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14 CFR Parts 71 and 91

Applicability of Federal Aviation Regulations in the Airspace Overlying the Waters Between 3 and 12 Nautical Miles From the United States Coast; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71 and 91

[Docket No. 25768; Amdt. Nos. 71-12, 91-207]

Applicability of Federal Aviation Regulations 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.

SUMMARY: This action extends controlled airspace and the applicability of certain air traffic rules to coincide with certain limits of territorial jurisdiction adopted by the United States. This action is taken 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 U.S. coast.

EFFECTIVE DATE: December 27, 1988.

FOR FURTHER INFORMATION CONTACT: David L. Bennett, Office of the Chief Counsel, AGC-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202) 267-3491.

SUPPLEMENTARY INFORMATION:

Availability of Rule

Any person may obtain a copy of this rule 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

A Presidential Proclamation extending the territorial sovereignty of the United States government, for international purposes, from 3 to 12 nautical miles from the U.S. coast, was signed on December 27, 1988. By its terms, this Proclamation does not extend the jurisdiction of any state or federal law and, therefore, does not alter the geographical boundaries of the United States (i.e., national borders and territorial waters within 3 miles of the U.S. coast) for domestic purposes. As a result, the definition of the United States contined in section 101(41) of the Federal Aviation Act of 1958 (49 U.S.C. 1301) (FAAct) is not changed by the Proclamation and does not encompass the area between 3 and 12 nautical miles from the U.S. coast. Accordingly, the extension of the territorial sea to 12 nautical miles does not automatically extend the application of the FAAct beyond 3 nautical miles.

Article 12 of the Chicago Convention on International Civil Aviation obligates each Contracting State to adopt measures to insure that every person operating an aircraft within its territory shall comply with its air traffic rules and Annex 2, "Rules of the Air," of the Chicago Convention when over the high seas. The article further obligates each Contracting State to enforce the applicable regulations. In the United States, such obligations are reflected in 14 CFR 91.1, which requires that operators of aircraft comply with U.S. operating rules when in the United States and that operators of U.S.-registered aircraft comply with Annex 2 when over the high seas. With the issuance of the Proclamation, the airspace overlying the area between 3 and 12 nautical miles will no longer be part of the high seas. However, since the definition of United States contained in the FAAct has not been expanded to include this area, this airspace would not be considered a part of the United States.

The air traffic control services in the airspace beyond 3 nautical miles from the U.S. coast are currently provided by the FAA pursuant to the International Civil Aviation Organization (ICAO) Regional Supplementary Procedures through Annex 2. These procedures will continue to be applicable in the airspace between 3 and 12 nautical miles from the U.S. coast. However, when the Proclamation is issued, there will be no U.S. regulatory obligation on operators of aircraft to comply with air traffic procedures and regulations in the area between 3 and 12 nautical miles from the coast of the United States, because that area will neither be a part of the United States (for purposes of the FAAct) nor a part of the high seas.

Consequently, in order to continue to fulfill its international obligations and in order to maintain a safe environment in this area, it is necessary for the United States to extend its domestic air traffic control authority, under Title III of the FAAct, over the airspace extending from 3 to 12 nautical miles from the coast of the United States.

Section 1110 of the FAAct makes provision for the extension of the application of the Act, and FAA jurisdiction, to airspace beyond 3 nautical miles from the U.S. coast (49 U.S.C. 1510). By Executive Order 10854 (issued November 27, 1959; 24 FR 9565, as amended by E.O. 11382, 32 FR 16247), the authority in Section 1110 has been exercised with respect to areas in which the U.S. Government has appropriate jurisdiction or control to the extent necessary for the Secretary of Transportation to accomplish the purposes and objectives of Title III of the FAAct (49 U.S.C. 1341-1355) and Title XII of the Act (49 U.S.C. 1521-1523). The Department of Transportation has decided that the extension of the application of the FAAct to 12 nautical miles from the U.S. coast is necessary to accomplish the purposes and objectives of Titles III and XII of the FAAct. The extension will be effective on December 27, 1988. The FAA has issued appropriate Notices to Airmen (NOTAMs) advising the pilots of any changes relating to the extension.

In order for the FAA to exercise immediate jurisdiction over the expanded territorial sea, for purposes of regulations promulgated under Titles III and XII of the FAAct, this rule extends controlled airspace and extends the applicability of general flight rules to the airspace overlying the waters between 3 and 12 nautical miles from the U.S. coast. The rule adopted is limited to the amendment of certain sections of FAR Part 71, Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; and FAR Part 91, General Operating and Flight Rules; all of which fall under Title III of the Act.

The FAA will consider the need, in view of the extension of FAAct applicability to 12 nautical miles from the U.S. coast, for additional rulemaking action to amend other Federal Aviation Regulations, including: Part 73, Special Use Airspace; Part 75, Establishment of Jet Routes and Area High Routes; Part 95, IFR Altitudes; Part 99, Security Control of Air Traffic; Part 101, Moored Balloons, Kites, Unmanned Rockets and Unmanned Free Ballons; Part 103, Ultralight Vehicles; and Part 105, Parachute Jumping. Other matters, such as the redesignation of Flight Information Region (FIR) boundaries, will also be considered at a later date.

