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Rulemaking Work Instructions

Purpose

The Federal Aviation Administration (FAA) uses the process in the Rulemaking Work Instructions (Work Instructions) to initiate, propose, and finalize regulatory documents such as notices of proposed rulemaking and final rules. These Work Instructions address those applicable statutes, Executive Orders, and *Federal Register* requirements that pertain to issuing regulatory documents. They also provide detailed information, requirements, and best practices for managing internal (FAA) review and issuance of those regulatory documents, as well as obtaining Department of Transportation (DOT) and Office of Management and Budget (OMB) approval when necessary.

Some of the regulatory documents addressed in these Work Instructions are published in the *Federal Register*. The regulatory changes that result from these regulatory documents are adopted in the Code of Federal Regulations, Title 14 – Aeronautics and Space (14 CFR).

Scope

These Work Instructions apply to the Office of Rulemaking and all FAA services/offices with rulemaking responsibilities. These Work Instructions apply to all types of regulatory documents, including proposals, final rules, withdrawals, technical amendments, and corrections. They do not apply to exemptions, special conditions, airworthiness directives, and other guidance materials.

Approval



 Director, Office of Rulemaking



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REVISION HISTORY

REV		
0	Original – This revision replaces the Rulemaking Manual ARM-001-014– revision # 26	10/16/08
1	Minor changes—The word “approximately” was added for clarity before “2 weeks” on pages 17, 27, and 85. The definition of “B” priority on pages 22 and 23 was coordinated for consistency. Regarding the use of Stakeholder Feedback Forms, on page 68 the word “must” was replaced by the word “may.” The quality management statement on page 49, 104, 106, and 108 was revised to delete the old DQR reference.	August 21, 2009
2	Major changes - On pg. 58, changed Cyberdocs #26801 to 29027. On pg. 59, included wording 'See Cyberdocs #18177 for more information on this process'. On pg. 60, replaced 'ARM-20' in second paragraph with 'ARM analyst.' On pg. 59, deleted sentence with reference to 'Appendix A' in the first 'NOTE'. On pg. 68, replaced 'may' with 'must', replaced 'several' with 'all', inserted 'if applicable' in parenthesis, and replaced 'the NPRM or' with 'The Rulemaking document and other supporting documents'. On pg. 69, inserted sentence 'Rulemaking analysts are responsible for uploading and/or checking to make sure all applicable documents are contained in FDMS.' On pg. 109, replaced 'AGC informs ARM once OST approves the rulemaking package' with 'ARM receives OST approval of the rulemaking document(s) through RMS.' On pg. 113, changed cyberdocs #26801 to 29027. On pg. 114, included wording 'See Cyberdocs #18177 for more information on this process', and replaced 'ARM-20' in second paragraph with 'ARM analyst.' On pg. 115, deleted sentence with reference to 'Appendix A' in the first 'NOTE'.	November 20, 2009



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REV		
3	<p>Major changes - p. 10, Added “requesting” and changed “open” to “reopen” for comments; replaced “products” with “documents” and included “technical amendments” and “corrections” as types of rulemaking documents; added, “Quality Management System” before its acronym. p. 11, Replaced the phrase “It is critical that any document you prepare accurately reflects” with “Any rulemaking document that you prepare must accurately reflect”; deleted “a” and replaced “explanation” with “explanations” for plurality of agency decisions. p. 12, Replaced “In” with “When”; “read” with “reads”; “document” with “documents”; and “reflect” with “reflects” for plurality of documents’ quality standards. pp. 13-14, Added “IRMIS/RMS Integration” section. p. 14, Replaced the sentence “Once you identify a need for a rulemaking, you (an employee of the OPR, that is, office of primary responsibility) begin the rulemaking process by completing the Phase I section of the RPR.” with “An employee of the office of primary responsibility (OPR) begins the rulemaking process by identifying a need for rulemaking and completing the Phase I of the Rulemaking Project Record (RPR).” p. 15, Added “Aviation Rulemaking Advisory Committee” before its acronym; replaced the phrase “If you need help with any portion of the Phase I RPR, please” with “For assistance with any portion of the Phase I RPR,” for beginning the rulemaking process. p. 16, Replaced “Once you have completed the Phase I RPR document, it becomes the vehicle for getting approval to begin the actual work on the project. You must get the Phase I RPR signed by your office director.” with “Once you complete the Phase I RPR, get it signed by the director of the OPR.” Moved “Please do not send an unsigned Phase I RPR to the Office of Rulemaking. We will return it without taking any action.” to the “Send to ARM-20 section.”</p>	OCTOBER 16, 2008



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REV		
3	<p>Major changes - p. 32, Replaced “If the Council has approved your Phase II, the rulemaking team is ready to go to the next step of preparing the NPRM, which the primary vehicle for getting public comment on a proposal, the NPRM” with “An NPRM”; added the sentence “If the Council has approved your Phase II RPR, the rulemaking team is ready to go to the next step of preparing the NPRM.”; added language to specify Chapter 2 when preparing for rulemaking; added reference to the <i>Federal Register’s</i> on-line database and searching for records before 1995.</p> <p>p. 33, Added “for a reference to a related <i>Federal Register</i> document”; added reference to “OPR”; and deleted “For additional information regarding roles and responsibilities for ACG attorneys, see Appendix F, Legal Review” from the third bulleted item from Drafting the NPRM section. p. 35, Replaced the IRMIS Milestones discussion with introductory sentences referencing the newly designated Rulemaking Project Milestones. p. 35, Replaced the IRMIS Milestones discussion with introductory sentences referencing the newly designated Rulemaking Project Milestones.</p>	October 16, 2008
4	<p>Major Revision – Replaces Revision 3 of Rulemaking Process Work Instructions dated October 16, 2008. Transitioned from RPR to LCD. Defined LCD documents and purpose. IRMIS/RMS defined. Added new appendices L&M for RIN/Designation List, respectively. Reorganized and changed the tone.</p>	November 11, 2011
5	<p>Major Revision – Replaces Revision 4 of Rulemaking Process Work Instructions dated November 11, 2011. Changes were made to make document more user-friendly and to update information based on changes to process since Revision 4. Also fixed all broken links. New language was also added to address (i) the new SFAR process, (ii) the creation of the effectivity chart, (iii) what constitutes PTC, and (iv) when to “check the box.”</p>	October 1, 2015


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List of Acronyms and Terms

The following is a list of some of the acronyms and terms used throughout this document (including appendices). Most are not identified later in this document. In addition, some appendices use acronyms and terms unique to that appendix and are identified in that appendix only.

14 CFR	Title 14 of the Code of Federal Regulations
AC	Advisory Circular
AD	Airworthiness Directive
ADA	FAA Office of the Deputy Administrator
AEO	FAA Office of Emergency Operations, Communications and Investigations
AFS	FAA Flight Standards Service
AFRL	Alternate Federal Register Liaison
AGC	FAA Office of the Chief Counsel
AGC-200	Assistant Chief Counsel for International Law, Legislation, and Regulations for AGC
AGI	FAA Office of Government & Industry Affairs
AIR	FAA Aircraft Certification Service
ANPRM	Advance Notice of Proposed Rulemaking
AOA	FAA Office of the Administrator
AOC	FAA Office of Communications
APO	FAA Office of Aviation Policy and Plans
API	FAA Office of International Affairs
ARAC	Aviation Rulemaking Advisory Committee
ARC	Aviation Rulemaking Committee
ARM	FAA Office of Rulemaking
ARM-1	The Director of the Office of Rulemaking
AST	FAA Office of Commercial Space Transportation
ATO	FAA Air Traffic Organization
AVS	FAA Aviation Safety Organization
CCMS	Correspondence Control Management System
CFR	Code of Federal Regulations



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Council	FAA Rulemaking Management Council
CRD	Committee Request Document
DDH	<u>Federal Register Document Drafting Handbook</u>
DLC	Director Level Concurrence
DMS	Document Management System
DOT	Department of Transportation
e-CFR	<u>Electronic Code of Federal Regulations</u>
FAA	Federal Aviation Administration
FDMS	Federal Docket Management System
FTC	Final Team Concurrence
HPEP	High-Profile Expedited Project
IBR	Incorporation by Reference
ICAO	International Civil Aviation Organization
ICR	Information Collection Request
IHEP	Initiation of a High-Profile Expedited Project
IRMIS	Integrated Rulemaking Management Information System
LCD	Rulemaking Lifecycle Document
LDR	Labor Distribution Code
NARA	National Archives and Records Administration
NEPA	The National Environmental Policy Act
NPRM	Notice of Proposed Rulemaking
NTSB	National Transportation Safety Board
OFR	Office of the Federal Register
OIRA	OMB Office of Information and Regulatory Affairs
OMB	Office of Management and Budget
OPR	FAA Office of Primary Responsibility
OST	Office of the Secretary of Transportation
PREP	Pre-Rulemaking Evaluation and Prioritization
PRA	Paperwork Reduction Act
PTC	Preliminary Team Concurrence
QMS	Quality Management System
RAP	Rulemaking Action Plan
RHEP	Resolution of a High-Profile Expedited Project

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RIA	Regulatory Impact Analysis
RIN	Regulation Identifier Number
RMS	Rulemaking Management System
ROCIS	RISC (the General Services Administration's Regulatory Information Service Center (RISC)) and OIRA Consolidated Information System
RRR	Retrospective Regulatory Review
SNPRM	Supplemental Notice of Proposed Rulemaking
SSP	Short Simple Project
Team	The Rulemaking Team Assigned to a Rulemaking Project



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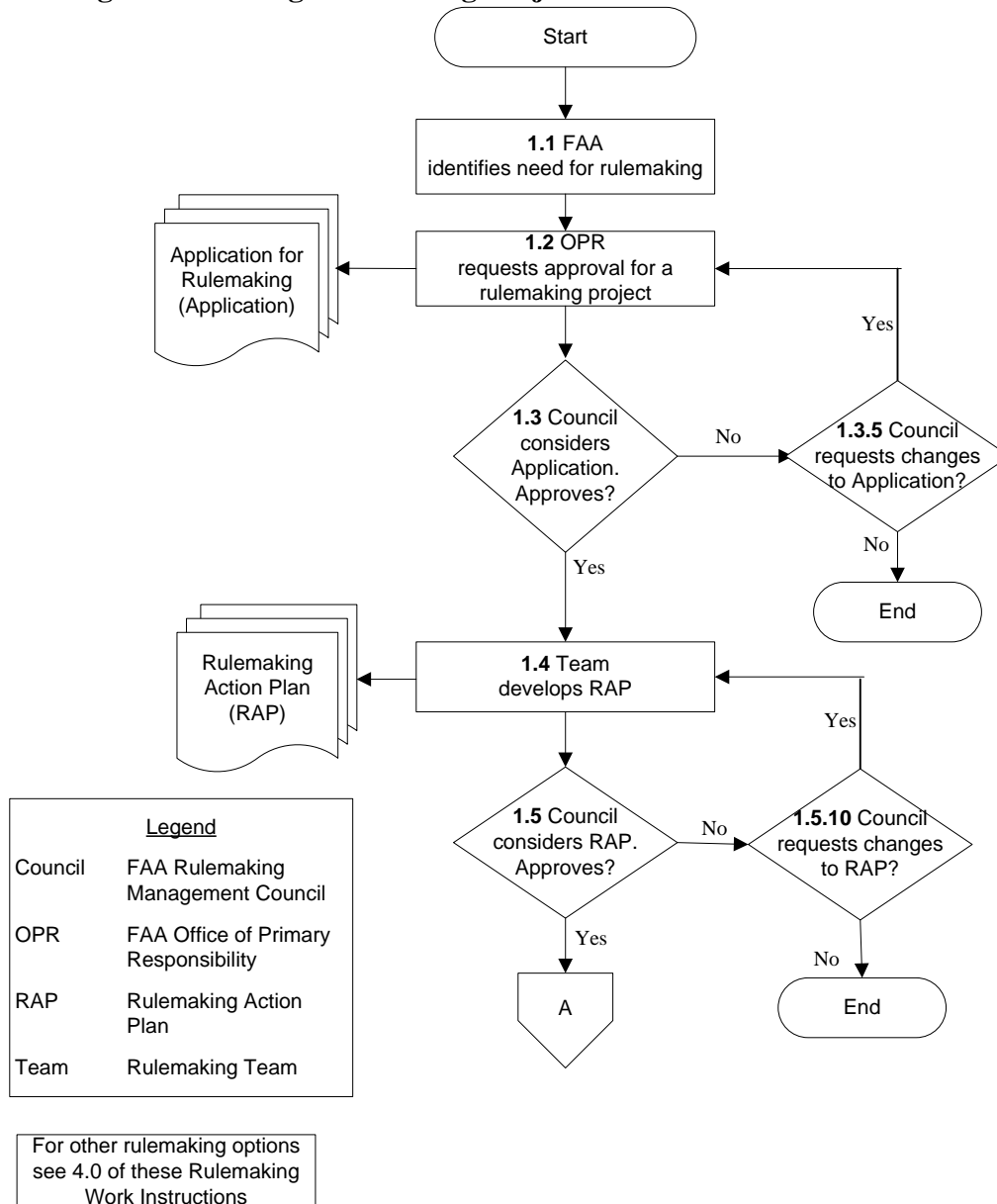
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Rulemaking Process Flowchart

Stage 1: Initiating Rulemaking Projects





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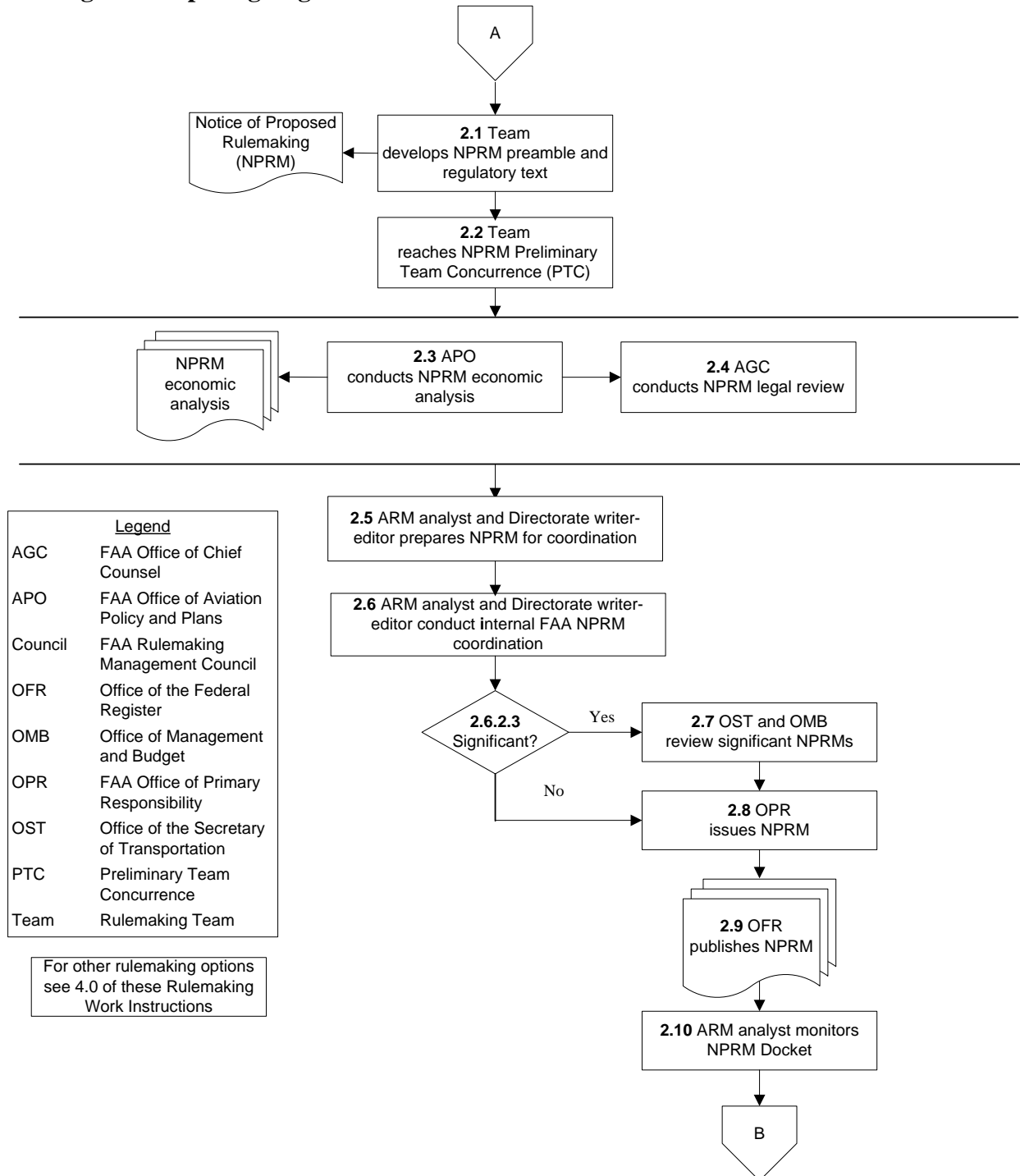
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Stage 2: Proposing Regulations





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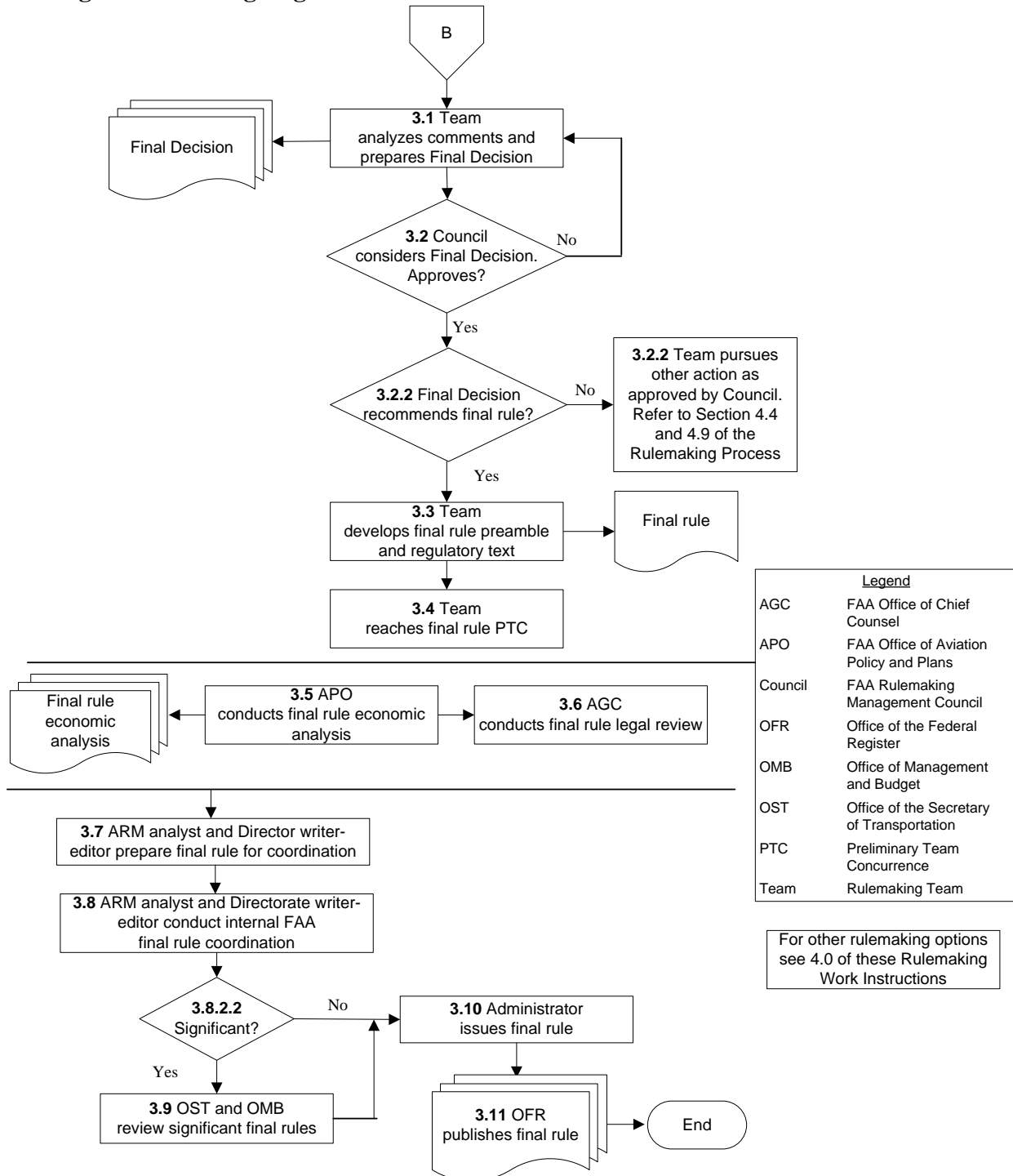
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Stage 3: Finalizing Regulations



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Introduction

The FAA Office of Rulemaking (ARM) uses these Rulemaking Work Instructions (Work Instructions) to provide detailed rulemaking requirements and standards to ensure quality control. For a summary of the steps identified in these Work Instructions, refer to [ARM-002-010, Rulemaking Process](#).


Throughout these Work Instructions, “*Requirements*” and the use of the word “must” indicates mandatory actions. “*Best practices*” and the use of the words “should” and “may” indicate actions that are encouraged but not required.

In addition, different offices or services may use different titles for individuals whose positions are at an equivalent level. For example, an Associate Administrator in one office may be equivalent to an Assistant Administrator in another. These Work Instructions refer to commonly used position titles such as “Director” or “Associate Administrator.” Readers should use equivalent position titles, as necessary.


Those individuals who play a part in developing FAA rulemaking documents are the main audience for these Work Instructions. These include:

- Staff and managers of FAA offices and services with rulemaking responsibility; and
- ARM analysts, Aircraft Certification Service (AIR) Directorate writer-editors, attorneys, economists, and their managers who ensure the FAA fulfills the agency’s procedural obligations.

While the FAA strives to fully comply at all times with all provisions of the Rulemaking Process and these Work Instructions, there are occasions when the standard process does not support critical mission needs. The Director of ARM (ARM-1) may authorize deviations from the

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standard process, as necessary, to address emergency or other situations that require exceptionally quick rulemaking action.

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1. Initiating Rulemaking Projects (Stage 1)

1.1. FAA Identifies Need for Rulemaking

1.1.1. Drivers Leading to Rulemaking


The FAA identifies potential rulemaking needs in several ways. Drivers for rulemaking action may include, but are not limited to:

- Laws passed by Congress;
- NTSB or other recommendations resulting from accident investigations;
- Availability of new technology;
- Changes in industry practice;
- Internal FAA safety analyses;
- A desire to harmonize FAA's regulations with other departments or agencies and those of other nations;
- Petitions for rulemaking submitted by members of the public;
- Exemptions from FAA regulations; and
- Special conditions/emergencies that may impact aviation safety if not addressed.

The FAA is responsible for most of 14 CFR parts 1-199 and 400-499. Rulemaking needs may include amending, adding to or removing regulations in these parts of 14 CFR.¹

1.1.2. Management of the FAA Rulemaking Program

¹ The OFR prints paper CFR books annually. ARM and some other FAA offices (e.g., AGC) may keep reference copies of the printed CFR books. The CFR is also available online as the Electronic CFR ([e-CFR](#)).

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ARM facilitates the FAA’s rulemaking program. FAA executive-level management provides the strategic direction for the FAA’s rulemaking program. The Council² implements the executive-level management’s strategic direction through the Council’s management of the rulemaking program. ARM-1 chairs the Council, which includes the:

- Assistant Chief Counsel for International Law, Legislation, and Regulations for AGC (AGC-200);
- Director of APO (APO-1); and
- Directors of those FAA services and offices with rulemaking responsibility.


1.2. OPR Requests Approval for a Rulemaking Project (Application for Rulemaking)

1.2.1. OPR Project Leadership

Once the FAA identifies a potential need for rulemaking, the OPR starts the rulemaking effort. The OPR is the service or office that has primary responsibility for the part of 14 CFR that will potentially be most affected by the rulemaking project. The OPR identifies a rulemaking project lead, who usually becomes the Team lead once the Team is formed (refer to Section 1.3.3). The OPR project lead serves as the primary subject matter expert for the rulemaking project.

The OPR will conduct a technical evaluation of the current regulations to determine how to best implement the proposed change. Once a plan of action is developed by the OPR and approved by its management, the OPR should contact ARM and start developing the PREP Worksheet required in Section 1.2.8. Once that is completed and it is determined that the OPR can bring the project to Council, the OPR will begin the process of drafting the LCD that is necessary to obtain Council approval to proceed to the next step of the rulemaking process. The OPR should contact ARM to determine which LCD is appropriate and obtain a copy of the LCD template from the [Council SharePoint site](#).

² [FAA Order 1110.153, Rulemaking Management Council Charter](#).

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1.2.2. Using Document Templates

ARM maintains templates³ for those documents used during the rulemaking process in DMS.⁴ Every template is identified by a unique document number (referenced as “Doc # *****”). ARM updates these templates as needed. Because document templates evolve over time, it is important to use the latest template version (see Doc # 43224 for a list of rulemaking templates). Appendix C, General Writing Guide, includes tips for working efficiently with ARM document templates.

1.2.3. Rulemaking Lifecycle Documents


The following is a list of the LCDs:

- Application for Rulemaking (refer to Sections 1.2 and 1.3);
- Rulemaking Action Plan (refer to Sections 1.4 and 1.5);
- Final Decision (refer to Sections 3.1 and 3.2);
- Initiation of High-Profile Expedited Project (refer to Section 4.1.1);
- Resolution of High-Profile Expedited Project (refer to Section 4.1.2);
- Appendix (refer to Section 4.2);
- Committee Request Document;⁵ and
- Appendix to Committee Request Document (refer to footnote 5).

³ Appendix A, Templates and Other Resources, lists some of the frequently used templates ARM maintains for use during the rulemaking process.

⁴ These Work Instructions use the general term “DMS” to avoid confusion about the various software versions that the FAA has used for rulemaking document management (e.g., Cyberdocs and Hummingbird). Section 1.3.7 explains the use of DMS.

⁵ An OPR may use a CRD to seek Council approval for establishment of an Aviation Rulemaking Committee or an Aviation Rulemaking Advisory Committee Working Group. The use of this LCD and an Appendix to CRD is addressed in ARM-001-015, Committee Manual.

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The audience for LCDs is the Council, OPR management, the Team, and the Team's management. Clear and concise writing facilitates their review and approval of LCDs.

1.2.4. Developing the Application

The Application (Doc # 30277) is used by the OPR to seek approval from the Council to begin a rulemaking project. It is the first of several LCDs used to request Council approval during the different stages of the rulemaking process.


The Application defines the scope of the project. The OPR sets forth the information that OPR management and the Council will need to understand the purpose of the proposed rulemaking project and make a decision on whether to approve the Application. This includes why the proposed rulemaking project is necessary/what problem it is addressing, what changes to 14 CFR are being proposed, and what is the expected outcome of the proposed changes. If unclear about what should go into the Application, the OPR should contact ARM for direction.

The Application also includes signature blocks for approval by the OPR project lead and OPR management through the Director level. A signature on the Application represents an agreement with the information in the document, and a commitment within the OPR to allocate necessary staff and other resources to the project.

Best practices:

The project lead:

- Contacts ARM for the latest template when beginning to prepare the Application;
- Complies with all applicable instructions in the template;
- Ensures the project title does not refer to a CFR part;
- Considers the Application audience, many of whom may be unfamiliar with the technical issues associated with the project;

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- Refers to Appendix C, General Writing Guide, for style suggestions to improve clarity and consistency within the document; and
- Confirms with ARM that no newer template version has become available before submitting the Application for Council review. If a newer template version has become available, the project lead transfers the information to the newest version.

1.2.5. Project Abstract and Rulemaking Document Summary

A project abstract is a short summary describing the rulemaking project. It is used throughout the life of the project, including in the “Summary” section of the rulemaking document. Chapter 1, Section 1.5 of the OFR [Document Drafting Handbook \(DDH\)](#) has helpful guidance on preparing the “Summary” section of a rulemaking document, and should be referred to when drafting the abstract for the Application.

The abstract should answer the following questions:

- What action is being taken?
- Why is this action necessary?
- What is the intended effect of this action?

The abstract should also:

- Use language a non-expert can understand;
- Describe what the document does, not how it affects the CFR;
- Refer to any acts of Congress mentioned by the popular name of the act; and
- Be brief.

The abstract should not include:

- Legal citations;

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- Acronyms;
- Regulatory history or extensive background; or
- Qualifications, exceptions, or specific details.

The abstract and “Summary” section of the rulemaking document may change over time during a rulemaking document’s development.


1.2.6. Guidance Material Associated with Rulemaking

When an OPR proposes new rulemaking, it may be necessary to develop associated guidance material that further explains how the FAA expects to work with industry to implement these requirements. New or modified guidance material such as ACs may provide options for industry to show compliance, for example. Without understanding how the FAA plans to implement new or changed requirements, industry may not be able to provide meaningful comments in response to the FAA’s proposed rules.

AVS policy⁶ requires the FAA publish any proposed or final guidance to industry associated with a rulemaking project within 5 days of publication of the applicable rulemaking document in the *Federal Register*. The OPR begins planning to meet this requirement with the Application, where it must identify what, if any, guidance material will be needed to support a rulemaking. By the time the Team is developing the RAP, the OPR should be ready to identify how it will be ready to publish the proposed guidance material associated with the rulemaking project in compliance with the AVS policy.

The OPR should develop any proposed associated guidance material as the Team develops the NPRM. To help ensure that it is ready for posting to the public docket at NPRM publication, the ARM analyst confirms the status of any associated guidance material as part of the Pre-Coordination Checklist (refer to Section 2.5.5) and the Pre-Issuance Checklist (2.8.1). Then, the OPR considers comments received on the proposed guidance material before finalizing it at final rule publication.

⁶ See “AVS Policy Memorandum: Publication of Guidance Material Associated with Rulemaking,” February 23, 2011 (Doc # 36100).

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1.2.7. Project Significance


Every rulemaking project is eventually designated as “significant” or “nonsignificant” by OMB in accordance with Executive Order [12866, Regulatory Planning and Review](#) (1993) and [Executive Order 13563, Improving Regulation and Regulatory Review](#) (2011). These Executive Orders and Department of Transportation (DOT) [Order 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations](#), identify a significant rulemaking as one that may:

- Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in Executive Orders [12866](#) and [13563](#).

Other factors that may make a rulemaking significant are:

- A high level of interest in the subject matter by the public, industry, Congress, OST or OMB;
- If the rulemaking is the result of a Congressional mandate; or
- The OPR expects the rulemaking to be controversial.

If a project is significant under any of the criteria above, OMB and OST must review and approve the rulemaking document prior to FAA issuance. OST and OMB reviews take several months, which adds to the time and resources needed to complete significant projects. These factors are important considerations during Council review of an Application.

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1.2.8. PREP Worksheet

Once a year, ARM requests that each OPR develop a list of those rulemaking projects that it intends to submit to the Council in the upcoming fiscal year to initiate rulemaking. As part of this process, the OPR needs to complete a PREP Worksheet for each project. The PREP Worksheet is a tool that asks a series of weighted, rulemaking-focused questions that each project lead must answer to identify a current problem and explain how to solve the problem with rulemaking.

After OPR management concurs with the PREP Worksheet, the OPR submits the PREP Worksheet to ARM. ARM reviews the results for accuracy and identifies any missing information. After the review, ARM consolidates the completed PREP Worksheets into a list for the OPR. This list represents the OPR's Prioritized Rulemaking List and is ranked by score. The OPR's Prioritized Rulemaking List allows the directors and managers to view their OPR specific rulemaking forecast for the fiscal year and determine if any of the projects need to be re-prioritized based on other factors.

