

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 12317, Amdt. 91-101]

PART 91—GENERAL OPERATING AND FLIGHT RULES

Flights Over Cuba; Rescission of Certain Requirements

The purpose of this amendment to Part 91 of the Federal Aviation Regulations is to rescind the application of § 91.101 to flights overflying Cuba.

Federal Aviation Regulation § 91.101 was originally issued as Special Civil Air Regulations SR-437 on October 30, 1959. It was issued during a period of international tension to provide for the proper coordination and clearance of all civil aircraft (with exceptions) departing the United States for flights "to or over" Cuba.

Many civil pilots, who overfly Cuba, believe that the applicability of § 91.101 to overflights is now no longer necessary and have requested its revocation with respect to overflights. The Department of State has advised that even though it still believes that the regulation should continue to be applied to flights "to" Cuba, there is no strong objection to rescinding the regulation with respect to flights, to other countries, passing "over" Cuba. The Department of Defense has advised that it concurs in this because the DVFR or IFR flight plan filed in accordance with FAR Part 99 satisfies air defense requirements. The Immigration and Naturalization Service and the U.S. Customs Service have also advised that they have no objection.

Section 91.101 now requires that no person may operate a civil aircraft (except the operation of aircraft by a scheduled air carrier over routes authorized in operations specifications issued by the Administrator) from the United States to, or over, Cuba unless—

- (1) Departure is from an international airport of entry;
- (2) The pilot has filed a DVFR or IFR flight plan; and
- (3) The pilot has filed a written statement containing specified information with the Office of Immigration and Naturalization Service.

Rescission of the application of § 91.101 to flights overflying Cuba will grant relief and eliminate an unnecessary inconvenience to pilots by permitting departure from any airport and by eliminating the need for filing the written statement with the Immigration and Naturalization Service.

Rescission of the application of § 91.101 to flights "over" Cuba does not in any way affect other requirements relating to flights over Cuba. Other procedures and regulations are still in effect which provide for aircraft safety, and also provide assurance that the Cuban

Government will be informed before any civil aircraft of the United States overflies Cuban territory. These other procedures and regulations include the following:

1. The "International Flight Information Manual" procedures for flights entering and overflying Cuban territory.
2. Federal Aviation Regulation § 99.11, which requires that an aircraft operating in or penetrating a coastal ADIZ must file a flight plan with an appropriate aeronautical facility.
3. Paragraph 3.3.1.1.2, Chapter 3, of the "International Standards, Rules of the Air," (Annex 2 to ICAO), which provides for a flight plan to be filed for operations across international borders.
4. Federal Aviation Administration Order 7110.10A, "Flight Services," paragraphs 790 and 1180, directing controllers to use ICAO procedures and docu- other messages.
5. ICAO Document No. 4444-RAC/501/10, "Rules of the Air and Air Traffic Services," Part VII, Coordination, providing for flight plans submitted under Annex 2 to be forwarded to the adjacent Flight Information Region.
6. Section 91.1(b) (1) of the Federal Aviation Regulations, which requires compliance with Annex 2 to ICAO over the high seas.

The entry procedures for Cuba stated in the "International Flight Information Manual" provide for a notification, by the overflying operator, by means of a cablegram addressed to AEROCIVIL, Habana, not less than 48 hours in advance of the anticipated time of departure.

These procedures provide for specific information (such as name, nationality, and official address of the operator, name of pilot in command, air corridor to be used under the flight plan, and date of the overflight) to be included in the cablegram. Under these procedures, this information is sent to AEROCIVIL, and the reply from AEROCIVIL insures that the notification has been received, and communicates its decision in the matter. Any aircraft which is authorized to make an overflight transmits its flight plan to the Habana air traffic control center not less than 1 hour before it enters the Flight Information Region assigned to the Republic of Cuba. Finally, these procedures provide for overflying aircraft to furnish the position reports prescribed by the aeronautical authority for the area of its jurisdiction, and to make use of any services and facilities for aid to navigation that have been established or that are required under regional agreements of the ICAO or for reasons of safety.

It should be clearly noted that rescinding the applicability of § 91.101 to aircraft overflying Cuba does not eliminate the requirement of filing a flight plan for such flights. As stated above, § 99.11(a) of the Federal Aviation Regulations provides that "no person may operate an aircraft in or penetrating a coastal or

domestic ADIZ unless he has filed a flight plan with an appropriate aeronautical facility." Any flight from the United States to Cuba that penetrates an ADIZ involves the required filing of a flight plan. Also, as stated above, paragraph 3.3.1.1.2, Chapter 3, of the "International Standards, Rules of the Air" (Annex 2 to ICAO), provides for a flight plan to be filed when operating across international borders. The United States, being a member of ICAO, complies with this provision.

The mere filing of a flight plan does not insure that the Cuban Government is informed that a United States civil aircraft will overfly Cuban territory. However, FAA Order 7110.10A "Flight Services," paragraphs 790 and 1180, directs a controller to use ICAO procedures for handling flight plans and flight plan information. Therefore, pursuant to ICAO Document No. 4444-RAC/501/10 "Rules of the Air and Air Traffic Services," Part VII, "Coordination" and Part VII, "Air Traffic Messages," controllers forward flight plans to adjacent Flight Information Regions. This procedure does assure that the Cuban Government will receive necessary prior information relating to overflights.

The safe operation of U.S. civil aircraft overflying Cuba is further achieved through § 91.1(b) of the Federal Aviation Regulations. This regulation requires, with certain exceptions, that each person operating a civil aircraft of U.S. registry outside of the United States, when over high seas, shall comply with Annex 2 (Rules of the Air) to the Convention on International Civil Aviation, and, when within a foreign country, comply with the regulations relating to the flight and maneuver of aircraft there in force.

Based upon the above discussion, and for the reasons stated, the FAA believes that the applicability of § 91.101 to flights overflying Cuba should be rescinded.

Since this amendment is minor in nature, and relieves the public of a burden that was imposed in response to an international situation that no longer requires that burden, it is found that notice and public procedure hereon would serve no useful purpose and are not necessary.

In consideration of the foregoing, Part 91 of the Federal Aviation Regulations is amended, effective October 18, 1972, as hereinafter set forth.

The introductory sentence of § 91.101 is amended to read as follows:

§ 91.101 Operations to Cuba.

No person may operate a civil aircraft from the United States to Cuba unless—

* * * * *

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

Issued in Washington, D.C., on October 11, 1972.

J. H. SHAFFER,
Administrator.

[FR Doc. 72-17716 Filed 10-17-72; 8:48 am]

AT