified individuals within the ODA Holder who perform the functions.

#### Section 183.45 Issuance of Organization Designation Authorizations

The description of the contents of the Letter of Designation in paragraph (a) has been removed since it was non-regulatory in nature.

#### Section 183.47 Qualifications (Proposed § 183.47 Eligibility)

Section 183.47 has been extensively revised and re-titled “Qualifications.” The proposed section listed a number of FAA certificates and presumed that a holder of any such certificate was “eligible” for an ODA. In fact, the primary requirement to become an ODA Holder is sufficient experience performing the authorized functions. The certificates listed appeared to be requirements to perform certain functions, rather than eligibility requirements to be granted an ODA. The section has been revised to require only that an applicant have adequate facilities, experience performing the functions sought, and experience with FAA policies and procedures related to the functions sought. Based on comments received, we have deleted the proposed requirement that the ODA Holder have facilities located within the United States.

#### Section 183.49 Authorized Functions

Section 183.49 has been extensively revised. The list of specific authorized functions has been removed, as identification of these functions was not necessary. This section now provides the authority for the Administrator to delegate any statutorily authorized function.

#### Section 183.51 Personnel

Section 183.51 has been re-titled “ODA Unit Personnel” to more accurately describe its content. Paragraph 183.51(b) has been revised based on comments submitted. As proposed, the language inferred that experience and expertise “in aircraft certification” is required to make conformity determinations, or issue airworthiness certificates. What is required is experience and expertise in

the function requested. The phrase “in aircraft certification” has been removed.

#### Section 183.53 Procedures Manual

Section 183.53 has been revised and its paragraphs redesignated. Based on comments received, the language has been revised to allow for an ODA Holder to make minor changes to the procedures manual without FAA approval. A description of the minor changes allowed must be defined in the approved procedures manual.

Proposed paragraph 183.53(c) has been clarified to require definition of the organizational structure and responsibilities of both the ODA Holder and ODA Unit. The proposed rule was unclear whether the requirement to define the organizational structure applied to the ODA Unit, ODA Holder, or both.

Proposed paragraph 183.53(e) has been revised to clarify that the ODA Holder must perform periodic audits of both the ODA procedures and the ODA Unit.

Proposed paragraph 183.53(h) has been revised to clarify that the procedures manual must contain only a description of the training required for ODA Unit members. As proposed, it appeared that the actual training material was required to be included in the manual.

Proposed paragraph 183.53(j) has been revised to require position descriptions and required qualifications only for the ODA Unit members.

A new procedures manual requirement has been added in revised paragraph 183.53(c)(15) requiring “Any other information required by the Administrator necessary to supervise the ODA Holder in the performance of its authorized functions.” This is intended to allow the FAA to revise future procedures manual requirements in policy materials without amending the rule language.

#### Section 183.55 Limitations

The substance of proposed paragraph 183.55(a) has been moved to § 183.49, and the remaining sections redesignated accordingly. Proposed paragraph 183.55(b) has been revised to require notification of any change that may affect performance of an authorized function, rather than only changes within the ODA Unit or ODA Holder. For example, changes that are not within the Unit or Holder, such as changes in facilities, may require reporting. Additionally, proposed paragraph 183.55(d) was revised to make the ODA Holder, rather than the ODA Unit subject to limitations specified by the Administrator.

Limitations are actually imposed on the ODA Holder, and flow down to the ODA Unit.

#### Section 183.57 Responsibilities of an ODA Holder

New paragraph 183.57(e) contains the requirement from proposed § 183.59 to notify the FAA of a change that may affect the ODA Holder's ability to meet the regulations requirements.

#### Section 183.59 Continued Eligibility

The provisions of proposed § 183.59 have been moved to § 183.57, and subsequent sections redesignated accordingly.

#### Section 183.61 Inspection

This section has been redesignated as § 183.59.

