

[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 29279; Notice No. 99-06]

RIN 2120-AG79

Airspace and Flight Operations Requirements for Kodak

Albuquerque International Balloon Fiesta; Albuquerque, NM

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

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

**SUMMARY:** This document proposes a Special Federal Aviation Regulation (SFAR), applicable for the periods of October 2 through October 10, 1999, and October 7 through October 15, 2000, to establish a temporary flight restriction (TFR) area for the 1999 and 2000 Kodak Albuquerque International Balloon Fiestas (KAIBF). The FAA is proposing this action to manage aircraft operating in the vicinity of the KAIBF, and to prevent any unsafe congestion of sightseeing and other aircraft over and around the Balloon Fiesta launch site.

**DATES:** Comments must be received on or before July 19, 1999.

**ADDRESSES:** Comments on this document should be mailed or delivered, in duplicate, to: U.S. Department of Transportation Dockets, Docket No. 29279, 400 Seventh Street

SW., Room Plaza 401, Washington, DC 20590. Comments also may be sent electronically to the following Internet address: 9-NPRM-CMTS@faa.gov. Comments may be filed and examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Steve Rohring, Airspace and Rules Division, ATA-400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8783.

**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. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document also are invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the

docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals in this document may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this document must include a pre-addressed, stamped postcard with those comments on which the following statement is made:

"Comments to Docket No. 29279" The postcard will be date stamped and mailed to the commenter.

#### **Availability of NPRM**

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321-3339), the Government Printing Office (GPO)'s electronic bulletin board service (telephone: (202) 512-1661), or, if applicable, the FAA's Aviation Rulemaking Advisory Committee bulletin board service (telephone: (800) 322-2722 or (202) 267-5948).

Internet users may reach the FAA's web page at <http://www.faa.gov/avr/arm/nprm/nprm.htm> or the

GPO's web page at <http://www.access.gpo.gov/nara> for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting 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. Communications must identify the notice number or docket number of this NPRM.

Persons interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

### **Background**

The KAIBF will be held on October 2 through October 10, 1999, and the following year on October 7 through October 15, 2000, at a site 9 miles north of Albuquerque International Sunport, in Albuquerque, NM.

This proposed SFAR would establish a TFR area to provide for the safety of persons and property in the air and on the ground during the KAIBF. The proposed TFR area would restrict aircraft operations in a specified location; however, access to this area may be allowed with the appropriate air traffic control (ATC) authorization from the Albuquerque International Sunport Airport Traffic Control

Tower (ATCT). ATC would retain the ability to manage aircraft through the TFR area in accordance with established ATC procedures.

Specifically, the proposed TFR area would be 9 miles north of the Albuquerque International Sunport ATCT and just west of Interstate Highway 25 (I-25). The TFR area would be centered on the Albuquerque Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) 038° radial 14 distance measuring equipment (DME) fix. The area would encompass a 4-nautical-mile radius, extending from the surface up to but not including 8,000 feet mean sea level (MSL). The TFR area would be in effect between the hours of 0530 mountain daylight time MDT and 1200 MDT, and from 1600 MDT until 2200 MDT on October 2 through October 10, 1999, and October 7 through October 15, 2000. Unauthorized aircraft would be required to remain clear of this area during these times.

The location, dimensions, and effective times of the proposed TFR area would be published and disseminated via the Notice to Airmen (NOTAM) system.

### **Exceptions**

The proposed SFAR would contain provisions to provide for flexible, efficient management and control of air traffic. ATC would have the authority to give priority to, or exclude from the requirements of the SFAR, certain flight

operations dealing with or containing personnel or equipment for essential military, medical emergency, rescue, or law enforcement purposes, and transportation of the President, or heads of state.

#### **Notice to Airmen Information**

Time-critical aeronautical information that is of a temporary nature, or is not sufficiently known in advance to permit publication on aeronautical charts or in other operational publications, receives immediate dissemination via the NOTAM system. All domestic operators planning flights to the KAIBF would need to pay particular attention to NOTAM D and Flight Data Center (FDC) NOTAM information.

NOTAM D contains information on airports, runways, navigational aids, radar services, and other information essential to flight. An FDC NOTAM contains regulatory information, such as amendments to aeronautical charts and restrictions to flight. FDC NOTAM and NOTAM D information also would be provided to international operators in the form of International NOTAMs. NOTAMs are distributed through the National Communications Center in Kansas City, Missouri, for transmission to all air traffic facilities having telecommunications access.

