

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 95**

[Docket No.: FAA-2004-19352; Amendment No. 95-340]

RIN 2120-A144

Redesignation of Mountainous Areas in Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule updates the designated mountainous areas in the State of Alaska. Regulations currently designating mountainous areas in Alaska were established in 1956. Since that time, we have concluded that areas previously considered non-mountainous should be expanded, and two areas previously designated mountainous should be considered non-mountainous. This final rule will allow aircraft operating in certain non-mountainous areas to fly at altitudes acceptable for the actual topography of the area.

DATES: This amendment becomes effective March 14, 2005.

FOR FURTHER INFORMATION CONTACT: Richard W. Girard, Flight Standards Division, Technical Standards Branch, AAL-233, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513-7587; telephone number (907) 271-3578.

SUPPLEMENTARY INFORMATION:**Availability of Rulemaking Documents**

You can get an electronic copy using the Internet by:

- (1) Searching 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.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if

submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (volume 65, number 70; pages 19477-78) or you may visit <http://dms.dot.gov>.

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. If you are a small entity and you have a question regarding this document, you 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/sbrefa.cfm>.

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 Administrator. 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, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations on the flight of aircraft (including regulations on safe altitudes). This regulation is within the scope of that authority because it prescribes minimum safe altitude requirements for operations in Alaska.

Background

This final rule updates designated mountainous areas within the State of Alaska. It expands areas considered non-mountainous and adds two more areas to accurately reflect the true topography of the land.

On October 14, 2004, the FAA published a Notice of Proposed Rulemaking (NPRM), "Redesignation of Mountainous Areas in Alaska" (69 FR 61128; October 14, 2004). In it, you will find a history of the problem and a discussion of the safety considerations supporting our course of action. You will see that an update of these regulations is overdue and that this action is welcomed by pilots/operators in Alaska. We explain in the NPRM that we are not compromising safety; rather we are more accurately identifying areas with mountainous terrain and areas with non-mountainous terrain.

Since this rule will actually correct our designation of mountainous areas, options or alternatives are not abundant. Without this rule, pilots in Alaska would be forced to continue to operate in areas incorrectly identified as mountainous, thereby forcing minimum altitudes to remain unreasonable for these affected areas. The alternative to this rule would be to not act, and that would be a disservice to pilots operating in the affected areas.

Discussion of Comments

The comment period for the NPRM closed on November 15, 2004. As of November 16, 2004, we had received 13 comments in response to the proposal. The comments are summarized as follows:

- 11 of the comments submitted were in favor of the proposal.
- 1 comment was a brief warning about the effect of the proposal.
- 1 comment did not agree with the proposal, but seemed to misunderstand the explanation for the proposal.

The 11 comments in favor ranged from anonymous commenters that felt that the proposal was overdue, to papers written presumably as an assignment for a college class. These commenters agreed with our proposal and felt that the change would result in a safer flying environment in Alaska.

One commenter wrote that, "Redesignation of mountainous areas in Alaska may be a problem in the long run." This was the entire comment with no supporting material for the conclusion.

One commenter felt that we might be endangering pilots by redesignating the mountainous areas we mentioned in the proposed rule. We believe the commenter may have misunderstood the basis for the proposal. We are not allowing a pilot to fly lower in mountainous terrain, which it seems the commenter believed was the intention of the proposal. Instead, this proposal is updating the designated areas to more accurately reflect the terrain. The areas we propose to remove from the mountainous designation are not mountainous. We are correcting our regulations to reflect the actual topography of the land. The information gathered to make this conclusion was not available when the regulation was originally written. We are not lessening requirements on pilots to maintain minimum altitudes because we feel technology is more advanced, we are correctly identifying areas we previously thought were mountainous.

Paperwork Reduction Act

There are no current or new requirements for information collection associated with this amendment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with 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.

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, Regulatory Planning and Review, directs the FAA to assess both the costs and the benefits of a regulatory change. We are not allowed to propose or adopt a regulation unless we make a reasoned determination that the benefits of the intended regulation justify its costs. Our assessment of this rulemaking indicates that its economic impact is minimal because we are simply updating a designation. Because the costs and benefits of this action do not make it a "significant regulatory action" as defined in the Order, we have not prepared a "regulatory impact analysis." Similarly, we have not prepared a full "regulatory evaluation," which is the written cost/benefit analysis ordinarily required for all rulemaking under the DOT Regulatory and Policies and Procedures. We do not need to do a full evaluation where the economic impact of a rule is minimal.

Economic Assessment, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to 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 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded

Mandates Reform Act of 1995 (Pub. L. 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.)

