



[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 401, 413 and 414

[Docket No.: FAA-2015-1745; Amdt. No(s). 413-11 and 414-3]

RIN 2120-AK58

Electronic Applications for Licenses, Permits, and Safety Approvals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: Currently, an application for a license or experimental permit, or for a safety approval must be submitted to the FAA in paper form. This rule will make the application process more flexible and efficient by providing applicants with an option to submit these applications to the FAA electronically (either via e-mail or on an electronic storage device) rather than submitting a paper application.

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

Submit comments on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. If we receive an adverse comment or notice of intent to file an adverse comment, we will advise the public by publishing a document in the Federal Register

before the effective date of the final rule. This document may withdraw the direct final rule in whole or in part.

ADDRESSES: You may send comments identified by docket number FAA-2015-1745 using any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.
- Mail: Send comments to Docket Operations, M-30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE, Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.
- Hand Delivery or Courier: Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: Fax comments to Docket Operations at 202-493-2251.

Privacy: In accordance with 5 USC 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

Docket: Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New

Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Shirley McBride, Office of Commercial Space Transportation, Regulations and Analysis Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-7470; e-mail Shirley.McBride@faa.gov.

For legal questions concerning this action, contact Alex Zektser, Office of Chief Counsel, International Law, Legislation, and Regulations Division, AGC-250, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267-3073; e-mail Alex.Zektser@faa.gov.

SUPPLEMENTARY INFORMATION:

Authority for this Rulemaking

The Commercial Space Launch Act of 1984, as amended and re-codified at 51 United States Code (U.S.C.) Subtitle V—Commercial Space Transportation, ch.509, Commercial Space Launch Activities, 51 U.S.C. 50901-50923 (the Act), authorizes the Department of Transportation (DOT) and thus the FAA, through delegations, to oversee, license, and regulate commercial launch and reentry, 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. Section 50905(a)(2) also authorizes the FAA to establish procedures for safety approvals of launch vehicles, reentry vehicles, safety systems, processes, services, or personnel that may be used to conduct a licensed launch or reentry.

The Direct Final Rule Procedure

The FAA is issuing this direct final rule without prior notice and prior public comment. The Administrative Procedure Act provides that an agency may publish a final rule without prior notice and comment if the agency for good cause finds that the notice and comment procedure is unnecessary.¹ This rule will not make any substantive changes to the requirements that must be met in order to obtain a commercial-space license, experimental permit, or safety approval. Rather, this rule will simply add an option for applicants for a license, permit, or safety approval to submit their applications electronically. Accordingly, the FAA does not believe that any adverse comments will be filed in response to this rulemaking, and consequently, notice and comment is unnecessary.

The Regulatory Policies and Procedures of the Department of Transportation (DOT), 44 FR 1134, February 26, 1979, provide that to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views.

The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting this final rule.

A direct final rule will take effect on a specified date unless the FAA receives an adverse comment or notice of intent to file an adverse comment within the comment period. An adverse comment explains why a rule would be inappropriate, or would be ineffective or unacceptable without a change. It may challenge the rule's underlying premise or approach.

¹ See 5 U.S.C. 553(b)(B).

Under the direct final rule process, we do not consider the following types of comments to be adverse:

(1) A comment recommending another rule change, in addition to the change in the direct final rule at issue. We consider the comment adverse, however, if the commenter states why the direct final rule would be ineffective without the change.

(2) A frivolous or insubstantial comment.

If we receive an adverse comment or notice of intent to file an adverse comment, we will advise the public by publishing a document in the Federal Register before the effective date of the final rule. This document may withdraw the direct final rule in whole or in part. If we withdraw a direct final rule because of an adverse comment, we may incorporate the commenter's recommendation into another direct final rule or may publish a notice of proposed rulemaking.

If we do not receive an adverse comment or notice of intent to file an adverse comment, we will publish a confirmation document in the Federal Register, generally within 15 days after the comment period closes. The confirmation document tells the public the effective date of the rule.

See the "Additional Information" section for information on how to comment on this direct final rule and how the FAA will handle comments received. The "Additional Information" section also contains related information about the docket, privacy, and the handling of proprietary or confidential business information. In addition, there is information on obtaining copies of related rulemaking documents.

I. Background

The FAA currently issues licenses for the launch of a launch vehicle, the operation of a launch site, the reentry of a reentry vehicle, and the operation of a reentry site.² The FAA also issues experimental permits that allow a person to launch or reenter a reusable suborbital rocket.³ Finally, the FAA issues safety approvals that may be used in conducting a licensed launch or reentry.⁴

To obtain a license, experimental permit, or safety approval, an applicant must first submit an application in writing to the FAA.⁵ Currently, this application may not be submitted electronically, but must instead be mailed to the FAA on paper and in duplicate.⁶

The FAA has determined that this paper-based submission process is unduly burdensome because an electronically-submitted application would provide the FAA with the same information as a paper application. In addition, the Government Paperwork Elimination Act (GPEA) requires that, when practicable, a Federal agency must provide the public with an option to transact with the agency electronically.⁷

² See 14 CFR 413.3.

