

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

[Docket No. 24722, Amendment No. 91-224]

RIN 2120-AE19

**Inapplicability of Basic VFR Weather Minimums for Helicopter Operations****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule; interpretive amendment.

**SUMMARY:** This action corrects an unintended restriction on helicopter operations conducted outside of controlled airspace below 1,200 feet above the surface. Section 91.155 of the Federal Aviation Regulations, as amended, technically requires the pilot of a helicopter conducting such operations to maintain greater distances from clouds when the visibility is at or above the minimum required than when the visibility is less than the minimum required. This was not the intent of the amendment. The intent of § 91.155 is to allow helicopters to operate under visual flight rules (VFR), regardless of flight visibility, provided the other criteria of that section are met. This action clarifies the intent of the rule.

**EFFECTIVE DATE:** September 23, 1991.

**FOR FURTHER INFORMATION CONTACT:** Mr. Aaron I. Boxer, (202) 267-9241, Air Traffic Rules Branch, ATP-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

**SUPPLEMENTARY INFORMATION:****Background**

On September 29, 1989, the Federal Aviation Administration (FAA) published a final rule that revised cloud clearance minimums for fixed-wing aircraft in uncontrolled airspace (54 FR 40324). Helicopters, under the previous rule, were permitted to fly clear of clouds, regardless of flight visibility, provided the flight was conducted outside controlled airspace below 1,200 feet above the surface. The language used in the revised rule was intended to provide the same level of exemption to helicopters as existed under the old rule. Section 91.155(b)(1), provided that when the visibility is below 1 mile during the day and below 3 miles at night, helicopters may fly clear of clouds outside of controlled airspace, and below 1,200 feet above the surface, if operated at a speed that allows the pilot adequate opportunity to see any air traffic or obstruction in time to avoid a

collision. It was brought to the FAA's attention by the U.S. Army that the wording of § 91.155(b)(1) appears to restrict helicopters to the same cloud clearance criteria as airplanes when flight visibility is above 3 miles at night. This interpretation of the rule is not intended. The change to § 91.155 was made to restrict fixed-wing aircraft to the same cloud clearance and visibility requirements in uncontrolled airspace as in controlled airspace. The FAA did not intend to remove the then-existing exceptions provided to helicopters under the rule.

Helicopters have the ability to operate at lower speeds and with a significantly higher degree of maneuverability than airplanes. These qualities allow a helicopter to be operated at lower visibility and cloud clearance distances while maintaining the same degree of safety as fixed-wing aircraft flying under more restrictive minima. The exception incorporated in § 91.155 is designed to allow the pilot of a helicopter to take advantage of the aircraft's abilities while maintaining the same degree of safety. Therefore, when a helicopter operates in uncontrolled airspace below 1,200 feet above the surface the pilot need only remain clear of clouds regardless of flight visibility.

**Reason for No Notice and Immediate Adoption**

This amendment is adopted as a final rule to clarify the intent of an agency regulation. Accordingly, this amendment is exempted from the general notice and comment requirements pursuant to 5 U.S.C. 553 (B). Because this amendment simply clarifies the intent of an existing regulation, I find that good cause exists for making the amendment effective upon publication.

**Economic Evaluation**

Executive Order 12291, dated February 17, 1981, directs Federal Agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each proposed change outweigh potential costs.

There are no costs associated with this amendment. It merely clarifies the original intent to continue to allow helicopters, operating in uncontrolled airspace below 1,200 feet above the surface, to remain clear of clouds only, regardless of flight visibility.

The FAA finds that this interpretive amendment is covered by the regulatory evaluation for the final rule published September 22, 1989, and further regulatory evaluation is not required. A copy of that regulatory evaluation is filed in the FAA Rules Docket 24722.

**International Trade Impact Statement**

This rule will not impose a competitive disadvantage to either U.S. air carriers doing business abroad or foreign air carriers doing business in the United States. This assessment is based on the fact that this rule will not impose additional costs on either U.S. or foreign air carriers.

