[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 135

[Docket No.: FAA-2019-0564; Amendment No. 135-141]

RIN 2120–AK94

IFR Operations at Locations Without Weather Reporting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is amending a regulation to allow helicopter air ambulance (HAA) operators to conduct instrument flight rules departure and approach procedures at airports and heliports that do not have an approved weather reporting source. This rule applies to HAA aircraft without functioning severe weather detection equipment (airborne radar or lightning strike detection equipment), to permit instrument flight rules departure and approach procedures when the pilot in command reasonably determines that the operation will not encounter severe weather at the destination, the alternate destination, or along the route of flight. This amended rule also updates requirements to address the discontinuance of area forecasts and certain requirements concerning HAA departure procedures.

DATES: This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION].

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see "How To Obtain Additional Information" in the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Tom Luipersbeck, Air Transportation Division, 135 Air Carrier Operations Branch, AFS-250, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone 202-267-8166; e-mail: Thomas.A.Luipersbeck@faa.gov

SUPPLEMENTARY INFORMATION:

I. Executive Summary

This rule finalizes the notice of proposed rulemaking entitled *IFR Operations at Locations Without Weather Reporting* (the NPRM).[1] The NPRM proposed permitting HAA departure and approach procedures conducted under instrument flight rules (IFR) when helicopters do not have functional severe weather detection equipment and when the airport or heliport at which the departure or approach will occur does not have an approved weather reporting source. The proposed regulatory text specified that such procedures could only occur when the pilot in command does not expect to encounter severe weather at the destination, the alternate destination, or along the route of flight. The NPRM further proposed updates to address the transition from Area Forecasts that the National Weather Service (NWS) currently provides to equivalent information from weather reports, forecasts, or any combination thereof. In addition, the NPRM proposed amending the term "the published Obstacle Departure Procedure" to "a published

[1] 83 FR 15332 (Apr. 10, 2018).

departure procedure." This rule finalizes all amendments the NPRM included, with no modifications.

II. Background

A. Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is codified in Title 49 of the United States Code. The FAA promulgates this rule under the general authority described in 49 U.S.C. 106, which includes a detailed description of the agency's authority. Section 106(f) establishes that the Administrator may promulgate and revise regulations as are necessary to carry out the FAA's functions. Furthermore, § 44701(a) requires the Administrator to promote safe flight of civil aircraft in air commerce by prescribing regulations and setting minimum standards for other practices, methods and procedures necessary for safety in air commerce and national security. Moreover, § 44730 addresses HAA operations and authorizes the Administrator to engage in rulemaking to ensure safety of part 135 certificate holders that engage in such operations.

B. Comments in Response to Proposed Rule

The FAA received five comments in response to the NPRM, all of which support the proposed amendment to remove the requirement for severe weather detection equipment in 14 CFR 135.611(b). The commenters generally agreed with the FAA that the amendment will encourage pilots to fly under IFR, which is safer than flights operated under visual flight rules (VFR), for flights conducted under marginal VFR conditions. One comment from an individual suggested the FAA consider further changes, such as requiring utilization of "lower altitude airway structures" and modifications to rules concerning operations in icing conditions. The FAA appreciates

the suggestions, but finds that such amendments to the final rule would be outside the scope of the proposal.

The Air Medical Operators Association (AMOA) requested the FAA clarify in the final rule that the use of the term "airport" in § 135.611 includes heliports. The FAA agrees that the term "airport," as defined in 14 CFR 1.1 and as used throughout the FAA's regulations, means an area of land or water that is used or intended to be used for the landing and takeoff of aircraft. This definition is broad, and includes heliports.

Additionally, AMOA supported the proposed amendment to remove the word "obstacle" from the term "obstacle departure procedure" in § 135.611(a)(3). The FAA agrees with AMOA that updating the term to "departure procedure" is necessary in order to permit the use of other departure procedures. For example, operators may conduct a diverse departure procedure or standard instrument departure procedure that the FAA has deemed safe and appropriate based on ensured obstacle clearance and flyability.

No commenters addressed the FAA's proposal to update the text of § 135.611(a)(1) to address the transition from Area Forecasts that the NWS currently provides to equivalent information from weather reports, forecasts, or any combination of such sources.

