



# Department of Defense INSTRUCTION

NUMBER 4540.01

March 28, 2007

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USD(P)

SUBJECT: Use of International Airspace by U.S. Military Aircraft and for Missile/Projectile Firings

- References:
- (a) DoD Directive 4540.1, "Use of Airspace by U.S. Military Aircraft and Firings Over the High Seas," January 13, 1981 (hereby canceled)
  - (b) Acting Deputy Secretary of Defense Memorandum, "DoD Directives Review – Phase II," July 13, 2005
  - (c) DoD Directive 5111.1, "Under Secretary of Defense for Policy (USD(P)), December 8, 1999
  - (d) DoD Flight Information Publications, "General Planning," current edition<sup>1</sup>
  - (e) through (i), see Enclosure 1

## 1. REISSUANCE AND PURPOSE

This Instruction:

1.1. Reissues Reference (a) as a DoD Instruction in accordance with the guidance in Reference (b) and the authority in Reference (c).

1.2. Updates policy and operating procedures for U.S. military aircraft in international airspace in accordance with Reference (d), the Convention on International Civil Aviation of 1944 (Reference (e)), and the applicable navigational provisions as reflected in the United Nations Convention on the Law of the Sea (Reference (f)).

## 2. APPLICABILITY

This Instruction applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as the "DoD Components").

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<sup>1</sup> Copies may be obtained from the Internet at <https://164.214.2.62/products/digitalaero/index.cfm#flip>

### 3. DEFINITIONS

Military Aircraft. For the purposes of this Instruction, the term includes manned and unmanned aircraft, remotely piloted vehicles, and cruise missiles.

### 4. POLICY

It is DoD policy that:

4.1. High seas freedoms of navigation and overflight include the right of aircraft of all nations to use the airspace over the high seas. Foreign sovereign airspace extends to the outer limits of the territorial seas; aircraft of all nations enjoy high seas freedoms of overflight in the airspace above Exclusive Economic Zones of coastal states beyond the territorial seas. Aircraft of all nations also enjoy freedom of overflight through straits used for international navigation and through archipelagic sea lanes. Consistent with customary international law as reflected in the navigational provisions of Reference (f), this freedom must be exercised with due regard for the safety of navigation of civil aircraft. (Also see DoD Instruction C-2005.1 (Reference (g)).)

4.2. U.S. military aircraft operate with due regard for the safety of civil air and surface traffic. When practical and compatible with the mission, U.S. military aircraft operating in international airspace shall observe:

4.2.1. International Civil Aviation Organization (ICAO) flight procedures.

4.2.2. Reasonable warning procedures with regard to the military aircraft of all nations. (Also see the Agreement and Protocol Between the Government of the United States of America and the Government of the Russian Federation on the Prevention of Incidents On and Over the High Seas (Reference (h)).)

4.2.3. In the event of combat operations in time of war, armed conflict, national emergency, situations requiring self-defense, or similar military contingencies, aircraft commanders shall, consistent with military necessity, take measures to minimize hazards to civil air or surface traffic. Such actions shall be of no greater extent or duration than required by military necessity.

### 5. RESPONSIBILITIES

5.1. The Heads of the DoD Components shall comply with the provisions of this Instruction.

5.2. The Director, National Geospatial-Intelligence Agency, under the authority, direction, and control of the Under Secretary of Defense for Intelligence, shall ensure that the provisions of this Instruction are incorporated into Reference (d).

## 6. OPERATING PROCEDURES

6.1. Selection of Operating Areas. Flight operations and firing activities shall be conducted away from high-density air traffic areas when possible, and shall be selected so as not to interfere with established air routes and ocean shipping lanes. In establishing firing exercise areas, every effort shall be made to confine activities to warning areas, altitude reservations (stationary or moving), other special-use airspace, or any combination thereof. Arrangements for airspace or altitude reservations shall be made through the appropriate airspace or altitude reservation facility.

6.2. Notices to Airmen (NOTAMs) and Notices to Mariners (NOTMARs). When firings may affect the safety of nonparticipating aircraft and ships, NOTAMs and/or NOTMARs shall be promulgated as appropriate. Coordination is essential to ensure safe routing of civil and military aircraft to, from, and around operating areas.

### 6.3. Procedures for Conducting Aircraft Operations

6.3.1. Operations Conducted Under ICAO Procedures. Normally, routine point-to-point and navigation flights shall follow ICAO flight procedures. Reference (d) provides ICAO information, definitions, rules, and procedures. Specific DoD guidance is also provided in DoD 4500.54-G, "Department of Defense Foreign Clearance Guide" (Reference (i)), "General Information" volume.

