

SUBCHAPTER B—PROCEDURAL RULES

PART 11—GENERAL RULEMAKING PROCEDURES

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EDITORIAL NOTE: Nomenclature changes to part 11 appear at 61 FR 18052, April 24, 1996.

Subpart A—General

§ 11.1 Applicability.

This part applies to the issue, amendment, and repeal of—

(a) Rules and orders for airspace assignment and use issued under section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); and

(b) Other substantive rules, including those applicable to a class of persons, and those addressed to and served on named persons whenever the Administrator decides to use public rulemaking procedures in such a case.

§ 11.11 Docket.

Official FAA records relating to rulemaking actions, including: (a) Proposals, (b) notices of proposed rulemaking, (c) written material received in response to notices, (d) petitions for rulemaking and exemptions, (e) written material received in response to summaries of petitions for rulemaking and exemptions, (f) petitions for rehearing or reconsideration, (g) petitions for modification or revocation,

(h) notices denying petitions for rulemaking, (i) notices granting or denying exemptions, (j) summaries required to be published under § 11.27, (k) special conditions required, as prescribed under § 21.16 or § 21.101(b)(2), (l) written material received in response to published special conditions, (m) reports of proceedings conducted under § 11.47 (n) notices denying proposals, and (o) final rules or orders are maintained in current docket form in the Office of the Chief Counsel. A public docket relating to rulemaking actions taken by each Regional Administrator on petitions for exemption filed under Part 139 of this chapter is maintained in the Regional Counsel's Office for that region. Unless a request for comment indicates otherwise, a public docket relating to rulemaking actions taken by Regional Administrators under Subparts D and E of this part is maintained in the Regional Counsel's Office. Any interested person may examine any docketed material at that office, at any time after the docket is established, except material that is ordered withheld from the public under section 1104 of the Federal Aviation Act of 1958 (49 U.S.C. 1504), and may obtain a photostatic or duplicate copy of it upon paying the cost of the copy.

[Doc. No. 1242, 27 FR 9586, Sept. 28, 1962, as amended by Amdt. 11-4, 29 FR 15074, Nov. 7, 1964; Amdt. 11-6, 31 FR 13697, Oct. 25, 1966; Amdt. 11-12, 37 FR 19354, Sept. 20, 1972; Amdt. 11-16, 44 FR 6900, Feb. 5, 1979; Amdt. 11-20, 45 FR 60170, Sept. 11, 1980; Amdt. 11-32, 54 FR 39289, Sept. 29, 1989; Amdt. 11-42, 62 FR 46865, Sept. 4, 1997]

§ 11.13 Delegation of authority.

All agency officials, with regulatory issuance authority, may exercise the authority of the Administrator to make certifications, findings and determinations under the Regulatory Flexibility Act (Pub. L. 96-354) with regard to any rulemaking document for which issuance authority is delegated by other sections in this part.

[Doc. No. 22081, 46 FR 41488, Aug. 17, 1981]

§ 11.15 Emergency exemptions.

If, as a result of enemy attack on the United States, communication with Washington headquarters of FAA is or may be disrupted or materially im-

paired, petitions for exemptions from any rule issued under Titles III or VI of the Federal Aviation Act of 1958 (air safety rules and air traffic and airspace rules) may also be filed at the nearest FAA Regional Office, air traffic control facility or office, Flight Standards District Office, Aircraft Certification Directorate, Aircraft Certification Office, International Field Office or FAA Representative in the Europe, Africa, and Middle East Region, or in the Pacific Region. The procedural requirements of §§ 11.53, 11.71, and 11.91, and the publication and comment procedures of § 11.27 need not be followed. Under these emergency conditions, the FAA inspectors or officers in charge of these offices may grant, in whole or in part and subject to reasonable conditions or limitations, such exemptions or may deny petitions for such exemptions; may issue such exemptions to named persons or in blanket form on their own initiative; and may limit or terminate exemptions so issued by them or by offices whose jurisdiction they may have assumed. Exemptions issued under these circumstances are at all times subject to modification and termination by the Regional Administrator or Acting Regional Administrator or officer in charge of the Region concerned, subject to ultimate action by the Director or Acting Director of the Service concerned.

[Amdt. 11-2, 29 FR 7091, May 29, 1964, as amended by Amdt. 11-5, 31 FR 11091, Aug. 20, 1966; Amdt. 11-10, 33 FR 17850, Nov. 30, 1968; Amdt. 11-11, 36 FR 3463, Feb. 25, 1971; Amdt. 11-16, 44 FR 6901, Feb. 5, 1979; Amdt. 11-32, 54 FR 39289, Sept. 25, 1989]

§ 11.17 Direct final rule.

Whenever the FAA anticipates that a proposed regulation is unlikely to result in adverse comment, it may choose to issue a direct final rule. The direct final rule will advise the public that no adverse or negative comments are anticipated, and that unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified in the direct final rule. If no written adverse or negative comment, or notice of intent to submit

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such a comment is received within the comment period, the direct final rule will become effective on the date indicated in the direct final rule. The FAA will publish a document in the FEDERAL REGISTER indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the FEDERAL REGISTER, and a notice of proposed rulemaking may be published with a new comment period. Normal procedures for the agency's receipt and consideration of comments will then apply.

