

[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 11

[Docket No. FAA-1999-6622; Notice No. 99-20]

RIN 2120-AG95

General Rulemaking Procedures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: FAA is issuing this proposed rule in response to President Clinton's mandate to Federal agencies to make communications with the public more understandable. FAA proposes to revise and clarify its rulemaking procedures by putting them into plain language and by removing redundant and outdated material. Rulemaking procedures are an important way for the public to interact with FAA, and it is important that these procedures be easy to understand and follow.

DATES: Send your comments on or before January 28, 2000.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh Street, SW, Washington, DC 20590-0001. You must identify the docket number FAA-1999-6622 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA has received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to <http://dms.dot.gov>. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the Nassif Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Donald Byrne, Assistant Chief Counsel, Regulations Division, AGC-200, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591; telephone: (202) 267-3073.

SUPPLEMENTARY INFORMATION:

Comments invited

Interested persons are invited to participate in the making of the proposed action by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document also are invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals in this document may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this document must include a pre-addressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. FAA-1999-6622." The postcard will be date stamped and mailed to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321-3339) or the Government Printing Office (GPO)'s electronic bulletin board service (telephone: (202) 512-1661).

Internet users may reach the FAA's web page at <http://www.faa.gov/avr/arm/nprm/nprm.htm> or the GPO's web page at <http://www.access.gpo.gov/nara> access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Communications must identify the notice number or docket number of this NPRM.

Persons interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular No. 11-2A,

Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

BACKGROUND

1. Proposed Substantive Changes

We propose to revise part 11 by eliminating redundant and outdated information that is not necessary to public participation in the rulemaking process. We also propose to remove supplementary information available on request from FAA, such as internal delegations of authority. This change will help FAA keep its procedures current because we will be able to change supplementary information that is not critical to your participation in the rulemaking process without the need to revise Part 11.

Because of the elimination of redundant material from subparts A through E, FAA will fold all its rulemaking procedures into one subpart, A. This rulemaking consolidates material on different aspects of our regulatory program into one subpart, clarifying that there is really only one basic process the public must follow to interact with our regulatory program. We will eliminate some provisions that are obsolete. These changes are explained in more detail in the following paragraphs. Finally, we will update our list of information collection clearance numbers found in current subpart F, now redesignated subpart B. New subpart B is not printed here; it will be included in the final version of part 11.

A. General Changes

FAA is proposing some general changes that will impact several different sections in the rule.

Petitions for Reconsideration of Final Rules

We have removed any reference in proposed part 11 to petitions for reconsideration of a final rule. The current rule discusses this procedure only for final rules for the designation of controlled airspace and for airworthiness directives (see current §§ 11.73 and 11.93). Actually, under both current part 11 and proposed part 11 you may ask FAA to reconsider any agency final rule by following FAA rulemaking procedures. For example, if the FAA issues a final rule accompanied by a request for comments, you may submit arguments why the final rule should not have been adopted. If we agree, we may issue another final rule repealing or revising the earlier rule.

In addition, you may file a petition for rulemaking to repeal or revise a final rule we recently adopted. If we agree with you that we should not have adopted the final rule, we may issue another final rule repealing or revising it. If you persuade us that the final rule was not reasonable in light of the record, including the comments we received, we may do this by issuing an immediate final rule to correct the problem. If you provide information that we didn't have before, we may need to preface our repeal or revision with an opportunity for others to comment.

Petitions for Reconsideration of Denied Petitions

We have created a single, simplified section to explain how to obtain reconsideration of a denial of a petition for rulemaking or exemption. It is a simplified version of the rule that currently applies to denials of exemption (§ 11.55(d)). You have to present a significant new fact and tell us why you didn't include it in your original petition. Or you have to show us how we made a significant factual error or misapplied a

law, regulation, or precedent incorrectly. If you can't do this, we won't be able to accept your petition for reconsideration.

Rules and Procedures for Airspace Designation

The procedures for designation of airspace currently in subpart D of part 11 are a variation of the other rulemaking procedures found elsewhere in part 11. As we have noted, we propose to consolidate all our rulemaking procedures in one subpart. We will continue to separately state other information specific to the process of designating airspace. For example, in new § 11.77, we have indicated what information you must provide when you petition the FAA to establish, amend, or revoke an airspace designation. This information is in addition to what you must provide with any other petition for rulemaking.

We have removed discussion of the Administrative Procedure Act for airspace actions, since it is the same as for other subparts. We also removed any reference to "orders," since we no longer use them to designate airspace. We only use regulations that we adopt using part 11 procedures. Also, we have removed references to most internal delegations. New part 11 would not specify time periods for agency action. The FAA will respond to petitions for airspace designations in a timely manner, and will provide a reasonable time for you to submit comments and to participate in any public meetings.

We have removed the reference now in § 11.65 that says an interested person is entitled to discuss or confer informally with appropriate FAA officials concerning a proposed action. This provision is contrary to DOT ex-parte policy, which prohibits non-public contacts with DOT officials once an NPRM has been issued. Where discussion of a proposal is appropriate, the FAA will hold an open public meeting.

We have removed the provisions now in § 11.67 for conducting hearings. Informal airspace meetings generally have replaced this procedure. These meetings are held prior to issuing an NPRM. We issue a notice announcing them in the Federal Register and open them to the public. At the meeting, we accept oral as well as written comments. The purpose of these meetings is to collect information from local aviation users on the impact on operations in the area of airspace changes we are considering.

