# REGULATIONS OF THE ADMINISTRATOR

## Part 405 - Rule Making Procedures

*Revised effective December 31, 1958*

### Chapter II—Federal Aviation Agency

### PART 405—RULE MAKING PROCEDURES

Section 313 (a) of the Federal Aviation Act of 1958 empowers the Administrator of the Federal Aviation Agency to make and amend such general or special rules, regulations or procedures, pursuant to and consistent with the provisions of the Act, as he deems necessary to carry out such provisions and to exercise and perform his powers and duties thereunder.

In order to provide an appropriate procedural framework for exercising the rule making functions conferred upon the Agency by the new Act, this amendment repeals as of December 31, 1958, Part 405, "General Procedures", of the Procedural Regulations issued by the Civil Aeronautics Administration and adopts a revised Part 405, captioned "Rule Making Procedures." The Agency will follow the procedures required by the Administrative Procedure Act for prescribing both substantive rules, on the one hand, and interpretative rules, general statements of policy, rules of Agency organization, procedure and practice, on the other hand. Accordingly, the principal purpose of the revised part is to describe the general procedures which will be followed in issuing, amending, or repealing those substantive rules as to which the Administrative Procedure Act requires publication in the FEDERAL REGISTER of a notice of proposed rule making, and an opportunity for interested persons to comment, prior to promulgation.

Further, the procedures set forth herein will also be used in promulgating such other classes of rules as the Administrator may voluntarily determine should be issued upon notice and after opportunity for comment by interested persons. The rule making procedures herein prescribed will govern the promulgation of both "public rules" which are applicable to classes of persons and, where appropriate, "private rules" which are applicable only to a named party or parties. Additionally, the revised part prescribes the requirements of the Agency governing the contents of all petitions for rule making or for exemption from the requirements of a rule, issued under Title III or Title VI of the Act, and describes the action which will be taken by the Agency upon such petitions.

Since this amendment is not a substantive rule but one of Agency procedure, notice and public procedure hereon are unnecessary.

In consideration of the foregoing, and in accordance with section 3 of the Administrative Procedure Act, I hereby repeal Part 405 of the regulations of the Administrator of Civil Aeronautics and, adopt the following revised part in lieu thereof, effective December 31, 1958:

Subpart A—Introduction

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405.1 Definition of terms.

Subpart B—Rules Applicable to Rule Making Proceedings

405.11 Scope of rule making.
405.12 Initiation of rule making procedures.
405.13 Petition for rule making.
405.14 Action on petitions for rule making.
405.15 Notice of proposed rule making.
405.16 Participation by interested persons in rule making proceedings.
405.17 Additional rule making proceedings.
405.18 Participation by the Board in rule making proceedings.
405.19 Petitions for exemption.
405.20 Action on petitions for exemption.
405.21 Request for informal appearances.

AUTHORITY: §§ 405.1 to 405.21 issued under Sec. 313 (a) of the Federal Aviation Act of 1958, Act of August 23, 1958, 72 Stat. 752 (Pub. Law 85-726). Interpret or apply Sec. 1001; 72 Stat. 788 (Pub. Law 85-726).

### Subpart A—Introduction

#### § 405.1 Definition of terms.

As used in this part:

(a) "Act" means the Federal Aviation Act of 1958.

(b) "Administrator" means the Administrator of the Federal Aviation Agency, or his designee.

(c) "Agency" means the Federal Aviation Agency.

