

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Parts 21, 27, 29, and 91**

[Docket No. FAA-98-4390; Amendment No. 21-76, 27-39, 29-46, 91-259]

RIN 2120-AG53

**Flight Plan Requirements for Helicopter Operations Under Instrument Flight Rules**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is amending instrument flight rules (IFR) for helicopters by revising alternate airport weather planning requirements, weather minima necessary to designate an airport as an alternate on an IFR flight plan, and fuel requirements for helicopter flight into IFR conditions. This action will provide operators with an additional margin of safety by easing access of helicopters to the IFR system, result in a reduction of noise heard on the ground, and increase the ability of operators to use helicopters more efficiently.

**EFFECTIVE DATE:** January 21, 2000.

**FOR FURTHER INFORMATION CONTACT:** William H. Wallace, General Aviation Commercial Division (AFS-804), Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3771.

**SUPPLEMENTARY INFORMATION:****Availability of Final Rules**

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321-3339) or the Government Printing Office's (GPO) electronic bulletin board service (telephone: (202) 512-1661).

Internet users may reach the FAA's web page at: <http://www.faa.gov/avr/arm/nprm/nprm.htm> or the GPO's web page at <http://www.access.gpo.gov/nara> for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Communications must identify the amendment number or docket number of this final rule.

Persons interested in being placed on the mailing list for future rulemaking documents 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.

**Small Business Regulatory Enforcement Fairness Act**

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official. Internet users can find additional information on SBREFA on the FAA's web page at <http://www.faa.gov/avr/arm/sbrefa/htm> and may send electronic inquiries to the following internet address: [9-AWA-SBREFA@faa.gov](mailto:9-AWA-SBREFA@faa.gov).

**Background**

The FAA issued a Notice of Proposed Rulemaking (NPRM) (63 FR 46834; Sept. 2, 1998) that proposed to amend the general operating rules for helicopters by revising alternate airport weather planning requirements, weather minima necessary to designate an airport as an alternate on an IFR flight plan, and the fuel requirements for helicopter flight into IFR flight conditions. The NPRM also proposed to withdraw Special Federal Aviation Regulation (SFAR) No. 29-4, Limited IFR Operations of Rotorcraft. The public comment period closed on October 2, 1998.

The FAA later issued a Supplemental Notice of Proposed Rulemaking (SNPRM) (64 FR 35902; July 1, 1999) that sought comments on modifications made to the NPRM in response to commenters' suggestions. The public comment period for the SNPRM closed on August 2, 1999.

**Statement of the Problem**

Flight planning requirements (including alternate airport weather minima) for helicopters and other aircraft are virtually identical, even though their operating characteristics are substantially different. The only distinction between the flight planning requirements for helicopters and other aircraft is addressed in 14 CFR 91.167, which specifies different requirements for the amount of fuel helicopters and other aircraft must carry after completing a flight to the first airport of intended landing. Helicopters, however, fly shorter distances at slower airspeeds than most other aircraft, and they generally remain in the air for shorter

periods between landings. A helicopter is therefore less likely to fly into unanticipated, unknown, or unforecast weather. The relatively short duration of the typical helicopter flight means that the departure weather and the destination weather are likely to be within the same weather system. This final rule revises the flight planning requirements for helicopter IFR operations to take into account their unique operating characteristics.

**History**

Over the past several years, there have been specific recommendations from industry, and from joint efforts of the FAA and industry regarding regulatory changes to safely expand helicopter access to the IFR system. The FAA has been addressing these recommendations by working with industry to identify regulations that prevent safe helicopter operations in the IFR environment.

**Previous Rulemakings**

In January 1975, the FAA issued Special Federal Aviation Regulation (SFAR) No. 29 (40 FR 2420; Jan. 13, 1975), which authorized the carriage, in rotorcraft IFR operations, of less than the 45 minutes, but not less than the 30 minutes, of additional fuel reserve, then required by § 91.23 (c) (now § 91.167(a)(3)), when approved by the Administrator. The SFAR also authorized the issuance of approvals for limited IFR operations for certain transport category rotorcraft that are certified to only operate under VFR. In 1979, the FAA undertook the Rotorcraft Regulatory Review Program (44 FR 3250; Jan. 15, 1979), which was a comprehensive review of rotorcraft operations and certification.