After reviewing its prioritized rulemaking list, each OPR notifies ARM that it concurs with the list or provides any desired revisions. ARM then consolidates each OPR's final list into one master list, creating the FAA's Prioritized Rulemaking List for the upcoming fiscal year. This enables the OPR, ARM, AGC, and APO to have a better understanding of the complexity of each potential project and to forecast achievable goals. The Council approves the FAA's Prioritized Rulemaking List.

OPRs are highly encouraged to only submit LCDs for proposed rulemakings that are on the list for Council consideration. If an OPR submits an LCD for a proposed rulemaking that is not on the FAA's Prioritized Rulemaking List, the OPR must complete a PREP Worksheet for the project and submit it to ARM along with the Application. In addition, at the Council Prep and Council meetings, the OPR should be prepared to discuss why the proposed rulemaking project was not on the FAA's Prioritized Rulemaking List and why it should take priority over those proposed rulemakings on the FAA's Prioritized Rulemaking List (especially those of the OPR).

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1.2.9. The Rulemaking Calendar and Application Submission for Council Consideration


ARM manages an annual Rulemaking Calendar (Doc # 30770) to facilitate efficient Council review of and decisions regarding Applications and other LCDs. The Council meets approximately once every 2 months (refer to Section 1.3.2).

Each Council meeting is preceded by a Council Prep meeting (refer to Section 1.3.1) that is usually scheduled 2 weeks prior to the Council meeting. All Applications are due to the person who oversees the Council process in ARM (the ARM-20 Council Coordinator), usually 2 weeks prior to the Council Prep meeting.

Requirements:

- The Team lead, the Team lead’s manager, and the OPR Director must sign the Application. If the Application is submitted without appropriate initials and signatures, the ARM-20 Council Coordinator may return it to the OPR without taking any further action.
- The OPR must submit the Application to the ARM-20 Council Coordinator in accordance with the Rulemaking Calendar, unless an extension is requested and granted by the ARM-20 Council Coordinator.
- The OPR must submit an electronic copy (in Microsoft Word) of the Application to the ARM-20 Council Coordinator.
- The OPR must submit a hard copy of the Application with either the original signed pages, scanned copies of the signed pages (when original signatures are not possible) or electronic “signatures” obtained through a system used by the OPR to record review and concurrence.
- If the project is not on the FAA Prioritized Rulemaking List, the OPR must complete a PREP Worksheet and attach it with the Application.

Best practice:

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The OPR Team lead should obtain a copy of the current Rulemaking Calendar from ARM for awareness of LCD submission due dates, Council Prep meetings, and Council meetings.

1.3. Council Considers Application

1.3.1. Council Prep Meetings

The first phase of Council review is a meeting to review all submitted LCDs in preparation for the Council meeting (Council Prep meeting). ARM-1, or a designee, leads this meeting of representatives from OPRs, AGC-200, and APO-300 to review the LCDs submitted for Council consideration.


The ARM-20 Council Coordinator develops the Council Prep meeting agenda and distributes meeting invitations based on all LCDs (including Applications) submitted for Council consideration. The ARM-20 Council Coordinator also prepares and distributes read-ahead packages that include all LCDs for which Council approval is requested. These packages are distributed to ARM, AGC, and APO management, rulemaking liaisons, and others as requested.⁷

Those managers participating in Council Prep meeting should review all LCDs (including Applications) under consideration prior to the meeting (those participating in the Council Prep meeting are referred to in this document as the “Council Prep Team”). At the Council Prep meeting, discussion of each Application may include whether or not:

- The OPR has adequately explored all the issues and alternatives needed to support the rulemaking project;
- Resources are available in ARM, AGC-200, and APO-300 to support the rulemaking project;
- Peer Review required by [OMB M-05-03](#) is necessary for this project; and⁸
- The Application is ready to move forward for Council review.

⁷ OPRs with large rulemaking programs such as AFS, AIR, and AST have identified specific individuals to serve as rulemaking liaisons.

⁸ OMB M-05-03, Final Information Quality Bulletin for Peer Review (December 16, 2004).

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At least one representative from the OPR, usually the project lead, should participate in the Council Prep meeting to address any questions that arise about the Application under consideration. Any OPR representative who cannot attend in person should make arrangements with the ARM-20 Council Coordinator to call in for the meeting.

If the Council Prep Team does not approve the Application, it usually returns the Application to the OPR and suggests further development prior to resubmission or suggests the OPR put the Application on hold until a later date.

1.3.2. Council Meetings

The Council Meeting is the second phase of Council review. It is usually scheduled 2 weeks after the Council Prep meeting. The ARM-20 Council Coordinator develops the meeting agenda and distributes meeting invitations based on all LCDs (including Applications) submitted for Council consideration and the outcome of the Council Prep meeting.

At the Council meeting, ARM-1 summarizes the Council Prep meeting discussions, when appropriate. The Council then discusses any outstanding questions, and makes the final determination to approve or deny each Application submitted for consideration.

The OPR Director, Deputy Director, or a designee must attend the Council meeting to address any questions that may arise about the Application under consideration. In addition, the OPR should have a representative familiar with the project (usually the project lead) attend the Council meeting in support of the project.

Any OPR representative who cannot attend the Council Meeting in person should make arrangements with the ARM-20 Council Coordinator to call in for the meeting.

1.3.3. Council Approves Application

If the Council approves the Application, members are assigned to the Team that will work with the OPR project lead, who usually becomes the Team lead. A Team includes the following core members:

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- A Team lead (identified by the OPR, refer to Section 1.2.1);
- An ARM analyst from either the Airmen and Airspace Rules Division (ARM-100) or the Aircraft and Airport Rules Division (ARM-200), as appropriate;
- If the OPR is an AIR Directorate, a writer-editor from the appropriate Directorate;
- An attorney from AGC-200 or, if appropriate, an attorney from the AGC regional office supporting an AIR Directorate; and
- An economist from APO-300.


In addition to these core Team members, the OPR may request Council appoint other Team members to ensure all appropriate subject matter expertise and organizational interests are represented (refer to section 1.4.1 for Team member roles and responsibilities). In addition, the Council may recognize the need for additional Team members and assign such Team members as needed.

After Council approves the Application, the ARM-20 Council Coordinator assigns a unique Project Number to each rulemaking project. This is the initial action in IRMIS for a project. The Project Number remains the same throughout the life of the project.⁹ The project record is archived in DMS and available for future reference.

The ARM analyst who is assigned to the project should request a project-specific LDR code from the person in ARM who oversees the LDR process (the ARM-20 LDR Coordinator) (the request should include the identifying project number and title). Once the LDR code is obtained from the ARM-20 LDR Coordinator, the ARM analyst should provide that LDR code to all Team members.

The ARM analyst should also contact the Team lead to discuss next steps including preparing for the first Team meeting (refer to Section 1.4.2).

⁹ A new Project Number may be assigned if a project is re-baselined or in other extenuating circumstances.

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This is a good opportunity for the ARM analyst to meet with the Team lead to learn about the specifics of the issue being addressed by the rulemaking project. By obtaining a basic understanding of the technical issues, the ARM analyst is in a better position to support the Team in drafting the rulemaking documents and facilitating any differences.

1.3.4. Rulemaking Training for Team Members

ARM makes training available to help with rulemaking projects, including two foundational courses:

- Regulatory Drafting and Process, and
- FAA Rulemaking.


After the Application has been approved, the ARM analyst should find out if each core Team member (ARM, AGC, APO and the Team lead) has attended each of the two foundational courses and, if so, how long ago was the training. The ARM analyst will then work with the person in ARM who oversees the training process (the ARM-20 Training Program Manager) to determine if any core Team member needs to be enrolled in an upcoming training class and, where necessary, arrange for enrollment.

If the ARM-20 Training Program Manager determines training is required for one or more of the core Team members, these Team members must, at a minimum, be registered for the applicable foundational rulemaking course(s) before the Council considers the RAP.

Best practices:

- In addition to the foundational rulemaking courses, ARM encourages all Team members to complete the Rulemaking Refresher course and the PRA Compliance course, as needed.
- The rulemaking courses are recommended for everyone on a Team, not just the core Team members.

1.3.5. Council Does Not Approve Application

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If the Council does not approve the Application, it usually returns the Application to the OPR and suggests further development prior to resubmission or suggests the OPR put the Application on hold until a later date.

1.3.6. Recording Council Decisions

After the Council meeting, the ARM-20 Council Coordinator documents the Council’s determinations (e.g., approval, denial, or a requested follow-up action) on each Application considered on a Council review sheet and in the meeting minutes. These are the official records of the Council’s determinations.

The ARM-20 Council Coordinator also summarizes the decisions in the Council Determination Sheet. The ARM-20 Council Coordinator then distributes the Council Determination Sheet to all ARM personnel.

Requirement:

- For all Applications, the ARM-20 Council Coordinator saves the Application in the DMS (refer to Section 1.3.7). If the Application is approved, this document is associated with the Project Number.

Best practices:


The ARM analyst should:

- Send a copy of the Council Determination Sheet to the Team.
- For approved Applications, confirm the Application is associated with the Project Number in the DMS.

1.3.7. Using the DMS for Document Management

Rulemaking projects require numerous documents that are worked on over a long period of time by many people. To assist in document management and organization, the FAA uses the DMS.¹⁰ ARM analysts and Directorate writer-editors have access to this system. Other Team members may also request access.

¹⁰Hummingbird Training Guide (Doc # 32406).

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The DMS allows all documents associated with an individual project (e.g., LCDs, rulemaking documents, Principals Briefing materials, and transmittal memos) to be linked together by one Project Number. ARM also uses the DMS to store and manage templates and other general documents that are not related to a specific rulemaking project. Using the DMS helps with document version control and management.

A link between the DMS and IRMIS facilitates overall rulemaking project management.

The ARM analyst and AIR Directorate writer-editor should:¹¹


- Store Applications and other documents related to a specific rulemaking project in the DMS;
- Associate each document with the Project Number, once assigned;
- Complete the system-required parameters in the Profile (Document Name, Author, Document Type, OPI,¹² and Application);¹³
- Using the same Document #, save new versions of the rulemaking document as it starts each milestone (e.g., PTC version, DLC version), at a minimum. Saving new versions of the rulemaking document whenever significant changes are made based on comments from the Team is also acceptable;¹⁴
- Use a document name that clearly identifies what the project and document are (for example, “System Level Safety Assessment NPRM”) and complies with ARM’s naming convention;
- Use the most appropriate Document Type to make its general purpose clear and to link effectively with IRMIS;

¹¹ The AIR Directorate writer-editor is responsible for these until the team reaches FTC (refer to section 2.6.2). From that point forward the ARM analyst is responsible.

¹² “OPI” is a field used in DMS and refers to the OPR.

¹³ “Application” refers to computer program type such as MS Word, MS Excel, Adobe Acrobat, etc.

¹⁴ The final version of a document should not be overwritten for purposes of historical record. The final two versions saved in a progression should be (i) the draft approved by the OFR for publication, and (ii) a copy of the document as published in the *Federal Register*.

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- Provide a description of each document version that clearly identifies why the new version was created (for example, “Comments received from ARM-1 on 5/21/12”);
- Preserve comments received from different commenters, being careful not to replace one set of comments with another; and
- Save the latest version of any document related to a specific rulemaking project that he or she has worked on during the day in the DMS at the end of each day.

1.3.8. Using IRMIS for Project Management

The FAA uses IRMIS to document, manage and track the status of rulemaking projects.¹⁵ ARM analysts and Directorate writer-editors have access to IRMIS and maintain current project information in the system at all times. Management uses reports generated from IRMIS for weekly review of the FAA’s rulemaking program. An interface between IRMIS and the DOT’s RMS facilitates external project reporting.

Using IRMIS, the ARM analyst or AIR Directorate writer-editor should¹⁶:


- Record and maintain a current project schedule;
- Record the date of each completed project milestone; and
- Record a project’s current status and any comments needed to provide management with more details on the project.

1.4. Team Develops the RAP

1.4.1. Team Roles and Responsibilities

¹⁵ IRMIS-RMS User Guide (Doc # 29500).

¹⁶ The AIR Directorate writer-editor is responsible for these until the team reaches FTC (refer to section 2.6.2). From that point forward the ARM analyst is responsible

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Team members are assigned when Council approves the Application (refer to Section 1.3.3). Once assigned to a Team, the Team members:

- Represent the positions and perspectives of their management;
- Assist the OPR in resolving regulatory issues;
- Identify and assess regulatory issues and options;
- Resolve issues, or elevate issues to management for resolution; and
- Record time spent on the rulemaking project in the LDR system under the project-specific code provided by the ARM analyst.


During development of the RAP and subsequent documents, Team members consistently communicate with their management about the substance, policy, and direction of the project. Establishing regular communication, whether formal or informal depending on each Team member's organization, facilitates project progress by ensuring all parties understand any issues that arise. It helps avoid unnecessary surprises that may lead to project delays.

Consistent and open communication with management also provides opportunities for each Team member to:

- Bring any major or new issues to management's attention;
- Obtain support for the Team's approach in resolving these issues; and
- Address management's views and comments throughout the drafting process.

Individual Team members also have specific roles (see Doc # 43245 for additional roles and responsibilities of the Team members and others involved in the Rulemaking Process). The Team lead:

- Provides subject matter expertise;
- Ensures all project LCDs and rulemaking documents are technically correct and provide an appropriate solution to the problem; and

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- Arranges project coordination with other offices providing subject matter expertise throughout the project.

The ARM analyst or Directorate writer-editor ensures all project LCDs and rulemaking documents are:¹⁷

- Written clearly;
- Meet the format and content requirements of the OFR; and
- Prepared with the most current document template available at the time of submission for Council review or issuance, as appropriate.

The Team attorney ensures the rulemaking document is within FAA’s legal authority, is defensible and enforceable, and meets all legal requirements (see Appendix E for additional information on the role of the Team attorney).

The Team economist conducts the economic analysis (refer to Sections 2.3 and 3.5) (see Appendix F for additional information on the role of the Team economist).


Team members bring different perspectives to the project. The best documents reflect the contributions of all Team members. While one Team member may have final say over a portion of the document (e.g., the Team attorney has final say over the regulatory text that will actually go in 14 CFR), the other Team members are encouraged to review and comment on each other’s contributions to any rulemaking document.

1.4.2. The First Team Meeting

The first Team meeting is an opportunity for the Team to discuss how to proceed. Topics to discuss as a Team include:

- Whether or not the OPR has drafted any material that can be used for the project;

¹⁷ When the OPR is a Directorate, the Directorate writer-editor is mainly responsible for these items. However, as a Team member, the ARM analyst can provide input during Team member review of the documents.

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- The availability of these Work Instructions;
- Ex parte communication (refer to Section 1.5.5);
- Document control and use of the DMS (refer to Section 1.3.7);
- LDR reporting;
- The roles and responsibilities of the Team members; and
- Team meeting logistics.


1.4.3. Developing the RAP

The Team develops the RAP (Doc # 30275) for Council consideration. The ARM analyst will provide the Team with the current RAP template. The RAP is another LCD used to request Council approval to proceed with the next step of a project.

How the FAA conducts rulemaking is subject to requirements from statutes, Executive Orders, and other sources such as guidance from OST and OMB (see Doc # 43246 for additional information). The Team uses the RAP to demonstrate how a project meets these requirements. In the RAP, the Team expands on and updates the information in the Application approved by Council. It also identifies any changes in the scope of the proposed rulemaking and any unresolved issues.

The RAP serves as a reference document throughout the rulemaking process. It also serves as a detailed outline of what will be in the proposed rulemaking document. The audience for the RAP includes the Council, Team members, and Team members' management, many of whom may be unfamiliar with the technical issues associated with the project.

Clear and concise writing facilitates Council review and approval. A well-written RAP forms the basis for the Team when it starts drafting the NPRM. The Team should refer to Appendix C, General Writing Guide for style suggestions to improve clarity and consistency within the document. In addition, the Team should comply with applicable instructions in the template.

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The ARM analyst or the Directorate writer-editor manages the RAP in the DMS by associating the document with the assigned Project.

Before submitting the RAP for Council review, the ARM analyst or Directorate writer-editor should confirm they are using the latest version of the template. If a newer template exists, the ARM analyst or Directorate writer-editor should transfer the information to the new version.


1.4.4. Information Collection and Recordkeeping Requirements under the PRA

1.4.4.1. PRA Facts

The PRA requires Federal agencies to consider paperwork and other information collection or recordkeeping burdens imposed on the public by regulatory requirements. It also requires OMB approval of any new or modified collection of information imposed on 10 or more persons by an agency, including such imposition that would be created by adoption of changes to the CFR proposed in an NPRM.

Federal agencies, including the FAA, request OMB approval of information collection or recordkeeping using OMB Form 83-I, Paperwork Reduction Act Submission (Doc # 24050)(see Doc #43247 for instructions on how to complete Form 83-I). The FAA also uses an Information Collection Request Supporting Statement (Doc # 35205), prepared by the Team lead and Team economist, to substantiate its submission. The agency provides the opportunity for public notice and comment on any new or changed information collection or recordkeeping burden by addressing PRA applicability in the NPRM preamble.

When OMB approves an agency ICR, it assigns an OMB Control Number and sets an expiration date for that collection. The FAA has existing OMB Control numbers for all established forms and other information collection impositions it makes on the public as defined by the PRA. An ICR, as prepared on Form 83-I and documented in its supporting statement, either identifies a new information collection, or requests extension or modification of an existing, already approved ICR or discontinues an existing ICR.

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Additional information is available on [the OMB website](#) and in Doc # 43248.¹⁸

The FAA’s expert on information collection activities is the PRA/Information Collections Program Coordinator in the Performance, Policy & Records Management Branch of the Office of the Deputy Assistant Administrator for Information and Technology (ASP-110). The PRA/Information Collections Program Coordinator advises the Team about any existing ICRs associated with the CFR part(s) to be affected by an NPRM, or whether a new ICR may be appropriate based on what the Team proposes.¹⁹ The Team lead and the Team economist work with the PRA/Information Collections Program Coordinator to ensure the FAA meets any requirements under the PRA.

Best practice:

To gain an understanding of what constitutes an information collection burden under the PRA, ARM strongly encourages Team members to enroll in the PRA Compliance course (refer to Section 1.3.4).


1.4.4.2. Information Collection and Recordkeeping Requirements and the RAP

Early in the development of the RAP, the Team should discuss whether the project may have information collection implications. Triggers to consider include, but are not limited to, requirements for:

- Changes or additions of identification placards on aircraft;
- Manual updates (e.g., flight manuals);
- Forms;
- Flight plan filing;

¹⁸ The most relevant document for FAA purposes is the memo titled "Information Collection under the Paperwork Reduction Act," listed under "Improving Implementation of the Paperwork Reduction Act" and dated April 7, 2010.

¹⁹ A list of OMB Control Numbers by CFR part number is in 14 CFR 11.201.

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- Compliance plans; and
- Training programs.

The RAP has a section seeking information on whether the proposed rulemaking may involve information collection or recordkeeping requirements under the PRA. Once the Team determines the subparts and specific sections of the CFR to which it will propose changes in the NPRM, the Team considers whether the proposed changes would:

- Affect existing information collection or recordkeeping requirements imposed by the agency,
- Create a new burden, or
- Not have information collection or recordkeeping impacts at all.


It is important to clarify expectations about information collection and recordkeeping at RAP approval so the Team and FAA management can reach agreement on the applicability of PRA requirements to the NPRM. Also, the Team then understands whether an ICR submission may be necessary.

Once the Team has completed the section of the RAP identifying the CFR subparts or sections the NPRM would affect, the Team lead consults with the PRA/Information Collections Program Coordinator to determine if PRA requirements may be applicable.

Best practices:

When the Team is developing the RAP, the ARM analyst should provide the Team lead with:

- The template for OMB Form 83-I, PRA Submission (Doc # 24050);
- The template for the ICR Supporting Statement (Doc # 35205); and

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- The contact information for the PRA/Information Collections Program Coordinator.

1.4.4.3. Continuing PRA Actions

If the Team thinks an ICR may be necessary, the Team lead begins completing OMB Form 83-I and the ICR Supporting Statement at the same time as the rulemaking document is being drafted. The Team lead works with the PRA/Information Collections Program Coordinator and the economist as needed to complete both documents.


The economist considers any PRA burden while conducting the NPRM economic analysis (refer to Section 2.3). The Team economist will provide the Team lead with responses to questions 12, 13, and 14 on the ICR Supporting Statement as part of completing the NPRM economic analysis milestone. This will allow the Team to complete both OMB Form 83-I and the ICR Supporting Statement documents before beginning Internal Coordination.

The Team revisits PRA applicability while developing the Final Decision (refer to Section 3.1). The Team continues to work with the PRA/Information Collections Program Manager until OMB approval of the ICR. The Team should strive to obtain OMB approval before final rule publication as failure to obtain such approval makes the section(s) creating the collection unenforceable until such approval is received.

1.4.5. NPRM Milestones and Suggested Timeframes

As part of the RAP, the Team proposes a schedule of rulemaking project milestones for NPRM development and coordination. Expectations for each milestone are explained in other sections of these Work Instructions.

When developing the milestone schedule, the Team should consider project size and complexity, Congressional deadlines, holidays and other factors that may influence project progress. Project significance, as defined in [Executive Order 12866](#), also impacts the project schedule by requiring dates to be included for both OST and OMB review and approval (refer to Section 1.2.7).

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The Team should follow the guidance in Appendix D when developing the milestones for the RAP.

The RAP allows for an entry of a Principals Briefing milestone. The Team rarely proposes a date for a Principals Briefing when establishing the project milestones for the RAP because the need and appropriate timing for a Principals Briefing often does not become clear until the Team has begun drafting the NPRM (refer to 2.5.6 for a discussion on Principals Briefings).

If the Council approved the project for expedited processing as an AIR Directorate harmonization rulemaking using delegated signature authority (based on AIR’s request in the Application), the Directorate writer-editor works with the Team to adjust milestones in accordance with [AIR-002-039-W1](#), [AIR Delegation of Signature Authority](#) (refer to Section 4.11).


The Team manages the rulemaking project to the schedule in the RAP as approved by the Council (refer to Section 1.5.3). The Council-approved schedule in the RAP can be changed only through an Appendix prepared by the Team, coordinated through management, and approved by the Council (refer to Section 4.2).

1.4.6. Coordinating and Submitting the RAP for Council Approval

All RAPs are due to the ARM-20 Council Coordinator in accordance with the annual Rulemaking Calendar, unless otherwise specified.

Initials and signatures on RAPs indicate agreement with all the project information in the document. The OPR Director’s signature represents a commitment by that office to allocate staff and other resources to the project and to meet any project schedule included in the RAP. If the RAP is submitted without appropriate initials and signatures, the ARM-20 Council Coordinator may return it to the OPR without taking any action.

RAPs for nonsignificant projects do not require Associate Administrator signature prior to submission. These RAPs also do not require AGC-1 signature.

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RAPs for significant projects require the signature of an Associate Administrator. If the OPR is outside of AVS, the OPR must obtain the signature of its Associate or Assistant Administrator before submission to the ARM-20 Council Coordinator. For OPR's within AVS, the ARM-20 Council Coordinator will obtain the signature of the Associate Administrator. RAPs for significant projects may have additional signature requirements that are met either prior to submission to the ARM-20 Council Coordinator, or with ARM's assistance.


RAPs for significant projects also require AGC-1 signature prior to the Council meeting. The ARM-20 Council Coordinator, at the direction of ARM-1, obtains AGC-1's signature for these RAPs. The OPR is not responsible for obtaining AGC-1's signature.

Requirements:

- The OPR Team lead, the Team lead's manager, and the OPR Director must sign the RAP. If the RAP is submitted without appropriate initials and signatures, the ARM Council Coordinator may return it to the OPR without taking any further action.
- The individual Team members and their supervisors must initial the RAP.
- The OPR must submit the RAP to the ARM-20 Council Coordinator in accordance with the Rulemaking Calendar (Doc # 30770), unless an extension is requested and granted by the ARM-20 Council Coordinator.
- The OPR must submit an electronic copy (in Microsoft Word) of the RAP to the ARM-20 Council Coordinator.
- The OPR must submit a hard copy of the RAP with either the original signed pages, scanned copies of the signed pages (when original signatures are not possible) or electronic "signatures" that were obtained through a system used by the OPR to record review and concurrence.

1.5. Council Considers RAP

1.5.1. Council Prep Meetings

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The Council Prep Team should review all LCDs under consideration prior to the meeting. At the Council Prep meeting, discussion of each RAP may include whether or not:

- The OPR has adequately explored all the issues and alternatives needed to support the rulemaking project;
- Resources are still available in ARM, AGC-200, and APO-300 to support the rulemaking project;
- The milestones proposed are achievable; and
- The RAP is ready to move forward for Council review.

At least one representative from the OPR, usually the project lead, should participate in the Council Prep meeting to address any questions that arise about the RAP under consideration. Any OPR representative who cannot attend in person should make arrangements with the ARM-20 Council Coordinator to call in for the meeting.


If the Council Prep Team does not approve the RAP, it usually returns the RAP to the OPR and suggests further development prior to resubmission or suggests the OPR put the RAP on hold until a later date.

If the Council Prep Team approves the RAP to move forward to the Council, the ARM analyst should begin entering information in the IRMIS/RMS Integration (refer to Section 1.5.6). The ARM analyst can prepare the IRMIS/RMS Integration by saving, but not submitting, the draft information in the Integration before Council approves the RAP.

1.5.2. Council Meetings

The ARM-20 Council Coordinator develops the meeting agenda and distributes meeting invitations based on all LCDs (including RAPs) submitted for Council consideration and the outcome of the Council Prep meeting.

At the Council meeting, ARM-1 summarizes the Council Prep meeting discussions, when appropriate. The Council then discusses any outstanding questions, and makes the final determination to approve or deny each RAP submitted for consideration.

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The OPR Director, Deputy Director, or a designee must attend the Council meeting to address any questions that may arise about the RAP under consideration. In addition, the OPR should have a representative familiar with the project (usually the project lead) attend the Council meeting in support of the project.

Any OPR representative who cannot attend the Council Meeting in person should make arrangements with the ARM-20 Council Coordinator to call in for the meeting.


1.5.3. Council Approves the RAP

If the Council approves the RAP, the FAA considers the rulemaking “initiated” on the date of the Council meeting. The ARM analyst/writer editor ensures the document is “open” in IRMIS and populates the necessary information (e.g., milestones, staff members) so it can be tracked in the Weekly Rules Report (refer to 1.5.7). The Team begins drafting and coordinating the NPRM in accordance with the milestones approved by the Council.²⁰

From this point until final rule publication:

- Communications with non-FAA employees on the project (ex parte communications) are limited (refer to Section 1.5.5);
- The FAA reports on the status of the project to DOT (refer to Sections 1.5.5 and 1.5.6);
- FAA management reviews the project’s status weekly (refer to Sections 1.5.7 and 1.5.8); and
- Certain project information becomes available to other organizations and the public (refer to Section 1.5.9).

²⁰ When the Council approves a RAP, it may make changes to the team-proposed schedule of timeframes to complete project milestones. The ARM-20 Council Coordinator documents any changes to the schedule when recording the Council’s determination.

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1.5.4. Regulation Identifier Number (RIN) Assignment

RINs are used to track all regulatory actions undertaken by the Federal government. The person in ARM who oversees the RMS process (the ARM-20 RMS Reviewer) assigns each project a RIN once Council approves the RAP. The RIN is included on the Council Determination Sheet.

The standard format for RINs is a 4-digit agency code (2120 for the FAA) followed by a four-character alphanumeric code that identifies the individual regulation under development. Projects usually keep the same RIN throughout the rulemaking process (e.g., 2120-AJ86).²¹

A project's RIN is always included in the heading of any rulemaking document published in the *Federal Register*. Also, DOT's RMS uses RINs to organize information on rulemaking projects undertaken by all DOT agencies.

The ARM-20 RMS Reviewer assigns each rulemaking project a RIN after Council approves the RAP.²²

Best practice:

The ARM analyst includes the RIN in the subject line of all correspondence with the ARM-20 RMS Reviewer.

1.5.5. Ex Parte Communication


[Appendix 1 to 14 CFR part 11](#) (Oral Communications with the Public during Rulemaking) addresses ex parte communication.²³

“Ex parte” is a Latin term that means “by or for one party” or “by one side,” and

²¹ A new RIN may be assigned if a project is re-baselined. Please work with the ARM-20 RMS Reviewer to determine if a new RIN is necessary if your project is re-baselined.

²² This does not apply to SSPs and IHEPs. In these cases, RINs are assigned when the Application or IHEP is approved by Council.

²³ Appendix 1 to part 11 summarizes DOT Order 2100.11, Policies for Public Contacts in Rule (October 5, 1970). Parts of this Appendix are repeated here for convenience.

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before that proceeding closes. A rulemaking proceeding does not close until the FAA publishes the final rule or withdraws the NPRM. Because an ex parte contact excludes some parties, including the rest of the public, from the communication, it may give an unfair advantage to one party, or appear to do so.


Under some circumstances, an ex parte communication could affect the basic openness and fairness of the rulemaking process. Even the appearance of impropriety can affect public confidence in the rulemaking process. For this reason, DOT policy sets careful guidelines for these contacts.

DOT policy authorizes ex parte contacts necessary for obtaining technical and economic information. The FAA needs this information to decide whether to issue a regulation and what it should say. The Team notes each contact that influences development of the regulation in the preamble. For multiple contacts that are similar, the Team may provide only a general discussion. For contacts not discussed in the preamble, the Team places a report discussing each contact or group of related contacts in the rulemaking docket when it is opened (refer to Section 2.10).

Team members should seek advice from AGC-200 and AGC regional counsel office attorneys when questions about ex parte communication arise. For rulemakings that are part of the FAA’s rulemaking cooperation efforts with other aviation authorities, the Team should meet with AGC-200 and AGC regional counsel office to determine how the ex parte communication restrictions impact these efforts.

Requirements:

- Once the RAP is approved by Council, the Team member who participated in any ex parte communication must record such communication by placing a report discussing each communication or group of related communications in the rulemaking docket when it is opened (including, at a minimum, a list of the participants, a summary of the discussion, and a specific statement of any commitments made by FAA personnel) (refer to Section 2.10).
- The Team may not provide any part of the preamble, regulatory text, or regulatory evaluation to parties outside the government before they are publicly available.

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Best practices:

- At an early Team meeting, the Team attorney should discuss ex parte communication with the Team.
- Each Team member should discuss ex parte communication with the Team member’s manager, as needed, early in the rulemaking process.
- Any questions about possible ex parte communication should be discussed with AGC–200 or an AGC regional counsel office attorney before any further communication takes place.
- To help avoid ex parte communication concerns, Team members should:
 1. Respond to questions about a rulemaking project from individuals outside government with a generic statement such as “The FAA is considering rulemaking;”
 2. Refer individuals seeking information about rulemaking projects to publicly available information, such as the DOT monthly report on the status of significant rulemaking documents ([DOT Internet Report](#)) and the [FAA’s list of recently published rulemaking documents](#); and
 3. If an individual from industry initiates communication during the comment period, encourage the individual to file comments directly in the docket.

1.5.6. IRMIS/RMS Integration

IRMIS/RMS Integration (Integration) enables automated transmission of rulemaking project information from the FAA to OST. The Integration is critical to efficient processing and reporting of a project. All information included in the Integration is intended to help the general public understand the extent of the regulatory changes the FAA is undertaking, and who the changes affect.

The Integration involves systems developed by the FAA and OST. The ARM analyst reviews all information in the Integration, and works with the ARM-20 RMS Reviewer to ensure the appropriate information is submitted to RMS.

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OST requires completion of the Integration within 5 business days of Council approval of the RAP. Therefore, it is helpful to begin entering the Integration information early. The ARM analyst may begin entering information for the Integration in IRMIS prior to Council approval of a RAP, as long as the Integration is saved but not submitted until after Council Approval. The best time to begin entering information for the Integration is after the Council Prep meeting where a determination is made to move a RAP forward for Council consideration (refer to Section 1.5.1).

