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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA-2006-25250; Amdt. No. 91-302]

RIN 2120-A163

Special Awareness Training for the Washington, DC Metropolitan Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is requiring “special awareness” training for any pilot who flies under visual flight rules (VFR) within a 60-nautical-mile (NM) radius of the Washington, DC VHF omni-directional range/distance measuring equipment (DCA VOR/DME). This training has been developed and provided by the FAA on its www.FAASafety.gov Web site and focuses primarily on training pilots on the procedures for flying in and around the Washington, DC Metropolitan Area Defense Identification Zone (ADIZ) and the Washington, DC Metropolitan Area Flight Restricted Zone (FRZ). The rule will reduce the number of unauthorized flights into the airspace of the Washington, DC Metropolitan Area ADIZ and FRZ through education of the pilot community.

DATES: This final rule is effective on February 9, 2009. Affected parties, however, do not have to comply with the information collection requirement in § 91.161 until the FAA publishes in the **Federal Register** the control number assigned by the Office of Management and Budget (OMB) for this information collection requirement. Publication of the control number notifies the public that OMB has approved this information collection requirement under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this final rule contact: John D. Lynch, Certification and General Aviation Operations Branch, AFS-810, General Aviation and Commercial Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3844.

For legal questions concerning this final rule contact: Michael Chase, Air Traffic and Airman/Airport Certification Law Branch, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3073.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The Administrator of the FAA has broad authority to regulate the safe and efficient use of the navigable airspace (49 U.S.C. 40103). The Administrator also is authorized to issue air traffic rules and regulations to govern the flight of aircraft, the navigation, protection and identification of aircraft for the protection of persons and property on the ground, and for the efficient use of navigable airspace. Additionally, pursuant to 49 U.S.C. 40103(b)(3) the Administrator has the authority, in consultation with the Secretary of Defense, to “establish security provisions that will encourage and allow maximum use of the navigable airspace by civil aircraft consistent with national security.”

List of Abbreviations and Terms Frequently Used in This Document

ADIZ—Air Defense Identification Zone
AOPA—Aircraft Owners and Pilots Association
ATC—Air Traffic Control
DCA VOR/DME—Washington, DC very high frequency omni-directional range/distance measuring equipment
FDC—Flight Data Center
FRZ—Flight Restricted Zone
HAI—Helicopter Association International
IFR—Instrument flight rules
NATA—National Air Transportation Association
NM—Nautical mile
NOTAM—Notice to Airmen
NPRM—Notice of Proposed Rulemaking
VFR—Visual flight rules

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I. Background

A. Establishment of the Washington, DC ADIZ

In February 2003, the FAA, in consultation with the Department of Homeland Security (DHS), the Department of Defense (DOD), and other Federal agencies, issued Notices to Airmen (NOTAMs) implementing an outer Air Defense Identification Zone (ADIZ) and an inner Flight Restricted Zone (FRZ) around the Washington, DC Metropolitan Area. At that time, the ADIZ closely resembled the Washington tri-area Class B airspace area. The FRZ, requiring more stringent access procedures than the ADIZ, was established within an approximately 15-nautical-mile (NM) radius from the Washington, DC very high frequency omni-directional range/distance measuring equipment (DCA VOR/DME). The NOTAMs also established radio communication, transponder, and flight plan requirements for pilots to follow. Some types of operations, such as U.S. military, law enforcement, and approved aeromedical flights, are

excluded from the requirements. The ADIZ and the FRZ, along with other security measures, enable the law enforcement and security communities to identify pilots and their intentions and to track aircraft operating in the vicinity of the nation's capital.

On August 30, 2007, the airspace restrictions in the Washington, DC area were modified by Flight Data Center (FDC) NOTAMs 07/0206 and 07/0211. While the specifications for the FRZ remain essentially the same (except that the western boundary has been moved slightly eastward), the radius of the ADIZ has been reduced to a 30-NM radius from the DCA VOR/DME, thereby reducing the number of airports affected by the airspace restrictions and making more navigable airspace available to pilots conducting operations in the area. In addition, the requirements to obtain appropriate authorization, establish two-way communication with Air Traffic Control (ATC), be equipped with an operating transponder with altitude-reporting capability, and file a flight plan remain the same. However, the revised NOTAM also added a "maneuvering area" for Leesburg Airport, and imposed an airspeed restriction of 180 knots or less (if capable) within the ADIZ/FRZ. For VFR aircraft operations conducted between 30 and 60 NM of the DCA VOR/DME, aircraft are restricted to an indicated airspeed of 230 knots or less, unless otherwise authorized.

