



[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

Docket No. FAA-2011-1396

RIN 2120-AK10

Operations in Class D Airspace

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is removing the provision describing an abbreviated taxi clearance. Previously, air traffic controllers issued abbreviated taxi instructions to aircraft en route to their assigned departure runway, which allowed pilots to cross all runways that intersected the taxi route to their departure runway. The FAA no longer uses these abbreviated taxi clearances and is removing the provision of the regulation that describes this clearance. This action aligns the regulation with current air traffic control practice and responds to the National Transportation Safety Board (NTSB) Safety Recommendation Numbers A-00-67 and -68.

DATES: Effective [INSERT FEDERAL REGISTER PUBLICATION DATE].

Submit comments on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Send comments identified by docket number FAA-2011-1396 using any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.
- Mail: Send comments to Docket Operations, M-30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE., Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.
- Hand Delivery or Courier: Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: Fax comments to Docket Operations at 202-493-2251.

Privacy: The FAA will post all comments it receives, without change, to <http://www.regulations.gov>, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the Federal Register published on April 11, 2000 (65 FR 19477-19478), as well as at <http://DocketsInfo.dot.gov>.

Docket: Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For questions concerning this rule, contact Ellen Crum, Airspace, Regulations and ATC Procedures Group, Air Traffic Organization, Mission Support Services, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8783; facsimile (202) 267-9328, e-mail; Ellen.Crum@faa.gov.

SUPPLEMENTARY INFORMATION:

Authority for this Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Acting Administrator, including the authority to issue, rescind, and revise regulations. Subtitle VII, Aviation Programs, describes, in more detail, the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Chapter 401, Section 40103 (b), which allows the Acting Administrator to regulate the use of the navigable airspace as necessary to ensure the safety of aircraft and the efficient use of airspace. Additionally, Subtitle VII, Part A, Subpart III, Chapter 447, Section 44701 (c) authorizes the Acting Administrator to carry out functions in this chapter in a way that helps to reduce or eliminate the possibility or recurrence of accidents in air transportation.

I. Background

In January 1990, the National Transportation Safety Board (NTSB) recommended that the FAA take action to address safety issues involving runway incursions and near-

collision ground incidents.¹ That recommendation followed several high-profile incidents, including a 1990 ground collision at Atlanta Hartsfield Airport between an Eastern B727 and a King Air (resulting in one fatality and one injury).

On August 15, 2007, an FAA “Call to Action” committee issued several recommendations to address improving runway safety across the National Airspace System (NAS). The committee identified taxi clearances as a key area of concern. Following the committee’s recommendations, the FAA convened a Safety Risk Management (SRM) panel of subject matter experts to review the committee’s recommendations, including the NTSB recommendation to eliminate the issuance of a "taxi to" clearance found in 14 CFR 91.129(i).

NTSB Safety Recommendations A-00-67 and A-00-68 were reiterated in an NTSB Safety Recommendation, dated August 28, 2007, following the 2006 crash of Comair flight 5191, CL-600, which crashed during takeoff from Blue Grass Airport (LEX), Lexington, KY. The NTSB determined that a contributor to the probable cause of that accident, in which the flight crew was instructed to take off from runway 22 but began its takeoff roll on runway 26, was the FAA’s failure to require that all runway crossings be authorized only by ATC clearances specific to the runway.

On September 11, 2008, the SRM panel issued its “Explicit Runway Crossing Clearances Safety Risk Management Document (SRMD),” which contained a proposal “to implement explicit runway crossing clearances per NTSB recommendation A-00-67.”

¹ NTSB Safety Recommendations A-00-67 and A-00-68 on July 6, 2000. These actions recommended that the FAA require that all runway crossing be authorized only by specific air traffic control clearance and ensure that all U.S. pilots and personnel assigned to move aircraft and pilots operating under 14 CFR part 129 receive adequate notification of the change. The NTSB further recommended that when an aircraft needs to cross multiple runways, air traffic controllers must issue an explicit crossing instruction for each runway after the previous runway has been crossed.