#### Section 183.63 Records and Reports

This section has been redesignated as § 183.61, and extensively revised based on comments received. The description of the content of records has been revised for clarity. Based on comments received, most airworthiness certificates and approvals must be maintained only for two years, rather than indefinitely as proposed. However, airworthiness certificates and approvals supporting type design approval projects must be maintained for the duration of the authorization. Based on comments received, the requirement to maintain inspection records proposed in § 183.63(c)(1) has been removed and periodic audit and corrective action records must be maintained for five years, rather than indefinitely, as proposed. Service difficulty records must also be maintained for five years rather than for two years as proposed in § 183.63(c)(2). These retention requirements are intended to allow access to a greater amount of service history information if an investigation is required.

#### Section 183.65 Data Review and Service Experience

This section has been redesignated 183.63, and retitled "Continuing Requirements: Products, Parts or Appliances." Proposed paragraphs 183.65(a) and (b) have been revised to clarify the requirements on the ODA Holder. A new requirement has been added to require the ODA Holder to actively monitor service difficulties. This is now done by current delegated organizations and is appropriate for inclusion in the regulatory text. Based on comments received, the notification and investigation requirements now apply to the ODA Holder rather than the ODA Unit.

The intent of proposed § 183.65(c) regarding operational approvals has been moved to new § 183.65 and titled "Continuing Requirements: Operational Approvals." The section has been revised to clarify that the ODA Holder must notify the FAA of problems with operational approvals and investigate those matters. This section requires that the ODA Holder inform the Administrator of any error in issuance of an operational approval (certificate or authorization), and when instructed by the Administrator, suspend issuance of any similar approval until corrective action is implemented. This section also requires that the ODA Holder investigate any problem.

#### Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted a copy of the information collection requirements(s) in this final rule to the Office of Management and Budget for its review. An agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

This rule contains information collections that are subject to review by OMB under the Paperwork Reduction Act of 1995 (Pub. L. 104-13). OMB has not yet approved the collection of this information.

This rule was proposed in the **Federal Register** on January 21, 2004. At that time the FAA requested public comments on the proposed information collection requirements. Based on comments received, the proposed requirement for respondents to maintain aircraft inspection records has been removed, and periodic audit and corrective action records must be maintained for five years, rather than indefinitely. Additionally, service difficulty information must be retained for five years, rather than the proposed two years, to ensure adequate information is available in the event safety issues require investigation. See the disposition of comments and discussion of changes and clarifications to the proposed language for more information. No comments addressed recordkeeping or reporting cost or burden estimates.

*Annual Burden Estimate:* We estimate the proposed rule imposes an annual public reporting burden of \$235,840 based on 4288 hours at \$55.00 per hour. The estimated recordkeeping costs are \$161,700, based on 2940 hours at \$55.00 per hour. Both of these cost estimates

are based on clerical, technical, and overhead expenses.

Estimates of the burden created by the rule are based on the following: The rule will phase out over three years the existing DAS and DOA rules contained in Subparts J and M of part 21, as well as SFAR No. 36. The collection and recordkeeping requirements imposed by those rules will transition to the requirements contained here over the initial three-year period. In addition, existing ODARs that are currently managed under part 183 will also be converted to ODA over the initial three-year period. As a result, the initial three-year burden will be large, with a smaller burden over the life of the program. It is expected that about 180 applications will be processed within the first three years of the program, with an estimated 10 more applications being submitted per year over the life of the program.

The annual cost to the Federal Government to analyze and process the information received is estimated to be \$69,300 per year. This estimate is based on 1260 hours at \$55.00 per hour.

#### International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

#### Economic Assessment, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

##### Preamble Summary

This portion of the preamble summarizes our analysis of the economic impacts of the rule. We suggest readers seeking greater detail read the full regulatory evaluation, which is in the docket.

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 impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531-2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S.

standards, the Trade Act requires agencies to consider international standards and, where appropriate, to use them as the basis for U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation).

