[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

Docket No.: FAA-2004 - 19352

RIN: 2120-AI44

Redesignation of Mountainous Areas in Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposal would update the designated mountainous areas in the State of Alaska. Regulations currently designating mountainous areas in Alaska were established in 1956. Since that time, we have concluded that areas previously considered non-mountainous should be expanded, and two areas previously designated mountainous should now be considered non-mountainous.. The intended effect of this proposal is to enhance safety by allowing aircraft operating in certain non-mountainous areas to fly at lower altitudes when necessary.

DATES: Comments must be received on or before [Insert date 30 days after date of publication in the Federal Register].

ADDRESSES: You may send comments [identified by Docket Number FAA –2004 – 19352] using any of the following methods:

- DOT Docket web site: Go to http://dms.dot.gov and follow the instructions for sending your comments electronically.
- Government-wide rulemaking web site: Go to http://www.regulations.gov and follow the instructions for sending your comments electronically.

- Mail: Docket Management Facility; US Department of Transportation, 400 Seventh Street, S.W., Nassif Building, Room PL-401, Washington, DC 20590-001.
- Fax: 1-202-493-2251.
- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, S.W., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document.

Privacy: We will post all comments we receive, without change, to http://dms.dot.gov, including any personal information you provide. For more information, see the Privacy Act discussion in the SUPPLEMENTARY INFORMATION section of this document.

Docket: To read background documents or comments received, go to http://dms.dot.gov at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, S.W., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Richard W. Girard, Flight Standards Division, Technical Standards Branch, AAL-233, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513-7587; telephone number (907) 271-3578.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this proposal by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposal in this

document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposal. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the ADDRESSES section of this preamble between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the ADDRESSES section.

Privacy Act: Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477-78) or you may visit http://dms.dot.gov.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this rule, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching 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 docket number, notice number, or amendment number of this rulemaking.

Background

Today, FAA regulations designate a large majority of the State of Alaska as a mountainous area. This designation sets specific minimum altitudes for all aircraft traveling in the area. Five areas of the state are specifically excepted from the mountainous area designation, and aircraft operated in these areas do not need to meet the same minimum altitude requirements. This proposal would expand those five areas that are excepted in the regulations, and add two areas in the vicinity of Fort Yukon and the islands of St. Paul and St. George (also known as the Pribilof Islands) under the exception.

The FAA has designated certain areas within the United States as mountainous areas. These areas are regulated to make sure that pilots maintain certain altitude minimums for a safe flying environment. These designated mountainous areas are specified in 14 CFR part 95, Subpart B. They include areas in the Eastern and Western continental United States, Hawaii, Puerto Rico, and Alaska.

Designating an area as a mountainous area involves the consideration of:

1. Weather phenomena in the area that are conducive to marked pressure differentials;
2. Bernoulli effect;
3. Precipitous terrain turbulence; and
4. Other factors likely to increase the possibility of altimeter error.

Specifically, § 91.177(a)(2)(i) sets minimum altitude requirements for anyone operating an aircraft under Instrument Flight Rules (IFR) over an area designated as a mountainous area in part 95 (where no minimum altitudes are prescribed for that area in parts 95 and 97). A pilot must maintain an altitude of at least 2,000 feet above the highest obstacle within a horizontal distance of 4 nautical miles from the course to be flown. Sections 91.515(a)(2) and 135.203(a)(2) provide similar requirements for Visual Flight Rule (VFR) night operations conducted under Subpart F of part 91 and part 135. Section 121.657(c) also provides the same requirement for night VFR, IFR, and over-the-top operations conducted under part 121. In each of the above sections the requirements are similar for non-mountainous areas except that the minimum altitude is set at 1,000 feet, rather than 2,000 feet.

In 1956, when the regulations designating mountainous areas were written, the FAA designated those areas that could be considered either mountainous or non-mountainous as mountainous areas because there were relatively few IFR operations. Since then, the number of IFR operations in the State has significantly increased. Technology and experience have provided the FAA with more accurate information on which areas within the state should receive exception status from the mountainous area designation. These areas meet the current defined requirements for non-mountainous areas, but were not previously identified. Today, IFR operations are prevalent in nearly every portion of the State. Correspondence with pilots

operating in Alaska has supported the conclusion that IFR operations are common and that the new designation of mountainous areas is necessary to provide appropriate flexibility for pilots and controllers. Pilots have asserted that the minimum altitude required in designated mountainous areas can force aircraft to fly high enough in certain weather conditions to risk ice buildup on wings and control surfaces. Thus, the risk assessment that led to a mountainous/non-mountainous classification in the 1950's may no longer be appropriate. The FAA believes the existing regulations may expose pilots operating in some parts of Alaska currently classified as mountainous areas to a greater risk than necessary. Additionally, this proposal will enhance safety by improving traffic flow and reducing controller workload.

