

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Parts 401, 404, 413, 415, and 420**

[Docket No. FAA-2005-21234, Notice No. 05-06]

RIN 2120-A145

Miscellaneous Changes to Commercial Space Transportation Regulations**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of proposed rulemaking (NPRM).

SUMMARY: This proposal would prohibit obtrusive space advertising and make other minor changes to the regulations governing commercial space transportation. The proposed changes are necessary to reflect a statutory change, capture current practice, and to correct errors in a table. The purpose of the changes is to give the public and the regulated industry accurate and current information.

DATES: Send your comments on or before July 18, 2005.

ADDRESSES: You may send comments identified by Docket Number FAA-2004 using any of the following methods:

- *DOT Docket Web Site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Government-wide Rulemaking Web Site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.

- *Fax:* 1-202-493-2251.

- *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the

Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michelle Murray, Office of Commercial Space Transportation (AST), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-7892.

SUPPLEMENTARY INFORMATION:**Comments Invited**

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite 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. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the Web address in the **ADDRESSES** section.

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <http://dms.dot.gov>.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

- (1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (<http://dms.dot.gov/search>);
- (2) Visiting the Office of Rulemaking's Web page at <http://www.faa.gov/avr/arm/index.cfm>; or
- (3) Accessing the Government Printing Office's Web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by submitting 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. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Background

The Commercial Space Launch Act of 1984, as codified at 49 U.S.C. subtitle IX, chapter 701, authorizes the Secretary of Transportation to oversee, license, and regulate non-Federal launch activities, including commercial launches carried out by U.S. citizens or within the United States and, in doing so, to safeguard public health and safety, safety of property, and the national security and foreign policy interests of the United States. The Secretary has delegated this responsibility to the FAA Administrator who, in turn, has further delegated it to the Associate Administrator for Commercial Space Transportation. The following paragraphs describe the changes we are proposing to make in the regulations we have adopted to carry out the purposes of the Commercial Space Launch Act, as amended.

Sections 401.5 and 415.51 Prohibition of Obtrusive Space Advertising

The National Aeronautics and Space Administration Authorization Act of 2000 (Pub. L. 106-391) amended 49 U.S.C. chapter 701 to add a prohibition against "obtrusive" space advertising. Space advertising is a new form of advertisement that may become more widespread as the space industry develops. This form of advertisement has traditionally been limited to such activities as placing logos on payloads, uniforms, launch vehicles, launch facilities, and launch infrastructure. Besides these traditional forms of advertisement, space also offers the ability to promote messages in entirely new ways. Objects placed in orbit, if large enough, could be seen by people

around the world for long periods of time. Their visibility in the sky could have adverse effects on the general public and astronomers. Large advertisements could destroy the darkness of the night sky. Their size and light emissions could impede astronomical observations that rely on a dark celestial environment. These are the type of adverse effects that indicate advertising is obtrusive.

Obtrusive space advertising, as defined in 49 U.S.C. chapter 701, is "advertising in outer space that is capable of being recognized by a human being on the surface of the Earth without the aid of a telescope or other technological device." 49 U.S.C. 70102. Although the statute gives the FAA the authority to prohibit obtrusive space advertising using a payload, current regulations do not reflect this authority. For this reason, we are proposing to add a definition of "obtrusive space advertising" to our general definitions section at 14 CFR 401.5. The language of the definition is the same as that contained in the statute. We are also proposing to add to existing 14 CFR 415.51 a statement that we will review a payload proposed for launch to determine if the launch of the payload would result in obtrusive space advertising.

An example of a proposed payload that would have been obtrusive space advertising came from a space company that proposed to launch a group of large billboards into low Earth orbit. Viewed from Earth, these billboards would have appeared as large as the Moon and been visible to millions of people around the world without the aid of a telescope or other technological device. The FAA is requesting comments from the public on what would clearly differentiate between obtrusive and non-obtrusive types of space advertising.

