



Opinion No 08/2013

Additional Airworthiness Requirements for Operations

RELATED NPA/CRD 2012-13 — RMT.0110 (21.039(κ)) — 18/09/2013

EXECUTIVE SUMMARY

In the Joint Aviation Authorities system, JAR-26 was introduced to make certain important newly introduced airworthiness requirements applicable to aircraft in service. Up till now, these requirements were enforced through national law, which will become obsolete through the full implementation of the new EU Operations rules by 28 October 2014. Therefore, JAR-26 needs to be transposed into the EU regulatory framework.

This Opinion proposes a new Commission Regulation with an Annex called 'Part-26', containing the high-level safety objective, applicability, and compliance period for each of the proposed measures. This Regulation will be complemented by an Agency Decision containing the Certification Specifications providing the standard means to comply with the high-level requirements of Part-26.

The proposals in this Opinion are based on JAR-26 Amendment 3, adapted, when necessary, for consistency with other current applicable requirements, and to address some identified implementation issues.

The proposed regulation is expected to maintain the safety level as established through JAR-26.

Applicability		Process map	
Affected regulations and decisions:	Part-26, Part-ORO	Concept Paper:	No
Affected stakeholders:	Operators of large aeroplanes	Rulemaking group:	No
Driver/origin:	safety	Terms of Reference:	09/08/2010
Reference:		RIA type:	Light
		Technical consultation during NPA drafting:	No
		Publication date of the NPA:	2012/Q3
		Duration of NPA consultation:	3 months
		Review group:	No
		Focussed consultation:	No
		Publication date of the Decision:	2014/Q4

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1. Procedural information

1.1. The rule development procedure

The European Aviation Safety Agency (hereinafter referred to as the 'Agency') developed this Opinion in line with Regulation (EC) No 216/2008¹ (hereinafter referred to as the 'Basic Regulation') and the Rulemaking Procedure².

This rulemaking activity is included in the Agency's Rulemaking Programme for 2013 under RMT.0110 (21.039(k)). The scope and timescale of the task were defined in the related Terms of Reference (see process map on the title page).

The draft text of this Opinion has been developed by the Agency. All interested parties were consulted through NPA 2012-13³. 54 comments were received from interested parties, including industry, national aviation authorities, professional organisations, and private companies.

The Agency has addressed and responded to the comments received on the NPA. The comments received and the Agency's responses are presented in the Comment-Response Document (CRD) 2012-13⁴. 4 reactions on the CRD were received from interested parties, including industry and national aviation authorities.

The final text of this Opinion (i.e. Explanatory Note and draft regulations) has been developed by the Agency.

The process map on the title page summarises the major milestones of this rulemaking activity.

1.2. The structure of this Opinion and related documents

Chapter 1 of this Opinion contains the procedural information related to this task. Chapter 2 'Explanatory Note' explains the core technical content. The draft rule text proposed by the Agency is published on the Agency's website⁵ together with this Opinion.

1.3. The next steps in the procedure

This Opinion contains a proposed new Union regulation on Additional Airworthiness Requirements for Operations with an Annex referred to as 'Part-26'. The Opinion is addressed to the European Commission, which uses it as a technical basis to prepare a legislative proposal.

The related Certification Specifications CS-26, that provide the standard means to show compliance of products with the requirements of Part-26, will be published as a Decision of the Executive Director of the Agency only when Part-26 is published by the European

¹ Regulation (EC) No 216/2008 of the European Parliament and 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, 19.3.2008, p. 1), as last amended by Commission Regulation (EU) No 6/2013 of 8 January 2013 (OJ L 4, 9.1.2013, p. 34).

² The Agency is bound to follow a structured rulemaking process as required by Article 52(1) of the Basic Regulation. Such process has been adopted by the Agency's Management Board and is referred to as the 'Rulemaking Procedure'. See Management Board Decision concerning the procedure to be applied by the Agency for the issuing of opinions, certification specifications and guidance material (Rulemaking Procedure), EASA MB Decision No 01-2012 of 13 March 2013.

³ In accordance with Article 52 of the Basic Regulation and Articles 5(3) and 6 of the Rulemaking Procedure.

