

The Aviation Regulatory Process

Christina Wall

Professor, Aviation Flight Technology/Aviation Management
Eastern Michigan University

The Aviation Regulatory Process

- Topics covered:
 - Who influences the FAA regulatory process?
 - How does a bill become a law?
 - Which committees in Congress address aviation issues?
 - Which laws govern the rulemaking process?
 - What is the informal rulemaking process?
 - What advisory committees augment the rulemaking process?
 - What are the regulatory responsibilities of the FAA?

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- Who influences the FAA regulatory process?
 - **Congress:** A law can be passed by Congress and the President which requires the FAA to create a regulation that facilitates compliance with the law.
 - Airline Safety and Federal Aviation Administration Extension Act of 2010
 - **Special interest groups:** The FAA creates a regulation based on internal/industry-driven reasons, such as a proactive approach to potential safety issues or a response to a new, currently unregulated sector of the industry.
 - Small UAS Notice to Proposed Rulemaking
 - **Other government agencies:** The FAA creates a regulation based on recommendations by the NTSB, for example.
 - Required fire detection for Cargo D holds based on NTSB recommendations made after the ValuJet accident in 1998.

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- How does a bill become a law?
 - Bills can originate in either the House (H.R.) or Senate(S.). Bills for raising revenue originate in the House.
 - 435 representatives, based on state populations, serve two year terms
 - 100 senators, two per state, serve staggering 6-year terms
 - Committees allow House Representatives and Senators to specialize (see next slide for specific committees)
 - Bills go back and forth between the House and the Senate until they are agreed upon and passed.
 - Once passed, the bill goes onto the President to pass or veto.
 - If the President passes the bill, it becomes a law.
 - The law can mandate the FAA to write regulations for compliance.

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Committees in Congress specifically address aviation issues:

- Senate:
 - Senate Committee on Commerce, Science and Transportation
 - Subcommittee on Aviation Operations, Safety and Security
- House:
 - House Committee on Transportation and Infrastructure
 - Subcommittee on Aviation

Adamski, 2012

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- Regardless if the FAA is responding to a passed law or creating a regulation for other reasons (such as industry interest or NTSB recommendations), the following laws govern the rulemaking process:
 - Administrative Procedures Act of 1946:
 - Laid out basic procedures for informal rulemaking, including the Notice to Proposed Rulemaking process.
 - Regulatory Flexibility Act of 1980:
 - Requires consideration of smaller companies when making regulations.
 - Unfunded Mandate Reforms Act of 1995:
 - If a final includes a federal mandate resulting in the expenditure by state or local governments or by the private sector to exceed \$100 million, the FAA must prepare an unfunded mandate assessment.
 - Small Business Regulatory Enforcement Fairness Act of 1996
 - Requires the FAA to provide compliance guides explaining the actions that a small entity may take to comply with the rules.

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- Process of informal rulemaking: **Initiation, Proposal, Final Rule**
(Some rules can bypass this informal rulemaking process)
 - **Initiation:** The FAA identifies need.
 - Laws passed by Congress, NTSB recommendations, availability of new technology, changes in airline operations, etc.
 - FAA must determine if there is an alternative and do a cost/benefit analysis.
 - **Proposal:** The FAA determines significance and creates NPRM.
 - Significance determined by annual economic effect, interference with other agencies, level of interest, level of controversy, congressional mandate.
 - Certain conditions require analysis in the proposal phase.
 - NPRM/ANPRM is created by the Rulemaking Team.
 - Comment period typically lasts 30-60 days; rulemaking team reads through all comments, responds to significant comments and agrees on how the NPRM may be changed.

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- Process of informal rulemaking: **Initiation, Proposal, Final Rule, continued...**
 - **Final Rule:** FAA issues the final rule.
 - FAA must act on NPRM within 16 months – issue a final rule, a supplemental NPRM or a notice of withdraw of the NPRM.
 - After final concurrence from Rulemaking Team, final approval goes through the FAA Deputy Administrator, the FAA Administrator, then Office of the Secretary of Transportation and the Office of Management and Budget Approval (if required).
 - Becomes a final rule when it is signed by the FAA Administrator.
 - Major final rules go to Congress for review
 - Cannot be made effective in fewer than 30 days (60 days for major final rules) unless under certain circumstances (Adamski, 2012).

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- Advisory program to augment the FAA rulemaking process consists of two committees:
 - Aviation Rulemaking Advisory Committee (ARAC)
 - Falls under requirements of the Federal Advisory Committee Act (FACA) of 1972
 - Formal standing advisory committee made up of representatives from aviation associations, aviation industry, public interest groups, advocacy groups and interested members of the public (Adamski, 2012, p.174)
 - Aviation Rulemaking Committee (ARC)
 - Does not fall under the requirements of the FACA
 - FAA will assign tasks to an ARC instead of the ARAC for various reasons (Adamski, 2012).

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- Five major regulatory responsibilities of the FAA:
 - Aviation Safety and Operations
 - Certification of airman, aircraft and airports
 - Commercial Space Transportation
 - Airport and Airway fees and charges
 - Requirements for foreign carriers operating in the US and US owned aircraft outside of the US (Adamski, 2012, p.193).

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Reference

Adamski, A. (2012). *Pathways to Compliance: A Systems Approach to the U.S. Aviation Regulatory System*. Plymouth, MI: Hayden-McNeil Publishing.

With sincere appreciation to Tony Adamski for allowing us to cite his text.