[Doc. No. 27925, 61 FR 11282, Mar. 19, 1996]

Subpart B—Rules Other Than Airspace Assignment and Use

§ 11.21 Scope.

(a) This subpart applies to substantive rules, other than those relating to airspace assignment and use.

(b) Unless the Administrator, for good cause, finds that notice is impracticable, unnecessary, or contrary to the public interest, and incorporates that finding and a brief statement of the reasons for it in the rule, the FAA issues notices of proposed rulemaking and allows interested persons to participate in rulemaking proceedings involving a substantive rule.

(c) Unless the Administrator determines that notice and rulemaking procedures are to be followed, interpretive rules, general statements of policy, and rules of FAA organization, procedure, or practice are prescribed as final without notice or rulemaking procedures.

(d) Whenever the Administrator so determines, the procedures prescribed in this subpart apply to exempting persons and classes from the requirements of a substantive rule.

§ 11.23 Initiating rulemaking procedures.

The Administrator initiates rulemaking procedures upon his own motion. However, in doing so, he considers

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the recommendations of other agencies of the United States and the petitions of other interested persons.

§ 11.25 Petitions for rulemaking or exemptions.

(a) Any interested person may petition the Administrator to issue, amend, or repeal a rule whether or not it is a substantive rule within the meaning of § 11.21, or for a temporary or permanent exemption from any rule issued by the Federal Aviation Administration under statutory authority.

(b) Each petition filed under this section must—

(1) In the case of a petition for exemption, unless good cause is shown in that petition, be submitted at least 120 days before the proposed effective date of the exemption;

(2) Be submitted in duplicate—

(i) To the appropriate FAA airport field office in whose area the petitioner proposes to establish or has established its airport, in the case of any petition for exemption filed under Part 139 of this chapter;

(ii) To the Director having Airworthiness Directive responsibility for the product involved in the case of petitions filed in accordance with Subpart D of this part.

(iii) To the Federal Air Surgeon (AAM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, in the case of a petition for exemption filed under Part 67 of this chapter; and

(iv) To the Rules Docket (AGC-10), Federal Aviation Administration, 800 Independence Avenue, Washington, D.C. 20591, in all other cases.

(3) Set forth the text or substance of the rule or amendment proposed, or of the rule or statute from which the exemption is sought, or specify the rule that the petitioner seeks to have repealed, as the case may be;

(4) Explain the interests of the petitioner in the action requested including, in the case of a petition for an exemption, the nature and extent of the relief sought and a description of each aircraft or person to be covered by the exemption;

(5) Contain any information, views, or arguments available to the petitioner to support the action sought,

the reasons why the granting of the request would be in the public interest and, if appropriate, in the case of an exemption, the reason why the exemption would not adversely affect safety or the action to be taken by the petitioner to provide a level of safety equal to that provided by the rule from which the exemption is sought; and

(6)(i) In the case of a unit of Federal, state, or local government that is applying for an exemption from any requirement of part A of subtitle VII of title 49, United States Code, that would otherwise be applicable to current or future aircraft of such unit of government as a result of the statutory change in the definition of public aircraft made by the Independent Safety Board Act Amendments of 1994, Public Law 103-411, the petition for exemption must contain any information, views, analysis, or arguments available to the petitioner to show that:

(A) The exemption is necessary to prevent an undue economic burden on the unit of government; and

(B) The aviation safety program of the unit of government is effective and appropriate to ensure safe operations of the type of aircraft operated by the unit of government.

(ii) The authority of the Administrator, under the Independent Safety Board Amendments of 1994, Pub. L. 103-411, to grant exemptions to units of government is delegated to the Director, Flight Standards Service, and the Director, Aircraft Certification Service.

(c) A petition for rulemaking 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 rulemaking 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.

[Doc. No. 1242, 27 FR 9586, Sept. 28, 1962]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 11.25, see the List of CFR Sections Affected appearing in the Finding Aids section of this volume.

§ 11.27 Action on petitions for rulemaking 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 rulemaking.* After receipt of a petition for rulemaking, 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 rulemaking 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 rulemaking 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 rulemaking procedures based on a petition.* If the Administrator determines, after consideration of any comments received in response to a summary of a petition for rulemaking, that the petition discloses adequate reasons, the FAA institutes rulemaking 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 rulemaking.* If the Administrator determines, after consideration of any comments received in response to a summary of a petition for rulemaking, that the petition does not justify instituting rulemaking 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 rulemaking 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 re-

quested 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 rulemaking or exemption.* A summary of a denial of a petition for rulemaking 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 rulemakings 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 rulemaking.* Within 120 days after publication in the FEDERAL REGISTER of a summary of petition for rulemaking and every 120 days thereafter, unless sooner denied under §11.51 or issued as a notice of proposed rulemaking 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.

[Amdt. 11-20, 44 FR 6901, Feb. 5, 1979]

§ 11.28 Action on special conditions.

