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AVS-002-010

Rulemaking Process

Purpose

The Federal Aviation Administration's (FAA) Office of Aviation Safety (AVS) uses the Rulemaking Process to initiate, propose, and finalize regulatory documents such as notices of proposed rulemaking (NPRMs) and final rules. Other FAA lines of business routinely follow the requirements outlined in this Rulemaking Process.

The Office of Rulemaking (ARM) plays an integral role in the Rulemaking Process. ARM analysts provide expertise regarding the development of all FAA Rulemaking Lifecycle Documents (LCDs) and rulemaking documents.

The Rulemaking Process addresses applicable statutes, Executive Orders, and Office of the Federal Register requirements. It outlines the procedures for managing internal review and issuance of those regulatory documents and obtaining Department of Transportation (DOT) and Office of Management and Budget (OMB) approval.


The FAA strives to fully comply at all times with the provisions of the Rulemaking Process. However, there are occasions when the standard process does not support critical mission needs. The Director of the Office of Rulemaking (ARM-1) may authorize deviations from the standard process to address emergency or other situations that require an expeditious rulemaking action.

The regulatory documents addressed in this process are published in the *Federal Register*. The regulatory changes that result from this process are published in the Code of Federal Regulations, Title 14 – Aeronautics and Space.

Scope

This process applies to all FAA offices that have rulemaking responsibilities and to all types of rulemaking proposals, final rules, withdrawals, technical amendments, and corrections. This process does not apply to exemptions, special conditions, and airworthiness directives.

Approval: Margaret Gilligan
Associate Administrator for Aviation Safety (AVS-1)

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REVISION HISTORY

Rev	Description of Change	Effective Date
0	Original. This is an elevation of the ARM-002-001 Rulemaking Process document to the AVS level.	March 17, 2014
1	In accordance with the approach described in PAR P-15-37, the AVS Technical / Business Process Measures Table located toward the back of the document has been removed. Process measures are captured on a central electronic site.	March 21, 2016



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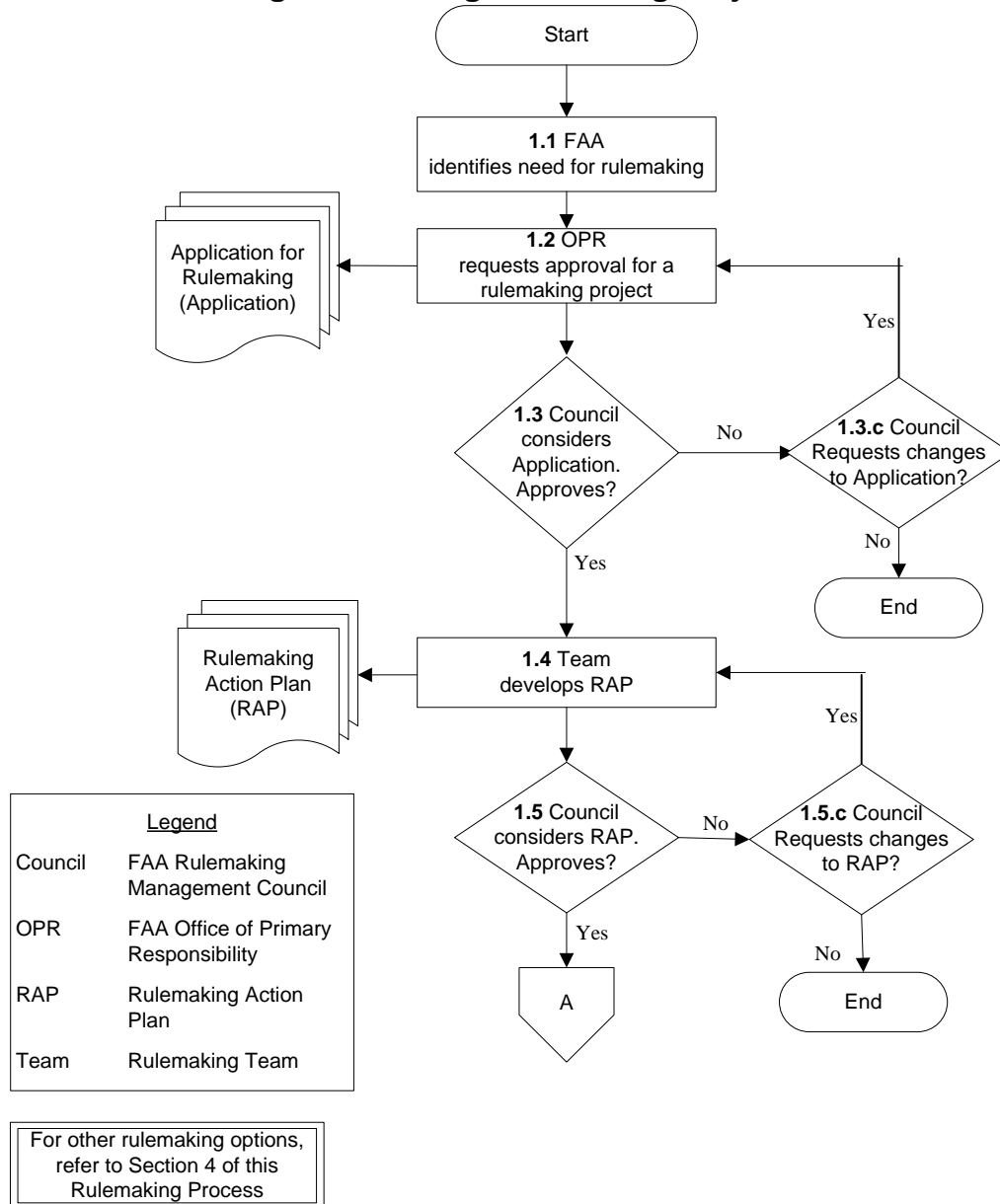
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Rulemaking Process Flowchart Stage 1: Initiating Rulemaking Projects



