

NOTICE OF PROPOSED AMENDMENT (NPA) No 7/2004

DRAFT OPINION OF THE EUROPEAN AVIATION SAFETY AGENCY,

for a Commission Regulation amending Commission Regulation (EC) No 2042/2003 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks

Explanatory Note

I. General

1. The purpose of this Notice of Proposed Amendment (NPA) is to propose an amendment to Article 7 (entry into force) to the Commission Regulation (EC) No 2042/2003¹. The reason for this proposal is outlined further below.

2. The Agency is directly involved in the rulemaking process. It assists the Commission in preparing drafts in accordance with the Basic Regulation procedures, which will be submitted to the Commission as “Opinions” in accordance with Article 14 of Regulation (EC) No 1592/2002².

3. The text of this NPA is developed by the Agency and submitted for consultation of all interested parties in accordance with Article 5(3) of the EASA rulemaking procedure³. In view of the urgency of the envisaged measure, the Agency decided to reduce the length of the consultation period as hereinafter indicated.

II. Content of the draft Commission Regulation

4. In November 2003, the European Commission adopted Regulation (EC) No 2042/2003 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks. During the discussion related to the adoption of the said Regulation, the subject of its entry into force was addressed. This resulted in the conclusion that the entry into force of some provisions should be progressive. It was also agreed that the pace at which these provisions would be implemented should be left to Member States to decide, as they have a better knowledge of the state of readiness of their industry to do so. This led to the opt-out provisions of Article 7 allowing Member States to postpone the entry into force of certain provisions of Regulation (EC) No 2042/2003.

5. In the case of Annex II (Part-145) the provisions of:

- 145.A.30(e), human factors elements,
- 145.A.30(g), as applicable to large aircraft with a maximum take-off mass of more than 5700 kg,
- 145.A.30(h)(1) as applicable to large aircraft with a maximum take-off mass of more than 5700 kg,
- 145.A.30(j)(1) Appendix IV, and
- 145.A.30(j)(1) Appendix IV

could be postponed until 28 September 2006, and the provisions of:

- 145.A.30(g), as applicable to large aircraft with a maximum take-off mass of 5700 kg or below,
- 145.A.30(h)(1)), as applicable to large aircraft with a maximum take-off mass of 5700 kg or below, and
- 145.A.30(h)(2)

¹ OJ L 315, 28.11.2003, p. 1.

² OJ L 240, 7.9.2002, p. 1.

³ Decision of the Management Board concerning the procedure to be applied by the Agency for the issuing of opinions, certification specifications and guidance material (“rulemaking procedure”), EASA MB/7/03, 27.6.2003.

could be postponed until 28 September 2008.

6. Unfortunately, this discussion focussed on European organisations and the case of the foreign ones was overlooked. This results in the impossibility for the Agency to postpone the entry into force of the above paragraphs of Annex II (Part-145) for the organisations for which it acts as competent authority. As certain provisions are linked to the implementation of other annexes such as Annex III (Part 66), it will be impossible for these organisations to implement the rule. Furthermore, this situation could be felt as discriminatory by certain foreign maintenance organisations.

7. The Agency considers therefore necessary to urgently issue an opinion to the Commission inviting it to amend Article 7 of Regulation (EC) No 2042/2003 to allow the Agency to also make use of the opt-out provisions of this article. Such an amendment should be made before 28 November 2004 (end of the transition period included in the Commission Regulation for closing findings related to the differences between Part 145 and the former applicable rules based on JAR145) to avoid several foreign organisations to be in an illegal situation beyond that date.

8. As the Agency only issues approvals of an unlimited duration, it is not felt necessary to include a provision allowing the Agency to make use of an opt-out for Article 7(4).

9. The proposed change is:

- to add in Article 7(3) the word “the Agency” so that the text would read as follows:

“3. By way of derogation from paragraph 1 and 2, Member States **and the Agency** may elect not to apply.” and

- to create a new Article 7(6) that would read as follows:

“6. When the Agency makes use the provisions of paragraph 3 it shall notify the Commission.” and

- to renumber article 7(6) into 7(7).

