

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

[Docket No. FAA-2005-21234, Amendment Nos. 404-3, 413-8, and 420-2]

RIN 2120-A145

Miscellaneous Changes to Commercial Space Transportation Regulations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends FAA regulations governing commercial space transportation. These 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: These amendments become effective October 2, 2006.

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SUPPLEMENTARY INFORMATION:**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/regulations_policies/; or
- (3) Accessing the Government Printing Office's Web page at <http://www.access.gpo.gov/fr/index.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 amendment number or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If

you are a small entity and you have a question regarding this document, you may contact a local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.

Authority for This Rulemaking

The Commercial Space Launch Act of 1984, as codified and amended at 49 U.S.C. Subtitle IX—Commercial Space Transportation, ch. 701, Commercial Space Launch Activities, 49 U.S.C. 70101-70121 (the Act), authorizes the Department of Transportation and thus the FAA, through delegations (See 64 FR 19586, Apr. 21, 1999) to oversee, license and regulate commercial launch and reentry activities and the operation of launch and reentry sites as carried out by U.S. citizens or within the United States. 49 U.S.C. 70104, 70105. The Act directs the FAA to exercise this responsibility consistent with public health and safety, safety of property, and the national security and foreign policy interests of the United States. 49 U.S.C. 70105. The FAA is also responsible for encouraging, facilitating and promoting commercial space launches by the private sector. 49 U.S.C. 70103. A 1996 National Space Policy recognizes the Department of Transportation as the lead Federal agency for regulatory guidance regarding commercial space transportation activities.

The rules that we are adopting are part of the Commercial Space Transportation Regulations and fall within the authority above.

Background

On May 19, 2005, the FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (70 FR 29164). Readers should refer to the NPRM for additional background information. We received comments from eight sources, including five individuals, one corporation, the International Astronomical Union, and the American Astronomical Society. These comments are discussed in detail later in this preamble.

Discussion of the Rules Adopted*Section 404.3 Waiver of the Requirement for a License*

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 amending our regulations to reflect this authority.

Section 404.5 Petition for Reconsideration

The FAA amends 14 CFR 404.5 by adding a process for reconsidering a denial of a waiver or petition. The 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.

14 CFR 404.5(e) will 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 will have to show one 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 amends 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

information. It is sometimes difficult for all of the additional information or data to be signed by an officer of the corporation. The application process will be streamlined if an officer of a corporation can 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 a launch site operator applicant to estimate the expected casualty (Ec) for a representative 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 inaccurate due to incorrect casualty areas in Table C-3. We are replacing the lookup table with corrected 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 will affect launch site applicants who wish to use the appendix C method to comply with part 420. To date, no one has applied for a launch site operator license using the appendix C method.

Prohibition of Obtrusive Space Advertising

The NPRM contained a definition of "obtrusive space advertising" that was proposed to be added to the definitions section in 14 CFR 401.5. We proposed adding to 14 CFR 415.51 a requirement that the FAA would review a payload proposed for launch to determine if the launch of the payload will result in obtrusive space advertising. Section 415.51, as proposed, would also have placed a prohibition on the launch of a payload if it resulted in obtrusive space advertising. We intended the proposal to address the statutory requirements contained in the National Aeronautics and Space Administration Authorization Act of 2000 (Public Law 106-391 of October 30, 2000), which amended 49 U.S.C. chapter 701.

Advertising from space is a new form of communication that had the potential to become widespread as the space industry developed. Prior to the enactment of Public Law 106-391, this form of advertisement had been used on such activities as placing advertising logos on uniforms, launch vehicles, launch facilities, and launch infrastructure. Outer space offered the possibility 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 greatly increasing the value of advertising. However, their visibility in the sky could have adverse effects on the general public, astronomers, and other components of the space industry. 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. Their size and light could also cause interference with the satellite control systems that use star trackers and sun sensors for guidance and navigation.

