

**R-6404B Hill AFB, UT [Amended]**

Under Using agency, remove the words “Commander, 6501 Range Squadron, Air Force Systems Command, Hill AFB, UT.” and insert “388th Fighter Wing, Air Combat Command, Hill AFB UT.”

**R-6404C Hill AFB, UT [Amended]**

Under Using agency, remove the words “Commander, 6501 Range Squadron, Air Force Systems Command, Hill AFB, UT.” and insert “388th Fighter Wing, Air Combat Command, Hill AFB UT.”

**R-6404D Hill AFB, UT [Amended]**

Under Using agency, remove the words “Commander, 6501 Range Squadron, Air Force Systems Command, Hill AFB, UT.” and insert “388th Fighter Wing, Air Combat Command, Hill AFB UT.”

**R-6405 Wendover, UT [Amended]**

Under Using agency, remove the words “Commander, 6501 Range Squadron, Air Force Systems Command, Hill AFB, UT.” and insert “388th Fighter Wing, Air Combat Command, Hill AFB UT.”

**R-6406A Wendover, UT [Amended]**

Under Using agency, remove the words “Commander, 6501 Range Squadron, Air Force Systems Command, Hill AFB, UT.” and insert “388th Fighter Wing, Air Combat Command, Hill AFB UT.”

**R-6406B Wendover, UT [Amended]**

Under Using agency, remove the words “Commander, 6501 Range Squadron, Air Force Systems Command, Hill AFB, UT.” and insert “388th Fighter Wing, Air Combat Command, Hill AFB UT.”

**R-6407 Hill AFB, UT [Amended]**

Under Using agency, remove the words “Commander, 6501 Range Squadron, Air Force Systems Command, Hill AFB, UT.” and insert “388th Fighter Wing, Air Combat Command, Hill AFB UT.”

\* \* \* \* \*

Issued in Washington, DC, April 23, 2009.

**Edith V. Parish,**

*Manager, Airspace and Rules Group.*

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**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Parts 91 and 135**

[Docket No. FAA-2002-14002; Amendment Nos. 91-306 and 135-110]

RIN 2120-AJ46

**Communication and Area Navigation Equipment (RNAV) Operations in Remote Locations and Mountainous Terrain**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This final rule amends the regulations to allow the use of the published Obstacle Departure Procedures (ODP) or an alternative procedure or route assigned by Air Traffic Control (ATC). Also, this final rule amends the requirements to facilitate compliance and accurately reflect operating conditions in areas in which the terrain impedes communications. In August 2007, the FAA issued regulations relating to ODPs and Area Navigation equipment (RNAV). Among the amendments, the FAA prohibited Instrument Flight Rules (IFR) takeoffs from airports with published ODPs for the takeoff runway to be used unless the pilot uses the ODP for that runway. Following publication of the rule, the FAA determined that this requirement is unnecessarily restrictive because it prohibits pilots from using Standard Instrument Departure (SID) procedures and air traffic control (ATC) radar vectoring. The final rule also amended the communication and navigation equipment requirements for aircraft operations under Visual Flight Rules (VFR). The FAA determined that compliance with the new communications requirements may not be possible in remote locations and areas of mountainous terrain. This final rule is adopted without prior notice and public comment, but the public may comment prior to the effective date of the rule.

**DATES:** *Effective Date*—This amendment becomes effective June 30, 2009.

*Comments Due*—Comments must be received by June 1, 2009.

**ADDRESSES:** You may send comments identified by Docket Number FAA-2002-14002 using any of the following methods:

• *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow

the instructions for sending your comments electronically.

• *Mail:* Send comments to Docket Operations, M-30, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590.

• *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* Fax comments to Docket Operations at 202-493-2251. 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://www.regulations.gov>, including any personal information you provide. 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 for 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://DocketsInfo.dot.gov>.

*Docket:* To read background documents or comments received, go to <http://www.regulations.gov> at any time or to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this final rule, contact Dennis Mills, Aviation Safety Inspector, Air Transportation Division, Flight Standards Service, AFS-220, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 493-4901 facsimile (202) 267-5229, e-mail [dennis.mills@faa.gov](mailto:dennis.mills@faa.gov). For legal questions concerning this final rule, contact Robert Hawks, General Attorney, Office of the Chief Counsel, Regulations Division, AGC-240, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-7143, facsimile (202) 267-7971, e-mail [rob.hawks@faa.gov](mailto:rob.hawks@faa.gov).

**SUPPLEMENTARY INFORMATION:****Comments Invited**

The FAA is adopting this final rule without prior notice and public

comment because an immediate action fulfills the FAA's regulatory intent and serves the public interest. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979) provide that, to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The FAA also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting this final rule. The most helpful comments reference a specific portion of the rule, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or, if filing comments electronically, please submit comments only once.

All comments received will be filed in the docket, as well as, a report summarizing each substantial public contact with FAA personnel concerning this rulemaking. The FAA will consider all comments received on or before the closing date for comments. The FAA may amend the final rule in light of the comments received.

