

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA-2004-19363; Airspace  
Docket No. 04-AAL-23]

**Establishment of Class E Airspace;  
Seward, AK**

**AGENCY:** Federal Aviation  
Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E airspace at Seward, AK to provide adequate controlled airspace to contain aircraft executing Special Instrument Approach Procedures. This Rule results in new Class E airspace upward from 700 feet (ft.) above the surface at Seward Airport, AK.

**EFFECTIVE DATE:** 0901 UTC, March 17, 2005.

**FOR FURTHER INFORMATION CONTACT:** Jesse Patterson, AAL-538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513-7587; telephone number (907) 271-5898; fax: (907) 271-2850; email: [Jesse.ctr.Patterson@faa.gov](mailto:Jesse.ctr.Patterson@faa.gov). Internet address: <http://www.alaska.faa.gov/at>.

**SUPPLEMENTARY INFORMATION:****History**

On Wednesday, November 3, 2004, the FAA proposed to revise part 71 of the Federal Aviation Regulations (14 CFR part 71) to create new Class E airspace upward from 700 ft. above the surface at Seward, AK (69 FR 63972). The action was proposed in order to establish Class E airspace sufficient in size to contain aircraft while executing Special Instrument Approach Procedures at the Seward Airport. New Class E controlled airspace extending upward from 700 ft. above the surface within a 4-mile radius of the Seward Airport is established by this action. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received, thus, the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9M, *Airspace Designations and Reporting Points*, dated August 30, 2004, and effective September 16, 2004,

which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

**The Rule**

This revision to 14 CFR part 71 establishes Class E airspace at Seward Airport, Alaska. This additional Class E airspace was created to accommodate aircraft executing Special Instrument Flight Procedures and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at Seward Airport, Alaska.

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 “significant regulatory action” under Executive Order 12866; (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 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.

The FAA’s authority to issue rules regarding aviation safety is found in title 49 of the United States Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency’s authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart 1, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing Instrument Approach Procedures for the Seward Airport and represents the FAA’s continuing effort to safely and efficiently use the navigable airspace.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

**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 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, *Airspace Designations and Reporting Points*, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

\* \* \* \* \*

*Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

**AAL AK E5 Seward, AK [New]**

Seward, Airport, AK

(Lat. 60°07'37" N., long. 149°25'08" W.)

That airspace extending upward from 700 feet above the surface within a 4-mile radius of the Seward Airport.

\* \* \* \* \*

Issued in Anchorage, AK, on January 5, 2005.

**Anthony M. Wylie,**

*Acting Area Director, Alaska Flight Services Area Office.*

[FR Doc. 05-661 Filed 1-12-05; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF COMMERCE****Bureau of Industry and Security****15 CFR Parts 742 and 774**

[Docket No. 041221359-5005-02]

**RIN 0694-AD25**

**Implementation of the Understandings Reached at the June 2004 Australia Group (AG) Plenary Meeting and Through a Subsequent AG Intersessional Decision; Correction**

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule; correction.

**SUMMARY:** On Wednesday, December 29, 2004, the Bureau of Industry and

Security (BIS) published a final rule that amended the Export Administration Regulations (EAR) to implement the understandings reached at the June 2004 plenary meeting of the Australia Group (AG) and through a subsequent AG intersessional decision. The December 29, 2004, final rule contained a typographical error in the description of the AG-related license requirements in the EAR, as well as an error in the amendatory language for ECCN 2B351, which controls certain toxic gas monitoring systems and dedicated detectors therefor. This document corrects those errors.

**DATES:** This rule is effective January 13, 2005.

**FOR FURTHER INFORMATION CONTACT:** For questions of a general nature, contact Willard Fisher, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security at (202) 482-2440 or e-mail [wfisher@bis.doc.gov](mailto:wfisher@bis.doc.gov). For questions concerning the AG-related license requirements in the EAR, contact Douglas Brown, Office of Nonproliferation Controls and Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 482-7900.

**SUPPLEMENTARY INFORMATION:**

**Background**

This document corrects the errors contained in the final rule that was published by the Bureau of Industry and Security (BIS) on December 29, 2004 (69 FR 77890). The December 29, 2004, final rule amended the Export Administration Regulations (EAR) to implement the understandings reached at, and subsequent to, the annual plenary meeting of the Australia Group (AG) that was held in Paris on June 7-10, 2004.

