DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 27318; Notice No. 93–6]

RIN 2120–AE85

Special Visual Flight Rules (SVFR) Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend certain regulations governing special visual flight rules (SVFR) operations. By omission of certain words and phrases, the Airspace Reclassification final rule inadvertently altered the applicability and scope of the Part 91 SVFR provisions. Further, some airspace revisions in the Terminal Airspace Reconfiguration final rule resulted in an unintentional reduction in the amount of airspace within which SVFR operations could be conducted at some airports. This action would restore the applicability and scope of the SVFR provisions and reestablish airspace for SVFR operations essentially equivalent to that which existed prior to those amendments.

DATES: Comments must be submitted on or before July 8, 1993.

ADDRESSES: Comments on this NPRM should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–10), Docket No. 27318, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be market Docket No. 27318. 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 M. DeMarr or William M. Mosley, Air Traffic Rules Branch, ATP–230, 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 notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should 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 preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 27318." 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 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, which describes the application procedure.

Background

The Airspace Reclassification Final Rule (56 FR 65638; December 17, 1991), which is effective September 16, 1993, replaces all control zones with either a Class B, C, D, or E segment of controlled airspace that extends upward from the surface. However, that final rule inadvertently amended Section 91.157 and removed the provision whereby a pilot could request and receive an air traffic control (ATC) clearance to conduct an SVFR flight through such an airspace segment. That was not the intention of the FAA. On the contrary, in response to comments to the proposal that preceded that final rule, the FAA included in the preamble to the final rule a discussion (56 FR 65648) that it intended to continue to permit SVFR operations for through flights as well as flights for arrival or departure at airports within Class B, C, D, or E surface areas.

Additionally, the December 17, 1991, final rule will replace, effective September 16, 1993, the SVFR prohibition provisions currently contained in § 93.113 with Section 3 of Appendix D to part 91. Currently, the prohibition against SVFR operations contained in § 93.113 only applies to fixed-wing aircraft at the airports listed in that section. However, in establishing Section 3 of Appendix D as the replacement for § 93.113, the FAA inadvertently omitted the word "fixed-wing." That omission, in effect, results in the inclusion of helicopters in the SVFR prohibitions. This action would restore the applicability of Section 3 of Appendix D to part 91 to only fixed-wing aircraft.

Further, in the December 17, 1991, final rule, the FAA adopted a new § 91.155 which will replace the existing § 91.155 effective September 16, 1993. That action was intended merely to facilitate the reclassification of control zones to Class B, C, D, or E controlled airspace extending upward from the surface. However, the phrase "beneath the ceiling" in paragraph (c) of that section was unintentionally omitted. In effect, the omission would prohibit operations conducted under visual flight rules (VFR) anywhere in such airspace, above as well as below a cloud ceiling, regardless of the meteorological conditions above the cloud layer(s), when the reported ceiling is less than 1,000 feet. It was the FAA's intent to prohibit VFR flight only beneath the ceiling when such ceiling is reported as less than 1,000 feet. This action would restore the VFR flight prohibition that existed prior to the December 17, 1991 final rule.

Transition to the new airspace classifications began on October 15, 1992, when portions of the Terminal Airspace Reconfiguration Final Rule (57 FR 38962; August 27, 1992) became effective. That final rule, in pertinent part, revised the vertical limits of control zones at airports with an operating control tower. However, only the lateral limits were changed for control zones without an operating control tower.

Control zones for airports for which an airport radar service area (ARSA) or terminal control (TCA) is designated had the control zone vertical limits reduced to the specified vertical limits of the ARSA or TCA. In all cases, the revised vertical limits are lower than they were prior to October 15, 1992. At other airports in control zones with an operating control tower, however, the

control zone vertical limits were generally reduced to 2,500 feet above ground level (AGL). On September 16, 1993, those revised vertical limits represent the altitudes below which two-way radio communications between ATC and aircraft operating within the specific airspace segment will be required. However, that action has the unforeseen effect of reducing the amount of airspace available for SVFR operations. Such impact was not the intent of the FAA since, prior to October 15, 1992, SVFR operations could be authorized within a control zone between the surface and 14,500 feet mean sea level (MSL).

