

RULEMAKING COOPERATION GUIDELINES
FOR
TRANSPORT CANADA CIVIL AVIATION
AND THE
EUROPEAN AVIATION SAFETY AGENCY

Background:

The Agreement between Canada and the European Union on civil aviation safety (the "Agreement") requires that Canada and the European Union develop procedures for regulatory cooperation for all activities they conduct which fall within the scope of the Agreement.

Transport Canada Civil Aviation (TCCA) and the European Aviation Safety Agency (EASA) (the "Participants") have determined that they should actively promote mutual rulemaking cooperation to maintain and further improve the harmonisation of their rules within the scope of Articles 4 and 8.3 of the Agreement.

The Participants understand that harmonisation can best be achieved through effective communication during the definition and early stages of implementation of their respective rulemaking programmes.

They also believe they should make the best use of scarce available resources to produce rules, and that cooperation in this field can be furthered without affecting their independence and regulatory oversight responsibilities when deciding on the final rules they best see fit to fulfil their statutory obligations. Therefore, these Guidelines are not intended to create binding obligations under international law. Additionally, no provision of this document should be construed to impair the authority of TCCA or EASA to develop and promulgate aviation regulations within the limits of their enabling legislation and regulations.



I. Objectives:

- 1) These Guidelines establish the process through which TCCA and EASA intend to promote rulemaking co-operation in the early stages of the rulemaking process.
- 2) The objectives of this rulemaking cooperation arrangement are to:
 - i. Exchange rulemaking intentions and priorities of the Participants to align as much as possible their respective rulemaking programmes;
 - ii. Identify rulemaking initiatives of common interest that through regulatory collaboration would allow TCCA and EASA to: (i) avoid unnecessary divergence and duplication of work, (ii) maximize available resources, and (iii) further harmonisation;
 - iii. Define the corresponding working methods (as described under Point IV) to be followed by the Participants when executing tasks which have been identified as of “common interest” under Point III below;

II. Scope

- 1) Subject to Articles 4 and 8.3 of the Agreement, the scope of these Guidelines includes rulemaking initiatives related to the Canadian Aviation Regulations (CARs) and associated Standards, and equivalent European Union rules for which proposals are developed by EASA, as well as to related acceptable means of compliance, certification specifications, advisory circulars, guidance material, and technical standard orders.
- 2) Activities related to the issuance of airworthiness directives, equivalent safety findings and special conditions for individual certification projects are outside the scope of this rulemaking cooperation arrangement.

III. Project Management

- 1) Management of the TCCA and EASA in charge of rulemaking intend to meet at least twice a year in the April and November time frame, preferably by videoconference, to:
 - i. Review the functioning of this rulemaking cooperation arrangement.
 - ii. Discuss their current and future rulemaking programmes, including priorities thereof and related documentation. To that end, TCCA and EASA intend to exchange on a regular basis their respective rulemaking programmes, and information on their implementation in accordance with Attachment I of these Guidelines.



- iii. Identify rulemaking activities of common interest, and corresponding working methods.
 - iv. Examine possible co-operative working methods and assign focal points.
 - v. Discuss possible changes in the rulemaking programmes and working methods imposed by changing priorities.
 - vi. Discuss possible contentious issues.
- 2) TCCA and EASA intend to develop an agenda for these meetings at least four weeks in advance.
- 3) TCCA and EASA will keep an up to date inventory of rulemaking tasks that have been identified as being of common interest, including identification of the focal points and information on the types of common actions agreed to and their current status. Where appropriate, TCCA and EASA intend to make available to the public the list of rulemaking tasks of common interest and status of the work.
- 4) Representatives of TCCA and EASA responsible for rulemaking may attend the meetings of the joint coordination bodies established under the Agreement, such as the Joint Committee, the Joint Sectorial Committee on Certification and the Joint Sectorial Committee on Maintenance to ensure, inter alia, that the discussion on rulemaking cooperation in the above bodies are consistent with the overall priorities identified under these Guidelines. The Participants intend that attendance at meetings at the Joint Committee be in accordance with the provisions of the Joint Committee's rules of procedure.

IV. Implementation and Selection of Working Methods

- 1) TCCA and EASA intend to use the following working methods to execute rulemaking tasks, which they have identified as "tasks of common interest", with the objective to make best use of available resources and expertise on both sides. "Tasks of common interest" may include newly initiated rulemaking projects of either Participant affecting a precisely defined domain (e.g. all rulemaking projects affecting certification specifications for CS / Part 25 airplanes). The selection of a working method should take into account the benefits for aviation safety and for the aviation sector, complexity of the subject, urgency of the tasks, and possible rulemaking resources efficiencies.

Working Method #1 – EASA Takes the Lead

The general process is the EASA rulemaking procedure. EASA will take into account this rulemaking co-operation arrangement when following this process.



This working method aims at giving TCCA sufficient involvement in the EASA rulemaking project to understand the content of the draft rule and to be able to contribute to this process as necessary to allow it, where appropriate, to launch an equivalent Notice of Proposed Amendment (“NPA”) or take other equivalent rulemaking decision.

The EASA focal point should lead the rulemaking process in regular coordination with the TCCA focal point.

