

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Agency

SUBCHAPTER B—PROCEDURAL RULES [NEW]

[Reg. Docket No. 4008; Amok. 11-8]

PART 11—GENERAL RULE MAKING PROCEDURES [NEW]

Assignment of Navigable Airspace

This amendment to Part 11 [New] of the Federal Aviation Regulations alters the Federal Aviation Agency's General Rule Making Procedures to authorize FAA Regional Directors to issue regulations assigning controlled airspace for terminal areas.

This action was published as a notice of proposed rule making in the FEDERAL REGISTER on February 14, 1964 (29 F.R. 2467). A supplemental notice and a notice extending the period for comments were published in the FEDERAL REGISTER on February 25, 1964, and March 17, 1964, respectively (29 F.R. 2677, 3441). Under the proposed rule, Regional Directors would have been authorized to issue regulations on restricted areas as well as on controlled airspace for terminal areas.

Five parties submitted comments on the proposal and the over-all reaction was one of opposition. Some of the comments stated broad objections to the decentralization of the airspace rule-making function while others concentrated on specific situations where regional handling of airspace rules would be undesirable. A prevailing theme dealt with the need for the exercise of firm control over the national airspace program, and the importance of centralization to the achievement of this goal. Particularly in the case of the designation of special use airspace, it was pointed out that the impact of many airspace rule making actions on the public and on the defense establishment was such as to call for top-level coordination and control. Strong objections were made to any delegation of rule making authority which would enable Regional Directors to issue notices and rules for special use or en route purposes, or to process cases requiring coordination with the Departments of Defense and State under Executive Order 10854.

It was suggested in two comments that if the Agency did carry the proposal to a final rule, procedures be incorporated therein for the appeal or referral of cases to the Washington Headquarters whenever a controversy arose over the position taken by a Regional Director. The Department of Defense was particularly concerned that delegation of airspace authority to the field in the FAA, while DOD maintained centralized authority, would disrupt the timely exchange of information between DOD and FAA. Other comments reflected upon the history of the airspace program and contended that adoption of the proposed

action would run contrary to the aims of the Federal Aviation Act of 1958 and prevent the administration of a uniform airspace program. Some comments suggested further that if any delegation of authority was to be adopted, the FAA should clearly outline the responsibilities of the Regional Directors and establish firm guidelines to prevent the promulgation of inequitable and inconsistent actions.

The FAA has studied these comments and found several of them to be meritorious. It has reviewed the proposal as it related to the designation of special use airspace and has concluded that this function should be performed by the Washington Headquarters. Restricted areas are by nature most critical because of the prohibition to flight they entail and because of their usual tie-in with national defense interests. Retention of this function in Washington will perpetuate the exercise of central control in this area and minimize the impact on procedures now followed by DOD and FAA in exchanging information on airspace matters.

The notice stated that airspace designations for en route purposes would continue to be handled by the Air Traffic Service in Washington. However, it also contained a provision which would have permitted Regional Directors to issue rules on airways and routes if they were tied in with an action on restricted areas or terminal control areas. The purpose of that provision was to ensure that the division of responsibilities between the headquarters and field offices did not require the Agency to fragmentize rule making cases when a consolidated presentation of actions was necessary to assure intelligent participation in the rule making process by interested persons or to avoid the separate publication of minor amendments tied in with another action. The Agency still intends to issue consolidated actions in line with this policy, but the change in the division of responsibilities adopted herein necessitates the establishment of different guidelines. Inasmuch as restricted area cases will not be handled by regional offices, it is not anticipated that it will be necessary for Regional Directors to issue any notices or rules on jet routes or jet advisory areas. Thus, the rule adopted herein prohibits Regional Directors from handling actions on Part 75 [New]. Regional Directors will, however, be authorized to include action on a Federal airway in a notice or rule relating to controlled airspace for terminal areas if the airway action is ancillary to the terminal area case and if he obtains approval from FAA Headquarters in Washington to ensure that there is consistency with national airway planning.

