



**Comments to the Federal Aviation Administration on the Airplane Fuel Efficiency Certification
Notice of Proposed Rule Making, 87 Fed. Reg. 36,076 (Jun. 15, 2022)**

Submitted to the Federal eRulemaking Portal Docket Number FAA-2022-0241

**Submitted by the
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August 15, 2022

Docket Operations, M-30
U.S. Department of Transportation (DOT)
1200 New Jersey Avenue SE, Room W12-140
West Building Ground Floor
Washington, DC 20590-0001

Ralph Iovinelli
Office of Policy, International Affairs & Environment, Emissions Division (AEE-300)
Federal Aviation Administration
800 Independence Avenue SW
Washington, DC 20591

Dear Mr. Iovinelli:

Please accept these comments on the FAA's Airplane Fuel Efficiency Certification NPRM, published at 87 Fed. Reg. 36,076 (Jun. 15, 2022).

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Who is MARPA?

The Modification and Replacement Parts Association was founded to support FAA Parts Manufacturer Approval (“PMA”) manufacturers and their customers. Aircraft parts are a vital sector of the aerospace and defense industry, and MARPA acts to represent the interests of the manufacturers of this vital resource before the FAA and other government agencies.

MARPA is a Washington, D.C.-based, non-profit association that supports its members’ business efforts by promoting excellence in production standards for PMA parts. The Association represents its members before aviation policy makers, giving them a voice in Washington D.C. to prevent unnecessary or unfair regulatory burden while at the same time working with aviation authorities to help improve the aviation industry’s already-impressive safety record.

MARPA represents a diverse group of manufacturing interests – from the smallest companies to the largest - all dedicated to excellence in producing aircraft parts. Nearly all MARPA members are small businesses under the SBA’s guidance.

MARPA members are committed to supporting the aviation industry with safe aircraft components. MARPA members manufacture and sell parts and repairs that provide equal or better levels of reliability when compared to their original equipment manufacturer competitors. They also work with customers to produced approved parts that improve reliability, performance, efficiency, and obtain weight savings.

MARPA strongly supports efforts to reduce emissions while maintaining and enhancing aviation safety.

Comments

General

MARPA appreciates the opportunity to provide comments on this Notice of Proposed Rulemaking (NPRM). MARPA and its members support the FAA fulfilling its statutory obligations to enhance fuel efficiency under the Clean Air Act while at the same time focusing on its mission to protect aviation safety.

MARPA seeks clarification that the proposed rule applies only to Type Certificated Products

Issue

The Background to the NPRM, the Discussion of the Proposal, the Regulatory Impact Analysis, and the discussion of the Regulatory Flexibility Act make clear that the rule applies only at the Type Certification level, but experience has shown that without specific language to the contrary, the rule in the future could be inadvertently applied to PMA manufacturers.

Analysis

The Background to the NPRM explains that in 2009 the ICAO Council and the Group on International Aviation and Climate Change released a “Programme of Action” that included as a goal the development of a standard for CO₂ “emissions from subsonic airplanes.”¹ The standard setting process involved *inter alia* “aircraft and engine manufacturers”² but not PMA manufacturers or small businesses. One of the guiding principles included the idea that “any standard reflect[] a manageable and appropriate level of resources to be expended by . . . manufacturers.”³

The Discussion of the Proposal focuses repeatedly on emission standards for “airplanes” and the fuel efficiency metric at the time the airplane was type-certificated.⁴ The Discussion also references 40 C.F.R. part 1030, the regulations adopted by the EPA to implement these aircraft emission standards.⁵ Those regulations identify only type certificated aircraft and aircraft engines (in 40 C.F.R. part 87) as subject to the applicability of the EPA regulations.⁶ The EPA regulations also define “aircraft,” “aircraft engine,” and “airplane” by reference to Title 14 of the Code of Federal Regulations.⁷ This is logical, because the context of the rule and NPRM make clear that the focus is on the fuel efficiency of the aircraft and engines at type certification, prior to receipt of an original certificate of airworthiness.⁸ The rule does not contemplate applicability at the piece-part level.

¹ See Airplane Fuel Efficiency Certification Notice of Proposed Rule Making, 87 Fed. Reg. 36,076, 36,076 (Jun. 15, 2022).

² Id.

³ Id. at 36,077 (emphasis added).

⁴ E.g., id. at 36,078.

