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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No.: FAA-2008-1087; Amendment No. 93-95]

RIN 2120-AJ29

Establishment of a Special Air Traffic Rule in the Vicinity of Luke Air Force Base (AFB), AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes a Special Air Traffic Rule (SATR) in the vicinity of Luke Air Force Base (Luke) which requires aircraft operating under visual flight rules (VFR) to establish two-way radio communication with the Luke Radar Approach Control (RAPCON) prior to entering the SATR area and maintain communication while operating in the area. The SATR is active during official daylight hours Monday through Friday while Luke pilot flight training is underway, as broadcast on the local Automatic Terminal Information Service (ATIS), and other times by Notice to Airmen (NOTAM). This action is necessary to address reported near midair collisions (NMACs) in the area around Luke and will help reduce the potential for midair collisions in the vicinity of Luke.

DATES: This amendment is effective May 6, 2010.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Group, Office of System Operations Airspace and AIM, AJR-33 Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8783. E-mail: Kenneth.McElroy@faa.gov. For legal questions concerning this final rule contact the Office of Chief Counsel, Regulations Division, Air Traffic & Certification of Airman Law Branch, AGC-240 Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-3073.

SUPPLEMENTARY INFORMATION:

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, including the authority to issue, rescind, and revise regulations. 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, chapter 401, section 40103(b), which allows the Administrator to regulate the use of the navigable airspace necessary to ensure the safety of aircraft and the efficient use of airspace. Moreover, subtitle VII, part A, subpart III, chapter 447, section 44701(c) authorizes the Administrator to regulate air commerce in a way that helps to reduce or eliminate the possibility or recurrence of accidents in air transportation. This change is within the scope of our authority and is a reasonable and necessary exercise of our statutory obligations.

Background

Luke Air Force Base (Luke) is home to the 56th Fighter Wing, the United States Air Force's (USAF's) largest fighter wing. Since 1941, Luke has trained pilots and other aircrew members for America's frontline fighter aircraft. Today, over 200 F-16s conduct more than 201,000 annual operations, and most of these operations are for student training.

Situated beneath the Phoenix Class B Airspace Area, the Luke terminal area consists of Class D airspace. The Phoenix Deer Valley Airport (DVT), (the nation's third busiest general aviation (GA) airport in 2004 and second busiest in 2008), is within 5 nautical miles of the Luke terminal airspace. There are two flight schools and two fixed base operators located at DVT, and the flight schools conduct training in the vicinity of Luke.

Alert Area A-231 is located adjacent to, and west of, Luke. Pilots conduct a large volume of jet training operations in Alert Area A-231. The USAF requires military pilots to establish communication with the Luke Radar Approach Control (RAPCON) and to be alert when flying in Alert Area A-231. Pilots of civil aircraft are not required to establish communication with the Luke RAPCON during transit. The USAF Flight Safety Office at Luke points out that reported NMACs are approximately 3 per quarter of a year, and each occurrence affects multiple aircraft in the same formation. The significant

number of NMACs between Luke F-16s and VFR aircraft indicates VFR pilots are not avoiding this area of concentrated student jet transition training.

Operational problems affecting safety in the Luke terminal airspace area are acute and include complex and voluminous traffic, aircraft congestion, terrain that constrains aircraft operations, and the uncontrolled mix of instrument flight rules (IFR) and VFR traffic. Luke RAPCON traffic counts show a mix of military F-16 aircraft operations, GA traffic operations, and some civil air carrier operations. F-16 aircraft operate at significantly higher airspeeds than civil GA traffic, normally 200+ knots faster on arrival and 250+ knots faster on departure. This difference in airspeed creates extreme closure rates between converging F-16 and GA aircraft. In addition, complexity is increased because GA pilots often do not detect all the aircraft in a military flight formation. Student pilot training in the F-16 aircraft, combined with student flight training in GA aircraft, also increases the potential for a near midair collision.

The average number of conflicts between controlled and uncontrolled aircraft has increased since 2000. In the five year period from 2000 to 2005, there were 76 NMACs reported. In the two year period from 2006 to 2008, 58 NMACs were reported. Aircraft track data modeling tools indicate a significant volume of GA traffic crossing Luke's primary instrument final approach course. This data indicates a direct correlation between NMAC events and the proximity/flight patterns of GA traffic operating out of DVT. Data track analysis also shows GA traffic from Goodyear Airport (GYR) and Glendale Airport (GEU) crossing the final approach course and departure path for Runway 21 at Luke. For additional information regarding the Luke data track analysis go to: http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/aaim/organizations/airspace_rules/.

There are a number of prominent landmarks the GA community uses when operating VFR. Two of these landmarks are the Glendale Arrowhead Mall and the Peoria Power Plant/Substation, which are close to the Luke Runway 21 final approach course. Luke F-16s use the Peoria Power plant as a visual aid for turning to the final approach course when conducting formation landings. Also, many of the flight schools use the Proving Grounds, located approximately 5 miles north of the Luke Auxiliary Field, for conducting

practice aircraft operations. Aircraft operations in the vicinity of the Proving Grounds can conflict with the radar pattern for the Luke Auxiliary Field. Use of these prominent VFR landmarks by GA traffic and others results in conflicts with the IFR and VFR patterns of Luke F-16s.