(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 special condition established by the Administrator.

(b) *Procedures.* This subpart and Subpart C apply to the issue, amendment, and repeal of special conditions under Part 21. In addition to the information required by §11.29(b), each notice will include—

(1) The name and address of the applicant;

(2) The model designation and a summary description of the affected product;

(3) The applicable type design approval regulations designated in accordance with §21.17 or §21.101 of Part 21; and

(4) A summary description of the novel or unusual design features that make the issue or amendment of special conditions necessary.

[Amdt. 11-17, 45 FR 60170, Sept. 11, 1980]

§ 11.29 Notice of proposed rulemaking.

(a) Each general notice of proposed rulemaking is published in the FEDERAL REGISTER, unless all persons subject to it are named and are personally served with a copy of it.

(b) Each notice, whether published in the FEDERAL REGISTER or personally served, includes—

(1) A statement of the time, place, and nature of the proposed rulemaking proceeding;

(2) A reference to the authority under which it is issued;

(3) A description of the subjects and issues involved or the substance and terms of the proposed rule;

(4) A statement of the time within which written comments must be submitted and the required number of copies; and

(5) A statement of how and to what extent interested persons may participate in the proceedings, as prescribed by §§11.31 and 11.33.

(c) A petition for extension of the time for comments must be submitted in duplicate not later than two days before expiration of the time stated in the notice. The filing of the petition does not automatically extend the time for petitioner's comments. Such a petition is granted only if the petitioner shows a substantive interest in the proposed rule and good cause for the extension, and if the extension is consistent with the public interest. If an extension is granted it is published in the FEDERAL REGISTER.

[Doc. No. 1242, 27 FR 9586, Sept. 28, 1962, as amended by Amdt. 11-1, 28 FR 2897, Mar. 23, 1963]

§ 11.31 Participation of interested persons in rulemaking procedures.

(a) Each interested person is entitled to participate in rulemaking proceedings by submitting written information, views, or arguments. In addition, he may comment on the original information, views, and arguments submitted by other persons, if, after receiving them, the Administrator considers it desirable.

(b) In any appropriate case, the Administrator also allows interested persons to participate in the rulemaking procedures described in § 11.33.

§ 11.33 Additional rulemaking proceedings.

(a) The rulemaking procedure also includes any further procedural steps that best serve the purposes of a particular proceeding. For example, interested persons may be allowed to make oral arguments, participate in conferences between the Administrator or

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his representative and interested persons and organizations, appear at informal hearings presided over by a designated FAA official at which a stenographic transcript is made, or participate in any other procedure whenever it is desirable and appropriate to assure informed administrative action and adequate protection of private interests.

(b) Any appropriate combination of the procedures described in paragraph (a) of this section may be used in addition to the basic procedure of allowing interested persons to participate in rulemaking proceedings by submitting written information, views, or arguments.

§ 11.35 Participation by Civil Aeronautics Board in rulemaking proceedings.

(a) Under section 1001 of the Federal Aviation Act of 1958 (49 U.S.C. 1481), the Civil Aeronautics Board may appear and participate as an interested party in any proceeding conducted by the Administrator under Title III of that Act, and in any proceeding under Title VI of that Act that cannot be appealed to the National Transportation Safety Board.

(b) To indicate its intention to participate in any proceeding described in paragraph (a) of this section, the Civil Aeronautics Board may file written information, views, or arguments in response to a notice of proposed rulemaking issued by the Administrator. The Civil Aeronautics Board is entitled to the procedural privileges accorded other parties and is equally free to participate.

[Doc. No. 1242, 27 FR 9586, Sept. 28, 1962, as amended by Doc. No. 8084, 32 FR 5769, Apr. 11, 1967]

§ 11.37 Requests for informal appearances.

(a) Upon his request, any interested person may appear informally before an appropriate official of the FAA to present, adjust, or determine a question or controversy relating to a rulemaking function of the FAA.

(b) A request for an appearance under this section must be sent in writing to the Federal Aviation Administration, Washington, D.C. 20590, or to the Re-

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gional or District Office nearest to the person making the request.

[Doc. No. 1242, 27 FR 9586, Sept. 28, 1962, as amended by Doc. No. 8084, 32 FR 5769, Apr. 11, 1967; Amdt. 11-8, 32 FR 6390, Apr. 25, 1967]

Subpart C—Processing of Rules Other Than Airworthiness Directives and Airspace Assignment and Use

§ 11.41 Scope.

(a) This subpart prescribes the supplemental procedures to be followed by the Offices and Services of the FAA in rulemaking proceedings and in granting or denying exemptions from rules. It also designates the Office or Service that is authorized to act for the Administrator in connection with those proceedings and exemptions. Any authority conferred by this subpart on the head of any Office or Service is also conferred on the Associate Administrator (if any) who exercises executive direction over that official.

(b) This subpart applies to rulemaking procedures other than for Airworthiness Directives and rules relating to Airspace Assignment and Use.