Since the creation of the ADIZ, there have been over 3,000 incursions into the Washington, DC ADIZ. Between February 12, 2003 and April 30, 2008, there were approximately 3,200 reported observed incursions into the Washington, DC ADIZ. A few of these flights came so close to the Capitol and the White House that they caused mass evacuations of these buildings and other Federal office buildings. In other incidents, civilian aircraft have been intercepted by U.S. Coast Guard helicopters and U.S. Air Force fighter airplanes. Although all of the incursions were eventually determined to be non-criminal in nature, each incursion places an unnecessary burden on Federal, state, and local law enforcement resources. For instance, when an unauthorized aircraft penetrates restricted airspace, the FAA's air traffic controllers must divert necessary resources to monitor the aircraft's flight, alert security operations, and communicate information about the aircraft to appropriate military and law enforcement agencies. Several branches of the Federal government, the military, and local law enforcement are forced to respond to the situation and to execute

a potentially hazardous intercept under circumstances that typically prove not to have been a threat to our national security.

B. Summary of the Special Awareness Training NPRM

On July 5, 2006, the FAA issued a Notice of Proposed Rulemaking (NPRM) entitled, "Special Awareness Training for the Washington, DC Metropolitan Area" (71 FR 38118). The FAA proposed that pilots flying VFR within a radius of 100 nautical miles (NM) of the DCA VOR/DME complete free online Special Awareness Training for operating in the Washington, DC metropolitan area and other Temporary Flight Restriction (TFR) areas. Pilots would be required to complete the training one time. Upon completion of the online training, a pilot would download a copy of his or her certificate of training completion. A copy of the certificate would have to be presented upon request of an authorized representative of the FAA, an authorized representative of National Transportation Safety Board (NTSB), any Federal, State, or local law enforcement officer, or an authorized representative of the Transportation Security Administration (TSA).

The comment period for the NPRM closed on September 5, 2006. The FAA is issuing this rule essentially as proposed, except that the proposed requirement that training must be completed by pilots flying within a 100-NM radius from the DCA VOR/DME has been modified in the final rule to require training for pilots flying within a 60-NM radius of the DCA VOR/DME. The FAA will place a note on the Washington Sectional, Baltimore-Washington Terminal Area Sectional, Baltimore-Washington Helicopter Route Sectional, and the CG-21 World Aeronautical Chart about the training requirement for the Washington, DC ADIZ and FRZ airspace.

In addition, the heading of § 91.161 has been modified to better describe the content of the section, and a paragraph entitled "Special Awareness Training" has been added to describe the training required by § 91.161 and where it is located.

C. Other Washington, DC ADIZ-Related Rulemaking Activity

On August 4, 2005, the FAA issued an NPRM entitled, "Washington, DC Metropolitan Area Special Flight Rules Area" (70 FR 45250) that proposed to codify current flight restrictions for certain aircraft operations in the Washington, DC metropolitan area. That rule remains in development, and this

final rule is not directly related to the issues addressed in that rulemaking action.

II. Discussion of Comments

The FAA received 65 comments on the NPRM, primarily from individuals but also from the Aircraft Owners and Pilots Association (AOPA), the National Air Transportation Association (NATA), and Helicopter Association International (HAI). The FAA also received comments related to the August 4, 2005, "Washington, DC Metropolitan Area Special Flight Rules Area" proposed rule. Those comments are outside the scope of this rulemaking and will not be addressed here.

Commenters generally expressed opposition to the NPRM. While many agreed that training could be helpful, they did not believe that the FAA's training program would be effective. A discussion of the comments follows.

A. Application of the Training Program

Commenters had varying opinions on the FAA's proposed audience, curriculum, and testing criteria for the Special Awareness Training. After considering all these comments, the FAA has decided not to change the proposed requirements for the training program, its target audience or its frequency. The agency believes that due to the potential impact of an incursion on the pilot, Federal resources, and the public, mandatory training is necessary, even if the incursion was inadvertent. The FAA believes the training curriculum is well designed and focuses on how to fly safely in the Washington, DC ADIZ and FRZ. The training is designed to cover the correct procedures for operating near or inside the DC ADIZ. While at least one commenter would have the training also address normal, abnormal, and emergency procedures resulting from transponder failure, navigation errors, dyslexia, or accidentally hitting the wrong button on annunciator or radio panel, the FAA did not feel this was appropriate, as there are other training programs that cover this material.

