4910-13

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

Docket No. FAA-2011-0117; Airspace Docket No. 09-AGL-31

Establishment of Restricted Areas R-5402, R-5403A, R-5403B, R-5403C, R-5403D, R-5403E, and R-5403F; Devils Lake, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes restricted area airspace within the Devils Lake Military Operations Area (MOA), overlying Camp Grafton Range, in the vicinity of Devils Lake, ND. The new restricted areas permit realistic training in modern tactics to be conducted at Camp Grafton Range while ensuring the safe and efficient use of the National Airspace System (NAS) in the Devils Lake, ND, area. Unlike restricted areas which are designated under Title 14 Code of Federal Regulations (14 CFR) part 73, MOAs are not regulatory airspace. However, since the restricted areas overlap the Devils Lake East MOA, the FAA is including a description of the Devils Lake East MOA change in this rule. The MOA change described herein will be published in the National Flight Data Digest (NFDD).

EFFECTIVE DATES: Effective date 0901 UTC, July 26, 2012.

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SUPPLEMENTARY INFORMATION:

History

On November 28, 2011, the FAA published in the FEDERAL REGISTER a notice of proposed rulemaking (NPRM) to establish Restricted Areas R-5402, R-5403A, R-5403B, R-5403C, R-5403D, R-5403E, and R-5403F in the vicinity of Devils Lake, ND (76 FR 72869). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. In response to public request, the FAA extended the comment period for 30 additional days (77 FR 1656; January 11, 2012). There were 43 comments received in response to the NPRM with 42 opposing various aspects of the proposal and one comment supporting the proposal as published. All comments received were considered before making a determination on this final rule. The following is a discussion of the substantive comments received and the agency's response.

Discussion of Comments

One commenter contended that the 500 feet above ground level (AGL) base for R-5402 would impact low level, aerial operations such as crop dusters, wildlife and agricultural surveys, and emergency medical access. The FAA recognizes that when active, R-5402 would restrict nonparticipating aircraft from operating within its boundaries. To mitigate impacts to the aviation activities described above, the United States Air Force (USAF) has agreed to implement scheduling coordination measures to de-conflict laser operations and accommodate access by local farming, ranching, survey, and medical aviation interests when they need to fly in or through R-5402, when it is active.

Another commenter noted that VFR traffic would have to circumnavigate active restricted airspace resulting in increased time and distances flown. The FAA acknowledges

restricted area airspace segregates nonparticipating aircraft from hazardous activities occurring inside the restricted area and that, on occasion, nonparticipating aircraft affected by the restricted area will have to deviate from preferred routings to remain clear. The lateral boundaries and altitudes of the restricted area complex were defined to minimize impacts to nonparticipant aircraft, yet still support the military in accomplishing its training mission. The subdivided configuration of the restricted area complex, the altitude stratifications, and the entire restricted area complex designated as "joint use," affords nonparticipant aircraft access to the portions of restricted area airspace not in use by the military to the greatest extent possible.

One commenter expressed concern that segregating airspace for new types of aircraft sets a dangerous precedent. The FAA agrees and maintains its policy to establish restricted area airspace when determined necessary to confine or segregate activities considered hazardous to nonparticipating aircraft. The FAA considers UAS operations to be non-hazardous. However, the FAA recognizes that some UAS platforms have the ability to employ hazardous ordnance or sensors. Since the MQ-1 Predator [UAS] laser is non-eye safe and will be used during training sorties flown by the military, its use constitutes a hazardous activity that must be confined within restricted area airspace to protect nonparticipating aircraft.

Two commenters suggested that Special Use Airspace (SUA) should be ceded back to civil control when not in use. The FAA proposed that the restricted areas be designated as "joint use" airspace, specifically to afford the highest level of access to NAS users and limit this access only when necessary. This rule provides that when the restricted areas are not needed by the using agency, the airspace will be returned to the controlling agency, Minneapolis Air Route Traffic Control Center, for access by other NAS users.

Another commenter recommended that the proposed restricted area airspace be developed for concurrent use. The FAA considered the commenters use of "concurrent use" to mean "sharing the same airspace, at the same time, between participating and nonparticipating aircraft." As noted previously, restricted areas are established to confine or segregate activities considered hazardous to nonparticipating aircraft; such as dropping bombs, firing guns/missiles/rockets, or lasing with a non-eye safe laser. Concurrent use, as described above, would not be prudent in such an environment as it constitutes an unacceptable risk to nonparticipating aircraft.

Twenty-two commenters stated that the proposed restricted areas should have been developed in conjunction with the North Dakota Airspace Integration Team (NDAIT), a group formed to find solutions to UAS integration into the NAS, as well as coordinate UAS activities state-wide. To clarify, the focus of this proposed action is consideration of establishing restricted areas to support hazardous military training activities, not UAS integration into the NAS. The FAA notes that the NDAIT was not established until after the USAF airspace proposal was submitted to the FAA and many of the NDAIT members took the opportunity to submit comments on the proposal.

One commenter stated that the proposed airspace should be environmentally assessed for the broad array of military aircraft that would be expected to employ in conjunction with UAS. The FAA agrees and has confirmed that the Environmental Impact Statement for the bed down of the MQ-1 Predator at Grand Forks Air Force Base (AFB) addresses other aircraft that would likely train with the UAS in the proposed restricted area airspace complex.

