

BRAZILIAN NATIONAL CIVIL AVIATION AGENCY

PUBLIC CONSULTATION - PROPOSED CHANGES TO RBAC No. 01, 21 AND 61

THEME 1 OF 2023-2024 REGULATORY AGENDA - TYPE DESIGN DATA WITH RELEVANT EFFECTS TO THE OPERATIONAL CONTEXT

JUSTIFICATION

1. PRESENTATION

1.1. This justification sets out the reasons that motivated the Brazilian National Civil Aviation Agency - ANAC to propose amendments to the Brazilian Civil Aviation Regulations - RBAC No. 01 (Definitions, writing rules and units of measurement to be used in RBAC), 21 (Aeronautical product and article certification) and 61 (Pilot licenses, ratings and certificates).

1.2. The changes are part of the normative theme of the Regulatory Agenda on "Type design data with relevant effects to the operational context". In this process, the scope was limited to the Master Minimum Equipment List (MMEL) and pilot proficiency criteria when a type rating is required.

1.3. This Justification and the Comparative Chart are presented in both Portuguese and English. The English version is courtesy, for reference only. In case of discrepancy, the Portuguese version shall prevail.

2. TECHNICAL EXPOSITION

2.1. Legal Competence

2.1.1. Law No. 11,182, of September 27, 2005, defined, through its art. 5, that ANAC is the civil aviation authority and has the competence to issue and publicize the regulations necessary for the application of that law.

2.1.2. The same Law nº 11,182, in its art. 8, items X and XXXIII, establishes that it is incumbent upon ANAC, among others, to regulate and supervise aeronautical products and processes, civil aviation safety, pollutant emissions, aeronautical noise and other civil aviation activities; and issue, homologate or recognize the certification of aeronautical products and processes for civilian use, observing the standards and norms established by it.

2.2. Main aspects of the Regulatory Impact Assessment (RIA)

2.2.1. The inclusion of this theme to the Regulatory Agenda was based on a contribution received during a public consultation, when it was suggested the adoption of the *Operational Suitability Data* (OSD) model, adopted by the European Union Aviation Safety Agency (EASA) in 2014 to cover 5 elements:

- MMEL;
- Proficiency for pilots (Flight Crew Data - FCD);
- Proficiency for flight attendants (Cabin Crew Data - CCD);
- Proficiency for maintenance personnel (Maintenance Certifying Staff Data - MCSD);
- Simulator Data (SIMD).

2.2.2. In this theme, ANAC opted to reduce its scope to MMEL and pilot proficiency, however, the regulatory problem was studied in detail and the RIA methodology contained in [Normative Instruction No. 154/2020](#), [ANAC RIA Guide](#) and [ANAC Regulatory Quality Guidelines](#) was followed for listing possible action options and for choosing the action option considered the best for addressing the regulatory problems.

2.2.3. In the analysis and definition of the regulatory problem, problems were mapped in a tree of causes and consequences, evaluating the applicability for MMEL, Operational Evaluation or both. These are the main problems which were identified:

- Difficulties in validating the Brazilian Type Certificate in other countries (duplicated or triplicated activities);
- Lack of update to the Operational Evaluation after issuance of the Type Certificate;
- Use of the Operational Evaluation Report is not mandatory for ANAC operators or servants;
- Lack of interest by smaller type or supplemental type certificate applicants to produce an MMEL (or supplement) or to perform an operational evaluation;

- Automatic adoption of foreign MMEL, with reliefs different from those that would be allowed in Brazil; and
- Some MMEL reliefs involve non-compliance with RBAC applicable for design, which might lead to a legality defect.

2.2.4. The economic agents affected by the issue were identified as the following ones:

- Holders and applicants for type certificates;
- Holders and applicants for supplementary type certificates;
- Pilots of aircraft requiring a type rating;
- Operators of Brazilian aircraft eligible for MMEL or requiring type rating for pilots; and
- Civil aviation training centers.