In conducting these analyses, we determined this rule: (1) Has benefits that justify its costs, is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures; (2) does not have a significant economic impact on a substantial number of small entities; (3) has a neutral international trade impact; and (4) does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector. These analyses, available in the docket, are summarized as follows.

#### *Total Benefits and Costs of This Rulemaking*

The aviation industry reported that the conversion to an ODA system allows them to schedule their manufacturing, modification, and repair activities more efficiently than they can under the current designee system. It also allows us to more effectively monitor the organizational designee system. Under certain assumptions discussed in detail in the Regulatory Evaluation, we estimate that the aviation industry could annually save about \$3.445 million in opportunity costs and a total present value savings of \$24.9 million between 2006 and 2015. We calculate that the total initial costs for the ODA program will be \$1.725 million spread over three years. The incremental annual costs of operating ODA programs between 2006 and 2015 will be \$17.4 million. The average annual cost will be \$2.175 million. The present value of the total costs for the ODA program will be \$12.3 million.

#### *Who Is Potentially Affected by This Rulemaking*

Aircraft manufacturers, air carriers, commercial operations, repair stations, and aircraft parts manufacturers may be affected by this rule.

#### *Alternatives We Considered*

We did not consider other alternatives to this final rule because the proposed rule had been developed in conjunction with the ARAC recommendations. We

received positive industry responses to the proposed rule and we received no suggested alternatives other than to maintain the current system.

#### *Cost Assumptions and Sources of Information*

Period of analysis is 2006–2015. Final rule will be effective by January 1, 2006.

Discount rate is 7 percent. Fully burdened labor rate for an aviation engineer is \$110 an hour. The affected parties will be 4 aircraft and two propeller manufacturers that have 7 DOAs, 26 companies that have 33 DASs, 13 companies that have 13 SFAR 36 authorizations, 42 organizations that have 47 maintenance ODARs, and 81 organizations that have 89 manufacturing ODARs. We did not estimate a cost for the unknown number of organizations that do not currently have a designation authorization may choose to apply for an ODA.

We obtained data from members of an ARAC working group, existing DAS, DOA, and SFAR 36 holders, and from public comments on the proposed rule.

#### *Estimated Benefits*

We determined that the rule will generate both improved safety and reduced costs. By shifting our inspection focus from reviewing test results to overseeing the designation program, we will be able to more efficiently use our resources while extending our oversight coverage, thereby increasing safety. In the NPRM, we requested that commenters provide quantitative estimates of their cost savings from substituting an ODA for their current designation authorizations. We did not receive any quantitative estimates, but nearly all of the industry commenters noted that an ODA will allow them to more efficiently schedule their work and save their time. This view was also the consensus in the ARAC working group. Under certain assumptions discussed in the Regulatory Evaluation, we estimate that the aviation industry could annually save \$3.445 million in undiscounted opportunity costs. We received comments from individuals who believe that the ODA program will increase costs. We disagree with those comments. Were an ODA to increase an organization's net costs, that organization has the option to not participate.

#### *Costs of This Rulemaking*

The average undiscounted initial cost for an existing DAS, DOA, or SFAR 36 holder to transition to an ODA will be \$13,480 for a large program and \$7,980

for a small program. The average annual incremental undiscounted cost will be \$13,450 for an existing DAS, DOA, or SFAR 36 holder with a large program and \$6,850 for those with a small program. We received two comments on the estimated costs for a manufacturing ODAR program to convert to an ODA. Taking the average of these costs, the average undiscounted initial cost for a large ODAR program will be \$9,640 and \$7,505 for a small ODAR program. The average incremental annual undiscounted cost will be \$6,410 for a large ODAR program and \$5,310 for a small ODAR program.

