

NOTICE OF PROPOSED AMENDMENT (NPA) No 2007-06**DRAFT OPINION OF THE EUROPEAN AVIATION SAFETY AGENCY**

for a Commission Regulation amending 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

AND

DRAFT OPINION OF THE EUROPEAN AVIATION SAFETY AGENCY

for a Commission Regulation amending 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

AND

DRAFT DECISION OF THE EXECUTIVE DIRECTOR OF THE EUROPEAN AVIATION SAFETY AGENCY,

amending Decision No 2003/1/RM of the Executive Director of the Agency of 17 October 2003 on acceptable means of compliance and guidance material 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 (“AMC and GM to Part 21”)

AND

DRAFT DECISION OF THE EXECUTIVE DIRECTOR OF THE EUROPEAN AVIATION SAFETY AGENCY,

amending Decision No 2003/19/RM of the Executive Director of the Agency of 28 November 2003 on acceptable means of compliance and guidance material 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 tasks

Permit to Fly privilege for Continuing Airworthiness Management Organisations and Approved Maintenance Organisations

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A. EXPLANATORY NOTE.

I. General

1. The purpose of this Notice of Proposed Amendment (NPA) is to envisage amending Commission Regulations (EC) No 1702/2003¹ and No 2042/2003² and Decisions of the Executive Director of the Agency No 2003/1/RM³ and No 2003/19/RM⁴. The scope of this rulemaking activity is outlined in Terms of Reference 21.023(c) and is described in more detail 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 the Basic Regulation⁵ which are adopted as “Opinions” (Article 14(1)). It also adopts Certification Specifications, including Airworthiness Codes and Acceptable Means of Compliance and Guidance Material to be used in the certification process (Article 14(2)).
3. When developing rules, the Agency is bound to following a structured process as required by Article 43(1) of the Basic Regulation. Such process has been adopted by the Agency’s Management Board and is referred to as “The Rulemaking procedure”⁶.
4. This rulemaking activity is included in the Agency’s rulemaking programme for 2007. It implements the rulemaking task 21.023(c).
5. The text of this NPA has been developed by the Agency and 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 procedure.

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 last amended by Regulation (EC) No 375/2007 (*OJ L 94*, 4.4.2007, p. 3).

² 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. Regulation as last amended by Regulation (EC) No 376/2007 (*OJ L 94*, 4.4.2007, p. 18).

³ Decision No. 2003/1/RM of the Executive Director of the Agency of 17 October 2003 on acceptable means of compliance and guidance material 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 (“AMC and GM to Part 21”).

⁴ Decision No 2003/19/RM of the Executive Director of the Agency of 28 November 2003 on acceptable means of compliance and guidance material 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 tasks.

⁵ 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 Regulation (EC) No 334/2007 (*OJ L 88*, 29.3.2007, p. 39).

⁶ 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/7/03, 27.6.2003.

II. Consultation

6. To achieve optimal consultation, the Agency is publishing the draft decision of the Executive Director on its internet site. Comments should be provided within 3 months in accordance with Article 6(4) of the EASA rulemaking procedure. Comments on this proposal should be submitted by one of the following methods:

CRT: Send your comments using the Comment-Response Tool (CRT) available at <http://hub.easa.europa.eu/crt/>

E-mail: In case the use of CRT is prevented by technical problems these should be reported to the [CRT webmaster](mailto:CRT_webmaster@easa.europa.eu) and comments sent by email to NPA@easa.europa.eu.

Correspondence: If you do not have access to internet or e-mail you can send your comment by mail to:
Process Support
Rulemaking Directorate
EASA
Postfach 10 12 53
D-50452 Cologne
Germany

Comments should be received by the Agency before 28 September 2007. If received after this deadline they might not be taken into account.

III. Comment response document

7. 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 on the Agency's website and in the Comment-Response Tool (CRT).

