

COMMENT/RESPONSE DOCUMENT
JAA REGULATORY AND RELATED PROCEDURES
(JAR 11-1)



LIST OF COMMENTORS

AEA (Association of European Airlines)
AIA (Aerospace Industries Association)
AIAC (Aerospace Industries Association of Canada)
Airbus Industrie
Austrocontrol - CAA Austria
Britannia Airways
CAA UK
CAA Finland
DGAC-France (Direction General d'Aviation Civile)
ECA (European Cockpit Association)
ETF (European Transport Worker's Federation)
Europe Airports
FAA (Federal Aviation Administration)
GAMA (General Aviation Manufacturers Association)
ITF (International Transport Worker's Federation)
ENAC Italy (Ente Nazionale per l'Aviazione Civile)
JAA Licensing Division
JAA Maintenance Division
LBA (Luftfahrt-Bundesamt) (no comments)
Luftfahrtshuset - SLV Denmark
Luftfahrtstilsynet - CAA Norway
Luftfartsverket - LFV Sweden
Mr. A. Young
Mr. F. Fagegaltier
NLA - CAA Netherlands (Nederlandse Luchtvaart Autoriteit)
British Aerospace (Society of British Aerospace Companies LTD)
Transport Canada
Turbomeca France (no comments)

GENERAL COMMENTS

[F. Fagegaltier] has submitted a completely re-written JAR-11.

Note: *This rewrite has been taken into account and some modifications to JAR-11 result from this: for example the need to justify when a request to amendment to a JAR has been denied has been added in JAR 11.055(e)(2); paragraph JAR 11.055(f) contains all elements relative to set up of a Working Party.*

[CAA UK] Reference is frequently made to 'JAR'. When such references are made, clarification is required as to whether a specific code is meant, for example JAR-25, whether all JAR codes are meant in general, or whether a JAR paragraph is meant, for example JAR 11.035.

[JAA Maintenance Division] JAR-11 is not user friendly, it should be simplified JAA Maintenance Regulations are well respected and "user-friendly" today, this credibility should not be compromised.

[A. Young] The term "regulations Director" is used in a number of places. "Regulation Director" is correct.

[AIAC (Aerospace Industries Association of Canada)] Add the text 'JAR' preceding the applicable references.

Response: *Comments agreed. Where needed, JAR 11 will be revised accordingly.*

[The Society of British Aerospace Companies LTD (SBAC)] Rules for capitalisation within this document need to be defined and adhered to. There are several examples of words being capitalised where the use of capitalisation is not required or beneficial. (dg: ACJ 11.060(b), para 6b2(3)). Apart from instances where capitalisation is grammatically required, a convention needs to be adopted (if it is not already in existence) to ensure that capitalisation is only used when it is performing a specified function. For example, a word or term that is defined in JAR-1, or JAR 11.05 should be capitalised, in order to highlight that the term means more than the simple wording may imply.

Response: *Comment not agreed. However, there were some typing-errors, which have been improved.*

Status of JAR-11

[Luftfahrtstilsynet - CAA Norway] It should be considered to issue JAR-11 as a procedure in the Administrative and Guidance Material (AGM). JAAC decided at JAAC meeting 99/1 that JAR-11 should be a JAR and to a chapter in AGM even though it was declared by the Commission that JAR-11 would not be included in Regulation 3922/91.

At that time the creation of EASA was going according to the mandate given by the Council. Since then it seems that EC is changing its position from an EU organisation/authority for aviation safety to an EU agency.

In light of the latest development we feel at this time that it should be reconsidered whether JAR-11 should be a JAR or a chapter in AGM.

Response: *Comment is noted. The JAR-11 WG had concluded earlier that the most logical place for the material included in JAR-11 should be an attachment to the Cyprus Arrangements. However the JAR-11 WG decided to promote that such material has the status of a JAR because it is more visible than an AGM and because its amendment-procedure is more transparent. It is quite likely that JAR-11 will constitute the basis for the EASA rulemaking procedures but in the meantime the status of JAR should be kept.*

New JAA structure and procedures (Agenda for Change, JAA bodies etc.)

[JAA Maintenance Division] JAR-11 should be changed in accordance with the new JAA-organisational set up of the Sectorial Teams.

[DGAC France] The procedures are sometimes too detailed in the proposal (e.g. in paragraphs 11.066 and 11.150 where the regulation director and the certification division are mentioned.) JAR 11 should be more general and we propose to use the term "JAA" instead of being too specific. Therefore, no change to JAR 11 would be required if the JAA structure is changed in the future.

[European Cockpit Association - ECA] A definition of "the JAA Body" an "JAA bodies" is missing. Under its current drafting, NPA 11 cannot be adopted unless the Agenda for Change is adopted. Is that desirable? Will there be a new NPA once the Agenda for Change is approved so that everybody knows in each article the name of the body or bodies responsible for taking the decisions?

[Luftfartsverket CAA Sweden] However as JAR 11 is meant to be a master document, i.e. a model for future JARs, and a tool to help stabilising the existing JARs, we think that it is of great importance that the JAR-11 itself is consistent in structure, wording and terminology. So before its publication, JAR-11 should be proof-read, amended and improved in the following respects:

- due consideration must be taken to the outcome of the Agenda for Change
- the new amendment system of the JARs, i.e. the replacement of the Orange Papers and Changes system, must be described, and the subsequent texts be corrected.
- the use of appendices should be avoided in a JAR as they complicate the structure of the document and make it less user-friendly
- inconsistencies in terminology and spelling must be corrected and the text completed with missing words.

[AEA] Due to the JAA Agenda for Change several paragraphs (e.g. 11.055, 11.0965, 11.075) refer to unspecified JAA bodies. Hopefully the organisational changes of the JAA can be agreed before the final JAR-11 is adopted. If not, a new NPA to incorporate the new JAA structure has to be issued. Until this time the Cyprus Arrangement shall be interpreted.

[Luftfartstilsynet - CAA Norway] JAR-11 should be changed to be in accordance with the new JAA organisation.

[DGAC France] The proposal on working parties (in paragraph 11.055 for example) should be consistent with the agenda for change.

[British Aerospace] Account needs to be taken of the "Agenda for Change" While it is acknowledged that the NPA does not take account of the "Agenda for Change", it will need to be revised to take this into account. Specific paragraphs that will be affected are: JAR 11.055, JAR 11.175(b)(1), ACJ 11.035 (a) Attachment, ACJ 11.045 (b), ACJ 11.065 (c)(1).

[ETF] The bodies referred to in the JAR-11 text should be specified in accordance with the outcome of the Agenda for Change process. This applies to a large number of paragraphs in the draft. The current text lacks clarity and specificity.

Response: *All comments above noted. The NPA was drafted before the full ramifications of the JAA Agenda for Change were known. The text should become clearer when these changes are made. The NPA will be modified to take account of these changes before submission to the JAAC for adoption. The principle adopted for incorporating Agenda for Change has been to find wordings that do not go too much into details. The JAA Management System manual will provide these details.*

MUTUAL RECOGNITION/JIP

[Transport Canada] JAR 11 needs to define the extent and status of documents or references granted recognition under the JAR system.

[ENAC Italy] position is still that JIPs are essential for the mutual recognition and that key elements of them should be made binding on all NAAs, in order to remove some legal uncertainties. The objective of defining key elements of JIPs should also be followed by the proposed policy group. Appropriate reference to the key elements should be done drafting Subpart C (JIPs) of JAR -11.

Response: See (revised) explanatory note para. 5. The JAR-11 WG takes the view that the subpart on JIPs remains reserved until it is clear from the EASA discussion which standardisation concept is opted for. This would provide the elements for the definition of the JIP concept.

Compliance with ICAO

[Lufftartshuset Denmark] We can inform you that we fully agree that differences with ICAO standards should be highlighted so that JAA Member States are aware and can take necessary steps to notify the differences when adopted, cf. ACJ 11.065(b), 2.6.

Response: Comment noted and agreed.

[CAA UK] we believe that some procedure should be in place that requires a full justification for a new requirement, or amendment to a requirement, if it would place a member State in conflict with ICAO. This would thus require a positive action to check against ICAO SARPs to determine whether there would in fact be a conflict. Clarification on how this is to be done is sought.

Response: Agreed. See 11.060(e)(5) for drafting. JAR 11.075(b)(3) for presentation note for JAAC for adoption. ACJ 11.065(b) 2.6 for justification

A-NPA

We agree with the provision of an A-NPA procedure, subject to the welcome requirement that its use be justified in the Explanatory Note accompanying each A-NPA, as you suggest, and subject to no restrictions on the scope of consultation.

Response: Comment noted. Please see response to 11.066(e), ETF.

REGULATORY IMPACT ASSESSMENT (RIA) (Formerly named: Cost/Safety Benefit Assessment)

[AEA] Having carefully read NPA 11-1 "Draft JAR-11 JAA Regulatory and Related Procedures", we would like to confirm that AEA fully supports this NPA and the implementation of JAR-11 as soon as possible. However, the following points should be considered:

- (Not addressed to the issue of Cost/Safety Benefit Analysis)
- (Not addressed to the issue of Cost/Safety Benefit Analysis)
- The work of the cost/safety benefit working group should be expedited in order to be able to adapt the analysis procedures about the time of JAR-11.

Response: The support of AEA for the implementation of a Regulatory Impact Assessment discipline in JAR-11 is noted. With regard to the issue of implementation, please see response to ETF on page 9 of this comment/response document under headings EXPLANATORY NOTE, Paragraph 4.3.

[British Aerospace] Recognising the comments on a Cost/Safety Benefit Assessment in the Explanatory Note, it needs to be recognised that NPA 11-1 itself proposes changes whose costs and effects need quantifying. It is not reasonable for such a significant NPA to be exempt from such a requirement. While it may be difficult to identify any safety benefit by the introduction of JAR 11, the NPA must identify the additional cost burden on Industry. Such a statement would, additionally, help to expose all implications of adopting the NPA and would certainly influence judgements on its acceptability.

We propose that this is developed and circulated for comment before the NPA is adopted.

Response: *JAR-11 will introduce a comprehensive set of regulatory and related procedures for JAA work. As such, it will largely eliminate the need for ad hoc decision making and working, and will reduce costs for both the JAA and for Industry.*

The JAR-11 Working Group feels strongly that it is neither sensible nor practical for JAA to continue for very much longer without a comprehensive set of regulatory and related procedures, and as such intends to try and expedite the adoption of JAR-11. The inclusion of Regulatory Impact Assessment procedures is more fully addressed in the response to the ETF on page 9 of this comment/response document under headings EXPLANATORY NOTE, Paragraph 4.3.

[Mr F Fagegaltier] para 4. Cost / Safety benefit analysis It is understood that a working group is proposed to elaborate a method. However, in this JAR-11, there should be a paragraph addressing this subject (as done below). It could be later on modified by the working group but, at least, its place would have been reserved in JAR-11.

Response: *Your support for the retention of a reference to a Regulatory Impact Assessment is noted. With regard to the issue of methodology and implementation, please see response to ETF on page 9 of this comment/response document under headings EXPLANATORY NOTE, Paragraph 4.3.*

Relationship JAA-EU

[CAA Finland] The problems encountered in the EU implementation procedure clearly show that the EU should be actively involved in the drafting of a JAR already at an early stage. The goals of harmonisation and mutual recognition are not achieved if a JAR cannot, in fact, be implemented after adoption (be it within the EU or in other JAA member states). Finding out how a JAR can be implemented after adoption should be an integral part of the drafting process itself.

[CAA Finland] We recognise that within the JAA framework we can only decide on internal JAA procedures. We wonder, however, whether it would be possible to improve the JAA/EU co-ordination in this field, be it only for a transitory period, while we are looking for a solution in the EASA discussions. Discussion on the EU involvement might give rise to some adjustments to the present Draft JAR-11.

[JAA Maintenance Division] The proposed "procedures" would appear to increase the bureaucratic process rather than decrease it. One of the main blockages in the system to date has been the delay between adoption by JAA and the EU process and this major problem has been addressed at all.

To make the JAR application completely dependent on the EU regulation-, adoption-process is time consuming. A medium way should be defined. Question should be raised if this is a JAR or more a JAA administrative procedure. Related to that: if this is a JAR, when will it be approved by EU to be adopted as regulated by itself?

The proposal seems to be in conflict, in that it says, JARs should only be adopted through Regulation 3922/91, while it is not intended that proposed JAR-11 will be adopted into the Regulation. How could JAR-11 therefore be made a requirement?

Because of workload and resource problem, a change of the Maintenance Requirements in accordance with a published JAR-11 should be done together with the change to EU-legislation. EU involvement in the approval/adoption process is not defined and therefore JAR-11 is incomplete. It therefore would appear more logical that JAR-11 should be adopted into Regulation 3922/91 and subsequently used as the method by which JARs achieve adoption into the EU regulation.

[AEA] EU should be encouraged to adapt the drafted amendment to regulation 3922/91 (inadequate safety, exemptions, equivalent safety cases).

Response: *The JAR 11 WG is fully aware of the concerns raised. There is no disagreement at all on the need to have close involvement of the Commission services at the earliest possible stage in the JAA regulatory activities. JAR 11.075 (3) assumes that timely co-ordination with the EU should provide insight on the extent to which adopted JARs are eligible for incorporation in the Community system. However, the legal relevance of the Community system, including Regulation 3922/91 cannot be denied. All EU Member States are as a matter of European law fully committed to the existing Community system. In that respect the comment to have JAR-11 incorporated in Regulation 3922/91 is not possible, since the Community has its own legal framework for the development of law. It is up to all involved in the EU legislative process to undertake all efforts necessary, to have the JARs incorporated in Regulation 3922/91.*

COMMENTS - EXPLANATORY NOTE¹

(Explanatory note, para 4.2)

[ITF] Change "acceptable level of safety" into "equivalent level of safety". The term "acceptable" does not specify a measurable standard against which non-conformity with a defined rule may be permitted.

Response: "equivalent level of safety" gives an other method of meeting the principle of the requirement the exemption is granted for. The competence to grant an exemption is not given to meet in an other way the requirement, but in special cases to deviate from the requirement without losing sight of a level of acceptable safety.

(Explanatory note, para 4.2.(e))

[NLA - CAA Netherlands] Add a description for "Equivalent Safety". Since para 4.2.(3) of the Main issues for Subpart B states that the JAA considers a distinct difference between exemptions (lower but acceptable level of safety) and equivalent safety findings, some explanation of both terms will help clarify this issue. Especially where in JAR 145.95 "Equivalent Safety Case", an exemption from a requirement is possible subject to compliance with any supplementary conditions to ensure equivalent safety. Here the two terms seem to be of the same level, JAR 145.95 text should be amended to a clear exemption para. Equivalent safety findings as stated here should be input for the a posteriori mechanism of ACJ material as described in 7.3(b) of the main issues on Subpart E (non-requirements) and JAR 11.175(c).

Response: Comment agreed. It is not felt that further explanation is needed to Explanatory Note 4.2(e). However, this should be aptly reflected in the text of other JARs, notably JAR 145.95, and such decisions taken by an individual NAA in this context should indeed be submitted to the procedure detailed in Explanatory Note para 7.3(b) with regard to JAR 11.175 and its relevant ACJ.

(Explanatory note para 4.3)

[A. Young] Having worked on the RAP, ICPTF, JAR-11 WG and the JAR-26 StG, the undersigned is well versed in the issue of cost/safety benefit. Permission to be considered for such a WG, on behalf of IACA/EURACA, will be sought from Martinair and IACA/EURACA.

Response: Your support for the implementation of a Regulatory Impact Assessment discipline in JAR-11 is noted. Your wish to be a member of the proposed Sub-Group is welcomed. Please see also the response to ETF on page 9 of this comment/response document under headings EXPLANATORY NOTE, Paragraph 4.3.

[Luftfartsverket Sweden] As we in Sweden are required to produce CBAs for *both* proposed new rules *and* proposed ACJs, as well as to consult upon them, we welcome the establishment of the proposed Sub-group and are prepared to nominate a member.

Response: The support of the Luftfartsverket Sweden towards the implementation of a Regulatory Impact Assessment discipline in JAR-11 is highly valued by the JAR-11 Working Group. Your wish to nominate someone to be a member of the proposed Sub-Group is noted.

¹ For ease of reference the original text of the explanatory note is attached.

[ETF] We have long-standing objections concerning the introduction of cost/safety benefit analysis into the JAA system. These may be summarised as follows:-

- a) Such systems risk reducing safety regulation to a series of economic calculations;
- b) Many elements of regulation (e.g. human factors, organisational structure, aspects of operations, personnel competence/skills/performance) are not readily measurable in economic terms;
- c) The JAA does not have the competence to carry out such evaluations (it is not an organisation of economists);
- d) The JAA does not have the resources to do so;
- e) Such failings are likely to leave the JAA vulnerable to cost calculations by the regulated parties which the JAA would find difficult to independently evaluate;
- f) Criteria for "benefit" are not defined, and would be likely to prove controversial. For example, such a system would require the valuing of a human life.
- g) Social, environmental and political considerations are also appropriate, and sometimes more significant elements in the assessment of rulemaking.

Nevertheless, we note that the JAA intend to establish a working group to "consider the feasibility" under which the JAA "might" introduce such a system. This suggests that the commitment to such a system which is contained in the draft JAR 11 is premature. We therefore propose on Form 200, the deletion of all current reference to cost/benefit analysis.

As I have indicated previously, the ETF wishes to participate in any such working group.

Response: *As a preliminary exercise, Central JAA performed a review of 5 Cost/Safety Benefit techniques submitted in response to a request for those methods currently in use by the NAAs. Initial considerations showed the UK Regulatory Impact Assessment (RIA) method as best matching the JAA's review criteria.*

The JAR-11 Working Group, having noted the results of this exercise and the comments from various stakeholders, have decided that previous considerations and commitments, documented in the EXPLANATORY NOTES, Paragraphs 4.3 and 9.2, have to be respected. It was also decided that the term 'Cost/Safety Benefit Assessment' should be replaced with the term 'Regulatory Impact Assessment', thereby giving a clearer indication that all regulatory elements should and will be considered.

