

OPINION No 05/2007

OF THE EUROPEAN AVIATION SAFETY AGENCY

**on the opportunity to amend Regulation (EC) No 1702/2003 as regards the
implementing rules related to environmental certification of aircraft and
related products, parts and appliances**

Noise Certificates

I. General

1. The purpose of this opinion is to clarify the Agency's position as regards the opportunity to amend the system for administering noise certification documentation of individual aircraft as laid down in Part 21 of Commission Regulation (EC) No 1702/2003¹.
2. The Opinion has been adopted, following the principle of 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. Regulation (EC) No 1592/2002 establishing the EASA system for aviation safety and environmental compatibility makes the Community responsible for regulating all aspects of aircraft noise certification. Its implementing rule, Commission Regulation (EC) No 1702/2003 prescribes that EU Member States have to use EASA Form 45 as noise certificate.
4. In recent years the ICAO Committee of Aviation Environmental Protection (CAEP) developed rules and guidance material on noise certification documentation to amend Annex 16 to the Chicago Convention, Volume I, Aircraft Noise. Following that work, Attachment G of Annex 16, Volume I, Fourth Edition, Amendment 8 became applicable on 24 November 2005 to include three different options for the administration of noise certification documentation that needs to be on board aircraft to enjoy free movement as prescribed by the Chicago Convention. Choice among these options is for ICAO Contracting States to decide.
5. ICAO Option 1 is one document (noise certificate) where all information is contained in a single one page document.
6. ICAO Option 2 consists of two complementary documents. The first document attests noise certification, but is limited to identification of the aircraft and the statement of compliance. The second one contains additional information (such as noise levels), normally as an approved page or pages of the Aircraft Flight Manual (AFM) or the Aircraft Operating Manual (AOM).
7. ICAO Option 3 is a system consisting of three complementary documents. The first document is identical to the first document of ICAO Option 2. The second one is similar to the second document of Option 2 containing all possible noise

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). Regulation as amended by Commission Regulation (EC) No 335/2007 (OJ L 88, 29.3.2007, p. 40).

² Decision of the Management Board amending and replacing Decision 7-03 concerning the procedure to be applied by the Agency for the issuing of opinions, certifications specifications and guidance material. EASA MB Decision 08-2007 of 13.6.2007 ("Rulemaking Procedure").

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, 7.9.2002, p. 1.). Regulation as last amended by Commission Regulation (EC) No 334/2007 (OJ L 88, 29.3.2007, p. 39).

configurations of the aircraft. The third one, issued in accordance with a regulated process, identifies the current aircraft configuration by associating a unique identifier to the actual maximum take-off mass (MTOM).

8. As Commission Regulation (EC) No 1702/2003, already mandated a system consistent with the above described ICAO Option 1, it was amended by Commission Regulation (EC) No 335/2007, to adapt the EASA Form 45 to the format adopted by ICAO in the above mentioned Attachment G of Annex 16, Volume I, Fourth Edition, Amendment 8.

II. Consultation

9. In reaction to the above mentioned change of ICAO Annex 16, several stakeholders called for an amendment of Commission Regulation 1702/2003 in order to transpose into Community law the flexibility so introduced in the system administering noise certification documentation, as the current legislation only allowed implementing the above described ICAO Option 1. The Agency published an Advanced Notice of Proposed Amendment (A-NPA 13-2006) on 23 August 2006, to seek stakeholders' views about the need for such a change and examine various possible options for noise certification documentation: the three ICAO ones, plus three variations thereof.
10. By the closing date of 23 November 2006 the Agency had received 102 comments from 19 national authorities, professional organisations and private companies. All comments received have been acknowledged and incorporated into a Comment Response Document (CRD), which was published on the Agency's website on 30 April 2007. This CRD contains all comments received and the answers of the Agency.
11. Fourteen comment providers made a distinctive statement on their preference concerning the six different options, which were discussed in the A-NPA. The majority, eight comment providers mainly from NAAs, but also from manufacturers and from one professional organisation, were in support of maintaining the current system as it is in place by using EASA Form 45. Also a substantive number of comment providers (six out of 14) were in support of leaving it to the aircraft owners or operators to choose from one of the three ICAO options as described above. These statements were made by professional organisations, one operator, one manufacturer and one NAA.
12. Based on the A-NPA and the CRD the Agency issued on 11 June 2007 a preliminary Regulatory Impact Assessment (pre-RIA), which concluded that the best option was to do nothing and stick to ICAO Option 1 already reflected by Form 45. The pre-RIA, which is attached for information purposes as an appendix to this opinion, was presented to the Agency's advisory bodies for rulemaking (the Safety Standards Consultative Committee and the Advisory Group of National Authorities) to justify that no rulemaking activity would be undertaken to change Regulation 1702/2003. Although not unanimously supported, this suggestion was broadly accepted.

III. Content of the Opinion of the Agency

13. The reason for issuing noise certificates is to demonstrate that the aircraft complies with the noise requirements as laid down in Annex 16, Volume I of the Chicago Convention (as transposed into EC law by Article 6 of Regulation (EC) No 1592/2002) and is therefore entitled to free movement as provided for by that convention. It is the Agency's opinion that this function is adequately provided for by the current system adopted by the Community under Regulation 1702/2003 for administering noise information (EASA Form 45).
14. The noise certificate, although documenting technical information including the maximum take-off mass and noise level(s), is not primarily intended to provide input for purposes other than noise certification. The Agency acknowledges, however, that some airport authorities use the data included in noise certificates for other purposes, such as calculating landing fees or implementing operational restrictions.
15. The Agency recognises the need for, and the benefits of, such measures to reduce aviation environmental impact around airports. It is questionable nevertheless that the technical data available on the noise certificates, whatever their form, provide sufficient data for such purposes. To be fair these measures should be based on noise levels associated with the actual operating take-off and landing conditions, such as actual masses, flap settings and use of special noise abatement procedures. While ICAO Resolution A36-22 recognises that operating restrictions should be based on the noise performance as yielded by the certification process, it does not restrict that to only the data available in the noise certificate. The certification process may indeed yield the supplementary noise levels that are needed to achieve this objective with the necessary flexibility to actually fully take into account the actual operating circumstances.
16. Based on the results of the CRD and the pre-RIA, the Agency is of the opinion that rulemaking under the EASA system is not an appropriate option to address the issue at stake and will therefore not engage in that direction. It suggests instead that action be taken on the proper legal basis to establish and introduce measures more appropriate to address the needs of aircraft and airports operators concerning aircraft noise related information in daily operation. It also suggests that the Commission undertake a coordinated action at international level to examine whether ICAO standards could be adapted as appropriate. In such a context the Agency would be willing to provide any additional technical noise data that would assist all stakeholders in implementing a more flexible approach when operational or economic measures are used to reduce the environmental impact of aviation in aerodrome surroundings.

Cologne, 18 December 2007

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Executive Director