



U.S. Department
of Transportation
**Federal Aviation
Administration**

Memorandum

Subject: **ACTION:** Designated Engineering Representative (DER) compliance findings to 14 CFR Part 21 requirements.

Date: **JUN 21 2004**

From: Manager, Aircraft Engineering Division, AIR-100

Reply to
Attn. of:

To: All Aircraft Certification Offices

This memo is to clarify national policy regarding Designated Engineering Representative (DER) compliance findings to 14 CFR Part 21 requirements. Following the guidance in this memo will ensure that Part 21 compliance findings are only made by appropriately authorized DERs and that the Federal Aviation Administration (FAA) Form 8110-3 is only used to approve documents that are appropriate for FAA approval.

DER authority is prescribed by 14 CFR Part 183 (Part 183). Part 183 section 183.29 describes what each of the different types of DERs may approve according to their technical discipline. For example, a structural DER may “approve structural engineering information...whenever the representative determines that information and other structural considerations comply with the applicable regulations of this chapter”. There are no provisions in Part 183 for the FAA to delegate certification procedures of 14 CFR Part 21 to a DER.

There are currently only two established means for a DER to approve data as compliant with the requirements of Part 21. These are “PMA by Identity” and “TSO Software”, and each requires the DER to be given a special delegation in addition to their technical authority. The delegation of PMA Identity is prescribed by 8100.8 and 8110.42 and the delegation of TSO Software is prescribed by AIR-100 Policy Memo 2001-01.

I am aware that some offices are allowing DERs to make findings of compliance to other Part 21 requirements and we must discontinue this practice. Compliance findings to Part 21 sections such as issue of type certificate (21.21), type design (21.31), tests and inspections (21.33), minor changes to type design (21.95), designation of applicable regulations (21.101), and supplemental type certificates (21.113) are neither authorized nor are they appropriate for a DER finding of compliance.

This position is supported by the following description of each misused section:

1. § 21.21 Issue of type certificate..., prescribes the conditions when an applicant is entitled to a TC. It is not a specific compliance finding.
2. § 21.31 Type Design, defines what is included in the type design. There is no compliance finding that can be made to this section.
3. § 21.33 Inspections and tests, gives the Administrator the authority to make inspections and tests as a means of finding compliance but no compliance finding is made to 14CFR 21.33.
4. § 21.95 Approval of minor changes in type design, allows the Administrator to accept a system for approving minor design changes. It is not the applicable regulation for the approval of minor design changes. Even if a system is accepted that prescribes using a DER to approve minor changes, the applicable regulations to which the DER finds compliance would be the airworthiness requirements found in the certification basis for the product, not 14CFR 21.95.
5. § 21.101(b)(1) Designation of applicable regulations, allows the Administrator to make a finding that a change is not significant in order for an applicant to use earlier amendments of the current rules. Although there is an FAA finding that can be made, and it is possible to delegate this finding, it is not a compliance finding made by DERs and it would not be appropriate on an FAA Form 8110-3.
6. § 21.113 Requirement of a supplemental type certificate prescribes the requirement for a person to apply for an STC. There is no finding of compliance that can be made to this section.
7. § 21.601 through 621 Technical Standard Order Authorizations, DERs have not been authorized to make compliance findings to support TSO authorization except for TSO Software approvals made under 21.601(b)(2).

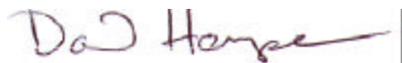
Additionally, some data submittals should not be approved by a DER on FAA Form 8110-3. Documents such as certification plans, compliance checklists, conformity plans, project schedules, and a proposed certification basis are all valued by the FAA for their contribution to effective project management. However, none of them is appropriate for approval by a DER via FAA form 8110-3 indicating they are compliant with the 14 CFR regulations. It is acceptable and often desirable for an appropriately authorized DER to submit these documents via letter or signed cover page indicating that the DER has reviewed the submittal and has found it to be acceptable for the FAA project. In this case, the DER can be authorized to use their DER number and title to indicate that their review was performed as an FAA representative. This would not be in conflict with 8100.8B paragraph 701i which states "...using a designee ID number when signing company or personal reports, drawings, service documents, or letters is not allowed", because the submittal is intended for the FAA and not for internal use by the applicant.

The misuses referenced above are very often by Management and Administrative DERs. It must be recognized that the Management DER and Administrative DER are not actually DER types with authority prescribed by Part 183 but rather special authorizations that were introduced by FAA policy in FAA Order 8110.37. These authorizations were established to recognize certain individual's capability to provide assistance to the ACO in administrative and project management aspects of certification.

Specifically, Management DERs can be useful contributors to the success of certification projects by reviewing certification plans, certification basis, compliance and conformity plans along with managing the applicant's DER data submittals and compliance activity. Administrative DERs can add value by coordinating applicant submittals and compliance activity. Since there is no compliance finding authority necessary for these administrative or management functions there is no data that a Management or Administrative DER, nor any other DER, can approve via FAA Form 8110-3.

In order for the FAA to better utilize the services of our DERs I have asked the policy team responsible for the 8110.37 to develop a new form for the purpose of documenting DER administrative and project management functions. The form would be used by the DER to document their non-compliance-finding roles such as reviewing certification plans or compliance checklists, proposing certification basis, or assuring projects are complete. If you would like to provide input into the design of this form, please contact Kevin Kendall in the Delegation and Airworthiness Programs Branch, AIR-140, tel. (405) 954-7074.

Please take the necessary actions to ensure that your DERs are operating per this guidance.

A handwritten signature in dark ink, appearing to read "Dave W. Hempe", followed by a vertical line.

Dave W. Hempe