



U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

Aircraft Certification Policy

ORDER
IR 8100.16

5/13/2011

SUBJ : Aircraft Certification Service Policy Statement, Policy Memorandum, and Deviation Memorandum Systems

This order provides instructions to the Aircraft Certification Service (AIR) for issuing policy statements, policy memorandums, and deviation memorandums. Policy statements disseminate guidance to Federal Aviation Administration (FAA) employees or to the public. Policy memorandums provide clarification or guidance on FAA directives and apply to FAA employees and/or designees. Deviation memorandums grant or deny a departure from established FAA directives and apply to FAA employees and/or designees.

A handwritten signature in black ink, appearing to read "Dorenda D. Baker".

Dorenda D. Baker

Director

Aircraft Certification Service, AIR-1

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Chapter 1. General Information

1-1. Purpose of This Order. This order describes procedures and provides guidance for issuing policy statements, policy memorandums, and deviation memorandums within AIR.

Note 1: The use of the word “should” throughout this order refers to a recommended practice. The associated activity is not a requirement; therefore, a record of completion is not required.

Note 2: The term “office” throughout this order can refer to either a division or directorate office.

1-2. Audience. All AIR employees who write, review, or approve policy statements, policy memorandums, or deviation memorandums, as well as those who implement these policy documents, and other offices, as applicable.

1-3. Where Can I Find This Order. You can find this order at https://employees.faa.gov/tools_resources/orders_notices/ and http://www.faa.gov/regulations_policies/orders_notices.

1-4. Effective Date. This order is effective July 13, 2011.

Chapter 2. Policy Statements

2-1. General Information on Policy Statements. A policy statement contains guidance on a statute, regulation, directive, policy, or technical issue. Policy statements disseminate guidance to FAA employees or to the public. A policy statement typically contains guidance on a single topic or issue. A policy statement is not generally used to provide clarification on issue papers, inter-office memorandums addressing a specific project, or general staff instructions.

2-2. Policy Statement Criteria. The policy statement criteria in this order conform to the U.S. Office of Management and Budget (OMB), Final Bulletin for Agency Good Guidance Practices (GGP), 72 FR 3432 (January 25, 2007). Policy statements within AIR must also adhere to the following criteria:

a. Policy statements must not create or change the regulatory requirement. The policy statement may define a means of compliance, but it must be consistent with the language of the regulation and the regulatory preamble. Only the rulemaking process can effect changes to regulations. Policy statements must not contradict regulatory language.

b. Policy statements must be a reasonable application of the rule. Each method of compliance provided in a policy statement must be firmly based in the rule. This guidance must not add to or relieve a requirement imposed by the Code of Federal Regulations (CFR). For example, if a regulation appears ambiguous, a legal interpretation from the Office of the Chief Counsel should be requested. Only the Office of Chief Counsel or Regional Counsel can issue legal interpretations. Policy statements must not interpret, but can be used to clarify the agency's intention with regard to implementation of a rule. Policy statements must not be arbitrary, capricious, or an abuse of discretion by the FAA.

c. Policy statements are not legally binding requirements. Although policy statements include a connection and reference to the CFR, policy statements contain guidance and, on their own, are not legally binding on the public. The OMB GGP, 72 FR 3432, states:

“Each guidance document should not include mandatory language such as “shall,” “must,” “required” or “requirement,” unless the agency is using these words to describe a statutory or regulatory requirement, or the language is addressed to agency staff and will not foreclose agency consideration of positions advanced by affected private parties. ...As a practical matter, agencies also may describe laws of nature, scientific principles, and technical requirements in mandatory terms so long as it is clear that the guidance document itself does not impose legally enforceable rights or obligations.”

Policy statements are not meant to impose or relieve a burden on anyone. Policy statements cannot be used in establishing an equivalent level of safety as described in FAA Order 8110.4, Type Certification.

d. Policy statements must not invalidate other guidance. Policy statements must not invalidate a method of compliance the FAA previously agreed to, unless –

- (1) It was accepted in error,
- (2) It is no longer in conformance with a change in the regulations, or
- (3) It no longer supports a finding of compliance; in which case, a justification should be included in the policy statement.

When the policy statement contains a method of compliance that may be perceived as more stringent, the policy statement must make clear that the previously acceptable method is still acceptable.

2-3. Content of Policy Statements. Policy statements may contain additional guidance to help the reader understand the methods of compliance the FAA considers acceptable, or include best practices, but clearly identify them as such. Policy statements may also include the following:

a. Regulatory references. Organize policy statements so each element has a clear regulatory reference. The policy statement must also clearly identify all requirements. Examples of requirements include general regulations found in the CFR and specific regulations, which include airworthiness directives. Link each method of compliance to the objective or airworthiness standard in the regulation.

b. Relevant past practice. Include in the policy statement a relevant past practice section, if applicable, discussing precedent to the policy or previous revisions to the policy statement.

c. Implementation. Policy statements must explicitly communicate the intent for implementing each method of compliance or best practice provided. This may be encompassed in a general statement or for each particular item, as needed.

