Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 91
Temporary Flight Restrictions; Proposed Rule
DEPARTMENT OF TRANSPORTATION  
Federal Aviation Administration  
14 CFR Part 91  
[Docket No. 26605; Notice No. 91-14]  
RIN 2120-AD-55  
Temporary Flight Restrictions  
AGENCY: Federal Aviation Administration (FAA), DOT.  
ACTION: Notice of Proposed Rulemaking (NPRM).  
SUMMARY: The FAA proposes to require the operator of an aircraft used in conducting authorized news-gathering operations in an area covered by temporary flight restrictions to contact the official in charge of the on-scene emergency response activities for the purpose of obtaining information about current and forecasted disaster relief aircraft activities. Adoption of this proposal would reduce the potential for traffic conflicts and disruption of relief operations. This proposal would increase the level of safety afforded aircraft used in conducting rescue or disaster relief operations.  
DATES: Comments must be received on or before September 23, 1991.  
ADDRESSES: Comments on this proposal may be mailed or delivered in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AAC-204), Docket No. 26605, 800 Independence Avenue SW., Washington, DC 20591. Comments may be examined in the Rules Docket, Room 115, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.  
SUPPLEMENTARY INFORMATION:  
Comments Invited  
Interested persons are invited to participate in the proposed rulemaking procedures by submitting such written data, views, or arguments as they may desire. Comments are invited that provide the factual basis supporting the views and suggestions presented relating to the environmental, energy, or economic impacts that may result from adoption of the proposals contained in this notice. Communications should identify the regulatory docket number or notice number and be submitted in duplicate to the address above. All communications received on or before the closing date for comments will be considered by the Administrator before taking further action on the proposed revisions to the rule. Proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons before and after the closing date for comments. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No._." The postcard will be date/time stamped, and returned to the commenter.  
Availability of NPRM  
Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-200, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the docket number and/or 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, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.  
Background  
Currently, when temporary flight restrictions are established under § 91.137(a)(2) to provide for the safety of aircraft conducting rescue or disaster relief operations, aircraft carrying properly accredited newspeople may enter the prescribed area without prior approval after filing a flight plan. However, the pilot of such an aircraft must operate above the altitude(s) being used by rescue or disaster relief aircraft. The process by which a pilot determines which altitudes are in use is not prescribed by the current regulation. Therefore, a pilot may determine such altitudes by requesting the information directly from the rescue or disaster relief aircraft on an appropriate two-way radio frequency, by observation, or by other methods. The information obtained using these methods may be valid for only a short time, or inaccurate. For example, in the case of temporary flight restrictions established for a forest fire being fought by aircraft dropping fire retardants, a pilot of an aircraft carrying newspeople visually determines the presence of rescue or disaster relief aircraft, and will often overlook the fact that there may be air tankers holding outside the operations area prior to entering the area to drop fire retardants. The official in charge of on-scene activities is the logical source for accurate information concerning the aircraft operating in the operations area and can generally be reached via two-way radio communications.  
Recently, situations involving aircraft carrying newspeople and emergency response aircraft in areas covered by temporary flight restrictions have occurred. For example, the U.S. Department of the Interior and the Forest Service have indicated that aircraft carrying accredited newspeople have been observed on several occasions operating below the altitudes being used by rescue or disaster relief aircraft. Specifically, on July 10, 1989, during fire suppression in Meadow Valley, Washington (Bertha Fire Helibase), a Bell 206 Helicopter was observed heading toward the fire scene, flying at approximately 50 feet above ground level (AGL), directly over the helibase. Temporary flight restrictions were in effect in the area. Due to the unknown position of the intruding helicopter, fire suppression activities were temporarily suspended. Another incident occurred on June 29, 1989, near Sunflower, Arizona, over mountainous terrain at 4,300 feet mean sea level. A fire had been reported out of control and temporary flight restrictions were in effect for the area. An air tanker had just made a drop and was climbing out of the mountain canyon when a Robertson R-22 Helicopter was observed flying up the canyon at or near the same altitude, approximately 700 feet AGL. The tanker was required to increase the rate of climb in order to avoid the helicopter. Subsequently, the intruding helicopter landed at the firebase heliport. The pilot of the intruding helicopter was under contract to a news service. After landing, the pilot was informed of the temporary flight restrictions and the potentially hazardous situation that he had created for himself, his passengers and the crew of the air tanker. At no time prior to landing at the heliport did the pilot of the intruding helicopter make contact with the official in charge of on-scene activities.  
The FAA has determined that such incidents demonstrate the need for stricter control of news-gathering operations using aircraft. Such control would be facilitated by having the news-gathering aircraft operate within the parameters established by the on-scene emergency response official. 