#### *Cost Benefit Summary*

Industry worked with us to improve our oversight efficiency and maintain system safety. This rule creates a more efficient system with benefits to both the industry and to the FAA. There were 10 industry comments that supported the proposed rule as being cost beneficial and one industry comment opposing it. As noted earlier, under certain assumptions described in Section III.C of the Regulatory Evaluation, the present value of the annual reduction in the opportunity costs from the ODA program could be \$24.9 million, which is greater than the present value of the compliance costs of \$12.3 million.

#### *Changes From the NPRM to the Final Rule*

Based on the comments received from the NPRM, we made three moderate changes in the unit cost estimates from those in the NPRM to those in the final rule. In response to two comments from manufacturers that hold ODARs, we increased our annual compliance costs for a large ODAR holder from the estimated \$7,320 in the NPRM to \$9,640 in the final rule analysis. In the NPRM, we had estimated that participants in the DDS program would have minimal costs. We received two comments stating that there will be costs for these programs to apply for an ODA. Based on the comments, we increased our initial compliance costs for DOA, DAS, and SFAR 36 holders from the estimated minimal amount in the NPRM to \$13,480 in the final rule for a large program and \$7,980 in the final rule for a small program. Finally, we increased our annual compliance costs for DOA, DAS, and SFAR 36 holders from a minimal amount in the NPRM to \$13,450 in the final rule for a large program and \$6,850 in the final rule for a small program. As a result, we calculate that the total initial costs for the final rule will be \$1.725 million whereas we had estimated that it would

be \$1.144 million in the NPRM. Whereas we had estimated that the annual incremental cost would be \$1.102 million in the NPRM, for the final rule it will now be \$2.175 million.

#### *Regulatory Flexibility Determination*

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the Act. In the Final Regulatory Evaluation, we note two important considerations for a small business impact. First, three of the four categories of designations already operate under programs that are very similar to the ODA program. Only the ODARs do not currently operate under an ODA-like system. There are about 4,000 aircraft repair stations and aircraft parts manufacturers (nearly all of which are small entities). Twenty of the 47 maintenance ODARs and 42 of the 89 manufacturing ODARs are operated by small companies having fewer than 1,500 employees. While there are a substantial number of small entities, the rule will not have a significant impact. The rule will not require them to operate an ODA. They can apply for one, but it is their choice. That is, if an ODA makes business sense, a small business has the option of applying for it, but is not required to have one. Second, the expected efficiency gains for some of these companies will exceed the expected compliance costs.

In light of this evidence, the FAA Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

#### *International Trade Impact Assessment*

The Trade Agreements Act of 1979 prohibits Federal agencies from establishing any standards or engaging in 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 FAA assessed the potential effect of this final rule and determined that because the compliance costs are minimal, and there will likely be net cost savings from increased scheduling efficiencies for primarily domestic organizations, this final rule will slightly reduce costs for U.S. organizations. It has no effect on foreign organizations. Thus, the final rule has a minimal effect on foreign commerce.

#### *Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (the Act) 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 an expenditure of \$100 million or more (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.

This final rule does not contain such a mandate. The requirements of Title II do not apply.

#### **Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions. Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

The rule will require every organization that has a designation authorization to apply for an ODA if it

intends to continue to have a designation authorization. Most of the 4,000 entities that participate in the aviation industry do not have designation authorizations. Rather, they perform their necessary testing and examinations using FAA-approved individuals operating under standard practices. This rule does not require these entities to have an ODA program and they can continue to operate using the existing system. As a result, the Administrator certifies that the rule will not have a significant impact on a substantial number of small entities.

#### **International Trade Impact Assessment**

As the compliance costs are minimal, this final rule will have a minimal trade impact.

#### **Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (the Act) 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 an expenditure of \$100 million or more (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."

We note that the rule would not impose a significant private sector cost. Thus, this rule does not contain such a mandate and the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

#### **Executive Order 13132, Federalism**

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore 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 rulemaking action qualifies for the categorical exclusion identified in

paragraph 303(d) and involves no extraordinary circumstances.

