

found that the awardee's submission in opposition raises a genuine dispute over facts material to the proposed debarment, at the request of the awardee, the debarring official shall refer the matter to the Energy Board of Contract Appeals for a fact-finding conference, in accordance with rules consistent with this section promulgated by the Energy Board of Contract Appeals. The Energy Board of Contract Appeals shall report to the Debarring Official findings of fact, not conclusions of law. The findings shall resolve any disputes over material facts based on a preponderance of evidence.

(b) *Decisionmaking process for suspensions.*

(1) In actions based on an indictment, the suspending official shall make a decision based upon the administrative record, which shall include submissions made by the awardee.

(2) In actions not based on an indictment, if it is found that the awardee's submission in opposition raises a genuine dispute over facts material to the suspension and if no determination has been made, on the basis of Department of Justice advice, that substantial interest of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced, the suspending official shall, at the request of the awardee, refer the matter to the Energy Board of Contract Appeals for a fact-finding conference, in accordance with rules promulgated by the Energy Board of Contract Appeals. The Energy Board of Contract Appeals shall report to the Suspending Official findings of fact, not conclusions of law. The findings shall resolve any disputes over material facts based on adequate evidence.

(c) *Meeting.* Upon receipt of a timely request therefore from the respondent, the debarring/suspending official shall schedule a meeting between the debarring/suspending official and the respondent, to be held no later than 30 days from the date the request is received. The debarring/suspending official may postpone the date of the meeting if the respondent requests a postponement in writing. At the meeting, the respondent, appearing personally or through an attorney or other authorized representative, may informally present and explain evidence that causes for debarment or suspension do not exist, evidence of any mitigating factors, and arguments concerning the imposition, scope, duration, or effects of a proposed debarment or suspension.

(d) *Fact-finding conference.* The purpose of a fact-finding conference under this section is to provide the

respondent an opportunity to dispute material facts and to provide the debarring/suspending official with findings of fact based, as applicable, on adequate evidence or on a preponderance of the evidence. If the debarring/suspending official determines that a written response or a presentation at the meeting under paragraph (c) of this section puts material facts in dispute, the debarring/suspending official shall refer the matter to the Energy Board of Contract Appeals for fact-finding. The fact-finding conference shall be conducted in accordance with rules promulgated by the Energy Board of Contract Appeals. The Energy Board of Contract Appeals shall report to the Debarring Official findings of fact, but not conclusions of law. The findings shall resolve any disputes over material facts based on a preponderance of evidence if the case involves a proposal to debar, or on adequate evidence if the case involves a suspension. Since convictions or civil judgments generally establish the cause for debarment by a preponderance of the evidence, there usually is no genuine dispute over a material fact that warrants a fact-finding conference for those proposed debarments based on convictions or civil judgments.

15. Section 1036.705 is amended in the introductory paragraph by revising "Director's" and "Director" to read "debaring/suspending official" in the first and second sentences, revising reference to "1036.700 (b)(1) or (b)(2)" to read "1036.700(c)" and by revising paragraph (b) to read as follows:

**§ 1036.705 Coordination with Department of Justice.**

\* \* \* \* \*

(b) Deny additional proceedings and base the decision on all information in the administrative recording, including any submissions made by the respondent.

**§ 1036.710 [Removed]**

16. Section 1036.710, DOE consolidated list of debarred, suspended, ineligible, and voluntarily excluded awardees, is removed.

**§ 1036.715 [Amended]**

17. Section 1036.715 is amended by revising the section heading to read "Effects of being listed on the GSA list." and, in the introductory paragraph, by revising "Director" to read "Deputy Assistant Secretary for Procurement and Assistance Management or designee" and by revising "DOE List" to read

"GSA List" wherever it appears in paragraphs (a) through (g).

[FR Doc. 96-1920 Filed 2-1-96; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. 95-SW-32-AD]

**Airworthiness Directives; Robinson Helicopter Company Model R44 Helicopters**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Robinson Helicopter Company (Robinson) Model R44 helicopters. This proposal would require an adjustment to the low-RPM warning unit threshold to increase the revolutions-per-minute (RPM) at which the warning horn and caution light activate, and revisions to the R44 Rotorcraft Flight Manual that prohibit flight with the throttle governor (governor) selected off, except in certain situations. This proposal is prompted by an FAA Technical Panel Review of Robinson accident history data which revealed that main rotor (M/R) blade stall at abnormally low M/R RPM resulted in accidents. The actions specified by the proposed AD are intended to minimize the possibility of pilot mismanagement of the M/R RPM, which could result in unrecoverable M/R stall and subsequent loss of control of the helicopter.

**DATES:** Comments must be received by March 4, 1996.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95-SW-32-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ms. Elizabeth Bumann, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712-4137, telephone (310) 627-5265; fax (310) 627-5210.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95-SW-32-AD." The postcard will be date stamped and returned to the commenter.

## Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95-SW-32-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

## Discussion

This document proposes the adoption of a new AD that is applicable to Robinson Model R44 helicopters, serial numbers (S/N) 0001 through 0183 and 0189, which would require resetting the warning unit to activate the warning horn and caution light at 96 to 97% RPM, and revisions to the R44 Rotorcraft Flight Manual that prohibit flight with the governor selected off, except in certain situations. A recent FAA Technical Panel review of Robinson accident history data revealed that some Model R22 accidents resulted from pilot mismanagement of the M/R RPM.

