



The View from Washington

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Your Voice Counts in Government Matters

Comment periods recently closed on a number of significant proposals released by the FAA earlier this year, including the Part 21 rewrite, a change in Part 65 inspection authorization regulations, and the follow-on rewrite to Part 145.

Did you voice your opinion on these proposals? You should; it's relatively easy and it's your duty.

The government works for the people; it's the rulemaking process that tells the government "what the people want." If you don't tell the government it is wrong, it assumes it is right — and in the end, we pay the price.

In the United States, the Administrative Procedure Act (APA) is the law under which approximately 55 U.S. government federal regulatory agencies, such as the FAA, DOT, OSHA and EPA, create the rules and regulations necessary to implement and enforce major legislative acts, such as the Federal Aviation Act, the Clean Air Act, and the Occupational Health and Safety Act.

The law requires a general notice of proposed rulemaking be published in the "Federal Register," and the notice include either the terms or substance of the proposed rule or a description of the subjects and issues involved.

After the notice required by this section, the agency shall give interested persons an opportunity to participate in the rulemaking through submission of written data, views or arguments with or without opportunity for oral presentation.

After consideration of the relevant matter presented, the agency shall

incorporate in the rules adopted a concise general statement of its basis and purpose.

In addition to the process of rulemaking, the APA also requires each agency to give interested persons the right to petition for the issuance, amendment or repeal of a rule.

Rulemaking Procedures

The regulations we use in petitioning the FAA are contained in Title 14, Code of Federal Regulations (CFR) Part 11 – Rulemaking Procedures. This part applies to the issuance, amendment and repeal of any regulation for which the FAA follows public rulemaking procedures under the Administrative Procedure Act.

Rulemaking has a number of steps, terms and abbreviations with which it is associated. The most common is the notice of proposed rulemaking (NPRM), but there is also an advance notice of proposed rulemaking (ANPRM) and a supplemental notice of proposed rulemaking (SNPRM), along with a final rule, for which there are actually two different methods.

We know an NPRM proposes the FAA's specific regulatory changes for public comment and contains supporting information. It also includes proposed regulatory text.

If the FAA is considering rulemaking but doesn't have a specific proposal, it may issue an ANPRM. An ANPRM tells the public the FAA is considering rulemaking and requests written comments on the appropriate scope of the rulemaking or on specific topics.

Following an NPRM, the FAA may decide it needs more information on a specific issue, or it may consider a different approach from the original proposal. In these cases, the FAA may issue an SNPRM to give the public an opportunity to comment further or to give us more information.

At this point, everything has been proposed and is not cause to change a process or comply with the proposal. A proposed regulation doesn't become final until it is published as a final rule. A final rule sets out new or revised requirements and its effective date. It also may remove requirements.

When preceded by an NPRM, a final rule also will identify significant substantive issues raised by commenters in response to the NPRM and will give the agency's response.

The preamble to the final rule will list the major topics raised during the ANRPM, NPRM and SNPRM processes and the FAA's response to these comments. It is not unusual for a proposal to be changed significantly based on the comments received.

It is also not unusual for me to receive phone calls from members who have been told to (or encouraged to) comply with a proposal in advance before it has become final. This is not a good idea; the purpose of rulemaking is for the public to advise the FAA as to what it expects.

Often, draft regulations and advisory circulars (AC) are changed during the rulemaking process. Complying with a draft document likely will cause you to spend more money correcting your process once the final rule is published.

An example of the challenges this brings when a pre-comment document is used as a standard and the post-comment document is changed in the process is the Repair Station Training Program. The draft AC was subject to public comment and, subsequently, was changed as a result of the comments received, whereas the FAA order never got the benefit of public comment and, as a result, guides the FAA inspector workforce to request items beyond the scope of the program's approval.

Final Rule

When the FAA issues a final rule without first issuing an ANPRM or NPRM, it is called a final rule with a request for comment. The FAA may go this route because it determines going the traditional NPRM route would be impracticable, unnecessary or contrary to the public interest.

An example of a final rule with request for comment is an airworthiness directive (AD). When a significant safety-of-flight issue arises in which immediate action is necessary to protect life and property, the FAA will issue an AD as a final rule without the benefit of an NPRM and ask for comments, which may or may not be received before the effective date of the rule.

Another type of final rule is the direct final rule. A direct final rule is a type of final rule with request for comments. In the case of a direct final rule without an NPRM, the FAA does not expect to receive any adverse comments, so it determines an NPRM is unnecessary.

