

Rulemaking Cooperation Guidelines
for the
Federal Aviation Administration
and
Transport Canada Civil Aviation

Background:

The bilateral agreement between the United States of America (U.S.) and the Government of Canada (Canada) promotes rulemaking cooperation between the Federal Aviation Administration (“FAA”) and Transport Canada Civil Aviation (TCCA).

The activities between the U.S. and Canada under the Regulatory Cooperation Council also encourage the sharing of rulemaking experiences to promote cooperation and aligning of rulemaking requirements.

The FAA and TCCA (the “Participants”) have informally cooperated on numerous rulemaking activities in the past.

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 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 the FAA or TCCA 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 the FAA and TCCA 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 the FAA and TCCA 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 Article IV) to be followed by the Participants when executing tasks which have been identified as of 'common interest' under Article III;

II. Scope

- 1) The scope of these Guidelines includes rulemaking initiatives related to Title 14, Code of Federal Regulations and equivalent Canadian rule for which proposals are developed by TCCA, 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 FAA and TCCA 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, the FAA and TCCA 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. Discuss possible changes in the rulemaking programmes and working methods imposed by changing priorities.
 - v. Discuss possible contentious issues.
- 2) The FAA and TCCA intend to develop an agenda for these meetings at least three weeks before the meeting.
 - 3) The FAA and TCCA intend to maintain 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, the FAA and TCCA intend to make available to the public the list of rulemaking tasks of common interest and status of the work.

IV. Implementation and Selection of Working Methods

- 1) The FAA and TCCA intend to use one of the following working methods to execute rulemaking tasks, which the Participants 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. The selection of a working method should take into account the benefits for aviation safety and for the aviation sector, and complexity of the subject.

Working Method # 1 - TCCA Takes the Lead

The general process is the TCCA rulemaking procedure as governed by the Canadian Aviation Regulation Advisory Council (CARAC).

This working method aims at giving the FAA sufficient involvement in the TCCA 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 Rulemaking (“NPRM”) or take other equivalent rulemaking decision.

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

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

- When a regulatory initiative has been prioritized by TCCA senior management and a Preliminary Issue and Consultation Assessment (PICA) has been developed;

- When deciding the composition of a Focus Group when such a group is established;
- When deciding changes in the terms of reference or the group composition;
- When releasing reports and recommendations of Focus Group.
- Before presenting the TCCA Notice of Proposed Amendment (NPA) to CARAC;

Working Method #2 - FAA Takes the Lead

The general process is outlined in the FAA Office of Rulemaking's Rulemaking Manual.

This working method aims at giving TCCA sufficient involvement in the FAA's rulemaking project to understand the content of the NPRM 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 FAA focal point should lead the rulemaking process in regular coordination with the TCCA focal point.

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

- When developing issue papers in preparation for drafting the Rulemaking Action Plan ("RAP");
- When selecting the membership of an ARAC ("Aviation Rulemaking Advisory Committee") or Aviation Rulemaking Committee ("ARC") to allow TCCA participation;
- During the deliberations of an ARAC or ARC up to and including publication of the final reports;
- When deciding changes to the scope of the rulemaking project prior to the development of the RAP.

Working Method #3 – Authorities Cooperation

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

- 2) The Participants may exchange technical experts, at their own cost. Exchanges of personnel should be addressed in separate written arrangements between the Participants.
- 3) For each task identified as a “task of common interest” the Participants intend to assign a focal point responsible for coordinating the work.

V. FAA *Ex Parte* Communications

To the extent that the FAA engages in any ex parte communications with TCCA after approval of the RAP until publication of the final rule and receives significant information and argument from TCCA respecting the merits of the proposed rule, the FAA will provide a summary of those discussions in the rulemaking docket.

VI. Work Plans

- 1) For each rulemaking project selected, TCCA and FAA intend to develop a work plan. Each work plan 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 FAA or TCCA 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, except that the FAA and TCCA, if their national procedures or rules so require, may decide not to make available copies of documents, such as in the case of the FAA, the RAP, or the NPRM prior to publication in the Federal Register;
 - v. Participation in work groups, e.g. ARAC and ARCs; and
 - vi. Any other cooperative activities mutually determined by TCCA and the FAA to be beneficial.

VII. Release of Data

Except as required by applicable law, neither the FAA nor TCCA 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.

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 TCCA or the FAA.

Done in duplicate in English,

For the Federal Aviation
Administration:

For Transport Canada Civil
Aviation:



Lirio Liu

Director, Office of Rulemaking



Shari Currie

Director, Policy and Regulatory
Services

DATE: 2/26/2014

DATE: _____

PLACE: WASHINGTON, DC

PLACE: _____

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Director, Office of Rulemaking

Director, Policy and Regulatory
Services

DATE: _____

DATE: 25 Feb 14

PLACE: _____

PLACE: OTTAWA

Attachment 1

Rulemaking Programmes

Documents to be provided by TCCA:

| Type of document | Frequency of exchanges | Focal Point |
|---|-------------------------------|--|
| Status report on regulatory priorities | once every four months | marie-anne.dromagnet@tc.gc.ca |
| AC status linked to regulatory priorities | Upon publication of the rule. | jacqueline.booth@tc.gc.ca |
| 4-year rulemaking look-ahead | annually | jacqueline.booth@tc.gc.ca |

Documents to be provided by FAA:

| Type of document | Frequency of exchanges | Focal Point |
|-----------------------------------|------------------------|------------------------|
| Rule status reports | once a month | James.M.Crotty@faa.gov |
| AC and Orders ¹ status | once a month | |
| 4-year rulemaking look-ahead | annually | James.M.Crotty@faa.gov |

¹ For the FAA, ACs and Orders are promulgated by the specific Line of Business and not by the Office of Rulemaking.