Another commenter stated that the proposed restricted area airspace would eventually be activated almost full time as is the current Temporary Flight Restriction (TFR) over Grand Forks

AFB. The TFR referred to by the commenter is contained in the Special Security Instruction authorized under 14 CFR 99.7 for Customs and Border Protection (CBP) UAS operations conducted from Grand Forks AFB. Although the TFR is active while the CPB UAS is flying, it allows airspace access by non-participant aircraft using procedural separation rules. The restricted areas proposed by this action are being established with specific times of designation, to support the hazardous non-eye safe laser training conducted by the USAF. The times are described by "core hours" and also may be activated by NOTAM to allow for training periods outside the core hours, i.e. at night.

Twenty commenters argued that the proposal is contrary to FAA policy, in that it is designed for the sole purpose of separating non-hazardous types of VFR aircraft. The FAA has established this restricted area airspace to confine the MQ-1 Predator employment of a non-eye safe targeting laser, which is hazardous to nonparticipating pilots. This laser training for UAS pilots must be contained in restricted areas to confine the hazardous activity, as well as protect non-participating aircraft flying in the vicinity of the restricted areas. Even though the Predator operations in the restricted areas will normally occur in Visual Meteorological Conditions (VMC), the UAS will be on an IFR flight plan in accordance with U.S. Air Force requirements.

Two commenters requested that the FAA establish a formal, annual review process and public report on the use and impacts of any designated airspace associated with UAS activity in Grand Forks, ND. The request to establish a formal annual review process with public reporting on use and impacts falls outside the scope of this proposed action. However, the FAA has a Restricted Area Annual Utilization reporting program already established to assist the FAA in managing special use airspace areas established throughout the NAS. These annual utilization reports provide objective information regarding the types of activities being conducted, as well

as the times scheduled, activated, and actual use, which the FAA uses to assess the appropriate use of the restricted areas.

Nineteen commenters recommended that proposed restricted airspace have a "sunset" date. The restricted areas are established to confine hazardous non-eye safe laser training, which will continue as long as the Predator UAS are operating from Grand Forks AFB. Technology developments to integrate UAS into the NAS with manned aircraft, as well as military Tactics, Techniques and Procedures (TTP) maturation may provide an opportunity to reconfigure the restricted area airspace at a future date, but the requirement for restricted area airspace will exist as long as the non-eye safe laser training is conducted.

One commenter recommended a requirement for equipping the UAS with forward viewing sensors that would enable the UAS to comply with 14 CFR part 91 see-and-avoid rules. While the FAA is working with the industry to develop see-and-avoid solutions for the safe and eventual seamless integration of UAS into the NAS, this suggestion is outside the scope of this action.

One commenter asked that the proposal be tabled until the FAA publishes its final Order/Advisory Circular regarding UAS operations in the NAS. The Order/Advisory Circular address the integration of UAS in the NAS, which is separate from the action of establishing restricted area airspace to confine hazardous non-eye safe laser training activities. This action is necessary to support the military's training requirement beginning this summer. The FAA is completing this airspace action separate from its UAS NAS integration guidance development efforts.

Several commenters recommended that instead of creating new SUA for these activities that the USAF use existing restricted areas or the airspace subject to flight restrictions under

§99.7 SSI and used by the Customs & Border Protection Agency (CBP) at Grand Forks AFB. The FAA advocates the use of existing SUA and requires proponents to examine all reasonable alternatives, prior to considering the need to establish new SUA. In this case, the USAF conducted an extensive analysis of alternatives and considered criteria including proximity to Grand Forks AFB, existence of a suitable air-to-ground range for laser targeting, and air traffic density both en route and at the training complex. The Beaver MOA in north central Minnesota is approximately three times as far as the proposed airspace, has much heavier air traffic density, and has no air-to-ground gunnery range. The Tiger MOAs in north central North Dakota are the same distance as the proposed airspace, have favorable air traffic density, but have no air-to-ground gunnery range. The airspace in the vicinity of the existing CBP §99.7 SSI flight restriction would be closer, but has much higher traffic density and complexity, and has no air-to-ground range. Additionally, there were no useable restricted areas within reasonable distance of Grand Forks AFB for consideration. The FAA believes the USAF considered and analyzed the alternatives to this action and that establishing new SUA is the only reasonable option.

One commenter suggested that the restricted area complex be moved north of Devils Lake. The FAA notes that the USAF studied an alternative of establishing restricted areas in the Tiger North and Tiger South MOAs, located north of Devils Lake, ND. While proximity to Grand Forks AFB and the air traffic density compared favorably to the proposed airspace area, the lack of an air-to-ground gunnery range suitable for hazardous laser training made this option operationally unfeasible. The FAA accepted the USAF's consideration and analysis of this alternative and proposed establishing the restricted areas set forth in this action.

One commenter recommended that the proposed airspace be moved to another state as it would impact flying training in the vicinity of Grand Forks. This airspace proposal resulted

from Congress' Base Realignment and Closure Commission of 2005 decision to retain Grand Forks Air Force Base in North Dakota for an emerging UAS mission. As addressed previously, Beaver MOA in north central Minnesota is the nearest SUA outside of North Dakota. It was approximately three times the distance from Grand Forks AFB, has much higher air traffic density airspace, and has no air-to-ground gunnery range for hazardous laser training. The FAA recognizes the proposed restricted areas could impact civil flight training, largely conducted by the University of North Dakota and east of the proposed complex. Additionally, nearly all civil flight training activity that currently occurs in the vicinity of the restricted areas would take place below the proposed R-5403 footprint. Whereas the floor of R-5402 goes down to 500 feet above ground level (AGL), its cylinder footprint was reduced to a 7 NM radius around R-5401 and the Camp Grafton Range to mitigate impacts to these civil operations. This airspace action provides a reasonable balance between military training requirements and accommodation of non-participant flight training.