Publication of Petitions for Rulemaking

We have removed any reference to the publication of summaries of petitions for rulemaking for public comment.

The FAA no longer publishes these summaries because we do an initial screening when we receive your petition. In circumstances where your petition does not meet our criteria for action, we will deny your petition without delay. In deciding whether to take action on your petition, we consider: the immediacy of the safety or security concerns you raise; their priority relative to other issues we must address; and the resources we have available to address these issues. We also may decline to handle your petition as a separate action if we are already addressing the issues you raise. For example, if we have tasked the Aviation Rulemaking Advisory Committee (ARAC) to study the general subject area of your petition, we may ask the ARAC to review and evaluate your proposed action as well.

If your petition meets these criteria for action, and we are not otherwise addressing the issues you raise, we will respond by issuing a Notice of Proposed Rulemaking (NPRM) no later than 6 months after we receive your petition. In such a case, we invite public comment on the proposed rule, rather than on your petition itself.

The FAA no longer publishes summaries of denials of petitions for rulemaking, in order to preserve resources for processing priority rulemaking actions.

Removal of Delegations

We have removed almost all the references to internal FAA delegations involving the processing of rulemaking actions. A number of these delegations in current part 11 are no longer accurate. We will publish a separate notice in the Federal Register, telling you who exercises the authority of the Administrator in rulemaking matters. Doing this by notice instead of regulation will make it easier for us to keep this information current. You can get this information from us at any time.

We have retained some references to delegations where you need to know them to participate in the rulemaking process. For example, the Director of Rulemaking accepts most petitions for rulemaking or exemption on behalf of the Administrator. Other officials accept certain other petitions. These are shown in tables in the proposed text.

Special Conditions

We have removed the discussion of special conditions now in § 11.28. The FAA issues special conditions when we find that the airworthiness standards for a proposed aircraft, engine, or propeller design do not contain adequate or appropriate safety standards, because of a novel or unusual design feature. The FAA follows the same rulemaking procedures as it does for general rules, and thus there is no need to address special condition regulations separately. FAA publishes additional information in the Federal Register notice to assist you in commenting on a proposed special condition.

Legal Citations

Current part 11 identifies some types of rulemaking by the statutory authority under which they are issued. For example, subpart D, which deals with the processing of airspace designations, refers to them as "rules and orders issued under § 307(a) of the Federal Aviation Act of 1958." In plain language, we call these simply "airspace designations." In addition, most of the legal citations in current part 11 are out of date. We have removed them since they are unnecessary to understanding the process. We will continue to include in the regulatory documents themselves legal citations to the authority under which we issue them.

Electronic Filing

The new rule makes clear that we will accept comments, petitions, requests for extension of comment periods, and other requests from the public by e-mail.

B. Description of Proposed Sections

Section 11.1: To what does this part apply? Proposed § 11.1 states that the part applies to FAA rulemaking actions covered by the Administrative Procedure Act (APA).

Section 11.3: What are the most common kinds of rulemaking actions for which FAA follows APA procedures? Proposed § 11.3 lists the most common types of rulemaking actions taken by FAA that are covered by the Administrative Procedure Act.

Section 11.5: Does FAA follow the same procedures in issuing all three types of rules? Proposed § 11.5 states that FAA follows the same general procedures for all these types of rules.

Section 11.11: How does FAA issue rules? Proposed § 11.11 lists the types of rulemaking documents that FAA issues, such as notices of proposed rulemaking and final rules, and what we put in the documents.

Section 11.13: What is an advance notice of proposed rulemaking? Proposed § 11.13 describes an advance notice of proposed rulemaking.

Section 11.15: Are there other ways FAA collects specific rulemaking recommendations before we issue an NPRM? Proposed § 11.15 describes FAA's use of the Aviation Rulemaking Advisory Committee and other rulemaking advisory committees to get advice about specific rulemakings.

Section 11.17: What is a notice of proposed rulemaking? Proposed § 11.17 describes a notice of proposed rulemaking.

Section 11.19: What is a supplemental notice of proposed rulemaking? Proposed § 11.19 describes a supplemental notice of proposed rulemaking.

Section 11.21: May FAA change its regulations without first issuing an ANPRM or NPRM? Proposed § 11.21 explains the circumstances under which FAA may adopt, amend, or repeal regulations without first issuing an ANPRM or NPRM.

Section 11.23: What is a final rule? Proposed § 11.23 describes a final rule.

Section 11.25: What is a direct final rule? Proposed § 11.25 describes a direct final rule.

Section 11.27: How does FAA process direct final rules? Proposed § 11.27 discusses FAA's publication of information on direct final rules in the Federal Register and how FAA deals with adverse comments on direct final rules.

Section 11.29: What is a final rule with request for comments? Proposed § 11.29 discusses when FAA might ask for comments on a final rule for which we did not issue an NPRM.

Section 11.31: How can I track FAA's rulemaking activities? Proposed § 11.31 discusses how the public can use the docket number and the regulation identifier number (RIN) to track FAA's rulemaking activities in the Department of Transportation's Docket Management System (DMS) and in the Federal Register.

Section 11.33: Does FAA include sensitive security information in the DMS? Proposed § 11.33 explains that FAA removes sensitive security information from public comments before putting them in the DMS.

Section 11.35: Where can I find information about an Airworthiness Directive, an airspace designation, or a petition handled in a region? Proposed § 11.35 specifies that you can get information about rulemaking actions taken in the regions by contacting the person listed in the Federal Register notice about the action.

