

Issued in Washington, DC, on February 9, 2007.

**Pamela Hamilton-Powell,**

*Director, Office of Rulemaking, Aviation Safety.*

[FR Doc. E7-2802 Filed 2-16-07; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 129**

**Operations: Foreign Air Carriers and Foreign Operators of U.S.-Registered Aircraft Engaged in Common Carriage; Correcting Amendment**

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

**ACTION:** Final rule; technical amendment.

**SUMMARY:** This action corrects a typographical error that appeared in the final rule, Foreign Air Carriers and Operators of Certain Large U.S.-Registered Airplanes, which the FAA published in the **Federal Register** on May 28, 1987. In that final rule, the FAA inadvertently misstated the word "markings" as "marketing." The intent of this action is to correct the error in the regulations to ensure the requirement is clear and accurate.

**EFFECTIVE DATES:** Effective on February 20, 2007.

**FOR FURTHER INFORMATION CONTACT:** Kim Barnette, Aircraft Maintenance Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202-493-4922); facsimile: (202-267-5115); e-mail: [kim.a.barnette@faa.gov](mailto:kim.a.barnette@faa.gov).

**SUPPLEMENTARY INFORMATION:** On May 28, 1987, the FAA published in the **Federal Register** (52 FR 20026) a final rule that amended § 129.11, among other changes, by adding a new paragraph (a)(4). In adding the new paragraph, the word "marketings" instead of "markings" was inadvertently used. This document corrects § 129.11(a)(4) to include the correct word. This correction will not impose any additional requirements on the affected operators.

**Technical Amendment**

This technical amendment will make a minor editorial correction to § 129.11(a)(4).

**List of Subjects in 14 CFR Part 129**

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping

requirements, Security measures, Smoking.

■ For the reasons set forth above, the Federal Aviation Administration correctly amends 14 CFR part 129 as follows:

**PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE**

■ 1. The authority citation for part 129 continues to read as follows:

**Authority:** 49 U.S.C. 1372, 40113, 40119, 44101, 44701-44702, 44705, 44709-44711, 44713, 44716-44717, 44722, 44901-44904, 44906, 44912, 46105, Pub. L. 107-71 sec. 104.

■ 2. Amend § 129.11 by revising paragraph (a)(4) to read as follows:

**§ 129.11 Operations specifications.**

(a) \* \* \*

(4) Registration markings of each U.S.-registered aircraft.

\* \* \* \* \*

Issued in Washington, DC, on February 12, 2007.

**Pamela Hamilton-Powell,**

*Director, Office of Rulemaking, Aviation Safety.*

[FR Doc. 07-741 Filed 2-16-07; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration.**

**14 CFR Parts 401, 415, 431, 435, 440, and 460**

[Docket No. FAA-2005-23449]

RIN 2120-A157

**Human Space Flight Requirements for Crew and Space Flight Participants**

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

**ACTION:** Final rule; correction.

**SUMMARY:** When the FAA issued a final rule on human space flight, it described one rule as consistent with the Second Amendment of the Constitution because, among other things, the right to bear arms under the Second Amendment is a collective right. The FAA now withdraws that characterization and amends its description.

**DATES:** This correction is effective February 20, 2007.

**FOR FURTHER INFORMATION CONTACT:** For technical information, contact Kenneth

Wong, Deputy Manager, Licensing and Safety Division, Commercial Space Transportation, AST-200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8465; facsimile (202) 267-3686, e-mail [ken.wong@faa.gov](mailto:ken.wong@faa.gov). For legal information, contact Laura Montgomery, Senior Attorney, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3150; facsimile (202) 267-7971, e-mail [laura.montgomery@faa.gov](mailto:laura.montgomery@faa.gov).

**SUPPLEMENTARY INFORMATION:** As required by the Commercial Space Launch Amendments Act of 2004, the FAA established *Human Space Flight Requirements for Crew and Space Flight Participants*, 71 FR 75616 (Dec. 15, 2006). The FAA's new requirements for commercial human space flight include a rule on security mandating that operators "implement security requirements to prevent any space flight participant from jeopardizing the safety of the flight crew or the public" and prohibiting a space flight participant from carrying on board "any explosives, firearms, knives or other weapons." 14 CFR 460.53. In explaining this rule in response to a comment, the FAA characterized the right to bear arms under the Second Amendment of the Constitution as "a collective right." 71 FR at 75626. The FAA now withdraws that characterization of the right to bear arms. The prohibition on the carriage of firearms by participants in commercial space flights remains unchanged.

The Executive Branch, through the Department of Justice, interprets the Second Amendment as securing a right of individuals to keep and bear arms. (See Memorandum for the Attorney General from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, *et al.*, Re: Whether The Second Amendment Secures An Individual Right (Aug. 24, 2004), available at <http://www.usdoj.gov/olcsecondoamendment2.pdf>). In light of this interpretation, the FAA is withdrawing the statement made in the final rule.

