Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AWA–3]

RIN: 2120–AA66

Proposed Revocation of the Sacramento McClellan Air Force Base (AFB) Class C Airspace Area, Establishment of the Sacramento McClellan AFB Class E Surface Area; and Modification of the Sacramento International Airport Class C Airspace Area; CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revoke the Sacramento McClellan AFB, CA, Class C airspace area, establish a Class E surface area at Sacramento McClellan AFB, and modify the Sacramento International Airport, CA, Class C airspace area. Specifically, the FAA is proposing to revoke the Sacramento McClellan AFB Class C airspace area due to a reduction in the number of air traffic operations at McClellan AFB. The FAA also proposes to establish a Class E surface area that would replace the existing Class C airspace and provide controlled airspace for the protection of instrument approach operations to McClellan AFB. In addition, this notice proposes to modify the Sacramento International Airport Class C airspace area to provide additional airspace for the management of aircraft operations to and from the Sacramento International Airport. The FAA is proposing these changes to enhance safety, reduce the risk of midair collision, and improve the management of air traffic operations in the Sacramento terminal airspace area.

DATES: Comments must be received on or before January 17, 2000.

ADDRESSES: Send comments on the proposal in triplicate to the FAA, Office of Chief Counsel, Attention: Rules Docket, AGC–200, Airspace Docket No. 99–AWA–3, 800 Independence Avenue, SW., Room 915, Washington, DC 20591. The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 915, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the FAA Western-Pacific Regional Office, AWP–500, 1500 Aviation Boulevard, Lawndale, CA 90261.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, FAA, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket 99–AWA–3.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of Air Traffic Airspace Management, Attention: Airspace and Rules Division, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA, Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

Related Rulemaking

On December 17, 1991, the FAA published the Airspace Reclassification Final Rule (56 FR 65638). This rule, in part, discontinued the use of the term ''Airport Radar Service Area (ARSA)'' and replaced it with the designation ''Class C airspace area.'' This change in terminology is reflected in the remainder of this NPRM.

History

On April 22, l982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and procedural aspects of the Air Traffic Control (ATC) system. Among the main objectives of the NAR was the improvement of the ATC system by increasing efficiency and reducing complexity. In its review of terminal airspace, NAR Task Group 1–2 concluded that Terminal Radar Service Areas (TRSA's) should be replaced. Four types of airspace configurations were considered as replacement candidates, and Model B, the ARSA configuration, was recommended by a consensus of the task group.

The FAA published NAR Recommendation 1–2.2.1, ''Replace Terminal Radar Service Areas with Model B Airspace and Service'' in Notice 83–9 (48 FR 34286; July 28, 1983) proposing the establishment of ARSA's at the Robert Mueller Municipal Airport, Austin, TX, and the Port of Columbus International Airport, Columbus, OH. ARSA's were designated at these airports on a temporary basis by

SFAR No. 45 (48 FR 50038; October 28, 1983) to provide an operational confirmation of the ARSA concept for potential application on a national basis.

Following a confirmation period of more than a year, the FAA adopted the NAR recommendation and, on March 6, 1985, the FAA published a final rule in the **Federal Register** (50 FR 9252) that defines Class C airspace, and prescribes operating rules for aircraft, ultralight vehicles, and parachute jump operations in Class C airspace areas. The final rule provides, in part, that all aircraft arriving at any airport in Class C airspace or flying through Class C airspace must: (1) Prior to entering the Class C airspace, establish two-way radio communications with the ATC facility having jurisdiction over the area; and (2) While in Class C airspace, maintain two-way radio communications with that ATC facility. For aircraft departing from the primary airport within Class C airspace, or a satellite airport with an operating control tower, two-way radio communications must be established and maintained with the control tower and thereafter as instructed by ATC while operating in Class C airspace. For aircraft departing a satellite airport without an operating control tower and within Class C airspace, two-way radio communications must be established with the ATC facility having jurisdiction over the area as soon as practicable after takeoff and thereafter maintained while operating within the Class C airspace area.