In an NPRM issued in 1985 (50 FR 10144; March 13, 1985), the FAA proposed to amend § 91.23 (now § 91.167) by reducing the fuel reserve requirement for helicopters from 45 minutes to 30 minutes. The FAA also proposed to amend the alternate airport IFR flight plan filing requirements by reducing the ceiling minimum for helicopters from 2,000 feet to 1,000 feet, and the visibility minimum for helicopters from 3 miles to 1 mile. No changes were proposed to § 91.83 (now § 91.169). As the FAA stated in the preamble to the 1985 NPRM, the basis for the proposed reductions was that a helicopter has the unique ability to reduce airspeed safely on approach to as low as 40 knots, and is therefore provided reduced visibility minima in part 97. The proposal also said that because the helicopter, with its reduced minima, has a better probability of completing the flight to the planned

destination, it should be allowed a reduced fuel reserve. In the 1985 NPRM, the FAA also stated that it had gained sufficient experience with operations under SFAR No. 29 to conclude that reducing the required fuel reserve would not decrease the level of safety.

In 1986, the FAA issued a final rule (51 FR 40692; Nov. 7, 1986) that adopted the proposal to reduce the fuel reserve required under § 91.23. The FAA did not, however, adopt the proposal to reduce the ceiling and visibility minima because a report entitled "Weather Deterioration Models Applied to Alternate Airport Criteria (Report No. DOT/FAA/RD 81/92 (September 1981) had stated that "any reduction in alternate airport requirements should be offset by limiting the duration of the flight for which the reduced requirements apply" (p. 4-1). The findings in that report, however, were preliminary, and in the years that have passed since it was issued, the FAA's experience with helicopter IFR flight plan filing criteria indicates that the preliminary concern for reduced helicopter ceiling and visibility minima was overemphasized.

#### *U.S. Army Practices*

In 1982, the U.S. Army adopted reduced IFR alternate airport weather planning minima and alternate airport selection criteria for both helicopters and airplanes. The Army's criteria of a ceiling 400 feet above the weather planning minimum required for the approach to be flown, and visibility one mile greater than the weather planning minimum required for the approach to be flown has been used for over 17 years and there have been thousands of flight hours with no mishaps associated with these weather planning criteria. The U.S. Army's experience demonstrates that reducing helicopter ceiling and visibility minima for IFR flight planning results in a level of safety equivalent to the current rule and offers greater operational flexibility for helicopter operators.

#### *ELVIRA Workshop*

In August 1993, a workshop conducted by the FAA with industry, called the Extremely Low Visibility Instrument Rotorcraft Approaches (ELVIRA) Workshop, resulted in a list of "Ten Most Wanted" changes (see "Extremely Low Visibility IFR Rotorcraft Approach (ELVIRA) Operational Concept Development, Final Report," Report No. DOT/FAA/RD-94/1, I. (March 1994)). The unprioritized list of 10 desired IFR system enhancements included "rotorcraft specific minima" for

determining the need for, and availability of, alternate airports for flight plan filing purposes (ELVIRA final report, p. 3).

Since rotorcraft are for the most part range-limited, their destination airport and alternate airport will most likely be in the same air mass and consequently will have similar weather. In the ELVIRA final report (p. 34), the FAA noted that the current regulations result in a "severe penalty in the productivity of helicopters operating under IFR." In addition, the FAA observed that "with certain weather conditions it is often impossible for the helicopter operator to gain access to the current IFR system, while VFR flight is allowed. \* \* \* [C]hanging this [the alternate airport minima] to 400-1 for a [helicopter] precision approach and 600-1 for a [helicopter] non-precision approach procedure, will enable many more [helicopter] IFR operations to take place while maintaining the same level of safety" (pp. 34-35).

#### *Petitions for Exemption*

On February 23, 1995, Helicopter Association International (HAI) petitioned the FAA for an exemption from § 91.169 (c)(1)(i), which provides that alternate airport minima for a precision approach are a ceiling of 600 feet and visibility of 2 statute miles. The petition asked the FAA to allow lower alternate airport weather minima for IFR flight planning.

On April 24, 1996, HAI filed an amendment to its petition for exemption from § 91.169 (c)(1)(i), proposing, in part, to limit operations under the requested exemption to those conducted by certain operators named in the amended petition. The stated purpose of this amendment was the further "accumulation of data to prove the operational safety of the use of such minimums." In addition, the FAA has received 13 other petitions requesting amendments to §§ 91.169 and 91.167 to allow helicopter operations with reduced alternate weather requirements. (With the issuance of the NPRM published on September 2, 1998, the FAA closed the docket on HAI's petition for exemption, and on the petitions submitted by HAI and others for various amendments to §§ 91.169, 91.167 and related regulations.) 0

