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European Aviation Safety Agency
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RE: Comments on Notice of Proposed Amendment, NPA 2019-05(C) – Embodiment of Safety Management System Requirements into Part-145 and Part 21

Dear Ladies and Gentlemen:

The Aeronautical Repair Station Association (ARSA) submits the following consolidated comments to the above-referenced Notice of Proposed Amendment (“the NPA) issued by the European Aviation Safety Agency (EASA) regarding the incorporation of safety management system (SMS) requirements into Part 145. Specific portions of this document are posted in their appropriate location using EASA’s Comment Response Tool (CRT). For ease of reference this document is also uploaded to the CRT.

Background

ARSA is the trade association for the €73 billion EUR (\$81 billion USD) global aviation maintenance industry. The association’s primary members are approved maintenance organisations certificated by EASA, the Federal Aviation Administration (FAA) and other aviation authorities to perform work on civil aviation products and articles. Our membership includes companies certificated by EASA directly and those approved by the agency through bilateral aviation safety agreements. Our members also include air carriers, manufacturers, industry service providers, educators and others supporting this vital section of the global economy.

Summary

ARSA shares EASA’s objective of improving aviation safety. We generally support the NPA’s goal of encouraging organisations authorized to perform civil aviation maintenance to adopt SMS policies, processes and procedures to assess risk; mitigate and constantly reevaluate risk and the effectiveness of safety management programs; and promote the SMS internally.

The NPA recognizes the complexity associated with managing compliance within companies with multiple certificates and that a one-size-fits all solution is inappropriate for a diverse industry made up of companies with various sizes and specialties. Specifically, point 145.A.200(b) provides that the SMS should correspond to the size of the organisation, the complexity of its activities and risks associated with those activities. Point 145.A.200(c) allows organisations holding more than one certificate to integrate

SMSs associated with those certificates. ARSA urges those concepts be maintained in the final regulations.

At the same time, certain provisions of the NPA run contrary to the philosophy underlying SMS, suggest a lack of confidence in the systems required by the new rules, would create new and unnecessary burdens for certificate holders and regulators and would potentially undermine safety. In particular, while the current regulation requires certificate holders to *notify* the regulator prior to making certain changes to the organisation, the proposed amendments to 145.A.85 would require *prior approval* by the competent authority. Perhaps most significantly, the proposed rule would require prior approval of changes to personnel responsible for compliance pursuant to point 145.A.30(b), for managing compliance monitoring pursuant to point 145.A.30(c) and for managing the SMS pursuant to point 145.A.30(ca). Notably, the proposed amendments to the regulation would eliminate the very reasonable provision in the current 145.A.85 that recognizes certain personnel changes may be unplanned and requiring notification of those changes at the earliest possible opportunity.

A key concept underlying SMS is that safety depends on the organization and its processes, not individuals; put another way, the privilege of holding a certificate is not dependent on any one individual, but rather on the company's SMS. Requiring the regulator to approve personnel changes made in accordance with the company's SMS defeats the purpose of the system and the proposed regulatory changes. It is the company's responsibility, not that of regulators, to manage operations and make decisions about who is best suited to ensure compliance, safety and the company's success. If the company has properly designed and implemented its SMS, the new employees appointed to key positions should be presumed qualified and trained as required by point 145.A.30(e). The new approval requirements in 145.A.85 would give regulators unprecedented authority over internal personnel changes, diverting competent authority resources and undermining the ability of certificate holders to manage their businesses on a daily basis. Finally, by requiring the regulator's approval of personnel changes, the new rule will undermine safety by thwarting a company's ability to remove a team member whose acts or omissions run contrary to the company's SMS. For all these reasons, we urge EASA to remove the prior approval requirement and revert to the current notification system, particularly as it relates to unanticipated personnel changes.