Concurrently, on March 6, 1985, by separate rulemaking action, ARSA's were permanently established at the Austin, TX, Columbus, OH, and the Baltimore/Washington International Airports (50 FR 9250). The FAA stated that future notices would propose ARSA's for other airports at which TRSA procedures were in effect.

Additionally, the NAR Task Group recommended that the FAA develop quantitative criteria for proposing to establish ARSA's at locations other than those which were included in the TRSA replacement program. The task group recommended that these criteria include, among other things, traffic mix, flow and density, airport configuration, geographical features, collision risk assessment, and ATC capabilities to provide service to users. These criteria have been developed and are being published via the directives system (Order 7400.2, Procedures for Handling Airspace Matters.

The NAR Task Group also recommended that each ARSA be of the same airspace configuration insofar as is practicable. The FAA adopted this recommendation. The standard ARSA consists of airspace within 5 nautical miles (NM) of the primary airport, extending from the surface to an altitude of 4,000 feet above airport elevation (AAE), and that airspace between 5 and 10 NM from the primary airport from 1,200 feet above ground level to an altitude of 4,000 feet AEE. Proposed deviations from this standard have been necessary at some airports because of adjacent regulatory airspace, international boundaries, topography, or unusual operational requirements.

Pre-NPRM Public Input

As announced in the **Federal Register** on October 13, 1998 (63 FR 54637) a pre-NPRM meeting was held on November 17, 1998, at Sacramento McClellan AFB, CA. The purpose of this meeting was to provide airspace users with an opportunity to present input on the FAA's planned modification to the Sacramento, CA, terminal airspace area. Those attending the meeting expressed general support for the planned modification. In the ensuing comment period, which closed on December 31, 1998, the FAA received no comments, either verbal or written, that objected to or opposed the proposed action.

The Proposal

The FAA is proposing to amend part 71 of the Code of Federal Regulations (14 CFR part 71) to revoke the Sacramento McClellan AFB Class C airspace area and establish a Class E surface area at Sacramento McClellan AFB. The FAA is proposing this action because the number of air traffic operations at McClellan AFB have decreased significantly as a result of the permanent closure of the airport traffic control tower (ATCT). The United States Air Force closed McClellan AFB tower on October 1, 1998 as part of its Base Realignment and Closing process. McClellan AFB is scheduled to be completely closed July 2001. Recent air traffic statistics clearly show that air traffic operations into McClellan AFB do not justify retention of the Class C airspace designation. These remaining operations are expected to further decline with the complete closure of McClellan. Thus, the FAA is proposing to replace the Sacramento McClellan AFB Class C airspace area with a Class E surface area to provide controlled airspace for the protection of instrument approach operations to McClellan AFB.

This notice also proposes to modify the current Sacramento International Airport Class C airspace area by expanding its eastern boundary. This proposed modification would ensure that the airspace overlying the Rio Linda airport, located in the revoked McClellan AFB Class C airspace area, retains Class C airspace protection. This is necessary to maintain the safety level previously afforded by part of the McClellan Class C airspace area.

The coordinates for this airspace docket are based on North American Datum 83. Class C and Class E airspace designations are published, respectively, in paragraphs 4000 and 6002 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class C and E airspace designations listed in this document would be published subsequently in the Order.

Regulatory Evaluation Summary

Changes to Federal Regulations must undergo several economic analyses. First, Executive Order 12866 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 requires agencies to analyze the economic effect of regulatory changes on small businesses and other small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this proposed rule: (1) Would generate benefits that justify its minimal costs and is not a ''significant regulatory action'' as defined in the Executive Order; (2) Is not significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) Would not have a significant impact on a substantial number of small entities; (4) Would not constitute a barrier to international trade; and (5) Would not contain any Federal intergovernmental or private sector mandate. These analyses are summarized here in the preamble, and the full Regulatory Evaluation is in the docket.