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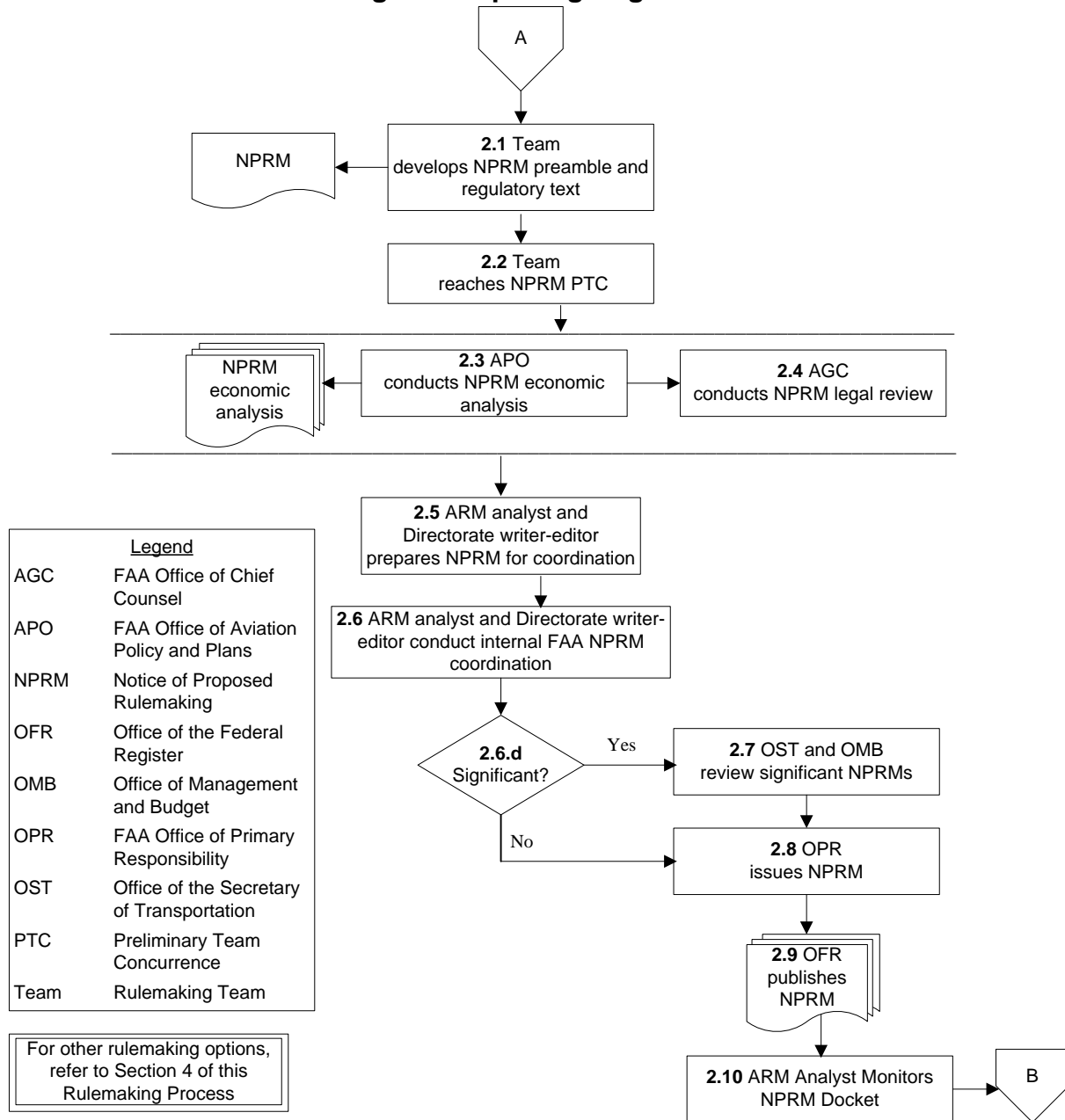
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Rulemaking Process Flowchart Stage 2: Proposing Regulations



