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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 77

[Docket No. FAA-2003-14973; Special Federal Aviation Regulation No. 98]

RIN 2120-AH83

CONSTRUCTION OR ALTERATION IN THE VICINITY OF THE PRIVATE RESIDENCE OF THE PRESIDENT OF THE UNITED STATES.

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Interim final rule; request for comments.

SUMMARY: This action requires that notice be filed with the FAA for the construction or alteration of any object that exceeds 50 feet above ground level (AGL) and is within the existing prohibited airspace surrounding the private residence of the President of the United States (P-49). Due to national security interests and the unique operating requirements of the United States Marine Corps (USMC) and the Secret Service Presidential Protective Division (SSPPD), this rule provides that any object within the designated area that exceeds the obstruction standard will be deemed a hazard to air navigation unless the FAA concludes, based upon submitted information and in consultation with the USMC and the SSPPD, that the construction or alteration will not adversely affect safety and would not result in a hazard to air navigation. This rule is adopted for purposes of national defense and will assist in protecting the President of the United States. This rule does not apply to prior construction or alteration of objects and will terminate at the end of the President's term in office.

DATES: This final rule is effective (~~insert publication date).~~ April 22, 2003 Comments must be submitted on or before (~~insert 60 days after date of publication~~ June 23, 2003).

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify the docket number FAA-2003-14973 at the beginning of your comments, and you should submit two copies of your comments.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Sheri Edgett-Baron, Airspace and Rules Division, ATA-400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA is adopting this final rule without prior notice and prior public comment. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979), however, provide that, to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, we invite interested persons to

participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. We also invite comments relating to environmental, energy, federalism, or international trade impacts that might result from this amendment. Please include the regulatory docket or amendment number and send two copies to the address above. We will file all comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, in the public docket. The docket is available for public inspection before and after the comment closing date.

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://dms.dot.gov.

The FAA will consider all comments received on or before the closing date for comments. We will consider late comments to the extent practicable. We may amend this final rule in light of the comments received.

Commenters who want the FAA to acknowledge receipt of their comments submitted in response to this final rule must include a preaddressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. FAA-2003-14973." The postcard will be date-stamped by the FAA and mailed to the commenter.

Availability of Final Rule

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (http://dms.dot.gov/search);

(2) Visiting the Office of Rulemaking's web page at http://www.faa.gov/avr/arm/index.cfm; or

(3) Accessing the Government Printing Office's web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue S.W, Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

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. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under FOR FURTHER INFORMATION CONTACT. You can find out more about SBRFA on the Internet at our site, http://www.gov/avr/arm/sbrefa.htm. For more information on SBREFA, e-mail us 9-AWA-SBREFA@faa.gov. Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8783.

Background

On March 26, 2001, the FAA published a final rule in the Federal Register establishing prohibited airspace (P–49) over the private residence of the President in

Crawford, Texas (66 FR 16391). [The FAA subsequently modified P-49 by relocating the center of the prohibited area approximately one-half mile east, southeast (68 FR 7917; February 19, 2003.)] This airspace designation is necessary to enhance security in the immediate vicinity of the presidential residence and assist the SSPPD in accomplishing its mission of providing security for the President of the United States. While that rule prohibits unauthorized aircraft from flying within the designated airspace, it does not address certain flight safety and national security issues concerning the transport of the President.

The USMC and the SSPPD provide transportation for the President and presidential personnel. The USMC and SSPPD devise various operational plans to accommodate the unique circumstances involved in transporting the President. The special operating procedures used by the USMC and the SSPPD include the concurrent operation of multiple aircraft, a variety of non-standard flight techniques for security purposes, and other special security provisions to ensure the secure transport of the President and his party during various weather and threat conditions. Flexibility in choosing altitude and direction of flight is essential for optimal use of these special procedures by the USMC and SSPPD, especially in the event of an unanticipated threat to the security of the President.

The Rule

The President's private residence in Crawford, Texas has several landing areas for Presidential aircraft. Each landing area must be accessible by flying several different approaches, depending upon the weather, threat conditions, the aircraft being used, and departure location. Also, the special operating procedures used by the USMC and the

SSPPD, including the use of multiple aircraft, non-standard flight techniques and other special security provisions, require the airspace surrounding the landing areas to be clear of obstructions that could affect these operating procedures and the safety of the President. Obstructions above 50 feet above ground level (AGL) in certain locations within the designated area could inhibit the flexibility of these special operating procedures and could compromise the safe transportation and the security of the President, particularly in emergency situations.

In order to provide for the safe operations of the Presidential helicopters and to accommodate the inherent national security interests involved in transporting the President, the FAA is requiring that any person constructing or altering any object that would exceed 50 feet AGL within a three nautical mile (NM) radius of the President's private residence must file notice with the FAA. This geographic area covers the same surface area that is designated as P-49. The FAA will consider objects that exceed 50 feet AGL within the designated area as obstructions to air navigation. Objects that exceed the above standard could become obstacles for the USMC and the SSPPD during certain operations and result in the inability to follow specified operating procedures and hinder the safety of the entire operations. It is critical for the USMC and SSPPD to have maximum flexibility in devising procedures that uniquely accommodate safely transporting the President. Limiting the construction of new obstructions or alteration of existing structures within the P-49 area will allow optimum operating procedures that are necessary to the safety of the entire operation.

Due to the unique operating requirements of the USMC and the SSPPD previously discussed, the aircraft conducting these operations must have the ability to take off, land or

perform various flight maneuvers in virtually every direction of the landing areas within the designated area. Consequently, it is critical that this area is clear of objects that may adversely affect the operations. Therefore, any new construction or alteration of an object that exceeds the obstruction standard within the designate area is presumed a hazard to air navigation and to compromise the safety of the operations conducted herein.

