

U.S. Department of Transportation
Federal Aviation Administration

Subject: ACTION: Public Involvement in Policy and Guidance Date: March 27, 2001
Developed by Aircraft Certification Directorate
Standards Staffs, SMT01-01
From: Standards Management Team (SMT) Reply to
Attn. of:
To: SEE DISTRIBUTION

Purpose: The purpose of this memorandum is to document the agreement by the Standards Management Team (SMT) to involve the public in the establishment of generic policy and guidance to the standards under the purview of the Aircraft Certification Directorates. This agreement affects:

- policy and guidance developed for the airworthiness standards contained in 14 Code of Federal Regulations (CFR) parts 23, 25, 27, 29, 31, 33, and 35;
- establishment of the appropriate airworthiness requirements or criteria for special classes of aircraft (14 CFR 21.17(b)) and primary category aircraft (14 CFR 21.24); and
- determination of regulations inappropriate for restricted category aircraft (14 CFR 21.25).

Background: It is the goal of the SMT to improve the quality of the policy and guidance in each of their areas of responsibility. This responsibility was established in Order 8000.51 and further clarified in Order 8100.5. These Orders did not prescribe methods for issuing policy and guidance, and instead, relied on other Orders, such as Order 1320.46B, Advisory Circular System. Although most of the generic policy and guidance is issued as advisory circulars, there are other types of policy, such as policy memoranda, that have been developed and issued through non-standardized processes. Although each office has procedures for developing policy, involving the public in the development of all policy has been determined to be a necessary step.

Generic policy and guidance statements are not intended to be binding (i.e. to establish what the courts refer to as a “binding norm”); they do not constitute a new regulation and the FAA would not rely upon them as a regulation. Although the FAA retains the discretion not to follow a policy statement in particular cases, there should be coordination between the Aircraft Certification Office and the accountable directorate’s standards staff before accepting an applicant’s proposed method of compliance that is outside of established policy and guidance. Typically, a request to deviate from established policy is initiated by an applicant request and the FAA decision on these requests is documented through the issue paper process.

There are much fewer requirements for developing generic policy and guidance than rulemaking, since no new requirement is being imposed on the regulated. However, the SMT believes that public input into the development of generic policy and guidance (after development with input from affected FAA offices) is essential in making quality policy and guidance documents and ensuring that we maintain the public trust.

There are several methods for gathering public input in the development of generic policy and guidance. These include:

1. The advisory circular (AC) process

2. The publication, in the Federal Register, of a notice of availability of the draft policy or guidance document with a request for comment
3. The use of an existing Federal Advisory Committee, e.g., ARAC
4. The conducting of a public meeting within the requirements of the Federal Advisory Committee Act (FACA).

The SMT recognizes that it is usually improper to obtain public input for project specific policy and guidance because of the specific proprietary issues involved with a specific design and the timeliness to support the project. Methods for communicating project specific policy and guidance are outlined in paragraph 400.g.(3) of Order 8100.5. It may be desirable for the accountable directorate standards staff to convey certain project specific policy and guidance issues using a memorandum with information copies to all Directorates/Divisions (Order 8100.5, paragraph 400.g.(3)(c)). This can be an effective method of alerting FAA offices of the specific project issue and to receive feedback to determine if there is a generic policy and guidance issue. When this method is used, the memorandum should state that the policy is applicable only to that project and that further application of this policy requires coordination with the accountable directorate standards staff.

Requirements: When establishing generic policy and guidance to the airworthiness standards under their purview, it is the expectation of the SMT that, as a minimum, the public shall be notified, given access to the policy and guidance, and given an opportunity to comment. It shall also be the norm that public comments shall be appropriately considered before a generic policy is issued.

It is also expected that prior to public notification, all draft documents will be sufficiently coordinated with affected FAA offices including FAA legal to ensure technical credibility and legal validity, e.g., no rulemaking by AC or policy.

Original signed by
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