**Regulations That Significantly Affect Energy Supply, Distribution, or Use**

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (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**

*14 CFR Part 21*

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

*14 CFR Part 121*

Air carriers, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

*14 CFR Part 135*

Air taxis, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

*14 CFR Part 145*

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

*14 CFR Part 183*

Aircraft, Airmen, Authority delegations (Government agencies), Reporting and recordkeeping requirements.

**The Amendments**

■ The Federal Aviation Administration amends parts 21, 121, 135, 145, and 183 of the Federal Aviation 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, 44707, 44709, 44711, 44713, 44715, 45303.

■ 2. Section 21.235 is revised to read as follows:

**§ 21.235 Application.**

(a) An application for a Delegation Option Authorization must be submitted, in a form and manner prescribed by the Administrator, to the

Aircraft Certification Office for the area in which the manufacturer is located.

(b) An application must include the names, signatures, and titles of the persons for whom authorization to sign airworthiness certificates, repair and alterations forms, and inspection forms is requested.

(c) After November 14, 2006, the Administrator will no longer accept applications for a Delegation Option Authorization.

(d) After November 14, 2009, no person may perform any function contained in a Delegation Option Authorization issued under this subpart.

■ 3. Section 21.435 is revised to read as follows:

**§ 21.435 Application.**

(a) An applicant for a Designated Alteration Station authorization must submit an application, in writing and signed by an official of the applicant, to the Aircraft Certification Office responsible for the geographic area in which the applicant is located. The application must contain:

(1) The repair station certificate number held by the repair station applicant, and the current ratings covered by the certificate;

(2) The air carrier or commercial operator operating certificate number held by the air carrier or commercial operator applicant, and the products it may operate and maintain under the certificate;

(3) A statement by the manufacturer applicant of the products for which he holds the type certificate;

(4) The names, signatures, and titles of the persons for whom authorization to issue supplemental type certificates or experimental certificates, or amend airworthiness certificates, is requested; and

(5) A description of the applicant's facilities, and of the staff with which compliance with § 21.439(a)(4) is to be shown.

(b) After November 14, 2006, the Administrator will no longer accept applications for a Designated Alteration Station authorization.

(c) After November 14, 2009, no person may perform any function contained in a Designated Alteration Station authorization issued under this subpart.

**PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS**

■ 4. The authority citation for part 121 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711,

44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

**PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT**

■ 5. The authority citation for part 135 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

**PART 145—REPAIR STATIONS**

■ 6. The authority citation for part 145 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701–44702, 44707, 44717.

■ 7. In parts 121, 135, and 145, Special Federal Aviation Regulation No. 36, the text of which is found at the beginning of part 121, is amended by revising the introductory text of section 4; revising the introductory text of section 7; revising the termination date to read as follows.

**Special Federal Aviation Regulation No. 36**

\* \* \* \* \*

4. *Application.* The applicant for an authorization under this Special Federal Aviation Regulation must submit an application before November 14, 2006, in writing, and signed by an officer of the applicant, to the certificate holding district office charged with the overall inspection of the applicant's operations under its certificate. The application must contain—

\* \* \* \* \*

7. *Duration of Authorization.* Each authorization issued under this Special Federal Aviation Regulation is effective from the date of issuance until, November 14, 2009, unless it is earlier surrendered, suspended, revoked or otherwise terminated. Upon termination of such authorization, the terminated authorization holder must:

\* \* \* \* \*

This Special Federal Aviation Regulation terminates November 14, 2009.

\* \* \* \* \*

**PART 183—REPRESENTATIVES OF THE ADMINISTRATOR**

■ 8. The authority citation for part 183 continues to read as follows:

**Authority:** 31 U.S.C. 9701; 49 U.S.C. 106(g), 40113, 44702, 44721, 45303.

■ 9. Section 183.1 is revised to read as follows:

**§ 183.1 Scope.**

This part describes the requirements for designating private persons to act as representatives of the Administrator in examining, inspecting, and testing persons and aircraft for the purpose of issuing airman, operating, and aircraft certificates. In addition, this part states the privileges of those representatives and prescribes rules for the exercising of those privileges, as follows:

(a) An individual may be designated as a representative of the Administrator under subparts B or C of this part.