Consequently, Central JAA shall establish a Sub-Group, using the expressed willingness to participate in such a group by a number of commentators, the task of which will be to develop a RIA methodology, bearing in mind the Terms of Reference previously developed and comments submitted on this topic. The JAR-11 Working Group have indicated that the introduction of a RIA methodology in the JAA system, through a future NPA to JAR-11, should occur around December 2002.

The JAR-11 Working Group believes that the discipline of some form of Regulatory Impact Assessment should be introduced into the requirements writing process. The text of the JAR-11 document will be adapted to reflect the decisions of the Working Group.

Your wish to nominate a member for the proposed Sub-Group is welcomed by the JAR-11 Working Group.

(Explanatory note para 4.4)

[A. Young] The Commission's working document on EASA (COM (2000) 144 final) does suggest that JAR-11 may require modification to fit its decision making processes. Harmonisation with the Commission's approval method is very important. Undue delays in being able to use published material cannot be tolerated and may, in the extreme, compromise important JAA consultation steps such as the RAP review and the full NPA process. In addition, a scenario can be envisaged whereby, non-EU member States of the JAA/EASA become "flags of convenience" through their ability to use JAA/EASA material more quickly and efficiently than EU member States. Such a situation cannot be allowed to exist.

Response: Comment noted The JAR-11 WG assumes that JAR-11 will be used as a basis for EASA rulemaking procedure and as such may be adapted. The JAR-11 WG understands that the issue of associating non-EU Member States is an important issue and that all efforts are being made to resolve satisfactorily this point.

(Explanatory note para 5.1.4 - Policy Group)

[Europe Airports] We support the creation of such a Policy Group and Europe Airports would be interested to participating in this Group. It is the policy of Europe Airports to have the European sports and recreational aviation sector regulated by National Regulations, mutually recognised in order to facilitate free movement of flight equipment and crew. Therefore we would favour *equivalent* rather than *common* technical requirements to support mutual recognition. We would like to discuss the JAA and EU methods in this frame.

[Luftfartsverket Sweden] We support the idea of establishing a policy group to help clarifying elements that are essential for safety and mutual recognition.

[Austrocontrol - Austria] As the JAA mutual recognition concept and the EU Mutual Recognition Concept are different we support to establish a so-called policy group composed of members of the different divisions, taking into account that possibly a standardisation system might be included within the framework of a future Single Authority. This policy group might be composed of NAA authority members, Regulation (legal advisors), Certification, Maintenance Operation, Licensing, JAA HQ and EC. JIPs are authority procedures therefore industry participation in the drafting is not envisaged.

Response: The concept of a policy group will not be pursued. Agenda for Change envisage a streamline of the certification/validation procedure and a review of the standardisation procedures in the light of the need for mutual recognition. It is assumed that EASA will define its own standardisation process.

(Explanatory note para 7.5)

[A. Young] Hidden requirements in Section 2 cannot be permitted for the following reason: Once a decision on the definitions of Section 2 material has been made, a review of all existing Section 2 material will need to be made to see where requirements exist in this Section. Any such texts found will have to be NPA-Ed or withdrawn. Considering that most Jars are already in existence, not taking the above mentioned step will dilute the value of JAR-11.

[CAA UK] In the case of JAR 27&29, Section 2 only contains ACJ material that is different to the material in FAR AC27 and AC 29, i.e. advisory material that is not harmonised with FAR. The desired end point, in the interests of harmonisation, is therefore that eventually there need be no material in Section 2, since the JAR ACJ material will be full harmonised with the FAR AC. if this

is what is intended then Option 1 does not make this clear and the explanatory paragraph should be amended accordingly.

Response: *The review of Section 2 material is required by Agenda for Change and the JAR-11 WG also agrees to a concept of ACJs that would simply cross-refer to another document (for instance an FAA Advisory Circular) provided that this document is well identified and its issue clearly stated. (e.g." Issue 1 DD/MM/YY).*

(Explanatory note para 9.1)

[A. Young] Many organisations are faced with space limitations for their archives. The JAA is not unique. The Dutch Rijksarchief has developed a selection and retention model for government organisations, PIVOT. It would be suitable to apply their model to the JAA's requirements. The undersigned can arrange contact with appropriate experts in this manner.

Response: *The JAR-11 WG appreciates the suggestion. It will be considered in due course.*

(Explanatory note para 9.2)

[Airbus Industrie] Even though the requirement for Cost/Safety Benefit Assessment implies an increase of the workload for NPA production, development of methodologies and training, this increase will be more than balanced by public interest considerations. It is very important for the Interested Parties to have a clear view of the balance between the cost and the safety benefit of a new rule.

Also, while the workload may be increased for each individual NPA, we expect that the number of NPAs produced in the coming years will decrease for the following reasons:

- Completion of Harmonisation;
- JAA Agenda for Change (JAR stabilisation, better control of Working Parties);
- Rulemaking initiatives to be justified by data (JSSI implementation plan).

So, globally, the JAA should be able to keep the NPA production workload under control, even with the Cost/Safety Benefit Assessment constraint.

Response: *The support of Airbus Industrie for the implementation of a Regulatory Impact Assessment discipline is noted. Also, see response to ETF on page 9 of this comment/response document under headings EXPLANATORY NOTE, Paragraph 4.3.*

(Explanatory note: Para 9.3)

[Airbus industry] Clarification of the non-requirement status of Section 2 is most welcome. This will have to be made very clear to all National Authorities, and relevant training should be organised for all NAA staff likely to implement JARs.

Response: *The JAR-11 WG agrees to the need for training. The Central JAA will develop proposals for training in the near future.*

(Explanatory note para 10 Future Work programme)

[Luftfartsverket Sweden] In the NPA, views are sought on the proposal to explore new methods for drafting requirements and reviewing comments in order to improve transparency and cost-effectiveness. We suppose that this proposal is a remainder of the proposal in the Eggers report to task the RAP to review the JAA regulation process, and we support the idea of going through with this exercise. The outcome should also be to find ways to improve the co-ordination

between the JAA and EU adoption processes to minimise the risk of having different JAA and EU versions of the same JAR.

Response: Comment not agreed. The Agenda for Change has required a streamline of existing working groups with two guiding principles, firstly to improve management and secondly to set up an ad-hoc group with clear terms of reference. A proposal should be agreed by the JAAC at its March 2001-meeting. It is therefore not proposed to proceed with the recommendations reflected in the Eggens report.

(Explanatory note/Annex 1)

[Airbus Industry] It is mentioned in appendix 1 that the ad hoc group for review of section 2 material will address the balance between requirements and ACJs for JAR-21, JAR-OPS 1/2/3, JAR-145, JAR-66, JAR-17, JAR- FCL 1/2/3. The proposed composition includes only one representative for Industry (Interested Parties?). due to the wide scope JARs to be reviewed, this is unacceptable. As a minimum, there should be a representative of the Interested Parties for each of the involved sectors (Certification, Operations, Maintenance and Licensing).

Response: See page 50 of the comment/response document under heading review of section 2 material.

SECTION ONE

[Britannia Airways] This should be set out in columns.

Response: *Comment noted and agreed. Layout will be adjusted accordingly*

(JAR 11.001)

[Luftfartsverket Sweden] Para (a) should be expanded to cover all regulatory acts within the JAA system. JAR 11 should cover all aspects of the regulatory work within the JAA system. At present JAR 11 covers JARs. Section One and Section Two including special conditions. However, there are several other regulatory material, such as Airworthiness Directives (AD's) and Operational Directives (OD's), which we believe should be covered by JAR 11 in order to achieve consistency and completeness.

Response: *This item has been discussed in extenso in the JAR 11 WG. It was felt that ADs and ODs were not acts that were adopted by the JAA using the JAA regulatory system but national acts that is established in accordance with applicable domestic procedures. The JAA may recommend however to Member States to issue a specific directive. As such, that recommendation is not a directive. For that reason there is no need to have JAR 11 cover these acts.*

JAR 11.005

[Transport Canada] Further clarification is needed to define what an "observer" is, versus a member or a participant.

Response: *As per the JAA Committee decision with regard to the composition of Sectorial Teams, contained in document EB 00/2 doc.4 rev.3, this distinction will no longer exist. All participants will henceforth be referred to as "Representatives". The JAR-11 document will be amended accordingly.*

[General Aviation Manufacturers Association -GAMA] Add an organisational chart depicting the relationship between all the elements of the regulatory process. Will add clarity.

Response: *The JAR-11 WG will take this suggestion under consideration, with the eventual possibility of producing such a chart in the Explanatory Note.*

[ITF] We would prefer the use of non-gender specific terminology throughout the JAR system, e.g. Chairperson rather than Chairman.

Response: *Comment agreed. The JAR-11 document will be amended accordingly, yet the term 'Chair' is preferred to 'Chairperson'.*

[British Aerospace] Propose new text: "NPA: Notice of Proposed Amendment. A formal document used to propose new JARs and amendments to existing JARs.

Response: *Comment agreed. Please see revised JAR 11.005.*

[British Aerospace] Some terminology is missing from this section. Specifically, the terms "Requirement", "Effective Date" and "Acceptable Level of Safety" need to be defined. According to ACJ 11.045, "Definitions are found in JAR-1, and whenever possible use should be made of them. If a terms specific to a particular JAR or Subpart is required, then it may be included in that JAR".

Response: *Comment not agreed. The term "requirement" is generic throughout all JARs and such a definition is not needed. As regards "Effective Date", taking into consideration the explanation given in ACJ 11.045(b), it is not felt that the term warrants a definition. Also, see*

response to DGAC France under ACJ 11.045 (b). With regards to "Acceptable Level of Safety", see response to NLA - CAA Netherlands under Explanatory note, para 4.2(e).

[DGAC France] Propose new text: "ACJ (*Advisory Circular Joint*): means a joint text providing guidance to help implement Joint Aviation Requirements. An ACJ may provide explanations, interpretations or acceptable means of compliance." This would permit first to state the non regulatory status of an ACJ and then to describe its content.

Response: *Comment agreed. Please see revised JAR 11.005.*

[Comment: DGAC France] Propose new text:

"JAR (*Joint Aviation Requirements*): means the code containing Requirements and the associated advisory circular joint."

From the definition of ACJ and the explanation given in paragraph 7 of the explanatory note, it appears that all elements contained in section 2, whether they are interpretations, explanations or acceptable means of compliance, are considered as Advisory Circular Joint. One of the problem existing today is the use of different terms for the material of section 2. It would therefore be less confusing to use only the term ACJ which is the one defined.

Response: *Comment agreed. Please see revised JAR 11.005.*

[DGAC France] The following definitions should be changed as follows to read:

Change: a new complete edition of a JAR which incorporates the Orange Papers and NPAs which have been published or adopted since the last complete edition.

Orange Paper: a formal published document which incorporates an amendment to a JAR after approval of the corresponding NPA.

NPA: Notice of Proposed Amendment. A formal document used to propose a new JAR or amendments to a JAR.

A-NPA: Advance Notice of Proposed Amendment. A document used to seek early advice from interested parties on a possible future NPA.

National Variant: A national requirement or regulation imposed by a country in addition to or instead of a JAR requirement.

The definition of NPA would need to be changed for being consistent with Subpart B. The definition of A-NPA would need to be changed for clarity. The term 'national variant' should be added (See comment on 11.085 below)

Response: *Comments noted. With regard to the definitions of Change and Orange Paper, please see the response to Airbus Industrie below. As regards the additional suggestions pertaining to NPA and A-NPA, please see revised JAR 11.005. As regards the addition of a definition of National Variant, it is not felt that is required. The description in JAR 11.085(a) as part of this requirement does not harm the JAR 11 concept and serves the purpose of complementing the understanding of JAR 11.085. It is, however, agreed that the word "means" in paragraph (a) shall be replaced with "is".*

[Airbus Industrie] Delete the definitions of *Change* and *Orange Paper*. Add a definition of *Amendment*. We understand that with the new JAA publications system, *Orange Papers* will no longer be issued, nor *Changes*. Only *Amendments* will be issued.

Change the definition of *Interested Parties* as follows: "Interested Parties: Organisations recognised by the JAA as significant enough to represent organisations/persons who are subject to regulation in accordance with JARs."

In the consultation on the JAA "Agenda for Change", Airbus Industrie has requested to be accepted as an Interested Party by itself, in addition to the representative international organisation AECMA, due to its own weight in the European aviation industry. The definition of *Interested Parties* should reflect this possibility to admit not only international organisations, but also some companies.

Response: Comments agreed concerning the deletion of the terms *Orange Paper* and *Change* and the need for the inclusion of the term *Amendment* in JAR 11.005. Please see revised JAR 11.005. Furthermore, the JAR-11 document will be revised to reflect the new procedure.

With regard to the special circumstances surrounding the acceptance of Airbus Industrie as an Interested Party by itself, it is not felt that this situation needs to be reflected in the definition of Interested Parties. The prevalent criteria for Interested Parties must be based on representativity in their sector of the European aviation industry. Please see revised JAR 11.005 and a new ACJ 11.005.

[JAA Maintenance Division] "Change" to be deleted. "Orange Paper" to be deleted. These terms are not longer to be used (in accordance to Regulations Div.) also mentioned in other paragraphs.

Response: Comments agreed. Please see above reply to Airbus Industrie and see revised JAR 11.005.

[General Aviation Manufacturers Association - GAMA] Delete all reference to "Orange Paper". The entire practice of Orange Papers should be discontinued. It is very contradictory to "publish amendments to a JAR, before amendments are introduced by means of a change." This practice has led to a great deal of confusion because Orange Papers are amended before they are even published as an NPA. Operators, authorities and manufacturers are often unsure as to whether they must comply with an Orange Paper. As Orange Papers are not mandatory, why should they be "published" outside the Working Party and JAA headquarters.

Response: Comment agreed. Please see above Response to Airbus Industrie and see revised JAR 11.005.

[Luftfartsverket, Sweden]

A-NPA Means Advanced Notice of Proposed Amendment, a document used to gather views regarding the contents of a future NPA.

A-NPA is the only term in the paragraph that has not been defined.

Response: Comment agreed. Please see revised JAR 11.005.

[CAA UK] Terminology. A definition of P-NPA should be added here together with an explanation of how it differs from an A-NPA. (See ACJ 11.065 (c)(2) para. 2).

Response: Comment noted. The JAR-11 WG agrees that the notion of P-NPA might lead to some confusion if used next to NPA and/or A-NPA, this as a result of the latter two being attached to a process whilst P-NPA constitutes a 'labelling' of a document during the drafting stage. The term P-NPA will be replaced with the term 'draft NPA' and the JAR-11 document amended accordingly.

[Luftfartsverket, Sweden] To clarify the different status of the sections of a JAR, and to explain ACJs.

- *JAR* (Joint Aviation Requirements): Means the code containing Requirements (Section One) and non-requirements (Section Two).

- *ACJ* (Advisory Circular Joint): Means non-requirements that are provided in Section Two of a JAR, such as acceptable means of compliance and interpretative/explanatory material.

Response: *Comments on need for clarification in terminology agreed. Please see revised JAR 11.005.*

[Luftfartsverket, Sweden] "Working Party" should be expanded to cover all different kinds of working parties that are found within the JAA system, such as Study Group (SG), Steering Group (StG) and Working Group (WG).

Response: *In view of the fact that the kind of Working Party which is formed depends on the work that has to be carried out, it would create confusion at this stage if the JAR-11 document were to enter into detail as to the various possibilities.*

[A. Young] An edited version of the text that appears on page 2-0-1 of each JAR provides a better definition. The use of "non-requirements" in the definition of ACJ is strange. It does not really have any meaning.

Response: *Comment agreed. Please see revised JAR 11.005.*

[GAMA]

- Old: "JAR (Joint Aviation Requirements): Means the code containing Requirements and Acceptable Means of Compliance and Interpretative and Explanatory Material (ACJs)."

- New: JAR (Joint Aviation Requirements): Means the code containing requirements and acceptable means of compliance."

ACJs, defined as "non-requirements" in the following paragraph, cannot be defined as part of the JARs, which by definition are "requirements".

Capitalizing the words "Acceptable Means of Compliance" implies they are separate and distinct documents.

Response: *Comments noted. Please see revised JAR 11.005.*

[Aerospace Industries Association of Canada -AIAC] The referenced text does not adequately explain:

- The eligibility Criteria of any organisation to become an Interested Party – No eligibility criteria is given.
- The Role, Responsibility and Privilege of any such organisation – These are not clearly described.
- The List of currently eligible organisations – The list is not attached to the A-NPA so the reader cannot even guess at the eligibility.
- The difference (if any) in the Roles, Responsibilities and Privileges of different organisations – The differences between 'Interested Parties', 'European Interested Parties', 'International Organisations' and 'Foreign Organisations' is not explained with respect to the Working Parties and their eligibility as Representatives or Observers, Ref: ACJ 11.055(e)(3), 11.055(g)(1)(2) & 11.060(b) para 3 & 4.

Proposed new text: "Interested Parties: An organisation whose members are subject to regulation in accordance with JARs and whose input to the rulemaking process has been determined by the Chief Executive to be beneficial to the JAA."

Delete all references to:

- Representative Interested Parties
 - European Interested Parties
 - International Organisations
 - Foreign Organisations
- And replace with:
- Interested Parties

Reason: Confusion arises concerning the use of the term interested parties throughout the JAR and ACJ. There are cases where the term stands alone and there are cases where it is modified to 'European Interested Parties'. There are also competing terms such as 'International Organisations' and 'Selected Foreign Organisations' which use similar text to the definition itself. In addition, the term 'Representative Interested Parties', is used when discussing the Joint Steering Assembly or the JAA consultative body. The author's use of these various terms is not clear to the reader. There needs to be clarity in the use of the term 'Interested Party' and there needs to be consistency in its application.

