



[4910-13]

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

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

**Docket No.: FAA-2016-6761; Notice No. 16-03**

**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:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action would streamline and improve commercial space transportation regulations' general rulemaking and petition procedures by reflecting current practice; reorganizing the regulations for clarity and flow; and allowing petitioners to file their petitions to the FAA's Office of Commercial Space Transportation electronically. Further, it would 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 are not unnecessarily burdensome. The intended effect of these changes is to improve the clarity of the regulations and reduce burden on the industry and on the FAA.

**DATES:** Send comments on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Send comments identified by docket number FAA-2016-6761 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, S.E., 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, S.E., 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](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://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 go to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, S.E., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For questions concerning this proposed rule, contact Shirley McBride, AST-300, Office of Commercial Space Transportation, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, DC 20591; telephone (202) 267-7470; e-mail [Shirley.McBride@faa.gov](mailto:Shirley.McBride@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. Background**

The Office of Commercial Space Transportation (AST) was established under the Act as part of the Office of the Secretary of Transportation within the Department of Transportation. In 1988, the general rulemaking and petition procedures, under the authority of the Act, were codified in 14 CFR, chapter III, part 404.

In November 1995, AST was transferred to the FAA as the agency's only space-related line of business. The FAA's general rulemaking and petition procedures, for which the agency follows public rulemaking procedures under the Administrative Procedure Act, 5 U.S.C. 553, reside in 14 CFR chapter I, part 11. When AST became part of the FAA, the general rulemaking and petition procedures in part 404 were not conformed to those in part 11 to remove duplicate and outdated information, or to clarify those provisions that apply specifically to the FAA's

commercial space transportation regulations. The proposed rule would update parts 404 and 11 to remove duplicate information from part 404 and add appropriate cross references between part 11 and part 404. In addition, the proposal would update part 404 to reflect current practice, clarify the requirements, and add an option to submit petitions to AST electronically.

Currently, the option to satisfy a commercial space transportation regulation by demonstrating an “equivalent level of safety” is limited to part 417<sup>1</sup> and to some specific sections of chapter III. This restricts the FAA’s flexibility in approving launch and reentry related activities where the operator can convincingly demonstrate that an alternative approach to the requirements of chapter III provides an equivalent level of safety. This proposal would expand the equivalent level of safety option so that it applies more broadly to chapter III requirements for both launch and reentry activities.

The current title of part 405 is “Investigations and Enforcement.” However, part 405 does not relate to investigations. To avoid confusion, the FAA proposes to revise the title of part 405 to a title more descriptive of its contents, namely, “Compliance and Enforcement.”

## **II. Discussion of the Proposal**

### **1. General Rulemaking Procedures (Part 11)**

The general rulemaking and petition procedures for commercial space transportation regulations, 14 CFR chapter III, part 404, are not aligned with the FAA’s general rulemaking and petition procedures located in 14 CFR chapter I, part 11. This has caused some confusion about how the two parts relate to each other and what requirements apply specifically to commercial space transportation regulations. Additionally, there is no option to file petitions electronically under chapter III.

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<sup>1</sup> See § 417.1(g): *Equivalent level of safety*. The requirements of this part apply to a launch operator and the launch operator's launch unless the launch operator clearly and convincingly demonstrates that an alternative approach provides an equivalent level of safety.

The FAA proposes minor changes to part 11 to clarify that this part applies to all FAA regulations, including commercial space transportation regulations, except as otherwise noted. Also, the FAA proposes to correct an outdated Internet link in part 11.

§ 11.15 – What is a petition for exemption?

The FAA proposes to amend § 11.15 to cross reference part 404 for commercial space transportation waivers. Authority for the FAA’s aviation safety oversight falls under Title 49 U.S.C., while the agency’s authority for commercial space transportation oversight falls under 51 U.S.C. 50901-50923. Title 49 allows for “exemptions” as requests for relief from a regulatory requirement, whereas Title 51 allows the Secretary to “waive” regulatory requirements. To retain the distinction of terms under both statutes, the FAA proposes to revise § 11.15 to cross reference part 404, which describes the agency’s delegated authority to issue commercial space transportation waivers.

