UNITED STATES OF AMERICA
FEDERAL AVIATION AGENCY
WASHINGTON, D. C.

Civil Air Regulations - New Part 9a

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AIRCRAFT AIRWORTHINESS;

SURPLUS MILITARY AIRCRAFT

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[Reg. Docket No. 1677]

## PART 9a—AIRCRAFT AIRWORTHINESS; SURPLUS MILITARY AIRCRAFT

### Certification of Surplus Military Aircraft

There is hereby being adopted Part 9a of the Civil Air Regulations, "Aircraft Airworthiness; Surplus Military Aircraft." The purpose of this part is to provide a basis for the certification of surplus military aircraft in the normal, utility, acrobatic, and transport categories.

Part 9a was published as a notice of proposed rule making in the FEDERAL REGISTER [28 F.R. 3555] on April 11, 1963, and circulated as Notice No. 63–13.

The current Part 9 was promulgated in November 1946, at which time a considerable number of surplus military aircraft were being offered for sale to the public. At the same time, there was an increasing need for aircraft in civil use. The aircraft industry, however, was not able to meet these needs. Part 9 permitted certification of surplus military aircraft in the limited category upon a finding that the service record had been satisfactory, that the particular aircraft was in a good state of preservation and repair, and that it was in a condition for safe operation. Carriage of cargo or passengers for hire was not permitted in these aircraft.

Because Part 9 was based upon conditions in the aviation industry existing in 1946, and known to be of a temporary nature, time limitations were established for type certification of aircraft in the limited category. In this regard, surplus military aircraft for which application for type certificate was made after 1947 were no longer eligible for certification under Part 9. To operate these aircraft, it was necessary to certificate them in the normal, utility, acrobatic, or transport category or in the restricted category under the provisions of Part 8 of the Civil Air Regulations.

Certification in accordance with Part 8 permits only special purpose operations. Aircraft certificated under this part also are not permitted to carry cargo or passengers for hire. Under these circumstances, a purchaser of a surplus military aircraft has often been confronted with the fact that the only way to certificate the aircraft was in accordance with the provisions of Part 3, 4b, 6, or 7.

Provisions of Parts 3, 4b, 6, and 7 prescribe that compliance be shown with the requirements of these parts effective on the date of application for a type certificate. Since the regulations are amended as the state of the art progresses in the aviation industry, demonstration of compliance with many of the current airworthiness requirements by an aircraft which was designed many years previously could be so burdensome and costly as to be prohibitive.

Part 9a is being adopted to permit a greater utilization of more recent surplus military aircraft. Such aircraft may be certificated under Part 9a in the normal, utility, acrobatic, or transport categories if found to conform, not to the airworthiness requirements in effect on the date of application for a type certificate, but to specified earlier versions of Part 3, 4b, 6, or 7 of the Civil Air Regulations. Part 9a also provides that aircraft which are counterparts of previously type certificated civil aircraft may be certificated upon compliance with the regulations governing the original type certificate. Surplus military aircraft, when certificated under Part 9a, will be eligible for the same type of operations as other civil aircraft for which a standard airworthiness certificate has been issued; e.g., they may be used for the carriage of cargo and passengers for hire.

In a comment received in response to Notice No. 63–13, it is pointed out that there are certain military aircraft in current production which although designed and first manufactured in the mid 1950's, have not been declared surplus because of their exceptional capability and performance. It was recommended that the proposal be expanded to permit the certification under Part 9a of such military type aircraft currently in production which have not been declared to be surplus. As stated in Notice No. 63–13, Part 9 of the Civil Air Regulations contains the current certification requirements for surplus military aircraft. However, since type certification of surplus military aircraft has not been possible under Part 9 since 1947, it was proposed to promulgate a new Part 9a to provide again a basis for the type certification of such military aircraft declared surplus by the military services. Therefore, the recommendation to expand the rule to cover military type aircraft in current production which have not been declared surplus, goes beyond the scope of the proposal, and requires consideration of matters not anticipated nor covered in Notice No. 63–13. Under such circumstances the Agency has determined that such a substantive change in the provisions of the Notice should not be made without further study and an opportunity for comment by all interested persons. Accordingly, the matter of broadening the scope of the regulations as recommended will be given further consideration by the Agency and if such a change is deemed appropriate, it will be the subject of further rule making action.

It has come to the attention of the Agency that there may be some confusion as to the date when particular aircraft are accepted for operational use by the military services for the purposes of this regulation. Therefore, a new provision has been added to the regulation as proposed to make it clear that the date of acceptance for operational use is the date that the first aircraft of a particular model is accepted for operational use by the military services.

