



[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 11, 404, 405, 420, 431, 435, 437, 460

[Docket No.: FAA-2016-6761; Amdt. Nos. 11-62, 404-6, 405-6, 420-8, 431-6, 435-4, 437-2, 460-2]

RIN 2120-AK76

Updates to Rulemaking and Waiver Procedures and Expansion of the Equivalent Level of Safety Option

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action streamlines and improves commercial space transportation regulations' general rulemaking and petition procedures to better reflect current practice; reorganizes the regulations for clarity and flow; and allows petitioners to file their petitions to the FAA's Office of Commercial Space Transportation electronically. Further, it expands the option to satisfy commercial space transportation requirements by demonstrating an equivalent level of safety to the regulatory requirements. These changes are necessary to ensure that the regulations regarding petitions are clear and current, and that the commercial space launch industry is more easily able to request approvals of safe alternative means of regulatory compliance.

DATES: Effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see “How To Obtain Additional Information” in the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: For questions concerning this action, contact Joshua Easterson, AST-300, Office of Commercial Space Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-5150; email Joshua.Easterson@faa.gov.

SUPPLEMENTARY INFORMATION:

Authority for this Rulemaking

The Commercial Space Launch Act of 1984, as amended and re-codified at 51 U.S.C. 50901-50923 (the Act), authorizes the Department of Transportation and thus the FAA, through delegations, to oversee, license, and regulate commercial launch and reentry activities, and the operation of launch and reentry sites as carried out by U.S. citizens or within the United States. 51 U.S.C. 50904, 50905. The Act directs the FAA to exercise this responsibility consistent with public health and safety, safety of property, and the national security and foreign policy interests of the United States. 51 U.S.C. 50905. The Act directs the FAA to regulate only to the extent necessary to protect the public health and safety, safety of property, and national security and foreign policy interests of the United States. 51 U.S.C. 50901(a)(7). The FAA is also responsible for encouraging, facilitating, and promoting commercial space launches by the private sector. 51 U.S.C. 50903.

I. Overview of Final Rule

The FAA is adopting this final rule to: streamline the general rulemaking and petition procedures in part 404; clarify how the general rulemaking and petition procedures in part 11 relate to those in part 404, and ensure the procedures reflect current practice; reorganize part 404 to make clear the distinct requirements for petitions for waivers and petitions for rulemaking; amend the title of part 405 to better reflect the content; and expand the equivalent level of safety option so that it applies more broadly throughout 14 CFR chapter III. In addition, this final rule is adopting minor changes to part 11.

This final rule reorganizes part 404 to clarify and streamline the requirements. The reorganization moves the requirements for petitions for waivers and petitions for rulemaking into separate sections but does not substantially change the requirements. Instead, some requirements, as discussed below, were revised for clarity, to remove duplicate information and to ensure current practice is reflected. The reorganization of part 404 as adopted is shown in the below table.

Part 404 Reorganization

| Part 404 - Current | Part 404 – As Adopted |
|---|--|
| PART 404—REGULATIONS AND LICENSING REQUIREMENTS | PART 404—PETITION AND RULEMAKING PROCEDURES |
| Subpart A—General | |
| <p>§ 404.1 Scope</p> <p>§ 404.3 Filing of petitions to the Associate Administrator</p> <p>§ 404.5 Action on petitions</p> | <p>§ 404.1 Scope</p> <p>§ 404.3 General</p> <p>§ 404.5 Filing a petition for waiver</p> <p>§ 404.7 Action on a petition for waiver</p> <p>§ 404.9 Filing a petition for rulemaking</p> <p>§ 404.11 Action on a petition for rulemaking</p> |

Subpart B—Rulemaking**§ 404.11 General****§ 404.13 Petitions for extension of time to comment****§ 404.15 Consideration of comments received****§ 404.17 Additional Rulemaking Procedures****§ 404.19 Hearings****§ 404.13 Rulemaking****§ 404.15 [Removed and Reserved]****§ 404.17 Additional Rulemaking Procedures****§ 404.19 Hearings**

In addition to reorganizing part 404, this final rule:

