TITLE 14--CIVIL AVIATION

CHAPTER II--FEDERAL AVIATION AGENCY

PART 409--PROCEDURES AND RULES FOR AIRSPACE ASSIGNMENT AND UTILIZATION

Section 307(a) of the Federal Aviation Act of 1958 empowers the Administrator of the Federal Aviation Agency to assign by rule, regulation, or order the use of the navigable airspace under such terms, conditions, and limitations as he may deem necessary in order to insure the safety of aircraft and the efficient utilization of the navigable airspace. It also provides the Administrator with authority to modify or revoke any such assignment when required in the public interest. Due to the specialized nature of the subject matter, the processing of rules, regulations, or orders issued pursuant to the authority in Section 307(a) will be accomplished in accordance with the procedures set forth herein, except in cases of emergency or in those instances where it is impracticable, unnecessary, or contrary to the public interest to follow such procedures. In addition, it is the intention of the Agency to publish in this part any special rules, regulations, or orders relating to the assignment and utilization of the navigable airspace and pertinent policies and interpretations issued by the Agency in regard thereto.

In consideration of the foregoing and acting pursuant to Section 313(a) of the Federal Aviation Act of 1958 and Section 3 of the Administrative Procedure Act, I hereby repeal Part 409 - "Procedures for Handling Proposals Involving the Utilization and Allocation of Airspace" of the Regulations of the Administrator of Civil Aeronautics, and do hereby adopt Part 409 of the Regulations of the Federal Aviation Agency, which reads as follows:

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SUBPART A--INTRODUCTION

§ 409.1 Definitions. (a) "Act" means the Federal Aviation Act of 1958.

(b) "Administrator" means the Administrator of the Federal Aviation Agency.

(c) "Agency" means the Federal Aviation Agency.

(d) "Air Carrier" means any citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage in air transportation.

(e) "Aircraft" means any contrivance now known or hereafter invented, used or designed for navigation of or flight in the air.

(f) "Air navigation facility" means any facility used in, available for use in, or designed for use in, aid of air navigation, including landing areas, lights, any apparatus or equipment for

disseminating weather information, for signaling, for radio-directional finding, or for radio or other electrical communication, and any other structure or mechanism having a similar purpose for guiding or controlling flight in the air or the landing and take-off of aircraft.

(g) "Airport" means a landing area used regularly by aircraft for receiving or discharging passengers or cargo.

(h) "Civil aircraft" means any aircraft other than a public aircraft.

(i) "Controlling agency" means the Federal Aviation Agency, or the agency, office, facility, or person to whom authority has been delegated to permit the use of "special use" airspace during those times in which such airspace is not being used for the purposes to which it was assigned.

(j) "Director" means the Director, Bureau of Air Traffic Management, or his authorized representative.

(k) "Federal airway" means a portion of the navigable airspace of the United States designated by the Administrator as a Federal airway.

(l) "Foreign air carrier" means any person, not a citizen of the United States, who undertakes, whether directly or indirectly or by lease or any other arrangement, to engage in foreign air transportation.

(m) "Landing area" means any locality, either or land or water, including airports and intermediate landing fields, which is used, or intended to be used, for the landing and take-off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo.

(n) "Navigable airspace" means airspace above the minimum altitude of flight prescribed by regulations issued under the Federal Aviation Act, and shall include airspace needed to insure safety in take-off and landing aircraft.

(o) "Operation of aircraft" or "operate aircraft" means the use of aircraft for the purpose of air navigation, and includes the navigation of aircraft. Any person who causes or authorizes the operation of aircraft, whether with or without the right of legal control (in the capacity of owner, lessee, or otherwise) of the aircraft, shall be deemed to be engaged in the operation of aircraft within the meaning of the Federal Aviation Act.

(p) "Person" means any individual, firm, copartnership, corporation, company, association, joint-stock association, organization, military department, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

(q) "Public aircraft" means an aircraft used exclusively in the service of any government or of any political subdivision thereof, including the government of any State, Territory, or possession of the United States, or the District of Columbia, but not including any government-owned aircraft engaged in carrying persons or property for commercial purposes.

(r) "Special use airspace" means navigable airspace assigned by the Administrator for such special purposes as he may deem required in the public interest.

(s) "United States" means 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.

SUBPART B--RULES APPLICABLE TO RULE-MAKING PROCEEDINGS

§ 409.11 Scope and effect of subpart. (a) This subpart establishes the procedures to be followed in the initiation, administrative processing, issuance, and publication of rules, regulations, or orders issued pursuant to the authority contained in Section 307(a) of the Federal Aviation Act of 1958. These procedures will be utilized except in cases of emergency, or in those instances when it is determined to be impracticable, unnecessary, or contrary to the public interest to follow such procedures.