A comment was received indicating that the general "equivalent level of safety" provisions in Parts 3, 4b, 6, and 7 would not be sufficient in the certification of surplus military aircraft. The Agency realizes that compliance with all of the specific regulations might not be practical in the case of surplus military aircraft. Such aircraft have been constructed to a somewhat different design philosophy than civil aircraft.

In such cases compliance, even on the basis of "equivalent level of safety," might require extensive modifications not commensurate with the relatively small increase in safety achieved by compliance. For this reason, a new provision, § 9a.2(h), is being added which permits deviations from the detailed requirements if it is shown that strict compliance would impose a severe burden and if it is found that, with the deviation, substantially the same level of airworthiness is achieved as would have been achieved by strict compliance.

It is recognized, with respect to engines and propellers used on surplus military aircraft, that in many cases these items have not been type certificated by the FAA. To obtain certification in accordance with Parts 13 and 14 of the Civil Air Regulations could be extremely expensive. In view of this, a provision is being included which permits engines and propellers to be approved for use in aircraft certificated under Part 9a if, on the basis of their military qualifications and acceptance and their service record, it is found that such engines and propellers provide substantially the same level of airworthiness as would be provided if they were type certificated under Parts 13 and 14. In general, the military service record for an engine, propeller, or related accessory would consist of a summary of all accidents in which the engine or propeller or related accessory was found to be a probable or contributing cause, hours of operation, and a pertinent technical orders. The applicant will be expected to obtain the information covering the military service record. If, however, the applicant presents evidence from the military services that such information can be released to the Agency but not to the applicant, the appropriate regional office of the Agency will assist in obtaining it.

Comments on the notice of proposed rule making raised the question as to how much military data would be accepted by the Agency in showing compliance with the requirements for certification under Part 9a. The Agency expects to make use of whatever data, including military, are presented in showing compliance with the regulations. The intent of Part 9a is to facilitate as much as practical the certification of surplus military aircraft.

A comment was also received expressing concern that the Agency would certificate surplus military aircraft under Part 9a and make the data available to the public in those cases where the same type aircraft had obtained prior certification directly under the provisions of Part 3, 4b, 6 or 7. The comment contends that this would be unfair to the person holding the original type certificate. The Agency anticipates that insofar as the military makes data available to the public for use in showing compliance with the requirement of Part 9a such data would continue to be available to the public after certification under Part 9a. However, all other data used in showing compliance with the certification requirement of Part 9a

would be treated the same as data used in obtaining a type certificate under any other Part of the Civil Air Regulations.

Interested persons have been afforded an opportunity to participate in the making of this regulation, and due consideration has been given to all relevant matter presented.

This regulation is subject to the FAA Recodification Program announced in Draft Release 61-25 (26 F.R. 10698). This recodification, however, will not result in any substantive change in the rules as adopted herein.

In consideration of the foregoing, Part 9a of the Civil Air Regulations is hereby adopted, to read as hereinafter set forth, effective January 10, 1964:

Issued in Washington, D.C., on December 5, 1963.

N. E. HALABY,
*Administrator.*

## PART 9a—AIRCRAFT AIRWORTHINESS; SURPLUS MILITARY AIRCRAFT

Sec.
9a.0 Applicability.
9a.1 Eligibility for type certificates.
9a.2 Type certification requirements.

AUTHORITY: §§ 9a.0 to 9a.2 issued under secs. 313(a), 601, 603, Federal Aviation Act of 1958 (49 U.S.C. 1354, 1421, 1423).

### § 9a.0 Applicability.

This part establishes the standards for the type certification of surplus military aircraft of the United States in the normal, utility, acrobatic, and transport categories.

### § 9a.1 Eligibility for type certificates.

To be eligible for type certification under the provisions of this part, the aircraft must be:

(a) Designed and constructed in the United States, accepted for operational use by the military services of the United States, and declared surplus by such military services; and

(b) Shown to comply with the applicable certification requirements prescribed in § 9a.2.

### § 9a.2 Type certification requirements.

(a) Except as otherwise provided in this section, airplanes having a maximum certificated weight of 12,500 pounds or less must be shown to comply with the requirements listed in either subparagraph (1) or (2) of this paragraph, as applicable.

(1) Airplanes powered with reciprocating engines:

(i) Accepted for operational use by the military services on or before May 15, 1956—Part 3 of this chapter (Civil Air Regulations) effective on May 15, 1956, or, at the option of the applicant, effective at a later date;

(ii) Accepted for operational use by the military services after May 15, 1956—Part 3 of this chapter (Civil Air Regulations) effective at the time the airplane was accepted for operational use by the military service, or, at the option of the applicant, effective at a later date.