The FAA sets the comment period to end before the effective date. If the FAA receives an adverse comment, it may withdraw the final rule before it becomes effective and may issue an NPRM.

A recent example of this was the change from an annual renewal for

inspection authorization to the two-year renewal. In this case, the FAA immediately went to the final rule with a request for comment.

In the "Federal Register" notice for "Inspection Authorization 2-Year Renewal; Final Rule," the notice included the explanation as to why the FAA followed the direct final route rather than the NPRM process.

In the "Direct Final Rule Procedure" notice, the FAA stated:

"The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule as a result of the strong support from the mechanics that hold inspection authorizations. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment, is received within the comment period, the regulation will become effective on the date specified above."

How do you comment?

To make comments, first go to the "Federal Register." Published by the Office of the Federal Register, National Archives and Records Administration, the "Federal Register" is the official daily publication for rules, proposed rules and notices of federal agencies and organizations, as well as executive orders and other presidential documents. The "Federal Register" can be viewed at www.gpoaccess.gov/index.html.

What does the "Federal Register" tell us? Let's use the two-year IA renewal as an example:

- What department issued the notice? In this case, the Department of Transportation.
- What agency of the department issued the notice? In this case, the FAA.
- What regulation is being amended? In this notice, it is 14 CFR Part 65.

• What is the short title of the proposal and what kind of notice is this? In this case, "Inspection Authorization 2-Year Renewal; Final Rule."

The notice will include a docket number to identify the notice and link comments to. In this case, this final rule is identified as Docket No.: FAA-2007-27108. On the website's Docket Management System, only use the docket number without the year for searching the docket. In this case, we would use "27108" as the docket number for the search on <http://dms.dot.gov>.

There always will be a short summary of what action the agency is taking. For this final rule, the summary reads:

"The Federal Aviation Administration (FAA) is amending the regulations for the Inspection Authorization (IA) renewal period. The current IA regulation has a one-year renewal period. This rulemaking changes the renewal period to once every two years. By changing the renewal period, the FAA reduces the renewal administrative costs by 50 percent. Both the FAA and the mechanic holding the IA will realize this cost reduction. Aviation safety will not be affected because this rulemaking does not change the requirements of the prior rule for annual activity (work performed, training, or oral examination)."

There will be a "Dates" section listing important dates, such as the effective date and any date by which comments should be received. For this rule, the rule became effective March 1, 2007. Any comments for inclusion in the rules docket must have been received on or before March 1, 2007.

In the "Addresses" section, the address for where to submit comments will be provided. This area includes the Department of Transportation Docket Management System website address: <http://dms.dot.gov>. It is from this web-

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site where you can track most documents that have been published in the “Federal Register.”

In the case of advisory circulars, they often are managed at the supervisor level within the agency and are not listed in the Docket Management System. Draft ACs can be viewed on the FAA’s Regulatory and Guidance Library, which can be accessed at <http://rgl.faa.gov>.

The “Address” section also includes the appropriate mailing address and a physical address where comments can be hand-delivered, if you’d like.

The “Federal Register” provides information on where you can read the rule and/or proposal along with any comments submitted to the docket as part of this rule. While the “Federal Register” usually contains the proposal language, it may not contain all of the supporting documents you may need to review, such as the cost-benefit analysis or propriety standards, which would not be reprinted in the “Federal Register.”

The last item of interest is who to contact for more information about this notice. There will be a section labeled “For Further Information Contact.” This is usually the person responsible for managing this particular rulemaking activity.

The notice will explain the rule as well as discuss the comments submitted to the NPRM, if applicable, the FAA’s response, and the actual regulatory language.

During the NPRM process, it is important to compare the current regulatory language to the proposed regulatory language, then determine if you agree or disagree with the FAA’s position. This is where the AEA’s regulatory comparison documents come in handy. For major proposals, the AEA publishes a comparison of the current language of the regulations with the

proposed language so you can review the proposal as it actually affects the regulations and your business.

What should your comments say?

First, identify who you are, then provide the docket number and the short title of the proposal for which you are submitting comments.

A simple business letter is fine. It really doesn’t need to be a Pulitzer-Prize-winning novel. A simple business letter explaining who, what, where, why, how and the cost is all that’s needed.