**Regulatory Flexibility Determination**

In accordance with the Regulatory Flexibility Act of 1980, the FAA has determined that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities. This assessment is based on the regulatory evaluation of the final rule published on September 22, 1989, and on the fact that this amendment will not impose any additional cost on aircraft operators.

**Federalism Implications**

The regulations adopted herein will not have any 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 final rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Paperwork Reduction Act**

This action clarifies an agency regulation and does not change any reporting requirements.

**Conclusion**

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not major under the Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). 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.

**List of Subjects in 14 CFR Part 91**

Air traffic control, Aviation safety, Flight visibility, Terminal control areas, Visual flight rules corridor.

**The Amendment**

Part 91 of the Federal Aviation Regulations (14 CFR part 91) is amended as follows:

**PART 91—[AMENDED]**

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

**Authority:** 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 (as amended by Pub. L. 100-228) 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; Pub. L. 100-202; 49 U.S.C. 100(g) (Revised Pub. L. 97-449, January 12, 1983).

2. Section 91.155(b)(1) is revised to read as follows:

**§ 91.155 Basic VFR weather minimums.**

\* \* \* \* \*

(b) \* \* \*

(1) *Helicopter.* A helicopter may be operated clear of clouds if operated at a

speed that allows the pilot adequate opportunity to see any air traffic or obstruction in time to avoid a collision.

\* \* \* \* \*

Issued in Washington, DC, on September 16, 1991.

**James B. Busey,**  
*Administrator.*

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## DEPARTMENT OF TRANSPORTATION

## 14 CFR Part 93

[Docket No. 26653; Amendment No. 93-63]

RIN 2120-AC90

## Ketchikan International Special Airport Traffic Rule

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

**SUMMARY:** This action amends the special air traffic rule at Ketchikan, Alaska, by establishing rule applicability in all portions of the Ketchikan Control Zone. The rule formerly excluded certain portions of the airspace below 600 feet mean sea level (MSL). This action also clarifies the original intent of the rule by specifying that pilots must comply with certain traffic advisory and self-announcement procedures while operating in the control zone. The FAA believes that the level of safety provided for aircraft operations in the Ketchikan area will be enhanced by this amendment.

EFFECTIVE DATE: October 23, 1991.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joseph C. White, 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**

Before 1973 when Ketchikan International Airport was opened adjacent to Ketchikan Harbor, wheeled aircraft with passengers or cargo destined for Ketchikan landed at Annette Island, about 18 miles southeast of Ketchikan International Airport, and transferred payloads to float aircraft. Float aircraft would then ferry passengers and cargo to Ketchikan and land in the harbor. Wheeled aircraft, including large turbojet aircraft, began using Ketchikan International Airport when it opened. Float aircraft continued to operate in substantial numbers in the vicinity of Ketchikan, using the harbor for surface operations.

A control zone was established at Ketchikan on May 24, 1973, and on April 8, 1976 the FAA promulgated an amendment to part 93 of the Federal Aviation Regulations (FAR) which established the Ketchikan International Airport Traffic Rule (Amendment No. 93-33, 41 FR 14879). That action affected all of the Ketchikan Control Zone

excluding that airspace below 600 feet above sea level and (a) more than 3 miles from the nearest point on Ketchikan International Airport; (b) east of a line through the center of Pennock Island, extending to the end of the ferry slip at Ketchikan International Airport, thence through Channel Island; or (c) west of a line extending from Granina Point to Vallemar Point.

On April 25, 1990, the FAA proposed to expand rule applicability to all portions of the Ketchikan Control Zone and to clarify the original intent of the rule by requiring aircraft operators to make announcements concerning their positions via two-way radio while operating in the control zone (Notice No. 90-15, 55 FR 17564). This requirement emulates established voluntary procedures that are detailed in the Airman's Information Manual (AIM) and are called "Traffic Advisory Practices at Airports Without Operating Control Towers." These procedures are customarily referred to as "Common Traffic Advisory Frequency (CTAF) procedures."

The comment period for this proposal closed on May 29, 1990. One comment was received in the docket.