Section 404.3 Waiver of the Requirement for a License

The FAA proposes to amend 14 CFR 404.3 to allow the Associate Administrator to waive the requirement for a launch license under 14 CFR 415 for launches that are not "amateur rocket activities," as defined at 14 CFR 401.5, that are 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. The Commercial Space Act of 1998 (Pub. L. 105-303) modified section 70105(b)(3) of the Commercial Space Launch Act to allow the Associate Administrator to waive the requirement to obtain a license for an individual applicant. The Associate Administrator must determine

that the waiver is in the public interest and will not jeopardize the public health and safety, the safety of property, or any national security or foreign policy interest of the United States. We are proposing to update our regulations to reflect this authority.

Section 404.5 Petition for Reconsideration

We are proposing to amend 14 CFR 404.5 by adding a process for reconsidering a denial of a waiver. The proposed addition of a license waiver process to 14 CFR 404.3 highlighted the fact that our existing petition processes do not allow for reconsideration of a denial of a waiver or petition.

Currently, 14 CFR 404.5(b) allows the Associate Administrator for Commercial Space Transportation to grant a petition for a waiver if 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. Existing 14 CFR 404.5(c) provides that if the Associate Administrator determines that the petition does not justify granting the waiver, the petition is denied.

Proposed 14 CFR 404.5(e) would allow a petitioner to request reconsideration of a petition denial within 60 days of the date of the denial. For FAA to accept the petition, it would have to show either of the following:

- The petitioner has a significant additional fact and a reason for not presenting it in the original petition,
- The FAA made an important factual error in the denial of the original petition, or
- The denial by the FAA is not in accordance with applicable law and regulations.

Section 413.7(c) Signature and Certification of Accuracy of an Application

Existing 14 CFR 413.7(c)(1) requires that an application for licensed activities must be legibly signed, dated, and certified as true, complete, and accurate by an *officer* authorized to act for the corporation (italics added) in licensing matters. To reduce the burden of licensing on the commercial space industry, the FAA proposes to amend 14 CFR 413.7(c)(1) to allow corporations to designate a person to sign applications who is not an officer of the corporation. For large corporations, the requirement for an officer of the company to submit an application is often difficult. Getting the original application signed by an officer may not be difficult, but the final application usually includes additional material than just the original

application. It is sometimes difficult for all additional information or data to be signed off by an officer of the corporation. The application process would be streamlined if an officer of a corporation could delegate his or her responsibility in licensing matters.

Part 420 Appendix C Correction of Table C-3

Appendix C to part 420 provides a method for an applicant to estimate the expected casualty (Ec) for a launch of a guided expendable launch vehicle using a flight corridor generated either by appendix A or appendix B to part 420. As part of the calculation, a casualty area lookup table is used. Recent analysis has shown that expected casualty values generated by appendix C are overly conservative, and that this conservatism stems largely from the overly conservative casualty areas in Table C-3. We are proposing to replace the lookup table to reflect more realistic casualty areas, which in turn will produce more reasonable Ec values. The new values will be, on average, an order of magnitude lower than their original counterparts. This change would affect launch site applicants who wish to use the appendix C method to comply with part 420.

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. We have determined that there are no new information collection requirements associated with this proposed rule.

Economic Evaluation

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency proposing or adopting a regulation to proceed only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531-2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis for U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 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). The FAA currently uses an inflation-adjusted value of \$120.7 million in lieu of \$100 million.

If it is determined that the expected impact is so minimal that the proposal does not warrant a full evaluation, this order permits a statement to that effect and the basis for it to be included in the preamble and a full regulatory cost benefit evaluation need not be prepared.

The proposed rule would prohibit FAA from authorizing for launch those payloads that result in obtrusive space advertising. The prohibition became law when chapter 701 of title 49 of the United States Code was amended to forbid the launch of payloads for the purpose of obtrusively advertising from space. This prohibition would primarily affect advertising entities that seek to use space as a medium for product or message promotion. The proposed rule would codify current practice and procedures of the Associate Administrator for Commercial Space Transportation since the amendment to chapter 701 of title 49 of the United States Code went into effect. As such, there would be no benefits gained or costs incurred.