(c) For the purposes of this subpart—

(1) The words “Office or Service” include the Technical Center, and include Regional Administrators with respect to petitions for exemptions from the requirements of Part 139 of this chapter; and

(2) “Chief Counsel” means—

(i) The Chief Counsel;

(ii) A Regional Counsel or the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office with respect to petitions for exemptions from the requirements of Part 139 of this chapter;

(iii) The Assistant Chief Counsel for Regulations for all other exemptions processed under this subpart; or

(iv) Any person to whom the Chief Counsel has delegated authority in the matter concerned.

[Doc. No. 1242, 27 FR 9586, Sept. 28, 1962, as amended by Amdt. 11-5, 31 FR 11091, Aug. 20, 1966; Amdt. 11-16, 31 FR 13697, Oct. 25, 1966; Amdt. 11-12, 37 FR 19354, Sept. 20, 1972; Amdt. 11-15, 43 FR 52205, Nov. 9, 1978; Amdt. 11-32, 54 FR 39290, Sept. 25, 1989; Amdt. 11-42, 62 FR 46865, Sept. 4, 1997]

§ 11.43 Processing of petitions for rulemaking or exemption from parts of this chapter.

Whenever the FAA receives a petition for rulemaking or for an exemption, a copy of the petition is referred for action, as provided in § 11.27, to the Office or Service having substantive responsibility for the subject involved.

[Doc. No. 15457, 41 FR 11271, Mar. 18, 1976]

§ 11.45 Issue of notice of proposed rulemaking.

Whenever he determines that a notice of proposed rulemaking is necessary or desirable, the head of the Office or Service concerned may, subject to the approval of the Chief Counsel with respect to form and legality, issue the notice provided for in § 11.29. In addition, he may grant or deny petitions for extension of the time for comments on the notice, filed under § 11.29(c).

[Doc. No. 1242, 27 FR 9586, Sept. 28, 1962, as amended by Amdt. 11-1, 28 FR 2897, Mar. 23, 1963]

§ 11.47 Proceedings after notice of proposed rulemaking.

(a) Each person who submits written information, views, or arguments in response to a notice of proposed rulemaking, or during additional rulemaking proceedings in connection with such a notice, must file the number of copies specified in the notice. All timely comments are considered before final action on the rulemaking proposal is taken. Late filed comments are considered so far as possible without incurring expense or delay.

(b) Whenever the head of the Office or Service concerned determines that additional rulemaking proceedings of the kind described in § 11.33 are necessary or desirable, he may designate representatives to conduct those proceedings.

[Doc. No. 1242, 27 FR 9586, Sept. 28, 1962, as amended by Amdt. 11-5, 31 FR 11091, Aug. 20, 1966]

§ 11.49 Adoption of final rules.

(a) After the Office or Service concerned has completed its analysis and evaluation of the information, views, and arguments submitted with respect to a proposed rule, representatives of

that Office or Service and the Office of the Chief Counsel prepare an appropriate rule, subject to the approval of the Chief Counsel as to form and legality. Except as provided in paragraph (b) of this section, the rule is then submitted, with the recommendations of the head of the Office or Service concerned and the Chief Counsel, to the Administrator for consideration. If a rule is adopted, it is published in the FEDERAL REGISTER.

(b) Final authority to issue, amend, and repeal—

(1) An appendix to a part is delegated to the head of the Office or Service concerned;

(2) Minimum en route IFR altitudes and associated flight data under Part 95 of this chapter, and standard instrument approach procedures under Part 97 of this chapter is delegated to the Manager, Technical Programs Division, Flight Standards Service; and

(3) Special conditions under Part 21 of this chapter is delegated to the Director, Aircraft Certification Service.

[Amdt. 11-15, 43 FR 52205, Nov. 9, 1978 as amended by Amdt. 11-19, 45 FR 47838, July 17, 1980; Amdt. 11-18, 45 FR 38346, June 9, 1980; Amdt. 11-20, 45 FR 60170, Sept. 11, 1980; Amdt. 11-20A, 45 FR 85597, Dec. 29, 1980; Amdt. 11-32, 54 FR 39290, Sept. 25, 1989]

§ 11.51 Denial of petition for rulemaking.

Whenever it is determined that a petition for rulemaking filed under § 11.25 should be denied, the Office or Service concerned prepares, subject to the approval of the Chief Counsel with respect to form and legality, a notice of denial for the Administrator's signature.

§ 11.53 Grant or denial of exemption.

(a) The head of the Office or Service concerned may, subject to the approval of the Chief Counsel with respect to form and legality, grant or deny any petition for an exemption. However, if the head of the Office or Service concerned finds that the grant or denial involves a technical or policy determination that should be made by the Administrator, he refers the petition and his recommendations and those of the Chief Counsel to the Administrator for final action.

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(b) Whenever a petition is granted or denied under this section, the Office or Service concerned prepares, subject to the approval of the Chief Counsel with respect to form and legality, a notice to the petitioner informing him of the action taken.

[Doc. No. 1242, 27 FR 9586, Sept. 28, 1962, as amended by Amdt. 11-11, 36 FR 3463, Feb. 25, 1971; Amdt. 11-15, 43 FR 52205, Nov. 9, 1978]

§ 11.55 Reconsideration of a denial or grant of exemption.

