

ORDER

DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION

8120.6

9/14/81

SUBJ: ENFORCEMENT OF FAR 21.165

1. **PURPOSE.** This order contains guidance material pertinent to the enforcement of 21.165(a) and/or (b) at FAA Production Certificate holders.

2. **DISTRIBUTION.** This order is distributed to the branch level or above in the Office of Airworthiness in Washington, to the section level or above in the Flight Standards Divisions in the Regions, and to the Engineering and Manufacturing and Flight Standards District Offices.

3. **BACKGROUND.** The FAA has a dual responsibility in the administration of FAR 21.165, the first being that of verification that Production Certificate holders have established and are maintaining a quality control system that complies with the intent of the appropriate FAR requirements. The other is that of performing a sufficient amount of surveillance over the Production Certificate holder's operation to establish that the product manufactured in accordance with the established quality control system conforms to the type design and is in a condition for safe operation. The primary objective of the FAA compliance and enforcement program is to promote aviation safety and protect the public interest by obtaining compliance with the FA Act of 1958 and regulations issued thereunder. Order 2150.3, Compliance and Enforcement Program should be followed for any violation of the FAR.

4. **ACTION.** It has been reported that certain FAA personnel have been interpreting FAR 21.165(a) as not enforceable unless a specific product could be associated with the breakdown of the established quality control system. This interpretation is not consistent with the one made by AGC-200 in a letter dated February 28, 1980. The basic points addressed in this interpretation are in the following paragraphs; which are to be used as guidance in processing violations of FAR 21.165:

a. FAR's 21.165(a) and 21.165(b) are separate and independent regulations. A violation of 21.165(a) may be enforced independently of 21.165(b).

b. FAR 21.165(a) may be enforced whenever there is a violation of the regulation which occurs at the point in which the established quality control system failed to detect the nonconforming article. A violation of FAR 21.165(a) also has occurred if the quality control system is not maintained in conformity with the data and procedures approved for the production certificate. A violation of FAR 21.165(a) may be enforced when there is sufficient evidence to establish that such a violation has occurred. The initiation of enforcement proceedings is not predicated upon the total

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abandonment of the quality control system. It is **not** necessary to find **non-conforming/unsafe** articles under the provisions of FAR 21.165(b) to enforce FAR 21.165(a), when other evidence will prove a violation **of** FAR 21.165(a).

c. Section 901(a)(1) of the Federal Aviation **Act** of 1958, states that **any** person **who** violates any rule, regulation, or order issued under the specified parts of the Act is subject to a civil **penalty not to exceed** \$1,000 for each such violation. FAR's 21.165(a) and 21.165(b) are regulations issued **under** those parts. **Therefore**, any violation of these regulations is **subject to** either a civil penalty or an administrative action **taken in** accordance with the requirements of Order 2150.3, **as deemed** appropriate by the **FAA**. In certain situations, certificate action **to suspend or** revoke the production certificate in accordance with Section 609 of the Act **may be an appropriate** enforcement action.



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