The Rule

This action amends Parts 71 and 91 of the Federal Aviation Regulations to extend controlled airspace and the applicability of flight rules to the airspace overlying the waters between 3 and 12 nautical miles from the U.S. coast. Specifically, the Continental Control Area, as described in FAR 71.9, and the Continental and Alaska Positive Control Areas, as described in § 71.193, are extended to 12 nautical miles from

the U.S. coast. The existing exclusion of airspace in the Alaska Positive Control Area above the Alaska Peninsula west of longitude 160°00'00" W. is not affected, nor is the exclusion of airspace in the Continental Positive Control area over the Farallon Islands, and the portion south of latitude 25°04'00" N.

The transition area in effect in the vicinity of the Hawaiian Islands is deemed sufficient for air traffic control in that region, and no change in controlled airspace in and around Hawaii is adopted at this time. Within airspace overlying the waters between 3 and 12 nautical miles from the U.S. coast that has not been designated controlled airspace, the FAA will exercise jurisdiction to the same extent as in uncontrolled airspace within the United States.

In Part 91, §§ 91.1 and 91.61 are amended to extend the applicability of (1) Subpart A, §§ 91.1 through 91.43 inclusive and (2) Subpart B in its entirety, to 12 nautical miles from the U.S. Coast.

Effective Date of Final Rule

Extension of the U.S. territorial sea necessitates an immediate amendment to Parts 71 and 91 of the Federal Aviation Regulations. This action must coincide with the effectiveness of the extension in order to ensure the FAA's authority to control air traffic, and to implement the flight rules under which pilots must operate in the airspace overlying the waters between 3 and 12 nautical miles from the U.S. coast. This action is necessary to provide for the safe and efficient use of the airspace within the newly designated area. For these reasons, I find that the notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. For the same reasons, I find that good cause exists for making this rule effective in less than 30 days to coincide with the effectiveness of the Proclamation.

Regulatory Evaluation

Air Traffic control (ATC) services are currently provided by the FAA in the nine-nautical mile strip of airspace affected by this rule. While the jurisdictional basis for the services is changed, there will be no change in the ATC services, and no impact on ATC system users. In this airspace, operators will be required to comply with FAA flight rules rather than ICAO Rules of the Air. The rules are similar for all effective purposes, and operators will incur no additional cost from compliance. Therefore, because the costs of the rule adopted are so minimal, a regulatory evaluation has not been prepared.

For the reasons set forth above, the FAA has determined that this action is not a "major rule" under Executive Order 12291. The rule is not considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Accordingly, because the costs of the rule adopted are virtually nonexistent, it is also certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Federalism Determination

The amendment set forth herein would 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 regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

List of Subjects

14 CFR Part 71

Aviation safety, Continental control area, Positive control areas, Moored balloons, Kites, Unmanned rockets, Unmanned free balloons.

14 CFR Part 91

Aviation safety, General operating and flight rules.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, Parts 71 and 91 of the Federal Aviation Regulations (14 CFR Parts 71, 91) are amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. No. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 71.9 is revised to read as follows:

§ 71.9 Continental control area.

The Continental Control Area consists of the airspace at and above 14,500 feet MSL overlying: the 48 contiguous States including the waters within 3 nautical miles of the coast; the waters between 3 and 12 nautical miles from the coast of the 48 contiguous States; the District of Columbia; Alaska including the waters within 3 nautical miles of the coast; and the waters between 3 and 12 nautical miles from the coast of Alaska; excluding the Alaska peninsula west of longitude 160°00'00" W.; but does not include—

(a) The airspace less than 1,500 feet above the surface of the earth; or

(b) Prohibited and restricted areas, other than restricted areas listed in Subpart D of this part.

3. Section 71.193 is revised as follows:

§ 71.193 Designation

The areas of airspace described below are designated as positive control areas.

Alaskan Positive Control Area

That airspace overlying the state of Alaska, including the waters within 3 nautical miles of the coast, and the waters between 3 and 12 nautical miles from the coast of Alaska, from 18,000 feet MSL to and including FL 600 but not including the airspace less than 1,500 feet above the surface of the earth or the Alaska Peninsula west of longitude 160°00'00"W.

Continental Positive Control Area

That airspace within the continental control area from 18,000 feet MSL to and including FL 600 overlying: the 48 contiguous states, including the waters within 3 nautical miles of the coast; the District of Columbia; and the waters between 3 and 12 nautical miles from the coast of the 48 contiguous states; but excluding Santa Barbara Island, the Farallon Islands, and the portion south of latitude 25°04'00"N.

PART 91—GENERAL OPERATING AND FLIGHT RULES

4. 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 (as amended by Pub. L. No. 100–223), 1422 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; Pub. L. No. 100–202; 49 U.S.C. 106(g) (Revised Pub. L. No. 97–449, January 12, 1983).

5. Section 91.1 is amended by redesignating existing paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and by revising paragraph (a) and adding a new paragraph (b) to read as follows:

§ 91.1 Applicability.

(a) Except as provided in paragraphs (b) and (c) of this section, this part

describes rules governing the operation of aircraft (other than moored balloons, kites, unmanned rockets, and unmanned free balloons) within the United States, including the waters within 3 nautical miles of the U.S. coast.

(b) Each person operating an aircraft in the airspace overlying the waters between 3 and 12 nautical miles from the coast of the United States shall comply with Subpart A, §§ 91.1 through 91.43, and Subpart B of this part.

* * * * *

6. Section 91.61 is revised as follows:

§ 91.61 Applicability.

This subpart prescribes flight rules governing the operation of aircraft within the United States and within 12 nautical miles from the coast of the United States.

Issued in Washington, DC, on December 27, 1988.

T. Allan McArtor,

Administrator.

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