In most cases, the reduced vertical limits of control zones will only have a minor technical impact; different types of airspace designations will permit different levels of SVFR use. For example, TCA's generally have a vertical limit of 8,000 to 12,500 feet MSL while most ARSA's extend upward to 4,000 feet AGL, and the majority of control zones with operating control towers are approximately 2,500 feet AGL. SVFR operations are permitted only to the vertical limit of these differing types of controlled airspace. The principal impact exists only at some airports in control zones with an operating control tower. This action would mitigate that impact.

However, when the Airspace Reclassification Final Rule becomes effective on September 16, 1993, control zones will cease to exist as a type of airspace. They will be replaced by Class B, Class C, Class D, and Class E surface areas, as appropriate. At airports without an operating control tower, the Class E airspace extending upward from the surface would technically terminate at the base of the overlying transition area (700 or 1200 feet AGL). Effectively, the airspace within which SVFR operations could be authorized would be significantly reduced, resulting in a severe limitation on SVFR arrival and departure operations at those airports. This was not the intent of the FAA in promulgating the Airspace Reclassification Final Rule. This action would reestablish airspace for SVFR operations essentially equivalent to that which existed prior to the amendment.

The Proposal

This proposal would accomplish four actions. It would make three editorial changes to ensure that the SVFR provisions are, as of September 16, 1993, continued or established as appropriate for: (1) Prohibiting flight under VFR within Class B, Class C, Class D, and Class E surface areas beneath the ceiling when the ceiling is less than 1,000 feet; (2) prohibiting only fixed-wing SVFR operations at certain specified airports; and (3) allowing SVFR operations through the airspace for Class B, Class C, Class D, and Class E surface areas.

The fourth action would amend § 91.157, Special VFR weather minimums, to restore the SVFR provisions virtually to the way they were prior to the Airspace Reclassification and the Terminal Airspace Reconfiguration Final Rules. Specifically, prior to October 15, 1992, most control zones extended from the surface upward to, but not including, 14,500 feet MSL, and SVFR operations could be authorized in all or part of such airspace. To reestablish consistency in the maximum altitudes applicable to SVFR operations regardless of airspace designation, the FAA is proposing to establish 10,000 feet MSL as the altitude below which air traffic control (ATC) could authorize an SVFR operation in controlled airspace designated to the surface for an airport. That altitude is consistent with the level at which the visibility requirement for flight under VFR increases from 3 miles to 5 miles.

Procedural Changes

To effect this proposal, a number of phraseology and procedural changes would be required. Procedural changes would be of an editorial nature and would occur without impact on aviation users. However, noticeable changes in phraseology would occur. Examples of phraseology for an ATC clearance authorizing a pilot to conduct SVFR operations might be:

"Cleared to the (name) Airport, Maintain Special V–F–R."
"Cleared to the (name) Airport, Maintain Special V–F–R at or Below (altitude)."
"Maintain Special V–F–R."
"Maintain Special V–F–R at or Below (altitude)."

The phrase, "while in the control zone," currently used in an SVFR ATC clearance, would be absent from the phraseology. This is intentional since effective September 16, 1993, control zones cease to exist. Further, to avoid the use of cumbersome phraseology to describe the lateral limits of an SVFR ATC clearance, the FAA would expect that pilots would refer to aeronautical charts to determine, as they do today, the airspace boundaries within which SVFR operations may be conducted.

