

OPINION No 02/2006

OF THE EUROPEAN AVIATION SAFETY AGENCY

On the opportunity to amend Article 7.3(c) of Commission Regulation (EC) No 2042/2003, on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks

I. General

1. The purpose of this opinion is to clarify the Agency's position as regards the opportunity to postpone the ultimate date of entry into force of the provisions of 145.A.30(g) and 145.A.30(h)(1) as applicable to large aircraft with a maximum take-off mass of more than 5700kg (28 September 2006), set by Article 7.3.(c) of Commission Regulation (EC) No 2042/2003¹
2. The Opinion has been adopted, following the procedure specified by the Agency's Management Board², in accordance with the provisions of Article 14 of Regulation (EC) No 1592/2002³.

BACKGROUND:

3. On 20 November 2003 the European Commission adopted Commission Regulation (EC) No 2042/2003. Appendix II of this regulation (Part-145) establishes that certifying staff must be properly qualified in accordance with the provisions of its annex III (Part 66). Part 66 is based on JAR-66. The implementation of JAR-66 had started in 1998, and the JAA member states had agreed to all start implementation before 2001 with an end of the transition period for the conversion of national qualifications into JAR-66 licences fixed at 2011.
4. When setting up Commission Regulation (EC) No 2042/2003 it was agreed that such a long transition was not necessary and that full benefit of Community action in this field would be better achieved by an immediate application. Though the implementation of JAR-66 had started in 1998, some JAA member states acknowledged that it had been postponed in their country. They therefore asked for the possibility to delay the implementation of Part 66 until 28 September 2006 for large aircraft and 28 September 2008 for small aircraft as the latter had not been regulated by the JAA. This was accepted and Article 7.3(c) of Commission Regulation (EC) 2042/2003 provides the basis for this opt-out possibility.
5. When analysing the situation relative to the use of this opt-out clause, it appears that:
 - All the Member and associated⁴ States have opted to use Article 7. 3 (c) second line of Commission Regulation (EC) 2042/2003.
 - All the Member and associated States, except one, have opted to use Article 7. 3 (c) third line of Commission Regulation (EC) 2042/2003.

As a consequence it is clear that when opting out all States subject to the provisions of Part 145 knew that they had to plan the issuing of, or the conversion of national licences into, Part 66 licences in order to fully comply by 28 September 2006 with the provisions

¹ Commission Regulation (EC) No 2042/2003 of 20 November 2003 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks (OJ L 315, 28.11.2003, p. 1). Regulation as amended by Commission Regulation (EC) No 707/2006 of 8 May 2006 (OJ L 122, 9.5.2006, p. 17)

² Decision of the Management Board concerning the procedure to be applied by the Agency for the issuing of Opinions, Certifications Specifications and Guidance Material ("Rulemaking Procedure"). EASA MB/7/03 of 27.06.2003.

³ Regulation (EC) No 1592/2002 of the European Parliament and of the Council of 15 July 2002 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency (OJ L 240, 7.09.2002, p. 1.). Regulation as last amended by Commission Regulation (EC) 1701/2003 of 24 September 2003 (OJ L 243, 27.9.2003, p. 5).

⁴ Associated States are Iceland, Lichtenstein, Norway and Switzerland.

of this Part related to certifying staff qualifications for line and base maintenance of aircraft with a maximum take-off mass of more than 5700kg.

6. As regards the current state of readiness to comply with this date of entry into force, the oversight performed by the Agency shows the following situation:
 - Half of the Member and associated States had started converting national qualifications into, and issuing, Part 66 licences and will be in a position to fully comply on time.
 - Nine Member and associated States had started the same process; they are however late and consider that they will have difficulties to meet the target date of compliance.
 - Four out of the twenty-eight Member and associated States subject to these requirements were far behind schedule and were not in a position to comply on time. Three of them had not even yet established any conversion reports.

On 31 January 2006, the Agency sent to the European Commission its annual standardisation report, highlighting the critical status of Part 66 conversion process versus the deadline of 28 September 2006.

7. The question was then whether the length of the transition period should be extended taking into account all the implications of such an extension.

