

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 99**

RIN 2120-A111

Security Control of Air Traffic

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action reorganizes the FAA's regulations governing the security control of air traffic. This action is necessary to reflect the changing environment and the increased role of Federal agencies in advising the FAA about matters related to the security of air traffic operations in the National Airspace System (NAS).

DATES: This action is effective on April 29, 2004.

FOR FURTHER INFORMATION CONTACT:

Terry Brown, 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:**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://www1.faa.gov/avr/arm/index.cfm>; or

(2) 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 SW., 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 SBREFA on the Internet at our site, <http://www.gov/avr/arm/sbreffa.htm>. For more information on SBREFA, e-mail us at 9-AWA-SBREFA@faa.gov.

Background

Since the events of September 11, 2001, the FAA initiated a review of 14 CFR part 99 to determine whether the regulation reflects the current environment in light of the increased emphasis on aviation security. As a result of this review, the FAA determined that part 99 should be revised to recognize the role of the newly created Department of Homeland Security, and agreements among Federal agencies regarding security matters related to air traffic operations in the NAS. The changes necessary to part 99 are relatively minor. The FAA is also taking this opportunity to streamline the regulation to improve its organization and readability. The organizational and changes for clarity are non-substantive.

Discussion of Amendments

This action amends FAA regulations that govern security control of air traffic. Specifically, this action reorganizes the content of 14 CFR part 99 as follows:

(1) The applicability section is amended in § 99.1(c) to indicate that an FAA air traffic control (ATC) center may exempt certain operations from the requirements of part 99 with the concurrence of either the military commanders concerned or Federal security/intelligence agencies;

(2) In § 99.3, the definitions of air defense identification zone and defense visual fight rules are amended to delete the use of the word "civil" and replace it with the parenthetical phrase "(except for DOD and law enforcement aircraft)". Thus all civil and public aircraft are covered in those definitions except for Department of Defense and law enforcement aircraft;

(3) Section 99.7 is amended to include the Federal security/intelligence agencies and the Department of Defense, as Federal entities that could work with the FAA in developing special security instructions for aviation;

(4) The provisions of current §§ 99.29 and 99.31 are moved to new paragraphs (c) and (d) of § 99.9;

(5) Section 99.11 (d) is added to cover the current requirements of § 99.15 except the phrase "unless the flight plan states that no notice will be filed." That phrase is being deleted because the FAA has determined that for operation oversight reasons related to aviation safety and security, the "no-notice"

option is no longer appropriate. The FAA needs to have notice of when the arrival is made and when the flight plan is closed;

(6) § 99.12 is removed and its language is moved to new § 99.13;

(7) Section 99.15 combines the position report requirements from §§ 99.17, 99.19, 99.21, and 99.23 into one section;

(8) Section 99.17 is a recodification of § 99.27; and

(9) Section 99.41 Defense Area is replaced by the requirements for the Hawaii ADIZ, since the defense area definition contained in § 99.49 duplicated the definition in § 99.3 Definitions.

Paperwork Reduction Act

There are no new requirements for information collection associated with this action. An agency may not conduct or sponsor and a person is not required to respond to a collection of information 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 determined that there are no ICAO Standards and Recommended Practices that correspond to this action.

FAA Authority

Adoption of these amendments is consistent with FAA's authority in 49 U.S.C. 40103(a) to regulate airspace and to promote the safe flight of civil aircraft. Furthermore, 49 U.S.C. 44701(5) specifically instructs the Administrator to promote the safe flight of civil aircraft in air commerce by prescribing "regulations and minimum standards for other practices, methods and procedures the Administrator finds necessary for safety in air commerce and national security."

Justification for Proceeding Without Notice

The FAA is issuing this action without notice and opportunity to comment under the authority of section 4(a) of the Administrative Procedure Act, 5 United States Code (U.S.C.) 553(b). Section 553(b) allows the FAA to issue a final rule without notice and comment when the agency, for good cause, finds that notice and public procedure are "impracticable, unnecessary or contrary to the public

interest.” In this instance, public comment is unnecessary because the changes are minor and for the most part non-substantive. These changes are either organizational in nature or recognize the FAA’s authority to work with the Department of Homeland Security and other Federal security agencies may have in working with the FAA regarding aviation security.