#### *ARAC Actions*

The Aviation Rulemaking Advisory Committee (ARAC) was established by the FAA to provide industry information and expertise during the rulemaking process. In October 1991, an IFR Fuel Reserve Working Group of the ARAC, General Aviation Operations

Issues, was assigned the task to "evaluate the advantages and disadvantages of revising the fuel reserve requirements for flight under instrument flight rules" (56 FR 51744; Oct. 15, 1991). Later the working group also evaluated: (1) The advantages and disadvantages of revised precision and non-precision instrument approach minima and alternate weather minima, considering the operational capability of the helicopter to decelerate before and during arrival at the Decision Height or Minimum Descent Altitude, including circling approaches; and (2) whether or not this capability reduces risk and the probability of a missed approach and the need to proceed to an alternate and meet the resulting regulatory alternate fuel requirement. The working group, which consisted of representatives from helicopter associations, helicopter manufacturers, helicopter pilot associations, helicopter operators, and government agencies, met numerous times between January 1992 and October 1997. As a result, ARAC submitted its recommendation to the FAA in November 1997. The FAA based the NPRM, published on September 2, 1998, and the SNPRM, published on July 1, 1999, on that ARAC recommendation.

ARAC recommended that the FAA revise the weather minima used to determine whether carriage of additional fuel to reach an alternate airport is needed when flying in IFR conditions. Specifically, ARAC suggested revising paragraph (b)(2) of § 91.167—*Fuel requirements for flight in IFR conditions*, to state that: " \* \* \* weather reports or prevailing weather forecast or combination of them indicate \* \* \* for helicopters, at the estimated time of arrival, the ceiling will be 1,000 feet above the airport elevation or 400 feet above the lowest approach minima, whichever is higher; and \* \* \* at the estimated time of arrival, the visibility will be at least 2 statute miles." The ARAC's suggested revisions would create different ceiling and visibility criteria for helicopters (as opposed to those for other aircraft), and would also change the requirement that those ceiling and visibility criteria be in effect for at least 1 hour before and 1 hour after the estimated time of arrival.

ARAC also recommended that IFR flight plan requirements for helicopters be amended by revising the alternate airport weather planning requirements and weather minima necessary when designating an alternate airport on an IFR flight plan. ARAC suggested that the FAA revise paragraph (b) of § 91.169—*IFR flight plan: Information required*, to state that the provisions of paragraph

(a)(2) of that section would not apply if 14 CFR part 97 prescribes “ \* \* \* a standard instrument approach procedure for the first airport of intended landing and the weather reports or prevailing weather forecast or combination of them indicate \* \* \* for helicopters, at the estimated time of arrival, the ceiling will be at least 1,000 feet above the airport or heliport elevation or 400 feet above the lowest approach minima, whichever is higher; and \* \* \* at the estimated time of arrival, the visibility will be at least 2 statute miles.”

Under § 91.169 (c), ARAC again suggested creating IFR alternate weather minima for helicopters performing precision and nonprecision approaches that would be different from those applicable to other aircraft. The new criteria would apply when it would be necessary to include an alternate airport in an IFR flight plan. Ceiling and visibility conditions at the alternate airport would be for “current prevailing weather forecasts \* \* \* at the estimated time of arrival” (when no instrument approach procedure has been specified in 14 CFR part 97 for an alternate airport). The helicopter minima recommended by ARAC were as follows: For a “precision approach procedure \* \* \* for helicopters, [c]eiling 400 feet and visibility 1 statute mile;” and for a “nonprecision approach procedure \* \* \* for helicopters, [c]eiling 600 feet and visibility 1 statute mile.”

The FAA agreed with most of ARAC’s recommendations, except the elimination of the requirement under §§ 91.167 (b)(2) and 91.169 (b) that weather report and forecast data be in effect for 1 hour after the estimated time of arrival.

### Discussion of Comments to the Original NPRM

#### General

The public comment period on the FAA’s September 2, 1998 NPRM closed on October 2, 1998. Thirty-nine comments were received, all of which were generally supportive of the proposal. Commenters praised the NPRM for its potential to enhance safety by facilitating the expansion of helicopter operations under IFR in marginal weather conditions, thereby reducing weather-related accidents. Commenters also stated that adoption of the rule would enable operators to better utilize their IFR-equipped helicopters, transport clients more efficiently, and reduce noise on the ground. Seven commenters however stated that certain technical issues were not adequately addressed by the FAA in the proposal.

These concerns are addressed in detail in the following discussion. In addition, since the FAA’s economic analysis did not anticipate any cost of compliance or need for additional equipment or training, comments on both the quantitative and qualitative benefits of the proposal were favorable also.

