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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket Nos.: FAA-2020-0772 and FAA-2018-0954; Amdt. No. 93-103]

RIN 2120-AL65

**Extension of the Requirement for Helicopters to Use the New York North Shore
Helicopter Route**

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule amends the expiration date of the final rule requiring pilots operating civil helicopters under Visual Flight Rules to use the New York North Shore Helicopter Route when operating along that area of Long Island, New York. The current rule expires on August 6, 2020. The FAA finds it necessary to extend the rule for an additional two years.

DATES: Effective August 5, 2020 through August 5, 2022.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see “How to Obtain Additional Information” in the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Sheri Edgett-Baron, Airspace Rules and Regulations, Air Traffic Organization, AJV-P2; Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267-8783; e-mail 9-NATL-NY-NorthShore@faa.gov.

SUPPLEMENTARY INFORMATION:

Good Cause for Immediate Effectiveness

Section 553(d) of the Administrative Procedure Act (APA) (5 U.S.C.) generally requires that the publication or service of a substantive rule shall be made not less than 30 days before its effective date. Section 553(d)(3) provides an exception to this general requirement when the agency finds good cause to waive the delay in the effective date. The current rule expires on August 6, 2020, and this extension of the rule maintains the status quo. To prevent confusion among pilots using the route and avoid disruption of the current operating environment from a temporary lapse of the requirement for helicopters to use the New York North Shore Helicopter Route, the FAA finds that good cause exists to make this rule immediately effective.

Authority

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

The FAA's authority for this rule is contained in 49 U.S.C. 40103 and 44715. Under section 40103(b)(2), the FAA Administrator has authority to prescribe air traffic regulations on the flight of aircraft (including regulations on safe altitudes) for, among other purposes, navigating aircraft and protecting individuals and property on the ground. In addition, section 44715(a) provides that, to relieve and protect the public health and welfare from aircraft noise, the FAA Administrator has authority to prescribe regulations to control and abate aircraft noise.

I. Background

In 2012, in response to concerns from local residents regarding noise from helicopters operating over Long Island, the FAA issued the New York North Shore Helicopter Route final

rule (77 FR 39911, July 6, 2012). The Rule required civil helicopter pilots operating Visual Flight Rules (VFR), whose route of flight takes them over the north shore of Long Island between the Visual Point Lloyd Harbor (VPLYD) waypoint and Orient Point (VPOLT), to use the North Shore Helicopter Route, as published in the New York Helicopter Chart (the Chart). The Rule was promulgated to maximize use of the route, as published per the Chart, to secure and improve upon decreased levels of noise that had been voluntarily achieved. The Rule permits pilots to deviate from the route and altitude requirements when necessary for safety, weather conditions, or transitioning to or from a destination or point of landing. The Rule is based on a voluntary VFR route that the FAA developed, working with the Eastern Region Helicopter Council. The voluntary route originally was added to the Chart on May 8, 2008.

The Rule has been extended twice without substantive change. It is currently in effect through August 6, 2020.¹

II. FAA Reauthorization Act of 2018

Section 182 of the FAA Reauthorization Act of 2018 (Pub. L. 115-254, October 5, 2018) directed the FAA to hold a public hearing to solicit feedback on the Rule from impacted communities and to provide notice of, and an opportunity for, at least 60 days of public comment regarding the Rule.

On November 2, 2018, the FAA opened the 60-day comment period and announced three public meetings in the Federal Register.² The FAA subsequently announced a fourth public

¹ *The Extension of the Expiration Date of the New York North Shore Helicopter Route*, 79 FR 35488 (June 23, 2014); *Extension of the Requirement for Helicopters to Use the New York North Shore Helicopter Route*, 81 FR 48323 (June 25, 2016).

