

**Title 14—Aeronautics and Space**

**CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION**

[Docket No. 18142; Amdt. No. 11-16]

**PART 11—GENERAL RULEMAKING PROCEDURES**

**Publication of Petitions for Rulemaking and for Exemptions in the Federal Register**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment prescribes procedures for the publication in the FEDERAL REGISTER, in each appropriate case, of (1) petitions, or summaries of petitions, for rulemaking or exemptions; (2) denials of petitions for rulemaking, and grants or denials of petitions for exemptions. The amendment enhances the public's ability to comment on any published petition, or summary of a petition. Public participation before the initiation of rulemaking procedures and in the exemption process, is expected to improve the quality of administrative decision making. Further, the publication of denials of petitions for rulemaking and grants or denials of petitions for exemptions should increase public awareness of agency actions. As a result, this amendment furthers the intent of Executive Order 12044. This amendment is not applicable to rules concerning airspace assignment and use and to petitions for medical exemptions.

**EFFECTIVE DATE:** March 20, 1979.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

This amendment is based on a Notice of Proposed Rulemaking (Notice No. 78-10) published in the FEDERAL REGISTER on July 24, 1978 (43 FR 3936). That Notice invited comment by all interested persons. All persons have been afforded an opportunity to participate in the making of this amendment, and due consideration has been given to all matters presented.

This amendment is part of the FAA's continuing effort to expedite its rulemaking and exemption programs and to make them more responsive to the public. This amendment increases early public participation in the agency's rulemaking process and enhances public awareness of agency actions.

**DISCUSSION OF COMMENTS**

The FAA received twenty comments from members of the general public, aviation industry, organizations representing consumer groups, and organizations representing pilots and flight attendants. The majority of the comments received were on the overall rule. These comments will be discussed first with a discussion of comments received on specific sections of the amendment to follow.

Those in support of the proposal and their comments were the following:

Avco Lycoming Williamsport Division (Avco) states that they were in "full agreement" with the NPRM if it will facilitate FAA action. As to the publication of summaries, they stated that this "will fill a current gap in public information."

The County of Los Angeles Department of Consumer Affairs states "with regular publication and invitations to comment, the public will be provided with improved opportunity to express its thoughts \* \* \*"

The Association of Flight Attendants (AFA) states that the FAA "is to be congratulated for its efforts to open its rulemaking procedure to the public."

The Air Line Pilots Association states that it concurs with the basic intent of the NPRM which is in keeping with the Administration's policies to increase public participation in the regulatory process.

The Town-Village Aircraft Safety & Noise Abatement Committee (Town-Village Committee) stated "it is gratifying to see that steps are being considered to let the public become aware of change at the beginning and not after it is too late to alter decisions."

Both the Council on Environmental Alternatives, Inc., and the Independent Federation of flight Attendants both "strongly" supported the proposal. Letters supporting the proposal were also received from New York State Department of Transportation (NYDOT), Aircraft Owners and Pilots Association (AOPA), Flight Engineers' International Association, Independent Union of Flight Attendants (IUFA) and Mr. Jay Lewin.

Those opposed to the proposal were the following:

M. Richard Berryman states that the proposal concerning exemptions would have the effect of interfering with the leasing of U.S.-registered aircraft to foreign carriers which would impede the optimum utilization of U.S. aircraft, detract from U.S. trade, and adversely impact the U.S. balance of payments.

Cathay Pacific Airways Limited (Cathay) states that as a result of the proposal, the FAA's existing timetable for processing exemptions would be lengthened which would lead to a severe reduction in the lease of U.S.-registered transport aircraft from U.S. sources. Itavia Airlines objected for a similar reason.

The New Hampshire Aeronautics Commission states that it is not in favor of any further enlargement of the FEDERAL REGISTER.

The Air Transport Association (ATA) states that the proposal is not adequately justified, would provide no significant improvement to the existing rulemaking process, would needlessly complicate the process for ob-

taining exemptions, and that it would cause additional delays to the current procedures.