**Discussion of Comment**

The commenter stated that the Ketchikan Control Zone is adequate as it is and need not be changed.

The FAA did not propose to alter the description of the control zone at Ketchikan. The FAA did propose to expand applicability of the existing special air traffic rule to those portions of the control zone which had been excluded from its provisions. The proposal also would require pilots operating within the affected airspace to comply with CTAF procedures. It should be noted that the AIM procedures identified above advises pilots to monitor and communicate on the CTAF from 10 miles from the airport until landing. The FAA believes that the level of safety provided for aircraft operations in the Ketchikan area will be enhanced by this amendment.

**Regulatory Evaluation Summary****Introduction**

This section summarizes the full regulatory evaluation prepared by the FAA that provides more detailed estimates of the economic consequences of this final rule. This summary and the full evaluation quantify, to the extent practicable, estimated costs to the private sector, consumers, Federal, State and local governments, as well as anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. 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.

The FAA has determined that this rule is not major as defined in the executive order; therefore, a full regulatory analysis, that includes the identification and evaluation of cost-reducing alternatives to the final rule has not been prepared. Instead, the agency has prepared a more concise document, termed a regulatory evaluation, that analyzes only this final rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains a final regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96-354) and an international trade impact assessment. If more detailed economic information is desired than is contained in this summary, the reader is referred to the full regulatory evaluation contained in the docket.

**Costs**

The FAA estimates that no monetary costs will accrue from implementing this rule. However, some aircraft operators may incur non-monetary (or qualitative) costs in the form of an inconvenience of having to comply with procedures for making announcements concerning their positions via two-way radio on the CTAF.

For the FAA, this rule will not impose any additional administrative costs for either personnel or equipment. Any additional operations workload generated by this rule will be absorbed by current personnel and equipment resources that are already in place at the Ketchikan Flight Service Station (FSS).

The only potential monetary costs to aircraft operators will be the purchase of two-way radio equipment. However, all aircraft operators who taxi onto the runway at Ketchikan International Airport or use the Ketchikan Control Zone, including the area of exclusion, are assumed to have the necessary operational two-way radio equipment to

comply with the CTAF procedures. This assumption is based on the fact that the vast majority of aircraft that fly in and out of Ketchikan are operated commercially and already have operational two-way radios to maintain contact with their companies. Furthermore, all aircraft operators, commercial or not, who taxi onto the runway at Ketchikan International Airport or operate within the Ketchikan Control Zone above 600 feet MSL are required to establish two-way radio communications and receive a traffic advisory from the FSS. Thus, they already must have operational two-way radios to comply with current regulations.

On a non-monetary basis, the FAA does recognize that potential costs could accrue from this rule in the form of inconvenience to aircraft operators who do not routinely comply with CTAF procedures at all times while inside the control zone. The potential inconvenience to aircraft operators will be the requirement to comply with CTAF procedures at all times when they would prefer not to do so. There also is the potential for inconvenience for those aircraft operators who operate within the area of exclusion since current regulations do not require them to comply with CTAF procedures. The FAA solicited comments and information in the notice to this rule regarding the extent that potential costs, both monetary and non-monetary, might be imposed. Only one commenter responded to the notice. The commenter did not address the potential costs that could be imposed by the notice. As the result of this rule, the FAA contends that the potential cost of inconvenience will more than likely be negligible.

#### *Benefits*

This rule is expected to accrue potential benefits primarily in the form of enhanced safety to the aviation community. Such safety, for example, will take the form of reduced casualty losses (namely, aviation fatalities and property damage) resulting from a lowered likelihood of midair collisions. This increase in aviation safety within the Ketchikan Control Zone will be achieved in two ways: (1) By eliminating the 600-foot MSL area of exclusion and (2) by establishing two-way radio communications in accordance with CTAF Procedures. Both areas of safety improvement are discussed in detail below.

