Rulemaking in the Agency : the Art of making sausages

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Presentation Contents

✈ **General**

✈ **Development of rulemaking programmes**

✈ **Notice of Proposed Amendment (NPA) process**

✈ **Other issues**

Rulemaking : general

- **Task of the Agency: Basic Regulation Articles 13 and 14**

- **Establishment of Rulemaking Procedure based on Article 43**

- **EASA Management Board MB/7/03, 17 June 2003**

- **"Procedure ... for the issuing of opinions, certification specifications and guidance material": "Rulemaking Procedure"**

Rulemaking : procedure

➢ **Contents:**

➢ **JAR 11 used as reference**

➢ **section 1: Basic principles and applicability**

➢ **Section 2: Rulemaking Procedure**

    ✦ programming

    ✦ {initiation, drafting, consultation, comments review, adoption}: "NPA process"

➢ **Section 3: Final provisions**

Programming (process)

- ✈ **Executive Director (ED) establishes annual rulemaking programme**
- ✈ **He consults SSCC and AGNA**
- ✈ **Any person may propose issues**
- ✈ **Programme supported by preliminary RIA (Regulatory Impact Assessment)**
- ✈ **ED can adapt the programme**
- ✈ **Publication of programme**
- ✈ **Regular review of the impact of rules**

Programming (contents)

✈ **Programme takes account of:**

- ✧ EASA objectives: <u>safety</u>, environmental protection, free movement, cost-efficiency
- ✧ Criteria for implementing rules: state of the art, experience and technical progress
- ✧ Developments in European and international law
- ✧ Harmonisation with non-EU partners
- ✧ Risk assessment studies and research
- ✧ need to correct implementation problems
- ✧ results of air accident investigations
- ✧ needs of emerging air traffic enhancement programmes

Actual Programmes (2004 & 2005/2007)

> **Covers:**

- Basic Regulation
- Part 21, M, 145, 66, 147 and AMC/GM
- Certification Specifications
- (Airworthiness Codes and AMC): CS-Definitions, CS-22, CS-VLA, CS-23, CS-25, CS-AWO, CS- VLR, CS-27, CS-29, CS-34, CS-36, CS-E, CS-P, CS-APU, CS-ETSO, AMC-20, Airships and Balloons (CS-30 and -31)

Actual Programmes (2004 & 2005/2007)

➤ **Based upon:**

✦ JAA inventory of ongoing rulemaking activities and new ideas (JAA Steering Groups)

✦ Decisions in the JAA system to start a rulemaking activity.

✦ Deferred items from EASA Comment Response Documents

✦ Inputs from authorities and industry regarding implementation problems

➤ **Conclusion:**
Mainly continuation of JAA programme

Actual Programmes (2004 & 2005/2007)

- ➤ **Decision 2004 or 2005/2007 based on expectation when deliverable is ready**
- ➤ **No preliminary RIAs because of lack of time**
- ➤ **For implementation will rely heavily on CJAA and NAA's workforce**
- ➤ **Adoption of 2004 programme: signed 22/04/2004**
- ➤ **Examples later in presentations**

NPA Process

✈ **Initiation**

✈ **Drafting**

✈ **Consultation**

✈ **Review of comments**

✈ **Adoption and publication**

NPA Process : Initiation

→ **Draw up Terms of Reference after consulting SSCC and AGNA**

  ✦ definition of task

  ✦ timetable

  ✦ format of deliverable

→ **Choose between drafting group or Agency resources**

→ **If drafting group: ED decides composition after consulting SSCC and AGNA**

→ **Agency to provide support to groups**

NPA Process : drafting procedural

➤ **ED may amend ToR**

➤ **ED to verify that drafting result satisfies ToR**

➤ **Assign unique NPA reference code**

➤ **Publish NPA, including**

  ✦ proposed rule

  ✦ explanatory note

  ✦ significant, contentious or interface issues

  ✦ situation with respect to ICAO and non-EU AA

  ✦ full RIA

NPA Process : drafting content

✈ **take account of:**

- ◆ EU Law (EASA Regulation)
- ◆ ICAO SARPs
- ◆ harmonisation with non-EU partners
- ◆ results of air accident investigations
- ◆ timely implementation
- ◆ compatibility with existing rules
- ◆ state of the art and best practices
- ◆ technological developments
- ◆ regulatory impact

NPA Process : consultation

✈ **Any person may comment**

✈ **Consultation period: 3 months
although ED may decide on different period**

✈ **extensions can be granted only in
exceptional cases**

✈ **Comments shall contain:**

- ✦ identification of the comment provider
- ✦ NPA reference code
- ✦ position with justification

NPA Process : review of comments

✈ **Comments review by original drafter(s) _AND_ experts not involved in the drafting**

✈ **Comment response document (CRD) to be published 3 months after consultation**

✈ **above period can be amended**

✈ **if significant differences: ED may decide to re-circulate**

✈ **if major objections from NAA's (for rules to be applied by MS), ED shall consult AGNA**