IV. Content of the draft opinion and decision

General:

8. The Commission Regulation and Agency Decision resulting from the Agency permit to fly (PtF) proposals under rulemaking task 21.023 have recently been adopted and published. During the discussion on the Agency proposal it was decided to remove the envisaged privilege for Continuing Airworthiness Management Organisations (CAMO) to issue a permit to fly, in order to examine more thoroughly all its implications. This privilege was subsequently not included in the Commission Regulation (EC) No 375/2007⁷ resulting from the legislative process. The Agency has therefore to initiate a new rulemaking process on this particular subject. During the consultation on the draft Terms of Reference of this task several parties suggested to also consider extending the privilege to approved maintenance organisations (Part M Subpart F and Part 145). The Agency considered the proposal and concluded that a privilege to issue a permit to fly is not appropriate for approved maintenance organisations because within the

⁷ Commission Regulation (EC) No 375/2007 of 30 March 2007 amending Regulation (EC) No 1702/2003 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 94, 4.4.2007, p. 3*.

scope of their approval they cannot easily establish the configuration of the aircraft. This Agency view is further elaborated in the regulatory impact assessment below.

The main privilege for the CAMO will be the issuance of the permit to fly after the flight conditions are approved by the appropriate authority or approved organisation. In addition the privilege to approve flight conditions is also foreseen, but this will be limited to cases where such approval is not related to the safety of the design. This may be the case for flights necessary to demonstrate continuing conformity with the design standard previously approved by the Agency for the aircraft to qualify or re-qualify for a certificate of airworthiness.

Detailed:

Changes to Regulation 1702/2003

9. Privilege to issue a permit to fly.

In paragraph 21A.711 a new subparagraph (d) is added to indicate that also CAMOs can issue a permit to fly under a privilege granted to the organisation. The Agency considers that such organisations will have the capacity to take this responsibility after some organisational adjustments.

The CAMO is already responsible for all tasks related to the responsibility for the continuing airworthiness of the aircraft. This means that it is fully aware of the configuration of the aircraft. When it has the privilege to perform airworthiness reviews it must be able to attest conformity of an individual aircraft with a specified design. Therefore all the technical elements in order to discharge the responsibilities linked to the issuance of a permit to fly are already available in the organisation. The organisation will have to establish specific procedures for issuance of a permit to fly.

As a result of the added subparagraph other subparagraphs are renumbered and subsequently various cross-references are corrected.

10. Privilege to approve flight conditions.

In accordance with 21A.710(b) the organisation that issues the permit to fly can also approve the associated flight conditions, provided the approval of the flight conditions is not related to the safety of the design. This will also be applicable to the CAMOs. The Agency considers this appropriate because the privilege is limited to non-design related issues, i.e. when the aircraft is in an already approved configuration. The intended flight conditions for these flights can be approved in a general sense as part of the procedures to be used by the organisation when exercising its privilege.

11. Other changes to Part 21.

In paragraph 21A.701 "Scope" a new subparagraph (b) is added to describe the contents of Subpart P in a similar way as it is done for other subparts.

Paragraph 21A.703 "Eligibility" is amended to clarify that any person can apply for the approval of flight conditions. The eligibility for application for approval of flight conditions was linked to the eligibility for application for issuance of permit to fly, which implied that any person could apply, but the current text could have been misunderstood as meaning that only the person applying for the permit to fly could apply for the approval of the related flight conditions.

Changes to Regulation 2042/2003

12. Privileges for CAMOs approved under Part M Subpart G.

In paragraph M.A.711 a new subparagraph (b)(3) is included stipulating the possible privilege for the CAMO in accordance with the new provisions in Part 21A.710 and 21A.711.

Paragraph M.A.707(a) is amended to clarify that the task to issue permit to fly shall be allocated to airworthiness review staff.

Appendix VI is amended to introduce the possible privilege in the approval certificate.

Changes to AMC/GM to Part 21

13. Several cross-references in AMCs are changed to reflect the added privilege for CAMOs. In other instances several cross-references are changed as they were incorrect.

GM No.2 to 21B.220(c) (EASA Form 56) is amended to reflect the possible privilege for production organisations to issue permit to fly. From GM 21B.325(a) all references to permit to fly are deleted. Both these changes are omissions from the initial amendment introducing the new permit to fly rules.

Changes to AMC/GM to Part M

14. In the AMC/GM for the CAMO several amendments are made to introduce the description of procedures that should be developed when the approval holder applies for an extension of the approval to include the permit to fly privileges.

V. Regulatory Impact Assessment

1. Purpose and Intended Effect

1.a. The issue that the NPA is intended to address

Permits to fly for aircraft engaged in commercial operations are often needed in cases where there is certain urgency: usually it concerns a situation where an aircraft is on ground and needs to be ferried to a place where maintenance or a repair can be performed. Only after the maintenance or repair is done the aircraft can perform revenue flights.