Over the years, the USAF has been educating the local aviation community about serious operational problems, including air traffic congestion, and the uncontrolled mix of IFR and VFR traffic, which impact safety around Luke. At first, the USAF addressed these problems by making pilots at local airports and flight schools aware of the issue and urging aircraft operators to use various traffic services that could make operations in the area safer. Although the ongoing educational efforts had a temporary impact on the number of NMACs and led to a slight reduction of near misses, there continues to be an average of one reported NMAC per month. The USAF finally concluded that safety problems at Luke were so acute they sought a rulemaking solution.

Prior to filing a petition with the FAA, the USAF provided its rulemaking petition to interested airspace user groups, elected officials, and others. The USAF submitted its petition for rulemaking to the FAA on July 21, 2006, along with the comments it received and USAF responses. The USAF petitioned the FAA to establish a SATR in the vicinity of Luke which would require pilots, among other things, to obtain an air traffic clearance to operate in the area (FAA-2006-25459-1). The USAF believed the growing amount of VFR traffic combined with a high volume of military air traffic, as well as the number of NMACs occurring in the Phoenix West Valley, fully justified such an action. Local mayors, Members of Congress, and U.S. Senators, as well as many aviation organizations, such as Pan Am International Flight Academy, Westwind School of Aeronautics, Oxford Airline Training Center, Airline Training Center Arizona, Inc., and WESTMARC (a regional coalition of business, government, education and community organizations), endorsed the petition and strongly supported the action.

The Aircraft Owners and Pilots Association (AOPA) and local pilot associations, including the Deer Valley Pilots Association (DVPA) and the Arizona Pilots Association (APA), responded to the USAF by opposing any action that would require air traffic clearances to operate in the area. The associations maintained the near midair problem could be solved through more education and more robust charting

notations about avoiding the Luke area during its peak operational hours.

After analyzing the petition and the initial response of the aviation community it generated, the FAA determined that proposing a SATR in the area had the potential to significantly reduce safety problems in the vicinity of Luke. However, instead of requiring an air traffic clearance to operate in the area, the FAA assessed that a simple two-way radio communication requirement for pilots operating around Luke would reduce the NMAC risk.

Summary of the NPRM

On September 26, 2008, a notice of proposed rulemaking (NPRM) was published (73 FR 55788) which proposed establishment of a Special Air Traffic Rule, in the vicinity of Luke Air Force Base (AFB), AZ. A technical correction was issued (73 FR 60996) October 15, 2008, to correct the docket number and extend the comment period. The FAA proposed that operators conducting VFR operations establish two-way radio communication with the Luke RAPCON prior to entering the Luke SATR area, and maintain communication while operating in the area, at certain times, and otherwise by NOTAM. The FAA sought to address reported NMACs in the area around Luke and to reduce the potential for NMACs. Interested parties were invited to participate in the rulemaking effort by submitting written comments on the proposal, and the comment period closed December 15, 2008. An analysis of the comments and the FAA's response are in the "Discussion of the Final Rule" section.

Summary of the Final Rule

This action establishes a Special Air Traffic Rule in the vicinity of Luke mandating a two-way communication requirement for VFR operators effective upon publication of the Phoenix (PHX) Terminal Area Chart and the PHX VFR Sectional Aeronautical Charts scheduled for May 6, 2010. The FAA has determined that additional safeguards for flight operations are necessary in the vicinity of Luke and this rule is necessary to reduce the potential for midair collisions between military and civilian pilots operating under VFR.

The final rule and the proposed rule are similar except the FAA will move the east boundary of the Luke Terminal area approximately one mile to the west in the vicinity of the Arrowhead Mall to accommodate straight in arrivals for runway 19 at GEU. The FAA is clarifying that only operators of aircraft

not equipped with an operational radio may make advance transit arrangements with the air traffic control (ATC) facility at Luke AFB, which is consistent with the NPRM. When discussing the ATIS, and in section 93.176 of this final rule, the FAA has substituted the word "broadcast" for "advertised." When the Luke NPRM was published (73 FR 55792, September 26, 2008) the FAA proposed to codify it as subpart N to part 93. Subsequently, another final rule was published (73 FR 60544, October 10, 2008) that used Subpart N. Therefore, the Luke subpart is now designated as Subpart O to part 93.

Discussion of the Final Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 93 to establish a SATR in the vicinity of Luke that requires aircraft operating under VFR to establish two-way radio communication with the Luke RAPCON prior to entering the SATR area and maintain communication while operating in the area.

A direct communication requirement is a cost-effective solution and does not impose a significant burden on aircraft operating in, or transiting, the airspace around Luke. It allows the GA community unrestricted access to the area for student pilots enrolled at GA flight schools in the vicinity of Luke. The alternative is to continue to rely on the Air Force's educational and awareness program, which has not resulted in a significant reduction in the number of conflicts and NMACs.