There are currently five areas outlined in the exceptions section of the regulation as non-mountainous areas. This proposed rule would expand these areas slightly while adding two more areas that would be designated non-mountainous.

Each of the proposed exception areas listed in this proposed rule is an area with homogenous weather characteristics. Weather reporting stations are now more abundant and reliable than when these regulations were written in 1956. These areas are free of precipitous terrain and weather phenomena associated with other designated mountainous areas. Because of these factors, we believe additional operational altitudes are necessary for these areas and these changes will not adversely affect safety.

For purposes of this proposed rule, a map is presented to illustrate the extent of these areas. The map entitled "Designated Mountainous Areas" of the State of Alaska that is currently included in part 95 will be replaced by the new map that includes the revisions and additions to § 95.17(b). See Docket No. FAA-2004-19352 to view the map.

Economic Assessment, Regulatory Flexibility Determination, International 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).

However, for regulations with an expected minimal impact the above-specified analyses are not required. The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the proposal does not warrant a full evaluation, a statement to that effect and the basis for that determination is included in the proposed regulation. Since this proposed rule more accurately identifies mountainous areas in Alaska, and thereby provides greater flexibility in aircraft operations, it is expected to have a minimal cost impact with positive

net benefits. The FAA requests comments with supporting justification regarding the FAA determination of minimal impact.

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 RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA 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 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 determines that a proposed 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.

This proposed rule will affect only the areas in which a plane may fly at a certain altitude. The changes we are proposing should not change how small entities or individuals in Alaska conduct business operations. Consequently, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Trade Impact Analysis

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 proposed rule and determined that it will not create unnecessary obstacles to foreign commerce and that international standards were considered.

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." The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million.

This proposed rule does not contain such a mandate. The requirements of Title II do not apply.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in title 14 of the CFR in manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers

appropriate. Because this proposed rule would apply to airspace designations specifically in Alaska, it could, if adopted, affect intrastate aviation in Alaska. The FAA therefore specifically requests comments on whether there is justification for the proposed rule.

Environmental Analysis

FAA Order 1050.1E 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. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 312(d) and involves no extraordinary circumstances.

Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant energy action" under the executive order because it is not a "significant regulatory action" under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

SECTION-BY-SECTION DISCUSSION OF PROPOSAL

14 CFR part 95, Subpart B
§95.17

In subsection (a) *Area*, we propose changing "The Territory of Alaska" to read "The State of Alaska." When the regulation was originally written in 1956, Alaska was not yet a State. In subsection (b) *Exceptions,* we propose revising the five current exceptions and adding two more for areas not previously covered.

The current exception areas that would be revised are:

(1) In the vicinity of Fairbanks, AK, and Nenana, AK. The proposed revision would include areas in the vicinity of Delta Junction, AK, and Minchumina, AK.

(2) In the vicinity of Talkeetna, AK, Anchorage, AK, Kenai, AK, and Homer, AK. The proposed revision would include additional shoreline and coastal areas west of the Cook Inlet.

(3) In the vicinity of King Salmon, AK, and Port Heiden, AK. The proposed revision would include areas in the vicinity of Dillingham, AK, and Iliamna, AK.

(4) In the vicinity of Bethel, AK, and Aniak, AK. The proposed revision would include areas in the vicinity of Anvik, AK, Saint Mary's, AK, Quinhagak, AK, Kipnuk, AK, Hooper Bay, AK, and Nunivak Island, AK.

(5) In the vicinity of Point Barrow, AK, Prudhoe Bay, AK, and Barter Island, AK. The proposed revision would include an area in the vicinity of Umiat, AK, and the coastal area east of Barter Island, AK.

The two additional exceptions that are being proposed include areas:

(1) In the vicinity of Fort Yukon, AK.

(2) The islands of Saint Paul and Saint George, which are also collectively known as the Pribilof Islands.

List of Subjects in 14 CFR Part 95

Air traffic control, Airspace, Alaska, Navigation (air)

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 95 of the Federal Aviation Regulations (14 CFR Part 95) as follows:

PART 95 – IFR ALTITUDES

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

2. Section 95.17 is revised to read as follows:

§95.17 Alaska Mountainous Area

All of the following area excluding those portions specified in the exceptions:

(a) Area. The State of Alaska.

