Will publish in part 5 of the Federal Register on October 5, 2004

[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA-2004-19246; Amendment Nos. 91-284]

RIN 2120-AI40

Flight Limitation in the Proximity of Space Flight Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action makes editorial changes to current FAA regulations regarding temporary flight restrictions near space flight operations. Specifically, this action removes references to the "Department of Defense (DOD) Manager for Space Transportation System Contingency Support Operations." This action does not change the intent of the existing rule.

DATES: This action is effective on November 4, 2004 [~~INSERT DATE 30-DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER~~].

FOR FURTHER INFORMATION CONTACT: Sheri Edgett-Baron, Airspace and Rules, Office of Systems Operations and Safety, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9354.

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

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 S.W, Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Justification for Proceeding without a notice

The FAA is issuing this action without notice and opportunity to comment under the authority of Section 4(a) of the Administrative Procedure Act, 5 United States Code (U.S.C.) 553(b). Section 553(b) allows the FAA to issue a final rule without notice and comment when the agency, for good cause, finds that notice and public procedure are "impracticable, unnecessary or contrary to the public interest." In this instance, public comment and notice are unnecessary. The change in this final rule merely removes a reference to a department now out of existence. This change will not have a negative effect on safety and does not change the original intent of the rule. Because this is an editorial change, the FAA believes the public will not have a substantial interest in this rulemaking.

Background and Discussion of the Rule

Currently, regulations prohibit aircraft from operating within certain areas except when authorized by Air Traffic Control (ATC) or the DOD Manager for Space Transportation System Contingency Support Operations. These temporary flight restricted areas are designated according to 14 CFR § 91.143 and the information made available through the Notice to Airmen (NOTAM) system. Site launch operators and launch licensees are required through the conditions of their license, or their regulations, to comply with all FAA rules and NOTAMs. During the times that a Space Flight Operation NOTAM is in effect, ATC may authorize aircraft to fly in the designated space flight area. Any such authorization could result in a hold for a launch operator. The ATC, as a matter of practice, will coordinate with the entity managing the space flight operation. Entities conducting the space flight operation may be private or federal.

This action is an administrative update and merely removes a reference to the Department of Defense (DOD) manager for space transportation system contingency support operations. We have been informed by the DOD that this office no longer exists.

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 advise 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.gov/avr/arm/sbrefa.htm. For more information on SBREFA, e-mail us at 9-AWA-SBREFA#@faa.gov. .

Paperwork Reduction Act

There are no new requirements for information collection associated with this amendment. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

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 practical. We have determined there are no ICAO Standards and Recommended Practices that correspond to these this rule.

Economic Assessment, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination 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 also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 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.)

We 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) will reduce barriers to international trade; and 4) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

However, for regulations with an expected minimal impact the above-specified analyses are not required. 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 impact is so minimal that the rule does not warrant a full evaluation, a statement to that effect and the basis for it is included in the rule. Since this rule is strictly administrative in nature involving editorial changes that do not change the intent of the existing rule, the expected outcome is to have a minimal impact.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980, 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 rational 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 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 RFA provides that the head of the agency may so certify and a regulatory flexibility analysis in not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This rule is an administrative change only involving editorial changes that do not change the intent of existing rules. It deletes a reference to the "Department of Defense (DOD) Manager for Space Transportation System Contingency Support Operations" which no longer exists. Consequently, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreement 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 rulemaking and has determined that it will 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 a $100 million or more expenditure (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 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, or the relationship between the national Government and the States, or on distributing 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 final rule qualifies for the categorical exclusion identified in paragraph 4(j) and involves no extraordinary circumstances.``

Energy Impact

The energy impact has been assessed in accordance with the Energy Policy and Conservation Act (EPCA Pub. L. 94-163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that this final rule is not a major regulatory action under the provision of the EPCA.

List of Subjects

14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends Part 91 of Title 14 Code of Federal Regulations as follows:

PART 91— GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

2. Section 91.143 is revised to read as follows:

§ 91.143 Flight limitation in the proximity of space flight operations.

When a Notice to Airmen (NOTAM) is issued in accordance with this section, no person may operate any aircraft of U.S. registry, or pilot any aircraft under the authority of an airman certificate issued by the Federal Aviation Administration, within areas designated in a NOTAM for space flight operation except when authorized by ATC.

Issued in Washington, DC, on SEP 2 9 2004

Marion C. Blakey

Marion Blakey
Administrator

Certified True Copy