### Subpart B—Rule Making Proceedings

#### § 405.11 Scope of rule making.

(a) The procedures described in this subpart relate to the issuance, amendment, or repeal of substantive rules, including those applicable to a class of persons or addressed to and served upon named persons whenever the Administrator determines that such rules should be adopted through the use of public rule making procedures;

(b) Normally, the Agency will issue notices of proposed rule making and permit the participation of interested per-

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ons whenever a substantive rule is involved unless the Agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the rules issued) that notice thereon is impracticable, unnecessary, or contrary to the public interest. As a general rule, interpretative rules, general statements of policy, and rules of Agency organization, procedure or practice will be promulgated as final rules without notice or rule making procedure thereon. However, when the Administrator determines that notice and rule making procedures should be followed in promulgating such interpretative, policy, organizational and procedural rules, the provisions of this subpart will also apply;

(c) When the Administrator so determines, the procedures described in this subpart will apply to the exemption of individuals or a class from the requirements of any substantive rule.

**§ 405.12 Initiation of rule making procedures.**

Rule making procedures will be initiated by the Administrator, upon his own motion: *Provided, That* in so doing, he will give due consideration to the recommendations of other agencies of Government, and the petitions of other interested persons as hereinafter provided.

**§ 405.13 Petition for rule making.**

Any interested person may petition the Administrator to issue, amend, or repeal any rule without regard to whether it is a substantive rule within the purview of § 405.11. The petition shall set forth the substance or text of the proposed rule or amendment thereof, or shall specify the rule sought to be repealed, shall contain all facts, views, arguments and data deemed to support the action requested, and shall indicate the interests of petitioner therein. Upon filing with the Agency, petitions for rule making will become public records available for inspection by any interested person.

**§ 405.14 Action on petitions for rule making.**

No public hearing, argument, or other formal proceedings will be directly held on petitions filed pursuant to § 405.13 prior to their disposition by the Agency. If the Administrator determines that the petition discloses sufficient reasons to warrant such action, he will issue an appropriate notice of proposed rule making or, in proper circumstances, adopt an appropriate final rule. If the Administrator determines that the petition is not sufficiently meritorious to justify instituting a rule making proceeding or granting the requested relief, the Administrator will notify the petitioner to that effect.

**§ 405.15 Notice of proposed rule making.**

A general notice of proposed rule making will be published in the FEDERAL REGISTER unless all persons subject to the proposed rule are named and personally served with such notice. The notice, whether published or personally served, shall include: (a) A statement of the time, place, and nature of the proposed rule making proceeding; (b) Reference to the authority under which issued; (c) A description of the subjects and issues involved or the substance and terms of the proposed rule; (d) A statement of the time within which written comments must be submitted and the number of required copies; (e) A description of the nature and extent of the opportunity to participate in such rule making proceeding pursuant to §§ 405.16 and 405.17, which will be afforded interested parties.

**§ 405.16 Participation by interested persons in rule making proceedings.**

All interested persons will be afforded an opportunity to participate in the rule making proceeding through the submission of written data, views, or arguments. The opportunity to participate may, at the discretion of the Administrator, include an opportunity to comment upon or respond to the original data, views, or arguments submitted by other parties when, after reviewing the original data, views, and arguments submitted, such action appears necessary or desirable. In appropriate cases, the Administrator may also afford interested parties the right to participate in rule making procedures of the type generally described in § 405.17.

**§ 405.17 Additional rule making proceedings.**

The procedure to be followed in rule making shall also encompass such further procedural steps as will best serve the purposes of the particular proceeding. For example, interested persons may also be afforded the opportunity of presenting oral argument, of participating in a conference between the Administrator or his representatives and interested persons and organizations, of appearing at informal hearings presided over by a designated official of the Agency, at which a stenographic transcript is made, or of participating in any other procedure which appears to be desirable and appropriate in order to insure informed administrative action and adequate protection of private interests. Moreover, any appropriate combination of the foregoing procedures may be employed in addition to the basic procedure of permitting interested persons to participate in the rule making proceeding through submission of written data, views, or arguments.

**§ 405.18 Participation by the Board in rule making proceedings.**

Pursuant to section 1001 of the Act, the Board may enter its appearance and participate as an interested party in any proceeding conducted by the Administrator under Title III and in those Title VI proceedings where the Administrator's action may not be appealed to the Board. In order to indicate its intention to participate, the Board may file written data, views, or arguments in response to a notice of proposed rule making issued by the Administrator, shall have the full benefit of all other procedural privileges accorded to the other interested parties, and shall be equally free to participate.