The proposed rule regarding license waivers would amend 14 CFR 404.3 to allow the FAA to waive the requirement for a license when the Associate Administrator for Commercial Space Transportation determines that waiving the requirement for a license 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. The license waiver amendment would codify current practice and procedures as established in the Commercial Space Act of 1998. Since the amendment would codify current practice and procedures, there should be no costs or benefits.

The proposed rule would amend 14 CFR 404.5 to allow for reconsideration of a denial of a waiver. This change would provide due process to a person whose petition for a waiver or exemption was denied by FAA. There is the potential for a cost savings if the petitioner can show that FAA has made a factual error or has not correctly applied existing law to a waiver request.

The proposed rule regarding the delegation of signing off for licensing matters would amend 14 CFR 413.7(c) to allow corporations to designate a

duly appointed person to sign in licensing matters who is not an officer of the corporation. Currently, only an officer authorized to act for the corporation in licensing matters has this signature authority. The proposal would reduce the burden of licensing on the commercial space transportation industry by allowing corporations to delegate this authority to a person other than a corporate officer. The proposal would expedite the licensing process because if the corporate officer were not available the delegated person could act in his or her place. The overall impact could result in a cost savings.

The proposal would change Table C-3 of appendix C in part 420 to correct values of the effective casualty area. An effective casualty area is defined in 14 CFR 420.5 as the aggregate casualty area of each piece of debris created by a launch vehicle failure at a particular point on its trajectory. Launch site applicants seeking a license to operate a site where guided expendable launch vehicles may be launched use these casualty areas to calculate the expected casualty of a proposed vehicle along a specified flight corridor. The rule would affect launch site operator or license applicants who wish to use appendix C to comply with part 420. Launch vehicle operators would not be affected by this rule because each vehicle they propose to launch from a site would require the use of their vehicle-specific attributes instead of the above mentioned table values when calculating the effective casualty area.

The proposal would allow for more accurate expected casualty calculations for the launch of a guided expendable launch vehicle. The primary benefit from the change is that more sites would initially qualify for a launch site operator license. In addition, once a site is authorized, each launch vehicle operator would still have to undertake a much higher fidelity Ec analysis to obtain a license to launch from that site.

Since this final rule merely revises and clarifies FAA rulemaking procedures, the expected outcome will have a minimal impact with possible cost savings to the industry, and a regulatory evaluation was not prepared. The FAA requests comments with supporting justification regarding the FAA determination of minimal impact.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational

requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. 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 proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 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.

In view of the minimal cost impact of the proposed rule, the FAA has determined that this proposed rule would have no significant economic impact on a substantial number of small entities. Consequently, the FAA certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA invites industry comments and requests that all comments be accompanied with clear and detailed supporting data.

International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. 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 proposed rule and determined that it would likely have only a domestic impact and therefore no effect on any trade-sensitive activity.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act 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 (adjusted annually for inflation) 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 \$120.7 million in lieu of \$100 million.

This proposed rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national 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.

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 proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 312(d) and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant energy action" under the executive order because it is not a "significant regulatory action" under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in

14 CFR Part 401

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

14 CFR Part 404

Administrative practice and procedure, Space transportation and exploration.

14 CFR Part 413

Confidential business information, Space transportation and exploration.

14 CFR Part 415

Aviation safety, Environmental protection, Space transportation and exploration.

14 CFR Part 420

Environmental protection, Reporting and recordkeeping requirements, Space transportation and exploration.

The Proposed Amendment

For the reasons stated in the preamble, the Federal Aviation Administration proposes to amend 14 CFR chapter III as set forth below:

PART 401—ORGANIZATION AND DEFINITIONS

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

Authority: 49 U.S.C. 70101–70121.

2. Amend § 401.5 to add the following definition in alphabetical order:

§ 401.5 Definitions.

