FEDERAL AVIATION AGENCY
FLIGHT STANDARDS SERVICE
Washington 25, D. C.

March 12, 1962

CIVIL AIR REGULATIONS DRAFT RELEASE NO. 62-11

SUBJECT: Proposed New Part 191 of the Civil Air Regulations, "Rules Applicable to the Operation Outside of the United States of Civil Aircraft of United States Registry"

The Flight Standards Service of the Federal Aviation Agency has under consideration a new Part 191 of the Civil Air Regulations to prescribe rules applicable to the operation outside of the United States of civil aircraft of United States registry. The reasons therefor are set forth in the explanatory statement of the attached proposal which is being published in the Federal Register as a notice of proposed rule making.

The Flight Standards Service desires that all persons who will be affected by the requirements of this proposal be fully informed as to its effect upon them and is therefore circulating copies in order to afford interested persons ample opportunity to submit comments as they may desire.

Because of the large number of comments which we anticipate receiving in response to this draft release, we will be unable to acknowledge receipt of each reply. However, you may be assured that all comments will be given careful consideration.

It should be noted that comments should be submitted, preferably in duplicate, to the Docket Section of the Federal Aviation Agency, and in order to insure consideration must be received on or before June 18, 1962.

George C. Pratt

Director,
Flight Standards Service

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FEDERAL AVIATION AGENCY

FLIGHT STANDARDS SERVICE

[14 CFR Part 191]

[Regulatory Docket No. 1107; Draft Release No. 62–11]

NOTICE OF PROPOSED RULE MAKING

Rules Applicable to the Operation Outside of the United States of Civil Aircraft of United States Registry

Pursuant to the authority delegated to me by the Administrator (14 CFR 405.27), notice is hereby given that there is under consideration a proposal to adopt a new Part 191 of the Civil Air Regulations as hereinafter set forth.

Interested persons may participate in the making of the proposed rules by submitting such written data, views, or arguments as they may desire. Communications should be submitted, preferably in duplicate, to the Docket Section of the Federal Aviation Agency, Room C–226, 1711 New York Avenue, N.W., Washington 25, D.C. All communications received on or before June 18, 1962, will be considered by the Administrator before taking action upon the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available in the Docket Section for examination by interested persons when the prescribed date for return of comments has expired.

The United States Government has received numerous complaints from various foreign governments that civil aircraft of United States registry have been flown in their airspace in violation of their rules and regulations. Such action by the operators of United States aircraft is becoming of increased concern to this country. Often these actions have caused considerable embarrassment to this Government. The failure to file flight plans or the disregard of flight plans filed have led on occasion to costly search and rescue operations by foreign governments. The ignoring of foreign traffic patterns and airport rules have almost caused serious accidents. Flights into prohibited areas have alarmed foreign governments and in some cases caused them to adopt certain security measures, including firing on the aircraft involved. The United States Department of State has requested that the Federal Aviation Agency take appropriate action to insure that civil aircraft of United States registry are flown in accordance with the rules and regulations relating to the flight and maneuver of aircraft which are in effect in the foreign country, over or within which the flight is being made. The Department of State has pointed out that the United States Government has an obligation in this regard as a party to the 1944 Chicago Convention on International Civil Aviation (61 Stat. 1180), Article 12 of which reads as follows:

Article 12

"Each contracting State undertakes to adopt measures to insure that every aircraft flying over or maneuvering within its territory and that every aircraft carrying its nationality mark, wherever such aircraft may be, shall comply with the rules and regulations relating to the flight and maneuver of aircraft there in force. Each contracting State undertakes to keep its own regulations in these respects uniform, to the greatest possible extent, with those established under this Convention. Over the high seas, the rules in force shall be those established under this Convention. Each contracting State undertakes to insure the prosecution of all persons violating the regulations applicable."

Further, section 1102 of the Federal Aviation Act of 1958 requires the Civil Aeronautics Board and the Administrator of the Federal Aviation Agency in the exercise of their powers and the performance of their duties to do so consistently with any obligation assumed by the United States in any treaty, convention, or agreement in force and to take into consideration any applicable laws and requirements of foreign countries which are parties to such treaties, conventions, or agreements. Section 1102 of the Act is as follows:

"International Agreements"

"Sec. 1102 (72 Stat. 797, 49 U. S. C. 1502). In exercising and performing their powers and duties under this Act, the Board and the Administrator shall do so consistently with any obligation assumed by the United States in any treaty, convention, or agreement that may be in force between the United States and any foreign country or foreign countries, and shall take into consideration any applicable laws and requirements of foreign countries and the Board shall not, in exercising and performing its powers and duties with

respect to certificates of convenience and necessity, restrict compliance by any carrier with any obligation, duty, or liability imposed by any foreign country: *Provided*, That this section shall not apply to any obligation, duty, or liability arising out of a contract or other agreement, heretofore or hereafter entered into between an air carrier, or any officer or representative thereof, and any foreign country, if such contract or agreement is disapproved by the Board as being contrary to the public interest."