1. Applicability to Pilots

With regard to whom the training requirement applied, a few commenters believed that training should be required of *all* pilots, not just those who anticipated flying within 100 NM of the DCA VOR/DME under IFR. In fact, one commenter felt that completion of training should be a prerequisite for any pilot's license renewal. Others, on the other hand, asked that the agency carve out exclusions for certain types of pilots

and operations or the training should be voluntary.

The FAA believes it is important that any pilot, whether acting as pilot in command or second in command, receive Special Awareness Training if the pilot has any intention of operating an aircraft under VFR within 60 NM of the DCA VOR/DME. Thus, § 91.161 applies when conducting operations under 14 CFR parts 91, 121, 125, 129, 133, 135 and 137. And, regardless of the type of pilot certificate held (e.g., sport, recreational, student, private, commercial, airline transport pilot (ATP), or foreign), or where the flight originated (e.g., Virginia, California, or even Canada), a pilot is subject to this Special Awareness Training requirement as a prerequisite for flying under VFR within a 60-NM radius of the DCA VOR/DME.

One commenter argued for a sport pilot exclusion because these pilots do not routinely fly in controlled airspace. He also suggested that pilots of gliders, balloons, powered parachutes, and weight-shift-control aircraft be excluded because these aircraft are limited in range. The FAA acknowledges that holders of sport pilot certificates are not permitted to operate in Class A, B, C, or D airspace, at an airport located in Class B, C, or D airspace, or at an airport having an operational control tower. However, sport pilots who hold the necessary endorsements and whose aircraft are appropriately equipped may perform those operations and hence could make unauthorized flights into the Washington, DC airspace. Therefore the FAA has determined that it is necessary to require this training of sport pilots as part of the agency's efforts to educate the pilot community and reduce the number of unauthorized flights into the Washington, DC airspace. In addition, the FAA does not agree that an aircraft's range limitations would necessarily prevent a pilot from making an unauthorized flight into the Washington, DC airspace. The FAA maintains that no matter what the pilot certificate or aircraft, if a pilot is flying under VFR in the identified area, then training should be required.

AOPA recommended exclusion for pilots who have been vetted for operations into the FRZ since they already receive special security training. The FAA is familiar with the security training requirements and finds significant differences in its curriculum versus the training required by § 91.161. The Special Awareness Training focuses on safe operating practices in the Washington, DC airspace while the security training for operating in the FRZ focuses on pre-flight and flight

procedure requirements for all flight-restricted zones.

2. Size of the "Training Zone"

As proposed, the FAA would have required pilots flying VFR within a 100-NM radius of the DCA VOR/DME to certify that they had completed the training program that is the subject of this rule.

Several commenters believed that requiring the larger training zone had the effect of extending the Washington, DC ADIZ and its operating requirements to a 100-NM radius of the DCA VOR/DME. Since publication of the NPRM, the size of the DC ADIZ itself has been reduced to 30 NM from the DCA VOR/DME by the August 30, 2007 NOTAM. Also by NOTAM (FDC NOTAM 7/0204), the FAA has implemented an additional speed restriction for VFR operations between 30 NM and 60 NM of the DCA VOR/DME. The FAA has therefore decided to reduce the size of the "training zone" to 60 NM from the DCA VOR/DME, which matches the 60-NM speed restriction area. While this action maintains a buffer zone, i.e., an area for which the training requirements apply that is larger than the DC ADIZ itself, establishing a training area larger than the Washington, DC ADIZ does not imply that the procedures for operating in the Washington, DC ADIZ have been expanded to cover the larger airspace.

In addition, many commenters asserted that requiring training within a 100-NM radius of the DCA VOR/DME was too prescriptive. As discussed above, the FAA has reduced the training zone to a 60-NM radius from the DCA VOR/DME under this final rule. The FAA has decided that a 30-NM distance from the outer edges of the Washington, DC ADIZ is a sufficient buffer of airspace. The agency has determined that the majority of pilots who inadvertently entered the Washington, DC ADIZ airspace departed from an airport within a 60-NM radius of the DCA VOR/DME. Therefore, reducing the training zone any further would not be prudent.

3. Frequency of Training

A minority of commenters expressed concern that the training will not be effective because it is a one-time obligation rather than a recurrent requirement. There was fear that a pilot would take the course, file his or her training certificate away, and forget the training unless the pilot flies in the Washington, DC area routinely. In contrast, one commenter urged the FAA to ensure that pilots who took the Special Awareness Training prior to the

issuance of this final rule get credit for complying with the requirement.