Section 11.37: How may I participate in FAA's rulemaking process? Proposed § 11.37 explains that you may participate in FAA's rulemaking by filing comments, requesting a meeting, or filing a petition.

Written Comments

Section 11.41: Who may file comments? Proposed § 11.41 explains that anyone may file written comments about proposals made in any rulemaking document that requests public comments.

Section 11.43: What information must I put in my written comments? Proposed § 11.43 lists the information that you must include in any comments on FAA's rulemaking.

Section 11.45: Where and when do I file my comments? Proposed § 11.45 addresses the timeframes for filing comments.

Section 11.47: May I ask for more time to file my comments? Proposed § 11.47 explains how to request more time to file comments.

Public Meetings and Other Proceedings

Section 11.51: May I request that FAA hold a public meeting on a rulemaking action? Proposed § 11.51 explains how to request a public meeting on a rulemaking action.

Section 11.53: What takes place at a public meeting? Proposed § 11.53 explains the nature of a public meeting.

Petitions for Rulemaking and for Exemption

Section 11.61: May I ask FAA to add, amend, or repeal a regulation, or grant relief from the requirements of a current regulation? Proposed § 11.61 explains that you may ask FAA to adopt, amend, or repeal a regulation, or grant relief from a regulation, by filing a petition.

Section 11.63: Where and to whom do I submit my petition for rulemaking or petition for exemption? Proposed § 11.63 provides an address to which you should send your petition for rulemaking or petition for exemption. The rule would no longer discuss where to file petitions for exemption from the medical standards in part 67, since exceptions to these standards are now handled by special issuances under § 67.401.

Section 11.71: What information must I include in my petition for rulemaking?

Proposed § 11.71 lists the information you must include in your petition for rulemaking.

Section 11.73: How does FAA process petitions for rulemaking? Proposed

§ 11.73 discusses how FAA handles petitions for rulemaking, including under what circumstances FAA may dismiss your petition.

Section 11.75: Does FAA invite public comment on petitions for rulemaking?

Proposed § 11.75 states that FAA does not invite public comment on petitions for rulemaking.

Section 11.77: Is there any additional information I must include in my petition

for designating airspace? Proposed § 11.77 lists additional information you must include in a petition to designate airspace.

Section 11.81: What information must I include in my petition for an exemption?

Proposed § 11.81 lists information you must include in your petition for an exemption.

Section 11.83: Are exemptions FAA grants under this part valid outside the

United States? Proposed § 11.83 explains how FAA handles exemptions that you want to use outside the United States.

Section 11.85: Does FAA invite public comment on petitions for exemption?

Proposed § 11.85 discusses how FAA publicizes petitions.

Section 11.87: Are there circumstances under which FAA may decide not to

publish a summary of my petition for exemption? Proposed § 11.87 explains what information you must provide to FAA to convince us not to delay your petition by publishing it.

Section 11.89: How much time do I have to submit comments to FAA on a petition for exemption? Proposed § 11.89 lists the amount of time usually allowed for comments on a petition for exemption.

Section 11.91: What information does FAA publish when it grants or denies my petition for exemption? Proposed § 11.91 lists what information FAA publishes after making a decision about a petition for exemption.

Section 11.101: Can I ask FAA to reconsider my petition for rulemaking or petition for exemption if it is denied? Proposed § 11.101 explains how you can request FAA to reconsider petitions that we have denied.

Section 11.201 – OMB control numbers assigned pursuant to the Paperwork Reduction Act: The text of this section will be updated and will appear in full in the final rule.

2. Clearer Regulatory Format

Plain language helps readers find requirements quickly and understand them easily. To do that, we have reorganized and reworded the regulation using plain-language techniques not usually found in the Federal Register and the Code of Federal Regulations (CFR).

- We have used undesignated center headings to cluster related sections within subpart A.
- We have shortened sections, paragraphs, and sentences, and where possible used simple words to speed up reading and improve understanding.
- Our section headings in the form of questions help direct the readers to specific material they are interested in.

- We have used personal pronouns to reduce passive voice and draw readers into the writing.
- We have used tables to display complex information in a simple, easy-to-read format.

3. Rulemaking Analyses and Assessments

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, Regulatory Planning and Review, directs the FAA to assess both the costs and benefits of a regulatory change. We are not allowed to propose or adopt a regulation unless we make a reasoned determination that the benefits of the intended regulation justify its costs. Our assessment of this proposal indicates that its economic impact is minimal. Since its costs and benefits do not make it a "significant regulatory action" as defined in the Order, we have not prepared a "regulatory impact analysis." Similarly, we have not prepared a "regulatory evaluation," which is the written cost/benefit analysis ordinarily required for all rulemaking proposals under the DOT Regulatory Policies and Procedures. We do not need to do the latter analysis where the economic impact of a proposal is minimal.

Executive Order 13132, Federalism.

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this notice does not have federalism implications.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) directs the FAA to fit regulatory requirements to the scale of the business, organizations, and governmental jurisdictions subject to the regulation. We are required to determine whether a proposed or final action will have a "significant economic impact on a substantial number of small entities" as defined in the Act. If we find that the action will have a significant impact, we must do a "regulatory flexibility analysis."

This proposed rule clarifies and revises FAA's general rulemaking procedures to make them easier for the public to understand. Its economic impact is minimal. Therefore, we certify that this proposed action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. § 3501 - 3520) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new information collection requirements associated with part 11.