Regulatory Evaluation

The proposed amendments to the regulations are to correct errors associated with the designation of controlled airspace and inadvertent omissions in operating rules dealing with SVFR operations within that airspace. ATC services associated with SVFR are currently provided by the FAA in that airspace. This action would ensure that those services would continue to be provided. The rules that changed the airspace descriptions and are a subject of this rulemaking are described in part 71. However, this action would restore ATC services in the affected airspace by amending part 91. The change to part 91 is necessary because of a terminology change in airspace descriptions that facilitates the reclassification of the U.S. airspace. Except for minor phraseology changes in ATC clearances, there would be no change to ATC services. Also, restoring the airspace for SVFR operations to 10,000 feet instead of 14,500 feet MSL would not impact ATC system users since, as a practical matter, SVFR operations have been rarely requested or authorized above 10,000 feet MSL. For these reasons, operators are not expected to incur any costs from compliance with the proposed rule. Additionally, this proposal would remove some of the restrictions put in place October 15, 1992, by allowing more operations in a designated airspace. This proposal is considered relieving in nature. Therefore, a regulatory evaluation has not been prepared because the proposed rule is essentially procedural in nature with no costs to aircraft operators.

Conclusion

For the reasons set forth above, the FAA has determined that this action is not a "major proposed rule" under Executive Order 12291. The proposed rule is considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). However, because the costs of the proposed rule are virtually nonexistent, it is also certified that this proposed rule would not have a significant economic impact, either positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Federalism Implications

The regulations 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 proposal will not have sufficient federalism

implications to warrant the preparation of a Federalism Assessment.

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:

The following amendments are to part 91 currently in effect:

PART 91—GENERAL OPERATING AND FLIGHT RULES

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

Authority: 49 U.S.C. app. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902; 49 U.S.C. 106(g).

2. Section 91.157 is amended by revising paragraphs (a), (b), (c), and (e) introductory text to read as follows:

§ 91.157 Special VFR weather minimums.

(a) Except as provided in § 93.113, when a person has received an appropriate ATC clearance to conduct operations under special VFR, the requirements and weather minimums of this section instead of those contained in § 91.155 apply to the operation under special VFR of an aircraft by that person in a control zone or in that airspace contained within the upward extension of the lateral boundaries of a control zone to, but not including, 10,000 feet MSL.

(b) No person may operate an aircraft under VFR in a control zone or the airspace contained within the control zone's upward extension to, but not including, 10,000 feet MSL except clear of clouds.

(c) No person may operate an aircraft (other than a helicopter) under VFR in a control zone or the airspace contained within the control zone's upward extension to, but not including, 10,000 feet MSL unless the flight visibility is at least 1 statute mile.

(d) * * *

(e) No person may operate an aircraft (other than a helicopter) in a control zone or the airspace contained within the control zone's upward extension to, but not including, 10,000 feet MSL under the special weather minimums of this section, between sunset and sunrise (or in Alaska, when the sun is more than 6° below the horizon) unless:

(1) * * *

(2) * * *

The following amendments are to part 91 effective September 16, 1993:

PART 91—GENERAL OPERATING AND FLIGHT RULES

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

Authority: 49 U.S.C. app. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902; 49 U.S.C. 106(g).

4. Section 91.155 is amended by revising paragraph (c) to read as follows:

§ 91.155 Basic VFR weather minimums.

* * * * *

(c) Except as provided in § 91.157, no person may operate an aircraft under VFR within the lateral boundaries of controlled airspace designated to the surface for an airport, beneath the ceiling when the ceiling is less than 1,000 feet.

* * * * *

5. Section 91.157 is revised to read as follows:

§ 91.157 Special VFR weather minimums.

(a) Except as provided in appendix D, section 3, of this part, special VFR operations may be conducted under the weather minimums and requirements of this section, instead of those contained in § 91.155, below 10,000 feet MSL within the airspace contained by the upward extension of the lateral boundaries of the controlled airspace designated to the surface for an airport.

(b) Special VFR operations may only be conducted—

(1) With an ATC clearance;

(2) Clear of clouds;

(3) Except for helicopters, when flight visibility is at least 1 statute mile; and

(4) Except for helicopters, between sunrise and sunset (or in Alaska, when the sun is 6° or more above the horizon) unless—

(i) The person being granted the ATC clearance meets the applicable requirements for instrument flight under part 61 of this chapter; and

(ii) The aircraft is equipped as required in § 91.205(d).

(c) No person may take off or land an aircraft (other than a helicopter) under special VFR—

(1) Unless ground visibility is at least 1 statute mile; or

(2) If ground visibility is not reported, unless flight visibility is at least 1 statute mile.