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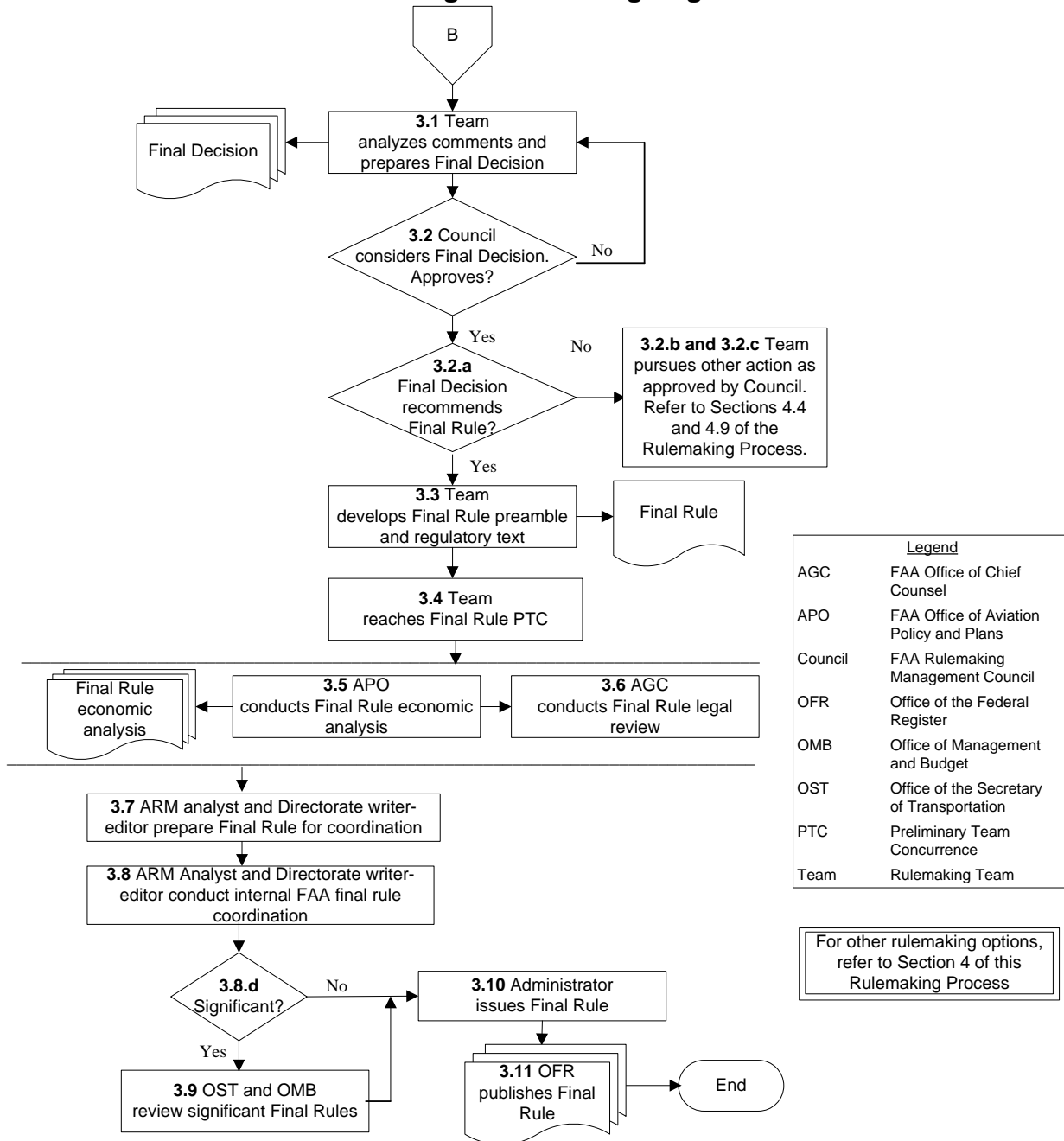
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Rulemaking Process Flowchart Stage 3: Finalizing Regulations




Legend	
AGC	FAA Office of Chief Counsel
APO	FAA Office of Aviation Policy and Plans
Council	FAA Rulemaking Management Council
OFR	Office of the Federal Register
OMB	Office of Management and Budget
OST	Office of the Secretary of Transportation
PTC	Preliminary Team Concurrence
Team	Rulemaking Team

For other rulemaking options, refer to Section 4 of this Rulemaking Process

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Note: For a list of acronyms and terms, refer to Appendix A. For a list of related documents, refer to Appendix B.

1. Initiating Rulemaking Projects (Stage 1)

1.1 FAA Identifies Need for Rulemaking

(a) The FAA identifies potential rulemaking needs in several ways. Triggers for rulemaking action may include:


- Laws passed by Congress;
- National Transportation Safety Board (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 those of other nations;
- Petitions for rulemaking that members of the public submit;
- Exemptions from FAA regulations; and
- Special conditions.