International Trade

The Office of Management and Budget directs the FAA to assess whether or not a regulatory change would affect international trade. We determined that the provisions of this proposed rule would have no impact on trade for U.S. firms doing business in foreign countries and foreign firms doing business in the United States.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. §§ 1532 - 1538) requires the FAA to assess the effects of Federal regulatory actions on state, local, and tribal governments, and on the private sector of proposed rules that contain a Federal intergovernmental or private sector mandate that exceeds \$100 million in any one year. This action does not contain such a mandate.

Cross Reference

To identify where we have relocated present regulations in the proposed rule, the following cross-reference table is provided:

Cross Reference Table		
Current part 11	Proposed part 11	Reason for change
Subpart A	Subparts A-E combined	Subparts were redundant
§ 11.1 Applicability	§§ 11.1 and 11.3	
§ 11.11 Docket	§§ 11.31 and 11.45	
§ 11.13 Delegation of authority	none	Not needed in rule, to be published separately
§ 11.15 Emergency exemptions	none	Unnecessary, applied only to "enemy attack on the United States"
§ 11.17 Direct final rule	§§ 11.25 and 11.27	
Subpart B		
§ 11.21 Scope	none	Substance included principally in proposed §§ 11.1 through 11.11,

Cross Reference Table		
Current part 11	Proposed part 11	Reason for change
§ 11.23 Initiating rulemaking procedures	none	Unnecessary language
§ 11.25 Petitions for rulemaking or exemption	§ 11.61 and following	
§ 11.27 Action on petitions for rulemaking or exemption	§ 11.61 and following	
§ 11.28 Action on special conditions	none	Not needed
§ 11.29 Notice of proposed rulemaking	§ 11.11 and following	
§ 11.31 Participation of interested persons in rulemaking procedures.	§§ 11.41 and 11.43	
§ 11.33 Additional rulemaking proceedings	§ 11.51 and following	
§ 11.35 Participation by Civil Aeronautics Board in rulemaking proceedings	None	CAB has been abolished
§ 11.37 Requests for informal appearances	None	Procedure no longer available
Subpart C		
§ 11.41 Scope	none	Delegations not needed in rule, to be published separately
§ 11.43 Processing of petitions for rulemaking or exemption from parts of this	none	Unnecessary, internal procedure

Cross Reference Table		
Current part 11	Proposed part 11	Reason for change
chapter.		
§ 11.45 Issue of notice of proposed rulemaking	none	Delegations not needed in rule, to be published separately
§ 11.47 Proceedings after notice of proposed rulemaking	Para. (a) to § 11.45 Para. (b) -- none	Internal procedures
§ 11.49 Adoption of final rules	none	Internal procedures and delegations
§ 11.51 Denial of petition for rulemaking	none	Internal procedures
§ 11.53 Grant or denial of exemption	none	Internal procedures
§ 11.55 Reconsideration of a denial or grant of exemption	§ 11.101	
Subpart D		
§ 11.61 Scope.	none	Consolidated; delegations to be published separately
§ 11.63 Filing of proposals	§ 11.63	
§ 11.65 Issue of notice of proposed rulemaking	none	Consolidated; delegations to be published separately
§ 11.67 Hearings	none	Replaced with informal meetings
§ 11.69 Adoption of rules or orders	none	Consolidated and simplified in one subpart

Cross Reference Table		
Current part 11	Proposed part 11	Reason for change
§ 11.71 Exemptions	§ 11.61 and following	
§ 11.73 Petitions for rehearing or reconsideration of rules or orders	none	Specific procedures unnecessary
Subpart E		
§ 11.81 Scope	none	Consolidated
§ 11.83 Processing of petitions for rulemaking or exemption	§ 11.61 and following	
§ 11.87 Proceedings after notice of proposed rulemaking	none	Internal procedures
§ 11.89 Adoption of final rules	none	Internal procedures
§ 11.91 Grant or denial of exemption	none	Internal procedures
§ 11.93 Petitions for reconsideration of rules	none	Specific procedures unnecessary
Subpart F	Subpart B	Updated and redesignated
§ 11.101 OMB control numbers assigned pursuant to the paperwork Reduction Act	§ 11.201	

List of Subjects in 14 CFR Part 11

Administrative practice and procedure, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Administration Aviation proposes to amend Chapter I of Title 14, Code of Federal Regulations as follows:

1. Revise part 11 to read as follows:

PART 11--GENERAL RULEMAKING PROCEDURES

Subpart A--Rulemaking Procedures

General

Sec.

11.1 To what does this part apply?

11.3 What are the most common kinds of rulemaking actions for which FAA follows APA procedures?

11.5 Does FAA follow the same procedures in issuing all three types of rules?

11.11 How does FAA issue rules?

11.13 What is an advanced notice of proposed rulemaking?

11.15 Are there other ways FAA collects specific rulemaking recommendations before we issue an NPRM?

11.17 What is a notice of proposed rulemaking?

11.19 What is a supplemental notice of proposed rulemaking?

11.21 May FAA change its regulations without first issuing an ANPRM or NPRM?

11.23 What is a final rule?

- 11.25 What is a direct final rule?
- 11.27 How does FAA process direct final rules?
- 11.29 What is a final rule with request for comments?
- 11.31 How can I track FAA's rulemaking activities?
- 11.33 Does FAA include sensitive security information in the DMS?
- 11.35 Where can I find information about an Airworthiness Directive, an airspace designation, or a petition handled in a region?
- 11.37 How may I participate in FAA's rulemaking process?