The Aerospace Industries Association of America (AIA) states the information made available to the public is unlikely to provide a response from the public that will contribute to reasonable and objective rulemaking and exemptions and will have an adverse effect upon the exemption processing time.

In discussing these proposals, it must be noted that under current Part 11, individuals can submit comments on petitions for rulemaking and exemptions (14 CFR 11.31). Comments received are reviewed in connection with the disposition of the petition. Although the FAA has not received a substantial number of comments on petitions, it has been our experience that analysis of the comments received has not delayed consideration of these petitions.

The effect of this amendment, therefore, would not be to create a new comment procedure but to expand it so that all interested parties are notified of petitions pending before the agency and are given the opportunity to submit comments on petitions for rulemaking or exemption.

Section 1 of Executive Order 12044 (March 23, 1978) states that "regulations shall be developed through a process which ensures that . . . opportunity exists for early participation and comment by other Federal agencies, State and local governments, business, organizations and individual members of the public."

The FAA believes that this amendment is consistent with the President's directive. The number of comments received in support of this proposal is evidence that the public will submit comments under the new procedures and does want to participate in the development of agency regulations and exemptions. In addition, this early public and industry participation will assist the FAA in meeting other objectives contained in Executive Order 12044 including consideration and analysis of meaningful regulatory alternatives.

The FAA believes that the benefits to the public and the agency as a result of this increased participation in the agency's rule-making process far outweigh the additional material that will be published in the FEDERAL REGISTER or the fact that processing time for certain petitions might be increased. The FAA further believes that this amendment will result in a lessening of the time required to process many petitions as a result of increased public awareness of the type of exemptions granted by the agency and of the information required to be submitted in support of those peti-

tions. The cost and time involved in the submission of petitions by the public should be lessened by making readily available all petitions previously denied or granted. This should further result in fewer petitions submitted which are identical to ones previously denied. In addition, the amount of time spent by agency officials in assisting petitioners in the submission of documentation should also be lessened. As a result of this and since the quality of petitions submitted to the agency should be improved, the FAA believes that this amendment will accelerate the decisionmaking process involved in the review of petitions.

The FAA is concerned by the amount of time expended on processing petitions. Petitions must be submitted in accordance with the requirements of § 11.25(b)(1) which requires that petitions "be submitted at least 120 days before the proposed effective date of the exemption." The FAA will closely monitor these procedures to ensure that delays do not develop as a result of these new procedures. If necessary, adjustments will be made to eliminate any problems encountered.

It must be emphasized that submittal of all information required by these procedures by petitioners will assist the FAA in the handling of petitions in a timely manner. Failure to submit all required information, particularly summaries as required by § 11.25(c) and (d), will increase FAA processing time and delay publication.

#### SPECIFIC COMMENTS

##### AVAILABILITY OF INFORMATION

The Town-Village Committee suggests that since many individuals do not receive the Federal Register, then notices should be mailed to individuals on a mailing list. The FAA does have a Notice of Proposed Rulemaking (NPRM) Distribution system in which members of the public can obtain copies of specific NPRMs or to receive copies of NPRMs relating to a specific FAR Part. Persons interested in obtaining copies of NPRMs in accordance with these procedures should contact:

Federal Aviation Administration, Office of Public Affairs, Attn.: Public Information Center, APA-440, 800 Independence Avenue, SW., Washington, D.C. 20591.

The FAA is reviewing the possibility of including distribution of information submitted to the FEDERAL REGISTER pursuant to this amendment in a similar manner.

AFA suggests that a summary of rulemaking actions maintained in the Offices of the Regional Counsel for each region should be maintained in the Office of the Chief Counsel. The Office of Chief Counsel does maintain dockets for regional actions, however,

these actions will not be included in summaries maintained under this amendment. As a result of the number of actions handled by the regions, summarizing them might create an undue administrative burden on the agency. The FAA will reexamine this decision based upon experience with the operation of this amendment.

#### PROPOSED EFFECTIVE DATE

AFA suggests that since petitions for exemptions are submitted without a proposed effective date, it is difficult for interested parties to know when their comments must be submitted. Therefore, they suggest that § 11.25(b) should clearly specify that a proposed effective date of the exemption is required. Under new § 11.27(c), twenty days will be allowed for public comment. Final action will not be taken until the comment period has been completed. Thus, the public will know the specific date by which their comments must be submitted.