The FAA has determined this rule (1) has benefits that justify its negligible costs, 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; (2) will not have a significant economic impact on a substantial number of small entities; (3) does not affect international trade; and (4) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses are summarized below.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) directs the FAA to fit regulatory requirements to the scale of the business, organizations, and governmental jurisdictions subject to the regulation. We are required to determine whether a proposed or final action will have a "significant economic impact on a substantial number of small entities" as they are defined in the Act. If we find that the action will have a significant impact, we must do a "regulatory flexibility analysis."

This final rule updates the areas in Alaska that are considered mountainous. It will allow aircraft operating in certain non-mountainous areas to fly at altitudes acceptable for the actual topography of the area. Therefore, we certify that this action will not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. 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 rulemaking and has determined that it will have only a domestic impact and therefore no effect on any trade-sensitive activity.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act 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 (adjusted annually for inflation) 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 \$120.7 million in lieu of \$100 million.

This final rule does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the National 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.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the FAA, when modifying its regulations in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinctions. In the NPRM, we requested comments on whether the proposed rule should apply differently to intrastate operations in Alaska. We didn't receive any comments opposing the proposal based on intrastate travel in Alaska. We have determined, based on the administrative record of this rulemaking, that there is no need to make any regulatory distinctions applicable to intrastate aviation in Alaska.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this

rulemaking action qualifies for the categorical exclusion identified in paragraph 312(d) and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant energy action" under the executive order because it is not a "significant regulatory action" under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 14 CFR Part 95

Air traffic control, Airspace, Alaska, Navigation (air), Puerto Rico.

The Amendment

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

PART 95—IFR ALTITUDES

■ 1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

■ 2. Section 95.17 is revised to read as follows:

§ 95.17 Alaska Mountainous Area.

All of the following area excluding those portions specified in the exceptions:

(a) *Area.* The State of Alaska.

(b) *Exceptions;*

(1) *Fairbanks—Nenana Area.*

Beginning at latitude 64°54' N, longitude 147°00' W; thence to latitude 64°50' N, longitude 151°22' W, thence to latitude 63°50' N, longitude 152°50' W;

thence to latitude 63°30' N, longitude 152°30' W; thence to latitude 63°30' N, longitude 151°30' W; thence to latitude 64°05' N, longitude 150°30' W; thence to latitude 64°20' N, longitude 149°00' W; thence to latitude 64°07' N, longitude 146°30' W; thence to latitude 63°53' N, longitude 146°00' W; thence to latitude 63°53' N, longitude 145°00' W; thence to latitude 64°09' N, longitude 145°16' W; thence to latitude 64°12' N, longitude 146°00' W; thence to latitude 64°25' N, longitude 146°37' W; thence to latitude 64°54' N, longitude 147°00' W, point of beginning.

(2) *Anchorage—Homer Area.*

Beginning at latitude 61°50' N, longitude 151°12' W; thence to latitude 61°24' N, longitude 150°28' W; thence to latitude 61°08' N, longitude 151°47' W; thence to latitude 59°49' N, longitude 152°40' W; thence to latitude 59°25' N, longitude 153°10' W; thence to latitude 59°00' N, longitude 153°10' W; thence to latitude 59°33' N, longitude 151°28' W; thence to latitude 60°31' N, longitude 150°43' W; thence to latitude 61°13' N, longitude 149°39' W; thence to latitude 61°37' N, longitude 149°15' W; thence to latitude 61°44' N, longitude 149°48' W; thence to latitude 62°23' N, longitude 149°54' W; thence to latitude 62°23' N, longitude 150°14' W; thence to latitude 61°50' N, longitude 151°12' W, point of beginning.