6. The title of Section 3 to Appendix D of part 91 is revised to read as follows:

Appendix D—Airports/Locations: Special Operating Restrictions

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Section 3. Locations at which fixed-wing Special VFR operations are prohibited.

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Issued in Washington, DC on June 1, 1993.

L. Lane Speck,

Director, Air Traffic Rules and Procedures Service.

[FR Doc. 93–13438 Filed 6–7–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 119, 121, 125, 127, and 135

[Docket No. 25713; Notice No. 93-7]

RIN 2120-AC08

Passenger Carrying and Cargo Air Operations for Compensation or Hire

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This supplemental notice proposes a definition for "scheduled operation" that differs from the definition proposed in Notice of Proposed Rulemaking No. 88-16, issued October 12, 1988. After review of the comments received opposing that definition to the extent that it was based on a "frequency and consistency of flight operations" standard, the FAA has determined that the proposed definition might cause an unnecessary burden on and detriment to certain segments of the aviation industry. The definition of "scheduled operation" proposed here is based on the classifications authorized by the Department of Transportation for air carrier operations and on a revised frequency standard for commercial operators as classified by the FAA.

DATES: Comments must be received on or before July 23, 1993.

ADDRESSES: Comments on this supplemental notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, (AGC-10), Docket No. 25713, 800 Independence Avenue SW., Washington, DC 20591. Comments must be marked "Docket No. 25713." 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: Gary Davis, Project Development Branch (AFS-240), Air Transportation Division, Flight Standards Service, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-3747.

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 proposal in this supplemental notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should 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 proposal 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 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 preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25713." The postcard will be date stamped and mailed to the commenter.

Background

In December 1978, in anticipation of the impeding sunset of the Civil Aeronautics Board (CAB), the FAA adopted Special Federal Aviation Regulation (SFAR) 38 on December 14, 1978. SFAR 38 simplified the procedures for issuance of FAA certificates to air carriers and commercial operators, and largely replaced the certification requirements in the Federal Aviation Regulations (FAR) for U.S. air carriers that, until then, had been premised on CAB economic authority. Anticipating further Congressional action regarding economic deregulation, the rules in the FAR were not updated at that time.

In 1985, the FAA issued SFAR 38-2, the main purposes of which were to extend SFAR 38, to state which FAR are applicable to a particular kind of operation, and to require all rotorcraft operations involving air transportation in common carriage to be governed by part 135. The FAA intended SFAR 38-2 to be a temporary measure of short duration that would allow the FAA time to review and update parts 121 and 135 as necessitated by the economic deregulation of the airline industry.

In Notice of Proposed Rulemaking (NPRM) No. 88-16 [53 FR 39852], October 12, 1988, the FAA proposed to establish new part 119 of the FAR. The major purposes of new part 119 are to make SFAR 38-2 permanent by incorporating certain of its provisions into the FAR; and to consolidate into one part the certification and operations specifications requirements for persons who operate under part 121 or part 135. In addition, in order to clarify which rules apply to specific kinds of operations and to correct a longstanding disparity in the FAA treatment of operationally similar service, NPRM 88-16 proposed to change the definition of "scheduled operation" contained in SFAR 38-2. SFAR 38-2 defined "scheduled operation" as "operations that are conducted in accordance with a published schedule for passenger operations which includes dates or time (or both) that is openly advertised or otherwise made readily available to the general public." The NPRM proposed to replace that definition with one that included operations being conducted under a scheduled certificate issued under section 401(d)(1) of the Federal Aviation Act by the Department of Transportation (DOT) or which met a "frequency and consistency of flight operations" standard of "5 or more one-way flights per calendar week over any consecutive 4-week calendar period. . . ."[1]

Comments

Of the comments received to the NPRM that addressed the proposed definition, most objected to the part of the definition that set a frequency of operation standard. The Regional Airline Association and several charter operators objected to the definition because of the one-way criterion, noting that, historically, the definition of a scheduled operation has been based on round-trip operations, such as the definition of "commuter air carrier" contained in 14 CFR part 298.