A pilot who completed the online training prior to issuance of this final rule is not required to retake the training. The FAA is only requiring that the training obligation be met once. However, a pilot has an on-going responsibility to be competent and proficient. The FAA encourages airmen to review periodically the Special Awareness Training program. Furthermore, the procedures for operating in the Washington, DC ADIZ and FRZ are issued by NOTAM, and a pilot is already required to be familiar with any NOTAM issued in the pilot's flying area prior to any departure. (See § 91.103.) The training also will be emphasized during flight reviews and the FAA-sponsored pilot proficiency awards program (WINGS Program).

B. Washington, DC ADIZ Operating Requirements

Many commenters, including AOPA and HAI, said the operating procedures in the Washington, DC ADIZ are overly complex or are obscure. These commenters believed that if the FAA would fix the difficulties of operating in the ADIZ, rather than require training, incursions would decrease.

The FAA recognizes there have been difficulties with operating in the ADIZ. Since the issuance of the Special Awareness Training NPRM, the procedures for operating in the Washington, DC ADIZ have been modified through an amended NOTAM. The FAA believes that operating in the area is now less difficult. Regardless, the FAA believes that pilot education remains critical.

The FAA is issuing this final rule to establish Special Awareness Training for pilots who fly within the restricted and special-use airspace of the Washington, DC Metropolitan Area under visual flight rules. The training, which is currently available online on the <http://www.FAASafety.gov> Web site, focuses on how to avoid and operate safely within the Washington, DC Metropolitan Area ADIZ and FRZ. The FAA believes that "pilot error" is the biggest contributor to violations of the restricted/special-use airspaces in the Washington, DC area, and through training, the number of inadvertent incursions into this airspace will be reduced.

C. Air Traffic Control

Approximately a dozen commenters felt that pilot training would not work to reduce incursions because the training does not address inadvertent errors made by air traffic controllers.

The purpose of this rule is to ensure that pilots operating in the Washington, DC area are familiar and trained in the operating requirements. The FAA has already conducted separate education for air traffic controllers at the Potomac Terminal Radar Approach Control Facility (TRACON). Additionally, the FAA is working to standardize procedures for ATC. For example, air traffic controllers are now directing pilots not to change their transponder codes until after landing at the airport.

D. The FAA's Enforcement Policy

Many commenters, including AOPA and HAI, said that the FAA's zero-tolerance enforcement policy is not appropriate for essentially technical errors by pilots who are otherwise following ADIZ procedures. AOPA and HAI, among others, suggested that the FAA is creating "another hook," to get pilots for inadvertent violations. Another commenter said that the FAA's enforcement policies do not take into account normal human error. In addition, there was concern that the training rule will "serve to criminalize general aviation."

The FAA is requiring this training to educate the pilot community on how to avoid making inadvertent incursions into the Washington, DC ADIZ out of concern for the pilot community and a desire to alleviate the burden on FAA and other governmental resources. Anything less than mandating the training program undermines the importance the agency places on this education. Any requirement, if not complied with, has the potential for an associated enforcement action. However, since the intent of this requirement is to reduce the number of incursions, there should be fewer enforcement proceedings related to inadvertent incursions.

Some commenters seemed to support the FAA in its endeavor and even recommended that the FAA perform ramp checks to ensure that pilots took the Special Awareness Training course. The FAA does not consider ramp checks the most efficient way to ensure that pilots have taken the Special Awareness Training or to enhance the education of pilots about flying in the Washington, DC ADIZ. The agency will emphasize safe operating practices for flying in the Washington, DC area during flight reviews, practical tests, and the FAA-sponsored pilot proficiency awards program (WINGS Program), which will cover all active pilots. The FAA will continue to review the violation history trends and modify the training where and when necessary.

NATA expressed concern about potential violations when a pilot cancels instrument-flight-rule (IFR) operation in non-emergency situations and proceeds under VFR for landing. NATA said that this benefits both the pilot and overburdened air traffic controllers. NATA suggested that the FAA create an exception for this type of situation. The FAA recognizes that some pilots cancel their IFR clearances and proceed under VFR for landing. However, pilots who wish to do so in the airspace covered by this rule are required to take the Special Awareness Training.