Congress responded to the potential conflict in the use of outer space by these competing interests by enacting Public Law 106-391, which banned all obtrusive space advertising. Obtrusive space advertising, as defined in 49 U.S.C. 70102, 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."

The language we proposed in the NPRM for the definition of "obtrusive space advertising" was the same as that contained in § 70102. After reviewing the comments and the language of the statute the FAA is withdrawing the proposal to change § 401.5 and § 415.51 as proposed in the NPRM because we determined that the regulatory prohibition is not necessary. The statutory prohibitions are sufficient to prevent the launch of a payload containing obtrusive space advertising.

Discussion of Comments

We received several comments on the proposal, which were exclusively in the area of obtrusive space advertising and almost evenly divided between two opposite positions. Comments from Kyle Bennett, David L. Williamson, and Christopher G. Modzelewski were generally opposed to the proposed obtrusive space advertising prohibition. Alternatively, comments from Carla M. Beaudet, Nickolaus E. Leggett and representatives of the American Astronomical Society (AAS), and the International Astronomical Union (IAU) generally supported the obtrusive space advertising prohibition. Finally, comments from Randall Clague represented a moderate position. After reviewing the public comments, two major areas of contention became apparent between the opposing groups.

The first area of contention exists between commenters who believe that obtrusive space advertising will degrade the quality of the night sky versus those who believe the economic benefit derived from allowing obtrusive space advertising is too great to prohibit it.

Ms. Beaudet and representatives from the AAS and IAU believe that obtrusive space advertising will lower the quality of the night sky. Ms. Beaudet compares obtrusive space advertising to ugly billboards along highways. Alternatively, Mr. Bennett and Mr. Williamson believe that forms of advertising that may be classified as obtrusive could be important funding sources for commercial space endeavors. Mr. Bennett and Mr. Modzelewski believe that the proposed prohibition will not stop deployment of obtrusive space advertising but will simply drive companies overseas to purchase launch services in countries that do not have similar restrictions on the launch of obtrusive space advertising.

The second area of contention exists between commenters who believe the proposed definition of "obtrusive space advertising" is not encompassing enough and those who believe it is too encompassing. The AAS and IAU believe that obtrusive space advertising will obscure astronomical observations. In addition, the IAU seeks a more restrictive quantitative definition. Alternatively, Mr. Modzelewski and Mr. Williamson believe that the proposed definition is too encompassing and fails to take into consideration certain solutions that may mitigate the perceived "obtrusive" aspects of space advertising. Mr. Clague proposes a quantitative tool that could provide a bright line test for identifying obtrusive space advertising. His tool utilizes three basic characteristics of light sources including, brightness, size, and dwell time to determine a visual nuisance value.

After reviewing the comments, the FAA is withdrawing the proposal to change § 401.5 and § 415.51 in the NPRM because it has determined that the regulatory prohibition is not necessary. We believe the statutory prohibitions are sufficient to prevent the launch of a payload containing obtrusive space advertising.

Section 70109a(a) stops the FAA from issuing, transferring, or waiving the launch license requirements for the launch of a payload containing any material to be used for the purposes of obtrusive space advertising. This statutory provision requires the FAA to follow the intent of Congress and refrain from involvement in an attempt to legally launch a payload containing obtrusive space advertising. If an applicant approaches the FAA in an attempt to launch a payload containing obtrusive space advertising, the FAA will rely on the existing regulatory authority of 14 CFR 415.51, 415.57, and

415.59 to review the payload. The FAA will consider factors of brightness, size, and dwell time in making a determination. If after considering these factors, the FAA determines that the payload contains obtrusive space advertising, then the applicant will be notified of the statutory prohibition as provided in 14 CFR 415.61. Section 70109a(b) prohibits holders of a license from launching a payload containing any material to be used for purposes of obtrusive space advertising. This provision covers existing license holders.

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 final rule.

Economic Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation 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 (Pub. L. 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the 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 with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect

and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows.

