

SUBCHAPTER B—PROCEDURE

PART 404—REGULATIONS AND LICENSING REQUIREMENTS

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AUTHORITY: 49 U.S.C. 70101–70121.

SOURCE: Docket No. 43810, 53 FR 11013, Apr. 4, 1988, unless otherwise noted.

Subpart A—General

§ 404.1 Scope.

Under 49 U.S.C. 70105, this part establishes procedures for issuing regulations to implement the provisions of 49 U.S.C. Subtitle IX, chapter 701, and for eliminating or waiving requirements of Federal law otherwise applicable to the licensing of commercial space transportation activities under 49 U.S.C. Subtitle IX, chapter 701.

[Doc. No. FAA–1999–5535, 65 FR 56657, Sept. 19, 2000]

§ 404.3 Filing of petitions to the Associate Administrator.

(a) Any person may petition the Associate Administrator to issue, amend, or repeal a regulation to eliminate as a requirement for a license any requirement of Federal law applicable to commercial space launch and reentry activities and the operation of launch and reentry sites or to waive any such requirement in the context of a specific application for a license.

(b) Each petition filed under this section shall:

(1) Be submitted in duplicate to the Documentary Services Division, Attention Docket Section, Room 4107, U.S. Department of Transportation, 400 Sev-

enth Street, SW., Washington, DC 20590;

(2) Set forth the text or substance of the regulation or amendment proposed, the regulation to be repealed, or the licensing requirement to be eliminated or waived;

(3) In the case of a petition for a waiver, explain the nature and extent of the relief sought;

(4) Contain any facts, views, and data available to the petitioner to support the action requested; and

(5) In the case of a petition for a waiver, be submitted at least 60 days before the proposed effective date of the waiver unless good cause for later submission is shown in the petition.

(c) A petition for rulemaking filed under this section shall contain a summary, which the Associate Administrator may cause to be published in the FEDERAL REGISTER, which includes:

(1) A brief description of the general nature of the action requested; and

(2) A brief description of the pertinent reasons presented in the petition for instituting the rulemaking.

[53 FR 11013, Apr. 4, 1988, as amended by Amdt. 404–1, 65 FR 56657, Sept. 19, 2000; Amdt. 404–2, 68 FR 35289, June 13, 2003]

§ 404.5 Action on petitions.

(a) *General.* No public hearing, argument or other proceeding is held on a petition before its disposition under this section.

(b) *Grants.* In the case of a petition for a waiver, the Associate Administrator may grant the waiver if the Associate Administrator determines that the waiver is in the public interest and will not jeopardize public health and safety, the safety or property, or any national security or foreign policy interest of the United States. In all other cases, if the Associate Administrator determines that the petition contains adequate justification, the Associate Administrator initiates a rulemaking action under Subpart B of this part.

(c) *Denials.* If the Associate Administrator determines that the petition does not justify initiating rulemaking action or granting the waiver, the petition is denied.

(d) *Notification.* Whenever the Associate Administrator determines that a petition should be granted or denied, the petitioner is notified of the Associate Administrator's action and the reasons supporting it.

[53 FR 11013, Apr. 4, 1988, as amended by Amdt. 404-2, 68 FR 35289, June 13, 2003]

Subpart B—Rulemaking

§ 404.11 General.

(a) Unless the Associate Administrator finds, for good cause, that notice is impractical, unnecessary, or contrary to the public interest, a notice of proposed rulemaking is issued and interested persons are invited to participate in proceedings related to each substantive rule proposed.

(b) Unless the Associate Administrator determines that notice and comment is necessary or desirable, interpretive rules, general statements of policy, and rules relating to organization, procedure, or practice are issued as final rules without notice or other proceedings.

(c) In the Associate Administrator's discretion, interested persons may be invited to participate in the rulemaking proceedings described in § 404.19 of this Subpart.

[53 FR 11013, Apr. 4, 1988, as amended by Amdt. 404-2, 68 FR 35289, June 13, 2003]

§ 404.13 Petitions for extension of time to comment.

(a) Any person may petition the Associate Administrator for an extension of time to submit comments in response to a notice of proposed rulemaking. The petition shall be submitted in duplicate not less than three days before expiration of the time stated in the notice. The filing of the petition does not automatically extend the time for petitioner's comments.

(b) The Associate Administrator grants the petition only if the petitioner shows a substantive interest in the proposed rule and good cause for the extension, and if the extension is in the public interest. If an extension is granted, it is granted as to all persons

and is published in the FEDERAL REGISTER.

[53 FR 11013, Apr. 4, 1988, as amended by Amdt. 404-2, 68 FR 35289, June 13, 2003]

§ 404.15 Consideration of comments received.

All timely comments are considered before final action is taken on a rulemaking proposal. Late filed comments may be considered to the extent possible, provided they do not cause undue additional expense or delay.

§ 404.17 Additional rulemaking proceedings.

The Director may initiate any additional rulemaking proceedings, if necessary or desirable. For example, the Associate Administrator may invite interested persons to present oral arguments, participate in conferences, appear at informal hearings, or participate in any other proceedings.

[53 FR 11013, Apr. 4, 1988, as amended by Amdt. 404-2, 68 FR 35289, June 13, 2003]

§ 404.19 Hearings.

(a) Sections 556 and 557 of Title 5, United States Code, do not apply to hearings held under this part. As a fact-finding forum, each hearing held under this part is nonadversarial and there are no formal pleadings or adverse parties. Any rule issued in a proceeding in which a hearing is held is not based exclusively on the record of the hearing, but on the entire record of the rulemaking proceeding.

(b) The Associate Administrator designates a representative to conduct any hearing held under this part. The FAA Chief Counsel designates a legal officer for the hearing.

[53 FR 11013, Apr. 4, 1988, as amended by Amdt. 404-2, 68 FR 35289, June 13, 2003]

PART 405—INVESTIGATIONS AND ENFORCEMENT

Sec.

405.1 Monitoring of licensed and other activities.

405.3 Authority to modify, suspend or revoke.

405.5 Emergency orders.

AUTHORITY: 49 U.S.C. 70101-70121.