All airspace docketed affecting airspace outside the three-mile limit will be issued by the Washington Headquarters. All of these cases are coordinated with the State and Defense Departments under Executive Order 10854 and their handling in Washington will permit continuation of existing procedures in effecting this coordination.

The notice of proposed rule making contained a provision for the redelega-

tion of authority by Regional Directors. Under the rule adopted herein, no redelegation of authority by a Regional Director would be permissible. With this provision, with the distribution to the field of new and revised internal directives on the processing of airspace cases, and with the limitation placed on Regional Directors as to the categories of airspace allocations they may handle, the FAA believes that proper control will be maintained over the airspace program. At the same time, Regional handling of cases on controlled airspace should accelerate the processing of a large volume of dockets. It will also permit decisions on many dockets having more of a local than national impact to be made by Agency officials most familiar with the case.

No provision appears in the rule making action taken herein for Headquarters intervention in terminal airspace dockets creating a controversy in the field. It is the intent of this amendment to delegate complete authority to Regional Directors in matters related to airspace allocations concerning terminal areas. Section 11.73 [New], however, does provide for petitions for reconsideration to be submitted to the Administrator within 30 days after publication of the rule. This provision should provide adequate relief for parties who feel that rule making action taken by a Regional Director is contrary to the public interest.

The notice of proposed rule making anticipated a problem in the handling of airspace overlapping two regions, and provided for the issuance of a rule in these cases by the region responsible for the larger portion of the airspace in question. Upon further consideration, the Agency has decided to refrain from establishing quantity of airspace as the determining factor as to how these actions would be handled. Responsibility over the greater portion of such airspace may be the controlling factor in some cases, but it will be left to the regional offices concerned to consider all the problems involved in the case and to jointly decide which region will issue the notice of rule.

Since these amendments are procedural in nature, they may be made effective on less than 30 days' notice.

In consideration of the foregoing, Part 11 [New] of Chapter I of Title 14 of the Code of Federal Regulations is amended, effective immediately, as hereinafter set forth.

1. In § 11.61, paragraph (c) is amended and paragraph (d) is added. The amended paragraph (c) and the added paragraph (d) read as follows:

§ 11.61 Scope.

(c) For the purposes of this subpart, "Director" means the Director, Air Traffic Service (or any person to whom he has delegated his authority in the matter concerned) or a Regional Director. Each Regional Director is limited, however, to those matters relating to terminal area air space, within the United States, as described in § 71.165 of Subpart F, and Subparts G and H, of Part 71 [New]. He may, however, include those matters relating to a Federal airway or additional

control area, within the United States, as described in Subparts B, C, D, and J, and § 71.163 of Part 71 [New], if they are ancillary to the terminal area airspace matter. Before including any related Federal airway or additional control area matter, the Regional Director must coordinate with and obtain approval from FAA Headquarters in Washington to ensure that there is consistency with national airway plans.

(d) For the purposes of this subpart, "General Counsel" means the General Counsel, or a Regional Counsel, or any person to whom the General Counsel or Regional Counsel has delegated his authority in the matter concerned.

§ 11.63 [Amended]

2. Section 11.63(a) is amended by striking out the words "a Regional Assistant Administrator or".

3. Section 11.69(a) is amended to read as follows:

§ 11.69 Adoption of rules or orders.

(a) After the closing date for submitting written comments on a notice or, if a hearing is held; after the hearing, the Office having substantive responsibility for the subject involved studies the entire matter of a proposed rule or order. The General Counsel determines whether legal justification exists for the proposed action, and thereafter prepares an appropriate rule, order, or notice of denial. The rule, order, or notice of denial is then submitted to the Director for his action.

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4. Section 11.69(b) is amended by striking out the words "by the Administrator" and inserting the words "by the Director" in place thereof.

§ 11.75 [Amended]

5. Section 11.75(a) is amended by striking out the words "Director of Air Traffic Service" and inserting the word "Director" in place thereof.

(Sec. 307 of the Federal Aviation Act of 1958; 49 U.S.C. 1348)

Issued in Washington, D.C., on July 13, 1964.

HAROLD W. GRANT,
Acting Administrator.

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