Currently the Luke RAPCON provides radar advisory services to GA aircraft on request, but safety can be significantly heightened with the full participation of all aircraft operating within the vicinity of the Luke terminal area in a communication requirement. A communication requirement provides an additional safety margin and increases the protection of both military and GA operations by providing Luke controllers advance notice of VFR aircraft transiting or operating within the designated area. When pilots operating VFR take advantage of the available advisory services, they are issued timely traffic advisories and assistance while in the area.

Luke will provide continuous information on the status of the SATR for flight crews both in flight and on the ground via landline and ATIS. This rule allows pilots flying VFR to access the active SATR area once communication is established with Luke RAPCON. A clearance is not required. The acceptance of flight following services by VFR aircraft is recommended, but not required. Aircraft not equipped with an

operational radio can make alternate arrangements by contacting the ATC facility at Luke AFB in advance of the proposed operation.

The FAA received 95 comments in response to the NPRM. Of the 95 comments received, 78 did not identify any specific issue, but were critical of the NPRM in general. Some commenters had concerns regarding additional airspace complexity, while others felt the SATR created proficiency-training issues and added frequency change requirements. Seventeen commenters, including Members of Congress and local mayors support the proposal as a necessary tool to reduce the potential for NMACs. Below is a more detailed discussion of the rule broken down into issue areas addressed by commenters. It reflects the comments we received and the FAA's response.

Data and Nonrulemaking Solutions

The Aircraft Owners and Pilot's Association (AOPA) questioned the currency of the USAF NMAC information. AOPA asserted that the "USAF data was obsolete and stale, and was measured before industry efforts to alleviate the problem."

The FAA does not agree. Between 2000 and 2005 the aviation community and the USAF were working to alleviate the NMAC problems in the vicinity of Luke and there were 76 reported NMACs. Of these NMACs, 84% of the documented occurrences were between F-16 and GA aircraft and none of the GA aircraft were in communication with the Luke RAPCON. In December 2008, the FAA and the USAF initiated a review of 58 NMAC reports on file at the Luke safety office which occurred during 2006 to 2008. The review disclosed 10 NMACs in 2006, 25 in 2007, and 23 in 2008; 90%, 76% and 86% respectively were between F-16 and GA aircraft. Because of the significant number of NMACs and the high concentration of mixed high performance military and GA aircraft in the same area, the FAA continues to have a safety concern.

AOPA, pilots associations, and others continue to oppose a rulemaking solution and maintain that education, more working groups and additional study should be used. Commenters suggested the FAA form working groups comprised of representatives from government as well as aviation communities, to study problems that the proposed SATR is expected to solve. Most of these commenters believe this group should be actively involved in the development of workable solutions. One aviation organization thought the user forums would pay specific attention to

user comments in developing the SATR, better serving the requirements and safety needs of all airspace users.

The FAA does not agree. The FAA reviewed and considered all comments and recommendations in the preparation of the NPRM and this final rule. While developing the proposal, the FAA specifically considered input from AOPA, and other local pilot associations, such as the DVPA and the APA. These organizations stressed pilot education, and more robust charting, with no clearance or flight plan requirements. The FAA agreed that a clearance requirement was too restrictive, and determined that a communication requirement would provide the adequate level of additional safety to increase protection of both military and GA aircraft.

The FAA determined that reliance on nonrulemaking alternatives to provide an acceptable level of safety is no longer appropriate. The FAA does not agree that additional education, outreach, working groups and more robust charting would provide an adequate level of additional safety. As discussed in the NPRM and the background section of this final rule, the USAF has conducted education and outreach activities with the affected aviation users over the years. In the last three years, the USAF has held numerous meetings in the Phoenix Valley informing the public of its growing safety concerns. These concerns center around potential conflicts between military and GA VFR traffic transiting the Luke area and conflicts between aircraft turning on final approach to Runway 21. As discussed previously, the FAA assessed that a rulemaking solution was required to address the number of NMACs, the high volume of military and GA activity in the area, and to reduce the NMAC risk.

Size, Boundaries and Classification

The FAA received comments addressing the Luke SATR area. AOPA and the Aviation Safety Advisory Group of Arizona stated that the Luke SATR closely resembles Class C airspace communication requirements for VFR aircraft entry, but may not meet the established criteria to create Class C airspace. Others stated that the airspace is nonstandard or a new category of airspace. One commenter stated that the FAA was creating, in effect, sterile or restricted airspace.

The FAA does not agree. Luke does not meet the enplaned or instrument approach requirements for Class C airspace. The only similarity between the SATR and Class C airspace is the requirement for operators to establish

two-way radio contact with ATC prior to entering the area and to maintain contact while in the area. The SATR offers flight following services to pilots on a strictly voluntary basis. Conversely, Class C services include among other things, separation, traffic advisories and safety alerts between IFR and VFR aircraft, and mandatory traffic advisories and safety alerts between VFR aircraft. Class C services are required for all aircraft operating within Class C airspace. The NPRM did not propose to establish, and this final rule does not establish, Class C airspace at Luke or within the SATR area.

