



U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

**ORDER
8100.20**

National Policy

Effective date:
01/01/23

SUBJ: Aircraft Certification Service (AIR) Issue Resolution and Appeal Processes

1. Purpose of This Order. This Order modifies and establishes certain issue resolution and appeal processes related to type certification activities.

2. Audience. Federal Aviation Administration (FAA) personnel, and applicants, design approval holders, delegated organizations, and designees.

3. Where Can I Find This Order. You can find this Order on the FAA website at http://www.faa.gov/regulations_policies/orders_notices/ and on the FAA's Dynamic Regulatory System (DRS) website at <https://drs.faa.gov>.

4. Background. Section 214 of the FAA Reauthorization Act of 2018, Pub. L. 115-254, amended Chapter 447 of Title 49, United States Code, by adding paragraph (6) to section 44704(a), requiring the FAA to establish an effective, timely, and milestone-based issue resolution process for certain type certification activities, with parameters as agreed to by the Administrator and the applicant. Section 110 of the Aircraft Certification, Safety, and Accountability Act, Pub. L. 116-260 (the Act) amended Chapter 447 of Title 49, United States Code, by striking new paragraph (6) of section 44704(a), and adding section (g) to 49 U.S.C. § 44704. Section 110 requires the FAA to issue an order establishing a timely, effective, and milestone-based issue resolution process for certain type certification activities, with parameters agreed to by the Administrator and the applicant. Section 110 also requires the order to establish appeal processes, providing certain covered persons with the right to appeal certain type certification activities. This Order is issued to meet the requirements of Section 110.

5. Related Publications.

a. FAA Order 8110.4C, *Type Certification*.

b. FAA Order 8110.112A, *Standardized Procedures for Usage of Issue Papers and Development of Equivalent Levels of Safety Memorandums*.

c. FAA Order 8100.15B, *Organization Designation Authorization Procedures*.

d. FAA Order VS 8000.375, *Aviation Safety Voluntary Safety Reporting Program*.

6. Definitions.

a. Covered Official. For purposes of this Order, a covered official is any of the following:

- (1) The Executive Director or any Deputy Director of the Aircraft Certification Service.
- (2) The Deputy Executive Director for Regulatory Operations of the Aircraft Certification Service.
- (3) The Director or Deputy Director of the Compliance and Airworthiness Division of the Aircraft Certification Service.
- (4) The Director or Deputy Director of the System Oversight Division of the Aircraft Certification Service.
- (5) The Director or Deputy Director of the Policy and Innovation Division of the Aircraft Certification Service.
- (6) The Executive Director or any Deputy Executive Director of the Flight Standards Service.
- (7) The Associate Administrator or Deputy Associate Administrator for Aviation Safety.
- (8) The Deputy Administrator of the FAA.
- (9) The Administrator of the FAA.
- (10) Any similarly situated or successor FAA management position to those described above, in subparagraphs (1) through (9) of this paragraph, as determined by the Administrator.
- (11) Any person appointed as an actor for any of the foregoing positions.

b. Covered Person. For purposes of the appeal processes of this Order, a covered person is:¹

- (1) An employee² or designee of the Administrator whose responsibilities relate to the certification of aircraft, engines, propellers, or appliances; or
- (2) An applicant for, or holder of, a type certificate.³

c. Documented. A decision, finding of compliance or non-compliance, or other act of the FAA with respect to compliance with design requirements, is documented for purposes of this Order when it is made or summarized, in writing, by an authorized FAA decision-maker (i.e., any FAA manager, or an FAA employee with authority to make said decision, compliance finding, or act with regard to a project's compliance with design requirements).

d. Major Certification Process Milestone. A "major certification process milestone" per 49 U.S.C. § 44704(g)(3)(C) is a milestone related to the type certification basis, type certification plan, type inspection authorization, issue paper, or other major type certification activity agreed

¹ This Order provides appeal rights to a broader spectrum of persons than required by Section 110 of the Act.

² For purposes of this Order, an "employee" is a current FAA employee as of the date of the appealed act, decision, or finding.

³ As described in paragraph 9.a of this Order.

to by the Administrator⁴ and the type certificate applicant.

7. Prohibition on Retaliation. All stakeholders are encouraged to promote a safety culture involving transparent exchange of information, mutual cooperation, critical thinking, and trust. No FAA employee or designee may explicitly or implicitly discourage a covered person from using the processes in this Order, or engage in any retaliation, directly or indirectly, or by act or omission, against a covered person, applicant, or witness based upon their participation in the processes in this Order.