Three commenters stated that the vast size of the restricted area complex is not necessary. The restricted areas being established by this action provide the minimum vertical and lateral tactical maneuvering airspace required for UAS operators to accomplish target acquisition prior to attack, and then contain the non-eye safe laser during firing. The restricted area complex was configured to confine two UAS operating on independent mission profiles at the same time, while minimizing airspace impacts to non-participating aircraft. As the UAS training flight transitions from one phase of the mission profiles to another, unused segments will be deactivated and returned to the NAS consistent with the FAA's Joint Use Airspace policy. The subdivided and stratified configuration of the restricted area complex enables the USAF to only activate the restricted areas needed for their training sorties while leaving the rest of the complex

inactive and available for NAS users. The FAA believes the segmentation and stratification of the complex will enhance civil access to those parts of the complex not activated for USAF training requirements. Actual procedures for restricted area activation and deactivation will be defined in a Letter of Procedure between the using and controlling agencies.

Two commenters asked if the USAF could find a less cluttered area with more suitable weather for MQ-1 Predator operations. The FAA acknowledges that weather challenges will exist for the MQ-1 Predator operations at Grand Forks AFB. The decision to base Predator UAS at Grand Forks AFB, however, was mandated by Congress. The restricted areas proposed by this action were situated and proposed in the only location that met the USAF's operational requirements of proximity to launch/recovery base, low air traffic density, and availability of an existing air-to-ground gunnery range suitable for the hazardous non-eye safe laser training activities.

One commenter contended that Alert Areas are more appropriate for UAS training activity. Alert Areas are designated to inform nonparticipating pilots of areas that contain a high volume of pilot training operations, or an unusual type of aeronautical activity, that they might not otherwise expect to encounter. However, only those activities that do not pose a hazard to other aircraft may be conducted in an Alert Area. Since employment of the non-eye safe laser carried by the MQ-1 Predator UAS is an activity hazardous to non-participants, an Alert Area is not an appropriate airspace solution.

Two commenters stated that the Air Force is proposing restricted areas as a means to mitigate for lack of see-and-avoid capability for UAS operations. They noted, correctly, that the Air Force could use ground-based or airborne assets to provide see-and-avoid compliance instead. FAA policy dictates that restricted areas are established to confine activities considered

hazardous to non-participating aircraft. As mentioned previously, the focus of this action is establishing restricted areas to support hazardous military training activities, not UAS integration into the NAS. As such, the FAA does not support establishing restricted areas as a solution to overcome UAS inability to comply with 14 CFR Part 91 see-and-avoid requirements. The FAA is establishing the restricted areas addressed in this action to confine the hazardous non-eye safe laser training activities conducted by the USAF.

One commenter stated that new restricted airspace should be offset by reallocation of unused SUA elsewhere in the NAS. The proposed restricted areas fall almost entirely within the existing Devils Lake East MOA. When activated, the new restricted areas will be, in effect, replacing existing SUA. Although the regulatory and non-regulatory process for establishing SUA is not directly linked to the restricted area and MOA annual utilization reporting process, the FAA does review restricted area and MOA utilization annually. If candidate SUA areas are identified, the FAA works with the military service to appropriately return that airspace to the NAS.

Seventeen commenters stated that Predator pilots can get the same training through simulation. The FAA cannot determine for the USAF the value of simulated UAS operator training over actual flying activities. The USAF is heavily investing in Live, Virtual, and Constructive (LVC) training options. As the commenters infer, the migration to a virtual training environment would be expected to reduce the demand for activating R-5402 and R-5403A-F. However, actual employment of the non-eye safe laser will still be required for both training proficiency and equipment validation. This action balances the training airspace requirements identified by the USAF as it matures its UAS capabilities with the airspace access requirements of other NAS users.

Twenty commenters addressed the increased collision hazard due to air traffic compression at lower altitudes and around the periphery of the proposed complex. The FAA recognizes that compression could occur when the restricted areas are active; however, the actual impact will be minimal. The FAA produced traffic counts for the 5 busiest summer days and 5 busiest winter days of 2011 during the proposed times of designation (0700-2200L) from 8,000 feet MSL to 14,000 feet MSL. Totals for all IFR and known VFR aircraft ranged between 4 and 22 aircraft over the 17-hour span. Volumes such as this are easily managed by standard ATC procedures. To enhance non-radar service in the far western part of the proposed complex, the FAA is considering a separate rulemaking action to modify V-170 so that it will remain clear of R-5402 to the west. On average, four aircraft file V-170 over a 24-hour day. Lastly, the FAA is nearing completion of a project to add three terminal radar feeds, from Bismarck, Fargo, and Minot AFB, covering the restricted area airspace area into Minneapolis ARTCC. These feeds will improve low altitude radar surveillance and enhance flight safety around the proposed restricted areas.