Sun Country Airlines, Inc., commented that the proposed change would require it to establish and certificate a flight dispatch system at substantially higher costs. As these costs would then be passed on to the public, Sun Country stated that the proposal

[1] Specifically, the definition proposed in the NPRM reads as follows: " 'Scheduled operation' means any common carriage passenger-carrying operation conducted under part 121 or part 135 of this chapter where—(1) The certificate holder operates or intends to operate under the authority of section 401(d)(1) (including section 401(d)(1) authority obtained under section 401(d)(8) of the FA Act) except for flights conducted by the certificate holder under part 207 (including those operated under part 380) of this title; or (2) For operations other than those included in paragraph (1) of this definition, the certificate holder operates 5 or more one-way flights per calendar week over any consecutive 4-calendar week period which includes the same two points at which any passenger may either enplane or deplane."

would eliminate low-cost charter transportation to the public and small operators. Similar comments were received from TPI International Airways, Inc., Ryan International Airlines, Inc., Empire Airlines, Inc., Mid-Pacific Air Corporation, Executive Jet Management, Inc., Mayo Aviation, Airline International, Inc., and the National Air Carrier Association. Sun Country asked the FAA to exclude from the definition of "scheduled operation" flights filed and sold as public charters under DOT rules governing such flights (14 CFR part 380).

Ports of Call pointed out that seasonal fluctuation in the demand for charter operations may indeed throw it into the category of "scheduled" operations, although in the great majority of cases, it conducts fewer than 5 flights to each of its markets. World Airways, Inc., stated that the proposed definition has not been justified for reasons of safety, noting that in adopting SFAR 38–2 the FAA commented at some length on the reasons for the regulatory distinction between scheduled and nonscheduled operations. World suggested a frequency standard of at least 10 one-way flights per week during a 16-consecutive-week period. The New England Helicopter Pilots Association opposed the proposed definition because it would capture many small and single pilot on-demand part 135 helicopter operators. Similarly, Kent Air argued that the proposed change would jeopardize its survival as a single-person company and mean the deletion of air transportation service in areas that are not served by commuters or air carriers.

Rich International Airways, Inc., commented that a redefinition of "scheduled operation" may force it to surrender its flag operations specifications; if so, it would be impossible for operators such as Rich to offer subservice to scheduled carriers. American Trans Air estimates that approximately one-third of its operations would have to be reclassified as "scheduled operations" under the proposed definition, and that many stations would have to be added to its operations specifications. This in turn would mean doubling the number of required amendments to its operations specifications, and costs would increase significantly. As this would present a considerable economic burden for U.S. carriers, the change in definition would give foreign carriers a definite economic advantage. American Trans Air also stated that scheduled carriers operating under DOT rules for charters (14 CFR part 207) may add charter flights without amendments to their operations specifications. Thus, this commenter stated that the change in definition would cause it to be at a competitive disadvantage with both foreign air carriers and scheduled carriers. Trans Continental Airlines, Inc., and the Air Transport Association supported these comments.

The Air Line Pilots Association stated, however, that it has no problem with the definition of "scheduled operation" as proposed in NPRM 88–16. American Airlines, Inc., also commented that there is no basis for modifying the definition. Instead, American urges the FAA to accelerate efforts to eliminate all operational distinctions between "scheduled" and "charter" operations. The Transport Workers Union of America also stated that it is opposed to any system of multiple safety standards wherein air carriers are regulated based on the type of operation conducted; that "users of charter flights desire and deserve the same consideration as those who use scheduled flights." Similarly, Midway Airlines, Inc., commented that nonscheduled operators whose service is the same as scheduled operators should be subject to the same minimum standards of safety, and that there is no economic or safety reason to exclude nonscheduled operations from the domestic or flag rules.

On November 30, 1989, representatives of American Trans Air restated the carrier's position in a meeting with representatives of the Office of the Secretary of Transportation and the FAA. Comments made during that meeting emphasized the same points enumerated above; a copy of the record of that meeting has been placed in the docket.