The SATR does not define a new category of airspace, it is a procedural requirement for the management of aircraft by ATC. The Luke SATR requires direct communication with Luke RAPCON before entry and while operating in the designated area. The designated area and procedures will be contained in 14 CFR part 93 which prescribes special air traffic rules necessary for the safe and efficient management of air traffic. The SATR area is in no way similar to restricted airspace as defined in 14 CFR part 73. Restricted airspace is established to confine or segregate activities considered hazardous to nonparticipating aircraft, and within which flight is not prohibited, but is subject to restriction. The SATR is not sterile nor does it prohibit or limit aircraft access, so long as the aircraft operator complies with simple communications requirements of this rule. It was developed to enhance safety and awareness within an area where high volumes of military and GA air traffic exist. Both the NPRM and the final rule continue to allow GA access to the SATR area and the FAA neither proposed, nor implemented, restricted or sterile airspace.

AOPA, the APA, and other commenters stated the proposed SATR would derogate rather than improve safety. Specific concerns were pilots concentrating on their instruments and placing too much reliance upon ATC rather than "see and avoid," and the compression of air traffic into narrow corridors. Commenters claimed that compression may increase the impact of aircraft noise on underlying communities and noise sensitive areas. Commenters stated that the SATR area design is too "chopped up" with the floor varying in altitudes across different sub-areas, and at times, increased "funneling" of aircraft into small vertical corridors at lower, and less safe, altitudes over populated areas and terrain.

The FAA does not agree. Direct and continuous communication requirements for aircraft operating in the vicinity of the Luke terminal airspace area would reduce the number of conflicts and the NMAC potential. Continuous communication provides controllers with the ability to exchange timely and accurate aircraft position information for both military and civil pilots operating in the area thus enhancing the pilots' see and avoid capability.

The SATR area uses prominent geographical landmarks to define the separate sub-areas that comprise the whole configuration. These sub-area boundaries are depicted on both the PHX Terminal Area Chart and the VFR Sectional Aeronautical Chart to assist the pilot with basic navigation. A uniform floor was considered and rejected because it would have required a larger area than was needed to protect aircraft arriving and departing Luke.

Regarding perceived issues of compression or "funneling" of air traffic, pilots have two alternatives. First, pilots may participate in SATR services and thus not be limited to flying below the base of each area. Second, a pilot may deviate 2,000 feet horizontally from the obstacle or populated area. FAA Advisory Circular (AC) 91-36D, Visual Flight Rules (VFR) Flight Near Noise-Sensitive Areas, recommends flights remain above 2,000 feet MSL, but the AC provisions do not apply when they conflict with regulations, ATC instructions, or when a pilot believes operating below 2,000 feet is necessary for the safety of the flight. The SATR area does not require a clearance and was not conceived or designed to force aircraft into circumnavigating the area but pilots can circumnavigate the area if necessary. The area is not restrictive or prohibitive and does not force aircraft into an unsafe operating mode. Pilots who choose not to contact the Luke RAPCON and avoid the SATR area do so voluntarily.

The FAA received comments suggesting changes to the boundaries, floors and ceilings of the Luke SATR. One commenter stated that the northeast corner of the proposed SATR area is likely to cause unintentional incursions by aircraft executing a straight-in approach to Runway 19 at GEU. These approaches typically start over the Arrowhead Mall which is very close to the northeast corner of the proposed SATR area.

The FAA shares this concern and asked the USAF to reevaluate the proposed boundary in the vicinity of the Arrowhead Mall. The USAF and the

FAA determined that relocating the boundary would not impact the final approach path to runway 21 at Luke. In this final rule the FAA has moved the SATR boundary approximately 1 mile west of the Arrowhead Mall to protect the straight-in approach to runway 19 at GEU. The FAA will not move the boundary 2 miles to the west, as suggested by the comment, because the airspace is necessary to protect the final approach path to runway 21.

Another commenter suggested eliminating the proposed SATR area and expanding the airport traffic area and control zone to the northwest by 5 miles. The FAA does not agree. In 1993, the FAA reclassified the regulatory structure of the National Airspace System (NAS). This was done primarily to more closely align the airspace in the United States along International Civil Aviation Organization (ICAO) guidelines. The airspace previously identified as Airport Traffic Areas and Control Zones were reclassified at that time to Class D Airspace Areas. FAA Order 7400.2G, Procedures for Handling Airspace Matters, provides guidance on the design of Class D airspace nationally. It states that vertical and lateral limits should be standardized and shall be designed to contain IFR arrival operations. The current Luke Class D airspace area varies from 4.4 miles to a 5.6 mile radius of Luke and is configured in accordance with the above mentioned guidelines. Adding an additional 5 miles to the existing Class D airspace area is not supported by current design criteria, and has no bearing on the scope of issues addressed by the SATR area.

Another commenter stated that the FAA should establish VFR corridors through the SATR area and allow pilots in the VFR corridors to operate without establishing and maintaining two-way radio communication with the Luke RAPCON. The FAA does not agree. The USAF sought an improvement in air safety when it petitioned the FAA to address the problem of NMACs in the proposed SATR area. The suggestion that pilots should be allowed to continue their current practice of not contacting the Luke RAPCON and not exchanging position information would negate the basic purpose of the SATR, which is to require two-way communication with Luke RAPCON to improve safety.