#### COMMENT PERIOD

AFA suggests that subsections (b) and (c) of Section 11.27 should be amended to state that summaries will be published within 7 days after receipt. While the FAA will make every effort to publish the summaries when received, priorities and staffing limitations may prevent publication of these summaries immediately. In addition, FAA documents are only published twice a week as a result of FEDERAL REGISTER requirements. Therefore, the FAA believes that requiring publication of these summaries within a certain time frame would create an undue administrative burden on the agency.

Section 11.27(c) states that 20 days will be allowed for public comment after publication of a petition for exemption. The IUPA states that "as NPRMs will be allowed 60 days, so should the petitions for exemptions." NYDOT suggests that 30 days rather than 20 days should be allowed for public comment petitions for exemptions. In determining the time period allowed for the submission of comments, the need to provide adequate time for public response must be balanced against the continued handling of petitions in a timely manner. The FAA believes that a 20 day comment period will enable the agency to meet both of these objectives. In this connection, it must be noted that § 11.47(a) states that comments submitted after the closing date "are considered so far as possible without incurring expense or delay."

ACAP recommended in its comments that the proposal be modified to state that the agency has 120 days after the close of the initial comment period to initiate rulemaking or else deny the petition. They state that "by acting in

this time frame, the Administrator can assure the petitioner and the public at large that it is moving swiftly on the resolution of important safety questions." Although the agency does respond to most petitions for rulemaking within this time frame, the response to a particular petition is dependent upon regulatory priorities within the agency (many involving safety issues), staffing limitations, and the complexity of the issues raised. Since these factors vary and to a large extent are not under the agency's control, a time limitation such as the one proposed by ACAP would not be beneficial and in fact would in many cases result in the premature denial of petitions.

The agency is aware, however, that as a result of these priorities agency action on a particular petition is often delayed without the petitioner having knowledge of its current status. The FAA does believe that a person who has submitted a petition for rulemaking should be kept apprised as to where it is in the regulatory process. Therefore, a paragraph (k) is added to § 11.27 which will require that a petitioner be advised of the status of a petition for rulemaking 120 days after it is published in the FEDERAL REGISTER and every 120 days thereafter until it is denied or issued as a notice of proposed rulemaking.

#### CONTENT OF SUMMARY

The AFA suggests that the following information be contained in the published summary:

1. If the Administrator determines to reduce the public comment period, deviations should be published in the FEDERAL REGISTER as should the basis of the Administrator's determination.

2. The basis upon which the disposition was made and the reasons why contrary comments submitted to the FAA were rejected.

3. FAA's findings on each safety issue to be stated with the justification for those findings.

As to the suggestion that deviations to the length of the public comment period be published, if a period other than stated in the regulation is utilized, that information will be included in the summary. The purpose of the publication of the summaries is to keep the public advised as to FAA rulemaking activities. The summary is not intended to be a complete synopsis of agency documents. Instead, it is intended that parties interested in a particular petition for exemption or rulemaking will write to the FAA or go to the FAA docket section to obtain a copy of the document which interests them. Therefore, it is not necessary to publish the basis upon which the disposition was made or why certain public comments were rejected since

that information will be contained in the final disposition.

#### DOCUMENTS TO BE PUBLISHED

AFA suggests that "emergency exemptions" be published as required by § 11.27(e), (f), (g) and (h). They state that publication, although after the fact, would inform the public of the FAA's actions in emergency situations. The FAA concurs. The provisions of § 11.27(f), (g), and (h) will apply to emergency actions.

AFA suggests that petitions for rulemaking and exemptions involving Airworthiness Directives and those involving Part 139 should be subject to the same publication and comment requirements as are other petitions. ALPA states that exemptions from the requirements of Part 139 and deviations allowed by the Administrator from the provisions of Part 121 "should be made subject to the formal processing," since they raise questions concerning such matters as the adequacy of the crash, fire and rescue status at airports, and operating requirements such as survival equipment aboard aircraft.