On April 17, 1990, the comment period for Notice No. 88–16 was reopened to receive additional comments on the definition of "scheduled operation." The comment period closed May 17, 1990. Additional comments from charter operators opposed the proposed definition for the same reasons iterated above.

The FAA's Response and Proposed Change in Definition

The FAA's intent in NPRM 88–16 in proposing a new definition of "scheduled operation" was to respond to the complaints of some operators that the definition contained in SFAR 38–2 was too broad. As proposed in the NPRM, "scheduled operation" would have been determined by the type of DOT economic authority under which such flights were operated or by the regularity and frequency of operation, rather than by the SFAR 38–2 criterion of whether or not the flight was advertised. Inclusion of a specific frequency standard was intended not only to create a definitive dividing line between scheduled and nonscheduled operations, but to serve as a basis for treating operationally similar service in a like manner.

However, after careful consideration of the industry comments, it appears that adoption of the "frequency" standard could produce serious problems for the charter industry, and that permitting only charters operated less frequently than two-and-a-half round trips per week to be conducted under the supplemental rules could substantially impact the charter industry as we know it today. It was never the intention of the FAA to diminish the availability of charter passenger air transportation, which has satisfactorily served the public for many years. While the record does not conclusively establish that competition would be harmed by the proposed change or that the change would be incapable of implementation, it is clear that, to the extent charter competition were affected, those effects would be negative. Moreover, the expected benefits of the frequency standard are not demonstrable by a history of particular safety problems with charters that the proposed change would cure.

Against this background, the FAA is proposing to delete that portion of the proposed "scheduled operation" definition that establishes a frequency criterion, at least insofar as air carrier operations are concerned. Whether an operation is considered scheduled will be based only on the air carrier classification and type of authority issued by the Department of Transportation. Therefore, if an operator receives DOT authority to conduct scheduled operations as an air carrier, then proposed part 119 allows that operator to conduct its scheduled operations under the rules applicable to domestic, flag, or commuter operations.

Operations conducted by FAA-classified commercial operators engaged in common carriage will be treated somewhat differently. Operators who conduct their operations wholly within a state, territory or possession of the United States are not required to obtain economic authority from the Department of Transportation. Currently there are few operators of this type in existence; all of the operators remaining are those who engage in Part 135 intrastate operations, most of which are conducted in Alaska. Some of these operations are of a frequency and nature that resemble scheduled operations and the FAA believes the operations should be governed by the rules applicable to

commuter operations. For these operations, the FAA proposes in § 119.3 to use the definition contained in SFAR 38–2 for commuter airlines that use small airplanes and rotorcraft used in commercial operations, that is, operations consisting of five or more round trips per week on at least one route between two or more points. At present, the FAA is not aware of the existence of any commercial operators using large airplanes that are engaged in common carriage. In the event that an applicant may contemplate conducting such operations at a future date, the FAA proposes to incorporate into § 119.3 the frequency of operations requirements of § 121.7 as the means for determining the kinds of operations that could be authorized.

The Proposal

The proposed definition of "scheduled operation" applies to air carrier operations that are classified by the Department of Transportation as operations involving "scheduled air transportation," with certain exceptions described below. The definition also applies to commercial operations that are classified by the FAA based upon the use of certain aircraft and the frequency of operations. It should be noted that charter air transportation operations are excluded from the definition.

The definition is divided into two paragraphs. Paragraph (1) excludes from the definition any air carrier operations governed by Part 135 of this chapter that involve the use of small airplanes or rotorcraft, or both, with a frequency of operations that do not meet the frequency formula for commuter operations. Paragraph (2) excludes from the definition any commercial operator operation that is conducted entirely within any State, territory, or possession of the United States and between any two or more points at which any passenger is either enplaned or deplaned when the operation does not meet the frequency formula for the aircraft used in the operation. The paragraph has two sets of frequency formulas which would be used to classify the operation for the purpose of establishing the applicable operating rules under which the certificate holder's operations would be governed. One set of formulas would be for large airplanes and the other set for rotorcraft and small airplanes.

