

**DEPARTMENT OF DEFENSE****Office of the Secretary**

[DoD–2006–OS–0133]

RIN 0790–AI06

**32 CFR Part 245****Plan for the Emergency Security Control of Air Traffic (ESCAT)****AGENCY:** Department of Defense.**ACTION:** Final rule.

**SUMMARY:** This rule updates the national plan for security control of air traffic during air defense emergencies and has direct relationship with the June 22, 2006, National Security Presidential Directive/NSPD–47 and Homeland Security Presidential Directive/HSPD–16, and is authorized by the Communications Act of 1934, as amended, 5 U.S.C. 301, 552, Executive Order 12656 (“Assignment of Emergency Preparedness Responsibilities”, November 18, 1988), as amended. The national plan defines the responsibilities and actions of agencies and personnel within the Departments of Defense, Transportation and Homeland Security with no effect to the public.

**DATES:** This rule is effective January 18, 2006.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gerald F. Pease, Jr., (703) 697–6937.

**SUPPLEMENTARY INFORMATION:** This rule updates the national plan for security control of air traffic during air defense emergencies and has direct relationship with the June 22, 2006, National Security Presidential Directive/NSPD–47 and Homeland Security Presidential Directive/HSPD–16, and is authorized by the Communications Act of 1934, as amended, 5 U.S.C. 301, 552, Executive Order 12656 (“Assignment of Emergency Preparedness Responsibilities”, November 18, 1988), as amended.

DoD has determined that good cause exists for exemption from public comment as the published change to 32 CFR part 245 is in direct compliance with current Presidential Directives, does not set a precedent in updating the National Plan, and any delay in acting on this request would be detrimental to U.S. aviation security and national commerce.

**List of Subjects in 32 CFR Part 245**

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

■ Accordingly 32 CFR part 245 is revised to read as follows:

**PART 245—PLAN FOR THE EMERGENCY SECURITY CONTROL OF AIR TRAFFIC (ESCAT)**

Sec.

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**Authority:** 5 U.S.C. 301, 552.

**Subpart A—General****§ 245.1 Purpose.**

This part:  
(a) Is authorized by the Communications Act of 1934, as amended, 5 U.S.C. 301, 552, Executive Order 12656 (“Assignment of Emergency Preparedness Responsibilities”, November 18, 1988), as amended.

(b) Defines the jointly developed and agreed upon responsibilities of the Department of Transportation/Federal Aviation Administration (DOT/FAA), Department of Homeland Security/Transportation Security Administration

(DHS/TSA), and Department of Defense (DoD) authorities for the security control of civil and military air traffic. It implements policy, assigns responsibilities, and prescribes procedures for implementation and performance of the ESCAT Plan. The Emergency Security Control of Air Traffic (ESCAT) is an emergency preparedness plan that prescribes the joint action to be taken by appropriate elements of the DoD, the DOT and the DHS in the interests of national security to control air traffic under emergency conditions.

**§ 245.2 Applicability.**

This part applies to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Combatant Commands, the DOT, the FAA, the DHS, and the TSA.

**§ 245.3 Responsibilities.**

The Assistant Secretary of Defense for Networks and Information Integration will ensure the responsibilities of the DoD are implemented. The DOT and the DHS shall implement the procedures and actions requested by the Department of Defense.

**Subpart B—Explanation of Terms, Acronyms and Abbreviations****§ 245.5 Terms.**

For the purpose of this part, the words “will” and “shall” denote mandatory action by the affected person(s) or agency(ies).

*Air control measures.* Airspace and/or flight restrictions that may be issued in support of National Defense or Homeland Security initiatives.

*Air defense.* All defensive measures designed to destroy attacking enemy aircraft or missiles as well as enemy operated aircraft or missiles in the Earth’s envelope of atmosphere, or to nullify or reduce the effectiveness of such attack.

*Air defense area (ADA).* Airspace of defined dimensions designated by the appropriate agency within which the ready control of airborne vehicles is required in the interest of national security.

*Air defense emergency (ADE).* An emergency condition, declared by the appropriate military authority, that exists when attack upon the continental United States, Alaska, Hawaii, other U.S. territories and possessions or Canada by hostile aircraft or missiles is considered probable, is imminent, or is taking place.

*Air defense identification zone (ADIZ).* Airspace of defined dimensions

within which the ready identification, location, and control of airborne vehicles are required.

*Air defense liaison officer (ADLO).* FAA representative at a North American Aerospace Defense Command (NORAD) air defense facility (NORAD Region or NORAD Air Defense Sector).

*Air defense region.* A geographical subdivision of an air defense area.

*Air defense sector.* A geographical subdivision of an air defense region.

*Air traffic control system command center (ATCSCC).* FAA Command Center responsible for the efficient operation of the National Airspace System, ensuring safe and efficient air travel within the United States.