Written Comments

- 11.41 Who may file comments?
- 11.43 What information must I put in my written comments?
- 11.45 Where and when do I file my comments?
- 11.47 May I ask for more time to file my comments?

Public Meetings and Other Proceedings

- 11.51 May I request that FAA hold a public meeting on a rulemaking action?
- 11.53 What takes place at a public meeting?

Petitions for Rulemaking and Exemptions

- 11.61 May I ask FAA to adopt, amend, or appeal a regulation, or grant relief from the requirements of a current regulation?
- 11.63 Where and to whom do I submit my petition for rulemaking or petition for exemption?
- 11.71 What information must I include in my petition for rulemaking?
- 11.73 How does FAA process petitions for rulemaking?

- 11.75 Does FAA invite public comment on petitions for rulemaking?
- 11.77 Is there any additional information I must include in my petition for designating airspace?
- 11.81 What information must I include in my petition for an exemption?
- 11.83 Are exemptions FAA grants under this part valid outside the United States?
- 11.85 Does FAA invite public comment on petitions for exemption?
- 11.87 Are there circumstances in which FAA may decide not to publish a summary of my petition for exemption?
- 11.89 How much time do I have to submit comments to FAA on a petition for exemption?
- 11.91 What information does FAA publish when it grants or denies my petition for exemption?
- 11.101 Can I ask FAA to reconsider my petition for rulemaking or petition for exemption if it is denied?

Subpart B--Paperwork Reduction Act Control Numbers

11.201 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

Authority: 49 U.S.C. 106 (g), 40101, 40103, 40105, 40109, 40113, 44110, 44502, 44701-44702, 44711, and 46102.

Subpart A--Rulemaking Procedures

General

§ 11.1 To what does this part apply?

This part applies to the issuance, amendment, and repeal of any regulation for which FAA ("we") follows public rulemaking procedures under the Administrative Procedure Act ("APA") (5 U.S.C. 553).

§ 11.3 What are the most common kinds of rulemaking actions for which FAA follows APA procedures?

- (a) FAA follows APA procedures for three major types of rules.
 - (1) Rules found in the Code of Federal Regulations;
 - (2) Airworthiness directives issued under part 39 of this chapter; and
 - (3) Airspace Designations issued under various parts of this chapter.
- (b) You will also find procedures in this part to petition FAA for an exemption from a current regulation. These procedures are modeled on the public rulemaking procedures of the APA.

§ 11.5 Does FAA follow the same procedures in issuing all three types of rules?

Yes. In general, FAA follows the same procedures for all three rule types. There are some differences as to which FAA official has authority to issue each type, and where you send petitions for the FAA to adopt, amend, or repeal each type. Assume that the procedures in this subpart apply to all three types, except where we specify otherwise.

§ 11.11 How does FAA issue rules?

- (a) FAA uses APA rulemaking procedures to adopt, amend, or repeal regulations. To propose or adopt changes to a regulation, FAA may issue one or more of

the following documents. We publish these rulemaking documents in the Federal Register unless we name and personally serve a copy of a rule on every person subject to it.

- (1) An advance notice of proposed rulemaking (ANPRM).
- (2) A notice of proposed rulemaking (NPRM).
- (3) A supplemental notice of proposed rulemaking.
- (4) A final rule.
- (5) A direct final rule.
- (6) A final rule with request for comments.

(b) Each of the rulemaking documents in paragraph (a) of this section generally contains the following information:

- (1) The topic involved in the rulemaking document.
- (2) FAA's legal authority for issuing the rulemaking document.
- (3) How interested persons may participate in the rulemaking proceeding (for example, by filing written comments or making oral presentations).
- (4) Whom to call if you have questions about the rulemaking document.
- (5) The date, time, and place of any public meetings FAA will hold to discuss the rulemaking document.
- (6) The docket number and regulation identifier number (RIN) for the rulemaking proceeding.

§ 11.13 What is an advance notice of proposed rulemaking?

An advance notice of proposed rulemaking (ANPRM) tells the public that FAA is considering an area for rulemaking and requests written comments on the appropriate scope of the rulemaking or on specific topics. An advance notice of proposed rulemaking may or may not include the text of potential changes to a regulation.

§ 11.15 Are there other ways FAA collects specific rulemaking recommendations before we issue an NPRM?

Yes. The FAA obtains advice and recommendations from rulemaking advisory committees. The Aviation Rulemaking Advisory Committee (ARAC) is a formal standing committee comprised of representatives of aviation associations and industry. In conducting its activities, ARAC complies with the Federal Advisory Committee Act and the direction of the FAA. We task ARAC with providing us with recommended rulemaking actions dealing with specific areas and problems. If we accept an ARAC recommendation to change an FAA rule, we ordinarily publish an NPRM using the procedures in this part. The FAA may establish other rulemaking advisory committees as needed to focus on specific issues for a limited period of time.

§ 11.17 What is a notice of proposed rulemaking?

A notice of proposed rulemaking (NPRM) proposes FAA's specific regulatory changes for public comment and contains supporting information. It includes proposed regulatory text.

§ 11.19 What is a supplemental notice of proposed rulemaking?

On occasion, FAA may decide that it needs more information on an issue, or that we should take a different approach than we proposed. Also, we may want to follow a

commenter's suggestion that goes beyond the scope of the original proposed rule. In these cases, FAA may issue a supplemental notice to give the public an opportunity to comment further or to give us more information.

§ 11.21 May FAA change its regulations without first issuing an ANPRM or NPRM?