NPA Process : adoption and publication

✈ **ED will issue decision not earlier than 2 months after publication of CRD**

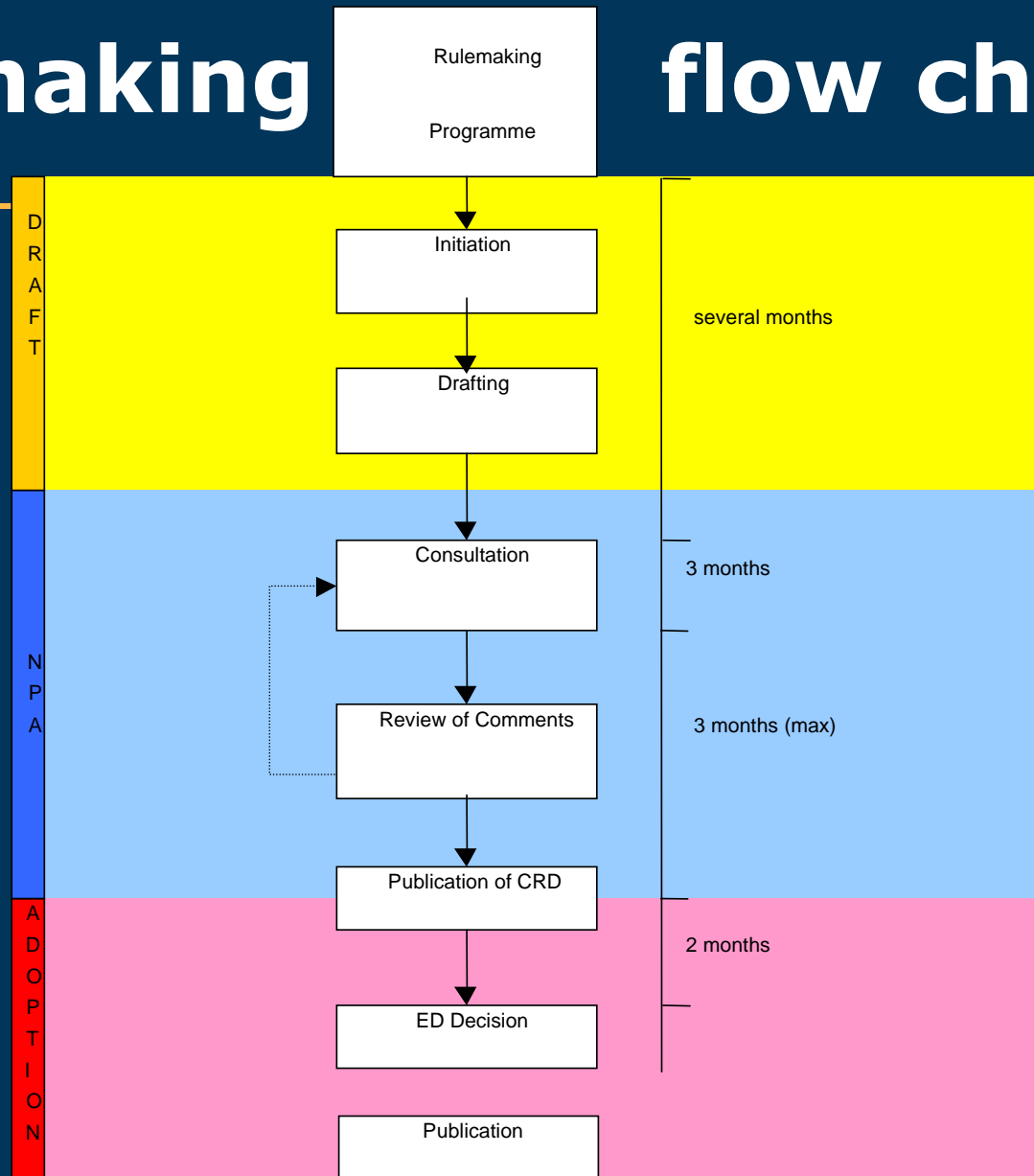✈ **Rules + explanatory memorandum to be published in Agency's Official publication**

Rulemaking : other issues

- ✈ **SSCC**
- ✈ **AGNA**
- ✈ **co-operation with third countries and International organisations: arrangements**
- ✈ **Access to documents: EC regulation 1049/2001**
- ✈ **Retention of documents: indefinitely**
- ✈ **Special procedures: A-NPA**
- ✈ **transition: easier procedure**

END

QUESTIONS:

please after next presentation

Regulatory **I**mpact **A**ssessment

- ✦ **What: decision <u>support</u> process**
- ✦ **Why: improve quality of regulation**
- ✦ **How: clarify positive and negative impacts**
- ✦ **form not prescribed**
- ✦ **model provided**
- ✦ **RIA proportionate to the likely impact**

Regulatory **I**mpact **A**ssessment model

✈ **Purpose and Intended Effect**

- ✦ Issue which the NPA is intended to address
- ✦ Scale of the issue (quantified if possible)
- ✦ Brief statement of the objectives of the NPA – such as a safety improvement

✈ **Options**

- ✦ The options identified and evaluated
- ✦ If possible the preferred option selected

✈ **Sectors affected**

- ✦ sectors affected and the number of organisations / individuals / aircraft affected

Regulatory Impact Assessment model (continued)

✈ **Impacts**
- ✦ quantified
- ✦ segmented by sector
- ✦ addressing following considerations:
  - ▪ Safety,
  - ▪ Economic,
  - ▪ Environmental
  - ▪ Social
  - ▪ Other aviation requirements
- ✦ Equity and fairness issues

Regulatory **I**mpact **A**ssessment model (continued)

✈ **Consultation**

✈ **Summary and Final Assessment**

✧ Comparison of impacts

✧ summary of who are affected and issues of equity and fairness

✧ Final assessment and recommendation

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