**§ 405.19 Petitions for exemption.**

Any interested person or class of persons may petition the Administrator for a temporary or permanent exemption from any rule issued under Title III or VI of the Act. The petition shall set forth the substance or text of the rule from whose requirements exemption is sought, shall set forth the relief requested, shall contain all facts, views, arguments and data deemed to support the action requested, and shall indicate how the interests of the petitioner are affected. Upon filing with the Agency, petitions for exemption will become public records available for inspection by any interested person.

**§ 405.20 Action on petitions for exemption.**

No public hearing, argument, or other formal proceedings will be directly held on petitions filed pursuant to § 405.19 prior to their disposition by the Agency. If the Administrator determines that the petition discloses sufficient reasons to warrant such action, he will issue an appropriate notice of proposed rule making or, in proper circumstances, adopt an appropriate final rule embodying such exemption. If the Administrator determines that the petition is not sufficiently meritorious to justify instituting a rule making proceeding or granting the requested relief, the Administrator will notify the petitioner to that effect.

**§ 405.21 Request for informal appearances.**

Any interested person may request and will be granted an opportunity to appear informally before the proper official or officials of the Agency for the presentation, adjustment, or determination of a question or controversy pertaining to a rule making function of the Agency. A request for such an appearance shall be submitted in writing and addressed to the Federal Aviation Agency, Washington 25, D. C., or to its nearest Regional or District Office.

This part shall become effective on December 31, 1958.

E. R. QUESADA,
*Administrator.*

[F. R. Doc. 58-10757; Filed, Dec. 31, 1958; 8:45 a. m.]

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Each amendment to this part, as issued, will be published in the Federal Register. Free copies of available amendments may be requested from the Federal Aviation Agency, Aeronautical Reference Branch, Attn: w-126, Washington 25, D.C.

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of such records may be obtained upon payment of the costs of such copies.

This amendment shall be effective upon the date of its publication in the FEDERAL REGISTER.

Issued in Washington, D.C., on March 12, 1959.

E. R. QUESADA,
*Administrator.*

[F.R. Doc. 59-2413; Filed, Mar. 19, 1959; 8:51 a.m.]

Sec.
405.25 Scope and effect of subpart.
405.26 Processing of petitions for rule making.
405.27 Issuance of notice of proposed rule making.
405.28 Proceedings subsequent to a notice of proposed rule making.
405.29 Adoption and publication of final rule.
405.30 Denial of petitions for rule making.
405.31 Exemptions.
405.32 Dockets.

AUTHORITY: §§ 405.25 to 405.32 issued under sec. 313(a) of the Federal Aviation Act of 1958, Act of August 23, 1958, 72 Stat. 752 (Pub. Law 85-726). Interpret or apply sec. 303(d), 307(c), 72 Stat. 749, 758 (Pub. Law 85-726).

§ 405.25 Scope and effect of subpart.

This subpart establishes the supplemental procedures which will be followed by the Bureaus and Offices of the Agency in rule making proceedings and in granting or denying exemptions from rules and regulations, as provided in Subpart B of this part. It also designates the Bureau or Office which is empowered to act for the Administrator in connection therewith. This part does not include the procedures to be followed in rule making proceedings conducted under the authority of section 307(a) of the Federal Aviation Act of 1958.

§ 405.26 Processing of petitions for rule making.

Upon receipt of a petition for rule making, a copy thereof will be referred for action as provided in § 405.14 and this subpart to the Bureau or Office having substantive responsibility for the subject matter involved. The original of the petition will be retained in the official rule making docket of the Agency maintained in the Office of the General Counsel.

§ 405.27 Issuance of notice of proposed rule making.