(b) The FAA is responsible for most of Title 14 of the Code of Federal Regulations (14 CFR) parts 1-199 and 400-1199. Rulemaking needs may include actions that remove, amend, or add new regulations to parts of 14 CFR.

(c) FAA executive-level management provides the strategic direction for the FAA rulemaking program. The Rulemaking Management Council (Council) 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 (AGC-200),
- Director of the Office of Aviation Policy and Plans (APO-1), and
- Directors of FAA organizations with rulemaking responsibility.¹

¹ FAA Order 1110.153, Rulemaking Management Council Charter.

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1.2 Office of Primary Responsibility (OPR) Requests Approval for a Rulemaking Project (Application for Rulemaking)

(a) Once the FAA identifies a potential need for rulemaking, the OPR leads the rulemaking effort for the affected part(s) of 14 CFR. The OPR develops an Application for Rulemaking (Application) for consideration by the Council. The Application is used to seek decisions from the Council about beginning a rulemaking project.

(b) The Application is the first of several internal LCDs that are used to request Council approval during the different stages of the Rulemaking Process. Other frequently used LCDs include the Rulemaking Action Plan (RAP) (Section 1.4) and Final Decision document (Section 3.1).

(c) In the Application, the OPR recommends one of several rulemaking documents to pursue. In most cases, the first rulemaking document published in the *Federal Register* is the notice of proposed rulemaking (NPRM). Section 1 (Stage 1) and Section 2 (Stage 2) of this process address initiating and proposing regulatory changes with an NPRM. Section 4 provides information on other rulemaking options.


(d) The OPR uses the Application to define the proposed scope of the project. The Application also includes the OPR's recommendation regarding project significance based on relevant Executive Orders and Department of Transportation (DOT) policy. The Application also asks the OPR to identify guidance material associated with the proposed rulemaking.

1.3 Council Considers Application

(a) The Council meets periodically (usually every 2 months) to consider applications for rulemaking and other LCDs. The Council could take several actions regarding any particular document.

(b) If the Council approves the Application, rulemaking team members are assigned to work with the OPR team lead. A rulemaking team (team) consists of:

- One or more technical experts from the OPR for the part(s) of 14 CFR to be amended;
- An ARM analyst;
- A Directorate writer-editor for projects led by Aircraft Certification Service (AIR) Directorates;

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- An attorney from the Office of the Assistant Chief Counsel for International Law, Legislation, and Regulations (AGC-200) or, if appropriate, an attorney from the Regional Office supporting a Directorate;
- An economist from the Economic Analysis Division (APO-300) in the Office of Aviation Policy and Plans; and
- Representatives from other FAA organizations, as needed.

(c) If the Council does not approve the Application, it may return the Application to the OPR and suggest further development and resubmission. In some cases, the Council may decide to reject the Application and end the process at this point.

1.4 Team Develops the RAP

(a) Once the Council approves the Application, the team works together to develop the RAP, which is another LCD. A well-written RAP:

- Helps the team to conduct a full, robust assessment of the need for rulemaking;
- Requires the team to clearly describe the proposed rule language, preliminary estimated cost and benefit information, and any issues not addressed in the Application; and
- Requires the team to propose a schedule that identifies milestones for rulemaking document drafting, coordination, and issuance.


(b) How the FAA conducts rulemaking is subject to requirements from statutes, Executive Orders, and other sources such as guidance from the Office of Management and Budget (OMB) and the Office of the Secretary of Transportation (OST). The team uses the RAP to demonstrate how a project meets these requirements. A RAP becomes the basis for rulemaking documents, such as an NPRM.

1.5 Council Considers RAP

(a) If the Council approves the RAP, then the FAA considers the rulemaking “initiated” on the date of the Council meeting. The team begins drafting the rulemaking document, such as an NPRM, after the Council approves the RAP, in accordance with the project milestone schedule included in the RAP.

(b) From this point until final rule publication, the FAA:

- Limits communications with non-FAA employees (ex-parte communications);
- Reports projects to DOT; and

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- Makes available certain project information to FAA organizations outside the OPR and to the general public.

(c) If the Council does not approve the RAP, then the Council may return the document to the team for further development. In some cases, the Council may decide to terminate the project at this point.

2. Proposing Regulations (Stage 2)

2.1 Team Develops NPRM Preamble and Regulatory Text

(a) After the Council approves the RAP, the team begins developing the NPRM. An NPRM is a rulemaking document that proposes regulatory changes, deletions, or additions to the CFR. It gives the public an opportunity to comment on those proposed changes, deletions, or additions.

(b) 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 considers the costs and benefits associated with the proposed changes to 14 CFR.

(c) The team must ensure that the scope of the proposed rule does not go beyond the project scope defined in the RAP without Council approval, obtained through an Appendix (refer to Section 4.2).

(d) The attorney ensures that the preamble contains necessary justifications for the proposed regulatory requirements, and the regulatory text is legally sufficient.