The Technical Panel noted that, with the throttle governor selected off, the Model R44 demonstrates potential for rotor RPM decay similar to the Model

R22. This led the Technical Panel to recommend that the Model R44 be flown with the governor on with exceptions for inflight system malfunction or emergency procedures training with an instructor pilot. Additionally, the Technical Panel recommended an increase in the RPM at which the warning horn and caution light activate, thereby allowing additional time for the initiation of corrective action between the activation of the warning horn and caution light and the onset of M/R blade stall.

Based on this recommendation, Robinson issued Robinson Helicopter Company R44 Service Bulletin SB-7A, Revised June 8, 1995, which describes procedures for increasing the RPM threshold at which the warning horn and caution light activate to avoid inadvertent low M/R RPM. This condition, if not corrected, could result in M/R stall and a subsequent loss of control of the helicopter.

Since an unsafe condition has been identified that is likely to exist or develop on other Robinson Model R44 helicopters of the same type design, the proposed AD would require an adjustment to the warning horn and caution light threshold from  $95 \pm 1\%$  RPM to between 96% and 97% RPM to increase the RPM at which the warning horn and caution light activate, and revisions to the R44 Rotorcraft Flight Manual that prohibit flight with the governor selected off, with exceptions for inflight system malfunction or emergency procedures training with an instructor pilot.

The FAA estimates that 20 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 0.2 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$240.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44

FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Robinson Helicopter Company: Docket No. 95-SW-32-AD.

*Applicability:* Model R44 helicopters, serial numbers (S/N) 0001 through 0183 and 0189, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

*Compliance:* Required within 30 days after the effective date of this AD, unless accomplished previously.

To minimize the possibility of pilot mismanagement of the main rotor (M/R) RPM, which could result in M/R stall and subsequent loss of control of the helicopter, accomplish the following:

(a) Adjust the A569-6 low-RPM warning unit so that the warning horn and caution

light activate when the M/R RPM is between 96% and 97% rotor RPM in accordance with the procedures contained in the Model R44 maintenance manual.

(b) Insert pages 2-7 of the FAA-approved Robinson Helicopter Company R44 Rotorcraft Flight Manual, revised July 25, 1995, into each Model R44 helicopter's flight manual, and make pen-and-ink changes to pages 2-7 to add the word "inflight" before "system malfunction", change "and" to "or", and add the phrase "with an instructor pilot" at the end so that the affected limitation will state "Flight prohibited with governor selected off, with exceptions for inflight system malfunction or emergency procedures training with an instructor pilot."

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on January 29, 1996.

Daniel P. Salvano,  
Manager, Rotorcraft Directorate, Aircraft  
Certification Service.

[FR Doc. 96-2263 Filed 2-1-96; 8:45 am]

BILLING CODE 4910-13-U

## 14 CFR Part 73

[Airspace Docket No. 95-ASW-6]

### Proposed Establishment of Restricted Areas; NM

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule would establish the following four new restricted areas in western/central New Mexico: R-5117, Fort Wingate, NM; R-5119, Socorro, NM; R-5121, Fort Wingate, NM; and R-5123, Magdalena, NM. The proposed restricted areas would provide an extended test range for the U. S. Army to conduct missile and sensor system tests associated with the theater missile defense system. Under the proposed test program, missile launches would be conducted from the Fort Wingate Army Depot, near Gallup, NM, and would terminate in the

existing restricted areas at the White Sands Missile Range (WSMR), NM. Currently, there are no operational over land ranges and few over water ranges operated by the United States that provide a realistic environment for testing the theater missile defense system. The proposed restricted areas would provide airspace to contain the launch, ascent, reentry, and impact of missiles and boosters. The areas would be designated for joint-use and would be activated only for the minimum time needed to safely conduct each test.

**DATES:** Comments must be received on or before March 15, 1996.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASW-500 Docket No. 95-ASW-6, Federal Aviation Administration, 2601 Meacham Blvd, Fort Worth, TX 76193-0500.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:** Pete Magarelli, Military Operations Program Office (ATM-420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-7130.

#### SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95-ASW-6." The postcard will be date/time stamped and returned to the commenter. Send comments on environmental and land use aspects to:

(1) U.S. Army Space and Strategic Defense Command, Attention: Mr. Dennis R. Gallien, P.O. Box 1500, Huntsville, AL 35807-5027, Telephone No. (205) 955-3887

or

(2) National Range Operations Branch, Attention: Mr. John W. Jensen, Building 1530, White Sands Missile Range, NM 88002-5012, Telephone No. (505) 678-1121.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

#### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3485.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

#### The Proposal

The FAA is proposing an amendment to part 73 of the Federal Aviation Regulations (14 CFR part 73) to establish four new restricted areas in west/central New Mexico. The proposed restricted areas would be designated R-5117, Fort Wingate, NM; R-5119, Socorro, NM; R-5121, Fort Wingate, NM; and R-5123, Magdalena, NM. The U.S. Army has proposed these areas to accommodate extended range tests needed to validate theater missile defense system design and operational effectiveness.

Proposed Restricted Area R-5117 would be designated at the Fort Wingate Army Depot. R-5117 would extend from the surface to unlimited altitude to contain the missile launch area. Restricted Area R-5121 would be designated adjacent to R-5117. R-5121 would extend from FL 200 to unlimited altitude and would be required to contain the ascent of missiles after launch from the Fort Wingate site. R-