In response to the NTSB's recommendation and effective June 30, 2010, the FAA implemented changes to the procedures for issuing taxi and ground movement instructions. The changes subsequently were incorporated into FAA Orders, JO 7110.65 Air Traffic Control and JO 7210.3 Facility Operation and Administration.

II. Immediately Adopted Final Rule

This action revises paragraph (i) of §91.129 by removing the sentences that describe a "clearance to 'taxi to' the takeoff runway assigned to the aircraft." This language is contradictory to current air traffic control procedures and could lead to confusion and incorrect pilot expectations. Removing this provision does not alter the requirement to have an appropriate ATC clearance. The FAA will continue to require all aircraft to receive an ATC clearance prior to entering any taxiway or runway.

The FAA finds, under 5 U.S.C. § 553(b), that notice and public comment are impracticable and contrary to the public interest. Furthermore, the FAA finds that good cause exists under 5 U.S.C. § 553(d) to make this rule effective upon publication. The changes to this section align the rule with current air traffic procedures and will not adversely affect the flow of taxiing aircraft. As this rule does not change the requirement to have an ATC clearance prior to taxiing, this amendment will not adversely impact safety and will avoid confusion that can be caused between contradictory regulations and ATC procedures. Nonetheless, the FAA invites parties to comment on this proceeding. A separate notice will be issued by the FAA addressing any comments received.

III. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 directs that each Federal agency shall

propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Public Law 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Public Law 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this rule. The reasoning for this determination follows:

The changes to this section align the rule with current air traffic procedures and will not adversely affect the flow of taxiing aircraft. As this rule does not change the requirement to have an ATC clearance prior to taxiing, this amendment will not adversely impact safety and will avoid confusion that can be caused between

contradicting regulations and ATC procedures. Further this rule responds to NTSB recommendations and to the August 15, 2007 FAA “Call to Action” Committee recommendations to address improving runway safety across the National Airspace System. That committee identified taxi clearances as a key area of concern. This action improves safety at no additional cost.

The FAA has, therefore, determined that this rule is not a “significant regulatory action” as defined in section 3(f) of Executive Order 12866, and is not “significant” as defined in DOT's Regulatory Policies and Procedures.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Public Law 96-354) (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.” The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA

provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear. This rule aligns the agency's regulations with current practice, responds to NTSB Safety Recommendation Numbers A-00-67 and A-00-68, and with no change in existing procedures there are no additional costs.

Therefore as the FAA Acting Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Public Law 96-39), as amended by the Uruguay Round Agreements Act (Public Law 103-465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this rule and determined that it will have only a domestic impact and therefore has no effect on international trade.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal

mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of \$143.1 million in lieu of \$100 million. This rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this immediately adopted final rule.

F. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

IV. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA analyzed this immediately adopted final rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities

among the various levels of government, and, therefore, does not have Federalism implications.

B. Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this immediately adopted final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a “significant energy action” under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

V. How To Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document may be obtained by using the Internet —

1. Search the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visit the FAA’s Regulations and Policies Web page at http://www.faa.gov/regulations_policies/ or
3. Access the Government Printing Office’s Web page at <http://www.gpo.gov/fdsys/>.

Copies may also be obtained by sending a request (identified by amendment or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680.

B. 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. A small entity with questions regarding this document may contact its local FAA official, or the person listed under the FOR FURTHER INFORMATION CONTACT heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit http://www.faa.gov/regulations_policies/rulemaking/sbre_act/

List of Subjects in 14 CFR Part 91

Afghanistan, Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Canada, Cuba, Ethiopia, Freight, Mexico, Noise control, Political candidates, Reporting and recordkeeping requirements and Yugoslavia.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations 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. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180).

2. Amend §91.129 by revising paragraph (i) to read as follows:

§91.129 Operations in Class D airspace.

* * * * *

(i) Takeoff, landing, taxi clearance. No person may, at any airport with an operating control tower, operate an aircraft on a runway or taxiway, or take off or land an aircraft, unless an appropriate clearance is received from ATC.

Issued in Washington, DC, on April 19, 2012.

Michael P. Huerta

Acting Administrator

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