#### *Two-way Radio Communications*

This action is expected to enhance aviation safety by requiring aircraft operators to engage in two-way radio

communications in accordance with CTAF procedures while in the Ketchikan Control Zone. Combined flight operations at Ketchikan International Airport and at Ketchikan Harbor have reached over 100,000 annually. This large volume of air traffic includes a mixture of general aviation aircraft (both wheeled and float) and large turbojet-type aircraft. Enhanced aviation safety will be achieved by requiring anyone who operates any of these types of aircraft in any airspace below 3,000 feet MSL within the Ketchikan Control Zone or taxis onto the runway at Ketchikan International Airport to monitor the advisory frequency at all times while operating within the specified airspace. This action will ensure the safety of all aircraft operating within the Ketchikan Control Zone by providing aircraft operators with enough traffic and other advisory information necessary to navigate safely within the entire perimeter of the control zone.

#### *Elimination of the Area of Exclusion*

Enhanced aviation safety is expected to accrue because this rule will eliminate the 600-foot MSL area of exclusion of the Ketchikan Control Zone. The current exclusion of aircraft operating below 600 feet MSL from participating in the special air traffic rules and communication requirements of the control zone is a concern among the Ketchikan aviation community and the FAA. This area of exclusion poses an unnecessary and unwarranted decline in the margin of safety, as evidenced by a midair collision that occurred on August 12, 1987, between a Hughes helicopter and a Cessna 185 within the area of exclusion. During the ensuing investigation, it was revealed that some pilots inbound to Ketchikan make initial contact with the FSS to receive advisories and then change frequencies to communicate with their companies.

This practice is dangerous because of the potential risk to aviation resulting from pilots leaving themselves unaware of changing air traffic information. The air traffic information is pertinent to the safety of pilots as well as other aircraft operators. The AIM cautioned pilots against this unsafe practice. Company communications can be adequately accomplished before entering the congested area or after landing.

The FAA believes that this rule to eliminate the area of exclusion, coupled with the requirement to comply with CTAF Procedures, will increase the safety level of the Ketchikan Control Zone. It is difficult to forecast this safety increase in monetary terms. Since

October 1, 1982, one actual midair collision and one near midair collision have occurred in the Ketchikan area. Although it was not determined whether one or both pilots involved in the midair collision had discontinued monitoring the FSS frequencies, the accident investigation revealed that this unsafe practice was done routinely by local pilots to communicate with their companies. For the purpose of this evaluation, the Ketchikan accident will serve as the FAA's best indication, over the next 10 years, of the potential benefits of this rule.

The potential benefits, in monetary terms, associated with avoiding a midair collision similar to the one that occurred in Ketchikan could amount to an estimated \$3.4 million (\$2.1 million discounted) in 1989 dollars. This figure represents \$3 million for the two fatalities and \$392,000 for property damage, namely the Hughes helicopter that was destroyed. (To provide public and government officials with a benchmark comparison of expected safety benefits of rulemaking actions with estimated costs and benefits in dollars, the DOT currently uses a value of \$1.5 million to statistically represent a human fatality avoided.)

The FAA strongly believes this rule will help to reduce the probability of a midair collision, especially in an area of increasing traffic levels. The FAA believes there is a lower likelihood that an accident of the magnitude that occurred in Ketchikan, which amounted to an estimated \$3.4 million in monetary damages, will happen again within the next 10 years. This figure represents a conservative estimate due to uncertainty, but it can be viewed as the equivalent of saving at least two lives and one aircraft.

#### *Conclusion*

The estimated cost of this rule is negligible over the next 10 years because no costs will be incurred due to additional equipment or personnel on the part of either the FAA or aircraft operators. In non-monetary terms, aircraft operators are expected to incur negligible inconvenience cost as a result of the requirement to comply with CTAF procedures.

The potential benefits of this rule will be the enhancement of safety by requiring aircraft operators to be more aware, via compliance with CTAF procedures, of traffic and other advisory information necessary to navigate safely within the Ketchikan Control Zone. Another form of enhanced safety will be the elimination of the area of exclusion that exists from the ground up to 600 feet

MSL. The potential benefits, in monetary terms, associated with avoiding a midair collision during the next 10 years similar to the one that occurred in Ketchikan could amount to an estimated \$3.4 million (\$2.1 million, discounted 10 percent).