Another commenter believed that the segment of the proposed SATR area west of DVT and north of Luke that has a floor of 3,000' and a ceiling of 4,000', will encourage pilots of aircraft departing or arriving GEU and/or DVT to under fly or circumnavigate

increasing the concentration of traffic in this area. He suggested raising the floor to 4,000' and the ceiling to 5,000' to allow aircraft to avoid the SATR area by operating at 3,500' and 4,500' below it.

The FAA does not agree. First, very few aircraft currently circumnavigate the airspace around Luke and a large percentage contact Luke and take part in the flight following services offered by Luke RAPCON. Although there may be an increase in the number of aircraft that would circumnavigate the SATR, the FAA does not expect the increase to be significant or burdensome. Second, aircraft operators can establish communication and operate within the SATR rather than navigate out of their way to avoid it. The SATR area was designed to protect aircraft on an instrument approach to Runway 21L/R. The floor of this area was designated at 3,000' which provides a 500' buffer between the lowest altitude in use on the instrument approach and any aircraft transiting or operating just beneath the SATR.

Another commenter suggested modifying or eliminating the segment of the proposed SATR labeled West Sector North which has a floor of 3,000' and a ceiling of 6,000'. He stated that this area intrudes into rising terrain in the northwest and would force aircraft into the foothills if pilots are trying to under fly this area. The FAA does not agree. This area was designed to protect the Luke auxiliary field traffic pattern for aircraft conducting touch and go landings. The northwest point of this area is the junction of Carefree Highway and US60. The area is remote and there were not many landmarks that could be used as visual references. A small portion of this area on the northern side intrudes into rising terrain. Pilots may avoid the rising terrain by establishing contact with Luke RAPCON and transiting the SATR or circumnavigating the area.

Another commenter stated that the 2,100' floor of the SATR area just west of GYR does not allow transition for aircraft wishing to overfly GYR Class D or aircraft departing/arriving GYR wishing to avoid the SATR area. The FAA is establishing the 2,100' floor to protect Luke aircraft departing/arriving runway 03 L/R. Aircraft that do not wish to contact Luke RAPCON for use of the SATR area will have to circumnavigate this area. Letters of Agreement (LOA) will be entered into among Luke RAPCON and GYR, DVT and GEU Towers. The LOA will outline special operating procedures to create a seamless environment for GA operations. Departure and arrival procedures to and from the SATR

boundaries and the airports, will be referenced in the LOA. These procedures will allow GA operators to proceed on course while movement information is passed between ATC facilities. This will negate abrupt frequency changes and not having enough time to establish two-way communication with the RAPCON prior to entering the SATR.

One of the commenters was concerned that the SATR area would infringe on, or virtually eliminate, airspace used today for GA pilot training. That is not the case. The SATR area does not replace, eliminate, or change any of the existing airspace structure or operating rules; it only adds a requirement for two-way radio communication with Luke RAPCON prior to entry and while in the area. The SATR does not prohibit or restrict aircraft access for any purpose including transit and/or training.

RAPCON Staffing and SATR Area Hours of Operation

Several commenters addressed RAPCON staffing, communication coverage and access to the area. The APA and others do not believe that Luke RAPCON can maintain adequate staffing to provide communication coverage and, as a result, GA aircraft will be denied access to the area. AOPA, APA and other commenters were concerned about frequency congestions and one commenter stated that during periods of peak traffic, Luke RAPCON may not be able to immediately respond to aircraft wishing to establish two-way radio contact for entry into the SATR area, thereby denying aircraft access to the area. Another commenter said that Luke radio coverage may not be sufficient for all the airspace encompassed by the SATR area; especially the Luke ATIS.

The FAA does not agree. Staffing and equipment resources are already in place to support the Luke SATR area. Staffing and equipment levels are adequate to provide all services without impacting safety or efficiency and the USAF and the FAA do not expect staffing to be an issue for Luke. LOAs and procedures will be developed to operate the Luke SATR efficiently. However, should circumstances arise that indicate a need for additional resources, action will be taken to obtain them.

The ability to provide any ATC service is limited by many factors, such as the volume of traffic, frequency of congestion, controller workload, or other higher priority duties that may not be apparent to a pilot requesting access to the SATR area. Aircraft attempting to establish two-way radio contact with

ATC for entry into the SATR area will be handled on a first-come, first-serve basis and as quickly as the controller can safely provide the service. Currently a large percentage of VFR operators contact Luke and exchange position information. Though there may be an increase in the number of aircraft establishing communication, the FAA does not expect the increase to be significant.

FAA's ATC experience has been that frequency congestion does occur at peak demand periods at most major airports. When such congestion occurs, resource adjustments are made on-site. Such adjustments include resectoring and assigning selected personnel. The USAF recognizes the potential exists for a need to establish additional controller positions if delays during peak demand become a problem, and will respond accordingly.

Luke's existing radio coverage is sufficient to cover the area defined in the SATR including the ATIS. The USAF has installed additional transceivers on the White Tank Mountains radio relay site that enhance the current radio coverage on the existing frequencies due to the height and placement of the new transceivers.