One commenter argued that the proposed airspace should be limited to daylight hours only. While daytime flying is usually safer in a visual see-and-avoid environment; when it comes to the military training for combat operations, darkness provides a significant tactical advantage and UAS must be capable of operating both day and night. While the USAF has a valid and recurring requirement to train during hours of darkness, the USAF was able to accept a 2-hour reduction in the published times of designation core hours from “0700-2200 daily, by NOTAM 6 hours in advance,” to “0700-2000 daily, by NOTAM 6 hours in advance.”

Another commenter sought details on the UAS lost link plan. Although the lost link plan is not within the scope of this action, the FAA does require detailed procedures for UAS lost

link situations for all UAS operations. These procedures will be similar to those in place today for UAS operations across the NAS. The servicing ATC facility and UAS operators closely coordinate lost link procedures and will incorporate them into the implementing Letters of Procedure (LOP) for the restricted areas established in this rule.

Two commenters commented that the proposed restricted area complex stratification and segmentation was confusing and would lead to SUA airspace incursions. The FAA promotes stratifications and segmentation of large SUA complexes to maximize the safety and efficiency of the NAS and to enable more joint use opportunities to access the same airspace by non-participating aircraft. Sub-dividing the complex permits activation of a small percentage of the overall complex at any one time while still providing for a diverse set of training profiles during UAS sorties, which is especially well-suited for long duration UAS training missions. Additionally, enhanced joint use access eases compression of air traffic in the local area; thus, increasing flight safety.

Nineteen commenters noted that UAS will not be able to see-and-avoid large flocks of birds using migratory flyways, which could create a hazard for personnel on the ground. Both Grand Forks AFB and the University of North Dakota flight school, located at the Grand Forks International Airport, have conducted extensive research into bird strike potential and prevention. Their research found that more than 90 percent of bird strikes occur below 3,500 feet AGL and that there are predictable windows for migratory bird activity, which are adjusted year-to-year based on historical and forecast weather patterns. Also, bird strikes are nearly twice as likely to occur at night compared to the day. The USAF has long standing bird strike avoidance procedures specifically customized for Grand Forks AFB, which will be optimized for UAS operations. Other mitigations include having the bases of the restricted airspace well

above most bird activity, conducting most training during daylight hours, and adjusting UAS operations during seasonal migratory activity. These mitigations conform to both civil and military standard bird strike avoidance measures that are in place across the NAS.

Eighteen commenters contended that persons and property under the proposed airspace would not be protected from the non-eye safe laser training. The USAF conducted a laser safety study in 2009 for the Camp Grafton Air-to-Ground Range. This range, where the laser targets will be placed, lies within the existing R-5401. The study examined laser and aircraft characteristics, topography, target composition, and employment parameters, and determined that the proposed airspace would adequately protect persons and property outside the footprint of R-5401. Personnel working at the range will use proper protective gear should they need to access the target areas during laser employment periods. The FAA has reviewed and accepts the USAF's laser safety study. The restricted areas established by this action are designed to allow laser employment without hazard to persons and property in the vicinity of R-5401.

Two commenters stated that it is dangerous to mix UAS with visual flight rules (VFR) air traffic. UAS are permitted to fly outside restricted area airspace in the NAS today and in the vicinity of VFR aircraft, under FAA approved Certificate of Waiver or Authorization (COA). Specific to this action, UAS operations will be occurring inside restricted area airspace that is established to confine the hazardous non-eye safe laser training activities; thus, segregated from nonparticipating aircraft.

One commenter said that VFR pilot violations will increase and those less informed will pose a safety hazard. The FAA interpreted the commenters use "violations" to mean SUA airspace incursions. VFR pilots must conduct thorough pre-flight planning and are encouraged to seek airborne updates from ATC on the status of SUA. The FAA finds that the restricted

areas established by this action pose no more risk of incursion or safety hazard than other restricted areas that exist in the NAS.

Two commenters observed that the NPRM failed to identify how UAS would transit from Grand Forks AFB to the proposed restricted areas. The FAA considers UAS transit and climb activities to be non-hazardous; therefore, establishing new restricted areas for transit and climb purposes is inappropriate. While UAS transit and climb activities are non-hazardous, they are presently atypical. Therefore, specifics on transit and climb ground tracks, corridor altitudes and widths, and activation procedures will be accomplished procedurally and consistent with existing COA mitigation alternatives available today. The establishment of restricted areas airspace is focused on the hazardous non-eye safe laser training activities.

Twenty four commenters noted that the proposed restricted areas would block V-170 & V-55 and impact V-169 & V-561. The FAA acknowledges that the proposed restricted area complex will have a minimal impact on three of the four Victor airways mentioned, depending on the restricted areas activated. The airway analysis began with V-170, which runs between Devils Lake, ND, and Jamestown, ND, with a Minimum En route Altitude (MEA) of 3,500 feet MSL along the effected segment of the airway. An average of four aircraft per day filed for V-170. R-5402, when active, impacts V-170 from 1200 feet AGL to 10,000 feet MSL. The FAA is considering a separate rulemaking action to modify V-170 by creating a slight “dogleg” to the west, which would allow unimpeded use of V-170 below 8,000 feet MSL regardless of the status of R-5402. Impacts to V-170 above 8,000 feet MSL are dependent upon which restricted areas are active.

V-55 runs between Grand Forks, ND, and Bismarck, ND, with an MEA of 8,000 feet MSL along the affected segment of the airway. An average of 7 aircraft per day filed for V-55.