Specifically, this document corrects a minor typographical error contained in § 742.2, which describes the AG-related license requirements in the EAR. This document corrects paragraph (a)(3)(i) in § 742.2 of the EAR by replacing the period at the end of the paragraph with a semicolon.

This document also corrects an error contained in Export Control Classification Number (ECCN) 2B351 on the Commerce Control List (CCL) (Supplement No. 1 to Part 774 of the EAR). In the December 29, 2004, final rule, the amendatory instruction for ECCN 2B351 did not specify that the heading of the ECCN should be revised to read as set forth in the regulatory text for that ECCN. The regulatory text in the December 29, 2004, final rule contained the following revised heading for ECCN 2B351: "Toxic gas monitoring systems that operate on-line and dedicated

detectors therefor, except those systems and detectors controlled by ECCN 1A004.c." This document corrects ECCN 2B351 by revising the heading to include the phrase that excludes systems and detectors controlled by ECCN 1A004.c.

**Rulemaking Requirements**

1. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule contains a collection of information subject to the requirements of the PRA. This collection has been approved by OMB under Control Number 0694-0088 (Multi-Purpose Application), which carries a burden hour estimate of 58 minutes to prepare and submit form BIS-748. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or by fax to (202) 395-7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, PO Box 273, Washington, DC 20044.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a

continuing basis. Comments should be submitted to Willard Fisher, Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2705, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

**List of Subjects**

15 CFR Part 742

Exports, Foreign trade.

15 CFR Part 774

Exports, Foreign trade, Reporting and recordkeeping requirements.

■ Accordingly, parts 742 and 774 of the Export Administration Regulations (15 CFR parts 730-799) are amended as follows:

**PART 742—[CORRECTED]**

■ 1. The authority citation for 15 CFR part 742 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901-911, Pub. L. 106-387; Sec. 221, Pub. L. 107-56; Sec. 1503, Pub. L. 108-11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003-23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of October 29, 2003, 68 FR 62209, 3 CFR, 2003 Comp., p. 347; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

**§ 742.2 [Amended]**

■ 2. Section 742.2 is amended by removing the period (".") at the end of paragraph (a)(3)(i) and adding a semicolon (";") at the end of the paragraph.

**PART 774—[CORRECTED]**

■ 3. The authority citation for 15 CFR part 774 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901-911, Pub. L. 106-387; Sec. 221, Pub. L. 107-56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

**Supplement No. 1 to Part 774 [Amended]**

■ 4. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2B351 is

amended by revising the ECCN heading to read as follows:

2B351 Toxic gas monitoring systems that operate on-line and dedicated detectors therefor, except those systems and detectors controlled by ECCN 1A004.c.

\* \* \* \* \*

Dated: January 10, 2005.

**Eileen Albanese,**

*Director, Office of Exporter Services.*

[FR Doc. 05-719 Filed 1-12-05; 8:45 am]

BILLING CODE 3510-33-P

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 171

RIN 3038-AC12

#### Rules Relating to Review of National Futures Association Decisions in Disciplinary, Membership Denial, Registration and Member Responsibility Actions

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission" or "CFTC") hereby amends its rules relating to the scope of Commission review of National Futures Association ("NFA") decisions in disciplinary, membership denial, registration and member responsibility actions. First, the Commission makes a technical amendment to add the NFA's Hearing Committee to the list of committees covered by that section. This change conforms Rule 171.1(b)(4) to changes in NFA's committee structure since part 171 was first adopted in October 1990. Secondly, the Commission adds a new provision to exclude from Commission review any appeal concerning NFA suspension of a member for failing to pay settlement or arbitration award ("award suspension cases") unless there are extraordinary circumstances that would otherwise warrant Commission review.

**DATES:** Effective January 13, 2005.

**FOR FURTHER INFORMATION CONTACT:** Thuy Dinh or Gail Scott, Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418-5120.