Regardless of the nature of the right, however, it remains true, as we noted, that the right is, like any other, not unfettered. The Justice Department itself made this abundantly clear in its analysis and through its historical review. (See *generally id.* at 1-5, 6 n.19, 8 n.29, 18 n.68, 61-68, 73, 81-82, 87-98, 102-04.) Similarly, the Fifth Circuit, which treats the right to bear arms as an

individual right, has stated, "Although, as we have held, the Second Amendment does protect individual rights, that does not mean that those rights may never be made subject to any limited, narrowly tailored specific exceptions or restrictions for particular cases that are reasonable and not inconsistent with the right of Americans generally to individually keep and bear their private arms as historically understood in this country." *U.S. v. Emerson*, 270 F.3d 203 (5th Cir. 2001).

The FAA continues to believe that the possession of weapons by space flight participants on board a suborbital rocket poses an unacceptably high risk to the integrity of the vehicle and the safety of the public, and that the rule is consistent with the Second Amendment. In proposing the rule, we pointed out that "[s]ecurity restrictions currently apply to passengers for airlines. Some of the restrictions prohibit a person carrying explosives, firearms, knives, or other weapons from boarding an airplane. Similar types of security restrictions for launch or reentry vehicles would contribute to the safety of the public by preventing a space flight participant from potentially interfering with the flight crew's ability to protect the public." 70 FR 77262-01, 77271. In response to the comment regarding the Second Amendment, we added that "in 1958, Congress made it a criminal offense to knowingly carry a firearm onto an airplane engaged in air transportation. 49 U.S.C. 46505." 71 FR at 75626. The FAA thus has authority to issue this rule.

#### Correction

In final rule FR Doc. No FAA-2005-23449, published on December 15, 2006 (71 FR 75616), make the following correction:

On page 75626, in the third column, fourth full paragraph, lines 16 through 20, correct, "Additionally, nearly all courts have also held that the Second Amendment is a collective right, rather than a personal right. Therefore, despite the Second Amendment collective right to bear arms, the FAA has" to read "By analogy, and for the reasons given when the FAA issued its human space flight requirements, the FAA has, consistent with the right to bear arms secured by the Second Amendment."

\* \* \* \* \*

Issued in Washington, DC, on February 14, 2007.

**Rebecca MacPherson,**

*Assistant Chief Counsel for Regulations.*

[FR Doc. E7-2851 Filed 2-16-07; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 23 CFR Parts 657 and 658

[FHWA Docket No. FHWA-2006-24134]

RIN 2125-AF17

#### Size and Weight Enforcement and Regulations

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the regulations governing the enforcement of commercial vehicle size and weight to incorporate provisions enacted in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU); the Energy Policy Act of 2005, and; the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act of 2006. This final rule adds various definitions; corrects obsolete references, definitions, and footnotes; eliminates redundant provisions; amends numerical route changes to the National Highway designations; and incorporates statutorily mandated weight and length limit provisions.

**DATES:** This final rule is effective March 22, 2007.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Mahorney, Office of Freight Management and Operations, (202) 366-6817, or Mr. Raymond Cuprill, Office of the Chief Counsel (202) 366-0791, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

Internet users may access this document, the notice of proposed rulemaking (NPRM), and all comments received by the U.S. DOT Docket by using the universal resource locator (URL) <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's home page at: <http://www.archives.gov> or the Government Printing Office's Web page at <http://www.gpoaccess.gov/nara>.

## Background

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59, 119 Stat. 1144), the Energy Policy Act of 2005 (Pub. L. 109-58, 119 Stat. 544), and the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act of 2006 (Pub. L. 109-115, 119 Stat. 2396) enacted size and weight provisions concerning auxiliary power units, custom harvesters, over-the-road buses, and drive-away saddle-mount vehicle combinations.

Additionally, the transfer of motor carrier safety functions to the Federal Motor Carrier Safety Administration (FMCSA) established by the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106-159, 113 Stat. 1748) affected the internal organizational structure of the FHWA. Although the responsibility for commercial motor vehicle size and weight limitation remained in the FHWA, the references in the regulations to the old FHWA's Office of Motor Carriers (OMC) and its officials are obsolete. This action updates these references to reflect the changes in the agency's organizational structure.

#### Discussion of Comments Received to the Notice of Proposed Rulemaking (NPRM)

On May 1, 2006, the FHWA published an NPRM in the **Federal Register** at 71 FR 25516 to provide an opportunity for public comment on the proposed changes to 23 CFR Parts 657 and 658. In response to the NPRM, the FHWA received 39 comments. Commenters included 8 State enforcement agencies, 9 industry associations, 4 members of Congress, 14 individuals, a union (multiple members), a law firm representing a trucking company, one intercity bus company, and an association of State transportation officials. The FHWA considered each of these comments in adopting this final rule. The changes made in response to those comments are identified and addressed under the appropriate sections below.

#### Section-by-Section Discussion of the Proposals

##### Part 657

##### Section 657.1 Purpose

Michigan DOT (MDOT) expressed concerns about using the terms "Federal-aid Interstate, Federal-aid primary, Federal-aid Secondary, or Federal-aid Urban Systems," which are