

Corrections

Federal Register 23-42A
Vol. 56, No. 28 See
Monday, February 11, 1991 23-42B

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Additions; Correction

Correction

In notice document 91-684 appearing on page 1181 in the issue of Friday, January 11, 1991, make the following correction:

In the 1st column, in the 13th line from the bottom, "9435-00-888-7208" should read "4935-00-888-7208".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

Energy Conservation Program for Consumer Products Representative Average Unit Costs of Energy

Correction

In notice document 91-2171 beginning on page 3455 in the issue of Wednesday, January 30, 1991, make the following correction:

On page 3456, in the fourth column of the table, in the first entry, "25.15" should read "24.15".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90N-0407]

Revision of Certain Food Chemicals Codex, 3D ed., Monographs; Opportunity for Public Comment

Correction

In notice document 91-633 beginning on page 1198 in the issue of Friday,

January 11, 1991, make the following correction:

On page 1199, in the 3rd column, the 21st entry, "6-Methylcoumarin(infrared spectra)" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90M-0437]

Datascope Corp.; Premarket Approval of the Micros™ PTCA Dilatation Catheter

Correction

In notice document 91-1028 appearing on page 1643 in the issue of Wednesday, January 16, 1991, make the following corrections:

1. In the first column, in the heading and in the second line from the bottom of the page, "dilatation" was misspelled.

2. In the third column, at the end of the document the title for Elizabeth D. Jacobson, should read, "Acting Deputy Director, Center for Devices and Radiological Health".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1 and 23

[Docket No. 28511; Amdt. Nos. 1-37 and 23-42]

RIN 2120-AC15

Small Airplane Airworthiness Review Program Amendment No. 2

Correction

In rule document 91-23 beginning on page 344 in the issue of Thursday, January 3, 1991, make the following corrections:

1. On page 345, in the third column, in the last paragraph, in the third line, "which" should read "what".

§ 23.161 [Corrected]

2. On page 351, in the third column, in § 23.161(b)(1), in the third line, insert "or" after "Vc".

§ 23.423 [Corrected]

3. On page 353, in the first column, in § 23.423, in the concluding text to paragraph (b), in the first line, "condition" should read "conditions".

§ 23.701 [Corrected]

4. On the same page, in the third column, in § 23.701(b), in the sixth line, insert a period after "surface)".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-90-53]

Petitions for Exemption; Summary of Petition Received; Dispositions of Petitions Issued

Correction

In notice document 90-30592 beginning on page 100 in the issue of Wednesday, January 2, 1991, make the following correction:

On page 101, in the first column under Docket No. 26227, in the second from the last line, "GRANT" should read "DENIAL".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8322]

RIN1545-AJ74

Untimely Filing of Income Tax Returns by Nonresident Alien Individuals and Foreign Corporations

Correction

In rule document 90-28772 beginning on page 50827 in the issue of Tuesday, December 11, 1990, make the following correction:

On page 50828, in the second column, the List of Subjects heading was incorrect and should read "List of Subjects in 26 CFR § § 1.861-1 through 1.997-1".

BILLING CODE 1505-01-D

NPRM 91-5

DEPARTMENT OF TRANSPORTATION
Federal Aviation Administration
14 CFR Part 91

[Docket No. 26476, Notice No. 91-5]

RIN 2120-AD97

Temporary Flight Restrictions in National Disaster Areas in the State of Hawaii

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to prohibit, or otherwise restrict, aircraft overflights of inhabited areas within a declared national disaster area in the State of Hawaii. The proposed rule would implement recent legislation that requires the FAA to consider safety and humanitarian reasons in the issuance of temporary flight restrictions within declared national disaster areas in the State of Hawaii.

DATES: Comments must be submitted on or before March 13, 1991.

ADDRESSES: Comments on this notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 26476, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked Docket No. Comments may be examined in Room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Melodie De Marr, Air Traffic Rules Branch, ATP-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9247.

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 should identify the regulatory docket or notice number and be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received 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 substantive public contact with Federal Aviation Administration (FAA) personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 26476." The postcard will be date stamped and mailed 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-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice 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, which describes the application procedure.