³ See 14 CFR 437.5.

⁴ See 14 CFR 414.1.

⁵ 14 CFR 413.7(a) and 414.11(a).

⁶ Id. See also Memorandum to Kenneth Wong from Rebecca MacPherson, Assistant Chief Counsel for Regulations (Nov 30, 2011) (concluding that the current regulations do not allow the FAA to accept applications electronically).

http://www.faa.gov/about/office_org/headquarters_offices/agc/pol_adjudication/agc200/interpretations/

⁷ Office of Management and Budget, Implementation of the Government Paperwork Elimination Act, http://www.whitehouse.gov/omb/fedreg_gpea2 (explaining implementation of Pub. Law 105-277, sec. 1704).

Accordingly, this rulemaking will relieve the burden imposed by the FAA's current paper-submission application processes and bring the FAA's application processes into compliance with GPEA by providing an option for license, experimental permit, and safety approval applicants to submit their applications electronically.

II. Discussion of the Direct Final Rule

This rule amends §§ 413.7 and 414.11 to allow applicants for a license, experimental permits or safety approval to file their applications to the FAA by paper or by electronic means. The new electronic filing options provided by this rule will be: (1) simply e-mailing the application to the FAA; or (2) providing the application to the FAA on a physical electronic storage device rather than submitting the application in paper form. Under this rule, "physical electronic storage" is an electronic storage device that can store electronic documents and files. Examples of physical electronic storage devices include optical discs, memory cards, USB flash drives, and external hard drives.⁸

The FAA emphasizes that this rule will not make electronic submission of applications mandatory. Thus, applicants who wish to submit their applications in paper form will be able to continue doing so under this rule. However, applicants who prefer to submit their applications electronically will now be able to do so instead of having to submit those applications in paper form.

To ensure the authenticity and security of electronically-submitted applications, this direct final rule specifies certain requirements for electronically-submitted applications.

⁸ This list of examples is not intended to be exhaustive.

For an application submitted via e-mail, the application will have to satisfy the following criteria. First, the application must be sent via e-mail as an e-mail attachment to the following e-mail address: ASTApplications@faa.gov. Second, the e-mail to which the application is attached must be sent from an e-mail address controlled by the person who signed the application or by an authorized representative of the applicant. The FAA anticipates that this will usually be that person's official work-related e-mail address. Finally, the application must be provided in a format that cannot be altered, such as a PDF document or a read-only Word file.

An application submitted via a physical electronic storage device will be subject to the following criteria. First, the submission package must include a cover letter identifying each document and file that is being submitted on the physical electronic storage device. The cover letter must be in paper form and it must be signed either by the person who signed the application or by an authorized representative of the applicant. Second, the physical electronic storage device must be submitted in a format that does not allow the contents of the device to be altered. For example, the application could be submitted on a write-protected USB flash drive or a CD-ROM disk that does not allow additional data to be written onto the disk.

Finally, the physical electronic storage device and cover letter must either be: (1) hand-delivered to an authorized FAA representative; or (2) mailed to the FAA's Office of Commercial Space Transportation (AST). If opting to mail the application to AST, the applicant must use the same mailing address that he or she would use to submit a paper application. This address is: Federal Aviation Administration, Associate Administrator for Commercial Space Transportation, Room 331, 800 Independence Avenue, SW, Washington, DC 20591. Attention: Application Review.

III. 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 direct final 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 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 direct final rule. The reasoning for this determination follows:

This direct final rule will permit, but not require, an application for a license, an experimental permit, or a safety approval to be submitted electronically to the FAA rather than by mailing in a paper application. This will make the application process more efficient and flexible.

This direct final rule does not impose any incremental costs because it will provide an additional method of submitting applications to the FAA. Therefore, the expected outcome will be a minimal impact with positive net benefits, and a full regulatory evaluation was not prepared. The FAA requests comments with supporting justification about the FAA determination of minimal impact.

The FAA has, therefore, determined that this direct 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 direct final rule does not impose any incremental costs because it will provide an additional method of submitting applications to the FAA.

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 (Public Law 96-39), as amended by the Uruguay Round Agreements Act (Public Law 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 direct final rule and determined that it will have only a domestic impact and therefore no effect on international trade.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 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 \$151 million in lieu of \$100 million.

