Performance Based Regulation

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A regulation is a legal provision that:

- creates, limits, or constrains a right,
- creates or limits a duty,
- or allocates a responsibility.

Aviation safety regulations can also be referred to as:

“safety risk controls used by the regulator”
Performance based rules – how did we get there?

The complexity of the aviation system

New demand on regulators

- “Value for money”
- De-regulation
- New public management

International aviation safety standards
The regulatory spectrum

- Only prescriptive
- Mainly prescriptive
- Hybrid (prescriptive/process based/performance based)
- Process/system based
- Fully performance based
In the EASA system, regulations can be divided into three broad categories:

<table>
<thead>
<tr>
<th>Authority requirements</th>
<th>Organisation requirements</th>
<th>Technical requirements &amp; standards</th>
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</thead>
<tbody>
<tr>
<td>addressing systems and processes, rights and obligations of competent authorities</td>
<td>addressing systems and processes, rights and obligations of service providers required to hold an approval</td>
<td>either applicable to individuals or to approved organisations</td>
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The Agency's approach:

- Place essential safety elements in the rules
  
  **“Hard Law”**

- Leave non-essential implementation aspects to Certification Specifications (CS) or Acceptable Means of Compliance (AMC)

  **“Soft Law”**

Despite their non-binding nature, the CS and AMC play an important role in providing sufficient flexibility in the implementation of the European Union requirements.
In practice, a combination of prescriptive and performance based regulatory elements are present at different degrees in almost all EASA rules.
Measuring performance

Multiple ways for measuring performance:

- Qualitative Interpretation
- Actual Measurement
- Predictions
- Determination of the appropriate level of risk

“information costs” both for the regulator and regulated entities
Stakeholder concerns may arise from:

- the possibility of using a variety of means of compliance,
- different “standards” being applied for accepting alternative means of compliance,
- different approach & methods to define and measure safety performance,
- more discretion provided to authorities for applying enforcement actions.
Proper change management is needed, considering all trade-offs in terms of:

- Efficiency (cost/benefit)
- Effectiveness (to mitigate safety risks / achieve the safety objectives),
- Equity and fairness
- Clarity and transparency
- Maturity of management systems (of regulators and regulated persons)
Thank you for your attention

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