Exemptions processed under Part 139 and exceptions to airworthiness directives are processed by FAA regional offices and basically concern local situations which are of limited interest to the general public. To subject these regional actions to the publication requirements of § 11.27(c) would create an undue administrative delay which would slow down the regulatory process. After further review, however, the FAA agrees that exemptions granted or denied under Part 139 or airworthiness directives should be published in accordance with § 11.27 (f) and (g). Accordingly, § 11.27 (i) and (j) are amended to require publication of these summaries.

As to ALPA's suggestion that regulatory deviations be included in the exemption process, the FAA does not believe that deviations are analogous to the regulatory actions included in this amendment. Deviation authority is contained in specific regulations. The public was given the opportunity to comment on the deviation authority when the regulation in which it was contained was promulgated. As a result of this and since deviations are granted at the local level primarily for specific factual situations, the FAA does not believe that they should be included within the publication requirements of this amendment.

The FAA does agree that deviation requests should be documented and available to the public. Therefore, the FAA is instituting a new procedure whereby deviation requests submitted by a carrier will be maintained in a docket by the FAA certificate holding office having jurisdiction over the car-

rier's operations. Individuals wishing to examine a particular docket should contact the certificate holding office in order to make arrangements to review the docket.

The NPRM specifically solicited comments on the usefulness of publishing medical exemptions from Part 67. The only comments received on this issue were from NYDOT and AOPA. NYDOT stated that they did not see any value in publishing summaries of FAA actions on medical exemptions. AOPA stated that if action is taken to insure that the published exemptions do not violate the airman's privacy, then they feel that publication of these exemptions will be particularly helpful. As a result of the large number of these petitions processed monthly (75-100), the FAA does not believe that it would be beneficial to publish summaries of agency action on medical exemptions at this time. The FAA will reexamine this decision after experience is gained with this amendment.

Several commenters have expressed the view that the proposed procedures might interfere with the leasing of U.S.-registered aircraft to foreign carriers. They state that timely processing of these petitions for exemption is essential to insure optimum utilization of U.S. aircraft, develop U.S. trade, improve relations with foreign governments, and stabilize U.S. balance of payments. These commenters state that in order to complete such a lease agreement, it is often necessary to obtain exemptions from various sections of the Federal Aviation Regulations relating to issuance of U.S. airman certificates, maintenance requirements, and minimum equipment lists. They further state that expeditious handling of a petition for exemption in these situations is essential before the lease agreement can be completed.

As previously stated, the FAA believes that these procedures will not delay the agency's exemption process. In this connection, it must be noted that a petitioner seeking expedited handling of a petition for exemption is obligated under § 11.25(b)(1) to submit the petition at least 120 days before the proposed effective date of the exemption unless good cause is shown. The FAA does agree, however, that in certain circumstances, such as in foreign lease arrangements, a one or two day period may be critical to the consummation of the lease. In a situation where a petitioner has met the obligation to show why the petition is not submitted 120 days before the proposed effective date and where any delay might be detrimental, the FAA believes the public comment procedures of § 11.27(c) should not apply. A situation in which detriment to the pe-

tioner is shown would fall within the "good cause" provision of § 11.27(j)(3).

In order to maximize public involvement in the exemption process, however, the types of petitions to which this exception is applicable will be strictly limited. Section 11.27(j)(3) is amended to set forth these limitations. The factors considered in this "good cause" determination are (1) whether the relief sought is routine and similar to other exemptions issued in the past or would set a precedent; (2) whether the time required for publication would be detrimental to the petitioner, and (3) whether the petitioner has filed the petition in a timely manner. It must be emphasized that the burden to show that "good cause" exists under § 11.27(j)(3) is on the petitioner. The petitioner must present sufficient information in the petition, so that a determination under this section can be made.