This direct final rule does not contain such a mandate; therefore, the requirements of Title II of the 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 direct final rule.

F. International Compatibility and Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

G. Environmental Analysis

FAA Order 1050.1E 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 312f and involves no extraordinary circumstances.

IV. 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. 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.

V. Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the rulemaking action in this document. The most helpful comments reference a specific portion of the rulemaking action, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking. Before acting on this rulemaking action, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this rulemaking action in light of the comments it receives.

B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visiting the FAA's Regulations and Policies web page at http://www.faa.gov/regulations_policies or
3. Accessing the Government Printing Office's web page at <http://www.gpo.gov/fdsys/>.

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

All documents the FAA considered in developing this rulemaking action, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

List of Subjects

14 CFR Part 401

Organization and functions (Government agencies), Space transportation and exploration.

14 CFR Part 413

Confidential business information, Human space flight, Reporting and recordkeeping requirements, Space safety, Space transportation and exploration.

14 CFR Part 414

Airspace, Aviation Safety, Space transportation and exploration.

The Amendment

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

PART 401—ORGANIZATION AND DEFINITIONS

1. The authority citation for part 401 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

2. In § 401.5, add a definition in alphabetical order for physical electronic storage to read as follows:

§ 401.5 Definitions.

* * * * *

Physical electronic storage means a physical device that can store electronic documents and files including but not limited to an optical disc, a memory card, a USB flash drive, or an external hard drive.

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PART 413—LICENSE APPLICATION PROCEDURES

3. The authority citation for part 413 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

4. In § 413.7, revise paragraph (a) to read as follows:

§ 413.7 Application.

(a) An applicant must make an application in writing and in English. The applicant must file the application with the Federal Aviation Administration either by paper, by use of physical electronic storage, or by e-mail in the following manner:

(1) For applications submitted on paper, an applicant must send two copies of the application to the Federal Aviation Administration, Associate Administrator for Commercial Space Transportation, Room 331, 800 Independence Avenue, SW, Washington, DC 20591. Attention: Application Review.

(2) For an application submitted by use of physical electronic storage, the applicant must either mail the application to the address specified in paragraph (a)(1) of this section or hand-deliver the application to an authorized FAA representative. The application and the physical electronic storage containing the application must also satisfy all of the following criteria:

(i) The application must include a cover letter that is printed on paper and signed by the person who signed the application or by an authorized representative of the applicant;

(ii) The cover letter must identify each document that is included on the physical electronic storage; and

(iii) The physical electronic storage must be in a format such that its contents cannot be altered.

(3) For an application submitted by e-mail, an applicant must send the application as an e-mail attachment to ASTApplications@faa.gov. The application and the e-mail to which the application is attached must also satisfy the following criteria:

(i) The e-mail to which the application is attached must be sent from an e-mail address controlled by the person who signed the application or by an authorized representative of the applicant; and

(ii) The application must be in a format that cannot be altered.

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PART 414—SAFETY APPROVALS

5. The authority citation for part 414 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

6. In § 414.11, revise paragraph (a) to read as follows:

§ 414.11 Application.

(a) An applicant must make an application in writing and in English. The applicant must file the application with the Federal Aviation Administration either by paper, by use of physical electronic storage, or by e-mail in the following manner:

(1) For an application submitted on paper, an applicant must send two copies of the application to the Federal Aviation Administration, Associate Administrator for Commercial Space Transportation, Room 331, 800 Independence Avenue, SW, Washington, DC 20591. Attention: Application Review.

(2) For an application submitted by use of physical electronic storage, the applicant must either mail the application to the address specified in paragraph (a)(1) of this section or hand-deliver the application to an authorized FAA representative. The application and the physical electronic storage containing the application must also satisfy all of the following criteria:

(i) The application must include a cover letter that is printed on paper and signed by the person who signed the application or by an authorized representative of the applicant;

(ii) The cover letter must identify each document that is included on the physical electronic storage; and

(iii) The physical electronic storage must be in a format such that its contents cannot be altered.

(3) For an application submitted by e-mail, an applicant must send the application as an e-mail attachment to ASTApplications@faa.gov. The application and the e-mail to which the application is attached must also satisfy the following criteria:

(i) The e-mail to which the application is attached must be sent from an e-mail address controlled by the person who signed the application or by an authorized representative of the applicant; and

(ii) The application must be in a format that cannot be altered.

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Issued under authority provided by 49 U.S.C. 106(f), and 51 U.S.C. 50904-50905 in Washington, DC, on April 30, 2015.

Michael P. Huerta

Administrator

[FR Doc. 2015-12556 Filed: 5/26/2015 08:45 am; Publication Date: 5/27/2015]