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, Regulatory Planning and Review, directs the FAA to assess both the costs and benefits of a regulatory change. The FAA is not allowed to propose or adopt a regulation unless we make a reasoned determination that the benefits of the intended regulation justify its costs. Our assessment of this action indicates that its economic impact is minimal and the benefits are primarily administrative. Since its costs and benefits do not make it a “significant regulatory action” as defined in the Order, the FAA has not prepared a “regulatory impact analysis.” Similarly, the FAA has not prepared a “regulatory evaluation,” which is the written cost/benefit analysis ordinarily required for all rulemaking actions under the DOT Regulatory and Policies and Procedures. The FAA does not need to do the latter analysis where the economic impact of an action is minimal.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980, 5 U.S.C. 601–612, directs the FAA to fit regulatory requirements to the scale of the business, organizations, and governmental jurisdictions subject to the regulation. The FAA is required to determine whether a proposed or final action will have a “significant economic impact on a substantial number of small entities” as defined in the Act. If the FAA finds that the action will have a significant impact, we must do a “regulatory flexibility analysis.”

This action amends FAA regulations that govern security control of air traffic. This action editorially reorganizes the content of part 99 and incorporates language, as a result of agreements between the FAA and other Federal security/intelligence agencies, regarding the security control of aircraft operations in the NAS. This rulemaking action imposes no costs on any entity in the aviation industry. Therefore, the FAA certifies that this action will not have a significant economic impact on a substantial number of small entities.

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 have only a domestic impact and therefore no effect on any trade-sensitive activity.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act 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 a \$100 million or more expenditure (adjusted annually for inflation) 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.”

This action does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this action under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action will 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. Therefore, the FAA has determined that this action does not have Federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

List of Subjects in 14 CFR Part 99

Air traffic control, Airspace, National defense, Navigation (air), Security measures.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends part 99 of title 14 Code of Federal Regulations as follows:

PART 99—SECURITY CONTROL OF AIR TRAFFIC

■ 1. The authority citation for part 99 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40103, 40106, 40113, 40120, 44502, 44721.

■ 2. Amend § 99.1 by revising paragraph (a), paragraph (b) introductory text, and paragraph (c) to read as follows:

§ 99.1 Applicability.

(a) This subpart prescribes rules for operating all aircraft (except for Department of Defense and law enforcement aircraft) in a defense area, or into, within, or out of the United States through an Air Defense Identification Zone (ADIZ) designated in subpart B.

(b) Except for §§ 99.7, 99.13, and 99.15 this subpart does not apply to the operation of any aircraft—

* * * * *

(c) An FAA ATC center may exempt the following operations from this subpart (except § 99.7) on a local basis only, with the concurrence of the U.S. military commanders concerned, or pursuant to an agreement with a U.S. Federal security or intelligence agency:

(1) Aircraft operations that are conducted wholly within the boundaries of an ADIZ and are not currently significant to the air defense system.

(2) Aircraft operations conducted in accordance with special procedures prescribed by a U.S. military authority, or a U.S. Federal security or intelligence agency concerned.

■ 3. Amend § 99.3 by revising the following definitions:

§ 99.3 Definitions.

* * * * *

Air defense identification zone (ADIZ) means an area of airspace over land or water in which the ready identification, location, and control of all aircraft (except for Department of Defense and law enforcement aircraft) is required in the interest of national security.

* * * * *

Defense visual flight rules (DVFR) means, for the purposes of this subpart, a flight within an ADIZ conducted by

any aircraft (except for Department of Defense and law enforcement aircraft) in accordance with visual flight rules in part 91 of this title.

■ 4. Revise § 99.7 to read as follows:

§ 99.7 Special security instructions.

Each person operating an aircraft in an ADIZ or Defense Area must, in addition to the applicable rules of this part, comply with special security instructions issued by the Administrator in the interest of national security, pursuant to agreement between the FAA and the Department of Defense, or between the FAA and a U.S. Federal security or intelligence agency.

■ 5. Amend § 99.9 by adding paragraphs (c) and (d) to read as follows:

§ 99.9 Radio requirements.