Additionally, while we share the goal of creating the safest global aviation system possible, we caution the agency against creating unreasonable public expectations about safety outcomes since some risks are inherent and cannot be eliminated. At their best, regulations reflect and mandate the adoption of broadly recognized and proven best practices; however, unnecessary and inconsistent mandates that intrude on sound business judgment add complexity and lead to confusion, which in turn undermine safety. It is with the foregoing in mind that we submit these comments and recommendations.

Comment Number	Segment Description	Page	Comment
1	Draft Cover Regulation (EU) No1321/2014 (Draft EASA opinion) – Article 4-10	7	The proposed regulation provides that certificated entities must adopt SMS within two years of the final regulation’s issuance. ARSA urges the two-year transition period to be maintained or extended to ensure sufficient time for systems to be properly designed and implemented.
2	145.A.60-Occurrence reporting	21	<p>Point 145.A.60(b) requires the organisation to report to both the competent authority and the organisation responsible for the design of the aircraft, “any incident, malfunction, technical defect, exceeding of technical limitations, occurrence that would highlight inaccurate, incomplete or ambiguous information [in technical data] or other irregular circumstance that has or may have endangered the safe operation of the aircraft and that has not resulted in an accident or serious incident.”</p> <p>ARSA is concerned that this requirement is overly broad and will impose unnecessary burdens on both certificated entities and the regulator. Many articles sent to maintenance providers have experienced discrepancies. Serious, previously undetected defects caused by issues with design or production deficiencies, are relatively easy to recognize and report. On the other hand, the failures and malfunctions that are known, anticipated, recognized as correctable and have corrective action specified should not require a report.</p> <p>To avoid over-reporting and clogging up the regulator’s system for handling reports under point 145.A.60(b) and to ensure unknown, unanticipated and serious matters are reported, logic dictates that the agency require reports on conditions (failures, malfunctions or defects) that do not have corrective actions available from (1) a design approval holder’s maintenance data (manuals or instructions for continued airworthiness, service bulletins and the like); or, (2) other methods, techniques or practices acceptable to or approved by the agency; or (3) an airworthiness directive. If a corrective action is available, the seriousness of the failure, malfunction or defect has been affirmatively addressed and there is no need for a report.</p>
3	145.A.70-Maintenance organisation exposition	24	Point 145.A.70(c) allows amendments to the MOE to be made in accordance with procedures adopted pursuant to points 145.A.70(a)(10) and (11) and provides that amendments outside the scope of the procedure in point (a)(10) and amendments related to changes listed in point 145.A.85(a) require approval by the competent authority. ARSA believes that, given the scope and breadth of issues treated in the MOE, certificated entities should have maximum flexibility to modify the Exposition provided that such changes are consistent with the

			company's SMS. As stated in our summary and comments related to 145.A.85 below (comment 4), we disagree in particular with the requirement that the certificated entity seek prior approval for personnel changes, a concept which is antithetical to SMS and may hinder the company's ability to remove unfit team members.
4	145.A.85-Changes to the organisation	25	<p>The proposed requirement that certificated entities seek prior approval from the competent authority before changing personnel nominated in accordance with points 145.A.30(b), (c) and (ca) is contrary to the philosophy of SMS, would impose unnecessary burdens on certificate holders and regulators and would potentially undermine safety. We also disagree with the proposal to eliminate the very reasonable provision in the current 145.A.85 that recognizes certain personnel changes may be unplanned and requiring notification of those changes at the earliest possible opportunity.</p> <p>A key concept underlying SMS is that the organisation is responsible for the safety of its operations, not individuals. Requiring the regulator to approve personnel changes made in accordance with the company's SMS defeats the purpose of the system and rule changes. It is the company's responsibility, not regulators, to manage operations and make decisions about who is best suited to ensure compliance, safety and the company's success. Once the company has properly designed and implemented its SMS, the new employees appointed to key positions must be qualified and trained as required by point 145.A.30(e). The new approval requirements in 145.A.85 would give regulators unprecedented authority over internal personnel changes, diverting agency resources and undermining the ability of certificate holders to manage their businesses. Finally, by requiring the regulator's approval of personnel changes, the new rule will undermine safety by thwarting a company's ability to remove a team member whose acts or omissions run contrary to the company's SMS.</p> <p>For all these reasons, we urge EASA to remove the prior approval requirement and use instead use a notification system, particularly as it relates to unanticipated personnel changes.</p>
5	145.A.200-Management system	28-29	Proposed point 145.A.200(a)(1) requires the organisation to establish, implement, and maintain a management system that includes, "clearly defined lines of responsibility and accountability throughout the organisation, including a direct safety accountability of the accountable manager." This wording is unclear. We believe it is the agency's intent that accountability be "to" (not "of") the accountable manager. In the alternative,