temporary flight restriction is issued through the notice to airman (NOTAM) system, information containing the person in charge of the emergency, the appropriate phone number, and the FAA coordination facility are in the NOTAM. Further, this contact would result in an appropriate air-to-air or air-to-ground radio frequency being given to the aircraft operator. Failure to obtain pertinent information from the official in charge of on-scene emergency response activities and remain clear of the routes, altitudes, and operating areas identified within the temporary flight restriction area would be a violation of § 91.137.

The Proposal

The FAA is proposing to revise § 91.137(c)(6) to require: (1) All pilots of aircraft carrying properly accredited newspaper people to first contact the official in charge of on-scene emergency response activities to ascertain the routes, altitudes, and operating areas in use by disaster relief aircraft; and (2) that the aircraft be operated clear of all disaster relief aircraft operations identified by the official in charge.

Regulatory Evaluation Summary

This section summarizes the full regulatory evaluation prepared by the FAA. The full regulatory evaluation provides more detailed analysis of the economic consequences of this proposed regulatory action. This summary and the full evaluation quantify, to the extent practicable, estimated costs to the private sector, consumers, Federal, State and local governments, as well as anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if the potential benefits to society for each regulatory change outweigh potential costs. This Order also requires the preparation of a Regulatory Impact Analysis of all major rules except those responding to emergency situations or other narrowly defined exigencies. A major rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, a significant adverse effect on competition, or is highly controversial.

The FAA has determined that this proposal is not major as defined in the Executive Order; therefore, a full regulatory analysis that includes the identification and evaluation of cost reducing alternatives to the proposal has not been prepared. Instead, the agency has prepared a more concise document termed a regulatory evaluation that analyzes only this proposal without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains an initial regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (RFA) and an international trade impact assessment. If more detailed economic information than is contained in this summary is desired, the reader is referred to the full regulatory evaluation contained in the docket.

Costs

The FAA estimates the total monetary costs of the proposed rule to be zero. However, there would be some negligible qualitative costs in the form of inconvenience to operators of aircraft used for news-gathering. These costs are discussed below.

For the FAA, or any government or private authority that acts as the official in charge of emergency relief aircraft operations, the proposed rule would not impose any additional administrative costs for either personnel or equipment. Any additional operations workload generated by the proposed rule would be absorbed by current personnel and equipment resources.

For aircraft operators, the proposed rule would not impose any additional equipment or operating costs. Potential equipment costs would be the purchase of two-way radio equipment in order to contact the official in charge. Potentially affected aircraft would be air taxis or aircraft owned by news-gathering organizations. However, these aircraft routinely operate in airspace that requires two-way radio communication. Thus, the FAA assumes that these types of aircraft are already equipped with two-way radios. Operators of aircraft conducting authorized news-gathering operations could incur qualitative costs in the form of inconvenience. This would be the result of having to contact the official in charge of the emergency in addition to filing a flight plan with air traffic control. However, the FAA contends that the inconvenience of having to contact the official in charge would be negligible.

Benefits

The proposed rule is expected to accrue potential benefits primarily in the form of enhanced aviation safety to emergency response aircraft and news-gathering aircraft. These benefits are discussed below.