Pilots and operators would need to consult the monthly NOTAM Domestic/International publication. This publication contains FDC NOTAM and NOTAM D information. Special

information, including graphics, would be published in the biweekly publication several weeks in advance of the KAIBF. For more detailed information concerning the NOTAM system, refer to the Aeronautical Information Manual "Preflight" section.

#### **Other U.S. Laws and Regulations**

Aircraft operators should understand clearly that the proposed SFAR is in addition to other laws and regulations of the United States. The SFAR would not waive or supersede any U.S. statute or obligation. When operating within the jurisdictional limits of the United States, operators of foreign aircraft must conform with all applicable requirements of U.S. Federal, State, and local governments. In particular, aircraft operators planning flights into the United States must be aware of and conform to the rules and regulations established by the:

1. U.S. Department of Transportation regarding flights entering the United States;

2. U.S. Customs Service, Immigration and other authorities regarding customs, immigrations, health, firearms, and imports/exports;

3. U.S. FAA regarding flight within or into U.S. airspace. This includes compliance with parts 91, 121 and 135 of Title 14, Code of Federal Regulations regarding operations into or within the United States through air

defense identification zones, and compliance with general flight rules; and,

4. Airport management authorities regarding use of airports and airport facilities.

#### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has determined that there are no requirements for information collection associated with this proposed rule.

#### **Compatibility With ICAO Standards**

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 reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these proposed regulations.

#### **Regulatory Evaluation Summary**

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 requires agencies to analyze the economic effect of regulatory changes on small

entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined this proposed rule is not "a significant regulatory action" under section 3(f) of Executive Order 12866 and, therefore, is not subject to review by the Office of Management and Budget. This proposed rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034, February 26, 1979). This proposed rule would not have a significant impact on a substantial number of small entities and would not constitute a barrier to international trade. The FAA invites the public to provide comments and supporting data on the assumptions made in this evaluation. All comments received will be considered in the final regulatory evaluation.

This regulatory evaluation examined the costs and benefits of the proposed SFAR applicable for the periods October 2 through October 10, 1999, and October 7 through October 15, 2000. The SFAR proposes to establish a TFR area for the 1999 and 2000 KAIBF to be held in Albuquerque, NM. Because the impacts of the proposed change are relatively minor, this economic summary constitutes the analysis, and no regulatory evaluation will be placed in the docket.

The major economic impact, in this case, would be the inconvenience of circumnavigation to operators who may want to operate in the area of the TFR. An aircraft operator could avoid the restricted airspace by flying over it or by circumnavigating the restricted airspace. Because the possibility of such occurrences is for a limited time and the restricted areas are limited in size, any circumnavigation costs would be negligible.

The benefits of the proposed TFR airspace would primarily be a lowered risk of midair collisions between aircraft and balloons due to increased positive control of TFR airspace. While benefits cannot be quantified, the benefits are commensurate with the small costs attributed to the temporary inconvenience of the flight restrictions for operators near the TFR area.

#### **Initial Regulatory Flexibility Act 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 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 determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

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 RFA provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination and the reasoning should be clear.

The major economic impact, in this case, would be the inconvenience of circumnavigation to operators who may want to operate in the area of the TFR. An aircraft operator could avoid the restricted airspace by flying over it or by circumnavigating the restricted airspace. Because the possibility of such occurrences is for a limited time and the restricted areas are limited in size, any circumnavigation costs would be negligible.

Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FAA certifies that this rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments from affected entities with respect to this finding and determination.

#### **International Trade Impact Analysis**

The provisions of this proposed rule would have little or no impact on trade for U.S. firms doing business in foreign countries and foreign firms doing business in the United States.

#### **Federalism Implications**

The regulation 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 proposed regulation would not have sufficient federalism implications to warrant the preparation of a federalism assessment.

#### **Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified in 2 U.S.C. 1501-1571, requires each Federal agency, to the extent permitted by law, to prepare a

written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year.

Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of \$100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This proposed rule does not contain a Federal intergovernmental or private sector mandate that exceeds \$100 million in any one year.

### **Environmental Analysis**

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, this rulemaking action qualifies for a categorical exclusion.