Activation of R-5402, R-5403A, R-5403B, or R-5403C would have no impact on V-55. The FAA raised the floor of R-5403D to 10,000 feet MSL and reduced the blocks for R-5403D and R-5403E to 2,000 feet each to allow ATC more flexibility to climb/descend IFR traffic on V-55. The FAA is also considering establishing a Global Positioning Satellite MEA along the affected segment of V-55 to allow properly equipped non-participating aircraft to fly the V-55 ground track, but at a lower altitude.

V-561 runs between Grand Forks, ND, and Jamestown, ND, with an MEA of 4,000 feet MSL along this segment of the airway. An average of two aircraft per day filed for V-561. When activated, the southeast corner of R-5403D, R-5403E, and R-5403F encroach upon V-561 from 10,000 feet MSL-11,999 feet MSL, 12,000 feet MSL-13,999 feet MSL, or 14,000 feet MSL-17,999 feet MSL, respectively.

V-169 runs between Devils Lake, ND, and Bismarck, ND, with an MEA of 3,500 feet MSL along this segment. The nearest point of any restricted area is 5 nautical miles (NM) from the centerline of V-169. Since Victor airways are 4 NM wide; the restricted areas do not encumber the use of V-169.

The FAA acknowledges potential impacts to users on Victor airways V-55, V-170, and V-651 by the restricted areas established in this action. However, based on the 13 total average daily flights filing for V-55, V-170, and V-651 in the same airspace as the proposed restricted area complex (V-169 is not affected by the proposed airspace), the impacts of the restricted areas on the three affected airways is considered minimal. These aircraft have air traffic control procedural alternatives available to include vectoring, altitude change, or re-routing as appropriate.

Nineteen commenters found that transcontinental and local area flights would be forced to deviate around restricted areas, increasing cost and flight time. The FAA understands that when the restricted areas are active, non-participation aircraft will have to accomplish course deviations or altitude changes for avoidance, which can increase distances flown and costs incurred. For this action, the FAA and USAF worked together to define the minimum airspace volume necessary to meet USAF training mission requirements and maximize airspace access to other users of the NAS. Reducing the overall size and internally segmenting and stratifying the complex have reduced course deviation distances and altitude changes required by non-participants to avoid active restricted areas. Additionally, the USAF as agreed to temporarily release active restricted airspace back to ZMP for non-participant transit during non-routine/contingency events (i.e. due to weather, icing, aircraft malfunction, etc.). Air traffic in this part of the NAS is relatively light and the level of impact associated with establishing the restricted areas in this action is considered minimal when balanced against valid military training requirements.

Twenty-four comments were received stating that four hours prior notice is insufficient lead time for activation by NOTAM, with most recommending that the prior notification time be increased to six hours. The FAA recognizes that many aircraft today have flight durations long enough that flight planning before takeoff may occur outside of the 4-hour window. Restricted areas provide protected airspace for hazardous operations with no option to transit when active, so changes in airspace status after flight planning would have an impact on routing or altitude. These impacts could be reduced by increasing the NOTAM notification time; therefore the proposed time of designation for R-5402 and R-5403A-F is amended to “0700-2000 daily, by NOTAM 6 hours in advance; other times by NOTAM.”

One commenter stated that the SUA should be limited to published times of designation or times that can be obtained through an Automated Flight Service Station (AFSS) or ZMP. The times of designation for the restricted areas conforms to FAA policy and provides military users the operational flexibility to adjust for unpredictable, yet expected events, such as poor weather conditions or aircraft maintenance delays. By establishing the restricted areas with a "By NOTAM" provision for activations, the AFSS will receive scheduled activation times at least 6 hours in advance and can provide activation information when requested. Additionally, ZMP can provide the most current restricted areas status to airborne aircraft, workload permitting, as an additional service to any requesting IFR or VFR aircraft.

Nineteen commenters contended that local and transient pilots would avoid the restricted areas regardless of the activation status. The FAA understands that some pilots may opt to avoid the vicinity of this proposed airspace complex; however, pilots have multiple ways to obtain SUA schedule information during preflight planning and while airborne to aid their situational awareness. Daily SUA schedules will be available on the sua.faa.gov website, NOTAMs will be issued at least 6 hours prior to activating the restricted areas, and AFSS will brief SUA NOTAMS upon request. Airborne updates will also be available through ZMP or AFSS. Lastly, the USAF will provide a toll-free phone number for inclusion on aeronautical charts that will enable NAS users to contact the scheduling agency for SUA status information; similar to what is in place for the Adirondack SUA complex in New York.

Two commenters requested that the FAA chart an ATC frequency for updates on the restricted areas. The FAA has frequencies listed on both the L-14 IFR Enroute Low Altitude Chart and the Twin Cities Sectional Aeronautical Chart already. Upon review, the VHF frequency listed on the IFR Enroute Low Altitude Chart near where R-5402 and R-5403A-F

restricted areas will be established was found to be different than the frequency listed on the Sectional Aeronautical Chart listing of SUA for the existing R-5401 (which R-5402 and R-5403A-F will overlay). The FAA is taking action to correct the discrepancy so that matching frequencies are charted.

Seventeen commenters stated that the NOTAM system is generally inadequate to inform users of SUA status, and the number of components to this restricted airspace would lead to intricate and confusing NOTAMs. The restricted area complex is comprised of 7 individual areas and structured to minimize complexity and maximize nonparticipant access when not required for military use during certain phases of a training mission. The overall complex configuration, with seven sub areas, is a reasonable balance between efficiency, complexity, and military requirements. The NOTAM system is designed to disseminate many types of aeronautical information, including restricted area status when activation is "By NOTAM" or outside published times of designation. Because of the "By NOTAM" provision in the legal description times of designation, activation NOTAMs for R-5402 and R-5403A-F will be included in verbal briefings from AFSS, upon pilot request.

