

NOTICE OF PROPOSED AMENDMENT (NPA) No 08/2006

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**

Entry in force Article 7.3.(c)

**Certifying staff qualified in accordance with Part 66 (provisions of Annex III) for
line and base maintenance (aircraft with a maximum take off mass of more than
5700 kg)**

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A- Explanatory Note

I. General

1. The purpose of this Notice of Proposed Amendment (NPA) is to evaluate the need for an amendment to Article 7.3.(c) of Commission Regulation (EC) No 2042/2003¹. The reasons for this rulemaking activity are outlined further below.
2. The Agency is directly involved in the rule-shaping process. It assists the Commission in its executive tasks by preparing draft regulations, and amendments thereof, for the implementation of Regulation (EC) No 1592/2002² (hereafter referred to as the Basic Regulation), which are adopted as "Opinions" (Article 14.1). It also adopts acceptable means of compliance and guidance material to be used in the certification process (Article 14.2).
3. The text of this NPA has been developed by the Agency. It is submitted for consultation of all interested parties in accordance with Article 43 of the Basic Regulation and Articles 5(3) and 6 of the EASA rulemaking procedure³.
4. This rulemaking activity was not originally included in the Agency's rulemaking programme for 2006. The rulemaking programme has been adapted therefore in accordance with the provisions of Article 3(6) of the rulemaking procedure. This rulemaking activity implements task MDM.036.
5. The main objective of this rulemaking tasks is to evaluate the difficulties some National Aviation Authorities (NAA) have to comply with the provisions of Commission Regulation (EC) No 2042/2003, which require staff entitled to release large aircraft after maintenance to hold a licence issued in accordance with its Part 66 when it applies at 28 September 2006. As a consequence the possibility to postpone the date of entry into force of these provisions will be examined.

¹ Commission Regulation (EC) No 2042/2003 of 20 November 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 OJ L 315, 28.11.2003, p. 1.

² 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.*

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.

II. Consultation

6. To achieve optimal consultation, the Agency is publishing the draft opinion in its official publication.
7. Considering the nature of the issue and the need to act before the above mentioned date of 28 September 2006, the Agency has decided, after consultation of its advisory bodies, to reduce the length of the consultation period to 6 weeks in accordance with Article 6(5) of the rulemaking procedure.

Comments on this proposal may be forwarded (*preferably by e-mail*), using the attached comment form, to:

By e-mail: NPA@easa.europa.eu

By correspondence: Process Support
Rulemaking Directorate
EASA
Postfach 10 12 53
D-50452 Köln
Germany

Comments should be received by the Agency before **Monday 21st August 2006**. If received after this deadline they might not be treated. Comments may not be considered if the form provided for this purpose is not used.

III. Comment response document

8. All comments received in time will be responded to and incorporated in a Comment Response Document (CRD). This may contain a list of all persons and/or organisations that have provided comments. The CRD will be available in the Agency's official publication.

IV. Content of the draft opinion

9. On 20 November 2003 the European Commission adopted Regulation (EC) No 2042/2003. Appendix II of this regulation (Part-145) establishes that certifying staff must be properly qualified in accordance with the provisions of its annex III (Part 66). Part 66 is based on JAR-66. The implementation of JAR-66 had started in 1998, and the JAA member states had agreed to all start implementation before 2001 with an end of the transition period for the conversion of national qualifications into JAR-66 licences fixed at 2011.

10. When setting up Commission Regulation (EC) No 2042/2003 it was agreed that such a long transition was not necessary and that full benefit of Community action in this field would be better achieved by an immediate application. Though the implementation of JAR-66 has started in 1998, some JAA member states acknowledged that it had been postponed in their country. They therefore asked for the possibility to delay the implementation of Part 66 until 28 September 2006 for large aircraft and 28 September 2008 for small aircraft as the latter had not been regulated by the JAA. This was accepted and Article 7.3.(c) of Commission Regulation 2042/2003 provides the basis for this opt-out possibility.
11. When analysing the situation relative to the use of this opt-out clause, it appears that:
- All the Member States have opted to use Article 7. 3 (c) second line of Commission Regulation 2042/2003 .
 - All the Member States except one have opted to use Article 7. 3 (c) third line of Commission Regulation 2042/2003

As a consequence the Agency issued Opinion 2/2004 suggesting amending Commission Regulation (EC) No 2042/2003 to allow all regulated persons, including foreign organisations under the oversight of the Agency, to be treated in the same manner by allowing for all the entry into force of the provisions of Part-145 for certifying staff qualification for line and base maintenance of aircraft with a maximum take-off mass of more than 5700kg until 28 September 2006.