#### Removal of SFAR No. 29–4

A number of commenters addressed the proposed removal of SFAR No. 29–4, Limited IFR Operations of Rotorcraft. One commenter stated that in the past, his company used the provisions of the SFAR to “prove IFR capabilities in a then non-IFR certified helicopter,” and the company “does not want to lose this capability.” Two other commenters stated that the FAA should retain the provisions of the SFAR for a period of time (for either a year or a “reasonable time”) after the other provisions of the NPRM are implemented as a final rule. The commenters believed that this course of action would have enabled the FAA and industry to determine whether the SFAR was needed or had outlived its usefulness. After that time, the FAA could better evaluate its removal. The FAA does not believe retaining the SFAR is necessary and is therefore removing it.

The SFAR was originally adopted to permit the FAA to collect operational data to study the feasibility of limited rotorcraft operations in IFR conditions. Since the adoption of the SFAR, the FAA has addressed the issue of helicopter IFR operations and issued regulations that govern both the certification and operation of helicopters under IFR. These regulations are found in Appendix B—Airworthiness Criteria for Helicopter Instrument Flight, contained in both 14 CFR parts 27 and 29. Operational regulations permitting helicopters to engage in IFR operations are found in 14 CFR parts 91 and 135.

Paragraph 5 of SFAR 29–4 states that “new applications for limited IFR rotorcraft operations under SFAR No. 29 may be submitted for approval until, but not including the effective date of Amendment No. 1 of the Rotorcraft Regulatory Review Program. On and after the effective date of Amendment No. 1, all applicants for certification of IFR rotorcraft operations must comply with the applicable provisions of the Federal Aviation Regulations.” The effective date of Amendment No. 1 was March 2, 1983. Concurrent with the effective date of Amendment No. 1, regulations establishing airworthiness criteria for helicopter instrument flight became effective. All new applicants for certification of helicopter IFR operations

must now comply with the provisions of Appendix B of parts 27 or 29, as applicable, and part 91. Because the FAA has established certification criteria and operational limitations for helicopters engaged in IFR operations, the need to prove IFR capabilities in a non-IFR certified helicopter is no longer warranted. The changes made to the regulations since the promulgation of SFAR No. 29 therefore no longer make its provisions necessary.

#### Alternate Airport Weather Minima

Commenters stated that the NPRM did not provide alternate airport weather minima reductions for helicopters when airports that have non-standard alternate airport weather minima are used as alternate airports. Prior to the adoption of this rule, standard alternate airport weather minima for all aircraft were stated in 14 CFR 91.169 (c)(1)(i) and (ii), (i.e., for a precision approach procedure a ceiling of 600 feet and a visibility of 2 statute miles; for a nonprecision approach procedure, a ceiling of 800 feet and a visibility of 2 statute miles).

The commenters stated that helicopter operators should not be subject to the same restrictions imposed on operators of other types of aircraft by the use of nonstandard alternate minimums. The commenters noted that these restrictions were generally imposed to facilitate the conduct of circle-to-land operations. Due to the ability of helicopters to fly any available instrument approach, regardless of wind direction, and to land at the approach threshold regardless of runway length by pivoting into the wind, if necessary, just before touchdown, the commenters asserted that helicopter operators should not be restricted by these non-standard alternate minimums. They further stated that helicopter operators therefore should be allowed to use lower-than-standard alternate weather minima, regardless of whether standard or nonstandard alternate airport weather minima are specified on part 97 approach plates.

The FAA agrees with these comments. Historically, the FAA has permitted helicopter operators to use procedures different from those permitted to be used by other aircraft. For example, 14 CFR part 97 allows helicopters to utilize “copter procedures” or other procedures prescribed in subpart C of that part, and to use the Category A minimum descent altitude (MDA) or decision height (DH). Part 97 also authorizes helicopter operators to reduce the required visibility minimum to one-half the published visibility minimum for Category A aircraft, but in no case may

it be reduced to less than one-quarter mile or 1,200 feet runway visibility range (RVR).

Alternate airport weather minima are established using the ceiling and visibility requirements for circling approaches as a minimum. *The United States Standard for Terminal Instrument Procedures (TERPS)* (FAA Order 8260.3B), Chapter 11. Helicopter Procedures, paragraph 1100.a, "Identification of Inapplicable Criteria," states in part, "circling approach and high altitude penetration criteria do not apply to helicopter procedures." The FAA in fact does not evaluate pilots in the performance of circling approaches during evaluation for any rating or check involving the piloting of a helicopter. Additionally, the Instrument Rating Practical Test Standards (PTS) (FAA-S-8081-4C), published by the FAA to establish the standards for instrument rating certification practical tests for airplane, helicopter, and powered lift category and classes of aircraft indicates that the circling approach task is appropriate only to airplane and airship instrument proficiency checks and ratings.