The Rule

The FAA is amending 14 CFR part 73 to expand the vertical and lateral limits of restricted area airspace over the Camp Grafton Range to contain hazardous non-eye safe laser training operations being conducted by the emerging UAS mission at Grand Forks Air Force Base (AFB); thus, transforming the range into a viable non-eye safe laser training location. Camp Grafton Range is currently surrounded by R-5401; however, the lateral boundaries and altitude are insufficient to contain the laser training mission profiles and tactics flown in combat operations today. This action supplements R-5401 by establishing additional restricted areas, R-

5402, R-5403A, R-5403B, R-5403C, R-5403D, R-5403E, and R-5403F, to provide the vertical and lateral tactical maneuver airspace needed for UAS target acquisition prior to attack, and to contain the non-eye safe laser during laser target designation training operations from medium to high altitudes.

The restricted area R-5402 is defined by a 7 nautical mile (NM) radius around the center of R-5401, with the northern boundary adjusted to lie along the 47°45'00"N latitude. The restricted area altitude is upward from 500 feet above ground level to, but not including 10,000 feet MSL. This new restricted area provides a pathway for the non-eye safe laser beam to transit from R-5403A, R-5403B, and R-5403C (described below) through the existing R-5401 and onto Camp Grafton Range.

The restricted areas R-5403A, R-5403B, and R-5403C share the same lateral boundaries, overlying R-5402 and layered in ascending order. The northern boundary of these R-5403 areas, as described in the regulatory text, share the same northern boundary as R-5402, the 47°45'00"N latitude. The western boundary lies approximately 14 NM west of R-5402 along the 99°15'00"W longitude and the eastern boundary lies approximately 7 NM east of R-5402 along the 98°15'00"W longitude. Finally, the southern boundary is established to remain north of the protected airspace for V-55. The restricted area altitudes, in ascending order, are defined upward from 8,000 feet MSL to, but not including 10,000 feet MSL for R-5403A; upward from 10,000 feet MSL to, but not including 14,000 feet MSL for R-5403B; and upward from 14,000 feet MSL to, but not including Flight Level (FL) 180 for R-5403C. The additional lateral and vertical dimensions provided by these restricted areas, in conjunction with R-5401, R-5402, R-5403D, R-5403E, R-5403F, establish the maneuvering airspace needed for UAS aircraft to practice the tactical maneuvering and standoff target acquisition training requirements necessary

for the combat tactics and mission profiles flown today and to contain the hazardous non-eye safe laser, when employed, completely within restricted airspace.

The areas R-5403D, R-5403E, and R-5403F also share the same lateral boundaries, adjacent to and southeast of R-5403A, R-5403B, and R-5403C, and are also layered in ascending order. The northern boundary of these R-5403 areas, as described in the regulatory text, shares the southern boundary of R-5403A, R-5403B, and R-5403C. The western boundary point reaches to the 99°15'00"W longitude and the eastern boundary lies along the 98°15'00"W longitude. Finally, the southern boundary is established to lie along the 47°15'00"N latitude. The restricted area altitudes, in ascending order, are defined upward from 10,000 feet MSL to, but not including 12,000 feet MSL for R-5403D; upward from 12,000 feet MSL to, but not including 14,000 feet MSL for R-5403E; and upward from 14,000 feet MSL to, but not including Flight Level (FL) 180 for R-5403F. The additional lateral and vertical dimensions provided by these restricted areas, in conjunction with R-5401, R-5402, R-5403A, R-5403B, R-5403C, and the Camp Grafton Range, establish the maneuvering airspace, standoff target acquisition, and hazardous non-eye safe laser employment training completely within restricted airspace, as noted above.

During the NPRM public comment period, it was realized that the proposal section of the NPRM preamble described the southern boundary for the proposed R-5403D, R-5403E, and R-5403F to lay along the 47°30'00"N latitude, in error. However, the regulatory text in the NPRM correctly described the southern boundary for these proposed restricted areas to lie along the 47°15'00"N latitude. This action confirms the southern boundary for R-5403D, R-5403E, and R-5403F is along the 47°15'00"N latitude.

Restricted areas R-5402, R-5403A, R-5403B, R-5403C, R-5403D, R-5403E, and R-5403F are all designated as "joint-use" airspace. This means that, during periods when any of the restricted airspace areas are not needed by the using agency for its designated purposes, the airspace will be returned to the controlling agency for access by other NAS users. The Minneapolis Air Route Traffic Control Center is the controlling agency for the restricted areas.

Lastly, to prevent confusion and conflict by establishing the new restricted areas in an existing MOA, and having both SUA areas active in the same volume of airspace at the same time, the Devils Lake East MOA legal description is being amended in the NFDD. The Devils Lake East MOA amendment will exclude R-5401, R-5402, R-5403A, R-5403B, R-5403C, R-5403D, R-5403E, and R-5403F when the restricted areas are active. The intent is to exclude the restricted areas in Devils Lake East MOA individually as they are activated. This MOA amendment will prevent airspace conflict with overlapping special use airspace areas.