12. As regards now the state of readiness to comply with the new date of entry into force, the oversight performed by the Agency confirms that some Member States will not have enough time to meet this target date:
- Half of the Member States have started converting national qualifications into, and issuing, Part 66 licences and will be in a position to fully comply on time.
 - Nine Member States have started the same process; they are however late and consider that they will have difficulties to meet the target date of compliance.
 - Four out of the twenty-eight States subject to these requirements are being far behind schedule and are not in a position to comply on time. Three of them have not even yet established any conversion reports.

On 31 January 2006, the Agency sent to the European Commission its annual standardisation report, highlighting the critical status of Part 66 conversion process versus the deadline of 28 September 2006.

13. The question is then whether the length of the transition period should be extended taking into account all the implications of such an amendment. It is to be taken into

account that new Member States were confronted with the aforementioned dates when joining the European Community without being able to make a complete impact assessment and evaluate the consequences. They are however not the only ones to encounter serious difficulties to meet the target date. On the other hand postponing could be therefore unfair to those having used the three year opt-out period to comply with the Regulation, urging the industry to make drastic efforts to move from the national to the European system, which has sometimes required significant investments.

14. However, urging some Members States to comply with the present deadlines is likely to place their industry in a difficult situation as they will not be able to find appropriately licensed staff to release aircraft or parts to service. To overcome this situation, some may be tempted to issue licences without enough justification or with improper conversion reports, creating therefore a safety risk and potential problems for the good functioning of the internal market and the free movement of workers.

V. Regulatory Impact Assessment

A. Intent of the NPA

15. The purpose of this NPA is to evaluate the need for a new deadline so that some Member States will have more time to adapt their system to be in line with the provisions of Part 145, which requires that release certificates for aircraft with a maximum take-off mass of more than 5700kg after base or line maintenance, be issued by engineers who comply fully with Part 66.

B. Options

16. In the present case, the Agency has considered two options:
 - a) Do nothing: this option implies that after the 28 September 2006, all Member States must be fully in compliance with Commission Regulation (EC) No 2042/2003 and that only appropriately licensed engineers can release large aircraft to service after base or line maintenance.
 - b) Extend the transition period until a deadline to be defined; the time needed for such changes varies probably from a short period of time to several years according to the feedback received; the Agency considers, based on the review of the information outlined in paragraph 12, that one additional year could be a reasonable time for all Member States to implement Part 66 for certifying staff for large aircraft: this option implies that the status quo is maintained until 28 September 2007, providing Member States with more time to convert national qualifications into, or issue Part 66 licences.

C. Sectors affected

a) “Do nothing”

17. The main sector affected is that of the large aircraft operators. As maintenance engineers who do not hold a Part 66 licence would not be able to release these aircraft to service, operators would have to find appropriately qualified persons to do so.

Maintenance organisations unable to hire properly licensed engineers could lose part of their contracts as they would not comply during a transitional period with the provisions of Part 145.

Some maintenance engineers themselves would lose the privileges they enjoyed under the national systems until their qualifications are converted.

National Aviation Authorities, which have not converted national qualifications into, or issued enough, Part 66 licences would have to intensify efforts and face infringement procedures launched by the European Commission.

The Agency might be affected as some Member States could try to make use of the flexibility provision of Article 10 of Basic Regulation.

b) Extend the transition period until 28 September 2007

18. In this option operators of large aircraft are again the main affected as the continuation of the transitional regime creates uneven playing field in the internal maintenance market.

The same also applies to maintenance engineers as free movement will be limited by the lack of recognition of licences throughout the European Community until the end of the transition period.