C. Exemption History

Since the FAA established the requirement for HAA operators to use helicopters equipped with functioning severe weather detection equipment, the FAA has received ten

petitions for exemption from the requirement.[2] These HAA operators established in their petitions that an exemption would not adversely affect safety because they would not conduct operations in accordance with the exemption if they expected to encounter severe weather conditions along their intended route of flight.[3] As a result, the FAA issued exemptions to those HAA operators, which allowed the safe conduct of IFR departure and approach procedures at airports that do not have an approved weather reporting source and when the helicopter used does not have severe weather detection equipment (airborne radar or lightning strike detection equipment). Each grant of exemption is valid for two years, unless sooner superseded or rescinded by the FAA. As a result, exemption holders need to seek renewal of their exemptions on a periodic basis.

III. Discussion of the Final Rule

A. Operations at Locations Without an Approved Weather Reporting Source

The FAA's initial intent of requiring severe weather detection equipment was to help the pilot ascertain the weather in the aircraft's vicinity.[4] The FAA then determined requiring such equipment, which includes radar or lightning strike detection equipment, would reduce the chances of a pilot inadvertently encountering instrument meteorological conditions (IMC). As noted in the NPRM, the FAA has since determined this requirement is overly broad, because it applies even in circumstances in which the pilot

[2] The FAA issued the final rule that set forth the requirement of § 135.611(b) on July 28, 2014. 79 FR 43622. Any certificate holder that seeks exemption from such a requirement may submit a petition for exemption pursuant to 14 CFR § 11.81.

[3] See the following FAA grants of petitions for exemption: Docket Nos. FAA-2016-5575, FAA-2016-5028, FAA-2016-2254, FAA-2015-3934, FAA-2015-3854, FAA-2015-3740, FAA-2015-2696, FAA-2015-2694, FAA-2015-1868, and FAA-2015-1867. These exemptions are accessible at www.regulations.gov.

[4] *Air Ambulance and Commercial Helicopter Operations, Part 91 Helicopter Operations, and Part 135 Aircraft Operations; Safety Initiatives and Miscellaneous Amendments*, 75 FR 62640, 62650 (Oct. 12, 2010).

does not reasonably expect to encounter severe weather along the route or at the destination.

Training, preflight evaluation of weather data, and risk analysis procedures all ensure pilots are adequately skilled in reasonably determining whether severe weather might exist at the destination, the alternate destination, or along the route of flight. The requisite training that pilots undergo on meteorology ensures pilots have practical knowledge of weather phenomena, including the principles of frontal systems, icing, fog, thunderstorms, and meteorology hazards applicable to the certificate holder's areas of operation. Further, pilots who conduct HAA operations receive training on adverse weather avoidance practices and weather planning. This training, together with the pre-flight risk analysis required in § 135.617, ensures pilots in command will reasonably ascertain if severe weather may exist along the route of a flight or at the destination airport. Moreover, pilots in command conduct risk analyses prior to each flight, which include determining whether another HAA operator has rejected a similar flight request based on the presence of any severe weather or dangerous meteorological phenomena. Overall, the pilot in command will use the knowledge and skills he or she maintains pursuant to the provisions of subpart L of part 135 in determining the likelihood of encountering severe weather. These requirements obviate the need for severe weather detection equipment when he or she does not reasonably expect to encounter severe weather.

As the FAA explained in the NPRM, § 135.611(b) inadvertently restricted HAA operations conducted when no severe weather is present at the airport or along the route.[5]

[5] 83 FR at 15333.

Therefore, the FAA anticipates this amendment will increase the number of IFR operations because the IFR infrastructure would be available to more operators. Such an increase in the frequency of IFR operations will minimize operations under VFR while in marginal visual meteorological conditions, and thereby increase safety.

The FAA emphasizes, however, that if a reasonable expectation of severe weather exists prior to or during the flight, at the destination, the alternate destination, or along the route of flight, the helicopter must be equipped with functioning severe weather detection equipment. In the absence of such equipment, the pilot in command must decline the flight, as appropriate.

B. Area Forecasts

The FAA, in coordination with the NWS, expects to discontinue Area Forecasts, currently used as flight planning and pilot weather briefing aids and transition to digital and graphical alternatives already being produced by NWS.[6] While the Area Forecast met aviation weather information needs for many years, today the NWS provides equivalent information through a number of other reliable alternatives.[7] NWS is currently engaged in transitioning Area Forecasts, which pilots currently use for flight planning and weather briefing aids, to digital and graphical alternatives. In order to address this upcoming transition, this rulemaking updates the wording of § 135.611(a)(1) from "area forecast" to "weather reports, forecasts, or any combination of them."