*Anchor annex flight.* Classified DoD mission.

*Appropriate military authority.* The military commander with the authority to direct the implementation of this part. The appropriate military authorities are designated in part 245.11, (a)(1), (a)(2), (a)(3) and (b)(1), (b)(2), (b)(3).

*Chief of the Defense Staff (CDS).* Canada's counterpart to the Chairman, Joint Chiefs of Staff.

*Civil reserve air fleet (CRAF).* Those aircraft allocated, or identified for allocation, to the DoD under section 101 of the Defense Production Act of 1950 (50 U.S.C. App. 2071), or made available (or agreed to be made available) for use by the DoD under a contract made under this title, as part of the program developed by the DoD through which the DoD augments its airlift capability by use of civil aircraft.

*Combatant Command.* A command with a broad continuing mission under a single commander established and so designated by the President, through the Secretary of Defense and with the advice and assistance of the Chairman of the Joint Chiefs of Staff. The Combatant Commands typically have geographic or functional responsibilities. For the purposes of this part, the term "combatant command" also includes NORAD.

*Continental United States (CONUS).* All U.S. territory of the 48 contiguous states (does not include Alaska and Hawaii), including the adjacent territorial waters within 12 miles of the coast of the 48 contiguous states.

*Contingency operations.* A military operation that:

(1) Is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(2) Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301 (a), 12302, 12304, 12305, or 12406 of title 10 U.S.C., chapter 15, as amended by E.O. 13286, February 28 2003, or any other provision of law during a war or during a national emergency declared by the President or Congress.

*Defense emergency.* An emergency condition that exists when:

(1) A major attack is made upon U.S. forces overseas or on allied forces in any theater and is confirmed by either the commander of a command established by the Secretary of Defense or higher authority; or

(2) An overt attack of any type is made upon the United States and is confirmed either by the commander of a command established by the Secretary of Defense or higher authority.

*Dispersal.* Relocation of forces for the purpose of increasing survivability.

*Diversion.* A change made in a prescribed route or destination for operational or tactical reasons.

*Domestic event network (DEN).* A 24/7 FAA sponsored, telephonic conference call network that includes all of the Air Route Traffic Control Centers (ARTCC) in the U.S. It also includes various other governmental agencies that monitor the DEN. The purpose of the DEN is to provide timely notification to the appropriate authorities that there is an emerging air-related problem or incident within the CONUS.

*ESCAT air traffic priority list (EATPL).* A list comprised of eight priorities designed to control the volume of air traffic when ESCAT has been implemented.

*National Airspace System (NAS).* The NAS consists of the overall environment for the safe operation of aircraft that are subject to the FAA's jurisdiction. It includes: air navigation facilities, equipment and services, airports or landing areas; aeronautical charts, information and services; rules, regulations and procedures, technical information, and manpower and material. Included are system components used by the DoD.

*National emergency.* A condition declared by the President or the Congress by virtue of powers previously vested in them that authorize certain emergency actions to be undertaken in the national interest. Actions to be taken may include partial, full, or total mobilization of national resources.

*Navigational aids (NAVAIDs).* Aids to navigation, including but are not limited to, Global Positioning System (GPS), Tactical Air Navigation (TACAN), VHF

Omnidirectional range (VOR), VHF Omnidirectional range/Tactical Air Navigation (VORTAC), Radar, and Long Range Navigation (LORAN). GPS also includes its Federal government-provided augmentations, *i.e.*, the FAA Wide Area Augmentation System (WAAS) and Local Area Augmentation System (LAAS), United States Coast Guard (USCG) Maritime Differential GPS (MDGPS) and USCG Nationwide Differential GPS (NDGPS).

*North American Aerospace Defense Command (NORAD).* A combined military command established by the Governments of Canada and the United States responsible for North American aerospace warning and control. Headquartered in Colorado Springs, CO, NORAD is subdivided into three geographic regions: Alaska NORAD Region (ANR), Canadian NORAD Region (CANR) and the CONUS NORAD Region (CONR).

*Security assurance check.* Measures taken by DoD/DHS, as appropriate, to ensure aircraft, cargo and crew security has not been compromised by hostile organizations or individuals who are or may be engaged in espionage, sabotage, subversion, terrorism or other criminal activities.

*Security control authorization (SCA).* Authorization for an EATPL category eight aircraft to take off when ESCAT has been implemented, which will be coordinated between DHS and the appropriate military authority.

*Special Use Airspace (SUA).* Airspace of defined dimensions identified by an area on the surface of the earth wherein activities must be confined because of their nature, and/or wherein limitation may be imposed upon aircraft operations that are not part of those activities. Types of special use airspace include Military Operations Areas, Prohibited Areas, Restricted Areas and Warning Areas.

*State and regional disaster airlift (SARDA).* The plan for using civil aviation resources to support State and regional emergency response operations.

