

January 28, 2000

Docket Management System
Docket No. FAA-1999-6622
U.S. Department of Transportation
Room PL 401
400 Seventh St., SW
Washington, DC 20590-0001

Gentlemen,

The Aircraft Owners and Pilots Association (AOPA), representing the aviation interests of over 355,000 pilots and aircraft owners, submits the following comments to Docket No. FAA 1999-6622. Docket No. 1999-6622 is a Federal Aviation Administration (FAA) Notice of Proposed Rulemaking (NPRM) that proposes to revise and clarify the agency's rulemaking procedures by putting them into plain language and by removing redundant and outdated material.

AOPA has long held that the Federal Aviation Regulations are overly cumbersome and difficult for pilots to understand, and conceptually speaking, we embrace the idea of "plain language" rulemaking. AOPA feels that, in the general sense, plain language rulemaking may ultimately lead to a better understanding of, and more consistent compliance with, the requirements of the Federal Aviation Regulations. However, we have serious reservations regarding the practical application of these concepts in the development of all types of rulemaking actions.

AOPA recognizes that, in this particular application, "plain language" rulemaking provisions can benefit the GA community by providing a clearer and more concise representation of the rules surrounding the FAA's rulemaking process. However, the practical application of many of the "plain language" concepts proposed in this NPRM provide no regulatory clarification and, therefore, may result in little or no appreciable benefit to the reader. More important, AOPA maintains that the elimination of an individual's ability to contact FAA personnel regarding the provisions of a proposed rule will severely curtail the public's ability to provide objective comments to the FAA. The provisions of this proposed rule, if adopted as proposed, will ultimately diminish the public's access to the rulemaking process.

To clarify AOPA's position on these issues, a section-by-section listing of AOPA's comments and concerns follows:

General:

Sec. 11.1 To what does this part apply?

AOPA has no opposition to the content of this section, however we fail to see the benefit in phrasing this particular section heading as a question. Practically speaking, it's much easier to understand the heading "Applicability" than it is to understand the question "To what does this part apply?" Consequently, AOPA recommends that the FAA entitle section 11.1 "Applicability".

Sec. 11.13, 11.17, 11.19, 11.23, 11.25, and 11.29 Definitions of various rulemaking actions

AOPA has no opposition to the proposed definitions of the various rulemaking actions. However, we see no inherent benefit in assigning each a specific section. Practically speaking, the heading "What is a notice of proposed rulemaking?" is unnecessarily verbose and is no more concise than the heading "Notice of Proposed Rulemaking". AOPA maintains that a single section containing the definitions of the various types of rulemaking actions would result in a more concise and easier to understand regulation. Therefore, AOPA recommends that the FAA consolidate the definitions contained in sections 11.13, 11.17, 11.19, 11.23, 11.25, 11.29 into a single section entitled "Definitions". Further, AOPA recommends that the FAA refrain from using questions to head definitions sections, as it results in a wordy regulation and provides little, if any, clarification to the reader.

Sec. 11.31 How can I track the FAA's rulemaking activities?

AOPA thanks the FAA for including this section in the proposed rule, as it is a significant improvement over the advisory information contained in the current part 11. Although AOPA supports the inclusion of this section in the proposed part 11, we recommend that the FAA modify its heading. To avoid the use of unnecessarily wordy language, AOPA recommends that the FAA entitle section 11.31 "Tracking FAA rulemaking activities".

Written Comments:

Sec. 11.41, 11.43, 11.45, and 11.47 Rules for filing comments

AOPA thanks the FAA for clarifying the rules under which the public submits comments to rulemaking actions. These sections provide substantial clarification to the reader when

compared to those contained in the current part 11.

Department of Transportation

Page 3

January 28, 2000

Public Meeting and Other Proceedings:

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

AOPA supports the inclusion of these instructions and encourages the FAA to hold public meetings whenever a particular rulemaking action is likely to prompt significant public comment. However, we have serious reservations regarding the elimination of regulatory language that grants the public the ability to contact appropriate FAA officials concerning a proposed rulemaking action.