This proposed action would establish a TFR area for safety purposes and would curtail or limit certain aircraft operations within a designated area on defined dates and times. Additionally, this proposed action would be temporary in nature and effective only for the dates and times necessary to provide for the management of air traffic operations and the protection of participants and spectators on the ground. ATC would retain the ability to direct aircraft through the restricted area in accordance with normal traffic flows. The FAA has determined that the proposed establishment of a TFR area would have minimal impact on ATC operations.

Further, this action would reduce aircraft activity in the vicinity of the Balloon Fiesta by restricting aircraft operations. There would be fewer aircraft operations in the

vicinity of the Balloon Fiesta than would occur if the TFR area were not in place, and noise levels associated with that greater aircraft activity would also be reduced. Additionally, aircraft avoiding the TFR area would not be routed over any particular area. This action would not, therefore, result in any long-term action that would routinely route aircraft over noise-sensitive areas. For the reasons stated above, the FAA concludes that this proposed rule would not significantly affect the quality of the human environment.

#### **Energy Impact**

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Pub.L. 94-163, and FAA Order 1053.1. It has been determined that the notice is not a major regulatory action under the provisions of the EPCA.

#### **List of Subjects in 14 CFR Part 91**

Air traffic control, Aircraft, Airports, Aviation safety.

#### **The Proposed Special Federal Aviation Regulation (SFAR)**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 91 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, 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. Amend part 91 by adding Special Federal Aviation Regulation No. [Insert SFAR No. ] to read as follows:

**SFAR NO. [XXX]-AIRSPACE AND FLIGHT OPERATIONS REQUIREMENTS FOR THE 1999 and 2000 KODAK ALBUQUERQUE INTERNATIONAL BALLOON FIESTAS, ALBUQUERQUE, NM**

1. **General.** (a) Each person shall be familiar with all Notices to Airmen (NOTAMs) issued pursuant to this SFAR and all other available information concerning that operation before conducting any operation into or out of an airport or area specified in this SFAR or in NOTAMs pursuant to this SFAR. In addition, each person operating an international flight that will enter the United States shall be familiar with any international NOTAMs issued pursuant to this SFAR. NOTAMs are available for inspection at operating Federal Aviation Administration air traffic facilities and regional air traffic division offices.

(b) Notwithstanding any provision of Title 14, Code of Federal Regulations, no person may operate an aircraft contrary to any restriction procedure specified in this SFAR, or through a NOTAM issued pursuant to this SFAR, or by the Administrator.

(c) As conditions warrant, the Administrator is authorized to-

(1) Restrict, prohibit, or permit IFR/VFR (instrument flight rules/visual flight rules) operations in the temporary flight restricted area designated in this SFAR or in a NOTAM issued pursuant to this SFAR;

(2) Give priority to or exclude the following flights from provisions of this SFAR and NOTAMs issued pursuant to this SFAR:

(i) Essential military.  
(ii) Medical and rescue.  
(iii) Presidential and Vice Presidential.  
(iv) Flights carrying visiting heads of state.

(v) Law enforcement and security.

(vi) Flights authorized by the Director, Air Traffic Service.

(d) For security purposes, the Administrator may issue NOTAMs during the effective period of this SFAR to cancel or modify provisions of this SFAR and NOTAMs issued pursuant to

this SFAR if such action is consistent with the safe and efficient use of airspace and the safety and security of persons and property on the ground as affected by air traffic.

**2. Temporary Flight Restriction.** At the following location, flight is restricted during the indicated dates and times: That airspace within a 4-nautical-mile radius centered on the Albuquerque Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) 038° radial 14 distance measuring equipment (DME) fix from the surface up to but not including 8,000 feet mean sea level unless otherwise authorized by Albuquerque Airport Traffic Control Tower.

**3. Dates and Times of Designation.** (a) October 2 through October 10, 1999, and October 7 through October 15, 2000, from 0530 MDT until 1200 MDT.

(b) October 2 through October 10, 1999, and October 7 through October 15, 2000, from 1600 MDT until 2200 MDT.

4. **Expiration.** This Special Federal Aviation Regulation expires on October 16, 2000.

Issued in Washington, DC, on May 6, 1999.

/s/

Reginald C. Matthews  
Acting Program Director, Air Traffic Airspace Management