2.2.5. Based on the identified regulatory problems and on the RIA methodology, the following action options were proposed:

- **A0 - *Status Quo*** : this is the "non-action" option, that is, not adopting any regulatory change in relation to what is currently practiced under the scope of this normative theme. MMEL and Operational Evaluation would remain on a voluntary basis, without RBAC requirements and without addressing the identified problems;
- **A1 - Total alignment amongst Certification Management Team (CMT) authorities** : this is an "idealistic" alternative, which would depend on important changes beyond ANAC, harmonizing the approach of FAA, EASA, Transport Canada Civil Aviation (TCCA) and ANAC;
- **A2 - Adopt EASA OSD model**: In such model, the OSD are part of the type (or supplementary type) certificate, and follow all the mechanisms of the type certification process, such as the existence of Certification Specifications (CS) for each OSD element, OSD certification basis, criteria for classifying modifications affecting OSD in minor or major, privileges for Design Organization Approval (DOA) holders, etc. The EASA model also covers the link between the OSD and its use in the regulations for granting type ratings, working as a "bridge" between type certification and the operational environment;
- **A3 - Adopt FAA model**: In the FAA model, activities related to MMEL and Operational Evaluation are carried out within the Flight Standards department, and make use of multidisciplinary boards, with the participation of persons from the Civil Aviation Authority (CAA), manufacturers and operators, who prepare the MMEL and carry out operational evaluation activities. Both the MMEL and the Operational Evaluation Report are issued by the CAA, even though the inputs for their preparation come from the aircraft design. As a result, such documents are based on Orders and *policies*, not Part 21 requirements or other regulations. The initiation of activities related to MMEL or Operational Evaluation occurs during project certification, and is triggered through Issue Papers. For Supplemental Type Certificates (STC - *Supplemental Type Certificates*), the MMEL is revised by the CAA itself in case the modification affects the MMEL; and
- **A4 - Improvements package**: set of normative changes aimed at the identified problems, but without alignment with a foreign model. Highlights in this model are the inclusion in the RBAC 21 of MMEL and Operational Evaluation requirements; provisions for using the result of the Operational Evaluation for pilot training, with possible flexibility at ANAC discretion; review of procedures to ensure the assessment of MMEL and Operational Evaluation in STC and modifications to the type certificate; update of ANAC Procedures Manuals with detailed activities linked to this theme; and search for improvements in international agreements aiming at further recognition of MMEL and Operational Evaluations carried out in Brazil.

2.2.6. Out of these options, option A1 was considered for comparative purposes only, as it is an alternative that exceeds the powers of ANAC and would depend on the actions of other civil aviation authorities.

2.2.7. For the analysis of impacts and comparison of options, it was used as methodology the multicriteria analysis, considering as criteria "Safety"; "Cost for Brazilian Stakeholders"; "Cost for Foreign Stakeholders" and "Cost for ANAC". It was not considered an international harmonization criterion since it was assessed that the impacts of such criterion are already considered amongst the other chosen criteria.

2.2.8. Best outcomes were identified for options A2 (Adopt EASA OSD model) and A4 (Improvements package). For choosing between these two option, quantitative and qualitative analysis were conducted, as well

as a risk assessment, whose result lead to **the option A4 (Improvements package) as the most adequate option for this regulatory theme.**

2.2.9. In the last stage of the RIA, Implementation, Oversight and Monitoring Strategies were proposed for the chosen action option, highlighting:

- Revision of RBAC 21 to include provisions for MMEL and Operational Evaluation;
- Revision of IS for MMEL and Operational Evaluation due to regulatory differences;
- Revision of RBAC 61, 121, 135 and 142, or related IS, for use of Operational Evaluation results for pilot training and certification of air operators and civil aviation training centers. Such results are used as a reference, in a non-compulsory way, not excluding the possibility of eventual deviations in the approval of the Training Programs;
- Review of ANAC procedures manuals, international agreements and other non-normative actions;
- Training and dissemination actions for servants and regulated parties; and
- Establishment of transition rules for the new model, with emphasis on graduality.

