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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

Docket No. 29279; SFAR No. 83

RIN 2120-AG61

Airspace and Flight Operations Requirements for the Kodak Albuquerque International Balloon Fiesta; Albuquerque, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a temporary flight restriction (TFR) area for the period of October 3 through October 11, 1998, for the upcoming Kodak Albuquerque International Balloon Fiesta (KAIBF). This TFR is necessary to manage aircraft operating in the vicinity of the KAIBF, and to prevent unsafe congestion of aircraft that are sightseeing over and around the Balloon Fiesta.

EFFECTIVE DATE: October 3, 1998.

FOR FURTHER INFORMATION CONTACT: Terry Brown, 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

Availability of Final Rules

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's electronic bulletin board service (telephone: 703-321-1661), or 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 Government Printing Office's webpage at <http://www.access.gpo.gov/nara.html> for access to recently published rulemaking documents.

Any person may obtain a copy of this final rule 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 amendment number or docket number of this final rule.

Persons interested in being placed on the mailing list for future Notices of Rulemaking and Final Rules should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Rulemaking Distribution System, that describes the application procedure.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to report inquiries from small entities concerning information on, and advice about, compliance with statutes and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity.

If you are a small entity and have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of Rulemaking, ARM-27, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 1-888-551-1594. Internet users can find additional information on SBREFA in the "Quick Jump" section of the FAA's web page at <http://www.faa.gov> and may send electronic inquiries to the following Internet address: 9-AWA-SBREFA@faa.dot.gov.

BACKGROUND

The KAIBF will be held on October 3 through October 11, 1998, at a site 9 miles north of Albuquerque International Sunport, in Albuquerque, NM.

This SFAR establishes a TFR area to provide for the safety of persons and property in the air and on the ground during the KAIBF. The TFR area will 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 will retain the ability to manage aircraft through the TFR area in accordance with established ATC procedures.

Specifically, the TFR area will be 9 miles north of the Albuquerque International Sunport ATCT and just west of Interstate Highway 25 (I-25). The TFR area will be centered on the Albuquerque Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) 038° radial 14 distance measuring equipment (DME) fix. The area will encompass a 4 nautical mile (NM) radius, extending from the surface up to but not including 8,000 feet mean sea level (MSL). The TFR area will be in effect between the hours of 0530 Mountain Daylight Time (MDT) and 1200 MDT, and from 1600 MDT until 2200 MDT on October 3 through October 11, 1998. Unauthorized aircraft will be required to remain clear of this area during these times.

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

Exceptions

This SFAR contains provisions to provide flexible, efficient management and control of air traffic. ATC will have the authority to give priority to, or exclude from the

requirements of the special regulation, flight operations dealing with or containing essential military, medical emergency, rescue, law enforcement, Presidential, and 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 flight to the KAIBF will 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 information that is regulatory in nature, such as amendments to aeronautical charts and restrictions to flight. FDC NOTAM and NOTAM D information will also be provided to international operators in the form of International NOTAMs. NOTAMs are distributed through the National Communications Center in Kansas City, MO, for transmission to all air traffic facilities having telecommunications access.

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

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

1. U.S. Department of Transportation regarding flights entering the U.S.;
2. U.S. Customs Service, Immigration and other authorities regarding customs, immigrations, health, firearms, and imports/exports;
3. U.S. FAA regarding flight in or into U.S. airspace. This includes compliance with Parts 91, 121 and 135 of Title 14 of the Code of Federal Regulations regarding operations into or within the U.S. through air defense identification zones, and compliance with general flight rules; and,

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

Discussion of Comments

A notice for proposed rulemaking (NPRM) was published in the Federal Register on July 15, 1998 (63 FR 38236). No comments were received regarding this proposal. Except for minor editorial changes, this amendment is being adopted as proposed in the NPRM.

Effective Date

The effective date of this rule is October 3, 1998, which coincides with the start of the KAIBF. This SFAR contains aeronautical information concerning the location, date and times that the special flight restrictions are in effect. In order for pilots and other affected entities that conduct operations in this area to be made aware immediately of the upcoming flight restrictions, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d), for making this amendment effective in less than 30 days to provide for the safety of persons and property in the air and on the ground during the KAIBF.

Environmental Effects

This action establishes a TFR area for safety purposes and curtails or limits certain aircraft operations within a designated area on defined dates and times. Additionally, this action is 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 will retain the ability to direct aircraft through the restricted area in accordance with normal traffic flows. The FAA believes the establishment of a TFR area will have minimal impact on ATC operations.

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

Paperwork Reduction Act

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

International Compatibility

The FAA has reviewed corresponding International Civil Aviation Organization international standards and recommended practices and Joint Aviation Airworthiness Authorities regulations, where they exist, and has identified no differences in this amendment and the foreign 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 that this rule is not "a significant regulatory action" as defined in the Executive Order and the Department of Transportation Regulatory Policies and Procedures. This rule will not have a significant impact on a substantial number of small entities and will not constitute a barrier to international trade.

The SFAR establishes a TFR area for the upcoming KAIBF to be held in Albuquerque, NM. Since the impacts of the 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, will 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, the FAA believes that any circumnavigation costs will be negligible.

The benefits of the TFR airspace will 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 FAA believes the benefits are commensurate with the small costs attributed to the temporary inconvenience of the flight restrictions for operators near the TFR area.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 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 the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act 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 (RFA) as described in the Act.

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 1980 Act 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 FAA conducted the required review of this proposal and determined that it would not have a significant economic impact on a substantial number of small entities. As previously stated, the major economic impact would be the

inconvenience of circumnavigation to operators who may want to operate in the area of the TFR. Because the possibility of such occurrences is for a limited time and the restricted area is limited in size, the FAA believes that any costs would be negligible.

Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FAA certifies that this rule will not have a significant impact on a substantial number of small entities.

International Trade Impact Analysis

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

Federalism Implications

The regulations herein will 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 rule will 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), enacted as Pub. L. 104-4 on March 22, 1995,

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 "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that will 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 rule does not contain a Federal intergovernmental or private sector mandate that exceeds \$100 million a year.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airports, Aviation safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 91 of Title 14, Code of Federal Regulations (14 CFR part 91) as follows:

PART 91--GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 USC 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. 83 to read as follows:

SFAR 83 -- AIRSPACE AND FLIGHT OPERATIONS REQUIREMENTS FOR THE KODAK ALBUQUERQUE INTERNATIONAL BALLOON FIESTA; ALBUQUERQUE, NM

1. General a) Each person shall be familiar with all 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 U.S. shall be familiar with any international NOTAMs issued pursuant to this SFAR. NOTAMs are available for inspection at operating FAA air traffic facilities and regional air traffic division offices.

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

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

(1) Restrict, prohibit, or permit IFR/VFR 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 NM radius centered on the Albuquerque VORTAC 038 radial 14 DME fix from the

surface up to but not including 8,000 feet MSL unless otherwise authorized by Albuquerque ATCT.

3. Dates and Times of Designation. (a) October 3 through October 11, 1998, and from 0530 MDT until 1200 MDT.

(b) October 3 through October 11, 1998, and from 1600 MDT until 2200 MDT.

4. Expiration. This Special Federal Aviation Regulation expires on October 12, 1998.

Issued in Washington, DC, on September 23, 1998.

/s/ Jane F. Garvey

Administrator