§ 11.27 – Are there other ways FAA collects specific rulemaking recommendations before we issue an NPRM?

The FAA proposes to add the Commercial Space Transportation Advisory Committee (COMSTAC) as an example of an advisory committee the FAA uses to review and provide advice on various issues. While the FAA uses the Aviation Rulemaking Advisory Committee (ARAC) for aviation-specific issues, it uses COMSTAC for commercial space transportation issues. ARAC is comprised of representatives from the aviation industry. COMSTAC includes representatives from the commercial space industry.

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

The proposal would amend this section to remove an outdated Internet address in § 11.63(a)(1), “<http://www.faa.gov/regulations>”, where petitioners are directed to find additional instructions on filing their petitions, and replace it with a description of where it could be found. This is because an Internet address may be subject to change, and a description would be more flexible while still providing adequate instruction.

## **2. Petitions for Waiver and Rulemaking (Part 404)**

Currently, part 404, subpart A is organized such that requirements for filing and processing a petition for waiver and a petition for rulemaking are combined in the same sections, §§ 404.3 and 404.5. This causes confusion because while some requirements apply to both petition for waiver and petition for rulemaking, certain others apply only to one or the other. Having requirements for both types of petitions in the same sections make it difficult to determine which requirement applies to which type of petition. The agency proposes to establish separate sections for requirements applicable to both petitions for waiver and petitions for rulemaking (proposed §§ 404.1 and 404.3), requirements applicable only to petitions for waiver (proposed §§ 404.5 and 404.7), and those applicable only to petitions for rulemaking (proposed 404.9 and 404.11).

Current subpart B of part 404 includes general rulemaking procedures that duplicate those in chapter I, part 11. The FAA proposes to reorganize subpart B to remove the duplicate information and add relevant cross references to part 11.

The FAA also proposes to remove the subpart titles in part 404 because the other organizational changes to part 404 would remove the need to use subpart titles as guides.

Additionally, and as indicated in the “Proposed Reorganization—Part 404” table below, in order to accommodate the reorganization of part 404, the current part title, some section titles, and some section numbers would change. Also, new sections would be added.

**Proposed Reorganization—Part 404**

Current Part 404	Proposed Part 404
<b>PART 404—REGULATIONS AND LICENSING REQUIREMENTS</b>	<b>PART 404—PETITION AND RULEMAKING PROCEDURES</b>
<b>Subpart A—General</b>	
§ 404.1 Scope	§ 404.1 Scope
§ 404.3 Filing of petitions to the Associate Administrator	§ 404.3 General
§ 404.5 Action on petitions	§ 404.5 Filing a petition for waiver
	§ 404.7 Action on a petition for waiver
	§ 404.9 Filing a petition for rulemaking
	§ 404.11 Action on a petition for rulemaking
<b>Subpart B—Rulemaking</b>	
§ 404.11 General	§ 404.13 Rulemaking
§ 404.13 Petitions for extension of time to comment	§ 404.15 [Removed and Reserved]
§ 404.15 Consideration of comments received	§ 404.17 Additional Rulemaking Procedures
§ 404.17 Additional Rulemaking Procedures	§ 404.19 Hearings
§ 404.19 Hearings	

Further, the proposal would update part 404 to reflect current practice. For example, part 404 does not include the option for petitioners to file their petitions electronically.

A discussion of the specific, proposed changes for part 404 follows.

Proposed § 404.1 – Scope

The FAA proposes to revise § 404.1 to clarify the scope of part 404. Currently § 404.1 states that part 404 “establishes procedures for issuing regulations to implement 51 U.S.C Subtitle V, chapter 509, and for eliminating or waiving requirements for licensing or permitting of commercial space transportation activities under that statute.” The FAA would revise § 404.1 to state that part 404 establishes procedures for issuing regulations and for filing a petition for

waiver or a petition for rulemaking to the Associate Administrator for Commercial Space Transportation.

Proposed § 404.3 – General

The FAA proposes to change the title of this section from “Filing of petitions to the Associate Administrator” to “General” to reflect the reorganization of the part.