#### § 245.6 Abbreviations and acronyms.

AADC—Area Air Defense Commander  
 ADE—Air Defense Emergency  
 ADIZ—Air Defense Identification Zone  
 ADLO—Air Defense Liaison Officer  
 AMC—Air Mobility Command  
 ANR—Alaska NORAD Region  
 AOR—Area of Responsibility  
 ARTCC—Air Route Traffic Control Center  
 ATC—Air Traffic Control  
 ATCSCC—Air Traffic Control System Command Center  
 CARDA—Continental U.S. Airborne Reconnaissance for Damage Assessment

CDS—Chief of the Defence Staff (Canada)  
 CERAP—Center-RAPCON  
 CJCS—Chairman, Joint Chiefs of Staff  
 CONR—CONUS NORAD Region  
 CONUS—Continental United States  
 CRAF—Civil Reserve Air Fleet  
 DEN—Domestic Event Network  
 DHS—Department of Homeland Security  
 DND—Department of National Defence (Canada)  
 DoD—Department of Defense  
 DOT—Department of Transportation  
 EATPL—ESCAT Air Traffic Priority List  
 E.O.—Executive Order  
 ESCAT—Emergency Security Control of Air Traffic  
 FAA—Federal Aviation Administration  
 IFR—Instrument Flight Rules  
 LEA—Law Enforcement Agencies  
 LIFE GUARD—Civilian air ambulance flights  
 LNO—Liaison Officer  
 MEDEVAC—Medical air evacuation flight  
 NAS—National Airspace System  
 NEADS—Northeast Air Defense Sector (NORAD)  
 NORAD—North American Aerospace Defense Command  
 PACAF—Pacific Air Forces  
 SARDA—State and Regional Disaster Airlift  
 SCA—Security Control Authorization  
 SEADS—Southeast Air Defense Sector (NORAD)  
 SUA—Special Use Airspace  
 TSA—Transportation Security Administration  
 USNORTHCOM—U.S. Northern Command  
 USPACOM—U.S. Pacific Command  
 VFR—Visual Flight Rules  
 WADS—Western Air Defense Sector (NORAD)

### Subpart C—The ESCAT Plan

#### § 245.8 Purpose.

This part establishes responsibilities, procedures, and instructions for the security control of civil and military air traffic in order to provide effective use of airspace under various emergency conditions.

#### § 245.9 Authority.

(a) E.O. 12656, 18 November 1988, which assigns emergency preparedness functions to Federal departments and agencies.

(b) E.O. 13074, Amendment to E.O. 12656, February 9, 1998.

(c) E.O. 13286, Amendment of E.O. 13276, 13274, 13271, 13260, 13257, 13254, and 13231, and Other Actions, in Connection With the Transfer of Certain Functions to the Secretary of Homeland Security, February 28, 2003.

(d) Title 10 U.S.C.—Armed Forces.

(e) Title 49 U.S.C., Subtitle VII—Aviation Programs.

(f) Communications Act of 1934, as amended.

(g) Aviation and Transportation Security Act of 2001 (Pub. L. 107–71), establishes the TSA and transfers civil aviation security responsibilities from FAA to TSA.

(h) Homeland Security Act of 2002 (Pub. L. 107–296), establishes DHS and transfers the transportation security functions of the DOT and Secretary of Transportation and the TSA to DHS.

(i) DoD Directive 5030.19,<sup>1</sup> “DoD Responsibilities on Federal Aviation and National Airspace System Matters,” outlines DoD/ NORAD responsibilities for the development of plans and policies in concert with the DOT, FAA and USCG for the establishment of a system for identification and emergency security control of air traffic.

#### § 245.10 Scope.

This part applies to all U.S. territorial airspace and other airspace over which the FAA has air traffic control jurisdiction by international agreement.

#### § 245.11 General description of the ESCAT plan.

The part defines the authorities, responsibilities, and procedures to identify and control air traffic within a specified air defense area during air defense emergencies, defense emergency, or national emergency conditions.

(a) For the purpose of this part, the appropriate military authorities are as follows:

(1) Contiguous 48 U.S. states, including Washington, DC; Alaska; and Canada—Commander NORAD or individual NORAD Region/Sector commanders.

(2) Hawaii, Guam, Wake Island, other U.S. Pacific Territories, and Pacific oceanic airspace over which FAA has air traffic control jurisdiction by international agreement—Commander, U.S. Pacific Command (USPACOM) or designated AADC.

(3) Puerto Rico and U.S. Virgin Islands—Commander, NORAD.

(b) This part provides for security control of both civil and military air traffic. It is intended to meet threat situations such as:

(1) An emergency resulting in the declaration of an Air Defense Emergency by the appropriate military authority. Under this condition, NORAD and USPACOM Commanders have

authority to implement ESCAT and may consider executing this part.