² *Request for Comments on Requirement for Helicopters To Use the New York North Shore Helicopter Route*, 83 FR 55133 (Nov. 2, 2018), and *Notification of Public Meetings on Requirement for Helicopters To Use the New York North Shore Helicopter Route*, 83 FR 55134 (Nov. 2, 2018).

meeting on December 12, 2018.³ The meetings were held on Long Island in locations along the North Shore Route and in Queens where helicopters turn east to pick up the route. The meetings and comment period were also announced on social media and through a press release, and local elected officials were informed. The meetings were held using a workshop format where subject matter experts from the FAA are available to speak with members of the public to answer their questions. The public also had the ability to provide comments at the meetings. Comments provided at these meetings were added to the public comment docket.⁴

The purpose of the meetings and the comment period was to assist the FAA in assessing and understanding the impacts of the Rule and any potential implications of modifying it. To help the public focus on the issues, FAA invited responses to the following four questions, which were stated in the FAA's November 2, 2018 Federal Register notice:

1. Did implementation of the Rule result in more or less helicopter noise in your community compared to levels you experienced prior to implementation of the Rule?
2. How and when do helicopter operators deviate from the Rule?
3. Are there alternative or supplemental routes that you believe will reduce the noise impacts without jeopardizing the safe operation of aircraft?
4. Should the Rule be extended, modified, or allowed to expire in 2020?

At the close of the comment period on January 2, 2019, the FAA had received a total of 417 comments, of which 396 were unique. Most of the comments the FAA received were from private citizens. The FAA also received comments from representatives of local governments

³ *Notification of Replacement Public Meeting on Requirement for Helicopters To Use the New York North Shore Helicopter Route*, 83 FR 63817 (Dec. 12, 2018).

⁴ FAA Docket No. FAA-2018-0954.

and civic associations. The largest portion of the comments came from people and communities on the East End of Long Island.

III. Overview and Disposition of Comments

The vast majority of commenters who addressed the first question complained about increased noise since the Rule's inception. A little more than half of the comments related the increased noise to the Rule. Without additional data and analysis, however, it is difficult to determine whether an increase in the level of activity or the Rule is the greatest contributing factor to the increase in noise complaints.

Approximately half of the commenters responded to the question regarding helicopters deviating from the Rule. The comments demonstrate that people believe pilots regularly deviate from the North Shore Route, including altitude requirements. The comments indicate that people perceive that deviations are commonplace.

Part of this belief may be a general misunderstanding of what the Rule requires. The Rule permits deviations from the route for safety, weather conditions, or transitioning to or from a destination or point of landing. Additionally, commenters appear to believe mistakenly that the altitude requirements of the route apply even after helicopters depart the route to transition to their destination.

The FAA received over 200 comments with respect to alternate or supplemental routes that may reduce noise. About half of these comments recommended a southern route over the Atlantic Ocean. These commenters believed that a southern route would minimize flight over land. Other commenters believed that the route should require helicopters to navigate around Orient Point or Plum Island; that is, that the route should eliminate deviations to transition to or

from a destination or point of landing. Still other commenters suggested that helicopters should be required to use both an all-water north shore route and a south shore route. Some of these commenters suggested that the north shore route be used in one direction and the south shore route be used in the other direction.

While most commenters expressed a desire for FAA to modify the route, there is no consensus as to how the route should be modified. The FAA finds that more engagement with stakeholders is necessary before a new or modified route acceptable to all stakeholders could be created and incorporated into the regulations, should the FAA determine that any further regulation is necessary. FAA also notes that East Hampton Airport will no longer be subject to grant obligations in September 2021,⁵ and the Town of East Hampton, which is the operator of East Hampton Airport, has indicated that when its grant obligations expire, it may close the airport or convert it to a private use airport.⁶ As a private use airport, East Hampton may be able to impose limits on operations (e.g., limits on the number of operations per day or limits on the time of day that aircraft may operate) that public use airports⁷ cannot impose without complying with the Aircraft Noise and Capacity Act of 1990 (49 U.S.C. 47521 et seq.).⁸

⁵ Grant obligations are assurances that an airport provides in exchange for receiving federal grants to improve the airport. Among the grant assurances are prohibitions on restricting access to the airport based on noise and the obligation to keep the airport open until the grant obligations expire.

⁶ A private use airport is a publicly owned or privately owned airport not open to the public. *Airport Compliance Manual*, FAA Order 5190.6B, Appendix A, at 324 (2009).

⁷ A public use airport is an airport used or intended to be used for public purposes. 49 U.S.C. 47102(20)-(21).

⁸ See also implementing regulations at 14 CFR part 161.

Additionally, the Eastern Region Helicopter Council, which represents the majority of commercial helicopter operators providing service to the East End of Long Island, agreed to fly an all-water route around Orient Point for the 2020 summer season.⁹

Before considering any modification to the route, FAA would want to consider how flying an all-water route impacts residents and operators, particularly with respect to safety. Furthermore, before considering modifying the route or creating a southern route, FAA would need a better understanding of the likelihood that East Hampton Airport will close or be converted to a private use airport. It would not be efficient or effective to design a new route based on current conditions when those conditions may no longer exist by the time a new route and rulemaking are complete.