The proposed rule would revoke the Class C airspace area at Sacramento McClellan AFB, establish a Class E surface area at McClellan AFB, and modify the existing Class C airspace area at Sacramento International Airport. The Sacramento International Airport Class C airspace area would be modified by expanding its boundary to the east. This modification is necessary to retain Class C airspace protection overlying the Rio Linda airport located in the revoked McClellan AFB Class C airspace area.

The FAA has determined that the modification of the Sacramento terminal area would result in negligible costs to the agency and no additional costs to airspace users. The proposed rule would impose a one-time cost of approximately $200 on the agency in order to inform pilots of the airspace changes. Changes to sectional charts would occur during the chart cycle and would cause no additional costs beyond the normal update of the charts. Any additional FAA administrative demands (personnel, equipment, and facilities) generated by this action would be absorbed by existing resources. Aircraft owners and operators would not incur costs for additional equipment because they are already operating in Class C airspace area at Sacramento International Airport and at McClellan AFB.

The modification of the Sacramento terminal area would enhance operational efficiency while maintaining aviation safety. The revocation of the McClellan Class C airspace area would allow visual flight rule users additional airspace in which to transition to and from satellite airports and around the proposed Sacramento Class C airspace area. The FAA contends that the proposed rule would reduce circumnavigation cost for some general aviation (GA) operators and improve the flow of air traffic operations into, out of, and through the Sacramento terminal area. As a result of the negligible costs and safety and efficiency benefits, the FAA has determined that the proposed rule would be cost-beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (the ACT) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rational for their actions. The Act 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 proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This proposed rule is not expected to have a significant impact on commercial and GA operators who presently use the Sacramento International Airport and are already equipped to operate within the proposed Sacramento Class C airspace area. As for aircraft that regularly fly through the existing McClellan AFB terminal area, the revocation of the Class C airspace area and establishment of a Class E surface area would not impose any additional equipment or navigational costs on these operators. Therefore, there would be no additional cost to these entities.

Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FAA certifies that this rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments from affected entities with respect to this finding and determination.

International Trade Impact Assessment

The proposed rule would not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries or the import of foreign goods and services into the United States.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for these small governments to provide input in the development of regulatory proposals.

This proposed rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 4000–Subpart C—Class C Airspace.

* * * * *

AWP CA C Sacramento, McClellan AFB, CA [Removed]

* * * * *

AWP CA C Sacramento International Airport, CA [Revised]

Sacramento International Airport, CA
(Lat. 38°41′44″ N., long. 121°35′27″ W.)
Riego Flight Strip
(Lat. 38°45′15″ N., long. 121°33′47″ W.)
Natomas Field

(Lat. 38°38′18″ N., long. 121°30′55″ W.)

That airspace extending upward from the surface to and including 4,100 feet MSL within a 5-mile radius of the Sacramento International Airport, excluding that airspace within a 2-mile radius of Riego Flight Strip, and that airspace within a 2-mile radius of Natomas Field, and that airspace east of the 002(bearing from Natomas Field; and that airspace extending upward from 1,600 feet MSL to 4,100 feet MSL within a 10-mile radius of Sacramento International Airport.

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Paragraph 6002—Class E Airspace Designated as Surface Areas.

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AWP CA E2 Sacramento, McClellan AFB, CA [New]

Sacramento, McClellan AFB, CA
(Lat. 38°40′04″ N., long. 121°24′02″ W.)

That airspace extending upward from the surface within a 4.5-mile radius of McClellan AFB excluding that airspace within the Sacramento International Airport Class C surface area.

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Issued in Washington, DC on November 23, 1999.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 99–31283 Filed 12–1–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AJ44

Well-grounded Claims

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations concerning a claimant's statutory responsibility to support his or her claim with adequate evidence to make the claim ''well grounded.'' The proposed rule also addresses VA's duty to help claimants who have filed well-grounded claims obtain evidence pertinent to their claims. The intended effect of this amendment is to establish clear guidelines regarding the types of evidence that make a claim well grounded; VA's duty to help claimants obtain evidence; and exceptions to the well-grounded claim requirement.