- Adds a cross reference in § 11.15 to part 404’s commercial space transportation waivers;
- Includes in § 11.63 the correct Internet link where petitioners can find additional information on filing their petitions;
- Amends § 404.1 to state that the scope of part 404 “establishes procedures for issuing regulations and for filing a petition for waiver or petition for rulemaking to the Associate Administrator for Commercial Space Transportation;”
- Revises § 404.3 such that petitioners need only file one copy of their petition to the Office of Commercial Space Transportation (AST) by mailing it to AST’s physical address or emailing it to the AST email address provided in § 404.3;
- Removes the requirement in § 404.3 that a petition for rulemaking contain a summary that the FAA may cause to be published in the Federal Register;
- Amends § 404.5 to require that the petition must reference the specific section or sections of 14 CFR chapter III from which relief is sought;
- Amends § 404.5 to require that the petition must state the reasons why granting the request for relief is in the public interest and will not jeopardize the public

health and safety, safety of property, and national security and foreign policy interests of the United States;

- Amends § 404.7 to state that under 51 U.S.C. 50905(b)(3), the FAA is not authorized to grant a waiver that would permit the launch or reentry of a launch vehicle or reentry vehicle without a license or permit if a human being would be on board;
- Removes information in §§ 404.9, 404.11, and 404.13 regarding filing petitions for rulemaking, the FAA’s action on petitions for rulemaking, and the agency’s general rulemaking process that duplicates part 11 and, instead, cross references relevant sections of part 11 in §§ 404.9, 404.11, and 404.13, respectively;
- Changes the current title of part 405, “Investigations and Enforcement,” to “Compliance and Enforcement,” to better reflect the content;
- Expands the equivalent level of safety option to each requirement of parts 420 (License To Operate A Launch Site), 431 (Launch And Reentry Of A Reusable Launch Vehicle), 435 (Reentry Of A Reentry Vehicle Other Than A Reusable Launch Vehicle), and 437 (Experimental Permits); and,
- Expands the equivalent level of safety option to § 460.5(d) as a means of compliance with pilot qualification requirements.

This final rule will result in nonquantified benefits for the commercial space transportation industry, the interested public, and the government by streamlining and improving commercial space transportation regulations’ general rulemaking and petition procedures and allowing petitioners to file their petitions to the FAA’s Office of Commercial Space Transportation electronically. In addition, this rule expands the option

to satisfy commercial space transportation requirements by demonstrating an equivalent level of safety, thereby providing more choice to operators and reducing the number of waivers that must be prepared by the industry and processed by the government.

II. Background

On June 1, 2016, the FAA published a notice of proposed rulemaking (NPRM) (81 FR 34919) proposing to amend 14 CFR chapter III to modify and streamline the FAA's commercial space transportation regulations regarding general rulemaking and petition procedures; expand the equivalent level of safety option to provide the commercial space transportation industry with alternative means of satisfying chapter III requirements; and, make a minor change to revise a part title.

The Office of Commercial Space Transportation (AST) was established under the Commercial Space Launch Act of 1984 (the Act) as part of the Department of Transportation. In 1988, pursuant to the Act, rulemaking and petition procedures specific to commercial space operations were codified in 14 CFR, chapter III, part 404. In November 1995, AST was transferred to the FAA, becoming the agency's only space-related line of business. Whereas AST's rulemaking and petition requirements reside in part 404, the FAA's rulemaking and petition procedures are codified in part 11. The two sets of procedures are mostly duplicative and at times confusing as to applicability. Therefore, the FAA issued the June 2016 NPRM to propose to reorganize, streamline, and modify the part 404 requirements. This final rule adopts the proposed changes to part 404 without change.

An equivalent level of safety provision allows an applicant to propose an alternative method to meet the safety intent of a current regulatory requirement, by

providing a clear and convincing demonstration through technical rationale that the proposed alternative approach provides a level of safety equivalent to the requirement it would replace. An equivalent level of safety means an approximately equal level of safety as determined by qualitative or quantitative means. Prior to this rulemaking, the option to satisfy a commercial space transportation regulation by demonstrating an equivalent level of safety was limited to the launch license provisions for expendable launch vehicles in parts 415 and 417, and to some specific sections of other parts in chapter III including sections of the launch site location review and explosive siting requirements to obtain a license to operate a launch site in part 420, collision avoidance distances for experimental permits in part 437, the requirement that a remote operator possess an FAA pilot certificate with an instrument rating in the Human Space Flight Requirements in part 460, and environmental controls and life support system requirements also in part 460. This restricted the FAA's flexibility in approving launch and reentry related activities, where the operator can convincingly demonstrate in an application that an alternative approach to the requirements of chapter III provides an equivalent level of safety.