Since the introduction of the new requirements for issuance of permit to fly on 4 April 2007 the procedure to obtain a permit to fly involves two separate approvals: an approval of the flight conditions by the Agency or an appropriately approved design organisation and the issuance of the permit to fly by the National Aviation Authority (NAA). The approval of flight conditions involves the technical assessment whether the aircraft can perform safely a flight under certain conditions. The permit to fly can subsequently be issued if it is established that the aircraft concerned is in conformity with the design as defined in the approved flight conditions. The Agency considers that this last step can be performed equally well by an appropriately approved organisation that is dealing with the aircraft on a daily basis. This can save valuable time for the operator, notably at times when immediate NAA response is not possible.

1.b. The scale of the issue

According to a preliminary estimate by operators approximately 2000 permits to fly per year are needed in the circumstances as described above.

1.c. Objectives

The objective of the NPA is to introduce possible privileges for CAMOs to issue a permit to fly in well defined cases and under well defined conditions.

2. The options

The options identified are:

Option 1 Do nothing.

Option 2 Privilege for CAMO only.

Option 3 Privilege for CAMO and approved maintenance organisations (Part M Subpart F, Part 145)

3. Sectors Concerned

For the purposes of this RIA three primary stakeholders are to be considered:

- Operators;
- CAMOs and approved maintenance organisations;
- NAAs.

4. Impacts

4.a. Impact on safety

Option 2 is expected to have a modest positive impact on safety. By issuing themselves the permit to fly, the organisations take full responsibility for the determination that the aircraft conforms to the standard as approved in the flight conditions. By allocating the responsibility to the entity that performs a task the awareness of the consequences of possible errors is increased.

The privilege for a CAMO to issue permits to fly is considered appropriate because:

- The CAMO is fully aware of the airworthiness status; and
- Establishing the configuration and assuring conformity to approved conditions is very close to the already existing privilege to perform airworthiness reviews.

Option 3 may have a negative impact on safety. Although approved maintenance organisations have access to the aircraft and could physically check the configuration this is not considered practicable. Only the owner or CAMO has the up-to-date knowledge of the aircraft configuration and will be able to make formal and credible statements regarding this configuration. Suggesting that a maintenance organisation can do the same from its own resources is unrealistic and may negatively impact safety.

4.b. Impact on economics

Option 2 will have an overall positive economic impact. It will increase the flexibility for operators to obtain a permit to fly without unnecessary bureaucratic delay. CAMO organisations will only need to make minor investments to obtain the permit to fly privilege. With option 3 in theory more organisations will be able to obtain the privilege, thus increasing the flexibility. However, the investments for maintenance organisations to obtain the privilege are expected to be considerable: training and experience requirements for staff performing the envisaged tasks will have to be consistent with the requirements for airworthiness review staff.

The privilege for Part 145 approved maintenance organisations is considered superfluous because the airworthiness of all aircraft that have to be maintained by a Part 145 organisation must be managed by a CAMO. So in all cases where maintenance is done by a Part 145 organisation the operator will also have access to a CAMO, which may obtain the permit to fly privilege.

4.c. Equity and fairness issues

Option 2 will have a positive impact on operators, which already are obliged to hold a CAMO approval. However owners and operators that do not hold such approval will not be able to get the privilege unless they obtain the CAMO approval, which would require additional investments.

Option 3 does not have this drawback because all aircraft are maintained by either a Part 145 or a Part M Subpart F organisation, which would also be able to obtain the permit to fly privilege. However the investments for maintenance organisations to obtain the privilege are expected to be considerable: training and experience requirements for staff performing the envisaged tasks will have to be consistent with the requirements for airworthiness review staff. Therefore it is expected that in practice for many of these organisations it is not economically viable to apply for the privilege.

In conclusion the Agency considers that both options may create minor equity and fairness issues.

5. Summary/Conclusion

The Agency concludes that Option 2 is the preferred option because the safety impact is moderately positive and the economic impact is also positive, while for option 3 the safety impact may be negative.

B. DRAFT OPINIONS AND DECISIONS.

The text of the amendment is arranged to show deleted text, new text or new paragraph as shown below:

1. ~~Text to be deleted is shown with a line through it.~~
2. New text to be inserted is highlighted with grey shading.
3.
Indicates that remaining text is unchanged in front of or following the reflected amendment.
....

