4910-13

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Docket No. FAA-2016-5391; Airspace Docket No. 16-AWA-3

RIN: 2120-AA66

Removal of Class A Airspace Area Exclusion

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes a provision in part 71 that excludes from Class A airspace, that portion of U.S. domestic airspace that overlies the Santa Barbara and Farallon Islands and the airspace south of latitude 25°04'00" North (overlying and in the vicinity of the Florida Keys). The effect of this provision is that the airspace from18,000 feet MSL up to and including Flight Level (FL) 600 (within the excluded areas) is classified as Class G (uncontrolled) airspace which limits the flexibility for air traffic control operations.

DATES: Effective date 0901 UTC March 31, 2016.

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

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, DC 20591; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Authority for this Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it removes from 14 CFR § 71.33(a) a provision that excludes the airspace in the vicinity of the Santa Barbara and Farallon Islands and the Florida Keys from U.S. Class A airspace in order to maintain the safe and efficient flow of air traffic.

Background

Positive Control Areas

In 1958, the Civil Aeronautics Board delegated to the Administrator the authority to designate positive control route segments in any portion of the airspace between 17,000 to 35,000 feet, within which certain operational requirements would be applicable. That same year the Administrator designated in 14 CFR part 601 specific airways as positive control airspace, noting that "with experience and the acquisition of more and better equipment, the positive control area will undoubtedly, from time to time, be expanded." 23 FR 3917 (June 5, 1958).

In 1962, the FAA redesignated part 601 as part 71. 27 FR 10353 (Oct. 24, 1962). Section 71.15 addressed positive control areas, and § 71.193 (published separately) contained those areas designated as positive control areas. Over several years, the airspace designated as positive control areas continued to expand as anticipated with the FAA's increased capability to control air traffic. In 1965, the FAA established an expansive area of positive control airspace designated the "continental positive control area." 30 FR 1836 (February 10, 1965). The FAA excluded from that positive control area the airspace over Santa Barbara Island and the Farallon Islands, and the airspace south of the latitude 25°04'00" North.

Class A airspace

In 1991, the FAA issued a final rule reclassifying "positive control areas" as Class A airspace.[1] 56 FR 65638, 65639 (Dec. 17, 1991).[2] In that final rule, new § 71.33 defined Class A airspace and continued to exclude from Class A airspace that airspace over Santa Barbara Island, the Farallon Islands, and south of latitude 25°04′00″ North that was originally established in 1965.

Unless otherwise specified, Class A airspace in the United States consists of that airspace from 18,000 feet MSL up to and including flight level (FL) 600. Unless otherwise authorized, all persons must operate their aircraft under instrument flight rules in airspace designated as Class A and comply with the applicable requirements of 14 CFR part 91. "Class A airspace" includes, in part, "that airspace overlying the waters within 12 nautical miles of the coast of the 48 contiguous States, from 18,000 feet MSL to and including FL600 excluding the states of

[1] The reclassification adopted the International Civil Aviation Organization (ICAO) letter classifications. (56 FR 65638; December 17, 1991).
[2] The effective date for the reclassification was September 16, 1993.

Alaska and Hawaii, Santa Barbara Island, Farallon Island, and the airspace south of latitude 25°04′00″ North."

The airspace excluded from Class A airspace over the Santa Barbara and Farallon Islands and the airspace south of 25°04'00" North renders those portions of U.S. domestic airspace (i.e., within 12 nautical miles (NM) of the baseline of the United States) as Class G (uncontrolled) airspace, which limits the provision of air traffic control services in those areas.

As these excluded areas lie within the 12 NM territorial limits of the United States, the airspace would ordinarily be classified as Class A airspace. When the exclusions were implemented decades ago, air traffic control services in the high altitude structure were limited due to lack of radar and radio communications coverage in some areas as well as less demand for those services. This was particularly true in the airspace near the Florida Keys.

Impact of the exclusion

The lack of Class A airspace inside portions of United States domestic airspace impacts the provision of air traffic control services. Although transit of Instrument Flight Rules (IFR) traffic through uncontrolled airspace is permitted when requested by the pilot, Air Traffic Control (ATC) authority within uncontrolled airspace is limited.