[GAMA] Change paragraph JAR 11.005 Terminology.

- Old: "Interested Parties: Representative International Organisations whose members are subject to regulation in accordance with JARs."
- New: "Interested Parties: JAA Authorities and representative international organisations whose members are subject to regulation in accordance with JARs, and others as determined by the Regulation Director."

Add ACJ 11.005

- "Individuals or single companies will not normally be allowed 'Interested Party' status unless they have clearly demonstrated their interests are not otherwise represented on the Working Party, or their expertise is clearly essential to the drafting process."

Under the proposed paragraph, JAA Authorities (which do not have "members"), would not be considered an Interested Party. (But they are allowed to participate on Working Parties.) The proposed paragraph excludes Authorities that may not be signatory to the Agreements, and other large organisations that may represent many other organisations or companies (not individuals) from the same country. The proposed change allows a degree of judgement in determining Working Parties membership, thereby ensuring they are effective.

[FAA] "Interested parties" is defined to mean "Representative International Organisations whose members are subject to regulation in accordance with JARs." Is the word "organisation" used to intentionally exclude individuals? This seems to conflict with JAR 11.055(a), which says that a person, as well as an organisation, may propose the development of a new JAR or an amendment to a JAR.

Response: (to last three comments) The comments made by AIAC, GAMA and the FAA above are noted. The current definition reflects the sought for 'representativity' factor relative to interested parties within the JAA system and its international [European] sphere of influence. It is clear that in view of the close co-operation efforts and work carried out with non-European authorities and organisations, the definition is not intended to exclude them. It is, therefore, proposed to maintain the definition as it stands and to add an ACJ so as to provide the necessary clarification. Please see revised JAR 11.005 and a new ACJ 11.005.

With specific regard to the comments from AIAC regarding "Eligibility Criteria" and "Roles, Responsibilities and Privileges", the continued development and implementation of the Agenda for Change has foreseen the establishment of such descriptions. Document EB 00/2 doc.4 rev. 3 regarding the composition of Sectorial

Teams does contain indications of "Eligibility Criteria" for interested parties. The same document also sets forth that all participants to a JAA forum will be referred to as 'Representatives' only.

As regards the list of currently eligible organisations, please refer to ACJ 11.150(b), which states that such a list is available at Central JAA.

With specific regard to the comment made by the FAA, please note that the example used is contextually incorrect. The initiation of a new JAR or the amendment to an existing JAR can be proposed by "Any person or organisation...", whether they have 'Interested Party' status or not.

[FAA] "JAR (Joint Aviation Requirements) is defined to mean " the code containing Requirements and Acceptable Means of Compliance and Interpretative and Explanatory Material (ACJs)." While this may be the widely accepted meaning of JAR among member states, we note that JAR appears to be significantly broader than the common understanding of "requirement" in the United States. We would ordinarily view the regulation itself (the "FAR") as the "requirement". An interpretation would then be an interpretation of the requirement, not the requirement itself, even though the interpretation may be binding. Also, the description of JAR requirements as including ACJs seems to conflict with the next definition which describes ACJs "non-requirement" that include "interpretations, explanations and/or means of compliance."

In addition, you may want to consider incorporating the language currently proposed in the ACJ within the JAR as a requirement. This would reduce the chance of inconsistency between related documents.

Response: *Comment noted. Please see revised JAR 11.005.*

[Lufftartsverket, Sweden] "Adoption" Two different terms should be defined; i.e. adoption within the JAA system and adoption by the NAAs and/or EU, according to the guidelines laid down in 3.2 of the Explanatory Note.

Response: *Comment not agreed. The definition of Adoption is, as a matter of clarification, included in JAR 11.005 so as to give a clear indication as to the meaning of the term when used within the context of JAR-11. This concept and the difference between the two kinds of "adoption" can be found in Explanatory Note 1.2.2.*

[Lufftartsverket, Sweden] JAR 11.005 Definitions: The terms in the paragraph are, with the exception of A-NPA, *defined* and the heading should therefore be changed accordingly. After having moved generic definitions to JAR-1, the heading could be changed to read "Definitions specific to JAR-11."

Response: *Comment is correct. The use, however, of Terminology, as per the writing convention, is to indicate that the JAR contains definitions specific to that JAR. In order to give further clarification, the JAR-11 WG suggests the inclusion of the phrase "For the purposes of this document:" in JAR 11.005. Please see revised JAR 11.005.*

[ECA] Draft Proposal of Amendment: informal document used to consult parties prior to the issuance of a formal document.

Amended Version (...)
Advisory Circular (...)
Proposal of Amendment (...)
Working Group (...)

Justification: The terms used sound artificial. An effort should be made to make JAA terminology more accessible. The use of acronyms is becoming excessive in the JAA. Simplification and clarity is always desirable in a legislative procedure.

Response: *Proposed changes not agreed. However, the comment with regard to simplification and clarity is noted. The JAR-11 WG will recommend that the writing convention take into consideration the existence of numerous acronyms and further use thereof should be avoided where possible.*

JAR 11.010

[ECA, LFV Sweden, British Aerospace, Mr. F. Fagelgaltier] have proposed changes to the text, for reasons of clarifications, redundancy and the correct use of wordings.

Response: *Comments noted and partly agreed. It is proposed to introduce the text proposal of LFV Sweden: "In respect of the JAA regulatory and related procedures, such documentation shall be maintained by Central JAA in order to enable the JAA to show the justification for its decisions and that the proper procedures have been followed."*

JAR 11.015

[A. Young] See Comment to explanatory note 9.1)

Response: *See response above under Explanatory note para 9.1*

[Airbus, Mr. F. Fagelgaltier] propose an additional paragraph (d) to include the retaining of 'Special Conditions'. Reason therefore is that records of special conditions must be kept, because these special conditions may be refused for several aircraft projects, may become interim policies and may end in amendments of JARs.

[Mr. F. Fagelgaltier] proposes a complete revised text, to include that records of FAR's and other documentation referred to in JAR's should be kept.

Response: *Comment partly agreed. JAR 11 intends to address only those documents which are related to pure regulatory work. 'Special Conditions' as such do not fall under this criterium. However if a consultation process is initiated for Special Conditions under JAR-11, the comments and dispositions and the related documents will be retained. This however is covered by JAR 11.015. Also a list of special conditions is kept and published in the Administrative and Guidance Material (AGM) Section 3, part 4. With regard to documents from other organisations (for example ICAO, EU, FAA), the JAR 11 WG takes the view that those documents are assumed to be well retained, updated and published by those organisations.*

JAR 11.020

[A.Young, Airbus, DGAC-France, ECA, FAA, LFV Sweden, Mr. Fagelgaltier] propose amendments and/or deletions, in order to reflect that documents are accessible to everybody, whether or not on the basis of a request or against the payment of a fee. LFV Sweden proposes to delete reference to "where involved".

Response: *Intention of the comments understood. However proposals not agreed. It is proposed to add in the ACJ 11.020 the following: "Jar 11.020 does not limit the principle of transparency. In accordance with the purpose and spirit of the Cyprus Arrangements, the JAA provides access to the Authorities and the Interested Parties. Primarily, it is the tasks of the Authorities and the Interested Parties to facilitate its citizens, and members respectively with regard to information requested. In addition, it would be impracticable for the JAA, without additional resources, to manage the access to documents for all interested individuals. The reference to "where involved" will be deleted.*

(JAR 11.030)

[JAA Maintenance Division] Appears to be in conflict with ACJ 11.050 in the use ACJ and AMC/IEM terminology.

[Luftfartsverket Sweden] Propose text: Delete (5) and add a new subparagraph (b): "(b) A JAR may include a Section Two containing Advisory Circulars Joint (ACJ). The reason therefore is that the information about section two should be separated from the information about what a JAR must consist of.

[FAA] You may want to clarify the term "effective" with regard to pages. Do you mean the table of contents should include a reference to the page where each section is located?

[DGAC France] Propose text:

(a) Each JAR must consist of:

- (1) a table of contents including a list of effective pages;
- (2) a preamble
- (3) a Section One containing requirements;
- (4) if appropriate, a Section Two containing Advisory Circular Joint (ACJ).

See also comment on the need for a "foreword" under comments on JAR 11.035.

(JAR 11.030(a)(5))

[DGAC France] Propose different text:

- (5) If appropriate, a section containing Advisory Circular Joint.

Response: Comments noted and agreed. The reference to 'JAR' in the opening sentence of JAR 11.030 will be replaced by 'JAR code'. The reference in paragraph (a)(1) to 'the list of effective pages' will be deleted, as it should not be part of a requirement. The list of effective pages will be issued with the publication of the JAR code. 'Effective' in this respect means those pages that are the latest adopted versions at the time of its publication. Paragraph (a)(5) will be revised as proposed by DGAC France. In addition paragraph number (a) will be deleted. The remaining subparagraph numbers (2) to (5) included will be deleted and renumbered (a) to (d).

JAR 11.035

[DGAC France] It is proposed to delete the "foreword" and the corresponding 11.035. The existence of a "foreword" could have been useful in the past. But, now, it seems to reproduce JAR-11. The only useful part of the "foreword" as currently proposed in 11.035 would be the reference to the basic code: this can be done in the preamble where it would be more logically placed because the preamble explains the changes made to the JAR code.

Response: Comment noted and agreed. Propose to delete 11.035.

JAR 11.035 (b)

[British Aerospace] In the context of future adoption of JARs into EC Regulation 3922/91 (European Law), is it appropriate (or even possible) to include sections/statements which have "no regulatory status". Surely if statements appear in the JAR, and the JAR is Law, the statements have legal standing. There is a possibility that both the Foreword and any ACJ material, when adopted into European Law, may become mandatory in nature, particularly for countries whose legal system is proscriptive in nature, rather than purposive.

Response: Comment noted. See above comment on JAR 11.035. Council Regulation (EC) 3922/21 only refers to technical requirements and administrative procedures. The interpretation until now has been that only section 1 of the JAR code, i.e. the requirements are part of the said Regulation. Consequently, section 2 and other parts like Foreword and preamble are not part of this Regulation.

JAR 11.040

[DGAC France] Propose different text:

- (a) The purpose of the Preamble is to give general information relative to the development of the JAR, the basic code that was used, if any, and a summary of the amendments made to the JAR. The Preamble contains, if applicable, the following information:
- (1) Background to JAA and JAA procedures for amending JARs,
 - (2) Description of the Basic Code, if any, and description of the basic content of the JAR,
 - (3) References to related documents,
 - (4) JAR Change number and date of issue, if applicable,
 - (5) List of amendments incorporated in the Change and their issue dates, if applicable,
 - (6) Information on status of amendments to the Basic Code in relation to the Change, if applicable, and
 - (7) Details of changes made, if applicable.
- (b) The Preamble has no regulatory status.

The preamble could start by making a reference to JAR-11 for explanations on methods used for approving the changes instead of reproducing the content of JAR-11, with the risk of being different.

Some parts of ACJ 11.035 (a) and ACJ 11.140(a) should be incorporated into 11.040, to make it more useful as a "requirement" for the work of the JAA system. Flexibility is on details, not on principles. The "references to related documents" might be used for finding the cross-reference to GAI 20 document for example.

Response: Comment noted and valid. The intention of the comment is now reflected in ACJ 11.040.

JAR 11.045(c)

[Airbus Industrie] Comment: obligation to insert in every JAR the possibility to grant an exemption, consequential textproposals.

Response: Every Working Party has the knowledge and therefore the responsibility to determine whether or not an exemption on the related subject is appropriate. Proposal should be rejected.

[British Aerospace] Comment: An applicability for this statement should be added, or alternatively exemptions should be dealt with in a more generic manner. Now every JAR has to be amended to include a provision for exemptions.

Response: the Working Party concerned has the knowledge to determine whether or not an exemption on the related subject is appropriate. This is not a matter to be dealt with in general. Proposal should be rejected.

[British Aerospace] This paragraph, along with the appendix and ACJ 11.045(c) does not take sufficient consideration of JAR's associated with the certification of products. It is essential that the ability to grant exemptions on a project-by-project basis is retained. As now, these cannot be anticipated when drafting every rule. Rather they should be discussed and agreed with the certification team when determining the certification basis of a product.

Response: This paragraph gives the possibility to insert in the different JAR's a base for granting exemptions. If an exemption will be granted on a project-by-project basis or in general depends on the matter the exemption is given from.

[Transport Canada] Comment: JAR-11 needs to be explicit on the universal principle(s) to be observed by each Authority when granting exemptions, which are 1) it does not affect safety and 2) it is in public interest.

Response: see response CAA under Appendix 1 on this matter.

[Luftfartsverket Sweden] Put § 45(c) and appendix 1 together into one paragraph.

Response: *Comment not agreed. For readability and better understanding appendix 1 should remain separate section.*

[NLA - CAA Netherlands] Comment: textproposal:from any provision of a JAR, Section One of that JAR must include.....

Response: *proposal should be accepted.*

Appendix 1

[AEA] Comment: renumber appendix 1, part headed "insert in ACJ for the JAR" in appendix 2 and part headed "insert in JIP for the JAR" in appendix 3; reason : current numbering is confusing.

[British Aerospace] Comment: delete the headings and revise the paragraph numbering.

Response: *Comments noted. The numbering in Appendix 1 has been improved.*

[British Aerospace] The impression is given, that all exemptions are of limited duration (§ "Insert in ACJ for the JAR" (a)).

Response: *the long term exemption is an exemption granted for more than six months, without any limitation.*

[CAA UK] If the inclusion of the requirement referring to the public interest is an attempt to require a safety justification, the text is not specific enough, the scope is far too large (§ "Insert in JAR" (b)(2)). Suggestion is to replace the sentence with a text requiring the applicant to make arguments to support the granting of an exemption, specifically that the overall effect of the exemption will be acceptable safe.

Response: *An exemption should be granted on base of criteria, which are directly related to the requirement the exemption has been granted from. The criterion "public interest" is indeed too generally formulated Proposal should therefore be accepted in this way, that the sentence referring to the public interest should be deleted only. The second sentence of this paragraph (describe any action.....) covers already the proposed text.*

[CAA UK] In the paragraph "Insert in JAR" (c)(2) it has to be made clear to whom the availability should be made.

Response: *the proposal should be accepted.*

[FAA] In some instances an exemption may be issued, but the exemption can prohibit other similar exemptions from being issued (§ "Insert in JIP" (a)(11)).

Response: *It is possible, that a NAA grants an exemption and that afterwards the Sectorial Team comes to the conclusion, that the exemption should not have been granted, while on the other hand it is not appropriate to revoke the granted exemption. In that case it can be necessary to advise, that no similar exemptions will be granted.*

[ITF] Comment: "public interest" requires definition (§ "Insert in JAR" (b)(2)).

Response: *see response CAA on this matter.*

[ITF] The confidentiality provisions should be modified in particular to specify that the applicant **shall** be named (§ "Insert in ACJ for the JAR" (e)).

Response: *For transparency reasons it is not necessary to know who is the applicant. As long as the applicant however is the same person as the one who is exempted, ACJ 11.045,2,d gives the necessary provision. No need to accept the proposal.*

[Lufftartsverket Sweden] See § 045(c), Lufftartsverket Sweden. Explain the meaning of "not in conflict with public interest" (§ "Insert in JAR" (b)(2))

Response: *see response CAA on this matter.*

[Lufftartsverket Sweden] Make in § "Insert in ACJ for the JAR" (d) clear, that the first option is to compensate fully for a condition being exempted.

Response: *textproposal:*

(d) The Authority should consider full compensation for the exempted condition by imposing substitute conditions or if not possible mitigating or otherwise compensating the exempted condition e.g.

JAR 11.050 (See also comments below on JAR 11.170)

JAR 11.055 - 11.066

General comments

[British Aerospace] Account needs to be taken of the "Agenda for Change". While it is acknowledged that the NPA does not take account of the "Agenda for Change", it will need to be revised to take this into account. Specific paragraphs that will be affected are: JAR 11.055, JAR 11.175(b)(1), ACJ 11.035 (a) Attachment, ACJ 11.045 (b), ACJ 11.065 (c)(1).

Response: *Comment noted. The NPA was drafted before the full ramifications of the JAA Agenda for Change were known. The NPA will be modified to take account of these changes before submission to the JAAC for adoption.*

[ETF] We agree with the provision of an A-NPA procedure, subject to the welcome requirement that its use be justified in the Explanatory Note accompanying each A-NPA, as you suggest, and subject to no restrictions on the scope of consultation.

Response: *Comment noted. Please see response to 11.066(e), ETF.*

PARAGRAPHS 11.055, 11.060, 11.065, 11.066 etc.

[ETF] The bodies referred to in the JAR-11 text should be specified in accordance with the outcome of the Agenda for Change process. This applies to a large number of paragraphs in the draft. The current text lacks clarity and specificity.

Response: *Comment noted. Please see response to GENERAL, British Aerospace. The text should become clearer when these changes are made.*

JAR 11.055 and JAR 11.060

[Several commentators] indicated that the description of the JAA internal process was unclear and that such process should be in line with Agenda for Change.

Response: *This is agreed. A review of Agenda for Change documentation has identified that the decision to initiate a new JAR is made by the JAAB and this is now reflected in paragraph 11.055(d)(1) and (e)(1). Reference has also been made to the JAA Work Programme both in 11.055(d)(1) and 11.055 (d)(2) to refer to the JAA internal process.*

This reference will be explained in an ACJ 11.055(d). The JAA Work Programme is a tool introduced by Agenda for Change to manage JAA regulatory activities.

JAR 11.055(d)(2) still leaves the decision to initiate an amendment to a JAR to Central JAA in consultation with relevant Sectorial Teams (Sectorial Teams replace existing Main Committees and Panels as decided by Agenda for Change). Reference is also made to the JAA Work Programme because it is assumed that this Work Programme will only describe broad areas where a JAR should be amended, leaving to Central JAA the practical management of initiating the amendment.