I. Draft Opinion Regulation 1702/2003 Part 21

21A.165 Obligations of the holder

.....

(k) Where applicable, under the privilege of 21A.163(e), establish compliance with 21A.711(b) and (de) before issuing a permit to fly (EASA Form 20b, see Appendix) to an aircraft.

21A.265 Obligations of the holder

.....

(g) Where applicable, under the privilege of 21A.263(c)(7), establish compliance with 21A.711(b) and (de) before issuing a permit to fly (EASA Form 20b, see Appendix) to an aircraft.

21A.701 Scope

(a) Permits to fly shall be issued in accordance with this Subpart to aircraft that do not meet, or have not been shown to meet, applicable airworthiness requirements but are capable of safe flight under defined conditions and for the following purposes:

.....

(b) This Subpart establishes the procedure for issuing permits to fly and approving associated flight conditions, and establishes the rights and obligations of the applicants for, and holders of, those permits and approvals of flight conditions.

21A.703 Eligibility

(a) Any natural or legal person shall be eligible as an applicant for a permit to fly except for a permit to fly requested for the purpose of 21A.701(a)(15) where the applicant shall be the owner.

(b) ~~A person eligible for an application for permit to fly is also~~ Any natural or legal person shall be eligible for application for the approval of the flight conditions.

21A.711 Issue of a permit to fly

.....

(d) An appropriately approved continuing airworthiness management organisation or under the privilege granted under M.A.711(b)(3) when the conditions of 21A.708 have been approved in accordance with 21A.710.

(de) The permit to fly shall specify the purpose(s) and any conditions and restrictions approved under 21A.710. It may include conditions and restrictions prescribed by the Competent Authority outside the scope of the conditions of 21A.708(b);

(ef) For permits issued under subparagraph (b), ~~or (c) or (d)~~, a copy of the permit to fly shall be submitted to the Competent Authority.

21A.723 Duration and continued validity

(a) A permit to fly shall be issued for a maximum of 12 months and shall remain valid subject to:

(1) compliance with the conditions and restrictions of 21A.711(de) associated to the permit to fly;

.....

II. Draft Opinion Regulation 2042/2003 Part M

ANNEX I (Part-M)

M.A.707 Airworthiness review staff

(a) To be approved to carry out airworthiness reviews and if applicable to issue permits to fly, an approved continuing airworthiness management organisation shall have appropriate airworthiness review staff to issue M.A. Subpart I airworthiness review certificates or recommendations and if applicable to issue a permit to fly in accordance with Part 21A.711(d).

In addition to M.A.706 requirements, these staff shall have acquired:

.....

M.A.711 Privileges of the organisation

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(b) An approved continuing airworthiness management organisation, may additionally be approved to:

1. issue an airworthiness review certificate, or;
2. make a recommendation for the airworthiness review to a Member State of Registry.
3. issue a permit to fly in accordance with Part 21A.711(d) including approval of the flight conditions in accordance with Part 21A.710(b), under procedures agreed with its competent authority for maintenance, when the continuing airworthiness management organisation is attesting conformity with the design conditions approved for the flight in accordance with Part 21A.710(a).

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*Appendix VI***Approval Certificate PART-M Section A Subpart G Continuing Airworthiness Management Organisation****EASA Form 14:**

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Aircraft type	Approved maintenance programme reference	Airworthiness review authorised	Permit to Fly issuance authorised	Organisation(s) working under the quality system
	, as revised	Yes	Yes	
	, as revised	Yes	Yes	
	, as revised	Yes	Yes	
	, as revised	Yes	Yes	
	, as revised	Yes	Yes	
	, as revised	Yes	Yes	
	, as revised	Yes	Yes	
	, as revised	Yes	Yes	
	, as revised	Yes	Yes	
	, as revised	Yes	Yes	

III. Draft Decision AMC/GM to Part 21

AMC 21A.163(e)

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2.4 Issue of the permit to fly under the POA privilege

The procedure must describe the process to prepare the EASA Form 20b and how compliance with 21A.711(c) and (de) is established before signature of the permit to fly.

.....

2.6 Interface with the local authority for the flight

The procedure must include provisions describing the communication with the local authority for compliance with the local requirements which are outside the scope of the conditions of 21A.708(b) (see 21A.711(de)).