(b) Exceptions;

(1) Fairbanks - Nenana Area. Beginning at latitude 64°54' N, longitude 147°00' W; thence to latitude 64°50' N, longitude 151°22' W, thence to latitude 63°50' N, longitude 152°50' W; thence to latitude 63°30' N, longitude 152°30' W; thence to latitude 63°30' N, longitude 151°30' W; thence to latitude 64°05' N, longitude 150°30' W; thence to latitude 64°20' N, longitude 149°00' W; thence to latitude 64°07' N, longitude 146°30' W; thence to latitude 63°53' N, longitude 146°00' W; thence to latitude 63°53' N, longitude 145°00' W; thence to latitude 64°09' N, longitude 145°16' W; thence to latitude 64°12' N, longitude 146°00' W; thence to latitude 64°25' N, longitude 146°37' W; thence to latitude 64°54' N, longitude 147°00' W, point of beginning.

(2) Anchorage - Homer Area. Beginning at latitude 61°50' N, longitude 151°12' W; thence to latitude 61°24' N, longitude 150°28' W; thence to latitude 61°08' N, longitude 151°47' W; thence to latitude 59°49' N, longitude 152°40' W; thence to latitude 59°25' N, longitude 153°10' W; thence to latitude 59°00' N, longitude 153°10' W; thence to latitude 59°33' N,

longitude 151°28' W; thence to latitude 60°31' N, longitude 150°43' W; thence to latitude 61°13' N, longitude 149°39' W; thence to latitude 61°37' N, longitude 149°15' W; thence to latitude 61°44' N, longitude 149°48' W; thence to latitude 62°23' N, longitude 149°54' W; thence to latitude 62°23' N, longitude 150°14' W; thence to latitude 61°50' N, longitude 151°12' W, point of beginning.

(3) King Salmon - Port Heiden Area. Beginning at latitude 58°49' N, longitude 159°30' W; thence to latitude 59°40' N, longitude 157°00' W; thence to latitude 59°40' N, longitude 155°30' W; thence to latitude 59°50' N, longitude 154°50' W; thence to latitude 59°35' N, longitude 154°40' W; thence to latitude 58°57' N, longitude 156°05' W; thence to latitude 58°00' N, longitude 156°20' W; thence to latitude 57°00' N, longitude 158°20' W; thence to latitude 56°43' N, longitude 158°39' W; thence to latitude 56°27' N, longitude 160°00' W; thence along the shoreline to latitude 58°49' N, longitude 159°30' W, point of beginning.

(4) Bethel - Aniak Area. Beginning at latitude 63°28' N, longitude 161°30' W; thence to latitude 62°40' N, longitude 163°03' W; thence to latitude 62°05' N, longitude 162°38' W; thence to latitude 61°51' N, longitude 160°43' W; thence to latitude 62°55' N, longitude 160°30' W; thence to latitude 63°00' N, longitude 158°00' W; thence to latitude 61°45' N, longitude 159°30' W; thence to latitude 61°34' N, longitude 159°15' W; thence to latitude 61°07' N, longitude 160°20' W; thence to latitude 60°25' N, longitude 160°40' W; thence to latitude 59°36' N, longitude 161°49' W; thence along the shoreline to latitude 63°28' N, longitude 161°30' W; point of beginning; and Nunivak Island.

(5) North Slope Area. Beginning at a point where latitude 69°30' N intersects the northwest coast of Alaska and eastward along the 69°30' parallel to latitude 69°30' N, longitude

156°00' W; thence to latitude 69°10' N, longitude 153°00' W; thence eastward along the 69°10' N parallel to latitude 69°10' N, longitude 149°00' W; thence to latitude 69°50' N, longitude 146°00' W; thence eastward along the 69°50' N parallel to latitude 69°50' N, longitude 145°00' W; thence to latitude 69°35' N, longitude 141°00' W; thence northward along the 141°00' W Meridian to a point where the 141°00' W Meridian intersects the northeast coastline of Alaska; thence westward along the northern coastline of Alaska to the intersection of latitude 69°30' N; point of beginning .

(6) Fort Yukon Area. Beginning at latitude 67°20' N, longitude 144°00' W; thence to latitude 66°00' N, longitude 143°00' W; thence to latitude 66°05' N, longitude 149°00' W; thence to latitude 66°45' N, longitude 148°00' W; thence to latitude 67°00' N, longitude 147°00' W; thence to latitude 67°20' N, longitude 144°00' W; point of beginning.

(7) The islands of Saint Paul and Saint George, together known as the Pribilof Islands, in the Bering Sea.

Issued in Washington, DC on

OCT 8 2004

James J. Ballough

James J. Ballough

Director, Flight Standards Service.

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