(b) An organization may be designated as a representative of the Administrator by obtaining an Organization Designation Authorization under subpart D of this part.

■ 10. Section 183.15 is amended by removing paragraph (c), redesignating paragraph (d) as paragraph (c), and revising paragraphs (a) and (b) to read as follows:

**§ 183.15 Duration of certificates.**

(a) Unless sooner terminated under paragraph (c) of this section, a designation as an Aviation Medical Examiner is effective for one year after the date it is issued, and may be renewed for additional periods of one year at the Federal Air Surgeon's discretion. A renewal is effected by a letter and issuance of a new identification card specifying the renewal period.

(b) Unless sooner terminated under paragraph (c) of this section, a designation as Flight Standards or Aircraft Certification Service Designated Representative as described in §§ 183.27, 183.29, 183.31, or 183.33 is effective until the expiration date shown on the document granting the authorization.

\* \* \* \* \*

■ 11. A new subpart D is added to part 183 to read as follows:

**Subpart D—Organization Designation Authorization**

## Secs.

183.41	Applicability and definitions.
183.43	Application.
183.45	Issuance of Organization Designation Authorizations.
183.47	Qualifications.
183.49	Authorized functions.
183.51	ODA Unit personnel.
183.53	Procedures manual.
183.55	Limitations.
183.57	Responsibilities of an ODA Holder.
183.59	Inspection.
183.61	Records and reports.
183.63	Continuing requirements: Products, parts or appliances.
183.65	Continuing requirements: Operational approvals.

183.67 Transferability and duration.

**§ 183.41 Applicability and definitions.**

(a) This subpart contains the procedures required to obtain an Organization Designation Authorization, which allows an organization to perform specified functions on behalf of the Administrator related to engineering, manufacturing, operations, airworthiness, or maintenance.

(b) *Definitions.* For the purposes of this subpart:

*Organization Designation Authorization (ODA)* means the authorization to perform approved functions on behalf of the Administrator.

*ODA Holder* means the organization that obtains the authorization from the Administrator, as identified in a Letter of Designation.

*ODA Unit* means an identifiable group of two or more individuals within the ODA Holder's organization that performs the authorized functions.

**§ 183.43 Application.**

An application for an ODA may be submitted after November 14, 2006. An application for an ODA must be submitted in a form and manner prescribed by the Administrator and must include the following:

(a) A description of the functions for which authorization is requested.

(b) A description of how the applicant satisfies the requirements of § 183.47 of this part;

(c) A description of the applicant's organizational structure, including a description of the proposed ODA Unit as it relates to the applicant's organizational structure; and

(d) A proposed procedures manual as described in § 183.53 of this part.

**§ 183.45 Issuance of Organization Designation Authorizations.**

(a) The Administrator may issue an ODA Letter of Designation if:

(1) The applicant meets the applicable requirements of this subpart; and

(2) A need exists for a delegation of the function.

(b) An ODA Holder must apply to and obtain approval from the Administrator for any proposed changes to the functions or limitations described in the ODA Holder's authorization.

**§ 183.47 Qualifications.**

To qualify for consideration as an ODA, the applicant must—

(a) Have sufficient facilities, resources, and personnel, to perform the functions for which authorization is requested;

(b) Have sufficient experience with FAA requirements, processes, and

procedures to perform the functions for which authorization is requested; and

(c) Have sufficient, relevant experience to perform the functions for which authorization is requested.

**§ 183.49 Authorized functions.**

(a) Consistent with an ODA Holder's qualifications, the Administrator may delegate any function determined appropriate under 49 U.S.C. 44702(d).