8. Resolution of Technical Issues.

a. Section 44704(g)(1)(A)(i) of title 49 of the U.S. Code requires this Order to “(establish) an effective, timely, and milestone-based issue resolution process for type certification activities...” Section 44704(g)(1)(B)(i) also requires this Order to “provide a process for resolution of technical issues at pre-established stages of the certification process, as agreed to by the Administrator and the type certificate applicant.”

b. The FAA has existing processes for milestone-based resolution of technical issues at pre-established stages of the certification process, as agreed to by the Administrator and type certificate applicants. The primary processes are set forth by two FAA orders:

(1) FAA Order 8110.4C, *Type Certification*, provides for the FAA and applicant to agree to a Project-Specific Certification Plan, establishing agreed-upon milestones during the type certification process, by which broad categories of likely issues, such as which regulations will apply to a project, are resolved. FAA Order 8110.4C directs discussions of “significant technical, regulatory, and administrative issues” (para. 2-4g) to the issue paper process set forth in FAA Order 8110.112A, *Standardized Procedures for Usage of Issue Papers and Development of Equivalent Levels of Safety Memorandums*.

(2) FAA Order 8110.112A provides a milestone (i.e., compliance target) based series of processes for resolution of technical issues with the applicant. It requires FAA personnel to use these processes to resolve significant technical issues during type certification, para. 1-6, and also allows the process to be used to resolve “controversial” technical issues, para. 2-1(b). Its broad definition of a “significant” issue includes those relating to the means of compliance proposed by the applicant for each regulation in the certification basis, para. 2-3(b), and “technical conflicts,” para. 2-3(o).

c. To meet the requirement of section 44704(g)(1)(B)(ii), that major certification process milestones not reached within agreed-upon timeframes are elevated automatically, this Order directs that the appropriate project manager will continuously monitor progress of the milestones on the project schedule, and promptly elevate the occurrence of unmet milestones to the appropriate ACO manager.

d. Both the FAA ACO manager and applicant will agree to a timeframe to resolve any unresolved technical issues that resulted in the missed milestone or escalate the issue to the appropriate level of management from the FAA and the applicant for resolution.

⁴ For the purposes of this Order, the term “Administrator” in this paragraph refers to the FAA.

e. If the FAA and applicant do not reach resolution within this agreed-to timeframe, or are unable to agree on a timeframe, the ACO manager must expeditiously elevate to their Division leadership the open issue and missed milestone. The Division leadership will then initiate an appropriate means to ensure timely resolution of the issue and implementation. These means may include a range of options for Division and applicant leadership, including focused management attention to ensure proper team engagement and progress, independent reviews by members of the AVS Senior Technical Experts Program⁵ or Technical Advisory Boards⁶ to provide recommended resolution for decision makers. Use of resolution frameworks defined in FAA-applicant Partnership for Safety Program agreements are also appropriate.

f. Nothing in this paragraph 8 precludes any covered person from filing an appeal of a documented decision in accordance with the processes in paragraph 9 of this order, prior to the completion of any issue resolution process.

g. Often technical decisions are based on information known at a given time. If new or clarifying information becomes available after a decision is documented, prior to requesting an appeal, affected parties are encouraged to employ an issue resolution process to determine if the decision remains valid.

h. In February 2021, the FAA established an additional process for the timely resolution of technical issues. FAA Order VS 8000.375, *Aviation Safety Voluntary Safety Reporting Program*, provides a process for the resolution of “issues and concerns” of AVS employees, including technical issues. While the terms of this process are not negotiated between the applicant and the FAA as described by Section 110, the VSRP nevertheless contributes to the FAA’s compliance with Section 110, by examining issues that may adversely affect safety, by analyzing causal factors, and by making systemic recommendations.

i. The FAA will integrate the substance of this paragraph into the next revision of FAA Order 8110.4C or FAA Order 8110.112A, as appropriate.

9. Appeal Processes. This section establishes processes for a covered person to appeal certain documented decisions, findings, and acts. After review of an appeal, an appeal panel will propose a decision which the Associate Administrator for Aviation Safety (AVS-1) will review and consider for adoption as a decision. Following the AVS-1 decision, a covered person may appeal the AVS-1 decision to the Administrator for a final review and determination, as described below.

a. Scope of Appealable Activities. The appeal processes provided by this Order apply⁷ to compliance activities in type certification and type validation projects involving an applicant for, or holder of (including Organization Designation Authorization (ODA)):

- (1) A type certificate (TC),

⁵ FAA Order 8000.80A, *Aviation Safety (AVS) Chief Scientific and Technical Advisor (CSTA) and Senior Technical Specialist (STS) Program*.