(b) Rules, regulations, or orders processed under these procedures shall include, but not be limited to:

(1) Designations of Federal airways, control zones, control areas, control area extensions, terminal control areas, high density air traffic zones, positive control route segments, and coded jet routes;

(2) Assignments of segments or portions of the navigable airspace for special use purposes, such as: restricted areas, military climb corridors, and experimental flight test areas;

(3) Special rules, regulations, and orders relating to the use or assignment of the navigable airspace.

§ 409.12 Filing of proposals. (a) All proposals, except those arising within the Agency, requesting the designation of Federal airways and other areas for normal air traffic use, or the assignment of navigable airspace for special use purposes, or the issuance of any special rules, regulations, or orders relating to the use of such airspace must be filed in writing, in triplicate. Proposals may be filed with any Regional Administrator or with the Director. The procedures set forth herein may be initiated in regard to proposals arising within the Agency by the Director, upon his own motion.

(b) Proposals requesting assignment of the navigable airspace for special use purposes or for the designation of areas for air traffic purposes must include at least the following:

(1) The location and description of the airspace desired for assignment or designation.

(2) A full and complete description of the activities or use to be made of the requested airspace. This must include a detailed description of the type, volume, duration, time, and place of the operations to be conducted in the assigned or designated area.

(3) Description of the air navigation, air traffic control, surveillance, and communication facilities available and to be provided in the event the assignment or designation is made.

(4) The proposed controlling agency for any assigned area and the location of such agency.

(c) Notice of any rejected proposal will be issued by the Director, with the concurrence of the General Counsel of the Agency as to form and legality.

§ 409.13 Issuance of notice of proposed rule-making. (a) If it is determined that the subject matter of a proposal should be submitted to the rule-making process, or in the event rule-making action is to be taken on his own motion, the Director, with the concurrence of the General Counsel of the Agency as to form and legality, will issue a notice of proposed rule-making.

(b) Normally a notice of proposed rule-making will be issued within approximately 30 days after receipt of a proposal in regard to which it has been determined that action might be taken.

(c) All notices of proposed rule-making will be published in the Federal Register.

(d) A notice of proposed rule-making will include at least the following:

(1) A statement of the time, place, and nature of the public rule-making proceedings.

(2) A reference to the authority under which the rule, regulation, or order is proposed.

(3) Either the terms or substance of the proposed action or description of the subjects and issues involved.

(e) Approximately 30 days will be allowed for the submission of written data, comments, views, or arguments.

(f) In the event that a public hearing is to be held, approximately 30 days' notice will be given either in the original notice of proposed rule-making or in a revised notice. The Director may grant or deny requests to extend the time specified in the notice for the submission of written material or may change the date of any hearings previously noticed.

(g) All written data, comments, views, or arguments submitted in response to a notice of proposed rule-making, or as may be requested thereafter, shall be filed in triplicate.

(h) Opportunity will be afforded to any interested person to discuss or confer informally with proper Agency representatives concerning the proposed action. However, any views, comments or statements presented during such conferences must also be submitted in writing in accordance with the notice of proposed rule-making in order to become a part of the formal record for consideration.

§ 409.14 Hearings. (a) The Federal Aviation Act of 1958 does not require that formal hearings be held in the formulation of rules, regulations, or orders for issuance under the authority of Section 307(a) of the Act. Accordingly, Sections 7 and 8 of the Administrative Procedure Act are not applicable to these proceedings. Hearings will not be held in all cases; however, in the event that a hearing is held, it will be conducted on an informal basis and in accordance with the procedures established herein. Any rules, regulations, or orders issued in cases wherein hearings have been held will not be based exclusively on the records of such hearings.

(b) An informal public hearing will be held when in the discretion of the Director such a proceeding is necessary to assure informed administrative action and adequate protection of private or public interests.

(c) A presiding officer will be designated by the Director. A legal adviser will be designated by the General Counsel.

(d) Usually hearings conducted under this subpart will be held in the locale of the affected airspace. Time will allotted to interested persons to make oral presentations without interruption, and a verbatim transcript by a certified court reporter will be made of the entire proceedings. The procedure to be followed in such hearings will be as follows:

(1) An opening statement will be given by the presiding officer with particular reference to the notice of proposed rule-making and its contents.