The description of necessary Central JAA co-ordination, of rulemaking responsibilities, of relationships between Central JAA and Sectorial Teams will be contained in the JAA Management System Manual.

Note:

Associated ACJs to JAR 11.055 have been modified when appropriate to reflect Agenda for Change.

[Several commentators] from non-JAA countries objected to the observer status that is offered to them when participating into Working Parties.

Response: *This issue has also been discussed when developing the guiding principles for Sectorial Teams. It is agreed that there should be only one status within Working Parties for two reasons:*

- *Several JARs also apply to non-JAA organisations*
- *Consensus is being used as a decision making tool.*

Therefore reference to observers has been withdrawn from JAR 11.055 and associated ACJs. All participants are now called representatives.

[Several commentators] requested that Interested Parties be consulted systematically before the decision to initiate a new JAR is made.

Response: *This is agreed because it is anticipated that the Interested Parties Advisory Panel (IPAP) that will be set up to replace the Joint Steering Assembly and the 3 Joint Boards (Manufacturers, Operators and Crew) will be consulted in the JAA Work Programme. JAR 11-055(d)(1) has introduced the principle of such consultation.*

[One commentator] suggested to group in the same paragraph all the elements relative to the set up of Working Parties.

Response: *Agreed. All elements are now in a new 11.055 of "set up of Working Parties".*

[One commentator] requested that the process to request for a new JAR or an amendment to a JAR be better explained.

Response: *It is felt that present wording of JAR 11.055(a); (b) and (c) is adequate.*

[One commentator] requested that the joint rulemaking policy agreed with FAA should be better reflected in the paragraph and associated ACJs.

Response: *This is agreed and is reflected as follows:*

- *The ACJ 11.055(c) contains now a more elaborated wording relative to the potential for differences with FAA but also with ICAO that could be introduced by a proposal.*

It is therefore expected that when proposing the Work Programme for adoption to the JAA Board (JAAB) the Chief Executive will have a clear picture of the potential for differences.

The JAAB agrees to the Work Programme and will also have a clear picture of the potential for differences.

[One commentator] indicated that the decision making process for the JAA Board when deciding to initiate a new JAR should be mentioned in JAR 11.055(c).

Response: *Disagreed. Rules of procedures for the JAAB should be defined by the JAAB and not JAR-11.*

[One commentator] requested that JAR 11.055 contains a requirement that Working Parties composition should be balanced.

Response: *Agreed in principle. Working Parties should be balanced so that their output is of good quality. However, this principle is only introduced in ACJ 11.055(e) because voting is not envisaged and because any organisation can comment at the NPA stage.*

[One commentator] suggested that the principle to limit NPAs to a JAR during its implementation period and the associated criteria should be introduced in JAR 11.055.

Response: *This principle is fully supported. Agenda for Change has developed a concept of JAR stabilisation. However it is believed that principle and criteria should be better introduced into Rules of Procedures for Sectorial Teams.*

JAR 11.060

[Several commentators] pointed out the importance of consistency with ICAO Standards and recommended practices(SARPS). Some commentators stressed that ICAO SARPS should be complied with. One commentator proposed that when a difference is accepted by the JAA System, a standard state letter should be prepared by the working party.

Response: *These comments are in principle agreed. Paragraph 11.060(e)1 now reads "Systematic consideration of ICAO standards and recommended practises". Such wording was preferred to one requiring compliance because this would have prevented states to agree differences and differences are accepted in the ICAO Convention. The consequence of a difference is that other states may not recognise a certificate or approval in such case.*

The suggestion of a stated state letter to be prepared by the working party is also not agreed. However, it is agreed to add in paragraph 11.075 (b)(3) that the presentation note to the JAAC clearly highlight that the draft final rule introduces differences with ICAO SARPS and clearly spells out these differences.. This information would thus be clearly visible to all Authorities and the JAAC could decide if it is appropriate that a standard letter be drafted by the Working Party or if the matter be left to each Authority.

[Two commentators] were concerned that translation delays be taken into account in the consideration of an implementation programme because Working Parties have no control of such delays.

Response: *This element is maintained because Working Parties are only asked to take it into account, not to control it. Information on translation delays can be obtained from bodies such as the EU Translation Centre.*

[One commentator] suggested not to include legal issues into drafting principles.

Response: *Disagreed. Even if members of Working Parties do not have legal expertise, they can obtain legal advise.*

[One commentator] suggested to add in the drafting principles one relative to consistency of wording.

Response: Agreed. The revised wording covers consistency of the whole JAA Regulation System. An ACJ 11.060(e)(6) will be added to explain that consistency includes common approaches to comparable problems and common terminology.

[One commentator] suggested that paragraph 11.060 actually tasks the Working Party to develop the NPA and proposed to define a standard NPA format.

Response: *Not agreed. Developing an NPA is explicitly mentioned in ACJ 11.055(e) relative to Terms of Reference. Main elements of an NPA are stated in JAR 11.065(b).*

[One commentator] suggested to use only the wording "Working Party" in JAR 11.060. [FAA] The terms "Working Party" and "Working Group" appear in paragraphs (a) and (c). Are these terms used interchangeably or do they represent different bodies? If they are different, we recommend a definition each.

Response: *Comments noted. The text will be corrected to reflect the uniform use of the term "Working Party" throughout the JAR-11 document.*

[One commentator] proposed to define in JAR 11.060 the neutral role of the Chairman as they believe this is a critical issue for the functioning of a group.

Response: *Not agreed. It is already mentioned in ACJ 11.060.*

JAR 11.065

[Mr F Fagegaltier] It is also suggested to create another new paragraph 11.vv, to address the 'NPA process' used in currently proposed 11.065 but not defined, as follows. It is abnormal that on some NPA's almost all the comments received from world-wide circulation are in fact JAA comments or that some NPA's are issued without consultation of all the interested JAA groups.

The JAA work must be co-ordinated as far as possible before issuance outside JAA: this is not good for JAA image.

The proposal is a mix of currently proposed JAR 11.065(a), (b) and (c) and ACJ. Some wording in (d) should be further improved. Note that the currently proposed wording in 11.065(c)(1) or (2) is not even better: 'the JAA body referred to in paragraph 11.055(d)(1)' of 11.065 is in 11.055 'the JAA body as envisaged in the Cyprus Arrangements'!! Who thinks this helps?

JAR 11.vv Processing of NPA's

(a) The assigned Working Party prepares the NPA in accordance with JAR 11.060 and submits it to the JAA body to which it reports with a formal letter from the Chairman of the Working Party.

(b) The proposal may be sent back to the Working Party for further work if considered necessary. If it is agreed, the NPA is transferred to JAA Headquarters for processing.

(c) JAA Headquarters will ensure that all the interested Working Parties and JAA Bodies have been appropriately consulted in the drafting process and that the interface issues have been resolved. If necessary, JAA Headquarters will send back the NPA to the Working Party for further co-ordination.

(d) The NPA will be presented by JAA Headquarters to the Regulation Advisory Panel to ensure that the proposal is clear, complete with justification and that sufficient background material is provided to be easily understood. Normally this review by the RAP will last three months. Longer or shorter duration may be considered as

appropriate. If necessary, the NPA will be sent back to the Working Party for further improvement.

(e) After appropriate co-ordination of Working Parties and after consultation of the RAP, JAA Headquarters will present the NPA to the relevant Main Committee(s) for deciding if the NPA is mature enough for consultation, except for NPA proposing new JARs for which the final decision is made by the JAA Committee with advice from JAA Headquarters Main Committee(s).

(f) Once it has been determined that JAA consensus has been achieved on the NPA or that dissenting opinions have been identified, JAA Headquarters will issue it for consultation as described in JAR 11.065.

(g) All this processing of NPA's must be completed within three months after the NPA is received by JAA Headquarters.

Response: Comment noted. The commentors remarks as to the clarity of referring to "... the body referred to in paragraph 11.055(d)(1) in accordance with the Cyprus Arrangement ... etc", are noted. These cumbersome references were introduced in an attempt to address the changes being introduced by the 'Agenda for Change'. These references will be satisfactorily resolved before JAR-11 is submitted to the JAA Committee for adoption. It is felt that such detailed information is more suited to ACJ than requirements. In particular it seems unnecessary to state 11.vv (a) and (b).

11.vv(c) seems to imply consultation prior to the issuing of an NPA for its formal consultation process which the JAR-11 Working Group does not agree with.

11.vv (d) will be covered once the correct agenda for change titles are substituted for the existing rather awkward expressions.

11.vv (e) is covered by ACJ 11.065(c)(2) 2.4 and ACJ 11.065(c)(1) 2.4.

11.vv (f) is covered by ACJ 11.065(c)(2) 2.4 and ACJ 11.065(c)(1) 3.2.

11.vv (g) is covered by ACJ 11.065(c)(2) 2.2 and ACJ 11.065(c)(1) 2.2.

[CAA UK] Clarification is requested regarding the time scales for consultation of JARs and ACJs. Circulation of JARs (JAR 11.065) states 3 months, but for the development of ACJs (JAR 11.175) circulation is for only 2 months. Is this difference intended as the result would be ACJ material being circulated at different times to the actual rule?

Response: Comment noted. The JAR-11 Working Group has decided that if an NPA contains only an amendment to an ACJ, that a simpler and quicker procedure is needed for those ACJ material and the two months consultation time-scale will help to make it faster and easier to introduce such new advisory material. However if an NPA contains both amendments to section 1-provisions and to one or more ACJ provisions, the duration of the consultation of the whole NPA will be 3 months.

[ETF] Reference should be made here, and elsewhere as appropriate, to the quality assurance role and contribution to the process of the Regulation Sectorial Team. Such a modification would more accurately reflect the rulemaking working methods of the JAA, which is the aim of JAR-11.

Response: Comment agreed. The NPA was drafted before the full details of the Agenda for Change were known. The correct references will be introduced before JAR-11 is submitted to the JAAC for adoption.

[Mr F Fagegaltier] There is no need to differentiate between 'new JAR' and 'amendment to a JAR': we only know 'NPA's'. To be consistent with the above comments and proposals, it is suggested to modify 11.065 to read as follows (based on the currently proposed (d), (e) and (f)):

"JAR 11.065 Consultation on NPA's

- (a) The NPA is circulated by the JAA Headquarters to:
- (1) the JAA National Authorities
 - (2) the Organisation represented in the (JAAC)
 - (3) Selected Foreign Organisations and Authorities,
 - (4) The European Commission,
 - (5) The subscribers to NPA's. Any person or organisation may become a subscriber and be entitled to comment upon registration in JAA Headquarters and payment of a fee.
- (b) The duration of the comment period is normally 3 months. It may be extended if deemed necessary by the (JAAC). The JAA Headquarters may also agree to extend the duration of consultation when receiving justified requests.
- (c) Comments must be sent to the JAA Headquarters using the standard form shown in Appendix.
- (d) JAA Headquarters do not respond individually to each commenter. Acknowledgement of receipt of a comment is indirectly made by the means of the comment/response document required under JAR 11.070 (b)."

Response: Comment noted. Because different bodies are involved in deciding whether the new JAR or amendment to a JAR is mature, the Working Group prefers to retain separate paragraphs. Suggested 11.065(a) and (b) are covered by existing text. It is not essential to use a proforma, so (c) is covered by existing 11.065(f). Suggested (d) is covered by 11.080(b).

PARAGRAPH 11.065(b)

[Luftfartsverket Sweden] The instructions seem to assume that there is a working party reporting directly to JAA Headquarters and not the Sectorial Teams or today main committees.

Response: Comment agreed. The text was drafted before the Agenda for Change was produced. The text will be amended to read, "... by the Working Party Chair to the relevant Sectorial Director or the JAA Chief Executive, at Central JAA ...".

PARAGRAPH 11.065(b)(1)

Paragraph 11.065(b) and also ACJ 11.065(b), ACJ 11.070(c)

[ETF] Reference to the cost/safety benefit analysis should be deleted from the JAR and ACJ. The JAA currently neither has the competence (professional expertise) nor resources to meet the obligations proposed. No methodology has been agreed. The definition of "cost" and "benefit" are both likely to prove highly controversial. The draft text suggests that each proposal (NPA) would be subject to the assessment even though it is widely acknowledged that there are significant elements of the JARs which cannot be measured in economic or cost terms. It would be inappropriate to mandate such an assessment or to define a global scope of applicability until the means are available for JAA compliance.

A Working Group is to be established to address these questions. The development (or otherwise) of appropriate text should await the outcome of the Group's work. The proposal is therefore premature and should be deleted.

Response: Please see response to ETF on page 9 of this comment/response document under headings EXPLANATORY NOTE, Para 4.3.

[F Fagegaltier] Propose new text: There is no proposed 'requirements' for the cost/safety analysis. A proposal based on current proposed ACJ 11.065(b) is made as follows:

JAR 11.yy Cost/Safety Benefit Analysis

- (a) The Cost/Safety benefit analysis required under 11.xx (*note: as proposed above*) shall indicate:-
- (1) Who is affected,
 - (2) The impact on affected parties,
 - (3) The impact on authorities resources, when relevant,
 - (4) The hazard to be addressed, and
 - (5) The expected effectiveness of the proposed measures.
- (b) This Cost/Safety benefit analysis is not necessarily a detailed economic analysis.

Response: *The list contained in the proposed paragraph, shall be forwarded to the Sub-Group, as described in the Response to the ETF on page 9, under headings EXPLANATORY NOTE, Paragraph 4.3, for their consideration.*

JAR 11.065(b)(1)

[GAMA] Propose new text:

Old: "... a safety Justification/Explanation and a Cost/Safety Benefit Assessment."

New: "... a safety justification/explanation and an assessment that the total benefits of the requirement(s) exceed the total costs."

The benefits of a JAR should always exceed the costs. If not, the requirement may cause more "damage" than good. It is not enough to merely assess the costs and benefits; they must be compared with one another. All costs should be considered, both direct and indirect. All benefits should be considered, not just those accruing from safety.

Response: *Comment noted. Please see response to ETF on page 9 of this comment/response document under headings EXPLANATORY NOTE, Para 4.3.*

[DGAC France] Propose different text: Add a reference to compliance with ICAO Standards and Recommended Practices.

Response: *Comment not accepted. A reference regarding compliance with ICAO Standards and Recommended Practices will be introduced in ACJ 11.065(b) Paragraph 2.6. See response to ACJ 11.065(b) 2.6 / 11.070(c) 3.4 Czech CAA.*

JAR 11.065(b)(1) and 11.075(b)(3)

[Europe Airports] In line with paragraph 4.3 of the Explanatory Note we wish to support the requirement for a Cost/Safety Benefit Assessment. Addition of social costs and human factors should also be provided, however strictly separated from the economic analysis in order not to dilute the issue.

Europe Airports is interested in participating in a relevant working group, however in a limited way in principle by receiving minutes and working papers and responding in writing.

Response: *The support of Europe Airports towards the implementation of a Regulatory Impact Assessment discipline is noted. With regard to social costs, etc., please see response to ETF on page 9 of this comment/response document under headings EXPLANATORY NOTE, Paragraph 4.3.*

Your wish to be involved with the proposed Subgroup is welcomed.

JAR 11.065(c)(3)

[Airbus Industry] Propose to delete paragraph. JAR 11.065(c)(3) puts a requirement on the JAA Headquarters, and/or JAA Committee, and/or Committees/Sectorial Teams, to decide on NPA maturity within 3 months.

- This requirement is not consistent with ACJ 11.065(c)(1) paragraph 2.2 and ACJ 11.065(c)(2) paragraph 2.2, which allow some time flexibility.
- If the JAA Headquarters, and/or JAA Committee, and/or Committees/Sectorial Teams cannot comply with JAR 11.065(c)(3), shall they apply for an exemption? Who will grant the exemption?

Response: *Comment is agreed. The text will be changed to read, "The decision referred to in sub-paragraphs (c)(1) and (c)(2) shall be taken without unnecessary delay and in accordance with the sponsors time schedules, and the need to fit in with the meeting schedules of the JAA Committee."*

JAR 11.065(d)

[GAMA] Propose new additional text: "The individuals who participated in drafting an NPA will not also submit comments during the Consultation. This does not preclude the organisations represented by these individuals from making comments."

The purpose of the Consultation is to garner the views, advice and comments of individuals or organisations outside the NPA-drafting process. (Otherwise, why would the Consultation be necessary?) As the views of the individuals drafting an NPA are adequately represented on the Working Party, it may distort the results of the Consultation if the same individuals who drafted the NPA also submit formal comments.

Response: *Comment not agreed. Whilst the intent of the commentor is understood it is not practical to try and ensure that an individual within a large organisation is forbidden to have any input to its comments.*

JAR 11.065(e)

[Airbus Industry] Propose different text: "(e) Duration of the Consultation is normally 3 months but may be extended or reduced if deemed necessary by ..." In some cases it may be beneficial to reduce the consultation period, for instance if safety dictates an urgent action, or if the NPA corrects an obviously inadequate rule, and/or if adverse comments on the proposal are unlikely. It could even be envisaged to open the possibility for direct final rule while maintaining the opportunity to comment, in well-defined cases, similar to the provisions of FAR § 11.17.

Response: *Comment not agreed. There are practical difficulties for many large organisations in responding to a period shorter than 3 months. Urgent safety issues should be addressed by airworthiness and operational directives. At the present time, it is not the intention of the JAR-11 Working Group to introduce a rule equivalent to FAR § 11.17.*

[Swedish LfV] The duration of the consultation period should be more flexible also to allow a period shorter, in exceptional cases, than three months if this can be justified.

Response: *Please see response to 11.065(e), Airbus Industry.*

JAR 11.065(f)

[GAMA] Propose new additional text: "(5) Name of the individual submitting the comments."