[6] Aviation Weather Product Change: Transition of Select Area Forecasts (FAs) to Digital and Graphical Alternatives, 79 FR 35211 (June 19, 2014). In the Notice, the FAA recommended that NWS transition six area forecasts (FA) covering separate geographical areas of the contiguous United States and one area forecast covering Hawaii to digital and graphical alternatives already being produced by NWS. The following FAs affected by this transition include FAUS41 (BOS), FAUS42 (MIA), FAUS43 (CHI), FAUS44 (DFW), FAUS45 (SLC), and FAUS46 (SFO). *See* Information for Operators 17013, Retirement of the NWS FA for the Contiguous United States (Aug. 28, 2017), *available at* https://www.faa.gov/other_visit/aviation_industry/airline_operators/airline_safety/info/all_infos/.

[7] See *id*.

C. Departure Procedures

This rule also updates requirements in § 135.611 regarding HAA departure procedures (DP) to include additional types of DP that are currently acceptable for use. A DP is necessary when a pilot in command intends to depart from an airport in weather conditions less than VFR. Several types of DPs, however, exist in addition to an "obstacle departure procedure" cited in the current regulation. For example, pilots in command may use a diverse DP or standard instrument DP. Based on an evaluation of the potential departure procedures, the FAA has determined that any of these DPs may be appropriate and safe, based on ensured obstacle clearance and flyability. Overall, removing the word "obstacle" permits additional types of DPs, such as departures from an airport in weather conditions that are less than VFR.

While this rule increases flexibility, it does not decrease the level of safety of HAA departures. The pilot in command remains responsible for using such an alternate procedure only after determining it is appropriate for the location of departure. Accordingly, the FAA amends the wording in § 135.611(a)(3) from "the published Obstacle Departure Procedure" to "a published departure procedure."

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct 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 impact of regulatory changes on small entities.

Third, the Trade Agreements Act of 1979 prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995).

The FAA determined this rule would result in cost savings with no reduction in safety and no additional costs. This rule removes unnecessary limits on certain HAA operations. These limits effectively reduced the number of HAA operations without improving aviation safety.[8] In the U.S., there are 65 authorized HAA certificate holders utilizing 1,208 approved air ambulance helicopters that may receive regulatory relief from this rule by allowing certain HAA operations that were previously restricted. In addition, the FAA has granted exemptions to HAA operators who asked for relief from these limitations. This rule would also provide savings by avoiding the need to petition and issue exemptions.

The FAA received five comments in response to the NPRM, all of which support the amendment to remove the requirement for severe weather detection equipment in § 135.611(b). As previously discussed, the commenters agreed with the FAA that the amendment will encourage pilots to fly under IFR, which is safer than flights operated

[8] There is a high degree of data uncertainty regarding the number of HAA operations affected by this rule. The FAA did not identify data to quantify the potential benefits and savings from removing limitations on HAA Operations.

under VFR, for flights conducted under marginal VFR conditions. The FAA did not receive comments on the Regulatory Evaluation in the NPRM. This rule finalizes all amendments the NPRM included, with no modifications.

The FAA was able to quantify a small savings to HAA operators and the FAA from avoided administrative costs associated with processing future petitions for exemptions. As presented in the NPRM, the FAA estimates the avoided administrative costs of submitting and reviewing a petition of exemption, including a renewal, to be about $1,500/exemption for both HAA operators and the FAA based on information from the FAA's Flight Standards Service. The FAA estimates this rule will avoid five exemptions, including renewals, per year.[9] This amounts to $7,500 of savings to HAA operators and the FAA per year. Over a five-year period, the total present value savings from avoided administrative costs associated with petitions is about $34,000 at a three percent discount rate or about $31,000 at a seven percent discount rate.

As previously discussed, this rule will also result in qualitative safety benefits by increasing the number of IFR operations because the IFR infrastructure would be available and used by more operators. Increasing the frequency of IFR operations would minimize operations under VFR while in marginal visual meteorological conditions, and thereby increase aviation safety.

The FAA has determined this final rule provides small cost savings and improved safety benefits and is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866.