The reorganized section would include information applicable to both petitions for waiver and petitions for rulemaking. This information would include the physical address to which petitioners should send their petitions, as well as the option to file petitions to AST electronically by using the specified FAA email address.

Current § 404.3(d), which explains a petitioner’s rights, provided by Congress in 51 U.S.C. 50916, to request the agency withhold certain sensitive information or data from the public, subject to certain conditions, would be moved to proposed § 404.3(b). Also, proposed § 404.3(a)(3) would reference the waiver exception described in proposed § 404.7(b). Further, the provision about public hearings in current § 404.5(a) would be moved to proposed § 404.3(g).

Current § 404.3 requires petitioners to send two copies of their petition to either AST’s physical address or to the docket’s physical address. The FAA proposes to require all petitions be sent to AST to ensure timely consideration. The FAA also proposes to remove the requirement to submit duplicate copies so that petitioners need only send one copy of the petition to AST.

The proposal would remove from § 404.3 the requirement that a petition for rulemaking contain a summary that the FAA may cause to be published in the Federal Register because part

11 does not require such a summary and the FAA does not seek public comment on petitions for rulemaking.

The proposal also would move the provisions in current §§ 404.5(d) and 404.5(e) to §§ 404.3(e) and 404.3(f), respectively, because notification and reconsideration of the Associate Administrator’s decision applies to both petitions for waiver and petitions for rulemaking.

Proposed § 404.5 – Filing a Petition for Waiver

The proposal would change the section title from “Action on petitions” to “Filing a Petition for Waiver.” Also, it would move the waiver procedures from current § 404.3 to proposed § 404.5. Proposed § 404.5 would clarify the requirements for filing a waiver request and, as noted in the discussion of proposed § 404.3, would move the information in current § 404.5(a) about public hearings related to petitions to proposed § 404.3(g).

Current § 404.3 states that the petition must “set forth the text or substance of the regulation...to be waived.” Proposed § 404.5 would clarify that the petition must reference the specific section or sections of 14 CFR chapter III from which relief is sought. Further, to help ensure petitions are complete and meet the requirements of the Act, 51 U.S.C. § 50905(b)(3), proposed § 404.5 would clarify 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.

Proposed § 404.7 – Action on a Petition for Waiver

The requirements in current § 404.5 that describe the FAA’s actions on petitions for waiver would be moved to proposed § 404.7. Proposed § 404.7 would clarify 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 a reentry vehicle without a license or permit if a human being would be on board.

#### Proposed § 404.9 Filing a Petition for Rulemaking

As noted, the current requirements for filing a petition for rulemaking reside in § 404.3. This proposal would remove those requirements and, instead, new § 404.9 would require a petitioner to follow § 11.71 for filing a petition for rulemaking. This proposed change would align the procedures for filing a petition for rulemaking under part 404 with the procedures for filing all other petitions for rulemaking made to the agency.

There are no substantive differences in the process for filing a petition for rulemaking with the FAA under part 404 or under § 11.71 of part 11. Therefore, the FAA does not foresee any issues with using part 11 procedures for commercial space petitions for rulemaking.

#### Proposed § 404.11 Action on a Petition for Rulemaking

The requirements in current § 404.5 that describe the FAA's actions on petitions for rulemaking would be removed, and new § 404.11 would cross reference § 11.73, which includes the FAA's actions on petitions for rulemaking. This change would align the actions of the FAA on petitions for rulemaking under part 404 with its actions regarding all other petitions for rulemaking made to the agency.

#### Proposed § 404.13 – Rulemaking

Since the FAA's general rulemaking procedures, which apply to all FAA regulations, including commercial space transportation regulations, reside in 14 CFR chapter I, part 11, the agency proposes to remove the general rulemaking procedures in current §§ 404.11, 404.13, and 404.15 and, instead, add a cross reference in proposed § 404.13(a) to part 11's general rulemaking procedures. Also, current § 404.17 (Additional rulemaking proceedings) and

§ 404.19 (Hearings) of subpart B would be retained as is. As a result, proposed § 404.13(b) states that in addition to the procedures referenced in § 404.13(a), the provisions in §§ 404.17 and 404.19 also apply.