When considering comments, questions may arise that can only be answered by the person who actually wrote the proposal. Especially in large organisations, a name would speed clarification or expansion. Having an individual's name may also clarify that differing comments from the same Authority came from different divisions or sections.

Response: Please see response to 11.065(f)(4), AEA, below.

JAR 11.065(f)(4)

[AEA] Propose different text: "Identification of the commentor's organisation **as applicable.**"
The consistency with 11.175(a) should remain.

Response: Comment noted. The text will be amended to read, "Identification of the commentor".

JAR 11.066

[DGAC France] The procedures are sometimes too detailed in the proposal (e.g. in paragraphs 11.066 and 11.150 where the regulation director and the certification division are mentioned). JAR-11 should be more general and we propose to use the term "JAA" instead of being too specific. Therefore, no change to JAR-11 would be required if the JAA structure is changed in the future. The proposal on working parties (in paragraph 11.055 for example) should be consistent with the agenda for change.

Response: Comment not agreed. It is better if the responsibility for specific decisions lies with clearly identified individuals, or failing that, with the smallest identifiable group of individuals, rather than vaguely lying within a large body such as "the JAA".

[F. Fagegaltier] Some clarification was felt necessary for clear understanding by an average reader (many editorial errors). The wording 'JAA Headquarters' is considered as being more general and would not require a change to JAR-11 if JAA structure is changed in the future. It is then suggested to re-write 11.066 as follows:

"JAR 11.066 Advanced Notice of Proposed Amendment

(a) Prior to the normal consultation as provided for in JAR 11.065, the JAA Headquarters may decide to initiate a consultation through the Advance Notice of Proposed Amendment (A-NPA) process. This may arise from the need to broadly discuss new concepts or the needs for further information or data to assist in the drafting of a formal NPA.

(b) An A-NPA proposal will contain a justification for using the A-NPA process.

(c) The A-NPA proposal will be circulated for comments normally according to JAR 11.065(a) but JAA Headquarters may decide to limit the number of parties to be consulted. The duration of consultation will be determined by the JAA Headquarters and will be at least one month. The JAA Headquarters may extend the duration of consultation.

(d) The status of an A-NPA is regarded to be of pre-legislative or pre-regulatory act. The initiation of an A-NPA process does not affect any obligation or privilege provided for the normal

consultation under JAR 11.065. However, the paragraphs (a) and (b) of JAR 11.070 will be applied."

Response: *Comment not agreed. It is believed to be better if responsibility is seen to lie with an individual rather than a large group of people. Please see response to 11.066 DGAC France.*

Addressing the commentors specific proposals for paragraph 11.066:

commentors (a), the reference to the Regulation Director will be retained as explained above. The second half of the commentors proposed changes use more elegant English than the text of existing para (b), and with minor changes will be adopted as follows:

"(b) This decision will have arisen from a need to broadly discuss new concepts or the need for further information or data to assist in the drafting of a formal NPA."

commentors (b), the justification should be a part of the "explanatory note" described in existing para (c), however to make this clearer, the text will be changed to read:

"(c) An A-NPA proposal will contain: an explanatory note (including a justification for using the A-NPA process), a preliminary proposal for the new JAR or amendment of a JAR and a preliminary proposal for an acceptable means of compliance."

commentors (c), this is covered by existing paragraphs (d) and (e) which will be retained.

commentors (d), this is covered by existing paragraph (f), which will be retained with minor word changes to improve clarity:

"(f) The status of an A-NPA is regarded to be a pre-legislative or... ..obligation or privilege provided for under JAR 11.065..."

JAR 11.066(a)

[JAA Maintenance Division] Propose different text: "... the Regulations Director or the Sectorial Director..."

Response: *Comment not agreed. The Sectorial Director can propose, but only the Regulation Director can authorise the use of the A-NPA process.*

JAR 11.066(b)

[CAA UK] Clarification is sought on the meaning and intent of the latter part of paragraph (b), which due to grammatical errors in the text, is not clear. The following alternative text is suggested:

JAR 11.066(b) "The decision ... new concepts or the need to obtain any necessary further information or data in order to support the development of the proposal as a whole."

Response: *Comment noted. Please see response to 11.066, Mr F Fagegaltier.*

[British Aerospace] Propose different text: Replace existing wording "... for the purpose of which is to be circulated as a formal NPA" with the following "... for the purpose of generating a formal NPA."

The final words of the existing paragraph are unclear.

Response: *The intent of the comment is agreed. Please see response to 11.066, Mr Fagegaltier.*

JAR 11.066(d) and (e)

[JAA Maintenance Division] Propose different text:... the Regulation Director or the Sectorial Director ...

Response: *Comment not accepted. See response to 11.066(a), Maintenance Division.*

JAR 11.066(d)

[JAA Maintenance Division] Propose different text: "... to article JAR-11.065 except (c)(3) and (e)..."

Response: *Comment not agreed. The commentors concerns regarding 11.065(c)(3) are addressed by the response to 11.065(c)(3), Airbus Industry. The reference to 11.065 is only to sub-paragraph (d), therefore no exemption from sub-paragraph (e) is necessary.*

JAR 11.066(d) & ACJ 11.065(c)(2)

[Britannia Airways] The P-NPA and A-NPA processes are not easy to find as they are in different clauses and sections.

Response: *Comment noted. The JAR-11 Working Group has decided to delete P-NPA and in future the term "draft NPA" will be used in its place.*

JAR 11.066(e)

[FAA] 11.066(e) A-NPA. This allows the Regulations Director to limit the number of parties for consultation on the A-NPA. What criteria does the Director use for this decision?

Response: *Comment noted. Please see response to 11.066(e), ETF.*

[ETF] Propose deletion of text. We support the A-NPA process. We DO NOT support subparagraph (e) as it is contrary to a general obligation to transparency, and the suggested appropriate items for A-NPA listed in paragraph 4.7 of the Explanatory memorandum are of a fundamental and policy or information-gathering nature that we cannot foresee the circumstances in which consultation should be restricted. This text should be deleted. Perhaps it is appropriate to develop an ACJ relative to this paragraph.

Response: *Comment not agreed. The JAR-11 Working Group has decided that the Regulation Director should be allowed to consult those individuals or organisations most likely to be able to contribute to the development of the proposal. The text of 11.066(e) will be amended to read "The number of parties to be consulted may be adapted by the Regulation Director, according to the scope of the A-NPA."*

[CAA UK] The current text of 11.065(d) seems to be conflicting with 11.066(e) in that 11.066(e) implies the distribution could be limited to less than those persons mentioned in 11.065(d).

Response: *Comment noted. Please see response to 11.066(e), ETF.*

JAR 11.070

JAR 11.070(c) & (d) & ACJ 11.070(c) - General

[Airbus Industry] Propose different text:

"In JAR 11.070(c), replace (See ACJ 11.070(b)) by (See ACJ 11.070(c)), and move it to the bottom of the paragraph (line break below (2)). In JAR 11.070(d), replace (See ACJ 11.070(c)) by (See ACJ 11.070(d)).

"ACJ 11.070(c):

1 General. In compliance with JAR 11.070(c) comments should normally be collated and answered in a "Comment/Response Document (CRD)" which will be circulated with the Amendment adopting the NPA ...

5.1 When preparing the Comment/Response Document, it is important to note who it is that has commented. In the published Comment/Response Document, it is not necessary ..."

Typo.

We understand that, with the new JAA publication system, orange papers will no longer be issued, nor changes. Only amendments will be issued.

Clarification.

Response: *The commentor is correct. The reference to ACJ 11.070(b) will be changed to ACJ 11.070(c). The JAR-11 Working Group has decided to combine subparagraphs (c)(1) and (c)(2), so that JAR 11.070(c) now reads:*

The Working Party must review the comments and document the responses, thereby establishing a Comment/Response Document. (See ACJ 11.070(c))."
The reference in 11.070(d) to ACJ 11.070(c) will be changed to ACJ 11.070(d). The changes to ACJ 11.070(c) will be adopted. It has been decided since the NPA was drafted, that there will only be amendments in future, replacing Orange Papers and Changes to JARs.

[Luffafahrtsverket Sweden] Similar to the comment in 11.065 the text does not make provision for the responsibility of main committees/sectorial teams.

Response: *Comment noted. Please see response to 11.065(b), Luffafahrtsverket Sweden.*

[ETF] It would be useful if some guidance is established regarding the review of comments, especially as the JAA system is unusual in that the body which undertakes the review is the same body which made the original proposal, and thus is not an independent appeal or review mechanism.

For instance an ACJ might be developed, specifying - for example - that each comment will be reviewed on its merits, that every substantive comment will receive a formal response in the comment/response document, and that the representativity of the responding organisation (for Interested Parties) will be taken into account when considering the weight of opinion ... these are just some possibilities.

To ensure the objectivity of, and trust and confidence in, the JAA NPA system.

Response: *Comment noted. Please see responses to 11.070(c)(1) DGAC France, and 11.070(e) Austro Control and response to ACJ 11.070(c), 2.1. GAMA.*

[NLA - CAA Netherlands] Propose different text:

Re-number para (d) to (e). Insert a new para (d):

"The Comment/Response Document will be sent to all commentators who participated in the consultation process in accordance with JAR 11.065 to inform them of the results of their comments."

It is nothing more than normal and civilised to inform people who participated in a consultation what has been done with their comments.

Response: Comment agreed. The suggested text will be adopted.

[Mr F Fagegaltier] An ACJ 11.070(b) is reference in 11.070(c)(1) but the draft JAR-11 does not contain it. The proposal below does not resolve the question of designation of relevant JAA 'bodies'. The currently proposed 11.070 did not introduce the adoption of NPA's. There is no need to discriminate between 'new JAR' and 'amendments to a JAR': we only have 'NPA's'.

It is suggested to re-write 11.070 as follows:

"JAR 11.070 Review of Comments on NPA's

(a) All the comments which are received after consultation on a NPA, made under JAR 11.065, will be sent by JAA Headquarters to the Working Party which had prepared the NPA, together with a time frame for the review of comments. If, in the course of the review process, it appears that this assigned time frame may not be respected, the Working Party shall inform the JAA Headquarters and seek further guidelines.

(b) The Working Party will review all the comments, respond to each one, propose a revised NPA and, except as specified in JAR 11.070(d), establish a detailed Comment/Response document in accordance with JAR 11.ww.

(c) If the revised text is significantly different from that initially submitted to consultation, JAA Headquarters, in consultation with the RAP and the relevant Main Committee(s) (note: exact bodies to be defined), will consider initiation of another consultation in accordance with JAR 11.065. Otherwise the text is approved under the procedures of JAR 11.075.

(d) When the number of comments is so large that establishing a detailed response to each of them would be impractical, the Comment/Response document may be limited to a summary of the issues which were addressed. This decision is made by JAA Headquarters with consultation of Main Committees (note: exact bodies to be defined)."

Response: The reference to ACJ 11.070(b) will be corrected to read ACJ 11.070(c). 11.070(c)(1) and (c)(2) will be combined.

Where the commentors individual remarks against paragraphs 11.065, 11.066 and 11.070 introduce new information and/or clarity into the text, the Working Group will endeavour to adopt them, however, it is not intended to adopt the completely revised paragraphs.

JAR 11.070(b)

[Airbus Industry] Propose different text:

"(b) The Working Party shall determine the time frame needed for the review of comments and inform the JAA HQ. The planned time frame shall not be more than one year from the end of the comment period, unless the Central JAA specifically accept a longer period. If in the course of the review process it appears ..."

Need to manage time and resources involved in any rulemaking project.

Response: Comment is agreed. However, it is felt this level of detail is more appropriate as ACJ rather than as a requirement. A new ACJ 11.070(b) will be introduced.

[British Aerospace] Propose different text:

"(b) The ... it appears that the timeframe may not be sufficient, the Working ... guidelines."

Improvements to sentence.

Response: Comment agreed. The word change will be adopted.

JAR 11.070(c)(1)

[British Aerospace] Propose different text: Delete the words 'unless the JAA body ... see ACJ 11.070(b)'. It is just as, if not more, important to have available a Comment/Response Document for a new JAR.

Response: Comment agreed. Please see response to 11.070(c)(1), DGAC France.

[DGAC France] Disagree. In all cases there should be a Comment/Response Document.

Accepting a Comment/Response document not to be established would mean to accept bad past working methods. We are today facing difficulties in implementing new JARs partly because in the absence of comment/response documents and with the turnover of specialists we are unable to fully understand the rationale and the meaning of such and such requirement.

It is evident that if such documents have not been established in the past, it was in good part due to the absence of a clear commitment to have one.

However, one can understand that it might be difficult, or impractical, to have a document with detailed answers to thousands of comments. In such a case, it might be acceptable to only have a synthetic document with detailed explanations for those points which were subject to large discussion or where consensus was difficult or impossible to reach. This could be explained in the corresponding ACJ.

Response: Comment agreed. See also response 11.070(e), Austro Control. The JAR-11 Working Group have agreed that 11.070(c)(1) and (c)(2) will be combined to read, "(c) Review of comments for a new JAR or an amendment to a JAR. The Working Party must review the comments and establish a Comment/Response Document (See ACJ 11.070(c))."

JAR 11.070(c)1+2

[JAA Maintenance Division] Propose different text: "... the working party or a nominated person/group of person."

Response: Comment not agreed. The Working Party is the agreed JAA group of persons and is clearly defined in JAR-11. The Working Party has to agree/approve the comments, although an individual member of the Working Party may initially draft the responses for the Party.

JAR 11.070(e)

[Austro Control] Propose new text, add under (e):

"The Comment/Response Document has to be accepted by the relevant JAA bodies in accordance to the Cyprus Arrangement (See ACJ 11.065(c))."

The JAA body should not only agree that such a document would be impracticable, the body should also agree to the comment/response document.

Response: Comment noted. See revised ACJ 11.075(b)(3) and(c). The adoption of the JAR implies the acceptance by the JAAC of the CRD. Consequently, the CRD may be published.

[Mr F Fagegaltier] JAA system must have clear and precise directives for drafting the response to comment document. FAA has a very structured system and it would be necessary for the JAA system to have a minimum 'requirements' for that. Therefore a proposal is made to create such 'requirements' by means of JAR-11: this is not relevant to ACJ. The currently proposed ACJ 11.070(c) was used as basis.

It is then suggested to create a new JAR 11.ww to read as follows:

"JAR 11.ww Comment/Response Document

(a) The purpose of the Comment/Response Document (CRD) required under JAR 11.070 is to provide with the details of the public consultation that has taken place as a response to the commenters, as well as a means to keep record of the rationale for the rule change.

(b) The CRD must contain the following:

(1) A first part giving a brief explanation of the intent of the proposals, based on the NPA's justification, along with other pertinent points such as history of the development of the NPA, associated or similar NPA's, FAA/JAA harmonisation. Any significant change to the Cost/Safety Benefit Assessment of the NPA due to incorporation of comments must be highlighted.

(2) A second part listing the organisations and persons which have commented.

(3) A third part addressing each comment. The commenter will not be identified and similar comments may be considered together. This part must be written so that:

(i) It is concise and easy to read.

(ii) It is possible to understand the essence of each comment.

(iii) Due justification is provided when a comment is not adopted.

(4) A fourth part explaining the changes made to the text, identifying particularly the most significant changes and the eventual remaining contentious points."

Response: Comment not agreed. The JAR-11 Working Group feels that such detailed text would be better introduced as ACJ rather than as a requirement and intends to develop guidelines as part of its future programme.

JAR 11.075

[Airbus, JAA Maintenance Division, British Aerospace] Typo in paragraph (a)"...must be taken by the JAA body ..."

Response: Comment agreed.

[Airbus] More important: With the JAA Agenda for Change, is it still appropriate that the "JAA body etc." decides on the adoption of each and every JAR amendment? Shouldn't the JAA Chief Executive, or the Regulation Director, be empowered to decide on the adoption of routine amendments, while the "JAA body etc." would decide only on new JAR's or significant amendments?

Response: Comment noted. JAR 11 reflects the position of both the Chief Executive and the Central JAA Directors as laid down in the JAA Agenda for Change.

[A.Young] Add the following to (b)(4): "The adequacy of the response to the comments made and the quality of the CRD form an important part of the adoption process. An inadequate CRD may result in the new or revised JAR being returned to the working party for re-consideration". Reason: Although ACJ 11.070(b) is a good text, the requirements on the working party remain weak. Some CRD's are still being published that are effectively meaningless (Recent JAR-FCL NPA's being good (or bad) examples) as they merely dismiss or ignore comments made. Not

only should the working party be aware that the CRD is needed, but that its quality, as evidence of the consultation process having been properly conducted, is as important as the final draft that will be produced. The credibility of the consultation process relies on positive evidence that the process has been taken seriously by the working party.

Response: *Comment noted and understood. However it is already within the responsibility of the Regulation Sectorial Team and decision-making bodies to consider the maturity and the quality of both the NPA and its CRD. A specific provision is not needed.*

[Europe Airports] wish to have a requirement for Cost/Safety Benefit Assessment similar as JAR 11.075(b)(3) for CRD.

Response: *Comment not agreed. It is premature to include already at this stage the commentors proposal.*

[Maintenance Division] JAR 11.075(b)(2) add after 'transition-period': "when in operation".

Response: *Comment noted and partly agreed. For clarity reasons, a new ACJ 11.075 (b)(2) will be introduced as follows: "The meaning of transitionperiod is explained in ACJ 11.045(b), paragraph 2."*

JAR 11.080

[Airbus Industry] Propose to delete reference to Orange Papers or Changes in paragraph 2 (b) and replace Orange Paper by Amendment in paragraph 2 (b)

[JAA Maintenance Division] Reference in paragraph (a)(2) and para (b) to Orange Paper and/or Changes to be deleted. Paragraph (c) ..within 2 months.