In the SNPRM, the FAA therefore proposed to change the language of § 91.169 (c)(1)(ii) to permit a helicopter operator to use an airport as an alternate airport provided the ceiling is at least "200 feet above and visibility 1 statute mile above the approach minima for the approach to be flown. \* \* \*" The purpose of this change was to allow helicopters to use lower-than-standard alternate airport minima regardless of the approach to be flown while eliminating the need to alter current approach plates. In making this change, the FAA unintentionally increased the visibility requirements proposed in the original NPRM. To correct this, the FAA has revised the language of § 91.169 (c)(1)(i) in this final rule to correspond with the original intent of the NPRM. See "Discussion of Comments to the SNPRM" below.

Some commenters requested that the FAA specify separate alternate airport weather minima for precision and nonprecision approaches used by a helicopter operator. Specifically, a 400-foot ceiling and one mile visibility was proposed for precision approach procedures and a 600-foot ceiling and one mile visibility was proposed for nonprecision approach procedures. The FAA, however, has not specified separate alternate airport weather minima for precision and nonprecision approaches used by helicopter operators in this rule. This action will ensure that alternate airport approach minima are above actual approach minima in those

situations where actual approach minima may be above values commonly associated with precision and nonprecision approaches. The changes recognize the unique operating characteristics of helicopters and remove the operational restrictions that occur by requiring helicopters to use alternate approach minima specified in current instrument approach procedures.

#### *Special Instrument Approach Procedures*

Prior to this rule change, § 91.167 (b) stated in part that, "paragraph (a)(2) of this section does not apply if—(1) Part 97 of this chapter prescribes a standard instrument approach procedure for the first airport of intended landing." Additionally, § 91.169 (b) stated in part that "paragraph (a)(2) of this section does not apply if part 97 of this chapter prescribes a standard instrument approach procedure for the first airport of intended landing." That regulatory language did not provide for the use of special instrument approach procedures in determining an aircraft operator's ability to meet alternate airport requirements. This rule will permit an aircraft operator to use an authorized approach procedure in determining compliance with alternate airport requirements.

Special instrument approach procedures are not issued pursuant to part 97 but may be issued to an operator through inclusion in the operator's Operations Specifications or through a letter of authorization issued by the Administrator to a specific operator. These approach procedures are not published in part 97, but are developed under the authority of § 91.175 (a). The FAA has developed over 120 new helicopter non-precision Global Positioning System (GPS) instrument approaches to heliports since 1995, over 75% of them since October 1997. The FAA has determined that these approaches are not standard instrument approach procedures but "special instrument approach procedures" which require additional aircrew training prior to their use. Therefore, to permit aircraft operators to use special instrument approach procedures to comply with alternate airport requirements, the FAA has revised the language contained in § 91.167 (b)(1) and 91.169 (b)(1), (c)(1), and (c)(2) of the original NPRM to permit the use of these special approaches when issued to an operator by the Administrator.

#### *Weather Reports and Forecasts*

Certain commenters noted the FAA's inaccurate use of the terms "weather

forecasts" and "weather reports," and the inconsistency between the way the terms "weather reports and forecasts and weather conditions" and "weather reports and/or prevailing weather forecast" were used in the narrative format and tabular format proposed in §§ 91.167 (b) and 91.169 (b) and (c) of the original NPRM. The FAA agrees that the phrases were used inconsistently in the original proposal and is therefore adopting the phrase "appropriate weather reports or weather forecasts, or a combination of them" in those paragraphs that pertain to the selection of an alternate airport. The final rule, however, retains the language proposed in § 91.167 (a) of the original NPRM. This language is substantively identical to that contained in current § 91.167 (a) and ensures consideration of "weather conditions" when determining fuel requirements for civil aircraft operations in IFR conditions, unless the provisions of paragraph (b) apply.

The language used in this final rule reflects current usage of the terms "weather forecasts" and "weather reports" by meteorologists and aviation industry personnel. It also includes the term "appropriate" when referring to weather reports and weather forecasts to indicate that an operator must consider current weather reports and current and valid weather forecasts when determining if a flight requires an alternate airport. Use of the term "appropriate" is consistent with references to weather reports and forecasts in other operating rules. Its inclusion should eliminate any ambiguity and ensure conformity in determining those reports and forecasts that should be considered by an operator when designating an alternate airport. Use of the term "appropriate" is also consistent with the provisions of 14 CFR 91.103 which requires each pilot in command, before beginning a flight, to become familiar with all available information concerning that flight.

