



[4910-13]

DEPARTMENT OF TRANSPORTATION

14 CFR Part 1

[Docket No.: FAA-2012-0019; Amdt. No. 1-67]

RIN 2120– AK03

Removal of Category IIIa, IIIb, and IIIc Definitions; Confirmation of Effective Date and Response to Public Comments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date and response to public comments.

SUMMARY: This action confirms the effective date of the direct final rule published on February 16, 2012 (77 FR 9163), and responds to the comments received on that direct final rule. In that document, the FAA proposed to remove the definitions of Category IIIa, IIIb, and IIIc operations because the definitions are outdated and no longer used for aircraft certification or operational authorization.

DATES: The direct final rule becomes effective on June 12, 2012.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this action, see “How To Obtain Additional Information” in the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Bryant Welch, Flight Technologies and Procedures Division, Flight Operations Branch, AFS-410, Federal Aviation Administration, 470 L’Enfant Plaza, Suite 4102, Washington, DC 20024; telephone (202) 385-4539; email bryant.welch@faa.gov.

For legal questions concerning this action, contact Nancy Sanchez, Office of the Chief Counsel, Regulations Division, AGC-200, Federal Aviation Administration, 800 Independence

Avenue SW., Washington, DC 20591; telephone (202) 267–3073; email nancy.sanchez@faa.gov.

SUPPLEMENTARY INFORMATION

Background

On February 7, 2012, the FAA issued Amendment No. 1-67, entitled “Removal of Category IIIa, IIIb, and IIIc Definitions” (77 FR 9163). The direct final rule removes the definitions of Category IIIa, IIIb, and IIIc operations. The definitions are outdated because they are no longer used for aircraft certification or operational authorization. Removing the definitions will aid in international harmonization efforts, future landing minima reductions, and airspace system capacity improvements due to the implementation of performance based operations. The FAA requested that comments on that rule be received on or before March 19, 2012.

By letter dated March 16, 2012, the International Civil Aviation Organization (ICAO) requested that the FAA consider postponing the effective date of the rule until the rule is reviewed through an international process. ICAO stated that due to the short time frame, it was not in the position to understand the full implications of removing the Category IIIa, IIIb, and IIIc definitions. ICAO further stated that additional time was necessary to adequately assess the impact of the Direct Final Rule and prepare comments.

On April 13, 2012, the FAA reopened the comment period for the Direct Final Rule until May 14, 2012, and delayed the effective date from April 16, 2012 to June 12, 2012. A direct final rule takes effect on the specified date unless the FAA receives an adverse comment or notice of intent to file an adverse comment within the comment period. If adverse comments are received, the FAA will advise the public by publishing a document in the Federal Register before

the effective date of the direct final rule. An adverse comment explains why a rule would be inappropriate or would be ineffective or unacceptable without a change, or may challenge the rule's underlying premise or approach. The FAA received eight comments on this rule. The FAA does not consider these comments to be adverse and is therefore publishing this Confirmation of Effective Date and Response to Public Comments in response to those comments.

Discussion of Comments

The FAA received eight comments on this rule. Six of those comments were received during the original comment period, and two comments were received after the comment period reopened. ICAO, Boeing, and five individuals commented on this rule.

On March 16, 2012, ICAO requested that the FAA delay the effective date of the rule so that it may conduct further review of this rulemaking. By letter dated May 14, 2012, ICAO submitted a follow up comment, stating that it has been clarified that “removal of the Category IIIa, IIIb, and IIIc definitions from 14 CFR part 1 will not impact relevant operational documents such as advisory circulars.” Additionally, ICAO further stated that “this initiative would have no impact on the recognition of any CAT III a, b, or c operational approval for international operators or United States-issued operational approvals which conform to Annex 6 – *Operation of Aircraft*. On this basis, the International Civil Aviation Organization has no objection to the change...”

Two individual commenters expressed support for this rulemaking. Boeing and three individual commenters expressed concern about various aspects of this rulemaking. Boeing submitted a comment during the original comment period. It stated that “[w]ithout additional guidance, the removal of these categories' definitions will create confusion and inconsistencies

in the establishment of operational authorizations, and leave subject to individual interpretation the low weather minima capabilities of the combined ground, space, and airborne systems.”