FAA may adopt, amend, or repeal regulations without first issuing an ANPRM or NPRM in the following situations:

(a) We may issue a final rule without first requesting public comment if, for good cause, we find that a notice of proposed rulemaking is impracticable, unnecessary, or contrary to the public interest. We place that finding and a brief statement of the reasons for it in the final rule. FAA calls these rules "immediately adopted" rules. For example, we may issue such a final rule in response to a safety emergency.

(b) If an NPRM would be unnecessary because we do not expect to receive adverse comment, we may issue a direct final rule.

§ 11.23 What is a final rule?

A final rule sets out new or revised requirements and their effective date. It also may remove requirements. When preceded by an NPRM, a final rule will also identify significant substantive issues raised by commenters in response to the NPRM and give the agency's response.

§ 11.25 What is a direct final rule?

A direct final rule is a final rule that will take effect on a specified date unless FAA receives an adverse comment or notice of intent to file an adverse comment within the comment period -- generally 60 days after the direct final rule is published in the

Federal Register. An adverse comment explains why a rule would be inappropriate, or would be ineffective or unacceptable without a change. It may challenge the rule's underlying premise or approach. Under the direct final rule process, we do not consider the following types of comments to be adverse:

(a) A comment recommending another rule change, in addition to the change in the direct final rule at issue. We consider the comment adverse, however, if the commenter states why the direct final rule would be ineffective without the change.

(b) A frivolous or insubstantial comment.

§ 11.27 How does FAA process direct final rules?

(a) We will publish a confirmation document in the Federal Register, generally within 15 days after the comment period closes, if we have not received an adverse comment or notice of intent to file an adverse comment. The confirmation document tells the public the effective date of the rule.

(b) If we receive an adverse comment or notice of intent to file an adverse comment, we will advise the public by publishing a document in the Federal Register before the effective date of the direct final rule. This document will withdraw the direct final rule in whole or in part. If we withdraw a direct final rule because of an adverse comment, we may incorporate the commenter's recommendation into another direct final rule or may publish a notice of proposed rulemaking.

§ 11.29 What is a final rule with request for comments?

The FAA usually issues a final rule with request for comments when we issue an immediately adopted final rule. We invite comments on an immediately adopted final

rule only if we think that we will receive useful information. We would not invite comments, for example, when we are just making an editorial clarification or correction.

§ 11.31 How can I track FAA's rulemaking activities?

The following identifying numbers allow you to track FAA's rulemaking activities:

(a) Docket number. We assign an identifying number, called a docket number, to each rulemaking proceeding. Each rulemaking document that FAA issues in a particular rulemaking proceeding will display the same docket number. This number allows you to do the following:

(1) Associate related documents that appear in the Federal Register.

(2) Search DOT's Docket Management System (DMS) for information on some rulemaking proceedings -- including notices of proposed rulemaking, public comments, appeals, records of additional rulemaking proceedings and final rules. The DMS does not contain information on Airworthiness Directives or Airspace Actions. There are two ways you can search the DMS:

(i) Visit the public docket room and review and copy any docketed materials during regular business hours. The DOT Docket Management System is located at the U.S. Department of Transportation, Plaza Level 401, 400 7th Street, SW, Washington, DC 20590-0001.

(ii) View and download docketed materials through the Internet at <http://dms.dot.gov>.

(b) Regulation identifier number. DOT publishes a semiannual agenda of all current and projected DOT rulemakings, reviews of existing regulations, and completed

actions. This semiannual agenda appears in the Unified Agenda of Federal Regulations which is published in the Federal Register in April and October of each year. The semiannual agenda tells the public about DOT's--including FAA's--regulatory activities. DOT assigns a regulation identifier number (RIN) to each individual rulemaking proceeding in the semiannual agenda. This number appears on all rulemaking documents published in the Federal Register and makes it easy for you to track those rulemaking proceedings in both the Federal Register and the semiannual regulatory agenda itself.

§ 11.33 Does FAA include sensitive security information in the DMS?

No. For proposed rule changes involving civil aviation security, FAA reviews comments as we receive them. If we find that a comment contains sensitive security information, we remove that information before placing the comment in the docket.

§ 11.35 Where can I find information about an Airworthiness Directive, an airspace designation, or a petition handled in a region?

To get information about rulemaking actions undertaken in FAA's regions, contact the person listed under "FOR FURTHER INFORMATION CONTACT" in the Federal Register document about the action.

§ 11.37 How may I participate in FAA's rulemaking process?

You may participate in FAA's rulemaking process by doing any of the following:

(a) File written comments on any rulemaking document that asks for comments, including an advance notice of proposed rulemaking, notice of proposed rulemaking, direct final rule, or a final rule with request for comments.

(b) Ask that we hold a public meeting on any rulemaking, and participate in any public meeting that we hold.

(c) File a petition for rulemaking that asks us to adopt, amend, or repeal a regulation.

(d) File an appeal that asks us to reexamine our decision to issue all or part of a final rule or direct final rule.

Written Comments

§ 11.41 Who may file comments?

Anyone may file written comments about proposals and final rules that request public comments.

§ 11.43 What information must I put in my written comments?

Your comments must be in English and must contain the following:

(a) The docket number of the rulemaking document you are commenting on, clearly set out at the beginning of your comments.

(b) Your name, mailing address, and, if you wish, other contact information, such as a fax number, telephone number, or e-mail address.

(c) Information, views, or arguments that follow the instructions for participation that appear in the rulemaking document on which you are commenting.