The final rule regarding license waivers amends 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 will codify current practice and procedures as established in the Commercial Space Act of 1998. Since the amendment will codify current practice and procedures, there should be no costs or benefits.

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

The final rule regarding the delegation of signing off for licensing matters amends 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 rule will 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 rule will 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 rule will 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. Recent analysis has shown that expected casualty values

generated by appendix C are inaccurate due to incorrect casualty areas in Table C-3. We are replacing the lookup table with corrected casualty areas, which in turn will produce more reasonable expected casualty values. The new values will be, on average, an order of magnitude lower than their original counterparts. The rule will affect launch site operator or license applicants who wish to use Appendix C to comply with part 420. Launch vehicle operators will not be affected by this rule because each vehicle they propose to launch from a site will require the use of their vehicle-specific attributes instead of the above mentioned table values when calculating the effective casualty area.

The rule will allow for more accurate estimates of expected casualty calculations for the launch of a guided expendable launch vehicle. The primary benefit from the change is that more sites will initially qualify for a launch site operator license. 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.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96-354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration. The RFA covers a wide-range of small entities, including small business, not-for-profit organizations, and small governmental jurisdictions. Agencies must perform a review to determine whether a 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 RFA.

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

This final rule amends FAA regulations governing commercial space transportation. These 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. These miscellaneous changes to the commercial space transportation regulations will have minimal cost impact. Therefore, as the FAA Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96-39) 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 potential effect of this final rule and has determined that it will have only a domestic impact and therefore no effect on any trade-sensitive activity.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) 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 with the base year 1995) 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 \$128.1 million in lieu of \$100 million.

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

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, 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 will 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 312(d) 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 (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 Parts 404, 413, and 420

Aviation safety, Environmental protection, Space transportation and exploration.

The Amendment

■ For the reasons stated in the preamble, the Federal Aviation Administration amends Chapter III of Title 14, Code of Federal Regulations as follows:

PART 404—REGULATIONS AND LICENSING REQUIREMENTS

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

Authority: 49 U.S.C. 70101-70121.

■ 2. 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 or permit 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 permit; or

(3) Waive the requirement for a license.

(b) Each petition filed under this section must:

(1) Be submitted in duplicate to the:
(i) Office of Commercial Space Transportation, Federal Aviation Administration, 800 Independence Avenue, SW., Room 331, Washington, DC 20591; or

(ii) 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 or permitting requirement to be eliminated or waived, or the type of license or permit to be waived;

(3) In the case of a petition for a waiver of a particular licensing or permitting 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.

(d) A petition filed under this section may request, under 14 CFR 413.9, that the Department withhold certain trade secrets or proprietary commercial or financial data from public disclosure.

■ 3. 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 within 60 days after being notified of the denial 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

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

Authority: 49 U.S.C. 70101–70121.

■ 5. Revise § 413.7(c)(1) to read as follows:

§ 413.7 Application.

* * * * *

(c) * * *

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

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PART 420—LICENSE TO OPERATE A LAUNCH SITE

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

Authority: 49 U.S.C. 70101–70121.

■ 7. Revise Table C–3 of Appendix C to part 420 to read as follows:

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Appendix C to Part 420—Risk Analysis

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

Instantaneous impact point range (nautical miles)	Orbital launch vehicles				Suborbital launch vehicles
	Small	Medium	Medium large	Large	Guided
0–49	3.14 x 10 ⁻²	1.28 x 10 ⁻¹	4.71 x 10 ⁻²	8.59 x 10 ⁻²	4.3 x 10 ⁻¹
50–1749	2.47 x 10 ⁻²	2.98 x 10 ⁻²	9.82 x 10 ⁻³	2.45 x 10 ⁻²	1.3 x 10 ⁻¹
1750–5000	3.01 x 10 ⁻⁴	5.52 x 10 ⁻³	7.82 x 10 ⁻³	1.14 x 10 ⁻²	3.59 x 10 ⁻⁶

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Issued in Washington, DC on August 16, 2006.

Marion C. Blakey,
Administrator.

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