



OPINION No 01/2010

OF THE EUROPEAN AVIATION SAFETY AGENCY

of 12 May 2010

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

'Subpart J DOA'

I. General

1. The purpose of this opinion is to propose to the Commission an amendment to Commission Regulation (EC) No 1702/2003¹ and its Annex (hereinafter Part 21) by including elaborated and improved requirements relating to the development of a certification programme, to extend the DOA privilege to minor revisions of the flight manual, and to include minor editorial revisions.
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. The main intent of the Notice of Proposed Amendment (NPA) 2006-16⁴ was to resolve the conflict between existing paragraphs of Part 21 in order to clarify and provide greater legal certainty on the level of Agency involvement in project related compliance verification. Specifically, the two paragraphs in question were: 21A.257(b), which allows the Agency discretionary powers to check the validity of any compliance statements made by the applicant, and 21A.263(b), which states that the Agency shall accept compliance statements without further verification.
4. A proposed concept to resolve this issue was first developed by an EASA/Authorities/Industry rulemaking group. Notice of Proposed Amendment (NPA) 2006/16 that contained the draft opinion for a Commission Regulation amending Regulation (EC) No 1702/2003 was published on the Agency's website on 12 October 2006.
5. By the closing date of 12 January 2007, the Agency had received 158 comments from 35 national authorities, professional organisations and private companies.
6. Comments received on NPA 16/2006 indicate that opinion was split. Some of the issues raised included: a possible reduction in safety due to a reduced level of Agency involvement in product certification, the Agency's inability to access certification data, the balance between organisation and product certification, etc. As a consequence, considerable internal debate was undertaken to try to reconcile these issues and opposing positions.
7. All comments received were acknowledged and incorporated into a Comment Response Document (CRD), which was published on the Agency's website on 16 September 2008. This CRD contains a list of all persons and/or organisations that have provided comments and the answers of the Agency.

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), as last amended by Commission Regulation (EC) No 1194/2009 of 30 November 2009.

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), as last amended by Regulation (EC) No 1108/2009 of the European Parliament and of the Council of 21 October 2009.

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

8. The published CRD included a revised proposal and introduced changes aimed at providing a clearer demarcation of responsibilities between the applicant and the Agency. Due to the controversial nature of this task, the Executive Director of the Agency extended the reaction period from the normal two months to three months, closing on 16th December 2008.
9. A Review Group set-up in accordance with the Agency's rulemaking procedure did not support the revised concept. Furthermore, the Agency received 86 reactions to the CRD from stakeholders following publication of the CRD, many of which indicated a lack of support for the main concepts.
10. The Agency acknowledges that the concept proposed in CRD 16/2006 is not mature and that it requires further review and elaboration before it can be considered for inclusion in Part 21. However, the Agency also recognised that certain aspects of the proposals that are non-controversial, namely the introduction of a certification programme and the extension of DOA privileges to approve minor revisions to flight manuals, should continue for inclusion in Part 21.

Therefore, the Agency has decided to withdraw from this NPA the proposed changes to paragraphs 21A.38, 21A.114, 21A.257 and the related changes in AMC and GM to Part 21 and to retain proposed changes to 21A.20, 21A.21, 21A.33, 21A.97, 21A.103, 21A.115, 21A.263, 21A.433 (with minor changes to reflect the reduced scope of this proposal).

11. Those issues that remain controversial, including the scope of DOA, the balance between DOA and product certification and the level and nature of Agency involvement in product certification will be subject to further Agency review as part of an on-going internal task related to the Agency's strategic direction and role.

III. Content of the Opinion of the Agency

12. This opinion proposes to amend Part 21, in particular the provisions related to the demonstration of compliance with the type-certification basis and environmental protection requirements and the possibility to extend DOA approvals to allow minor revisions of the flight manual without the Agency's involvement.
13. The introduction of a requirement for the applicant to provide the Agency with a certification programme is intended to formalise existing practice and is already included as part of the published Agency certification procedures.
14. Privileges extended to a Design Organisation Approval (DOA) holder under 21A.263(c)(4) to approve certain aircraft flight manual changes without the involvement of the Agency are inconsistent with the identification of *minor* under 21A.91. The nature of 'documentary changes to aircraft flight manuals' has been a recurrent problem. 21A.263(c)(4) is therefore amended to refer to 'minor revisions' (to be defined in the associated AMC&GM), covering both technical changes to AFM associated with minor design changes under 21A.91 together with other non-technical documentary changes as defined today.

IV. Regulatory Impact Assessment

15. This amendment is expected to have no impact on safety.

16. The introduction of the certification programme (21A.20) is already standard practice and will have no economic impact on applicants. Its introduction in Part 21 will however enshrine existing practice into EU law and provide a clear obligation on the applicant.
17. The new possibility to extend DOA privileges to approve minor revisions to flight manuals will have a moderate positive economic impact. It will allow suitably endorsed DOA holders to approve minor revisions to flight manuals without any delays caused by the need for Agency involvement, and it will alleviate the Agency from performing a task which has no or little safety benefit.
18. No equity and fairness issues were identified.

Cologne, 12 May 2010

P. GOUDOU
Executive Director