[9] From 2015 to 2016, the FAA granted ten petitions for exemption to HAA operators; about five such exemptions per year require renewal. As previously discussed, each grant of exemption is valid for two years, unless sooner superseded or rescinded by the FAA. As a result, current exemption holders need to seek renewal of their exemptions on a periodic basis.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980, Public Law 96-354, 94 Stat. 1164 (Sept. 19, 1980) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation." Id. section 2(b). The Regulatory Flexibility 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 rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency does not expect a rule to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

As this final rule removes an unnecessary limitation on the operation of HAAs without reducing aviation safety, it will relieve HAA operators and the FAA the costs associated with future petitions. This rule will have a positive impact on affected small entities. Any such impact, however, will not be significant. Therefore, the head of the agency certifies the FAA does not expect this rule to have a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979, Public Law 96-39, 93 Stat. 144 (July 26, 1979), as amended by the Uruguay Round Agreements Act, Public Law 103-465, 108 Stat. 4809 (Dec. 8, 1994), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this rule and determined that the rule will have the same impact on international and domestic flights and is a safety rule. Accordingly, the FAA has determined this final rule is consistent with the Trade Agreements Act.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104-4, 109 Stat. 64 (Mar. 22, 1995), requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $155 million in lieu of $100 million. This rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995, Public Law 104-13, 109 Stat. 163 (May 22, 1995), requires the FAA consider the impact of any information collection burdens imposed on the public. 44 U.S.C. 3507(d). The FAA has determined that there would be no new requirement for information collection associated with this rule.

F. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that this rule does not contravene any ICAO Standards and Recommended Practices.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances.[10] The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5-6.6 and involves no extraordinary circumstances.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

[10] U.S. Department of Transportation, FAA, Environmental Impacts: Policies and Procedures (July 16, 2015), *available at* https://www.faa.gov/documentLibrary/media/Order/FAA_Order_1050_1F.pdf

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism (Aug. 4, 1999). The agency has determined this action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, this rule will not have federalism implications.

B. Executive Order 13211, Regulations that Significantly Affect Energy Supply Distribution, or Use

The FAA analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that this rule would not be a "significant energy action" under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, International Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation (May 1, 2012), promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action will have no effect on international regulatory cooperation.

D. Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

This final rule is a deregulatory action under Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs (Jan. 30, 2017). Details on the cost savings of this rule are in the Regulatory Evaluation section, as previously noted.

VI. Additional Information

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (http://www.regulations.gov);
2. Visiting the FAA's Regulations and Policies web page at http://www.faa.gov/regulations_policies or
3. Accessing the Government Printing Office's web page at http://www.gpo.gov/fdsys/.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267-9677. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this rule, including economic analyses and technical reports, may be accessed from the internet through the Federal eRulemaking Portal referenced in item (1) above.

List of Subjects in 14 CFR Part 135

Air Transportation, Aircraft, and Aviation safety

The Amendment

In consideration of the foregoing, the FAA amends chapter I of title 14, Code of Federal Regulations as follows:

PART 135--OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

1. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 41706, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722, 44730, 45101–45105; Pub. L. 112–95, 126 Stat. 58.

2. Amend § 135.611 by revising paragraphs (a)(1) and (3) and (b) to read as follows:

§ 135.611 IFR operations at locations without weather reporting.

(a) * * *

(1) The certificate holder must obtain a weather report from a weather reporting facility operated by the NWS, a source approved by the NWS, or a source approved by the FAA, that is located within 15 nautical miles of the airport. If a weather report is not available, the certificate holder may obtain weather reports, forecasts, or any combination of them from the NWS, a source approved by the NWS, or a source approved by the FAA, for information regarding the weather observed in the vicinity of the airport;

* * * * *

(3) In Class G airspace, IFR departures with visual transitions are authorized only after the pilot in command determines that the weather conditions at the departure point are at or above takeoff minimums depicted in a published departure procedure or VFR minimum ceilings and visibilities in accordance with § 135.609.

* * * * *

(b) Each helicopter air ambulance operated under this section must be equipped with functioning severe weather detection equipment, unless the pilot in command reasonably determines severe weather will not be encountered at the destination, the alternate destination, or along the route of flight.

* * * * *

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44730in Washington, DC, on July 17, 2019.

Daniel K. Elwell
Acting FAA Administrator
[FR Doc. 2019-15840 Filed: 7/24/2019 8:45 am; Publication Date: 7/25/2019]