publishes 2-28-03
in part 3

[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration.

14 CFR Parts 91 and 93

[Docket No.: FAA-2002-13235; Amendment No. 91-273 and 93-82 **]**

RIN 2120–AH57

Special Air Traffic Rules; Flight Restrictions in the Vicinity of Niagara Falls

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action codifies current flight restrictions for aircraft operating in U.S. airspace in the vicinity of Niagara Falls, NY. The FAA is taking this action to complement flight management procedures established for Niagara Falls by the Canadian government. The intended effect of this action is to prevent unsafe congestion of aircraft in this popular sightseeing area. The FAA is also adopting a number of editorial changes to parts 91 and 93 of Title 14, Code of Federal Regulations.

DATES: Effective on March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Terry Brown or Jan Glivings, Airspace and Rules Division, ATA-400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy of this document using the Internet by:

(1) Using the docket number of this rulemaking to search the Department of Transportation's electronic Docket Management System (DMS) web page (http://dms.dot.gov/search);

(2) Visiting the Office of Rulemaking's web page at http://www.faa.gov/avr/arm/index.cfm; or

(3) Accessing the Government Printing Office's web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue S.W., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the amendment number or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires 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 its local FAA official, or the person listed under FOR FURTHER INFORMATION CONTACT. You can find out more about SBREFA on the Internet at http://www.faa.gov/avr/arm/sbrefa.htm, or by e-mailing us at 9-AWA-SBREFA@faa.gov.

Background

On September 4, 2002, the FAA published in the Federal Register a notice of proposed rulemaking (NPRM) to codify current flight restrictions for aircraft operating in U.S. airspace in the vicinity of Niagara Falls and to make editorial changes to parts 91

and 93 of Title 14, Code of Federal Regulations (67 FR 56740). See the preamble to the NPRM for a discussion of the following:

- Canadian flight restrictions in the area,
- Complimentary U.S. temporary flight restriction,
- The public meeting we sponsored in 1993, and
- The specifics of the proposed rule.

The background material in the NPRM also contains the basis and rationale for this final rule and, except where we have specifically expanded on the background elsewhere in this preamble, provides the justification for this final rule.

The comment period for the NPRM was open for 45 days and closed on October 21, 2002. In response to the NPRM, we received a letter containing comments from the Aircraft Owners and Pilots Association (AOPA), which is discussed below.

Discussion of Comments

In a letter dated October 18, 2002, the AOPA concurs with codifying the current U.S. temporary flight restriction in the vicinity of Niagara Falls to prevent congestion and reduce the risk of collision by sightseeing aircraft. However, the AOPA is opposed to parts of the NPRM that go beyond a simple codification of the existing temporary flight restriction. The commenter believes that certain items in the proposed regulations are advisory in nature and should not be made mandatory. The commenter identified the following parts of proposed § 93.71 as those that should remain recommendations:

- Paragraph (e)(1)—Fly a clockwise pattern,
- Paragraph (e)(2)—Do not proceed north of the Rainbow Bridge,
- Paragraph (e)(3)—Prior to joining the pattern, broadcast flight intentions on frequency 122.05Mhz, giving altitude and position, and monitor the frequency while in the pattern,
- Paragraph (e)(6)—Anticipate heavy congestion of VFR traffic at or above 3,500 feet MSL,
- Paragraph (e)(7)—Use caution to avoid high-speed civil and military aircraft transiting the area to or from Niagara Falls Airport,
- Paragraph (f)—These procedures do not relieve pilots from the requirements of § 91.113 of this chapter to see and avoid other aircraft, and
- Paragraph (g)—Flight following, to and from the area, is available through Buffalo Approach.

The commenter asserts that including these proposed provisions in the final rule is unnecessary and inappropriate and mandating them would likely create compliance and enforcement problems. Further, there is no evidence that safety problems have occurred as a result of the procedures being recommended rather than mandated.

The FAA does not agree with the commenter that the provisions in § 93.71(e)-(f) should be advisory. These provisions establish the rules of the road for the airspace above Niagara Falls. While these provisions have been advisory under the temporary flight restriction, this rulemaking is designed to make these advisory procedures mandatory to ensure consistency with Canadian regulations and to safely manage the airspace. In addition, these provisions provide requirements that will not be available

once the temporary flight restriction is withdrawn. If we were to allow these procedures to remain advisory, the possibility would exist that someone could operate contrary to all of these procedures without any repercussion, while the majority of pilots in the area would be operating in accordance with them. Such a situation could cause a significant safety problem in this airspace.

