



OPINION No 04/2010

OF THE EUROPEAN AVIATION SAFETY AGENCY

of 26 August 2010

**for a Commission Regulation XXX/2010 laying down Implementing Rules
for Pilot Licensing**

I. General

1. The purpose of this Opinion is to assist the Commission in laying down Implementing Rules for Pilot Licensing. Regulation (EC) No 216/2008¹ of the European Parliament and of the Council (hereinafter referred to as the 'Basic Regulation') as amended by Regulation (EC) No 1108/2009² establishes an appropriate and comprehensive framework for the definition and implementation of common technical requirements and administrative procedures in the field of civil aviation.
2. The objective of the proposed rule was to create requirements that are proportionate to the privileges of the licence concerned and to provide clarity, legal certainty and enforceability of the regulatory text. It has taken into account the development of European Union and international law (ICAO), and the harmonisation with the rules of other authorities of the European Union main partners as set out in the objectives of Article 2 of the Basic Regulation. Further on it has been based on ICAO Standards and Recommended Practices as well as on adopted Joint Aviation Requirements (JARs), and it is in strict adherence with EU law, specifically with the Basic Regulation. The proposed rule was drafted with due consideration to safety, regulatory principles and to the current distribution of text between hard and soft law. Also, provisions deriving from NPAs to JAR-FCL that were in an advanced phase of adoption in the Joint Aviation Authorities (JAA) system, but did not undergo the full regulatory process due to the closure of the JAA are included.

II. Consultation

3. NPA 2008-17 was published on the website of the European Aviation Safety Agency (the Agency) on 5 June 2008 for consultation of all interested parties in accordance with Article 52 of the Basic Regulation and Articles 5(3) and 6 of the Rulemaking Procedure³.
4. NPA 2008-17 was divided into three separate documents:
 - NPA 2008-17a contained the Explanatory Note to the NPA with detailed explanatory memorandums for both Part-FCL and Part-Medical, as well as cross-reference tables between JAR-FCL 1, 2 and 3 and the proposals presented in the NPA.
 - NPA 2008-17b contained draft proposals for Implementing Rules (IR) and related AMC and GM for the licensing of pilots (Part-FCL).
 - NPA 2008-17c contained draft proposals for IR and related AMC and GM for the medical certification of pilots (Part-MED).
5. In addition, the Regulatory Impact Assessment (RIA) for Part-FCL was published at the end of October 2008, as NPA 2008-22f, and was open for consultation until 15 April 2009.
6. Due to the amount of comments received, and in accordance with the work programme established by the Agency in agreement with the Commission and the Management Board, it was decided that the Comment Response Document (CRD) for NPA 2008-17 would be divided and published in phases.

¹ Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC (OJ L 79, 19.03.2008, p. 1).

² Regulation (EC) No 1108/2009 of the European Parliament and of the Council of 21 October 2009 amending Regulation (EC) No 216/2008 in the field of aerodromes, air traffic management and air navigation services and repealing Directive 2006/23/EC (OJ L 309, 24.11.2009, p. 51).

³ Management Board Decision concerning the procedure to be applied by the Agency for the issuing of opinions, certification specifications and GM ("Rulemaking Procedure"), EASA MB 082007, 13.6.2007.

7. In reviewing and replying to the comments and making the necessary changes to the text of the NPA, the Agency was supported by the FCL.001 review group⁴. This group was created in accordance with the Rulemaking Procedure and it included the members of the FCL.001 core drafting group as well as other experts from the Agency, NAAs and industry, who had not been involved in the initial drafting phase. The Agency also relied on additional expertise whenever the complexity of the issues so required, and as it is highlighted in some cases in Annex II to the CRD to NPA 2008-17b.
8. The CRD to NPA 2008-17b (Part-FCL) was published on the Agency's website on 9 April 2010. All comments received to NPA 2008-17b were acknowledged and incorporated into the different parts of the CRD as appropriate, together with the responses of the Agency.
9. The CRD for NPA 2008-17b was open for reactions from stakeholders for a period of 2 months, as established in the Rulemaking Procedure. By the closing date of 9 June 2010 for the CRD to NPA 2008-17b, the Agency had received a total amount of 534 reactions from over 200 commentators, including National Aviation Authorities, professional organisations, non-profit general aviation organisations, private companies and individual persons. All reactions received to the CRD for NPA 2008-17b were acknowledged and considered for the final drafting of the Opinion for the "Implementing Rules for Pilot Licensing".