This definition accomplishes four objectives:

(1) The definition would require air carriers who are classified and authorized by the DOT to engage in scheduled air transportation, and who conduct or plan to conduct the operation with airplanes having more than 30 passenger seats or a maximum payload capacity of more than 7,500 pounds, to conduct the operation under the part 121 rules applicable to domestic or flag operations;

(2) The definition would require air carriers who are classified and authorized by the DOT to engage in scheduled air transportation, and who conduct or plan to conduct the operation with small airplanes, rotorcraft, or both, with a frequency of operations of at least five round trips per week on at least one route between two or more points where a passenger is either enplaned or deplaned, to conduct the operation under the part 135 rules applicable to commuter operations;

(3) The definition would require commercial operators who are classified and authorized by the FAA to engage in common carriage passenger-carrying operations entirely within a State, territory, or possession of the United States with rotorcraft or small airplanes, or both, with a frequency of operations of at least five round trips per week on at least one route between two or more points to conduct the operation under the part 135 rules applicable to commuter operations; and

(4) The definition would require commercial operators who are classified and authorized by the FAA to engage in common carriage passenger-carrying operations entirely within a State, territory, or possession of the United States with large airplanes with a frequency of operations of at least two flights or one round trip a week on the same day or days of the week for 8 or more weeks in any 90 consecutive days, or a total of 36 of more flights or 18 or more round trips in any consecutive 90 days, to conduct the operation under the part 121 rules applicable to domestic operations.

As a result of the changes to the definition of "schedule operation," this supplemental notice must alter two other definitions that are directly affected, those being the definitions of "commuter operation" and "domestic operation." With the removal of the frequency test from the definition of "scheduled operation," it is necessary to make a conforming change to the definition of "commuter operation." In the case of "domestic operation," paragraph (3) was added to incorporate the provisions of § 121.3(d) which authorizes operations to points outside of the 48 contiguous States and the District of Columbia to be conducted under the part 121 rules applicable to domestic operations. This provision was inadvertently omitted from the definition in the NPRM. Only those three definitions are written into the regulatory language of this supplemental notice. The agency realizes that other conforming changes may have to be made to other sections of new part 119 before it can be issued if the definition of "scheduled operation" proposed in this notice is adopted. Those will be accomplished in the final rule.

Economic Statement

Executive Order 12291, dated February 17, 1981, directs Federal Agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. 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 expected to have $100 million or more annual effect on the economy. Other reasons for classifying a rule as major are: it causes a large increase in consumer costs; it has a significant adverse effect on competition; or it is highly controversial.

The FAA has determined that this proposed rule is not major as defined in the executive order. Therefore, a full regulatory analysis, including identification and evaluation of cost reducing alternatives to this proposal, has not been prepared. Furthermore, the FAA has determined that the proposed rule would not impose additional costs on the public or the FAA. Thus, no additional regulatory evaluation was prepared.

The proposed definition of "scheduled operation" will allow air carriers and commercial operators to operate under the FAA safety rules based on the air carrier and commercial operator classification requirements established by the DOT and the FAA respectively. This proposal would continue current practices and would not shift any operator from one classification to another. Because all present arrangements are maintained, this proposal would not impose additional costs on the aviation industry. Also, this proposal would not cause any loss of safety benefits because each carrier and commercial operator would continue to operate under the same operating rules that they are currently following.

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 for rulemaking officials to apply when determining whether a proposed or existing rule has any significant economic impact on a substantial number of small entities.[2]

The entities that would be affected by this rule are air carriers and commercial operators operating under parts 121 and 135. These air carriers and commercial operators are within the general classification of "operators of aircraft for hire." A substantial number of carriers is a number of carriers that is not fewer than 11 or which is more than one-third of affected small entities.

The FAA has determined that the proposed rule will not have a significant economic impact on a substantial number of small entities. Because the proposal would maintain what is essentially current practice, there is no economic impact on entities covered under this proposal.

International Trade Impact Assessment

The proposed rule would have no impact on international trade. Because the proposed rule maintains the current classification of air carriers, U.S. air carriers operating in international markets would incur no additional costs or impacts on competition.

