

FAA 91-186

91-63

14 CFR Part 91

[Docket No. 22951; Amdt. No 91-186]

Temporary Flight Restrictions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment to § 91.91 of the Federal Aviation Regulations (FAR) provides for imposition by the Administrator, or his designee, of temporary flight restrictions over an area in which all aircraft activity would be prohibited, except appropriate rescue activity, when an incident or event on the surface poses a hazard to people on the ground or to airborne aircraft. The amendment also narrows the circumstances in which aircraft may be relieved from complying with certain temporary flight restrictions to those operations that are approved by the official in charge of on scene emergency response activities. The flight plan filing and notification requirements have also been relaxed for certain operations.

EFFECTIVE DATE: June 6, 1985.

FOR FURTHER INFORMATION CONTACT:

Mr. William C. Davis, Airspace and Air Traffic Rules Branch, ATO-230, Airspace—Rules and Aeronautical Information Division, Office of the Associate Administrator for Air Traffic, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Background

Currently, under FAR § 91.91, the Administrator may impose a temporary flight restriction (TFR) to prevent congestion of sightseeing aircraft over an event which may generate a high degree of public interest, or to provide a safe operating environment for disaster relief aircraft. An example typical of Notices to Airmen (NOTAM) establishing an area wherein TFR's apply would be:

Flight restrictions relief aircraft operations, Minner, Iowa, effective immediately and until 2359 GMT, January 6, 1983. Pursuant to FAR § 91.91 temporary flight restrictions are in effect within a 5 statute mile radius of the Minner VOR at and below 3,000 feet AGL. Minner flight service station (FSS) (792) 555-6742. Pleasant County Sheriffs Department (792) 555-8122 is the agency directing relief activities.

The rule allows five major exceptions to the prohibition against flight in those areas: (1) Aircraft participating in disaster relief, and operated under the direction of the agency responsible for

relief operations; (2) aircraft operating to or from an airport within the area and operated so as not to hamper or endanger relief activities; (3) operations specifically authorized under an instrument flight rules (IFR) air traffic control (ATC) clearance; (4) en route operations under visual flight rules (VFR), when flight around or above the area is impracticable due to weather, terrain, or other considerations, notice is given to the air traffic facility specified in the Notice to Airmen, and the operation does not hamper or endanger relief activities; and (5) the aircraft is carrying accredited news representatives or persons on official business concerning the incident or event, is operated above the altitudes used by disaster relief aircraft unless specifically authorized to fly lower, and the operator has filed a flight plan to include any information deemed necessary by ATC.

Several incidents have demonstrated the need for control broader than that provided for in current § 91.91 in order to ensure adequate levels of safety of persons and property on the ground. For example, in March 1981, a high-rise condominium under construction in Cocoa Beach, Florida, collapsed. Ground rescue teams, using listening devices, were trying to determine if any survivors were trapped beneath the rubble. A news helicopter operating in the area created noise rendering the listening devices useless.

Another incident occurred near Crestview, Florida, on April 8, 1979. A train derailment caused chlorine gas to be released into the atmosphere. Later, as rescue personnel were staging beneath the gas cloud, rotor wash from a low flying helicopter forced gas into the staging area, causing injury to several rescue team members. The Fort Worth, Texas, Office of Emergency Management, has also advised of an incident that occurred in that city in 1982 involving a chlorine gas tank leak at a water treatment plant. A news media helicopter landing close to the incident created rotor wash which dispersed the toxic gas into an area where people were working. Approximately seven persons were taken to the hospital for treatment. A Fort Worth city official stated that these casualties would not have occurred if the media helicopter had not been operated so close to the incident site.

In all of the above examples, flight restrictions under § 91.91 were implemented by local FAA elements. However, the operations which proved hazardous to ground personnel were specifically excluded from the restrictions under the current rule. A

number of other incidents have occurred, with little warning, which have created a hazard to aircraft, but which have not been within the scope of the current § 91.91. Those incidents include persons discharging firearms at aircraft, toxic gas releases, and bomb detonations. A recent coal gas leak from a deep mine that had been "sealed" for several years created a potential hazard to unwary aircraft operators and occupants. Those incidents do not, by definition, qualify for current § 91.91 restrictions. In those types of cases, the FAA needs swift procedures for the issuance of temporary flight prohibitions to provide adequate protection of airborne aircraft and aircraft occupants. It is, therefore, necessary to revise and update § 91.91 to cover such situations.

These amendments are based on a Notice of Proposed Rulemaking (Notice No. 82-7) published in the Federal Register on April 29, 1982, (47 FR 18560). All interested persons have been given an opportunity to participate in the making of these amendments and due consideration has been given to all matters presented. A number of substantive changes and changes of an editorial and clarifying nature have been made to the proposed rules based upon relevant comments received and upon further review by the FAA. Except for minor editorial and clarifying changes and the substantive changes discussed below, these amendments and reasons for their adoption are the same as those contained in Notice 82-7.