(2) An adjacent Combatant Command is under attack and an Air Defense Emergency has not yet been declared. Under these conditions, NORAD and USPACOM Commanders may direct implementation of ESCAT for their own AORs individually, if airspace control measures are warranted and agreed upon by DoD/DHS/DOT.

(3) Emergency conditions exist that either threaten national security or national interests vital to the U.S., but do not warrant declaration of Defense Emergency or Air Defense Emergency. Under these conditions, NORAD and USPACOM Commanders may direct implementation of ESCAT for their own AORs individually, if airspace control measures are warranted and agreed upon by DoD/DHS/DOT.

#### § 245.12 Amplifying instructions.

(a) Prior to any formal ESCAT implementation, the appropriate military authority will consult with DOT through the FAA Administrator and DHS through the TSA Administrator to discuss the air traffic management, airspace and/or security measures required. Every effort will be made to obtain the approval of the Secretary of Defense prior to ESCAT declaration, time and circumstance permitting. Any ESCAT implementation will be passed as soon as possible through the Chairman of the Joint Chiefs of Staff to the Secretary of Defense.

(b) ESCAT may be implemented in phases to facilitate a smooth transition from normal air traffic identification and control procedures to the more restrictive identification and control procedures specific to the situation.

(c) Once ESCAT is implemented, the appropriate military authority will consult regularly with DOT (through the FAA Administrator) and DHS (through the TSA Administrator) as appropriate, regarding any changes in the air traffic management, airspace, and/or security measures required.

(d) Interference with normal air traffic should be minimized.

(e) The process for implementation of measures for mitigation of hostile use of NAVAID signals, when required, will be subject to separate agreement between DoD and other Departments and Agencies.

(f) Upon the formal declaration of ESCAT, the appropriate military authority has the final authority regarding the extent of measures necessary for successful mission completion.

(g) The rules/procedures governing Special Use Airspace (SUA) will remain

<sup>1</sup> Copies may be obtained at <http://www.dtic.mil/whs/directives/cores/dir2.html>.

in effect until notified by the appropriate military authority. The appropriate military authority will address SUA use in the ESCAT activation message.

(h) Appropriate Combatant Commanders, in conjunction with their FAA and TSA Liaisons, will prepare supplements to this part for their area of responsibility. These supplements are to consider the special requirement of organized civil defense and disaster relief flights, agricultural and forest fire flights, border patrol flights, and other essential civil air operations so that maximum use of these flights, consistent with air defense requirements, will be made when ESCAT is in effect.

(i) Flight operations vital to national defense, as determined by appropriate military commanders, will be given priority over all other military and civil aircraft.

(j) Prior to or subsequent to the declaration of an Air Defense Emergency, Defense Emergency, or National Emergency, there may be a requirement to disperse military aircraft for their protection. If such dispersal plans are implemented when any part of this part has been placed in effect, operations will be in accordance with the requirements of that portion of the ESCAT plan that is in effect. If any part of the ESCAT plan is ordered while dispersal is in progress, dispersal operations will be revised as required to comply with ESCAT.

(k) Direct communications are authorized between appropriate agencies and units for the purpose of coordinating and implementing the procedures in this part.

(l) To ensure implementation actions can be taken expeditiously, ESCAT tests will be conducted periodically, but at least annually in accordance with § 245.31 of this part.

(m) The area of responsibility of the appropriate military authority does not always align with ARTCC boundaries, especially in the NORAD area where one ARTCC's boundaries may lie within two or more CONUS NORAD Sectors. For NORAD and USPACOM, the FAA ARTCCs/CERAPs are aligned as follows:

Command/region/sector	ARTCC's
CONR South East Air Defense Sector (SEADS) .....	Atlanta, Fort Worth, Houston, Indianapolis, Jacksonville, Kansas City, Memphis, Miami, Washington, San Juan CERAP.
CONR North East Air Defense Sector (NEADS) .....	Boston, Chicago, Cleveland, Minneapolis, New York, Indianapolis, Kansas City, Atlanta, Memphis, Washington.
CONR Western Air Defense Sector (WADS) .....	Albuquerque, Denver, Los Angeles, Oakland, Salt Lake City, Seattle, Fort Worth, Houston, Kansas City, Minneapolis.
ANR (Alaskan NORAD Region) .....	Anchorage.
PACOM .....	Honolulu CERAP, Oakland, Anchorage.

(n) Commander NORAD, acting for the DoD, will process and distribute administrative and organizational changes as they occur; however, this part will be reviewed at least once every two years by DHS/TSA, DOT/FAA, and DoD and reissued or changed as required. Recommended changes should be forwarded to: Headquarters North American Air Defense Command, Commander NORAD/J3, ATTN: NJ33C, 250 Vandenberg Street, Suite B106, Peterson AFB, CO 80914-3818.