Boeing also noted that this rulemaking will require corresponding changes to other FAA regulations, orders and advisory circulars and will have substantial international ramifications.

Additionally,

Boeing suggested that “the public be given the opportunity to review the proposed changes in their entirety and comment via the Notice of Proposed Rulemaking (NPRM) process.” Boeing did not submit an additional comment during the reopened comment period.

Several individual commenters expressed similar concerns. One commenter stated that “[a] unilateral change of these standards by the United States will negate the current global harmony of these landing definitions, and compel international flight crews to train and operate differently in the United States versus the rest of the world.” This commenter further stated that “...these changes should not be allowed to become effective until ICAO has changed the internationally recognized standard definitions, and all member states have concurred...” Two anonymous commenters submitted nearly identical comments and stated that “[t]he proposed definition relaxation will result in blending the Cat III operational and system performance distinctions, and appears to ignore the potential reduction in safety” These individuals also commented that “...fail-passive systems and flight crews trained to the fail-passive minimums and procedures will be permitted to fly to fail-operational minimums.”

In response to Boeing’s comment, the FAA notes that the removal of the Category IIIa, IIIb, and IIIc definitions will not affect current FAA category III aircraft certifications or operator authorizations and will not require changes to other FAA regulations. Category III standards used in the United States will be completely unaffected by the removal of the Category

IIIa, IIIb, and IIIc definitions. The Category III operational concepts represented by the Category IIIa, IIIb, and IIIc definitions are used to develop the certification and authorization criteria and these criteria are then applied directly to individual aircraft certifications and operator authorizations. Thus, the certification of Category III aircraft systems under Advisory Circular (AC) 120-28D no longer directly refers to the Category IIIa, b, and c definitions contained in 14 CFR 1.1, but uses the airworthiness criteria in the AC and the certification statements refer to those criteria as well. Likewise, Operations Specification (OpSpec) C060, the operational authorization for Category III operators, no longer specifically uses the Category IIIa, IIIb, and IIIc definitions, but rather ties authorized weather minima to the certification level of aircraft, as specified in the AC.

In response to the individual comments, the FAA notes that AC 120-28D uses the ICAO Category IIIa, IIIb, and IIIc definitions in its development of Category III operational concepts. Category IIIa, IIIb, and IIIc definitions will continue to be used unless changed in the normal ICAO process. In its second comment, ICAO stated that this rulemaking would have no impact on the recognition of any CAT III a, b, or c operational approval for international operators or United States-issued operational approvals which conform to Annex 6 – *Operation of Aircraft* and therefore has no objection to the change. Thus, operational authorizations for all operators and aircraft certification through AC 120-28D and OpSpec C060 rely only upon the ICAO Category IIIa, IIIb, and IIIc definitions and will be completely unaffected by removing the definitions of Category IIIa, IIIb, and IIIc in the CFR. Additionally, the use of Fail Passive or Fail Operational Category III minima is not bound by the Category III definition. Category III minima are controlled completely by the operational authorization, OpSpec C060, under criteria contained in AC 120-28D. Since, as explained above, the AC criteria will be unaffected by

removal of the sub-definitions, CAT III minima authorized through the OpSpec will be unchanged.

Conclusion

After consideration of the comments submitted in response to the direct final rule, the FAA has determined that no further rulemaking action is necessary. Therefore, Amendment 1-67 remains in effect.

How To Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document may be obtained by using the Internet —

1. Search the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visit the FAA's Regulations and Policies Web page at http://www.faa.gov/regulations_policies/ or
3. Access the Government Printing Office's Web page at <http://www.gpoaccess.gov/fr/index.html>.

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680.

B. Comments Submitted to the Docket

Comments received may be viewed by going to <http://www.regulations.gov> and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's dockets by the name

of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the FOR FURTHER INFORMATION CONTACT heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.

Issued in Washington, DC on June 11, 2012.

John M. Allen
Director, Flight Standards Service

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