



U.S. Department  
of Transportation

**Federal Aviation  
Administration**

# Memorandum

Subject: **INFORMATION**: AIR-200 Policy Memorandum  
99-09 Guidance for Developing Undue Burden and  
No Undue Burden Decision Papers Under 14 CFR  
Part 21

From: Manager, Production and Airworthiness Certification  
Division, AIR-200  
Manager, Aircraft Engineering Division, AIR-100

To: All Aircraft Certification Directorates  
All Manufacturing Inspection Offices  
All Manufacturing Inspection District/Satellite  
Offices  
All Certificate Management Offices  
All Certificate Management Units

Date: November 19, 1999

Reply to  
Attn. of:

**PURPOSE**: This policy memorandum supersedes in its entirety Policy Memorandum (PM) 98-14, Guidance for Developing Undue Burden and No Undue Burden Decision Papers Under 14 CFR Part 21, dated November 20, 1998. The intent is to provide general guidance on what project types require a decision paper, decision paper processing and distribution procedures, and to define the required content for decision papers. This policy memorandum also incorporates March 17, 1999, guidance, transmitted via e-mail, concerning what work can be initiated on international Type Certification (TC)/Supplemental Type Certification (STC) projects while a decision paper is in the development process. Specific guidance relative to international STC policy will be published in Directive Notice N 8110.STC and a future revision to Order 8110.4, Type Certification Process.

**BACKGROUND**: The provisions of Title 14 Code of Federal Regulations (14 CFR), part 21, Certification Procedures for Products and Parts, sections 21.43, 21.137, 21.303(g), and 21.601(c), prohibit Federal Aviation Administration (FAA) approval of aeronautical products manufactured in facilities located outside the United States, unless the Administrator finds that the location of the manufacturer's facilities places no undue burden on the FAA. Various Aircraft Certification Offices (ACO) and Manufacturing Inspection Offices (MIO) have independently interpreted these regulations since their inception. These interpretations identified a need for a standardized approach to determine what constitutes an undue burden.

The FAA has traditionally supported international programs using existing personnel. However, with the increased globalization of manufacturing and the lack of staffing

increases, the FAA is compelled to evaluate existing as well as new programs, that may cause an undue burden for regulatory oversight. When an initial production approval involving non-U.S. facilities is issued by the FAA, the "no undue burden" decision is made based upon manufacturing programs at that time. Any subsequent changes to an approval holder's international manufacturing programs causes the initial "no undue burden" decision to be reviewed by the FAA. (It is not necessary to complete a *new* decision paper unless there is a change to the approval holder's international manufacturing program, e.g., adding a new priority part supplier.)

Policy Memorandum 98-14 provided general instructions on what to consider during decision paper development, the general content requirements of decision papers, and provided templates for use when generating a decision paper. This policy memorandum includes revised template forms that should simplify the review process, and a specific list of required decision paper elements in the attached appendices.

#### PROCEDURES:

An undue burden may be found to exist under the following circumstances:

- There is a need to transfer resources from international to domestic surveillance due to an increase in domestic program levels.
- The applicant has not adequately addressed regulatory responsibility for the project (design, manufacturing, quality, continuous airworthiness).
- A permanent reduction in authorized ASI staffing levels occurs or other resource reductions preclude international surveillance.
- A Civil Aviation Authority (CAA) can not perform oversight functions on behalf of the FAA.
- Civil unrest, or the potential for civil unrest, exists in the applicable country.
- Significant safety concerns develop such as: failed quality control processes or systems, failed parts, or any other significant areas that could affect safety.
- Project is dependent upon the use of co-producers or priority parts suppliers in non-bilateral countries.

**If any of the above circumstances are found to create an undue burden, accurate and conclusive justification of undue burden must be provided.**

A decision paper is the means to formally document all undue burden and no undue burden determinations. The Production Approval Holder (PAH) or applicant's certificate management office (in conjunction with the appropriate ACO) should prepare the decision paper for production certification and surveillance activities. The applicant's ACO in conjunction with the appropriate MIO should prepare the decision paper for type certification and supplemental type certification activities. When both type and production certification activities are involved, the Directorate manager will assign either the ACO or MIO to lead the development of a single decision paper for the entire scope of the project. The responsible MIO or ACO will ensure that all factors relative to the final decision have been considered. A decision paper should be developed for:

- Initial grant of design approvals (including STC's) involving manufacturing

facilities outside the United States. (As previously stated, guidance relating to International STC's will be forthcoming in a Notice and subsequent revision to Order 8110.4, Type Certification Process.)

**NOTE: TSO Design Approvals for Import Appliances from bilateral countries do not require decision papers.**

- Extensions of FAA Production Approvals (e.g., reference Advisory Circular (AC) 21-24, Extending a Production Certificate to a Facility Located in a Bilateral Airworthiness Agreement Country).
- New priority part suppliers in other countries.
- Other unique international situations that may arise that would result in FAA certification or surveillance activities. (In these situations, communication with AIR-4/100/200 is encouraged to ensure current national policy is appropriately considered, and to assist in determining if a decision paper is necessary.)

**DECISION PAPER DEVELOPMENT AND PROCESSING:**

Persons preparing decision papers for TC and STC projects should refer to Appendix 1 and Appendix 2 respectively, for the template to be used for such projects. Persons preparing decision papers on Production Approval Extensions or Priority Parts Supplier projects, should refer to Appendix 3 for the appropriate template. Electronic versions of the appendices were created using *check boxes* and *text fields* to enable on-screen completion. To complete the *Questions* section of the template, use the left mouse button to select the appropriate answer. For the *Cost Impact* and *Conclusion* narrative sections, delete the examples and include the information appropriate to your project. Electronic versions of this policy memorandum and appendices will be transmitted to all MIO, ACO, and Directorate Managers. Copies may also be obtained from a member of AIR-200 at the phone number listed at the end of this document.