Your letter should include: Who you are; what are you commenting about; how the proposal will affect you, your business, your employees or your customers; why you support or do you not support the proposal; and what the financial impact will be for you and your business if the proposal is enacted.

Finally, if you disagree with the FAA’s proposal, provide any alternative means of meeting the intent of the rule. An alternative is an important element most people leave out. If you don’t like the wording of a proposed regulation, provide a revised wording. Although there are times when your only response is just to say no to more government.

Even though the AEA submits comments on most rulemaking activities affecting the repair station industry or the avionics community, for substantial changes to the rules we still need members to share their thoughts with the agency. If you aren’t comfortable with submitting comments to the docket or you need help finding the resources, contact the AEA — that’s what we are here for. □

Regulatory Update

United States

FAA Issues Final Rule on Inspection Authorization

In the Jan. 30, 2007 "Federal Register," the Federal Aviation Administration issued a final rule extending the inspection authorization (IA) renewal from one year to two years.

The FAA is amending the regulations for the IA renewal period. The current IA regulation has a one-year renewal period. This rulemaking changes the renewal period to once every two years.

By changing the renewal period, the FAA reduces the renewal administrative costs by 50 percent. The FAA claims both the FAA and the mechanic holding the IA will realize this cost reduction.

Aviation safety will not be affected because this rulemaking does not change the requirements of the prior rule for annual activity (work performed, training or oral examination).

The AEA commented on the rule. The Association's comments can be viewed on Resource 1, the AEA's members-only website at www.aea.net/R1.

FAA Proposes Amending Pilot, Flight Instructor, Pilot School Certification

On Feb. 7, 2007, the FAA proposed amending the training, qualifications, certification and operating requirements for pilots, flight instructors, ground instructors and pilot schools.

These changes are needed to clarify, update and correct the existing regulations. The changes are intended to ensure flight crew members have the training and qualifications to enable them to operate aircraft safely.

Comments must be submitted to the FAA no later than May 8, 2007. Send comments, identified by Docket

Number FAA-2006-26661, to the DOT Docket website at <http://dms.dot.gov>.

Working with the European Community on Airworthiness Certification, Continued Airworthiness

On Jan. 29, 2007, the FAA issued change No. 1 to FAA Order 8100.14A. This order provides interim policy and guidance on how to interact with the European Aviation Safety Agency (EASA) and the National Aviation Authorities (NAA) of European Union (EU) member states for the purposes of type, production and airworthiness certification, as well as continued airworthiness of aeronautical products.

This change is issued to include a limited number of changes to 8100.14A, which primarily are updates related to revised EASA administrative processes for design approvals, repair design data acceptance/approvals, technical assistance requests, and new EASA e-mail addresses.

Canada

TCCA Update on TCCA Safety Management Systems Implementation Schedule

As reported in the February edition of *Avionics News*, TCCA recently updated its safety management systems (SMS) implementation schedule. Implementation to AMOs performing maintenance on aircraft operated under CAR 702, 703 and 704 now is forecast for December 2007.

TCCA has indicated this will be a graduated implementation, with 704 AMOs being the first required to have an SMS, followed by 703, then 702 AMOs. Finally, specialized maintenance AMOs will be required to implement SMS into their operations. It is expected the regulations for these

AMOs will not come into force until later in 2008.

TCCA is taking a phased-in approach to implementation in each regulatory area. There will be four phases extending over three years after the in-force date:

- Phase 1: Initial Certification. Within three months of the publication of the SMS regulation, initial certification requires applicants provide Transport Canada with:

- 1) The name of the accountable executive.

- 2) The name of the person responsible for implementing the SMS.

- 3) A statement of commitment to the implementation of SMS (signed by the accountable executive).

- 4) Documentation of a gap analysis between the organization's existing system and the SMS regulatory requirements.

- 5) The organization's implementation project plan, based on the requirements of the exemption and the certificate holder's internal gap analysis.

- Phase 2: One-Year Follow-Up. After one year, certificate holders will demonstrate their system include the following components:

- 1) Documented safety management plan.

- 2) Documented policies and procedures relating to the required SMS components.

- 3) A process for occurrence reporting with the associated supportive elements, such as training, a method of collecting, storing and distributing data, and a risk management process.