2.2 Team Reaches NPRM Preliminary Team Concurrence (PTC)

(a) PTC is the first project milestone tracked to document the progress of the project. The team completes PTC when all team members are satisfied with the overall content of the document, and agree with the concept, direction, and approach the document takes. At PTC, no unresolved policy or legal issues remain that could affect the costs and benefits of the rulemaking.

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(b) The team has enough of the preamble and regulatory text drafted for the economist to begin the economic analysis. Also, 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.

(c) The ARM analyst or Directorate writer-editor, as appropriate, documents PTC in ARM’s rulemaking management information system. FAA management, OST, and others track milestone completion to follow overall project progress.

2.3 APO Conducts NPRM Economic Analysis


(a) As part of the team developing the RAP (refer to Section 1.4), the economist has already estimated preliminary costs and benefits associated with the rulemaking. The economist formally begins work on the economic analysis after the team completes PTC. An economic analysis for a proposed rule must include the following:

- Initial economic analysis;
- Initial Regulatory Flexibility Analysis;
- International Trade Impact Assessment; and
- Unfunded Mandates Assessment.

(b) The economist develops a draft Regulatory Impact Analysis (RIA) document based on the economic analyses, if applicable. The economist prepares a separate summary of the RIA, which is incorporated into the preamble of the rulemaking document. The ARM analyst or Directorate writer-editor, as appropriate, includes the RIA in the rulemaking package during coordination. The ARM analyst makes the RIA available in the public docket after NPRM publication (refer to Section 2.10).

(c) If APO expects the economic impact to be so minimal that the rulemaking does not warrant an RIA, the economist prepares a statement to that effect, including the basis for the statement. The statement is included in the NPRM preamble instead of a summary of the RIA.

(d) The ARM analyst documents completion of the economic analysis in ARM’s rulemaking management information system. FAA management, OST, and others track milestone completion to follow overall project progress.

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2.4 AGC Conducts NPRM Legal Review

(a) While the economist is working on the economic analysis (refer to Section 2.3), the attorney may use this time to address other areas that are part of the attorney’s legal analysis not required for PTC. For example, the attorney may need to consult with other attorneys in AGC that specialize in areas that may be affected by the rule (for example, international or enforcement). Or, the attorney may need to review other regulations to ensure there are no unintended effects of the rule being drafted.

(b) This additional review may result in changes to the NPRM. The attorney completes this legal review; any changes are to be completed by the Council-approved milestone date for economic analysis and legal review.

2.5 ARM Analyst and Directorate Writer-Editor Prepare NPRM for Coordination

(a) The ARM analyst or Directorate writer-editor, if applicable, works with the team to prepare the rulemaking document package for coordination. Preparations include drafting additional documents required for the coordination packages (for example, Executive Summary and transmittal memo) and conducting final editorial and plain language reviews.


(b) The ARM analyst must request designation of the rulemaking as significant or nonsignificant under the requirements of section 3(f) of Executive Order 12866 from OST and OMB before beginning the internal FAA coordination. Internal coordination may proceed prior to a designation response from OST and OMB.

2.6 ARM Analyst and Directorate Writer-Editor Conduct Internal FAA NPRM Coordination

(a) Once the NPRM is ready for coordination, the ARM analyst and Directorate writer-editor, if applicable, initiates internal FAA coordination. The NPRM coordination package must include the Executive Summary, RIA (if applicable), NPRM, and concurrence grid(s).

(b) The ARM analyst facilitates all levels of FAA coordination (except as noted):

- Final Team Concurrence (FTC)—Team members and managers through Division-level (for Directorate-led rulemakings, the Directorate writer-editor facilitates FTC within the Directorate(s) and the ARM analyst facilitates FTC among other offices represented on the team);

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- Director Level Concurrence (DLC)—Office Directors and AGC-200;
- Associate Level and AGC-1 Concurrence (Associate and AGC-1)—Associate or Assistant Administrators, as applicable (including the FAA Assistant Administrator for Public Affairs (AOC-1), as appropriate) and the Chief Counsel; and
- Deputy Administrator (ADA) and Administrator (AOA) Approval.

(c) Reviewers may comment at any level of coordination. The team and management, as appropriate, review the document and approve any substantive changes before the next level of coordination.

(d) After the team has addressed any comments received during ADA and AOA approval, the rulemaking document is ready for either additional review (significant rules) (refer to Section 2.7), or issuance (nonsignificant rules) (refer to Section 2.8).

(e) The ARM analyst documents each internal coordination and approval level in ARM’s rulemaking management information system. FAA management, OST, and others track milestone completion to follow the overall project progress.


2.7 OST and OMB Review Significant NPRMs

(a) If OMB designates a rulemaking as significant, ARM transmits the rulemaking document, RIA, and Executive Summary to OST for review and approval.

(b) OST may provide questions, comments, or both during the rulemaking package review. The team addresses any OST questions or comments, coordinates the FAA response through management, as appropriate, and provides the response to OST.

