

Federal Register

Friday
March 11, 1994

Part III

Department of
Transportation

Federal Aviation Administration

14 CFR Part 91
Airspace Reclassification; Final Rule

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 91**

[Docket No. 27633; Amendment No. 91-239]

Airspace Reclassification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action reinstates the requirement for pilots to establish and maintain two-way radio communications with an operating control tower in Class E and Class G airspace areas. This action also adds a paragraph to § 91.130 of the Federal Aviation Regulations (FAR), for simplification and clarification, that allows an aircraft operator to deviate from any provision of § 91.130 under the provisions of an air traffic control (ATC) authorization. This action is necessary to reinstate and clarify certain operating rules that existed prior to the Airspace Reclassification final rule, which became effective September 16, 1993.

EFFECTIVE DATE: This amendment is effective on March 11, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Crum, Air Traffic Rules Branch, ATP-230, Airspace-Rules and Aeronautical Information Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:**Background**

On December 17, 1991, the FAA published a final rule on Airspace Reclassification (56 FR 65638). This rule, effective September 16, 1993, in pertinent part, reclassified control zones for airports with operating airport traffic control towers (ATCT) and airport traffic areas as Class D airspace areas. Further, the rule required two-way radio communication with air traffic control in these Class D airspace areas.

Discussion

The Airspace Reclassification final rule requires two-way communication with ATCT located in Class B, C, and D airspace only. The rule deleted the requirement for pilots to establish two-way radio communications with the ATCT's (including temporary ATCT established for special aviation and emergency activities) located in areas other than Class B, C, or D airspace, i.e., Class E and G airspace. This was not the intent of the FAA.

An ATCT is established when the traffic volume and complexity warrants the need for increased services and safety. At the time the Airspace Reclassification final rule was promulgated, it was assumed that those pilots operating at airports within Class E and Class G airspace would establish radio contact with the ATCT. Additionally, the ATCT's located outside Class B, C, or D airspace were considered to have minimal levels of traffic which would not create a safety problem even though two-way communication was not mandatory. However, since the final rule was published, the FAA has received reports of incidents where pilots have not established communications with these ATCT's. Unless all pilots are in communication with the ATCT, controllers are unaware of the intentions of each aircraft, and may be unable to provide ATC services and safety advisories. Therefore, only by requiring pilots to communicate with an operating ATCT can safety be enhanced for pilots operating on or in the vicinity of an airport. This action reinstates the communication requirement for aircraft operating at airports where there is an operating ATCT, as existed in § 91.129 to September 16, 1993.

The Terminal Airspace Reclassification project required numerous amendments to the FAR's. Specifically, § 91.130, "Operations in Class C Airspace" of the FAR was one of the affected rules. Previous to the Airspace Reclassification final rule, § 91.130 included a paragraph which allowed for deviations from any provision of this section under the provisions of an ATC authorization issued by the ATC facility having jurisdiction over the airport radar service area. This paragraph now appears only in § 91.129; § 91.130 includes a statement which requires the reader to refer back to § 91.129 in order to obtain a complete understanding of the rule. This action makes the "deviation" information more accessible to the reader and will replicate the current § 91.130 as closely as practicable to the pre-Airspace Reclassification version.

The Rule

This action enhances the safety of certain aircraft operations in Class E and Class G airspace and continues the intent of the regulation which existed prior to September 16, 1993. Specifically, this rule adds § 91.126(d) and § 91.127(c) requiring all aircraft to establish two-way radio communications with an ATCT when operating an aircraft to, from, through,

or on an airport having an operational control tower. In addition, this action amends § 91.130, making the "deviation" information more accessible to the reader, and replicating the current § 91.130 as closely as practicable to the pre-Airspace Reclassification version.

Conclusion

The FAA has determined that this action: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. In addition, the FAA certifies that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act of 1980.

In the interest of flight safety, the public needs to be made immediately aware of the requirement for pilots to establish and maintain two-way radio communications with operating ATCT's that are located in Class E or G airspace areas. Therefore, I find that notice and public procedures under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Further, the FAA finds good cause, pursuant to 5 U.S.C. 553(d), for making this amendment effective in less than 30 days to promote the safe and efficient handling of air traffic in these airspace areas.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 91 of the Federal Aviation Regulations (14 CFR part 91) as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. app. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125 articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514, 35 FR 4247, 3 CFR, 1966-1970 Comp., p. 902; 49 U.S.C. 106(g).

2. Section 91.126 is amended by revising the introductory text in paragraph (b) and adding paragraph (d) to read as follows:

§ 91.126 Operating on or in the vicinity of an airport in Class G airspace.

* * * * *

(b) *Direction of turns.* When approaching to land at an airport without an operating control tower in Class G airspace—

* * * * *

(d) *Communications with control towers.* Unless otherwise authorized or required by ATC, no person may operate an aircraft to, from, through, or on an airport having an operational control tower unless two-way radio communications are maintained between that aircraft and the control tower. Communications must be established prior to 4 nautical miles from the airport, up to and including 2,500 feet AGL. However, if the aircraft radio fails in flight, the pilot in command may operate that aircraft and land if weather conditions are at or above basic VFR weather minimums, visual contact with the tower is

maintained, and a clearance to land is received. If the aircraft radio fails while in flight under IFR, the pilot must comply with § 91.185.

3. Section 91.127 is amended by adding paragraph (c) to read as follows:

§ 91.127 Operating on or in the vicinity of an airport in Class E airspace.

* * * * *

(c) *Communications with control towers.* Unless otherwise authorized or required by ATC, no person may operate an aircraft to, from, through, or on an airport having an operational control tower unless two-way radio communications are maintained between that aircraft and the control tower. Communications must be established prior to 4 nautical miles from the airport, up to and including 2,500 feet AGL. However, if the aircraft radio fails in flight, the pilot in command may operate that aircraft and land if weather conditions are at or above basic VFR weather minimums,

visual contact with the tower is maintained, and a clearance to land is received. If the aircraft radio fails while in flight under IFR, the pilot must comply with § 91.185.

4. Section 91.130 is amended by adding paragraph (e) to read as follows:

§ 91.130 Operations in Class C airspace.

* * * * *

(e) *Deviations.* An operator may deviate from any provision of this section under the provisions of an ATC authorization issued by the ATC facility having jurisdiction over the airspace concerned. ATC may authorize a deviation on a continuing basis or for an individual flight, as appropriate.

Issued in Washington, DC, on March 7, 1994.

L. Lane Speck,

Director, Air Traffic Rules and Procedures Service.

[FR Doc. 94-5775 Filed 3-10-94; 8:45 am]

BILLING CODE 4910-13-M