(d) All available material that is relevant to any statement of fact in your comments.

(e) The document title and page number of any material that you reference in your comments.

§ 11.45 Where and when do I file my comments?

(a) Send your comments to the location specified in the rulemaking document on which you are commenting. If you are asked to send your comments to the Docket Management System, you may send them in either of the following ways:

(1) By mail to:

U.S. Department of Transportation
Docket Management System
400 7th Street, SW.
Plaza Level 401
Washington, DC 20591

(2) Through the Internet to <http://dms.dot.gov>.

(b) Make sure that your comments reach us by the deadline set out in the rulemaking document on which you are commenting. We will consider late-filed comments to the extent possible only if they do not significantly delay the rulemaking process.

(c) We may reject your paper or electronic comments if they are frivolous, abusive, or repetitious. We may reject comments you file electronically if you do not follow the electronic filing instructions at the website.

§ 11.47 May I ask for more time to file my comments?

Yes. If FAA grants your request for more time to file comments, we grant all persons the same amount of time. We will notify the public of the extension by a document in Federal Register. If FAA denies your request, we will notify you of the denial. To ask for more time, you must file a written or electronic request for extension at least ten days before the end of the comment period. Your letter or message must:

(a) Show the docket number of the rule at the top of the first page.

(b) Begin by stating that you are requesting an extension of the comment period.

(c) Show that you have good cause for the extension and that an extension is in the public interest.

(d) Send your request to the address specified for comments in the rulemaking document that you wish to comment on.

Public Meetings And Other Proceedings

§ 11.51 May I request that FAA hold a public meeting on a rulemaking action?

Yes. You may request that we hold a public meeting. FAA holds a public meeting when we think that we need more than written comments to make a fully informed decision. You should submit your request in writing to the address specified for comments in the rulemaking document that you wish to comment on. Specify at the top of your letter or message that you are requesting that the agency hold a public meeting. Submit your request no later than 30 days after our rulemaking notice. If we find that we have good cause for a meeting we will notify you and publish a notice of the meeting in the Federal Register.

§ 11.53 What takes place at a public meeting?

A public meeting is a non-adversarial, fact-finding proceeding conducted by an FAA representative. Public meetings are announced in the Federal Register. We invite interested persons to attend and to present their views to the agency on specific issues. There are no formal pleadings and no adverse parties, and any regulation issued afterward is not necessarily based exclusively on the record of the meeting. Sections 556 and 557

of the Administrative Procedure Act (5 U.S.C. 556 and 557) do not apply to public meetings under this part.

Petitions for Rulemaking and for Exemption

§ 11.61 May I ask FAA to adopt, amend, or repeal a regulation, or grant relief from the requirements of a current regulation?

Yes.

If you want...	Then you must submit...
(a) to adopt, amend, or repeal a regulation,	a petition for rulemaking.
(b) relief from the requirements of a current regulation,	a petition for exemption.

§ 11.63 Where and to whom do I submit my petition for rulemaking or petition for exemption?

(a) For paper submissions, send one original signed and two copies of your petition for rulemaking or exemption to the following postal address, except as provided in paragraph (c) of this section for petitions pertaining to parts 39 and 139 of this chapter, or airspace designations:

Federal Aviation Administration
Office of Rulemaking (ARM-1)
800 Independence Avenue, SW
Washington, DC 20591

(b) For electronic submissions, send one original to the following electronic address, except as provided in paragraph (c) of this section for petitions pertaining to parts 39 and 139 of this chapter, or airspace designations:

Send your...	to...
(1) petition for rulemaking	To Be Announced
(2) petition for exemption	To Be Announced

(c) For petitions pertaining to parts 39 and 139 of this chapter, or airspace designations submit one original signed and two copies of your petition for rulemaking or petition for exemption to the following offices:

Send your petitions concerning...	To the...
(1) Part 39: Airworthiness Directives	Certification Directorate having airworthiness responsibility for the product involved.
(2) Part 139: Certification of Airports	appropriate FAA airport field office in whose area the petitioner proposes to establish or has established its airport.
(3) Class D or E airspace designation	manager of the Air Traffic Division in the FAA region involved.
(4) any other airspace designation	Associate Administrator for Air Traffic (ATS-1) Federal Aviation Administration 800 Independence Avenue, SW Washington, DC 20591

§ 11.71 What information must I include in my petition for rulemaking?

(a) You must include the following information in your petition for rulemaking:

(1) Your name and mailing address and, if you wish, other contact information such as a fax number, telephone number, or e-mail address.

(2) An explanation of your proposed action and its purpose.

(3) The language you propose for a new or amended rule, or the language you would remove from a current rule.

(4) An explanation of why your proposed action would be in the public interest.

(5) Information and arguments that support your proposed action, including relevant technical and scientific data available to you.

(6) Any specific facts or circumstances that support or demonstrate the need for the action you propose.

(b) In the process of considering your petition, we may ask that you provide information or data available to you about the following:

(1) The costs and benefits of your proposed action to society in general, and identifiable groups within society in particular.

(2) The regulatory burden of your proposed action on small businesses, small organizations, small governmental jurisdictions, and Indian tribes.

(3) The recordkeeping and reporting burdens of your proposed action and whom they would affect.

(4) The effect of your proposed action on the quality of the natural and social environments.

§ 11.73 How does FAA process petitions for rulemaking?