On balance, the FAA has determined that this rule is cost-beneficial.

#### Final 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 that may have "a significant economic impact on a substantial number of small entities."

The small entities that could be potentially affected by the implementation of this rule are unscheduled operators of aircraft for hire that own, but do not necessarily operate, nine or fewer aircraft.

Only those small entities without operational two-way radios will potentially be affected by this amendment. However, the FAA assumes that all potentially affected aircraft are already equipped with operational two-way radios. This assumption is based on the fact that these small aircraft operators routinely fly in and out of the Ketchikan Control Zone, where they are required by the present air traffic rule, to establish two-way radio communications with the Ketchikan FSS. Therefore, the FAA believes this amendment will not have a significant economic impact on a substantial number of small entities.

#### International Trade Impact Assessment

This amendment will neither have an effect on the sale of foreign aviation products or services in the United States, nor will it have an effect on the sale of U.S. products or services in foreign countries. The amendment will neither impose costs on aircraft operators nor aircraft manufacturers (U.S. or foreign) that will result in a competitive disadvantage to either.

#### Federalism Determination

The requirements adopted 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 will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not major under Executive Order 12291. In addition, the FAA certifies that this rule 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. This rule is considered nonsignificant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). A regulatory evaluation of the final rule, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "**FOR FURTHER INFORMATION CONTACT.**"

#### The Rule

Effectively, the FAA is amending the Ketchikan International Special Airport Traffic Rule by applying it to all portions of the control zone. Additionally, when the Ketchikan FSS is not operating, pilots will be required to comply with certain CTAF procedures while operating in the Ketchikan Control Zone.

#### List of Subjects in 14 CFR Part 93

Airports, Air traffic control, Alaska, Aviation safety, Navigation (air).

#### The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 93 of the Federal Aviation Regulations (14 CFR part 93) as follows:

#### PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

1. The authority citation for part 93 is revised to read as follows:

Authority: 49 U.S.C. App. 1302, 1303, 1348, 1354(a), 1421(a), and 1424, 2402, and 2424; 49 U.S.C. 106 (Revised Pub. L. 97-449, January 12, 1983).

2. Section 93.151 is revised to read as follows:

#### § 93.151 Applicability.

This subpart prescribes special air traffic rules and communication requirements for persons operating aircraft under VFR—

(a) To, from, or in the vicinity of the Ketchikan International Airport or Ketchikan Harbor.

(b) Within the airspace below 3,000 feet MSL within the perimeter defined for the Ketchikan Control Zone, regardless of whether that control zone is in effect.

3. Section 93.153 is revised to read as follows:

#### § 93.153 Communications.

(a) When the Ketchikan Flight Service Station is in operation, no person may operate an aircraft within the airspace specified in § 93.151, or taxi onto the runway at Ketchikan International Airport, unless that person has established two-way radio communications with the Ketchikan Flight Service Station for the purpose of receiving traffic advisories and continues to monitor the advisory frequency at all times while operating within the specified airspace.

(b) When the Ketchikan Flight Service Station is not in operation, no person may operate an aircraft within the airspace specified in § 93.151, or taxi onto the runway at Ketchikan International Airport, unless that person continuously monitors and communicates, as appropriate, on the designated common traffic advisory frequency as follows:

(1) *For inbound flights.* Announces position and intentions when no less than 10 miles from Ketchikan International Airport, and monitors the designated frequency until clear of the movement area on the airport or Ketchikan Harbor.

(2) *For departing flights.* Announces position and intentions prior to taxiing onto the active runway on the airport or onto the movement area of Ketchikan Harbor and monitors the designated frequency until outside the airspace described in § 93.151 and announces position and intentions upon departing that airspace.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, if two-way radio communications failure occurs in flight, a person may operate an aircraft within the airspace specified in § 93.151, and land, if weather conditions are at or above basic VFR weather minimums.

Issued in Washington, DC, on September 16, 1991.

James B. Busey,  
Administrator.

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