Background and Need for Rulemaking

Section 9124 of the Aviation Safety and Capacity Expansion Act of 1990, provides in relevant part, "the Administrator [of the FAA], for safety and humanitarian reasons, shall issue such regulations as may be necessary to prohibit or otherwise restrict aircraft overflights of any inhabited area which has been declared a national disaster area in the State of Hawaii" (Pub. L. 101-508, November 5, 1990). The legislation was enacted in response to problems encountered in populated areas affected by the lava flow from the Kilauea volcano. The area was declared a national disaster area on May 18, 1990. It is the agency's understanding that the presence of low flying aircraft that were not directly involved in the relief effort or associated activities operating over affected inhabited areas interfered with and endangered those involved with the collection of scientific data and/or disaster relief efforts and adversely affected the inhabitants of those areas.

Currently, § 91.137 of the Federal Aviation Regulations (14 CFR 91.137) authorizes the Administrator to designate an area within which some or all flights are prohibited for reasons of safety. The regulation is designed to protect persons and property on the surface or in the air from a hazard associated with an incident on the surface; to provide a safe environment

for the operation of disaster relief aircraft; and to prevent an unsafe congestion of sightseeing and other aircraft above an incident or event which may generate a high degree of public interest. In each case, the circumstances supporting implementation of a § 91.137 flight restriction involve issues of safety. Section 9124 of the Aviation Safety and Capacity Expansion Act of 1990 is intended to cover certain situations in the State of Hawaii that are not addressed in § 91.137. Specifically, the proposed regulation (14 CFR 91.138) would authorize the Administrator to consider safety and humanitarian factors prior to the issuance of flight restrictions over inhabited areas within declared national disaster areas in the State of Hawaii.

National disaster areas are identified by Presidential declaration following a request by the Governor of the affected state. Such a request is based on a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the state and the affected local governments and that Federal assistance is necessary. National disaster areas have been declared on four occasions in the State of Hawaii in the ten years preceding this proposal:

- (1) April 22, 1982 (heavy rains and flooding);
- (2) November 27, 1982 (hurricane Iwa);
- (3) January 8, 1988 (severe storms, mudslides, flooding); and
- (4) May 18, 1990 (Kilauea volcano—lava flow.)

Based on historical data, the FAA expects the proposed rule to be invoked on an infrequent basis. Section 91.138 would apply upon the Administrator of the FAA's determination if the affected inhabited area is within a declared national disaster area in the State of Hawaii and the Governor of the State of Hawaii, or the Governor's designee, has forwarded to the Administrator of the FAA a request for and justification of the need for the application of this regulation for humanitarian reasons.

The regulation as proposed would provide for the operation of specific flights within the affected area through coordination with the official in charge of disaster-response activities. Such flights would include those aircraft involved in collecting scientific data, carrying accredited news or media personnel, or participating in disaster relief activities. Aircraft departing from or landing at airports with departure/approach procedures that would cause them to transit the affected area would

be required to obtain an appropriate air traffic control (ATC) clearance. All other flights would be required to comply with the restrictions issued by the Administrator and described in the NOTAM.

Regulatory Evaluation Summary

This section summarizes the full regulatory evaluation prepared by the FAA that provides detailed estimates of the economic consequences of this proposed regulatory action. This summary and the full evaluation quantify, to the extent practicable, estimates of the costs and benefits to the private sector, consumers, and Federal, state, and local governments.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or to modify existing regulations only if potential benefits to society outweigh potential costs for each regulatory change. The order contains no express exception for regulations directed by legislation. The 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 have an annual impact on the economy of \$100 million or more, to have a major increase in consumer costs, to have 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 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 (Pub. L. 96-354) and an international trade impact assessment. The complete regulatory evaluation, which contains more detailed economic information than this summary provides, is available in the docket.

Cost-Benefit Analysis

The primary objective of this proposed rule is to protect victims of national disaster areas in the State of Hawaii from aircraft that are operating in the area as a result of the occurrence of a national disaster. An examination of the costs and the benefits associated

with the proposed rule are presented below.

Costs

The FAA believes that there would be negligible costs associated with compliance with the proposed rule. Because the proposed rule would be invoked only in the case of a declared national disaster in the State of Hawaii and would apply only to those inhabited areas designated by the Governor or the Governor's representative, the only economic impact would be a slight inconvenience to scenic tour operators who want to operate in the area of the temporary flight restriction. Because such occurrences are expected to be infrequent and the restricted areas are expected to be limited in size, the FAA believes that any loss of business by the tour operators would be negligible.