Finally, FAA asked commenters whether the Rule should be extended, modified, or allowed to expire in August 2020. Virtually all of the comments FAA received in response to this question suggested that the Rule should either expire or be modified. Many of the comments mirrored the comments regarding alternate or supplemental routes. Some of the comments suggested modifications unrelated to the route and thus are outside of the scope of this rulemaking. With respect to the comments that suggested modifying the Rule, as discussed above, the lack of consensus and the changing circumstances argue against a modification of the Rule at this time.

Other commenters suggested that FAA should impose higher minimum altitudes. While higher minimum altitudes could result in less noise in certain areas, it could also spread noise

⁹ See <https://www.27east.com/southampton-press/helicopter-firms-agree-to-fly-new-noise-abatement-routes-into-east-hampton-airport-1686302/>

over larger areas. Requiring helicopters to maintain higher altitudes until in close proximity to an airport would require pilots to make specialized steep approaches at much lower airspeeds than most operations require. These landings could take three to four times longer than a standard approach and landing, causing a corresponding increase in noise levels and duration.

Still others comments suggested that Instrument Flight Rules (IFR) routes should be required. IFR routes would not necessarily change the location of aircraft and could have the impact of concentrating aircraft on the IFR route. Finally, some commenters suggested that the ability to deviate from the Rule be eliminated, even for weather and safety. FAA finds that modifying the Rule to eliminate deviations for weather and safety would create unsafe and potentially hazardous conditions.

IV. Discussion of Final Rule

This final rule extends for an additional two years the requirement for pilots of civil helicopters to use the North Shore Helicopter Route when transiting along the north shore of Long Island. The FAA considered the comments received, and expects that two years will provide a sufficient time to assess route modifications identified by commenters and whether a new or modified route should be created and incorporated into regulation. Additionally, this period of time will allow the FAA to evaluate the effects of the all-water route around Orient Point resulting from the voluntary agreement by the Eastern Region Helicopter Council, and the effects of any changes implemented by East Hampton Airport once it ceases to be a grant obligated airport in 2021. Extending the requirement to use the North Shore Helicopter Route during this period will continue to foster maximum use of the North Shore Helicopter Route and avoid disruption of the current operating environment. Therefore, the FAA finds that a two-year extension of the current rule is warranted.

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several analyses. First, Executive Orders 12866 and 13563 direct 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. In addition, DOT rulemaking procedures in 49 CFR part 5 instruct DOT agencies to issue a regulation upon a reasoned determination that benefits exceed costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), as codified at 5 U.S.C. 603 et seq., requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act of 1979 (Pub. L. 96-39), as codified in 19 U.S.C. Chapter 13, prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements 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 (Pub. L. 104-4), as codified in 2 U.S.C. Chapter 25, 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). The FAA also analyzes this regulation under the Paperwork Reduction Act. This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

In conducting these analyses, the FAA has determined this rule is not a significant regulatory action, as defined in section 3(f) of Executive Order 12866 and under DOT rulemaking procedures. As notice and comment under 5 U.S.C. 553 are not required for this final

rule, the regulatory flexibility analyses described in 5 U.S.C. 603 and 604 regarding impacts on small entities are not required. This rule will not create unnecessary obstacles to the foreign commerce of the United States. This rule will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector, by exceeding the threshold identified previously.

This final rule amends the expiration date of the final rule requiring pilots operating civil helicopters under Visual Flight Rules to use the New York North Shore Helicopter Route when operating along that area of Long Island, New York. As previously discussed, the FAA finds it necessary to extend the Rule for an additional two years to preserve the current operating environment while allowing sufficient time for the FAA to assess route modifications identified by commenters and whether a new or modified route could be created and would be appropriate for incorporation into regulation.

The FAA determined the 2012 final rule would impose minimal costs because many of the existing operators were already complying with the final rule requirements. In addition, the FAA based the 2012 final rule on a voluntary route developed by the FAA working with the Eastern Region Helicopter Council—the FAA added the voluntary route to the New York Helicopter Chart on May 8, 2008. The 2012 final rule also permits deviations from the route for safety, weather conditions, or transitioning to or from a destination or point of landing. The FAA extended the 2012 final rule in 2014 and 2016 without any substantive change. As this final rule further extends the 2012 final rule requirements without change, the FAA expects it will not impose additional costs.

