



European Aviation Safety Agency

**COMMENT RESPONSE DOCUMENT (CRD)
TO NOTICE OF PROPOSED AMENDMENT (NPA) 2008-22B & 2009-02D**

**for an Agency Opinion on a Commission Regulation establishing the
Implementing Rules for authority requirements**

and

**a draft Decision of the Executive Director of the European Aviation Safety
Agency on Acceptable Means of Compliance and Guidance Material related to
the Implementing Rules for authority requirements**

“Authority Requirements”

CRD b.1 – Cover Regulation

Proposal for a
COMMISSION REGULATION
on Authority Requirements

THE COMMISSION OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Union,

Having regard to 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/EC¹, amended by Regulation (EC) No 1108 of the European Parliament and of the Council of 21 October 2009² and in particular Article 7, 8, 10, and 15 thereof,

Whereas:

- (1) Regulation (EC) No 216/2008 establishes common essential requirements to provide for a high uniform level of civil aviation safety and environmental protection; it requires the Commission to adopt the necessary Implementing Rules to ensure their uniform application; it establishes the 'European Aviation Safety Agency' (hereinafter referred to as the 'Agency') to assist the Commission in the development of such Implementing Rules.
- (2) Articles 7 and 8 of Regulation (EC) No 216/2008 mandate the Commission to adopt common technical requirements and administrative procedures for air operations and personnel qualifications to ensure compliance with the essential requirements laid down in Annexes III, IV and Vb of that Regulation.
- (3) Articles 10 and 15 of Regulation (EC) No 216/2008 further mandate the Commission to adopt common measures in relation to oversight and enforcement and the establishment of an information network between the Commission, the Agency and National Aviation Authorities.
- (4) In order to ensure a smooth transition and a high level of civil aviation safety in the European Union, Implementing Rules should reflect the state of the art, including best practices, and scientific and technical progress in the field of pilot training and air operations. Accordingly, technical requirements and administrative procedures agreed under the auspices of the International Civil Aviation Organisation (hereinafter referred to as "ICAO") and the European Joint Aviation Authorities (hereinafter referred to as "JAA"), as well as existing European and national rules, should be considered.
- (5) With a view to ensuring uniformity in the application of common requirements, it is necessary that common procedures be followed by the competent authorities and, where applicable, the Agency when assessing compliance with these requirements; the Agency should develop Acceptable Means of Compliance and Guidance Material to facilitate the necessary regulatory uniformity.
- (6) It is necessary to provide sufficient time for Member State administrations to adapt to the new regulatory framework, in accordance with Article 70 of Regulation (EC) No 216/2008, and to recognise the validity of certificates issued before the entry

¹ OJ L 79, 13.3.2008, p.1.

² OJ L 309, 24.11.2009, p. 51.

into force of this Regulation under certain conditions, in accordance with Article 69 of that Regulation.

- (7) The measures provided by this Regulation are based on the Opinion issued by the Agency in accordance with Articles 17 and 19 of the Basic Regulation.
- (8) The measures provided for in this Regulation are in accordance with the Opinion of the European Aviation Safety Agency Committee established by Article 65 of the Basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Objective and scope

This Regulation establishes administrative requirements to be followed by the Agency and Member States for the implementation and enforcement of Regulation (EC) No 216/2008 and its Implementing Rules, and specifically regarding:

1. air operations;
2. personnel requirements; and
3. ramp inspections of aircraft of operators under the regulatory oversight of another State.

Article 2

Definitions

Within the scope of this Regulation:

1. 'Acceptable Means of Compliance' are non-binding standards adopted by the Agency to illustrate means to establish compliance with the Basic Regulation and its Implementing Rules;
2. 'Additional Means of Compliance' are those that propose new means to establish compliance with the Basic Regulation and its Implementing Rules for which no associated Acceptable Means of Compliance have been adopted by the Agency;
3. 'Alternative Means of Compliance' are those that propose an alternative to an existing Acceptable Means of Compliance;
4. 'Audit' means a systematic, independent and documented process for obtaining evidence and evaluating it objectively to determine the extent to which requirements are complied with;
5. 'Code share' means an arrangement under which an operator places its designator code on a flight operated by another operator, and sells and issues tickets for that flight;
6. 'Grounding' means the formal prohibition of an aircraft to take-off and the taking off such steps as are necessary to detain it;
7. 'Guidance Material' means non-binding material developed by the Agency that helps to illustrate the meaning of a requirement or specification and is used to support the interpretation of regulations and Acceptable Means of Compliance;
8. 'Inspection' means an independent documented conformity evaluation by observation and judgement accompanied as appropriate by measurement, testing or gauging, in order to verify compliance with applicable requirements;
9. 'JAR' means Joint Aviation Requirements;

10. 'Part-AR' means the Implementing Rules to Regulation (EC) No 216/2008 establishing requirements for authorities;
11. 'Prioritisation' of ramp inspections means the dedication of an appropriate portion of the total number of ramp inspections conducted by or on behalf of a competent authority on an annual basis;
12. 'Ramp inspection' means the inspection of aircraft, of flight and cabin crew qualifications, if applicable, and of flight documentation in order to verify the compliance with the applicable requirements.