The ARM analyst enters specific legal and other project data through the “IRMIS/RMS Integration” screen (under “Project”) in IRMIS. The Integration also draws on other project information already in IRMIS prior to initiating the Integration, including the abstract.

The Integration involves two procedures:


- Project Submission (all rulemaking projects); and
- Milestone Submission (significant rulemaking projects only).²⁴

By this point in the project, the OPR has provided a project abstract. The Team has also submitted an abstract as part of the RAP. Evolution of any project often includes refinements that may not be reflected in the IRMIS abstract when it is time to complete the Integration. Therefore, the ARM analyst should review the abstract in IRMIS to ensure it reflects OFR [DDH](#) guidance described in Section 1.2.5 (See Doc # 21625 for additional information)

Requirements:

- The ARM analyst completes the Integration within 5 business days from Council approval of the RAP.
- The ARM-20 RMS Reviewer reviews the Integration information, coordinates with the ARM analyst if any editing is necessary, and submits the information to RMS for approval by OST.

²⁴ For answers to Frequently Asked Questions and a glossary of terms involved in the IRMIS/RMS Integration procedures, see “IRMIS/RMS Integration Release” (Doc # 21625).

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- The ARM analyst should ensure the project title does not refer to a CFR part.

Best practices:

The ARM analyst should:

- Consider the guidance for drafting a project Summary from the OFR [DDH](#) when preparing the abstract for use in the Integration (refer to Section 1.2.4);
- Review the RMS Status Report, provided weekly by the ARM-20 RMS Reviewer, and complete any noted updates;
- Access RMS regularly to review how project status appears to OST. Accessing RMS regularly also avoids getting locked out of the system; and
- Provide the ARM analyst’s manager with a draft copy of the proposed information for the IRMIS/RMS integration before submitting it to the ARM-20 RMS Reviewer.

1.5.6.1. Project Submission


The ARM analyst usually submits project information once, at the time of the Integration. Information included in this submission is under all tabs of the “IRMIS/RMS Integration” screen in IRMIS under “Project.”

If project information previously submitted through the Integration requires updating, the ARM analyst and the ARM-20 RMS Reviewer work together to determine if re-submission of project information is appropriate, or if the new information should be entered directly into RMS.

Best practices:

The ARM analyst should:

- Refer to the “IRMIS/RMS Integration FAQs and Glossary” (Doc # 21625);

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- Regularly select “Save Project” in the “IRMIS/RMS Integration” screen of a project while entering information;
- Select “Print All” from the “Show all” tab in the “IRMIS/RMS Integration” screen as a reference for discussion with the ARM-20 RMS Reviewer in case issues arise before submitting the project information to the ARM-20 RMS Reviewer by selecting “Submit Project,”; and
- Coordinate with the ARM-20 RMS Reviewer before submitting project information again in the event resubmission may be necessary.


1.5.6.2. Milestone Submission (Significant rulemaking projects only)

The ARM analyst submits project milestones once at the time of the Integration and again each time a projected or completed milestone date is updated. The ARM analyst enters and updates the milestone information on the “Milestones” screen under “Document” in IRMIS. This is the only screen where the ARM analyst can make adjustments to projected and completed milestones. A copy of the milestones shows as a tab in the Integration, but may only be viewed, not edited.

Requirements:

- In IRMIS, the ARM analyst initially reviews the Milestone tab under the “IRMIS/RMS Integration” screen, and submits to the ARM-20 RMS Reviewer for review and submission to OST.
- During the life of the project, the ARM analyst updates projected and completed milestone dates on the “Milestone” screen under “Document” in IRMIS. The ARM analyst then verifies the milestones under the “Milestone” tab on the “IRMIS/RMS Integration” screen in IRMIS, and submits to the ARM-20 RMS Reviewer, again for review and submission to OST (if applicable).

Best practice:

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The ARM analyst should review milestone dates carefully to ensure accuracy before submitting to the ARM-20 RMS Reviewer for review and submission to OST. For example, sometimes the dates in the RAP are holidays or weekends.

1.5.7. Updating IRMIS

ARM analysts maintain project information in IRMIS from Council approval of the RAP through project closeout, with one exception. For any AIR Directorate rulemaking project, the Directorate writer-editor maintains project information in IRMIS until the Team reaches FTC (refer to Section 2.6.2). From that point forward, the ARM analyst maintains project information.


FAA management relies on reports generated from IRMIS to monitor rulemaking projects. For example, one report, known as the “Weekly Rules Report”, is used regularly by ARM management as a reference, and specifically for the meetings described below.²⁵ The goal of the Weekly Rules Report is to communicate a clear, concise, and accurate picture of project status to FAA management. FAA management can then provide guidance and assistance, as needed, to keep projects on track.

After receiving feedback from the staff-level Weekly Rules meeting, the ARM analyst updates IRMIS as soon as possible to ensure latest information is available for the Weekly Rules meeting.

Best practices:

- On an ongoing basis from RAP approval through project closeout, the ARM analyst or Directorate writer-editor, as appropriate, should update in IRMIS:
 1. The “Milestones” screen when a milestone is completed, new milestones are projected, or a project is re-baselined;
 2. The “Staff” screen when a Team member is added or removed;

²⁵ Any IRMIS user can generate the Weekly Rules Report from the “Reports” menu by selecting “Management” and then choosing “25 Weekly Rules.” The report can be generated for the entire FAA rulemaking program, or with limitations by analyst or other fields.

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3. Under Notes/Comments, the “Status” screen to reflect progress toward the next milestone or other project information of interest to FAA management; and
 4. Under Notes/Comments, the “Weekly Comment” screen to include any additional project information of interest to FAA management.
- Before each staff-level Weekly Rules meeting, the ARM analyst or Directorate writer-editor, as appropriate, should:
 1. Review project “Status” and “Weekly Comment” information in IRMIS;
 2. In the “Status” field, update with new information, if necessary, or repeat the previously entered “Status” to reflect the most recent review date; and²⁶
 3. In the “Weekly Comment” field (if information has been entered previously), keep the information current by either (1) retaining if still accurate, (2) updating with new information, or (3) replacing with the word “None.”

1.5.8. Management Review of Rulemaking Status

AVS-1 or AVS-2 convenes a standing meeting to review and discuss the status of active rulemaking projects. Attendees at these “Weekly Rules” meetings may include:

- AVS-1 and/or AVS-2;
- AGC-200 and other AGC managers;
- APO-1 and APO-300;
- ARM-1, ARM-100, and ARM-200;
- Directors and other managers from offices with active rulemakings; and

²⁶ A recent update date on the Weekly Rules report indicates the ARM analyst has reviewed and confirmed the information.

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- Rulemaking liaisons from OPRs with large rulemaking programs.

ARM-1 convenes a smaller meeting, to prepare for Weekly Rules. Attendees at these “Staff-Level Weekly Rules” meetings may include:

- ARM-1, ARM-100, and ARM-200;
- APO-300; and
- Rulemaking liaisons.

Team members and other FAA personnel with an interest in rulemaking may attend Weekly Rules and Staff-Level Weekly Rules meetings.


1.5.9. External Reporting on Rulemaking Projects

1.5.9.1. Unified Agenda Reporting on All Rulemaking Projects

The Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda, sometimes referred to as the Semi-Annual Agenda) fulfills requirements under Executive Order [12866](#) and the Regulatory Flexibility Act for most Federal agencies, including the FAA, to publish semiannual regulatory agendas describing regulatory actions they are developing or have recently completed.

GSA’s Regulatory Information Service Center (RISC) publishes the Unified agenda every spring and fall on the [OIRA and RISC website](#).

The Unified Agenda includes basic information on all rulemaking projects for which the Council has approved a RAP, regardless of project significance. Fall editions also include The Regulatory Plan, which presents agency statements of regulatory priorities and additional information about the most significant regulatory activities planned for the coming year.

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OIRA receives project information from OST, which receives information from the FAA through the IRMIS/RMS Integration. ARM-20 coordinates FAA efforts to ensure OST and OIRA have current, accurate project information to provide to the public when OIRA is ready to publish the Unified Agenda.

Best practice:

Teams should support Unified Agenda reporting by responding promptly to periodic requests from ARM analysts and ARM-20 for project information beyond what is already included in the IRMIS/RMS Integration.


1.5.9.2. OST Internet Reporting on Significant Projects

OST produces a monthly report (the [DOT Internet Report](#)) to help the public follow the status of significant rulemaking projects. Basic information about all of the FAA’s significant projects for which the Council has approved a RAP is reported to the public in this report.

OST receives project information from the FAA through the IRMIS/RMS Integration on an ongoing basis. Each month prior to the DOT Internet Report’s formulation from RMS, ARM-20 coordinates ARM efforts to ensure OST has current, accurate project information to provide to the public. These efforts include requests for project schedule and other updates in IRMIS and RMS, and ARM Management Team meetings to update the information that will be included on the report.

Best practices:

- Teams should support DOT Internet reporting by responding promptly to requests from ARM analysts and ARM-20 for project information beyond what is already included in the IRMIS/RMS Integration.
- Team members contacted by the public about the status of a significant rulemaking project should provide the DOT Internet Report website (see link above).

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1.5.10. RAP is not Approved

If the Council does not approve the RAP, it usually returns the RAP to the OPR and suggests further development prior to resubmission or suggests the OPR put the RAP on hold until a later date.

1.5.11. Recording Council Decisions

After the Council meeting, the ARM-20 Council Coordinator documents the Council's determinations (e.g., approval, denial, or a requested follow-up action) on each RAP considered on a Council review sheet and in the meeting minutes. These are the official records of the Council's determinations.

The ARM-20 Council Coordinator also summarizes the decisions in the Council Determination Sheet. The ARM-20 Council Coordinator then distributes the Council Determination Sheet to all ARM personnel.


Requirement:

For all RAPs, the ARM Analyst saves the RAP in the DMS (refer to Section 1.3.7) and associates it with the Project Number.

Best practices:

The ARM Analyst should:

- Send a copy of the Council Determination Sheet to the Team.
- Confirm the RAP is associated with the Project Number in the DMS.

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2. Proposing Regulations (Stage 2)

2.1. Team Develops NPRM Preamble and Regulatory Text

After the Council approves the RAP, the Team begins drafting the NPRM. During this drafting process, the Team must not go beyond the project scope as defined in the RAP without Council approval. If the Team determines the project scope should be modified, the Team must seek Council approval by drafting and submitting an Appendix for Council consideration (refer to Section 4.2).

As the Team is drafting the NPRM, the OPR also begins developing or revising guidance material associated with the rulemaking, if applicable (refer to Section 1.2.6).

2.1.1. NPRM Document Structure and General Guidance


An NPRM is a rulemaking document that proposes changes, deletions, or additions to 14 CFR. It is published in the *Federal Register* and gives the public an opportunity to comment on those proposed changes, deletions, or additions.

Each proposed rulemaking must contain:

- A preamble, which explains the basis and purpose of the proposed regulatory text;
- Regulatory text, which presents proposed changes to 14 CFR; and
- An economic analysis, which summarizes the costs and benefits associated with proposed changes to 14 CFR.

When drafting an NPRM, the Team should consider the following general guidance:

- Remember Your Audience – Several audiences will read the NPRM. First, it will be reviewed by FAA management as the document proceeds through its internal FAA review. If the document is significant, it will then be reviewed by OST and OMB. Finally, when it is published in the *Federal Register*, it will be read by regulated entities and other interested persons.

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While some of these audiences may have a technical background in the area covered by the NPRM, others may not. Therefore, it is important to organize the information logically and strike an appropriate balance between necessary technical language and non-technical “translations” to address these different audiences.


- Use the OFR’s DDH - An NPRM is a rulemaking document that will eventually become available to the public in the *Federal Register*. As such, the NPRM must conform to the OFR’s guidance and examples, as explained in Chapter 1 of the [DDH](#).²⁷
- Use the Latest NPRM template (Doc # 115) – When the Team starts drafting an NPRM, the ARM Analyst should get a copy of the NPRM template. The Team should follow the template’s standard organization, formatting, and text suggestions. Although deviations from the organization and text suggestions may be appropriate, following the standard template text is recommended to avoid unnecessary delays during document coordination. The template also contains several sections of “boilerplate” text that has been established and agreed upon, and is, therefore, familiar to document reviewers. Changes to the “boilerplate” are not recommended.

In addition to the OFR publication requirements in the [DDH](#), certain elements of an NPRM are subject to requirements from statutes, Executive Orders, and other sources such as guidance from OST and OMB. The template is designed to address these requirements and is updated to stay current with any changes to these requirements.

Drafting and coordinating an NPRM can be a lengthy process. The ARM analyst and AIR Directorate writer-editor, as appropriate, should manage the NPRM in the DMS by associating the NPRM with the assigned Project Number and assigning the “NPRM” Document Type (refer to Section 1.3.7).

Best practices:

²⁷ Section 1.2 of the [DDH](#) explains general requirements for the Proposed Rules document category, which includes NPRMs as well as advance and supplemental notices of proposed rulemakings (for ANPRMs and SNPRMs, refer to Sections 4.3 and 4.4, respectively).

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The ARM analyst or Directorate writer-editor should use the latest template when beginning to prepare the NPRM. Changes to the template occur periodically. Failure to get the latest version from the DMS may result in certain required information being left out of the version that is published.


The Team should:

- Comply with all applicable instructions in the template;
- Consider the template as a “starting point” during drafting, but consult with ARM management before making major deviations;
- Conform to template formatting examples as much as possible, to expedite review;
- Consider the NPRM audiences, who may be unfamiliar with the technical issues associated with the project;
- Ensure that the document is Section 508 compliant (which requires Federal agencies to make their electronic and information technology accessible to people with disabilities); and
- Refer to Appendix C, General Writing Guide, for general reminders and specific tips regarding common practices to improve clarity and consistency within the document, and with other documents.

2.1.2. Drafting and Organizing the NPRM Preamble

The NPRM preamble is a well-reasoned and well-articulated explanation of the agency’s intended actions. Because it is part of a proposal, the Team writes the NPRM preamble as a description of what the changes, deletions, or additions to the CFR *would* accomplish, if adopted.

The preamble explains the basis and purpose of the proposed regulatory text, but contains no regulatory text itself. It arranges basic information on the "who, what, where, when, and why" of the proposed changes in a standardized way for

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the reader's convenience. The preamble is organized into captioned sections as prescribed in the [DDH](#) and the template.²⁸

As the Team develops the preamble, it often builds on (or simply copies) text or ideas already presented in:


- Rulemaking LCDs (e.g., the Application and RAP);
- ARAC or ARC Recommendations;²⁹
- NTSB Recommendations;
- Related rulemaking documents; or
- Results of work by the ICAO other aviation authorities or other international harmonization groups.

A Team may approach the drafting of an NPRM preamble in a variety of ways. In some cases, the OPR has prepared the regulatory text or an entire draft NPRM before the Team has its first meeting. In other cases, the Team starts from scratch at the first meeting, refining the precise changes to be proposed in the regulatory text so these changes can be explained effectively in the preamble.

The entire Team should collaborate in developing the preamble since each Team member serves a unique role and has different responsibilities (refer to Section 1.4.1). Throughout preamble development, it is essential each Team member reads and understands the document. This does not mean everyone has to have a complete knowledge of all technical issues discussed in the preamble. Rather, each Team member should understand what the Team is trying to accomplish and make sure the preamble clearly reflects that intent. The Team builds on the individual strengths of each Team member to create a quality document.

²⁸ Section 1.5 of the [DDH](#) provides detailed information and examples of preamble organization and content.

²⁹ See [ARM-001-015, Committee Manual](#).

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The Team attorney ensures the preamble contains all necessary justifications for the proposed regulatory requirements, and the regulatory text is legally sufficient.

Best practices:

While developing the preamble, each Team member should consider whether:

- All decisions discussed are reasonable, well supported, justified, and appropriate to the problem the NPRM is attempting to solve;
- The proposed changes should be applied to any other part of the FAA’s regulations; and
- The preamble (i) addresses the issue and answers all relevant questions, (ii) identifies and addresses any likely challenges; and (iii) identifies and answers the most controversial question someone could ask about the proposed rule.


2.1.2.1. Captioned Sections of the NPRM Preamble

The OFR requires all rulemaking documents, including NPRMs, to contain certain information in specifically-ordered sections. By adhering to the guidance in these Work Instructions and in the NPRM template (Doc # 115), the Team organizes the preamble with captioned sections to meet OFR requirements.

2.1.2.2. NPRM Authority

In the **Authority for this Rulemaking** section, the Team drafts a short discussion about the FAA’s authority for regulatory action under U.S. law. It includes why the rulemaking document is within the scope of specific authority cited. In some cases, this section identifies a piece of legislation that required the rulemaking action, and states that it fulfills a specific statutory mandate.

The Team attorney provides appropriate language for this section of the NPRM preamble. The sections cited in this section will also be used in the signature line of the document.

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2.1.2.3. Optional Subsections to Improve NPRM Readability

The Team may choose to include a **List of Abbreviations and Acronyms Frequently Used in this Document**. Generally, an abbreviation and acronym list assists the reader if the preamble is lengthy and includes more than a dozen different abbreviations and acronyms used multiple times throughout the document, or with multiple pages separating each use. To determine if an abbreviations and acronyms list is necessary, just answer the following question - would it help the reader?

If an acronym section is used, this list includes only technical and FAA-specific acronyms. Do not include names of acronyms for other government agencies (e.g., “DOD” or “OMB”) or other external organizations (e.g., “AOPA” or “RAA”). The Team should also define each acronym at the term’s first occurrence in the preamble, regardless of whether the rulemaking document includes a formal acronym list.


The Team may also choose to include a **Table of Contents**, depending on the length and complexity of the preamble.

2.1.3. Overview of the Proposed Rule

The **Overview of the Proposed Rule** section serves as the NPRM’s “executive summary” for the readers.^{30,31} This section usually has subsections addressing “Purpose of the Regulatory Action”, “Summary of the Major Provisions of the Regulatory Action in Question”, and “Costs and Benefits.”

³⁰ The “Overview of the Proposed Rule” section, which is part of the NPRM preamble itself, differs from the stand-alone “Executive Summary” document the Team prepares for inclusion in the internal FAA rulemaking document coordination package (Section 2.5.2).

³¹ The “Overview of the Proposed Rule” and “Authority for the Proposed Rule” subsections of the preamble ensure the FAA meets the requirements of [Executive Order 13563](#), as explained in OIRA memo [“Clarifying Regulatory Requirements: Executive Summaries”](#) (January 4, 2012).

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The Team uses this section to explain, in non-technical terms, what the proposed rule would do. The Team also identifies who the proposal would affect if adopted, and how, in practical terms, the affected parties would be required to change current practice(s). Lastly, the Team summarizes the proposal’s costs and benefits in this section. Where the estimated costs and benefits of a proposal are quantified, the Team economist provides a table for inclusion.

2.1.4. NPRM Background


The Team should use the **Background** section to concisely state the problem and the general rationale for the proposed solution. The Team also uses this section to explain history leading up to the problem, the steps the FAA (and in some cases other agencies), has already taken to address the problem, as well as why, in spite of these previous actions, the FAA believes rulemaking is needed. The Team also discusses any related rulemaking activity and recommendations of the NTSB or any ARC/ARAC (and how the proposal would address those recommendations).

2.1.5. Discussion of the Proposal

The next section in the preamble is usually the **Discussion of the Proposal** section. The Team uses this section to explain why the proposal makes sense and is in the public interest.

The **Discussion of the Proposal** section is an in-depth evaluation of the problem, how the NPRM would address the problem, and alternatives considered. It includes a clear explanation of how the proposed solution is related to the stated problem—since the relationship may not be obvious to the reader. The description goes beyond identifying the changes to explain why the FAA is proposing each change.

The Team usually organizes the **Discussion of the Proposal** by topic, not by CFR section. This structure allows the Team to discuss the most important proposed changes first, and to address proposals together. Using this approach leads to a more logical presentation of the detailed **Discussion of the Proposal**, and reduces repetitiveness. However, there may be cases where the Team decides a section-by-section discussion is more appropriate for the subject matter being discussed.

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Best practices:


- The Team organizes this detailed explanation of proposed changes by topic in order of decreasing importance.
- The ARM analyst consults with ARM management for advice if the Team believes a different structure for the proposal’s rationale would be more effective.
- The Team uses lettered topic subsection headings (including CFR section numbers in parentheses) to help the reader understand the issues that the FAA is addressing with the proposal (e.g., A. Most Important Topic Addressed heading (§ xx.xx); B. Less Important Topic Addressed (§§ xx.xx and xx.xx); etc.).
- The Team considers grouping minor proposed changes in a final Miscellaneous Amendments section.

2.1.6. NPRM Regulatory Notices and Analyses

The next section in the NPRM preamble is the **Regulatory Notices and Analyses** section. The Team uses this section to demonstrate that the FAA has considered the impacts the proposal would have, if adopted. As required by various statutes and executive orders, the Team considers both general economic impacts and specific effects on particular groups or geographic areas in this section. These sections are primarily prepared and provided by the Team economist as part of its economic analysis and summarize specific elements in the economic analysis (refer to 2.3). In addition, the Team addresses (i) any PRA requirements associated with the proposal, (ii) the proposal’s compatibility with the U.S. obligations under the Convention on International Civil Aviation, (iii) NEPA applicability, and (iv) the proposal’s impact on intrastate aviation in Alaska.

The NPRM template contains instructions on how to complete each of these sections and notes which sections are the responsibility of the Team economist or the Team lead.

2.1.7. NPRM Executive Order Determinations

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The next section in the preamble is the **Executive Order Determinations** section. In this section, the Team addresses the FAA’s adherence to Executive Orders not dealt with in the previous **Regulatory Notices and Analyses** section.

At a minimum, this section may include Federalism and energy use implications, but may also be expanded to address new Executive Orders with regulatory requirements, as needed.

2.1.7.1. NPRM Language Addressing Federalism

The first subsection addresses whether the proposed rulemaking has a substantial direct effect on the:


- States,
- Relationship between the Federal Government and the States, or
- Distribution of power and responsibilities among the various levels of government.

The Team attorney determines whether the rulemaking has any Federalism impact on the basis of [Executive Order 13132](#). Unless the Team attorney provides an alternative statement, the Team includes in this section the statement addressing Federalism from the rulemaking document template.

2.1.7.2. NPRM Language Addressing Energy Use Impact

The second subsection addresses whether the proposed rulemaking significantly affects energy supply, distribution or use. Specifically, the energy impact statement addresses;

- The rulemaking’s probable impact on energy efficiency and energy conservation;
- The rulemaking’s adverse effects on energy supply, distribution, or use, if any; and

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- Any reasonable alternatives and the expected effects of the alternatives on energy supply, distribution, and use.

The Team lead determines whether the rulemaking has any energy use impact based on [Executive Order 13211](#) or [Energy Conservation Policies and Practices, 42 U.S.C. 6362](#). Unless the Team lead provides an alternative statement on the basis of OPR review, the Team includes in this section the statement addressing energy use from the rulemaking document template.

2.1.8. NPRM Additional Information

2.1.8.1. Inviting Comments and Explaining Rulemaking Document Availability


The next section in the preamble invites the public to comment and explains how the public can access documents associated with the rulemaking document. This section helps to ensure transparency to the general public. It also includes instructions for commenters that may wish to include proprietary or private information or obtain a copy of rulemaking documents.

2.1.8.2. Comments Containing Proprietary Information

The Team may anticipate comments in response to a rulemaking document could contain proprietary information. In such cases, the Team includes specific language from the rulemaking document template to instruct the public on how to file such comments.

Generally, all information used in rulemaking must be available to the public and placed in the docket (refer to Section 2.10). However, a commenter may furnish proprietary information as part of a comment, but request certain information be withheld or reasonably separated. The FAA does everything reasonable to accommodate such requests in accordance with [14 CFR § 11.35\(b\)](#).

If the FAA receives a request to examine or copy information that has been separated or withheld from the docket, the Team treats it as any other request under the Freedom of Information Act ([5 U.S.C. 552](#)).

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The FAA processes such requests under DOT procedures found in [49 CFR part 7](#).

2.1.9. Concluding the NPRM Preamble

2.1.9.1. List of Subjects

The **List of Subjects** is the last item of the preamble. It is a list of index terms for each CFR part number cited in the rulemaking document heading. The terms provide a common vocabulary for indexing the rulemaking documents of all agencies and are the basis of the "CFR Index" prepared by the OFR. The [OFR Thesaurus of Indexing Terms](#) (Thesaurus) contains the terms in the List of Subjects for all rulemaking documents.

By using subject terms from the Thesaurus in the List of Subjects, the Team helps the general public and other agencies identify FAA rules that may relate to rulemakings by other agencies. The Team uses appropriate terms from the Thesaurus, but may include other terms, if necessary.

Best practice:


The Team considers the List of Subjects used in previous rulemaking documents published in the *Federal Register* for each CFR part identified in the NPRM document heading, and uses the same terms in the NPRM's List of Subjects, as appropriate.

2.1.9.2. Words of Issuance

"Words of Issuance" serve as the bridge between the preamble and the specific proposed changes to 14 CFR. Sections 1.7 and 2.7 of the [DDH](#) explain their use in detail.

2.1.10. Regulatory Text

Regulatory text is the section of the rulemaking document that sets out the FAA's proposed changes to the CFR. The regulatory text is presented in conformance with the CFR with regard to:

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- Structure and numbering;
- Headings;
- Table of Contents;
- Authority citation;
- Amendatory language;
- Asterisks; and
- Cross-references.


The Team should refer to sections 1.8 through 1.15 of the [DDH](#) for guidance and examples for all of these areas. Another helpful resource is “*Federal Register* and Code of Federal Regulations Format Requirements, Simplified” (Doc # 35332).

2.1.10.1. Regulatory Text Structure and Numbering

Structure and numbering of regulatory text conforms to CFR structure and numbering. The basic structure of the CFR consists of a hierarchy of designated major CFR units. Section 1.12 of the OFR’s [DDH](#) discusses this in further detail.

For 14 CFR, consider these major CFR units:

- Title—a broad area subject to Federal Regulation:
Title 14, Aeronautics and Space.
- Chapter—rules of a single issuing agency or part of an agency:
Chapter I—FAA, DOT;
Chapter II—Office of the Secretary, DOT (Aviation Proceedings);
Chapter III—Commercial Space Transportation, FAA, DOT.
- Subchapter—groups of parts. For example, the Subchapters in Chapter 1 are:
Subchapter A—Definitions (parts 1-3)

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Subchapter B—Procedural Rules (parts 11-17)
 Subchapter C—Aircraft (parts 21-59)
 Subchapter D—Airmen (parts 60-67)
 Subchapter E—Airspace (parts 71-77)
 Subchapter F—Air Traffic and General Operating Rules (parts 91-109)
 Subchapter G—Air Carriers and Operators for Compensation or Hire: Certification and Operations (parts 110-139)
 Subchapter H—Schools and Other Certificated Agencies (parts 140-147)
 Subchapter I—Airports (parts 150-169)
 Subchapter J—Navigational Facilities (parts 170-171)
 Subchapter K—Administrative Regulations (parts 183-193)
 Subchapters L and M (reserved)
 Subchapter N—War Risk Insurance (parts 198-199)

- Part—unified body of rules concerning a single function or specific subject. For example, the parts in Subchapter E are:
 Part 71—Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points (71.1 – 71.901)
 Part 73—Special Use Airspace (73.1-73.85)
 Part 75—Reserved
 Part 77—Safe, Efficient Use, and Preservation of the Navigable Airspace (77.1-77.41)
- Section—the basic unit of the CFR intended to provide a short, simple presentation of one regulatory function.

The CFR numbering system is not based on a decimal numbering system. Each section number includes the number of the part followed by a period and a sequential number.

The CFR structure includes designation of each paragraph in sections with multiple paragraphs. Although the OFR’s paragraph structure within a CFR section allows up to six levels of designation, it is best to limit paragraph hierarchy to three levels, as follows:

- Level 1—(a), (b), (c), etc.

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- Level 2—(1), (2), (3), etc.
- Level 3—(i), (ii), (iii), etc.

Use of more than three paragraph levels makes the rule more difficult to read and use. It may be helpful to use more sections as a drafting technique, to avoid using excessive paragraph levels.

The term “Reserved” is sometimes used to indicate sections have been set aside to allow for future new regulatory functions, should they become necessary.


2.1.10.2. Regulatory Text Headings

A heading is a brief statement that accurately describes the content of the part, section, appendix, or other CFR unit, as appropriate. Each CFR part has a heading that contains subject terms that identify the agency's rules in a manner consistent with the terms used by other agencies to identify similar material. Section 1.9 of the OFR’s [DDH](#) discusses this in further detail. The OFR’s [Thesaurus](#) includes most subject terms in CFR part headings.

The Team uses terms from the Thesaurus when amending a CFR part heading, if possible. The Team uses headings for other CFR units as follows, if appropriate:

- To separate ideas in a part into subparts;
- To break up a large subpart and group together sections concerning a particular subject area under undesignated center headings;
- To serve as descriptive indicators of particular regulatory text in sections; and
- To identify an appendix at the section, subpart, or part level.

The Team may choose to use headings at the paragraph level, if it does so consistently for all paragraphs at the same level. If the Team

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chooses to use paragraph headings, it underlines each paragraph heading and ends it with a period or question mark, as appropriate.³²

In accordance with the [DDH](#), the Team:

- Includes a specific amendment if it seeks to change a CFR heading;
- For Section headings, capitalizes the first word (and any proper nouns) as in an ordinary sentence, and ends the heading with either a period or a question mark, as appropriate; and
- For Appendix headings, uses a capital letter and identifies whether it is associated with a part, subpart, or section.

2.1.10.3. Regulatory Text Table of Contents

The Team uses a table of contents for the regulatory text if the rulemaking:

- Adds a new part or subpart, or
- Revises an existing part or subpart.


The regulatory text table of contents includes all:

- Section headings;
- Subpart headings;
- Undesignated center headings; and
- Appendix headings to parts and subparts.

The regulatory text table of contents does not include:

- Paragraph headings; or

³² The OFR prints underlined headings in italics in the *Federal Register* (instead of underlining).

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- Appendix-to-section headings.

The Team does not use a table of contents for the regulatory text if the rulemaking document adds or amends a single section or miscellaneous sections within a part or parts. For these rulemaking documents, the OFR changes the table of contents when the amendments are included in the CFR. Section 1.10 of the OFR's [DDH](#) discusses this in further detail.

2.1.10.4. Regulatory Text Authority Citation


Authority for regulations is statutory (public law or United States Code), or non-statutory. Just as the CFR cites specific authority for each part prior to the first section of the part, the rulemaking document identifies the authority citation(s) for the part being amended at the beginning of the regulatory text. Section 1.11 of the OFR's [DDH](#) discusses this in further detail.

The authority identified with one or more specific citations at the beginning of the regulatory text reflects the preamble discussion of authority (refer to Section 2.1.2.2).

The Team uses language from the rulemaking document template to set out the authority citation(s) based on whether the rulemaking:

- Revises or amends an existing part or subpart for which the authority has not changed (using authority as set out in the CFR);
- Revises or amends an existing part or subpart for which the authority has changed due to statutory or non-statutory actions (using authority as set out in the CFR, but amending it as necessary) ; or
- Adds a new part or subpart.

Best practice:

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In most cases, the Team may find it useful to copy and paste the authority from the Electronic Code of Federal Regulations ([e-CFR](#)) as a starting point.

2.1.10.5. Amendatory Language


The Team uses amendatory language to precisely identify and describe the revisions, deletions, and additions to the CFR it already described in the preamble. The amendatory language consists of standard terms that give specific instructions to OFR staff on how to change the CFR. Section 1.13 of the OFR's [DDH](#) discusses this in further detail.

The amendatory language:

- Identifies the specific CFR unit to be changed;
- Precedes the regulatory text of the specific CFR unit to be changed;
- Places amendments in CFR numbering order;
- Uses standard terms to describe the change; and
- Addresses all regulatory text set out in the document.