Some commenters stated that the operating rules for the SATR were not clearly defined in the NPRM. They requested clarification about whether a clearance from Luke was required, and if separation services, including assigned headings, would be provided to GA aircraft. Further, they asked if routine traffic advisories would be given, and if a transponder was required.

As stated in the NPRM and final rule, an air traffic clearance is not required to operate in the SATR area. The final rule requires pilots to establish two-way radio communication with Luke RAPCON prior to entering the SATR area, and to maintain communication while operating in the area. Once two-way communication is established, flight following service is available upon request from Luke RAPCON. Pilots of those aircraft not equipped with radios, or with inoperable radios, can make advance arrangements with the Luke RAPCON to coordinate transit through the area. The USAF requires use of flight following service for military aircraft. The FAA recommends use of flight following services by GA. Those aircraft participating in flight following services are provided traffic advisory service as they transition the area. Separation services and headings will not be provided, and this rule does not change the current transponder requirements in 14 CFR 91.215.

Commenters had concerns about the Luke SATR's hours of operation. One stated that the proposed hours of operation were not clear. Another observed that the Luke RAPCON could open and close for just one flight and asked whether the SATR would be activated for that situation. Another noticed that the SATR was not active at night. Others were concerned about access to the SATR area when the Luke RAPCON is not open.

The NPRM and the final rule both state the Luke SATR is designated during official daylight hours Monday through Friday, during flight training operations. The area may be activated at other times by NOTAM when necessary to support Luke flight training. Status of Luke flight training activities will be broadcast on Luke, DVT, GYR, and GEU local ATIS frequencies. The Luke ATIS also can be contacted via a local telephone call. Luke does occasionally open outside of normal hours to handle VIP or other transient aircraft movement, but the SATR area will not be activated routinely for those limited situations.

The SATR area is not necessary during nighttime operations primarily for three reasons. First, Luke's primary auxiliary airfield is closed at night which significantly reduces the number of F-16 aircraft transitioning between the auxiliary field and Luke. Second, aircraft are more easily visible at greater distances at night, thereby allowing pilots more reasonable reaction time for conflict avoidance with high performance aircraft. Third, the SATR area would be extremely difficult to navigate at night when visual landmarks are either not visible or not easily distinguishable. Therefore, when limited Luke flight training activities are conducted at night the SATR will not be active and GA pilots will have access to the area without a requirement to communicate with the Luke RAPCON.

Gliders

Pilots from the glider community expressed concern that their operations would be unfairly impacted. They stated that it was not clear that sailplanes without transponders would be able to operate within the SATR area.

The FAA agrees that clarification about glider operations is needed. In that regard, the USAF has worked with the glider community to address their operational concerns. The USAF met with the Pleasant Valley Sailplane Association (PVSA) personnel to discuss the glider community concerns. The USAF and the PVSA agreed to enter into an LOA covering glider operation to allow glider operations to continue. The

Luke RAPCON plans to designate an assigned beacon code for the tow planes. When the first tow plane of the morning goes up on the discrete code, the Luke RAPCON will show the glider area active and provide general traffic advisories throughout the course of the day while the area is in use. The glider operators will call the Luke RAPCON at the termination of the day's glider activity.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined there is no current or new requirement 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.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

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 of 1980 (Pub. L. 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96-39) 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 requires agencies to consider international standards and, where appropriate, that they be 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 with base year of 1995).

This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this final rule: (1) Has benefits that justify its costs, (2) is not an economically "significant regulatory action" as defined in section 3(f) of Executive Order 12866, (3) is not "significant" as defined in DOT's Regulatory Policies and Procedures; (4) will not have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

Costs and Benefits of the Rule

The FAA believes that this rule will impose minimal costs on VFR pilots of GA aircraft, Luke AFB RAPCON and negligible cost on the FAA. The rule will enhance aviation safety by reducing the risk of a midair collision in the SATR area. As a result, the FAA believes this rule is cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96-354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to ensure that such proposals are given serious consideration." The RFA 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 rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that

the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule will impose only negligible costs on individuals operating GA aircraft in the Luke AFB vicinity under VFR. Most operators of GA aircraft are individuals, not small business entities, and are not included when performing a regulatory flexibility analysis. However, flight schools, as well as GA operators flying for business reasons, are considered small business entities. The FAA assumes affected instructors and operators use aircraft equipped with two-way radios, and therefore will not incur any extra costs.

Therefore, as the FAA Administrator, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

International Trade Analysis

The Trade Agreements Act of 1979 (Pub. L. 96-39), as amended by the Uruguay Round Agreements Act (Pub. L. 103-465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. 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 final rule and determined that it will have only a domestic impact and therefore will not create unnecessary obstacles to the foreign commerce of the United States.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) 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 with the base year 1995) 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 level equivalent of \$100 million in CY 1995, adjusted for inflation to CY 2007 levels by the

Consumer Price Index for all Urban Consumers (CPI-U) as published by the Bureau of Labor Statistics, is \$136.1 million. This final rule does not contain such a mandate. The requirements of Title II 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 Federal 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.