In the case of air carriers, section 41.64 of the Civil Air Regulations and the operations specifications of those air carriers operating under Part 42 require that they conform to the rules and regulations relating to the flight and maneuver of aircraft which are in effect in a foreign country over or within which the flight is made. However, except in the case of air carriers, no specific Civil Air Regulations have been promulgated generally requiring conformity with such foreign rules and regulations by United States registered aircraft operating abroad.

Accordingly, the Federal Aviation Agency proposes to promulgate a new Part 191 of the Civil Air Regulations requiring all civil aircraft of United States registry operating over and within foreign countries to fly in accordance with the rules of flight and maneuver of aircraft of the country concerned. Further, to insure compliance with such a regulation and to satisfy the Administrator as to the competence of persons operating civil aircraft of United States registry outside the United States and the airworthiness of such aircraft, it is proposed to require such persons to obtain a Foreign Flight Authorization. Foreign Flight Authorizations may be applied for and issued not only to pilots of such aircraft but to any person who engages in the "operation of aircraft" as that phrase is defined in section 101(26) of the Federal Aviation Act of 1958, as amended (72 Stat. 737, 49 U.S.C. 1301). This would include persons operating aircraft in the capacity of owner, lessee, or otherwise. Further, the Foreign Flight Authorization may be issued for single flights, a series of flights, or a continuing operation outside of the United States.

Article 31 of the Convention on International Civil Aviation requires that every aircraft engaged in international navigation shall be provided with a certificate of airworthiness issued or rendered valid by the State in which it is registered. Article 32 of the Convention requires that the pilot of every aircraft and the other members of the operating crew of every aircraft engaged in international navigation shall be provided with certificates of competence and licenses issued or rendered valid by the State in which the aircraft is registered. A Foreign Flight Authorization would be evidence of the fact that the Administrator is satisfied that the pilot and other members of the operating crew of the aircraft hold valid and appropriate airman certificates permitting them to operate a United States registered civil aircraft and that such aircraft has a valid airworthiness certificate. To this end, the proposed regulation would require that persons operating United States civil aircraft outside the United States provide the Administrator with satisfactory assurances that the aircraft used in such operation or operations has a valid airworthiness certificate; that the airmen operating the aircraft have valid United States airman certificates and are otherwise qualified for the type of flight or flights contemplated; and that those operating the aircraft are familiar with the applicable laws and regulations of the areas in which they will be operating as well as the applicable treaty obligations and applicable laws, regulations, and orders of the United States Government. The operations conducted outside of the United States must be accomplished in such a manner as to respect the obligations which the United States has undertaken by treaty. It will be noted that such Foreign Flight Authorization is not required for civil aircraft of the United States being operated in air transportation as defined by the Federal Aviation Act of 1958, as amended, or under authority of an air carrier operating certificate or operations specifications issued pursuant to Part 44 of the Civil Air Regulations. The need for requiring a Foreign Flight Authorization in such cases is obviated by the requirements surrounding the obtaining of an air carrier operating certificate, or operations specifications.

No Foreign Flight Authoriziation will be required for operations conducted solely over the high seas between the contiguous forty-eight States of the United States and the States of Hawaii and Alaska, or between the States of Hawaii and Alaska, or between the States of the United States and the Territories and possessions of the United States including the Commonwealth of Puerto Rico, or between the various Territories and possessions of the United States including the Commonwealth of Puerto Rico. Further, operations conducted between the United States and Canada or Mexico will not require the obtaining of a Foreign Flight Authorization. The volume and nature of the air traffic within and between the areas enumerated above is such that the requiring of a Foreign Flight Authorization would be unduly burdensome. It is important to note, however, that while certain operations do not require the obtaining of a Foreign Flight Authorization (see subparagraphs (b)(1), (b)(2), and (b)(3) of § 191.7), all operations outside of the United States must be conducted in accordance with the other applicable provisions of this part. In this connection, it is further anticipated that Part 41 of the Civil Air Regulations will be amended to delete therefrom the requirement presently contained in § 41.64 requiring compliance with foreign air traffic rules and local airport rules. Such compliance will be required by the provisions of this proposed new part. Similarly, it is contemplated that Part 60 of the Civil Air Regulations will be amended by deleting § 60.1a which requires United States registered aircraft operated over the high seas to comply with the applicable provisions of Annex 2 (Rules of the Air) to the Convention on International Civil Aviation. Such compliance will be required by the provisions of this proposed new regulation.

Violation of this regulation or of the terms and conditions of a Foreign Flight Authorization will sub-

ject the violator to appropriate enforcement action by the Administrator, including the revocation or suspension of his certificate or the imposition of a civil penalty. In addition to enforcement action, the Administrator, in appropriate cases, could withdraw the Foreign Flight Authorization. In those instances in which a Foreign Flight Authorization is withdrawn, the Administrator will notify the United States Department of State of such action, and request that such notification be communicated to the appropriate foreign governments. Such notifications will be for the purpose of informing the appropriate foreign governments that in light of its obligations under the Chicago Convention the United States Government does not sanction the operation outside of the United States of the operator whose Authorization has been withdrawn.