2.3. **Proposed normative changes**

2.3.1. Once the RIA phase was concluded, necessary normative changes were proposed for implementation of the chosen option A4, with the following particularities:

- Update the definition of MEL and MMEL in RBAC No. 01 is needed; and
- It is not needed to review RBAC No. 121, 135 and 142, so that the use of the results of the operational evaluation in the approval of training programs will be included in the appropriate IS.

2.3.2. For this Public Consultation, draft documents for proposed changes in RBAC No. 01, 21 and 61 are submitted, summarized below:

- **RBAC No. 01** : update of MEL and MMEL definitions;
- **RBAC No. 21** : inclusion of sections 21.5a-I and 21.5b-I containing the requirements associated with MMEL and Operational Evaluation, respectively; and
- **RBAC No. 61** : amendment of sections 61.215 (Maintenance or re-establishment of the validity of type ratings), 61.217 (Privileges and limitations to the holder of a type rating) and 61.219 (Maintenance or re-establishment of the validity of type ratings exclusively for the second-in-command pilot function).

2.3.3. The following documents are available in this public consultation:

- Original Regulatory Impact Assessment (RIA) Report, along with an additional document changing the implementation of action option A4 (Portuguese only);
- Comparative Chart containing the text of the current RBAC, the text of the reference foreign regulation, when applicable, the amended text of the RBAC and the rationale with the detailed motivation for the changes (bilingual in Portuguese and English);
- Draft ANAC resolution, including changes in RBAC and the deadline for entry into force (Portuguese only); and
- Draft documents of RBAC No. 01, 21 and 61, compiling the proposed amendments (Portuguese only).

2.3.4. A period of 6 (six) months is proposed for the entry into force of changes in RBAC, as proposed during the RIA phase. Within that period, affected entities will be able to learn about and adapt themselves to the new rules. It is noteworthy that, despite there is no current requirement in RBAC for MMEL and Operational Evaluation, such matters are already known and used by the regulated sector, not characterizing new onerous obligations in a generalized way.

2.3.5. In addition to the changes in RBAC, the IS related to the preparation of MMEL, the performance of operational evaluation and the approval of pilot training programs will also be updated. Such IS are not submitted to public consultation, however, the relevant aspects of requirements that will have detailed means of fulfillment in IS are shown in the Comparative Chart.

2.3.6. Normative process No. 00066.004388/2020-13, referring to the present amendments, can be consulted in the Public Search tool of the Electronic Information System (SEI) of ANAC at the electronic

address: <https://www.gov.br/anac/pt-br/sistemas/protocolo-eletronico-sei/pesquisa-publica-de-processos-e-documentos>.

3. PUBLIC CONSULTATION

3.1. Invitation

3.1.1. Anyone interested is invited to participate in this Public Consultation process, by submitting comments to ANAC, in writing, that include data, suggestions and points of view, with the respective arguments.

3.1.2. Contributions must be sent using the appropriate electronic form, available at the following electronic address: <https://www.gov.br/anac/pt-br/aceso-a-informacao/participacao-social/consultas-publicas/consultas-publicas-em-andamento/consulta-publica>.

3.1.3. All comments received within the period of this Public Consultation will be analyzed by ANAC.

3.2. Period for submitting comments

3.2.1. Comments regarding this Public Consultation may only be sent **within 45 calendar days** from the publication of the Call Notice in the Brazilian Official Journal (DOU).

3.3. Contact

3.3.1. For additional information regarding this Public Consultation, please contact:

Brazilian National Civil Aviation Agency – ANAC

Department of Airworthiness – SAR

Standards and Innovation Technical Branch – GTNI

Setor Comercial Sul - Quadra 09 - Lote C - Edifício Parque Cidade Corporate - Torre A (1º ao 7º andar)

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