The most frequently used amendatory terms are:

- Add—a new CFR unit (e.g., word, paragraph, section) is inserted into the CFR;
- Redesignate—an existing CFR section or paragraph is transferred to a vacant position and assigned a new designation;
- Remove—an existing CFR unit (e.g., word, paragraph, section) is being taken out of the CFR; and
- Revise—an existing CFR unit (not smaller than a sentence) is replaced in its entirety.

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"Amend" means an existing CFR unit is changed, but it is an introductory term that does not provide specific instructions on how the change is to be made. Therefore, "amend" cannot stand alone. The Team uses "amend" with one of the specific amendatory terms listed above or identified in section 1.13 of the [DDH](#) to precisely describe the change to the CFR unit.

The Team may find it helpful to begin developing amendatory language after it agrees on the specific CFR revisions, deletions, and additions in the rulemaking. A useful step to ensure agreement may be to redline changes to current regulatory text as copied and pasted from the [e-CFR](#).

While the Team usually participates in writing the amendatory language, the Team attorney is ultimately responsible for ensuring the regulatory text is legally sufficient.


Best practices:

The Team should:

- For extensive changes, revise the text in full rather than breaking down amendatory instructions into fragments, so the reader has the complete text of the amended paragraph or section;
- Group all amendments to the same CFR unit together in one instruction;
- Refrain from using the word "proposed" in amendatory instructions (since the Words of Issuance for an NPRM establish the instructions are for proposed changes); and
- Review the specific examples and guidance in Section 1.13 of the [DDH](#) that are relevant to the CFR changes it is proposing.

2.1.10.6. Use of Asterisks

Like the specific amendatory terms identified in Section 2.1.10.5, the Team uses asterisks in specific ways to provide clear amendatory instructions to OFR staff. Asterisks are an important tool for

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conveying exactly what CFR units are, and are not, being changed. Section 1.14 of the OFR’s [DDH](#) discusses this in further detail.

When the Team is adding or revising only certain units of a CFR section, the amendatory language states exactly which units are added or revised. Only those units are printed. In these cases, the Team uses asterisks to represent text which it is not changing.

Using five asterisks (* * * * *) shows a whole paragraph, including its subordinate paragraphs, is unchanged.

Using three asterisks (* * *) shows text at a subordinate level is changed, and the higher level paragraphs remain unchanged.


2.1.10.7. Issuance Information

AOA has delegated authority to issue NPRMs to the OPR Director, in most cases. The Team includes an issuing statement (including authority) and signature area after the last amendatory instruction and regulatory text, in accordance with the NPRM template. The signature block identifies the OPR Director’s name and title.

Including the typed signature block serves as a reminder to the Team and reviewers of who is likely to issue the document. However, because the OFR does not permit one official to “sign for” another, the Team removes the typed name and title from the document prior to sending for issuance (refer to Section 2.8). Section 1.16 of the OFR’s [DDH](#) discusses this in further detail.

2.1.10.8. Incorporation by Reference (IBR)([1 CFR part 51](#) and Chapter 6 of the [DDH](#))

IBR allows Federal agencies to comply with the requirement to publish rules in the *Federal Register* while referring to materials already published elsewhere. The legal effect of IBR is the material referenced in the IBR is treated as if it were published in the *Federal Register*, with the force and effect of law just like the CFR. Congress

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authorized IBR in the Freedom of Information Act to reduce the volume of material published in the *Federal Register* and CFR.³³

The Director of the OFR decides when an agency may incorporate material by reference in a final rule to be codified in the CFR. The Director may approve an IBR request if the material:


- Is published data, criteria, standards, specifications, techniques, illustrations, or similar material;
- Is reasonably available to and usable by the class of persons affected by the publication;
- Does not reduce the usefulness of the *Federal Register* publication system;
- Benefits the Federal Government and members of affected classes; and
- Substantially reduces the volume of material published in the *Federal Register*.

Even though agencies do not have to obtain IBR approval from the OFR for an NPRM, the Team considers whether the referenced materials are appropriate for IBR approval when developing the NPRM in order to avoid unexpected issues when preparing the final rule.

If the Team determines that IBR is needed, the ARM analyst, working with the Team attorney, ensures the needed language is included in the proposed regulatory text.

Best practices:

³³ Chapter 6 of the Document Drafting Handbook provides detailed information about IBR requirements in the preamble and regulatory text.

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- The ARM analyst discusses any potential IBR materials with the Team attorney and ARM’s Alternate Federal Register Liaison as soon as possible during NPRM drafting.
- The Alternate Federal Register Liaison consults with the OFR as early as possible when considering using an IBR in a regulation.

2.2. Team Reaches NPRM Preliminary Team Concurrence

2.2.1. Reaching PTC

PTC is the first project milestone that is tracked to document project progress. The Team completes PTC when:

- All Team members are satisfied with the overall content of the document, and are comfortable with the concept, direction, and approach the document takes;
- All Team members agree on enough of the document to allow Team members to share the document with others within the FAA outside of the Team, as appropriate;
- No unresolved policy issues remain that could affect the costs and benefits of the rulemaking, and the Team has enough of the preamble and regulatory text drafted for the economist to begin the economic analysis;
- The Team’s economist has (i) indicated his/her understanding of how the rule would impact industry if adopted, (ii) identified the data needed to conduct his/her regulatory evaluation, and where he/she needs to obtain such data, and (iii) obtained the necessary APO approvals required under APO’s process;
- The Team attorney has ensured the regulatory text is legally sufficient and the preamble contains all necessary justifications for the proposed requirements (AGC is ultimately responsible for the language and may make drafting changes and require additional information from the OPR in order to complete the drafting of rationales in the preamble); and
- Each Team member has briefed his/her management on the project’s substance, policy and direction and his/her intention to agree to PTC.

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PTC does not mean that everyone on the Team is completely satisfied with every single word in the document. It also does not mean that the document is complete.

Best practice:

- If the project is expected to be a minimal cost rulemaking, the ARM analyst should discuss with the ARM analyst's manager whether it is appropriate to place the project on a Designation List for OST and OMB consideration at this point, rather than waiting until after APO completes the economic analysis (refer to Section 2.5.5).
- The Team's economist reviews the assumptions for the regulatory evaluation with the Team prior to reaching PTC.

2.2.2. Documenting PTC


PTC, like other project milestones, is documented for project tracking purposes while the project is ongoing and for historical purposes.

Although there is no formal document coordination for PTC, the ARM analyst and Directorate writer-editor should get some form of written acknowledgement of PTC. This can be an e-mail or a document signed at a Team meeting.

The ARM analyst or Directorate writer-editor, as appropriate, documents completion of PTC in IRMIS by entering the milestone completion date.

Best practices:

- The OPR should continue to work on any proposed guidance material associated with the NPRM, so it will be ready to be posted in the public docket at NPRM publication.
- The ARM analyst may find it helpful to ask an ARM colleague to review and provide feedback on the NPRM draft once the Team reaches PTC, since review by someone who has not previously been involved in document drafting often helps to identify issues best addressed prior to document coordination.

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2.3. APO Conducts NPRM Economic Analysis

When the Team completes PTC, the Team economist formally begins work on the economic analysis. The Council approved the timeframe for the Economic Evaluation/Legal Review milestone when it approved the RAP (refer to Section 1.5.3).

The economic analysis includes the initial:


- Regulatory Evaluation (refer to Section 2.3.1);
- Regulatory Flexibility Analysis (refer to Section 2.3.2);
- International Trade Impact Assessment (refer to Section 2.3.3); and
- Unfunded Mandates Assessment (refer to Section 2.3.4).

The Team economist also estimates the information collection or recordkeeping burden that may be imposed by the proposed rule as part of the economic analysis (refer to Section 2.3.5), based on Team determinations about PRA requirements made while developing the RAP or the NPRM preamble.

Finally, the Team economist summarizes the economic analysis for the NPRM preamble and provides a stand-alone RIA (refer to Section 2.3.6) for projects APO determines have more than minimal economic impact (refer to Section 2.3.7).

Although the Team economist conducts the assessments described in the following sections (in accordance with APO guidance and requirements set forth in specific Executive Orders and DOT policy), it is important all Team members have a basic understanding of the required analyses the Team economist prepares. Knowledge of the origin and intent of each required analysis helps Team members make an informed review of the Team economist's description of the proposed regulatory changes and determinations regarding their impacts.

DOT's Office of the General Counsel maintains a summary of the requirements imposed on DOT as it implements its responsibilities for rulemaking, the [DOT Rulemaking Requirements](#) document. This document serves as a source of additional information and references for Team members seeking to gain a better understanding of the requirements under which the economist prepares the NPRM's Economic Analysis.

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2.3.1. Initial Regulatory Evaluation

Several terms may be used to describe the Team economist’s investigation of the proposed rule’s estimated cost and benefit impacts on the public and private sectors.³⁴ The assessment of NPRM costs and benefits is considered an “initial” evaluation.³⁵

The Team economist adheres to guidance from a number of sources when preparing the initial regulatory evaluation, including Executive Orders [12866](#) and [13563](#), and [DOT Order 2100.5](#).

The Team economist may:


- Consider alternative methods for achieving the proposed rule’s objective;
- Determine which of the alternative methods is best from a cost benefit perspective;
- Obtain feedback from the Team; and
- Adjust the analysis accordingly.

The Team economist’s analysis of cost impacts that could result from adoption of the proposed rule may include estimated (or known) costs associated with:

- Equipment (new equipment and obsolescence of old);
- Employees (new hiring and training);
- Time (preparation of new documents and completion of new forms, etc.); and
- Fees.

³⁴ Terms include “regulatory evaluation,” “economic assessment,” or “economic evaluation.”

³⁵ The Team economist completes the “final” regulatory evaluation after consideration of comments received on the proposed rule’s cost and benefits from the public, during development of the final rule (Section 3.5).

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The Team economist may also consider costs that could result from changing existing regulations to require regulated entities to perform practices or procedures the same organizations or individuals currently do voluntarily.

The Team economist’s analysis of benefits that could result from adoption of the proposed rule may include quantified information from a variety of data sources on:

- Fatalities avoided;
- Injuries avoided (serious and minor);
- Property loss avoided;
- Reduced costs for accident investigation (based on fewer accidents as a result of accidents avoided); and
- Fuel savings.

The FAA’s ability to use accidents/incidents to determine benefits is limited. Once one or more rulemakings are determined to be 100% effective in preventing an accident/incident, that accident/incident can no longer be used in future rulemaking projects. To determine the available effectivity for any accident/incident, the Team economist should refer to the Accident Effectivity Database (Doc # 43252). ARM and APO work together to update this document twice a year.


The Team economist may also include a discussion of qualitative benefits when such benefits cannot be quantified.

2.3.2. Initial Regulatory Flexibility Analysis

The Team economist conducts an initial analysis in accordance with the Regulatory Flexibility Act (5 U.S.C 601 et. seq.) to determine and describe the NPRM’s impact, if any, on small businesses, organizations, and government jurisdictions (or “small entities,” as defined in the Act).

In this analysis, the Team economist considers:

- The reasons why the FAA is considering the proposed regulatory changes;

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- The objectives of the proposed regulatory changes;
- A description of and, if possible, an estimate of the number of small entities to which the proposed regulatory change would apply;
- A description of the proposed reporting, recordkeeping, and other compliance requirements;
- Identification of all Federal rules that may duplicate, overlap, or conflict with the requirements of the proposed regulatory changes; and
- A description of alternatives that would minimize the significant economic impact of the proposed regulatory changes on small entities.³⁶

2.3.3. Initial International Trade Impact Assessment


The Team economist conducts an initial analysis to determine if the proposed regulatory changes would conform to the [Trade Agreements Act of 1979](#) (19 U.S.C. 2501 and 2531-2533).

The Team economist assesses whether the proposed regulatory changes would comply with the Act's:

- Prohibition against setting standards that create “unnecessary obstacles to the foreign commerce” of the United States;³⁷
- Requirement to use performance rather than design standards, where appropriate; and
- Requirement to consider international standards in developing U.S. standards and international standards be the basis for the U.S. standards.

³⁶ The Regulatory Flexibility Act requires agencies to consider whether a proposed (or final) rule could “have a significant economic impact on a substantial number of small entities,” or “SEISNOSE.” If so, the agency must prepare a complete RIA document.

³⁷ The statute is primarily concerned with “products.” It does not consider legitimate domestic objectives, such as safety, to be unnecessary obstacles. For more information, see the description of the Act found in the [DOT Regulatory Requirements](#) document.

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2.3.4. Initial Unfunded Mandates Assessment

The Team economist assesses any unfunded mandates that adoption of the proposed regulatory changes in the NPRM would impose on State, local and tribal governments and on private industry, except to the extent the regulations incorporate requirements specifically set forth in law. The Team economist conducts this assessment in accordance with the [Unfunded Mandates Reform Act](#); Title II – Regulatory Accountability and Reform (2 U.S.C. Sections 1532-1538), which includes the requirements for this assessment. The Team economist also adheres to the most recent DOT guidance on the threshold of “significant regulatory actions” that trigger an analysis under the act.³⁸

2.3.5. NPRM Information Collection or Recordkeeping Burden Estimate for PRA Consideration

The Team first considers information collection and recordkeeping requirements under the PRA when developing the RAP (refer to Section 1.4.4 on PRA in general, and how the FAA addresses the Act’s requirements throughout the rulemaking process).

If the Team has determined the proposed regulatory changes may result in a PRA burden, the Team economist conducts the analysis needed to estimate the costs associated with the burden and assists the Team lead in completing OMB Form 83-I, Paperwork Reduction Act Submission (Doc # 24050) and an ICR Supporting Statement (Doc # 35205). Questions 12, 13, and 14 of the ICR Supporting Statement specifically address the estimate of any PRA burden.

2.3.6. NPRM Regulatory Impact Analysis

The Team economist develops an initial RIA document based on the analyses above for most projects, in accordance with APO standards and guidance. The ARM analyst or Directorate writer-editor, as appropriate, includes this stand-alone document in the rulemaking package during Internal Coordination (refer to Section 2.6). The initial RIA will also be made available to the public after NPRM publication during the NPRM comment period.

³⁸ For example, see DOT policy, [Threshold of Significant Regulatory Actions Under the Unfunded Mandates Reform Act of 1995](#) (updated July 24, 2012).

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The Team economist prepares a separate summary of the initial RIA, which the Team incorporates into the NPRM preamble prior to coordination.

Best practice:

The Team economist should seek Team member review of the draft initial RIA and the RIA summary for the preamble prior to the milestone due date, to avoid late issues and improve document quality control.

2.3.7. Minimal Economic Impact NPRMs

If APO expects the economic impact of the proposed rule to be so minimal the rulemaking does not warrant a full initial RIA, the Team economist prepares a statement to that effect, including the basis for the statement. The Team includes the statement in the NPRM preamble instead of a summary of the RIA.


Best practice:

The Team economist should seek Team member review of the minimal impact statement and any other economic analysis summary for the preamble prior to the milestone due date, to avoid late issues and improve document quality control.

2.3.8. NPRM Economic Analysis Completion

The Team economist conducts the economic analysis and drafts appropriate summaries, statements, and a stand-alone RIA, when appropriate. However, the Team as a whole is responsible for developing a well-written, clear, and readable rulemaking document and supporting material. All Team members, therefore, should:

- Review the material provided by the Team economist;
- Ask clarifying questions if necessary; and
- Suggest changes for Team consideration in order to improve the rulemaking document.

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To complete the NPRM Economic Evaluation/Legal Review milestone, the Team economist provides the following to the Team after coordination with APO management:

- A summary of the economic analysis for the NPRM preamble;
- Either a statement identifying the NPRM as a minimal cost rulemaking for inclusion in the NPRM preamble, or an initial RIA document, as appropriate;
- Responses to questions 12, 13, and 14 of the ICR Supporting Statement, if the Team has determined the NPRM modifies existing or creates new information collection requirements; and
- The ARM analyst or Directorate writer-editor enters the Economic Evaluation milestone completion date in IRMIS.

The ARM analyst documents completion of the economic analysis in IRMIS.³⁹


2.4. AGC Conducts NPRM Legal Review

While the Team economist is working on the economic analysis, the Team attorney may use this time to address other areas that are part of the Team attorney’s legal analysis not required for PTC. For example, the Team attorney may need to consult with other attorneys in AGC that specialize in areas that may be affected by the rule (e.g., international or enforcement). Or, the Team attorney may need to review other regulations to ensure there are no unintended effects of the rule being proposed.

This review may result in changes to the rulemaking document. The Team attorney completes this legal review and resolves any associated changes with the Team before the milestone date approved by the Council for Economic Evaluation/Legal Review.

In addition to the above, the Team attorney prepares a redline regulatory text document that will go in the “Background” section of the coordination folders during Internal Coordination (refer to Section 2.6). This document shows, in redline, all of the changes to the regulatory text being proposed or that will go into effect.

³⁹ IRMIS refers to the Economic Evaluation/Legal Review milestone from the RAP as the “Economic Evaluation” milestone.

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2.5. Preparing NPRM for Coordination

The ARM analyst and Directorate writer-editor, if applicable, works with the Team to prepare the rulemaking document package for coordination. The goal of this preparation is to ensure rulemaking document and coordination package quality control.

Responsibility for preparing AIR Directorate-led projects for coordination is shared between the Directorate writer-editor and the ARM analyst. However, the ARM analyst is responsible for ensuring requirements in the following sections are met, and documenting their completion on the Pre-Coordination Checklist (refer to Section 2.5.5).

2.5.1. Completing the Rulemaking Document Content

The ARM analyst and Directorate writer-editor, as appropriate, work with the Team to finalize the rulemaking document's content. It is important to fill in any gaps and resolve outstanding issues prior to drafting the Executive Summary and beginning coordination.


If the Team has determined the NPRM impacts existing or creates new information collection or recordkeeping requirements, the Team lead submits OMB Form 83-I Paperwork Reduction Act Submission (Doc # 24050) and the Supporting Statement to the PRA/Information Collections Program Coordinator.⁴⁰

2.5.2. Rulemaking Document Executive Summary

The ARM analyst or Directorate writer-editor, if applicable, prepares a rulemaking document Executive Summary to assist reviewers outside the Team in understanding the rulemaking's highlights. Uses of the Executive Summary include:

- As the first document included in the rulemaking package for Internal Coordination (refer to Section 2.6); and

⁴⁰ See also Sections 1.4.5, 2.1.6.2, 2.3.5, and 2.3.8 to understand the steps already taken to ensure the team is ready to complete this requirement prior to internal NPRM coordination.

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- For transmittal to OST for external review (usually significant projects only) (refer to Section 2.7).

The Executive Summary mirrors the form used to request OST and OMB Designation (Doc # 43243). The only difference is the words “Executive Summary” is added to the top of the front page, along with the FAA seal.

The Executive Summary is sometimes made available outside the FAA (e.g., to OST and OMB), but is not shared with the public. It is neither published in the *Federal Register* with the rulemaking document, nor included in the public docket.

2.5.3. Checking CFR Reference Accuracy


Because CFR part, section, and paragraph titles, headings, and organization may change during rulemaking document drafting, careful review is necessary. The ARM analyst or Directorate writer-editor, if applicable, reviews the document to ensure the accuracy of references in the preamble and regulatory text of:

- Cross-references to those CFR parts, sections and paragraphs addressed in the rulemaking document; and
- References to CFR parts, sections and paragraphs beyond those addressed in the rulemaking document.

In addition, it is necessary to check Title 14 for references to the regulatory text addressed in the rulemaking document and update any affected references. The regulatory text may need to include amendatory instructions (conforming amendments) to update these references, and corresponding text may need to be added to the preamble to explain the reference updates.

For example, the FAA proposed to move certain definitions from § 119.3 to a new § 110.2. Upon review of Title 14, the ARM analyst found that § 45.11 included a reference to § 119.3 that would no longer be accurate if the proposed changes were adopted. To address the reference in § 45.11, the ARM analyst added the following to the NPRM’s regulatory text:

- Part 45, to the List of Subjects;

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- An amendatory instruction to address the unchanged authority for part 45 (a conforming amendment); and
- An amendatory instruction to update the reference: “2. Amend § 45.11(g)(1)(ii) and (g)(3) by removing the citation “§ 119.3” and adding the citation “§ 110.2” in its place.”


The ARM analyst or Directorate writer-editor, as appropriate, identifies references elsewhere in Title 14 by searching the [e-CFR](#) (refer to Section 2.1.10.4). If a reference is found, the proposed rule’s impact on that reference should be analyzed. If an impact is found, the NPRM should include a proposal to address such impact (including a discussion in the preamble)

The following steps describe the most efficient way to identify section references in Title 14:

- Go to the [e-CFR website](#).
- From the list of options on the left-hand side of the screen, select “Simple Search.”
- In the box following the “Enter Title Number” text, type the number “14” (since the search is for all of Title 14).
- In the box following “Search For:”, enter the number of the first section addressed in the rulemaking, without quotation marks.
- Press the “Submit Search” button. The list of links to CFR sections returned in the search results includes the actual CFR section, and all references to the section elsewhere in Title 14.

2.5.4. Rulemaking Document Pre-Coordination Reviews

Between using boilerplate language from templates and sharing authorship among Team members, rulemaking documents have many opportunities for inconsistency. Reviews by the ARM analyst and Directorate writer-editor, as appropriate, improve document quality control. These reviews help to eliminate the most common formatting inconsistencies, including footnotes, font, paragraph spacing, and line indentation. Other common formatting

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inconsistencies are numbering of preamble headings, footnotes, amendatory instructions, and regulatory text.

The ARM analyst and Directorate writer-editor, as appropriate, should:

- Review the NPRM to ensure formatting consistency; and
- Save the FTC version that is distributed as a clean version of the NPRM in the DMS with a comment that clearly identifies it as the coordination version.

Best practices:

The ARM analyst and Directorate writer-editor, as appropriate, should refer to Appendix C, General Writing Guide, for reminders about customary capitalization, section symbol, spacing, and other formatting practices.

2.5.5. Rulemaking Document Pre-Coordination Checklist


ARM relies on the Pre-Coordination Checklist (Doc # 35520) to record completion of the requirements in the sections above. Completion of this checklist is the last step before starting Internal Coordination (refer to Section 2.6).

The ARM analyst fills out the Pre-Coordination Checklist, initials, and dates. The ARM analyst will include the Pre-Coordination Checklist in the ARM FTC coordination package for the ARM analyst’s Division manager approval as part of FTC (refer to Section 2.6.2).

The ARM analyst may place the completed Pre-Coordination Checklist in the DMS, associating it with the Project Number and assigning the “ADMIN” Document Type.

2.5.6. Principals Briefings

2.5.6.1. Need and Timing

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A briefing for upper-level management (Principals Briefing) may occur at any time during the rulemaking process where communication between the Team and senior management would be helpful. For example, a briefing may be necessary if the rulemaking project is likely to have a high level of interest or anticipated controversy, or the Team needs management direction or concurrence on an issue.

Many projects do not require a Principals Briefing. Others may require several to keep senior management informed throughout a particularly sensitive or complex project.

Generally, Principals Briefings are held every Monday in the AVS conference room. ARM management works with the AVS-1 administrative staff to set the Principals Briefing schedule.

If a Principals Briefing is necessary, the ARM analyst should⁴¹:


- Work with the appropriate ARM Division manager to schedule a Principals Briefing; and
- Enter the projected date for the Principals Briefing as a milestone and as a comment in IRMIS.

2.5.6.2. Participants

The Team lead usually conducts the Principals Briefing and is supported by other Team members during the discussion (as necessary).

Principals Briefing participants are usually those individuals who would participate in Director Level Concurrence (2.6.3) and Associate Level/AGC-1 Concurrence (2.6.4). A list of the core group of managers that are invited to all Principals Briefings is maintained by ARM. Prior to the invitation going out, the Team should review this core group list and determine if any other individuals should be invited to the briefing.

⁴¹ If the OPR is an AIR directorate, the AIR Directorate writer/editor should work with the ARM analyst to schedule the Principals Briefing.

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Best practices:

The ARM analyst should work with:


- The Team and the ARM analyst’s Division manager to confirm an appropriate attendance list.
- The AVS-1 administrative staff to ensure all Principals and other attendees appropriate for the briefing are added to the AVS-1 calendar invite.
- The Team to ensure proper Team support prior to and at the briefing, including appropriate telephone and video conference capabilities, if needed.

Any participants who are likely to be engaged directly in the discussion, either by presenting materials or answering questions, should join the Principals Briefing by video conferencing rather than by phone. The ARM analyst coordinates video or phone conferencing arrangements with the AVS-1 administrative staff, as necessary.

2.5.6.3. Preparing for a Principals Briefing

The Team develops briefing materials specific to the project’s issues. Appropriate topics to address during a Principals Briefing may include, but are not limited to:

- A brief summary of the rulemaking project, its relationship to other rulemaking projects (if relevant), and any decisions needed from the Principals;
- Information on controversial issues or challenging policy questions related to the project;
- Concerns related to the economic analysis that may affect how the Team proceeds with the project;
- Schedule and resource issues; and

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- Next steps for the project.

Usually, the Team prepares a PowerPoint presentation. However, an issue paper or other type of material may be appropriate to convey the most important information to the Principals.

The Team should ensure any PowerPoint presentation prepared for the Principals Briefing complies with current FAA branding requirements.⁴²

In addition, the ARM analyst should prepare a Principals Briefing Sign-in Sheet (Doc # 22030).

Best practices:


The ARM analyst should:

- Distribute any read-ahead materials to the Principals and other attendees no later than noon on the last business day before the day the Principals Briefing is scheduled for;
- Forward the e-mail to the Principals and attached briefing materials to the Team, and request they forward it to their branch-level managers; and
- Prepare extra copies of the briefing materials to bring to the Principals Briefing.

2.5.6.4. During the Principals Briefing

Seating in the conference room is limited, and chairs at the table are usually needed for the Principals, service or office Directors, and (sometimes) Division Managers. Only those Team members presenting materials during the briefing should sit at the table in order to communicate directly with the Principals. Generally, other Team members and interested parties sit around the perimeter of the room.

⁴² The [FAA Branding website](#) includes PowerPoint presentation templates.

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Video and phone participation is used if necessary. A Principals Briefing usually begins with the Team lead's presentation of briefing materials, but may include a discussion among the Principals, other attendees, and Team members as the Principals raise questions about the project.

Requirements:

The ARM analyst must:

- Circulate the sign-in sheet at the start of the Principals Briefing to record meeting participation (Doc # 22030)(there may be more than one sign-in sheet);
- Add contact information to the sign-in sheet for any attendees who join the Principals Briefing remotely; and
- Note issues, decisions, and action items that arise during the Principals Briefing.

Best practices:


Time during the Principals Briefing rarely allows for introductions of the Principals and other attendees. When participants join a Principals Briefing from a remote location, the ARM analyst may find it helpful to identify one person from each remote location with whom to follow-up after the Principals Briefing, if necessary, to assist in recording information for all attendees correctly on the sign-in sheet.

2.5.6.5. After the Principals Briefing

The Team may have to revise an LCD with an Appendix (refer to Section 4.2) or a rulemaking document to reflect any decisions made at the Principals Briefing.

Requirement:

The ARM analyst must:

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- Save any Principals Briefing materials and the completed sign-in sheet in the DMS as separate documents;
- Record completion of a Principals Briefing as a milestone in IRMIS; and
- Indicate the outcome of the Principals Briefing, including any resulting next steps to be taken, in the IRMIS “Status” field.


2.6. Internal FAA NPRM Coordination (Internal Coordination)

The purpose of Internal Coordination is to obtain and record acceptance of the Executive Summary, the rulemaking document, and (if applicable) the initial RIA from offices across the FAA. It is sometimes referred to as “formal” coordination, because each reviewer’s acceptance is formally documented on a grid.

Standard practices described in the following sections help to make Internal Coordination as complete and efficient as possible, and ensures all reviewers’ substantive comments are considered. Reviewers may comment at any level. The Team and their management, as appropriate, review all documents in the coordination package and approve any substantive changes before the ARM analyst begins the next level of Internal Coordination.

Each level of coordination is considered to be reached when all of the reviewers have initialed their concurrence grids, all of the coordination packages have been returned to the ARM analyst or Directorate writer-editor, as applicable, and all of the comments received have been either accepted or resolved between the Team and the reviewer. If the Team receives a comment that is unacceptable, the Team member who is in the same service or office as the reviewer who provided the edits decides whether to inform the reviewer of the Team’s decision not to include the edits (for example, a Team decision not to include a comma may not need to be briefed to the applicable manager). When the proposed edits are suggested by senior management, the Team should strive to incorporate such edits. If not, such senior management must be briefed and their approval received prior to moving onto the next level of coordination.

In addition, if any proposed edit significantly impacts the rule, the Team must consider whether that level of coordination (and all prior levels of coordination) must be repeated to alert the prior reviewers of such edit and its impact on the rule. The ARM analyst or the Directorate writer-editor, as applicable, should consult with management about a possible repeat coordination and how such a repeat coordination should occur.

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The ARM analyst documents completion of each level of Internal Coordination in IRMIS.

When AOA receives the rulemaking coordination package (the last Internal Coordination step), he or she can be confident all the appropriate FAA offices, and their leadership at the Associate Administrator level, are aware of and have accepted the documents in it.

Internal Coordination is completed before the rulemaking document leaves the agency—either for publication in the *Federal Register* (nonsignificant projects) or for OST/OMB review (significant projects).


2.6.1. NPRM Coordination Package

The ARM analyst generally prepares rulemaking coordination packages with red “circulation” folders, also referred to as “red folders.” Exceptions include when electronic coordination is used, at the ADA/AOA Approval milestone (refer to Section 2.6.5) or when the rulemaking document is too large to be contained in a folder. For these large documents, the ARM analyst consults with ARM analyst’s Division manager on using other means to deliver the coordination package.

The ARM analyst usually sets up each coordination package as follows, with:

- A transmittal memo attached to the outside of the folder’s front cover, based on an ARM template stating the purpose of the folder, its contents, and the timeframe for completing review (the text of the transmittal memo is different depending on the milestone (refer to Appendix B for the Doc # of the applicable transmittal memo));
- The Executive Summary (refer to Section 2.5.2) as the first document inside the folder, in front of the “Document” tab;
- A “Document” tab;⁴³

⁴³ “Tabs” are usually standard dividers used for 3-ring binders. ARM reuses dividers and folders from one document coordination to another.

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- The rulemaking document, behind the “Document” tab;
- A “Regulatory Evaluation” tab, if an initial RIA has been prepared (refer to Section 2.3) (if not, this should be noted in the transmittal memo);
- The initial RIA, if applicable;
- A “Coordination” tab;
- The coordination grid (the first page of the Executive Summary printed with a grid overlay) to allow multiple reviewers to indicate approval with their initials, their organization’s routing symbol, and the date;
- Copies of signed coordination grids from earlier coordination, if applicable, to make clear to the reviewer who has already reviewed and accepted the documents;
- A “Background” tab; and
- Any “Background” information, including, but not limited to redline regulatory text prepared by the Team attorney showing the specific changes being proposed to Title 14 (refer to Section 2.4) and any other material the Team agrees is necessary to assist the reviewers.


Best practice:

The ARM analyst or Directorate writer-editor uses double-sided copies of all documents whenever possible, unless a reviewer specifically requests a single-sided copy to expedite his or her review.

2.6.2. NPRM Final Team Coordination (FTC)

FTC is the first level of Internal Coordination. It is based on (usually simultaneous) coordination package review and approval by each Team member and each Team member’s management. Despite the name, FTC includes more than the Team.

The ARM analyst prepares the FTC coordination package using the FTC transmittal memo template (Doc # 23896). The ARM analyst may use electronic documents rather than paper documents for any or all Team members’ offices to

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obtain FTC, at the discretion of each office. This flexibility helps to accommodate Team members and their management located outside Washington, DC. AIR Directorate rulemakings require other considerations at FTC (refer to Section 2.6.2.2).