Para (c) (Publication): This provides for 3 months from adoption to publication. What is involved in that time period? [FAA]

Response: *Comments with regard to Orange Paper noted and accepted. The text will be revised accordingly. The period of 3 months serves administrative and logistic needs for the purpose of publication. Unlike domestic legal systems publication in the JAA system does not constitute the entering into force of the provisions of JAR code.*

[DGAC France] Although the JAR itself nor any ACJ makes no reference to it, paragraph 4.4. of the explanatory note limits the publication of a JAR, or amendment, to adoption by the European Union with the excuse that there would be a discrepancy between the published JAR and the applicable regulation in the JAA States. This approach is not acceptable.

We should simply state in a published JAR that its publication does not mean that it has become an EU regulation (nor a regulation for non-EU States States). We could also decide to add at the beginning of the JAR the list of States which have incorporated the requirement in their regulation.

1. The explanation given in the explanatory note is aimed at the problem with regulation 3922. It is rather cavalier to say to other JAA member States to simply wait for EU States to solve their problems. It would be as if they were only observers.
2. This, in a certain sense, is not new. And in fact this is why the JAA have decided to publish in the administrative and guidance material a list of which JAR has been adopted by which State.
3. Once again, we are not yet in an EASA with regulatory power. JARs are not regulatory binding and have to be included in national (or EU) regulations and we have to admit that this process is not the same for all the JAA States.

Response: *Comment noted. The reference in paragraph 4.4. of the Explanatory Note to "(and therefore publication)" is redundant and will be deleted. However reference is made to*

JAR 11.075 paragraph (b)(3), which provision assumes co-ordination with the European Commission prior to adoption.

JAR 11.085

[A. Young] JAA should arrange for NAA's to submit up to date lists of NV's to the existing JAR's for publication in A&GM section 1.

Response: see *textproposal ITF*.

[Airbus Industrie] National variants should be prohibited; no further proposal.

Response: *Harmonising technical standards is not always possible without some form of temporary deviation from one or more standards.*

[British Aerospace] Replace existing paragraph with "National Variants in new JAR's or amendments to JAR's are prohibited".

Response: *Harmonising technical standards is not always possible without some form of temporary deviation from one or more standards (see subparagraph (e)). Proposal should be rejected.*

[British Aerospace] Subparagraph (a): comment: these paragraph is a definition and should be included in JAR-1 or in JAR-11.005.

Response: *Comment noted. JAR 11.085 (a) will be slightly reworded to remove the defining nature of this paragraph.*

[British Aerospace] Subparagraph (e): comment: The wording could either mean that a solution has to be proposed within one year, or that a solution that can be resolved within one year must be proposed by the NAA.

Response: *the proposal should be done within one year; insert the words "within one year from declaration" after "JAA".*

[CAA UK] If the NV is not apparent at the time when the JAR/amendment is being adopted, the first sentence of (b) cannot apply. For clarity the second sentence of (b) should be added to (g) and consequently the final sentence of (g) should be altered.

Response: *not necessary, the last sentence of (g) is quite clear. Moreover the same comment can be made on subparagraph (c), where a reference is made to subparagraph (b).*

[ITF] Add new (h): The JAA shall annually publish a report listing all National Variants and proposed solutions and progress towards their elimination.

Add new (i): Authorities and interested parties shall be notified as soon as possible, and within two months, of the actual text required by (c) above.

Amend (f) to read: The solution achieved on the proposals by the National Authority shall be published within two months of the date applicable under (e).

Aim is to ensure the maximum transparency in the application of NV's and to ensure that they are in the public domain in order that the NAA concerned is subject to public scrutiny of a decision not to conform to a commonly agreed requirement.

Response: *The proposal adds some quite obvious procedural elements to paragraph 11.085. Proposal should be accepted.*

[Luftfartsverket Sweden] Subparagraph (d): comment: add: but must not be included in the actual JAR text in Section 1 or Section 2

Response: *present text is quite clear, proposed text not necessary.*

JAR 11.140

[Transport Canada] The criteria for issuing Special Conditions on the basis of “major technological changes” do not agree with JAR 21.16. JAR 11 defines it in terms of the change, while JAR 21.16 defines it in terms of the JAR not containing adequate or appropriate safety standards.

Response: *JAR 21 is the only JAR which gives the possibility to prescribe Special Conditions (JAR 21.16). So the text of JAR 11.145 should be in line with JAR 21.16. Proposed change of subparagraph a) of JAR 11.145: replace “Special Conditions, which new policy” by “Important Special Conditions, which are to be prescribed according to JAR 21.16, ”. ACJ 11.145 should be reworded in line.*

[DGAC France] Proposed text is not clear enough for an independent JAR. The non specialised reader could have difficulties in understanding (for example, according to the currently proposed text, special conditions for JAR-OPS are to be found in JAR 21).

Response: *see response CAA Canada on this matter.*

[ITF] For the sake of completeness, the requirements relative to Special Conditions should also be reproduced in JAR-11, especially as the means of consultation on such SC's are contained in this JAR.

Response: *JAR-21 being the only JAR that gives a base for Special Conditions, it is not necessary to duplicate the requirements on SC's in JAR-11, nor is it appropriate to transfer these requirements to JAR-11.*

JAR 11.145

[Airbus Industrie] When a special condition has been given, the same special condition for another project should not be submitted to comments unless requested.

Response: *proposal should be accepted.*

[British Aerospace] This paragraph is unclear as to who should submit the Special Condition.

Response: *according to JAR 21.16 SC's are issued by the Authority, so the Authority shall submit the SC.*

[FAA] Subparagraph (a): comment: This subparagraph states, that Special Conditions may be issued to address “new policy”. What would be included in “new policy” apart from other mentioned criteria.

Response: *some examples of new policies are given in ACJ 11.145.*

JAR 11.150

[AIAC Canada] Proposal for a definition of “Interested Parties”, replace “representative interested parties”, “European interested parties”, “international organisations” and “foreign organisations” by: Interested Parties.

Response: *See under JAR 11.005 of this CRD.*

[Airbus Industrie] Subparagraph (b): replace “JAAC” for: JAA body referred to in paragraph 11.055(d)(1).

Response: *depends on new organisation.*

[British Aerospace] Subparagraph (d): comment: replace the first sentence by “A consultation period, which is appropriate to the certification programme, will be agreed between the Authority

and the applicant". A consultation period of 3 months for a SC may be excessive. Proposed is a period of one month.

Response: *A period of one month will in most cases be too short. The Certification Team has the possibility to shorten the consultation period when appropriate.*

[CAA UK] Subparagraph (a): comment: this subparagraph seems inconsistent with § 145(a) when a major technical change is involved Textproposal: Apart from the case of a Special Condition involving major technological change, the decision is to be made.....

Response: *the proposal should be accepted.*

[DGAC France] It is not acceptable that comments be reviewed by a Certification Team alone as proposed in (e). Certification Director and Certification Committee must be involved: it is a fundamental control function. Review of comments is not part of consultation. In some aspects the currently proposed 11.150 is too much detailed. And is lacking some important points such as management control by JAA.

Adoption is not part of consultation, so this item is not relevant to this paragraph and not to the subpart itself (according to its title). It would be necessary to delete (f) to be consistent. But this will raise a concern: JAA consult and nothing happens? There is no comment/response document. There is no action to change the special condition according to comments (there is only a review by the CT).

It is suggested to re-write JAR 11.150 and to create additional paragraphs for actions after consultation as suggested in the textproposal. It is recognised that the proposal may appear as a "heavy" procedure. This can be subject of further discussion in light of the opposite objectives: a) adoption of SC's should be fast for not delaying the certification process and b) the SC's create new rules and the approval of these changes to JAR's should be equivalent to the NPA process.

Response: *The Special Conditions will be developed and adopted in accordance with the Joint Validation Procedures. The text of the subparagraphs e and f will be grouped together to one subparagraph (e), reading:
"(e) Comments received would be reviewed, and will be implemented in accordance with the Joint Certification/Validation Procedures."*

[FAA] Subparagraph (d): comment: Regulations Director can limit the number of parties for consultation on the A-NPA. Criteria?

Response: *See page 31 of this CRD under JAR 11.066(e).*

JAR 11.155

[DGAC France] Special Conditions must be published. Who is doing? Where? See ACJ 11.155. "After the type certificate has been issued". Which one?

Response: *As said the JAA publishes the SC (ACJ 11.155). The type certificates are still been given by the NAA. Even so the SC's according to JAR21.16. So apart from the JAA it is up to the NAA if and where the SC is published.*

[FAA] Special Conditions will be published 6 months after issuance of the type certificate. Why not before of at the issuance of the TC, why, if so, would it have to wait six months.

Response: *This paragraph states only, that a SC has to be issued within 6 months after issuance of a TC. It gives a maximum time limit after the TC-issuance and does not prohibit earlier issuance of the SC.*

JAR 11.160

[CAA UK] Although a review of Special Conditions is required, there is no indication as to which JAA entity will undertake this review. Guidance should be given to ensure that this task is executed properly.

Response: *insert after “regularly”: by the Certification Sectorial Team.*

JAR 11.165

[F. Fagegaltier] Some editorial improvements are proposed for clarity and consistency with other sub-parts (see 11.025 for example).

JAR 11.165 General

[F. Fagegaltier] proposes following textproposal:

- (a) This sub-part defines procedures for development, adoption, publication and amendments to ACJs.
- (b) ACJs may be developed:
 - (1) either in association with the corresponding requirements under sub-part B
 - (2) or under this sub-part E.

Response: *Comment and proposed text agreed*

JAR 11.170 Acceptance of ACJ

[DGAC France and F. Fagegaltier] We do not agree with the statement that the authority should automatically accept a demonstration which is in accordance with a published ACJ as proof of compliance. ACJs often make assumptions on a level of technology of the product, or on standard design features or operational practices. If the application is not in line with those assumptions then the published ACJ may not be an acceptable means of compliance for the specific application and specific interpretative material may need to be developed.

Response: *Comment not accepted. The ACJ does not have the meaning suggested by the commenter notably with respect to “automatic acceptance”.*

[DGAC France] Direct consultation of a working party by a national authority should be avoided. ACJ 11.175(c) should read – When a national authority is willing to accept, independently of the JAA system, a new ACJ, it should take precautions to be confident that the proposed material would be accepted by the other authorities as being in agreement with the Section 1 text in the corresponding JAR.

Response: *Comment not accepted. NAA’s should act prudently in all cases.*

[Airbus Industry] In 11.170, to clarify that when an applicant is required, or elects to comply with the requirements of e.g., JAR-25 at change 14, it may elect but may not be forced to use means of compliance published with a later change, the text should be amended to state that “an applicant, showing compliance with the requirements in accordance with ACJ material published on or after the date of publication of the requirements, is assured of the authority acceptance of such methods”.

Response: *Principle of comment agreed but it is not considered necessary to change the text.*

SECTION TWO - General

[Britannia Airways] These should always be denoted under the clause heading in Section 1.

ACJ 11.005

See above under JAR 11.005

ACJ 11.020

[A.Young] Spelling - "reasonable" in ACJ 11.020 (a).

[DGAC-France] proposes to delete ACJ 020(a). No real need for such ACJ

[LFV-Sweden] comments that it might be practical to state that a fee may be requested only for costs related to printing and administration. Reason: The fee should be restricted to printing and administrative costs in order to secure the principle of access to documentation.

[F. Fagegaltier] proposes to delete ACJ. No real need for such ACJ.

[British Aerospace] comments that ACJ 11.020 (a), point 1 refers to the need for contact with JAA "in advance" if access to the documentation is desired. Some period of notice should be defined, or some point of contact defined to determine what that period of notice might be. Reason : Taking the extreme view, a notice period of 5 years could be quoted, which would comply with JAR-11 as currently worded, but would be practically useless. On the other hand, iff access to these documents could be arranged via the Internet, then a simple phone call 5 minutes beforehand, to open the relevant access pathways might be all that was required.

Response: See response under JAR 11.020

(ACJ 11.035)

ACJ 11.035 (a)

[CAA UK] Standard Model Foreword Paragraph 5: This text appears to limit those people entitled to propose a JAR amendment more severely than in fact JAR 11 itself does (in JAR 11.055(a). Is this intended and if so why? if not, the two paragraphs should be made consistent.

ACJ 11.035(a)

[DGAC France] Propose to delete paragraph. See comment on 11.035.

ACJ 11.035(a), para 2

[British Aerospace] Replace the acronym "AC" with the words it represents, or provide a definition of the terminology. "MC" is not contained in JAR 11.005 or in JAR 1.

Response: Comment noted. The text will be modified to reflect the written meaning of "MC", referring to means of compliance. A definition shall not be added to JAR 11.005 as the acronym is not used extensively throughout the document, and due to the fact that means of compliance is covered by the term ACJ.

ACJ 11.035(a), para 3

[Britannia Airways] there should be a definition of "Basic Code".

Response: Comment not agreed. The explanation given in ACJ 11.045 (4.1) is deemed sufficient and satisfactory.

[ITF] References at various points to 'Basic Code' are confusing. The origin of a JAR in a pre-existing text is not relevant to the processes for development or modification of any JAR.

Response: Comment not agreed. The reference to the "Basic Code" serves the purpose of providing the needed background information relevant to the new JAR, if and when it is required.

Attachment to ACJ 11.035(a)

[ITF] This requires updating. Paragraph 1 should not contain reference to the Type Certificate as the model Foreword is intended for all JARs, not solely the Airworthiness codes.

Attachment to ACJ 11.035 (a) paras 1,2, 5 & 7

[AIAC (Aerospace Industries Association of Canada)] Use 'NAAs' instead of 'Civil Aviation Authorities' throughout.

[ITF] References to Joint Steering Assembly in paragraph 5 should be updated in the light of the Agenda for Change, and equivalent modifications made elsewhere as required.

ACJ 11.040(a)

[DGAC France] Propose to delete paragraph. With the proposed revision to text in section one (see comment above under 11.040) there is no longer a need for this ACJ.

ACJ 11.045

[A. Young] Add new 2.8: "For brevity the pronoun "he" is used in various parts of the JARs. Where appropriate the pronoun "she" should be assumed".

Response: Comment agreed. Where appropriate the wordings are revised.

(ACJ 11.045, para 4.2)

[British Aerospace] The example paragraph numbering given in paragraph 4.2 does not follow the numbering convention defined in paragraph 4.1. an example should be consistent with the principle it is trying to illustrate.

Response: Comment noted. Present experience did not reveal any major problems.

(ACJ 11.045, para 4.3)

[British Aerospace]The use of up to six levels of sub-division is too many. It is recommended that no more than 3 levels be used, unless the base code demands otherwise. It is assumed that this is based upon FAR convention and is therefore seen as acceptable. However, it is too many, and is likely to lead to confusion. In addition, the use of upper case alpha characters for the second order of sub-division, as opposed to the first, is not logical.

(ACJ 11.045(b), paragraphs 1b, 1c and 2)

[DGAC France] The link between D2 and D3 and the terms applicability and effectivity should be explained in this ACJ.

Response: Comment not agreed. The explanation given in ACJ 11.045(b) 1b, 1c and 2 ensures clarity in the relationship between the various dates relevant to the implementation of JARs. Furthermore, it should be noted that the use of the word 'applicability' in JAR 11.045 does not refer to a date, but rather to the 'scope of applicability' of the JAR. For the sake of clarity the text in JAR 11.045 will be amended as follows: "Section One must include the scope of applicability and dates..."

(ACJ 11.045 (b), para 3a)

[British Aerospace] Paragraph 3a refers to annexation into EC 3922/91. Drafting should only include adoption under the Cyprus Arrangements. It is unlikely that those drafting the JARs will be able to predict the time-scales for this.

Response: Comment noted. This element should be taken into account based on the best available estimates and through communication with the Commission.

(ACJ 11.045(c))
[AIAC Canada] Add new subparagraph 2g: "g. Specify the aeronautical product on which an exemption is granted."

Response: Exemptions are also to be granted on JAR-OPS or JAR-FCL. Moreover the subject of the proposed sentence is already covered by subparagraph 2e.

[Austro Control] Change first sentence: "The appropriate JAA body referred to in JAR 11.055(d) (1) have to determine whether exemptions are to be permitted...."
Add after the first sentence: "The appropriate JAA body referred to in JAR 11.055(d)(1) may decide to consult interested parties, and if considered appropriate the Working Party responsible for developing the new JAR on this subject.

Response: the Working Party concerned has the knowledge and should therefore have the responsibility to decide whether or not an exemption on the related subject is appropriate. Proposal should be rejected.

[British Aerospace] Exemptions should always be permitted, and the procedure dealt with generically in JAR-11. The Working Party developing the new JAR will not be able, at the time of drafting, to determine whether or not exemptions are to be permitted.

Response: exemptions are a violation of the principle of harmonisation. The possibility to grant exemptions should therefore be as much restricted as possible. The Working Party concerned has the knowledge to decide whether or not an exemption if, and so on which provisions, the possibility of granting an exemption is appropriate. Proposal should be rejected.
The last sentence of paragraph 1 is not understood. As far as the sentence is clear it is quite obvious; to avoid misunderstandings sentence can be deleted.

[CAA UK] The single line of text following paragraph 1 does not make any sense and needs to be clarified or deleted.

Response: As far as the sentence makes sense it is quite obvious; sentence can be deleted.

[DGAC France] The last sentence of paragraph 1 is not understood.

Response: As far as the sentence is clear it is quite obvious; to avoid misunderstandings sentence can be deleted.

[FAA] It refers to the Working Party drafting a provision at the time of an amendment, but it also states that the justification should include the NAA that is granting the exemption. Is this intended to delegate to one NAA all JAA "authority" to "rule" on exemptions.

Response: the provision to include the NAA, that is granting the exemptions, has only the purpose to know which NAA is responsible for the exemption.

[Luffartsverket Sweden, subparagraphs 2b-2f]
Subparagraph 2b: comment: change the wording to read "specify the legal provision under the power of which the exemption is granted".

Response: proposal should be accepted.

