

NBAA MEMBER RESOURCE: Writing Comments to Federal Regulatory Proposals

Short of learning how to land in a stiff crosswind, writing comments to a federal rulemaking proposal is likely one of the most difficult things a business aviation operator can undertake. Unlike “hangar flying,” where new pilots can learn from seasoned experts, people rarely get together to share stories about their best legal arguments to prevent bad rules. There are many turns on the rulemaking road that are out of public view, which makes the few visible moments even more important to those in the aviation community who want to have their voices heard by Washington’s regulatory agencies.

A key component of any regulatory agency’s rulemaking process is to solicit input from the public. NBAA can help you develop a constructive response to proposed rules that could ultimately affect the way you use or operate your company aircraft.

Effective and valuable comments to a federal rulemaking proposal cover a few key points. These include your standing as a commenter, major issues, your specific concerns, the cost impact to you and any alternatives or suggestions you identify. Each of these points is covered in depth by this NBAA resource.



This guide will help you to analyze, develop and articulate a constructive and valuable response to rules that could ultimately affect the way you use or operate your company aircraft.

STANDING

Standing refers to your basis for submitting comments. As an operator of an aircraft, you have “standing” when the Federal Aviation Administration, Transportation Security Administration, Internal Revenue Service, Customs and Border Protection or any other government agency wants to change existing rules or implement new rules that directly affect your ownership or operations of that aircraft. Ask yourself, “Why do I care?” Use your answer to describe your standing.

Here are some points to consider including in your comments:

- » Are you a pilot? If so, how long have you been flying? What aircraft have you flown? Have you flown aircraft covered by the proposal?
- » Are you an aviation maintenance technician? If so, how long have you been involved in aircraft repair? Which airframes/powerplants/avionics platforms have you repaired? Have you repaired aircraft covered by the proposal?
- » Do you own or operate an aircraft? How long have you owned or operated aircraft? How many aircraft do you operate? Do you have a spotless safety record? Where do you fly these aircraft, in a general sense (domestic/international)?

MAJOR ISSUES

As with any regulatory proposal, there are bound to be some elements on which you have a very strong opinion, either for or against. After a review of the document, identify those elements that would have the most significant impact on your operation. For example:

- » Are there fundamental problems with what was proposed beyond the technical elements?
- » Does the proposal contain a requirement to install a piece of equipment that is either too expensive or too costly to maintain?
- » Does the proposal contain a new process that is overly burdensome?
- » Does the proposal provide any alleviation or efficiencies that reduce your workload, regulatory burden or compliance costs?

It is important to describe in as much detail as possible the reasons for your concerns. While you may have read the government’s lengthy and articulate explanations as to why this solution is in your (or their) best interest, the rule writers and analysts often fail to completely determine the affects of the rule. Do not let incomplete or inaccurate descriptions of the effect of a proposal on your operation go unchallenged.

In order to change a proposal, the government must see, through your comments, that its estimates were wrong and that the rule requires modification.

Not every proposed rule (or every portion of a proposed rule) is detrimental or burdensome. If the vast majority of a rule makes you cringe, but you view one element as a positive change, be sure to include your support of it in your comments and provide details about the beneficial effects. For example:

- » Will this section of the proposed rule save you time, money, or resources, while maintaining an acceptable level of safety/security/compliance?
- » Does the portion of the rule in question acknowledge an existing common process or best practice in your industry?
- » Does this section harmonize with international requirements or practices, making your operation more efficient?

Remember, the agency that drafted the proposed rule can alter any portion of the proposal before a final rule is published – even the “good stuff.” If the proposing agency receives no feedback on sections that you feel are positive changes, the agency might not understand the beneficial impact of those sections, and they could be removed or changed before you would ever reap the benefits.

SPECIFIC CONCERNS

Beyond the major concerns you identified earlier, you will likely find additional elements of the proposal that also require comment. Sometimes these additional issues add up to a rather hefty price tag or burden. Identify those specific proposals that, among other requirements, will:

- » Require you to spend more resources on:
 - Personnel time
 - Equipment
 - Training
 - Recordkeeping
- » Change processes and procedures that do not enhance safety or security
- » Require changes that just don’t seem to make sense

COST CONSEQUENCES

Every change in federal regulations involves cost consequences. Sometimes these will benefit the way you operate due to increased flexibility and reduced burdens. Usually, however, changes will require added costs. Effective and valuable comments to regulatory proposals contain as much information as possible about the financial consequences of a proposal on an individual or a company.

