

economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Kennett Memorial Airport, Kennett, MO.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

**PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS**

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9N, dated September 1, 2005, and effective September 16, 2005, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

**ACE MO E5 Kennett, MO**

Kennett Memorial Airport, MO  
(Lat. 36°13'33" N., long. 90°02'12" W.)  
Kennett NDB  
(Lat. 36°13'43" N., long. 90°02'21" W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Kennett Memorial Airport and within 2.5 miles each side of the 003° bearing from the Kennett NDB extending from the 6.6-mile radius of the airport to 7 miles north of the NDB and within 2.5 miles each side of the 030° bearing from the Kennett NDB extending from the 6.6-mile radius of the airport to 7 miles north of the NDB and within 2.5 miles each side of the 191° bearing from the Kennett NDB extending from the 6.6-mile radius of the airport to 7 miles south of the NDB.

\* \* \* \* \*

Issued in Kansas City, MO, on October 26, 2005.

**Elizabeth S. Wallis,**

*Acting Area Director, Western Flight Services Operations.*

[FR Doc. 05–22395 Filed 11–9–05; 8:45 am]

**BILLING CODE 4910–13–M**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 121**

**[Docket No.: FAA–2005–22915; Amendment No. 121–317]**

**RIN 2120–ai65**

**Supplemental Oxygen**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Direct final rule; request for comments.

**SUMMARY:** In this direct final rule, the FAA is amending its regulation on the use of pilot supplemental oxygen. The amendment changes the flight level at which the remaining pilot at the controls of the airplane must put on and use his oxygen mask if the other pilot at any time leaves his control station of the airplane. This amendment revises that altitude to “above flight level 350” from “above flight level 250.” It will also eliminate the needless use of oxygen that is not otherwise required to provide for safety in air carrier operations. This will reduce needless expenditures to replace oxygen equipment that is subject to excessive wear and tear.

**DATES:** Effective January 9, 2006.

Comments for inclusion in the Rules Docket must be received on or before December 27, 2005.

**ADDRESSES:** You may send comments [identified by Docket Number [Insert docket number, for example, FAA–200X–XXXX]] 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:** Michael J. Coffey, Air Transportation Division (AFS–220), Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; Telephone No. (202) 267–3750.

**SUPPLEMENTARY INFORMATION:** On February 25, 2004, the FAA published a notice in the **Federal Register** asking the public to tell us which regulations we should amend, remove, or simplify. See 69 FR 8575. In response to the February notice, we received four comments on the topic of supplemental oxygen. Additionally, the FAA has received numerous petitions for exemption from 14 CFR 121.333(c)(3). These petitions requested relief from the regulation so that if it is necessary for one pilot to leave his station at the controls of the airplane when the aircraft is above flight level (FL) 250, the remaining pilot at the controls must put on and use his oxygen mask until the other pilot has returned to his duty station. The petitioners sought relief up to FL 410.

When flight operations above FL 250 were first initiated, there was uncertainty of the ability of pilots to safely operate in that environment. Before the establishment of the FAA in 1958, the Civil Aeronautics Board (CAB) was responsible for safety in air transportation. The CAB established requirements that both pilots must wear oxygen masks at all times when the airplane was operated above FL 250. The FAA carried forward this requirement without comment into its regulations.

As airplanes, pressurization systems, engines, and other systems, became more reliable, the FAA amended the requirements concerning oxygen masks.

The regulations were amended to permit flights above FL 250 up to FL 410 for certain aircraft and up to FL 350 for all others with neither pilot being required to wear an oxygen mask if there were two pilots at the controls of the airplane and both pilots were equipped with approved "Quick Don" oxygen masks. In promulgating that amendment, the FAA required that when operating above FL 250, if one pilot is absent from his duty station, the other pilot must put on and use his oxygen mask until the other pilot has returned to his duty station.

The FAA finds that the oxygen equipment in today's modern aircraft has improved to the extent that a pilot can safely operate an airplane during and following a rapid decompression, up to certain flight levels, without requiring the pilots to wear the oxygen masks. This finding is predicated on the pilot being fully trained and qualified in accordance with approved training programs and having state of the art oxygen equipment available for use within easy reach.