Although in these cases, a summary of the petition for exemption will not be published in accordance with § 11.27(c), a summary of a grant of exemption (§ 11.27(e)) or a denial of exemption (§ 11.27(g)) will be published. In this connection, it must also be noted that under new § 11.55 (a) and (b), effective November 9, 1978 (43 FR 52203) there are procedures for reconsideration of denials or grants of petitions for exemption. Therefore, the public will have an opportunity to submit their views if they contest the grant of an exemption and submit a petition for reconsideration.

#### VI. REVIEW OF COMMENTS

ACAP states that proposed § 11.27(g) is broadly written and could be interpreted as permitting the Administrator to deny a petition solely on the basis of adverse initial reaction during the comments phase. Under this section, the agency is required to make a determination as to whether the petition justifies the relief requested. This determination must satisfy judicial requirements. Therefore, the FAA does not believe that this section need be amended.

#### ADOPTION OF AMENDMENT

Accordingly, the Federal Aviation Administration amends Part 11 of the Federal Aviation Regulations (14 CFR Part 11) as follows:

1. By revising the first sentence of § 11.11 to read as follows:

#### § 11.11 Docket.

Official FAA records relating to rule-making actions, including (a) proposals, (b) notices of proposed rule making, (c) written material received in response to notices, (d) petitions for rule making and exemptions, (e) written material received in response to summaries of petitions for rule

making and exemptions, (f) petitions for rehearing or reconsideration, (g) petitions for modification or revocation, (h) notices denying petitions for rule making, (i) notices granting or denying exemptions, (j) summaries required to be published under § 11.27, (k) reports of proceedings conducted under § 11.47, (l) notices denying proposals, and (m) final rules or orders are maintained in current docket form in the Office of the Chief Counsel.

#### § 11.15 [Amended]

2. By amending the second sentence of § 11.15 to read: "The procedural requirements of §§ 11.53, 11.71, and 11.91, and the publication and comment procedures of § 11.27 need not be followed."

3. By revising § 11.25 by adding new paragraphs (c) and (d) to read as follows:

#### § 11.25 Petitions for rule making or exemptions

(c) A petition for rule making filed under this section must contain a summary, which may be published in the FEDERAL REGISTER as provided in § 11.27(b), which includes—

(1) A brief description of the general nature of the rule requested; and

(2) A brief description of the pertinent reasons presented in the petition for instituting rule-making procedures.

(d) A petition for exemption filed under this section must contain a summary, which may be published in the FEDERAL REGISTER as provided in § 11.27(c), which includes—

(1) A citation of each rule from which relief is requested; and

(2) A brief description of the general nature of the relief requested.

4. By revising § 11.27 to read as follows:

#### § 11.27 Action on petitions for rule making or exemptions.

(a) *General.* Except for the publication and comment procedures provided for in this section, no public hearing, argument, or other formal proceeding is held directly on a petition, filed under § 11.25, before its disposition by the FAA.

(b) *Publication of summary of petition for rule making.* After receipt of a petition for rule making, except as otherwise provided in paragraph (i) of this section, the FAA publishes a summary of the petition in the FEDERAL REGISTER which includes—

(1) The docket number of the petition;

(2) The name of the petitioner;

(3) A brief description of the general nature of the rule requested;

(4) A brief description of the pertinent reasons presented in the petition for instituting rule-making procedures; and

(5) In appropriate situations, a list of questions to assist the FAA in obtaining comment on the petition.

Comments on the petition for rule making must be filed, in triplicate, within 60 days after the summary is published in the FEDERAL REGISTER unless the Administrator, for good cause, finds a different time period appropriate. Timely comments received will be considered by the Administrator before taking action on the petition.

(c) *Publication of summary of petition for exemption.* After receipt of a petition for exemption, except as otherwise provided in paragraphs (i) and (j) of this section, the FAA publishes a summary of the petition in the FEDERAL REGISTER which includes—

(1) The docket number of the petition;

(2) The name of the petitioner;

(3) A citation of each rule from which relief is requested; and

(4) A brief description of the general nature of the relief requested.

Comments on the petition for exemption must be filed, in triplicate, within 20 days after the summary is published in the FEDERAL REGISTER unless the Administrator, for good cause, finds a different time period appropriate. Timely comments received will be considered by the Administrator before taking action on the petition.

