UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Civil Air Regulations Amendment 60-9
Effective: April 1, 1958
Adopted: February 13, 1958

AIR TRAFFIC RULES

AUTHORITY OF ADMINISTRATOR TO WAIVE COMPLIANCE WITH AIR TRAFFIC RULES AND TO DESIGNATE RESTRICTED AREAS

Part 60 of the Civil Air Regulations contains the air traffic rules which have been made applicable to all aircraft (civil and military) operated anywhere in the United States. The present regulations (Section 60.1(a) of this Part) permit military aircraft of the armed forces to deviate from the air traffic rules when appropriate military authority determines that noncompliance with this Part is required. Section 60.13a authorizes the Administrator to designate restricted areas when he finds that a hazard to aircraft in flight exists. This authority has been delegated to the Administrator by the Board in order that he may correlate the use of restricted airspace with his statutory responsibility to designate airways and because his administrative organization can effectively cope with the needs of local users of airspace. The establishment of restricted areas has been accomplished by the Administrator only after the entire matter has been processed by, and agreement as to proposed action secured in, the Air Coordinating Committee.

The growing operational needs of the various users of the airspace have created increasing problems in resolving conflicts in the allocation of airspace to accommodate such needs. The availability of airspace is rapidly decreasing to the point where it is no longer easy to meet the needs of users merely by allocating airspace not previously allocated for airways or special purposes. The problem of diminishing airspace has become so acute that the Government can no longer accommodate all of the needs of individual users without judiciously weighing the interests of all users to determine what is most in the public interest. In short, the common objective is to attain the maximum effective utilization of available airspace with the least possible penalty to any individual user of such airspace.

Thus, on July 29, 1957, the Board issued a Notice of Proposed Rule Making, Draft Release No. 57-16, which proposed to amend Section 60.1(a) of Part 60 to permit military aircraft to deviate from the air traffic rules when "noncompliance is necessary to permit urgent and immediate military operation required as a result of intelligence of actual or impending acts inimical to the United States." In addition, it was proposed to amend Section 60.13a to authorize the Administrator to impose such terms, conditions and limitations as he may deem necessary in the designation of restricted areas and to modify or revoke such designation where required in the public interest. Under this delegation, actions by the Administrator would be taken in conformity with the Administrative Procedure Act.

Comments on Draft Release 57-16 were received from the Air Transport Association, the Air Line Pilots Association, the Aircraft Owners and Pilots Association, the Air Line Dispatchers Association, the Civil Aeronautics Administration, the Department of Defense, and several individuals. All parties, except the Department of Defense, favored the Board's proposal. Following the receipt of comments, all interested parties were invited to participate in discussions with the Board's staff on November 6, 1957, to consider appropriate methods of implementing the Board's proposal.

The Board has carefully considered the comments of all interested parties and has decided that Draft Release No. 57-16 should be adopted with certain modifications. In reaching this decision the Board has concluded that it has the legal authority to promulgate this regulation which permits military aircraft of the United States armed forces to deviate from the air traffic rules under certain conditions and which authorizes the Administrator, in conformity with the provisions of the Administrative Procedure Act, to designate, modify, or revoke restricted areas. Although the Department of Defense submitted comments in opposition to the Board's legal authority, the Board has subsequently received a letter from the Deputy Secretary of Defense, in which he stated that the Department of Defense agrees that the Board has the appropriate legal authority to issue the revised regulation. A copy of this letter dated February 7, 1958, together with a legal opinion of the Board's General Counsel, has been placed in the official docket of this proceeding.

The Board recognizes that under certain circumstances it may be necessary for the military to conduct operations which cannot comply with the Civil Air Regulations. Thus, Section 60.1(a) permits military aircraft of the United States Armed Forces to deviate from the air traffic rules when appropriate military authority determines that noncompliance is required by military emergency or current military

USCOMM-DC-10702

necessity essential to the defense of the United States and prior notice thereof is given to the Administrator. However, it is intended under this revision of the regulation that insofar as practical all other military flights such as training operations would be conducted under the terms of a waiver issued by the Administrator and not under noncompliance authority.

Under the regulation, as amended, (Section 60.13a) the Administrator, pursuant to delegation of authority from the Board, may designate restricted areas when he finds such action necessary to assure the safety of aircraft in flight. The Administrator may impose such terms, conditions, and limitations as he may deem necessary, and may modify or revoke such designation when required in the public interest. The Administrator will comply with the provisions of the Administrative Procedure Act in exercising such authority. Accordingly, the procedures adopted in implementation of this regulation will afford all interested parties a full and complete opportunity to participate in the rule-making process. The Board, of course, reserves the right to review, on its own initiative, any action taken by the Administrator under his delegation of authority.

Interested persons have been afforded an opportunity to participate in the making of this amendment (22 F.R. 6252), and due consideration has been given to all relevant matter presented.

In consideration of the foregoing, the Civil Aeronautics Board hereby amends Part 60 of the Civil Air Regulations (14 CFR Part 60, as amended) effective April 1, 1958.

1. By amending § 60.1(a) to read as follows:

60.1 Scope. The air traffic rules in this part shall apply to aircraft operated anywhere in the United States, including the several States, the District of Columbia, and the several Territories and possessions of the United States, including the territorial waters and the overlying airspace thereof, except:

(a) Military aircraft of the United States Armed Forces when compliance with this part has been waived by the Administrator or when appropriate military authority determines that noncompliance with this Part is required by military emergency, or current military necessity essential to the defense of the United States, and prior notice thereof is given to the Administrator. Such prior notice shall be given to the Administrator at the earliest time practicable and, to the extent time and circumstances permit, every reasonable effort shall be made to consult fully with the Administrator and to arrange in advance for the required deviation from the rules on a mutually acceptable basis.

2. By amending § 60.13a to read as follows:

60.13a Authority for designation of restricted areas by the Administrator. Upon petition of any interested party or upon his own notice, recognizing the independent authority of the President of the United States as Commander-in-Chief, and under Section 4 of the Air Commerce Act of 1926, the Administrator under delegation of authority from the Board, will designate restricted areas when he finds such action necessary to assure the safety of aircraft in flight. The Administrator may impose such terms, conditions, and limitations as he may deem necessary, and may modify or revoke such designation when required in the public interest. In exercising the authority granted herein, the Administrator shall give full consideration to the requirements of national defense. The Board upon its own initiative may review any action of the Administrator taken pursuant to this delegation of authority.

(Sec. 205 (a), 52 Stat. 984; 49 U.S.C. 425(a). Interpret or apply Secs. 601-610, 52 Stat. 1007-1012, as amended; 49 U.S.C. 551-560).

By the Civil Aeronautics Board:

/s/ M. C. Mulligan

M. C. Mulligan
Secretary

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Part 60 last printed September 10, 1955.