

COMSTAC Regulatory Working Group
Draft White Paper: Part 413 Recommendations
August 2020

Purpose

The purpose of this paper is to recommend improvements in the commercial space transportation regulations that govern the application process for applicants. Specifically, this paper addresses those processes described in Part 413 of the regulations.

Background

Part 413 generally “explains how to apply for a license or experimental permit. These procedures apply to all applications for issuing a license or permit, transferring a license, and renewing a license or permit.”¹

Part 413.5 describes the requirement for a Pre-Application Consultation as an engagement between the FAA and the applicant to “discuss the application process and possible issues relevant to the FAA’s licensing or permitting decision.” The part further states that “early consultation helps an applicant to identify possible regulatory issues at the planning stage when changes to an application or to proposed licensed or permitted activities are less likely to result in significant delay or costs to the applicant.”

The Pre-Application Consultation provides an opportunity for the applicant to gain a better understanding of the licensing process and for the FAA to better understand the proposed operations and activities of the applicant. Ideally, the pre-application process would be a time when both industry and the FAA have the opportunity to understand as much about the proposed operation as possible to minimize delays in the evaluation process.

The determination by the FAA that an application is “complete enough” to move to evaluation would benefit from specific defined benchmarks and more specificity in Advisory Circulars or in the regulations. For example, the regulations state: “The FAA will initially screen an application to determine whether it is complete enough for the FAA to start its review. After completing the initial screening, the FAA will notify the applicant in writing that...The FAA accepts the application and will initiate the reviews required to make a decision about the license or permit.”² However, the regulations also state that “the FAA’s acceptance of an application does not mean it has determined that the application is complete.”³ Clearly, this part of the regulation is meant to provide the agency with flexibility to request additional information from the applicant and for the applicant to ensure it has provided sufficient information to the FAA throughout the evaluation period. This could be a good approach for new and non-traditional

¹ 14 CFR 413.1 (a)

² 14 CFR 413.11 (a)

³ 14 CFR 413.13

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operations the agency may evaluate but is a source of delays for experienced operators if not managed properly.

The requirement that an applicant go through the Pre-Application Consultation and have an application judged as “complete enough” before moving forward in the evaluation process is directly connected to the requirement in federal law that the FAA make licensing determinations “not later than 180 days after accepting an application.”⁴ Additionally, the FAA is required to make determinations on experimental permit applications “not later than 120 days after receiving an application.”⁵ Because the 180 or 120 days is required under federal law, the FAA strives to get as much information into the application prior to “starting the clock” on the statutory requirement. This process is important for the agency to ensure that it does not receive a deficient application that it must later toll or outright reject. This process can be lengthy and be a source of delay in evaluation, but it is incumbent upon the applicant and the agency to work expeditiously to ensure the proper data is available for evaluation. Here again, the process could benefit from specific benchmarks and guidelines.

The law is specific that the FAA must make a determination on the application within 180 or 120 days of “accepting” an application. Federal law permits the FAA to issue licenses “in the form and way the [FAA] prescribes,”⁶ so the regulatory requirement for Pre-Application Consultation and a “complete enough” determination is consistent with the statute. However, the current process requires applicants and the agency to have a basic common understanding of what is required for a license application to be considered “complete enough” to move forward and accepted as final. Additionally, the regulations may not effectively provide the agency or the applicant an explicit enough roadmap for how to move through the process, leading to initial regulatory uncertainty in development programs.

This lack of clarity over what constitutes “complete enough” or an acceptable application causes tension and uncertainty for both the applicant and the FAA. Having a better definition for the determinations and a well-defined process with benchmarks for progress will ease this tension, improve evaluation efficiency, conserve resources at the agency, and shorten pre-application consultation through the use of clearly defined benchmarks. Moreover, the entirety of the evaluation process and the requirements for acceptance of an application are amorphous and require clear and timely communication between the applicant and the agency to conserve resources for both.

Recommendations

While the Pre-Application Consultation and the requirement for the FAA to make a determination that an application is “complete enough” clearly has value if handled appropriately by both the applicant and the agency, the current state of the regulations and the process by

⁴ 51 USC 50905(a)(1)

⁵ 51 USC 50906(a)

⁶ 51 USC 50905(a)(1)

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which this is administered could be improved to ensure that both the FAA and the applicant have a clear understanding of:

- what is required to move from Pre-Application Consultation to Evaluation;
- what constitutes a “complete enough” application such that the FAA can accept the application under 14 CFR 413.11(a);
- how the applicant should provide data and information to the FAA; and
- how the FAA can streamline the process to conserve resources for the agency and for the applicants.