(a) Except as provided in paragraph (c) of this section, if a petition for exemption is denied, the petitioner may file a petition for reconsideration with the Administrator. The petition must be filed, in duplicate, within 30 days after the petitioner is notified of the denial of the exemption.

(b) If a petition for exemption is granted, a person other than the initial petitioner may file a petition for reconsideration with the Administrator. The petition must be filed, in duplicate, within 45 days after the grant of exemption is issued.

(c) If a petition for exemption from the requirements of Part 67 of this chapter is denied, the petitioner may file a petition for reconsideration with the Federal Air Surgeon. The petition must be filed in duplicate, within 30 days after the petitioner is notified of the denial of the exemption. However, if the final action on the initial petition was by the Administrator in accordance with the second sentence of § 11.53(a), the Federal Air Surgeon refers the petition for reconsideration and recommendations and those of the Chief Counsel to the Administrator for final action.

(d) A petition for reconsideration under this section must be based on the existence of one or more of the following:

(1) A finding of a material fact that is erroneous.

(2) A necessary legal conclusion that is without governing precedent or is a departure from or contrary to law, FAA rules, or precedent.

(3) An additional fact relevant to the decision that was not presented in the initial petition for exemption. In order for a petition under paragraph (a) or (c) of this section to be based on this

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ground, the petition for reconsideration must state the reason the additional fact was not presented in the initial petition.

[Amdt. 11-15, 43 FR 52205, Nov. 9, 1978]

Subpart D—Rules and Procedures for Airspace Assignment and Use

§ 11.61 Scope.

(a) This subpart establishes procedures for initiating, processing, issuing, and publishing rules and orders issued under section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)), including—

(1) Designations of controlled airspace under part 71 of this chapter;

(2) Assignments of segments or parts of the navigable airspace for special use purposes, such as restricted areas, military climb corridors, and experimental flight test areas; and

(3) Special rules or orders relating to the assignment or use of navigable airspace.

(b) This subpart does not apply to emergency cases and cases in which the procedures described in paragraph (a) of this section are found to be impractical, unnecessary, or contrary to the public interest.

(c) For the purposes of this subpart, “Director” means the Executive Director of System Operations, the Associate Administrator for Air Traffic or the Director, Air Traffic Rules and Procedures Service, or any person to whom the Director has delegated authority in the matter concerned.

(d) For the purposes of this subpart, “Chief Counsel” means the Chief Counsel, or a Regional Counsel, the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office or the Assistant Chief Counsel for Regulations or any person to whom the Chief Counsel, Assistant Chief Counsel, or Regional Counsel has delegated authority in the matter concerned.

[Doc. No. 1242, 27 FR 9586, Sept. 28, 1962, as amended by Amdt. 11-3, 29 FR 9662, July 17, 1964; Amdt. 11-4, 29 FR 15074, Nov. 7, 1964; Amdt. 11-5, 31 FR 11091, Aug. 20, 1966; Amdt. 11-15, 43 FR 52205, Nov. 9, 1978; Amdt. 11-30, 51 FR 2348, Jan. 16, 1986; Amdt. 11-32, 54 FR 39290, Sept. 25, 1989; Amdt. 11-35, 56 FR 65638, 65653, Dec. 17, 1991; Amdt. 11-42, 62 FR 46865, Sept. 4, 1997]

§ 11.63 Filing of proposals.

(a) Each proposal, except one arising in the FAA, for the designation of Federal airways or other areas for normal air traffic use, the assignment of navigable airspace for special use purposes, or the issue of a special rule or order relating to the use of navigable airspace, must be filed in writing, in triplicate, with the Director.

(b) The director may, on his own motion, initiate the procedures prescribed in this subpart for proposals arising within the FAA.

(c) A proposal requesting the assignment of navigable airspace for special use purposes, or for the designation of an area for air traffic purposes, must include at least the following:

(1) The location and a description of the airspace desired for assignment or designation.

(2) 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 assigned or designated area.

(3) A description of the air navigation, air traffic control, surveillance, and communication facilities available and to be provided if the assignment or designation is made.

(4) The name and location of the agency, office, facility, or person to whom authority would be delegated to permit the use of the airspace during those times it would not be used for the purpose to which it would be assigned.

(d) Subject to the approval of the Chief Counsel with respect to form and legality, the Director issues a notice of any rejected proposal.

[Doc. No. 1242, 27 FR 9586, Sept. 28, 1962, as amended by Amdt. 11-3, 29 FR 9662, July 17, 1964]

§ 11.65 Issue of notice of proposed rulemaking.

(a) If it is determined that the subject matter of a proposal should be submitted to the rulemaking process, or if rulemaking action is to be taken on his own motion, the Director, subject to the approval of the Chief Counsel with respect to form and legality, issues a notice of proposed rulemaking.

(b) Normally, a notice of proposed rulemaking is issued within approximately 30 days after receipt of a proposal with respect to which it has been determined that action might be taken.

(c) Each notice of proposed rulemaking is published in the FEDERAL REGISTER and includes at least the following:

(1) A statement of the time, place, and nature of the public rulemaking proceedings.