### 6.3.2. Operations Not Conducted Under ICAO Procedures

6.3.2.1. Military operational situations may not lend themselves to ICAO flight procedures; e.g., military contingencies, classified missions, politically sensitive missions, routine aircraft carrier operations, and some training activities. Operations not conducted under ICAO flight procedures are conducted under the "due regard" or "operational" prerogative of military aircraft and are subject to one or more of the following conditions:

6.3.2.1.1. Aircraft shall be operated in visual meteorological conditions.

6.3.2.1.2. Aircraft shall be operated within surveillance and radio/satellite communications of a surface and/or airborne facility.

6.3.2.1.3. Aircraft shall be equipped with airborne radar that is sufficient to provide separation between themselves, aircraft they may be controlling, and other aircraft.

6.3.2.1.4. Aircraft shall be operated outside controlled airspace (Reference (d), Chapter 2).

6.3.2.2. The above conditions provide for a level of safety equivalent to that normally given by ICAO air traffic control agencies and fulfill U.S. Government obligations under Article 3 of Reference (e), which stipulates that there must be "due regard for the safety of navigation of civil aircraft" when flight is not being conducted under ICAO flight procedures. Essentially,

flight under “due regard” or “operational” conditions (i.e., not under ICAO flight procedures) obligates the military aircraft commander to act as his or her own air traffic control and to separate his or her aircraft from all other air traffic.

6.4. Operations in Foreign Air Defense Identification Zones (ADIZs). Reference (d) provides procedures for U.S. military aircraft penetrating a foreign ADIZ on a flight plan or intending to penetrate the sovereign airspace of the ADIZ country. Military aircraft transiting through a foreign ADIZ without intending to penetrate foreign sovereign airspace are not required to follow these procedures.

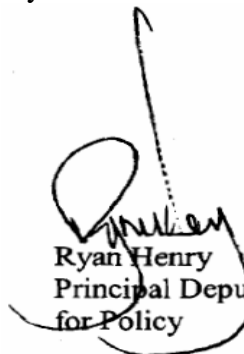
6.5. Operations in Flight Information Regions (FIRs). Military aircraft transiting through a FIR without intending to penetrate foreign sovereign airspace are not required to submit a request for diplomatic clearance. If entry into a FIR requires penetration of a foreign sovereign’s airspace, a request for diplomatic clearance must be submitted to the country whose airspace is being penetrated (Reference (i)).

6.6. Procedures for Missile/Projectile Firings. Firing areas shall be selected so that trajectories are clear of established oceanic air routes or areas of known surface or air activity. An exception to this operating procedure may be made when it can be ascertained that aircraft are operating above the maximum ordinate of the trajectory.

6.7. Special Provisions. Details of classified operations shall not be divulged to unauthorized personnel.

## 7. EFFECTIVE DATE

This Instruction is effective immediately.



Ryan Henry  
Principal Deputy Under Secretary of Defense  
for Policy

Enclosures – 1

E1. References, continued

ENCLOSURE 1

REFERENCES, continued

- (e) Convention on International Civil Aviation of 1944<sup>2</sup>
- (f) United Nations Convention on the Law of the Sea, December 10, 1982<sup>3</sup>
- (g) DoDI C-2005.1, "Freedom of Navigation (FON) Program (U)," October 12, 2005
- (h) Agreement and Protocol between the Government of the United States of America and the Russian Federation on the Prevention of Incidents On and Over the High Seas, May 25, 1972, and May 22, 1973<sup>4</sup>
- (i) DoD 4500.54-G, "Department of Defense Foreign Clearance Guide," current edition<sup>5</sup>

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<sup>2</sup> Copies may be obtained from the Internet at [http://www.icao.int/avsec/files/avsec\\_1\\_26\\_2005\\_4\\_2.pdf](http://www.icao.int/avsec/files/avsec_1_26_2005_4_2.pdf)

<sup>3</sup> Copies may be obtained from the Internet at <http://www.state.gov/t/ac/trt/4791.htm#treaty>

<sup>4</sup> Copies may be obtained from the Internet at <http://www.state.gov/t/ac/trt/4791.htm>

<sup>5</sup> Copies may be obtained from the Internet at <https://www.fcg.pentagon.mil/>