The EASA focal point should ensure that communication takes place for the following phases of the EASA process:

- When drafting the terms of reference of the task;
- When deciding the composition of the rulemaking group when such group is established;
- When deciding changes in the terms of reference or the group composition;
- Prior to the publication of the Notice of Proposed Amendment (“NPA”);
- When deciding the composition of the review group when such group is established;
- When reviewing comments and drafting the comment response document (CRD); and
- Prior to the publication of the final decision.

Working Method #2 - TCCA Takes the Lead

The general process is the TCCA rulemaking procedure as governed by the Canadian Aviation Regulation Advisory Council (CARAC). TCCA will take into account this rulemaking co-operation arrangement when following this process.

This working method aims at giving EASA sufficient involvement in the TCCA’s rulemaking project to understand the content of the NPA and be able to contribute to this process as necessary to allow it, where appropriate, to launch an equivalent NPA or take other equivalent rulemaking decision.

As appropriate, the TCCA focal point should lead the rulemaking process in constant coordination with the EASA focal point.

The TCCA focal point shall in particular ensure that communication takes place for the following phases of the TCCA process:

- When drafting the proposed rulemaking;
- When deciding the proposed composition of the rulemaking team;

- When deciding changes to the scope of the rulemaking or the rulemaking team;
- Before presenting the TCCA NPA to CARAC;
- When reviewing the comments received and drafting responses;
- When deciding on changes to TCCA NPA's proposed regulatory text based on comments received; and
- Before publication of the final rule in Canada Gazette II.

Working Method #3 – Joint Rule Development

Under this method, TCCA and EASA will develop the rules jointly while respecting the requirements of their respective rulemaking procedures. They will use the resources available to avoid duplication of effort and aim at developing a single text which could be used by TCCA and EASA for the publication of NPA and/or the final rule/opinion as applicable.

TCCA and EASA will:

- Jointly develop a draft reference document, which should meet the requirements of their respective rulemaking procedures;
- Jointly appoint representatives for the rulemaking team, in a way which makes the optimal use of the expertise available in EASA and TCCA. The composition of the group will be approved under the respective TCCA and EASA rulemaking procedures;
- Endeavour to publish on the same date the NPA based on the outcome of the joint work done. They will also, to the extent possible, prescribe similar commenting periods for the general public.
- Inform each other about the major comments received in the public consultation process, and discuss significant changes that they intend to make to the draft rule as a result of the comments received;
- To the extent possible coordinate on the date of issuance of a jointly developed final rule/opinion;



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Working Method #4 – Authorities Cooperation

Under this method, the TCCA and EASA intend to develop their rulemaking projects separately, but concurrently (to the extent practicable). However, as appropriate, the TCCA and EASA focal points may follow the process described in Working Methods #1 and #2 in sharing information during concurrent development of the rule.

- 2) Implementation of each working method will be the responsibility of the assigned focal points. The focal points will communicate frequently, in particular at each significant step identified in the working methods. They will ensure that the other focal point is aware of all issues and will try to resolve any differences of opinion before moving forward with the next step of the rulemaking process. Any dispute that the focal points cannot resolve will be reported to senior management as necessary.

V. Work Plans

- 1) For each rulemaking project selected, EASA and TCCA intend to develop a work plan which should describe the following:
 - i. Working method;
 - ii. Technical points of contact;
 - iii. Project implementation schedule and meeting dates;
 - iv. Description of the technical documents that either the TCCA or EASA intends to make available for review and discussion. These may include jointly developed issue papers, analyses, research results and other technical documents of a non-confidential nature.
 - v. Participation in work groups; and
 - vi. Any other cooperative activities mutually determined by EASA and the TCCA to be beneficial.

VI. Release of Data

Except as required by applicable law, neither the TCCA nor EASA should disclose to any third party confidential or pre-decisional rulemaking information received from the other Participant as a result of that Participant's involvement in any rulemaking project under these Guidelines, without the written consent of that other Participant. Each Participant should identify documents designated as confidential or pre-decisional and should ensure that such information is not accessible to unauthorized third parties.



VII. Progress Report


The Participants will provide progress reports to the Joint Committee on an annual basis.

VIII. Applicability and Changes

These Guidelines are applicable from the date of signature and may be changed or terminated in writing at any time by either EASA or the TCCA.

Done in duplicate in English,

For Transport Canada Civil
Aviation:



Ms Nicole Girard

Director, Policy and Regulatory
Services

DATE: September 27, 2013

PLACE: OTTAWA CANADA.

For the European Aviation Safety
Agency:



Mr Jules Kneepkens

Rulemaking Director

DATE: 27-9-13

PLACE: Montreal.



Appendix I

Documents to be provided by EASA:

Type of document	Frequency of exchanges	Focal Point
monthly rulemaking scoreboard	Once every four months	athanassios.tziolas@easa.europa.eu
4 year rulemaking programme.	Annually	athanassios.tziolas@easa.europa.eu

Documents to be provided by TCCA:

Type of document	Frequency of exchanges	Focal Point
Rule status reports AC and Orders ¹ status	Once every four months	marie-anne.dromaguet@tc.gc.ca jacqueline.booth@tc.gc.ca
4-year rulemaking look-ahead	Annually	jacqueline.booth@tc.gc.ca

¹ For the TCCA, the Standards Branch is responsible for the issuance of guidance material.



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