III. Content of the Opinion of the Agency

10. The Basic Regulation empowers the Commission to adopt Implementing Rules for the implementation of the Basic Regulation and the essential requirements for pilot licensing that shall reflect the state of the art, including best practices and scientific and technical progress, in the field of pilot training.
11. The present Opinion contains the Agency's proposals for Implementing Rules to the Basic Regulation concerning the licensing of all pilots involved in the operation of aircraft referred to in Article 4(1)(b) and (c) of the Basic Regulation, and the certification of instructors and examiners involved in the training and checking of those pilots. These proposals are based on the requirements of JAR-FCL 1 and 2, the Standards and Recommended Practices of ICAO Annex 1 and also on existing national regulations.
12. The Opinion covers all aeroplane and helicopter licences and ratings that were included in JAR-FCL 1 and 2. In addition, it includes proposals for:
 - new licences for other categories of aircraft: sailplanes, balloons, airships and powered-lift aircraft;
 - a new Light Aircraft Pilot Licence (LAPL) for pilots involved in non-commercial operations of non-complex aircraft with a maximum take-off mass (MTOM) up to 2000 kg;
 - new ratings for specific activities: the sailplane towing and banner towing ratings, the aerobatic rating, the mountain rating, and ratings for pilots conducting category 1 and 2 flight tests.
13. The text proposed in this Opinion reflects the changes made to the initial proposals of the Agency (as published in NPA 2008-17b) as a result of the public consultation (as published in the CRD to the NPA), as well as some changes that were made to reflect the reactions received to the CRD.
14. A total of 534 reactions were received on the CRD. The distribution of the reactions with regard to the different Subparts is shown in table 1 below.

⁴ The composition of the review group can be found on the Agency's website under <http://easa.europa.eu/rulemaking/comment-response-documents-CRDs-and-review-groups.php>.