⁴ <https://www.easa.europa.eu/rulemaking/docs/crd/2012/CRD%202012-13.pdf>

⁵ <http://easa.europa.eu/agency-measures/opinions.php>

Commission. The draft CS-26 can be found in CRD 2012-13 and will remain unchanged unless changes to Part-26 are made during the adoption process by the Commission which necessitate changing the CS as well.

2. Explanatory Note

2.1. Issues to be addressed

The safety recommendations from accident and incident investigations, technological developments, and research often lead to new or improved design standards for aircraft and are included in the Agency's Certification Specifications. These standards are only applicable to new aircraft types and to certain significant changes of existing types. However, some of these new developments, if incorporated in the existing fleet of in-service aircraft, can bring considerable safety improvement. In the Joint Aviation Authorities system, JAR-26 was introduced to make these requirements applicable to aircraft in service. Up till now, JAR-26 was enforced through national law, which will become obsolete through the full implementation of the new EU Operations rules by 28 October 2014. Therefore, JAR-26 needs to be transposed into the EU regulatory framework.

The rules for aircraft certification in Commission Regulation (EU) No 748/2012 do not provide for a possibility to impose new design standards to aircraft types that are already certified. Consequently, a new dedicated Regulation is necessary to transpose the existing set of measures as introduced in JAR-26 into the EU regulatory framework.

2.2. Objectives

The overall objectives of the EASA system are defined in Article 2 of the Basic Regulation. This proposal will contribute to the achievement of the overall objectives by addressing the issues outlined in Chapter 2.1. The specific objective of this proposal is to transfer existing JAR-26 requirements into the EU legal framework in order to maintain the level of safety that was targeted by JAR-26. Because similar provisions to the JAR-26 requirements are also included in the FAA operational rule FAR Part 121, the proposal will also achieve harmonisation with the US rules.

2.3. Outcome of the consultation

Many of the comments on the NPA related to the compatibility of the proposed Part-26 and CS-26 provisions with earlier versions of the relevant certification standards. The Agency confirmed the compatibility of these standards and where necessary included references or amended the text.

Several NPA comments questioned the adequacy of the transition period. The Agency considered the transition period adequate because:

- due to the length of the rulemaking process stakeholders already know well in advance that a requirement is being prepared;
- Part-26 is a transposition of existing JAR-26 which should have been applied by all EU operators; and
- most of the requirements originate from technological and regulatory developments that date back to more than 10–15 years.

Nevertheless, reactions on the CRD questioned the above assumption that JAR-26 was implemented in all JAA Member States and, therefore, suggested reconsidering the transition period. In addition, the reactions also foresaw some problems with providing proof of compliance to Part-26 or CS-26 by the affected operators. Based on these reactions, the Agency has decided to propose a longer transition period of two years

instead of one year. This will allow more time for the operators to show compliance. It will also allow the Agency to provide further guidance on the methods of showing compliance.

One reaction on the CRD requested adding a requirement for the type certificate holders to make available to operators a compliance to Part-26 checklist. Although the Agency agrees that such a checklist can be useful for the operators, it does not agree to add a requirement imposing this. The Agency wishes to stay as closely as possible to the existing JAR-26 without changing the responsibilities of the affected stakeholders. Nevertheless, the Agency recommends type certificate holders to make a checklist for compliance with Part-26 available.

Another reaction requested to identify in the cross reference table of GM1 26.1 for which Part-26 requirements compliance could be demonstrated only per visual inspection. The Agency has currently not identified any Part-26 requirement for which compliance can be demonstrated only by visual inspection. However, when practice would show that these cases do exist, the Agency can easily update the cross reference table to confirm this.

Finally, a reaction asked to introduce in the future Operational Suitability Data (OSD) process (see Agency Opinion No 07/2011) systematic Part-26 compliance demonstration by the type certificate applicants. The Agency considers that the scope of the OSD process is currently limited to crew type training and Master Minimum Equipment List, and it does not include compliance with other requirements. Nevertheless, as already indicated above, the Agency recommends type certificate holders and applicants to include Part-/CS-26 compliance in the type certification process and make available to operators a compliance checklist.