2-4. Policy Statement Numbering System. All policy statements must be assigned a unique number. The standard format for the numbering system is PS-XXX-ZZ.ZZZ-Y-R_n where PS stands for policy statement, XXX is the office identifier (e.g., ANE), ZZ.ZZZ is the 14 CFR section that is the subject of the policy and the Y is a sequence number assigned by the originating office. If the policy concerns more than one CFR section, then use only the CFR part number (e.g., PS-AIR-25-01-R_n). Revisions are denoted by -R_n where *n* is the revision number.

2-5. Retention and Review of Policy Statements. The project manager will submit the policy statement for posting on RGL by sending it to mailbox 9-AMC-AIR140-Information-Products@faa.gov. Policy statements can be found at http://www.faa.gov/regulations_policies/. Policy statements, once issued, must be made available to the public until cancelled or incorporated into an advisory circular (AC) or directive. Thereafter, it is required the policy statement be retained and archived as a historical record.

2-6. Required Coordination. Policy statements written for the public will be coordinated with FAA Office of Chief Counsel to ensure legal sufficiency and with affected FAA offices, as necessary, to ensure technical credibility and procedural consistency. Policy statements that will have a significant impact will be made available to the public for comment prior to issuance if determined by the policy office. The standard period for public comment is 60 calendar days, unless otherwise required. Generally, the internal review process is complete before releasing a draft policy statement for public review. If needed, the draft policy statement may be reviewed simultaneously within the FAA and the public, provided legal concurrence is obtained prior to releasing a draft policy statement for public review.

Chapter 3. Policy Memorandums

3-1. General Information on Policy Memorandums. A policy memorandum is an internal document from AIR management to users of directives (e.g., orders and notices). The memorandum provides clarification or guidance for directives to FAA employees and designees affected by those directives.

3-2. Policy Memorandum Criteria.

a. A policy memorandum can only be issued by the office that issued the directive. When clarifying directive requirements that affect two or more offices (e.g., FAA Order 8100.8 includes requirements for AIR-100, AIR-200, and AFS-300), coordination and concurrence from all affected offices are required.

b. Policy memorandums are not used to create or change directive requirements.

c. Include “clarification” or “guidance” in the subject line to specify the purpose of the memorandum.

d. Future revisions or changes to directives will incorporate policy memorandum guidance, when applicable. When this occurs, the policy memorandum will be cancelled.

3-3. Application of Policy Guidance. The date on the policy memorandum is the effective date unless otherwise stated.

3-4. Availability and Retention of Policy Memorandums. The originating office must make current policy memorandums available to the affected offices until cancelled or incorporated into the applicable directive. Thereafter, it is required that the policy memorandum be retained and archived as a historical record.

Chapter 4. Deviation Memorandums

4-1. General Information on Deviation Memorandums. A deviation memorandum is an internal document from AIR management in response to a deviation request, which grants or denies a departure from established directives or policy statement. Any FAA office can request a deviation from a directive or policy statement. Designees, delegated organizations, and applicants may not directly request a deviation from a directive or policy statement, but may submit a request through their managing office.

4-2. Deviation Memorandum Criteria.

a. The requesting office will coordinate deviation requests affecting more than one office with all applicable offices for review and approval before submitting the request to the issuing office of the directive or policy statement.

b. A request to deviate from a directive or policy statement must be submitted as a memorandum.

c. The deviation request must be signed by the office manager submitting it.

d. The deviation request must describe the nature and need for the proposed deviation from the directive or policy statement requirements, provide justification for the request, and explain the impact if the deviation is not granted.

(1) A deviation may –

(a) Be issued to allow another method of compliance to the directive or policy statement, which all directorates can then use. This includes situations that were not previously anticipated, but still meet the intent of the guidance.

(b) Be issued for a single unique event pertaining to an office or individual.

(c) Be issued to exempt an office from directive or policy statement requirements.

(d) Be issued to allow a longer implementation period of a new directive requirement.

(2) A deviation may *not* –

(a) Be issued if there is no language or requirements established, or for something the directive or policy statement does not cover.

(b) Be issued to change the intent of the rule.

4-3. Requests for Deviations from Offices Other than AIR. This type of request must be coordinated with the requestor's policy office and be approved by them before it is sent to the issuing office of the directive or policy statement. For example, AFS-300 is the office to contact for maintenance designated airworthiness representatives who are requesting a deviation for requirements covered in FAA Order 8100.8, Designee Management Handbook. If the AFS-300 office agrees with the proposed deviation, the responsible AFS field office will request a deviation from the issuing office of the directive.