Discussion of Comments

The National Transportation Safety Board (NTSB) filed comments supporting the proposed rule, and suggests the phrase "on the ground" in proposed § 91.91(a)(1) be replaced with the phrase "on the surface" in order to make it clear that it includes situations over waterways, rivers, and bodies of water. The NTSB also suggests the phrase "agency responsible for relief activities" in proposed § 91.91(b), (d)(1), and (d)(3), be replaced by the phrase "official in charge of on scene emergency response activities." The recommended changes more clearly convey the intent of the proposed rule as well as the current rule, and the rule reflects these changes.

The Aircraft Owners and Pilots Association (AOPA) generally agrees with the proposed rule, and believes that every effort should be made to exclude airports from TFR areas. To the extent this cannot be accomplished, AOPA does not believe operators should be required to notify the FAA for flight to and from an airport within the

TFR area. AOPA states that this is not a provision in the current rule because those operations are required to be conducted without hampering or endangering relief activities.

The FAA agrees that there is no reason to require notification for an operation into a TFR when the operation is necessitated by weather, terrain, etc., because the objective of the TFR would not be affected by such infrequent and noninterfering occurrences. However, in situations which require disaster relief aircraft operations, the FAA must provide for the safety of those aircraft as proposed by requiring notification of flight into and within any TFR designated under those conditions. Notification serves to establish a means whereby aircraft operators receive information concerning the nature of relief aircraft activities. Operators, using this information are better equipped to conduct flight so as not to hamper or endanger relief activities. The final rule has been revised to provide that notification will be for the purposes of receiving advisories concerning relief activities.

AOPA and the National Business Aircraft Association (NBAA) recommend that the duration of the TFR be set forth in the implementing NOTAM. This recommendation does not require a rule change and will be coordinated with the appropriate FAA offices and facilities.

The NBAA also suggests that a clear explanation in the NOTAM of the reason the restriction is imposed should result in greater cooperation in avoiding a hazardous area, and that an education program be conducted to inform pilots of the provisions of the new rule. The FAA intends to publish an advisory circular which will be available to interested parties. Additionally, the NBAA suggests an annual review be conducted of all TFR operations under the rule to determine if the provisions of the rule with respect to these operations are warranted. The FAA periodically reviews TFR's that have been issued and will continue to do so.

The State of Oregon Aeronautics Division in support of the rule recommends the inclusion of a procedure for amending NOTAM's if circumstances should develop which required more restrictive requirements. It also suggests that notice of any upgraded condition be accomplished by radio broadcasts. Situations that necessitate upgrading a TFR NOTAM should be very rare. However, if this should become necessary, the NOTAM can be cancelled quickly and easily by the issuance of a more restrictive NOTAM.

The Offshore Racing Commission of the American Power Boat Association (ORC) agrees generally with the proposed rule, but objects to the provisions of the current rule which provides for news media operations in the TFR area. ORC believes that helicopters carrying news representatives to cover boat races operate dangerously close to the high speed racing craft and are having a serious effect on the boats' attitude. ORC recommends that the rule provide for the establishment of a minimum altitude within the TFR area which would apply to all aircraft except those assigned for safety or official business purposes by officials of the event. With respect to events such as boat races, the current rule provides for the establishment of a TFR area to preclude an unsafe congestion of sightseeing aircraft. Since news media aircraft are not sightseeing aircraft, they are not covered by the current rule and no change in these provisions was proposed in Notice 82-7.

The ORC also suggests that an FAA representative be present during race events to monitor the TFR area for FAR violations. The FAA does not believe it is necessary to monitor all events where news media coverage is accomplished by aircraft. The current regulations provide for the safety of persons and property on the surface. For example, while § 91.79 allows helicopters to be operated at altitudes above, and distances from, persons, vessels, vehicles, or structures less than those required of fixed wing aircraft, it also requires such operations to be conducted without hazard to persons and property on the surface. If there is reason to believe that an aircraft is not being operated in compliance with the regulations, or that an operator cannot determine the minimum safe distance from participating racing craft, then the local FAA General Aviation District Office should be contacted for assistance.

The State of Idaho Department of Transportation, in support of the proposed rule, noting several incidents in which rescue aircraft and people being rescued were directly endangered by unauthorized aircraft operations, suggests that speeding the process of imposing TFR's might add strength to the rule, and that the text of implementing NOTAM's should be written in a style that would facilitate ease in plotting. These suggestions are appreciated and will be considered during a review of the ATC procedures concerning TFR's. Further, it recommends that the agency which requested the TFR be the only authority

for allowing flight in the TFR. Both Notice 82-7 and this final rule contain this provision with respect to hazards associated with incidents on the surface. However, in the other situations, the FAA believes the current regulations are sufficient.