**§ 245.13 Responsibilities.**

(a) The NORAD and USPACOM Commanders will:

(1) Establish the military requirements for ESCAT.

(2) Implement the plan as appropriate by declaring ESCAT (including the timing and scope) within their AOR.

(3) Terminate the plan as appropriate by discontinuing ESCAT (including the timing and scope) within their AOR.

(4) Coordinate with the Secretary of Defense or his designee, the CJCS, other Combatant Commands, the Department of Transportation, the Department of Homeland Security and the Canadian Minister of National Defence, as appropriate, regarding procedures for ESCAT implementation.

(b) The DOT (through the FAA Administrator) will:

(1) Establish the necessary FAA directives/plans including special ATC procedures to implement this part.

(2) Maintain liaison with Combatant Commands whose AORs include FAA areas of authority through the appropriate LNO, or FAA ADLO offices.

(3) Administer this part in accordance with established requirements.

(4) Ensure authorized FAA ADLO positions at NORAD facilities are staffed.

(5) Publish a common use document describing ESCAT and its purpose for use by civil aviation.

(6) Ensure FAA participation with the Combatant Commands in the testing of this part.

(7) Ensure the FAA Air Traffic Organization Service Units will:

(i) Disseminate information and instructions implementing this part within their AORs.

(ii) Place in effect procedures outlined in this part.

(iii) Assist appropriate military authorities in making supplemental agreements to this part as may be required.

(iv) Ensure each ARTCC/CERAP has a plan for diverting or landing expeditiously all aircraft according to the ESCAT priorities imposed upon implementation of ESCAT. Ensure a review and verification of the diversion plan is accomplished each calendar year.

(8) Ensure the ATGCC/ARTCC/CERAPs will:

(i) Participate with Combatant Commanders in the training/testing of this part at all operational level.

(ii) Ensure dissemination of information and instructions implementing this part within their AORs.

(iii) Place in effect procedures outlined in this part.

(iv) Develop a plan for diverting or landing expeditiously all aircraft according to the ESCAT priorities imposed upon implementation of ESCAT. Review the diversion plan each calendar year.

(c) The DHS (through the TSA Administrator) will:

(1) Establish the necessary TSA directives/plans including special security procedures to implement this part.

(2) Maintain liaison with Combatant Commands whose AORs include TSA geographic areas of authority through the appropriate Federal Security Directors or other field offices.

(3) Administer this part in accordance with established requirements.

(4) Ensure authorized TSA liaison positions at NORAD facilities are staffed.

(5) Issue security directives describing ESCAT and its purpose for use by airport and aircraft operators.

(6) Ensure TSA participation with the Combatant Commands in the testing of this part.

(7) Ensure TSA Federal Security Directors and field offices:

(i) Disseminate information and instructions implementing this part within their AOR.

(ii) Implement procedures outlined in this part.

(iii) Assist appropriate military authorities in making supplemental agreements to this part, as necessary.

(d) The Commanders of Combatant Commands will:

(1) Ensure that departing North American strategic flights are coordinated with appropriate NORAD and FAA/NAVCANADA authorities.

(2) Ensure training/testing of this part at all levels within their command, as appropriate.

#### Subpart D—Procedures for Implementation of ESCAT

##### § 245.15 Appropriate military authority.

Appropriate military authority will take the following actions:

(a) Notify or coordinate, as appropriate, the extent or termination of ESCAT implementation with DOT and DHS.

(b) Disseminate the extent of ESCAT implementation through the Noble Eagle Conferences and the FAA DEN.

(c) Specify what restrictions are to be implemented. Some examples of restrictions to be considered include:

(1) Defining the affected area.

(2) Defining the type of aircraft operations that are authorized.

(3) Defining the routing restrictions on flights entering or operating within appropriate portions of the affected area.

(4) Defining restrictions for the volume of air traffic within the affected area, using the EATPL, paragraph 245.22 of this part) and Security Control Authorizations, as required.

(5) Setting altitude limitations on flight operations in selected areas.

(6) Restricting operations to aircraft operators regulated under specified security programs (e.g., the Aircraft Operator Standard Security Program (AOSSP), and the Domestic Security Integration Program (DSIP).

(d) Revise or remove restrictions on the movement of air traffic as the tactical situation permits.

##### § 245.16 ATCSCC.

ATCSCC will direct appropriate ARTCCs/CERAPs to implement ESCAT restrictions as specified by the appropriate military authority. ARTCCs/CERAPs will take the following actions when directed to implement ESCAT:

(a) Provide the appropriate military authority feedback through the ATCSCC on the impact of restrictions and when the restrictions have been imposed.

(b) Impose restrictions on air traffic as directed.

(c) Disseminate ESCAT implementation instructions to U.S. civil and military air traffic control facilities and advise adjacent air traffic control facilities.

##### § 245.17 U.S. civil and military air traffic control facilities.

U.S. civil and military air traffic control facilities will:

(a) Maintain current information on the status of restrictions imposed on air traffic.