As discussed in the preamble of the NPRM, the flight restrictions for the Washington, DC ADIZ and FRZ specifically exempt U.S. Department of Defense/U.S. military, law enforcement, and approved aeromedical operations from certain requirements otherwise applicable to aircraft entering the ADIZ and FRZ. (See FDC NOTAM 07/0206.) These operations must be handled differently because of their importance to national security and safety and for the public interest. These exceptions, proposed under § 91.161 (d), have been retained in the final rule under § 91.161 (e) "Exceptions." The paragraph, however, has been modified by changing the term "aeromedical" to "air ambulance" to mirror current terminology. An air ambulance is a part 135 operator that has been issued operations specifications that authorize the operator to perform air ambulance operations in either an airplane or a helicopter. (See FAA Order 8900.1, Volume 5, Chapter 5.) The exception for air ambulance operators does not extend to other medically related flights, even if they are operated under a lifeguard call sign. In addition, paragraph (e) has been reworded to associate the exceptions with the types of flights being performed rather than the persons conducting the operations. The paragraph now states that if a flight is conducted in an aircraft of an air ambulance operator, the U.S. Armed Forces, or a law enforcement agency, the requirements of § 91.161 do not apply. The exception includes all operations, including repositioning aircraft and training flights.

E. Charting the Training Area

Many commenters, including NATA, AOPA, and HAI, argued that the Special Awareness Training zone be shown on applicable FAA aeronautical charts. Commenters felt that it was unreasonable for the FAA to put a regulation in place without physical representation on a chart. One individual even commented that the FAA's actions amounted to the creation

of a new class of VFR airspace that is uncharted. In whole, these commenters did not believe that the FAA's reliance on graphics in the training curriculum would be sufficient for the pilot community. They felt that the graphics and information provided by the FAA in the NPRM and other material were of poor quality or were too vague. These deficiencies, argued some, made it difficult for pilots to plot the "training zone" on their own. Additionally, some commenters said, general aviation aircraft do not have distance-measuring equipment (DME) capable of receiving a VORTAC signal 100 NM away from the DCA VOR/DME.

In response to these comments, the FAA will add to the note on the Washington Sectional, Baltimore-Washington Terminal Area Sectional, Baltimore-Washington Helicopter Route Sectional, and the CG-21 World Aeronautical Chart about the training requirement for the Washington, DC ADIZ and FRZ airspace, and will depict the airspace within 60 NM of the DC VOR/DME to notify pilots about the training requirements for pilots who operate under VFR in this airspace. The FAA acknowledges that reducing the distance to 60 NM does not necessarily resolve the commenters' concern that general aviation aircraft are not able to receive the DCA VOR/DME signal while still some distance from the DCA VOR/DME. However, the agency believes that depicting the airspace on the Washington Sectional, Baltimore-Washington Terminal Area Sectional, Baltimore-Washington Helicopter Route Sectional, and the CG-21 World Aeronautical Chart will assist pilots in identifying the training area.

F. Educational Outreach

Several commenters questioned whether the pilots who really need this training will be aware of the requirement. They fear that only knowledgeable, conscientious pilots who already know about the ADIZ and either avoid it or make an effort to comply will take the training, but others who are ignorant of the Washington, DC ADIZ will be unaware of the requirement to be trained. AOPA said that the FAA should have a plan for conducting aggressive educational outreach targeted at addressing the most common types of violations.

The FAA publishes its regulations in the **Federal Register**, which is official notification to the public. The FAA realizes, however, that many individuals do not monitor the **Federal Register**. The agency therefore maintains communication with aviation organizations who publicize FAA

actions to their members through their magazines, newsletters, and online Web sites. In fact, the FAA heard from one commenter that he became aware of the proposed rule through AOPA and the Experimental Aircraft Association. For this particular final rule, the FAA also can rely on the NOTAM reporting system to be a regular reminder to pilots that there is a training requirement attached to operating in the Washington, DC area. FDC NOTAMs 07/0206 and 07/0211 specifically reference the online training. It is a pilot's responsibility to be familiar with all pertinent NOTAMs, so pilots, by meeting the requirement to check NOTAMs, will be aware that training is required.

G. Impact on General Aviation Pilots

Many commenters, including AOPA, believed that the training requirement would add an unnecessary burden on the general aviation (GA) community.

The FAA recognizes the impact the training requirement has on the GA community, but the agency has minimized the burden. The course requires little time and is offered free of cost. The FAA believes the online training is the most economical means for pilots to receive training because, for most pilots, it can be performed in their own homes on their personal computers. Furthermore, in response to concerns that the proposed training zone was too large, the FAA reduced the size of the airspace from 100 NM to 60 NM from the DCA VOR/DME.

As already discussed, the FAA has reviewed the history of Washington, DC ADIZ violations, and finds that it is GA pilots who continue to make mistakes. It is only proper that the training be focused on these pilots in order to make them more aware that heightened security procedures exist in the Washington, DC metropolitan area.