Regulatory Notices and Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct 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 (Public Law 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Public Law 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the 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 (Public Law 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.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows:

As presented in the discussion of comments section of this preamble, commenters stated that there could be the following potential adverse economic impacts from implementing this final rule: the rule will block V-170 and V-55 and limit the use of V-169 and V-561; VFR and local area flights will be forced to deviate around restricted areas, increasing cost and flight time; and the 500 feet AGL floor for R-5402 will affect low level aerial operations such as crop dusters, wildlife and agricultural surveys, and emergency medical access.

With respect to the first potential impact, as discussed in the preamble, the FAA acknowledges that users of Victor airways V-55, V-170, and V-561 could be potentially affected when the restricted areas established in this action are active; however users of V-169 will not be affected at all. Users of V-170 from 1200 feet AGL to 8,000 feet MSL would be affected only when R-5402 is active. The FAA's has determined that there is an average of 4 flights per day between Devils Lake, ND, and Jamestown, ND. Of these flights, 90 percent are general aviation

flights (many of them University of North Dakota training flights) and 10 percent are military or air taxi flights. The potential effect on users of V-170 could be offset by several actions. One action would be to modify V-170 by creating a slight "dogleg" further west of R-5402 to allow unimpeded use of V-170 below 8,000 feet MSL regardless of the status of R-5402. The FAA estimates that this "dogleg" would add about 5 miles to the length of the flight between Devils Lake and Jamestown. Another action would be for air traffic control to either vector the aircraft west of R-5402 or climb the aircraft to 8,000 feet MSL to avoid R-5402. V-170 above 8,000 feet MSL, V-55, and V-561 can still be used by the public, even during military training operations, if the nonparticipant aircraft flies at a different altitude than the altitudes the military is using at that time. The FAA has determined that these adjustments will result in minimal cost to the affected operators.

With respect to the second potential impact, with the exception of R-5402, the public will not be required to deviate around the restricted areas, even during military operations, as long as the nonparticipating aircraft flies at an altitude above or below the altitudes that the military is using at that time. The FAA has determined that these altitude adjustments will have a minimal effect on cost.

With respect to the third potential impact, the USAF has agreed to implement scheduling coordination measures for R-5402 that will accommodate access by local farming, ranching, survey, and medical aviation interests. Further, when any of the restricted areas are not needed by the USAF for its intended purposes, the airspace will be returned to the controlling agency, Minneapolis Air Route Traffic Control Center, for access by other NAS users; providing considerable time for these interests to perform most of their aviation activities in a timely

manner. The FAA has determined that these potential disruptions in public aviation will have a minimal effect on cost.

The FAA has, therefore, determined that this final rule is not a “significant regulatory action” as defined in section 3(f) of Executive Order 12866, and is not “significant” as defined in DOT's Regulatory Policies and Procedures.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Public Law 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 assure 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.

The FAA received two comments from small business owners and a comment from the North Dakota Agricultural Aviation Association (NDAAA), representing agricultural aviation operators. The comments from the business owners expressed concerns about the availability of airspace and that they would be diverted from their normal flight plans, thereby increasing their costs. As previously stated in this preamble, however, these routes will not be closed even during military operations – they can be flown by nonparticipant aircraft so long as those aircraft are not at the altitudes being used by the military. The NDAAA comment that agricultural aircraft are frequently ferried at altitudes greater than 500 feet applies only to those aircraft in R-5402 – not in any of the other areas. As previously noted, the agreement with the USAF and the fact that there are no restrictions in R-5402 when it is not being used by the military will minimize the potential economic impact to agricultural aviation operations in this airspace.

While the FAA believes that one air taxi operator, a few small business operators, and a few agricultural aviation operators constitute a substantial number of small entities, based on the previous analysis, the FAA determined that the final rule will have a minimal economic impact.

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

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Public Law 96-39), as amended by the Uruguay Round Agreements Act (Public Law 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 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 no effect on international trade.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 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 (in 1995 dollars) 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 FAA currently uses an inflation-adjusted value of $143.1 million in lieu of $100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

Environmental Review

Pursuant to Section 102(2) of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR Parts 1500-1508), and other applicable law, the USAF prepared and published *The BRAC Beddown and Flight Operations of Remotely Piloted Aircraft at Grand Forks Air Force Base, North Dakota"* dated July 2010 *(*hereinafter the FEIS) that analyzed the potential for environmental impacts associated with the proposed creation of Restricted Areas R-5402, R-5403A, R-5403B, R-5403C, R-5403D, R-5403E, and R-5403F. In September 2010, the USAF issued a Record of Decision based on the results of the FEIS. In accordance with applicable CEQ regulations (40 CFR 1501.6) and the Memorandum of Understanding (MOU) between FAA and Department of

Defense (DOD) dated October 2005, the FAA was a cooperating agency on the FEIS. The FAA has conducted an independent review of the FEIS and found that it is an adequate statement. Pursuant to 40 CFR 1506.3(a) and (c), the FAA is adopting the portions of the FEIS for this action that support the establishment of the above named restricted areas. The FAA has documented its partial adoption in a separate document entitled "*Partial Adoption of Final EIS and Record of Decision for the Establishment of Restricted Areas R-5402 and 5403.*" This final rule, which establishes restricted areas R-5402, R-5403A, R-5403B, R-5403C, R-5403D, R-5403E, and R-5403F, will not result in significant environmental impacts. A copy of the FAA Partial Adoption of FEIS and ROD has been placed in the public docket for this rulemaking and is incorporated by reference.