Benefits

This proposed rule is expected to produce potential benefits in the form of relief from noise and anxiety caused by low-flying aircraft. Although these benefits cannot be quantified, the FAA believes the benefits exceed any possible cost attributed to the temporary inconvenience of the flight restriction for commercial tour operators. Also, the agency notes that the proposed rule is required by legislation, without regard to its cost-effectiveness.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) requires Federal agencies to review rules that may have a "significant economic impact on a substantial number of small entities." The FAA has adopted criteria and guidelines (U.S. Department of Transportation, FAA Order 2100.14A) for rulemaking officials to apply when determining whether a proposed rule has 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 the scenic tour operators who own nine or fewer aircraft.

Because there would be negligible costs associated with compliance with this proposed rule, there would be no significant economic impact on a substantial number of small entities.

International Trade Impact Statement

This proposed rule would neither have an effect on the sale of foreign aviation products or services in the United States, nor would it have an effect on the sale of U.S. products or services in foreign countries. The proposed rule

would not impose costs on aircraft operators or aircraft manufacturers (U.S. or foreign) that would result in a competitive disadvantage to either.

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 proposal will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Effects

This proposed action would establish temporary flight restrictions in designated areas for safety and humanitarian reasons and would curtail or limit certain aircraft operations within the affected area. As such, this proposal would not establish specific operating procedures, nor would it limit the operation of an aircraft to a specific route or procedure. The designation of temporary flight restrictions pursuant to this proposed action would be temporary in nature and effective only for the time necessary to protect inhabitants of an affected area within a declared national disaster area in the State of Hawaii. Air traffic control (ATC) would retain the ability to direct aircraft through the affected area in accordance with normal traffic flows. Therefore, this proposal would accommodate the operation of an aircraft in compliance with existing safety and environmental requirements and procedures and would not alter or supersede those requirements.

The establishment of temporary flight restrictions under the proposed regulation would result in a reduction of aircraft operations at low altitudes over inhabited areas within a declared national disaster area. As a result of these restrictions, the FAA believes that the number of aircraft operations in the vicinity of inhabited portions of national disaster areas would be reduced and noise levels would be lower than would have been if the temporary flight restrictions were not in place. Aircraft operators complying with the NOTAM restrictions would not be routed over any particular area or confined to operate within certain airspace. For the reasons stated above, the FAA concludes that any action taken under this proposed rule would not significantly impact the quality of the human environment and that further

environmental assessment is unnecessary.

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 regulation would not be major under Executive Order 12291. In addition, the FAA certifies that this regulation would 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 regulation is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A regulatory evaluation of the regulation, including a Regulatory Flexibility Determination and International 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

Aircraft, Airmen, Aviation safety.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration 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 is revised to read as follows:

Authority: 49 U.S.C. App. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1433, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 23, 31, and 32(a) of the Convention on International Civil Aviation (81 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. Part 91 is amended by adding a new § 91.138 to subpart B to read as follows:

§ 91.138 Temporary flight restrictions in national disaster areas in the State of Hawaii.

(a) When the Administrator has determined, pursuant to a request and justification provided by the Governor of the State of Hawaii, or the Governor's designee, that an inhabited area within a declared national disaster area in the State of Hawaii is in need of protection for humanitarian reasons, the Administrator will issue a Notice to Airmen (NOTAM) designating an area within which temporary flight restrictions shall apply. The Administrator will designate the extent and duration of the temporary flight restrictions necessary to provide for the protection of persons and property on the surface.

(b) When a NOTAM has been issued in accordance with this section, no person may operate an aircraft within the designated airspace unless:

(1) That person has obtained express authorization from the official in charge of associated emergency or disaster relief response activities, and is operating the aircraft under the conditions of that authorization;

(2) The aircraft is carrying law enforcement officials;

(3) The aircraft is carrying persons involved in an emergency or a legitimate scientific purpose;

(4) The aircraft is carrying properly accredited newsmen; prior to entering the area, a flight plan is filed with the appropriate FAA or ATC facility specified in the NOTAM; and the operation is conducted in compliance with the conditions and restrictions established by the official in charge of on-scene emergency response activities; or,

(5) The aircraft is operating in accordance with an ATC clearance or instruction.

(c) A NOTAM issued under this section is effective for 90 days or until the national disaster area designation is terminated, whichever comes first, unless terminated by notice or extended by the Administrator at the request of the Governor of the State of Hawaii or the Governor's designee.

Issued in Washington, DC on February 6, 1991.

Harold W. Becker,

Acting Director, Air Traffic Rules and Procedures Service.

[FR Doc. 91-3199 Filed 2-6-91; 3:00 pm]

BILLING CODE 4910-13-M