H. Certificate of Training Completion

Under this final rule, each pilot who is required to complete the training course should print and maintain a certificate of training completion (the certificate can be downloaded from the <http://www.FAASafety.gov> Web site). Upon request from an authorized representative of the FAA, an authorized representative of the National Transportation Safety Board, any Federal, State, or local law enforcement officer, or an authorized representative of the Transportation Security Administration, the pilot must present the certificate of training completion. The FAA further proposed that a pilot did not have to necessarily carry the certificate of completion document in his or her personal

possession, but would be required to provide it to a requesting official in a reasonable time period. This latter provision raised concerns with at least one commenter. That commenter believed that if he were asked to present the certificate but he did not have it in his personal possession that a follow-up investigation would immediately follow.

The FAA notes that, because the agency's database identifies pilots (by pilot number) who complete the training, the agency would check the FAA Safety Database to verify a pilot's claim that he or she completed the course.

I. The FAA's Web Site

One commenter pointed out that Windows software is not free and suggested that the FAA make its Web site accessible to other free and open-source browsers. He said this will enable Linux and Macintosh (Mac) users to access the training regardless of model and operating systems. The FAA has designed the accessibility for taking this online training via the most accessible system that is being used throughout the world. Most PC- and Mac-based browsers will be able to access the site using Microsoft Internet Explorer 5.5 or above. Internet Explorer 6.0 or above is preferred. Internet Explorer browsers can be downloaded for free at: <http://www.microsoft.com/windows/ie/downloads/critical/ie6sp1/default.asp>.

Another commenter said that not everyone has computers and that the FAA is 10 to 20 years ahead of itself. The FAA considered that not everyone owns a personal computer, although the number of pilots who may not have access to their own personal computers and Internet is small. In addition, public libraries provide access to computers and the Internet. Thus, the FAA believes that establishing this training online is the most economical and efficient means to provide this training to the pilot community.

J. Adopting a Training Requirement Based On a NOTAM

AOPA expressed concern that adopting the training rule while the "Washington, DC Metropolitan Area Special Flight Rules Area" rulemaking action is pending suggests that the codification of the NOTAM is preordained despite overwhelming objections. The FAA disagrees that adopting the training rule suggests that codification of the Washington, DC NOTAMs is preordained. Whether the airspace restrictions around Washington, DC exist via NOTAM or via

codified regulation in 14 CFR, the FAA has determined that training is required to safely fly in the Washington, DC area.

III. Differences Between the NPRM and the Final Rule

The provisions proposed as new § 91.161 are adopted with the following modifications.

- All references in § 91.161 to "100 nautical miles of the DCA VOR/DME" have been changed to "60 nautical miles of the DCA VOR/DME;"
- Captions have been added to each lettered paragraph;
- Proposed paragraphs (b) through (d) have been redesignated as (c) through (e);
- New paragraph (b) has been added to describe the content of the Special Awareness Training and information about where the training can be obtained;
- Paragraph (e) (proposed as (d)) has been reworded as discussed in "II.D" above.

IV. Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted a copy of the new (or amended) information collection requirement(s) in this final rule to the Office of Management and Budget (OMB) for its review. Affected parties do not have to comply with the information collection requirements until the FAA publishes in the **Federal Register** the control number assigned by OMB for these information requirements. Publication of the control number notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

A description of the annual burden is shown below.

Description of Respondents: The FAA estimates that approximately 87,000 persons that fly under VFR within 60 NM of the DCA VOR/DME will be affected by the rule, and that the population of affected persons will grow by approximately 0.14 percent per year.

Estimated Burden: The FAA assumes that each person will spend a total of 1 hour (40 minutes taking the online training and 20 minutes taking the test), at a cost of time of \$31.50 per hour.

Based on that assumption, the first-year cost will be \$2,740,500 ((87,000 persons × \$31.50) × 1 hour), and time spent during the first year would be 87,000 hours (87,000 persons × 1 hour). The FAA estimates that in subsequent years (2009–2017), the per-year costs will be \$3,843 (122 persons × \$31.50 per 1 hour), and time spent during

subsequent years would be 122 hours (122 persons \times 1 hour).

The total cost over 10 years is expected to be \$2,775,087 $(\$2,740,500 + (9 \times \$3,843))$, with an average cost per year of \$277,509 $(\$2,740,500 + (9 \times \$3,843)) \div 10$.