II. Consultation

8. A Notice of Proposed Amendment – NPA 08/2006⁵ - was published on the Agency website (www.easa.europa.eu) on 12 July 2006, according to the EASA standard rulemaking procedure. The consultation period had been limited to six weeks from the date of the NPA publication in order to gather and answer the comments and to be in a position to issue an Opinion before 28 September 2006.
9. By the closing date of 21 August 2006, the Agency had received 15 comments from 12 national authorities, professional organisations and private persons.
10. All comments received have been acknowledged and incorporated into a Comment Response Document (CRD), which is published together with this Opinion on the Agency's web site. This CRD contains a list of all persons and organisations that have provided comments and the responses of the Agency.
11. All the received comments, except one, support the option not to postpone the date of entry in force of the provisions of part 145 related to certifying staff qualifications for line and base maintenance of aircraft with a maximum take-off mass of more than 5700kg. No Member States informed that they will have difficulties to implement the current regulation.
12. According to Article 8 of the EASA standard rulemaking procedure, the Executive Director should not adopt his opinion in respect of the issue in question before 2 months following the date of publication of the comment response document in order to allow sufficient time for stakeholders to react to its content. However, for the reasons presented

⁵ <http://www.easa.europa.eu/doc/Rulemaking/NPA/NPA-08-2006.pdf>

in paragraph 8 above, the opinion of the Agency must be made public as soon as possible so that all stakeholders know that the provisions of article 7.3 (c) of Commission Regulation (EC) No 2042/2003 will not be amended and that accordingly entry into force (28 September 2006) of the provisions of part 145 related to certifying staff qualifications for line and base maintenance of aircraft with a maximum take-off mass of more than 5700kg will not be postponed.

III. Content of the Opinion of the Agency

13. Based on the results of the CRD (refer to paragraph 11), the European Aviation Safety Agency suggests the Commission not to amend Article 7.3(c) to the Commission Regulation (EC) No 2042/2003.

IV. Regulatory Impact Assessment

14. Sectors affected

The main sector affected is that of the large aircraft operators. As maintenance engineers who do not hold a Part 66 licence would not be able to release these aircraft to service, operators would have to find appropriately qualified persons to do so.

Maintenance organisations unable to hire properly licensed engineers could lose part of their contracts as they would not comply during a transitional period with the provisions of Part 145.

Some maintenance engineers themselves would lose the privileges they enjoyed under the national systems until their qualifications are converted.

National Aviation Authorities, which have not converted national qualifications into, or issued enough, Part 66 licences, would have to intensify efforts and face infringement procedures launched by the European Commission.

15. Impact on Safety:

The decision to maintain the agreed date of entry in force is in principle the most conducive to improving safety in the Community as only aircraft that have been subject to appropriate verification by engineers meeting the best qualification requirements, may be released to service.

It may however push some Member States rushing in converting national qualifications into Part 66 licences without proper justification/conversion report and granting undue privileges to some maintenance engineers. This may of course have safety implications if unfit aircraft were therefore released to service.

This risk seems however limited for large aircraft that are subject to additional surveillance by continuing airworthiness maintenance organisations. Moreover the Agency role is to conduct standardisation inspections to verify that such practice will not happen or will be immediately followed by appropriate remedial action.

16. Economic impact:

In principle this option should have no global economic impact as the investment to convert to the new regulatory regime adopted by the Community has to be made any how

so that all stakeholders enjoy the benefit brought by the completion of the internal market in this field.

The possible shortage of licensed engineers in some Member States may lead to delays in the release of aircraft to service and induce significant indirect costs to operators. This could also affect the functioning of the market of certified staff and increase the average level of their salaries, with a direct effect on maintenance organisations and indirectly on their customers. However the consequences should not be exaggerated over the period needed by national aviation authorities to catch up, as the low mobility in the market of this type of certification services is likely to affect only the countries that have so far not sufficiently progressed with the conversion process.

Most National Aviation Authorities will not be affected in as much as they have already issued a sufficient number of licences. Only those that are late will have to intensify efforts, which may lead to some extra costs if they have to hire additional staff to convert all the licences from their national system to comply with Commission Regulation (EC) No 2042/2003.

17. Environmental impact:

None

18. Social impact:

Some certifying engineers who have not obtained a part 66 licence are likely to be significantly affected as they would no longer be qualified to issue releases to service to large aircraft after 28 September 2006. This could affect their employment conditions.

V. Conclusion

Based on the analysis made concerning the opportunity to delay the date of entry into force of the provisions of Part 145.A.30 (g) and Part.A.30 (h) (1) as applicable to the qualification of the certifying staff for the release to service of aircraft with a maximum take-off mass or more than 5700kg (line and base maintenance), the Agency concludes that the provisions of Article 7.3 (c) of Commission Regulation (EC) N° 2042/2003, should not be amended and that the date they specify should be maintained.

Cologne, 25 September of 2006

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