The ARM analyst or Directorate writer-editor, as appropriate, saves the FTC coordination package documents in DMS.

The Team works to complete FTC before the Council approved milestone. The amount of time requested for FTC review in the transmittal memo depends on the length and complexity of the documents in the coordination package, the extent of comments anticipated, and time available. If the time requested is significantly shorter than the Council approved milestone or exceeds the Council approved milestone, the ARM analyst or Directorate writer-editor, as appropriate, should discuss with the ARM analyst's or Directorate writer-editor's manager prior to starting FTC.


Each Team member and each Team member's management indicates acceptance of all documents in the coordination package by initialing and dating the concurrence grid provided. Each Team member either gives the original initialed grid or emails a scanned copy of the initialed grid to the ARM analyst. Team members who receive paper coordination packages from the ARM analyst should return the complete package to the ARM analyst so ARM can reuse folders, tabs, and documents for other coordination levels as appropriate.

The ARM analyst or Directorate writer-editor, as appropriate, incorporates comments/edits received from FTC reviewers in a redline draft of the appropriate document and shares such comments with the Team. The Team then decides if the proposed changes are appropriate. While the Team should reach a decision on whether to accept a proposed change, the Team economist's position is controlling for proposed changes to the regulatory evaluation and its preamble summary and the Team attorney's position is controlling for proposed changes to the regulatory text.

Requirements:

The ARM analyst or Directorate writer-editor, as appropriate:

- Prepares NPRM coordination packages in accordance with Section 2.6.1;

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- Uses the latest version of the FTC transmittal memo template to coordinate FTC (Doc # 23896); and
- Enters the FTC milestone completion date in IRMIS to indicate Internal Coordination is ready to move into DLC (refer to Section 2.6.3).


Best practices:

The ARM analyst or Directorate writer-editor should:

- Work with Team members to determine if each office prefers to receive electronic or hard copy FTC coordination packages;
- Request concurrence 1-2 weeks prior to the scheduled FTC milestone (when possible) to allow the Team to address any comments received during FTC;
- Work with the Team to ensure that any proposed changes by FTC reviewers are appropriate and provide appropriate responses to the applicable FTC reviewer when a proposed change is not accepted by the Team (when appropriate);
- Record Team member and management FTC on a single summary grid to document FTC;
- Combine all initialed FTC grids received from the Team into one PDF file, and save it in the DMS, associating the FTC grid file with the Project Number; and
- Save a scanned copy of the completed Pre-Coordination Checklist in the DMS, associating the file with the Project Number.

2.6.2.1. Management Involvement in FTC

The number of managers participating in FTC by reviewing and indicating acceptance of the coordination package varies depending on the structure of each Team member's office. Generally, all reviewers from each Team member's office at FTC use the same concurrence grid to indicate review and acceptance, but using the same grid is not always practical.

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It may be appropriate for Team members to formally or informally circulate the package among other offices in their organization during FTC.

For ARM, the Division manager of the ARM analyst usually reviews the documents after the ARM analyst has reviewed and approved the coordination package.

For APO, APO management through APO-300 usually participates in FTC.

For AGC, an AGC-200 branch manager usually participates in FTC (AGC-200 is included in DLC). If a senior attorney who reports directly to AGC-200 is the attorney on the Team, usually that senior attorney is the only AGC-200 participant in FTC.


For OPRs within AVS, branch and division management, if applicable, usually participate in FTC. For AIR Directorate rulemakings, this includes the Directorate manager (ACE-100, ANE-100, ANM-100, or ASW-100). Section 2.6.2.2 provides additional information on FTC coordination for Directorate rulemakings.

For OPRs within Airports, branch and division management, if applicable, usually participate in FTC.

FTC participation of management in OPRs in other FAA organizations (such as AST and ATO) is agreed upon by ARM and the OPR on a case by case basis.

2.6.2.2. FTC when a Directorate is the OPR

When a Directorate is the OPR, there are two phases of FTC; Directorate FTC and Washington, DC (Washington) FTC. Generally, Directorate FTC starts first followed by Washington FTC. Simultaneous coordination in the Directorates and in Washington can lead to document control confusion and a potential loss of substantive comments. However, due to time constraints and other factors, this is not always possible. The Directorate writer-editor manages FTC within the Directorate and the ARM analyst manages FTC once Washington FTC starts.

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Each Directorate has a different process for who reviews the FTC package, and when the FTC package is ready to start Washington FTC.⁴⁴ Prior to starting FTC, the Directorate writer-editor and the ARM analyst should review the Directorate FTC process to ensure:

- Sufficient time is allocated to complete Washington FTC; and
- All comments resulting from Washington FTC will be considered by the Team lead and OPR management (FTC is not complete unless all comments from Washington FTC are considered.)


When Washington FTC is ready to start, the Directorate writer-editor will place the coordination documents in the DMS, and inform the ARM analyst Washington FTC can commence. These documents should include a copy of the concurrence grid for the completed parts of Directorate FTC.

The ARM analyst will then begin Washington FTC, which includes, at a minimum, the AIR rulemaking liaison (who ensures coordination through the appropriate AIR branches in Washington), APO, and ARM. A designated attorney in AGC-200 will also participate (the ARM analyst should check with his/her manager to determine who the designated AGC-200 attorney is).

Upon completion of Washington FTC, the ARM analyst will send the Directorate writer-editor:

- Redline versions of the FTC documents showing all comments received during Washington, FTC; and
- A copy of the Washington, FTC concurrence grids.

⁴⁴ For example, in the Transport Airplane Directorate (ANM-100), the Directorate writer-editor coordinates FTC up to but not including ANM-100 before Washington FTC begins. Then, upon completion of Washington FTC, ANM-100 is given the opportunity to review and concur on these comments. This ensures that ANM-100 has seen the final document AIR-1 will receive during the next stage of internal coordination-DLC. Other Directorates usually prefer to complete Directorate FTC review prior to starting Washington FTC.

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It is critical for the Team lead and OPR management to consider any changes made to the coordination package by reviewers in Washington. Therefore, FTC for Directorate rulemakings is not complete until the Directorate writer-editor consolidates all Washington input to the documents in a redline version and the Directorate has coordinated the revised package, as appropriate, at the Directorate and with the Directorate Manager.


Once FTC is completed, the Directorate writer-editor will put the resulting documents in the DMS and send the ARM analyst the complete Directorate FTC concurrence grid.

FTC, like all other steps, in the Rulemaking Process, is most easily accomplished for Directorate rulemakings when the ARM analyst and Directorate writer-editor maintain open communications.

Best practices:

The following steps are based on completion of Directorate FTC prior to Washington FTC. This is not always possible due to time constraints, but is the preferred means to meet FTC. The Directorate writer-editor should:

- Begin Directorate FTC after the ARM analyst has completed the Pre-Coordination Checklist (refer to Section 2.5.5);
- Update IRMIS and the DMS throughout Directorate FTC coordination;
- Include the AIR rulemaking liaison in FTC coordination;
- Manage and incorporate input on all coordination package documents received from Directorate reviewers, as agreed to by the Team;
- Save new versions of the coordination package documents in the DMS after incorporating Directorate FTC input, clearly indicating the Directorate FTC versions; and

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- Combine all initialed Directorate FTC grids into one PDF file, and save it in the DMS.


The ARM analyst should then:

- Begin Washington FTC after Directorate FTC is complete, using the final Directorate FTC document versions in the Washington FTC coordination packages;
- Consolidate all input from Washington FTC reviewers in clearly identified redlined versions of the coordination package documents;
- Save the redline versions of the coordination package documents in the DMS, clearly indicating the Washington FTC redline versions;
- Combine all initialed Washington FTC coordination grids with the Directorate FTC into one PDF file, and save it in the DMS; and
- Update IRMIS throughout Washington FTC coordination.

Once Washington FTC is complete, the Directorate writer-editor should circulate the final version of the coordination package as needed among Directorate reviewers, as appropriate, based on any proposed changes from Washington FTC.

If the Directorate Manager did not review and concur with the NPRM coordination package prior to Washington FTC, the Directorate writer-editor should:

- Work with the Team lead to obtain Directorate Manager review and acceptance of the FTC coordination package;
- Add any Directorate Manager changes to the documents and the Directorate Manager initialed grid to the FTC Coordination Grid file; and

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- Advise the ARM analyst of Directorate Manager approval of the FTC package.

2.6.2.3 OST and OMB Designation as Significant or Nonsignificant

Unless done at the completion of PTC (refer to Section 2.2.1), the ARM analyst requests designation of the rulemaking as significant or nonsignificant (refer to Section 1.2.8) from OST and OMB through the ARM-20 RMS Reviewer upon completion of FTC.


The ARM analyst uses form OIRA Designation Request – Instructions, Blank Form & Example (Doc # 43243) to request the proposed rule be designated significant or non-significant (see Doc # 43243 for additional information on this process). Once completed, it should be submitted to the ARM RMS Reviewer, who will determine if the form is ready for submission to OST and OMB. The ARM RMS Reviewer may offer suggestions on how to improve the form and the Team should consider making such changes. Once the form is finalized, the ARM RMS Reviewer will formally submit the form to OST and will provide notice to the ARM analyst. The ARM analyst should inform the Team when this is accomplished and make a note in IRMIS.

OST will then work with OMB to obtain designation. Once OMB designation is obtained, OST will normally notify ARM management and the ARM RMS Reviewer, who will let the ARM analyst know. Once designation occurs, ARM analyst should inform the Team and make a note in IRMIS.

2.6.3. NPRM Director Level Concurrence (DLC)

DLC is the second level of formal coordination. It is based on (usually simultaneous) coordination package review and approval by each Team member's service or office Director. It is the responsibility of each Team member to be sure the Team member's Director is not surprised by anything in the DLC coordination package. This may be accomplished by briefing the Director at some point prior to the start of DLC.

The ARM analyst prepares the DLC coordination package (refer to Section 2.6.1) using the DLC transmittal memo template (Doc # 26449). When

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appropriate and at the discretion of each service or office, electronic files may be used instead of paper files for coordination.

The ARM analyst and the Team work to complete DLC before the milestone approved by Council in the LCD. Completing DLC includes the incorporation of input from reviewers, and any discussion or document re-coordination that may be necessary (reviewer comments should be handled in the same manner as discussed in Section 2.6).

Each Team member's Director indicates acceptance of all documents in the coordination package by initialing and dating the concurrence grid provided.


The ARM analyst:

- Incorporates input on all coordination package documents received from DLC reviewers, in coordination with the Team as appropriate;
- Saves the coordination package documents agreed to at DLC as new document versions in the DMS;
- Combines all initialed DLC grids into one PDF file, and saves it in the DMS, associating the DLC grid file with the Project; and
- Enters the DLC milestone completion date in IRMIS to indicate the NPRM package is ready to move into Associate/AGC-1 Coordination (refer to Section 2.6.4).

Requirements:

The ARM analyst:

- Prepares NPRM coordination packages in accordance with Section 2.6.1;
- Uses the latest version of the DLC transmittal memo template to coordinate DLC (Doc # 26449), including obtaining the ARM analyst's Division manager's approval since the memo is from the Division manager; and
- Includes copies of the initialed FTC concurrence grids behind the blank concurrence grid in the DLC coordination package.

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Best practices:

- On the transmittal memo, the ARM analyst should request concurrence approximately 1 week prior to the scheduled DLC milestone to allow the Team time to address any comments received during DLC.
- The ARM analyst may record DLC on a single summary grid to document DLC, in addition to scanning all original grids that support the summary grid.

2.6.4. NPRM Associate Level/AGC-1 Concurrence

Associate/AGC-1 Concurrence is the third level of formal coordination. Generally, each Team member's Associate Administrator and AGC-1 are included in Associate/AGC-1 Concurrence.


The ARM analyst prepares the Associate/AGC-1 coordination package (refer to Section 2.6.1) using the appropriate transmittal memo template (Doc # 26450). Electronic files may be used instead of paper files for Associate/AGC-1 coordination with the approval of the ARM analyst's Division manager.

The ARM analyst and the Team work to complete Associate/AGC-1 Concurrence before the Council approved milestone. Completing Associate/AGC-1 Concurrence includes the incorporation of input from reviewers (reviewer comments should be handled in the same manner as discussed in Section 2.6).

Each Team member's Associate Administrator and AGC-1 indicate acceptance of all documents by initialing and dating the concurrence grid provided.

The ARM analyst:

- Incorporates input on all coordination package documents received during Associate/AGC-1 review, in coordination with the Team as appropriate;
- Saves the coordination package documents agreed to at Associate/AGC-1 Concurrence as new document versions in the DMS;
- Combines all initialed Associate/AGC-1 grids into one PDF file, and saves it in the DMS, associating the file with the Project ; and

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- Enters the Associate/AGC-1 milestone completion date in IRMIS to indicate the NPRM package is ready to move forward for ADA/AOA Approval (refer to Section 2.6.5.).

Requirements:

The ARM analyst:


- Prepares NPRM coordination packages in accordance with Section 2.6.1;
- Uses the latest version of the Associate/AGC-1 transmittal memo template (Doc # 26450), including obtaining the ARM analyst's Division manager clearance and ARM-1 approval since the memo is from ARM-1; and
- Includes copies of the initialed FTC and DLC concurrence grids behind the blank concurrence grid in the Associate/AGC-1 coordination package.

Best practices:

- If an OPR is outside of AVS, the ARM analyst should consult with the ARM analyst's Division manager to determine if AVS-1 should be included in Associate/AGC-1 Concurrence. Although AVS-1 is interested in many non-AVS rules because of AVS oversight of ARM and the agency rulemaking program, not all projects require AVS-1 participation in Associate/AGC-1 review.
- On the transmittal memo, the ARM analyst should request concurrence up to 1 week prior to the scheduled Associate/AGC-1 milestone to allow the Team time to address any comments received during review.
- The ARM analyst may record Associate/AGC-1 concurrence on a single summary grid, in addition to scanning all original grids that support the summary grid.

2.6.5. NPRM ADA/AOA Approval

ADA/AOA NPRM Approval is the fourth level of Internal Coordination. The ARM analyst prepares the ADA/AOA NPRM Approval package (refer to Section 2.6.1) using one of two transmittal memo templates based on whether

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the project is significant (Doc # 26451) or nonsignificant (Doc # 31899). This is because the next step after ADA/AOA Approval depends on whether the NPRM is a significant or nonsignificant regulatory action under Executive Order [12866](#).

Once the rule has been through all of the prior levels of Internal Coordination and is ready to move to ADA/AOA Approval, the ARM analyst:


- Prepares the transmittal memo (Doc # 38503), signed by ARM-1;
- Places the following in a Red Folder and takes it to ARM-1:
 1. Transmittal Memo, with grid signed by ARM analyst and appropriate ARM Manager;
 2. Executive Summary (single sided); and
 3. Copies of the ALC grids.
- The ARM analyst also sends to the ARM administrative staff an electronic copy of the NPRM and the initial RIA.

Once the Transmittal Memo is signed by ARM-1, ARM administrative staff will date and scan it, along with the copies of the ALC grids and the Executive Summary, into CCMS. A member of the ARM administrative staff will then:

- Create the control in CCMS under AVS, so it is an AVS level control;
- Attach the word document of the NPRM as the incoming document; and
- Attach the Transmittal Memo, ALC grids and the initial RIA (scanned in one document) under additional information.

After the control has been created, a member of the ARM administrative staff then transfers the items to AOA. At that point:

- AOA administrative staff accepts the transfer; and
- The rule is now ready for ADA/AOA review and any other AOA staff.

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When the package is in CCMS, a member of the ARM administrative staff will give the ARM analyst hard copies in the red folder and a copy of the CCMS control.

If there are edits to the document, they will be transmitted back to the ARM administrative staff via CCMS and will then be forwarded to the ARM analyst.

Once the ARM analyst has made corrections, the clean version is sent to the ARM administrative staff to be uploaded in CCMS to be viewed by AOA/ADA.

Once the Transmittal Memo has been signed, a notification will come through CCMS with a scanned copy and the hard copy will come shortly after.

When ADA/AOA Approval is complete, AOA-3 normally returns the coordination package to AGC-200 or AVS-1, and a member of the ARM administrative staff then retrieves the approved package from the ARM inbox in AGC-200 or the AVS-1 office suite.

After ADA/AOA Approval, NPRMs that are nonsignificant regulatory actions under [Executive Order 12866](#) are ready to be prepared for Issuance (refer to Section 2.8), and NPRMs that are significant regulatory actions under [Executive Order 12866](#) are ready to move to OST for review (refer to Section 2.7).


Requirements:

The ARM analyst:

- Saves the coordination package documents as finalized at ADA/AOA Approval as new document versions in the DMS; and
- Enters the ADA/AOA Approval milestone completion date in IRMIS to indicate the NPRM package is ready to move forward to OST (significant rules) or to the OPR Director for Issuance (nonsignificant rules).

Best practices:

If OST has requested informal review of an NPRM for a nonsignificant regulatory action, the ARM analyst emails the coordination package documents to OST as soon as ADA/AOA Approval begins.

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2.6.6. AOC and AGI Clearance

Before any rulemaking can be published in the *Federal Register*, ARM must obtain AOC and AGI clearance. For non-significant rulemakings, this request is normally made when the rule is sent for ADA/AOA Approval. For significant rulemakings, this request is normally made after the rule is approved by OMB. This request is normally made by the ARM analyst's manager.

Some rulemakings require AOC to prepare some type of news release and/or AGI to provide briefings to Congress prior to a rulemaking's publication. For these types of rulemakings, it is important for the Team and their managers to periodically brief AOC and AGI on the content and status of the rule so publication will not be delayed after Issuance.

2.7. OST and OMB Review Significant NPRMs

2.7.1. OST Review


If OMB has designated a rulemaking project as significant, ARM transmits the Executive Summary, NPRM, and initial RIA (if applicable) to OST for review and approval. The ARM analyst emails the documents to the ARM-20 RMS Reviewer for uploading to RMS. No transmittal memo is needed, since the transmittal is handled electronically through RMS.

OST may provide questions, comments, or both during the rulemaking package review. Following the process in Doc # 35862, the Team addresses any OST questions or comments, coordinates the FAA response through management, as appropriate, and provides the response to OST.

How the FAA returns revised documents to OST varies depending on the project, and on timing. Therefore, it is important for the ARM analyst to follow the process in Doc # 35862 and update the ARM analyst's Division manager on how the Team intends to address OST comments.

The ARM analyst receives notice of OST approval and transmittal to OMB through AGC, ARM management, or the ARM-20 RMS Reviewer. The ARM analyst then documents completion of OST review in IRMIS.

Requirements:

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- Once received from the ARM analyst, the ARM-20 RMS Reviewer uploads the NPRM Executive Summary, NPRM, and initial RIA (if appropriate) to RMS for OST review.
- Once notified OST has completed its review of the documents, the ARM analyst enters the OST Approval milestone completion date in IRMIS to indicate the NPRM package is ready to move forward to OMB for review.

2.7.2. OMB Review

Rulemaking documents that are significant regulatory actions under [Executive Order 12866](#) require OMB review in addition to OST review. OST uploads the documents directly into OMB’s tracking system - ROCIS.

Like OST, OMB may provide questions, comments, or both during the rulemaking package review. Following the process in Doc # 35862, the Team addresses any OMB questions or comments and coordinates the FAA response through management. How the FAA returns revised documents to OMB varies depending on the project, and on timing. The ARM-20 RMS Reviewer may upload clean documents with no redline to RMS so OST can then upload the documents to ROCIS. Or, FAA personnel may informally email redlined documents to OST or OMB for review before the ARM-20 RMS Reviewer uploads clean versions to RMS.


The ARM analyst usually receives notice of OMB approval through AGC, ARM management, the ARM-20 RMS Reviewer, or [OMB’s public website](#). After OMB approves the rulemaking package and any FAA responses to questions or comments, the rulemaking document is ready for Issuance (refer to Section 2.8).

Requirement:

The ARM analyst enters the OMB Approval milestone completion date in IRMIS to indicate the NPRM package is ready for Issuance.

2.7.3. Documenting Results of OMB’s NPRM Review, and the FAA’s Responses

Section 6(a)(3)(E) of [Executive Order 12866](#) requires agencies to identify for the public, in a complete, clear, and simple manner, those changes made at the

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suggestion or recommendation of OIRA. To meet this requirement, the ARM analyst begins working with the Team and management, as appropriate, to summarize changes to the rulemaking document made as a result of OMB’s questions or recommendations, if any.

The ARM analyst also begins completing the “Compliance with Executive Order 12866” form (Doc # 20447) at this time. This record, with the accompanying summary or redline, as appropriate, will be made available to the public after rulemaking document publication (refer to Section 2.9.5).

Best practices:

The ARM analyst:

- Discusses with the ARM analyst’s Division manager how to show the changes made as a result of OMB feedback, since either a summary or a redline may be appropriate; and
- Works with the Team and management, as appropriate, to begin developing a summary of final rule changes made as a result of OMB’s feedback.


2.8. OPR Issues NPRM

NPRMs that are nonsignificant regulatory actions under [Executive Order 12866](#) are usually ready for Issuance after ADA/AOA Approval, and those that are significant regulatory actions under [Executive Order 12866](#) are usually ready for issuance after OMB approval.

2.8.1. Preparing the NPRM Issuance Package

The ARM analyst prepares an Issuance package similar to the NPRM coordination package. The Issuance package includes:

- A transmittal memo based on the template for requesting NPRM Issuance (Doc # 26452);
- The NPRM Executive Summary;
- The NPRM;

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- Copies of concurrence grids recording each level of Internal Coordination for reference (no grid signature is required at Issuance); and
- If applicable, a redline or summary document showing changes made since the OPR Director reviewed the NPRM package during DLC (placed behind a “Background” tab).


It is critical to ensure NPRM quality control before Issuance. The ARM analyst reviews the NPRM again, to address any CFR and any template changes. However, these should not be significant changes to the document as this may impact the prior approvals from Internal Coordination, OST and OMB. If such changes are significant, the ARM analyst should discuss these changes with the ARM analyst’s manager prior to making them in the document.

In addition, the ARM analyst confirms that the NPRM is on an approved Designation List (refer to Section 2.5.5).

An OPR Director usually has the authority to sign an NPRM, but is not always available to do so. The OFR does not accept documents signed “for” another person. Because an Acting OPR Director may issue the NPRM, the ARM analyst deletes the typed name and title of the OPR Director from the NPRM signature block before forwarding the Issuance package for signature. This allows any Acting OPR Director to issue the NPRM. (The ARM analyst will add the accurate name and title of the issuer below the signature later, when preparing the NPRM for transmittal to the OFR (refer to Section 2.9.3)).

In addition to deleting the typed name and title of the OPR Director from the signature block, the ARM analyst does the following before submitting the NPRM to the OPR Director for Issuance:

- Deletes the “Pre-Decisional Draft” language from the header on all pages;
- Removes all redline in the document by deleting comments and accepting or rejecting all changes, as appropriate;
- Requests a docket number from the DOT Docket Staff (refer to Section 2.8.3);
- Obtains a notice number from the Alternate Federal Register Liaison (AFRL) (refer to Section 2.9.2) (a notice number is obtained from the AFRL)

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as the FAA is providing notice of a proposed change. For a final rule, an amendment number will be obtained from the AFRL prior to Issuance);

- Checks CFR section and paragraph references within the NPRM for accuracy;
- Updates the NPRM to conform to the latest document template, if applicable;
- Reviews the NPRM to ensure formatting consistency;
- Runs spellcheck; and
- Completes the Pre-Issuance Checklist (Doc # 35933), including obtaining the ARM analyst’s Division manager’s approval.

The Pre-Issuance Checklist (Doc # 35933) is ARM’s record the ARM analyst has completed these preparations.

Best practices:


Before forwarding the NPRM Issuance package for signature, the ARM analyst should:

- Include either a summary or redline of any substantive changes since DLC, as appropriate;
- Indicate where the Issuer is to sign with a “Sign here” tab; and
- Advise the Team of the NPRM’s status.

2.8.2. NPRM Issuance

The ARM analyst works with the Team lead to have the OPR Director issue the NPRM promptly. OPR staff usually returns the Issuance package to ARM or calls the ARM analyst for pick-up after Issuance, as requested in the transmittal memo.

Requirements:

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After Issuance, the ARM analyst enters the Issuance milestone completion date in IRMIS.

Best practices:

The ARM analyst should notify the Team of Issuance, and promptly begin preparing the NPRM for transmittal to the OFR for publication (refer to Section 2.9.2).

2.8.3. Requesting a Docket Number

The FAA invites the public to comment on its proposal in the NPRM preamble. All rulemaking documents and related public comments are managed in a project-specific docket on the Regulations.gov website (refer to Section 2.10).

For each NPRM, the ARM analyst sends the DOT Docket Staff an e-mail requesting assignment of a docket number at NPRM Issuance (refer to “Docket Number Request Sample Email” (see Doc # 35833 for an example of a typical email)). Basing a Docket Number request on this sample email helps to avoid confusion and expedite prompt processing.


The DOT Docket Staff responds with an email indicating the assigned docket number for the rulemaking project.

2.9. NPRM is Published in the *Federal Register*

2.9.1. Federal Register Facts

The *Federal Register* is the daily journal of the Federal government. The OFR compiles the *Federal Register* under the authority of the National Archives and Records Administration (NARA, or the National Archives). A statutory partnership joins NARA and the Government Printing Office (GPO) to provide *Federal Register* publications and services to the public. In keeping with this partnership, GPO publishes the *Federal Register* every business day. The *Federal Register* provides public and legal notice of administrative rules and other documents in a comprehensive, uniform manner. The [OFR’s website](#) and [NARA’s website](#) provide more information about the *Federal Register*.

The *Federal Register* is available in printed form and online. The public may request a printed copy of the *Federal Register* by contacting GPO. In addition,

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the public may view and download the daily journal in its entirety at the [Federal Register's website](#) or [GPO's website](#). The FAA submits all rulemakings, and some rulemaking-related documents such as Notices of Public Meetings, to the OFR for publication.

A *Federal Register* citation appears in the following format: 64 FR 21908. The first number is the *Federal Register* volume. The second number is the page on which the document begins in that volume. *Federal Register* pages are numbered consecutively throughout a year. It is common, but not required, to include the publication date following the page number.

2.9.2. Preparing the NPRM for the OFR

After Issuance, the ARM analyst works with the AFRL to prepare and transmit the NPRM to the OFR for publication.


The AFRL is an ARM staff member who serves as the primary point of contact for the OFR in communication regarding the publication of rulemakings and rulemaking-related documents.⁴⁵ In the absence of the AFRL, the ARM analyst works with whoever is designated to serve as the AFRL back-up.

The ARM analyst asks the AFRL to assign the NPRM a notice number prior to Issuance.

For the OFR to accept a paper submission, the electronic version (in Microsoft Word) of the NPRM and the issued paper NPRM must match. The ARM analyst, therefore, adds the following information to the electronic version:

- Who issued the NPRM (i.e., the signatory), including the issuer's title ("Director" or "Acting Director," in most cases) (refer to Section 2.8.1);
- The Issuance date;
- The docket number; and
- The notice number.

⁴⁵ "Alternate Federal Register Liaison Responsibilities" (Doc # 18177) explains the specific tasks undertaken by the AFRL to successfully transmit rulemakings and rulemaking-related documents for publication.

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The ARM analyst also adjusts the original, signed NPRM, if necessary, by printing a new first page of the NPRM to replace that used in the Issuance package. The first page of the NPRM in the Issuance package might not have included the docket number or notice number. Then, the ARM analyst ensures the Issuance date is added to the signed last page of the issued NPRM, and the name and title of the individual who signed the NPRM is added, if necessary.

The ARM analyst provides the original, signed paper NPRM, along with three photocopies of it, and an electronic version of the adjusted NPRM to the AFRL.

The ARM analyst works with the ARM analyst's manager and the AFRL if the FAA needs to request OFR special handling of an NPRM, such as emergency publication.

Requirements:

The ARM analyst:


- Gives the original, signed paper NPRM and three photocopies of it to the ARM AFRL;
- Provides an electronic version of the NPRM to the AFRL; and
- Saves the final, Issued electronic version of the NPRM as a new version in the DMS.

2.9.3. Transmitting the NPRM to the OFR

The AFRL arranges for delivery to the OFR of:

- The original, signed paper NPRM;
- Two photocopies of the NPRM; and
- An electronic version of the NPRM.

After processing the NPRM for publication, an OFR staff may contact the AFRL with editorial or other concerns. If this occurs, refer to Section 2.9.4. Once the ARM analyst and Team address any OFR edits, the OFR staff advises

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the FAA of the date when the NPRM will be filed for public inspection, and the scheduled publication date.

When an NPRM is filed for public inspection (i.e., go on public display), it can also be viewed at [NARA's Federal Register link for Documents on Public Inspection](#). The date of filing for public inspection is usually one business day before the publication date. On the publication date, the rulemaking document can be viewed at the websites noted in Section 2.9.1.

The AFRL notifies ARM, AOC, AGI, and AGC of NPRMs that the AFRL submits to the OFR for publication. The AFRL also notifies those offices of publication dates for those submissions. Notifications are usually via e-mail.

Best practice:

The ARM analyst should promptly notify the Team of the display and publication dates.

2.9.4. Responding to NPRM Comments or Edits from the OFR


If the AFRL receives proposed edits to the NPRM from the OFR and these edits are purely formatting to address OFR publication requirements, the AFRL may not contact the ARM analyst prior to accepting these changes. The AFRL will then notify the ARM analyst of these edits.

If the proposed OFR edits go beyond such formatting issues, the ARFL will contact the ARM analyst with the proposed edits to determine if such edits are acceptable. The ARM analyst will contact the Team with such edits to obtain their approval. Once such approval is obtained or if the Team wishes to adjust the proposed edits, the ARM analyst will provide the Team's response to the AFRL. The AFRL will then contact the OFR staff to discuss the response.

Requirement:

If the OFR makes any changes to the NPRM before publication, the ARM analyst saves this version in the DMS as a new version of the NPRM.

2.9.5. After *Federal Register* NPRM Publication

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When an NPRM is published, the ARM analyst's responsibilities have not ended. He or she ensures accuracy of the NPRM as published in the *Federal Register* and takes action to address any errors. If any errors are found and such errors were caused by the FAA, the ARM analyst initiates a correction to address any errors (refer to Section 4.7). If such errors were caused by the OFR, the ARM analyst notifies the AFRL, who will notify the OFR staff. In this case, the OFR staff will notify the AFRL when a correction will publish in the *Federal Register*. The AFRL will notify the ARM analyst of this publication date.


The ARM analyst also updates IRMIS with the rulemaking document's publication date and citation, and uploads into the docket any appropriate documents from the following list (typically within 5 business days of the NPRM's publication):

- The initial RIA;
- Associated guidance material (refer to Section 1.2.6); and
- Any other material supporting or related to the NPRM (e.g., ARC or ARAC reports, scientific research).

Requirements:

After publication of the NPRM, the ARM analyst:

- Enters the publication date and citation in IRMIS to document milestone completion;
- Reviews the regulatory text and all dates included in the NPRM, as published in the *Federal Register*, for quality control;
- Initiates a correction to address any errors caused by the FAA (refer to Section 4.7);
- Notifies the AFRL (who will notify the OFR staff) to correct any errors caused by the OFR; and
- Saves a copy of the published NPRM in the DMS.

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2.10. NPRM Comment Period

2.10.1. Public Docket Facts

Regulations.gov is the public source for information on the development of Federal regulations and other related documents issued by the U.S. government. Through this site, the public can find, read, and comment on regulatory issues that are important to them. The FDMS is the system agencies use to manage the information in Regulations.gov. ARM analysts and Directorate writer-editors do not have access to FDMS. The DOT Docket Office manages docket issues through FDMS, including posting documents from the FAA to specific dockets, and posting comments from the public.

A docket folder is a collection of documents related to a rulemaking or other action. The docket folder may contain:


- One or more *Federal Register* documents (Rules and Notices);
- Materials specifically referenced in those documents;
- Public comments; and
- Regulatory Evaluations.