The FAA may respond to your petition for rulemaking in one of the following ways:

(a) If we determine that your petition justifies our taking the action you suggest, we may issue an NPRM or ANPRM. We will do so no later than 6 months after the date we receive your petition. In making our decision, we consider:

- (1) The immediacy of the safety or security concerns you raise;
- (2) The priority of other issues the FAA must deal with; and
- (3) The resources we have available to address these issues.

(b) We may dismiss your petition for rulemaking in the following circumstances:

(1) If we already have issued an ANPRM or NPRM on the subject matter of your petition, we will consider your arguments for a rule change as a comment in connection with the rulemaking proceeding. We will not treat your petition as a separate action.

(2) If we already have begun a rulemaking project in the subject area of your petition, we will consider your comments and arguments for a rule change as part of that project. We will not treat your petition as a separate action.

(3) If we have tasked the Aviation Rulemaking Advisory Committee (ARAC) to study the general subject area of your petition, we may ask the ARAC to

review and evaluate your proposed action. We will not treat your petition as a separate action.

(4) If we determine that the issues you identify in your petition may have merit but do not address an immediate safety concern or cannot be addressed because of other priorities and resource constraints, we may dismiss your petition.

§ 11.75 Does FAA invite public comment on petitions for rulemaking?

Generally, FAA does not invite public comment on petitions for rulemaking.

§ 11.77 Is there any additional information I must include in my petition for designating airspace?

In petitions asking FAA to establish, amend, or repeal a designation of airspace, including special use airspace, you must include all the information specified by § 11.71 and also:

(a) The location and a description of the airspace you want assigned or designated;

(b) A complete description of the activity or use to be made of that airspace, including a detailed description of the type, volume, duration, time, and place of the operations to be conducted in the area;

(c) A description of the air navigation, air traffic control, surveillance, and communication facilities available and to be provided if we grant the designation; and

(d) The name and location of the agency, office, facility, or person who would have authority to permit the use of the airspace when it was not in use for the purpose to which you want it assigned.

§ 11.81 What information must I include in my petition for an exemption?

You must include the following information in your petition for an exemption.

- (a) Your name and mailing address and, if you wish, other contact information such as a fax number, telephone number, or e-mail address.
- (b) The specific section or sections of 14 CFR from which you seek an exemption.
- (c) The extent of relief you seek, and the reason you seek the relief.
- (d) The reasons why granting your request would be in the public interest; that is, how it would benefit the public as a whole.
- (e) The reasons why granting the exemption would not adversely affect safety, or how the exemption would provide a level of safety at least equal to that provided by the rule from which you seek the exemption.
- (f) Any additional information, views or arguments available to support your request, and
- (g) A summary we can publish in the Federal Register, stating:
 - (1) The rule from which you seek the exemption; and
 - (2) A brief description of the nature of the exemption you seek.
- (h) Whether you want to exercise the privileges of your exemption outside the United States.

§ 11.83 Are exemptions FAA grants under this part valid outside the United States?

No. Exemptions FAA issues under this part normally do not apply outside the United States. If you want to be able to use your exemption outside the United States, you must request this when you petition for relief. We will verify whether operating

under the exemption would be in compliance with the standards of the International Civil Aviation Organization (ICAO). If it would not, but we still believe it would be in the public interest to allow you to do so, we will file a difference with ICAO.

§ 11.85 Does FAA invite public comment on petitions for exemption?

Yes. FAA publishes information about petitions for exemption in the Federal Register. The information includes:

- (a) The docket number of the petition;
- (b) The citation to the rule or rules from which the petitioner requested relief;
- (c) The name of the petitioner;
- (d) The petitioner's summary of the action requested and the reasons for requesting it; and
- (e) A request for comments to assist FAA in evaluating the petition.

§ 11.87 Are there circumstances in which FAA may decide not to publish a summary of my petition for exemption?

The FAA may not publish a summary of your petition for exemption and request comments if you present or we find good cause why we should not delay action on your petition. The factors we consider in deciding not to request comment include:

- (a) Whether granting your petition would set a precedent.
- (b) Whether the relief requested is identical to exemptions granted previously.
- (c) Whether our delaying action on your petition would affect you adversely.
- (d) Whether you filed your petition in a timely manner.

§ 11.89 How much time do I have to submit comments to FAA on a petition for exemption?

The FAA states the specific time allowed for comments in the Federal Register notice about the petition. We usually allow 20 days to comment on a petition for exemption.

§ 11.91 What information does FAA publish when it grants or denies my petition for exemption?

When FAA grants or denies your petition for exemption, we publish a summary in the Federal Register that includes:

- (a) The docket number of your petition;
- (b) Your name;
- (c) The citation to the rules you wanted to change, or from which you requested relief;
- (d) A brief description of the general nature of the change or relief requested;
- (e) Whether FAA granted or denied the request;
- (f) The date of FAA's decision; and
- (g) An exemption number.

§ 11.101 Can I ask FAA to reconsider my petition for rulemaking or petition for exemption if it is denied?

Yes. You may petition FAA to reconsider your petition denial. You must submit your request to the address to which you sent your original petition, and FAA must receive it within 60 days after we issued the denial. For us to accept your petition, show the following:

(a) That you have a significant additional fact and why you did not present it in your original petition;

(b) That we made an important factual error in our denial of your original petition; or

(c) That we did not correctly interpret a law, regulation, or precedent.

Subpart B--Paperwork Reduction Act Control Numbers

§ 11.201 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

[NOTE: The text of this section will be updated and will appear in full in the final rule]

Issued in Washington, DC on December 8, 1999.

/s/

Jane F. Garvey

Administrator