



NOTICE OF PROPOSED AMENDMENT (NPA) No 2010-07

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

Amending Decision no. 2003/19/RM of the Executive Director of the European Aviation Safety 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

“Amend AMC M.A. 706(e) to cover additional cases for the competent authority to accept that the nominated post holder in the operator/Part-M Subpart G organisation be employed by the contracted Part-145 organisation”

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A. Explanatory Note

I. General

1. The purpose of this Notice of Proposed Amendment (NPA) is to consider the amendment of Annex I (AMC to Part-M) to Decision 2003/19/RM of the Executive Director of the European Aviation Safety Agency of 28 November 2003¹ of Commission Regulation (EC) No 2042/2003². The scope of this rulemaking activity is outlined in Terms of Reference (ToR) M.022 and is described in more detail below.
2. The European Aviation Safety Agency (hereinafter referred to as '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 Regulation³ which are adopted as "Opinions" (Article 19(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 19(2)).
3. When developing rules, the Agency is bound to follow a structured 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"⁴.
4. This rulemaking activity is included in the Agency's Rulemaking Programme for 2012. It implements the rulemaking task M.022 'Amendments to the AMC material to Part-M, additional text to AMC M.A.706(e)(2): Change AMC M.A.706(e)(2)'.
5. The text of this NPA has been developed by the Agency. It is submitted for consultation of all interested parties in accordance with Article 52 of the Basic Regulation and Articles 5(3) and 6 of the Rulemaking Procedure.
6. The text of this NPA has taken into account the development of European Union and International law (ICAO), and the harmonisation with the rules of other authorities of the European Union's main partners as set out in the objectives of Article 2 of the Basic Regulation.

II. Consultation

7. To achieve optimal consultation, the Agency is publishing this NPA on its Internet site. Comments to the NPA should be provided within 3 months in accordance with Article 6 of the Rulemaking Procedure. Comments 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/>.

¹ 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 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. Decision as last amended by Decision 2010/002/R of 28 April 2010.

² OJ L 315, 28.11.2003, p. 1. Regulation as last amended by Commission Regulation (EC) No 127/2010 of 5 February 2010 (OJ L40, 13.02.2010, p. 4).

³ Regulation (EC) No 216/2008 of the European Parliament and of 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, 19.03.2008, p. 1). Regulation as last amended by Regulation 1108/2009 of the European Parliament and of the Council of 21 October 2009 (OJ L 309, 24.11.2009, p. 51).

⁴ 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 08-2007, 13.6.2007.

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 e-mail 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 submitted by 19 October 2010. If received after this deadline, they might not be taken into account.

III. Comment response document

8. All comments received in time will be responded to and incorporated in a comment response document (CRD). The CRD will be available on the Agency's website and in the Comment-Response Tool (CRT).

IV. Content of the NPA

9. Regulation (EC) 2042/2003 Annex I, Part-M, paragraph M.A.706 "Personnel requirements" provides that the organisation in charge of continuing airworthiness management shall appoint an accountable manager. For commercial air transport, the accountable manager shall designate a nominated post holder. This person shall be responsible for the management and supervision of continuing airworthiness activities. According to M.A.706(e), this nominated post holder shall not be employed by a Part-145 approved organisation under contract to the operator, unless specifically agreed by the competent authority.

AMC M.A.706(e)(1) defines that the competent authority of the operator should only accept that the nominated post holder be employed by the organisation approved under Part-145 when it is manifest that he/she is the only available competent person in a position to exercise that function, within a practical working distance.

AMC M.A.706(e)(2) further states that the conditions of AMC M.A.706(e)(1) do not apply when the organisation approved under Part-145 and the operator are the same organisation.

10. The main objective of the provision in M.A.706(e) is to avoid conflicts of interests: If the nominated post holder is also employed by the contracted Part-145 organisation, he/she may be reluctant to take actions contrary to the interest of the Part-145 organisation should maintenance tasks have been performed improperly or should some provisions of the contract not have been met, as he/she is also gaining economic benefit from that Part-145 organisation. By contrast, in the case where the Part-145 organisation and the operator/Part-M Subpart G organisation are part of the same company, this company is globally responsible for the actions of its personnel, whether these belong to the operator/Part-M Subpart G organisation or to the Part-145 organisation. In this case, this company is expected to take the appropriate actions to ensure that the procedures followed by the operator/Part-M Subpart G organisation and the Part-145 organisation prevent any possible conflict of interest.
11. Some stakeholders claim that the provision defined in AMC M.A.706(e) should be amended to also cover the case where the organisation approved under Part-145 and the operator are two different organisations, but with the same person acting as accountable manager. According to those stakeholders, such amendment could be justified as in their views there appears to be no difference in responsibility, accountability and ability with

regard to supervising and maintaining continuing airworthiness between an operator/Part-M Subpart G organisation with its own Part-145 organisation integrated in the operator to a system where the accountability for airworthiness and maintenance is held by two different organisations, as long as the same person is nominated accountable manager in both organisations. However, as outlined in Section V, the Agency is not convinced of that justification.