Article 3

Safety Programme

1. The Member States and the Agency shall establish a safety programme aimed at continuous safety improvement.
2. This programme shall provide for a State safety plan, developed in conjunction with the safety plan of the Agency, identifying the safety priorities in terms of safety promotion and oversight.

Article 4

Oversight capabilities

1. Member States shall designate one or more entities as the competent authority(ies) within that Member State with allocated responsibilities for the certification and oversight of persons and organisations subject to Regulation No (EC) 216/2008 and its Implementing Rules.
2. If a Member State designates more than one entity as competent authority, the areas of competence of each competent authority shall be clearly defined in terms of responsibilities and geographic limitation. Coordination shall be established between those entities to ensure effective oversight of all organisations and persons subject to Regulation No (EC) 216/2008 and its Implementing Rules within their respective remits.
3. Member States shall ensure that the competent authority(ies) has(ve) the necessary capability to ensure the oversight of all persons and organisations covered by their oversight programme, including sufficient resources to fulfil the requirements of this Regulation.
4. Personnel authorised by the competent authority to carry out certification and/or oversight tasks shall be empowered to perform at least the following acts:
 - (a) examine the relevant records, data, procedures and any other material relevant to the execution of the required task;
 - (b) take copies of or extracts from such records, data, procedures and other material;
 - (c) ask for an oral explanation on site;
 - (d) enter relevant premises, operating sites or means of transport;
 - (e) perform audits, inspections, including ramp inspections and unannounced inspections;
 - (f) take enforcement measures as appropriate.

Such acts shall be carried out in compliance with the legal provisions of the relevant Member State.

Article 5

Flexibility provisions

1. When applying Article 14 (1) of Regulation (EC) No 216/2008, the notification sent by the Member State shall include at least :
 - (a) a description of the safety problem;
 - (b) the affected requirements of Regulation (EC) No 216/2008 and its Implementing Rules
 - (c) the identification of the product, part, appliance, person or organisation concerned;
 - (d) the identification of the affected activity;
 - (e) the action required and its justification;
 - (f) the time limit for compliance with the action required; and
 - (g) its applicability date.
2. When applying article 14(4) of Regulation (EC) No 216/2008, the notification sent by the Member State shall include at least:
 - (a) the requirement from which the exemption is granted;
 - (b) the reason for granting the exemption;
 - (c) the identification of the product, part, appliance, person or organisation to which the exemption applies;
 - (d) the type of operation or the activity concerned;
 - (e) the applicability date and the duration of the exemption;
 - (f) a reference to previous similar exemptions, if any; and
 - (g) evidence demonstrating that the level of safety is not adversely affected, including, if applicable, a description of the related mitigation measures.
3. When applying article 14(6) of Regulation (EC) No 216/2008, the notification sent by the Member State shall include at least:
 - (a) the requirements from which the Member State intends to derogate;
 - (b) the reason for granting the derogation;
 - (c) the identification of the product, part, appliance, person or organisation to which the derogation applies;
 - (d) the conditions that the Member State has put in place to ensure that an equivalent level of protection is achieved; and
 - (e) evidence demonstrating that an equivalent level of protection is ensured.

Article 6

Transitional arrangements

Within a maximum period of 12 months from the entry into force of this Regulation, Member States' competent authorities shall transfer to the Agency all records related to the oversight of organisations for which the Agency is the competent authority in accordance with Article 21.1(b) of Regulation (EC) No 216/2008.

Article 7

Entry into force

1. This Regulation shall enter into force on the day following its publication in the Official Journal of the European Union and shall become applicable as from 8 April 2012.
2. By way of derogation from paragraph 1, Member States' competent authorities
 - (a) may elect to update their administrative procedures to comply with this Regulation within a maximum period of 12 months from the date of applicability of this Regulation;
 - (b) may elect to accomplish in 2012 at least 90% of the minimum annual quota of points calculated in accordance with AR.GEN.415.
3. When a Member State makes use of the provisions of paragraph 2, it shall notify the Commission and the Agency. This notification shall describe the justification for such derogation as well as the programme for implementation containing actions envisaged and related timing.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, XXXX.

For the Commission