

SUPPLEMENTARY INFORMATION:

History

On March 19, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish J-184 between Buckeye, AZ, and Newman, TX (58 FR 15117). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Jet routes are published in paragraph 2004 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 as of September 16, 1993. The jet route listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes J-184 between Buckeye, AZ, and Newman, TX. Currently, J-4 is the only route between these areas, therefore, aircraft are routinely vectored in that area to expedite traffic and to reduce congestion along J-4. The J-184 provides air traffic control with an alternative to radar vectors. This action improves the flow of traffic in the area and reduces controller workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Jet routes.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 in effect as of September 16, 1993, as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *
J-184 [New]
From Buckeye, AZ; Deming, NM; to Newman, TX.
* * * * *

Issued in Washington, DC, on August 5, 1993.

Willis C. Nelson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93-20011 Filed 8-18-93; 8:45 am]

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14 CFR Part 71

[Docket No. 24456, Amendment No. 71-21]

Airspace Reclassification; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correcting amendment.

SUMMARY: This action clarifies the Airspace Reclassification final rule that was promulgated on December 17, 1991, regarding the designation of the airspace above flight level (FL) 600 as Class E airspace. The clarification is necessary to ensure that the operating rules continue as intended on September 16, 1993, the implementation date of Airspace Reclassification.

EFFECTIVE DATE: This amendment is effective September 16, 1993.

FOR FURTHER INFORMATION CONTACT: Melodie DeMarr, Air Traffic Rules Branch, ATP-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1991 the FAA published the Airspace Reclassification final rule (56 FR 65638), which, among other things, changed the wording of many operating rules by replacing the

existing terminology for airspace with the new international classes of airspace that are being adopted by the United States. These changes become effective September 16, 1993.

Discussion

Although the discussion of the final rule addressed the airspace presently referred to as the Continental Control Area which includes the airspace above FL600, part 71 was not amended to reflect that discussion with regard to the airspace above FL600. This action clarifies the intent of the FAA and is consistent with international airspace designations of airspace above FL600.

Prior to September 16, 1993, the Continental Control Area includes the airspace from 14,500 feet to infinity. The airspace reclassification rule amended the airspace designations up to and including FL600, inadvertently omitting the redesignation of the airspace above FL600. The FAA is aware that numerous aircraft operations are conducted annually in the airspace above FL600 in both civilian and military aircraft. The airspace reclassification final rule included discussion of the redesignation of the remaining continental control area that was not reclassified as Class A, Class B, Class C, or Class D airspace as Class E airspace. However, the final rule inadvertently omitted that redesignation in amending part 71. This action amends part 71 to include the redesignation of the continental control area in the airspace above FL600 as Class E airspace.

List of Subjects in 14 CFR Part 71

Airspace, Navigation (air).

The Amendment

Accordingly, 14 CFR part 71, in effect as of September 16, 1993, is amended by making the following clarification amendment:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; Executive Order 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. app. 106(g); 14 CFR 11.69.

2. Section 71.71 is amended by revising paragraph (a) introductory text read as follows:

§ 71.71 Class E airspace.

* * * * *

(a) The airspace of the United States, including that airspace overlying the waters within 12 nautical miles of the coast of the 48 contiguous states and Alaska, extending upward from 14,500 feet MSL up to, but not including 18,000 feet MSL, and the airspace above FL600, excluding—

Issued in Washington, DC, on August 16, 1993.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 93-65]

Remission or Refund of Vessel Repair Duties

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to eliminate the filing of supplemental petitions for review when seeking the remission or refund of vessel repair duties. The amended regulations provide that a party seeking remission or refund after liquidation of a vessel repair entry must file a valid protest. These amendments conform the regulations to existing case law, and will simplify the administration of the vessel repair statute by ending the confusion which has arisen as to the proper agency review procedure which a party must follow thereunder.

EFFECTIVE DATE: August 19, 1993.

FOR FURTHER INFORMATION CONTACT: Larry L. Burton, Carrier Rulings Branch, (202-482-6940).