DATES: Comments must be received on or before January 31, 2000.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AJ44.'' All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Janice Jacobs, Consultant, Policy and Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–7223.

SUPPLEMENTARY INFORMATION: Section 5107(a) of title 38, United States Code, states that, except when otherwise provided by the Secretary, a person who submits a claim for benefits under a law administered by VA shall have the burden of submitting evidence sufficient to justify a belief by a fair and impartial individual that the claim is well grounded. Section 5107(a) further requires the Secretary of Veterans Affairs to assist ''such a claimant'' in developing the facts pertinent to the claim. Both the United States Court of Appeals for Veterans Claims (CAVC) and the United States Court of Appeals for the Federal Circuit (Federal Circuit) have construed this statutory language as requiring a claimant to submit a well-grounded claim before VA has a duty to help him or her obtain any additional evidence it needs to decide the claim on its merits.

Although VA has not defined the term ''well grounded,'' CAVC and the Federal Circuit have issued a number of decisions defining that term. A well-grounded claim is ''a plausible claim, one which is meritorious on its own or capable of substantiation. Such a claim need not be conclusive but only possible to satisfy the initial burden of [5107(a)].'' *Murphy* v. *Derwinski*, 1 Vet. App. 78, 81 (1990). The Federal Circuit has affirmed CAVC decisions holding that VA's statutory duty to assist attaches only after a claimant submits a well-grounded claim. *Epps* v. *Gober*, 126 F.3d 1464, 1468–69 (Fed. Cir. 1997), *cert. denied sub. nom. Epps* v. *West*, ____ U.S. ____, 118 S.Ct. 2348 (1998). In *Morton* v. *West*, 12 Vet. App. 477, 486 (1999), the CAVC held that VA has no authority to issue regulations inconsistent with the statutory requirement that claimants submit enough evidence to well ground their claims before VA is required to assist in developing the claims. The *Morton* decision, in effect, invalidated any internal VA directives or procedures which purport to volunteer VA assistance in all claims, even if they are not well grounded, by holding that such directives or procedures are inconsistent with section 5107(a).

In a number of cases, both the Board of Veterans' Appeals (BVA) and CAVC have found that claims developed and adjudicated at VA's regional offices were not well grounded. The Veterans' Claims Adjudication Commission, established under Public Law 103–446, questioned the prudence of investing time and resources in developing claims that are not well grounded. Furthermore, the CAVC has noted that if the Secretary, as a matter of policy, volunteers assistance to establish well groundedness, grave questions of due process can arise if there is apparent disparate treatment among claimants in this regard. See *Grivois* v. *Brown*, 6 Vet. App. 136 (1994).

Recognizing the need for clear guidelines that can be consistently applied both on well-grounded claims and VA's duty to assist, VA published an advance notice of proposed rulemaking in the **Federal Register** on October 30, 1998 (63 FR 58336). This notice invited comments on the proposed policy and procedures VA should adopt with respect to these issues. We received comments from the American Legion (AL); Disabled American Veterans (DAV); the State of Florida Department of Veterans Affairs (FDVA); joint comment from AMVETS, the National Organization of Veterans Advocates (NOVA), and the Paralyzed Veterans of America (PVA); Vietnam Veterans of America (VVA); and three concerned individuals.

Need to Write Regulations

Several commenters, maintaining that the courts have misconstrued section 5107(a) by holding that a well-grounded claim is a prerequisite to VA's duty to assist claimants in developing evidence, stated that VA should not undertake rulemaking on these issues and thereby ingrain the error of the courts in its regulations. VA does not agree that the courts have misconstrued section 5107(a) in this respect. Moreover, VA is bound by the precedent decisions of the courts and their interpretations of statutes. We are, therefore, proposing to revise the regulations to incorporate the courts' interpretation of section 5107(a).

Another commenter stated that there is no need for VA to undertake rulemaking on this issue because it already has binding rules in its Adjudication Procedures Manual, M21–1; in agency circulars; in precedential general counsel opinions; in agency