Research in the area of aviation physiology began in the 1950s and was significantly expanded during the 1960s and 1970s. In 1973, The National Aeronautics and Space Administration (NASA) published information in this area in order to compile the large body of research generated in recent years. The FAA evaluated the data and affirms the validity of it in promulgating this rule.

In The Bioastronautics Data Book, published by NASA, in 1973, NASA states that the mean time of useful consciousness (TUC) at FL 410 is 16 to 17 seconds. In addition to the mean TUC, NASA provides data that the minimum TUC at FL 410 observed was less than 10 seconds and was in the region of 8 to 9 seconds. Based on these TUCs, the FAA finds safety would be compromised if FAA permitted operations up to FL 410 in which the only pilot on the flight deck was not wearing an oxygen mask. However, in reviewing the data published by NASA, the FAA now finds that a FL above FL 250 would still provide an acceptable level of safety, if a single pilot were at the flight controls and is not wearing and using an oxygen mask. The FAA analyzed the TUC at each FL between FL 250 and FL 410. The FAA finds that FL 250 could safely be raised but an increase to FL 410, as requested, would not provide an acceptable level of safety. After reviewing the different TUCs, the FAA finds that FL 350 is the highest FL that provides acceptable TUCs. The mean TUC at FL 350 is 34

seconds and the minimum observed TUC is 17 seconds.

In order to be approved for use under part 121, pilot oxygen masks must meet the requirements set forth under aircraft certification standards. These set forth, among other requirements, that the oxygen equipment must be designed and manufactured so that each pilot may don the oxygen equipment with one hand, not disturb reading glasses, and establish communications, all within 5 seconds. While there is no literal regulatory requirement that each pilot actually demonstrate proficiency in this maneuver under part 121, approved training programs require that pilots train to proficiency in rapid decompression procedures. Thus, there is the commonly acknowledged "5 second criteria."

The FAA believes that in actual aircraft operations, the single pilot may be delayed, and take longer than 5 seconds to start inhaling supplemental oxygen. Any such delay will take up part of the TUC. After considering the variables, the FAA finds the mean TUC at FL 350, 34 seconds, and the minimum observed TUC at FL 350, 17 seconds, is the shortest TUC to which the FAA can safely revise the affected regulation.

NASA provides these TUCs based on studies published by W.V. Blockley, and D.T. Hanifan, in An analysis of the oxygen protection problem at altitudes between 40,000 and 50,000 feet. Webb Associates, Santa Monica, California, California, 1961.

This amendment will also bring the U.S. regulations in closer harmonization with Canadian Regulations on the use of oxygen. Section 605.32(3) of the Canadian Aviation Regulations states "the pilot at the flight controls of an aircraft shall use an oxygen mask if (a) the aircraft is not equipped with quick-donning oxygen masks and is operated at or above flight level 250; or (b) the aircraft is equipped with quick-donning oxygen masks and is operated above flight level 410."

This rule only applies to 121 operations. The FAA has not considered the appropriateness of the rule for operations other than those conducted under part 121 because of insufficient data.

#### Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority. This rulemaking is

promulgated under the authority described in subtitle VII, part A, subpart III, section 44701, "General requirements." Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing:

- Minimum standards required in the interest of safety for the design and performance of aircraft;
- Regulations and minimum standards in the interest of safety for inspecting, servicing, and overhauling aircraft; and
- Regulations for other practices, methods, and procedures the Administrator finds necessary for safety in air commerce.

This regulation is within the scope of that authority because it prescribes a safe level of flight that a single pilot during decompression can safely don oxygen equipment and maneuver the airplane to an altitude not requiring supplemental oxygen.

#### The Direct Final Rule Procedure

In accordance with § 11.13, the FAA is issuing this rule as a direct final with request for comment because we do not expect to receive any adverse comments, and thus, an NPRM is unnecessary. However, to be certain that we are correct, we set the comment period to end before the effective date. If the FAA receives any adverse comment or notice, then the final rule is withdrawn before it becomes effective. The FAA may then issue an NPRM.