12. Stakeholders further claim that before the entry into force of Part-M, national regulations based on JAR-OPS Subpart M in some Member States allowed that for small operators the 'nominated post holder maintenance' be contracted from the JAR/Part-145 organisation, which in many cases was preferable, as it allowed having a person holding a mechanics licence as nominated post holder maintenance. Stakeholders state that such arrangement proved to work well under the JAA system, as management of continuing airworthiness and of maintenance was ensured by one and the same person. With the entry into force of Part-M, such operators were no longer allowed to do so, unless specifically agreed by the competent authority under the conditions defined in AMC M.A.706(e)(1).
13. Finally, stakeholders argument that for business and commercial reasons, some operators with an integrated maintenance organisation choose to establish different legal entities for the Part-M Subpart G organisation and for the Part-145 maintenance organisation. Typically, these organisations are part of a common holding and, while being separate legal entities, they may share some management personnel, including the accountable manager, and facilities. Considering the management setup and close links between the two organisations, these could then be considered as a single entity for the purpose of Part-M, i.e. AMC M.A.706(e)(2). Accessorily, this would be compatible with the definition of "organisation" provided in Article 2(i) of Regulation (EC) No 2042/2003.
14. The purpose of this NPA is to evaluate the need for amending the second bullet point of AMC M.A.706(e) by adding additional conditions under which the nominated post holder of the Part-M Subpart G organisation can be employed by the Part-145 organisation under contract.

Based on input received from stakeholders, such additional conditions should address the particular situation where the organisation approved under Part-145 and the operator are different organisations, but share the same accountable manager.

V. Regulatory Impact Assessment

15. Purpose and Intended Effect

a. Issue which the NPA is intended to address

Feedback received from stakeholders indicates that there is no difference in responsibility, accountability and ability with regard to supervising and maintaining continuing airworthiness between an operator/Part-M Subpart G organisation with its own Part-145 organisation integrated in the operator's organisation to a system where the overall accountability for airworthiness and maintenance is held by two different organisations and the same person is accountable manager in both organisations.

b. Scale of the issue

This issue affects commercial air transport operators where the Part-M Subpart G organisation of the operator and the Part-145 organisation are separate legal entities, but where the same person holds the position of accountable manager in the Part-145 organisation and in the Part-M Subpart G organisation. This is typically the case with smaller operators, contracting smaller Part-145 organisation (cf. § 20 "sectors concerned"). The number of such smaller operators is estimated to be low; however, the impact of the current rule on such smaller operators is felt by stakeholders as disproportionate: in such cases, there is a need to employ additional licensed mechanics either as nominated post holders in the operator's

Part-M subpart G organisation or in the Part-145 organisation. Stakeholders claim this results in additional costs and/or in a more complicated organisation and that the current AMC constitutes a restriction with regards to the business models an operator may choose.

c. Brief statement of the objectives of the NPA

The objective of the task is to decide whether an equivalent level of safety can be assumed for a configuration where the operator/Part-M Subpart G organisation and the independent contracted Part-145 organisation have the same accountable manager, compared to the configuration already covered by the AMC, where the organisation approved under Part-145 and the operator/Part-M Subpart G are the same organisation.

16. Options

a. The options identified:

Option 1: Do nothing.

Option 2: Amend AMC M.A.706(e) to specifically address the case where the operator/Part-M Subpart G organisation and the contracted, independent Part-145 organisation have the same accountable manager.

b. The preferred option selected (if possible):

Option 1

17. Sectors concerned.

The issue is relevant for commercial air transport operators only (cf. M.A.706(d)).

Questionnaires were sent via AGNA to all EASA Member States' competent authorities to take stock of the situation within each Member State, to determine the sectors concerned and to estimate the number of organisations that may benefit from an amendment to AMC M.A.706. Considering the low number of responses received (9), it is not possible to provide representative data. However, responses received indicate the following:

- The situation appears to be different in each Member State, which implies that the potentially positive effect of the envisaged amendment on industry would not necessarily concern all Member States.
- In general, the type of operators and maintenance organisations concerned are assumed to be small:
 - Operators are typically those operating on average five aircraft, small to medium size.
 - Maintenance organisations are typically those with less than ten persons actively involved in maintenance.
- In most cases, the Part-145 organisation is closely linked to the operator; in some cases it provides maintenance only for that operator, so that there is interdependence between the two organisations.