The Miami, Florida, fire department noted that the city of Miami fire/rescue has experienced disruption of emergency operations through interrupted radio messages due to aircraft noise and through prop wash moving toxic fumes and blowing blankets, bandages, etc. off of victims of the incident. The city of Miami fire department, the International Fire Service Training Association, the Oklahoma State University Fire Service Training Department, the South Carolina State Firemen's Association, the Prattville, Alabama, fire department, and the Fargo, North Dakota, fire department filed comments in support of the amendment to the rule. The comments of the Chemical Manufacturers Association, Military Airlift Command, Air Transport Association, and the Air Line Pilots Association also support the amendment.

Two broadcast news organizations—Columbia Broadcasting System, Inc. and National Broadcasting Company, Inc.—and three associations—the National Association of Broadcasters, the Society of Professional Journalists/Sigma Delta Chi, and the Radio-Television News Directors Associations—submitted joint comments expressing support for the safety objectives served by § 91.91, but strongly opposing the adoption of the proposed amendment insofar as it would prohibit news organizations from flying over the sites of newsworthy events whenever a temporary flight restriction is imposed to protect persons and property on the ground or in the air from hazards associated with an incident on the ground. The joint broadcasting and journalism commenters propose two alternatives to the FAA proposal. First, the commenters propose a less restrictive regulation under which news gathering aircraft would maintain a communications link with FAA and/or rescue personnel at the emergency site, and could receive the recommendations of rescue personnel to avoid unsafe conditions. Alternatively, if the rule, as proposed, is made final, the joint commenters urge the adoption of guidelines to minimize the effect on news aircraft.

The FAA agrees that, consistent with the First Amendment guarantees of the constitution, regulation of aerial newsgathering should be no more

restrictive than is essential to achieve safety. However, we cannot agree that the procedures proposed by the joint commenters for a ground-to-air communications link with newsgathering aircraft, which would permit air traffic control specialists to make flight recommendations, are adequate to assure safety. The FAA appreciates the spirit of responsibility and cooperation of those aerial newsgathering journalists who routinely cooperate with FAA in an effort to assure that their activities pose no safety hazard to others. Nevertheless, incidents involving the news media do occur. Therefore, reliance on recommendations in lieu of airspace restrictions would not be sufficient to assure safety. Furthermore, the establishment of communications links often is not feasible in emergency situations, and any establishment and use of such communications by newsgathering aircraft could divert resources needed for rescue activities.

However, the FAA agrees with the suggestion that guidelines should be prepared to prevent unnecessary restriction on aerial newsgathering. The FAA intends to issue an advisory circular and to revise national ATC procedures to ensure that only in cases where a hazard is present to persons and property on the ground or in the air will a total ban be placed on all aircraft.

Finally, based on a review of the comments received and further FAA consideration, certain paragraphs have been editorially rearranged and several paragraphs have been reworded to use language usually used in NOTAM's designating temporary flight restrictions. The requirements applicable to law enforcement and event personnel have been separated from the requirements applicable to news representatives.

Economic Analysis

This amendment is in accordance with the FAA policy of seeking an acceptable level of air safety for all airspace users. The economic benefits and costs of this amendment to consumers, the public, Federal, State, and local governments have been considered and found to be negligible.

Consequences

There would be three types of operations that are presently permitted under the current regulation that would be prohibited under the proposed rule in certain situations. The types are:

- (1) Operations to or from an airport within the designated area.
- (2) VFR overflight operations when flight conditions around the designated area prevent another route.

(3) news media operations.

In the case of type (1) operations, the designating FAA facility would, to the maximum extent possible, exclude airports from the designated area. In the event an airport is included in the area, impacted arrival operations would have to use an alternate airport. Aircraft desiring to depart, on the other hand, could not depart until the restrictions were relaxed or cancelled.

In the case of type (2) operations, it would be almost impossible for the ATC facility to recommend other than avoiding the area completely.

News media operations (type (3)) would be, because of a perceived need to fly "low and close," prohibited entirely and without an alternative course of action except to conduct operations from the ground.

There have been approximately 10 incidents over the past 5 years that would have warranted implementing temporary flight restrictions that would have excluded all types of air operations except for relief activities. This represents an average of two relief activities per year. Of this average, it is estimated that there would be no economic impact on type (1) and (2) operations because the areas in which restrictions apply generally encompass a 2 nautical mile radius with the ceiling at 2,000 feet above ground level.

Since all news media would be excluded, some extra expenses may be incurred such as costs for alternate transportation means. In view of the number of occurrences, this impact is considered insignificant. In any event, if any unforeseen economic burden were to be placed on operators, it would be definitely offset by the enhanced safety benefits, afforded by the rule, to ground relief crews and unwary aircraft occupants.