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. This final rule reduces the restrictiveness of a requirement as it applies to air carriers conducting operations under part 121. The reduction in the requirement will not affect the safety of these operations because of the improvement of oxygen equipment. As a result, the FAA has determined that this amendment is a relieving change that has no adverse effect on public safety.

Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment,

or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

#### 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 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.access.gpo.gov/su\\_docs/aces/aces140.html](http://www.access.gpo.gov/su_docs/aces/aces140.html).

You can also get a copy by sending 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.

#### Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at our site, <http://www.faa.gov/avr/arm/sbrefa.cfm>.

#### 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 requirements for information collection associated with this rule.

#### International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA identified and discussed similarities and differences in these proposed amendments and foreign regulations.

#### Economic Evaluation, Regulatory Flexibility Act, Trade Impact Assessment, and Unfunded Mandates Assessment

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only after 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. section 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 also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 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 has determined this rule (1) has benefits which do justify its costs, is not a "significant regulatory action" as defined in the Executive Order and is "not significant" as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant impact on a substantial number of small entities; (3) does not impose any barriers to international trade; and (4) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected cost impact is so minimal that a 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 evaluation cost benefit evaluation need not be prepared. Such a determination has been made for this rule. The reasoning for that determination follows.

Since this final rule is relieving, the FAA has determined that the rule will have minimal impact. The FAA requests comment with supporting justification regarding the FAA determination of minimal impact.

#### Regulatory Flexibility Act

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 agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

This final rule will provide minor cost savings to small part 121 operators. Therefore, the FAA Administrator certifies this action will not have a significant economic impact on a substantial number of small entities.

#### Trade Impact Assessment

The Trade Agreements Act of 1979 prohibits Federal agencies from engaging in any standards or 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 potential effect of this final rule and has determined that it will provide cost savings to domestic operators and will not impose any costs on international entities, and thus has a neutral trade impact.

#### Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104-4 on March 22, 1995, 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 a \$100 million or more expenditure (adjusted annually for inflation). The FAA currently uses an inflation-adjusted value of \$120.7 million in lieu of \$100 million.

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this regulation.

#### Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of

Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this final rule does 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 rulemaking action qualifies for the categorical exclusion identified in paragraph 312d and involves no extraordinary circumstances.

#### Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, 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 121

Air Carriers, Aircraft, Airmen, Aviation Safety, Charter Flight, Safety, Transportation.

#### Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends part 121 of the Federal Aviation Regulations (14 CFR part 121) as follows:

#### PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 1. The authority citation for part 121 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 45101–45105, 46105, 46301.

#### § 121.333 [Amended]

■ 2. Amend § 121.333 by:

■ a. Changing the word “shall” to “must” wherever it appears in the section; and

■ b. By removing the reference in paragraph (c) to “flight level 250” wherever it appears and inserting the reference to “flight level 350” in its place.

Issued in Washington, DC on November 4, 2005.

**Marion C. Blakey,**  
Administrator.

[FR Doc. 05–22456 Filed 11–9–05; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 100

[CGD07–05–116]

RIN 1625-AA08

#### Special Local Regulations: Offshore Super Series Boat Race, St. Petersburg Beach, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary special local regulation for the Offshore Super Series Boat Race in St. Petersburg Beach, Florida, in the vicinity of the Don Cesar Hotel. This event will be held November 16th, 17th, 19th, and 20th, 2005 between 11 a.m. and 5 p.m. EDT (Eastern Daylight Time). Historically, there have been approximately 400 participant and spectator craft. The nature of high speed boats traveling at speeds in excess of 130 miles per hour creates an extra or unusual hazard in the navigable waters of the United States. This rule is necessary to ensure the safety of life for the participating vessels, spectators, and mariners in the area on the navigable waters of the United States.

**DATES:** This rule is effective from 10:30 a.m. on November 16, 2005 through 5:30 p.m. on November 20, 2005.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket [CGD07–05–116] and are available for inspection or copying at Coast Guard Sector St. Petersburg, Prevention Department, 155 Columbia Drive, Tampa, Florida 33606–3598 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

#### FOR FURTHER INFORMATION CONTACT:

Lieutenant Junior Grade Jennifer Andrew at Coast Guard Sector St. Petersburg, Prevention Department, (813) 228–2191, Ext. 8203.