While it's important to characterize the broader impacts of a proposal on your operation, real value will come from providing real financial numbers that you would use for an analysis in any other part of your business. The government uses federally defined guidelines when it attempts to determine the cost of human lives (in areas where rules will reduce human losses, such as safety improvements), the average hourly wage rate, equipment acquisition and installation costs and other estimates for its analysis. Believe it or not, the government has determined that you are worth about \$2.7 million when calculating the cost of preventing human casualties.

Most of the time, these federal guidelines will substantially underestimate the regulatory costs for aviation rulemaking. Often, this will result in the actual cost estimates for a proposed rule being orders of magnitude more expensive than the government estimated. This is why it is important for your comments to include estimates for your company to comply with a proposal. Elements to consider include:

- » The hourly rate that you would pay your employees involved in the complying with the rule. For your salaried employees, divide their annual salary by 2,080 (the number of work hours in a calendar year) to determine an hourly wage rate.
- » The hourly rate you would pay for service on your aircraft.
- » The hourly rate you would pay to have your personnel trained to comply with the new rule.
- » The hourly fully allocated operating costs of your aircraft as it relates to changes in how you operate your aircraft.
- » The hourly rate you would pay for any external contractors (advisors, legal reviews, experts) to assist with your compliance.

All of these elements and other cost consequences when included in your comments provide the needed evidence to warrant changes to a regulatory proposal.

ALTERNATIVES

It's nearly impossible for the government to have detailed knowledge of every aspect of your businesses and how you operate aircraft. What's included in any regulatory proposal is an educated determination of the solution the government believes will address a specific problem. Often, there are alternatives to achieve the outcome desired by the regulator while reducing the burden on you.

Your comments should spend a little time focusing on any possible alternatives that you feel could achieve the same outcome while reducing your costs. Sometimes there simply are no alternatives that make sense. But where there are,

suggesting rational alternatives that make sense and cost less often results in a final rule with reduced burden.

Alternatives should include any specifics of how it would achieve the goals defined by the proposed rule, financial details, any identified benefits and why your alternative is better for your company and the public. An alternative that costs less – for you and/or the government – than the proposed regulation is especially difficult for the agency to defend its proposed position against. Remember, an agency has to justify the costs associated with each proposed rule. Any financial information you provide that is contrary to the agency's figures or presents a more financially sound alternative is particularly valuable to the process.

SUBMITTING YOUR COMMENTS

Now that you've fully described your standing, major issues and specific concerns with the proposal and provided your cost consequences and alternatives, it's time to submit these to the docket. The docket is a publicly viewable database of all comments submitted responding to a particular regulatory proposal.

The government has centralized its regulatory development process and now tracks all proposed changes for every government agency through a single web site, **www.regulations.gov**. This web site will allow you to submit your comments online. You also may choose to submit your comments via U.S. postal mail at the address provided in the proposal.

A key piece of information you'll need to ensure that you submit your comments to the correct location is the regulatory docket number. The government includes this number in its proposal and you will use it to find the docket on the web site. Each agency has a slightly different system for identifying its regulatory proposals, so be sure to use the exact information provided in the proposal.

Once you have identified the correct docket, you will have the option of providing all the necessary information (name, company, address, etc.) needed in case the agency needs to follow up with you regarding information provided in your comments. Most of the time, you'll never hear from the agency, but sometimes your information may require additional clarification. The government has the authority to reach out for additional clarifying information once the comment period has closed.

You can choose to submit either the text of your comments or upload a file, such as a PDF or Word document, to ensure the government receives your comments in the form you desire. PDF files tend to work best because they remove the chance that anything could alter your comments after submission.

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Change to regulatory proposals can occur only through participation by affected individuals and companies like yours.

After uploading your comments, the system will issue you an electronic receipt acknowledging your submission. It may take two to three days before you find your comments on the docket.

WHAT'S NEXT

Once the comment period closes, the government will review all of the submissions and determine if the comments warrant a change. There could be one of several possible outcomes based on the information submitted by the public. They include:

- » A complete withdrawal of the proposal
- » A revised proposal with significantly different requirements and subject to another comment period
- » A final rule with a mandatory compliance timeline

This process can take anywhere from six months for a very small, uncomplicated proposal to several years for a proposal that affects a large number of individuals or companies.

Change to regulatory proposals can occur only through participation by affected individuals and companies like yours. You can receive further information on specific aviation regulatory proposals by contacting NBAA at (202) 783-9000 or info@nbaa.org.

ABOUT NBAA

Founded in 1947 and based in Washington, DC, the National Business Aviation Association (NBAA) is the leading organization for companies that rely on general aviation aircraft to help make their businesses more efficient, productive and successful. The Association represents more than 8,000 Member Companies of all sizes and located across the country. Join NBAA today by calling (800) FYI-NBAA or visiting www.nbaa.org/join.