#### Proposed § 404.15 – Removed and Reserved

As discussed under proposed § 404.13, the proposal would remove the current, specified contents of subpart B, including § 404.15, and add a cross reference to part 11. In addition, it would reserve § 404.15 to prevent gaps in the CFR numbering for part 404.

### **3. Investigations and Enforcement (Part 405)**

The agency proposes to change the title of part 405 to better reflect the part's requirements. Part 405 has not substantially changed since 1988. Although its current title is "Investigations and Enforcement," the part does not apply to investigations. Instead, requirements for investigations reside in part 406, entitled "Investigations, Enforcement, and Administrative Review."

What part 405 actually contains is requirements for FAA monitoring of licensed and permitted activities; the agency's authority to modify, suspend or revoke a license or permit; and the FAA's authority to issue emergency orders to terminate, prohibit, or suspend a licensed or permitted launch or reentry activity. To avoid confusion, the FAA proposes to revise the title of part 405 to "Compliance and Enforcement," to better reflect the content of the part.

### **4. Equivalent Level of Safety**

Currently, the option to satisfy the requirements of 14 CFR, chapter III by demonstrating an "equivalent level of safety" is limited to part 417 (safety of expendable launch vehicles) and to specific sections of parts 420 (operation of a launch site), 437 (experimental permits), and 460 (human space flight). The option does not apply to parts 431 and 435, which govern reentry of

reusable launch vehicles and other reentry vehicles. The FAA addresses this limitation through the waiver process, which places an unnecessary burden on the industry and on the FAA. Thus, the agency proposes to expand the availability of its equivalent level of safety option.

Currently, in parts 420 and 437, the equivalent level of safety option only applies to §§ 420.23(a)(3), (b)(4), and (c)(2); 420.25(a); and, 437.65(b). The FAA proposes to expand the availability of the option so that it applies not just to these specific sections but to parts 420 and 437 in their entirety. Therefore, this proposal would remove the equivalent level of safety provision in these specific sections and replace them with proposed §§ 420.1(b) and 437.1(b). The proposed change to § 420.23 would remove current § 420.23(c)(2), move current § 420.23(c)(3) to proposed § 420.23(c)(2) to prevent a gap in paragraph numbering, and remove current § 420.23(c)(3) to prevent identical language from appearing in both § 420.23(c)(2) and (c)(3). These proposed sections would require that each requirement of the part would apply unless an applicant or licensee under part 420, or a permittee under part 437, clearly and convincingly demonstrates that an alternative provides an equivalent level of safety to the requirement of the part.

Current parts 431 and 435 have no equivalent level of safety option. Therefore, the FAA proposes to add this option to the “General” sections of parts 431 and 435 (§§ 431.1 and 435.1, respectively) so that the option would apply to these parts in their entirety.

The agency further proposes to expand the equivalent level of safety provision now in § 460.5. That provision, which includes qualification requirements for a pilot and a remote operator, currently only extends the equivalent level of safety option (*see* § 460.5(d)) to a remote operator but not to a pilot. The FAA proposes amending § 460.5(d) to allow an applicant,

licensee, or permittee to satisfy pilot qualification requirements by demonstrating an equivalent level of safety.

#### **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 proposed 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 proposed rule. The reasoning for this determination follows.

This rule proposes to streamline and improve commercial space transportation regulations' general rulemaking and petition procedures. It proposes to 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 proposes to 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.

The intended effect of these proposed changes is to improve the clarity of the regulations and reduce burden on the industry and on the FAA. Increased clarity could result in fewer requests for more information and, therefore, in cost savings. Expanding the equivalent level of safety option provides more choice to operators and lowers the number of waiver requests the FAA must process, resulting in reduced FAA burden. Allowing petitioners the option to submit electronically could result in small cost savings, from reduced mail expense.

Since the expected outcome of this proposal is increased regulatory clarity with the potential of a minimal cost impact, a regulatory evaluation was not prepared. The FAA requests comments with supporting justification about the FAA determination of minimal impact.