Therefore, the FAA has determined that this final 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, in 5 U.S.C. 605(b), provides that a regulatory flexibility analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities. The agency head must also include a statement providing the factual basis for this certification.

The FAA Administrator certifies that this final rule will not have a significant economic impact on a substantial number of small entities, for the following reasons. With this final rule, the regulatory provisions already in place will be extended two years to provide the FAA with time to assess route modifications identified by commenters and whether a new or modified route could be created and incorporated into regulation. The final regulatory flexibility analysis for the 2012 final rule determined that it had a minimal cost impact on a substantial number of small entities. This final rule extends those requirements. Thus, the FAA expects a minimal economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Public Law 96-39) 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 this Act, 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 final rule and determined that the

Rule will preserve the current operating environment and is not considered an unnecessary obstacle to foreign commerce.

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 \$155 million in lieu of \$100 million.

This final 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 USC 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 final rule.

F. International Compatibility and Cooperation

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 this regulation.

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor,

security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

G. Environmental Analysis

FAA Order 1050.1F, “Environmental Impacts: Policies and Procedures,” identifies FAA actions that, in the absence of extraordinary circumstances, are categorically excluded from requiring an environmental assessment (EA) or environmental impact statement (EIS) under the National Environmental Policy Act. This rule qualifies for the categorical exclusion in paragraph 5-6.6.f of that Order, which includes “[r]egulations. . . excluding those that if implemented may cause a significant impact on the human environment.” There are no extraordinary circumstances that warrant preparation of an EA or EIS.

IV. Executive Order Determinations

A. Executive Order 12114, Environmental Effects Abroad of Major Federal Actions

The FAA has analyzed this action under Executive Order 12114, Environmental Effects Abroad of Major Federal Actions (44 FR 1957, January 4, 1979), and DOT Order 5610.1C, Paragraph 16. Executive Order 12114 requires the FAA to be informed of environmental considerations and take those considerations into account when making decisions on major Federal actions that could have environmental impacts anywhere beyond the borders of the United States. The FAA has determined that this action is exempt pursuant to Section 2-5(a)(i) of Executive Order 12114 because it does not have the potential for a significant effect on the environment outside the United States.

In accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 8-6(c), the FAA has prepared a memorandum for the record stating the reason(s) for this determination and has placed it in the docket for this rulemaking.

B. Executive Order 13132, Federalism

The FAA has analyzed this 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.

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

The FAA analyzed this 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.

D. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

E. Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

VI. How to Obtain Additional Information

A. Availability of Rulemaking Documents

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

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

<https://www.govinfo.gov/>.

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW, Washington, D.C. 20591, or by calling (202) 267-9677.

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, visit https://www.faa.gov/regulations_policies/rulemaking/sbre_act/.

List of Subjects in 14 CFR Part 93

Air traffic control, Airspace, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of Title 14 of the Code of Federal Regulations as follows:

PART 93-SPECIAL AIR TRAFFIC RULES

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

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44715, 44719, 46301.

2. Revise Subpart H to read as follows:

Subpart H—Mandatory Use of the New York North Shore Helicopter Route

Sec.

93.101 Applicability.

93.103 Helicopter operations.

§ 93.101 Applicability.

This subpart prescribes a special air traffic rule for civil helicopters operating VFR along the North Shore, Long Island, New York, between August 5, 2020, and August 5, 2022.

§ 93.103 Helicopter operations.

(a) Unless otherwise authorized, each person piloting a helicopter along Long Island, New York's northern shoreline between the VPLYD waypoint and Orient Point, shall utilize the North Shore Helicopter route and altitude, as published.

(b) Pilots may deviate from the route and altitude requirements of paragraph (a) of this section when necessary for safety, weather conditions or transitioning to or from a destination or point of landing.

Issued under authority provided by 49 USC 106(f), 44701(a), and 44703 in Washington, DC,
on August 4, 2020.

Steve Dickson
Administrator.

[FR Doc. 2020-17334 Filed: 8/5/2020 4:15 pm; Publication Date: 8/7/2020]