(b) Process flight plans in accordance with current instructions received from the ARTCC. All flights must comply with the airspace control measures in effect, the EATPL, or must have been granted a Security Control Authorization.

(c) Disseminate instructions and restrictions to air traffic as directed by the ARTCCs.

##### § 245.18 Transportation security operations center (TSOC).

TSOC will direct appropriate FSDs and field offices to implement ESCAT restrictions as specified by the appropriate military authority. FSDs and field offices will take the following actions when directed to implement ESCAT:

(a) Provide the appropriate military authority feedback through the TSOC on the impact of restrictions and when the restrictions have been implemented.

(b) Impose restrictions on civil aviation as directed by DOT/DHS.

(c) Disseminate ESCAT implementation instructions to U.S. civil aircraft operators and airports.

#### Subpart E—ESCAT Air Traffic Priority List (EATPL)

##### § 245.20 Purpose.

When ESCAT is implemented, a system of traffic priorities may be required to make optimum use of airspace, consistent with air defense requirements. The EATPL is a list of priorities that may be used for the movement of air traffic in a defined area. Priorities shall take precedence in the order listed and subdivisions within priorities are equal.

##### § 245.21 ESCAT air traffic priority list.

(a) *Priority One.* (1) The President of the United States, Prime Minister of Canada and respective cabinet or staff members essential to national security, and other members as approved or

designated by the Secretary of Defense and Chief of the Defence Staff.

(2) Aircraft engaged in active continental defense missions, including anti-submarine aircraft, interceptors, air refueling tanker aircraft, and airborne early-warning and control aircraft (e.g., E-3, E-2, P-3).

(3) Military retaliatory aircraft, including direct tanker support aircraft, executing strategic missions.

(4) Airborne command elements which provide backup to command and control systems for the combat forces.

(5) Anchor annex flights.

(b) *Priority Two.* (1) Forces being deployed or in direct support of U.S. military offensive and defensive operations including the use of activated Civil Reserve Air Fleet (CRAF) aircraft as necessary, and/or other U.S. and foreign flag civil air carrier aircraft under mission control of the U.S. military.

(2) Aircraft operating in direct and immediate support of strategic missions.

(3) Search and rescue aircraft operating in direct support of military activities.

(4) Aircraft operating in direct and immediate support of special operations missions.

(5) Federal flight operations in direct support of homeland security, e.g., Law Enforcement Agencies (LEA) and aircraft performing security for high threat targets such as Nuclear Power Plants, Dams, Chemical Plants, and other areas identified as high threat targets.

(c) *Priority Three.* (1) Forces being deployed or performing pre-deployment training/workups (e.g., Navy Field Carrier Landing Practice) in support of the emergency condition.

(2) Aircraft deployed in support of CONUS installation/base defense, i.e., aircraft operating in direct/immediate security support, or deploying ground forces for perimeter defense.

(3) Search and rescue aircraft not included in Priority Two.

(4) Flight inspection aircraft flights in connection with emergency restoration of airway and airport facilities in support of immediate emergency conditions.

(5) Continental U.S. Airborne Reconnaissance for Damage Assessment (CARDA) missions in support of immediate emergency conditions.

(d) *Priority Four.* (1) Dispersal of tactical military aircraft.

(2) Dispersal of U.S. civil air carrier aircraft allocated to the CRAF Program.

(3) Repositioning of FAA/DoD/DND flight inspection aircraft.

(4) Flight inspection activity in connection with airway and airport facilities.

(5) Specific military tactical pilot currency or proficiency in support of homeland defense.

(6) Military tactical aircraft post-maintenance test flights.

(7) Federal aircraft post maintenance check flights in support of homeland security.

(e) *Priority Five.* (1) Air transport of military commanders, their representatives, DoD/DND-sponsored key civilian personnel, non-DoD/DND or other Federal key civilian personnel who are of importance to national security.

(2) Dispersal of non-tactical military aircraft for their protection.

(3) Aircraft contracted to and/or operated by Federal agencies

(f) *Priority Six.* (1) State and local LEA directly engaged in law enforcement missions.

(2) Flight operations in accordance with approved Federal and State emergency plans.

(3) LIFEGUARD and MEDEVAC aircraft in direct support of emergency medical services.

(4) Flight operations essential to the development, production, and delivery of equipment, personnel, materials, and supplies essential to national security.

(5) Other essential CARDA missions not covered in Priority Three.

(g) *Priority Seven.* Other military flight operations.

(h) *Priority Eight.* Other flight operations not specifically listed in priorities 1 through 7.

#### **§ 245.22 Policy for application of EATPL.**

(a) The originator of an aircraft flight operation under the EATPL shall be responsible for determining and verifying that the mission meets the appropriate definition and priority in accordance with the list described in § 245.22 of this part , and ensuring a security check of crew, cargo and aircraft has been completed prior to take off.