⁵ See, e.g., id. at 36,077 (“[T]he EPA adopted regulations limiting the GHG emissions from certain airplanes in 40 CFR part 1030.”).

⁶ 40 C.F.R. § 1030.1.

⁷ Id. at § 1030.105.

⁸ See 87 Fed. Reg. at 36,078 (“Airplanes manufactured after [the applicable effective date] would not be eligible for an original certificate of airworthiness unless compliance with part 38 has been shown.”).

The Regulatory Impact Analysis (RIA) states that “[t]he FAA identified three U.S. manufacturers that would be affected by the proposed rule.”⁹ The required Regulatory Flexibility Act analysis agreed with the RIA that “three U.S. manufacturers that would be affected by the proposed rule” and “all three manufacturers are large businesses.”¹⁰ This analysis indicates that only major TC-PC holders are contemplated as affected by the proposed rule.

Although the background, discussion, and regulatory analyses make clear that the rule applies only to Type Certificated Products, experience has shown that inadvertent misapplications of regulatory language can result in very harmful interventions by well-meaning FAA employees, who seek to enforce onerous requirements against small business manufacturers to whom the rules do not apply.

For instance, it would be easy for an ACO to misapply proposed § 38.11. That section reads: “For each airplane subject to this part, or to determine whether a modification makes an airplane subject to this part under the change criteria of § 38.19, a fuel efficiency metric value must be calculated, using the following equation”¹¹ Although the change criteria described in § 38.19 and the discussion of changed airplanes¹² in the preamble make clear the modifications described apply to only limited type certification criteria (e.g., maximum takeoff mass, significant changes in fuel efficiency metric), it is possible that an ACO could view the word “modification” as applying to *any* modification, down to the piece part level. So, a PMA manufacturer who changed the material composition of a part to improve safety and reliability may be inadvertently subjected to this rule if the material change increased the weight of the part.

The language of the preamble makes clear that such an interpretation is not the intention or goal of the rule. Virtually all PMA manufacturers are small businesses. The Regulatory Flexibility Analysis concluded that the proposed rule affected only three business, each of which is a “large business.”¹³ Further, “the head of FAA certifie[d] that this rulemaking will not result in a significant economic impact on a substantial number of small entities.”¹⁴ This is consistent with the fact that no small business manufacturers appear to have been engaged in the CO₂ standard-setting process¹⁵ as well as the guiding principle that “implementation of any standard reflect[] a manageable and appropriate level of resources to be expended by . . . manufacturers.”¹⁶ Applying the rule to PMA manufacturers would have “a significant economic impact on a substantial number of small entities.” Performing a full fuel efficiency metric analysis would be cost prohibitive for a PMA manufacturer producing individual replacement parts, and that is before one ever reaches the practical reality that the relevant TC-PC holder data would simply not be available to a third party to perform such an analysis.

⁹ Id. at 36,081 (emphasis added).

¹⁰ Id.

¹¹ Id. at 36,085 (emphasis added).

¹² “An airplane that was type-certificated before the applicable compliance date listed in § 38.1 may be required to demonstrate compliance with the fuel efficiency standard if certain modifications to the airplane that, in general, would affect the fuel efficiency of the airplane, are incorporated after January 1, 2023 (§ 38.1(a)(4) and (5)).” Id. at 36,078.

¹³ Id. at 36,081.

¹⁴ Id.

¹⁵ See id. at 36,076.

¹⁶ Id. at 36,077.

The language of the Discussion and the already enacted EPA rule also confirm that the rule applies only during the type certification process to Type-Certificated Products, as well as when significant changes are made to those type designs. The requirements and fuel efficiency analyses do not apply to replacement part manufacturers producing FAA-PMA parts at the piece-part level.

The FAA, EPA, ICAO, and industry stakeholders have done well to develop requirements that reduce CO₂ emissions while also considering and defending against harmful impacts on small businesses. MARPA requests that the FAA issue clarifying language in the preamble to the final rule to make clear that this rule does not apply to PMA manufacturers. Such language will avoid the potential devastating consequences to small businesses of inadvertent misapplication of this well-meaning and important rule.

Recommendation

MARPA recommends the adoption of the following text in the preamble to the final rule:

This rule applies only to design and approval of Type Certificated Products. It does not apply to PMA manufacturers of modification and replacement parts under Part 21 Subpart K.

Conclusion

MARPA supports the FAA's efforts to limit CO₂ emissions and respectfully requests the clarifications outlined above.

Respectfully Submitted,



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