AMC 21A.263(c)(7)

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2.3 Issue of the permit to fly under the DOA privilege

The procedure must describe the process to prepare the EASA Form 20b and how compliance with 21A.711(b) and (de) is established before signature of the permit to fly.

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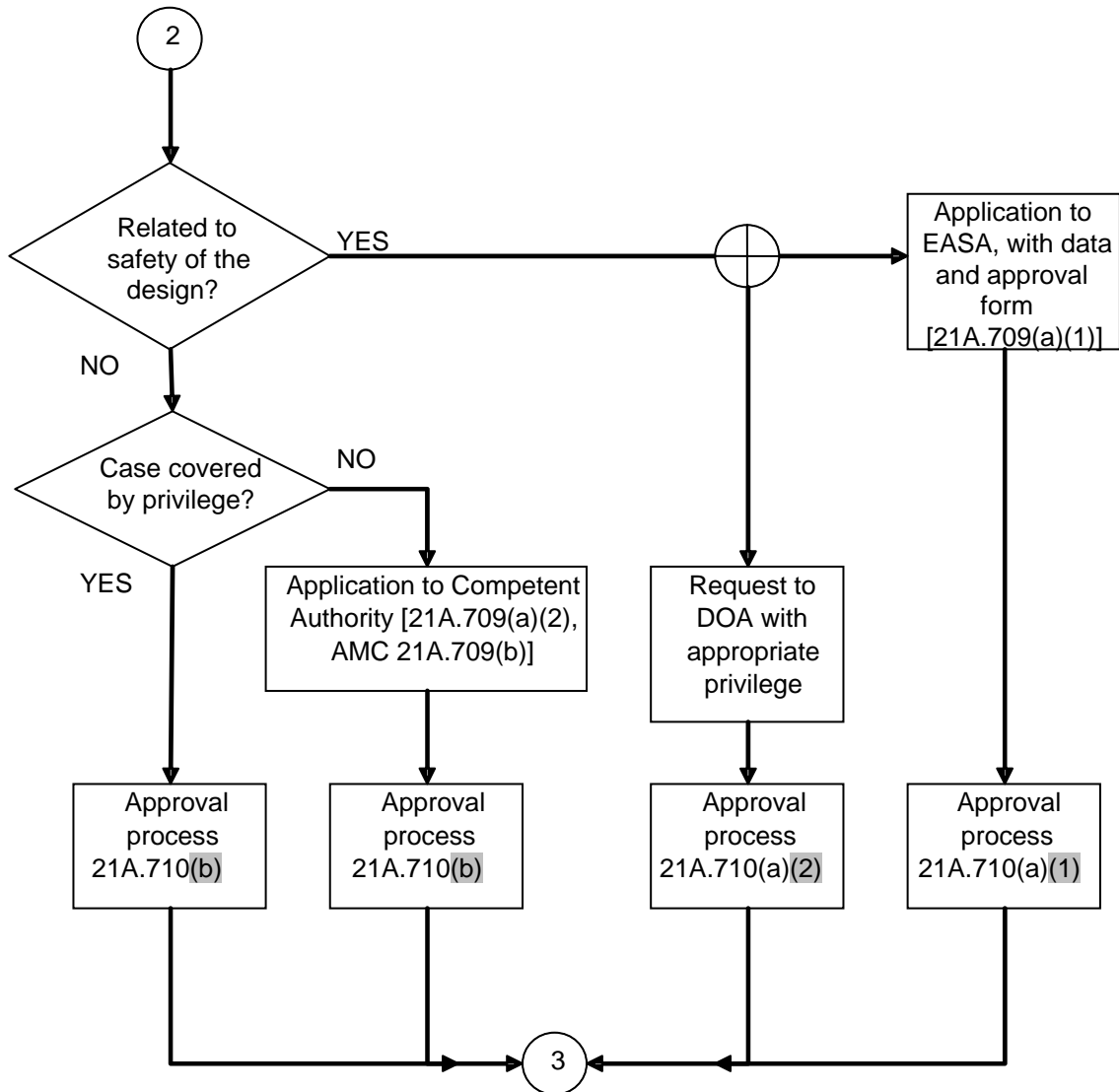
2.5 Interface with the local authority for the flight

The procedure must include provisions describing the communication with the local authority for compliance with the local requirements which are outside the scope of the conditions of 21A.708(b) (see 21A.711(de)).