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 (NEPA) in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA 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" and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visiting the FAA's Regulations and Policies Web page at http://www.faa.gov/regulations_policies/ or
3. Accessing the Government Printing Office's Web page at <http://www.gpoaccess.gov/fr/index.html>.

You can also get a copy by sending 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://DocketsInfo.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 your local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. You can find out more about SBREFA on the Internet at http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.

List of Subjects in 14 CFR Part 93

Air Traffic Control, Airports, Alaska, Navigation, Reporting and recordkeeping requirements.

The Amendment

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

PART 93—SPECIAL AIR TRAFFIC RULES

■ 1. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

■ 2. Add Subpart O to part 93 to read as follows:

Subpart O—Special Flight Rules in the Vicinity of Luke AFB, AZ

Sec.

93.175 Applicability.

93.176 Description of area.

93.177 Operations in the Special Air Traffic Rule Area.

Subpart O—Special Flight Rules in the Vicinity of Luke AFB, AZ

§ 93.175 Applicability.

This subpart prescribes a Special Air Traffic Rule for aircraft conducting VFR operations in the vicinity of Luke Air Force Base, AZ.

§ 93.176 Description of area.

The Luke Air Force Base, Arizona Terminal Area is designated during official daylight hours Monday through Friday while Luke pilot flight training is underway, as broadcast on the local Automatic Terminal Information Service (ATIS), and other times by Notice to Airmen (NOTAM), as follows:

(a) East Sector:

(1) South section includes airspace extending from 3,000 feet MSL to the base of the overlying Phoenix Class B airspace bounded by a line beginning at: Lat. 33°23'56" N; Long. 112°28'37" W; to Lat. 33°22'32" N; Long. 112°37'14" W; to Lat. 33°25'39" N; Long. 112°37'29" W; to Lat. 33°31'55" N; Long. 112°30'32" W; to Lat. 33°28'00" N; Long. 112°28'41" W; to point of beginning.

(2) South section lower includes airspace extending from 2,100 feet MSL to the base of the overlying Phoenix Class B airspace, excluding the Luke Class D airspace area bounded by a line beginning at: Lat. 33°28'00" N; Long. 112°28'41" W; to Lat. 33°23'56" N; Long. 112°28'37" W; to Lat. 33°27'53" N; Long. 112°24'12" W; to point of beginning.

(3) Center section includes airspace extending from surface to the base of the overlying Phoenix Class B airspace, excluding the Luke Class D airspace area bounded by a line beginning at: Lat. 33°42'22" N; Long. 112°19'16" W; to Lat. 33°38'40" N; Long. 112°14'03" W; to Lat. 33°27'53" N; Long. 112°24'12" W; to Lat. 33°28'00" N; Long. 112°28'41" W; to Lat. 33°31'55" N; Long. 112°30'32" W; to point of beginning.

(4) The north section includes that airspace extending upward from 3,000 feet MSL to 4,000 feet MSL, bounded by a line beginning at: Lat. 33°42'22" N; Long. 112°19'16" W; to Lat. 33°46'58" N; Long. 112°16'41" W; to Lat. 33°44'48" N; Long. 112°10'59" W; to Lat. 33°38'40" N; Long. 112°14'03" W; to point of beginning.

(b) West Sector:

(1) The north section includes that airspace extending upward from 3,000 feet MSL to 6,000 feet MSL, bounded by a line beginning at: Lat. 33°51'52" N; Long. 112°37'54" W; to Lat. 33°49'34" N; Long. 112°23'34" W; to Lat. 33°46'58" N; Long. 112°16'41" W; to Lat. 33°42'22" N; Long. 112°19'16" W; to Lat. 33°39'27" N; Long. 112°22'27" W; to point of beginning.

(2) The south section includes that airspace extending upward from the surface to 6,000 feet MSL, bounded by a line beginning at: Lat. 33°39'27" N; Long. 112°22'27" W; to Lat. 33°38'06" N; Long. 112°23'51" W; to Lat. 33°38'07" N; Long. 112°28'50" W; to Lat. 33°39'34" N; Long. 112°31'39" W; to Lat. 33°39'32" N; Long. 112°37'36" W; to Lat. 33°51'52" N;

Long. 112°37'54" W; to point of beginning.

§ 93.177 Operations in the Special Air Traffic Rule Area.

(a) Unless otherwise authorized by Air Traffic Control (ATC), no person may operate an aircraft in flight within the Luke Terminal Area designated in § 93.176 unless—

(1) Before operating within the Luke Terminal area, that person establishes radio contact with the Luke RAPCON; and

(2) That person maintains two-way radio communication with the Luke RAPCON or an appropriate ATC facility while within the designated area.

(b) Requests for deviation from the provisions of this section apply only to aircraft not equipped with an operational radio. The request must be submitted at least 24 hours before the proposed operation to Luke RAPCON.

Issued in Washington, DC, on December 18, 2009.