Subparagraph 2c: comment: change the wording to read "Specify the circumstances in which it may be used, including....."

Response: *proposal should be accepted.*

Subparagraph 2d: comment: Add where applicable "In many cases no specific person is exempted". If the intention is to state who is the legal recipient the wording should rather be "Specify the organisation or persons who are....."

Response: *This proposal may have implications for other paragraphs of JAR-11 as well. See also revised wording subparagraph (d).*

Subparagraph 2f: comment: change the wording to read "...when making use of the exemption.

Response: *proposal accepted.*

[CAA UK] Paragraph 12.2 states that non-specifics should not be used. ACJ 11.045(b) paragraph 4 however, in this instance, and others, this proposal does not observe it's own rule.

Response: *Comment agreed. Wordings revised.*

ACJ 11.055

(ACJ 11.055 (c))

[Two commentors] suggested to introduce a reference to a simplified Cost Benefit Analysis.

Response: *Partially agreed. A reference to benefits and costs has been introduced as a (even simplified) Cost Benefit Analysis may not be practical at this stage.*

[British Aerospace] Propose different text: Add an extra bullet point:

- Outline cost safety benefit analysis

The justification should include an "outline" cost safety benefit analysis. It is accepted that this will not be fully detailed at this stage, but it should show envisaged benefits sufficient for those responsible to decide whether it is reasonable for the study to commence.

Response: *Comment agreed. An outline Regulatory Impact Assessment should be provided with the justification or ideally be the core of the justification. The RIA would be developed along with the NPA as further information became available, most probably from information supplied by those commenting on the NPA.*

See also response to ETF on page 9 of this comment/response document under headings EXPLANATORY NOTE, Paragraph 4.3.

(ACJ 11.055 (d))

[One commentor] suggested to delete such ACJ if Section 1 text is made clear.

Response: *Agreed. However, ACJ 11.055(d) is kept to explain how the JAA Work Programme is developed (Divisions/Sectorial Teams), proposed (Chief Executive) and adopted (JAAB with advice from JAAC).*

(ACJ 11.055 (e))

[British Aerospace] Propose different text: Add the following paragraph: "2.6 To develop the cost-safety benefit analysis." One of the Working Party tasks should be to develop the cost-safety benefit analysis.

Response: Comment agreed. New paragraph 2.6 as proposed and amended as per the JAR-11 Working Group decisions, will be added to ACJ 11.055(e).
Please see also the response to ETF on page 9 of this comment/response document under headings EXPLANATORY NOTE, Paragraph 4.3.

[One commentator] proposed to add to the tasks the development of a Cost Benefit Analysis.

Response: Not agreed. ACJ clarifies that the working party develops an NPA. The NPA should include a Cost Benefit Assessment (not Analysis). Comments need to be reviewed in the light of the proposals from the Cost Benefit Assessment sub-group.

[One commentator] suggested to put the ACJ in line with Agenda for Change.

Response: Agreed. Reference is now made to appropriate division or body.

[One commentator] suggested that limiting number of meetings may be artificial as the important point is that time-scales are adhered to.

Response: Agreed. Paragraph 4 of ACJ has been modified to reflect this.

[One commentator] suggested that para 3 duplicates rule text and should be deleted.

Response: Agreed that it duplicates rule text. However, paragraph is kept because it made ACJ "user friendly" and because it will be expanded to introduce the principle of balanced composition.

(ACJ 11.055 (g), now renumbered (f)(1))

[One commentator] objected to the use of the work observer (see also discussion on para 11.055).

Response: Agreed. ACJ 11.055f(1) now refers to representatives.

[One commentator] indicated that there is a risk that Working Parties could become "self regulating".

Response: The introduction of the JAA Work Programme should limit this.

[One commentator] proposed that a party excluded from a Working Party may request consideration.

Response: It is believed that such a procedure would be seldom used due the principles of composition of Working Parties as envisaged by JAR-11.

(ACJ 11.055 (g)(2), now renumbered (f)(2))

[One commentator] suggested a link with ACJ 11.055f(1) in the case a new or modified working party is set up.

Response: Agreed. It is now clarified that in the case of a new or modified existing party the procedures of ACJ 11.055f(1) will be followed as applicable.

ACJ 11.060(b)

[One commentator] found the wording of paragraph 1.2 (election of Chairman) unclear.

Response: Agreed. Working has been improved.

[One commentator] proposed that the role of the representative be re-worded to emphasise that he must convey his Organisation/Authority position.

Response: *Disagreed. The proposed working provides flexibility in discussions, still making the representative accountable to his Organisation/Authority.*

[One commentator] suggested that the creation of any sub-group should be submitted to the agreement to the person/body the Working Party reports to.

Response: *Disagreed. The word permanent was used to leave some flexibility to the Working Party to organise their work.*

[One commentator] objected in line with comments on JAR 11.055 to the status of observers offered to non-JAA Organisations/Authorities.

Response: *Agreed. See **Response** on JAR 11.055.*

[One commentator] did not agree that ACJ 11.060(b) provided in its paragraph 6 an escalation process.

Response: *Disagreed. The escalation process for NAAs is described in Agenda for Change: Chief Executive and JAAC are respectively lower and upper level of appeal. For Interested Parties, the proactive role envisaged by IPAP could alleviate the concern.*

[One commentator] suggested to add that representatives attend on a regular basis and if they don't they should be withdrawn.

Response: *Partially agreed. Only the first element was incorporated.*

[One commentator] proposed that the Chairman may also come from Interested Parties.

Response: *Comment noted. However, wording has not been changed because it is believed that NAAs and the public would be more confident with a chair from Authorities.*

ACJ 11.065 (See also below: Compliance with ICAO)

[CAA UK] The consideration of the link to ICAO is very welcome. However, although the text caters for situations where States may need to file a difference with ICAO, no mention is made of the need to be conscious that JAA can assist in the development of ICAO Annexes and SARPs by a more overt process of feeding good JAA requirement material into the ICAO process. JAR-11 provides an opportunity to establish such a process. It is recommended that the JAR-11 WG seeks to include in its future work programme a task to consider this issue.

Response: *Comment noted. The JAR-11 Working Group feels that this is not a JAR-11 issue.*

(ACJ 11.065(b), para 2.5

[T Sulocki] Note: ACJ 11.065 refers to JAA policy letter 07/04-2-3-1-1 94-L143 dated 11 April 1994. This policy letter should be revised to introduce the agreed new policy on joint rulemaking or reference to a new document may be needed to fit with the agreed new policy.

To keep airworthiness codes as harmonised as possible and to implement the FAA/JAA policy on "joint rulemaking activity for airworthiness codes", as presented in the document entitled "Plan for Maintaining Harmonisation".

Response: *Comment noted. The JAR-11 Working Group feels that this is not a JAR-11 issue.*

[ENAC- Italy] The adoption of an explanatory note form is considered necessary for achieving the standardisation. It is for the benefit of a prompt understanding of NPA development process and related main issues.

Response: *Comment noted. The JAR-11 Working Group recognises the advantages of a standard Explanatory Note form, but does not intend to develop one for the time being.*

(ACJ 11.065(b), para 2.6

[CAA UK] Paragraph 2.6 seems to limit the definition of a 'difference' which would require notification to ICAO. However, ICAO guidance on differences includes at least two other categories which require notification to ICAO, and therefore this paragraph must be aligned with ICAO guidance material.

Response: *Comment agreed. The text of paragraph 2.6 will be amended. Please see response to ACJ 11.065(b) 2.6 / 11.070(c) 3.4, Czech CAA.*

[DGAC France] Propose different text: "2.6 When differences with ICAO are introduced which would make the JAR less severe than the relevant ICAO standards or recommended practices, this should be highlighted and a rationale should be given so that JAA States are aware and take necessary steps to notify the difference when adopted."

Concerning ICAO SARPs, the objective is not only to file differences but to achieve a minimum number of differences. The ICAO safety oversight audit programme has shown that developed States tend to have a large number of differences with the SARPs. One of the main reasons is that they do not take appropriate action to amend them when necessary. Thus it is important when JAA have a good reason to divert from the SARPs that the rationale be given to the States so that when they file a difference, they may also ask ICAO to amend the corresponding SARPs.

Response: *Comment agreed. Please see response to ACJ 11.065(b) 2.6 / ACJ 11.070 (c), 3.4 Czech CAA.*

[Luftfartsverket Sweden] Also differences with ICAO which would make the JAR more severe than the relevant ICAO standards should highlighted.

Response: *Comment agreed. Please see response to ACJ 11.065(b) 2.6 / ACJ 11.070 (c), 3.4 Czech CAA.*

[SLV Denmark] We fully agree that differences with ICAO Standards should be highlighted so that JAA Member States are aware and can take necessary steps to notify the differences when adopted, of ACJ 11.065(b), 2.6.

Response: *Comment noted. Please see response to ACJ 11.065(b) 2.6 / ACJ 11.070 (c), 3.4 Czech CAA.*

(ACJ 11.065(b), para 2.6 & ACJ 11.070(c), para 3.4

[Czech CAA] When differences with ICAO are introduced which would make the JAR less severe than the relevant ICAO standards this should be highlighted and text of a notification to ICAO, required by Article 38 of the Convention on International Civil Aviation, should be provided.

An effort to minimize administrative steps necessary to comply with the provisions of Article 38 of the Convention on International Civil Aviation and to facilitate the relevant legal findings resting with each JAA Authority.

Response: *Comment noted. Paragraphs ACJ 11.065(b) 2.6 and ACJ 11.070 (c) 3.4, will be amended to read, "When differences with ICAO are introduced which would make the JAR more severe, less severe or different in character to the corresponding ICAO standards, this should be highlighted and justified so that the JAA States are aware ... when adopted."*

(ACJ 11.065(c)(1))

[F Fagegaltier] As most part of the currently proposed ACJ text was proposed as section one material, this ACJ could be simplified as follows. This covers the currently proposed ACJ 11.065(c)(2) as well. For avoiding misinterpretation of the status of a NPA or misuse of the draft texts, before it is formally issued for consultation under JAR 11.065, the draft NPA will be identified as 'A-NPA' (Preliminary NPA)

(ACJ 11.065(c)(2))

[F Fagegaltier] This ACJ should be deleted (See comment on ACJ 11.065(c)(1) above). Then: ACJ to be deleted.

(ACJ 11.065(e))

[F Fagegaltier] This is transferred to the section one. Then: ACJ to be deleted.

Response: *(ACJ 11.065(c)(1) to ACJ 11.065(e)) Comment not agreed. The JAR-11 Working Group prefers to keep detailed instructions as ACJ, rather than transferring them to the requirements paragraphs.*

(ACJ 11.065(f))

[DGAC France] Propose different text: "All documents issued by the JAA system for public consultation will request comments to be provided by means of a standard Comment Form. A blank copy of JAA Form 200 is attached." This ACJ should be more general and should propose a "Comment form". The same form should be used for consultation on NPA, ACJ or Special condition.

[F Fagegaltier] This ACJ should be more general and should propose a 'Comment form'. The same form should be used for consultation on NPA, ACJ or Special condition.

It is suggested to change the text as follows: All documents issued by the JAA system for public consultation will request comments to be provided by means of a standard Comment Form. A blank copy of JAA Form 200 is attached.

Response: *(DGAC France and Mr F Fagegaltier) The Working Group cannot be certain the comment form 200 will be suitable for all documents that will ever be issued by the JAA system. Therefore, the existing text will be retained.*

(ACJ 11.065(b))

[AIA] US Industry believe the formal requirement of a Cost/Safety Benefit Assessment is justified by the need to present to commentators and decision makers the two aspects of the problem: The safety reasons for proposing the rules, and the economic impact of the proposed rules and advisory material.

We support the creation of a working group to develop mutually acceptable cost/safety benefit methodology that will support the economic analysis and safety benefit of the proposed rules. US Industry is very interested in participating in this working-group. We believe that working together and developing mutually acceptable methodology in the long term reduces costs and resources and support harmonising the rulemaking practices with the FAA.

Response: *The support of AIA towards the implementation of a Cost/Safety Benefit discipline is noted. Please also see response to ETF on page 9 of this comment/response document under headings EXPLANATORY NOTE, Paragraph 4.3. Your wish for US Industry to be involved with the proposed Subgroup is also noted.*

[F Fagegaltier] Some minor changes are proposed so that this ACJ reads as follows:

"(1) *General*

This ACJ sets out guidance relating to the content of the 'Safety/Explanation', and the 'Cost/Safety Benefit Assessment' which are part of a NPA.

(2) *Safety Justification/Explanation*

The intent described in the justification should be consistent with the wording of the proposed rules and/or ACJ material. This is very important as justifications may be used during disputes occurring during application of a rule.

The proposal should be adequately substantiated. With the introduction of a new concept the need to regulate at JAA level should be explained if relevant. This is especially valid for new JARs; service experience; incident/accident data; supporting research data, etc. are possible reasons for the proposals.

Major points should be clearly highlighted notably contentious issues where specific comments are sought. Although the JAA principle is to achieve consensus ("best centre of gravity of opinions"), there may be cases where this is not achievable. This is addressed under JAR 11.zz (*note: see comment above on 11.055*). In such instance the rationales for the majority position and minority position should be clearly explained. The reasons for adopting the majority position should also be described. Finally, the majority should be qualified (large, narrow, etc.).

The extent of Harmonisation with FAA texts should be outlined along the lines of the JAA policy concerning JAA/FAA harmonisation as developed in 1994 (See JAA policy letter 07/04-2-3-1-1 94-L143 dated 11 April 1994). Also the extent of harmonisation with ICAO should be addressed. Any future Harmonisation work programme should be described. As Harmonisation is one of the main JAA objectives this deserves a specific paragraph in the justification/explanatory note.

When differences with ICAO are introduced which would make the JAR less severe than the relevant ICAO standards this should be highlighted so that JAA States are aware and can take necessary steps to notify the difference when adopted.

The rules and/or ACJ material development process (when relevant) should be described, which organisations were involved in the Working Party, which bodies were consulted, etc.

(3) *Cost/Safety Benefit Assessment*

A Cost/Safety Benefit Assessment should be presented. It should indicate who is affected; the impact on affected parties (e.g. increase in capital; changes in organisation; changes in work force; increase in direct operating costs; increase of compliance costs, (tests instead of analysis, new tests, new analysis); changes in documentation) and impact on authorities resources (when relevant) and a Cost/Safety Benefit Assessment (hazard to be addressed, effectiveness of proposed measures).

It is important to note that what is requested is not a detailed economic analysis as FAA does. Of course nothing prevents to use the economic analysis done by FAA in case of harmonisation projects.

A Cost/Safety Benefit Assessment for a full new JAR may not be achievable. Such a Cost/Safety Benefit Assessment is justified by the need to present a commenters and decision makers the two aspects of the problem: The safety reasons for proposing the rules and/or ACJ material and the impact of the proposed rules and advisory material. This will help at the comment stage. It should also be remembered that some JAA

countries are required by law to produce economic analysis of the proposed rules. It also helps to harmonise our rulemaking practices with the FAA."

Response: *The commentor is thanked for bringing the detailed list of items that should be addressed by a safety justification/explanation to the attention of the Working Group. It is hoped that the final Regulatory Impact Assessment method selected, will address all of the commentors concerns.*

Please see also the response to ETF on page 9 of this comment/response document under headings EXPLANATORY NOTE, Paragraph 4.3.

(ACJ 11.065(b), paragraph 3)

[British Aerospace] More positive guidance is required to illustrate what is expected from a "cost/safety benefit assessment". For consistency of approach in the future, the provision of an example in the ACJ would be beneficial.

The European requirement is to provide a "regulatory impact analysis". This may be subtly different from the "cost/safety benefit assessment". In addition, there are major differences in methodology between similar tasks performed by different Authorities, for example CAA UK and FAA analyses use fundamentally different approaches. A defined and harmonised methodology would help to ensure that the actual issues being discussed are not obscured.

Response: *Please see response to ETF on page 3 of this comment/response document under headings EXPLANATORY NOTE, Paragraph 4.3.*

(ACJ 11.065(b), paragraph 3.3)

[Luftfartsverket Sweden] Delete paragraph 3.3. There is already a requirement for a CBA in JAR 11.065(b)(1). An ACJ cannot exempt from a requirement.

Response: *Comment agreed. Paragraph 3.3 of ACJ 11.065(b) will be deleted. Please see also the response to ETF on page 9 of this comment/response document under headings EXPLANATORY NOTE, Paragraph 4.3.*

ACJ 11.070

(ACJ 11.070(c)

[Airbus] See comment and response under JAR 11.070.

[CAA UK] There is an opportunity, in this paragraph, to address another issue which can arise in today's process, regarding the quality of the work done by Working Groups in considering and addressing comments, and which is not subject to scrutiny or appeal. The result can be that wholly inadequate consideration is given to comments and valid comments are inappropriately disposed of. It is recommended that the JAR-11 WG seeks to include in its future work programme a task to consider this issue.

Response: *Comment noted. See revised ACJ 11.075(b)(3) and(c). The adoption of the JAR implies the acceptance by the JAAC of the CRD. Consequently, the CRD may be published.*

[F Fagegaltier] The wording 'sponsor' is an old one used at the beginning of the JAA system but is no longer appropriate and the text of the currently proposed ACJ is not consistent with the currently proposed text of 11.070 (See for example § 2.1). Some of the currently proposed ACJ text was used for re-writing the section one paragraph. Therefore the ACJ could be simplified as follows:

- (1) This ACJ provides guidance for preparing the response to comment document which is required under JAR 11???

The Comment/Response Document is of use not only as a public record of the JAA' decision making, but it is also of use as a basic guide to the development of a rule. This

may be particularly useful in the future when attempting to determine how a rule was written and amended over the passage of time. It may also be useful in the future for the solving of disputes when applying the requirements. The JAA Headquarters and the National Aviation Authorities have easy access to archive files, but that is not the case for many other interested organisations.