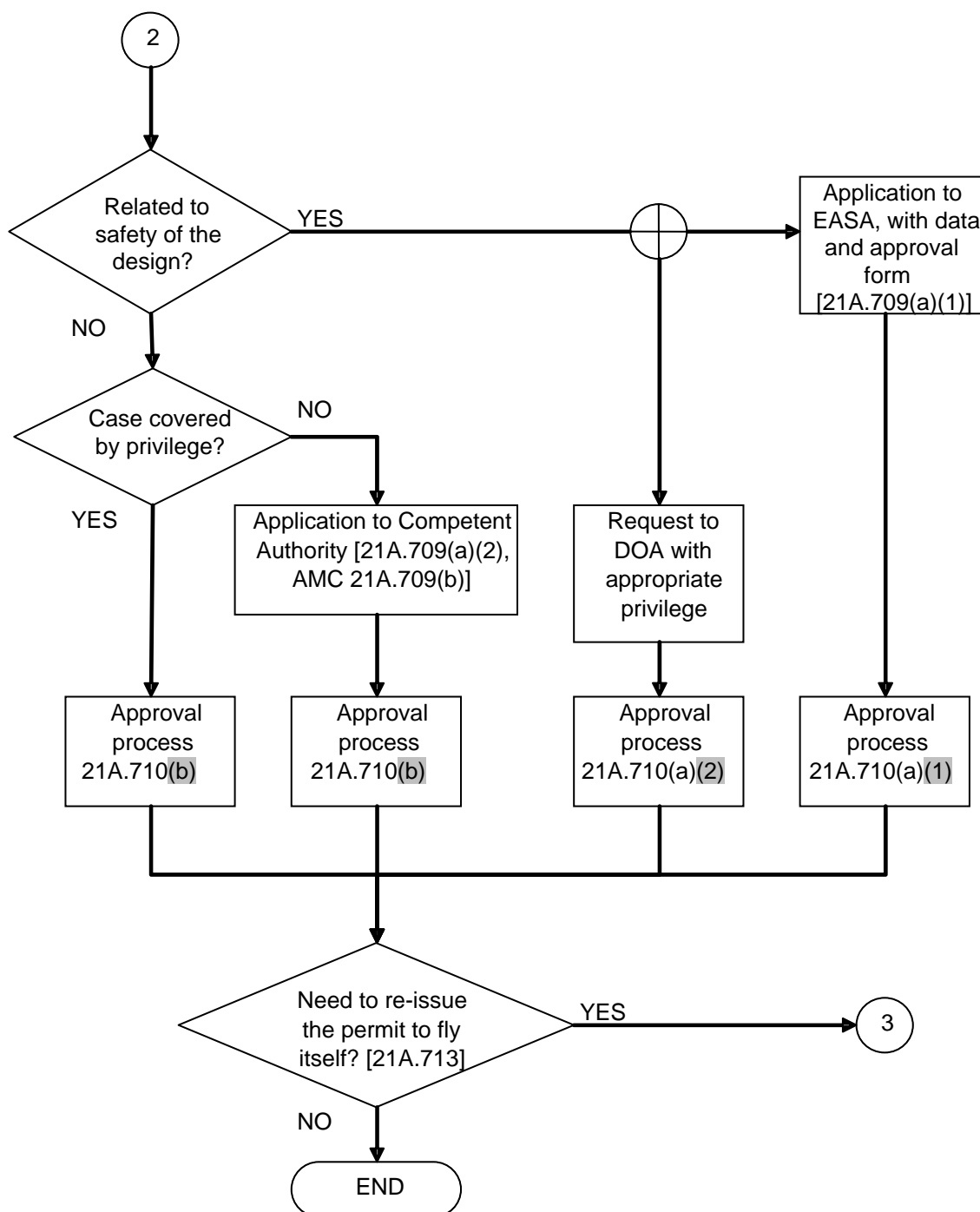
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GM to Subpart P

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Flow-chart 2: approval of flight conditions

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Flow-chart 4: changes after first issue of permit to fly

GM 21A.711(de)
Additional conditions and restrictions

.....

GM No. 2 to 21B.220(c)
Procedures for investigation – General

EASA Form 56

PART TWO OF FIVE PARTS: Part 21 SUBPART G COMPLIANCE

21A.139 Quality System

(b) The quality system shall contain:

(1) As applicable within the scope of approval, control procedures for:

(xvii) +-----+
 +-----+ Issue of permit to fly and approval of associated flight conditions.