While applicants are still able to petition for waiver of any regulatory requirement, the June 2016 NPRM proposed to expand the equivalent level of safety option so that it applies more broadly to all requirements in parts 420, 431, 435, and 437 in chapter III. The waiver process can sometimes be more time-consuming than pursuing an equivalent level of safety determination. The NPRM also proposed clarifying that the equivalent level of safety provision for FAA pilot certificates applicable to remote operators in part 460 should also be applicable to all pilots under part 460.

Expanding the equivalent level of safety option is expected to reduce paperwork burdens without negatively impacting safety. To utilize the option applicants must demonstrate that they are achieving a level of safety equivalent to any safety parameters specified in the regulations. The FAA will evaluate every request for an alternative means of regulatory compliance under the equivalent level of safety provisions to ensure that the safety of the public, property, or any national security or foreign policy interest of the United States is maintained to be consistent with the requirements in chapter III of Title 14 of the Code of Federal Regulations.

This final rule adopts the proposed expansion of the equivalent level of safety option without change. In addition to previously available opportunities to pursue an equivalent level of safety, applicants will now have the option to pursue an equivalent level of safety option for each requirement of parts 420 (License To Operate A Launch Site), 431 (Launch And Reentry Of A Reusable Launch Vehicle), 435 (Reentry Of A Reentry Vehicle Other Than A Reusable Launch Vehicle), and 437 (Experimental Permits). The equivalent level of safety determination by the FAA will be included as part of any license or permit issued applying this provision.

The title of part 405 was “Investigations and Enforcement.” However, part 405 does not relate to investigations. To avoid confusion, the FAA proposed to revise the title of part 405 to a title more descriptive of its contents, namely, “Compliance and Enforcement.” This final rule adopts the change as proposed.

In addition to the proposed changes to chapter III, the June 2016 NPRM proposed minor changes to part 11 of chapter I to add a cross reference to part 404’s commercial space transportation waivers; make minor editorial changes and clarify that formal

standing advisory committees comply with the Federal Advisory Committee Act (FACA); and, include the correct Internet link to information relevant to filing petitions. This final rule adopts the proposed changes, except for minor clarifications discussed under the “Discussion of Public Comments” section of this preamble.

III. Discussion of Public Comments

The FAA received comments from two entities, the Aeronautical Repair Station Association (ARSA) and Space Exploration Technologies Corporation (SpaceX). In general, the commenters supported the proposed amendments, with SpaceX fully supporting the rule. ARSA suggested minor changes to the proposed regulatory text. After carefully considering ARSA’s comments, the FAA generally adopts the provisions as proposed, but makes the two minor changes discussed below.

ARSA recommended that the Web address referenced in proposed § 11.63 (http://www.faa.gov/regulations_policies/) be changed to one less likely to change over time. The FAA agrees and in the final rule changed the Web address to <http://www.faa.gov>, which is a top-level Web domain that is not likely to change. The FAA also added language stating that the user should then navigate to the “Rulemaking” home page.

ARSA further recommended that the FAA not cite specific examples (i.e., the Aviation Rulemaking Advisory Committee (ARAC) and the Commercial Space Transportation Advisory Committee (COMSTAC)) of standing advisory committees in proposed §11.27, as doing so might be interpreted as excluding or limiting other types of committees from which the FAA receives rulemaking recommendations. ARSA argued that when another advisory committee is created, rulemaking would again be necessary.

The FAA carefully considered ARSA's suggested change, and determined that the language unambiguously conveys that the FAA may convene a variety of advisory committees of which ARAC and COMSTAC are examples. Indeed, the existing regulation already contains a reference to ARAC, which has not caused confusion or required the FAA to amend §11.27 when additional types of advisory committees are used to obtain rulemaking recommendations. That being said, the FAA has opted to remove the proposed change. As such, the existing language in §11.27 will remain unchanged.

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Public Law 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Public Law 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private

sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows.

This rule will streamline and improve commercial space transportation regulations' general rulemaking and petition procedures. It will do this by updating the rule language to reflect current practice; reorganizing it for clarity and flow; and allowing petitioners to file their petitions to the FAA's Office of Commercial Space Transportation electronically. In addition, this rule will expand the option to satisfy commercial space transportation requirements by demonstrating an equivalent level of safety. These changes are necessary to ensure the regulations are current, accurate, and not unnecessarily burdensome.

As this rule will streamline and clarify FAA rulemaking procedures, codify current practice and expand options to demonstrate an equivalent level of safety possibly leading to fewer waiver requests, the expected outcome will have only a minor cost savings impact. Therefore, the FAA concludes this final rule will result in minimal costs

and a regulatory evaluation was not prepared. This conclusion is further bolstered by the fact that the FAA received no comments on this minimal cost determination.

