

SUBCHAPTER B—PROCEDURE

PART 404—PETITION AND RULEMAKING PROCEDURES

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AUTHORITY: 51 U.S.C. 50901–50923.

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

§ 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.

[Doc. No. FAA–2016–6761, Amdt. No. 404–6, 83 FR 28534, June 20, 2018]

§ 404.3 General.

(a) Any person may petition the Associate Administrator to:

(1) Issue, amend, or repeal a regulation to eliminate as a requirement for a license or permit any requirement of Federal law applicable to commercial space launch and reentry activities and the operation of launch and reentry sites;

(2) Waive any such requirement in the context of a specific application for a license or permit; or

(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.

[Doc. No. FAA–2005–21234, 71 FR 51971, Aug. 31, 2006, as amended at 72 FR 68475, Dec. 5, 2007; Doc. No. FAA–2016–6761; Amdt. No. 404–6, 83 FR 28534, June 20, 2018]

§ 404.5 Filing a petition for waiver.

(a) A petition for waiver must be submitted at least 60 days before the proposed effective date of the waiver, unless the Administrator agrees to a different time frame in accordance with § 404.15.

(b) The petition for waiver must include:

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

(2) The extent of the relief sought and the reason the relief is being sought;

(3) The reason 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; and

(4) Any additional facts, views, and data available to the petitioner to support the waiver request.

[Doc. No. FAA-2019-0229, Amdt. 404-7, 85 FR 79709, Dec. 10, 2020]

§ 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.

[Doc. No. FAA-2016-6761, Amdt. No. 404-6, 83 FR 28534, June 20, 2018]

§ 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.

[Doc. No. FAA-2016-6761, Amdt. No. 404-6, 83 FR 28534, June 20, 2018]

§ 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.

[Doc. No. FAA-2016-6761, Amdt. No. 404-6, 83 FR 28534, June 20, 2018]

§ 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.

[Doc. No. FAA-2016-6761, Amdt. No. 404-6, 83 FR 28534, June 20, 2018]

§ 404.15 Alternative Time Frames.

(a) *General.* Unless otherwise approved by the Administrator, an applicant, a licensee, a permittee, or a safety element approval holder must meet the time frames set forth in this chapter.

(b) *Request to change a time frame.* An applicant, a licensee, a permittee, or a safety element approval holder may file a written request to the FAA to propose an alternative time frame to any of the time frames included in the chapter III sections listed in Appendix A to part 404. The request must be—

(1) Emailed to ASTApplications@faa.gov in accordance with § 413.7; or

(2) Mailed to the Federal Aviation Administration, Associate Administrator for Commercial Space Transportation, Room 331, 800 Independence Avenue SW, Washington, DC 20591. Attention: Alternative Time Frame Request.

(c) *Administrator review.* The Administrator will review and make a decision or grant a request for an alternative time frame as follows:

(1) The FAA will conduct its review on a case-by-case basis, taking into account the complexity of the request, the timeliness of the request, and whether the requested alternative allows sufficient time for the FAA to conduct its review and make the requisite public health and safety, safety

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of property, and national security and foreign policy findings;

(2) The FAA will provide its decision in writing; and

(3) The FAA may grant the request, deny the request, or grant an alternative time frame that differs from what was requested.

[Doc. No. FAA-2019-0229, Amdt. 404-7, 85 FR 79710, Dec. 10, 2020]

§ 404.17 Additional rulemaking proceedings.

The FAA may initiate other rulemaking proceedings, if necessary or desirable. For example, it may invite interested people to present oral arguments, participate in conferences, appear at informal hearings, or participate in any other proceedings.

[Doc. No. FAA-2006-24197, 72 FR 17016, Apr. 6, 2007]

§ 404.19 Hearings.

(a) Sections 556 and 557 of Title 5, United States Code, do not apply to

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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]

APPENDIX A TO PART 404—ALTERNATIVE TIME FRAMES

A404.1 GENERAL

Alternative time frames. This appendix lists the sections and corresponding paragraphs in this chapter that provide the eligible time frames for an applicant, licensee, permittee, or safety element approval holder, as applicable, to request an alternative time frame.

TABLE A404.1—ELIGIBLE TIME FRAMES

Sections	Paragraphs
§ 404.5—Filing a petition for waiver	(a).
§ 413.23—License or permit renewal	(a).
§ 414.31—Safety element approval renewal	(a).
§ 420.57—Notifications	(d).
§ 437.89—Pre-flight reporting	(a), (b).
§ 440.15—Demonstration of compliance	(a)(1), (a)(2), (a)(3), (a)(4).
§ 450.169—Launch and Reentry Collision Avoidance Analysis Requirements	(f)(1).
§ 450.213—Pre-flight reporting	(b), (c), (d), (e).
§ 450.215—Post-flight reporting	(a)

[Doc. No. FAA-2019-0229, Amdt. 404-7, 85 FR 79710, Dec. 10, 2020]

PART 405—COMPLIANCE AND ENFORCEMENT

Sec.

405.1 Monitoring of licensed, permitted, and other activities.

405.3 Authority to modify, suspend or revoke.

405.5 Emergency orders.

AUTHORITY: 51 U.S.C. 50901–50923.

SOURCE: Docket No. 43810, 53 FR 11014, Apr. 4, 1988, unless otherwise noted.

§ 405.1 Monitoring of licensed, permitted, and other activities.

Each licensee or permittee must allow access by and cooperate with Federal officers or employees or other individuals authorized by the Associate Administrator to observe licensed facilities and activities, including launch sites and reentry sites, as well as manufacturing, production, testing, and training facilities, or assembly sites used by any contractor, licensee, or permittee to produce, assemble, or test a launch or reentry vehicle and to integrate a payload with its launch or reentry vehicle. Observations are conducted to monitor the activities of the licensee, permittee, or contractor at