- Phase 3: Two-Year Follow-Up. Two years after initial certification, certificate holders will demonstrate, in addition to the components already demonstrated during Phase 2, they

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also have a process for the proactive identification of hazards and associated methods of collecting, storing and distributing data, and a risk management process. Required components include:

- 1) Documented safety management
 - 2) Documented policies and procedures.
 - 3) A process for reactive occurrence reporting and training.
 - 4) Process for proactive identification of hazards.
- Phase 4: Three-Year Follow-Up.

One year after Phase 3, certificate holders will demonstrate, in addition to the components already demonstrated during Phases 2 and 3, they also have addressed:

- 1) Training
- 2) Quality assurance
- 3) Emergency preparedness

Frequently Asked Questions

The following information is from the Federal Aviation Regulations.

TOPIC:

Instructions for Continued Airworthiness

QUESTION:

Is there any guidance on the development and submittal of ICAs?

ANSWER:

The regulatory reference is Section xx.1529 for each of the aircraft and rotorcraft certification rules (Sections 23.1529; 25.1529; 27.1529; and 29.1589).

Each section refers to an appendix, which spells out what should be contained in an ICA and in what format the ICA should be.

In addition to the regulations, FAA Order 8110.54 provides FAA inspectors with their guidance on responsibilities, requirements and content for instructions for continued airworthiness (ICA). This document may provide good information for the applicant as well.

In this order, the FAA offers guidance on responsibilities, requirements and content for ICA as required by Title 14 of the Code of Federal Regulations (14 CFR) § 21.50.

This order was written for personnel in the aircraft certification service, aircraft evaluation groups, and flight standards district offices that review and accept ICA as required by the regulations.

Chapter 3 specifically deals with the format of the ICA and the types of data an inspector should be looking for as he reviews and accepts the ICA as part of a major repair or major alteration data package.

There are two commercial sources of information that also may help the avionics shop in its ICA application process: Air Transport Association's iSpec 2200, "Information Standards for Aviation Maintenance," and the General Aviation Manufacturers Association's Specification No. 2, "Maintenance Manual," dated Sept. 1, 1982.

Note: The AEA offers "Frequently Asked Questions" to foster greater understanding of the Federal Aviation Administration regulations and the rules governing our industry. The AEA strives to ensure FAQs are as accurate as possible at the time of publication; however, rules change. Therefore, information received from an AEA FAQ should be verified before being relied upon. This information is not meant to serve as legal advice. If you have particular legal questions, they should be directed to an attorney. The AEA Disclaims Any Warranty for the Accuracy of the Information Provided.

Europe

EASA

Amendment Could Involve More Than 600 Aircraft

NPA 17-2006 is to envisage amending Commission Regulation EC 1702/2003 (Part 21) to allow the continued operation of aircraft designed in the Soviet Union and CIS, and currently registered in a member state, until the time when an EASA type certificate can be determined by the agency; otherwise, their continued operation can no longer be justified. The scope of this rulemaking activity is outlined in ToR MDM.041.

The text proposed was provided after intensive investigation by the agency to which extent aircraft types and commercial operations would be affected by the new regulation. The task is to determine the types of aircraft being accepted by EASA as type certified. The lack of approval basically would ban the types from European Union (EU) registers.

The number of potentially affected aircraft is estimated to be between 323 and 667.

Appealing Agency Decisions Via the Website

EASA has amended its website to include a link to a site explaining and providing guidance to appeal against decisions of the agency that have been taken in the following fields:

- Investigation of undertakings
- Airworthiness and environmental certifications

- Fees and charges regulation

The site further gives guidance and reference to an appeal notification form, as well as the composition and organization of the board of appeal.

Removing the Ambiguity for Manufacturers

A terms of reference, TOR 21.021, was issued in January addressing the subject of ambiguity between AMC/GM and Part 21 in respect to eligibility for Subpart F and G for manufacturers of raw material.

Although the applicability and eligibility paragraphs of Subpart F and G do not include material manufacturers of raw material (not being products, parts and appliances), ambiguity as to the applicability of those parts to manufacturers of raw material exists because of confusing instructions for completion of the EASA Form 1 in Part 21 and related AMC/GM. In addition, AMC and GM for Subpart F and G in Part 21 and AMC for Part M and Part 145 are confusing in this respect.

The objective is to remove the ambiguity in AMC/GM for eligibility and applicability of Subpart F and G of Part 21. An NPA is planned for publication soon, with a decision expected by the end of the year.