With regard to the use of weather forecasts, the FAA notes that although a weather forecast may be valid for a period as long as 24 hours, only the most current and valid weather forecast is considered "appropriate." In some instances a current weather forecast may be issued, however it may not be valid for the time period required to be considered by an operator when choosing an alternate airport. Such a report is not considered "appropriate." Any superceded weather report is not considered current and its use in determining an alternate airport is not considered appropriate.

The rule also does not include the descriptive term "prevailing" with the

phrase “weather forecasts” because “prevailing” is used to refer to actual weather conditions observed at a station and not to weather forecasts. Its use in the context of the original proposal was therefore improper and has been deleted.

#### *Format of the Regulatory Text*

In response to the FAA’s request in the original NPRM for specific comments on whether readers preferred a tabular or a narrative format in portions of §§ 91.167 (b) and 91.169 (b) and (c), seven commenters addressed the subject. Three commenters preferred the tabular format; two preferred the narrative; and two stated that either format was acceptable. Upon further consideration, the FAA has decided not to use the tables in the form in which they were originally proposed because the format might be confusing to some people. The FAA is currently reviewing part 91 to see how tables and other plain language writing techniques could improve reader comprehension. Until this review is completed, the FAA has decided to use the narrative format for §§ 91.167 (b) and 91.169 (b) and (c), but might reconsider this decision in future rulemaking.

#### *Technical Corrections*

In the original NPRM, the FAA proposed distinct alternate airport weather minima for airplanes and helicopters. Aircraft other than airplanes and helicopters (e.g. airships) however may require access to the IFR system and require the need for an alternate airport. The FAA has therefore revised the language in the original proposal to provide different alternate airport requirements for helicopters and for aircraft other than helicopters, as opposed to airplanes, in this final rule.

#### *Discussion of Comments to the SNPRM*

The public comment period on the FAA’s SNPRM closed on August 2, 1999. Six comments were received, all of which were generally favorable. Five commenters pointed out that the FAA changed the visibility minimum in § 91.169 (c)(1)(ii) when it sought to revise helicopter alternate airport weather minima by eliminating the distinction between precision and nonprecision approaches specified in the original NPRM. The original NPRM had stated the visibility for both types of approaches “will be 1 statute mile, but never lower than the published minima for the approach to be flown.” However, the commenters stated, since visibility required for a typical helicopter ILS approach is ¼ mile, that would require an airport with this type

of approach to have a visibility of at least 1¼ miles to be considered an acceptable alternate airport. The original NPRM, however, would have permitted the designation of an airport that is forecast to have 1 mile visibility as an alternate airport on a helicopter instrument flight plan. The FAA agrees with the commenters and has changed the language in that section accordingly. One of the commenters also stated that if an aircraft is equipped with the appropriate advanced equipment that enhances situational awareness and reduces pilot workload, the aircraft should be eligible for alternate minima that are lower than those the FAA proposed. The FAA believes the comment is outside the scope of this rulemaking action and, therefore, is adopting the alternate minima set forth in this final rule.

#### *Technical Corrections*

For the reasons previously specified in the discussion of “Weather Reports and Forecasts” under “Discussion of Comments to the Original NPRM,” the final rule retains the language originally proposed in § 91.167 (a). This language is substantively identical to the language in current § 91.167 (a).

In addition, in § 91.169 (c)(2), the word “or” has been changed to “and.” This change was made because the intent of the proposal was only to require the more restrictive VFR ceiling and visibility minima for the alternate airport if no instrument approach procedure had been published or issued.

#### **Discussion of Dates**

The Administrative Procedures Act (APA) (5 U.S.C. 553 (d)) requires publication of an amendment in the **Federal Register** at least 30 days before the effective date, unless good cause is determined. Because this final rule will increase safety by enabling more helicopter pilots to operate under IFR in marginal weather conditions without the restrictions imposed by the current regulations, the FAA has determined that there is no reason to delay the effective date for 30 days. The rule is therefore effective upon publication in the **Federal Register**.

#### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has determined that there are no new requirements for information collection associated with this final rule.

#### **International Compatibility**

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and intends to file the following differences.

This rule does not prescribe that the weather at the airport of intended landing be at or above the operating minima at the estimated time of arrival. Paragraph 2.6.2.1 of ICAO annex 6, Part III, International Operations—Helicopters, Section III, International General Aviation, Chapter 2, Flight Operations, requires that the heliport of intended landing meet operating minima at the estimated time of arrival.