* * * * *

(c) If the pilot operating an aircraft under DVFR in an ADIZ cannot maintain two-way radio communications, the pilot may proceed, in accordance with original DVFR flight plan, or land as soon as practicable. The pilot must report the radio failure to an appropriate aeronautical facility as soon as possible.

(d) If a pilot operating an aircraft under IFR in an ADIZ cannot maintain two-way radio communications, the pilot must proceed in accordance with § 91.185 of this chapter.

■ 6. Amend § 99.11 by revising paragraph (a) and by adding paragraph (d) to read as follows:

§ 99.11 ADIZ flight plan requirements.

(a) No person may operate an aircraft into, within, or from a departure point within an ADIZ, unless the person files, activates, and closes a flight plan with the appropriate aeronautical facility, or is otherwise authorized by air traffic control.

* * * * *

(d) The pilot in command of an aircraft for which a flight plan has been filed must file an arrival or completion notice with an appropriate aeronautical facility.

§ 99.12 [Redesignated as § 99.13].

■ 7–8. Redesignate § 99.12 as § 99.13 and reserve § 99.12.

■ 9. Revise § 99.15 to read as follows:

§ 99.15 Position reports.

(a) The pilot of an aircraft operating in or penetrating an ADIZ under IFR—

(1) In controlled airspace, must make the position reports required in § 91.183; and

(2) In uncontrolled airspace, must make the position reports required in this section.

(b) No pilot may operate an aircraft penetrating an ADIZ under DVFR unless—

(1) The pilot reports to an appropriate aeronautical facility before penetration: the time, position, and altitude at which the aircraft passed the last reporting point before penetration and the estimated time of arrival over the next appropriate reporting point along the flight route;

(2) If there is no appropriate reporting point along the flight route, the pilot reports at least 15 minutes before penetration: The estimated time, position, and altitude at which the pilot will penetrate; or

(3) If the departure airport is within an ADIZ or so close to the ADIZ boundary that it prevents the pilot from complying with paragraphs (b)(1) or (2) of this section, the pilot must report immediately after departure: the time of departure, the altitude, and the estimated time of arrival over the first reporting point along the flight route.

(c) In addition to any other reports as ATC may require, no pilot in command of a foreign civil aircraft may enter the United States through an ADIZ unless that pilot makes the reports required in this section or reports the position of the aircraft when it is not less than one hour and not more than 2 hours average direct cruising distance from the United States.

■ 10. Revise § 99.17 to read as follows:

§ 99.17 Deviation from flight plans and ATC clearances and instructions.

(a) No pilot may deviate from the provisions of an ATC clearance or ATC

instruction except in accordance with § 91.123 of this chapter.

(b) No pilot may deviate from the filed IFR flight plan when operating an aircraft in uncontrolled airspace unless that pilot notifies an appropriate aeronautical facility before deviating.

(c) No pilot may deviate from the filed DVFR flight plan unless that pilot notifies an appropriate aeronautical facility before deviating.

§ 99.19 [Removed and reserved].

■ 11. Remove and reserve § 99.19.

§ 99.21 [Removed and reserved].

■ 12. Remove and reserve § 99.21.

§ 99.23 [Removed and reserved].

■ 13. Remove and reserve § 99.23.

§ 99.27 [Removed and reserved].

■ 14. Remove and reserve § 99.27.

§ 99.29 [Removed and reserved].

■ 15. Remove and reserve § 99.29.

§ 99.31 [Removed and reserved].

■ 16. Remove and reserve § 99.31.

■ 17. Revise § 99.41 to read as follows:

§ 99.41 General.

The airspace above the areas described in this subpart is established as an ADIZ. The lines between points described in this subpart are great circles except that the lines joining adjacent points on the same parallel of latitude are rhumb lines.

§§ 99.49 [Removed]

■ 18. Remove § 99.49.

§§ 99.42 through 99.47 [Redesignated]

■ 19. Redesignate §§ 99.42, 99.43, 99.45, and 99.47 as §§ 99.43, 99.45, 99.47, and 99.49 respectively.

Issued in Washington, DC, on March 23, 2004.

Marion C. Blakey,
Administrator.

[FR Doc. 04–6964 Filed 3–29–04; 8:45 am]

BILLING CODE 4910–13–P