#### Authority for This Rulemaking

The FAA's authority to issue rules on 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 Section 44701, the FAA is charged with prescribing regulations and minimum standards for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This final rule promotes safety in air commerce by utilizing air traffic procedures that provide obstacle and terrain clearance, and by facilitating air navigation in remote locations and areas of mountainous terrain.

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C.) authorizes agencies to dispense with notice and comment procedures for rules when the agency for "good cause" finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under this section and upon finding good cause, an

agency may issue a final rule without seeking comment prior to the rulemaking.

The FAA finds that notice and comment procedures under the APA to this final rule are unnecessary and contrary to the public interest. Because operators cannot comply with the current rule as written, it is in the public interest to amend the rule without delay. Furthermore, the FAA solicits comments upon publication of this final rule.

#### Background

##### *Discussion of the Final Rule*

##### Changes to § 91.175

The Area Navigation and Miscellaneous Amendments Notice of Proposed Rulemaking (NPRM) proposed that published ODPs must be followed under IFR conditions to ensure adequate obstacle clearance (67 FR 77326, Dec. 17, 2002). The proposal also provided that if an operation did not use an ODP, the operator may use an alternative procedure or route assigned by ATC. The final RNAV rule however did not include the alternative procedures and prohibited IFR takeoffs from airports with published obstacle departure procedures (ODPs) for the takeoff runway to be used unless the pilot uses the ODP for that runway.<sup>1</sup> (72 FR 31662, June 7, 2007). The final rule inadvertently omitted the exception for ATC-assigned alternative routes. The rule without the proposed exception for ATC-assigned alternative routes is unnecessarily restrictive because it prohibits pilots from using Standard Instrument Departure (SID) procedures and ATC radar vectoring, which provide obstacle and terrain clearance comparable to an ODP.

Accordingly, this final rule corrects the omission and prescribes the use of an ODP or alternative procedure or route assigned by ATC in the circumstances set forth in § 91.175(f). This final rule accords with the intent of the final rule to ensure adequate obstacle clearance and provides a comparable level of safety to the final rule while increasing operational flexibility.

##### Changes to § 135.161

The Area Navigation and Miscellaneous Amendments final rule amended § 135.161 to require aircraft,

<sup>1</sup> Of the forty comments received in response to the proposed rule, four addressed portions of the amendments to section 91.175 (Takeoff and landing under IFR). However, those comments related only to engine-out departure procedures and not to ODPs or other departure procedures under normal operating conditions.

operating under VFR over routes that can be navigated by pilotage, be equipped with equipment to, in relevant part, communicate with at least one appropriate station from any point on the route and receive meteorological information from any point en route.<sup>2</sup> (72 FR 31662, June 7, 2007). Following publication of the final rule, the FAA determined that compliance with § 135.161(a)(1) and (a)(3) may be impossible in certain situations. Part 135 air carriers sometimes operate in remote and mountainous areas of the National Airspace System (NAS). Because of the terrain or gaps in communication coverage in these areas, it may be impossible to communicate from some points along the route, and therefore part 135 air carriers may be unable to comply with the current rule for reasons beyond their control.

Because this final rule corrects a situation where compliance with the requirement for continuous communication in certain remote regions and mountainous terrain may be impossible, this final rule will make compliance possible by reflecting actual operating conditions and accords with the intent of the rule.

#### Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires the FAA to consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined there is no current or new requirement for information collection associated with these amendments.

#### 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 has determined there are no ICAO Standards and Recommended Practices that correspond to these regulations.

#### Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.

<sup>2</sup> Of the forty comments received in response to the proposed rule, none addressed the proposed changes to section 135.161 which is the subject of this rulemaking.

Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) 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, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of 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).

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 allows a statement to that effect and the basis for it to 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:

This final rule corrects an inadvertent omission of an exception allowing ATC-assigned alternative routes for takeoffs under IFR and an unintended requirement for continuous communication in certain remote regions and mountainous terrain for which compliance is impossible. The costs to part 121, 125, 129, and 135 operators resulting from these amendments are minimal because no subsequent actions are required, except that operators have the option of submitting comments for 30 days following **Federal Register** publication.

Accordingly, the FAA has determined that this final rule is not a “significant regulatory action” as defined in section 3(f) of Executive Order 12866, and is not “significant” as defined in DOT’s Regulatory Policies and Procedures.

#### **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 and informational requirements to the scale of the businesses, 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 businesses, 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 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 corrects an inadvertent omission of an exception allowing ATC-assigned alternative routes for takeoffs under IFR and an unintended requirement for continuous communication in certain remote regions and mountainous terrain for which compliance is impossible. Although a substantial number of small entities are affected by this rule, the economic impact is insignificant because the rule does not include any added communication or equipment requirements.

Therefore, as the Acting 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), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered unnecessary obstacles to the foreign commerce of the United States, so long as the standards have a legitimate domestic objective, such as the protection of safety, and do not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of

international standards and, where appropriate, that they be the basis for U.S. standards. The FAA notes the purpose is to ensure the safety of the American public, and has assessed the effects of this rule to ensure it does not exclude imports that meet this objective. As a result this final rule will have only a domestic impact, and, therefore, will not create any unnecessary obstacles to the foreign commerce of the United States.