We also do not agree with the commenter's characterization of proposed § 93.71(g) as a requirement. We intend this paragraph to simply provide information. For this reason, we are not making any changes to it in this final rule.

Section-by-Section Analysis of the Final Rule

Subpart E--Flight Restrictions in the Vicinity of Niagara Falls, NY

§ 93.71 General operating procedures

The FAA is adopting a new subpart E to 14 CFR part 93 (consisting of § 93.71) that codifies the current temporary flight restrictions in the vicinity of Niagara Falls. This final rule complements and supports flight management procedures established by Transport Canada for Canadian airspace in the vicinity of Niagara Falls to prevent unsafe congestion of sightseeing and other aircraft. Final § 93.71(a) establishes flight restrictions below 3,500 feet MSL in the airspace above Niagara Falls, New York, west of a line from latitude 43°06'33" N., longitude 79°03'30" W. (the Whirlpool Rapids Bridge) to latitude 43°04'47" N., longitude 79°02'44" W. (the Niagara River Inlet) to latitude 43°04'29" N., longitude 79°03'30" W. (the International Control Dam) to the United States/Canadian Border and thence along the border to the point of origin.

Final § 93.71(b) prohibits flight in the area described in final paragraph (a) except for aircraft operations conducted directly to or from an airport/heliport within the area,

aircraft operating on an ATC-approved IFR flight plan, aircraft operating the Scenic Falls Route pursuant to approval of Transport Canada, aircraft carrying law enforcement officials, or aircraft carrying properly accredited news representatives for which a flight plan has been filed with Buffalo NY (BUF) Automated Flight Service Station (AFSS).

Final § 93.71(c) requires pilots to check with Transport Canada for flight restrictions in Canadian airspace. It also advises pilots that commercial air tour operations approved by Transport Canada are conducting a north/south orbit of the Niagara Falls area below 3,500 feet MSL over the Niagara River.

Final § 93.71(d) establishes the minimum altitude for VFR flight over the Scenic Falls area as 3,500 feet MSL.

Final § 93.71(e) requires pilots to comply with the following procedures when conducting flight over the area described in final § 93.71(a):

(1) Fly a clockwise pattern;

(2) Do not proceed north of the Rainbow Bridge;

(3) Prior to joining the pattern, broadcast flight intentions on frequency 122.05 Mhz, giving altitude and position, and monitor the frequency while in the pattern;

(4) Use the Niagara Falls airport altimeter setting. Contact Niagara Falls Airport Traffic Control Tower to obtain the current altimeter setting, to facilitate the exchange of traffic advisories/restrictions, and to reduce the risk of midair collisions between aircraft operating in the vicinity of the Falls. If the Control Tower is closed, use the appropriate Automatic Terminal Information Service (ATIS) Frequency;

(5) Do not exceed 130 knots;

(6) Anticipate heavy congestion of VFR traffic at or above 3,500 feet MSL; and

(7) Use caution to avoid high-speed civil and military aircraft transiting the area to or from Niagara Falls Airport.

Final § 93.71(f) tells pilots these procedures do not relieve them from the requirements of § 91.113 of this chapter to see and avoid other aircraft.

Final § 93.71(g) advises pilots that flight following, to and from the area, is available through Buffalo Approach.

Editorial Changes to Parts 91 and 93

The FAA is also adopting a number of editorial changes to 14 CFR parts 91 and 93. These changes include the following:

- Change the title of part 93 from "Special Air Traffic Rules and Airport Traffic Patterns" to "Special Air Traffic Rules." This title better describes the intent of part 93 and the activities it addresses.
- Change §93.1 to reflect the deletion of the term "airport traffic area" and for the purposes of brevity and clarity. On December 17, 1991, the FAA published a final rule (56 FR 65638) that reclassified various airspace designations and deleted the term "airport traffic area." We intended these changes to apply to all similarly designated airspace areas. However, we have not adopted corresponding changes to part 93 until now.
- Change §93.51 by deleting the phrase "and traffic patterns" to be consistent with the change to the title of part 93 described above.
- Divide §93.81, which contains the special air traffic rule for the Valparaiso, Florida, Terminal Area, into two sections, 93.80 and 93.81, with minor editorial changes to new §93.80, Applicability.

