

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 25531, Amdt. No. 91-217]

Removal of the Transponder With Automatic Altitude Reporting Capability (Mode C Transponder) Requirement for Operations in the Vicinity of Hector International Airport, Fargo, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment removes the Mode C transponder requirement for operations in the vicinity of Hector International Airport, Fargo, ND, which would have become effective on December 30, 1990. This action results in the retention of the rules that are currently in effect for operations in the vicinity of Fargo, ND, and continues the present high level of safety being achieved for aircraft operations at this site.

EFFECTIVE DATE: The amendment to Appendix D of part 91 currently in effect is effective July 23, 1990. The amendment to Appendix D to become effective August 18, 1990 is effective August 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Steenson, Air Traffic Rules Branch, ATO-230, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-9246.

SUPPLEMENTARY INFORMATION:**Availability of Rule**

Any person may obtain a copy of this rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the amendment number of this final rule. Persons interested in being placed on a mailing list for future rules should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

Background

On July 21, 1988, the FAA published a Final Rule, Transponder with Automatic Altitude Reporting Capability Requirement (Amendment No. 91-203; 53 FR 23356), which revised § 91.24 of the Federal Aviation Regulations (14 CFR 91.24). In pertinent part, that rule adopted § 91.24(b)(5)(ii) which requires

the use of a Mode C transponder at certain airports for which a terminal control area (TCA) or airport radar service area (ARSA) had not been designated but where terminal radar service is provided, as listed in Appendix D of part 91. Section 91.24(b)(5)(ii) becomes effective on December 30, 1990. Hector International Airport, Fargo, ND (Hector International) was designated as one of these airports.

Part 91 will be completely revised as of August 18, 1990, (see 54 FR 34284; August 18, 1989) to renumber all of its sections. Section 91.24(b)(5)(ii) will be renumbered as § 91.215(b)(5)(ii). Hereinafter in this preamble, references to the renumbered part 91 will be shown in brackets.

An annual enplaned passenger count of at least 200,000 was established as the criterion for an airport to be considered as a candidate for the § 91.24(b)(5)(ii) [14 CFR 91.215(b)(5)(ii)] requirement. The FAA still believes that this number of enplanements per year is a reasonable threshold for the level of air carrier activity that would support the more stringent Mode C transponder requirement.

Hector International was one of the airports exceeding the required enplanements at the time the rule was issued. In Calendar Year (CY) 1986, there were 231,197 enplanements at Hector International. Since that time, the number of enplanements has significantly decreased to the point where the criterion is not met, and likely will not be met in the foreseeable future. There were 168,524 enplanements reported for CY-88, and projections are that the level of enplanements at Hector International will remain less than the established criterion.

Effect on Safety

The removal of Hector International from Appendix D of this part will not affect or compromise the high level of safety currently being achieved. At the present time, terminal radar service is provided, and aircraft operators are subject to the existing requirements that pilots of aircraft with a Mode C transponder must operate that equipment while in controlled airspace. All currently effective safety requirements will be retained, and the air traffic control services offered at Hector International will not be altered as a result of this action.

Regulatory Evaluation Summary

Executive Order (E.O.) 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if the

potential benefits to society for the regulatory change outweigh the potential costs to society. The order also requires the preparation of a Regulatory Impact Analysis of all major rules except those responding to emergency situations or other narrowly defined exigencies. A major rule is one that is likely to result in an annual effect on the economy of \$100 million or more, a major increase in consumer costs, a significant adverse effect on competition or is highly controversial.

This final rule is not major as defined in E.O. 12291, so a full Regulatory Evaluation of alternative approaches has not been prepared. A more concise Regulatory Evaluation has been prepared, however, and includes an analysis of the safety and economic consequences of this rule. This analysis is included in the docket, and it quantifies, to the extent practicable, estimated costs to the private sector, consumers, Federal, State and local governments, as well as anticipated benefits and impacts.

A summary of the Regulatory Evaluation is contained in this section. For a more detailed analysis, the reader is referred to the full evaluation contained in the docket.

Cost-Benefit Analysis

This regulatory evaluation examines the costs and benefits associated with the final rule to amend 14 CFR part 91 of the Federal Aviation Regulations. This rule removes Hector International from the list of airports in Appendix D of the Transponder With Automatic Altitude Reporting Capability (Mode C) Rule (Amendment No. 91-203; FR 23356). The list of airports in Appendix D will be subject to the Mode C transponder requirements of § 91.24(b)(5)(ii) [§ 91.215(b)(5)(ii)] as of December 30, 1990.

Costs

The FAA finds that there will be no costs associated with implementation of this rule to either society or aircraft operators for the reasons discussed below.

