

OPINION No 02/2007

OF THE EUROPEAN AVIATION SAFETY AGENCY

**for a Commission Regulation amending Commission 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**

AND

**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**

I. General

1. The purpose of this opinion is to suggest the Commission to amend Commission Regulations (EC) No 1702/2003¹ and No 2042/2003². The reasons for this rulemaking activity are outlined further below.
2. The Opinion has been adopted, following the procedure specified by the Agency's Management Board³, in accordance with the provisions of Article 14 of Regulation (EC) No 1592/2002⁴.

II. Consultation

3. The draft Opinion for a Commission Regulation amending Commission Regulation (EC) No 1702/2003 was published (notice of proposed amendment NPA 9/2006) on the Agency website on 05 July 2006.
4. By the closing date of 5 October 2006, the Agency had received 235 comments from national authorities, professional organisations and private companies.
5. All comments received have been acknowledged and incorporated into a Comment Response Document (CRD), which was published on the Agency's web site on 11 December 2006. Several of the comments have led to changes in the proposed amendments and these are reflected in the CRD.
6. Comments were made on the procedure for handling applications for permit to fly. According to article 15 of Regulation (EC) 1592/2002 there is a division of responsibilities between the Agency and the national Aviation Authorities (NAA) in the area of airworthiness. Therefore both have to be involved in the process for issuance of permits to fly. In the procedure as described in NPA 9/2006 the involvement of the Agency was triggered by the NAA receiving the application but at the same time the applicant was supposed to contact the Agency directly for submitting the necessary documents. This appeared to be confusing. The Agency has acknowledged that the procedure could be improved by introducing a separate approval process covering the involvement of the Agency.
7. The NPA 9/2006 envisaged to create possible privileges related to the issuance of a permit to fly for approved design organisations and approved production organisations. In

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 Commission Regulation (EC) No 706/2006 of 8 May 2006 (OJ L 122, 9.5.2006, p. 16).

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 amended by Commission Regulation (EC) No 707/2006 of 8 May 2006 (OJ L 122, 9.5.2006, p. 17).

³ Decision of the Management Board concerning the procedure to be applied by the Agency for the issuing of Opinions, Certifications Specifications and Guidance Material. EASA MB/7/03 of 27.06.2003 (rulemaking procedure).

⁴ 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, 7.09.2002, p. 1.). Regulation as last amended by Commission Regulation (EC) 1701/2003 of 24 September 2003 (OJ L 243, 27.9.2003, p. 5).

response to several comments the Agency decided to extend these possible privileges and also to allow privileges for approved continuing airworthiness management organisations. Since the latter organisations are regulated by 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, this regulation also needs amendment.

8. After the publication of the CRD 11 reactions were received from national authorities, professional organisations and private companies. After a review of the reactions the Agency decided to replace the term “justification” by “substantiation” in paragraphs 21A.708(c) and 21A.713 and improving paragraph 21A.710 by stipulating clearly the competence and responsibility of the Agency, Competent Authorities and approved organisations in relation to approval of the flight conditions for a permit to fly. Other reactions have prompted further amendments to Regulation 2042/2003 complementing the possible privilege for continuing airworthiness management organisations by adding provisions for staff and making a change to the approval certificate form.
9. After a final internal review the Agency decided to make the following additional amendments for legal certainty and internal and external consistency:

One of the cases where a permit to fly is considered appropriate is deleted (21A.701(a)16) and another one is amended (21A.701(a)15). In these provisions the Agency was given power to decide on the eligibility for permit to fly on a case by case basis. Legal certainty requires for establishment of the cases for which a permit to fly can be issued firmly in legislation.

The eligibility paragraph is amended by adding the eligibility for application for approval of the flight conditions. This is consistent with the concept of a separate approval of the flight conditions.

The possibility for accredited National Aviation Authorities (NAAs) to approve the flight conditions is removed from paragraph 21A.710. The possibility for the Agency to outsource certain tasks to NAAs as well as the associated accreditation process is currently included in Agency procedures and it is not considered appropriate to elevate this to the level of legislation.