(b) The individual filing the flight plan will be responsible for including the priority number as determined by the originator of the aircraft flight operation, in the remarks section of the flight plan.

(c) Situations may occur that cannot be controlled by the EATPL. Aircraft emergencies and inbound international flights that have reached the point of no return, including foreign air carrier flights en route to safe haven airports in accordance with specific international agreements are examples of such situations. These events must be treated individually through coordination between ATC and appropriate military authorities in consideration of the

urgency of the in-flight situation and existing tactical military conditions.

(d) Priorities for air traffic clearances required under the ESCAT plan are not to be confused with civil priorities assigned to general aviation civil aircraft under the State and Regional Disaster Airlift (SARDA) plan. SARDA priorities are designed to provide for controlled use of civil aircraft capability, and they have secondary significance when the EATPL for the movement of aircraft is in effect.

(e) *Exceptions to EATPL.* (1) DoD aircraft in priorities three through seven that do not meet EATPL restrictions may request an exemption from the appropriate military authority. For the contiguous 48 U.S. states, Alaska, Puerto Rico, U.S. Virgin Islands and Canada, requests shall be submitted to the appropriate NORAD Sector. For Hawaii, Guam, Wake Island, other U.S. Pacific Territories, and Pacific oceanic airspace over which FAA has air traffic control jurisdiction by international agreement, requests shall be submitted to the designated AADC.

(2) For Federal, State, local government agencies and aircraft in priority eight, a Security Control Authorization may be granted on a case-by-case basis. Requests for SCAs will be coordinated through TSA. TSA will forward those requests that it recommends for approval to the appropriate military authority. Aircraft with a SCA shall have a Security Assurance Check prior to take off. Refer to specific SCA procedures provided in separate agreement between the appropriate military authority and TSA.

#### **Subpart F—Procedure for Movement of Air Traffic Under ESCAT**

##### **§ 245.24 Aircraft assigned an EATPL number 1 or 2.**

Aircraft assigned an EATPL number 1 or 2 will not be delayed, diverted, or rerouted by Combatant Commanders. However, commanders may recommend that this traffic be rerouted to avoid critical or critically threatened areas.

##### **§ 245.25 Aircraft assigned an EATPL number other than 1 or 2.**

Aircraft assigned an EATPL number other than 1 or 2 may be delayed, diverted, or rerouted by Combatant Commanders to prevent degradation of the air defense system.

##### **§ 245.26 Aircraft being recovered.**

Aircraft being recovered will be expedited to home or an alternate base. Search and Rescue aircraft may be expedited on their missions. Such aircraft may be diverted to avoid critical

areas or takeoff may be delayed to prevent saturation of airspace.

##### **§ 245.27 Data entry.**

Aircraft will file IFR or VFR flight plans, assigned a discrete transponder code, and must be in direct radio communication with ATC. The appropriate EATPL number will be entered in the remarks section of the flight plan. The EATPL number will be passed with flight plan data from one ATC facility to the next, and to the appropriate air defense control facilities.

#### **Subpart G—Test Procedures**

##### **§ 245.29 Purpose.**

The purpose of establishing training/test procedures is to specify procedures that will allow all participants to determine the time required and assure the capability to notify all agencies/personnel, down to the lowest action level, that ESCAT has been implemented. To ensure the proper level of participation, the appropriate military authority will provide, at a minimum, 30 days notice of a test to the appropriate civil agencies. Testing shall be conducted at least annually.

##### **§ 245.30 ESCAT test procedures restrictions.**

(a) Aircraft will not be grounded or diverted.

(b) Test messages will not be broadcast over air/ground frequencies.

(c) Radio communications will not be interrupted.

(d) Navigation Aids will not be affected.

##### **§ 245.31 ESCAT test.**

For ESCAT testing, the responsible military commander will notify the ATCSCC using the following sample statement:

(a) Exercise, Exercise, Exercise, this is CONUS NORAD Region with a NORAD exercise message for \_\_\_\_\_ (State exercise name) \_\_\_\_\_.

Simulate implementing ESCAT for \_\_\_\_\_ (Specified Area) \_\_\_\_\_.

The following air control measures are being implemented. (Some examples are: Flight restricted zones, Temporary Flight Restrictions, and/or other specific air control measures for operators.)

\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_,  
\_\_\_\_\_.

All aircraft not previously mentioned as exemptions are restricted from flight in the affected area until further notice.

and/or

EATPL Priorities \_\_\_\_\_ through \_\_\_\_\_ are being implemented.

ATCSCC will advise the appropriate military commander when the affected

FAA ATC facilities have reported simulating ESCAT.

This is an exercise message for \_\_\_\_\_ (State exercise name) \_\_\_\_\_. Exercise, Exercise, Exercise.