FAA has, therefore, determined that this final rule is not a “significant regulatory action” as defined in section 3(f) of Executive Order 12866, and is not “significant” as defined in DOT's Regulatory Policies and Procedures.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Public Law 96-354) (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.” To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.” The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is

not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule is expected to have an effect on States, local governments, large entities such as Boeing and a significant number of small entities such as Scaled Composites, LLC, Masten Space Systems, XCOR Aerospace, Escape Dynamics, and Space Information Laboratories.

As this rule will streamline and clarify FAA rulemaking procedures, codify current practice and expand options to demonstrate an equivalent level of safety, the expected outcome will have only minor cost savings impact on any small entity affected by this rulemaking action. Therefore, the FAA concludes the rule will have only a minimal economic cost. This conclusion is further bolstered by the fact that the FAA received no comments on this minimal cost determination.

If an agency determines that a rulemaking will not result in a significant economic impact on a substantial number of small entities, the head of the agency may so certify under section 605(b) of the RFA. Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so

long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this rule and determined that it would impose the same costs on domestic and international entities and thus has a neutral trade impact.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$155 million in lieu of \$100 million.

This rule does not contain such a mandate; therefore, the requirements of Title II of the Unfunded Mandates Reform Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this final rule.

F. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5-6.6 and involves no extraordinary circumstances.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

B. Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a “significant energy action”

under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

This final rule is considered an EO 13771 deregulatory action. The FAA expects minor cost savings that cannot be quantified. The rule streamlines and improves commercial space transportation regulations' general rulemaking and petition procedures. These changes should make it easier to read and understand the regulations, and lead to minimal cost savings that are not quantifiable. The rule also allows petitioners to file their petitions to the FAA's Office of Commercial Space Transportation electronically. This could save minimal costs over mailing petitions. Finally, the rule expands the options to demonstrate an equivalent level of safety. This would also reduce the number of waivers that have to be approved. These cost savings are expected to be minimal and not quantifiable, as we don't know the effect of having acceptance of the equivalent level of safety approach earlier in the process than the alternative of requesting a waiver later in the process. We also don't know how often a petitioner will choose to demonstrate an alternative level of safety as opposed to requesting a waiver.

VI. How To Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document may be obtained by using the Internet —

1. Search the Federal eRulemaking Portal (<http://www.regulations.gov>);

2. Visit the FAA's Regulations and Policies Web page at http://www.faa.gov/regulations_policies/ or
3. Access the Government Printing Office's Web page at <http://www.gpo.gov/fdsys/>.

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680.

B. Comments Submitted to the Docket

Comments received may be viewed by going to <http://www.regulations.gov> and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the FOR FURTHER INFORMATION CONTACT heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.

List of Subjects

14 CFR Part 11

Administrative practice and procedure, Reporting and recordkeeping requirements.

14 CFR Part 404

Administrative practice and procedure, Space transportation and exploration.

14 CFR Part 405

Investigations, Penalties, Space transportation and exploration.

14 CFR Part 420

Environmental protection, Reporting and recordkeeping requirements, Space transportation and exploration.

14 CFR Part 431

Aviation safety, Environmental protection, Investigations, Reporting and recordkeeping requirements, Space transportation and exploration.

14 CFR Part 435

Aviation safety, Environmental protection, Investigations, Reporting and recordkeeping requirements, Space transportation and exploration.

14 CFR Part 437

Aircraft, Aviation safety, Reporting and recordkeeping requirements, Space transportation and exploration.

14 CFR Part 460

Aircraft, Aviation safety, Reporting and recordkeeping requirements, Space transportation and exploration.

The Amendments

In consideration of the foregoing, the Federal Aviation Administration amends chapters I and III of title 14, Code of Federal Regulations as follows:

PART 11—GENERAL RULEMAKING PROCEDURES

1. The authority citation for part 11 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40101, 40103, 40105, 40109, 40113, 44110, 44502, 44701–44702, 44711, 46102, and 51 U.S.C. 50901–50923.

2. Revise § 11.15 to read as follows:

§ 11.15 What is a petition for exemption?

A petition for exemption is a request to the FAA by an individual or entity asking for relief from the requirements of a current regulation. For petitions for waiver of commercial space transportation regulations, see part 404 of this title.

3. Amend § 11.63 by revising paragraph (a)(1) to read as follows:

§ 11.63 How and to whom do I submit my petition for rulemaking or petition for exemption?