18. Impacts

Option 1: Do nothing.

a. All identified impacts:

- i. Safety
None
- ii. Economic
None
- iii. Environmental

- None
- iv. Social
 - None
- v. Other aviation requirements outside EASA scope
 - None
- vi. Foreign comparable regulatory requirements
 - No equivalent regulatory requirements on this particular issue exist under FAA rules, or in the ICAO Standards and Recommended Practices.
- b. Equity and fairness in terms of distribution of positive and negative impacts among concerned sectors:
 - None.

Option 2: Amend the AMC M.A.706(e) to specifically address the case where the operator/Part-M Subpart G organisation and the contracted, independent Part-145 organisation have the same accountable manager.

- a. All identified impacts

- i. **Safety**

Although the overall accountability is held by one single person for both organisations (the same accountable manager), the Agency is not convinced that the "corporate authority" of the accountable manager is equivalent to a situation where the operator/Part-M Subpart G organisation and the Part-145 organisation are the same company. With two separate companies, the corporate authority of the common accountable manager is limited by the fact that there are two separate entities with separate corporate liability. If no compensating measures are applied, this has the potential to affect the supervision of continuing airworthiness tasks and to create conflict of interest situations for the nominated post holder also employed by the Part-145 organisation under contract. Therefore, such configuration should not be allowed on the basis of a generally applicable provision, defined in the AMC to M.A.706(e), without specific compensating measures.

This potentially negative safety impact is believed to be more significant for smaller organisations, as these are more vulnerable economically, thus the nominated post holder maintenance may tend to refrain from taking particular actions that would be contrary to the interests of the Part-145 organisation, should certain maintenance tasks not have been performed in accordance with applicable regulations, procedures or contractual arrangements.

- ii. **Economic**

A positive economic impact is expected, as there would be no restrictions any longer for appointing a nominated post holder that is also employed by the Part-145 organisation.

- iii. Environmental

- None

- iv. **Social**

- None

- v. **Other aviation requirements outside EASA scope**

- None

- vi. **Foreign comparable regulatory requirements**

- No equivalent regulatory requirements on this particular issue exist under FAA rules, or in the ICAO Standards and Recommended Practices.

- b. Equity and fairness in terms of distribution of positive and negative impacts among concerned sectors:

Option 2 may economically benefit those commercial air transport operators where the Part-M Subpart G organisation and the Part-145 organisation are separate companies, but where the same person holds the position of accountable manager in the Part-145 organisation and in the Part-M Subpart G organisation. Costs of regulatory compliance would be expected to decrease given the possibility to nominate a post holder among the Part-145 organisation's staff. Such organisations would be "relieved" from the burden created by the introduction of Part-M compared to the situation under JAR-OPS Subpart M.

It is assumed that this positive economic impact is more or less significant depending on the industry configuration within each Member State. Consequently, the need for amending AMC M.A.706(e) is not equally supported in each Member State.

Option 2 has a potentially negative effect on safety, as it cannot be ensured that the overall accountability and responsibility in relation to airworthiness matters is generally equivalent to a situation where the nominated post holder is not employed by the contracted Part-145 or where the operator/Part-M Subpart G organisation and the Part-145 organisation are the same company.

19. Summary and Final Assessment

- a. Comparison of the positive and negative impacts for each option evaluated:

Option 1 has no impact, the situation remains unchanged. As defined in M.A.706(e) the competent authority has the possibility to specifically agree that the nominated post holder be employed by the Part-145 organisation under contract, on a case-by-case basis. Moreover, the competent authority has always the possibility to approve an alternative means of compliance to AMC M.A.706(e)(1), provided that an equivalent level of safety can be demonstrated for such alternative means of compliance. It is important to note that no demonstration of equivalent level of safety, that may include specific compensating measures to be defined on a case-by-case basis, would be required if the AMC M.A.706(e) was amended in line with the needs expressed by some stakeholders, as this AMC would then be directly and generally applicable.

For Option 2, a positive economic impact can be expected depending on the Member State's industry configuration, but this comes with a potentially negative impact on safety.

- b. A summary describing who would be affected by these impacts and analysing issues of equity and fairness:

Option 2 would typically benefit smaller operators and smaller maintenance organisations. The potentially negative safety impact however is believed to be more significant for such smaller organisations.

- c. Final assessment and recommendation of a preferred option:

Considering the uncertainty regarding the distribution of the positive economic impact among the Member States, the possibility already provided to competent authorities with AMC M.A.706(e)(1) to accept a nominated post holder employed by the organisation approved under Part-145 under certain conditions, as well as to approve an alternative means of compliance on a case-by-case basis, and taking into account the possible negative impact on safety, the Agency believes that Option 1 is to be preferred.