

DATES: Comments must be received on or before October 29, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Philip Brito, Manager, FAA New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Clifton Anderson, Jr., Chairperson, Woodbine, New Jersey, at the following address: Mr. Clifton Sanderson, Jr., Chairperson, Woodbine Port Authority, P.O. Box 144, Woodbine, New Jersey 08270.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Brito, Manager, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York 11530; telephone (516) 227-3803; FAX (516) 227-3813; E-Mail Philip.Brito@faa.gov.

SUPPLEMENTARY INFORMATION: On April 5, 2000, new authorizing legislation became effective. That bill, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Pub. L. 10-181 (Apr. 5, 2000; 114 Stat. 61) (AIR 21) requires that a 30 day public notice must be provided before the Secretary may waive any condition imposed on an interest in surplus property.

Issued in Garden City, New York, on September 19, 2003.

Philip Brito,

Manager, New York Airports District Office, Eastern Region.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Licensees

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of policy.

SUMMARY: The Federal Aviation Administration (FAA) Office of the Associate Administrator for Commercial Space Transportation (AST) is responsible for licensing entities to conduct commercial space launch and reentry operations and to operate commercial launch and reentry sites. According to the terms and conditions of a license issued by the FAA/AST, each licensee has a public safety responsibility in which they are responsible for the safe conduct of licensed commercial space transportation operations. As part of

their safety responsibility, a licensee must ensure that personnel who perform safety-critical functions are not impaired, either by intoxication from alcohol or from being under the influence of unlawful drugs, such that an individual's judgment is affected while performing those safety-critical functions that can affect safe operations.

DATES: This notice is effective September 30, 2003.

FOR FURTHER INFORMATION CONTACT:

Stephen Izon, AST-200, Office of the Associate Administrator for Commercial Space Transportation (AST), Room 331, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC. 20591, telephone: (202) 385-4712.

SUPPLEMENTARY INFORMATION: The FAA mission includes authorizing commercial space transportation activities under 49 U.S.C. chapter 701, consistent with public health and safety, safety of property, and the national security and foreign policy interests of the United States. Commercial space transportation activities licensed by the FAA include launch of a launch vehicle, including a suborbital rocket, reentry of a reentry vehicle, and operation of a launch or reentry site. The FAA works to ensure that licensed activities are conducted safely so as not to jeopardize public safety or safety of property.

Under a license and implementing regulations, 14 CFR Chapter III, the FAA places responsibility for public safety on a licensee in conducting licensed activities. According to 14 CFR 415.71, a launch licensee is "responsible for ensuring the safe conduct of a licensed launch and for ensuring that public safety and safety of property are protected at all times during the conduct of a licensed launch." Similarly, 14 CFR 431.71 states that in the conduct of reusable launch vehicle (RLV) missions and re-entry operations, a "licensee is responsible for ensuring the safe conduct of an RLV mission and for protecting public health and safety and the safety of property during the conduct of the mission." Additionally, as stated in the terms and conditions of launch site operator licenses, a licensee is responsible for ensuring the safe operation of the site and for ensuring that public safety and safety of property are protected at all times during its licensed activities.

In placing responsibility for the safe conduct of licensed activity on a licensee, the FAA places a duty on a licensee to, among other things, safeguard against unsafe practices or conditions when conducting authorized activities, which by their very nature

can be hazardous to the public and have the potential to affect the safety of the uninvolved public. Licensee vigilance is critical in this regard. A licensee's public safety responsibility includes ensuring that a person who performs a safety-critical function is not impaired, either by alcohol or from being under the influence of unlawful drugs such that personal judgment is affected when performing a safety-critical function.

Currently, there are no FAA regulations mandating a drug and alcohol testing program for licensees. However, the absence of a regulatory program requiring employee testing does not mean that the FAA is not concerned about the possible misuse of alcohol or unlawful drugs by individuals performing safety-critical functions during or in support of the conduct of licensed operations. As evidenced in other modes of transportation, the misuse of alcohol or unlawful drugs has been a factor in transportation accidents and in several instances, its detection prevented a situation that could have endangered the safety of the public.

So far, the public safety track record for the space transportation industry speaks for itself. There has not been one drug or alcohol related incident or accident in the decades of U.S. space launch experience. Accordingly, the FAA is not directing, by regulation, that a licensee comply with a prescribed drug and alcohol testing program. However, in fulfilling a licensee's responsibility for public safety, the FAA expects each licensee to employ appropriate safeguards against the hazards that could be created if persons impaired by use of alcohol or unlawful drugs are allowed to affect the safe conduct of licensed operations.

While a licensee is not responsible for policing federal employees or those of federal government contractors, a licensee, however, would be in violation of its safety responsibility under a license if it allowed licensed activity to proceed when the licensee knows or has reason to know that federal personnel, including contractor personnel, performing safety-critical functions are under the influence of alcohol or unlawful drugs.

Safety-critical, as defined in CFR 401.5 means "essential to safe performance or operation. A safety-critical system, subsystem, condition, event, operation, process or item is one whose property recognition, control, performance or tolerance is essential to system operation such that it does not jeopardize public safety." A safety-critical function is one that is essential to safe performance or operation. A