(a) * * *

(1) By electronic submission, submit your petition for rulemaking or exemption to the FAA through the Internet at <http://www.regulations.gov>, the Federal Docket Management System Web site. For additional instructions, you may visit <http://www.faa.gov>, and navigate to the Rulemaking home page.

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PART 404—PETITION AND RULEMAKING PROCEDURES

4. The authority citation for part 404 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

5. The heading of part 404 is revised to read as set forth above.

6. Remove the headings of subparts A and B.

7. Revise § 404.1 to read as follows:

§ 404.1 Scope.

This part establishes procedures for issuing regulations and for filing a petition for waiver or petition for rulemaking to the Associate Administrator for Commercial Space Transportation.

8. Amend § 404.3 by revising the section heading and paragraphs (a)(3), (b), (c), (d), and adding new paragraphs (e), (f), and (g) to read as follows:

§ 404.3 General.

(a) * * *

(3) Waive the requirement for a license, except as provided in § 404.7(b).

(b) A petition filed under this section may request, under § 413.9 of this chapter, that the Associate Administrator withhold certain trade secrets or proprietary commercial or financial data from public disclosure.

(c) Each petitioner filing under this section must:

(1) For electronic submission, send one copy of the petition by email to the Office of Commercial Space Transportation at ASTpetition@faa.gov; or

(2) For paper submission, send one copy of the petition to the Office of Commercial Space Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Room 331, Washington, DC 20591.

(d) Each petition filed under this section must include the petitioner's name, mailing address, telephone number and any other contact information, such as an email address or a fax number.

(e) Notification. When the Associate Administrator determines that a petition should be granted or denied, the Associate Administrator notifies the petitioner of the Associate Administrator's action and the reasons supporting the action.

(f) Reconsideration. Any person may petition the FAA to reconsider a denial of a petition the person filed. The petitioner must send a request for reconsideration within 60 days after being notified of the denial to the same address to which the original petition was filed. For the FAA to accept the reconsideration request, the petitioner must show—

(1) There is a significant additional fact and the reason it was not included in the original petition;

(2) The FAA made an important factual error in its denial of the original petition;

or

(3) The denial is not in accordance with the applicable law and regulations.

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

9. Revise § 404.5 to read as follows:

§ 404.5 Filing a petition for waiver.

A petition for waiver must be submitted at least 60 days before the proposed effective date of the waiver unless the petitioner shows good cause for later submission in the petition, and the petition for waiver must—

(a) Include the specific section or sections of 14 CFR chapter III from which the petitioner seeks relief;

(b) Include the extent of the relief sought and the reason the relief is being sought;

(c) Include any facts, views, and data available to the petitioner to support the waiver request; and

(d) Show why granting the request for relief is in the public interest and will not jeopardize the public health and safety, safety of property, and national security and foreign policy interests of the United States.

10. Add § 404.7 to read as follows:

§ 404.7 Action on a petition for waiver.

(a) Grant of waiver. The Associate Administrator may grant a waiver, except as provided in paragraph (b) of this section, if the Associate Administrator determines that the waiver is in the public interest and will not jeopardize public health and safety, the safety of property, or any national security or foreign policy interest of the United States.

(b) Waiver ineligibility. The FAA may not grant a waiver that would permit the launch or reentry of a launch vehicle or a reentry vehicle without a license or permit if a human being will be on board.

(c) Denial of waiver. If the Associate Administrator determines that the petition does not justify granting a waiver, the Associate Administrator denies the petition.

11. Add § 404.9 to read as follows:

§ 404.9 Filing a petition for rulemaking.

A petition for rulemaking filed under this part must be made in accordance with 14 CFR 11.71.

12. Revise § 404.11 to read as follows:

§ 404.11 Action on a petition for rulemaking.

The FAA will process petitions for rulemaking under this part in accordance with 14 CFR 11.73.

13. Revise § 404.13 to read as follows:

§ 404.13 Rulemaking.

(a) The FAA's rulemaking procedures are located in subpart A of part 11 of this title, under the General, Written Comments, and Public Meetings and Other Proceedings headings.

(b) In addition to the rulemaking procedures referenced in paragraph (a) of this section, the provisions of §§ 404.17 and 404.19 also apply.

§ 404.15 [Removed and Reserved]

14. Remove and reserve § 404.15.

PART 405—COMPLIANCE AND ENFORCEMENT

15. The authority citation for part 405 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

16. The heading of part 405 is revised to read as set forth above.

PART 420—LICENSE TO OPERATE A LAUNCH SITE

17. The authority citation for part 420 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

18. Revise § 420.1 to read as follows:

§ 420.1 General.