SUPPLEMENTARY INFORMATION:

Background

As provided in 19 U.S.C. 1466(a), and § 4.14(a), Customs Regulations (19 CFR 4.14(a)), equipment purchases for, and repairs made to, an American vessel, while outside the United States, are dutiable at the rate of 50 percent ad valorem on their actual cost in the foreign country where they are incurred. An entry covering the applicable duties must be filed with Customs for such equipment or repairs following the arrival of the vessel in the United States. This entry would be forwarded to the

appropriate Customs vessel repair liquidation unit. 19 CFR 4.14(b)(2).

Duties which may be properly assessed on equipment purchases or repairs under § 1466(a) are nevertheless subject to refund or remission if the purchases or repairs are made under the conditions set forth in § 1466(d) (19 U.S.C. 1466(d)), and § 4.14(c)(3)(i-iii), Customs Regulations (19 CFR 4.14(c)(3)(i-iii)).

Section 4.14(d), Customs Regulations (19 CFR 4.14(d)), prescribes the administrative avenue through which a party may seek remission or refund of vessel repair duties. Under this regulation, a party may file an application for relief within 60 days of arrival of the vessel, either challenging the classification of an item or a repair expense as dutiable under § 1466(a), or seeking the remission or refund of these duties under § 1466(d). If the application for relief is denied, the party may file a petition for review under § 4.14(d)(2)(i). Liquidation of the entry is suspended during both of these proceedings. If the petition for review is denied, a supplemental petition may be filed, but liquidation of the entry is no longer suspended. 19 CFR 4.14(d)(2)(iii).

Following liquidation of the entry, § 4.14(f) requires that a protest under 19 U.S.C. 1514 be filed against the decision to treat an item or a repair expense as dutiable under § 1466(a). There is, however, no equivalent directive concerning an appeal from a Customs decision to deny remission or refund of duties under § 1466(d). It was in fact Customs position that the remission or refund of vessel repair duties under § 1466(d) was not encompassed within § 1514 protest procedures and thus had to be pursued through the supplemental petition procedure.

The legal permissibility of this divergent post-liquidation appeal process, however, was overruled by the Court of International Trade in the case of *Perrod Drilling Co. v. United States*, 13 CIT 1005, 1010-1012 (1989). Essentially, the court held in *Perrod* that the decision by Customs to deny remission or refund under section 1466(d) constituted an official decision affecting the amount of duties chargeable, which, therefore, could only be appealed by filing a valid protest under § 1514. Consequently, the failure of the party there to timely protest Customs decision left the court with no jurisdiction to review the merits of the case.

Since the *Perrod* ruling, Customs has treated all supplemental petitions for remission or refund of duties under section 1466(d) as protests, if they are

filed in a timely manner following liquidation of the related entry.

Accordingly, in light of the foregoing, Customs is amending § 4.14 (d), (e) and (f), as necessary, in order to eliminate the discredited supplemental petition procedure for vessel repairs, and to provide that Customs decisions denying remission or refund under section 1466(d) are also subject to protest under § 1514.

As already made clear, these amendments conform the regulations to existing case law, and, furthermore, they will simplify the administration of the vessel repair statute by ending the confusion which has arisen as to the proper agency review procedure which a party must follow when seeking the remission or refund of duties thereunder.

Inapplicability of Public Notice and Comment and Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12291

For the reasons set forth in the preamble, pursuant to 5 U.S.C. 553(b), good cause exists for dispensing with notice and public procedure, and, pursuant to 5 U.S.C. 553(d), a delayed effective date is not required. Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). These amendments do not meet the criteria for a "major rule" as defined in E.O. 12291; therefore, a regulatory impact analysis is not required thereunder.

Drafting Information

The principal author of this document was Russell Berger, Regulations Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 4

Customs duties and inspection, Exports, Freight, Harbors, Maritime carriers, Oil pollution, Reporting and recordkeeping requirements, Vessels.

Amendments to the Regulations

Part 4, Customs Regulations (19 CFR part 4), is amended as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority for part 4 and the specific sectional authority for § 4.14 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 56, 1624; 46 U.S.C. App. 3;

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