Benefits

This amendment is expected to increase safety and efficiency in the areas where ground crews would be susceptible to life-threatening conditions—conditions which could be compounded by low flying aircraft. Additional safety benefits are expected to be realized by aircraft in flight because of the protection from hazards emanating from the surface.

Determination

Considering the limited number of times this amendment would be invoked, the inherent benefits to the public and the overall economic evaluation, including the effects on small business entities, the economic impact of this rule is judged nonsignificant. There should be no

appreciable economic impact to the public, consumers, Federal, State, and local governments.

Because the very small number of incidents per year that would warrant imposition of a temporary flight restriction with the stricter provisions adopted by this amendment and generally small radius and low ceiling of the restricted areas, this document involves a rulemaking action which is not a "major rule" under Executive Order 12291 and is not a "significant rule" under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). For these reasons and because the only economic benefits would be those to individuals who receive additional protection from the revised rule, I certify that, under the criteria of the Regulatory Flexibility Act, the amendment will not have a significant impact on a substantial number of small entities. In addition, the FAS has determined that the expected impact of this amendment is so minimal that it does not require a full evaluation.

List of Subjects in 14 CFR Part 91

Airmen, Air safety, Safety, Aviation safety, Air transportation, Aircraft.

The Amendment

PART 91—[AMENDED]

Accordingly, Part 91 of the Federal Aviation Regulations (14 CFR Part 91) is amended by revising § 91.91 to read as follows:

§ 91.91 Temporary flight restrictions.

(a) The Administrator will issue a Notice to Airmen (NOTAM) designating an area within which temporary flight restrictions apply and specifying the hazard or condition requiring their imposition, whenever he determines it is necessary in order to—

(1) protect persons and property on the surface or in the air from a hazard associated with an incident on the surface;

(2) provide a safe environment for the operation of disaster relief aircraft; or

(3) prevent an unsafe congestion of sightseeing and other aircraft above an incident or event which may generate a high degree of public interest.

The Notice to Airmen will specify the hazard or condition that requires the imposition of temporary flight restrictions.

(b) When a NOTAM has been issued under paragraph (a)(1) of this section, no person may operate an aircraft within the designated area unless that aircraft is participating in the hazard relief

activities and is being operated under the direction of the official in charge of on scene emergency response activities.

(c) When a NOTAM has been issued under paragraph (a)(2) of this section, no person may operate an aircraft within the designated area unless at least one of the following conditions are met:

(1) The aircraft is participating in hazard relief activities and is being operated under the direction of the official in charge of on scene emergency response activities.

(2) The aircraft is carrying law enforcement officials.

(3) The aircraft is operating under an ATC approved IFR flight plan.

(4) The operation is conducted directly to or from an airport within the area, or is necessitated by the impracticability of VFR flight above or around the area due to weather, or terrain; notification is given to the Flight Service Station (FSS) or ATC facility specified in the NOTAM to receive advisories concerning disaster relief aircraft operations; and the operation does not hamper or endanger relief activities and is not conducted for the purpose of observing the disaster.

(5) The aircraft is carrying properly accredited news representatives, and, prior to entering the area, a flight plan is filed with the appropriate FAA or ATC facility specified in the Notice to Airmen and the operation is conducted above the altitude used by the disaster relief aircraft, unless otherwise authorized by the official in charge of on scene emergency response activities.

(d) When a NOTAM has been issued under paragraph (a)(3) of this section, no person may operate an aircraft within the designated area unless at least one of the following conditions is met:

(1) The operation is conducted directly to or from an airport within the area, or is necessitated by the impracticability of VFR flight above or around the area due to weather or terrain, and the operation is not conducted for the purpose of observing the incident or event.

(2) The aircraft is operating under an ATC approved IFR flight plan.

(3) The aircraft is carrying incident or event personnel, or law enforcement officials.

(4) The aircraft is carrying properly accredited news representatives and, prior to entering that area, a flight plan is filed with the appropriate FSS or ATC facility specified in the NOTAM.

(e) Flight plans filed and notifications made with an FSS or ATC facility under this section shall include the following information:

(1) Aircraft identification, type and color.

(2) Radio communications frequencies to be used.

(3) Proposed times of entry of, and exit from, the designated area.

(4) Name of news media or organization and purpose of flight.

(5) Any other information requested by ATC.

(Secs. 307 and 313(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348, 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.45)

Issued in Washington, D.C., on October 31, 1984.

Donald D. Engen,
Administrator.

[FR Doc. 84-32044 Filed 12-7-84; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 24348; Amdt. No. 1283]

Air Traffic and General Operating Rules; Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO-230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4 and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on

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