III. Content of the Opinion of the Agency

10. Regulation (EC) No 1592/2002 in article 5 paragraph 3(a) provides for the issuance of a permit to fly by derogation of the rules for issuance of certificates of airworthiness. The permit to fly is generally issued when a certificate of airworthiness is temporarily invalid (e.g. as the result of a damage) or when a certificate of airworthiness cannot be issued (e.g. when the aircraft does not comply with the essential requirements for airworthiness or when compliance has not yet been shown), but the aircraft is nevertheless capable of performing a safe flight. During the drafting of Commission Regulation (EC) No 1702/2003 it was recognised that common requirements were necessary to address the issuance of permit to fly. However due to a lack of time no detailed and comprehensive set of requirements and Acceptable Means of Compliance (AMC) and Guidance Material (GM) was developed. Therefore a transition period until 28 March 2007 was established during which the National Aviation Authorities (NAAs) are still responsible for all aspects related to permit to fly, giving the Agency time to prepare an opinion for amending Regulation 1702/2003. Many comments on the draft Part 21A.185 (“Issue of Permits to

Fly”) that were made during the consultation on the initial issue of Commission Regulation (EC) No 1702/2003 were deferred and were intended to be addressed in this rulemaking activity. This Opinion contains proposals to address all these issues.

11. This opinion is based on the current version of Regulation (EC) No 1592/2002. The Agency recognized that a proposal to change Article 15 of Regulation (EC) No 1592/2002 had been made which could affect the legal basis for issuance of permits to fly in the longer term. This proposal is currently discussed by the European legislator before it will become a final amendment, and may change before its adoption. It was therefore agreed that it would not be used as the basis for this opinion. When the final amendment to Regulation (EC) No 1592/2002 is adopted the Agency will assess the need for further amendment of Commission Regulation No 1702/2003.
12. One of the main challenges in drafting this opinion has been to address the division of responsibilities between the Agency and the Competent Authorities of the Member States. The Agency is clearly responsible for all design approval related issues while the Member States are responsible for finding conformity of the individual aircraft with the design as approved by the Agency. The traditional permit to fly encompassed both elements in one certificate. However since most permits to fly are issued to aircraft that do not meet an approved design, a permit to fly can only be issued by the Competent Authority of the Member State after the Agency has determined that the aircraft can perform safely a flight. Therefore the rules had to be drafted taking into account the two responsibilities but at the same time trying to maintain a process that can work in day to day practice. Consequently, and trying to take into account all these specificities, it is proposed to create a new Subpart P in the Annex to Regulation (EC) No 1702/2003 (Part 21), to address clearly the case of permit to fly, including the various interfaces.
13. The proposed Subpart P contains elaborated rules for the application and issuance of permit to fly.

The eligibility for application for a permit to fly is limited to specified cases to prevent that permit to fly is used to circumvent the rules for certificates of airworthiness. One special eligibility case is the permit to fly for certain aircraft that cannot comply with the rules for certificates of airworthiness indefinitely but are considered to be able to fly safely under defined conditions. This applies to certain aircraft for which there is no longer an organisation taking care of the continuing airworthiness responsibility (“orphan aircraft”).

The applicant applies to the NAA for a permit to fly but in order to obtain a permit to fly he must also make sure that the flight conditions are approved. These are approved under a separate approval process which requires a separate application. The flight conditions can be approved by the Agency or a design organisation approval holder for design related cases; or by the NAA or a production organisation approval holder or an approved continued airworthiness management organisation for non design related cases.

The permit to fly can be issued by the NAA, a design organisation approval holder, a production organisation approval holder or an approved continued airworthiness management organisation.
14. In order to assure a smooth transition from the applicable national rules to the new Community rules existing permits to fly are grandfathered for a maximum period of one year. The conditions for the permit to fly are grandfathered indefinitely unless the Agency

objects. To improve the legal certainty a time limit for the possible disagreement by the Agency was added.

Cologne, 8 February 2007

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