

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 91

[Docket No. 29279 Notice No. 98-7]

RIN 2120-AG61

**Proposed Airspace and Flight Operations Requirements for the 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 period of October 3 through October 11, 1998, to establish a temporary flight restriction (TFR) area for the upcoming Kodak Albuquerque International Balloon Fiesta (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 August 31, 1998.

**ADDRESSES:** Comments on this NPRM may be delivered or mailed in triplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attn.: Rules Docket (AGC-200), Docket No. [29279], Room 915G, 800 Independence Avenue, SW., Washington, DC 20591. Comments submitted must be marked "Docket No. [29279]." Comments may also be sent electronically to the following Internet address: 9-nprm-cmts@faa.dot.gov. Comments may be examined in room 915G, weekdays, between 8:30 a.m. and 5:00 p.m., except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Terry Brown, Airspace and Rules Division, ATA-400, Office of the 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 this 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 notice are also invited. Substantive comments should be accompanied by

cost estimates. Comments must identify the regulatory docket or notice number and be submitted in triplicate to the Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this 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. Late-filed comments will be considered to the extent practicable. The proposals contained in this notice may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice 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 **Federal Register's** electronic bulletin board service (telephone: 202-512-1661), 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 **Federal Register's** web page at [http://www.access.gpo.gov/su\\_docs/aces/aces140.html](http://www.access.gpo.gov/su_docs/aces/aces140.html) for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM 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 of docket number of this NPRM.

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

**Comment Period Justification**

The FAA is requesting a comment period of 45 days to allow for the

consideration and incorporation of comments to this proposal, and to expedite publication of the SFAR for those aircraft planning operations in the vicinity of the KAIBF.

The early publication of this action would reduce the potential confusion of pilots since the proposed SFAR restrictions could change normal operating procedures of the affected area. Further, early publication of the SFAR would result in a safe operation and the prevention of any unsafe congestion of sightseeing and other aircraft over the Balloon Fiesta launch site.

**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 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 (NM) 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 3 through October 11, 1998. 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 flexible, efficient management and control of air traffic. ATC would 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 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 information which is regulatory in nature, such as amendments to aeronautical charts and restrictions to flight. FDC NOTAM and NOTAM D information would 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 would need to consult the monthly NOTAM Domestic/International publication. This publication contains NOTAM FDC and D NOTAMs. Special information, including graphics, would be published in the biweekly publication several weeks in advance of the Balloon Fiesta. For more detailed information concerning the NOTAM system, refer to the Aeronautical Information Manual "Preflight" section would need to be made.

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

Aircraft operators should clearly understand that the proposed SFAR is in addition to other laws and regulations of the U.S. The SFAR would 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 with 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.

#### Environmental Effects

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 believes 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 which 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.

#### International Compatibility

The FAA has reviewed corresponding International Civil Aviation organization international standards and recommended practices and Joint Aviation Authorities regulations, where they exist, and has identified no differences in these proposed amendments and the foreign regulations.

#### 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 proposed regulation.

#### 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 proposed rule is not "a significant regulatory action" as defined in the Executive Order and the Department of Transportation Regulatory Policies and Procedures. 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 period October 3 through October 11, 1998. The SFAR proposes to establish a TFR area for the upcoming KAIBF to be held in Albuquerque, NM. Since 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, the FAA believes that 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 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.

### Initial Regulatory Flexibility Act 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. 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. 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 both U.S. firms during business in foreign countries and foreign firms doing business in the U.S.

### 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), 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 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 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 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 (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 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. XX to read as follows:

### SFAR NO. XX AIRSPACE AND FLIGHT OPERATIONS REQUIREMENTS FOR THE 1998 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 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 July 8, 1998.

**John S. Walker,**

*Program Director for Air Traffic Airspace  
Management.*

[FR Doc. 98-18652 Filed 7-14-98; 8:45 am]

**BILLING CODE 4910-13-M**