

APPENDIX 1 TO PART 11—ORAL COMMUNICATIONS WITH THE PUBLIC DURING RULEMAKING

1. What is an *ex parte* contact?

“*Ex parte*” is a Latin term that means “one sided,” and indicates that not all parties to an issue were present when it was discussed. An *ex parte* contact involving rulemaking is any communication between FAA and someone outside the government regarding a specific rulemaking proceeding, before that proceeding closes. A rulemaking proceeding does not close until we publish the final rule or withdraw the NPRM. Because an *ex parte* contact excludes other interested persons, including the rest of the public, from the communication, it may give an unfair advantage to one party, or appear to do so.

2. Are written comments to the docket *ex parte* contacts?

Written comments submitted to the docket are not *ex parte* contacts because they are available for inspection by all members of the public.

3. What is DOT policy on *ex parte* contacts?

It is DOT policy to provide for open development of rules and to encourage full public participation in rulemaking actions. In addition to providing opportunity to respond in writing to an NPRM and to appear and be heard at a hearing, DOT policy encourages agencies to contact the public directly when we need factual information to resolve questions of substance. It also encourages DOT agencies to be receptive to appropriate contacts from persons affected by or interested in a proposed action. But under some circumstances an *ex parte* contact could affect the basic openness and fairness of the rulemaking process. Even the appearance of impropriety can affect public confidence in the process. For this reason, DOT policy sets careful guidelines for these contacts. The kind of *ex parte* contacts permitted and the procedures we follow depend on when the contact occurs in the rulemaking process.

4. What kinds of *ex parte* contacts does DOT policy permit before we issue an ANPRM, NPRM, Supplemental NPRM, or immediately adopted final rule?

The DOT policy authorizes *ex parte* contacts that we need to obtain technical and economic information. We need this information to decide whether to issue a regulation and what it should say. Each contact that influences our development of the regulation is noted in the preamble. For multiple contacts that are similar, we may provide only a general discussion. For contacts not discussed in the preamble, we place a report discussing

each contact or group of related contacts in the rulemaking docket when it is opened.

5. Does DOT policy permit *ex parte* contacts during the comment period?

No, during the comment period, the public docket is available for written comments from any member of the public. These comments can be examined and responded to by any interested person. Because this public forum is available, DOT policy discourages *ex parte* contacts during the comment period. They are not necessary to collect the information the agency needs to make its decision.

6. What if the FAA believes it needs to meet with members of the public to discuss the proposal?

If the FAA determines that it would be helpful to invite members of the public to make oral presentations to it regarding the proposal, we will announce a public meeting in the FEDERAL REGISTER.

7. Are any oral contacts concerning the proposal permitted during the comment period?

If you contact the agency with questions regarding the proposal during the comment period, we can only provide you with information that has already been made available to the general public. If you contact the agency to discuss the proposal, you will be told that the proper avenue of communication during the comment period is a written communication to the docket.

8. If a substantive *ex parte* contact does occur during the comment period, what does FAA do?

While FAA tries to ensure that FAA personnel and the public are aware of DOT policy, substantive *ex parte* contacts do occasionally occur, for example, at meetings not intended for that purpose. In such a case, we place a summary of the contact and a copy of any materials provided at the meeting in the rulemaking docket. We encourage participants in such a meeting to file written comments in the docket.

9. Does DOT policy permit *ex parte* contacts the comment period has closed?

DOT policy strongly discourages *ex parte* contacts initiated by commenters to discuss their position on the proposal once the comment period has closed. Such a contact at this time would be improper, since other interested persons would not have an opportunity to respond. If we need further information regarding a comment in the docket, we may request this from a commenter. A record of this contact and the information provided is placed in the docket. If we need to make other contacts to update factual information, such as economic data, we will disclose this information in the final rule