

**SUBCHAPTER B—PROCEDURE**

**PART 404—REGULATIONS AND LICENSING REQUIREMENTS**

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**AUTHORITY:** Secs. 8 and 13, Pub. L. 98-575 (49 U.S.C. App. 2601 note).

**SOURCE:** Docket No. 43810, 51 FR 6877, Feb. 26, 1986, unless otherwise noted.

**Subpart A—General**

§ 404.1 Scope.

Pursuant to sections 8 and 13 of the Act, this part sets forth the procedures for issuing regulations to implement the Act, and for eliminating or waiving requirements of Federal law otherwise applicable to the licensing of commercial space launch activities.

§ 404.3 Filing of petitions to the Director.

(a) Any interested person may petition the Director to issue, amend or repeal a regulation, to eliminate as a requirement for a license any requirement of Federal law applicable to commercial launch activities, or to waive any such requirement in the context of a specific application for a license.

(b) Each petition filed under this section must:

(1) Be submitted in duplicate to the Documentary Services Division, Attention Docket Section, Room 4107, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590;

(2) Set forth the text or substance of the regulation or amendment proposed, the regulation to be repealed,

or the licensing requirement to be eliminated or waived;

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

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

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

(c) A petition for rulemaking filed under this section must contain a summary, which may be published in the **FEDERAL REGISTER**, which includes:

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

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

§ 404.5 Action on petitions.

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

(b) *Grants.* In the case of a petition for a waiver, the Director may grant the waiver if the Director 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. In all other cases, if the Director determines that the petition contains adequate justification, the Director initiates a rulemaking action under Subpart B of this part.

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

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

**Subpart B—Rulemaking****§ 404.11 General.**

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

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

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

**§ 404.13 Contents of notices.**

(a) Each notice of proposed rulemaking is published in the FEDERAL REGISTER, unless all persons subject to it are named and are personally served with a copy of it.

(b) Each notice, whether published in the FEDERAL REGISTER or personally served, includes:

(1) A statement of the time, place, and nature of the proposed rulemaking proceeding;

(2) A reference to the authority under which it is issued;

(3) A description of the subjects or issues involved and, in most cases, a description of the substance or terms of the proposed rule;

(4) A statement of the time within which written comments must be submitted and the required number of copies; and

(5) A statement of how and to what extent interested persons may participate in the proceeding.

**§ 404.15 Petitions for extension of time to comment.**

(a) Any person may petition the Director for an extension of time to submit comments in response to a notice of proposed rulemaking. The petition must be submitted in duplicate not less than three days before expiration of the time stated in the

notice. The filing of the petition does not automatically extend the time for petitioner's comments.

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

**§ 404.17 Consideration of comments received.**

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

**§ 404.19 Additional rulemaking proceedings.**

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

**§ 404.21 Hearings.**

(a) Sections 556 and 557 of Title 5 U.S. Code, do not apply to hearings held under this part. As a fact-finding proceeding, each hearing held under this part is nonadversary 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.

(b) The Director designates a representative to conduct any hearing held under this part. The General Counsel designates a legal officer for the hearing.

**§ 404.23 Adoption of final rules.**

Final rules are prepared by the appropriate representatives of the Director and the Office of the General Counsel. The rule is then submitted to the Director for consideration. If the Director adopts the rule, it is published in the FEDERAL REGISTER, unless

all persons subject to it are named and are personally served with a copy of it.

**PART 405—INVESTIGATIONS AND ENFORCEMENT**

Sec.

- 405.1 Monitoring of licensed and other activities.
- 405.3 Authority to modify, suspend or revoke.
- 405.5 Emergency orders.
- 405.7 Civil penalties.

**AUTHORITY:** Secs. 14, 17 and 19 Pub. L. 98-575 (49 U.S.C. App. 2601 note).

**SOURCE:** Docket No. 43810, 51 FR 6878, Feb. 26, 1986, unless otherwise noted.

**§ 405.1 Monitoring of licensed and other activities.**

Each licensee shall allow and cooperate with Federal officers or employees or other individuals authorized by the Director to observe licensed activities, including launch sites, production facilities or assembly sites used by any contractor of a licensee in the production or assembly of a launch vehicle and in the integration of a payload with its launch vehicle. Such observance is conducted in order to monitor the activities of the licensee or contractor at such time and to such extent as the Director considers reasonable and necessary to determine compliance with the license or to carry out the Director's responsibilities pertaining to payloads for which no Federal license, authorization, or permit is required.

**§ 405.3 Authority to modify, suspend or revoke.**

(a) Upon application by the licensee or upon the Director's own initiative, the Director may modify a license issued under this chapter if the Director finds that the modification is consistent with the requirements of the Act.

(b) If the Director finds that a licensee has substantially failed to comply with any requirement of the Act, the terms and conditions of the license, any DOT commercial space launch regulation, or other applicable requirement, or that public health and safety, the safety of property or any national security or foreign policy in-

terest of the United States so require, the Director may suspend or revoke any license issued under this chapter.

(c) Unless otherwise specified by the Director, any modification, suspension or revocation made by the Director under this section:

- (1) Takes effect immediately; and
- (2) Continues in effect during any review of such action under this part.

(d) Whenever the Director takes any action under this section, the Director immediately notifies the licensee in writing of the Director's finding and the action which the Director has taken or proposes to take regarding such finding.

**§ 405.5 Emergency orders.**

The Director may immediately terminate, prohibit or suspend a licensed launch or launch site operation if the Director determines that—

(a) Such launch or operation is detrimental to public health and safety, safety of property, or any national security or foreign policy interest of the United States; and

(b) The detriment cannot be eliminated effectively through the exercise of other authority of the Director.

**§ 405.7 Civil penalties.**

(a) Pursuant to section 19 of the Act, any person found by the Director, after notice and opportunity to be heard on the record in accordance with section 554 of title 5 U.S. Code, to have violated a requirement of the Act, a regulation issued under the Act, or any term, condition or restriction of any license issued or transferred by the Director, shall be liable to the United States for a civil penalty. Each day of a continuing violation shall constitute a separate violation. The amount of such civil penalty shall be assessed by the Director by written notice. The Director may compromise, modify, or remit with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

(b) If any person fails to pay a civil penalty assessed against such person after the penalty has become final or if such person appeals an order of the Director, and the appropriate court