This rule would require helicopter operators to evaluate weather conditions at the airport of intended landing from the estimated time of arrival until one hour after the estimated time of arrival when determining whether an alternate airport is required. Paragraph 2.6.2.2 of ICAO Annex 6, Part III, Section III requires an operator to evaluate weather conditions at the heliport of intended landing from two hours before to two hours after the estimated time of arrival or from the actual time of departure to two hours after the estimated time of arrival or from the actual time of departure to two hours after the estimated time of arrival.

Paragraph 2.7.1 of ICAO Annex 6, Part III, Section III states that an alternate shall be required in an operator’s flight plan unless the weather conditions specified in paragraph 2.6.2.2 of that section prevail or other specific conditions related to isolated heliports are met and a point of no return (PNR) determination is made, if applicable. The weather conditions for the selection of an alternate differ from those specified in paragraph 2.6.2.2, and the rule does not address isolated heliports and PNR determinations.

The FAA has not adopted the ICAO standards for the reasons discussed earlier in this preamble.

#### **Regulatory Evaluation Summary**

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the

economic effect of regulatory changes on small entities. Third, OMB directs agencies to assess the effect of regulatory changes on international trade. And fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) 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).

In conducting these analyses, the FAA has determined that this rule is not "a significant regulatory action" under section 3(f) of Executive Order 12866 and, therefore, is not subject to review by the Office of Management and Budget. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979). This rule will not have a significant impact on a substantial number of small entities and will not constitute a barrier to international trade. This rule will not impose any additional equipment, training, or other cost to the aviation industry. Therefore, there will be no compliance costs associated with the rule. The FAA estimates that the rule will provide \$58 million (\$41 million, present value) in benefits over the next 10 years. In addition, there will be the non-quantified benefits which include a reduction in the level of aircraft noise experienced by individuals on the ground when helicopters fly at higher altitudes and possible savings in corporate personnel time associated with enhanced corporate flight operations.

The rule will not present a significant impediment to either U.S. firms doing business abroad, or foreign firms doing business in the United States. Furthermore, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small entities. The rule does not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

#### **Regulatory Flexibility Determination**

The Regulatory Flexibility Act (RFA) of 1980, 5 U.S.C. 601-612, was enacted by the U.S. Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The RFA requires a regulatory flexibility analysis if a rule has a significant economic

impact on a substantial number of small business entities. FAA's interim regulatory flexibility policy and guidelines establish threshold costs and small entity size standards for complying with RFA requirements. This guidance defines small entities in terms of size thresholds, significant economic impact in terms of annualized cost thresholds, and substantial number as a number which is not less than eleven and which is more than one-third of the small entities subject to the final rule.

This rule will impact entities regulated by part 91. The FAA has determined that there are no compliance costs associated with this rule. The FAA has also solicited comments during this rulemaking. No operators responded that they felt they would be negatively impacted from implementation of the rule. Only positive comments were received supporting the FAA's position that this rulemaking will not place any additional requirements on the aviation industry. Therefore, the FAA believes that there are no compliance costs associated with the rule. Accordingly, pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 605 (b)), the FAA certifies that this rule will not have a significant impact on a substantial number of small entities.

#### **International Trade Impact Statement**

The provisions of this rule will have little or no impact on trade for U.S. firms doing business in foreign countries and foreign firms doing business in the United States.

#### **Federalism Implications**

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action will not have a substantial direct effect 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, the FAA has determined that this final rule does not have federalism implications.

#### **Unfunded Mandates Reform Act Assessment**

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified in 2 U.S.C. 1501-1571, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the

Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of \$100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

#### **Environmental Analysis**

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

#### **Energy Impact**

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163, as amended (43 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

#### **List of Subjects**

##### **14 CFR Part 21**

Aircraft, Aviation safety, Exports, Imports, Reporting and recordkeeping requirements.

##### **14 CFR Part 27**

Aircraft, Aviation safety.

##### **14 CFR Part 29**

Aircraft, Aviation safety.

## 14 CFR Part 91

Aircraft, Airports, Aviation safety.

**The Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends parts 21, 27, 29, and 91 of Chapter I, title 14, Code of Federal Regulations, as follows:

**PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS**

1. The authority citation for part 21 continues to read as follows:

**Authority:** 42 U.S.C. 7572; 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44707, 44709, 44711, 44713, 44715, 45303.