(3) *King Salmon—Port Heiden Area.*

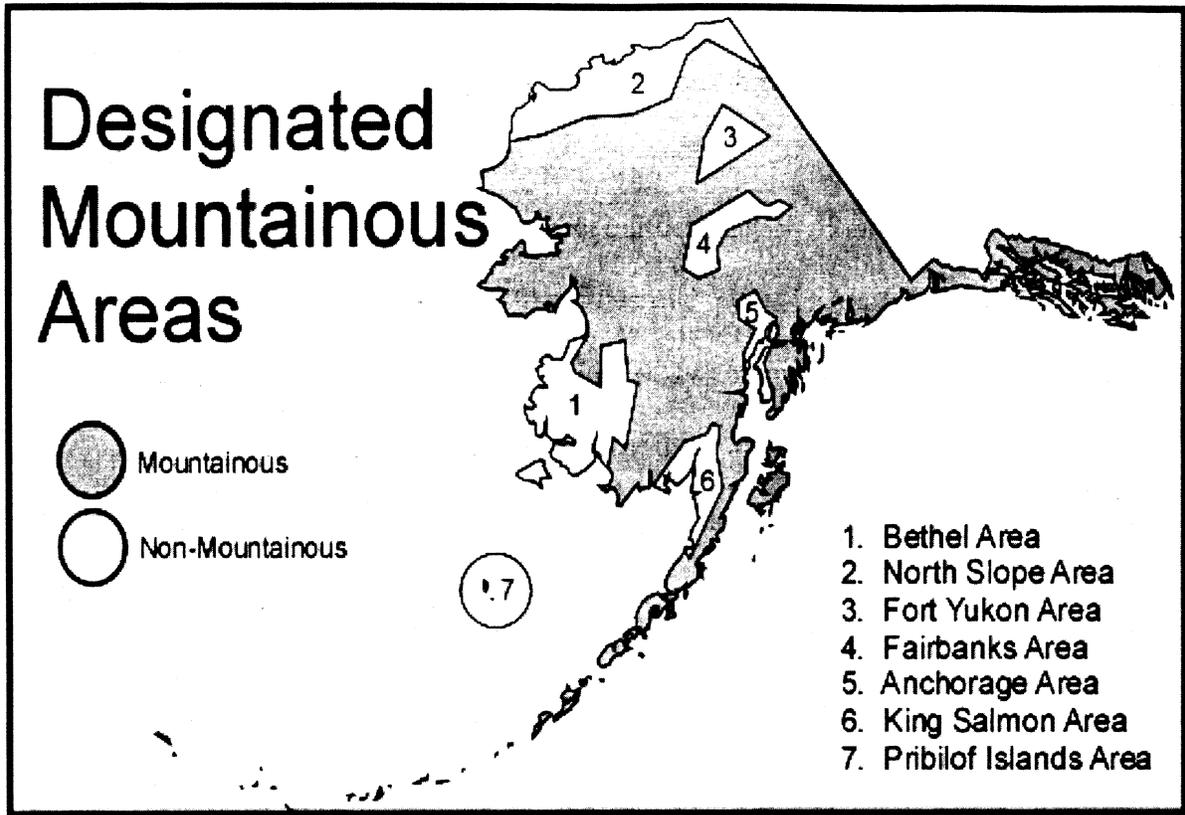
Beginning at latitude 58°49' N, longitude 159°30' W; thence to latitude 59°40' N, longitude 157°00' W; thence to latitude 59°40' N, longitude 155°30' W; thence to latitude 59°50' N, longitude 154°50' W; thence to latitude 59°35' N, longitude 154°40' W; thence to latitude 58°57' N, longitude 156°05' W; thence to latitude 58°00' N, longitude 156°20' W; thence to latitude 57°00' N, longitude 158°20' W; thence to latitude 56°43' N, longitude 158°39' W; thence to latitude 56°27' N, longitude 160°00' W; thence along the shoreline to latitude 58°49' N, longitude 159°30' W, point of beginning.

(4) *Bethel—Aniak Area.* Beginning at latitude 63°28' N, longitude 161°30' W; thence to latitude 62°40' N, longitude 163°03' W; thence to latitude 62°05' N, longitude 162°38' W; thence to latitude 61°51' N, longitude 160°43' W; thence to latitude 62°55' N, longitude 160°30' W; thence to latitude 63°00' N, longitude 158°00' W; thence to latitude 61°45' N, longitude 159°30' W; thence to latitude 61°34' N, longitude 159°15' W; thence to latitude 61°07' N, longitude 160°20' W; thence to latitude 60°25' N, longitude 160°40' W; thence to latitude 59°36' N, longitude 161°49' W; thence along the shoreline to latitude 63°28' N, longitude 161°30' W; point of beginning; and Nunivak Island.

(5) *North Slope Area.* Beginning at a point where latitude 69°30' N intersects the northwest coast of Alaska and eastward along the 69°30' parallel to latitude 69°30' N, longitude 156°00' W; thence to latitude 69°10' N, longitude 153°00' W; thence eastward along the 69°10' N parallel to latitude 69°10' N, longitude 149°00' W; thence to latitude 69°50' N, longitude 146°00' W; thence eastward along the 69°50' N parallel to latitude 69°50' N, longitude 145°00' W; thence to latitude 69°35' N, longitude 141°00' W; thence northward along the 141°00' W Meridian to a point where the 141°00' W Meridian intersects the northeast coastline of Alaska; thence westward along the northern coastline of Alaska to the intersection of latitude 69°30' N; point of beginning.

(6) *Fort Yukon Area.* Beginning at latitude 67°20' N, longitude 144°00' W; thence to latitude 66°00' N, longitude 143°00' W; thence to latitude 66°05' N, longitude 149°00' W; thence to latitude 66°45' N, longitude 148°00' W; thence to latitude 67°00' N, longitude 147°00' W; thence to latitude 67°20' N, longitude 144°00' W; point of beginning.

(7) The islands of Saint Paul and Saint George, together known as the Pribilof Islands, in the Bering Sea.



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Issued in Washington, DC, on February 4, 2005.

Marion C. Blakey,
Administrator.

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