(2) A reference to the authority under which it is proposed.

(3) Either the terms or substance of the proposed action or a description of the subjects and issues involved.

(d) Approximately 30 days are allowed for submitting written information, views, or arguments on the notice. Petitions for extension of the time for such comments are governed by the provisions of § 11.29(c). If a public hearing is to be held, either the original notice of proposed rulemaking or a revised notice gives approximately 30 days' notice. The Director may grant or deny petitions for extension of the time for comments on the notice and may change the date of any hearing previously noticed.

(e) Written information, views, and arguments submitted in response to a notice of proposed rulemaking, or that are requested after the notice, must be submitted in triplicate.

(f) Each interested person is entitled to discuss or confer informally with appropriate FAA officials concerning a proposed action. However, to become a part of the formal record for consideration, any information, views, or arguments presented during the conference must also be submitted in writing in accordance with the notice.

[Doc. No. 1242, 27 FR 9586, Sept. 28, 1962, as amended by Amdt. 11-1, 28 FR 2897, Mar. 23, 1963]

§ 11.67 Hearings.

(a) Sections 7 and 8 of the Administrative Procedure Act do not apply to proceedings used to formulate rules under section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)).

§ 11.69

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Whenever the Director, in his discretion, considers that a hearing is necessary to provide informed Administrative action and assure adequate protection of private or public interests, he may hold an informal public hearing. However, any rule or order issued in a case in which such a hearing is held is not based exclusively on the record of the hearing.

(b) The Director designates a presiding officer for each hearing and the Chief Counsel designates a legal adviser.

(c) Normally, hearings held under this section are held in the vicinity of the affected airspace. Interested persons are allotted time to make an oral presentation without interruption and a verbatim transcript is made of the proceedings by a certified court reporter.

(d) The procedure in hearings held under this section is as follows:

(1) The presiding officer makes an opening statement with particular reference to the notice of proposed rulemaking.

(2) The presiding officer designates interested persons or their authorized representatives to speak at the hearing.

(3) The presiding officer allots enough time to each interested person on an equal basis so that his position may be expressed fully and placed on the record, with those who favor it speaking first followed by those who oppose it, initial statements being made as far as possible without interruption, and questions permitted after initial statements have been made by all designated persons.

(4) Arguments and oral statements are limited to the subject named in the notice of proposed rulemaking.

(5) Written information, views, arguments, or briefs may be offered for the record, but may not be accepted after the hearing unless good cause is shown or the submission is requested by the presiding officer or the Director.

(e) The presiding officer of a hearing may deviate from the procedures prescribed in this section to assure a more complete and informative record.

§ 11.69 Adoption of rules or orders.

(a) After the closing date for submitting written comments on a notice or, if a hearing is held; after the hearing, the Office having substantive responsibility for the subject involved studies the entire matter of a proposed rule or order. The Chief Counsel determines whether legal justification exists for the proposed action, and thereafter prepares an appropriate rule, order, or notice of denial. The rule, order, or notice of denial is then submitted to the Director for his action.

(b) Each rule or order issued by the Director is published in the FEDERAL REGISTER and in such other publications as the Director considers desirable. Each notice of denial is sent to the person who made the proposal and to such other interested persons as the Director considers desirable.

(c) Each rule or order issued under this subpart becomes effective not less than 30 days after it is published, except in an emergency, or when it is impractical, unnecessary, or contrary to the public interest.

[Doc. No. 1242, 27 FR 9586, Sept. 28, 1962, as amended by Amdt. 11-3, 29 FR 9662, July 17, 1964]

§ 11.71 Exemptions.

(a) A petition for an exemption from any rule or order issued under section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) may be filed with the Director. Such a petition must be in triplicate and state clearly the nature of the requested exemption and the reasons why it should be granted.

(b) The Director may, subject to the approval of the Chief Counsel with respect to form and legality, grant or deny any petition filed under this section and shall notify the petitioner of his action.

§ 11.73 Petitions for rehearing or reconsideration of rules or orders.

(a) Any interested person may petition the Administrator for a rehearing on, or for reconsideration of, any rule or order issued under section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)). Such a petition must be filed, in triplicate, within 30 days after

the rule or order is published in the FEDERAL REGISTER. It must contain a brief statement of the complaint and an explanation as to how the rule or order is contrary to the public interest.

(b) If the petitioner requests the consideration of additional facts, he must state their nature and purpose, and the reason they were not presented at the hearing or in writing within the allotted time.

(c) The Administrator does not consider repetitious petitions.

(d) Unless the Administrator orders otherwise, the filing of a petition under this section does not stay the effect of a rule or order.

§ 11.75 Petitions for revoking or modifying rules or orders.

(a) Any interested person may petition to revoke or modify any rule or order covered by this subpart. Such a petition must be filed, in triplicate, with the Director and must clearly state the information, views, and arguments the petitioner considers necessary to support the requested action and must clearly indicate the effect the action would have on the use of navigable airspace.

