

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. 25767; Special Federal Aviation Regulation (SFAR) No. 53-3]

Establishment of Warning Areas in the Airspace Overlying the Waters Between 3 and 12 Nautical Miles From the United States Coast

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

ACTION: Final rule; extension of expiration date; request for comments.

SUMMARY: This action continues for an additional 24 months the effectiveness of warning areas established in airspace subject to FAA jurisdiction in order to reflect presidential action extending the territorial sea of the United States, for international purposes, from 3 to 12 nautical miles from the coast of the United States. The warning areas were established in the same location as nonregulatory warning areas previously designated over international waters. The Department of Defense (DOD) conducts hazardous military flight activities in these areas. The warning areas were established for an initial period of 1 year to permit the FAA to consider the need for rulemaking action to meet military training needs in this airspace. The establishment of those areas was extended by subsequent rulemakings to allow the DOD sufficient time to analyze its needs in the affected airspace and present its recommendations to the FAA. At this time, the DOD has not finalized its airspace analysis and usage projections. This action, therefore, continues the effectiveness of warning areas while airspace analyses and rulemaking efforts are ongoing.

DATES: Effective date: December 27, 1993. Expiration date: January 15, 1996. Comment date: Comments must be received on or before February 28, 1994.

ADDRESSES: Comments on this notice should be mailed, in triplicate, to: Federal Aviation Administration Office of the Chief Counsel; Attention: Rules Docket (AGC-200), Docket No. 25767, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked Docket No. 25767. Comments may be examined in room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Melodie De Marr, Air Traffic Rules and Regulations, ATP-230, Federal Aviation Administration, 800 Independence

Avenue, SW., Washington, DC 20591, Telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION

Comments Invited

Interested persons are invited to participate in the rulemaking process by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this amendment are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or amendment number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator. This final rule may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with Federal Aviation Administration (FAA) personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25767." The postcard will be date stamped and mailed to the commenter.

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-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the number of this SFAR. Persons interested in being placed on a mailing list for future rules should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Background

Presidential Proclamation No. 5928, signed on December 27, 1988, extended the sovereignty of the United States government, for international purposes, over the territorial seas from 3 to 12 nautical miles from the coast of the United States (including its territories). By final rule issued on that same date,

the FAA amended parts 71 and 91 of the Federal Aviation Regulations to extend controlled airspace and the applicability of general flight rules to the airspace overlying the waters between 3 and 12 nautical miles from the coast of the United States (54 FR 264; January 4, 1989). The FAA amended part 71 by extending the Continental Control Area, the Alaskan Positive Control Area, and the Continental Positive Control Area to 12 nautical miles from the U.S. Coast. The FAA amended part 91 by extending the applicability of subpart A, sections 91.1 through 91.43, and all of subpart B, to 12 nautical miles from the U.S. coast.

When the airspace was considered to be over international waters, military aircraft were not prohibited from conducting hazardous training activities within this area. Warning areas were designated in this airspace to provide notice to nonparticipating pilots of the location of hazardous military training operations. However, nonparticipating pilots were not restricted from operating in these areas.

Upon the extension of part 91 operating rules to this airspace, the DOD would have been prohibited from hazardous flight activities without an exemption from the regulations or the designation of an airspace category for that purpose. Warning areas established in international airspace, under FAA internal procedures, do not in themselves authorize hazardous activities. An interruption of military operations normally conducted in warning areas would have an adverse impact on national defense. An exemption would permit the continuation of military operations, but would not in itself adequately inform the general flying public of the existence of these activities. Accordingly, by regulation the FAA established warning areas to permit the continuation of existing military training activities in the same areas where those activities were and are still being conducted.

To preclude the interruption of ongoing DOD training activities in that airspace while the issue was studied and resolved, the FAA amended part 73 by promulgating SFAR 53. SFAR 53 established warning areas in the airspace overlying the waters between 3 and 12 nautical miles from the U.S. coast by final rule (54 FR 260; January 4, 1989) for an initial period of 1 year to permit the FAA to consider the need for rulemaking action to meet military training needs in this airspace. The warning areas established by SFAR 53 are unique airspace designations intended solely to allow the continuation of military training activity and to maintain the right of

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nonparticipating aircraft to fly through such areas. Controlled flights are not affected by SFAR 53, as such flights will continue to be routed around active warning areas. This action maintains the existing level of safety since it allows military training activity to continue without interruption.

Warning area designations and descriptions are not contained in the Code of Federal Regulations (CFR). For Federal Register citations affecting the warning areas, see the List of CFR Sections Affected in the Finding Aids section of 14 CFR part 73.

On December 27, 1989, the FAA, at the request of the DOD, extended the expiration date of SFAR 53 to December 27, 1990. The DOD stated that this delay would enable it, in consultation with the FAA, to determine the best course of implementation of regulatory special use airspace (54 FR 51286; December 13, 1989).