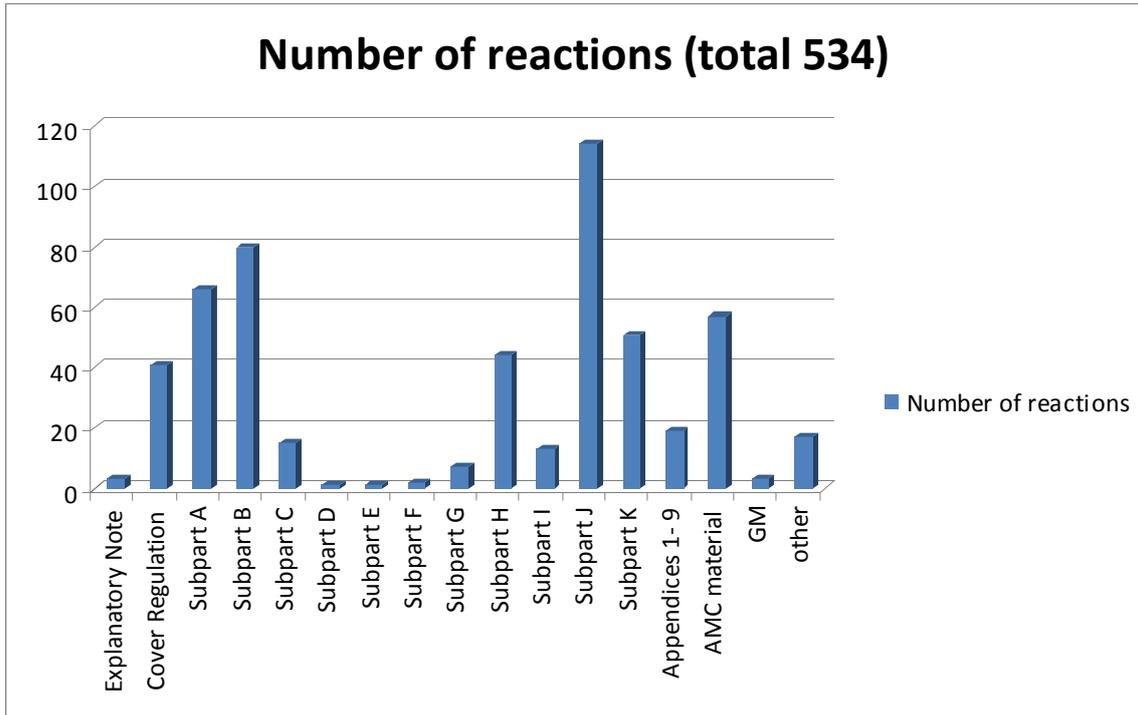


Table 1: Distribution of reactions on the CRD

15. After a careful evaluation of the reactions received, the following changes were applied to the text of the CRD:
- a. editorials, text standardisation and clarification issues;
 - b. changes that were related to comments to the NPA that had been accepted by the Agency but where the corresponding text changes had been omitted in the CRD;
 - c. improvement of text that had been added in the CRD, following comments received on the NPA; and
 - d. a change to the text concerning the curtailment of privileges of holders of balloon, sailplane, powered-lift aircraft and airship licences, aged 60 to 65 years and engaged in commercial air transport (FCL.065), following comments and reactions to the CRD and in order to align the rule with practices in several Member States.
16. With reference to 15. a. above, the editorial changes were necessary because the reactions to the CRD as well as proof-reading in the Agency showed inconsistencies of text in the CRD. Examples of these changes are:
- a. standardised use of abbreviations such as replacing "touring motor glider" by "TMG", "approved training organisation" by "ATO", "multi-crew co-operation" by "MCC", "Simulator" and "flight simulator" by "FFS", "flight examiner" by "FE", etc.;
 - b. standardised use of capital letters such as changing "Section" to "section", "Paragraph" to "paragraph" but also "this part" to "this Part", etc.;
 - c. standardisation of terminology such as replacing "simulators" or "flight simulators (FS)" by "FFS", "authority" by "competent authority", "powered-lift" by "powered-lift aircraft", "Part-OPS" by "applicable air operations requirements", etc.
17. With reference to 15. c. above, the reactions received led to some changes:
- a. Subpart A: the definition 'Cruise relief co-pilot' was amended. The definition had been added in the CRD following comments to the NPA. The Agency then received numerous reactions to this new definition and considered them as valuable arguments to clarify the text.

- b. Subpart B: FCL.110.S was amended by the addition of a requirement for a 50 km solo cross-country flight for the LAPL(S).
 - c. Subpart C:
 - i. clarification that the holder of a PPL may act as an instructor for remuneration also for ratings and certificates included in the PPL or LAPL;
 - ii. the sizes of the balloon envelopes were reclassified.
 - d. Subpart J:
 - i. FCL.905.FI was amended in order to extend the privileges of the Flight Instructor (FI) to conduct flight instruction for the issue, revalidation or renewal of a Mountain Instructor (MI) and a Synthetic Training Instructor (STI) certificate
 - e. Appendices 1 – 9:
 - i. Appendix 3 covers the requirements for the training courses for the issue of a CPL and an ATPL. An additional paragraph was added to chapter 'A. ATP integrated course – Aeroplanes' to be in line with chapter 'B. CPL/IR integrated course – Aeroplanes':