The total number of hours over 10 years is expected to be 88,098 hours $(87,000 + (9 \times 122))$, with an average number of hours per year of 8,809.80 hours $((87,000 + (9 \times 122)) \div 10)$.

An agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

V. 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 that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

VI. 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 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 (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). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule. We

suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this final rule: (1) Has benefits that justify its costs, (2) is not an economically “significant regulatory action” as defined in section 3(f) of Executive Order 12866, (3) is not “significant” as defined in DOT's Regulatory Policies and Procedures; (4) will not have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above.

Total Costs and Benefits of this Rule

The FAA has determined that from 2008 to 2017, the total cost of the rule will be approximately \$2.78 million (\$2.77 million, discounted). The total derives from the cost of requiring pilots who fly under VFR within a 60-NM radius from the DCA VOR/DME to take the training. If the rule were 100% effective in reducing the number of unauthorized flights into the Washington DC, Metropolitan Area ADIZ, the potential benefits of the rule over 10 years would be approximately \$35.7 million (\$26.8 million, discounted). The FAA recognizes that a 100% rate is unrealistic because there is no way to predict the effectiveness of the rule. However, the FAA needs only a 10% success rate in reducing the number of incursions, resulting in benefits of approximately \$2.7 million, for this rule to be cost-beneficial.

The FAA notes the aviation community would receive training at no direct monetary cost. Also, this analysis does not calculate the benefit of avoiding the use of force against aircraft that improperly enter the Washington, DC, ADIZ or FRZ.

Regulatory Flexibility Determination

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

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

For the most part, this rule will impact only individual persons, who are not considered as entities under RFA, flying VFR within 60 NM of the DCA VOR/DME. However, for the few small entities that could be impacted by this rule, the additional costs are negligible. The FAA estimates that the training requires only an hour of a pilot's time (estimated at a cost of time of about \$32) and there is no charge for the training. 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 Statement

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 primarily will have an impact on domestic operations, although it could affect some international pilots. For example, there could be some Canadian pilots affected when they fly between Canada and the Southern United States. However, this rulemaking will have negligible impact on foreign firms that provide goods or services in the United States.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates

on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of \$136.1 million in lieu of \$100 million.

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

VII. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has 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, and, therefore, does not have federalism implications.

VIII. 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 312f and involves no extraordinary circumstances.

IX. 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 has 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.

X. Availability of Rulemaking Documents

You can get 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/; or
3. Accessing the Government Printing Office's Web page at <http://www.gpoaccess.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.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (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://dms.dot.gov>.

XI. 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 your local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT** 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/.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Noise control, 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. Add § 91.161 to read as follows:

§ 91.161 Special awareness training required for pilots flying under visual flight rules within a 60-nautical mile radius of the Washington, DC VOR/DME.

(a) *Operations within a 60-nautical mile radius of the Washington, DC VOR/DME under visual flight rules (VFR).* Except as provided under paragraph (e) of this section, no person may serve as a pilot in command or as second in command of an aircraft while flying within a 60-nautical mile radius of the DCA VOR/DME, under VFR, unless that pilot has completed Special Awareness Training and holds a certificate of training completion.

(b) *Special Awareness Training.* The Special Awareness Training consists of information to educate pilots about the procedures for flying in the Washington, DC area and, more generally, in other types of special use airspace. This free training is available on the FAA's Web site. Upon completion of the training, each person will need to print out a copy of the certificate of training completion.

(c) *Inspection of certificate of training completion.* Each person who holds a certificate for completing the Special Awareness Training must present it for inspection upon request from:

- (1) An authorized representative of the FAA;
- (2) An authorized representative of the National Transportation Safety Board;
- (3) Any Federal, State, or local law enforcement officer; or
- (4) An authorized representative of the Transportation Security Administration.

(d) *Emergency declared.* The failure to complete the Special Awareness Training course on flying in and around the Washington, DC Metropolitan Area is not a violation of this section if an emergency is declared by the pilot, as described under § 91.3(b), or there was a failure of two-way radio communications when operating under IFR as described under § 91.185.

(e) *Exceptions.* The requirements of this section do not apply if the flight is being performed in an aircraft of an air ambulance operator certificated to conduct part 135 operations under this chapter, the U.S. Armed Forces, or a law enforcement agency.

Issued in Washington, DC on August 5, 2008.

Robert A. Sturgell,

Acting Administrator.