An example of the impacts is the Florida Keys area (that airspace south of latitude 25°04'00" North) which is under the jurisdiction of the Miami Air Route Traffic Control Center (ARTCC). There are four Air Traffic Service routes that transit the airspace in question. Miami ARTCC cannot use the routes or vector aircraft through the area unless requested by the pilot. This obligates air traffic controllers to vector aircraft around the airspace. Complicating their task is the location of military warning area airspace just to the south of the Florida Keys area. When the warning areas are activated, flights have to be rerouted hundreds of miles around the

airspace. With an average of 317 flights per day transiting this airspace, ATC must employ Traffic Management Initiatives (TMI) to manage the volume of traffic. These TMIs increase delays and add to users' operating costs. The Miami ARTCC area has experienced dramatic growth in international air traffic to and through the area which is expected to continue into the future.

Another example is the Farallon Islands area which is under the jurisdiction of the Oakland ARTCC. This area falls within a corridor of arrivals and departures for international flights to San Francisco, Oakland, and San Jose, which have increased exponentially since the inception of the original exclusion. To circumvent this area of uncontrolled airspace would result in a significant impact both to the Oakland ARTCC and NAS users. Returning the Farallon Islands area to controlled airspace would reduce the workload for air traffic controllers and flight crews, which enhances safety and aids in the management of controlled airspace within the National Airspace System (NAS). In addition NAS users will gain a measurable increase in efficiency with the ability to create flight plans utilizing this area as controlled airspace.

The Santa Barbara Island exclusion encompasses two navigation fixes and overlaps the boundary of Control Area 1318H which connects to an inbound oceanic route. The close proximity of this exclusion to the Los Angeles terminal area affects Los Angeles ARTCC operations and poses similar impacts to the NAS as described above.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending section 71.33(a) in 14 CFR part 71 to remove the words "...Santa Barbara Island, Farallon Island

and the airspace south of latitude 25°04'00" North." Subparagraphs (b) and (c) in § 71.33 remain unchanged by this action.

The FAA is taking this action because the current exclusion severely limits the FAA's ability to provide ATC services in the affected areas of U.S. domestic airspace. The FAA believes that the current Class A airspace exclusion is no longer warranted considering the expansion of radar and radio communications coverage, greater air traffic control system capabilities and increased demand for ATC services in the affected areas since the exclusion was originally promulgated. The current exclusion creates an impediment to providing ATC services and leads to air traffic delays, rerouting of air traffic, increased controller workload and reduced efficiency of the National Airspace System.

Good Cause for Immediate Adoption

Section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C.) authorizes agencies to dispense with notice and comment procedures when the agency for ''good cause'' finds that those procedures are ''impractical, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking. Based on the information presented above, the FAA has determined that prompt remedial action is necessary to enhance safety and avoid significant adverse impact on the operation of the NAS. Without immediate action, the traveling public will experience substantial flight delays. Therefore, the FAA finds that it is impractical and contrary to the public interest to delay action in order to follow the normal notice and comment procedures.

Good Cause for Early Effective Date

Under 5 U.S.C. 553(d), publication of a substantive rule shall be made not less than 30 days before its effective date, except as otherwise provided by the agency for good cause found and published with the rule. The FAA is issuing this rule with an effective date of March 31, 2016, which is less than 30 days after publication. The FAA finds good cause because this rule will enhance safety and prevent significant adverse impact on the operation of the NAS

Regulatory Notices and Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Public Law 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Public Law 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (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 with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this [proposed/final] rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that

a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this rule. Without this rule there will be: an impediment to providing ATC service; traffic will be rerouted; increasing air traffic delays; increase controller workload; resulting in reduced efficiency of the National Airspace System. As current traffic patterns will not change unless this rule is not issued, the economic impact of this rule will be minimal cost.

FAA has, therefore, determined that this rule 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.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Public Law 96-354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation." To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." 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 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 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 rule is necessary to avoid rerouting current air traffic. The rerouting will increase miles flown, increasing fuel and crew cost. While the rule will likely impact a substantial number of small entities, it will have a minimal economic impact.

If an agency determines that a rulemaking will not result in a significant economic impact on a substantial number of small entities, the head of the agency may so certify under section 605(b) of the RFA. Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

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

will have the same impact on international and domestic flights and is a safety rule thus is consistent with the Trade Agreements Act.

Unfunded Mandates Assessment

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

Environmental Review

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environment Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5-6.5a and involves no extraordinary circumstances.

How to Obtain Additional Information

An electronic copy of a rulemaking document may be obtained by using the Internet —

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

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking,

ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71--DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

2. Amend § 71.33 by revising paragraph (a) to read as follows:

§71.33 Class A airspace areas.

(a) That airspace of the United States, including that airspace overlying the waters within 12 nautical miles of the coast of the 48 contiguous States, from 18,000 feet MSL to and including FL600 excluding the states of Alaska and Hawaii.

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Issued in Washington, DC, on March 29, 2016.

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