Impact on Society

In terms of society, this rule will not impose any additional costs in the form of a reduction in aviation safety. The current high level of safety will be continued.

According to the Mode C Transponder Rule (Amendment No. 91-203; 53 FR 23356), which was published on July 21, 1988, the Mode C transponder requirement applies to all affected aircraft that operate in TCA's, ARSA's,

and at certain airports for which a TCA or ARSA has not been designated but where terminal radar is provided. Since this rule only applies to the Mode C transponder requirement for certain operations at designated airports, only this topic will be the point of discussion in this evaluation.

An annual enplaned passenger count of at least 200,000 was established as the criterion for an airport to be considered as a candidate for the Mode C requirement. At the time the Mode C Rule was adopted, Hector International met this criterion. Since publication of the Mode C Rule, an examination of passenger enplanement data indicates that this airport no longer meets the subject criterion. In CY-1986, there were 231,197 passenger enplanements reported. However, for CY-1987 and CY-1988 there were 217,064 and 188,524 passenger enplanements, respectively. The FAA believes that the level of passenger enplanements at Hector International will in all likelihood remain less than the established criterion.

In the absence of this rule, a Mode C transponder would have been required on all affected aircraft operating in the vicinity of the subject airport by December 30, 1990. Since the annual enplaned passenger count at Hector International no longer meets the criterion (200,000 enplanements) as a designated airport, the FAA has determined that there is no need to include Hector International as a designated airport under Appendix D of part 91. With the lower number of enplaned passengers, the current high level of safety can be maintained. Thus, the incremental impact on aviation safety as the result of this rule is considered to be zero.

Impact on Aircraft Operators

In terms of aircraft operators, this rule will not impose any additional costs in the form of either Mode C transponders or circumnavigation, because the requirement for Mode C transponders for Hector International has been dropped as the result of this rule.

Benefits

The benefit of this rule is the elimination of a cost burden, while ensuring that an adequate level of aviation safety is maintained.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules which

may have a significant economic impact on a substantial number of small entities.

The small entities which could be potentially affected by the implementation of this rule are unscheduled operators of aircraft for hire owning nine or fewer aircraft.

Only those unscheduled aircraft operators without the Mode C capability to operate in Hector International would have been impacted by the original rule. This rule, however, will not impact those operators. Since this rule will not impose any costs on aircraft operators, the FAA finds that it will not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

This rule will not have an effect on the sale of foreign aviation products or services in the United States or on the sale of U.S. products or services in foreign countries. The rule will not impose costs on aircraft operators or aircraft manufacturers (U.S. or foreign) that will result in a competitive disadvantage to either.

Federalism Implications

The amendment set forth herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Effective Date and Reasons for Final Rule Without Notice

Approximately 65,000 comments were received in response to the notice of proposed rulemaking (notice) (53 FR 4306; February 12, 1988) that preceded Amendment No. 91-203. The subject of access to airports by aircraft not equipped with a Mode C transponder was addressed by many commenters. The FAA believes that it would serve little or no purpose to precede this final rule with a notice because of the extensive exposure of the subject of access to airports. Further, in the preamble to Amendment No. 91-203, the FAA established a criterion of an annual enplaned passenger count of at least 200,000 as the threshold indicator for an airport to be considered as a candidate for the requirement. Hector International no longer meets that threshold.

Since this action is adopted as a final rule in response to issues raised and

comments received, further notice and comment would result in needless delay in the relief granted and would be contrary to the public interest. Because there is no question that passenger levels at Hector International do not meet the established minimum criteria for the Mode C requirement, notice would not result in meaningful comment. Accordingly, I find that further notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Because this action relieves a restriction that would have been effective in the future, the amendment is effective upon publication.

Conclusion

In view of the estimated zero cost of compliance, coupled with the elimination of an undue cost burden without jeopardizing aviation safety, the FAA finds that this final rule is cost-beneficial.

The Rule

This amendment to part 91 of the Federal Aviation Regulations amends the Mode C transponder requirement for operation in the vicinity of Hector International and continues the rules that are currently in effect for that area.

The FAA has determined that this amendment is not a major rule under Executive Order 12291 and is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Additionally, the FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 91

Aircraft, Airports, Airspace, Air traffic control, Air transportation, Aviation Safety, Pilots, Safety.

Adoption of the Amendment

For the reasons set forth in the preamble, part 91 of the Federal Aviation Regulations (14 CFR part 91) is amended 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 31(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11524; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

Appendix D to Part 91—[Amended]

2. Appendix D of part 91 currently in effect and Appendix D of Part 91 to become effective August 18, 1990 are amended by removing the words "Hector International Airport, Fargo, ND."

Issued in Washington, DC on July 16, 1990.

James B. Busey,
Administrator.

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