- Make a minor editorial change to §93.117, which describes the applicability of the special air traffic rule for the Lorain County (Ohio) Regional Airport.
- Divide existing §93.151, which describes the applicability of the special air traffic rule for the Ketchikan (Alaska) International Airport, into two sections, 93.151 and 93.152, with minor editorial changes to §93.151.
- Change the alphabetical listing in section 4 of Appendix D to part 91, change the title of subpart T, and change §§93.251 and 93.253 to reflect the renaming of Ronald Reagan Washington National Airport.

We do not intend these editorial changes to change the substance of parts 91 or 93.

Paperwork Reduction Act

There are no current or new requirements for information collection associated with this amendment.

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 determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Economic Assessment, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to 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 (19 U.S.C. §§ 2531-2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 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, FAA has determined this rule (1) has benefits that justify its costs, is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866 and is not "significant" as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant economic impact on a substantial number of small entities; (3) will reduce barriers to international trade; and (4) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses, available in the docket, are summarized below.

Economic Assessment

This final rule codifies the current temporary flight restriction for those aircraft operating in U.S. airspace in the vicinity of Niagara Falls, NY. The FAA is taking this action to complement flight management procedures established for the Falls by

Transport Canada. Additionally, this action makes a number of editorial changes to 14 CFR parts 91 and 93.

As a rule, the FAA does a benefit-cost analysis when this agency makes a temporary flight restriction permanent by rulemaking. However, this temporary flight restriction has been in effect for almost eight years. This length of time makes it difficult to obtain data to estimate baseline costs before the imposition of the temporary flight restriction. The FAA does not believe that the temporary flight restriction imposed significant costs on aircraft operating in U.S. airspace in the vicinity of Niagara Falls, NY, and the FAA does not believe this rulemaking will impose significant costs on those operators. We received no comments in response to the NPRM concerning the costs imposed by this rulemaking.

Regarding benefits, the FAA is aware of the mid-air collision in the vicinity of Niagara Falls before the issuance of the temporary flight restriction and before the flight management procedures established by Transport Canada. Since the issuance of the temporary flight restriction and Canadian flight management procedures, there have been no mid-air collisions. The FAA believes that the flight management procedures established in the temporary flight restriction and by Transport Canada are responsible for this improvement in aviation safety. The FAA is making the temporary flight restriction permanent because we believe that there are positive aviation safety benefits from imposing these flight restrictions on aircraft operating in U.S. airspace in the vicinity of Niagara Falls. We did not receive any public comments regarding these benefit findings in response to the NPRM.

The FAA finds that the safety benefits accruing to this rulemaking justify the costs imposed. Therefore, the FAA finds this final rule to be cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The 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 proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected 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.

The FAA believes that this action imposes little costs on any small entities subject to this rule. Any costs of complying with the final rule are already borne by those complying with the existing flight restrictions for the past eight years. Consequently, the

FAA certifies that the final rule will not have a significant economic impact on a substantial number of small entities. We did not receive any public comments regarding this cost finding.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. 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 rulemaking to be minimal and has determined that it will not result in an impact on international trade by companies doing business in or with the United States.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act 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 (adjusted annually for inflation) 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."

This final rule does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply.

Executive Order 3132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) 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) Public Law 94-163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. We have determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 91

Afghanistan, Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Canada, Cuba, Ethiopia, Freight, Mexico, Noise control, Political candidates, Reporting and recordkeeping requirements, Yugoslavia.

14 CFR Part 93

Aircraft flight, Airspace, Aviation safety, Air traffic control.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. 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).

2. Amend ~~§~~ section 4 of Appendix D to part 91 by removing the words "Washington National Airport" and adding in their place the words "Ronald Reagan Washington National Airport" in the alphabetical list of cities and airports.

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~~PART 93—[AMENDED]~~

3. The authority citation for 14 CFR part 93 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

4. Amend part 93 by revising the title to read as ~~follows:~~ set forth above.

PART 93—SPECIAL AIR TRAFFIC RULES

5. Revise § 93.1 to read as follows:

§93.1 Applicability.

This part prescribes special air traffic rules for operating aircraft in certain areas described in this part, unless otherwise authorized by air traffic control.

