TITLE 14-AERONAUTICS AND AIRSPACE

CHAPTER III-FEDERAL AVIATION AGENCY

(AMENDMENT 2)

(Airspace Docket No. 59-WA-425)

PART 409--Procedures and Rules for Airspace Assignment and Utilization

Part 409 of the Regulations of the Federal Aviation Agency, Procedures and Rules for Airspace Assignment and Utilization, was published in the Federal Register on May 1, 1959 (24 F. R. 3498), to become effective May 15, 1959. Amendment No. 1 thereto, which related to the scope and applicability of Part 409, was published in the Federal Register on May 16, 1959 (24 F. R. 3972), and became effective on that date. Such amendment modified the preamble to Par. 409 by specifically stating that the Part was not applicable to exceptions which may be authorized under Section 307(f) of the Act for military emergency or necessity. It also limited the scope of the Part to the types of rule-making actions specified in Section 409.11(b) and the applicability of the Part to airspace assignments within the United States.

On November 27, 1959, the President issued Executive Order 10854 (24 F. R. 9565) which, to the extent necessary to permit the Administrator to accomplish the purposes and objectives of Titles III and XII, extended the application of the Federal Aviation Act of 1958 (72 Stat. 731; 49 U. S. C. 1301) to those areas of land or water outside the United States and the overlying airspace thereof over or in which the Federal Government of the United States, under international treaty, agreement or other lawful arrangement, has appropriate jurisdiction or control.

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This grant of authority was made subject to the provision that the Administrator is required to consult with the Secretary of State on matters affecting foreign relations and with the Secretary of Defense on matters affecting defense interests, prior to taking any action under the authority of the Executive Order. Moreover, the Executive Order precluded the Administrator from taking any action which the Secretary of State determines to be in conflict with any international treaty or agreement to which the United States is a party or to be inconsistent with the successful conduct of the foreign relations of the United States, or which the Secretary of Defense determines to be inconsistent with the requirements of national defense.

Assignments of airspace authorized by the Executive Order will be processed under Part 409. It, therefore, becomes necessary to amend the Part so that it will have applicability to airspace outside the United States. Additionally, it has now become evident to the Federal Aviation Agency that the limitation of the scope of Part 409 to the types of assignments of airspace specified in Section 409.11(b) is undesirable since it will entail a separate amendment of these procedural regulations whenever it becomes necessary to make an assignment of airspace of a type not hitherto utilized. For example, on November 5, 1959, the Federal Aviation Agency issued a Notice of Proposed Ruling (Regulatory Docket No. 168; Draft Release 59-17; 24 F. R. 9020) which contemplates a new type of an assignment of airspace to be known as an "airport traffic pattern area". Moreover, it is believed that the reference in the preamble of Part 409 to Section 307(f) of the Federal Aviation Act is unnecessary especially since Section 409.11(a), which relates to the scope and effect of the Part, specifically

states that the Part "establishes the procedures to be followed in the initiation, administrative processing, issuance, and publications of rules, regulations, or orders issued pursuant to the authority contained in Section 307(a) of the Federal Aviation Act of 1958".

As the simplest means of providing appropriate procedures for implementing the Executive Order and expediting assignments of airspace through the rule-making process, Amendment No. 1 to Part 409 is being revoked, thus returning these procedural regulations to their original provisions.

Since this amendment is procedural in nature and does not impose an additional burden on any person, compliance with the notice, public procedures and effective date provisions of Section 4 of the Administrative Procedure Act is not necessary.

In consideration of the foregoing, Amendment 1 to Part 409 of the Regulations of the Federal Aviation Agency (24 F. R. 3498; 24 F. R. 3972), is revoked.

This amendment shall become effective upon the date of publication in the Federal Register.

Sections 307(a) and 313(a), 72 Stat. 749, 752; 49 U. S. C. 1348, 1354).

Administrator

Issued in Washington, D. C. on April 15, 1960.