#### SUPPLEMENTARY INFORMATION:

##### I. Scope of Commission Review

On June 15, 1990, the Commission published proposed rules establishing

standards and procedures for its review of decisions of registered futures associations such as NFA in disciplinary actions, membership denial actions, registration actions and member responsibility actions. 55 FR 24254. Under the proposed rules, two categories of decisions were excluded from Commission review: (a) Disciplinary decisions in which the aggrieved party failed to pursue his or her appeal rights to the NFA Appeals Committee and no extraordinary circumstances warranted Commission review; and (b) decisions in arbitration actions. See 171.1(b)(1) and 171.1(b)(2), respectively. Two comment letters were received in response to the request for public comment. Of particular interest to the Commission was a letter it received from the NFA.<sup>1</sup>

In its letter, the NFA proposed that the Commission exclude any appeal arising from NFA suspension of an association member based solely on that member's failure to pay NFA dues or arbitration awards.<sup>2</sup> In its final rules published on October 9, 1990, the Commission agreed that the suspension for non-payment of dues should not generally be considered a disciplinary action subject to Commission review and accordingly amended the proposed rules by adding 171.1(b)(3) under "Matters excluded" in the publication of its final rules. See 55 FR 41061. However, the Commission specifically rejected NFA's request to exclude from Commission review the suspension of a member for failing to pay arbitration awards, stating:

The Commission is reluctant at this time \* \* \* to exclude suspension of a member for failing to pay arbitration awards. When the Commission has excluded NFA arbitration decisions themselves from its review, one of the reasons it has done so is that these decisions can be reversed in the court system. In contrast, membership suspension raises somewhat different issues which generally go to the core of the Commission's

<sup>1</sup> August 31, 1990 NFA Letter ("NFA Letter").

<sup>2</sup> The NFA presumed that "actions in these areas would not be deemed disciplinary actions" within Commission review under Part 171. NFA Letter at 7. Section 10(g) of NFA's Code of Arbitration (Code) and Section 10(g) of NFA's Member Arbitration Rules (Member Rules) authorize NFA to summarily suspend an NFA member or associate if such member or associate fails to pay an NFA award or settlement reached in an NFA arbitration or mediation proceeding within 30 days. Members and associates receive a 30-day written notice before the suspension becomes effective, giving them a minimum of 60 days to satisfy the award or settlement. Once the suspension becomes effective, a member or associate can get it lifted at any time by paying the amount due. A member or associate can also file a motion to vacate the award. A timely motion to vacate an award stays the suspension while the motion is pending in a court of competent jurisdiction.

role in reviewing NFA actions affecting membership status. Pending additional experience on the issue the Commission has determined not to exclude such NFA action from its appellate jurisdiction.

*Id.* at 41064.

From 1990 to the present, the Commission has received a total of five appeals related to the suspension of a member for failing to pay an arbitration award. The Commission first considered this issue in 1991, shortly after Part 171 was adopted. In the initial case, the respondent asked the Commission to stay the suspension while he worked out a payment schedule. In rejecting the petition, the Commission stated, "NFA's ministerial imposition of a pre-determined sanction for a member's failure to perform an undisputed duty of membership [to pay an arbitration award] is not, without more, a proper subject for Commission review." *Machin v. NFA*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,041 at 37,893 (CFTC Apr. 25, 1991).

There were no other appeals of this nature until 1997, when the Commission dismissed an appeal from an award suspension where the appeal was predicated on alleged procedural and substantive errors in the underlying arbitration. The Commission stated, "it would be inappropriate to consider either procedural or substantive errors in NFA's resolution of the issues raised in the arbitration." *Indelicato v. NFA*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,130 at 45,287 (CFTC Aug. 7, 1997). Citing *Machin*, the Commission further noted, "the imposition of a suspension for failing to pay an arbitration award might be reviewable upon a showing that NFA acted arbitrarily in imposing the suspension. Here, however, as in *Machin*, petitioners have failed to establish such arbitrariness." *Id.*

The Commission's denials of review in three recent cases, from March 2003 to February 2004, have followed *Machin* and *Indelicato*, *i.e.*, declining to accept any appeal from this type of suspension unless it "involves something more than the ministerial application of a pre-determined sanction." See *Howell v. NFA*, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 29,702 at 55,993 (CFTC Feb. 27, 2004); *Mawhorr v. NFA*, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 29,633 at 55,717 (CFTC Nov. 28, 2003); *Bunyard v. NFA*, CRAA 03-01 (CFTC Mar. 5, 2003). In *Bunyard*, the Commission stated, "[only] an appeal raising a colorable claim that the NFA acted arbitrarily—or a similar claim that goes to the core of the Commission's role in ensuring the reliability of NFA's membership