⁶ FAA QMS Document QPM # AIR-700-TAB-W1, *AIR Technical Advisory Board Work Instruction*.

⁷ 49 U.S.C. § 44704(g) only applies to a type certificate and amended type certificate.

- (2) An amended TC,
- (3) A supplemental type certificate (STC), or
- (4) An amended STC.

b. Administration. AIR-300 is responsible for administering appeals pursuant to this Order, including:

- (1) Monitoring an Appeals Mailbox;
- (2) Monitoring and facilitating process timeframes;
- (3) Tracking and managing the appeal through AVS-1 and AOA;
- (4) Identifying, notifying, and assisting the appeal panel;
- (5) Facilitating any subsequent appeals to AOA-1;
- (6) Maintaining a complete record of appeals made pursuant to this Order;
- (7) Through December 2025, timely preparing the annual report required by 49 U.S.C. § 44704(g)(1)(D)(i), including a summary of each appeal acted upon in accordance with the processes of this Order, and ensuring proper coordination within the FAA prior to submission to Congress; and
- (8) Monitoring and assessing the performance of the appeal processes against established targets or measures.

c. Permissible Appeals and Appellants. These appeal processes are limited to appeals of documented decisions, findings of compliance or noncompliance, and other acts with respect to compliance with design requirements (e.g., findings establishing the project's certification basis; findings of compliance; findings regarding the acceptability of proposed means of compliance; findings of equivalent levels of safety). Only a covered person directly involved with the certification or compliance activity in dispute may file an appeal, and can do so only on the basis that the aforementioned decision, finding, or act is erroneous or inconsistent with Chapter 447 of the U.S. Code, regulations or other requirements, or FAA guidance (e.g., advisory circulars).

d. Appeal Filing Guidelines. A covered person directly involved with the compliance activities in dispute may appeal by sending an email to the CertificationAppeals@faa.gov. The appeal should be submitted within 10 business days of the appellant learning of the decision, finding, or act. The appeal should include all of the following information, or an explanation regarding why the appellant cannot include a particular item:

- (1) The appellant's contact information, including email and mailing address;
- (2) The FAA office that made the decision, finding, or act under dispute, if known;

- (3) A summary or description of the appealed decision, finding, or act;
- (4) A statement summarizing how the appellant learned of the decision, finding, or act, including the date of such discovery;
- (5) Rationale explaining why the appellant considers the decision, finding, or act to be erroneous or inconsistent with Chapter 447 of title 49, U.S. Code, regulations or other requirements, or guidance promulgated by the FAA;
- (6) Any supporting information known to the appellant, including but not limited to information that was utilized to support any issue resolution process used to support the decision, finding, or act under dispute, or a description of such information including its location; and
- (7) Whether the appellant desires a meeting with the appeal panel.

The FAA may, but is not required to, dismiss an appeal which is untimely filed or fails to provide all of the foregoing information, or fails to provide an explanation for why the appeal was belatedly filed or an item was omitted. Such dismissal may only be made in writing with an explanation, by the Director or Deputy Director of AIR-300. Such a dismissal is not appealable, either within the FAA or, judicially.⁸

e. Prohibition on Participation.

(1) During the course of an appeal pursuant to this Order, no covered official may engage in an ex parte communication (an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but not including requests for status reports) with an individual representing or acting on behalf of an applicant for, or holder of, a certificate or design approval under this section in relation to such appeal unless such communication is disclosed pursuant to the following paragraph. Contact AGC-200 if unsure whether a contact could be considered ex parte.

(2) If, during the course of an appeal subject to this Order, a covered official engages in, receives, or is otherwise made aware of an ex parte communication, the covered official is required by 49 U.S.C. § 44704(g)(2)(B) to disclose such communication in the public record, and pursuant to this Order must do so by promptly providing a summary to AIR-300 for attachment and reference in the next written decision (whether proposed decision by the appeal panel, or issued decision by AVS-1, or AOA-1). The summary must include the time and date of the communication, the subject of the communication, and all persons engaged in such communication.

f. Processing the Appeal.

(1) Within 3 business days of receiving the appeal, AIR-300 will email an acknowledgement of receipt to the appellant, and 2) email a copy of the appeal to AIR-300. AIR-300 will also obtain the applicant's contact information from the appropriate certification office.

⁸ 49 U.S.C. § 44704(g)(1)(D)(iii).