(2) The presiding officer shall designate interested persons or their authorized representatives to speak at the hearing. Sufficient time will be allotted by the presiding officer to all interested persons on an equal basis in order that their positions may be expressed fully and placed on the record. Those persons who are proponents of the action, or who favor it, will be permitted to speak first, followed by those persons who are opposed. Initial statements will be permitted to be made with a minimum of interruption. After initial statements have been made by all the designated persons, questions will be permitted.

(3) Arguments and oral statements must be limited to the subject matter stated in the notice of proposed rule-making.

(4) Written comments, data, arguments, or briefs may be offered as part of the record at the hearing. Such documents

will not be accepted after the close of the hearing, unless good cause is shown, or unless the submission has been requested by the designated presiding officer or by the Director.

(5) The presiding officer is authorized to deviate from these hearing procedures in order to assure a more informative and complete record.

§ 409.15 Adoption of rules, regulations, or orders. (a) After the closing date for the submission of written comments, or in the event a hearing is held, after the close of the hearing, the entire matter will be studied and analysed by the Airspace Utilization Division, Bureau of Air Traffic Management, Washington, D. C. Thereafter a rule, regulation, order, or notice of denial will be recommended to the Director, which, after approval by the Director and concurrence by the General Counsel as to form and legality, will be forwarded to the Administrator for adoption.

(b) All the rules, regulations, or orders issued by the Administrator under this part will be published in the Federal Register and in such other publications as may be deemed desirable by the Director. Notices of denial will be forwarded to the person making the proposal and to such other interested persons as determined by the Director.

(c) Except in cases of emergency or when impracticable, unnecessary, or contrary to the public interest, all rules, regulations, or orders issued by the Administrator under this part will become effective in not less than 30 days after publication.

§ 409.16 Exemptions. (a) Petitions for exemption from the requirements of any rule, regulation, or order issued pursuant to Section 307(a) may be filed with the Director. Such petitions must be filed in triplicate and clearly state the nature of the requested exemption, as well as the reasons why the exemption should be granted. The Director, with the concurrence of the General Counsel as to form and legality, may grant or deny such petitions and shall so notify the petitioner.

§ 409.17 Petitions for rehearing or reconsideration of rules, regulations, or orders. (a) Any interested person may petition the Administrator for a rehearing or for reconsideration of any rule, regulation, or order issued pursuant to Section 307(a). Such petitions must be filed in triplicate within 30 days after publication of the rule, regulation, or order in the Federal Register. The petition shall contain a brief statement of the matters complained of and an explanation as to how the rule, regulation, or order is contrary to the public interest. If the petition requests consideration of additional facts, the nature and purpose of the new facts and the reason why such facts were not presented at the time of the hearing or in written form within the allotted time must be stated. Repetitious petitions will not be entertained by the Administrator. The filing of a petition under this section

shall not operate to stay the effectiveness of the Agency's rule, regulation, or order, unless otherwise ordered by the Administrator.

§ 409.18 Petitions for revocation or modification of existing rules, regulations, or orders. (a) Any interested person may petition for the revocation or modification of existing rules, regulations, or orders relating to airspace assignments issued under Section 307(a) of the Federal Aviation Act, or previously issued by the Administrator of Civil Aeronautics or the Civil Aeronautics Board. Such petitions shall be filed in triplicate with the Director and shall clearly set forth all the facts, views, and data deemed necessary to support the action requested, and shall indicate clearly the effect the proposed action will have on the use of the navigable airspace. Such petitions will be processed in the same manner as proposals, or in such other manner as deemed necessary or desirable by the Director.

§ 409.19 Docket. (a) The official Agency records consisting of proposals, notices of proposed rule-making, written material received in response to notices, petitions for rehearing or reconsideration, petitions for modification or revocation, notices granting or denying exemptions, notices denying proposals, and all rules, regulations, or orders issued pursuant to Section 307(a) will be maintained in docket form in the Office of the General Counsel and, unless ordered withheld

from the public under Section 1104 of the Federal Aviation Act of 1958, will be made available for examination by interested persons at that office. Photostatic or duplicate copies of such records may be obtained upon payment of the costs of such copies.

This action shall become effective on May 15, 1959.

(Sec. 313(a) of the Federal Aviation Act of 1958, Act of August 23, 1958, 72 Stat. 752 (P.L. 85-726). Interpret or apply Secs. 303(d), 307, 1001, and 1501(a), 72 Stat. 749, 750, 788, 809 (P.L. 85-726)).

Issued in Washington, D. C. on April 24, 1959.

S/ E. R. QUESADA

Administrator

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