* * * * *

Obtrusive space advertising means advertising in outer space that is capable of being recognized by a human being on the surface of the Earth without the aid of a telescope or other technological device.

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PART 404—REGULATIONS AND LICENSING REQUIREMENTS

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

Authority: 49 U.S.C. 70101–70121.

4. Revise § 404.3 to read as follows:

§ 404.3 Filing of petitions to the Associate Administrator.

(a) Any person may petition the Associate Administrator to:

(1) Issue, amend, or repeal a regulation to eliminate as a requirement for a license any requirement of Federal law applicable to commercial space launch and reentry activities and the operation of launch and reentry sites;

(2) Waive any such requirement in the context of a specific application for a license; or

(3) Waive the requirement 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, the licensing requirement to be eliminated or waived, or the type of license to be waived;

(3) In the case of a petition for a waiver of a particular licensing requirement, 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 for later submission is shown in the petition.

(c) A petition for rulemaking filed under this section must contain a summary, which the Associate Administrator may cause to 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.

5. Amend § 404.5 by adding new paragraph (e) to read as follows:

§ 404.5 Action on petitions.

* * * * *

(e) *Reconsideration.* Any person may petition FAA to reconsider a denial of a petition the person had filed. The petitioner must send a request for reconsideration to the same address to which the original petition went. For FAA to accept the petition, the petitioner must show the following:

(1) There is a significant additional fact and the reason it was not included in the original petition;

(2) FAA made an important factual error in our denial of the original petition; or

(3) The denial by the FAA is not in accordance with the applicable law and regulations.

PART 413—LICENSE APPLICATION PROCEDURES

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

Authority: 49 U.S.C. 70101–70121.

7. Amend § 413.7 by revising paragraph (c)(1) to read as follows:

§ 413.7 Application.

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(c) * * *
(1) For a corporation: An officer or other individual duly authorized to act for the corporation in licensing matters.
* * * * *

PART 415—LAUNCH LICENSE

8. The authority citation for part 415 continues to read as follows:

Authority: 49 U.S.C. 70101–70121.

9. Revise § 415.51 to read as follows:

§ 415.51 General.

(a) The FAA reviews a payload proposed for launch to determine whether a license applicant or payload owner or operator has obtained all required licenses, authorization, and permits, unless the payload is exempt from review under § 415.53 of this subpart. If not otherwise exempt, the FAA reviews a payload proposed for

launch to determine whether its launch would jeopardize public health and safety, safety of property, U.S. national security or foreign policy interests, or international obligations of the United States.

(b) The FAA also reviews a payload proposed for launch to determine if the launch of the payload would result in obtrusive space advertising. No payload, whether exempt from review or not, may be launched under a launch license if it results in obtrusive space advertising.

(c) A payload determination is part of the licensing record on which the FAA's licensing determination is based.

10. Amend § 415.59 by revising paragraphs (a)(7) and (8) and by adding paragraph (a)(9) to read as follows:

§ 415.59 Information requirements for payload review.

* * * * *

(a) * * *

(7) Intended payload operations during the life of the payload;

(8) Delivery point in flight at which the payload will no longer be under the licensee's control; and

(9) Any material to be used for the purposes of advertising.

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PART 420—LICENSE TO OPERATE A LAUNCH SITE

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

Authority: 49 U.S.C. 70101–70121.

12. Revise Table C–3 of appendix C to part 420 to read as follows:

Appendix C to Part 420—Risk Analysis

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TABLE C–3.—EFFECTIVE CASUALTY AREA (MILES²) AS A FUNCTION OF IIP RANGE (NM)

Table with 6 columns: Instantaneous impact point range (nautical miles), Small, Medium, Medium large, Large, and Guided. Rows include ranges 0–49, 50–1749, and 1750–5000 with corresponding casualty area values in scientific notation.

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Issued in Washington, DC on May 10, 2005.

Patricia Grace Smith,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 05–9705 Filed 5–18–05; 8:45 am]

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