2.4. Summary of the Regulatory Impact Assessment

As was the case for JAR-26, the additional airworthiness specifications for operations in the proposed Part-26 will be applicable to the operators conducting commercial air transport (CAT) with large aeroplanes. Consequently, these operators will be responsible for showing compliance with the Part-26 requirements. When the basic type design of the affected aircraft does not comply, compliance can be achieved by introducing modifications designed by the TC holder as a change to the TC, or by third parties under a Supplemental Type Certificate (STC).

The level of safety as achieved through the implementation of JAR-26 should be maintained. In the few cases where JAR-26 was not implemented, the level of safety can be increased.

In 2009, the Agency performed a survey regarding the level of compliance with JAR-26 amongst CAT operators in the EU. Through responses from 11 of the then 27 national aviation authorities, the Agency estimated that 3.6% of the current fleet would not be fully in compliance with the JAR/Part-26 provisions. The level of non-compliance could not be established. Nevertheless, the Agency considers that the costs for the operators to bring the fleet fully in compliance with Part-26 are not significant, and in any case commensurate with the safety level obtained through these requirements.

As described above under 2.3., the Agency has decided to propose a longer transition period of two years instead of one year. This will allow more time for the operators to show compliance. It will also allow the Agency to provide further guidance on the methods of showing compliance.

2.5. Overview of the proposed Regulation

The Agency's Opinion proposes a new Commission Regulation implementing point 5(e)(vi) of Regulation (EC) No 216/2008 with an Annex referred to as 'Part-26'. This Part-26 transposes the high level safety requirements of JAR-26 into the EU regulatory framework.

Each JAR-26 paragraph is transferred into Part-26 paragraphs bearing the same number, for consistency and ease of the transition from the old to the new system of rules.

When transposing JAR-26 into the EU regulatory framework, the Agency decided to split each provision in elements to be included in Part-26 and other elements to go into CS-26. This was done for the following reasons. In the EU system, only EU regulations can impose generally binding rules on (natural or legal) persons so in order to make the former JAR-26 content binding, it has to be included in an EU regulation. At the same time also, it is acknowledged that airworthiness standards need to be implemented in a flexible manner. For new designs, the necessary flexibility is included in Part-21 which allows deviations from the standards through special conditions or equivalent level of safety findings. The same approach is not possible for the retroactive airworthiness requirements because there is no possibility to establish a certification basis upon an application for an approval. Therefore, the flexibility has to be found in limiting the binding law to high-level objectives, applicability, and implementation dates only, and leaving the details in 'soft law' such as CSs and GM. This approach has the advantage to allow enough flexibility for the addressee of the requirement to establish the best way to comply with a certain safety requirement. This also allows for a shorter process when an update of the technical requirements is needed, as necessary to follow-up the pace of evolution of other CS. Finally, the existence of a dedicated CS-26 allows for its inclusion, at the request of an applicant, in the certification basis of new or changed products, which will allow a clear statement of compliance with these provisions that can be used by the operators of these types or changed types when demonstrating compliance with Part-26.

The initial version of Part-26 includes only the existing JAR-26 provisions and applies to operators of large aeroplanes operated in commercial air transport, consistent with the applicability of JAR-26. Further provisions will follow under separate rulemaking tasks, which depending on the technical content, may also be applicable to other categories of aircraft and/or operations and also to design approval holders or production organisations. Each time a new airworthiness requirement needs to be imposed, an amendment to Part-26 and CS-26 will be proposed through an NPA.

The new Part-26 will be applicable directly to the operators, and Member States can, therefore, use existing national law to enforce it. However, the Agency considers that there is a need to have a wider range of enforcement tools available to the Member States. Therefore, this Opinion also proposes to include a cross reference to the new rule into the rules for operators for obtaining an Air Operator Certificate.

Done at Cologne, on 18 September 2013.

P. KY
Executive Director

3. References

3.1. Affected regulations

- Commission Regulation (EU) No .../.... on additional airworthiness requirements for operations;
- Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council.(OJ L 296, 25.10.2012, p. 1)

3.2. Affected decisions

CS-26 Additional Airworthiness Specifications for Operations.