#### **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 level equivalent of \$100 million in CY 1995, adjusted for inflation to CY 2007 levels by the Consumer Price Index for all Urban Consumers (CPI-U) as published by the Bureau of Labor Statistics, is \$136.1 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.

#### **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). The FAA 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. Also, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### **Availability of Rulemaking Documents**

You may obtain an electronic copy of rulemaking documents using the Internet by:

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
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.gpoaccess.gov/>.

You also may obtain 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. Please identify the amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting or signing the comment (if submitted 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 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://docketsinfo.dot.gov/>.

### 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. If you are a small entity and you have a question about this document, you may contact your local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. You can find out more about SBREFA on the Internet at [http://www.faa.gov/regulations\\_policies/rulemaking/sbre\\_act/](http://www.faa.gov/regulations_policies/rulemaking/sbre_act/).

### List of Subjects

#### 14 CFR Part 91

Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Noise control, Reporting and recordkeeping requirements.

#### 14 CFR Part 135

Air taxis, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

### The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends Chapter I 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:

**Authority:** 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44704, 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. Revise § 91.175(f)(3) to read as follows:

### § 91.175 Takeoff and landing under IFR.

\* \* \* \* \*

(f) \* \* \*

(3) Except as provided in paragraph (f)(4) of this section, no pilot may takeoff under IFR from a civil airport having published obstacle departure procedures (ODPs) under part 97 of this chapter for the takeoff runway to be used, unless the pilot uses such ODPs or an alternative procedure or route assigned by air traffic control.

\* \* \* \* \*

### PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 3. The authority citation for part 135 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 41706, 44113, 44701-44702, 44705, 44709, 44711-44713, 44715-44717, 44722, 45101-41505.

■ 4. In § 135.161, revise paragraphs (a)(1) and (a)(3) to read as follows:

#### § 135.161 Communication and navigation equipment for aircraft operations under VFR over routes navigated by pilotage.

(a) \* \* \*

(1) Communicate with at least one appropriate station from any point on the route, except in remote locations and areas of mountainous terrain where geographical constraints make such communication impossible.

\* \* \* \* \*

(3) Receive meteorological information from any point en route, except in remote locations and areas of mountainous terrain where geographical constraints make such communication impossible.

\* \* \* \* \*

Issued in Washington, DC, on March 16, 2009.

Lynne A. Osmus,

Acting Administrator.

[FR Doc. E9-10089 Filed 4-30-09; 8:45 am]

BILLING CODE 4910-13-P

### FEDERAL TRADE COMMISSION

#### 16 CFR Parts 3 and 4

#### Rules of Practice

**AGENCY:** Federal Trade Commission (“Commission” or “FTC”).

**ACTION:** Final rule.

**SUMMARY:** The FTC is amending Rules 3.1, 3.25, 3.31(g), and 4.2, and rescinding Rule 3.11A, of its Rules of Practice, 16 CFR Parts 3 and 4. Other

than these revisions, it is adopting as final all other amendments to the Part 3 and Part 4 Rules that were published as interim final rules on January 13, 2009. 74 Fed. Reg. 1804.

**DATES:** This rule is effective on May 1, 2009, and will govern all Commission adjudicatory proceedings that are commenced on or after that date.

**FOR FURTHER INFORMATION CONTACT:** Michael D. Bergman, Attorney, (202) 326-3184, or Lisa M. Harrison, Assistant General Counsel, (202) 326-3204, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington DC 20580.

**SUPPLEMENTARY INFORMATION:** On January 13, 2009, the Commission published comprehensive amendments to Part 3 and various amendments to Part 4 of its Rules of Practice, 16 CFR Parts 3 and 4, in order to further expedite its adjudicatory proceedings, improve the quality of adjudicative decision making, and clarify the respective roles of the Administrative Law Judge (“ALJ”) and the Commission in Part 3 proceedings. The Commission requested comments on the interim final rules and set a deadline of February 12, 2009, for any such comments. The Commission received no comments on its interim rules. Other than the rule provisions discussed below, the Commission is adopting the interim rules as final. While no comments were submitted, the Commission has determined, upon further deliberation, that four rule provisions should be amended and that one rule be rescinded. These amendments are discussed below.<sup>1</sup>

#### Section 3.1: Scope of the rules in this part; expedition of proceedings.

The interim rule amendments that the Commission is adopting today as final will substantially expedite Part 3 proceedings. The expedited deadlines apply to all Part 3 matters and are accelerated further for administrative cases where the Commission is also seeking preliminary injunctive relief from a federal district court under Section 13(b) of the Federal Trade

<sup>1</sup> The final rule amendments are not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601(2). The rule revisions to Part 3 are also not subject to the requirements of the Paperwork Reduction Act, which contains an exemption for information collected during the conduct of administrative proceedings or investigations. 44 U.S.C. 3518(c)(1)(B)(ii); 5 CFR 1320.4. To the extent that Rule 4.2 applies to filings that do not fall within this exception, OMB has approved the collection of information, along with other applications and notices to the Commission, and has assigned control number 3084-0047. The revisions to Rule 4.2 do not substantially or materially modify this collection of information.