21A.163 Privileges

Pursuant to the terms of approval issued under 21A.135, the holder of a production organisation approval may:

(e) Under procedures agreed with its competent authority for production, for an aircraft it has produced and when the production organisation itself is controlling under its POA the configuration of the aircraft and is attesting conformity with the design conditions approved for the flight, to issue a permit to fly in accordance with 21A.711(c) including approval of the flight conditions in accordance with 21A.710(b).

+-----+
 +-----+

21A.165 Obligations of the holder

The holder of a production organisation approval shall:

(j) Where applicable, under the privilege of 21A.163(e), determine the conditions under which a permit to fly can be issued.

+-----+
 +-----+

(k) Where applicable, under the privilege of 21A.163(e), establish compliance with 21A.711(b) and (e) before issuing a permit to fly (EASA Form 20b, see Appendix) to an aircraft.

+-----+
 +-----+

GM 21B.325(a)
Airworthiness Certificates

1 Completion of the certificate of airworthiness by a Member State

Block 5: Insert restrictions developed in accordance with Part 21, including any reference to limitations as indicated in GM 21B.320(b)(6).

2 Completion of the restricted certificate of airworthiness by a Member State

Block 5: Insert restrictions developed in accordance with Part 21, including any reference to limitations as indicated in GM 21B.320(b)(6).

~~3 Completion of the permit to fly by a Member State~~

~~Block 4: Insert purpose of flight in accordance with Article 5(4)(e)(ii) first indent of the Basic Regulation.~~

~~Block 5: Insert restrictions in accordance with Article 5(4)(e)(ii) second and third indent of the Basic Regulation.~~

IV. Draft Decision AMC/GM to Part M

AMC M.A.707 (a) Airworthiness review staff

1. Airworthiness review staff are only required if the M.A. Subpart G organisation wants to be granted M.A.711 (b) airworthiness review and if applicable permit to fly privileges.

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Appendix V to AMC M.A.704 Continuing airworthiness management organisation Exposition

CONTINUING AIRWORTHINESS MANAGEMENT EXPOSITION

TABLE OF CONTENT

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Part 4B Permit to fly procedures

4B.1	Approval of flight conditions (when relevant);
4B.2	Conformity with approved conditions;
4B.3	Issue of the permit to fly under the CAMO privilege;
4B.4	Authorised signatories;
4B.5	Interface with the local authority for the flight.
4B.6	Permit to fly records, responsibilities, retention and access.

.....

PART 4B PERMIT TO FLY PROCEDURES

4B.1 Approval of the flight conditions (when relevant)

(The procedure must include the process to establish and justify the flight conditions, in accordance with 21A.708, and include the EASA Form 18B as defined in AMC 21A.709(b) for the approval under the CAMO privilege.)

4B.2 Conformity with approved conditions

(The procedure must indicate how conformity with approved conditions is made, documented and attested by an authorised person.)

4B.3 Issue of the permit to fly under the CAMO privilege

(The procedure must describe the process to prepare the EASA Form 20b (See Appendix IV to Part 21) and how compliance with 21A.711(d) and (e) is established before signature of the permit to fly.)

4B.4 Authorised signatories

(The person(s) authorised to sign the permit to fly under the privilege of M.A.711(b)(3) must be identified (name, signature and scope of authority) in the procedure, or in an appropriate document linked to the CAME.)

4B.5 Interface with the local authority for the flight

(The procedure must include provisions describing the communication with the local authority for flight clearance and compliance with the local requirements which are outside the scope of the conditions of 21A.708(b) (see Part 21A.711(e)))

4B.6 Permit to fly records, responsibilities, retention and access.

(This paragraph should describe how records are kept, the periods of record keeping, location where the records are being stored, access to the records and responsibilities.)

Appendix VII to AMC M.B.702(f) EASA Form 13**PART 3:**

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Part 4B	Permit to fly procedures	
4B.1	Approval of flight conditions (when relevant);
4B.2	.....	Conformity with approved conditions;
4B.3	.....	Issue of the permit to fly under the CAMO privilege;
4B.4	.....	Authorised signatories;
4B.5	.....	Interface with the local authority for the flight.
4B.6	.....	Permit to fly records, responsibilities, retention and access.
.....		