Once an NPRM is published in the *Federal Register*, it is automatically uploaded to the appropriate docket. The public may submit comments directly through Regulations.gov.

2.10.2. How to Upload to the Docket

The ARM analyst may either upload documents directly into the docket through Regulations.gov,⁴⁶ or email documents to the DOT Docket Staff with a request the staff upload directly through FDMS. Working through the DOT Docket Staff is helpful for large documents, or large numbers of documents, for uploading.

⁴⁶ See [the help page](#) for instructions on how to upload directly into a docket.

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“Docket Number Request Sample Email” (Doc # 35833) includes current email addresses for DOT Docket Staff.

Best practice:

The ARM analyst should call the DOT Docket Staff to coordinate the uploading of documents in a particular order, the uploading of a large number of documents, or any other special needs.

2.10.3. Commenters

All rulemaking documents (including an NPRM) that request public comment specify the length of the comment period, and where to send the comments. Anyone, except FAA employees acting in their official capacity, may submit comments on a document that requests public comment.


If an FAA employee wants to submit a comment, there are two ways to proceed. He or she may:

- Submit the comment to Regulations.gov as an individual, without identifying himself or herself as an FAA employee. The comment should not reference FAA employment or include FAA letterhead; or
- Submit the comment officially through the FAA employee’s service or office. The service or office then addresses and submits comments directly to the OPR, as appropriate. If submitting a comment officially through the FAA employee’s management, the FAA employee does not submit the comment to Regulations.gov.

If an FAA employee inadvertently submits a comment and identifies him or herself as an FAA employee in any way, the ARM analyst contacts the DOT Docket Staff immediately to request removal of the comment from the docket. Additionally, the ARM analyst coordinates with the OPR/Team Lead to ensure the FAA employee is notified why their comment was removed from the docket and how to comment appropriately.

2.10.4. Monitoring the Docket during the Comment Period

During the comment period, it is important for the Team to monitor the docket and review comments as they are posted, rather than waiting until the comment

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period closes. Doing so helps the Team to get a sense of the commenters' positions in order to respond effectively.

Through Regulations.gov, any user can request automatic email notifications of submissions to a specific docket folder. This makes it easy for all Team members to monitor comments on a real-time basis.

Best practice:

Team members should sign up for e-mail alerts for a specific docket. To sign up for an e-mail alert, go to the specific docket folder in Regulations.gov and click the "Sign up for E-mail Alerts" link.

2.10.5. Misdirected Comments

Occasionally documents or comments may be posted to the wrong docket. When this occurs, the ARM analyst works with the DOT docket staff to resolve the situation.

2.10.6. Public Meetings

A public meeting is another way for the FAA to receive comments. Although the FAA does not hold public meetings frequently, the Administrative Procedure Act allows agencies to decide whether to hold a meeting and the type of meeting to hold.


The FAA may hold:

- An informal discussion meeting; or
- A more formal presentation of statements for the record, with informal questions from the FAA and other participants.

The FAA makes a reasonable effort to accommodate all members of the public who want to participate in a public meeting, including those with disabilities.

The FAA may hold a public meeting when:

- Issues are complex or controversial;

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- Face-to-face exchange of views with industry, consumer groups, aviation organizations, and the public would be helpful; or
- The public requests such a meeting in accordance with [14 CFR 11.51](#).

If the Team is considering holding a public meeting, the Team members work with their management to determine if a public meeting is appropriate.

At FAA public meetings, there is usually a panel consisting of representatives from ARM, AGC, APO, and the OPR. Unless other arrangements are made, the OPR makes the logistical arrangements for the public meeting. This includes:

- Arranging for a meeting room and any other facilities or services necessary to accommodate participants, including those with disabilities;
- Notifying AOC of the time, date, and location of the meeting;
- Arranging for contractor support, including court reporter services to make a transcript of the meeting; and
- Preparing the materials to be used by the FAA panel.

If the FAA is holding a public meeting, it informs the public of the meeting by publishing a notice in the *Federal Register* that includes the subject, location, and time of the meeting.


Requirements:

The ARM analyst:

- Prepares a Notice of Public Meeting for publication in the *Federal Register* (Doc # 5185); and
- Uploads the transcript, FAA presentations, and written material submitted at the meeting to the public docket as soon as possible after the meeting (refer to Section 2.10.2).

Best practices:

The OPR should:

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- Work with the ARM analyst to ensure a meeting notice is published in the *Federal Register* at least 30 days before the meeting date; and
- Review "Tips for Creating Accessible Documents" (Doc # 19906); and "Checklist for Planning Accessible Meetings and Events" (Doc # 19905).

2.11. Extending or Reopening the Comment Period

2.11.1. Why Extend or Reopen a Comment Period

From time to time, the FAA may decide an NPRM requires additional time for public comment. This occurs most often when the NPRM is lengthy, complex, or particularly sensitive.


Extending or reopening the comment period may be considered:

- In response to a request or requests from the public or other interested party;
- To allow the FAA or the public time to post newly available information related to the NPRM in the public docket, and for the public to have time to comment in response to the new information; and
- To provide time for the FAA to make necessary corrections to the original NPRM posted for comment, and for the public to have time to comment in response if these corrections are substantive.

The OPR, AGC, and ARM decide together whether to allow additional time for public comment. If the decision occurs before the comment period closes, the FAA extends the comment period. If the decision occurs after the comment period has closed, the FAA reopens the comment period.

2.11.2. How to Extend or Reopen a Comment Period

If the OPR, AGC and ARM decide to extend or reopen the comment period, the ARM analyst works with the Team, as appropriate, to develop a *Federal Register* notice to extend the comment period (Doc # 9632) or to reopen the comment period (Doc # 9631), as applicable. When the Team completes drafting the *Federal Register* notice, the ARM analyst begins formal coordination to ensure ARM, OPR, and AGC management, at a minimum,

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concur with the document. The ARM analyst consults with the ARM analyst's Division manager to discuss if additional offices should be included in the coordination.

The ARM analyst uses a red folder and sets up the coordination package, with the following documents inside the folder (unless otherwise noted):

- A Transmittal Memo (use the FTC transmittal memo template (Doc # 23896) and modify it as necessary to reflect the document is extending or reopening a comment period) is attached to the outside of the folder;
- The *Federal Register* notice;
- A "Coordination" tab;
- The coordination grid (the first page of the *Federal Register* notice printed with a grid overlay) to allow multiple reviewers to indicate approval with their initials, their organization's routing symbol, and the date; and
- A "Background" tab, if the Team and the ARM analyst's Division manager agree background information, such as the NPRM, is necessary to inform the reviewer, followed by the background material.

The ARM analyst may use electronic documents rather than paper documents, at the discretion of each office.

Once the ARM analyst receives division-level concurrence from the OPR, ARM, AGC, and any other offices included in the coordination, the *Federal Register* notice is ready to be issued by ARM-1. The ARM analyst refers to Doc # 35857, E-Signature Information for ARM analysts, for instructions about how to receive ARM-1 e-signature. The AFRL ensures the *Federal Register* notice is transmitted to the OFR.

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3.0. Finalizing Regulations (Stage 3)

3.1. Team Analyzes Comments and Prepares Final Decision

3.1.1. Preparing to Finalize Regulations

Once the comment period closes, the ARM analyst closes the NPRM document associated with the project number in IRMIS and opens a final rule document associated with the project number. This document is usually a place-holder document (e.g., the final rule template (Doc # 114)) until the Team begins working on the final rule. The purpose of the final rule place holder document is so a final rule project will display on the Weekly Rules report (refer to Section 1.5.8).

Requirement:

After the comment period for the NPRM closes, the ARM analyst revises IRMIS to ensure the document being tracked on the Weekly Rules report is a final rule.


Best practice:

The ARM analyst or, the Directorate writer-editor, as applicable, should update IRMIS to include the status of the comment disposition and the expected date to present a Final Decision to Council.

3.1.2. The Final Decision

At the close of the comment period, the Team develops a Final Decision for Council consideration based on the Final Decision template (Doc # 30278). The Final Decision is another LCD used to request Council approval to proceed with the next step of a project, in this case, a final rule. The audience for the Final Decision includes the Council, Team members, and the Team members' management. The Final Decision serves as a reference document throughout final rule development. Clear and concise writing facilitates Council review and approval. A well-written Final Decision, along with the NPRM and any public comments received, serve as the basis for the Team when it starts drafting the final rule.

The Final Decision requires the Team to:

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- Summarize issues raised by commenters based on analysis of comments (refer to Section 3.1.3);
- Recommend disposition of the comments;
- Request Council approval to proceed with the final rule or other document (refer to Section 3.1.5); and
- Propose a schedule of milestones for drafting, coordinating, and issuing the final rule (refer to Section 3.1.6).


The Team should also revisit PRA applicability while developing the Final Decision. The Team continues to work with the PRA/Information Collections Program Manager until OMB approval of the ICR.

3.1.3. Analyzing Comments

Usually the first step in preparing the Final Decision is for the Team to analyze the comments received to the prior rulemaking document (usually an NPRM). When analyzing comments, the Team considers:

- Comments submitted to the docket during the comment period;
- Comments submitted to the docket after the comment period has closed (see discussion below);
- Comments from any public meetings;
- Comments beyond the scope of the rulemaking document (that is, comments that do not relate to the subject, or recommend changes not proposed by the FAA). If the Team is unsure of a comment's scope, the Team attorney can provide guidance; and
- Comments received as ex parte contacts (refer to Section 1.5.5).

It is FAA policy to consider all *timely* comments. Timely comments are those submitted to the docket by the deadline set in the particular rulemaking document. It is also FAA policy to consider late-filed comments only if they would not cause undue expense or significantly delay in issuing a final rule or

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other rulemaking document. For example, if a comment comes in after the final rule is in coordination, it would probably cause delay to consider it. However, if a comment is submitted to the docket a few weeks after the comment period closed, while the Team is still analysing comments, the Team can probably consider it without undue delay to the project.

The Team should continue to monitor the docket after the comment period closes to ensure all timely comments have been posted. It can take the DOT Docket staff some time to post all the comments to the docket, depending on volume of comments received.

3.1.4. Drafting the Final Decision

How the FAA conducts rulemaking is subject to requirements from statutes, Executive Orders, and other sources such as guidance from OST and OMB. The Team uses the Final Decision to demonstrate how a project meets these requirements.


Best practices:

The Team:

- Uses the latest template when beginning to prepare the Final Decision (Doc # 30278)
- Complies with all applicable instructions in the template;
- Considers the Final Decision audience, many of whom may be unfamiliar with the technical issues associated with the project; and
- Refers to Appendix C, General Writing Guide, for style suggestions to improve clarity and consistency within the document.

3.1.5. Recommending an Alternative to a Final Rule

In some cases, the Team may recommend in the Final Decision the agency withdraw the NPRM (refer to Section 4.9) or publish an SNPRM (refer to Section 4.4).

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3.1.6. Final Rule Milestones and Suggested Timeframes

As part of the Final Decision, the Team proposes a schedule of milestones for final rule development and coordination. Expectations for each milestone are explained in other sections of these Work Instructions.

When developing the milestone schedule, the Team should consider project size and complexity, Congressional deadlines, holidays and other factors that may influence the project progress. Project significance, as defined in [Executive Order 12866](#), also impacts the project schedule (refer to Section 1.2.7). The Team should follow the guidance in Appendix D when developing the milestones for the Final Decision.


The Final Decision template includes a Principals Briefing milestone. The need and timing for a Principals' Briefing may not be clear when the Team is preparing the Final Decision. The Team rarely proposes a date for a Principals Briefing when establishing the project milestones for the Final Decision, because the need and appropriate timing for a Principals Briefing often does not become clear until the Team has begun drafting the final rule.

If the Council approved the project for expedited processing as an AIR Directorate harmonization rulemaking using delegated signature authority (based on AIR's request in the Application), the Directorate writer-editor works with the Team to adjust milestones in accordance with [AIR-002-039-W1](#), [AIR Delegation of Signature Authority](#) (refer to Section 4.11).

The Team manages the rulemaking project to the schedule in the Final Decision as approved by the Council. The Council-approved schedule in the Final Decision can be changed only through an Appendix prepared by the Team, coordinated through management, and approved by the Council (refer to Section 4.2).

Unless otherwise approved by management, when developing the schedule, the Team must ensure publication of the final rule meets the requirement [in Section 106\(f\)\(3\) of Title 49](#) of the United States Code (49 U.S.C.) to issue a final regulation or take other rulemaking action no later than 16 months after the last day of the public comment period for an NPRM.

3.1.7. Coordinating and Submitting the Final Decision for Council Approval

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The Team submits the Final Decision for Council consideration in accordance with Section 1.2.9, Rulemaking Calendar and LCD Submission.

Requirements:

- All Team members and their managers must initial the Final Decision.
- The Team lead, the Team lead’s manager, and the OPR Director must sign the Final Decision.
- For significant regulatory actions under [Executive Order 12866](#) in lines of business other than AVS, the OPR must obtain the signature of their Associate Administrator before submission.
- The OPR must submit an electronic copy and a hard copy (with either the original signed pages or scanned copies of the signed pages (when original signatures are not possible) of the Final Decision to the ARM-20 Council Coordinator, in accordance with the Rulemaking Calendar (Doc # 29632).

3.2. Council Considers Final Decision


3.2.1. Council Prep and Council Meetings

The Council considers the Final Decision at Council Prep and Council Meetings, following the same procedure used for considering RAPs (refer to Section 1.5). The process in Section 1.5 should be followed, with appropriate adjustments for working with a Final Decision rather than a RAP.

Council determinations regarding Final Decisions are documented in accordance with Section 1.3.6, Recording Council Decisions.

Requirements:

- The OPR Director, Deputy Director, or designee must attend the Council meeting to address any questions that may arise about the Final Decision; and
- The OPR provides a representative familiar with the project to attend the Council meeting in support of the project.

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Best practice:

The ARM analyst should begin entering final rule draft project and milestone information in the IRMIS/RMS Integration after the Council Prep Team determines a Final Decision is to go forward for Council consideration. The ARM analyst can prepare for the Integration by saving, but not submitting, the draft information in the Integration before Council approves the Final Decision.

3.2.2. Council Approves Final Decision

If the Council approves a Final Decision that recommends proceeding with a final rule, the Team develops and coordinates the final rule in accordance with the milestones approved by the Council.⁴⁷

If the Council approves a Final Decision that recommends withdrawing the NPRM, the Team develops a Withdrawal notice and the project ends with its publication in the *Federal Register* (refer to Section 4.9).

If the Council approves a Final Decision that recommends an SNPRM, the Team prepares an SNPRM (refer to Section 4.4).


3.2.3. Council Does Not Approve Final Decision

If the Council does not approve the Final Decision, it usually returns the Final Decision to the OPR and suggests further development prior to resubmission or suggests the OPR put the Final Decision on hold until a later date. However, the Council may also decide that the NPRM should be withdrawn (refer to Section 4.9) or that the OPR should pursue a Supplemental Notice of Proposed Rulemaking (refer to Section 4.4).

3.3. Team Develops Final Rule Preamble and Regulatory Text

After the Council approves the Final Decision, the Team begins developing the final rule. Like an NPRM, each final rule must contain a preamble, regulatory text, and an economic analysis.

⁴⁷ When the Council approves a Final Decision, it may make changes to the Team-proposed schedule to complete project milestones. The ARM-20 Council Coordinator documents any changes to the schedule when recording the Council's determination.

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Final rule development differs from NPRM development in several ways, including:

- The final rule must consider substantive public comments received on the NPRM; and
- The final rule must set out an effective date for the rule.

When drafting the final rule, the Team must not go beyond the project scope defined in the Final Decision without Council approval, obtained through an Appendix (refer to Section 4.2). Also, the Team needs to remember the document is no longer a proposal, and the preamble needs to reflect that. For example, when the FAA is developing a final rule, it no longer “believes” something to be true. By the final rule, it should have “determined” the facts.

Concurrent with final rule drafting, the OPR begins finalizing the guidance material associated with the rulemaking (refer to Section 1.2.6).

3.3.1. Final Rule Document Structure and General Guidance


A final rule, like an NPRM, is a rulemaking document that will eventually become available to the public in the *Federal Register*. A final rule conforms to OFR guidance and examples, as explained in Chapter 1 of the [DDH](#).⁴⁸

Several audiences review final rules (e.g., FAA management, OST, OMB, regulated entities, and the interested public). Some audiences may have a technical background, but others may not. It is important to organize the information logically and strike an appropriate balance between necessary technical language and non-technical “translations” for different audiences.

Each final rule includes:

- A preamble, which explains the basis and purpose of the regulatory text;
- Regulatory text, which presents the changes to 14 CFR; and
- An economic analysis, which considers the costs and benefits associated with the changes to 14 CFR.

⁴⁸ Section 2.2 of the [DDH](#) explains general requirements for the Rules document category.

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In addition to the OFR publication requirements in the [DDH](#), certain elements of a final rule are subject to requirements from statutes, Executive Orders, and other sources such as guidance from OST and OMB. ARM manages template revisions in response to changing requirements from many sources. The Team uses the final rule template (Doc # 114) as a guide while developing the final rule.

Some administrative elements of the final rule are standard, such as agency billing code and other document heading information. For these sections, the Team simply uses the standard language in the final rule template and makes only minor adjustments specific to the project.⁴⁹

For other elements of the final rule, the Team begins with standard organization, formatting, and text suggestions in the template and guidance in these Work Instructions. The “boilerplate” text in the template has been established and agreed upon, and is therefore familiar to document reviewers. Although deviations from this language may be appropriate, using standard template text may help to avoid unnecessary delays during document coordination.

Drafting and coordinating a final rule can be a lengthy process. The requirements and best practices in Section 1.3.7 (Using the DMS for Document Management) can help the ARM analyst or Directorate writer-editor, as appropriate, manage the document to prevent the Team from losing document drafts.


Best practices:

The ARM analyst or Directorate writer-editor should use the latest template when beginning to prepare the final rule (Doc # 114). Changes to the template occur periodically. Failure to get the latest version from the DMS may result in certain required information being left out of the version that is published.

The Team should:

- Comply with all applicable instructions in the template;

⁴⁹ Sections 1.3 and 1.4 of the [DDH](#) provide background and examples of billing code and other document heading information. As noted in the NPRM template, the FAA’s billing code is [4910-13].

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- Consider the template as a “starting point” during drafting, but consult with ARM management before making major deviations;
- Conform to template formatting examples as much as possible, to expedite review;
- Consider the final rule audiences, who may be unfamiliar with the technical issues associated with the project; and
- Refer to Appendix C, General Writing Guide, for general reminders and specific tips regarding common practices to improve clarity and consistency within the document, and with other documents.


3.3.2. Final Rule Information Collection or Recordkeeping Burden for PRA

If the Team determined there was a PRA burden for the NPRM (refer to Section 2.3.5), the Team must finalize the hour burdens and costs associated with the burden in the final rule. The Team economist conducts the analysis needed to finalize the costs associated with the burden and assists the Team lead in completing OMB Form 83-I, Paperwork Reduction Act Submission (Doc # 24050) and an ICR Supporting Statement (Doc # 35205). For the ICR Supporting Statement, the Team economist specifically addresses the PRA burden issues raised Questions 12, 13, and 14. The OPR works with the Team economist and the PRA/Information Collections Program Coordinator to ensure the PRA package is submitted to OST and OMB in a timely manner. The goal is to have OMB approve the package concurrently with the final rule.

3.3.3. Incorporation by Reference (IBR)

As discussed in Section 2.1.10.8., IBR allows Federal agencies to comply with the requirement to publish rules in the *Federal Register* by referring to materials already published elsewhere. Obtaining OFR approval of an IBR for a final rule is basically identical to the criteria for an NPRM IBR. The process in Section 2.1.10.8 should be followed, with appropriate adjustments for working with a final rule rather than an NPRM.

3.4. Team Reaches Final Rule PTC

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Final rule PTC is basically identical to the criteria for NPRM PTC (refer to Section 2.2). The process in Section 2.2 should be followed, with appropriate adjustments for working with a final rule rather than an NPRM.

3.5. APO Conducts Final Rule Economic Analysis

3.5.1. Final Rule Economic Analysis

When the Team completes FTC, the Team economist formally begins work on the economic analysis. The Council approved the timeframe for the Economic Evaluation/Supplemental Legal Review milestone when it approved the Final Decision.

The economic analysis estimates the costs and benefits associated with the final rule. The Team economist starts with the economic analysis conducted for the NPRM (refer to Section 2.3) and considers the impact on that analysis based on any substantive public comments received relating to the costs and benefits presented in the NPRM and the RIA.


3.5.2. Final Rule RIA

The Team economist develops a final rule RIA document for most projects. The final RIA updates the following analyses that were conducted for the initial RIA:

- Regulatory Flexibility Analysis (refer to Section 2.3.2);
- International Trade Impact Assessment (refer to Section 2.3.3); and
- Unfunded Mandates Assessment (refer to Section 2.3.4).

The Team economist also finalizes the information collection or recordkeeping burden that may be imposed by the final rule as part of the economic analysis based on Team determinations about PRA requirements made while developing the final rule.

The Team economist also summarizes the economic analysis for the final rule preamble and provides a stand-alone final RIA for projects APO determines have more than minimal economic impact (refer to Section 3.5.3).

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The ARM analyst or Directorate writer-editor, as appropriate, includes the final RIA in the rulemaking package during coordination.

Best practice:

The Team economist should seek Team member review of the draft final rule RIA and the final RIA summary for the preamble prior to the milestone due date to avoid late issues and improve document quality control.

3.5.3. Minimal Economic Impact Final Rules

If APO expects the economic impact of the final rule to be so minimal that the rulemaking does not warrant a full final RIA, the Team economist prepares a statement to that effect, including the basis for the statement. The Team includes the statement in the final rule preamble instead of a summary of the RIA.

3.5.4. Final Rule Economic Analysis Completion

Final rule economic analysis completion is basically identical to the NPRM economic analysis completion (refer to Section 2.3.8). The process in Section 2.3.8 should be followed, with appropriate adjustments for working with a final rule rather than an NPRM.


Best practice:

For nonsignificant projects that APO has determined would have a substantial impact on small businesses, the ARM analyst asks APO if and when it will provide the final RIA to the Small Business Administration.

3.6. AGC Conducts Final Rule Legal Review

Final rule supplemental legal review is basically identical to NPRM supplemental legal review (refer to Section 2.4). The process in Section 2.6.3 should be followed, with appropriate adjustments for working with a final rule rather than an NPRM.

3.7. Preparing the Final Rule for Coordination

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The ARM analyst and Directorate writer-editor, if applicable, works with the Team to prepare the rulemaking document package for coordination. Preparing a final rule for coordination is basically identical to preparing the NPRM for coordination (refer to Section 2.5). The process in Section 2.5 should be followed, with appropriate adjustments for working with a final rule rather than an NPRM.

3.8. Internal FAA Final Rule Coordination

3.8.1. Final Rule Coordination Package

The final rule coordination package is similar to the NPRM coordination package (refer to Section 2.6), with the final rule document substituting for the NPRM. The process in Section 2.6 should be followed, with appropriate adjustments for working with a final rule rather than an NPRM.

3.8.2. Final Rule FTC

Final rule FTC is basically identical to the criteria for NPRM FTC (refer to Section 2.6.2). The process in Section 2.6.2 should be followed, with appropriate adjustments for working with a final rule rather than an NPRM.


3.8.2.1. FTC for AIR Directorate-led Rulemakings

Final rule FTC for AIR Directorate-led rulemakings is basically identical to the criteria for NPRM FTC for AIR Directorate-led rulemakings (refer to Section 2.6.2.2). The process in Section 2.6.2.2 should be followed, with appropriate adjustments for working with a final rule rather than an NPRM.

3.8.2.2 OST and OMB Designation as Significant or Nonsignificant

Unless done at the completion of PTC, the ARM analyst requests designation of the rulemaking as significant or nonsignificant (refer to Section 1.2.8) from OST and OMB through the ARM-20 RMS Reviewer upon completion of FTC. The ARM analyst should follow the process set forth for NPRM designation (refer to 2.6.2.3).

3.8.3. Final Rule DLC

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Final rule DLC is basically identical to the process for NPRM DLC (refer to Section 2.6.3). The process in Section 2.6.3 should be followed, with appropriate adjustments for working with a final rule rather than an NPRM.

3.8.4. Final Rule Associate Level/AGC-1 Concurrence

Final rule Associate Level/AGC-1 Concurrence is basically identical to the criteria for NPRM Associate/AGC-1 concurrence (refer to Section 2.6.4). The process in Section 2.6.4 should be followed, with appropriate adjustments for working with a final rule rather than an NPRM.

3.8.5. Final Rule ADA/AOA Approval


The ARM analyst prepares the ADA/AOA Approval package using one of two transmittal memo templates based on whether the project is significant (Doc # 26451) or nonsignificant (Doc # 28241). This is because the next step after ADA/AOA Approval depends on whether the final rule is for a significant or nonsignificant project.

The process for receiving final rule ADA/AOA Approval is basically identical with the process for receiving NPRM ADA/AOA Approval, including responding to any comments received during ADA/AOA Approval. The process in Section 2.6.5 should be followed, with appropriate adjustments for working with a final rule rather than an NPRM.

In addition, if the rule is a nonsignificant rule, the Administrator will issue the final rule at this stage of Internal Coordination. As such, the ARM analyst should prepare the final rule for Issuance before sending it to ADA/AOA for approval (refer to Section 3.10).

3.8.5.1. AOC and AGI Clearance

Before the FAA can publish any rulemaking in the *Federal Register*, ARM must obtain AOC and AGI clearance. For non-significant rulemakings, this request is normally made when the rule is sent for ADA/AOA Approval. For significant rulemakings, this request is normally made after the rule is approved by OMB. This request is normally made by the ARM analyst's manager.

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Some rulemakings will require AOC to prepare some type of news release and/or AGI to provide briefings to Congress prior to a rulemaking's publication. For these types of rulemakings, it is important for the Team and their managers to periodically brief AOC and AGI on the content and status of the rule so publication will not be delayed after Issuance.

3.9. OST and OMB Review Significant Final Rules

OST and OMB review of significant final rules is basically identical to the criteria for OST and OMB Review of significant NPRMs (refer to Section 2.7). The process in Section 2.7 should be followed, with appropriate adjustments for working with a final rule rather than an NPRM.

3.10. Administrator Issues Final Rule


3.10.1. Preparing the Final Rule Issuance Package (Nonsignificant Projects)

The Administrator issues nonsignificant final rules after approving the final rule coordination package.

3.10.2. Preparing the Final Rule Issuance Package (Significant Projects)

The ARM analyst prepares an Issuance package containing the following documents:

- A transmittal memo based on the template for requesting final rule Issuance (Doc # 26453);
- The final rule Executive Summary;
- The final rule;
- Copies of concurrence grids that record each level of Internal Coordination for reference (there is no grid signature at Issuance); and
- If applicable, a redline or summary document showing changes made since AOA/ADA reviewed the final rule package. The redline is placed behind a "Background" tab.

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It is critical to ensure final rule quality control before Issuance. The ARM analyst reviews the final rule again, to address any quality control issues, such as CFR and template changes that may be in the document.


In addition, the ARM analyst confirms:

- The final rule is on an approved Designation List; and
- If the final rule has information collection or recordkeeping requirements (refer to Section 1.4.4), the PRA/Information Collections Program Coordinator in AES-200 has received the completed OMB Form 83-I and Supporting Statement, and is ready to take any actions needed upon final rule publication.

The ARM analyst makes the following final adjustments to the final rule before Issuance:

- Deletes the “Pre-Decisional Draft” language from the header on all pages;
- Removes all redline in the document by deleting comments and accepting or rejecting all changes, as appropriate;
- Checks CFR section and paragraph references within the final rule for accuracy, and determines if any references elsewhere in Title 14 of the CFR sections affected by the final rule would be rendered inaccurate if the final rule’s changes were adopted (if any such references exist, the ARM analyst works with the Team to change the final rule regulatory text and preamble, as appropriate);
- Updates the final rule to conform to the latest document template, if applicable;
- Reviews the final rule to ensure formatting consistency; and
- Runs spellcheck.

Since coordination practices involving AOC and AGI vary, the ARM analyst works with the ARM analyst’s Division manager for appropriate AOC or AGI coordination, if any, before forwarding the final rule Issuance package.

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Requirements:

Before forwarding the final rule to the Administrator for Issuance, the ARM analyst:

- Saves the Issuance package documents as new document versions in the DMS; and
- Completes the Pre-Issuance Checklist (Doc # 35933), including obtaining the ARM Division manager’s approval.

Best practices:

Before forwarding the final rule Issuance package for signature, the ARM analyst should:

- Include either a summary or redline of any substantive changes since the Administrator approved the final rule, as appropriate;
- Indicate where the Administrator is to sign with a “Sign here” tab; and
- Advise the Team of the final rule’s status.

3.10.3. Final Rule Issuance


Issuance of a final rule occurs when the Administrator signs the final rule. When the Administrator issues the final rule, the Administrator’s office returns the coordination package. The ARM analyst documents issuance of the final rule in IRMIS.

Requirement:

After Issuance, the ARM analyst enters the Issuance milestone completion date in IRMIS.

3.11. Final Rule Publishes in the *Federal Register*

3.11.1. Preparing the Final Rule for the OFR

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The process of preparing the final rule for the OFR is basically identical to the process for preparing an NPRM for the OFR (refer to Section 2.9.2). The process in Section 2.9.2 should be followed, with appropriate adjustments for working with a final rule rather than an NPRM (e.g., the ARM analyst should ask the AFRL for an amendment number, not a notice number).

3.11.2. Transmitting the Final Rule to the OFR

The process of transmitting the final rule to the OFR is basically identical to the process for transmitting an NPRM to the OFR (refer to Section 2.9.3). The process in Section 2.9.3 should be followed, with appropriate adjustments for working with a final rule rather than an NPRM.


3.11.3. Responding to Final Rule Edits from the OFR

The process of responding to final rule edits from the OFR is basically identical to the process for responding to NPRM edits from the OFR (refer to Section 2.9.4). The process in Section 2.9.4 should be followed, with appropriate adjustments for working with a final rule rather than an NPRM.

3.11.4. After *Federal Register* Final Rule Publication

When a final rule is published, the ARM analyst's responsibilities have not ended. He or she ensures accuracy of the final rule as published in the *Federal Register* and takes action to address any errors. These responsibilities are basically identical to the process for after *Federal Register* NPRM publication (refer to Section 2.9.5). The process in Section 2.9.5 should be followed, with appropriate adjustments for working with a final rule rather than an NPRM.

In addition, the ARM analyst completes the Close-out Checklist (Doc # 27184), purges documents from the project folder in accordance with the standards in Doc # 2258, and archives the project files according to ARM's Official Files List (Doc # 40478).

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4.0. Other Rulemaking Options

4.1. High-Profile Expedited Project (HPEP)

An HPEP is a rulemaking project with an accelerated schedule. It may be driven by an accident, a Congressional mandate, an Administration priority, an FAA priority, or other major factor. The decision to designate a rulemaking action as an HPEP comes from senior management, not from the OPR.

The steps for initiating regulatory changes as an HPEP vary from what is addressed in Section 1.0 of this document. Unlike the standard Rulemaking Process that has three LCDs (Application, RAP, and Final Decision), an HPEP only has two LCDs - Initiation of HPEP (IHEP) and Resolution of HPEP (RHEP). The IHEP consolidates the information normally requested in the Application and RAP. The RHEP is similar to the Final Decision.


4.1.1. Initiation of an HPEP

Once senior management decides to designate a rulemaking action as an HPEP, management assigns Team members to the project to develop the IHEP (Doc # 30273) for Council consideration. The Team should work together to complete the IHEP.