FAA Authority

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. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in SubtitileVII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes restricted area airspace at Camp Grafton Range, near Devils Lake, ND, to enhance safety and accommodate essential military training.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited Areas, Restricted Areas.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73 - SPECIAL USE AIRSPACE

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

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

§ 73.54 [Amended]

2. Section 73.54 is amended as follows:

* * * * *

R-5402 Devils Lake, ND [New]

Boundaries. Beginning at lat. 47°45'00"N., long. 98°47'19"W.;
to lat. 47°45'00"N., long. 98°31'25"W.;
then clockwise on a 7 NM arc centered
on lat. 47°40'31"N., long. 98°39'22"W.;
to the point of beginning, excluding the
airspace within R-5401 when active, and
R-5403A when active.
Designated altitudes. 500 feet AGL to, but not including, 10,000 feet MSL.
Time of designation. 0700-2000 daily, by NOTAM 6 hours in advance; other times by NOTAM.
Controlling agency. FAA, Minneapolis ARTCC.
Using agency. U.S. Air Force, 119th Operations Support Squadron, Hector International Airport, Fargo, ND.

* * * * *

R-5403A Devils Lake, ND [New]

Boundaries. Beginning at lat. 47°45’00”N., long. 99°15’00”W.;
to lat. 47°45’00”N., long. 98°15’00”W.;
to lat. 47°35’39”N., long. 98°15’00”W.;
to lat. 47°15’00”N., long. 99°15’00”W.;
to the point of beginning.
Designated altitudes. 8,000 feet MSL to, but not including, 10,000 feet MSL.

Time of designation. 0700-2000 daily, by NOTAM 6 hours in advance; other times by NOTAM.
Controlling agency. FAA, Minneapolis ARTCC.
Using agency. U.S. Air Force, 119th Operations Support Squadron, Hector International Airport, Fargo, ND.

R-5403B Devils Lake, ND [New]

Boundaries. Beginning at lat. 47°45'00"N., long. 99°15'00"W.;
to lat. 47°45'00"N., long. 98°15'00"W.;
to lat. 47°35'39"N., long. 98°15'00"W.;
to lat. 47°15'00"N., long. 99°15'00"W.;
to the point of beginning.
Designated altitudes. 10,000 feet MSL to, but not including, 14,000 feet MSL.
Time of designation. 0700-2000 daily, by NOTAM 6 hours in advance; other times by NOTAM.
Controlling agency. FAA, Minneapolis ARTCC.
Using agency. U.S. Air Force, 119th Operations Support Squadron, Hector International Airport, Fargo, ND.

R-5403C Devils Lake, ND [New]

Boundaries. Beginning at lat. 47°45'00"N., long. 99°15'00"W.;
to lat. 47°45'00"N., long. 98°15'00"W.;
to lat. 47°35'39"N., long. 98°15'00"W.;
to lat. 47°15'00"N., long. 99°15'00"W.;
to the point of beginning.
Designated altitudes. 14,000 feet MSL to, but not including, FL 180.
Time of designation. 0700-2000 daily, by NOTAM 6 hours in advance; other times by NOTAM.
Controlling agency. FAA, Minneapolis ARTCC.
Using agency. U.S. Air Force, 119th Operations Support Squadron, Hector International Airport, Fargo, ND.

R-5403D Devils Lake, ND [New]

Boundaries. Beginning at lat. 47°35'39"N., long. 98°15'00"W.;
to lat. 47°15'00'N., long. 98°15'00"W.;
to lat. 47°15'00'N., long. 99°15'00"W.;
to the point of beginning.
Designated Altitudes. 10,000 feet MSL to, but not including, 12,000 feet MSL.
Time of designation. 0700-2000 daily, by NOTAM 6 hours in advance; other times by NOTAM.
Controlling agency. FAA, Minneapolis ARTCC.

Using agency. U.S. Air Force, 119th Operations Support Squadron, Hector International Airport, Fargo, ND.

R-5403E Devils Lake, ND [New]

Boundaries. Beginning at lat. 47°35'39"N., long. 98°15'00"W.;
to lat. 47°15'00'N., long. 98°15'00"W.;
to lat. 47°15'00'N., long. 99°15'00"W.;
to the point of beginning.
Designated Altitudes. 12,000 feet MSL to, but not including, 14,000 feet MSL.
Time of designation. 0700-2000 daily, by NOTAM 6 hours in advance; other times by NOTAM.
Controlling agency. FAA, Minneapolis ARTCC.
Using agency. U.S. Air Force, 119th Operations Support Squadron, Hector International Airport, Fargo, ND.

R-5403F Devils Lake, ND [New]

Boundaries. Beginning at lat. 47°35'39"N., long. 98°15'00"W.;
to lat. 47°15'00'N., long. 98°15'00"W.;
to lat. 47°15'00'N., long. 99°15'00"W.;
to the point of beginning.
Designated Altitudes. 14,000 feet MSL to, but not including, FL 180.
Time of designation. 0700-2000 daily, by NOTAM 6 hours in advance; other times by NOTAM.
Controlling agency. FAA, Minneapolis ARTCC.
Using agency. U.S. Air Force, 119th Operations Support Squadron, Hector International Airport, Fargo, ND.

Issued in Washington, DC, on June 14, 2012.

Paul Gallant
Acting Manager, Airspace, Regulations and ATC Procedures Group

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