D. Impacts

a) “Do nothing”

Safety

19. This option is in principle the most conducive to improving safety in the Community as only aircraft that have been subject to appropriate verification by engineers meeting the best qualification requirements, may be released to service.

20. It may however push some Member States rushing in converting national qualifications into Part 66 licenses without proper justification/conversion report and granting undue privileges to some maintenance engineers. This may of course have safety implications if unfit aircraft were therefore released to service. This risk seems however limited for large aircraft that are subject to additional surveillance by continuing airworthiness maintenance organisations. Moreover it is the role of the Agency to conduct standardisation inspections to verify that such practice will not happen or will be immediately followed by appropriate remedial action.

Economics

21. In principle this option should have no global economic impact as the investment to convert to the new regulatory regime adopted by the Community has to be made any how so that all stakeholders enjoy the benefit brought by the completion of the internal market in this field.
22. The possible shortage of licensed engineers in some Member States may lead to delays in the release of aircraft to service and induce significant indirect costs to operators. This could also affect the functioning of the market of certified staff and increase the average level of their salaries, with a direct effect on maintenance organisations and indirectly on their customers. However the consequences should not be exaggerated over the period needed by national aviation authorities to catch up, as the low mobility in the market of this type of certification services is likely to affect only the countries that have so far not sufficiently progressed with the conversion process.
23. Most National Aviation Authorities will not be affected in as much as they have already issued a sufficient number of licences. Only those that are late will have to intensify efforts, which may lead to some extra costs if they have to hire additional staff to convert all the licenses from their national system to comply with Commission Regulation (EC) No 2042/2003.

Environmental

24. None

Social

25. Some certifying engineers who have not obtained a part 66 licence are likely to be significantly affected as they would no longer be qualified to issue releases to service to large aircraft after 28 September 2006. This could affect their employment conditions.

b) Extend the transition period until 28 September 2007

Safety

26. This option, which maintains the national systems in some countries, is not conducive to timely implement the safety improvements contained in

Community law and recognised by all stakeholders. This does not however affect negatively the situation as it is to day.

Economic

27. No significant economic impact is expected

Environmental

28. None

Social

29. This option postpones the moment when licensed engineers can enjoy free movement in the internal market. The low mobility of this category of personnel should not however lead to a significant impact, except for the moral prejudice to the engineers who entered the Part 66 system in order to fully comply with the implementation of the new Regulation.

E. Conclusion of the Regulatory Impact Assessment:

30. On the basis of the previous analysis, the Agency concludes that the “do nothing” option is the most appropriate to improve safety, while economic consequences would provide an advantage to the second option. It considers that the social consequences are relatively balanced. On one side some maintenance engineers may face difficulties until their qualifications are converted, while some other may see an improvement in their financial conditions due to a temporary shortage of qualified staff.

VI. General conclusions

31. Considering that the main objective of the new Community regulatory system established by the Basic Regulation is to maintain and whenever possible improve civil aviation safety, the Agency thinks more appropriate to keep the transition provisions of Commission Regulation (EC) No 2042/2003 as they are and to refrain therefore undertaking any change to it.

32. It is true that this will put the Member States that are late in converting national qualifications into, or issue, Part 66 licences under significant strain and may create some difficulties to their maintenance and operating industry. Apart from the safety reasons mentioned here above, the Agency considers also that such a decision is justified for the following reasons:

- It is an incentive to Members States to implement regulations on time, as they are committed to under their Treaty obligations;
- The deadlines as proposed by the present EC regulations have been discussed and accepted by all the Member States during the consultation period in 2002 and only 4 Member States are clearly in difficulty.

- Some Members States and their stakeholders have invested a lot of efforts and money to meet the deadlines: giving an extension would be unfair to them.
33. Such a decision would send a clear message that safety regulations are to be complied with in the proper timeframe. Member States should not count on their possible future postponement hoping that their lack of action would any how trigger an additional delay. Lastly, sticking to the present deadlines will provide an accurate snap-shot of the qualified population within each Member State and will help in assessing training needs for the future.

B- DRAFT OPINION

II - Proposed changes to Commission Regulation (EC) No 2042/2003

None