Federalism Implications

The regulations 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 various levels of government. Therefore, in accordance with Executive Order 12012, it is determined that this regulation will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons set forth under the heading "Economic Impact," the FAA has determined that this supplemental notice of part 119: (1) is not a major rule under Executive Order 12291; and (2) is a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, it is certified that this proposed amendment would not have a significant economic impact on a substantial number of small entities.

[2] U.S. Department of Transportation, Federal Aviation Administration. Regulatory Flexibility Criteria and Guidance. FAA Order 2100.14A. September 16, 1986.

List of Subjects

14 CFR Part 119

Administrative practice and procedures, Air carriers, Air taxis, Aircraft, Aviation safety, Charter flights, Commuter operations, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Reporting and recordkeeping requirements.

14 CFR Part 125

Aircraft, Airplanes, Airworthiness, Air transportation.

14 CFR Part 127

Air carriers, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Aviation Safety, Reporting and recordkeeping requirements.

The Proposal

In consideration of the foregoing, the Federal Aviation Administration proposes to amend the Federal Aviation Regulations (Subchapter G) as follows:

1. The heading of Subchapter G is revised to read:

Subchapter G—Air Carriers and Operators for Compensation or Hire: Certification and Operations

2. A New part 119 is added to 14 CFR chapter I, subchapter G, to read as follows:

PART 119—CERTIFICATION: AIR CARRIERS AND OTHER OPERATORS FOR COMPENSATION OR HIRE

Authority: 49 U.S.C. App. 1354(a), 1355, 1356, 1357, 1401, 1421–1431, 1472, 1485, 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

§ 119.3 Definitions.

For the purpose of subchapter G of this chapter, the term—*Commuter operation* means any scheduled operation conducted by any person who is a U.S. citizen, with a frequency of operations of at least five round trips per week on at least one route between two or more points to which any passenger is either enplaned or deplaned according to published flight schedules using—

(1) Airplanes having a maximum passenger seating configuration of 30 seats or less, excluding any required crewmember seat and a maximum payload capacity of 7,500 pounds or less, or

(2) Rotorcraft.

Domestic operation means any scheduled operation conducted by any person who is a U.S. citizen using airplanes having a passenger seating configuration of more than 30 seats, excluding any required crewmember seat, or a payload capacity of more than 7,500 pounds—

(1) Between any points within the 48 contiguous States of the United States or the District of Columbia; or

(2) Between any points entirely within any State, territory or possession of the United States; or

(3) Between any points within the 48 contiguous States of the United States and the District of Columbia and any specifically authorized points located outside the United States.

Scheduled operation means any common carriage passenger-carrying operation conducted under part 121 or part 135 of this chapter that is other than any of the operations that follow:

(1) Any charter air transportation operation;

(2) Any other air transportation operation, authorized under the appropriate economic authority issued by the Civil Aeronautics Board or the Department of Transportation or under the exemption authority of part 298 of this title, conducted with airplanes having a passenger seating configuration of less than 30 seats, excluding any required crewmember seat, or a payload capacity of less than 7,500 pounds, or rotorcraft, or both, with a frequency of operations fewer than five round trips per week on at least one route between two or more points where a passenger is either enplaned or deplaned; and

(3) Any commercial operator operation conducted with rotorcraft or airplanes entirely within any State, territory, or possession of the United States between any two or more points at which any passenger is either enplaned or deplaned with a frequency of operations fewer than the following:

(i) For rotorcraft and airplanes having a passenger seating configuration of 30 seats or less, excluding any required crewmember seat, and a payload capacity of 7,500 pounds or less, five round trips per week on at least one route between two or more points; and

(ii) For airplanes having a passenger seating configuration of more than 30 seats, excluding any required crewmember seat, or a payload capacity of more than 7,500 pounds, the following:

(A) Two flights, or one round trip a week on the same day or days of the week for 8 or more weeks in any 90 consecutive days, or

(B) A total of 36 or more flights or 18 or more round trips in any 90 consecutive days.

Issued in Washington, DC on June 1, 1993.

William J. White,

Acting Director, Flight Standards Service.

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