FAA has, therefore, determined that this proposed 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 proposal 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 proposed rule would streamline and clarify FAA rulemaking procedures, codify current practice and expand options to demonstrate an equivalent level of safety, the expected

outcome would have only minimal costs to minor cost savings impact on any small entity affected by this rulemaking action.

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 proposed 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 (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 \$155 million in lieu of \$100 million.

This proposed 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 would be no new requirement for information collection associated with this proposed rule.

F. International Compatibility and Cooperation

(1) 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 proposed regulations.

(2) 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.

## **V. Executive Order Determinations**

### **A. Executive Order 13132, Federalism**

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action would 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, would not have Federalism implications.

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

The FAA analyzed this proposed 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 would not be a “significant energy action” under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

## **VI. 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 proposals in

this document. The most helpful comments reference a specific portion of the proposal, 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 proposed rulemaking. Before acting on this proposal, 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 proposal 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](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 S.W., Washington, DC 20591, or by calling (202) 267-9680. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, 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 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 Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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 amended 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. Revise § 11.27 to read as follows:

### **§ 11.27 Are there other ways FAA collects specific rulemaking recommendations before we issue an NPRM?**

Yes, the FAA obtains advice and recommendations from advisory committees, including the Aviation Rulemaking Advisory Committee (ARAC) for aviation issues and the Commercial Space Transportation Advisory Committee (COMSTAC) for commercial space transportation issues. These advisory committees are formal standing committees comprised of representatives of industry, consumer groups, and interested individuals. In conducting their activities, ARAC and COMSTAC comply with the Federal Advisory Committee Act (FACA) and the direction of FAA. We task these advisory committees with providing us with recommended rulemaking actions dealing with specific areas and problems. If we accept their recommendation to change an FAA rule, we ordinarily publish an NPRM using the procedures in this part. The FAA may

establish other rulemaking advisory committees for a limited period of time as needed to focus on aviation-specific issues.

4. 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 Website. For additional instructions, you may visit [http://www.faa.gov/regulations\\_policies/](http://www.faa.gov/regulations_policies/), and navigate to the Rulemaking home page.

\* \* \* \* \*

**PART 404—PETITION AND RULEMAKING PROCEDURES**

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

Authority: 51 U.S.C. 50901-50923.

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

7. Remove the headings of subparts A and B.

8. 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.

9. 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) of this part.

(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](mailto:ASTpetition@faa.gov); or

(2) For paper submission, send the petition to the Office of Commercial Space Transportation, Federal Aviation Administration, 800 Independence Avenue, S.W., 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.

10. 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.

11. Add new § 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 or property, or any national security or foreign policy interest of the United States.

(b) 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.

12. Add new § 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.

13. 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.

14. Revise § 404.13 to read as follows:

**§ 404.13 Rulemaking.**

(a) The FAA's rulemaking procedures are located in subpart A chapter I, part 11 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 of this subpart also apply.

**§ 404.15 [Removed and Reserved]**

15. Remove and reserve § 404.15.

**PART 405—COMPLIANCE AND ENFORCEMENT**

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

Authority: 51 U.S.C. 50901-50923.

17. Amend part 405 by revising the part heading to read as set forth above.

#### **PART 420—LICENSE TO OPERATE A LAUNCH SITE**

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

Authority: 51 U.S.C. 50901-50923.

19. 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.

20. 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 appendices 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.

\* \* \* \* \*

21. 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)**

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

Authority: 51 U.S.C. 50901-50923.

23. 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)**

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

Authority: 51 U.S.C. 50901-50923.

25. 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 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 437—EXPERIMENTAL PERMITS**

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

Authority: 51 U.S.C. 50901-50923.

27. 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.

28. 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**

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

Authority: 51 U.S.C. 50901-50923.

30. 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.

\* \* \* \* \*

Issued under authority provided by 49 U.S.C. 106(f) and (g), 44701(a), 44703 and 51 U.S.C. 50901-50923 in Washington, DC, on May 16, 2016.

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Commercial Space Transportation  
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