(b) ATCSCC will notify ARTCC(s)/CERAP(s).

(c) ARTCC(s)/CERAP(s) will notify all appropriate U.S. civil and military approach control facilities and FSS. Upon completion of all actions, the implementation completion time will be forwarded to the ATCSCC.

(d) ATCSCC will provide completion times to the appropriate military authority.

(e) Tests should normally be conducted in conjunction with scheduled headquarters NORAD approved exercises. Individual NORAD Regions and Sectors may conduct tests when test objectives are local in nature and prior coordination has been effected with the ATCSCC.

(g) A narrative summary of each test will be prepared by the ATCSCC and copies sent to the appropriate military authority. Each military authority will, in turn, forward copies of the summary to HQ NORAD and DHS.

#### Subpart H—Authentication

##### § 245.33 Approval.

Authentication will be accomplished via secure communications means between the appropriate military authority and the ATCSCC for the implementation of ESCAT. Implementation will be validated with a call back via secure communications to the appropriate military authority. Further dissemination of information may be accomplished over non-secure communications.

Dated: October 11, 2006.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, DoD.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[CGD01-06-033]

RIN 1625-AA09

#### Drawbridge Operation Regulations; Jamaica Bay and Connecting Waterways, Queens, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is changing the drawbridge operation regulations governing the operation of the Beach Channel railroad bridge across Jamaica Bay, mile 6.7, at Queens, New York. This final rule requires the Beach Channel bridge to remain in the closed position during the morning and afternoon commuter rush hours from 6:45 a.m. to 8:20 a.m. and 5 p.m. to 6:45 p.m., Monday through Friday, except Federal holidays. In addition, obsolete language shall also be removed from the existing regulatory text. This rule is expected to help facilitate commuter rail traffic while continuing to meet the present and anticipated needs of navigation.

**DATES:** This rule is effective November 20, 2006.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD01-06-033 and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, One South Street, New York, New York, 10004, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ms. Judy Leung-Yee, Project Officer, First Coast Guard District, (212) 668-7195.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

On May 24, 2006, we published a notice of proposed rulemaking (NPRM) entitled "Drawbridge Operation Regulations"; Jamaica Bay and Connecting Waterways, New York, in the **Federal Register** (71 FR 29869). We received six comment letters in response to the NPRM. No public hearing was requested and none was held.

##### Background and Purpose

The Beach Channel railroad bridge across Jamaica Bay at mile 6.7 has a vertical clearance of 26 feet at mean high water, and 31 feet at mean low water in the closed position. The existing drawbridge operating regulations listed at 33 CFR 117.5 require the bridge to open on signal at all times.

Jamaica Bay facilitates both commercial and recreational vessel traffic. The owner of the bridge, New York City Transit, requested a change to the drawbridge operation regulations to help reduce commuter rail traffic delays during the morning and afternoon commuter hours.

Under this final rule, the Beach Channel railroad bridge will not open

for the passage of vessel traffic from 6:45 a.m. to 8:20 a.m. and from 5 p.m. to 6:45 p.m., Monday through Friday, except Federal holidays.

On November 2, 2005, the Coast Guard implemented a 90-day temporary deviation with request for public comment (70 FR 66260), to test the above proposed rule change. The temporary test deviation was in effect from December 1, 2005 through February 28, 2006. No comments or complaints were received in response to the temporary test deviation.

#### Discussion of Comments and Changes

The Coast Guard received six comment letters in response to the notice of proposed rulemaking. Two comments voiced no objection, three comments were in favor, and one comment objected to the rule change.

Motiva Enterprises, an oil and gasoline distributor, objected to the rule change which would allow the bridge to remain closed during the morning and evening commuter rail rush hours. Motiva stated that keeping the bridge closed at any time would negatively impact their operation. They also stated that they receive approximately six barge deliveries each week and that their barges' transits are made at high tide.

The Coast Guard believes that the negative impact Motiva claims is more a matter of inconvenience since the small number of barge transits they receive weekly would still be able to make their deliveries at or near the high tide in most cases.

The Coast Guard further believes that the relatively short duration of the scheduled bridge closures Monday through Friday, coupled with the infrequency of high tide occurring during those closures, is unlikely to result in frequent missed deliveries. In addition, the bridge will open on demand on Saturday and Sunday thereby providing two full days with no closures at any time.

As a result of the above information, the Coast Guard believes this final rule is reasonable.

In addition, we discovered obsolete regulatory text within the existing regulation, which will also be removed under this final rule.

The New York City Cross Bay Boulevard Bridge, mile 10.0, and the New York City Transit Authority Bridge, mile 10.6, which are listed under this section, have been subsequently permitted as fixed bridges by Coast Guard Bridge permits, (7-87-1) dated September 3, 1987 and (7-89-1) dated August 30, 1989. The above bridges can no longer open for the passage of vessel