

This is being submitted as it relates to the FAA's rulemaking activities in adopting a Final Rule based on the NPRM published on December 31, 2019 that provided for public comment until March 2, 2020 but otherwise denied an extension of that comment period.

The FAA has repeatedly engaged in ex parte conversations, meetings, and other communications with the public, government entities, and businesses on the subject of the rulemaking after the NPRM was filed. These activities suggest that communications made privately may or will influence the agency in its Final Rule.

These communications, whether or not having actual influence, prevent the public from being able to reply effectively to the information that was presented privately to the FAA so the FAA could make a fully informed decision affecting the safety and security of the national airspace. It is possible someone in the public could have pointed out some serious life-threatening safety and security flaws that were not previously identified and to forgo this opportunity is arbitrary, capricious, and an abuse of discretion.

Furthermore, the Administrative Procedures Act and the Due Process Clause requires notice; however, we have no notice of what has been presented to the FAA or relied on privately by the FAA which made its way into the final rule.

Not disclosing everything creates the appearance there is one administrative record for the public and this court and another for the FAA. The mere appearance of ex parte raises questions as to whether the final rule was based upon public comments or secret meetings and secret documents. The FAA just needs to make some public argument for the reason why they arrived at their decisions while keeping secret the true primary reason. Communications outside the record seriously frustrate any meaningful judicial review as judges will not ever know what was really relied upon in deciding. This also frustrates any review under the Congressional Review Act.

This raises serious questions of fairness. The undermining of the fairness of the rulemaking process erodes the FAA's ability to protect the safety of the national airspace. Many individuals will feel victimized and disenfranchised and therefore justified in not complying with the rules. How is anyone supposed to respect the FAA when the FAA is clearly violating their own rulemaking procedures?

Such improper and unfair ex parte contacts include, but are not limited, to the following actual related out-of-record contacts: the remote ID cohort, the secret meeting at the FBI Academy, and Jay Merkle's presentation at the Drone Advisory Committee.

The final shaping of the rules may have been by compromised among the contending industry forces, rather than by exercise of the FAA's independent discretion for the public interest.

We are asking that the FAA pause the rulemaking, disclose all of the ex parte events with summaries of those discussions, disclose all of the ex parte documents, allow the public to comment, and then proceed ahead.