Safety benefits would take the form of a reduced risk in casualty losses (namely, aviation fatalities and property damage) resulting from a lowered likelihood of midair collisions. Of course, the FAA does not know with certainty to what extent the proposal would help in preventing midair collisions. In addition, the FAA cannot predict with a reliable degree of certainty the frequency and magnitude of casualty loss resulting from a midair collision because it represents a random event.

The potentially disastrous incidents described in the background section of this notice posed an unnecessary and unwarranted diminution in the margin of safety of areas under temporary flight restrictions. By not contacting the official in charge, these pilots left themselves unaware of emergency air traffic information that was pertinent to not only their safety, but to the safety of fire fighters in the air and on the ground.

The FAA contends that requiring aircraft operators conducting authorized news-gathering operations to contact the official in charge would increase their awareness of the emergency operations being conducted in the area. This increased awareness and information would increase safety by lowering the likelihood of a midair collision between news-gathering and emergency aircraft. Forest fires and other crisis situations in which emergency aircraft must operate are potentially dangerous enough without the added potential of colliding with news-gathering aircraft. This proposal would also increase efficiency by lowering the likelihood of emergency operations being suspended due to unidentified aircraft operating in the area.

Conclusion

The estimated dollar cost of this proposal is zero because there would be no costs incurred to acquire additional equipment or to hire personnel on the part of the FAA, the emergency relief authority, or aircraft operators. In qualitative terms, the proposed rule would impose negligible costs in the form of the inconvenience of news-gathering aircraft operators having to contact the official in charge. The potential benefits of this proposal would be the enhanced safety of requiring aircraft operators to be more aware of emergency relief aircraft traffic and other advisory information. This information is necessary to navigate safely within an area of temporary flight restrictions and would reduce the likelihood of a midair collision. This proposed action would also generate benefits in the form of an increased efficiency in emergency operations. On balance, the FAA firmly believes that the proposed rule is cost-beneficial.
Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1996 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have a significant economic impact on a substantial number of small entities. The small entities that could be potentially affected by the implementation of this proposed rule are unscheduled operators of aircraft for hire, such as air taxi operators owning nine or fewer aircraft.

Only air taxi operators and aircraft operated by news-gathering organizations without two-way radios would be affected by this proposed amendment. However, the FAA assumes that all potentially affected aircraft already are equipped with two-way radios. This assumption is based on the fact that these aircraft must routinely operate in airspace that requires two-way communications with air traffic control. Therefore, the FAA certifies that this proposed amendment would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The proposed amendment would neither have an effect on the sale of foreign aviation products or services in the United States, nor have an effect on the sale of U.S. products or services in foreign countries. This is because the proposed amendment would neither impose costs on aircraft operators nor on aircraft manufacturers (U.S. or foreign) that would result in a competitive disadvantage to either.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, the FAA certifies that this proposal, if adopted, 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. This proposal is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 28, 1979). An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under “FOR FURTHER INFORMATION CONTACT.”

List of Subjects in 14 CFR Part 91


The Proposed Amendment

For the reasons set forth in the preamble, the FAA proposes to amend part 91 of the Federal Aviation 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:


2. Section 91.137(c)(5) is revised to read as follows:

§ 91.137 Temporal flight restrictions.

(c) * * *

(5) The aircraft is carrying properly accredited newspapers; and:

(i) Prior to entering the area identified in the NOTAM, the pilot in command files a flight plan with the appropriate FAA or ATC facility specified in the NOTAM; and contacts the official in charge of on-scene emergency response activities for the purpose of obtaining information about current and forecasted disaster relief aircraft routes, altitudes, and operating areas; and

(ii) After entering the area identified in the NOTAM, the pilot in command remains clear of the routes, altitudes, and operating areas identified by the official in charge or which otherwise appear to be used by disaster relief aircraft.

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Issued in Washington, DC, on July 18, 1991.

Jerry W. Ball,
Acting Director Air Traffic Rules and Procedures Service.

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