The ARM analyst or AIR Directorate writer-editor should use the latest template when preparing the IHEP. The Team:

- Complies with all applicable instructions in the template;
- Considers the IHEP audience, many of whom may be unfamiliar with the technical issues associated with the project; and
- Refers to Appendix C, General Writing Guide, for style suggestions to improve clarity and consistency within the document.

The IHEP includes the proposed milestones for completing the rulemaking document. Appendix D sets forth the recommended milestones for standard rulemaking projects. Since this is an expedited project, the Team should work together to develop milestones that significantly reduce the recommended milestones where possible. The Council will be expecting a schedule that shows how the project is being expedited.

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The ARM analyst or AIR Directorate writer-editor should confirm the Team used the latest version of the template before submitting the IHEP. If a newer template version exists, the ARM analyst or Directorate writer-editor transfers the IHEP information to the new version.

All Team members and their managers must initial the IHEP, and the Team lead, the Team lead's manager, and the OPR Director must sign the IHEP. Additional signatures will be required depending on whether the project is significant or nonsignificant (refer to Section 1.4.6 for direction).

The Team submits the IHEP in accordance with the Rulemaking Calendar (refer to Section 1.2.9).


Formal rulemaking is considered to have started upon Council approval of the IHEP. If Council rejects the IHEP, the Team submits a new, revised IHEP for approval, if appropriate. If the Council approves the IHEP, but requests more information or a revised schedule, the Team instead completes an Appendix to the IHEP, using the generic Appendix template (Doc # 30276).

If Council approves the IHEP, the Team drafts, coordinates, and publishes the HPEP following the standard rulemaking process. The procedures for drafting, coordinating, and issuing an HPEP are identical to an NPRM (refer to Section 2.0 for specific details on procedures for drafting, coordinating, and issuing an NPRM).

Best Practices:

The ARM analyst or AIR Directorate writer-editor, as appropriate:

- Requests a project-specific LDR code from the ARM-20 LDR Coordinator after the Council approves the IHEP;
- Provides the project-specific LDR code to all Team members for recording time spent working on the rulemaking project upon receipt from the ARM-20 LDR Coordinator;
- Confirms no newer template version has become available before submitting the HPEP for Issuance. If a newer template version exists, the ARM analyst

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or Directorate writer-editor transfers the IHEP information to the new version; and

- Manages the IHEP in the DMS.

4.1.2. Resolution of HPEP

The RHEP template (Doc # 30274) is used to request Council approval for the second and final decision of the HPEP. The entire Team works to complete the RHEP.

The ARM analyst or AIR Directorate writer-editor should use the latest template when preparing the RHEP (Doc # 30274). The Team:


- Complies with all applicable instructions in the template;
- Considers the RHEP audience many of whom may be unfamiliar with the technical issues associated with the project; and
- Refers to Appendix C, General Writing Guide, for style suggestions to improve clarity and consistency within the document.

All Team members and their managers must initial the RHEP, and the Team lead, the Team lead's manager, and the OPR Director must sign the RHEP. Additional signatures will be required depending on whether the project is significant or nonsignificant (refer to Section 1.4.6 for direction).

The Team submits the RHEP in accordance with the Rulemaking Calendar (refer to Section 1.2.9).

If the Council approves the RHEP, the Team drafts, coordinates, and publishes the HPEP following the standard rulemaking process. The procedures for drafting, coordinating, and issuing an HPEP at this stage are identical to a final rule (refer to Section 3.0 for specific details on procedures for drafting, coordinating, and issuing a final rule).

If Council rejects the RHEP, the Team makes the necessary adjustments and resubmits a new RHEP to Council. If the Council approves the RHEP, but asks for additional information, the Team provides that information by using the generic Appendix template (Doc # 30276).

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Best Practices:

- The ARM analyst or AIR Directorate writer-editor, as appropriate, manages the RHEP in the DMS; and
- Confirms that no newer template version has become available before submitting the RHEP for Issuance. If a newer template version exists, the ARM analyst or Directorate writer-editor transfers the RHEP information to the new version.


4.2. Changing a Rulemaking LCD: Requesting Council Approval with an Appendix

After the Council approves the Application, RAP, or other LCD, a change in project scope or approach may be considered based on the Team’s work, public comments, or other unforeseen circumstances. When this happens, the Team prepares an Appendix (Doc # 30276) to amend the appropriate Council-approved LCD. The Appendix is another LCD that is coordinated through management and submitted for Council approval.

The Appendix is a brief, simple document designed to capture and receive approval of new or supplemental information needed to make changes to an existing LCD. In most cases, the Team uses an Appendix to propose scope changes without changing the type of rulemaking document under development. However, in less common instances, the Team may also use an Appendix to propose a change in the type of rulemaking document under development; for example a supplemental notice of proposed rulemaking (SNPRM)(refer to Section 4.4).

The Appendix is also used when proposed project changes are beyond the Team’s control and require schedule adjustments. The Council may decide to “re-baseline” the project milestones to a new schedule. In such a case, the Team prepares an Appendix for Council approval to “re-baseline” the project milestones. The Appendix can also be used to withdraw a project.

The Team is not limited to only one Appendix per LCD. The Team uses an Appendix as many times as necessary to document major happenings throughout the lifecycle of the rulemaking project. The Team tailors the Appendix to fit the needs of the proposed change to the project. Therefore, if some of the areas in the template do not apply to the rulemaking project’s particular circumstance, enter “Not Applicable”.

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All Team members and their managers must initial the Appendix, and the Team lead, the Team lead's manager, and the OPR Director must sign the Appendix.⁵⁰ The Team submits the Appendix in accordance with the Rulemaking Calendar (refer to Section 1.2.9).

Requirements:

The ARM analyst or the AIR Director writer-editor, as appropriate:

- Manages the Appendix in the DMS.
- Confirms that no newer template version has become available before submitting the Appendix. If a newer template version exists, the ARM analyst or Directorate writer-editor transfers the information to the new version.

Best Practices:


When drafting the Appendix, The Team should:

- Comply with all applicable instructions in the template;
- Consider the Appendix audience, many of whom may be unfamiliar with the technical issues associated with the project; and
- Refer to Appendix C, General Writing Guide, for style suggestions to improve clarity and consistency within the document.

The ARM analyst or AIR Directorate writer-editor should confirm that no newer template version has become available before submitting the Appendix. If a newer template version exists, the ARM analyst or Directorate writer-editor transfers the information to the new version.

4.3. Advance Notice of Proposed Rulemaking (ANPRM)

⁵⁰ The exception to this is when the OPR wants to cancel a project. In that case, only Team lead and his or her management needs to sign the document.

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The FAA issues an ANPRM to inform the public that the FAA is considering rulemaking on a specific subject matter and requests information from the public to assist the FAA in either developing an NPRM or determining if rulemaking is not appropriate. An ANPRM assists the FAA in many ways, such as:

- Identifying entities that may be affected;
- Identifying unique procedures;
- Assessing the issues and potential public impact;
- Gathering technical or economic data that does not exist within the FAA;
- Asking for written comments from the public on what the scope of consideration for the potential changes to a regulation should encompass; and
- Asking for written comments from the public on specific topics.

ANPRMs may also seek information from industry about best practices that have already been developed that the FAA may wish to codify into the regulations. This type of rulemaking document may include the text of potential changes to a regulation, but regulatory text is not required.

4.3.1. Initiating an ANPRM

The steps for initiating and proposing regulatory changes using an ANPRM are similar to what is addressed in Sections 1.0 and 2.0 of this Rulemaking Work Instructions. However, the first document is an ANPRM instead of an NPRM.

The OPR initiates an ANPRM by completing an Application (refer to Section 1.2.4). The Team submits the Application in accordance with the Rulemaking Calendar (refer to Section 1.2.9).

If the Council approves the Application, the Team must submit an Appendix to the Application to obtain Council approval of the milestone schedule (the milestone schedule should follow the same review and concurrence process used for an NPRM. The Team should provide additional information that was not included in the ANPRM Application.

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After Council approves the schedule, the Team drafts, coordinates, and publishes the ANPRM (Doc # 674) following the standard rulemaking process. The procedures for drafting, coordinating, and issuing an ANPRM are identical to an NPRM (refer to Section 2.0 for specific details on procedures for drafting, coordinating, and issuing an NPRM).

When drafting an ANPRM, the Team should ensure it has clear, concise questions that address the specific information needed to proceed with an NPRM.

4.3.2. Addressing Public Comments on an ANPRM

Once the ANPRM comment period closes, the Team must review and disposition the comments following the same process in Section 2.10 (and Section 2.11 if a decision is made to extend or reopen the comment period).

If, after reviewing the comments, the OPR determines further rulemaking is not necessary, the Team completes a Final Decision (Doc # 30278), selecting the “Withdrawal of Proposed Rule(s)” as its next recommended rulemaking action with a Team-approved milestone schedule.

If the OPR decides to proceed with an NPRM, the Team completes the RAP (Doc # 30275), selecting the NPRM as its next recommended rulemaking action with a Team-approved milestone schedule.⁵¹


Requirement:

The ARM analyst and AIR Directorate writer-editor, as appropriate, must manage the ANPRM in the DMS.

Best practices:

The ARM analyst or Directorate writer-editor should use the latest template when beginning to prepare the ANPRM (Doc # 674). The Team should:

⁵¹ [Section 106\(f\)\(3\) of 49](#) U.S.C. requires the Administrator to issue a final rulemaking action not later than 24 months after the date of publication of an ANPRM in the Federal Register. The Team should consider this when developing the milestones for the NPRM.

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- Comply with all applicable instructions in the template;
- Consider the template as a “starting point” during drafting, but consult with ARM management before making major deviations;
- Conform to template formatting examples as much as possible, to expedite review;
- Consider the ANPRM audiences, who may be unfamiliar with the technical issues associated with the project; and
- Refer to Appendix C, General Writing Guide, for general reminders and specific tips regarding common practices to improve clarity and consistency within the document, and with other documents.

4.4. Supplemental Notice of Proposed Rulemaking (SNPRM)


An SNPRM is published in the *Federal Register* and allows the public to comment on changes to an NPRM’s scope or language before the FAA issues the final rule.

The FAA may issue an SNPRM if it:

- Needs more information on an issue based on comments received; or
- Decides to take an approach that is beyond the scope of what was originally proposed in an NPRM.

When developing the SNPRM, the Team considers and discusses in the SNPRM the substantive comments received on the NPRM. The SNPRM may revise the FAA’s proposal in the NPRM preamble and accompanying regulatory text. In addition, the Team economist may need to revise the economic analysis conducted for the NPRM and respond to comments received regarding the initial economic analysis.

4.4.1. Initiating an SNPRM

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The Team initiates the SNPRM by completing an Appendix to the RAP (refer to Section 4.2) The Team submits the Appendix to the RAP in accordance with the Rulemaking Calendar (refer to Section 1.2.9).⁵²

When the Council approves the Appendix to the RAP, the Team begins drafting the SNPRM using the SNPRM template (Doc # 675). In some cases, the Team includes in the SNPRM responses to comments received on the original NPRM. The procedures for drafting, coordinating, and issuing an SNPRM are identical to an NPRM (refer to Section 2.0 for specific details on procedures for drafting, coordinating, and issuing an NPRM).

Requirement:


The ARM analyst and AIR Directorate writer-editor, as appropriate, must manage the SNPRM in the DMS.

Best practices:

The ARM analyst or Directorate writer-editor should use the latest template when beginning to prepare the SNPRM (Doc # 674). The Team should:

- Comply with all applicable instructions in the template;
- Consider the template as a “starting point” during drafting, but consult with ARM management before making major deviations;
- Conform to template formatting examples as much as possible, to expedite review;
- Consider the SNPRM audiences, who may be unfamiliar with the technical issues associated with the project; and
- Refer to Appendix C, General Writing Guide, for general reminders and specific tips regarding common practices to improve clarity and consistency within the document, and with other documents.

⁵² [Section 106\(f\)\(3\) of 49 U.S.C.](#) requires the Administrator to issue a final regulation or other final action not later than 16 months after the date of publication of an SNPRM in the Federal Register.

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4.4.2. Addressing Public Comments to an SNPRM

During the comment period, the Team may review and dispose of the comments as they are filed in the docket. However, when the comment period closes the Team must complete its disposition of the comments.

Refer to Section 2.10 for information concerning comment periods and Section 3.1.3 for information about analyzing comments.

After the Team dispositions all the comments, the Team completes a Final Decision recommending a Withdrawal of Proposed Rule(s) or a Final Rule. For more information on a Final Decision, refer to Section 3.1.4.


4.5. Final Rule with Request for Comments

The FAA may issue a final rule with request for comments without first issuing an NPRM when prior notice is “impracticable,” “unnecessary,” or “contrary to the public interest” ([5 U.S.C. 553\(b\)\(B\)](#)). These three exceptions to notice and comment rulemaking are found in the Administrative Procedure Act’s (APA) “good cause” exception.

The final rule with request for comments recognizes the value of public comment, even after publishing a final rule. This allows the FAA to both issue and implement the rule quickly, where justified, and provide opportunity for public comment. While it is preferred to seek public comment before publishing a final rule, there may be instances where there is justification for issuing a final rule with request for comments, thereby offering a public comment opportunity after issuing the rule. The FAA may revise the final rule based on the public comments received.

In the case of a final rule with request for comments, the FAA must explain why prior public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest. The legislative history of the APA defines “impracticable,” “unnecessary,” and “public interest” as follows:

- “Impracticable means a situation in which the due and required execution of the agency functions would be unavoidably prevented by its undertaking public rule-making proceedings.” For example, the FAA may learn from an accident investigation that it is necessary to issue or amend certain rules, without delay, for the safety of the traveling public.

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- “Unnecessary means unnecessary so far as the public is concerned, as would be the case if a minor or merely technical amendment in which the public is not particularly interested were involved.” This refers to the issuance of a minor rule or amendment in which the public is not particularly interested.
- “Public interest supplements the terms ‘impracticable’ or ‘unnecessary;’ it requires that public rule-making procedures shall not prevent an agency from operating and that, on the other hand, lack of public interest in rule-making warrants an agency to dispense with public procedure.” That is “Contrary to the public interest” means the interest of the public would be defeated by any requirement of advance notice.⁵³

The APA generally requires publication of a rule for 30 calendar days before its effective date. An agency may shorten this time period “upon good cause found and published with the rule.” This discretionary exception enables the agency to take care of cases in which the public interest requires the agency to act immediately or within a period less than 30 calendar days.


When using the “good cause” exception to not use notice and comment procedures or make a rule effective immediately (or in a period of less than 30 days), the FAA must explicitly say so and provide a rationale in the final rule with request for comments document published in the *Federal Register*. Use of the exception is subject to judicial review.

4.5.1. Initiating a Final Rule with Request for Comments

The OPR begins by completing an Application (Doc # 30277), and following the process described in Section 1.2. The Team submits the Application in accordance with the Rulemaking Calendar (refer to Section 1.2.9).

Once the Council approves drafting a final rule with request for comments, the Team begins drafting it using the final rule with request for comments template (Doc # 5181). The procedures for drafting, coordinating, and issuing a final rule with request for comments are similar to a final rule (refer to Section 3.0 for information regarding drafting, coordinating, and issuing a final rule).

⁵³ Source: Senate Committee on the Judiciary, “Administrative Procedure Act: Legislative History,” Senate Document 248, 79th Congress, 2nd Session (1946).

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Requirement:

The ARM analyst and AIR Directorate writer-editor, as appropriate, must manage the final rule with request for comments in the DMS.

Best practices:

The ARM analyst or Directorate writer-editor should use the latest template when beginning to prepare the final rule with request for comments (Doc # 5181).


The Team should:

- Comply with all applicable instructions in the template;
- Consider the template as a “starting point” during drafting, but consult with ARM management before making major deviations;
- Conform to template formatting examples as much as possible, to expedite review;
- Consider the document’s audiences, who may be unfamiliar with the technical issues associated with the project; and
- Refer to Appendix C, General Writing Guide, for general reminders and specific tips regarding common practices to improve clarity and consistency within the document, and with other documents.

4.5.2. Disposition of Comments on a Final Rule with Request for Comments

Because the rulemaking document is a final rule, the FAA must publish a disposition of comments in the *Federal Register*. Based on the comments received, the Team determines whether:

- No action is necessary other than publishing the disposition of comments in the *Federal Register*; and
- The Team should revise the final rule.

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If no comments were received on the final rule request for comments, no further action is necessary. If comments are received, but the Team does not recommend making any changes to the rule, the Team must publish a disposition of comments document in the *Federal Register*.

To address the comments received, the team completes the Final Decision (refer to Section 3.1) for Council approval. The 16-month deadline date does not apply to comment periods on final rules. A Final Decision, in this case, allows the Team to report the following to the Council:

- Disposition of the comments received on the final rule;
- Significant issues, if any, resulting from the comments received;
- Proposed changes, if any, from the original final rule;
- The Team’s next recommended action (in this case disposition of comments on the final rule or amend the final rule); and
- The Team-approved schedule for the next recommended action.

Once the Council approves the Final Decision, the Team begins drafting the appropriate rulemaking document (e.g., disposition of comments, withdrawal, final rule). The procedures for drafting, coordinating, and issuing the resulting rulemaking document is similar to a final rule (refer to Section 3.0 for information regarding drafting, coordinating, and issuing a final rule).


Requirement:

The ARM analyst and AIR Directorate writer-editor, as appropriate, must manage the disposition of comments in the DMS.

Best practices:

The ARM analyst or Directorate writer-editor should use the latest template when beginning to prepare the disposition of comments (see Doc # 36088 for an example). The Team should:

- Comply with all applicable instructions in the template;

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- Consider the template as a “starting point” during drafting, but consult with ARM management before making major deviations;
- Conform to template formatting examples as much as possible, to expedite review;
- Consider the document’s audiences, who may be unfamiliar with the technical issues associated with the project; and
- Refer to Appendix C, General Writing Guide, for general reminders and specific tips regarding common practices to improve clarity and consistency within the document, and with other documents.


4.6. Direct Final Rule

A direct final rule is similar to a final rule with request for comments. The FAA may choose to issue a direct final rule when the FAA does not expect to receive any adverse comments.⁵⁴

A direct final rule is issued without first issuing an NPRM. A direct final rule is quicker than the usual Rulemaking Process and may be appropriate when rules are not controversial. It is based on the APA’s “good cause” exception to notice and comment procedures. The FAA may issue a direct final rule when public comment procedures are “unnecessary, impracticable, or contrary to the public interest” because the FAA does not expect to receive adverse comments. Refer to Section 4.5 for definitions for “unnecessary”, “impracticable”, or “contrary to the public interest.”

If the FAA receives a substantive adverse comment (or a notice of intent to file a substantive adverse comment) within the comment period, the FAA advises the public of the adverse comment by publishing a notice in the *Federal Register* before the effective date of the direct final rule. This document may withdraw the direct final rule in whole or in part. If the FAA withdraws a direct final rule because of an adverse comment, the FAA may incorporate the commenter’s recommendation into another direct final rule or may publish an NPRM (refer to the discussion of the Notice of Withdrawal in Section 4.9).

⁵⁴ An adverse comment explains why a rule would be inappropriate, or would be ineffective or unacceptable without a change. It may challenge the rule’s underlying premise or approach.

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If the FAA does not receive an adverse comment or notice of intent to file an adverse comment, the FAA publishes a confirmation document in the *Federal Register*. The confirmation document confirms the effective date of the rule. In some cases where the FAA does not use notice and comment procedures, it may be in the public interest to make the rule effective immediately.

When using the “good cause” exception to not use notice and comment procedures, the FAA must explicitly explain why it finds using the public notice and comment procedures unnecessary, impracticable, or contrary to the public interest and provide a rationale in the direct final rule document published in the *Federal Register*. Use of the exception is subject to judicial review.

4.6.1. Initiating a Direct Final Rule

The OPR begins by completing an Application (Doc # 30277) and following the process described in Section 1.2. The Team submits the Application in accordance with the Rulemaking Calendar (refer to Section 1.2.9).

Once the Council approves drafting a direct final rule, the Team begins drafting using the direct final rule template (Doc # 671). The procedures for drafting, coordinating, and issuing a direct final rule are similar to a final rule (refer to Section 3.0 for information regarding drafting, coordinating, and issuing a final rule).


Requirement:

The ARM analyst and AIR Directorate writer-editor, as appropriate, must manage the direct final rule in the DMS.

Best practices:

The ARM analyst or Directorate writer-editor should use the latest template when beginning to prepare the direct final rule (Doc # 671). The Team should:

- Comply with all applicable instructions in the template;
- Consider the template as a “starting point” during drafting, but consult with ARM management before making major deviations;

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- Conform to template formatting examples as much as possible, to expedite review;
- Consider the document’s audiences, who may be unfamiliar with the technical issues associated with the project; and
- Refer to Appendix C, General Writing Guide, for general reminders and specific tips regarding common practices to improve clarity and consistency within the document, and with other documents.

4.6.2. Disposition of Comments on a Direct Final Rule

If no substantive adverse comments are received:


- The ARM analyst prepares a notice for publication in the *Federal Register*, using the direct final rule confirmation notice template (Doc # 5165) confirming the effective date of the rule. This notice is published before the effective date of the direct final rule; and
- The regulation becomes effective on the date specified in the direct final rule.

If the FAA receives an adverse comment or a notice of intent to file an adverse comment, the FAA must publish a notice of withdrawal in the *Federal Register* before the planned effective date of the rule (refer to Section 4.9 addressing withdrawals). The FAA must then incorporate the commenter’s recommendation into another direct final rule, or publish an NPRM with a new comment period.

4.7. Correction

A correction is a rulemaking document that may be used to change inaccurate information:

- In another rulemaking document (for example, an NPRM or final rule) already published in the *Federal Register* that has not yet become effective; or
- In the CFR, where the inaccurate information has existed for less than 9 months.

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A correction addresses information that was incorrect when the FAA submitted the original rulemaking document for publication in the *Federal Register*. It is different from a correction notice that may be warranted due to an error on the part of the OFR. The templates for a correction are Docs # 30184 and # 9895, depending whether the rule is effective. All correction documents should be coordinated through ARM.

Examples of inaccurate information that may be appropriate for a correction include:

- Typographical errors;
- Incorrect or missing amendment number, notice number, or RIN;
- Inaccurate amendatory instructions; and
- Incorrect preamble material.


Correction documents follow an abbreviated approval and coordination process. Usually, Council does not need to approve corrections. Also, coordination is usually only necessary through the division or Director level. Finally, ARM-1 has authority to issue correction documents.

Requirement:

The ARM analyst and AIR Directorate writer-editor, as appropriate, must manage the correction document in the DMS.

Best practices:

- The ARM analyst should use the latest applicable template when beginning to prepare the correction document (either Doc # 30184 or # 9895).
- The ARM analyst should discuss with the ARM analyst's manager the appropriate level of coordination for the correction document.
- The Team should:
 1. Comply with all applicable instructions in the template;
 2. Consider the template as a "starting point" during drafting, but consult with ARM management before making major deviations; and

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3. Conform to template formatting examples as much as possible, to expedite review.

4.8. Technical Amendment

A technical amendment is a rulemaking document that may be used to change inaccurate information in the CFR, where the information was:

- Accurate when the FAA submitted the original rulemaking document for publication in the *Federal Register*, but has now become outdated, obsolete, or irrelevant; or
- Inaccurate when the FAA submitted the original rulemaking document for publication in the *Federal Register* and the inaccurate information has existed for more than 9 months.

The term “technical amendment” has no specific meaning under the APA. When used by an agency in the context of rulemaking, the words “technical amendment” refer to a final rule that has not been preceded by an NPRM because the agency has found good cause (including a statement of the reasons) under the APA that notice and comment rulemaking is unnecessary, impracticable, or contrary to the public interest. Technical amendments follow an abbreviated approval and coordination process.


Usually, Council does not need to approve technical amendments. Also, coordination is usually only necessary through the division or Director level. Finally, ARM-1 has authority to issue technical amendments.

Requirement:

The ARM analyst and AIR Directorate writer-editor, as appropriate, must manage the technical amendment document in the DMS.

Best practices:

- The ARM analyst or Directorate writer-editor should use the latest template when beginning to prepare the technical amendment (Doc # 13462).
- The ARM analyst should discuss with the ARM analyst’s manager the appropriate level of coordination for the technical amendment.

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- The Team should:
 1. Comply with all applicable instructions in the template;
 2. Consider the template as a “starting point” during drafting, but consult with ARM management before making major deviations; and
 3. Conform to template formatting examples as much as possible, to expedite review.


4.9. Withdrawal

A notice of withdrawal allows the FAA to withdraw an ANPRM, NPRM, SNPRM, or other rulemaking document published in the *Federal Register*. The FAA may withdraw a proposal after publication for any reason, such as:

- A cost and benefit impact not previously realized;
- An adverse effect on safety not previously recognized;
- Difficulty of implementation or enforcement not anticipated;
- A more serious burden on a substantial number of small entities than originally expected; and
- The solution to the problem would not have the effect originally intended.

A notice of withdrawal also allows the FAA to withdraw a direct final rule after *Federal Register* publication, but before it becomes effective. The FAA may withdraw a direct final rule in response to a substantive adverse comment or a notice of intent to file such a comment. However, once a final rule becomes effective, the FAA cannot withdraw it, only a new rulemaking can remove it.

4.9.1. Preparing a Notice of Withdrawal

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To withdraw an ANPRM, NPRM, SNPRM, a direct final rule, a final rule or any other rulemaking document, the OPR begins by completing the Final Decision for the project and following the process described in Section 3.1, (though, for a direct final rule, the process must be followed BEFORE the effective date). If the Council previously approved a Final Decision for the project, then the OPR uses an Appendix to the Final Decision to begin the notice of withdrawal.⁵⁵

Once the Council approves drafting a notice of withdrawal, the Team begins drafting it using the notice of withdrawal template (Doc # 5186 (not yet effective) or # 30771 (proposal)). The procedures for drafting, coordinating, and issuing a notice of withdrawal are similar to a final rule. Refer to Section 3.0 for information regarding drafting, coordinating, and issuing a final rule.

The text of the notice of withdrawal should include a response to comments to the extent necessary to show the FAA’s rationale for withdrawal of the proposal. Withdrawal of a notice does not preclude the FAA from issuing another notice on the subject matter in the future or committing the FAA to any future course of action. A statement to this effect is made in every notice of withdrawal.

Requirement:


The ARM analyst and AIR Directorate writer-editor, as appropriate, must manage the withdrawal in the DMS.

Best practices;

The ARM analyst or Directorate writer-editor should use the latest template when beginning to prepare the withdrawal (Doc # 30771 (proposal) or 5186 (not yet effective final rule), as appropriate). The Team should:

- Comply with all applicable instructions in the template;

⁵⁵ [Section 106\(f\)\(3\) of 49 U.S.C.](#), requires the Administrator to issue a final regulation or take other final action not later than 16 months after the last day of the public comment period of an NPRM or SNPRM and not later than 24 months after the date of publication of an ANPRM in the Federal Register. A withdrawal is a final action under [Section 106\(f\)\(3\) of 49 U.S.C.](#)

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- Consider the template as a “starting point” during drafting, but consult with ARM management before making major deviations;
- Conform to template formatting examples as much as possible, to expedite review;
- Consider the document’s audiences, who may be unfamiliar with the technical issues associated with the project; and
- Refer to Appendix C, General Writing Guide, for general reminders and specific tips regarding common practices to improve clarity and consistency within the document, and with other documents.

4.10. Short Simple Project (SSP)

The term SSP refers to an approach for certain projects that can be handled quickly, without noticeable impact on other rulemaking projects. A project may be a candidate for an SSP only if it requires minimal rulemaking resources, has minimal economic impact, and is nonsignificant under OST and OMB criteria.


The process for an SSP does not result in an NPRM or ANPRM. Although some projects may meet the criteria for an SSP, an OPR may instead elect to follow the standard rulemaking process and publish an NPRM before publishing a final rule.

All SSPs are direct final rules or final rules with request for comment, but not all direct final rules or final rules with request for comment are SSPs. The decision on whether a project is an SSP is made by the Council.

4.10.1 Initiating an SSP

Like a typical project, the OPR submits an Application (Doc # 30277) to request Council approval following the process in 1.2. However, the Application requesting SSP status:

- Requests either a direct final rule or a final rule with comments;
- Is signed by APO-1 (the OPR is responsible for obtaining APO concurrence for an SSP project before submitting it to ARM); and

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- Contains a proposed expedited milestone schedule.

Best practices:

The Team lead:


- Contacts ARM for the latest template when beginning to prepare the Application;
- Complies with all instructions in the applicable template;
- Ensures the project title does not refer to a CFR part;
- Considers the Application audience, many of whom may be unfamiliar with the technical issues associated with the project;
- Refers to Appendix C, General Writing Guide, for style suggestions to improve clarity and consistency within the document; and
- Confirms with ARM that no newer template version has become available before submitting the LCD. (If a newer template version has become available, the project lead transfers the LCD information to the newest version.)

4.10.2. Council Considers Application for an SSP

If the Council does not agree that the project qualifies as an SSP, the Council may approve the project, but not the SSP status, assign a Team, and instruct the Team to develop a RAP for a typical project. In this case, the project follows the appropriate rulemaking process approved by the Council.

If the Council approves the project as an SSP and the selected final rule approach, an ARM analyst (and possibly a directorate writer/editor) is designated to work with the OPR representative to draft the rule. The submission of a RAP to Council is unnecessary with a Council approved SSP project.

4.10.3. Drafting and Coordinating an SSP

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Following Council approval of the Application for the SSP, the Team drafts the approved rulemaking document. Once the final rule is drafted, it is then coordinated with a representative from APO and AGC during Final Team Concurrence (refer to Section 2.6.2).

The rulemaking document then continues through the normal coordination process.

Once the rulemaking document publishes and the comment period closes, the Team must address any comments received in the docket. Refer to Sections 4.5 and 4.6, addressing the final rule with request for comment and the direct final rule, as appropriate.

4.11. Aircraft Certification NPRM Delegated Signature Authority

On October 13, 2010, the Administrator authorized the Director of the Aircraft Certification Service (AIR-1) to issue certain NPRMs for public comment after completing Director-level concurrence. The steps for handling these delegated signature rulemaking projects may vary from what is addressed in Stages 1 and 2 of this Rulemaking Process (refer to [AIR-002-039, AIR Delegation of Signature Authority](#)).

4.12. Petition for Rulemaking


A Petition for Rulemaking is one of the factors that may trigger the FAA to initiate rulemaking (refer to Section 1.1). The APA permits interested persons the right to petition for the issuance, amendment, or repeal of a rule ([5 U.S.C. 553\(e\)](#)).

Members of the public may submit a Petition for Rulemaking to the FAA in accordance with the procedures contained in [14 CFR part 11](#). Petitions for Rulemaking ask the FAA to add a new regulation, amend an existing regulation, or repeal an existing regulation. Consideration of and responses to Petitions for Rulemaking occur as a precursor to the rulemaking process.

4.12.1. Responding to a Petition for Rulemaking

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

- Issue an NPRM or ANPRM if the petition justifies it;

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- Consider the petitioner’s arguments for a rule change as a comment in connection with an NPRM or ANPRM already issued on the same subject;
- Consider the petitioner’s comments and arguments for a rule change as part of an ongoing rulemaking project on the same subject;
- Consider assigning the issue to the ARAC or an ARC to review and evaluate; or
- Dismiss the petition if the issue the petitioner identifies does not address an immediate safety concern or cannot be addressed because of other priorities and resource constraints. In such case, the FAA will place the comments and arguments in a database that is examined for future rulemaking projects.


The OPR recommends what action to take on a petition for rulemaking after considering:

- The immediacy of the safety or security concern the petitioner raises;
- The priority of other issues the FAA must deal with; and
- The resources the FAA has to address the issue.

In most cases, ARM will issue a letter (Doc # 43255) informing the petitioner that rulemaking cannot be initiated at this time due to other existing priorities. However, the topic of the petition will be retained in a database maintained by ARM and used annually to determine the FAA’s potential rulemaking list for the upcoming fiscal year. If this topic is included on such list, ARM will notify the petitioner.