When it is determined that a notice of proposed rule making is necessary or desirable, the head of the appropriate Bureau or Office will issue, subject to the approval of the General Counsel as to its form and legality, the notice provided for in § 405.12. The head of such Bureau or Office may also grant or deny requests to extend the time specified in the notice for the submission of data, views or arguments in response thereto. A copy of the notice and the grant or denial of a request to extend the time specified in the notice will be made a part of the official rule making docket.

§ 405.28 Proceedings subsequent to notice of proposed rule making.

(a) All written data, views or arguments submitted in response to a notice of proposed rule making or in the course of additional rule making proceedings in connection therewith shall be filed with the number of copies specified in the notice. Upon receipt by the Agency, a copy will be forwarded to the Bureau or Office issuing the notice and the original will be retained in the official rule making docket.

(b) When the head of the appropriate Bureau or Office determines that additional rule making proceedings of the type provided for in § 405.17 are necessary or desirable, he may designate representatives to conduct such proceedings. A full report of any such proceeding will be included in the official rule making docket.

§ 405.29 Adoption and publication of final rule.

After the appropriate Bureau or Office has completed its analysis and evaluation of the data, views and arguments submitted in support of a proposed rule, representatives of such Bureau or Office and the Office of the General Counsel will prepare, subject to the approval of the General Counsel as to form and legality, an appropriate rule. Thereafter such rule will be submitted, together with the recommendations of the head of the Bureau or Office and the General Counsel to the Administrator for his consideration and adoption. If adopted, the rule will be published in the FEDERAL REGISTER and a copy included in the official rule making docket.

§ 405.30 Denial of petitions for rule making.

When it has been determined that a petition for rule making filed in accordance with § 405.13 should be denied the appropriate Bureau or Office will prepare, subject to the approval of the General Counsel as to form and legality, a notice of denial for the signature of the Administrator. A copy of such notice will be included in the official rule making docket.

§ 405.31 Exemptions.

(a) *Processing of petitions.* Upon receipt of a petition for exemption from the requirements of any rule or regulation prescribed under Titles III and VI of the Federal Aviation Act of 1958, a copy of the petition will be referred to the Bureau or Office having substantive responsibility for the subject matter involved for action pursuant to § 405.20. The original of the petition will be retained in the official rule making docket. The head of the appropriate Bureau or Office, subject to the approval of the General Counsel as to form and legality, may grant or deny the petition. In the event that the head of the Bureau or Office finds that the grant or denial of such petition involves a technical or policy determination which should be made by the Administrator, he will refer the petition together with his recommendations and those of the General Counsel to the Administrator for final action.

(b) *Notification of the grant or denial.* Whenever a petition for exemption is granted or denied the Bureau or Office having substantive responsibility for the subject matter of the petition will prepare, subject to the approval of the General Counsel as to form and legality, a notice to the petitioner of the action taken. A copy of such notice will be included in the official rule making docket.

§ 405.32 Docket.

The official Agency records pertaining to rule making actions and petitions for exemptions will be maintained in the Office of the General Counsel and, unless ordered withheld from the public under section 1104 of the Federal Aviation Act of 1958, will be made available for examination by interested persons at that Office. Photostatic or duplicate copies

# Title 14—CIVIL AVIATION

## Chapter II—Federal Aviation Agency

### SUBCHAPTER A—PROCEDURAL REGULATIONS

[Amdt. ]

## PART 405—RULE MAKING PROCEDURES

### Subpart C—Processing of Rules

The purpose of this subpart is described in § 405.25. Since it does not involve a substantive rule and concerns Agency procedure, notice and public procedure thereon are unnecessary.

In consideration of the foregoing, acting pursuant to section 303(d) of the Federal Aviation Act of 1958, and section 3 of the Administrative Procedure Act, I hereby amend Part 405 of the regulations of the Federal Aviation Agency by adding a new Subpart C to read as follows: