

the requirements of 150.21, as described in the NCP at pages ES-3 and 196. Section 150.21(d), as amended states that the NEM should be updated if there is either a substantial new noncompatible use within the DNL 65 dB contour, or if there is a significant reduction in noise over existing noncompatible land uses [69 FR 57622, dated 9/24/04].

#### 4. FAA ATCT Procedures Development

The NCP contains several measures that will be implemented by the FAA and the local ATC staff. In order to document and formalize the recommended touch and go procedures, it is recommended a tower order be developed. Tower orders are typically implemented under a Memorandum of Agreement (MOA) between the airport sponsor (St. Lucie County) and the FAA. The sponsor will coordinate development of existing and recommended procedures (listed at page 197) with ATCT controllers to ensure continuity. Costs are not eligible for State or Federal funding. (Sponsor supplemental letter date May 15, 2006; NCP, page ES-3, NCP Recommendations, and page 196-197).

*FAA Action:* Approved in concept. Coordination between the sponsor and FAA could help ensure continuity. Not all measures listed on page 197 are appropriate for inclusion in a tower order. Existing and operational measures within the NCP and approved in this ROA, that normally would be included in a tower order (for example, the touch and go procedures and altitudes), may be appropriate for consideration. The FAA will determine the appropriate elements of the noise compatibility program to include in any tower order, and the language describing them, consistent with applicable Federal requirements.

#### 5. Traffic Pattern Notification Lights for Training Aircraft

St. Lucie International Airport is home to one of the largest flight training schools in the Treasure Coast Region (see pages 182-184), with over 81,000 training operations per year. In order to minimize the repeated noise of training aircraft over residential areas located directly east of the airport, a system of permanently mounted lights is recommended to be installed along U.S. Highway 1 to act as a further landmark for student pilots, if practical, to initiate their downwind/upwind leg of the training operation when utilizing Runway 9/27. (Sponsor supplemental letter dated May 15, 2006; NCP page ES-3, NCP Recommendations, and page 197).

*FAA Action:* Disapproved. There is insufficient analysis of the placement of lighting or the expected noise benefits. There are no FAA-approved standard for traffic pattern notification lights.

#### 6. Noise Office Staffing

St. Lucie County should continue to employ a noise office staff person. The monitoring of nighttime operations, program education, and compliance and complaint response are an integral part of the noise program. Costs for this position are not eligible for FAA funding. (Sponsor supplemental letter dated May 15, 2006; NCP, page ES-3, NCP Recommendations; and page 198.)

*FAA Action:* Approved.

These determinations are set forth in detail in a Record of Approval signed by the FAA on August 21, 2006. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative office of the St. Lucie County Board of County Commissioners. The Record of Approval also will be available on-line at <http://www.faa.gov/arp/environmental/14cfr150/index14.cfm>.

Issued in Orlando, Florida, on October 4, 2006.

**W. Dean Stringer,**

*Manager, Orlando, Airports District Office.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Commercial Space Transportation; Waiver of License Requirement for Blue Origin's Pre-flight Preparatory Activities Conducted at a U.S. Launch Site

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

**ACTION:** Notice of waiver.

**SUMMARY:** The FAA waived a requirement for Blue Origin, LLC (Blue Origin), to obtain a launch license for certain launch processing activities at West Texas Launch Site. Blue Origin is authorized to conduct suborbital rocket launches under Experimental Permit No. EP 06-001, which was issued by the FAA on September 15, 2006. The FAA finds that waiving the requirement to obtain a launch license for certain launch processing activities conducted in preparation for flight is in the public interest and will not jeopardize public health and safety, safety of property, or

national security and foreign policy interests of the United States.

**FOR FURTHER INFORMATION CONTACT:** Mr. Sherman Council, Systems Engineering and Training Division, Office of Commercial Space Transportation, Federal Aviation Administration, U.S. Department of Transportation, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267-8308.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Federal Aviation Administration (FAA) Office of Commercial Space Transportation (AST) implements its licensing and permitting authority under 49 U.S.C. Subtitle IX, ch. 701—Commercial Space Launch Activities (chapter 701), which states that a license or permit is required “to launch a launch vehicle.” 49 U.S.C. 70104(a). On September 15, 2006, the FAA issued an experimental permit to Blue Origin. The experimental permit authorizes Blue Origin to conduct an unlimited number of launches of a Propulsion Module 1 (PM1) vehicle from West Texas Launch Site for one year from the effective date of the permit. PM1 will be a low-altitude demonstrator vehicle, using 2,042 kilograms (4,500 pounds) of hydrogen peroxide (H<sub>2</sub>O<sub>2</sub>) as a monopropellant, and is capable of reaching an altitude of no more than 610 meters (2,000 feet) with a mission time of less than one minute. Each PM1 vehicle will take off and land vertically using rocket propulsion. The PM1 vehicle is designed to carry no crew, no space flights participants, and no payload.

West Texas Launch Site, which contains the entire PM1 operating area, consists of an 18,600 acre plot of land, and will be enclosed by a fence. The launch site is privately owned and will be exclusively used by Blue Origin. The proposed operating area is uninhabited and controlled by Blue Origin. Blue Origin will limit access to the launch site to launch personnel and invited guests.

Blue Origin plans to ship PM1 to the launch site over ground. The panels and nose cap of its aeroshell will be shipped separately. PM1 will arrive at the launch site in a completely inert state, with no helium pressurant or H<sub>2</sub>O<sub>2</sub> propellant onboard. Once on the launch site, PM1 will be removed from its shipping fixture and the aeroshell will be installed on the PM1 in a vehicle processing facility (VPF). The PM1 will be assembled and undergo check-out and pre-flight procedures inside the VPF.

Launch processing inside the VPF will include functional checks of the

PM1 vehicle. These functional checks include verifying proper operation of PM1's actuators, and that all valves, regulators, and avionics function normally. During these tests, the PM1 will contain no H<sub>2</sub>O<sub>2</sub>. Blue Origin will pressurize the PM1 helium tanks in the VPF before moving the PM1 to a test landing pad. A separate test, called the "flight readiness test", will be performed after helium pressurization gas has been loaded on the vehicle, just before the vehicle is transported to the test landing pad. At the test landing pad, Blue Origin will load the PM1 with H<sub>2</sub>O<sub>2</sub> and prepare it for flight. After landing, the PM1 and any support equipment will be returned to a safe condition. In accordance with this waiver, under Blue Origin's experimental permit, launch begins with pressurization of gaseous helium bottles of the PM1 in the VPF and includes all preparation until flight of the vehicle.

By statute, for a suborbital rocket, "launch" means to place or try to place a launch vehicle in a suborbital trajectory, and includes activities involved in the preparation of a launch vehicle or payload for launch, when those activities take place at a launch site in the United States. 49 U.S.C. 70102(3). Chapter 701 requires FAA authorization of Blue Origins' launch processing activities, by license or permit, unless waived by the FAA. 49 U.S.C. 70104, 70105. By regulation, launch begins with the arrival of a launch vehicle at a U.S. launch site. 14 CFR 401.5.<sup>1</sup>

#### Waiver Criteria

Chapter 701 allows the FAA to waive the requirement to obtain a license for an individual license or experimental permit applicant if the waiver is in the public interest and will not jeopardize public health and safety, safety of property, national security and foreign policy interests of the United States. 49 U.S.C. 70105(b)(3).<sup>2</sup> To assess the impact on public health and safety and safety of property, the FAA utilizes a four-prong test. The FAA also addresses any aspects of granting a waiver that

<sup>1</sup> Under current FAA policy, the FAA does not require Blue Origin to obtain a part 420 license for the operation of West Texas Launch Site. Nonetheless, although not licensed, West Texas Launch Site is still a launch site. To the extent that the FAA has previously suggested that a license was required for a launch site to be a launch site, see *Waiver of License Requirement for Scaled Composites' Pre-flight Preparatory Activities Conducted at a U.S. Launch Site*, 69 FR 48549, 48550 (Aug. 10, 2004), that reasoning was incorrect.