On May 8, 1990, the DOD submitted a letter to the FAA requesting a legal opinion from the Office of the Chief Counsel regarding the feasibility of creating a new category of airspace to maintain the status quo. The DOD suggested the creation of "domestic warning areas." The DOD claimed that it would incur excessive costs if special use airspace is extended to 12 nautical miles from the U.S. coast in the form of increased fuel costs for transient flight time and costs affiliated with environmental analysis, etc.

On December 27, 1990, the FAA extended the expiration date of SFAR 53 for an additional 3 years to December 27, 1993. The DOD stated it was continuing to assess the impact of the expansion of the territorial airspace on military operations. The DOD had completed a survey of individual command training and operational requirements for this airspace to determine the areas that should be converted to another form of regulatory or nonregulatory special use airspace. However, development of a proposed airspace configuration was incomplete. Preliminary results indicate that, in a number of areas, there will be a continuing need for special use airspace to provide connectivity for hazardous operation, such as DOD and National Aeronautics and Space Administration (NASA) missile launches, and to encompass existing range resources located between 3 and 12 nautical miles offshore.

A number of events have precluded the DOD from completing its study of operational needs in the airspace over the coastal waters. The magnitude of the task of assessing the training needs of the military in the airspace between 3

and 12 nautical miles from the U.S. coast is in itself a formidable task. However, in the past year a significant number of military bases have been targeted for closure further impacting the projected utilization of warning areas as military aviation units are relocated or eliminated. The FAA acknowledges that the long-range effects of the base closures on military training needs and airspace requirements are difficult to assess. The DOD is in the process of identifying warning area segments that are critical to those training needs, as well as those segments that are no longer needed.

Based on representation from the DOD, the FAA expects to see the DOD recommendations for the disposition of the airspace within 3 to 12 miles off the U.S. coast within 6 to 9 months after the date of this extension. This action continues the effectiveness of SFAR 53 for an additional 24 months to: (1) Prevent any interruption of ongoing military training activity; (2) warn nonparticipating aircraft of possible hazardous activities while permitting the aircraft to fly through such areas; (3) permit the DOD additional time to finalize its airspace analysis and usage projections including any environmental assessments that may be necessary; and, (4) allow the FAA sufficient time to effect rulemaking or other action necessary to implement revision to the current warning areas after receipt of the DOD recommendations.

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization Standards and Recommended Practices (SARP) to the maximum extent practicable. The FAA has determined that this rule will not present any differences with the SARP.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), there are no requirements for information collection associated with this rule.

Regulatory Evaluation

This SFAR does not alter the provision of air traffic control (ATC) services, nor does it have an impact on ATC system users. This special rule merely allows military training activity to continue without interruption, while permitting nonparticipating pilots to fly through such areas. Accordingly,

because the costs of the rule are so minimal, further regulatory evaluation has not been prepared. Although the FAA has initially determined that any possible costs imposed by this amendment will be minimal, we seek comments from the public on the possible impact of this rule.

Regulatory Flexibility Act Determination

The Regulatory Flexibility Act of 1980 (RFA) ensures that government regulations do not needlessly and disproportionately burden small businesses. The RFA requires the FAA to review each rule that may have "a significant economic impact on a substantial number of small entities."

The amendment will not alter the provision of air traffic control (ATC) services, nor will it have an impact on ATC system users. Hence, the amendment will not impose a significant cost on a substantial number of small entities.

Federalism Implications

The amendment set forth 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 rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, the FAA has determined that this rule is not a significant regulatory action under Executive Order 12866. In addition, the FAA certifies that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This regulation is not considered significant under DOT Order 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations.

Effective Date of Final Rule

Since this action does not involve a change in the actual dimensions, configuration, or operating requirements of airspace, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Furthermore, I find that good cause exists, pursuant to 5 U.S.C. 553(d), for making this amendment effective in less than 30 days to avoid confusion on the part of pilots operating in the warning areas.

List of Subjects in 14 CFR Part 73

Aviation safety, Special use airspace.

The Amendment

For the reasons set forth above, the FAA is amending 14 CFR part 73 as follows:

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. By amending Special Federal Aviation Regulation No. 53 to revise the Applicability paragraph (which expires December 27, 1993), to read as follows:

Special Federal Aviation Regulation No. 53—Establishment of Warning Areas in the Airspace Overlying the Waters Between 3 and 12 Nautical Miles From the United States Coast

1. Applicability. This rule establishes warning areas in the same location as nonregulatory warning areas previously designated over international waters. This

special regulation does not affect the validity of any nonregulatory warning area which is designated over international waters beyond 12 nautical miles from the coast of the United States. This special regulation expires on January 15, 1996.

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Issued in Washington, DC, on December 22, 1993.

Willis C. Nelson,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 93-31858 Filed 12-23-93; 2 50 pm]

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