

FAR Aug 91-215

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

[Docket No. 26212; Amdt. No. 91-215]

RIN 2120-AC89

Airport Radar Service Area (ARSA) Communication Requirement**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule.

SUMMARY: This rule clarifies the regulation dealing with the two-way radio communication requirement for operations in an ARSA. Pilots will be able to identify which ATC facilities they are required to contact for entry into an ARSA. This rule will ensure that the correct air traffic control facility is aware of all aircraft operating in an ARSA and will tend to reduce the potential for traffic conflicts.

EFFECTIVE DATE: The amendments to § 91.88 are effective May 29, 1990. The amendments to § 91.130 are effective August 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Steenson, Air Traffic Rules Branch, ATO-230, Airspace-Rules and Aeronautical Information Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:**Availability of Document**

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-200, 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 267-3484. Communications must identify the amendment number of the document.

Part 91 will be completely revised as of August 18, 1990. All the sections will be renumbered. Section 91.88 will be renumbered as § 91.130. Hereafter in this preamble, references to the renumbered part 91 will be shown in brackets.

Need for Rulemaking

In pertinent part, § 91.88 [§ 91.130], Airport Radar Service Areas (ARSA), requires the pilot of an aircraft to establish and maintain two-way radio communication with air traffic control (ATC) when operating in an ARSA. The intent of this regulation is twofold. First, the pilot of an aircraft planning to enter

an ARSA is expected to contact the ATC facility having jurisdiction over the ARSA. Second, for an aircraft operation to, on, or from a satellite airport with an operating control tower in the ARSA, a pilot is expected to establish and maintain two-way radio communication with that control tower. In most situations, pilots are complying with the intent of the regulation and are contacting the correct ATC facility when an ARSA entry is involved. However, there have been incidents reported where an aircraft was actually in an ARSA but the pilot of that aircraft was in radio communication with an ATC facility not associated with the ARSA. The controller at the ATC facility that was in contact with the aircraft was not aware that the aircraft was operating in the ARSA. Additionally, the controller providing ATC services and separation to aircraft in the ARSA was unaware of the presence of the aircraft.

Under part 1 of the Federal Aviation Regulations (FAR), "ATC" means a service operated by appropriate authority to promote the safe, orderly, and expeditious flow of air traffic. A person technically could assume that the § 91.88 [§ 91.130] communication requirement is met when two-way radio communication is established and maintained with any nearby ATC facility including air traffic control towers, approach control facilities, air route traffic control centers, or flight service stations. While an accident has not yet resulted from the incidents precipitated by such an interpretation, the potential for one to occur increases as long as a misunderstanding is possible.

The intent of the ARSA two-way radio communication requirement contained in § 91.88 [§ 91.130] is evident from the preamble to the rule that established the requirement (50 FR 9252; February 27, 1985). Specifically, under the caption "The Amendment", the plain-language explanation of the rule stated that:

Aircraft arriving at any airport in an ARSA, and overflying aircraft, prior to entering the ARSA must: (1) Establish two-way radio communication with the ATC facility having jurisdiction over the area; and, (2) while in the ARSA, maintain two-way radio communication with that ATC facility. For aircraft departing from the primary airport within the ARSA, two-way radio communication must be maintained with the ATC facility having jurisdiction over the area. For aircraft departing a satellite airport or heliport within the ARSA, two-way communication must be established and thereafter maintained while operating within the ARSA with the ATC facility having jurisdiction over the area.

In spite of educational efforts by the FAA through pilot forums, briefings, and other contacts to promote understanding of the intent of the rule, there continue to be incidents and discussions related to the communication provisions of the rule. Therefore, the FAA is amending the rule so that it clearly specifies the ATC facility with which a pilot is required to establish and maintain two-way radio communication when conducting operations associated with an ARSA. This amendment does not alter the existing ARSA communication requirement. However, to the extent the amendment eliminates confusion about what the rule requires, it should: (1) Ensure that the appropriate controller is aware of all the aircraft operating in the area over which that controller has jurisdiction; and (2) reduce the potential for traffic conflicts in ARSA airspace.

Conclusion

For the above reasons the FAA has determined that this action is not a major rule under Executive Order 12291; is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and does not warrant preparation of a regulatory evaluation because there will be no impact on users of the system.

This action is an interpretation and clarification of an existing rule and does not place any new restrictions or requirements on the public. Accordingly, I find that this interpretive rule is excepted from the general notice and comment requirements pursuant to 5 U.S.C. 553(b).

Federalism Implications

The requirements stated herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this amendment will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 91

Aviation safety, Safety aircraft, Air traffic control, Pilots, Airspace, Air transportation, and Airports.

The Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends part 91 of the Federal Aviation Regulations (14 CFR part 91) as follows:

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

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

The following amendments are made to part 91 in effect as of the effective date of this amendment:

§ 91.88 [Amended]

2. Section 91.88(c) is amended by replacing the words "with ATC" with the words "with the ATC facility having jurisdiction over the airport radar service area."

3. Section 91.88(d) is revised to read as follows:

* * * * *

(d) Departures. No person may operate an aircraft within an airport radar service area except as follows:

(1) From the primary airport or satellite airport with an operating control tower, unless two-way radio communication is established and maintained with the control tower in

accordance with § 91.87 of this part, and thereafter as instructed by ATC while operating in the airport radar service area.

(2) From a satellite airport without an operating control tower, unless two-way radio communication is established as soon as practicable after departing and thereafter maintained with the ATC facility having jurisdiction over the airport radar service area.

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4. Section 91.88(f) is amended by replacing the words "by ATC" with the words "by the ATC facility having jurisdiction over the airport radar service area."

The following amendments are made to part 91 as it will be renumbered and revised on August 18, 1990:

§ 91.130 [Amended]

5. Section 91.130(c) is amended by replacing the words "with ATC" with the words "with the ATC facility having jurisdiction over the airport radar service area."

6. Section 91.130(d) is revised to read as follows:

* * * * *

(d) Departures. No person may operate an aircraft within an airport radar service area except as follows:

(1) From the primary airport or satellite airport with an operating control tower, unless two-way radio communication is established and maintained with the control tower in accordance with § 91.87 of this part, and thereafter as instructed by ATC while operating in the airport radar service area.

(2) From a satellite airport without an operating control tower, unless two-way radio communication is established as soon as practicable after departing and thereafter maintained with the ATC facility having jurisdiction over the airport radar service area.

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7. Section 91.130(f) is amended by replacing the words "by ATC" with the words "by the ATC facility having jurisdiction over the airport radar service area."

Issued in Washington, DC on April 20, 1990.

James B. Busey,

Administrator.

[FR Doc. 90-9658 Filed 4-25-90; 8:45 am]

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