

US FAA Proposes Changes to International Aviation Safety Assessment Program (and More) (August 2024)

On August 16, 2024, the United States Federal Aviation Administration (FAA) published a request for comments concerning proposed changes to the International Aviation Safety Assessment Program (IASA).¹ At the same time, the FAA also published a notice suspending the FAA's September 28, 2022, IASA policy statement.² According to the FAA, since the publication of the 2022 policy changes, "the FAA and DOT have received inquiries and questions that warrant a reassessment of those changes and clarifications, and an opportunity for public comment before they are adopted permanently."³

Background

Under the IASA program, established in 1992, "the FAA determines whether another country's oversight of its air carriers that operate, or seek to operate, into the U.S., or codeshare with a U.S. air carrier, complies with safety standards established by the International Civil Aviation Organization (ICAO)."⁴ The FAA publishes a list of IASA assessment results for public reference.⁵

In September 2022, the FAA adopted changes to the IASA program, including (i) clarifying IASA categories to avoid confusion; (ii) changing the inactivity period (after which a country would be removed the IASA list altogether) from four to two years; (iii) explaining the FAA's analysis for conducting IASA reassessments; (iv) announcing a policy of informal engagement



The firm's practice encompasses virtually every aspect of aviation law, including advising domestic and foreign airlines on compliance with FAA's regulations and policies concerning operations and safety matters. For further information regarding the matters discussed in this article, please contact any of the following attorneys:

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with civil aviation authorities (CAAs) prior to initiating formal IASA action; and (v) adopting new risk mitigation measures (limiting foreign operations and the display of U.S. carrier codes on foreign operators when the FAA has identified safety oversight concerns and notified a CAA of such concerns.

Summary of Proposals

The FAA's request for comments includes several proposals:

- Removing "Category 2*" designation – Category 2* was used to refer to countries with no carriers serving the U.S. at the time of their assessment. The FAA proposes to categorize any country not meeting ICAO standards as Category 2.
- Adding a new "Category 1*" designation – at present, a Category 1 rating means that the FAA has found that the country's CAA complies with ICAO standards. The FAA proposes to add Category 1* to indicate Category 1 countries that have been notified through official channels of a need for an IASA reassessment based on identified risks of possible noncompliance with ICAO standards. The FAA will remove the asterisk once a reassessment is complete, at which point the country would either remain in Category 1 or be demoted to Category 2.
- Amending criteria for removal from IASA list – the country has no foreign operators holding FAA operations specifications under 14 CFR part 129 or operating under 14 CFR §§ 375.42 and 375.70 with service to the United States nor foreign operators carrying the code of a U.S. operator, and the country has not received technical assistance from the FAA for identified ICAO safety oversight deficiencies within the prior two-year period. The FAA also proposes to reduce the time for removal from the IASA list from four years to two years.
- Clarifying when an IASA assessment will be performed on an unrated country – the FAA will perform an IASA assessment when a carrier from that country files an application with the Department of Transportation for economic authority (traffic rights) and/or when a foreign carrier displays the code of a U.S. carrier on its flights.
- Clarifying the development of a corrective action plan upon notification of Category 2 rating – if, after an assessment, the FAA determines that a CAA is not meeting ICAO standards, the FAA will (i) orally brief the CAA, (ii) provide a written record of the FAA's findings, and (iii) schedule a final follow-up discussion. The FAA also includes timelines for subsequent actions: if the FAA assessment finds an instance of noncompliance, it will notify the CAA. Within 90 days of this notification, the FAA will request discussions with the CAA to recommend corrective action. If, following the conclusion of the final discussion, the CAA has not corrected its deficiencies, the country in question will be placed in Category 2. The FAA states that it may conduct virtual meetings with CAAs to discuss findings, including providing a

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Corrective Action Plan outline and a timeline for resolution. The FAA states that it may also assist CAAs in developing Corrective Action Plans under a technical assistance agreement.

- Addressing safety concerns outside of the IASA Process – the FAA’s proposal notes that the FAA retains authority – independent of the IASA program – to take action to address known safety concerns or prevent further noncompliance or unsafe operation of an aircraft by a carrier. Such actions could include limiting operations to the U.S., placing limits on the display of a U.S. carrier code, and initiating immediate IASA category changes.

Comments

The FAA’s IASA Program is an important aviation safety tool and one that has serious and significant consequences for countries with carriers serving the U.S. For example, a new carrier seeking to operate to the U.S., from a Category 2 country cannot do so using its own aircraft; rather, it must wet lease from a U.S. carrier or a carrier from a Category 1 country (or limit itself to codesharing). A carrier from a country with a Category 1 rating that is downgraded to Category 2 cannot add/expand service to the U.S. and any U.S. carrier codes displayed by that carrier must be removed. Comments to the FAA’s policy are due by September 16, 2024.

¹ Request for Comments on Proposed Changes to the IASA Program, 89 Fed. Reg. 66645 (Aug. 16., 2024).

² Suspension of Policy Statement, 89 Fed. Reg. 66546 (Aug. 16, 2024). Also see our discussion of the 2022 changes at https://www.kmazuckert.com/publications/aviation/2022/FAA_IASA_October_2022.pdf.

³ 89 Fed. Reg. 66645.

⁴ https://www.faa.gov/sites/faa.gov/files/about/initiatives/iasa/FAA_Initiatives_IASA.pdf.

⁵ <https://www.faa.gov/initiatives/iasa/iasa-program-results>.