

## **FAA-EASA Rulemaking Co-operation**

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The aviation authorities for the United States of America and Europe have established an active and constructive dialogue in several domains of their activities, including rulemaking. In the past, the Federal Aviation Administration (FAA) and the Joint Aviation Authorities (JAA) succeeded in harmonising many rules through a comprehensive rulemaking co-operation programme.

The FAA and the European Aviation Safety Agency (EASA) agree that they should actively promote mutual rulemaking co-operation to maintain and further improve the achieved level of harmonisation of their rules. They also agree that harmonization can best be achieved through constant communication during the definition and implementation of their respective rulemaking programmes.

They also believe that the best use must be made of scarce available resources to produce rules, and that co-operation in this field can be furthered without affecting their independence when deciding on the final rules they best see fit to fulfil their statutory obligations.

This document establishes the process through which such objectives can be met. As FAA and EASA agree to promote rulemaking co-operation, this arrangement is initially implemented on a voluntary basis. It will be used as a basis for the procedure to be developed for implementing the provisions on regulatory co-operation in the *Agreement on Cooperation in the Regulation of Aviation Safety* between the United States and the European Community.

### **I. Objectives**

The objectives of this rulemaking co-operation arrangement are to:

- Exchange rulemaking intentions and priorities thereof to align as much as possible the rulemaking programmes of the FAA and EASA;
- Identify rules of common interest that the FAA and EASA can develop jointly to (i) avoid unnecessary divergence and duplication of work, (ii) maximize available resources and (iii) further harmonisation,
- Establish processes for developing those rules of common interest;
- Implement the principles of the Guidelines on Regulatory Cooperation and Transparency negotiated as part of the Transatlantic Economic Partnership between the U.S. and the EU. Specifically, this document addresses necessary operational elements of regulatory cooperation such as 1) consultation and exchange of information; 2) identification and selection of problems to be addressed through regulation; and 3) monitoring of forthcoming rulemaking projects.

This rulemaking co-operation arrangement does not affect the independence of either the FAA or EASA in any way when deciding on the necessary rules for the protection of the travelling public. Neither the FAA nor EASA is bound by the decisions of the other.

## **II. Scope**

The scope of this rulemaking co-operation arrangement includes initiatives related to 14 Code of Federal Regulations and equivalent EASA rules; related acceptable means of compliance, advisory circulars, related guidance material; and technical standard orders.

Activities related to the issuance of airworthiness directives, equivalent safety findings and special conditions for individual certification projects will be handled outside the scope of this rulemaking co-operation arrangement.

## **III. Programming**

Senior management of the FAA and EASA in charge of rulemaking will try to meet twice a year, preferably in October and April, to:

- (i) Review the functioning of this rulemaking co-operation arrangement.
- (ii) Discuss their future rulemaking programmes, including priorities thereof and related documentation such as preliminary regulatory impact assessments. To that end, the FAA and EASA will exchange their respective rulemaking programmes<sup>1</sup> at least three weeks before the meeting at which the programmes will be discussed. Upon receipt, the FAA and EASA will review the rulemaking programmes in a detailed manner to identify those rulemakings eligible for possible co-operation and potential focal points.
- (iii) Identify rulemakings of common interest.
- (iv) Examine possible co-operative working methods for joint action when appropriate (based on the below chapter on implementation).
- (v) Discuss possible changes in the rulemaking programmes and working methods imposed by changing priorities.
- (vi) Discuss possible contentious issues.

The FAA and EASA will try to develop an itinerary for these meetings at least one week before the meeting.

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<sup>1</sup> EASA inventory. FAA Draft Rulemaking Program

#### **IV. Implementation of tasks of common interest**

This chapter describes the various possible working methods that can be used to execute tasks of common interest with the objective to make best use of available resources and expertise in both systems.

Tasks of common interest are classified into two categories:

- Items for joint action: these are issues that are included in the two organisations work programmes and their timescales are compatible. Work is shared as much as possible to reduce costs using working methods 1 to 3.
- Items for information exchange: the intention is to improve awareness of a subject and to avoid regulatory developments that could create incompatibilities. Working method 4 is used in that case.

The choice of one of these working methods will take into account the sensitivity of the subject as well as the added value for reaching consensus.

In all cases, implementing the guidelines under each working method is mainly the responsibility of the focal points. They will communicate frequently, in particular at each significant step identified below. 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 rulemaking. Any dispute that the focal points cannot resolve will be reported to senior management as necessary.

##### **1. Working Method # 1 - EASA Takes the Lead**

The general process will be the EASA rulemaking procedure (EASA MB/7/03), with specific cross-references that take into account this rulemaking co-operation arrangement.

The process aims at giving the FAA sufficient involvement to understand the content of the draft rule and to be able to adjust it as necessary to its own needs before launching the NPRM or decisions are made by the FAA.

The EASA focal point will lead the process in constant co-ordination with the FAA focal point.

The EASA focal points should in particular 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 NPA;
- When deciding the composition of the review group when such group is established;
- When issuing the draft comment response document (CRD); and
- Prior to the publication of the final decision.

2. Working Method #2 - FAA Takes the Lead

The general process will be the FAA Office of Rulemaking's Rulemaking Manual. The focal point will take into account this rulemaking co-operation arrangement when following this process.

The process aims at giving EASA sufficient involvement to understand the content of the Notice of Proposed Rulemaking (NPRM) and be able to adjust it as necessary to its own needs before launching the NPA or decisions are made by EASA.

The FAA focal point will lead the process in constant co-ordination with the EASA focal point.

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

- When drafting the Rulemaking Project Record for the rulemaking;
- When deciding the proposed composition of the rulemaking team;
- When deciding changes to the scope of the rulemaking or the rulemaking team;
- Before publication of the NPRM;
- When reviewing the comments received and drafting responses;
- When deciding on changes to the NPRM's proposed regulatory text based on comments received; and
- Before publication of the Final Rule.

3. Working Method #3 – Authorities cooperation

Under this method, the FAA and EASA want to develop their rulemaking projects separately, but concurrently (to the extent practicable). Each authority will use its own technical experts or external specialised expert organisations to develop and draft its rulemaking project. However, the FAA and EASA focal points will communicate frequently during the drafting process to harmonize their rules where possible.

4. Working Method #4 – Reciprocal information

Under this method, the FAA and EASA have agreed to keep each other informed by sharing drafts of documents before their publication so that either can evaluate and react to possible impact the envisaged rule could have on its own activities or policies. In some cases, where a proposed activity is significant but there is no near-term counterpart activity, FAA or EASA may agree to have an observer from the other organization participate to assist with future regulatory considerations.