			<p>replacing “a” with “the” in front of the phrase “direct safety accountability” would clarify that it is the accountable manager who is directly accountable for safety.</p> <p>ARSA agrees with the intent of points 145.A.200(b) and (c), viz., that SMS should be scalable and correspond to the organisation’s size and risks associated with its activities, and that organisations holding multiple certificates should be allowed to integrate their SMS. We urge that these concepts be maintained in the final regulation.</p>
6	145.B.330-Changes-organisations	40	<p>The proposed section fails to provide due process and accountability. While requiring the competent authority to “suspend, limit or revoke” the certificate of an organisation that makes changes without prior approval (point 145.B.330(d)), it does not mandate timely review of the proposed change by the regulator or response to the certificate holder. Our concerns with the breadth of “prior approval” requirements are documented above at comments 3 and 4. The combination of expansion of the regulator’s authority under the proposed 145.A.70 and 145.A.85 combined with the lack of transparency and accountability embodied in the proposed 145.B.330 would potentially put certificate holders in bureaucratic limbo while the regulator reviews proposed changes. We urge the removal of proposed 145.B.330(d) and adoption of a clear timetable for reviewing and responding to requested changes.</p>
7	145.B.355-Suspension, limitation and revocation	42	<p>The provision describes circumstances under which the competent authority shall suspend, limit or revoke certificates. However, it does not define a process by which determinations are made, nor does it provide a process for appealing the regulator’s decision. We urge the inclusion of language establishing procedural guidelines to ensure due process and fairness for organisations facing certificate action.</p>
8	AMC1 145.A.70(a)(1)-Maintenance organisation exposition (MOE)	104-105	<p>ARSA agrees with the intent of the language allowing organisations holding multiple certificates to combine the MOE with other expositions or manuals to avoid duplication. We urge this language be maintained in the final regulation.</p>
9	AMC1 145.A.85-Changes to the organisation	109	<p>Point AMC1 145.A.85(c) recognizes that certain changes to an organisation requiring prior approval may be “unforeseen” and requests notification at “the earliest opportunity”. While ARSA is pleased to see a recognition of this fact in the AMC, as stated in comments 3 and 4 above, ARSA is concerned that the regulations themselves do not acknowledge that certain circumstances may prevent the organisation from seeking prior approval.</p>

10	GM1 145.A.85(a)(1) – Changes to the organisation	110	This section lists as “changes that may affect the certificate or the terms of approval” many items that were previously included in the underlying regulation (145.A.85). We question the rationale for moving these items from the regulation to the guidance material if most of the requirements will effectively stay the same. Including these requirements in 145.A.85 would provide more certainty and clarify for regulated entities. As noted in comments 3 and 4 above, however, ARSA disagrees with the requirement that these items should require the regulator’s prior approval.
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While these comments reflect ARSA’s primary concerns based on our analysis of the NPA, we recognize that our submission may not include all issues impacting our member companies. As such, we urge EASA to seriously consider all suggestions provided by industry to improve the proposed SMS regulatory framework.

Thank you for considering ARSA’s comments. We look forward to working with you to complete the amendment process.

Respectfully submitted,



Christian A. Klein
Executive Vice President