

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Parts 91 and 93**

[Docket No.: FAA-2002-13235; Amendment Nos. 91-273 and 93-82]

RIN 2120-AH57

Special Air Traffic Rules; Flight Restrictions in the Vicinity of Niagara Falls

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action codifies current flight restrictions for aircraft operating in U.S. airspace in the vicinity of Niagara Falls, NY. The FAA is taking this action to complement flight management procedures established for Niagara Falls by the Canadian government. The intended effect of this action is to prevent unsafe congestion of aircraft in this popular sightseeing area. The FAA is also adopting a number of editorial changes to parts 91 and 93 of Title 14, Code of Federal Regulations.

DATES: Effective on March 20, 2003.

FOR FURTHER INFORMATION CONTACT:

Terry Brown or Jan Glivings, Airspace and Rules Division, ATA-400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy of this document using the Internet by:

- (1) Using the docket number of this rulemaking to search the Department of Transportation's electronic Docket Management System (DMS) Web page (<http://dms.dot.gov/search>);
- (2) Visiting the Office of Rulemaking's Web page at <http://www.faa.gov/avr/arm/index.cfm>; or
- (3) Accessing the Government Printing Office's Web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the amendment number or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of

1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at <http://www.faa.gov/avr/arm/sbreffa.htm>, or by e-mailing us at 9-AWA-SBREFA@faa.gov.

Background

On September 4, 2002, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to codify current flight restrictions for aircraft operating in U.S. airspace in the vicinity of Niagara Falls and to make editorial changes to parts 91 and 93 of Title 14, CFR (67 FR 56740). See the preamble to the NPRM for a discussion of the following:

- Canadian flight restrictions in the area,
- Complimentary U.S. temporary flight restriction,
- The public meeting we sponsored in 1993, and
- The specifics of the proposed rule.

The background material in the NPRM also contains the basis and rationale for this final rule and, except where we have specifically expanded on the background elsewhere in this preamble, provides the justification for this final rule.

The comment period for the NPRM was open for 45 days and closed on October 21, 2002. In response to the NPRM, we received a letter containing comments from the Aircraft Owners and Pilots Association (AOPA), which is discussed below.

Discussion of Comments

In a letter dated October 18, 2002, the AOPA concurs with codifying the current U.S. temporary flight restriction in the vicinity of Niagara Falls to prevent congestion and reduce the risk of collision by sightseeing aircraft. However, the AOPA is opposed to parts of the NPRM that go beyond a simple codification of the existing temporary flight restriction. The commenter believes that certain items in the proposed regulations are advisory in nature and should not be made mandatory. The commenter identified the following parts of proposed § 93.71 as those that should remain recommendations:

- Paragraph (e)(1)—Fly a clockwise pattern,
- Paragraph (e)(2)—Do not proceed north of the Rainbow Bridge,

- Paragraph (e)(3)—Prior to joining the pattern, broadcast flight intentions on frequency 122.05 Mhz, giving altitude and position, and monitor the frequency while in the pattern,

- Paragraph (e)(6)—Anticipate heavy congestion of VFR traffic at or above 3,500 feet MSL,

- Paragraph (e)(7)—Use caution to avoid high-speed civil and military aircraft transiting the area to or from Niagara Falls Airport,

- Paragraph (f)—These procedures do not relieve pilots from the requirements of § 91.113 of this chapter to see and avoid other aircraft, and

- Paragraph (g)—Flight following, to and from the area, is available through Buffalo Approach.

The commenter asserts that including these proposed provisions in the final rule is unnecessary and inappropriate and mandating them would likely create compliance and enforcement problems. Further, there is no evidence that safety problems have occurred as a result of the procedures being recommended rather than mandated.

The FAA does not agree with the commenter that the provisions in § 93.71(e)–(f) should be advisory. These provisions establish the rules of the road for the airspace above Niagara Falls. While these provisions have been advisory under the temporary flight restriction, this rulemaking is designed to make these advisory procedures mandatory to ensure consistency with Canadian regulations and to safely manage the airspace. In addition, these provisions provide requirements that will not be available once the temporary flight restriction is withdrawn. If we were to allow these procedures to remain advisory, the possibility would exist that someone could operate contrary to all of these procedures without any repercussion, while the majority of pilots in the area would be operating in accordance with them. Such a situation could cause a significant safety problem in this airspace.

We also do not agree with the commenter's characterization of proposed § 93.71(g) as a requirement. We intend this paragraph to simply provide information. For this reason, we are not making any changes to it in this final rule.

Section-by-Section Analysis of the Final Rule

Subpart E—Flight Restrictions in the Vicinity of Niagara Falls, NY

§ 93.71 General operating procedures

The FAA is adopting a new subpart E to 14 CFR part 93 (consisting of § 93.71)