(c) After approving the rulemaking package and any FAA responses to questions or comments, OST forwards the package to OMB.

(d) OMB reviews the rulemaking package, and circulates it to other executive branch agencies, as appropriate, for comment. OMB may provide questions, comments, or both to the FAA during its review. These questions and comments may come from OMB, other offices within the White House, or other executive branch agencies. The team addresses any questions or comments, coordinates the response through FAA management and OST, as appropriate, and provides the response to OMB.

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(e) After OMB approves the rulemaking package and any FAA responses to questions or comments, the rulemaking is ready for issuance.

(f) The ARM analyst documents completion of OST and OMB reviews in ARM’s rulemaking management information system. FAA management, OST, and others track milestone completion to follow overall project progress.

2.8 OPR Issues NPRM

(a) After the Administrator approves nonsignificant rulemaking projects or OMB approves significant projects, ARM coordinates NPRM issuance with the OPR. Issuance of an NPRM occurs when the designated FAA official, usually the OPR Director, signs the NPRM.

(b) The ARM analyst documents issuance of the NPRM in ARM’s rulemaking management information system. FAA management, OST, and others track milestone completion to follow overall project progress.


2.9 Office of the Federal Register Publishes NPRM

(a) The FAA must publish rulemaking documents in the *Federal Register*.

(b) The ARM analyst documents publication of the NPRM in ARM’s rulemaking management information system. FAA management, OST, and others track milestone completion to follow overall project progress.

2.10 ARM Analyst Monitors NPRM Docket

(a) The Federal Docket Management System (FDMS) is an electronic database that stores information and provides the official public record of material. Each rulemaking project has its own docket within FDMS. This is where the public submits comments during the comment period, and the FAA continues to post information relevant to the rulemaking throughout the life of the project. The NPRM directs the public to the appropriate docket in FDMS to submit comments.

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(b) The ARM analyst ensures that the NPRM, RIA (if applicable), any associated guidance material, and other supporting documents (for example, studies or recommendations referenced in the preamble) are posted in the public docket for comment after *Federal Register* publication.

(c) The team monitors the docket for public comments throughout the comment period, and may begin reviewing comments as soon as they are received.

2.11 Extending or Reopening the Comment Period

(a) From time to time, the FAA may decide to extend or reopen a comment period in response to a request from a member of the public or other interested party. This occurs most often when the NPRM is lengthy, complex, or particularly sensitive. To extend or reopen the comment period, the FAA must publish a notice in the *Federal Register*.

3. Finalizing Regulations (Stage 3)


3.1 Team Analyzes Comments and Prepares Final Decision Document

(a) At the close of the comment period, the team prepares a Final Decision document in preparation for Council consideration. The Final Decision document is another LCD used during the Rulemaking Process. The Final Decision document requires the team to:

- Summarize issues that commenters raise;
- Recommend disposition of the comments;
- Request Council approval to proceed with the final rule or other document; and
- Propose a schedule of milestones for drafting, coordinating, and issuing the final rule.

(b) The Final Decision document, the NPRM, and the public comments received serve as the basis for the final rule.

(c) In some cases, the team may recommend in the Final Decision document that the agency withdraw the NPRM (refer to Section 4.9) or publish a Supplemental Notice of Proposed Rulemaking (SNPRM) (refer to Section 4.4).

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3.2 Council Considers Final Decision Document

- (a) If the Council approves a Final Decision document that recommends proceeding with a final rule, the team develops and coordinates the final rule.
- (b) If the Council approves a Final Decision document that recommends withdrawing the NPRM, the project ends with publication of a Withdrawal notice in the *Federal Register* (refer to Section 4.9).
- (c) If the Council approves a Final Decision document that recommends an SNPRM, the team prepares an SNPRM in accordance with Section 4.4. of this Rulemaking Process.
- (d) If the Council does not approve the Final Decision document, the Council usually returns the Final Decision document to the team for further development.

3.3 Team Develops Final Rule Preamble and Regulatory Text


- (a) After the Council approves the Final Decision document, the team begins developing the final rule. Like an NPRM, each final rule must contain a preamble, regulatory text, and an economic analysis.
- (b) 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.
- (c) When drafting the final rule, the team must not go beyond the project scope defined in the Final Decision document without Council approval, obtained through an Appendix (refer to Section 4.2).

3.4 Team Reaches Final Rule PTC

- (a) Final rule PTC requirements are identical to the criteria for NPRM PTC (refer to Section 2.2).

3.5 APO Conducts Final Rule Economic Analysis

- (a) The economist formally begins work on the economic analysis after the team reaches PTC on the final rule. The economic analysis estimates the costs and benefits associated with the final rule, and

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considers any substantive public comments received relating to the costs and benefits presented in the NPRM.

(b) The economist develops a final RIA document for most projects. The economist also prepares a summary of the RIA, which is included in the preamble of the rulemaking document. The ARM analyst or Directorate writer-editor, as appropriate, includes the RIA in the rulemaking package during coordination. The RIA is available to the public after final rule publication.