It is important to recognize that not all applicants are the same and that the applicant has a duty to be educated about the application process and to provide complete information that allows for appropriate oversight of the operation proposed. In short, the FAA and the applicant have a duty to work in good faith towards a licensing decision.

Recommendation 1 – Pre-Application Consultation Process

- The FAA should create specific deadlines for evaluation in the Pre-Application Consultation Phase, including a formal initiation of the Pre-Application Consultation process with the FAA acknowledging, in writing, that the Pre-Application Consultation has begun and a clear timeframe for when the FAA expects the applicant to move to the evaluation phase.
- Once the Pre-Application Consultation has concluded, the FAA should acknowledge in writing that the applicant’s initial application is under “Complete Enough Review.” It is recommended that the FAA complete its initial review of a “complete enough” application within two weeks of issuing that determination and provide written feedback within 30 days to the applicant.
- After the review, the FAA should provide the applicant with a determination that the application is “complete enough” or, as required by 413.11(b), provide in writing to the applicant a list of specific items of concern, missing content, or clarifications of checklist items that precludes the agency from issuing a complete enough evaluation.
- The applicant should be provided with a reasonable deadline for responding to the concerns outlined in the letter and respond expediently. Once the issues identified in the review have been addressed in writing by the applicant, the FAA should provide the applicant with a specific acknowledgement, in writing, that the application is “Complete Enough” and the application has been accepted for evaluation under 413.11(a).

Recommendation 2 – “Complete Enough” Review

- The FAA should provide in an Advisory Circular (AC) the specific requirements the applicant must meet to be considered “complete enough” to move out of Pre-Application Consultation to the evaluation phase. FAA should work with industry to develop the appropriate content in this AC.

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- COMSTAC recommends that the FAA define requirements in each of the following areas, at a minimum:
 - o Safety Critical System Descriptions
 - o Draft Airspace Agreements (if applicable)
 - o Nominal Operating Procedures, and Emergency Procedures (if applicable)
 - o Safety Management System
 - o Flight Safety Analysis
 - o System Safety Analysis
 - o Hazardous Materials List
 - o Verification Program Plan (if applicable)
 - o Emergency Response Plan
 - o Mishap Investigation Plan
 - o Applicable Part 460 content
 - o Contingency Abort Profiles
 - o Environmental Assessments
- The ability of the FAA to request additional information from the applicant during the evaluation of the application⁷ should be limited to only information that was not covered by the list included in the AC. The FAA should not use the evaluation period to request additional information from those areas already provided as part of the “complete enough” determination unless there were material facts discovered through the application process that call into question the completeness of the information provided in the pre-application phase.

Recommendation 3 – Acceptance of a Complete Application

- The “Complete Enough” Determination Letter should include a notification that the statutory 180 day or 120 day review requirement has started as of the day the application was submitted (not from the day the application was deemed “complete enough”) and a timeline for evaluation of each of the following application areas, including:
 - o Flight Safety,
 - o Ground Safety,
 - o System Safety,
 - o Policy Review,
 - o Payload Review, and
 - o Environmental Compliance.

Recommendation 4 – Review Period

- Throughout the entire evaluation phase, the FAA should provide a substantive update to the applicant on the status of the pending application periodically and upon request.

⁷ 14 CFR 413.13

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- In the event that the FAA believes an application review period must be tolled as outlined in regulations,⁸ the FAA should provide to the applicant, on the day of the beginning of the toll, a letter that outlines the specific deficiencies of the application that precipitated the toll, how the applicant can cure the deficiencies, and a timeline for response, evaluation of the new information, and the end of the toll.

Recommendation 5 – Accuracy and requirements updates for existing licensees

- COMSTAC recommends that the FAA eliminate Pre-Application Consultation for licensees with active licenses that are in the process of being updated for accuracy upon certification by the licensee that there have been no technical modifications to the launch vehicle.
- To the maximum extent practicable, when evaluating an application from an applicant with an active applicable launch operator’s license, the FAA should utilize existing environmental impact and assessment data, existing flight, ground, and system safety data, and existing information from previous policy and payload reviews for applications from applicants with active licenses or permits.

⁸ 14 CFR 413.15(b)