6. Revise § 93.51 to read as follows:

§93.51 Applicability.

This subpart prescribes special air traffic rules for aircraft operating in the Anchorage, Alaska, Terminal Area.

7. Amend part 93 by adding Subpart E consisting of §93.71 to read as follows:

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Subpart E—Flight Restrictions in the Vicinity of Niagara Falls, New York

§93.71 General operating procedures.

(a) Flight restrictions are in effect below 3,500 feet MSL in the airspace above Niagara Falls, New York, west of a line from latitude 43°06'33" N., longitude 79°03'30" W. (the Whirlpool Rapids Bridge) to latitude 43°04'47" N., longitude 79°02'44" W. (the Niagara River Inlet) to latitude 43°04'29" N., longitude 79°03'30" W. (the International Control Dam) to the United States/Canadian Border and thence along the border to the point of origin.

(b) No flight is authorized below 3,500 feet MSL in the area described in paragraph (a) of this section, except for aircraft operations conducted directly to or from an airport/heliport within the area, aircraft operating on an ATC-approved IFR flight plan, aircraft operating the Scenic Falls Route pursuant to approval of Transport Canada, aircraft carrying law enforcement officials, or aircraft carrying properly accredited news representatives for which a flight plan has been filed with Buffalo NY (BUF) Automated Flight Service Station (AFSS).

(c) Check with Transport Canada for flight restrictions in Canadian airspace. Commercial air tour operations approved by Transport Canada will be conducting a north/south orbit of the Niagara Falls area below 3,500 feet MSL over the Niagara River.

(d) The minimum altitude for VFR flight over the Scenic Falls area is 3,500 feet MSL.

(e) Comply with the following procedures when conducting flight over the area described in paragraph (a) of this section:

(1) Fly a clockwise pattern;

(2) Do not proceed north of the Rainbow Bridge;

(3) Prior to joining the pattern, broadcast flight intentions on frequency 122.05 Mhz, giving altitude and position, and monitor the frequency while in the pattern;

(4) Use the Niagara Falls airport altimeter setting. Contact Niagara Falls Airport Traffic Control Tower to obtain the current altimeter setting, to facilitate the exchange of traffic advisories/restrictions, and to reduce the risk of midair collisions between aircraft operating in the vicinity of the Falls. If the Control Tower is closed, use the appropriate Automatic Terminal Information Service (ATIS) Frequency;

(5) Do not exceed 130 knots;

(6) Anticipate heavy congestion of VFR traffic at or above 3,500 feet MSL; and

(7) Use caution to avoid high-speed civil and military aircraft transiting the area to or from Niagara Falls Airport.

(f) These procedures do not relieve pilots from the requirements of § 91.113 of this chapter to see and avoid other aircraft.

(g) Flight following, to and from the area, is available through Buffalo Approach.

8. Add new § 93.80 to read as follows:

§93.80 Applicability.

This subpart prescribes special air traffic rules for aircraft operating in the Valparaiso, Florida, Terminal Area.

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§ 93.81 [Amended]

9. Amend § 93.81 by removing paragraph (a); removing the paragraph designation of paragraph (b); and redesignating paragraphs (b)(1), (2), (2)(i), (2)(ii), and (2)(iii) as (a), (b), (b)(1), (b)(2), and (b)(3) respectively.

10. Revise § 93.117 to read as follows:

§93.117 Applicability.

This subpart prescribes a special air traffic rule for aircraft operating at the Lorain County Regional Airport, Lorain County, Ohio.

11. Revise § 93.151 to read as follows:

§93.151 Applicability.

This subpart prescribes a special air traffic rule for aircraft conducting VFR operations in the vicinity of the Ketchikan International Airport or Ketchikan Harbor, Alaska.

12. Add new § 93.152 to read as follows:

§93.152 Description of area.

Within that airspace below 3,000 feet MSL within the lateral boundary of the surface area of the Ketchikan Class E airspace regardless of whether that airspace is in effect.

Subpart T to part 93 [Amended]

RF 2-21-03

13. In the heading and text of subpart T, remove the words "Washington National Airport" and add, in their place, the words "Ronald Reagan Washington National Airport".

Issued in Washington, DC, on FEB 19 2003

Marion C. Blakey

Marion C. Blakey
Administrator

Certified to be a True Copy
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