

[Docket No. 10850; Amdt. 91-91]

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

Flights Within Terminal Control Area

The purpose of this amendment to Part 91 of the Federal Aviation Regulations is to more clearly delineate the extent of permissible flight within a terminal control area by nontransponder equipped aircraft. This amendment was proposed in Notice 71-4 published in the FEDERAL REGISTER on February 18, 1971 (36 F.R. 3129).

Only 10 comments were received in response to Notice 71-4 and of those 10 only three comments were critical of the proposal. In one case the commentator objected to the floor levels within the terminal control area itself, and the fact that the very existence of those floors blocked low altitude airspace unnecessarily. A second commentator in making the same objection noted that requiring light nontransponder equipped aircraft to fly over or around a terminal control area was in itself unsafe because it forced a choice between an altitude of decreasing performance or a route that unnecessarily reduced the available fuel margin. The third objection was to the effect that if it was not unsafe to permit a nontransponder equipped aircraft to penetrate a terminal control area on its way to a satellite airport, then it should not be unsafe to permit any IFR en route operation to traverse a terminal control area regardless of its destination.

The FAA does not believe that the first two objections were germane to the proposal contained within Notice 71-4 as both opposed the terminal control area concept rather than the specific proposal itself. Comments of like import were addressed to the notice which proposed the terminal control area concept and were dealt with at that time.

As for the third objection, the FAA cannot agree with that assertion for a number of reasons. In the first place, to provide a narrow exception to a given rule is a far different thing than destroying the objective of the rule by making the proposed exception too broad. Also, while safety requires the use of transponders in TCA's, the FAA's duty to provide for the efficient utilization of the airspace must also be respected where to do so is not in derogation of the safety considerations that gave rise to the rule itself. In short, while the FAA believes that it would have been unreasonable to completely ban nontransponder equipped aircraft from a TCA, it would be equally unreasonable and unsafe to destroy the entire TCA concept by permitting unrestricted IFR enroute operations.

Interested persons have been afforded an opportunity to participate in the making of this amendment. In other respects, for the reasons stated in the preamble to the notice, this rule is adopted as prescribed herein.

In consideration of the foregoing, Part 91 of the Federal Aviation Regulations is amended, effective July 23, 1971, as follows:

The last sentence in § 91.90(a)(3)(iii) and the last sentence in § 91.90(b)(2)(iii) are revised to read as follows:

§ 91.90 Flight in terminal control areas; operating rules and pilot and equipment requirements.

(a) * * *

(3) * * *

(iii) * * * This requirement is not applicable to helicopters operating within the terminal control area, or to IFR flights operating to or from a secondary airport located within the terminal control area, or to IFR flights operating to or from an airport without the terminal control area but which is in close proximity to the terminal control area, when the commonly used transition, approach, or departure procedures to such airport require flight within the terminal control area.

(b) * * *

(2) * * *

(iii) * * * This requirement is not applicable to helicopters operating within the terminal control area, or to VFR aircraft operating within the terminal control area, or to IFR flights operating to or from a secondary airport located within the terminal control area, or to IFR flights operating to or from an airport without the terminal control area but which is in close proximity to the terminal control area, when the commonly used transition, approach, or departure procedures to such airport require flight within the terminal control area.

(Secs. 307(c), 313(a), Federal Aviation Act of 1958, 49 U.S.C. 1348(c), 1354(a); sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on July 16, 1971.

J. H. SHAFFER,
Administrator.

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