<sup>2</sup> Chapter 701 does not provide the FAA authority to waive a permit. See *id*; see also 70105a(i).

may have national security or foreign policy implications.

#### Four-Prong Test

The four-prong test used by the FAA was originally raised by the House Science Committee in 1995, as guidance to the FAA to assist it in defining "launch" under chapter 701. H.R. Rep. No. 233, 104th Cong., 1st Sess., at 60 (1995). The guidance suggested that pre-flight activities that should be regulated as part of a "launch", are those that:

1. Are closely proximate in time to ignition or lift-off,
2. Entail critical steps preparatory to initiating flight,
3. Are unique to space launch, and
4. Are inherently so hazardous as to warrant AST's regulatory oversight under 49 U.S.C. chapter 701.

As the FAA noted in the *Scaled Waiver* and in a *Notice of Proposed Rulemaking, Experimental Permits for Reusable Suborbital Rockets*, 71 FR 16251 (Mar. 31, 2006), the four-prong test provides a rational approach to determining whether to waive the license requirement for launch processing. The many hazards involved in the processing of expendable launch vehicles led the FAA to define launch to begin with the arrival of a vehicle at the launch site. *Commercial Space Transportation Licensing Regulations*, 64 FR 19586, 19592 (Apr. 21, 1999); *Scaled Waiver*, 69 FR at 48550. With new technologies involving different hazards, however, the FAA is willing to entertain requests for waivers. There should be no concerns if the license requirement is waived because the nature and existence of hazards are addressed as part of the waiver process.

#### The Four-Prong Test Applied to PM1 Launch Processing

Prior to pressurization of the helium tanks, no launch processing activities meet all four prongs of the test. In particular, no inherently hazardous activities take place until pressurization. Therefore, the FAA finds no activities prior to pressurizing the vehicle helium tanks require oversight by the FAA. Storage of the helium is not hazardous because it is inert and will not react with any other elements or compounds under ordinary conditions. The unfueled PM1 presents no risk of fire, explosion, debris, or unintended motor flight.

#### National Security and Foreign Policy Implications of PM1 Launch Processing

The FAA evaluation conducted in support of Blue Origins' experimental permit concluded that there are no issues relating to U.S. national security

or foreign policy interests that would require the FAA to prevent launches of PM1. Thus, there are no national security or foreign policy issues associated with the launch processing of PM1.

#### Summary and Conclusion

A waiver is in the public interest because it accomplishes the goals of Chapter 701 and avoids unnecessary regulation. The waiver will not jeopardize public health and safety or safety of property because launch processing activities for PM1 up to helium pressurization conducted at West Texas Launch Site are benign to the public. A waiver will not jeopardize national security and foreign policy interests of the United States.

For the foregoing reasons, the FAA has waived the requirement for Blue Origin to obtain a license for Blue Origin's launch processing until helium pressurization conducted at West Texas Launch Site.

Issued in Washington, DC, on October 13, 2006.

**Stewart W. Jackson,**

*Manager, Systems Engineering and Training, Office of the Associate Administrator for Commercial Space Transportation.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2006-26109]

#### Panoz Auto-Development Company; Receipt of Application for a Temporary Exemption From the Advanced Air Bag Requirements of FMVSS No. 208

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice of receipt of petition for temporary exemption from provisions of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection*.

**SUMMARY:** In accordance with the procedures in 49 CFR part 555, Panoz Auto-Development Company has petitioned the agency for a temporary exemption from certain advanced air bag requirements of FMVSS No. 208. The basis for the application is that compliance would cause substantial economic hardship to a manufacturer