(2) Within 3 business days of receiving the appeal, AIR-300 will forward the appeal to the person or office who made the appealed decision, finding, or act, and offer such person or office the opportunity to, within 5 business days, provide AIR-300 (and thereby the panel) its written opinion on each of the matters for which the panel will be making factual findings as described in paragraph 9.g.(5) below. AIR-300 will also notify AVS-1 of the appeal.

(3) Within 10 business days of receiving the appeal, AIR-300, after consultation with other divisional directors and managers as necessary, will identify and appoint three panel members to initially review and provide a proposed decision for AVS-1 review. The panel members should be I-band or above, and have demonstrated technical expertise. They must not have been directly involved in the appealed decision, finding, or act, or in any preceding process to resolve that particular matter. They may be drawn from any division within AIR, or from elsewhere within AVS upon the concurrence of AVS-1 or their Deputy.

(4) Within 15 business days of receiving the appeal, AIR-300 will prepare an appeal packet. This appeal packet should include a memorandum signed by the Director or Deputy Director of AIR-300 to the panel, containing standardized instructions on reviewing the appeal and developing a proposed decision regarding the appeal, including any applicable deadlines; a copy of the appeal (including all supporting information) provided by the appellant; and the written opinions, if any, provided by the decision-maker to AIR-300 on the questions of fact that the panel will determine. Within 3 business days of completing the appeals packet, AIR-300 will provide an identical appeal packet to each panel member, the appellant, and the applicant.

g. Appeal Panel Duties. The purpose of the appeal panel is to perform the function required by 49 U.S.C. § 44704(g)(1)(B)(iv), of an “initial review by appropriate Administration employees.”

(1) The panel members should hold an initial meeting to discuss the appeal within 3 business days of receiving the appeal packet. At this initial meeting, the panel should determine whether it wishes to seek out and consider additional information, such as witness information or expert opinion.

(2) The panel may discuss the matter with witnesses or experts. All panel members should be present for each such discussion, and with any meeting with the appellant or applicant.

(3) The panel may meet with the appellant, if the appellant requests a meeting or if the panel thinks such a meeting would assist the panel in reaching its decision. The panel will decide the terms of any meetings with witnesses, experts, or the appellant, and a panel member will summarize each such meeting in writing for retention in the record. This Order does not affect any other rights that an appellant, witness, or expert may have, such as the right to union representation. Neither the appellant nor applicant may attend any deliberations of the appeal panel.

(4) The panel may meet with the applicant, if an AIR employee other than the panel members attends the meeting. The sole duty of such AIR employee at the meeting will be to prepare a written summary of the meeting attendees’ discussion, for retention in the record. The

applicant may present information to the panel, including through a representative. The panel may terminate any meeting with the applicant at any time.

(5) The panel must make written factual findings regarding: (A) whether any reasons other than aviation safety and regulatory compliance, such as cost or delivery schedule, were explicitly considered in the making of the appealed decision, act, or finding, and if so to what degree; (B) whether there is any FAA technical precedent or industry standard on the appealed issue; (C) the comparative levels of aviation safety represented by the appealed decision, act, or finding, by a reversal of that decision, and by any other reasonably obvious or available alternatives; and (D) whether the appealed decision, act, or finding was erroneous or inconsistent with federal law, regulations or other requirements, or FAA guidance.⁹

(6) If the panel finds that the appealed decision, act, or finding was erroneous or inconsistent with law, regulations or other requirements, or guidance, the appeal panel must make recommendation(s) regarding the next steps the agency should take, including the panel's opinion as to how best to address that error or inconsistency. The panel may also make other recommendations, and include its findings supporting the recommendation, such as for agency process improvements, even if the panel does not find that the appealed decision, finding, or act was erroneous or inconsistent as described above.

(7) The panel should strive for unanimity in its findings and recommendations, but if unsuccessful, should document the basis for the majority and minority positions in its findings and recommendations. The panel's proposed decision must be made in writing, and signed and dated by all panel members. The panel's proposed decision should identify the applicant and the proposed design; the law, regulations, and guidance that were considered by the panel; a summary of all other information considered by the panel; and the names of any persons the panel consulted or met with (including the appellant and applicant) together with a summary, including dates, of such conversations. The panel's proposed decision should minimize the use of proprietary, personal, or otherwise restricted information. Within 15 business days of receiving the appeal packet, the panel should provide its findings and recommendations to AIR-300. Within 3 business days of receiving the panel's proposed decision, AIR-300 will forward to AVS-1 for review, the request for appeal, the appeal panel's proposed decision, including the findings and recommendations, and if applicable, any recommendation(s) by the appeal panel regarding next steps the agency should take to address that error or inconsistency.