(d) *Instituting rule-making procedures based on a petition.* If the Administrator determines, after consideration of any comments received in response to a summary of a petition for rule making, that the petition discloses adequate reasons, the FAA institutes rule-making procedures.

(e) *Grant of petition for exemption—summary.* If the Administrator determines, after consideration of any comments received in response to a summary of a petition for exemption, that the petition is in the public interest, the Administrator grants the exemption and, except as otherwise provided in paragraph (i) of this section, the FAA publishes a summary of the grant of the petition for exemption in the FEDERAL REGISTER. A summary of a grant of a petition for exemption includes—

(1) The docket number of the petition;

(2) The name of the petitioner;

(3) A citation of each rule from which relief is requested;

(4) A brief description of the general nature of the relief granted; and

(5) The disposition of the petition.

(f) *Denial of petition for rule making.* If the Administrator determines, after consideration of any comments received in response to a summary of a petition for rule making, that the petition does not justify instituting rule-making procedures, the FAA notifies the petitioner to that effect. Except as otherwise provided in paragraph (i) of this section, the FAA publishes a summary of the denial of the petition for rule making in the FEDERAL REGISTER in accordance with paragraph (h) of this section.

(g) *Denial of petition for exemption.* If the Administrator determines, after consideration of any comments received in response to a summary of a petition for exemption, that the petition does not justify granting the requested exemption, the FAA notifies the petitioner to that effect. Except as otherwise provided in paragraph (i) of this section, the FAA publishes a summary of the denial of the petition for exemption in the FEDERAL REGISTER in accordance with paragraph (h) of this section.

(h) *Summary of denial of petition for rule making or exemption.* A summary of a denial of a petition for rule making or exemption includes—

- (1) The docket number of the petition;
- (2) The name of the petitioner;
- (3) In the case of a denial of a petition for exemption, a citation of each rule from which relief is requested;
- (4) A brief description of the general nature of the rule or relief requested; and
- (5) The disposition of the petition.

(i) *General exceptions.* The publication and comment procedures of paragraphs (b) through (h) of this section do not apply to the following:

- (1) To petitions for rule makings or exemptions processed under § 11.83.
- (2) To petitions for exemptions from the requirements of Part 67 of this chapter.

(j) *Exceptions to publication of summary of petition for exemption.* The publication and comment procedures of paragraph (c) of this section do not apply to the following:

- (1) To petitions for emergency exemptions processed under § 11.15.
- (2) To petitions for exemptions processed under Part 139 of this chapter.

(3) Whenever the head of the Office or Service concerned, subject to the approval of the Chief Counsel with respect to form and legality, finds for good cause shown in a petition for exemption that action on the petition should not be delayed by the publication and comment procedures. Factors that may be considered in determining whether good cause exists, include—

- (i) Whether a grant of exemption would set a precedent or whether the petition for exemption and the reasons presented in it are identical to exemptions previously granted;
- (ii) Whether the delay in acting on the petition for exemption that would result from publication would be detrimental to the petitioner; and
- (iii) Whether petitioner acted in a timely manner in filing the petition for exemption.

(k) *Status of petition for rule making.* Within 120 days after publication in the FEDERAL REGISTER of a summary of petition for rule making and every 120 days thereafter, unless sooner denied under § 11.51 or issued as a notice of proposed rule making under § 11.65, the Office or Service concerned shall advise petitioner in writing of the status of the petition.

(l) *Additional specific provisions.* Specific provisions covering actions on petitions are set forth in Subpart C of this part.

(Secs. 313 and 601 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354 and 1421); sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

The Federal Aviation Administration has determined that this document is not significant in accordance with the criteria required by Executive Order 12044, and set forth in the proposed "Department of Transportation Regulatory Policies and Procedures" published in the FEDERAL REGISTER June 1, 1978 (43 FR 23925). In addition, this amendment is procedural in nature and the Federal Aviation Administration has determined that the expected impact of it is so minimal that it does not require an evaluation.

Issued in Washington, D.C., on January 30, 1979.

LANGHORNE BOND,  
Administrator.