(a) Scope. This part prescribes the information and demonstrations that must be provided to the FAA as part of a license application, the bases for license approval, license terms and conditions, and post-licensing requirements with which a licensee shall comply to remain licensed. Requirements for preparing a license application are contained in part 413 of this subchapter.

(b) Equivalent level of safety. Each requirement of this part applies unless the applicant or licensee clearly and convincingly demonstrates that an alternative approach provides an equivalent level of safety to the requirement of this part.

19. Amend § 420.23 by revising paragraphs (a)(3), (b)(4), and (c)(2), and removing paragraph (c)(3) to read as follows:

§ 420.23 Launch site location review— flight corridor.

(a) * * *

(3) Uses one of the methodologies provided in appendix A or B of this part.

(b) * * *

(4) Uses one of the methodologies provided in appendix A or B to this part.

(c) * * *

(2) An applicant shall base its analysis on an unguided suborbital launch vehicle whose final launch vehicle stage apogee represents the intended use of the launch point.

* * * * *

20. Amend § 420.25 by revising paragraph (a) to read as follows:

§ 420.25 Launch site location review—risk analysis.

(a) If a flight corridor or impact dispersion area defined by § 420.23 contains a populated area, the applicant shall estimate the casualty expectation associated with the

flight corridor or impact dispersion area. An applicant shall use the methodology provided in appendix C to this part for guided orbital or suborbital expendable launch vehicles and appendix D for unguided suborbital launch vehicles.

* * * * *

**PART 431—LAUNCH AND REENTRY OF A REUSABLE LAUNCH VEHICLE
(RLV)**

21. The authority citation for part 431 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

22. Revise § 431.1 to read as follows:

§ 431.1 General.

(a) Scope. This part prescribes requirements for obtaining a reusable launch vehicle (RLV) mission license and post-licensing requirements with which a licensee must comply to remain licensed. Requirements for preparing a license application are contained in part 413 of this subchapter.

(b) Equivalent level of safety. Each requirement of this part applies unless the applicant or licensee clearly and convincingly demonstrates that an alternative approach provides an equivalent level of safety to the requirement of this part.

**PART 435—REENTRY OF A REENTRY VEHICLE OTHER THAN A
REUSABLE LAUNCH VEHICLE (RLV)**

23. The authority citation for part 435 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

24. Revise § 435.1 to read as follows:

§ 435.1 General.

(a) Scope. This part prescribes requirements for obtaining a license to reenter a reentry vehicle other than a reusable launch vehicle (RLV), and postlicensing requirements with which a licensee must comply to remain licensed. Requirements for preparing a license application are contained in part 413 of this subchapter.

(b) Equivalent level of safety. Each requirement of this part applies unless the applicant or licensee clearly and convincingly demonstrates that an alternative approach provides an equivalent level of safety to the requirement of this part.

PART 437—EXPERIMENTAL PERMITS

25. The authority citation for part 437 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

26. Revise § 437.1 to read as follows:

§ 437.1 Scope and organization of this part.

(a) Scope. This part prescribes requirements for obtaining an experimental permit. It also prescribes post-permitting requirements with which a permittee must comply to maintain its permit. Part 413 of this subchapter contains procedures for applying for an experimental permit.

(b) Equivalent level of safety. Each requirement of this part applies unless the applicant or permittee clearly and convincingly demonstrates that an alternative approach provides an equivalent level of safety to the requirement of this part.

(c) Organization of this part. Subpart A contains general information about an experimental permit. Subpart B contains requirements to obtain an experimental permit. Subpart C contains the safety requirements with which a permittee must comply while

conducting permitted activities. Subpart D contains terms and conditions of an experimental permit.

27. Amend § 437.65 by revising paragraph (b) to read as follows:

§ 437.65 Collision avoidance analysis.

* * * * *

(b) The collision avoidance analysis must establish each period during which a permittee may not initiate flight to ensure that a permitted vehicle and any jettisoned components do not pass closer than 200 kilometers to a manned or mannable orbital object.

PART 460—HUMAN SPACE FLIGHT REQUIREMENTS

28. The authority citation for part 460 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

29. Amend § 460.5 by revising paragraph (d) to read as follows:

§ 460.5 Crew qualifications and training.

* * * * *

(d) A pilot or a remote operator may demonstrate an equivalent level of safety to paragraph (c)(1) of this section through the license or permit process.

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Daniel K. Elwell

Acting Administrator

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