h. Issuance of Decision by AVS-1. AVS-1 will review the packet and issue a decision letter to the appellant, with a copy to AIR-300 and the applicant, within 10 business days of receiving the packet. The decision letter must state the grounds for the decision and indicate that the appellant has 5 business days from receiving the decision to appeal it to the Administrator by submitting an appeal to CertificationAppeals@faa.gov with the same information specified in paragraph 9.d of this Order. The decision letter must also explain that the appeal may be dismissed if it is untimely filed or fails to provide all of the information specified in paragraph 9.d, or fails to provide an explanation for why the appeal was belatedly filed or an item was omitted.

⁹ The panel may consult with AGC-200 as needed for assistance regarding an interpretation of law or regulation.

i. Final Review and Determination by the Administrator.

(1) Within 3 business days of receiving a request for review by the Administrator, AIR-300 will electronically transmit a copy of the request, the appeal packet, and the AVS-1 decision letter with all attachments to AOA-1, the appellant and the applicant, providing the latter parties with an opportunity to comment on the request within 5 business days of receipt.

(2) The Administrator may decline to review the appeal, but any decision to not review the appeal must be made in writing.

(3) If the Administrator does not decline to review the appeal, then, within 10 business days of receiving the request for Administrator review packet, including any comments from the applicant or original appellant, the Administrator will issue a decision on the request for review of the AVS-1 decision. The decision will make a finding on the request for review, and on any relevant factual finding and recommendation, of the AVS-1 decision.

(4) Within 3 business days of the Administrator's decision, AIR-300 will electronically transmit the decision to the requester, the appellant, and the applicant.

10. Timelines. The timelines in this Order do not, and may not be implied to, individually or collectively convey any rights to anyone.

11. No Judicial Review. As stated in 49 U.S.C. § 44704(g)(1)(D)(iii), no decision regarding an appeal, including a decision to decline to review an appeal, is subject to judicial review.

12. Nothing in this Order applies to the communication of a good-faith complaint by any individual alleging gross misconduct, a violation of Title 18 of the United States Code, or a violation of any of the provisions of Title 5 of the Code of Federal Regulations (5 CFR) part 2635, Standards of Ethical Conduct for Employees of the Executive Branch, or 5 CFR part 6001, Supplemental Standards of Ethical Conduct For Employees of The Department of Transportation.

13. Other programs available to report or dispute certification-related issues include:

a. The Administrator's Hotline Operations Program, Aviation Safety Hotline, and Consumer Hotline consolidated under the Office of Audit and Evaluation (AAE) at <https://hotline.faa.gov/>, and

b. The AVS Voluntary Safety Reporting Program (VSRP), at <https://avsvsrp.aero>.

14. Suggestions for Improvement. Please forward all comments on deficiencies, clarifications, or improvements regarding the contents of this Order to:

a. The AIR Directives Management Officer at 9-AWA-AVS-AIR-DMO@faa.gov, or

b. The FAA Directive Feedback System at <https://ksn2.faa.gov/avs/dfs/Pages/Home.aspx>.

Your suggestions are welcome. FAA Form 1320-19, *Directive Feedback Information*, is located in appendix A of this Order for your convenience.

15. Records Management. Refer to FAA Order 0000.1, FAA Standard Subject Classification System; FAA Order 1350.14, Records Management; or your office Records Management Officer (RMO)/Directives Management Officer (DMO) for guidance regarding retention or disposition of records.

16. Distribution. The FAA distributed this Order using online systems including http://www.faa.gov/regulations_policies/orders_notices/ and the Dynamic Regulatory System (DRS), <https://drs.faa.gov/browse>.



David H. Boulter
Acting Associate Administrator
Aviation Safety

Appendix A. Directive Feedback Information

Please submit any written comments or recommendation 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 8100.20, Aircraft Certification Service (AIR) Issue Resolution and Appeal Processes

To: 9-AWA-AVS-AIR-DMO@faa.gov

Please mark all appropriate line items:

An error (procedural or typographical) has been noted in paragraph _____ on page _____.

Recommend paragraph _____ on page _____ be changed as follows:

In a future change to this Order, please cover the following subject:
(Briefly describe what you want added.)

Other comments:

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

Submitted by: _____ Date: _____

Telephone Number: _____ Routing Symbol: _____

FAA Form 1320-19 (10-98)