(2) Airplanes powered with turbine engines:

(i) Accepted for operational use by the military services on or before October 1, 1959—Part 3 of this chapter (Civil Air Regulations) effective on October 1, 1959 (Part 3 as amended to May 15, 1956, including Amendments 3-1 through 3-5), or, at the option of the applicant, effective at a later date; and

(ii) Accepted for operational use by the military services after October 1, 1959—Part 3 of this chapter (Civil Air Regulations) effective at the time the airplane was accepted for operational use by the military service, or, at the option of the applicant, effective at a later date.

(b) Except as otherwise provided in this section, airplanes having a maximum certificated weight of more than 12,500 pounds must be shown to comply with the requirements listed in either subparagraph (1) or (2) of this paragraph, as applicable.

(1) Airplanes powered with reciprocating engines:

(i) Accepted for operational use by the military services on or before August 25, 1955—Part 4b of this chapter (Civil Air Regulations) effective on August 25, 1955 (Part 4b as amended to December 31, 1953, including Amendments 4b-1 and 4b-2), or, at the option of the applicant, effective at a later date; and

(ii) Accepted for operational use by the military services after August 25, 1955—Part 4b of this chapter (Civil Air Regulations) effective at the time the airplane was accepted for operational use by the military service, or, at the option of the applicant, effective at a later date.

(2) Airplanes powered with turbine engines:

(i) Accepted for operational use by the military services on or before October 1, 1959—Part 4b of this chapter (Civil Air Regulations) effective on October 1, 1959 (Part 4b as amended to December 31, 1953, including Amendments 4b-1 through 4b-11), together with Special Civil Air Regulation SR-422B, or, at the option of the applicant, effective at a later date; and

(ii) Accepted for operational use by the military services after October 1, 1959—Part 4b of this chapter (Civil Air Regulations), and such other regulations as are applicable, effective at the time the airplane was accepted for operational use by the military service, or, at the option of the applicant, effective at a later date.

(c) Except as otherwise provided in this section, rotorcraft having a maximum certificated weight of 6,000 pounds or less must be shown to comply with the requirements listed in either subparagraph (1) or (2) of this paragraph, as applicable.

(1) Rotorcraft accepted for operational use by the military services on or before October 1, 1959—Part 6 of this chapter (Civil Air Regulations) effective on October 1, 1959 (Part 6 as amended to December 20, 1956, including Amendments 6-1 through 6-4), or, at the option of the applicant, effective at a later date.

(2) Rotorcraft accepted for operational use by the military services after October 1, 1959—Part 6 of this chapter (Civil Air Regulations) effective at the time the rotorcraft was accepted for operational use by the military service, or, at the option of the applicant, effective at a later date.

(d) Except as otherwise provided in this section, rotorcraft having a maximum certificated weight of more than 6,000 pounds must be shown to comply with the requirements listed in either subparagraph (1) or (2) of this paragraph, as applicable.

(1) Rotorcraft accepted for operational use by the military services on or before October 1, 1959—Part 7 of this chapter (Civil Air Regulations) effective on October 1, 1959 (Part 7 effective August 1, 1956, including Amendments 7-1 through 7-4), or, at the option of the applicant, effective at a later date.

(2) Rotorcraft accepted for operational use by the military services after October 1, 1959—Part 7 of this chapter (Civil Air Regulations) effective at the time the rotorcraft was accepted for operational use by the military service, or, at the option of the applicant, effective at a later date.

(e) For the purposes of paragraphs (a) through (d) of this section, the date of acceptance for operational use by the military services is the date that the first aircraft of a particular model is accepted for operational use by the military services.

(f) Aircraft which are counterparts of previously type certificated civil aircraft may be certificated upon compliance with the regulations governing the original type certificate.

(g) Engines, propellers, and their related accessories installed in surplus military aircraft to be type certificated in accordance with the provisions of this part may be approved for use on such aircraft if, on the basis of the previous military qualifications and acceptance and service record, it is shown that such engines and propellers provide substantially the same level of airworthiness as would be provided if the engines or propellers were type certificated under the provisions of Parts 13 and 14 of this chapter (Civil Air Regulation).

(h) In cases where the applicant has shown to the satisfaction of the Administrator, with respect to a particular aircraft being submitted for type certification, that strict compliance with a specific provision of the applicable requirements prescribed in paragraphs (a) through (f) of this section would impose a severe burden on the applicant, the Administrator may accept such compliance as he finds will provide substantially the same level of airworthiness as is provided by the specific provision of the requirements. In such cases, evidence of satisfactory military service experience may be considered in determining whether the level of airworthiness is substantially the same as that which would be provided by strict compliance with the specific provisions of the applicable requirements.

(i) In cases where the Administrator finds that, with respect to a particular aircraft being submitted for type certification, compliance with the applicable requirements prescribed in paragraphs (a) through (h) of this section will not insure an adequate level of airworthiness for such aircraft, compliance must be shown with such special conditions and later requirements as he finds necessary.

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