(b) Under the general supervision of the Administrator, an ODA Unit may perform only those functions, and is subject to the limitations, listed in the ODA Holder's procedures manual.

**§ 183.51 ODA Unit personnel.**

Each ODA Holder must have within its ODA Unit—

(a) At least one qualified ODA administrator; and either

(b) A staff consisting of the engineering, flight test, inspection, or maintenance personnel needed to perform the functions authorized. Staff members must have the experience and expertise to find compliance, determine conformity, determine airworthiness, issue certificates or issue approvals; or

(c) A staff consisting of operations personnel who have the experience and expertise to find compliance with the regulations governing the issuance of pilot, crew member, or operating certificates, authorizations, or endorsements as needed to perform the functions authorized.

**§ 183.53 Procedures manual.**

No ODA Letter of Designation may be issued before the Administrator approves an applicant's procedures manual. The approved manual must:

(a) Be available to each member of the ODA Unit;

(b) Include a description of those changes to the manual or procedures that may be made by the ODA Holder. All other changes to the manual or procedures must be approved by the Administrator before they are implemented.

(c) Contain the following:

(1) The authorized functions and limitations, including the products, certificates, and ratings;

(2) The procedures for performing the authorized functions;

(3) Description of the ODA Holder's and the ODA Unit's organizational structure and responsibilities;

(4) A description of the facilities at which the authorized functions are performed;

(5) A process and a procedure for periodic audit by the ODA Holder of the ODA Unit and its procedures;

(6) The procedures outlining actions required based on audit results,



including documentation of all corrective actions;

(7) The procedures for communicating with the appropriate FAA offices regarding administration of the delegation authorization;

(8) The procedures for acquiring and maintaining regulatory guidance material associated with each authorized function;

(9) The training requirements for ODA Unit personnel;

(10) For authorized functions, the procedures and requirements related to maintaining and submitting records;

(11) A description of each ODA Unit position, and the knowledge and experience required for each position;

(12) The procedures for appointing ODA Unit members and the means of documenting Unit membership, as required under § 183.61(a)(4) of this part;

(13) The procedures for performing the activities required by § 183.63 or § 183.65 of this part;

(14) The procedures for revising the manual, pursuant to the limitations of paragraph (b) of this section; and

(15) Any other information required by the Administrator necessary to supervise the ODA Holder in the performance of its authorized functions.

#### **§ 183.55 Limitations.**

(a) If any change occurs that may affect an ODA Unit's qualifications or ability to perform a function (such as a change in the location of facilities, resources, personnel or the organizational structure), no Unit member may perform that function until the Administrator is notified of the change, and the change is approved and appropriately documented as required by the procedures manual.

(b) No ODA Unit member may issue a certificate, authorization, or other approval until any findings reserved for the Administrator have been made.

(c) An ODA Holder is subject to any other limitations as specified by the Administrator.

#### **§ 183.57 Responsibilities of an ODA Holder.**

The ODA Holder must—

(a) Comply with the procedures contained in its approved procedures manual;

(b) Give ODA Unit members sufficient authority to perform the authorized functions;

(c) Ensure that no conflicting non-ODA Unit duties or other interference affects the performance of authorized functions by ODA Unit members.

(d) Cooperate with the Administrator in his performance of oversight of the ODA Holder and the ODA Unit.

(e) Notify the Administrator of any change that could affect the ODA Holder's ability to continue to meet the requirements of this part within 48 hours of the change occurring.

#### **§ 183.59 Inspection.**

The Administrator, at any time and for any reason, may inspect an ODA Holder's or applicant's facilities, products, components, parts, appliances, procedures, operations, and records associated with the authorized or requested functions.

#### **§ 183.61 Records and reports.**

(a) Each ODA Holder must ensure that the following records are maintained for the duration of the authorization:

(1) Any records generated and maintained while holding a previous delegation under subpart J or M of part 21, or SFAR 36 of this chapter.