Flight Standards Added to Website

EASA is adding a "Flight Standards" section to its website. Currently, this new section includes Maintenance Review Board reports, MMEL and International Maintenance Review Board policy issues. The Flight Standards Section is structured under the "Certification" section.

RTCA/EUROCAE New Documents Available on Website

RTCA recently issued a number of new documents on its website, including:

- DO-303, "Safety, Performance

and Interoperability Requirements Document for the ADS-B Non-Radar-Airspace Application." This document addresses the operational concept and minimum requirements for the use of ADS-B surveillance for ATS services in non-radar areas. It was developed jointly with EUROCAE.

- DO-302, "Minimum Operational Performance Standards for Surveillance Transmit Processing (STP)." This document contains requirements for interfacing ADS-B avionics to onboard position sources, such as GPS and flight management systems. Proper integration and installation of ADS-B equipment into aircraft is essential for successful implementation of ADS-B air-to-ground and air-to-air applications. STP is a critical subsystem of the end-to-end system defined in the minimum aviation system performance standards for aircraft surveillance application (RTCA DO-289).

- DO-301, "Minimum Operational Performance Standards for Global Navigation Satellite System (GNSS) Airborne Active Antenna Equipment for the L1 Frequency Band." This document contains minimum operational performance standards for GNSS airborne active antenna equipment designed to use the GPS or Galileo L1 frequency augmented by other systems/equipment/techniques as appropriate to meet the performance requirements for primary means of navigation for enroute, terminal, non-precision and precision approach phases of flight.

- DO-300, "Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance System II (TCAS II) Hybrid Surveillance." This document will allow TCAS to lower the number of aircraft it actively tracks through the use of passive tracking aircraft via the extended squitter. (Active tracking is used intermittently to validate the ADS-B data.) It will allow TCAS to increase its operational range as it will not need to initiate

interference limiting because the number of actively tracked aircraft will be lower.

- DO-294B, "Guidance on Allowing Transmitting Portable Electronic Devices (T-PEDs) on Aircraft." This document addresses near-term T-PED technologies, such as existing devices enabled with cellular technologies, wireless local area networks, and wireless personal area networks, as well as emerging PED technologies, such as active RF identification tags, transmitting medical devices, and picocells for devices enabled by cellular technologies for use onboard aircraft. EUROCAE provides a similar document with the designation ED-130.

- DO-229D, "Minimum Operational Performance Standards for Global Positioning System/Wide Area Augmentation System Airborne Equipment." This document contains minimum operational performance standards for airborne navigation equipment (2-D and 3-D) using the GPS augmented by the WAAS.

- Change 1 to DO-293, "Minimum Operational Performance Standards for Nickel-Cadmium and Lead Acid Batteries."

- Change 1 to DO-290, "Safety and Performance Requirements Standard for Air Traffic Data-Link Services in Continental Airspace (Continental SPR standard)."

- Change 1 to DO-289, "Minimum Aviation System Performance Standards for Aircraft Surveillance Applications." This change to DO-289 mainly clarifies the definitions of several parameters transmitted by aircraft in ADS-B messages.

- Change 1 to DO-282A, "Minimum Operational Performance Standards for Universal Access Transceiver Automatic Dependent Surveillance-Broadcast." This change to DO-282A mainly clarifies the definitions of several parameters transmitted by aircraft in ADS-B messages.

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- Change 2 to DO-260A, “Minimum Operational Performance Standards for 1090 MHz Extended Squitter Automatic Dependent Surveillance–Broadcast and Traffic Information Services–Broadcast.” This change to DO-260A mainly clarifies the definitions of several parameters transmitted by aircraft in ADS-B messages.

- Change 1 to DO-242A, “Minimum Aviation System Performance Standards for Automatic Dependent Surveillance Broadcast.” This change to DO-242A mainly clarifies the definitions of several parameters transmitted by aircraft in ADS-B messages.

AEA Creates STC Database for Europe Members

Based on requests from AEA members in Europe, the AEA is developing an STC package database (including minor mod packages) for the exclusive use of the European membership. The AEA will simply act as the STC package depository. The Association will not be involved in the purchase transactions of the packages between member companies.

AEA’s website will serve as the venue for providing the information about the package and the contact information of the selling company on the website. It is up to each company to contact the seller and arrange payment and delivery of the packages.

The success and usefulness of the database is dependent on participation by European members. For more information, contact Mark Gibson, website administrator for AEA, via e-mail at markg@aea.net. □

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