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Comments of Northwest Airlines, Inc.

In The Matter Of:
Notice of Proposed Rulemaking
Notice # 99-20
General Rulemaking Procedures

Docket # FAA-1999-6622
US Department of Transportation
Federal Aviation Administration

Introduction:

In a Notice dated December 13, 1999, the Federal Aviation Administration sought comments on its

proposal to revise and clarify its rulemaking procedures. The FAA's actions are being taken in response to a directive by President Clinton for Federal agencies to simplify their rulemaking processes. The FAA seeks to achieve this simplification by using plain language, simplified grammar, and through removal of unnecessary and redundant provisions of its rulemaking

procedural rules.

Northwest believes that the FAA's proposal represents an important improvement to the rulemaking process. We encourage FAA to apply a simplified approach to FAA regulations,

generally. We note that such an approach was recommended in the February 1997 Final Report of the White House Commission on Aviation Safety and Security:

The Commission urges the FAA to take two steps to address this problem. First, as

appropriate, all new rules should be rewritten as performance-based regulations, and in plain English. Second, within 18 months, a bottom-up review of existing regulations should be conducted to identify those in need of rewriting as performance-based, plain English regulations. Such clarifications would improve

compliance and help the FAA resolve serious problems created by differences in interpretations of regulations by FAA officials across the country.

Northwest is pleased to see the FAA taking steps to meet the Commission recommendation. The

Notice provides a clearly articulated and easy to understand explanation of the rulemaking process. We encourage the FAA to proceed with simplification of its regulations in other areas, and to work towards the important objective of “performance-based” regulations, which provide goals for regulated parties to achieve, rather than detailed measures that must be undertaken to achieve such

compliance.

Specific Comments:

Deletion of redundant elements of the regulation is appropriate. Northwest supports the FAA's effort to eliminate redundancies in its rulemaking procedures. Such redundancies are unnecessary, confusing and can lead to unintended constructions.

The simplified cross-reference table is a valuable tool. It is extremely difficult to locate a specific regulation that has been subsequently eliminated, moved, or reordered. Provision of a cross-referencing table such as the one in the proposed rule makes it possible to navigate through such changes. Northwest urges FAA to incorporate cross-referencing when making changes to

Air Carrier Standard Security Programs as well.

The simplified rulemaking procedures should include guidance to interested parties on the proper handling of security-sensitive information. The Notice properly recognizes that parties

may wish to provide security-sensitive information for the FAA's consideration in the context of certain rulemaking proceedings, and that such security-sensitive information must be excluded from the public docket. The FAA should take an important further step and adopt procedures that direct interested parties how to submit security-sensitive information for consideration in

rulemakings, rather than relying upon the docket clerk to properly handle such information. These procedures should include a process by which a responsible and knowledgeable FAA official will pre-screen information labeled “security-sensitive”, to confirm that the information is both sensitive and relevant, and describe how such information will be handled once such a determination has

been made. Such “confidentiality” procedures are commonplace in government agency rulemakings.

Caution should be exercised in prescribing an unduly broad definition of ex parte

communications. The proposal contains a declarative statement suggesting that all non-public contacts with FAA officials once an NPRM has been issued constitute illegal ex parte communications. Past practices have generally permitted senior agency officials to docket a summary of discussions regarding a proposal in certain circumstances, rather than providing for an

absolute bar of such discussions. We urge the FAA to maintain general procedures permitting free flow of information to the extent necessary to yield informed rulemaking decisions and in a manner that satisfies the requirements of the Administrative Procedure Act.

Publication of summaries of certain rulemaking petitions should be continued. While Northwest agrees that the FAA should not be expending valuable resources in publishing all rulemaking petitions it receives, Northwest believes that there is value in the continued publication of summaries of some rulemaking petitions. The FAA has indicated that, in cases where a

rulemaking petition meets its criteria, the FAA will proceed to the issuance of a notice of proposed rulemaking. Northwest believes that, in cases where the FAA finds that a petition for rulemaking meets its criteria, it would be in the public interest for the FAA to publish a summary of such rulemaking petition. This would provide an opportunity for the sharing of added perspective on

such issues prior to the FAA expending the significant amount of resources that are necessary to develop and issue a notice of proposed rulemaking.

CONCLUSION:

Northwest supports the FAA's efforts to simplify its rulemaking procedures. We urge the FAA to continue this process in other areas of its rules, both prospective and existing. We agree with the White House Commission on Aviation Safety and Security that "government can achieve better

regulatory compliance if its objectives are stated clearly and its focus on goals, not process”. In that regard, we reiterate our earlier comment that it is important that the FAA’s orientation in rulemaking be one of focusing on performance-based goals, not detailed process.

Dated: February 1, 2000