(2) Justification

The justification part of the response to comment document should contain a brief explanation of the intent of the proposals (based on the NPA's justification) along with any other pertinent points (e.g. the NPA may be second or third version - what was the development, there may have been a similar NPA issued previously - what is the relationship between the two, Information on FAA/JAA Harmonisation, etc.).

(3) Identification of commenters

It is important to note early on in the Comment/Response Document who, persons or organisations, commented. After this, it is not necessary to identify individual comments with their authors as it is more important to explain the intent of the comments than to identify who made them. It may however be useful to identify individual commenters in certain cases. For example, it would be logical to identify FAA comments when dealing with matters of JAA/FAA Harmonisation.

(4) Response to comments

This part of the response to comment document should contain the following:

A summary of each comment sufficient to understand the essence of it: the text of each comment should be explained so that the gist of the comment is easily understood and so as to describe the issue(s) in question.

The reason for not adopting certain comments.

The explanation of the changes to the text which are made as a result of certain comments and the reasons for these changes.

A concise and readable document is possible by dealing with each paragraph and/or subject at a time, rather than by methodically discussing the disposal of each comment as presented by each commenter.

Some Comment/Response Documents have, in the past, referred to specific comments by their author's reference number, rather than explaining the comment. This makes it very difficult to understand what the intent of the comment was, especially if the response is not full. This is to be avoided, as either the comment should be explained, or the original comment printed in full.

It may take different forms provided it achieves the above mentioned objective. Where many comments are received, a tabular layout may be easier to draft.

(5) Summary of changes

This part of the response to comment document should highlight the important changes compared to the contents of the circulated NPA and highlight how interfaces issues have been solved and describe a work programme to do so if this is not yet fully achieved. All remaining contentious issues should be properly identified.

When differences with ICAO are introduced which would make the JAR less severe than the relevant ICAO standards this should be highlighted so that JAA States are aware and can take the necessary steps to notify the difference when adopted.

Handling of Harmonisation, when relevant, should be described. If an NPA is relative to an item included in the Harmonisation Work Programme, any remaining significant differences with FAA tests should be highlighted.

Any significant change to the Cost/Safety Benefit Assessment, due to incorporation of comments, should be highlighted.

Response: *The commentor is thanked for his efforts in producing an alternative layout to these ACJs. However, the Working Group, after due deliberation, prefers to retain the original layout.*

Where the individual sentences in the proposed new texts introduce new information and/or clarity into the existing text, the Working Group will endeavour to adopt them, however, it is not intended to adopt the new texts in their totality.

(ACJ 11.070(c), para 2.1)

[GAMA] Propose different text:

Old: "The Working Party tasked with the review of comments need not be the original Sponsor."

New: "The Working Party tasked with the review of comments will be the original Sponsor."

Working Parties begin their work with some expertise, but it is typically broadened and deepened as they draft the NPA. The result is a body considerable, unique expertise. This expertise should not be ignored when NPA comments are considered.

Response: *Comment not agreed. The existing wording does not exclude the original sponsor from reviewing the comments. However, the JAR-11 Working Group will modify the text as follows: "... tasked with the review of comments will normally be, but need not always be, the original sponsor".*

(ACJ 11.070(c), para 5.2)

[Luftfartsverket Sweden] It is proposed that the example is a positive rather than a negative one, i.e. the example should show how comment response is made properly.

Response: *Comment not agreed. The example is there, specifically to show people what not to do. Putting in a positive example will not illustrate the problem which the JAA is trying to avoid.*

[AIAC] Propose different text: 'The text of the comment should be explained so that it is easily understood'. Current text violates ACJ 11.045(7.3)(f). (Does everyone understand 'gist'?)

Response: *Comment agreed. However, the JAR-11 Working Group prefers the following: "The text of each comment should be explained so that the intent of the comment is easily understood and so ..."*

(ACJ 11.070(d))

[Luftfartsverket Sweden] Better guidelines for when a new consultation is needed should be developed by the JAR-11 Working Group.

Response: *Comment not agreed. The present guidance can be developed in the future, in the light of experience with JAR-11, in the meantime it is better if working parties consult the Regulation Division for advice in situations of doubt.*

[F Fagegaltier] The currently proposed text is 'common sense'. However, is it not too much 'obvious' and then is it useful? If it is decided to keep it, some re-write is proposed as follows:

The word significant has been used to indicate that a new consultation is only necessary if important changes have been introduced following the review of comments. Editorial changes are obviously not a reason to re-circulate. A complete change of policy or objectives, a reversal of policy (e.g. 'accept' instead of 'forbid'), is a reason to re-circulate.

Between these extremes there is a grey area where judgement should be exercised. The decision will be taken after appropriate consultation as specified in JAR 11.070 and will be based on a review of precedents.

Response: *It is felt that a reference to 'seeking the advice of the Regulation Division' is the best option in a situation where a repeat consultation is considered.*

(Description of ACJ)

[DGAC France and F. Fagegaltier]: the currently proposed JAR 11.050 simply states the obvious. Alternative text is proposed setting out a fuller description of Section 2.

[DGAC France and F. Fagegaltier]: 11.170 should be moved to 11.050(a)(2).

[A. Young] 11.050 does not define the contents of Section 2. An edited version of the text that appears on page 2-0-1 of each JAR provides a better definition. In addition, the use of the term "non-requirements" is strange and does not really have any meaning.

Response: *Expansion of JAR 11.050 comment not accepted. Reference to GAI20 is made in JAR 11.050 and its corresponding ACJ as follows:
JAR 11.050 refers to a 'specific JAA document', whilst the corresponding ACJ 11.050 outlines that the intention of such document is to cover all ACJs related to more than one JAR, across various disciplines, and which, if desired, may be published only once.
This document is currently known as GAI-20.*

(Scope of ACJ)

[DGAC France] This JAR-11 does not address the newly proposed GAI20 document (supposed to incorporate the AMJs which are applicable to more than one JAR code).

Response: *Comment agreed. See revised text at 11.050(c).*

(Contents of ACJ)

[CAA UK] In the case of JAR-27 and 29, Section 2 only contains ACJ material which differs from FAR AC27 and AC29 i.e., advisory material that is not harmonised with FAR. Eventually there should be no material in Section 2 since the JAR ACJ material will be fully harmonised with the FAR AC. The explanatory paragraph at 7.4 should be amended accordingly.

Response: *Comment agreed but no change to text needed. ACJ will cross-refer to AC text.*

[DGAC France] Some ACJ may be related to very particular situations and affect a small number of users (e.g., specific operations in French Guyana). Accordingly publication of the ACJ should not be necessary where it is considered that it is specific to only a very small number of users.

Response: *Comment not accepted. All ACJ should be published.*

(Initiation of new ACJ or amendments to ACJ)

[F Fagegaltier] The current proposal is confusing and mixing subjects of different nature in the same paragraph. The process is not well described. It is not clear if this paragraph is addressing new or alternate ACJs only or is also addressing changes to existing ACJs. It is suggested that it be addressed in a manner similar to JARs. Alternative text is proposed.

Response: *Proposal rejected as not in accordance with JAR 11 principle of simplified procedure for separate development of ACJ material.*

Review of Section 2 material

[Airbus Industry] The proposed composition of the ad hoc group for review of Section 2 material to address the balance between requirements and ACJs includes only one representative for industry. Due to the wide scope of JARs to be reviewed, this is unacceptable. As a minimum, there should be a representative of the interested parties for each of the involved sectors (certification, operations, maintenance and licensing).

Response: *Comment agreed. Procedure to be reviewed. The Regulation Director will make alternative proposals.*

[CAA UK] In Annex 1 “review of Section 2 material” the terms of reference should be amended to reflect the current status of JAR-OPS 2 which is not yet adopted.

Response: *Comment agreed. In these circumstances the relevant working group should develop its text in accordance with the principles established by JAR 11.*

Agenda for change and Orange Papers

[Austro Control] In 11.175(b)(1), it should state “the appropriate body referred to in JAR 11.055(d)(1) following co-ordinated advice from JAA “Headquarter” will agree to develop ACJs. The decision for initiation of an ACJ should be consistent with JAR 11.055(d)(1). The JAA HQ together with the appropriate bodies or the future executive or Sectorial team should decide the development of ACJ's.

[JAA Maintenance Division] The draft should be reviewed for consistency with the Agenda for Change and take account of the demise of Orange Papers.

[Luffartsverket – Sweden] due consideration must be taken of the outcome of the Agenda for Change and the replacement of the Orange Papers and changes system.

[Airbus Industry] JAR 11.175(b)(3)(i) should be amended by referring to the consultative body pursuant to the Cyprus Arrangements rather than the Joint Steering Assembly to reflect the Agenda for Change which replaces the JSA by the IPAP.

[Austro Control] in 11.175(c)(1) reference to the JAA main committee should be changed to “appropriate bodies referred to in JAR 11.055(d)(1)” for consistency.

[ENAC Italy] 11.175(c)(1) – for consistency with paragraphs (c)(2) and (c)(3) this should require material to be put to the appropriate JAA bodies referred to in paragraph 11.055(d)(1) for control and publication.

[CAA UK] 11.175(c)(5) needs to be redrafted because as written it requires “the body referred to in JAR 11.055(d)(1)...” to report to itself.

Response: *Agreed*

Cost safety benefit assessment for ACJ

[Luffartsverket – Sweden] A cost safety benefit assessment should be made for ACJs.

Response: *This issue will be considered by the working group to be established.*

Definition of JARs

[FAA] Joint Aviation Requirements is defined to mean “the code containing requirements and acceptable means of compliance and interpretative and explanatory material (ACJs).”. This appears to be significantly broader than the common understanding of “requirement” in the United States. We would ordinarily view the regulation itself (the “FAR”) as the “requirement”. An interpretation will then be an interpretation of the requirement, not the requirement itself, even though the interpretation may be binding. Also, the description of JAR requirements as including ACJs seems to conflict with the next definition which describes ACJs as “non-requirements” that include “interpretations, explanations and/or means of compliance.”.

Response: *A valid point but no change to the text is needed as current nomenclature and structure is well established and understood.*

Drafting of ACJ

[FAA] You may want to consider incorporating the language currently proposed in the ACJ within the JAR as a requirement. This would reduce the chance of inconsistency between related documents.

Response: *Noted.*

[AIAC Canada] The text “JAR” should precede applicable references so that the reference in the ACJ to paragraph numbers in the JAR are clear. Readers could interpret the ACJ reference to be directed at the ACJ para instead of the JAR para.

Response: *Comment agreed.*

[Lufftartsverket – CAA Sweden] After defining ACJ in JAR 11.115, the term ACJ should be used consistently throughout JAR-11.

Response: *Comment agreed.*

[FAA and CAA UK] In 11.175(b)(2), “shall” and “must” should not be used but the ACJ may need to paraphrase the relevant JAR in which case “shall” and “must” are OK.

Response: *Comment agreed and text proposed.*

[AIAC Canada] In 11.175(c)(2) it should state “... Will organise a consultation as prescribed in JAR 11.175(b)(3)” as at present it violates ACJ 11.045(c)(12.2).

Response: *Comment agreed and amendment proposed.*

Title of Section 2 material

[JAA Licensing Division] the change of the acronyms AMC/IEM to ACJ should not apply for the JARs in the licensing area. The JAR-FCL documents address a large community of pilots, training organisations etc as users who are by now familiar with the terminology of AMC/IEMs. The change to the acronym ACJs will create confusion and will result in numerous amount of amendments in national translations of the JARs, training material etc. It is also not in line with the proposed stabilisation of a JAR.

Response: *Comment not accepted. It is agreed that the change of name could create confusion at the beginning. However the intenton of the JAR-11 WG is to give training. In addition, although the acronym has changed, the substance of the text has not. The*

benefit of ACJ lies in that a consistent acronym is created. It should be noted that it is consistent with the consolidation of JARs as required by Agenda for Change.

Establishing means of compliance by Joint Certification/Validation procedures

[Austro Control] In 11.175(b)(5), there should be added "(CRI procedure according JC/VP as published in Section 3 of administrative and guidance material)" as a reminder that alternative explanation, interpretations or means of compliance can be established using JC/VP.

Response: *Comment not accepted. Not necessary. Moreover, the location of the procedure may change.*

Consultation

[AEA] In the 11.175(b)(3)(ii) the duration of consultation should be three months as two months is too short for organisations. Three months is also consistent with 11.065(e).

Response: *Comment not agreed. The intention is to keep the total procedure as short as possible. At present most of the basic JARs have been adopted. In practice most NPA will be amendments to basic JARs for which two months should be sufficient. The text already provides flexibility when appropriate.*

Acceptance of means of compliance by NAAs

[CAA UK] In 11.050 para 11 it is not at all clear what is meant or intended. For example are there such things as alternative ACJs and if so, where are they or where will they be put. Likewise what actually is a form. Is a form a standard pro forma to be completed by an organisation and included within the ACJ material or it is something else.

Response: *Comment accepted and revised text proposed.*

[ENAC – Italy] It is proposed to adopt "advisory circular" in place of ACJs in paragraphs 11.175(c)(1) and (c)(3) because an AC accepted directly by an NAA is not joint until adopted by the appropriate JAA body.

Response: *Strictly the commenter is correct but we will retain the ACJ acronym.*

Retention of a priori TGL procedure

[JAA Maintenance Division] 11.175(c) should be deleted and in its place a procedure equivalent to the TGL should be introduced. This is because the approval process "a posteriori" is completely unacceptable in the maintenance area. An a posteriori NAA decision can survive for over a year during which mutual recognition will have to be given even though the decision is ultimately shown to be wrong. To avoid this, more compliance information will be put into Section 1 making it too complicated and losing flexibility. Experience in maintenance shows that the TGL system gained acceptance everywhere. It:

1. makes use of a wide range of expertise in different NAAs and therefore contributes to flight safety;
2. uses a short decision making process;
3. is a method of testing a proposed solution which can then be adopted in Section 2 material. The proposal to withdraw TGM as a means of providing fast track information and interpretation of the requirements is seen as a retrograde step. The system provides the JAA with a means of disseminating information rapidly and then assessing its impact with a view to developing the requirements in a sound manner. The a posteriori process is in contradiction with the FAA-MIP agreement.

[CAA Finland] 11.175(c) should be replaced by new text that would introduce a procedure similar to the temporary guidance leaflets procedure. In our view, the a posteriori process in the maintenance area is not ideal especially given the fact that mutual recognition should exist and that national authorities would lose credibility if they accept an ACJ which is later found not to be consistent with the associated requirements.

[Lufftartsstyret – CAA Norway] The temporary guidance leaflet procedure should be retained since it has proved to be a flexible and fast means of information and interpretation of the requirements.

[JAA Licensing Division] The a posteriori mechanism proposed in JAR 11.175(c) should not be incorporated into JAR-11. The introduction of the a posteriori mechanism will infringe one of the basic objectives of the JAA, harmonisation and standardisation of requirements in the field of civil aviation. With the introduction of JAR 11.175(b) containing a limited consultation and the adoption procedure by the technical main committee, the procedure of introduction of Section 2 material has been reduced so much that it eliminates the need for an a posteriori mechanism.

Response:

Comment not accepted. The WG discussed this issue at great length. The key point is that we are saying that if a person complies with a means of compliance published in an ACJ he is guaranteed acceptance of that means of compliance by any JAA NAA.

It follows from this that each NAA must have the opportunity to contribute to the development and adoption of such published ACJ material. An independent NAA (which is what every JAA Member is) cannot be committed to accepting an AMC by JAA HQ or anyone else. They have to be a party to the process. The proposal for development of ACJ material is intended to meet that need.

Two further questions then arise. First, whether there can be an expedited procedure whereby NAAs will become committed to accepting material without going through the full process. The WG conclusion was that, attractive as it may appear, the full procedure is an inevitable part of the multi-national and informal structure of JAA.

The second question which arises is whether, even accepting all of the above, there is scope for temporary guidance material with some different status to ACJ material. It cannot, for the reasons explained above, commit NAAs. The most it can do is put forward a position which JAA HQ on the basis of various soundings believe it likely to be acceptable.

We can see the attraction of having a vehicle for material of that sort. The problem is that its status is likely to be unclear. Experience suggests that the process may be abused. For example TGLs have been proposed which purport to amend Section 1 of a jar. It is likely to be used as an alternative to ACJ because people cannot be bothered to go through the full process. If we look at existing documents, we think it is quite inappropriate to be basing RVSM implementation in Europe on a document described as a temporary guidance leaflet which in itself supersedes an information leaflet.

The risk of loss of credibility an National Authority would run when an ACJ it had accepted be rejected by the JAA system, is believed to be quite low. Mutual recognition of certificates, licenses, approvals etc. is based on four elements including full membership and results of standardisation remaining satisfactory. It is believed that the staff of such a full member should well understand the JAR. It should be noted that this risk of loss of credibility also exist with TGLs, when they are used to test a solution.

The a-posteriori is not contradictory with FAA MIP agreement. The MIP agreement is actually more severe than the JAA system in the sense it requires for a European maintenance organisation to comply with the Section One, Section Two and the list of TGLs

ACJ 11.145

Textproposal: see under § 145.

ACJ 11.150

[AIAC Canada] First part of the last sentence should be replaced by: The appropriate JAA body is the one mentioned in paragraph 11.055(d)(1).

Response: *comment is right, however see response on comment DGAC France. Consequently § 11.150(d) has to be changed in the way as meant in this comment.*

[DGAC France] The currently proposed text does not provide any useful additional information and is not consistent with the intent of the subpart. Paragraph should be deleted.

Response: *comment is right, paragraph can be deleted.*

ACJ 11.150(b)

Comment: the first sentence does not provide any useful additional information and then should be deleted.

Response: *comment is right, sentence can be deleted.*

EDITORIAL COMMENTS

[(CAA UK] list of editorial comments)]

Response: *Comments noted and agreed.*