

24 August 2016

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RE: Consistency of Regulatory Interpretation (313) ARC Member Comments
FAA Draft Order 8000.RCCB—Regulatory Consistency Communication Board (RCCB)

Dear Mr. Mathews:

The undersigned were members of the Consistency of Regulatory Interpretation (CRI) Aviation Rulemaking Committee (ARC) established by section 313 of the FAA Modernization and Reform Act of 2012. The CRI ARC provided six recommendations; one was for the FAA to develop a Regulatory Consistency Communications Board (RCCB). The Board would develop and follow a process for certificate/approval holders, applicants and/or agency personnel to have regulatory decisions reviewed without fear of reprisal. The process was to provide industry and the FAA with a vehicle for the timely, impartial resolution of difficult regulatory issues. To that end, the undersigned associations appreciate the opportunity to review the draft order referenced above and offer feedback.

General Comments

The proposed FAA Order 8000.RCCB represents an important step in promoting consistency of regulatory interpretations and application. The ARC highlighted that one of the issues with inconsistent regulatory application was the general reluctance and/or failure by both industry and the FAA to work issues through to a final resolution. Key factors hindering final resolution in existing processes were lengthy delays and fear of retaliation. Another factor was the application of regulations by local preference rather than the plain language of the regulation, the regulatory intent, and effect on safety or written policy.

While the draft order provides a more streamlined process, the devil is in the details. Ultimately, the order contains many vital policies, but does not provide the details necessary to ensure that the intent is fulfilled. As the agency has reminded many certificate holders, procedures require a clear delineation of the specific steps, duties and responsibilities of individuals (usually by title), not just an overview of general intent or broad stages. The procedure must be in enough detail to ensure it can be followed, audited and appropriate metrics gathered for review and analysis for validity and/or improvement of the process or its outcomes. For example, there is little detail on how each element will be fulfilled and how vital and relevant information will be gathered and analyzed to ensure the intended sustainable result.

Additionally, there is no method for involvement of the certificate holder, applicant or other stakeholders. The ability to obtain information from all the sources of a particular issue or matter is vital to obtaining or providing a durable result. The RCCB must be assured it is reviewing all pertinent facts so the proper regulations and guidance can be applied, changed, adjusted, or merely explained in a more comprehensive manner.

Section Specific Feedback

Section 2.1

The policy should make clear that the RCCB is distinguishable from other processes (see comments to section 2.3 below); therefore, we recommend that the word “timely” be added to the following text:

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The RCCB's purpose is to provide a collaborative environment where AFS, AIR, and AGC representatives discuss, clarify, and provide *timely* resolutions to complex issues involving inconsistencies brought forward by internal and external stakeholders.

It is notable that external stakeholders do not have an opportunity to discuss the particular issue, situation or matter with the internal stakeholders. The ability to discuss a matter with external sources to obtain, confirm, adjust or ascertain the facts, circumstances and data is essential to ensuring a long-term and durable solution.

Section 2.2.1

The section does not fully explain or provide details on how conflicts would be resolved among and between the offices, divisions, directorates and the RCCB. To reach final resolution, there must be a clear hierarchy of decision making. If the details are in other orders or policies, those processes should be clearly referenced.

Sections 2.2.1 & 2.2.2

While the issues that are sent to the OPR identified in section 2.2.2 will be worked outside of the Board, the matter will be "accepted" by it. Therefore, the responsibility for ensuring the outcome intended by the RCCB is implemented and achieved should also be a responsibility of the Board.

The draft Order describes the purpose of the RCCB as "...to provide a collaborative environment where AFS, AIR, and AGC representatives discuss, clarify, and provide resolutions to complex issues involving inconsistencies brought forward by internal and external stakeholders. The intent of the RCCB is to promote an agile organization and resolve issues with durable decisions."

To ensure resolutions stand the test of time, it is imperative that simply drafting and issuing guidance or policy is not the sole outcome as this by itself does not ensure intended objectives are met. After drafting and issuing an RCCB decision, follow up actions must be outlined to ensure implementation, review and tracking of results to determine if the resolution was, in fact, durable.

Section 2.3

The RCCB is meant to provide resolution to FAA personnel and certificate/approval holders and applicants of questions related to the application of regulations in a timely manner and promote collaboration between AFS, AIR, AGC and certificate/approval holders and applicants. The RCCB is meant to provide a more collaborative environment to respond to certain concerns in a timely manner whereas other processes may require a more formal legal decision or escalation process that requires significantly more time.

This section provides several examples of other FAA processes in which the RCCB would not be the primary vehicle for resolution; however, it does not describe the differences between the RCCB and other processes which could pose a challenge. For example, the term "request for legal interpretation" is vague; the concern is that the RCCB process could use the broadest definition or understanding of what constitutes a legal interpretation as the basis for rejecting submissions into the RCCB. At some level, all issues submitted to the RCCB could also be considered a "request for legal interpretation".

Similarly, the CSI process is an escalation and reporting process for issue resolution that is managed by senior FAA levels while the RCCB process can be managed by policy offices and junior representatives in a comparatively timely manner.

We recommend that each alternative have distinctions, so appropriate matters are addressed by the RCCB or referred to another process that is clearly where the particular issue must be submitted.

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Section 2.4

Section 2.4 does not define the person or position ultimately responsible for ensuring the intended outcome of the RCCB is implemented, tracked, reviewed and analyzed to ensure it achieved a durable result.

While section 2.4.2.2 indicates the POCs produce the content that the RCCB will use to “document resolution of issues”, it is not clear that a resolution of an issue goes beyond just writing, clarifying, or editing a summary of the resolution.

Further, section 3.3.3.1 indicates that the RCCB considers an issue resolved once the publication of revised documents has occurred and the RCCB issues a memo that describes which documents were revised.

We recommend that section 2.4 identify a specific position with the responsibility to ensure the RCCB’s decision has achieved its desired outcome and is not simply the publication of revised documents. In some cases it would include changes to additional policy, guidance or regulatory language; in other cases, it would include training or even enforcement.

Section 2.4.2.2 should address verification and validation resolutions’ durability. And if the resolution was not durable, what and how further actions will be taken.

Section 3.3.3.1

Resolution of complex issues will not always stop at the publication of documents or summaries. Issuing a resolution must be followed by validation and verification of the result and definition of any further actions that will be taken if the resolution was not durable.

It is recommended the inclusion of the following statement be made: “A determination that the actions of the RCB or OPR have achieved a durable result; and...”

Section 3.4

We recommend a new subsection 3.4.1.2 to identify where and how issues will be tracked by the RCCB. The issued should be described, and the details that lead to a resolution (not just the publication of documentation), should be included. This information could be available to internal and external stakeholders (on request) in order to promote the Board’s efforts and intended results and to alleviate future issues of similar nature—thus helping to ensure a lasting result.

Section 3.5

We recommend that the third sentence be more definitive, that is: “In these events, the OPR for this policy will take the lead...”. In addition, there should be a specified timeline for the OPR to adopt RCCB actions for the resolution to be implemented and effective.

Conclusion

The undersigned associations appreciate your attention to these comments and would welcome the opportunity to sit down with the drafters of the policy to understand and address the need for details in the order and in any work instructions. Indeed, the committee has several volunteers readily available for that effort.

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