J. Randolph Babbitt,
Administrator.

[FR Doc. E9-30938 Filed 12-30-09; 8:45 am]
BILLING CODE 4910-13-P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038-AC66

Revised Adjusted Net Capital Requirements for Futures Commission Merchants and Introducing Brokers

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (“Commission”) is amending its regulations that prescribe minimum adjusted net capital requirements for futures commission merchants (“FCMs”) and introducing brokers (“IBs”). The amendments: increase the required minimum dollar amount of adjusted net capital that an IB must maintain from \$30,000 to \$45,000; increase the required minimum dollar amount of adjusted net capital that an FCM must maintain from \$250,000 to \$1,000,000; amend the computation of an FCM’s margin-based minimum adjusted net capital requirement to incorporate into the calculation customer and noncustomer positions in over-the-counter derivative instruments that are submitted for clearing by the FCM to derivatives clearing organizations (“DCOs”) or other

clearing organizations (“cleared OTC derivative positions”); specify capital deductions for FCM proprietary cleared OTC derivative positions based on the deductions required by the Commission’s regulations for FCM proprietary positions in exchange-traded futures contracts and options contracts; and amend the FCM capital computation to increase the applicable percentage of the total margin-based requirement for futures, options and cleared OTC derivative positions in noncustomer accounts to eight percent.

DATES: Effective March 31, 2010.

FOR FURTHER INFORMATION CONTACT:

Thelma Diaz, Associate Director, Division of Clearing and Intermediary Oversight, 1155 21st Street, NW., Washington, DC 20581. Telephone number: 202-418-5137; facsimile number: 202-418-5547; and electronic mail: tdiaz@cftc.gov or Mark Bretscher, Attorney-Advisor, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 525 W. Monroe, Suite 1100, Chicago, Illinois 60661. Telephone number: 312-596-0529; facsimile number: 312-596-0714; and electronic mail: mbretscher@cftc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On May 7, 2009, the Commission published in the **Federal Register** for public comment proposed amendments to the minimum financial requirements applicable to FCMs and IBs (“Proposing Release”).¹ As noted in the Proposing Release, Section 4f(b) of the Commodity Exchange Act (“Act”) provides that FCMs and IBs must meet such minimum financial requirements as the Commission may prescribe to insure that FCMs and IBs meet their obligations as registrants.² FCMs are subject to greater capital requirements than IBs because the Act permits FCMs, but not IBs, to hold funds of customers trading on designated contract markets and to clear such customer positions with a DCO. CFTC Regulation 1.17 currently requires IBs and FCMs to maintain adjusted net capital of \$30,000 and \$250,000 respectively, or to maintain some greater amount as determined under other calculations required by the regulation.³

Specifically, Commission Regulation 1.17(a)(1)(iii) requires that IBs maintain

adjusted net capital in an amount that equals or exceeds the greatest of: \$30,000; the amount of adjusted net capital required by a registered futures association of which the IB is a member; or, if the FCM is also a securities broker and dealer registered with the U.S. Securities and Exchange Commission (“SEC”), the amount of net capital required by SEC Rule 15c3-1(a), 17 CFR § 240.15c3-1(a). Regulation 1.17(a)(1)(i) requires FCMs to maintain adjusted net capital equal to or in excess of the greatest of: \$250,000; the FCM’s margin-based or “risk-based” capital requirement, which is determined by adding together eight percent of the total risk margin requirement for positions in customer accounts, plus four percent of the total risk margin requirement for positions carried in noncustomer accounts; the amount of adjusted net capital required by a registered futures association of which the FCM is a member; or, for an FCM also registered with the SEC as securities broker and dealer, the amount of net capital required by SEC Rule 15c3-1(a).

As described in the Proposing Release, the Commission proposed several amendments to Regulation 1.17(a) that generally would increase the adjusted net capital requirements of FCMs and IBs. The comment period closed 60 days after publication in the **Federal Register** of the Proposing Release, during which nine comment letters were received. Responses were submitted by Mindy Yost (“Yost”), an individual non-registrant; Newedge USA, LLC (“Newedge”), an FCM/broker-dealer; MF Global, Inc. (“MF Global”), an FCM; R.J. O’Brien & Associates, LLC (“RJO”), an FCM; FCStone, LLC (“FC Stone”), an FCM; the Securities Industry and Financial Markets Association (“SIFMA”); CME Group, Inc. (“CME”); the Futures Industry Association (“FIA”); and the National Futures Association (“NFA”). The concerns and suggestions of each of the commenters are addressed below, in connection with the description of the amendments being adopted by the Commission.⁴

⁴ The Proposing Release also included a query soliciting comment on a topic for which no amendments to Commission regulations have yet been proposed. Specifically, the Commission asked for comment on the advisability of expanding ANC requirements for FCMs that are also securities brokers and dealers, by increasing their ANC by the amount of net capital required by SEC Rule 15c3-1(a). No commenter supported this potential revision of FCM/BD capital requirements.

¹ 74 FR 21290 (May 7, 2009). Copies of the Proposing Release and the comment letters received by the Commission are also available on the Commission’s Web site at <http://www.cftc.gov>.

² The Act is codified at 7 U.S.C. 1 *et seq.*

³ The Commission regulations cited herein may be found at 17 CFR Ch. I (2009).