



OPINION No 01/2009

OF THE EUROPEAN AVIATION SAFETY AGENCY

of 24 August 2009

for a Commission Regulation amending Commission Regulation (EC) No 1702/2003 of 24 September 2003 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations

'Possibility to deviate from airworthiness code in case of design changes'

I. General

1. The purpose of this opinion is to suggest the Commission to amend the Annex to Commission Regulation (EC) No 1702/2003¹ (hereinafter Part-21) and in particular points 21A.17 and 21A.101 related to the establishment of the certification basis for type certificates and changes to type certificates.
2. The Opinion has been adopted, following the procedure specified by the European Aviation Safety Agency's (the Agency) Management Board², in accordance with the provisions of Article 19 of Regulation (EC) No 216/2008³ (hereinafter referred to as the Basic Regulation).

II. Consultation

3. Notice of Proposed Amendment (NPA) 2008-09⁴ that contained the draft opinion for a Commission Regulation amending Part-21 was published on the Agency website on 7 May 2008.
4. By the closing date of 7 August 2008, the Agency had received 39 comments from 12 national authorities, professional organisations and private companies.
5. All comments received have been acknowledged and incorporated into a Comment Response Document (CRD), which was published on the Agency's web site on 8 April 2009. This CRD contains a list of all persons and/or organisations that have provided comments and the answers of the Agency.
6. The main intent of the NPA 2008-09 was to amend point 21A.101 of Part-21 in such a way that the same flexibility could be used in establishing the certification basis for changed products as it was perceived to exist for establishing the certification basis for type-certificates. At the same time, new text for this flexibility provision in point 21A.17 for type certificates was proposed trying to clarify its intent. However, following many adverse comments, the Agency has accepted that the proposed text did not make clear for which cases it is intended and that it would not reduce the current ambiguity. Therefore the Agency had decided to withdraw these two proposals from the NPA and to keep only the proposal related to "elect to comply" in case of changes to design. This decision was reflected in the CRD.
7. By 8 June 2009 three reactions from three commentators were received to the CRD. One reaction pointed out an inconsistency between the text of point 21A.101(a) and the new point 21A.101(f). The Agency accepts that the text of point 21A.101(f) contained an error. However instead of making the text consistent with point 21A.101(a) it decided to make the text consistent with the similar provision in point 21A.17(d).

¹ Commission Regulation (EC) No 1702/2003 of 24 September 2003 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations (OJ L 243, 27.9.2003, p. 6).

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 08-2007, 13.06.2007.

³ 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)

⁴ See Rulemaking Archives at http://www.easa.europa.eu/ws_prod/r/r_archives.php.

III. Content of the Opinion of the Agency

8. This opinion proposes to amend Part-21, in particular the provisions related to the establishment of the certification basis for type certificates and changes to type certificates. The content of these amendments is explained below.
9. When an application is made for a type certificate, the certification basis consists of the certification specifications that are applicable at the date of application and possible special conditions. If the certification specifications are amended after the application was done but before the type certificate is issued, the applicant can elect to comply with the amended specifications. This principle should also be applicable to the certification basis for changed products. Therefore the "elect-to-comply" option is added to point 21A.101 of Part-21

IV. Regulatory Impact Assessment

10. The possibility to comply with later certification specifications will allow the applicants for the approval of changes to a product to use the most up to date safety standards. This is beneficial to safety. Since the use of this provision is optional there is no negative economic impact.

Cologne, 24 August 2009

P. GOUDOU
Executive Director