(2) For any approval or certificate issued by an ODA Unit member (except those airworthiness certificates and approvals not issued in support of type design approval projects):

(i) The application and data required to be submitted under this chapter to obtain the certificate or approval; and

(ii) The data and records documenting the ODA Unit member's approval or determination of compliance.

(3) A list of the products, components, parts, or appliances for which ODA Unit members have issued a certificate or approval.

(4) The names, responsibilities, qualifications and example signature of each member of the ODA Unit who performs an authorized function.

(5) A copy of each manual approved or accepted by the ODA Unit, including all historical changes.

(6) Training records for ODA Unit members and ODA administrators.

(7) Any other records specified in the ODA Holder's procedures manual.

(8) The procedures manual required under § 183.53 of this part, including all changes.

(b) Each ODA Holder must ensure that the following are maintained for five years:

(1) A record of each periodic audit and any corrective actions resulting from them; and

(2) A record of any reported service difficulties associated with approvals or certificates issued by an ODA Unit member.

(c) For airworthiness certificates and approvals not issued in support of a type design approval project, each ODA Holder must ensure the following are maintained for two years;

(1) The application and data required to be submitted under this chapter to obtain the certificate or approval; and

(2) The data and records documenting the ODA Unit member's approval or determination of compliance.

(d) For all records required by this section to be maintained, each ODA Holder must:

(1) Ensure that the records and data are available to the Administrator for inspection at any time;

(2) Submit all records and data to the Administrator upon surrender or termination of the authorization.

(e) Each ODA Holder must compile and submit any report required by the Administrator to exercise his supervision of the ODA Holder.

#### **§ 183.63 Continuing requirements: Products, parts or appliances.**

For any approval or certificate for a product, part or appliance issued under the authority of this subpart, or under the delegation rules of subpart J or M of part 21, or SFAR 36 of this chapter, an ODA Holder must:

(a) Monitor reported service problems related to certificates or approvals it holds;

(b) Notify the Administrator of:

(1) A condition in a product, part or appliance that could result in a finding of unsafe condition by the Administrator; or

(2) A product, part or appliance not meeting the applicable airworthiness requirements for which the ODA Holder has obtained or issued a certificate or approval.

(c) Investigate any suspected unsafe condition or finding of noncompliance with the airworthiness requirements for any product, part or appliance, as required by the Administrator, and report to the Administrator the results of the investigation and any action taken or proposed.

(d) Submit to the Administrator the information necessary to implement corrective action needed for safe operation of the product, part or appliance.

#### **§ 183.65 Continuing requirements: Operational approvals.**

For any operational authorization, airman certificate, air carrier certificate, air operator certificate, or air agency certificate issued under the authority of this subpart, an ODA Holder must:

(a) Notify the Administrator of any error that the ODA Holder finds it made in issuing an authorization or certificate;

(b) Notify the Administrator of any authorization or certificate that the ODA Holder finds it issued to an applicant not meeting the applicable requirements;

(c) When required by the Administrator, investigate any problem

concerning the issuance of an authorization or certificate; and

(d) When notified by the Administrator, suspend issuance of similar authorizations or certificates until the ODA Holder implements all corrective action required by the Administrator.

**§ 183.67 Transferability and duration.**

(a) An ODA is effective until the date shown on the Letter of Designation,

unless sooner terminated by the Administrator.

(b) No ODA may be transferred at any time.

(c) The Administrator may terminate or temporarily suspend an ODA for any reason, including that the ODA Holder:

(1) Has requested in writing that the authorization be suspended or terminated;

(2) Has not properly performed its duties;

(3) Is no longer needed; or

(4) No longer meets the qualifications required to perform authorized functions.

Issued in Washington, DC, on September 30, 2005.

**Marion C. Blakey,**

*Administrator.*

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