If the OPR determines a rulemaking action is appropriate, the ARM analyst or directorate writer/editor, in coordination with the OPR, prepares and coordinates a letter to the petitioner to explain the FAA’s decision. The OPR then initiates the rulemaking project, as appropriate.⁵⁶

⁵⁶ If the FAA decides to issue an NPRM or ANPRM, action must take place no later than 6 months after the date the FAA received the petition. For more information, see [14 CFR 11.73](#).

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4.13. SFAR Process


Considering the speed with which safety, security, and other crisis events involving aviation frequently unfold world-wide, it is imperative that the FAA be able to respond to these incidents rapidly and effectively, drawing on the specialized resources and capabilities of the agency's lines-of-business.

To respond to such incidents, two groups have been developed to coordinate emergency response actions within the FAA's lines of business and the preparation of documents/briefings for senior leadership, including ADA/AOA. These groups are the Crisis Response Working Group (CRWG) and the Crisis Response Steering Group (CRSG), to whom the CRWG reports its recommended actions. Because of the need to respond rapidly, the SFAR Process does not follow the normal Rulemaking Process. A special process was developed that combines the CRWG/CRSG Process with the Rulemaking Process to prevent duplicate efforts. This process is described below.

The CRWG is convened when a crisis is reported. Depending on the reported incident, the CRWG may issue a Notice to Airman (NOTAM). If the NOTAM is an Advisory or a Pointer NOTAM, ARM will not take any action internally, but will work with the CRWG team to continue to monitor the situation. If the CRWG recommends a Prohibitory NOTAM and CRSG approves the action, the memo signed by AOA has now taken the place of an Application for Rulemaking. The memo is provided to ARM by AEO. The ARM analyst will then request a project number and RIN from the appropriate points of contact in ARM and proceed with initiating the project in IRMIS and submit the project and project schedule to RMS.

The Team develops a draft final rule using the CRWG SFAR template and, once the draft document is agreed upon by the CRWG, AEO and API will coordinate with DOT, and other key stakeholders within and external to the agency. In addition, ARM will complete the OIRA Designation Form and submit it to OST/OMG for designation (refer to Section 2.6.2.3).

Upon completion of this coordination effort, the CRSG is briefed. Once briefed, the CRWG will provide ARM with the final draft for formal rulemaking processing. The draft document is then coordinated in red folders for a combined DLC/ALC review and concurrence. For the AOA review/concurrence, follow the normal rulemaking and CCMS submission process.

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Appendix A — Templates and Other Resources


This Appendix lists document templates, with their DMS Document Numbers and appropriate Document Types, referenced throughout these Work Instructions. Section 1.2.2, Using Document Templates; Section 1.3.7, Using the DMS for Document Management; and other sections of these Work Instructions include specific guidance relating to the use of templates. Appendix C, General Writing Guidance, is also a useful reference to ensure consistency among documents produced by ARM and Teams.

Table A-1: Rulemaking Lifecycle Document (LCD) Templates

LCD Template (DMS Document Type)	DMS Document Number
Appendix (APX)	30276
Application for Rulemaking (APP)	30277
Committee Request Document (CRD)	30279
Final Decision (FIN)	30278
Initiation of High-Profile Expedited Project (HPI)	30273
Resolution of High-Profile Expedited Project (HPR)	30274
Rulemaking Action Plan (RAP)	30275

Table A-2: Rulemaking Document Templates

Rulemaking Document Template (DMS Document Type)	DMS Document Number
ANPRM (ANPRM)	674
Correction to final rule after Effective Date (published < 9 months ago)(CORR)	30184
Correction to final rule before Effective Date (CORR)	9895
Correction to NPRM (CORR)	30772
Direct final rule (FINALRULE)	671
Direct final rule confirmation/Disposition of Comments (FINALRULE)	5165
Extension of Comment Period (EXT)	9632
Final rule (FINALRULE)	114
Final rule immediately adopted or with Request for Comments (FINALRULE)	5181
Notice of OMB Paperwork Approval (ADMIN)	30294
NPRM (NPRM)	115
Reopening of Comment Period (REOPEN)	9631
Special Federal Aviation Regulation (SFAR)	30719
SNPRM (SNPRM)	675

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Rulemaking Document Template (DMS Document Type)	DMS Document Number
Technical Amendment (Correction) to final rule (published > 9 months ago)(TECHAMEND)	13462
Withdrawal of final rule (WITH)	5186
Withdrawal of NPRM (WITH)	30771

Table A-3: Internal FAA Coordination Transmittal Memo Templates⁵⁷

Coordination Level (refer to Sections 2.6 and 3.7)	DMS Document Number
Preliminary Team Concurrence	Use 30680 for both NPRM and Final Rule, regardless of significance
Final Team Concurrence	Use 23896 for both NPRM and Final Rule, regardless of significance
Director Level Concurrence	Use 26449 for both NPRM and Final Rule, regardless of significance
Associate/AGC-1 Coordination	Use 26450 for both NPRM and Final Rule, regardless of significance
ADA/AOA Coordination	Use 31899 for NPRM and 26451 for Final Rule, regardless of significance
Issuance	For an NPRM - use 26452 regardless of significance For a Nonsignificant Final Rule – use 28241 For a Significant Final Rule – use 26453

Table A-4: Other Resources

Resource	DMS Document Number or Website
Closeout Checklist	27184
Document Drafting Handbook	DDH
Executive Summary	117
Notice of Public Meeting	5185
OFR Certification Letter	3011
OMB Form 83-I	24050
OMB Form 83-R	19169
OMB Review Documentation	20447
OMB Transmittal Memo	19166
OST & OMB Coordination Desk Guide	35862
Principals Briefing Sign-In Sheet	22030
Pre-Coordination Checklist	35520

⁵⁷ The DMS Document type for all Transmittal Memos is “MEMOTRAN.”



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Resource	DMS Document Number or Website
Review and Change Transmittal Form	2542
Rulemaking Calendar	29632

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Appendix B — Choosing the Appropriate Rulemaking Lifecycle Documents (LCDs)


The following tables identify which LCD is usually appropriate to request approval for a rulemaking project. The information does not apply for high-profile expedited projects.

Table B-1: LCDs Required to Initiate Rulemaking

To publish this document:	First prepare and seek approval for a(n):
NPRM	Application and RAP
ANPRM	Application and Appendix to Application
Direct Final Rule with comments	Application
Final Rule Immediately Adopted with comments	Application

Table B-2: LCDs Required For Second Phase of Rulemaking

Once this is published:		
ANPRM	NPRM	RAP
ANPRM	Withdrawal of ANPRM	Final Decision
NPRM	Final Rule	Final Decision
NPRM	SNPRM	Appendix to RAP
NPRM	Withdrawal of NPRM	Final Decision
ARC or ARAC recommendations	NPRM	Application
Direct Final Rule w/ Comments	Withdrawal of Direct Final Rule	Final Decision
Direct Final Rule w/ Comments	Disposition of Comments and/or Confirmation of Effective Date	Final Decision
Final Rule Immediately Adopted w/ Comments	Withdrawal of Final Rule	Final Decision
Final Rule Immediately Adopted w/ Comments	Disposition of Comments and/or Confirmation of Effective Date	Final Decision
SNPRM	Final Rule	Final Decision

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Appendix C — General Writing Guide

General Reminders


Good writing is carefully constructed. Consider the audience. Who is the document being written for? What expertise and knowledge do they have? What do they need?

Organize the document. The key to clear writing is to present material in the order that is most useful to the reader. If the document deals with a process, consider organizing it chronologically, first step to last. If the document deals with a variety of subjects, consider discussing them in the same order throughout the document. Whichever method is used, keep the reader in mind and be consistent.

Writing Resources

The following general manuals and documents, several of which are referenced in these Work Instructions, are useful references:

1. [**Federal Register Document Drafting Handbook \(DDH\)**](#)
Aside from providing general guidance regarding the drafting of all rule documents, the DDH also provides general guidance regarding how documents should be written.
2. [**U.S. Government Printing Office Style Manual**](#)
This manual provides overarching guidance regarding the style to be used when publishing documents, including in the *Federal Register*. This is the style used by the OFR. The more the rule document conforms to this style, the fewer changes will be made by the OFR.
3. [**FAA Correspondence Manual**](#)
This document provides specific guidance for drafting correspondence – Congressionals, letters, memoranda, and emails – on behalf of FAA.
4. [**Order 1000.36, FAA Writing Standards**](#)
This FAA Order provides general guidance regarding writing documents, much of it culled from other previously-listed sources.
5. [**Purdue Grammar Guide**](#)
This website provides general grammar, spelling, and other guidance.
6. [**Federal Plain Language Guidelines**](#)

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The President signed the [Plain Writing Act of 2010](#) (Pub. L. 111-274; 124 Stat. 2861) on October 13, 2010. The law requires that federal agencies use "clear Government communication that the public can understand and use." On January 18, 2011, the President issued [Executive Order 13563, Improving Regulation and Regulatory Review](#). It states that "[our regulatory system] must ensure that regulations are accessible, consistent, written in plain language, and easy to understand." Two other executive orders ([Executive Order 12866](#), Regulatory Planning and Review, and [Executive Order 12988](#), Civil Justice Reform) cover the use of plain language in regulations.

Specific Tips for Document Drafting

Acronyms and Abbreviations

Below is a brief list of commonly used acronyms and abbreviations, with guidance as to how to use them:


- U.S.C.: When discussing the United States Code it is to be abbreviated U.S.C., NOT USC.
- CFR: When discussing the Code of Federal Regulations, it is to be abbreviated CFR, NOT C.F.R. When discussing multiple years of the Code of Federal regulations, the abbreviation is written CFRs, NOT CFR's, CFRS', or CFRs'.⁵⁸
- Days and months are to be spelled out in their entirety, not abbreviated – Monday, NOT Mon.; August, NOT Aug.⁵⁹
- Internal and terminal punctuation in symbols representing units of measure are to be omitted to conform to practice adopted by scientific, technical, and industrial groups. Where the omission of terminal punctuation causes confusion; e.g., the symbol in (inch) mistaken for the preposition in, the symbol should be spelled out.⁶⁰
- FR: When discussing the *Federal Register* or citing a publication in the *Federal Register* it is to be abbreviated FR, NOT Fed. Reg. or F.R.⁶¹

⁵⁸ U.S. Government Printing Office Style Manual, Chapter 5.

⁵⁹ Ibid., 9.46, 9.47.

⁶⁰ Ibid., 9.3.

⁶¹ OFR, [DDH](#), 1.18.

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- Pub. L.: When discussing a public law it is to be cited as Pub. L., NOT PL. or P.L.
- Federal Aviation Regulation: The term Federal Aviation Regulation must be spelled out in its entirety; the acronym “FAR” must not be used. In the context of the *Federal Register* and government regulations in general, FAR stands for Federal Acquisition Regulations – a body of regulations controlled jointly by the Department of Defense and the General Services Administration. Further, it is not proper to use FAR as though it were a legal citation.

It is best to avoid the use of acronyms and abbreviations in headings, as they may be unclear to the reader who is skimming a document.

A common approach to the use of acronyms is to define an acronym at the first instance, and then use the acronym without definition for the remainder of the document. It is also appropriate to consider the length of time or distance between uses of acronyms. If an acronym is used early in a document and then does not appear again until late in the document, it may be appropriate to not use the acronym at all, or to restate the acronym for the reader’s benefit.


Use of the Section Symbol (§)

The section symbol (§) is used to refer to a single CFR section. When referring to more than one CFR section, it is appropriate to use two symbols together without a space in between (“§§ 16.21 and 16.23” is correct; “§ 16.21 and § 16.23” is not correct).

Both § and §§ are always followed by one space before the section number (“§ 16.23” is correct; §16.23” is not correct).

Both § and §§ are not used:

- At the start of a sentence – the word “Section” or “Sections” is used instead of the symbol;
- When discussing sections in the United States Code (U.S.C.) (49 U.S.C. 106(f) is correct; 49 U.S.C. § 106(f) is not correct); and
- When the reference follows a title number and “CFR” (“14 CFR 16.23” is correct; “14 CFR § 16.21” is not correct).

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Section references that split across lines may be confusing, and may distract reviewers (§ 121.1023, for example). To force MS Word to not continue to the next line at the space between § and the number following it:

- Select, or highlight, the space between § and the number following it;
- Hold down the “Control” and “Shift” keys simultaneously; and
- Hit the space bar.

This has the effect of replacing a simple space with a space that tells Microsoft Word to keep the text/symbol before and after the space on the same line. This method can be used to eliminate text wrapping across lines in dates and other cases that may distract the reviewer or confuse the reader.

Capitalization

Certain words are always capitalized, per the GPO Style Manual:⁶²

- United States Congress, U.S. Congress, Congress, and variations thereof
- House of Representatives, House, Senate, and variations thereof
- President (name), the President, the President of the United States
- United States Government, U.S. Government, Federal Government
- State, States, State of Virginia
- Department of Transportation, the Department


The full name “notice of proposed rulemaking” is not capitalized, even though its abbreviation is (“NPRM”). The names of other rulemaking document types, such as direct final rule and final rules, are also not capitalized.

Use of Numbers

Most rules for the use of numbers are based on the general principle that readers understand figures (digits such as 7) more easily than numbers that are spelled out (seven). However, numbers should be spelled out in certain circumstances.⁶³

⁶²U.S. Government Printing Office Style Manual, Chapter 3.

⁶³Ibid., chapter 12

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Units of time or measurement.⁶⁴

Use figures (digits) for units of time or measurement. For example:

10 years , 1 month, 4 weeks, 8 days, 6 hours, 7 minutes, or 20 seconds; and
15 miles, 7 yards, 3 meters, 10 feet, or 1 inch.

Spell out the numbers one through nine when used alone in a sentence.⁶⁵ Use figures (digits) when a series of numbers in a sentence includes one or more that is larger than 10.⁶⁶ For example:

- There were nine comments to the NPRM.
- There were 10 commenters, and 9 of them supported the NPRM.

Expressing units of time or measurement in figures (digits) does not affect the use of numbers for other parts of the sentence.⁶⁷ For example:

- The five commenters stated that the compliance date for the rule should be delayed for 2 years.

For numbers greater than or equal to 10, use a figure (digit) for a number greater than or equal to 10,⁶⁸ unless the number is the first word in a sentence.⁶⁹ For example:

- There were 20 commenters to the NPRM.
- Twenty airlines commented on the NPRM.

Use of Brackets

In the *Federal Register*, brackets used in certain instances have specific meanings. However, this special use does not preclude the use of brackets in other instances.

⁶⁴ Ibid., 12.9


⁶⁵ Ibid, 12.23

⁶⁶ Ibid, 12.5

⁶⁷ Ibid, 12.6

⁶⁸ Ibid, 12.4

⁶⁹ Ibid., 12.16

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Brackets are used by the OFR to indicate where information must be added by the OFR. For example, “[INSERT DATE 30 DAYS FROM DATE OF PUBLICATION]” indicates to the OFR that the date 30 days from date of publication should be inserted in lieu of the bracketed request.

Be certain the bracketed instructions to the OFR are written based on the requirements of the [DDH](#). That is, if the OFR requires ALL CAPS be used, use them. Errors can inadvertently occur when editors do not see the bracketed instructions and the document publishes with the bracketed phrases rather than the date requested being inserted.

Brackets may also be used to communicate other information to readers in a preamble. They may be used to note that emphasis has been added to a quotation “[Emphasis added]”, or to note an error in a quotation is being quoted directly, “[sic]”.⁷⁰


Use of Key Terms and Words

The following information describes the currently-accepted use of many key rulemaking terms and words:⁷¹

- Use “must” instead of “shall.” “Must” imposes obligation and creates a necessity to act. To impose a legal obligation, use “must.”
- “Shall” imposes an obligation to act, but may be confused with prediction of future action. “Shall” is an ambiguous word. It can mean must, ought, or will. While “shall” cannot mean “should” or “may,” writers have used it incorrectly for those terms and it has been read that way by the courts.
- “Should” infers obligation, but not absolute necessity. “Should” does not create or establish a requirement.
- The word “will” predicts future action and is used to describe effects to occur in the future.
- The word “would” is an indefinite verb, describing possible effects depending on other events or outcomes. The word “would” is used to describe the potential effects

⁷⁰ Ibid., 8.19.

⁷¹ OFR, [Drafting Legal Documents, Principles of Clear Writing](#).

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of a proposed rule as it describes a possible situation (the proposed language becoming part of the CFR).

- The word “may” indicates discretion to act.” It is a voluntary term.
- The words “may not” indicate a prohibition.⁷²

Current writing conventions suggest limiting the use of such phrases as “provided that.”⁷³ Alternatives include:

- To introduce a qualification or limitation to the rule, use “but;”
- To introduce an exception to the rule, use “except that;” and
- To introduce a condition, use “if.”

There are acceptable and less acceptable ways to describe the Federal Aviation Administration and commenters to its rules. The FAA never "feels." The agency "believes" at the NPRM stage, and "determines" at the Final Rule stage.

Spacing Consistency

A common question that arises is whether it is required to use two spaces or one space after each period (and colon). There is no universal requirement for spacing after periods/colons, other than to be consistent throughout the document. If more than one person is drafting a document, it may be simplest to use a single space after periods and colons, because it is easier to use the “search and replace” function in a word processor to standardize single spaces.⁷⁴


Use of Document Templates

It is helpful to remember the following specific points when using ARM document templates:

⁷² See also [14 CFR 1.3](#).

⁷³ OFR, [Drafting Legal Documents, Ambiguity](#).

⁷⁴ To achieve consistent single spacing after a period, use the word processor function to search for all occurrences of “. “ (a period with two spaces after it), and replace each with “. “ (a period with one space after it). As always, take care if using the “Replace All” feature.

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- Save the current document template in DMS as the first version of the document. This is helpful because it provides a record of the template version used as the basis for the document.

Conduct a final review of any document developed based on a template to ensure:


- Deletion of all instructional text.
- Conversion of any sample text used from blue to black text.
- Removal of any highlighting.
- Retention of the “Predecisional Draft” language from the template header in rulemaking documents throughout internal FAA coordination and OST and OMB review, if applicable. Do not delete this heading until immediately before transmitting the rulemaking document for issuance.

If not using pronouns, refer to organizations (including the FAA) as “it” (not “they”). Examples include:

- “ATA was granted an exemption to modify its aircraft....”
- “The ARC submitted its recommendations,” or
- “The FAA considered the alternative. It [or “The agency”] has determined...”.

If using personal pronouns, ensure consistency by:

- Keeping track of who “you” is where the document refers to multiple affected entities; and
- Checking boilerplate from the template with the rest of the document.

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Appendix D — Milestones and Suggested Timeframes

The following milestones include timeframes that should be used as guidance only. Each rulemaking Team must evaluate each project to determine specific timeframes to include in the RAP and Final Decision. For example, the suggested timeframes must be shortened to meet the 24-month requirement for final action after publication of an ANPRM or to address the expedited nature of an SSP (and the fact that all of the milestones do not apply to an SSP).

Rulemaking Lifecycle Documents (LCD)

<i>Milestone</i>	<i>Average Timeframe*</i>
ARM receipt of Application for Rulemaking (Application)**	4 weeks before Council meeting.
Council Prep Team Performs Initial Review of the Application**	2 weeks before Council meeting.
Council approval of the Application**	At Council meeting.
Council denial of the Application**	At Council meeting.
Rulemaking Action Plan (RAP) requested by Council.	At Council meeting.
ARM receipt of RAP.	4 weeks before Council meeting.
Council Prep Team Performs Initial Review of RAP.	2 weeks before Council meeting.
Council approval of RAP.	At Council meeting.
Council denial of RAP.	At Council meeting.
Council takes other action.	At Council meeting.
ARM receipt of Final Decision***	4 weeks before Council meeting.
Council Prep Team Performs Initial Review of Final Decision***	2 weeks before Council meeting.
Council approval of Final Decision***	At Council meeting.
Council receipt of Short Simple Project (SSP) request.	4 weeks before Council meeting.
Council Performs Initial Review on SSP request.	2 weeks before Council meeting.
Council approval of SSP request.	At Council meeting.
Council denial of SSP request.	At Council meeting.

* Depends on the size and complexity of the rule.

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** Or Initiation of High-Profile Expedited Project, if appropriate.

*** Or Resolution of High-Profile Expedited Project, if appropriate.

Notice of Proposed Rulemaking

<i>Milestone</i>	<i>Average Timeframe*</i>
Preliminary Team Concurrence	180 days from Council approval of the RAP for rulemaking.
Principals' Briefing, if required.	At any stage of the process.
Economic Evaluation/Supplemental Legal Review	90 days from preliminary team concurrence.
Final Team Concurrence	30-60 days from completion of economic evaluation.
Director Level Concurrence	15-20 days from Final Team Concurrence.
Associate Level/AGC-1 Concurrence	15 days from Director Level Concurrence.
ADA/AOA Approval	30 days from Associate Level/AGC-1 Concurrence.
Transmittal to OST, if significant	1 day from ADA/AOA approval.
OST Approval, if significant	45 days from transmittal to OST.
Transmittal to OMB, if significant	1 day from OST approval.
OMB Approval, if significant	90 days from NPRM transmittal to OMB.
Issuance	If proposed rule is significant, 5 days from OMB approval. If proposed rule is nonsignificant, 5 days from ADA/AOA approval.
Publication	10 days from issuance.
Close of Comment Period	30-120 days from publication.


*Depends on the size and complexity of the rule.

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Final Rule

<i>Milestone</i>	<i>Average Timeframe*</i>
Preliminary Team Concurrence	180 days** from close of comment period from the proposed rule; or, if not preceded by a proposed rule, 180 days from Council approval of the Final Decision for rulemaking.
Principals' Briefing, if required	At any stage of the process.
Economic Evaluation/Supplemental Legal Review	60 days from preliminary team concurrence.
Final Team Concurrence	30-60 days from completion of economic evaluation.
Director Level Concurrence	15-20 days from Final Team Concurrence
Associate-Level/AGC-1 Concurrence	15 days from Director Level concurrence.
ADA/AOA Approval	30 days from Associate Level/AGC-1 Concurrence.
Transmittal to OST, if significant	1 day from ADA/AOA approval.
OST Approval, if significant	45 days from transmittal to OST.
Transmittal to OMB, if significant	1 day from OST approval.
OMB Approval, if significant	90 days from transmittal to OMB.
Issuance	If final rule is significant, 5 days from OMB approval. If final rule is nonsignificant, same day as ADA/AOA approval.
Publication	10 days from issuance.
Close of Comment Period, if appropriate	30-120 days from publication


* Depends on the size and complexity of the rule.
** Includes disposing of comments from the proposed rule, preparation, coordination, and Council approval of the Final Decision.

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Withdrawal

<i>Milestone</i>	<i>Average Timeframe*</i>
Preliminary Team Concurrence	140 days from Council approval of the LCD.
Principals' Briefing, if required.	At any stage of the process.
Economic Evaluation/ Supplemental Legal Review	60 days, if required.
Final Team Concurrence	30-60 days from Preliminary Team Concurrence.
Director Level Concurrence	15-20 days from Final Team Concurrence
Associate-Level/AGC-1 Concurrence	15 days from Director Level Concurrence.
ADA/AOA Approval	30 days from Associate Level/AGC-1 Concurrence.
Transmittal to OST, if significant.	1 day from ADA/AOA approval.
OST approval, if significant	45 days from transmittal to OST.
Transmittal to OMB, if requested by OMB	1 day from OST approval.
OMB Approval, if requested by OMB	90 days from transmittal to OMB.
Issuance	If withdrawing a significant proposed rule, 5 days from OST and/or OMB approval. If withdrawing a nonsignificant proposed rule, 5 days from ADA/AOA approval. If withdrawing a significant final rule, 5 days from OST and/or OMB approval. If withdrawing a nonsignificant final rule, the same day as ADA/AOA approval.
Publication	5 days from issuance.
Close of Comment Period, if appropriate	30-60 days from publication.

* Depends on the size and complexity of the rule.

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Appendix E — Legal Review

General


When reviewing a rulemaking project, the AGC attorney assigned to the rulemaking Team looks at whether:

- There is adequate legal authority for the action being taken.
- The document complies with all applicable laws, regulations, Executive Orders, and other such documents.
- The FAA can enforce the requirements being imposed.
- The requirements being imposed are reasonably resistant to legal challenge, including whether the regulatory philosophy and content are consistent with existing regulations.
- The preamble to the rule:
 - Discloses all critical data or methodologies to allow for comment.
 - Responds to all significant comments in the preamble of a final rule.
 - Explains the rationale for the rule in sufficient detail to permit judicial review of the FAA’s final decision.
 - States the basis for the rule, its purpose, and why the action is being taken.
 - Makes a logical connection between the facts stated and why the rule being proposed is needed. These facts should be stated in sufficient detail so they are more than simple assertions or conclusions. The mere statement that a problem exists is not enough. You must have evidence of a problem or a need for rulemaking. The more evidence you can cite, the more support you have that the action is not arbitrary.

Attorney’s Responsibilities

A reviewing attorney’s specific responsibilities include the following:

- Call to the attention of the Chief Counsel any policy matter that may need to be discussed at the Executive Level or with the Administrator.
- Discuss any concerns with the program or technical office involved.
- Brief AGC management on the total project.
- Understand the document in its entirety, and be able to explain it or translate questions the Chief Counsel may have.
- Keep projects moving.
- Maintain the integrity and quality of the FAA’s documents and regulations.

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If a reviewing attorney is unable to answer questions or address concerns about the project, there is potential for the project to be delayed because management and/or OST (C-50) will not sign off if there are pending issues. AGC is the contact point for OST (C-50) to ask questions.


Use of the Term “FAR”

Do not use the term Federal Aviation Regulation (FAR) in FAA rulemaking documents. The Office of the Federal Register does not recognize the acronym FAR as a reference to the regulations in 14 CFR. In fact, the term belongs to the Federal Acquisition Regulations, which are used in procurement. Further, it is not proper to use FAR as though it were a legal citation. See the following examples for the proper format for referencing FAA regulations:

First reference: 14 CFR part 91 14 CFR 91.875
 Subsequent references: part 91 § 91.875

If you do not want or need to use specific section numbers, or have a general statement without a section reference, write “in the regulations” rather than “in the FAR”.

If you work with the Joint Aviation Regulations, you may refer to “JAR” after the first, spelled-out reference, because that is what the Joint Aviation Authorities calls its regulations, and it does not designate parts.

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Appendix F — Economic Evaluation

General

An economist from APO works closely with the other members of the rulemaking Team to draft a regulatory evaluation or regulatory analysis. The economist consults with the Team to understand the issues addressed by the proposed or final rule so he or she can prepare an accurate cost and benefit analysis.

Developing a Cost-Benefit Model

When estimating costs and benefits, the economist develops a model by—

- Creating a set of alternative methods for achieving the rulemaking’s objective,
- Determining which of the several alternative methods is best from a cost-benefit perspective,
- Getting feedback from the rulemaking Team, and
- Adjusting the model based on Team feedback.


Issues Considered in a Cost-Benefit Analysis

When preparing a cost and benefit analysis, the economist analyzes the costs and benefits to the public and private sector.

The analysis of cost to the public and private sectors may include the following:

- Costs of new equipment and costs of equipment made obsolete by the regulation;
- New employees hired specifically because of the regulation and old employees no longer employed because of the regulation;
- New employee training;
- Time involved with complying with the new regulations; for example, completing forms, acquiring required documents, postage, and documentation; and
- New fees.


Note: *If a company currently is performing a certain procedure voluntarily and this procedure now will be required through regulations, the economist considers this during the analysis.*

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The analysis of benefits to the public and private sectors may include the following:

- NTSB accident data;
- National Aviation Safety Data Analysis Center data;
- Fatalities avoided;
- Injuries avoided (serious and minor);
- Property loss avoided;
- Reduced cost of accident investigation based on fewer accidents;
- Fuel savings; and
- Unquantifiable benefits; for example, improved physical and psychological health, increased efficiency in law enforcement, and improved databases.

The economist compares costs with benefits and ensures the regulatory evaluation contains a reasoned determination that the benefits of the proposed or final rule justify the costs.

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APPENDIX G — RULEMAKING MANUAL ARM-001-14

Revision History

Rev	Description of Change	Effective Date
1	Original	01/26/05
2-9	Revisions tracked before instituting ISO 9000	02/25/05
10	Added revised Paperwork Reduction Act processes	02/28/05
11	Revised QMS performance measure in Ch. 3 and 6	03/18/05
12	Added Short & Simple RPR's information to Ch 1	04/26/05
13	Revised header to reflect FAA logo	05/06/05
14-15	Tweaking on Rev 10 (PRA process) & version date	05/31/05
16	Corrected formatting issues dealing w/pagination and header/footers, inserted a paragraph in the preface that addresses the authority the ARM Director has to modify the rulemaking process.	07/19/05
17	Updated information on coordination for final team concurrence and associate-level concurrence (adding Appendix K). Also, changed all references for AVS to AVS; updated information on ARAC; and other minor edits.	09/09/05
18	Shortly after uploading version 17 of the Rulemaking Process Work Instructions into Hummingbird, it was discovered that this document had become corrupted. This version recaptures the updates made in versions 16 & 17 as well as other minor changes.	10/24/05
19	Added references to OMB Bulletin, M-05-19 (Peer Reviews of Scientific Disseminations)	01/11/06
20	Rulemaking product definition was added per CAR-05-008. References made to AVR were changed to AVS.	02/22/06

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Rev	Description of Change	Effective Date
21	Per PAR-05-003, updated several sections of the manual pertaining to significant vs. nonsignificant; executive summaries; principals' briefings; final team & associate-level cover memos; project priority definitions; final economic assessment; notification of AGC-1 approval; and <i>Federal Register</i> publication confirmation. Eliminated Appendix E. Per PAR-06-151, revised the information pertaining to completion of OMB Form 83-R including creating Appendix L.	03/06/06
22	Per PAR-06-289, updated several areas of the manual covering concerns raised via a Stakeholder/Customer Feedback Form from the ANM directorate (see F-06-005, docs #23985). Also: Updated information on Council meetings, RPRs, and appendixes to RPRs in Chapters 1, 2, and 5. Expanded guidance on ANPRMs and SNPRMs.	04/10/06
23	<ul style="list-style-type: none"> • Per PAR-06-288, added Appendix M which consolidates the Paperwork Reduction Act process into one location within the manual. (Also see references to Appendix M in Chapters 3 & 6.). • Updated the CY 2005 value equivalent amount for unfunded mandate rules (See Chapters 3 & 6 and Appendix J.). • Updated information regarding priority "B" projects (See Chapter 2.). 	06/12/06
24	Per PAR-07-99, changed phone number for Rulemaking Management Council point of contact (POC). Also, clarified when Ad hoc council meetings may be requested, and added guidance for projects involving simple technical amendments, based on decisions and approved minutes from November 28, 2006 Council meeting.	01/08/07
25	Regulatory Agenda and Designation List amendments on pages 32 and 92. Correction was made on the Header—ARM eliminated and AVS added. Manual Updates to FTC, ALC, DLC, and AGC-1 on pages 48, 51, 54, 56, 105, 107, 111, 112, 115, and 116.	08/15/07
26	Insert PAR info after correction(s) – Jackie	03/03/08
27	Converted the Rulemaking Manual into two documents: 1) Rulemaking Process (ARM-001-014), with a brief overview and, 2) Rulemaking Process Work Instructions (ARM-001-014-W1), with detailed information for the user to complete a published rulemaking. The revision history prior to the conversion is in Appendix I of the Rulemaking Process Work Instruction.	03/24/08

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APPENDIX H — RELATED DOCUMENTS

- [Federal Aviation Administration \(FAA\) Order 1110.153, FAA Rulemaking Management Council Charter](#) (current version)
- [AVS-002-010, Rulemaking Process](#)
- [AIR-002-039, AIR Delegation of Signature Authority](#)