(c) If APO expects the economic impact to be so minimal that the rulemaking does not warrant an RIA, the economist prepares a statement to that effect, including the basis for the statement. The statement is included in the final rule preamble instead of a summary of the RIA.

(d) The ARM analyst documents completion of the final rule economic analysis in ARM’s rulemaking management information system. FAA management, OST, and others track milestone completion to follow overall project progress.

3.6 AGC Conducts Final Rule Legal Review

(a) Final rule legal review is identical to NPRM legal review (refer to Section 2.4).


3.7 ARM Analyst and Directorate Writer-Editor Prepare Final Rule for Coordination

(a) Preparing a final rule for coordination is identical to preparing an NPRM for coordination (refer to Section 2.5).

3.8 ARM Analyst and Directorate Writer-Editor Conduct Internal FAA Final Rule Coordination

(a) Once the final rule is ready for coordination, the ARM analyst and Directorate writer-editor (if applicable) initiates internal FAA coordination. The final rule coordination package must include the Executive Summary, RIA (if applicable), final rule, and concurrence grid(s). Usually, the final rule coordination package also includes a copy of the NPRM as published in the *Federal Register*.

(b) The ARM analyst facilitates all levels of coordination (except as noted):

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- FTC (for Directorate-led rulemakings, the Directorate writer-editor facilitates FTC within the Directorate(s) and the ARM analyst facilitates FTC among other offices represented on the team);
- DLC;
- Associate and AGC-1 Concurrence (including AOC-1, as appropriate); and
- ADA and AOA Approval.

(c) Reviewers may comment at any level. The team and management, as appropriate, must approve any substantive changes before the next level of coordination.

(d) After the team has addressed any comments received during AOA approval, the rulemaking document is ready for either additional review (significant rules) or issuance (nonsignificant rules).

(e) The ARM analyst documents completion of each internal coordination and approval level in ARM's rulemaking management information system. FAA management, OST, and others track milestone completion to follow overall project progress.

3.9 OST and OMB Review Significant Final Rules

(a) OST and OMB reviews of a significant final rule are identical to reviews for a significant NPRM (refer to Section 2.7).


3.10 Administrator Issues Final Rule

(a) ARM coordinates final rule issuance with AOA. Issuance of a final rule occurs when the Administrator signs the final rule.

(b) The ARM analyst documents issuance of the final rule in ARM's rulemaking management information system. FAA management, OST, and others track milestone completion to follow overall project progress.

3.11 Office of the Federal Register Publishes Final Rule

(a) The FAA must publish rulemaking documents in the *Federal Register*. The ARM analyst documents publication of the final rule in ARM's rulemaking management information system. FAA management, OST, and others track milestone completion to follow overall project progress.

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4. Other Rulemaking Options

Note: While the majority of rulemaking projects follow the process flowchart -- Stage 1: Initiating Rulemaking Projects, Stage 2: Proposing Regulations, and Stage 3: Finalizing Regulations -- some projects do not follow the traditional lifecycle. This section discusses some of the alternative documents or processes that may be used in these circumstances.

Note: An OPR should consult ARM management or an ARM analyst when the OPR believes that the documents and processes discussed in this section may be appropriate. This is because these documents and processes do not follow the standard Rulemaking Process discussed in Sections 1-3 of this document.

4.1 High-Profile Expedited Project (HPEP)

(a) 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.


(b) The steps for initiating regulatory changes as an HPEP vary from what is addressed in Stage 1 (Section 1) of the Rulemaking Process. Unlike the standard Rulemaking Process that has three LCDs (Application, RAP, and Final Decision document); the HPEPs only have two LCDs (Initiation of HPEP (IHPEP) and Resolution of HPEP (RHPEP)). The IHPEP consolidates the information requested in the Application and RAP. The RHPEP is similar to the Final Decision document.

(c) HPEPs require Council approval once before initiating rulemaking. Unlike standard rulemaking projects that go to the Council twice before initiating rulemaking, the HPEP is considered initiated upon Council approval of the IHPEP.

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

(a) 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 unforeseen circumstances. When this happens, the team prepares an Appendix document to amend the appropriate LCD. The Appendix is another LCD that is coordinated through management and submitted for Council approval.

(b) 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

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an Appendix to propose a change in the type of rulemaking document under development; for example an SNPRM (refer to Section 4.4).

(c) When proposed project changes are beyond the team’s control and require schedule adjustments, the Council may decide to “rebaseline” the project milestones to a new schedule proposed by the team.

4.3 Advance Notice of Proposed Rulemaking (ANPRM)

(a) The FAA may issue an ANPRM to obtain information from the public that may assist in either developing an NPRM or determining that rulemaking is not appropriate.

(b) An ANPRM informs the public that the FAA is considering rulemaking on a specific subject matter and asks for written comments from the public. The ANPRM often seeks input regarding changes the FAA is contemplating, sometimes providing options or asking a series of questions intended to gather further information before proceeding with rulemaking.