[FR Doc. E8-18619 Filed 8-11-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

[SATS No. UT-044-FOR; Docket ID: OSM-2007-0014]

Utah Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving an amendment to the Utah regulatory program (the Utah program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Utah proposed revisions to its statute and rules regarding permit application requirements which may be waived with a written determination that they are unnecessary by the Division of Oil Gas and Mining (the Division), permit applications being filed in a local public office for public inspection, and extensions to permitted area being processed as significant revisions or applications for new permits. Utah is revising its program to be consistent with the corresponding Federal regulations and SMCRA, clarify ambiguities, and improve operational efficiency. This amendment package contains changes proposed previously under UT-042-FOR and UT-043-FOR.

DATES: *Effective Date:* August 12, 2008.

FOR FURTHER INFORMATION CONTACT:

James F. Fulton, Chief, Denver Field Division, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, suite 3320, Denver, CO 80202-5733, Telephone: (303) 844-1400, extension 1424, E-mail: jfulton@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Utah Program
- II. Submission of the Proposed Amendment
- III. Office of Surface Mining Reclamation and Enforcement's (OSM's) Findings
- IV. Summary and Disposition of Comments
- V. OSM's Decision
- VI. Procedural Determinations

I. Background on the Utah Program

Section 503(a) of the Act permits a State to assume primacy for the

regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Utah program on January 21, 1981. You can find background information on the Utah program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Utah program in the January 21, 1981, **Federal Register** (46 FR 5899). You can also find later actions concerning Utah's program and program amendments at 30 CFR 944.15, 944.20, 944.25 and 944.30.

II. Submission of the Proposed Amendment

By letter dated August 31, 2007, Utah sent us an amendment to its program (Administrative Record No. ¹ OSM-2007-0014-0004 & OSM-2007-0014-0005) under SMCRA (30 U.S.C. 1201 *et seq.*). Utah sent the amendment in response to concern letters sent by OSM regarding changes proposed under UT-042-FOR (Administrative Record No. UT-1181 dated February 21, 2003) and UT-043-FOR (Administrative Record No. UT-1193 informal concern letter dated February 14, 2006), and to include changes made at its own initiative. Concerns regarding section 40-10-10(2)(d) of the Utah Code Annotated (UCA) and UCA 40-10-10(5) as submitted under UT-042-FOR are addressed here and the remainder of the UT-042-FOR package is being processed through a separate **Federal Register** notice. Utah formally withdrew the amendment to Administrative Rule R645-303-222 proposed under UT-043-FOR in a letter dated February 16, 2006 (Administrative Record No. UT-1194), and we approved the remainder of that amendment package on June 8, 2006 (71 FR 33249; Administrative Record No. UT-1195).

We announced receipt of this proposed amendment in the October 22, 2007, **Federal Register** (72 FR 59489). In the same document, we opened the

¹ This final rule notice contains references to documents assigned Administrative Record numbers through our old record system and those assigned through the new regulations.gov system. OSM is transitioning to regulations.gov and all administrative record numbers will be assigned through this system in the future.

public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record No. OSM-2007-0014-0001). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on November 21, 2007. We received comments from two Federal agencies and one private citizen.

III. OSM's Findings

The following are our findings concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

A. Utah proposes to amend UCA 40-10-10(2)(d) to read:

40-10-10(2)(d)(i) A permit application will also include the following information:

(A) the result of test borings or core samples from the permit area, including logs of the drill holes;

(B) the thickness of the coal seam found;

(C) an analysis of the chemical properties of the coal;

(D) the sulfur content of any coal seam;

(E) chemical analysis of potentially acid or toxic-forming sections of the overburden; and

(F) chemical analysis of the stratum lying immediately underneath the coal to be mined.

(ii) Application requirements of Subsection (2)(d)(i) may be waived by the division if there is a written determination that these requirements are unnecessary.

Utah proposes to revise its statute at UCA 40-10-10(2)(d) to include recodification and language changes that are intended to increase accessibility and readability, limit the requirements to permit applications rather than permit applications and reclamation plans, and clarify which permit application requirements may be waived with a written determination by the Department that they are unnecessary.

UCA 40-10-10(2)(d) is being recodified as UCA 40-10-10(2)(d)(i)(A) through (F), and (ii). This proposed change will increase accessibility and readability of the section by identifying each requirement set forth in a separate subsection rather than having all requirements stated in one sentence. The recodification and minor language changes necessary to create separate sentences do not change the meaning or effectiveness of this provision.

The proposed language change at UCA 40-10-10(2)(d)(i) will replace the phrase "A statement of" with "A permit application will also include the following". This change has the effect of limiting the requirements set forth under 40-10-10(2)(d) to only permit