"(f) 5 hours to be carried out in an aeroplane certificated for the carriage of at least 4 persons that has a variable pitch propeller and retractable landing gear." This wording had been accepted for chapter 'B. CPL/IR integrated course – Aeroplanes' after having received comments to the NPA. The reaction stated that given the fact that both training courses lead basically to the same licence, namely a CPL/IR (A), and that the practical training is identical for both training courses, the above mentioned paragraph should be added also to chapter 'A. ATP integrated course – Aeroplanes';
 - ii. Appendix 7 covers the test requirements for the skill test for the issue of an Instrument Rating. A reaction has been received stating that certain items in the check items list should be referenced with '°', indicating that these items '°shall be performed by sole reference to instruments'. This change was already agreed by the FCL.001 review group during the review of the NPA but the CRD had not been amended accordingly prior to publication;
 - iii. Appendix 9 covers the training, skill test and proficiency check for MPL, ATPL, class and type ratings, and proficiency check for instrument ratings. In Appendix 9, A. paragraph 6 the wording concerning the duration of the check has been amended. Reactions to the CRD pointed out that the reference to the use of Full Flight Simulators (FFS) for the check was not in accordance with JAR-FCL and the duration of the check did not seem adequate for certain types of tests or checks. Therefore, the obligation to use FFS whenever available was reinforced, and the duration of the test or check for IR and single-pilot class or type ratings was changed to 60 minutes.
18. With reference to 15. d. above, taking into account both the comments received to the NPA and the reactions to the CRD, and after further analysis of ICAO Annex 1, 2.1.10 and JAR-FCL 1 and 2, the Agency reconsidered this paragraph and decided to change it for certain categories of aircraft. The relevant comments and reactions requested a complete removal of the limitation of commercial privileges between ages 60 to 64 for sailplane, balloon, airships and powered-lift aircraft. The main arguments were that the ICAO rule only covers international flights, that retirement rules in Europe do not cover these pilots who would have to stop flying at the age of 60 as they are piloting single-pilot aircraft in commercial air transport operations and that, in some Member States, balloon pilots are not submitted to any age limit under national regulations. The Agency decided to keep the requirements according to ICAO Annex 1 for the aeroplane and helicopter categories as this had already been regulated in JAR-FCL 1 and 2 and to allow

for all other categories the exercise of privileges in commercial air transport operations until the age of 65 years without restriction. The limit of 65 years for commercial air transport operations was kept for all pilots for reasons of consistency with ICAO Annex 1, and keeping in mind that the ICAO requirement is well based on a safety risk analysis. The above mentioned change represents a difference to ICAO Annex 1 and the Member States should be aware that they should file a difference to ICAO on this item.

19. Apart from the changes mentioned above, the Agency has received reactions on the content of Appendices 1 - 9 from two important stakeholder groups:
 - a. an organisation representing a group of airlines. This organisation requested that the content of Appendices 1 – 9 should be transferred to AMC to enable Member States to develop alternative AMCs for the implementation of competency-based and evidence-based training and checking immediately after the completion of the related ICAO document;
 - b. an organisation representing a group of airline pilots. This organisation requested that the content of Appendices 1 – 9 should remain in the rule text to avoid that training, testing and checking of pilots would follow different regulations in different Member States as they consider that as a threat to safety.

The Agency is actively involved in the ICAO work on competency and evidence-based training and recognises the importance of this new training method and supports its implementation. However, the future ICAO document will cover entirely new training, testing and checking methods which will have an impact on the whole set of the corresponding regulations and result in major changes. This should be dealt with in a separate rulemaking task that has already been introduced in the Rulemaking Programme in accordance with the Rulemaking Procedure. For this reason, and also to stay in line with present regulations, the Agency therefore decided to keep the content of Appendices 1 - 9 in the rule.

20. Some reactions on Subparts B and C are focussing on the crediting or acceptance of flight time on Annex II aircraft in order to fulfil the recency or crediting requirements for the LAPL or PPL. The Agency is aware that a clarification of this issue is needed and it will be included in the rulemaking task FCL.002.

Cologne, 26 August 2010

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