(c) 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.


(d) If the FAA decides to move forward with rulemaking, it must follow the ANPRM with an NPRM. The steps for initiating and proposing regulatory changes using an ANPRM are similar to what is addressed in Stages 1 and 2 of this Rulemaking Process. However, the first document is an ANPRM instead of an NPRM and the NPRM would address the substantive comments received from the ANPRM.

4.4 Supplemental Notice of Proposed Rulemaking (SNPRM)

(a) An SNPRM allows the public to comment on changes to an NPRM’s scope or language before the FAA issues the final rule.

(b) The FAA may issue an SNPRM if it:

- Needs more information on an issue based on comments received; or

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- Decides to take an approach that is beyond the scope of what was originally proposed in an NPRM.

(c) 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 economist may need to revise the economic analysis conducted for the NPRM and respond to comments received regarding that initial economic analysis.

4.5 Final Rule with Request for Comments

(a) 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’s) “good cause” exception. This allows the FAA to both issue and implement the rule quickly, where justified, and provide opportunity for public comment.


(b) The FAA may revise the final rule based on the public comments received.

4.6 Direct Final Rule

(a) 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.

(b) 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.

(c) 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*. 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.

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(d) 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.

4.7 Correction

(a) 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.

(b) 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 Office of the Federal Register.

(c) The FAA publishes corrections in the *Federal Register*. Examples of inaccurate information that may be appropriate for a correction include:


- Typographical errors;
- Incorrect or missing amendment number, notice number, or regulation identifier number (RIN);
- Inaccurate amendatory instructions; and
- Incorrect preamble material.

4.8 Technical Amendment

(a) 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.

(b) The words “technical amendment” have 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

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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.

(c) The FAA publishes technical amendments in the *Federal Register*.

4.9 *Withdrawal*

(a) A notice of withdrawal allows the FAA to withdraw an ANPRM, NPRM, SNPRM, final rule, 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.


(b) 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.

(c) The FAA publishes notices of withdrawal in the *Federal Register*.

4.10 *Short Simple Project (SSP)*

(a) 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 SSP handling only if the project requires minimal rulemaking resources, has minimal economic impact, and is nonsignificant under OST and OMB criteria.

(b) SSP handling does not result in an NPRM. Although some projects may meet the criteria for SSP handling, an OPR may instead elect to follow the full Rulemaking Process and publish an NPRM before publishing a final rule. In this case, the project does not follow SSP handling and instead is considered a regular rulemaking project.

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4.11 Aircraft Certification NPRM Delegated Signature Authority

(a) On October 13, 2010, the Administrator authorized the Director of the Aircraft Certification Service (AIR-1) to issue certain NPRMs for public comment after completion of Director-level concurrence by ARM, APO, and AGC. 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) 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)).

(b) 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 this Rulemaking Process.

(c) If the FAA decides to pursue rulemaking because of a Petition for Rulemaking, this Rulemaking Process would then apply.


Rulemaking Process Measures

[Key Performance Indicators \(KPIs\) are located on the KPI / Measures SharePoint Site Page on the AVS QMS SharePoint Site](#)

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Appendix A: List of Acronyms and Terms

ADA	FAA Office of the Deputy Administrator
AFS	FAA Flight Standards Service
AGC	FAA Office of the Chief Counsel
AGI	FAA Office of Government and Industry Affairs
AIR	FAA Aircraft Certification Service
ANPRM	Advance notice of proposed rulemaking
AOA	FAA Office of the Administrator
AOC	FAA Office of Communications
APA	Administrative Procedure Act
APO	FAA Office of Aviation Policy and Plans
ARM	FAA Office of Rulemaking
AVS	FAA Aviation Safety Organization
CFR	Code of Federal Regulations
Council	FAA Rulemaking Management Council
DLC	Director Level Concurrence
DOT	Department of Transportation
FAA	Federal Aviation Administration
FDMS	Federal Docket Management System
FTC	Final Team Concurrence
HPEP	High-Profile Expedited Project
LCD	Rulemaking Lifecycle Document
NPRM	Notice of proposed rulemaking
NTSB	National Transportation Safety Board
OMB	Office of Management and Budget
OPR	FAA Office of Primary Responsibility
OST	Office of the Secretary of Transportation
PTC	Preliminary Team Concurrence
QMS	Quality Management System
RAP	Rulemaking Action Plan
RIA	Regulatory Impact Analysis
RIN	Regulation Identifier Number
SB&P	FAA Strategy, Budget, and Planning Committee
SNPRM	Supplemental notice of proposed rulemaking
SSP	Short, Simple Project
Team	Rulemaking team

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Appendix B: Related Documents

- FAA Order 1110.153, FAA Rulemaking Management Council Charter (current version)
- ARM-002-001-W1, Rulemaking Process Work Instructions
- AIR-002-039, AIR Delegation of Signature Authority