In the preamble to the proposed rule, the FAA indicates that the public contact provisions (contained in the current §11.65) were removed from the proposed rule because these provisions were “contrary to DOT ex-parte policy”. DOT ex-parte policy prohibits non-public contacts with DOT officials once an NPRM has been issued. AOPA maintains that such non-public contacts provide a vital link between the flying public and appropriate authorities within the FAA. AOPA, aircraft type-clubs, aircraft owners/operators, and mechanics regularly use such “non-public” contacts as an informal way to gain the facts they need to provide objective comments to FAA rulemaking actions. Elimination of this link effectively denies the public access to the rulemaking process.

Recently the FAA lauded AOPA and all other organizations and individuals who submitted comments on the twin Cessna exhaust AD. The FAA, recognizing the merit of objective and specific comments to a proposed rule, commended commenters for submitting an unprecedented number of quality recommendations. Had it not been for the “non-public” contacts between AOPA, other interested organizations and the FAA, the GA community would have lacked the specific information necessary to make these objective and specific comments.

Without the GA community’s quality comments on the twin Cessna exhaust AD, the FAA would have had no choice but to issue a particularly onerous and overly burdensome airworthiness action. “Non-public” contacts provided the flying public and the FAA a necessary insight. The resulting public comments played an indispensable role in increasing the quality of the FAA’s rulemaking actions. Prohibition of such “non-public” contacts will degrade the quality of information the FAA receives from the GA community and may ultimately damage the fragile relationship between the FAA and the flying public.

AOPA recognizes that the FAA makes an honest attempt to include all necessary information in the body of a proposed rule. However, through 60 years of participation in

the rulemaking process and the submission of countless petitions and comments, we're
Department of Transportation
Page 4
January 28, 2000

well aware that no agency, including the FAA, can accomplish that task. AOPA, and the GA community, rely on these "non-public" contacts in order to provide the most objective, and most useful comments we possibly can.

AOPA seriously doubts that the FAA has the financial or administrative resources to hold a public hearing every time an individual or organization has a question concerning a particular rulemaking action. In the absence of such abundant resources, the elimination of the "non-public" contact provisions can only serve to diminish public access to the rulemaking process. In its very essence, DOT's ex-parte policy is contrary to a fair and open rulemaking process.

In order to protect the public's right to a fair and open rulemaking process, AOPA recommends that the FAA include the provisions contained in the current §11.65 in the proposed §11.51, and entitle the section "May I ask for more information on a rulemaking action?"

Petitions for Rulemaking and for Exemption:

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

AOPA thanks the FAA for providing these clarifications in an easy-to-read chart format. Consolidating the information contained in the current §11.25, 11.27, 11.71, and 11.83 into a single new section (proposed §11.61) results in a much clearer representation of the provisions of this part.

Summary:

AOPA supports any effort to make the Federal Aviation Regulations more concise and easier to understand. If carefully and properly implemented, the concept of plain language rulemaking can accomplish this goal. In this particular situation, the majority of the provisions of the proposed rule will lead to clearer and more concise rulemaking actions. However, without careful consideration, many of the proposed changes to §11 could actually result in a rule that's overly complex and difficult to understand. AOPA urges the FAA and the DOT to exercise due diligence when applying plain language concepts to operating, certification, and maintenance regulations.

Further, AOPA maintains that some of the provisions of the proposed rule will limit the

public's access to the rulemaking process and will ultimately degrade the quality of information the FAA receives in response to a rulemaking action. Specifically, AOPA is
Department of Transportation

Page 5

January 28, 2000

concerned with the FAA's prohibition of "non-public" contacts during the rulemaking process. Given the FAA's inability, administratively or financially, to support a public meeting for every request for information or clarification, AOPA implores the FAA and DOT to reconsider its ex-parte policy and allow "non-public" contacts. Anything short of such action will be a departure from the true spirit and intent of plain language rulemaking and will severely limit the public's access to the rulemaking process.

Thank you for your time and consideration in this matter. AOPA stands ready to assist the FAA and the DOT in reconsidering the provisions of this proposed rule.



Respectfully,

Lance Nuckolls

Director

Regulatory and Certification Policy