Early notification and communication with the Manager, Production and Airworthiness Certification Division, AIR-200; the Manager, Aircraft Engineering Division, AIR-100; and the Manager, International Airworthiness Programs Staff, AIR-4, during the decision paper development process will facilitate timely processing. In an effort to expedite decision paper approval, a draft may be forwarded via e-mail to AIR-200 for initial review and comment by AIR-4/100/200 as appropriate.

**NOTE: Coordination with AIR-1 and AIR-2 must take place during unique, complex, or precedent-setting programs, prior to the Directorate Manager's approval. Such programs include fabrication and manufacturing of major sub-assemblies outside the United States. Since these are Directorate programs, it is the responsibility of Directorate management to brief AIR-1/2 prior to final submittal of the decision paper.**

The final version shall be electronically forwarded to the Directorate Manager, or in the Directorate Manager's absence, the Assistant Directorate Manager for approval. Approval authority may only be delegated to the Assistant Directorate Manager. Once approved, the Directorate shall transmit, via e-mail, the final version of the decision paper to AIR-200 for concurrence. The message shall make the following or similar statement:

"The enclosed decision paper for (*XYZ Aviation*) has been reviewed and approved by (*name*), Manager, Small Airplane Directorate, ACE-100."

AIR-200 will review the document to ensure standardization throughout AIR and that appropriate Headquarters offices (AIR-1/2/4/100) are included in the coordination process when necessary. Copies of all completed decision papers will be retained by AIR-200.

Upon concurrence, AIR-200 will transmit an email message back to the Directorate MIO or ACO of origin. The message shall contain the following or similar language:

"The decision paper for (*XYZ Aviation*) has been reviewed and concurred with by (*name*), Manager, Production and Airworthiness Certification Division, AIR-200 (and Manager, Aircraft Engineering Division, AIR-100, as appropriate)."

All completed decision papers are considered current until the program terminates or there is a need to amend them. Decision papers need not be completely rewritten in order to incorporate an amendment. However, all amendments should be coordinated with AIR-100 and AIR-200 as appropriate.

**NOTE: Decision papers are internal resource allocation determination documents and are not to be released to the production approval holder (PAH), applicant, or public. Decision papers, being deliberative documents, may be exempt from release under the Freedom of Information Act.**

#### WORK ACTIVITIES ASSOCIATED WITH DECISION PAPER APPROVALS FOR TC'S/STC'S:

A certain level of activity may be permitted to determine if a project is viable prior to final approval of the decision paper. However, under no circumstances should any authorizations be provided to the applicant relative to beginning work.

Work that can be performed includes:

- Discussing details of the applicant plans;
- Defining the State of Registry and establishing communications;
- Obtaining permission from the State of Registry for the modification;
- Identifying necessary resources;
- Identifying capability to perform the production or TC/STC project based on the general design;

- Ensuring the appropriate airworthiness authority is prepared to return the test article to service;
- Notifying the CAA, of the country in which work will be performed, of the intent to use designees to perform work in their country;
- Opening up a certification project (for the purpose of tracking time and providing a numbering system for decision papers only).

**NOTE: The FAA must obtain concurrence from all non-bilateral CAA's of the intent to use designees. For those countries with established bilateral agreements, the FAA must notify the CAA in advance of the intent to use designees. Concurrence (positive response) must also be obtained from France and Italy, if performing work in those countries.**

Work that should **not** be initiated includes:

- Establishing the certification basis and compliance checklist;
- Issuing requests for conformities;
- Findings of compliance data;
- Any manufacturing activity or parts production relative to the TC/STC.
- Any surveillance or oversight of production or designee activities.

**NOTE: In an effort to permit projects to proceed while awaiting decision paper approval, applicants have been asked to sign risk acceptance papers. The FAA has no authority to request such action and this process must not occur.**

#### BILATERAL COUNTRY CONSIDERATIONS:

In many cases, applicants may anticipate the FAA burden to be mitigated through support by the counterpart CAA under a Bilateral Airworthiness Agreement (BAA) or Bilateral Aviation Safety Agreement (BASA). However, this support may not be available or advantageous under certain circumstances, and it is critical to consider each case and country individually during the decision paper development process. Preliminary discussions with the CAA should be conducted so that the decision paper can indicate if, and to what extent, they will support FAA activities. The following factors should be considered when assessing potential support from another CAA:

- Not all authorities have the same level of understanding of FAA requirements nor the same capabilities to support TC/STC or production/airworthiness requirements;
- Not all authorities have the same level of resources to support new or expanded U.S. company ventures;
- Not all existing bilateral partners have a "components" conformity provision in their agreements with the United States or are active in the same companies that U.S. PAH's use;

- Bilateral applicability (confirmation should be obtained from AIR-4).

For each BAA/BASA country involved, the decision paper should identify the nature of the activities that the FAA would request of the CAA. It should be noted that unless a country has a current BAA/BASA with the United States, the full burden for support and surveillance remains with the FAA.

AIR-100 and AIR-200 will continue to monitor this process for approximately one year. At the end of the one-year period, the procedures will be revised for optimum efficiency.

This policy was developed in coordination with AIR-4. If there are any questions, please contact a member of Certification Procedures Branch, AIR-110, for engineering issues and the Evaluation and Assessment Branch, AIR-230, Production and Airworthiness Certification Division, AIR-200, at (202) 267-8361, for production and airworthiness issues.

Frank P. Paskiewicz /s/

James C. Jones /s/

Attachments

Appendix 1, Sample Decision Paper for TC Projects

Appendix 2, Sample Decision Paper for STC Projects

Appendix 3, Sample Decision Paper for PAE or PPS