(b) A petition filed under this section is processed in the same manner as an original proposal, or in any other manner that the Director considers necessary or desirable.

[Doc. No. 1242, 27 FR 9586, Sept. 28, 1962, as amended by Amdt. 11-3, 29 FR 9662, July 17, 1964]

Subpart E—Processing of Airworthiness Directives

SOURCE: Docket No. 7162, 31 FR 13697, Oct. 25, 1966, unless otherwise noted.

§ 11.81 Scope.

(a) This subpart prescribes the procedures to be followed in rulemaking proceedings for Airworthiness Directives issued pursuant to Part 39 and in granting or denying exemptions from Airworthiness Directives. It also designates the persons that are authorized to act for the Administrator in connec-

tion with those proceedings and exemptions.

(b) For the purposes of this subpart, "Director" means the Director, Aircraft Certification Service, or a Manager of an Aircraft Certification Directorate (Directorate Manager).

(c) The authority for issuing Airworthiness Directives is limited to the following persons:

(1) The Director, Aircraft Certification Service; and

(2) Managers of the Aircraft Certification Directorates for products under the authority of those directorates, as determined by the Administrator.

(d) For the purposes of this subpart, "Chief Counsel" means the Chief Counsel or a Regional Counsel or a Directorate Counsel, the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office or the Assistant Chief Counsel for Regulations, or any person to whom the Chief Counsel, Assistant Chief Counsel, Regional Counsel, or Directorate Counsel has delegated authority in the matter concerned.

[Doc. No. 7162, 31 FR 13697, Oct. 25, 1966, as amended by Amdt. 11-15, 43 FR 52205, Nov. 9, 1978; Amdt. 11-21, 45 FR 80815, Dec. 8, 1980; Amdt. 11-32, 54 FR 39290, Sept. 25, 1989; Amdt. 11-42, 62 FR 46865, Sept. 4, 1997]

§ 11.83 Processing of petitions for rulemaking or exemption.

Whenever the FAA receives a petition for rulemaking or for an exemption, a copy of the petition is referred for action, as provided in § 11.27, to the Director having Airworthiness Directive responsibility for the product involved.

§ 11.85 Issue of notice of proposed rulemaking.

Whenever he determines that a notice of proposed rulemaking is necessary or desirable, the Director may, subject to the approval of the Chief Counsel with respect to form and legality issue the notice provided for in § 11.29. In addition, he may grant or deny petitions for extension of the time for comments on the notice, filed under § 11.29(c).

§ 11.87

§ 11.87 Proceedings after notice of proposed rulemaking.

(a) Each person who submits written information, views, or arguments in response to a notice of proposed rulemaking, or during additional rulemaking proceedings in connection with such a notice, must file the number of copies specified in the notice.

(b) Whenever the Director determines that additional rulemaking proceedings of the kind described in § 11.33 are necessary or desirable, he may designate representatives to conduct those proceedings.

§ 11.89 Adoption of final rules.

In any case in which a notice of proposed rulemaking was issued, the Director completes his analysis and evaluation of the information, views, and arguments submitted with respect to the proposed rule and studies the entire matter. In any case in which the subject matter is, for good cause, submitted to the rulemaking process without notice, the Director initiates the procedure. The Chief Counsel determines whether legal justification exists for the action proposed, and thereafter prepares an appropriate rule or notice of denial. The rule or notice of denial is then submitted to the Director for his action.

§ 11.91 Grant or denial of exemption.

(a) The Director may, subject to the approval of the Chief Counsel with respect to form and legality, grant or deny any petition for an exemption from an Airworthiness Directive.

(b) Whenever a petition is granted or denied under this section, the Director prepares, subject to the approval of the Chief Counsel with respect to form and legality, a notice to the petitioner informing him of the action taken.

§ 11.93 Petitions for reconsideration of rules.

(a) Any interested person may petition the Administrator for a rehearing on, or for reconsideration of, any Airworthiness Directive. Such a petition must be filed, in duplicate, within 30 days after the rule is published in the FEDERAL REGISTER. It must contain a brief statement of the complaint and

an explanation as to how the rule is contrary to the public interest.

(b) If the petitioner requests the consideration of additional facts, he must state their nature and purpose and the reason they were not presented at the hearing or in writing within the allotted time.

(c) The Administrator does not consider repetitious petitions.

(d) Unless the Administrator orders otherwise, the filing of a petition under this section does not stay the effect of a rule or order.

Subpart F—Agency Information Collection Requirements Under the Paperwork Reduction Act

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

(a) *Purpose.* This subpart consolidates and displays the OMB assigned control numbers for the information collection requirements of the Federal Aviation Administration pursuant to the Paperwork Reduction Act of 1980 (Title 44, U.S.C. Chapter 35) which mandates that every collection requirement have a control number displayed in the Code of Federal Regulations.

