[Regulatory Docket No. 6515; Amdt. 99-5]

PART 99—SECURITY CONTROL OF AIR TRAFFIC

Special Instructions for the Security Control of Air Traffic

On March 17, 1965, a notice of proposed rule making was published in the FEDERAL REGISTER (30 F.R. 3550) stating that the Federal Aviation Agency was considering amendments to §§ 99.3 and 99.7 of part 99 of the Federal Aviation Regulations that would clarify the extent to which the Administrator intends implementing his authority, under the Federal Aviation Act of 1958, to encourage and permit the maximum use of the navigable airspace by civil aircraft consistent with the national security.

Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of comments. Due consideration was given to all relevant matter presented.

Although all comments generally supported the proposed amendments, the Air Transport Association of America (ATA) stated that it was concerned with the broadness of the authority granted the Adminstrator by the proposal to amend § 99.7. The amendment, as proposed, does not grant the Administrator any degree of authority. Rather, it implements the authority granted him by § 1202 of the Federal Aviation Act of 1958.

The purpose of the amendment, herein, is to make perfectly clear that special security instructions, can and may be issued, in accordance with § 1202 under any situation determined to be detrimental to the interests of national defense, including all degrees of hostile actions as well as situations precipitating the declaration of an Air Defense Emergency or Defense Emergency and attendant full war plans.

The ATA also commented that the words "* * * in the interest of national security," as used in the proposed change to section 99.7, are not defined and, as such, are susceptible to different interpretations. Further, it was suggested that the language would be more in keeping with the intent of the amendment, as expressed in the preamble of the notice, if the words "* * * hostile actions threatening national security," were used. In the interest of national security, the Administrator may issue special security instructions under conditions which include all degrees of hostility, ranging from threats to actual attack. The phrase "in the interest of national security" is not specifically defined since it is an inclusive term intended to cover any and all situations that quite obviously cannot be predetermined.

The Aircraft Owners and Pilots Association recommended that the terms Air Defense Emergency and Defense Emergency continue as conditions for the issuance of special security instructions. The basis for this recommendation was that the Administrator has sufficient authority under the Federal Aviation Act of 1958 to issue special security instructions as necessary, and in the event of a time-critical situation, military commanders would not wait for a formal declaration of an Air Defense Emergency or Defense Emergency prior to initiating defensive measures. Again, the amendment of § 99.7 is designed to clarify the extent to which the Administrator intended using his authority under § 1202 of the Act, rather than attempting to add to that authority. Further, the argument that military commanders would not wait for a formal declaration of an Air Defense Emergency or Defense Emergency strengthens, rather than contravenes, the position that such a declaration should not be a prerequisite for the issuance of, and compliance with, special security instructions.

Finally, AOPA stated that it realized situations may arise that do not require the declaration of an Air Defense Emergency or Defense Emergency, or hostile actions may occur without sufficient time to make these declarations, but that the issuance of special rules would be sufficient to cope with these situations; that it would be impractical to cover such exceptions to a formal declaration in part 99. Unfortunately, immediate compliance with defense measures, including special security instructions, to counter threatening hostile actions may be required at any given moment, and does not lend itself even to the publication of special regulations. In view of such uncertainty, the language proposed for § 99.7 provides an exceptionally practical and necessarily flexible means, consistent with appropriate agreements between the Federal Aviation Agency and the Department of Defense, for dealing with situations involving all activities determined to be detrimental to national security. To clarify further the extent to which the Administrator intends issuing special security instructions under the authority of § 1202, specific reference to such appropriate agreements between the Agency and the Department of Defense is hereby inserted in § 99.7 as proposed.

In consideration of the foregoing, §§ 99.3 and 99.7 of part 99 of the Federal Aviation Regulations are amended, effective August 27, 1965, as hereinafter set forth.

1. Paragraph (b) of § 99.3 is amended to read as follows:

(b) Unless designated as an ADIZ, a Defense Area is any airspace of the United States in which the control of aircraft is required for reasons of national security.

2. Section 99.7 is amended to read as follows:

§ 99.7 Special security instructions.

Each person operating an aircraft in an ADIZ or Defense Area shall, in addition to the applicable operating rules of this part, comply with special security instructions issued by the Administrator in the interest of national security and that are consistent with appropriate agreements between the FAA and the Department of Defense.

(Secs. 307 and 1202 of the Federal Aviation Act of 1958; 49 U.S.C. 1348, 1522)

Issued in Washington, D.C., on July 22, 1965.

D. D. THOMAS,
Deputy Administrator.

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