**SFAR No. 29–4 [Removed]**

2. Remove Special Federal Aviation Regulation (SFAR) No. 29–4—Limited IFR Operations of Rotorcraft from part 21.

**PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT**

3. The authority citation for part 27 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

**SFAR No. 29–4 [Removed]**

4. Remove SFAR No. 29–4 from in part 27.

**PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT**

5. The authority citation for part 29 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

**SFAR No. 29–4 [Removed]**

6. Remove SFAR No. 29–4 from in part 29.

**PART 91—GENERAL OPERATING AND FLIGHT RULES**

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

**Authority:** 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

**SFAR No. 29–4 [Removed]**

8. Remove Special Federal Aviation Regulation (SFAR) No. 29–4, Limited

IFR Operations of Rotorcraft, from part 91.

9. Revise § 91.167 to read as follows:

**§ 91.167 Fuel requirements for flight in IFR conditions.**

(a) No person may operate a civil aircraft in IFR conditions unless it carries enough fuel (considering weather reports and forecasts and weather conditions) to—

(1) Complete the flight to the first airport of intended landing;

(b) of this section, fly from that airport to the alternate airport; and

(3) Fly after that for 45 minutes at normal cruising speed or, for helicopters, fly after that for 30 minutes at normal cruising speed.

(b) Paragraph (a)(2) of this section does not apply if:

(1) Part 97 of this chapter prescribes a standard instrument approach procedure to, or a special instrument approach procedure has been issued by the Administrator to the operator for, the first airport of intended landing; and

(2) Appropriate weather reports or weather forecasts, or a combination of them, indicate the following:

(i) *For aircraft other than helicopters.* For at least 1 hour before and for 1 hour after the estimated time of arrival, the ceiling will be at least 2,000 feet above the airport elevation and the visibility will be at least 3 statute miles.

(ii) *For helicopters.* At the estimated time of arrival and for 1 hour after the estimated time of arrival, the ceiling will be at least 1,000 feet above the airport elevation, or at least 400 feet above the lowest applicable approach minima, whichever is higher, and the visibility will be at least 2 statute miles.

10. Revise § 91.169 (a), (b), and (c) to read as follows:

**§ 91.169 IFR flight plan: Information required.**

(a) *Information required.* Unless otherwise authorized by ATC, each person filing an IFR flight plan must include in it the following information:

(1) Information required under § 91.153 (a) of this part;

(2) Except as provided in paragraph (b) of this section, an alternate airport.

(b) Paragraph (a)(2) of this section does not apply if:

(1) Part 97 of this chapter prescribes a standard instrument approach procedure to, or a special instrument approach procedure has been issued by the Administrator to the operator for, the first airport of intended landing; and

(2) Appropriate weather reports or weather forecasts, or a combination of them, indicate the following:

(i) *For aircraft other than helicopters.* For at least 1 hour before and for 1 hour after the estimated time of arrival, the ceiling will be at least 2,000 feet above the airport elevation and the visibility will be at least 3 statute miles.

(ii) *For helicopters.* At the estimated time of arrival and for 1 hour after the estimated time of arrival, the ceiling will be at least 1,000 feet above the airport elevation, or at least 400 feet above the lowest applicable approach minima, whichever is higher, and the visibility will be at least 2 statute miles.

(c) *IFR alternate airport weather minima.* Unless otherwise authorized by the Administrator, no person may include an alternate airport in an IFR flight plan unless appropriate weather reports or weather forecasts, or a combination of them, indicate that, at the estimated time of arrival at the alternate airport, the ceiling and visibility at that airport will be at or above the following weather minima:

(1) If an instrument approach procedure has been published in part 97 of this chapter, or a special instrument approach procedure has been issued by the Administrator to the operator, for that airport, the following minima:

(i) *For aircraft other than helicopters:* The alternate airport minima specified in that procedure, or if none are specified the following standard approach minima:

(A) *For a precision approach procedure.* Ceiling 600 feet and visibility 2 statute miles.

(B) *For a nonprecision approach procedure.* Ceiling 800 feet and visibility 2 statute miles.

(ii) *For helicopters:* Ceiling 200 feet above the minimum for the approach to be flown, and visibility at least 1 statute mile but never less than the minimum visibility for the approach to be flown, and

(2) If no instrument approach procedure has been published in part 97 of this chapter and no special instrument approach procedure has been issued by the Administrator to the operator, for the alternate airport, the ceiling and visibility minima are those allowing descent from the MEA, approach, and landing under basic VFR.

\* \* \* \* \*

Issued in Washington, DC, on January 13, 2000.

**Jane F. Garvey,**  
Administrator.

[FR Doc. 00–1326 Filed 1–20–00; 8:45 am]

**BILLING CODE 4910–13–U**