Certain new construction or alteration to existing structures that would exceed 50 feet AGL may be compatible with the safe and secure transport of the President. The proponent of the construction/alteration must submit detailed information regarding the proposed construction/alteration. Only where the FAA, in consultation with the USMC and the SSPPD, determines that it would not adversely affect safety and not result in a hazard to air navigation, would the FAA issue a Determination of No Hazard. Because the decision of the Administrator may be based upon classified or otherwise sensitive information regarding the security of the President, the Administrator need not provide or disclose the basis for such determination

New construction or alterations to existing structures above 50 feet AGL, outside of the P-49 area, may still pose a danger to the safe transportation and protection of the President. Nothing in this rule, however, precludes the FAA or another federal agency from determining that a new construction or alteration to an existing object outside the designated area is a danger to the safe transportation and protection of the President. Such objects outside the designated area, however, will be addressed by other legal authorities.

Prior Construction and Alterations

The provisions of this rule do not apply to any construction or alteration that occurred before the effective date of this rule.

Duration of the Rule

This rule shall be in effect only for the duration of President George W. Bush's term of office. The FAA recognizes that all Presidents' private residences raise safety and national security concerns regarding the safe ingress and egress of the President and his party. However, the protections necessary to ensure the safe ingress and egress may vary substantially depending upon the nature and location of each President's residence. Therefore, the FAA anticipates that similar rules, tailored to the security concerns of the Presidential residence, may be needed at other locations to protect the transportation of future Presidents.

Justification for Immediate Adoption

We find that the important national security interests of protecting the President and his party during flight operations renders notice and public procedure under 5 U.S.C. 553(b) impracticable and contrary to the public interest. Furthermore, good cause exists under 5 U.S.C. 553(d) to make this rule effective immediately upon publication in the Federal Register so as to prevent the commencement of any construction or alteration in the affected area between the issuance of the rule and the effective date of the rule that could affect the safe transport of the President and his party.

Paperwork Reduction Act

Information collection requirements in the amendment to 14 CFR part 77 previously have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and have been assigned OMB Control Number 2120-0001.

An agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

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 reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking action is taken under an emergency situation within the meaning of Section 6(a) (3) (D) of Executive Order 12866, Regulatory Planning and Review. It also is considered an emergency regulation under Paragraph 11g of the Department of Transportation (DOT) Regulatory Policies and Procedures. In addition, it is a significant rule within the meaning of the Executive Order and DOT's policies and procedures. No regulatory analysis or evaluation accompanies this rule. Because this final rule is being issued with no prior notice, the FAA is not required to assess whether this rule will have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act of 1980, as amended, and we have not performed such an assessment.

International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, aren't considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. The FAA accordingly has assessed the potential effect of this rule to be minimal and therefore has determined that this rule will not result in an impact on international trade.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. 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 rulemaking and has determined that it will impose the same costs on domestic and international entities and thus has a neutral trade impact.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act) requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. The Act requires

the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local and tribal governments on a proposed "significant intergovernmental mandate." Under the Act, a "significant intergovernmental mandate" is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. § 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this rule would not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. We determined that this rule, therefore, would not have federalism implications.

Energy Impact

We assessed the energy impact of this rule in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94-163, as amended (42 U.S.C. § 6362). We have determined that this rule is not a major regulatory action under the provisions of the

EPCA.

List of Subjects in 14 CFR Part 77

Administrative practice and procedure, Airports, Airspace, Aviation safety, Navigation (air), Reporting and recordkeeping requirements.

The Amendment

For the reasons set forth in above, the Federal Aviation Administration amends part 77 of Title 14 of the Code of Federal Regulations as follows:

PART 77—OBJECTS AFFECTING NAVIGABLE AIRSPACE

1. The authority citation for part 77 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113-40114, 44502, 44701, 44718, 46101-46102, 46104

2. Add Special Federal Aviation Regulation (SFAR) No. 98 to read as follows:

SFAR NO. 98--CONSTRUCTION OR ALTERATION IN THE VICINITY OF THE PRIVATE RESIDENCE OF THE PRESIDENT OF THE UNITED STATES.

Section 1. Construction or alteration near the private residence of the President. This section applies to:

(a) Any object of natural growth, terrain, or permanent or temporary construction or alteration, including appurtenances and equipment or materials used therein.

(b) Any apparatus of a permanent or temporary character.

Section 2. Notice of Construction/Alteration. Proponents proposing construction or

alteration of any object described in Section 1 that would exceed 50 feet AGL and is within 3 NM radius of lat. 31°43'45N, long. 97°32'00W shall notify the Administrator in the form and manner prescribed in 14 CFR 77.17.

Section 3. Obstruction Standard.

(a) Any object described in Section 1 that would exceed 50 feet AGL and is within 3 NM radius of lat. 31°43'45N, long. 97°32'00W is an obstruction and is presumed to adversely affect aviation safety and therefore is a hazard to air navigation.

(b) A Determination of No Hazard will be issued only when the FAA determines, based upon submitted information and in consultation with the USMC and the SSPPD, that the construction or alteration will not adversely affect safety and would not result in a hazard to air navigation.

Section 4. Termination This rule will terminate at the end of President George W. Bush's term in office.

Issued in Washington, DC on APR 16 2003

Marion Blakey

Marion C. Blakely
Administrator

Certified to be a True Copy

Vanessa Wilkins