III. Consultation

10. The Decision of the Management Board concerning the procedure to be applied by the Agency for the issuing of opinions, certification specifications and guidance material, requires the Agency to provide any person with the opportunity to comment on an envisaged rule in which he/she has an interest. The envisaged correction is not purely editorial, since it does affect the substance of the requirements included in the Commission Regulation. It also extends the executive powers given to the Agency. Therefore it is necessary to follow the rulemaking process. As such a change only has little impact on the industry and taking into account the need to act urgently the Agency considers necessary to reduce the consultation period to six weeks so that the amendment process has a chance to be finalised in due time. This period may be extended in the light of the nature of the comments received.

11. The documents submitted by the Agency for consultation in no way prejudge the opinion, which will be finally adopted by the Agency at the end of the consultation process.

12. Comments on this Notice of Proposed Amendment (NPA) may be forwarded to:

By e-mail: consultation.EASA-NPA7-04@jaa.nl

By correspondence:

Joint Aviation Authorities
Inge van Opzeeland
NPA Administrator
Box 3000
2130 KA Hoofddorp
Netherlands
Fax: +31 23 56 21714

13. Comments should be received by the NPA Administrator before **14 September 2004** and if received after this deadline they might not be treated. Comments will not be considered if the form provided for this purpose is not used.

IV. Comment response document

14. All comments received will be responded to and incorporated in a so-called Comment Response Document (CRD). This may contain a list of all persons and/or organisations that have provided comments. The CRD will be widely available ultimately when the Agency's opinion is submitted to the Commission for adoption.

V. Regulatory Impact Assessment

15. The proposal is expected to have only a positive impact as it will give foreign organisations and the Agency the same progressive implementation calendar as that available for European Union organisations and Member States.

Draft

COMMISSION REGULATION (EC) No .../..

of [...]

amending Commission Regulation (EC) No 2042/2003 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to 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 Agency¹ (hereinafter referred to as the Agency), and in particular Articles 5 and 6 thereof,

Having regard to Commission Regulation (EC) No 2042/2003 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks², and in particular Article 7 thereof,

Whereas :

- (1) The current provisions of the Commission Regulation (EC) No 2042/2003 make it impossible for foreign maintenance organisation to be exempted from the immediate implementation of some requirements of its Annex II (Part-145); this situation could be felt as discriminatory by certain non European Union maintenance organisations.
- (2) It is necessary to give the Agency the power to postpone the entry into force of some provisions of this Annex II.
- (3) The measures provided by this Regulation are based on the opinion issued by the Agency³ in accordance with Articles 12(2)(b) and 14(1) of the basic Regulation.
- (4) The measures provided for in this Regulation are in accordance with the opinion⁴ of the European Aviation Safety Agency Committee established by Article 54(3) of the Basic Regulation.
- (5) The Commission Regulation (EC) No 2042/2003 should therefore be amended accordingly,

¹ OJ L 240, 7.9.2002, p. 1.

² OJ L 315, 28.11.2003, p. 1

³ [To be issued.]

⁴ [To be issued].

HAS ADOPTED THIS REGULATION:

Article 1

In Article 7 of Commission Regulation (EC) No 2042/2003, the third paragraph is replaced by the following:

“3. By way of derogation to from paragraph 1 and 2, Member States and the Agency may elect not to apply:”

Article 2

In Article 7 of Commission Regulation (EC) No 2042/2003 the following paragraph shall be added:

“6. When the Agency makes use of the provisions of paragraph 3 it shall notify the Commission.”

Article 3

In Article 7 of Commission Regulation (EC) No 2042/2003, the paragraph 6 is renumbered 7

Article 4

This Regulation shall enter into force on [the day of publication].

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

Done at Brussels,

For the Commission

Member of the Commission