4-4. Disposition of Deviations. The directive or policy statement owner will either grant or deny the deviation request within 60 business days.

a. Disposition Process.

(1) Possible considerations may include, but are not limited to the following:

- (a) Impact on other offices.
- (b) Impact on stakeholders.
- (c) Mandatory compliance issue.
- (d) Timeframe for the deviation.
- (e) Impact to other field offices (e.g., all MIOs or ACOs).
- (f) Change or revision to directive.

Note: For deviations that will be implemented in a future revision or change to a directive, the project manager will indicate as much in the granted deviation memorandum.

(2) The project manager will discuss the research and present the deviation response to the office manager for signature.

(3) The directive owner will grant or deny the request for deviation.

Note: It's not mandatory, but the requestor may be contacted for clarification purposes.

(4) If the deviation memorandum is approved, the issuing office administrative staff will distribute and file a copy of the deviation. If the deviation request is denied, the directive owner will send a memorandum to the requestor that explains the reason(s) for the denial.

(5) The date on the deviation memorandum is the effective date.

(6) If the deviation is of limited duration, the appropriate FAA office(s) must take action to comply with the published directive once the dated deviation expires or request an extension of the deviation.

(7) The process owner for the directive may implement the deviation into the next revision or change to the directive.

(8) The originating office must make current deviation memorandums available to the affected offices. The deviation memorandum will be cancelled once the guidance is incorporated into an AC or directive. The deviation memorandum will be retained and archived as a historical record.

Appendix A. Administrative Information

- 1. Distribution.** This order is distributed to the Washington headquarters branch levels of the Aircraft Certification Service, to the branch level in the Aircraft Certification Service directorates, to all aircraft certification offices, to all manufacturing inspection district and satellite offices, to the Flight Standard Services, to the Aircraft Certification and Airworthiness Branches at the FAA Academy, to applicable representatives of the Administrator, and to all international field offices.
- 2. Authority to Change This Order.** The authority to revise or cancel material in this order resides with AIR-1, coordinated by the Aircraft Engineering Division (AIR-100) in conjunction with the Production and Airworthiness Division (AIR-200).
- 3. Related Publications.** Orders referenced in this directive list only the basic order number. It is the responsibility of the user to establish that the latest revision/amendments are being utilized.
- 4. Deviations to This Order.** Adherence to the procedures in this order is necessary for uniform administration of this directive material. AIR-100 or AIR-200 coordinates and dispositions any procedural deviations. Deviations from the policy in this order can only be approved by AIR-1 or his or her delegate. If a deviation from this directive becomes necessary, the FAA employee involved must ensure the deviations are substantiated, documented, and concurred with by the appropriate supervisor. Submit deviations for review and concurrence to AIR-100 or AIR-200.
- 5. Suggestions for Improvement.** Please forward all comments on deficiencies, clarifications, or improvements regarding this order to:

Aircraft Certification Service
Administrative Services Branch, AIR-510
ATTN: Directives Management Officer
800 Independence Avenue, SW.
Washington, DC 20591

FAA Form 1320-19, Directive Feedback Information, is located as Appendix B to this order for your convenience. If you require an immediate interpretation, please contact AIR-200 at (202) 385-6346; however, you should also complete Form 1320-19 as a follow-up to the conversation.

- 6. Records Management.** Refer to Orders 0000.1, FAA Standard Subject Classification System; 1350.14, Records Management; 1350.15, Records Organization, Transfer, and Destruction Standards; and FAA-IR-04-01, Aircraft Certification Service Records Management Requirements Manual, or your office Records Management Officer (RMO)/Directives Management Officer (DMO) for guidance regarding retention or disposition of records.

Appendix B. FAA Form 1320-19, Directive Feedback Information



U.S. Department
of Transportation
**Federal Aviation
Administration**

Directive Feedback Information

Please submit any written comments or recommendations for improving this directive, or suggest new items or subjects to be added to it. Also, if you find an error, please tell us about it.

Subject: FAA Order 8100.16

To: Directive Management Officer, 9-AWA-AVS-AIR-DMO@faa.gov

(Please check all appropriate line items)

- An error (procedural or typographical) has been noted in paragraph _____ on page _____.
- Recommend paragraph _____ on page _____ be changed as follows:
(attach separate sheet if necessary)
- In a future change to this directive, please include coverage on the following subject
(briefly describe what you want added):
- Other comments:

I would like to discuss the above. Please contact me.

Submitted by: _____ Date: _____

FTS Telephone Number: _____ Routing Symbol: _____

FAA Form 1320-19 (10-98)