(b) *Display.*

14 CFR part or section identified and described	Current OMB control No.
Part 21	2120-0018
§ 34.7	2120-0508
Part 39	2120-0056
Part 43	2120-0020
§ 45.13	2120-0508
§§ 47.3, 47.5	2120-0029
§ 47.7	2120-0029, 2120-0042
§ 47.8	2120-0042
§ 47.9	2120-0029, 2120-0042
§§ 47.11 thru 47.47	2120-0042
§ 47.63	2120-0024
Part 49	2120-0043
§ 61.3	2120-0034
§§ 61.13 thru 61.197	2120-0021
Part 63	2120-0007
Part 65	2120-0022
§ 67.11	2120-0034, 2120-0052, 2120-0059, 2120-0069
§ 67.19	2120-0052, 2120-0059, 2120-0069
§ 67.23	2120-0002
Part 77	2120-0001
§ 91.1	2120-0026
§ 91.3	2120-0005
§ 91.18	2120-0027
§§ 91.24 thru 91.34 (except § 91.30)	2120-0005
§ 91.30	2120-0522

14 CFR part or section identified and described	Current OMB control No.
§ 91.39	2120-0027
§§ 91.41 thru 91.55	2120-0005
§ 91.63	2120-0027
§ 91.75	2120-0005
§ 91.83	2120-0026
§§ 91.97 thru 91.217	2120-0005
Part 91, Subpart E	2120-0082
§§ 91.851 thru 91.875	2120-0553
Part 93, Subpart S	2120-0524
Part 101	2120-0027
Part 105	2120-0027
Part 107	2120-0075
Part 108	2120-0098
Part 121 (except as below)	2120-0008
§§ 121.3 thru 121.155	2120-0008, 2120-0028
§ 121.344	2120-0616
§ 121.344a	2120-0616
§ 121.585	2120-0542
§ 121.683	2120-0585
§ 121.715	2120-0523
§ 121.723	2120-0008, 2120-0025
Part 123	2120-0028
Part 125 (except as below)	2120-0085
§ 125.226	2120-0616
Part 127	2120-0028
§ 129.20	2120-0616
Part 133	2120-0044
Part 135 (except as below)	2120-0039
§§ 135.11 thru 135.17	2120-0008, 2120-0039
§ 135.43	2120-0025, 2120-0039
§ 135.63	2120-0585
§ 135.129	2120-0542
§ 135.152	2120-0616
§ 135.163	2120-0619
§ 135.411	2120-0619
§ 135.415	2120-0003, 2120-0039
§ 135.421	2120-0619
Part 137	2120-0049
Part 139	2120-0063
Part 141	2120-0009
Part 143	2120-0021
Part 145 (except as below)	2120-0010
§ 145.63	2120-0003, 2120-0010
Part 147	2120-0040
Part 149	2120-0012
§§ 150.21 and 150.23	2120-0517
Part 152	2120-0065, 2120-0080
Part 157	2120-0036
§ 159.13	2120-0061
§ 159.93	2120-0084
Part 171	2120-0014
§ 183.11	2120-0002, 2120-0033, 2120-0035
§§ 183.15 thru 183.17	2120-0033
§§ 183-25 thru 183.31	2120-0035
Part 198	2120-0514
Part 199	2120-0081
SFAR 44-5 Appendix	2120-0502
SFAR 36	2120-0507

[Doc. No. 23738, 48 FR 39449, Aug. 31, 1983]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §11.101, see the List of CFR Sections Affected in the Finding Aids section of this volume.

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

Subpart A—Investigative Procedures

Sec.

- 13.1 Reports of violations.
- 13.3 Investigations (general).
- 13.5 Formal complaints.
- 13.7 Records, documents and reports.

Subpart B—Administrative Actions

- 13.11 Administrative disposition of certain violations.

Subpart C—Legal Enforcement Actions

- 13.13 Consent orders.
- 13.15 Civil penalties: Federal Aviation Act of 1958, as amended, involving an amount in controversy in excess of \$50,000; an in rem action; seizure of aircraft; or injunctive relief.
- 13.16 Civil penalties: Federal Aviation Act of 1958, involving an amount in controversy not exceeding \$50,000; Hazardous Materials Transportation Act.
- 13.17 Seizure of aircraft.
- 13.19 Certificate action.
- 13.20 Orders of compliance, cease and desist orders, orders of denial, and other orders.
- 13.21 Military personnel.
- 13.23 Criminal penalties.
- 13.25 Injunctions.
- 13.27 Final order of Hearing Officer in certificate of aircraft registration proceedings.
- 13.29 Civil penalties: Streamlined enforcement procedures for certain security violations.

Subpart D—Rules of Practice for FAA Hearings

- 13.31 Applicability.
- 13.33 Appearances.
- 13.35 Request for hearing.
- 13.37 Hearing Officer's powers.
- 13.39 Disqualification of Hearing Officer.
- 13.41 [Reserved]
- 13.43 Service and filing of pleadings, motions, and documents.
- 13.44 Computation of time and extension of time.
- 13.45 Amendment of notice and answer.
- 13.47 Withdrawal of notice or request for hearing.
- 13.49 Motions.
- 13.51 Intervention.
- 13.53 Depositions.
- 13.55 Notice of hearing.
- 13.57 Subpoenas and witness fees.
- 13.59 Evidence.
- 13.61 Argument and submittals.
- 13.63 Record.