In consideration of the foregoing, it is proposed to promulgate a new Part 191 of the Civil Air Regulations to read as follows:

PART 191—RULES APPLICABLE TO THE OPERATION OUTSIDE OF THE UNITED STATES OF CIVIL AIRCRAFT OF UNITED STATES REGISTRY

Sections:

191.1 Applicability.
191.2 Airworthiness.
191.3 Airman certificates.
191.4 Foreign flight rules.
191.5 Operation over the high seas.
191.6 Lawful purpose.
191.7 Foreign Flight Authorization.

191.1 *Applicability.* The provisions of this regulation are applicable to the operation outside of the United States of civil aircraft of United States registry.

191.2 *Airworthiness.* No civil aircraft of United States registry shall be operated outside of the United States without a currently valid airworthiness certificate issued by the Administrator of the Federal Aviation Agency or his duly authorized representative, nor unless maintained, altered and repaired in accordance with the provisions of the Civil Air Regulations.

191.3 *Airman certificates.* No civil aircraft of United States registry shall be operated outside of the United States unless each airman serving in connection with the operation thereof has in his personal possession a valid United States airman certificate authorizing him to serve in such capacity.

191.4 *Foreign flight rules.* No civil aircraft of United States registry shall be operated in violation of the rules and regulations relating to the flight and maneuver of aircraft including the air traffic and local airport rules of the country in which such aircraft is being operated.

191.5 *Operation over the high seas.* No civil aircraft of United States registry shall be operated over the high seas in violation of the applicable provisions of Annex 2 (Rules of the Air) to the Convention on International Civil Aviation.

191.6 *Lawful purpose.* No civil aircraft of United States registry shall be operated contrary to the applicable laws, regulations, and orders of the United States or in a manner or for a purpose inconsistent with any obligation or commitment of the United States in any international treaty or agreement to which the United States is a party.

191.7 *Foreign Flight Authorization.*

(a) *General.* No person shall operate civil aircraft of United States registry outside of the United States unless a Foreign Flight Authorization describing the operation authorized and prescribing the terms, conditions, and limitations applicable thereto has been issued by the Administrator; nor shall such operation be conducted otherwise than in accordance with the terms, conditions, and limitations set forth in such authorization.

(b) *Exceptions.*

(1) No Foreign Flight Authorization shall be required for civil aircraft of United States registry operated under the provisions of an air carrier operating certificate authorizing overseas or foreign air transportation or operations specifications issued pursuant to Part 44 of the Civil Air Regulations.

(2) No Foreign Flight Authorization shall be required for civil aircraft of United States registry which are being operated solely over the high seas between:

(i) The contiguous forty-eight States of the United States and the States of Hawaii or Alaska; or

(ii) The States of Hawaii and Alaska; or

(iii) Any of the States of the United States and any Territory or possession of the United States including the Commonwealth of Puerto Rico; or

(iv) Any Territories or possessions of the United States including the Commonwealth of Puerto Rico.

(3) No Foreign Flight Authorization shall be required for civil aircraft of United States registry operating solely between the United States and any of the following areas, or solely within the following areas:

(i) Dominion of Canada;

(ii) Mexico.

(c) *Requirements for issuance.* A Foreign Flight Authorization will be issued to an applicant therefor who provides assurance satisfactory to the Administrator or his representative that:

(1) The aircraft to be used for the proposed operation has a valid airworthiness certificate and equipment adequate to insure safe operations;

(2) The airmen possess valid airman certificates and are otherwise qualified for the type of flight contemplated;

(3) The operation will not violate the applicable laws, regulations, and orders of the United States and is consistent with the obligations undertaken by the United States Government in connection with any treaty or other international agreement to which it is a party; and

(4) The airman who will be in command of the aircraft is familiar with the pertinent laws and regu-

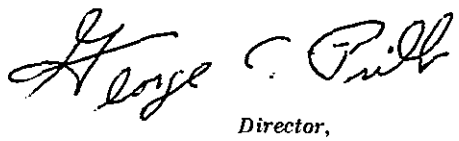
lations of the foreign countries through which the proposed flight will take place.

(d) *Application.* Application for a Foreign Flight Authorization shall be made in duplicate upon the applicable form prescribed and furnished by the Administrator.

(e) *Display.* The Foreign Flight Authorization shall be kept in the personal possession of the pilot in command at all times during operation pursuant to the authorization, and shall be presented for inspection upon the request of any authorized representative of the Administrator, and, when the aircraft is within any foreign country, upon the request of any authorized representative of such government or political subdivision thereof.

(f) *Duration.* A Foreign Flight Authorization shall be limited to the period prescribed on such authorization, unless sooner surrendered by the holder, or withdrawn by the Administrator.

This regulation is proposed under the authority of sections 313(a), 601–610, and 1102 of the Federal Aviation Act of 1958 (72 Stat. 752, 775–780, 797; 49 U.S.C. 1354(a), 1421–1430, 1502).



Director,
Flight Standards Service

Issued in Washington, D.C., on March 12, 1962.