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DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 208

[Docket No: USCIS 2020–0013]

RIN 1615–AC57

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Part 1208

[A.G. Order No. 4975–2021]

RIN 1125–AB08

Security Bars and Processing; Delay of Effective Date

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security (“DHS”); Executive Office for Immigration Review, Department of Justice (“DOJ”)

ACTION: Final rule; delay of effective date.

SUMMARY: On December 23, 2020, DHS and DOJ (collectively, “the Departments”) published a final rule to clarify that the danger to the security of the United States statutory bar to eligibility for asylum and withholding of removal encompass certain emergency public health concerns and make certain other changes. The Departments are delaying the rule’s effective date for 60 days.

DATES: As of January 21, 2021, the effective date of the final rule published at 85 FR 84160 (Dec. 23, 2020) is delayed until March 22, 2021.

FOR FURTHER INFORMATION CONTACT: For USCIS: Andrew Davidson, Asylum Division Chief, Refugee, Asylum and International Affairs Directorate, U.S. Citizenship and Immigration Services, DHS; telephone 240–721–3000 (not a toll-free call).

For EOIR: Lauren Alder Reid, Assistant Director, Office of Policy,

Executive Office for Immigration Review, telephone (703) 305–0289 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background and Basis for Delay

On December 23, 2020, the Departments published a final rule (“Security Bars rule”) to amend existing regulations to clarify that in certain circumstances there are “reasonable grounds for regarding [an] alien as a danger to the security of the United States” or “reasonable grounds to believe that [an] alien is a danger to the security of the United States” based on emergency public health concerns generated by a communicable disease, making the alien ineligible to be granted asylum in the United States under section 208 of the Immigration and Nationality Act or the protection of withholding of removal under that Act or subsequent regulations (because of the threat of torture). *See* Security Bars and Processing, 85 FR 84160 *et seq.* (Dec. 23, 2020).

On January 20, 2021, the White House Chief of Staff issued a memorandum asking agencies to consider delaying, consistent with applicable law, the effective dates of any rules that have published and not yet gone into effect, for the purpose of allowing the President’s appointees and designees to review questions of fact, law, and policy raised by those regulations. *See* Memorandum for the Heads of Executive Departments and Agencies from Ronald A. Klain, Assistant to the President and Chief of Staff, *Re: Regulatory Freeze Pending Review* (Jan. 20, 2021). This action is consistent with that memorandum.

The Departments have good cause to delay this rule’s effective date without advance notice and comment because a permissible path to implementation of the rule is not apparent due to a preliminary injunction against a related rule. On December 11, 2020, the Departments issued a rule titled *Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review*.¹ On January 8, 2021, a district court preliminarily enjoined the Departments “from implementing, enforcing, or applying

the [December 11] rule . . . or any related policies or procedures.”²

Implementing the Security Bars rule will not be viable given this injunction. Most prominently, the Security Bars rule relies upon the framework for applying bars to asylum during credible fear processing that was established in the December 11 rule.³ That is not possible given the injunction. The regulatory text of significant portions of the Security Bars rule is also embedded within and repeats regulatory text that was established by the December 11 rule.⁴

To implement the full Security Bars rule—and effectively reinsert or rely upon provisions that the *Pangea* court has enjoined—might run afoul of the court’s injunction. Because the court’s injunction is already effective and it would be impracticable to engage in notice and comment procedures in advance of the scheduled January 22 effective date, the Departments are proceeding with this final rule.⁵

The Acting Secretary of Homeland Security, David P. Pekoske, having

² *See Pangea Legal Servs. v. Dep’t of Homeland Security*, No. 20–09253–JD, 2021 WL 75756, at *7 (N.D. Cal. Jan. 8, 2021). The *Pangea* court held that plaintiffs showed a likelihood that Chad F. Wolf, who approved the December 11 rule in his capacity as Acting Secretary of Homeland Security, did not have valid authority to act in that capacity. *See id.* *6. Following the court’s ruling, Peter T. Gaynor and Mr. Wolf took steps to ratify the December 11 rule. *See* DHS Delegation No. 23028, Delegation to the Under Secretary for Strategy, Policy, and Plans to Act on Final Rules, Regulations, and Other Matters (Jan. 12, 2021); Chad F. Wolf, Ratification (Jan. 14, 2021). By issuing this rule, the Departments state no position on Mr. Gaynor or Mr. Wolf’s actions or authority, the outcome thus far in *Pangea*, or the effects of any further actions.

³ *See, e.g.*, 85 FR at 84176 (“As noted, the [Security Bars] final rule is not, as the NPRM proposed, modifying the regulatory framework to apply the danger to the security of the United States bars at the credible fear stage because, in the interim between the NPRM and the final rule, the [December 11 rule] did so for all of the bars to eligibility for asylum and withholding of removal.”); *id.* at 84189 (describing changes made in the Security Bars rule “to certain regulatory provisions not addressed in the proposed rule as necessitated by the intervening promulgation of the [December 11] Rule.”).

⁴ *Compare, e.g.*, 85 FR at 84194–84198 (revising 8 CFR 208.30, 235.6, 1208.30, and 1235.6, among other provisions) and 85 FR at 80390–80401 (same).

⁵ *See* 5 U.S.C. 553(b)(B), (d) (providing an exception from the notice and comment requirements when an agency “for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest,” and providing additional exceptions with respect to the delayed effective date).

¹ *See* 85 FR 80274 (Dec. 11, 2020).

reviewed and approved this document, has delegated the authority to electronically sign this document to Sharmistha Das, who is the Deputy General Counsel for DHS, for purposes of publication in the **Federal Register**.

Sharmistha Das,

Deputy General Counsel, U.S. Department of Homeland Security.

Monty Wilkinson,

Acting Attorney General, Department of Justice.

[FR Doc. 2021-01683 Filed 1-21-21; 4:15 pm]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2020-0800; Airspace Docket No. 20-ANM-43]

RIN 2120-AA66

Revocation of Class D and Amendment of Class E Airspace; Gillette, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes the Class D airspace, establishes a Class E surface area, modifies the Class E airspace as an extension to the surface area and modifies the Class E airspace extending upward from 700 feet AGL at Northeast Wyoming Regional Airport, Gillette, WY. In addition, this action removes the VOR/DME from the legal description and replaces the outdated term Airport Facility/Directory with the term Chart Supplement. It also makes two minor administrative corrections noted in the Notice of Proposed Rulemaking (NPRM); the airport name is updated and the Class E surface area is identified as new airspace rather than amended airspace.

After being informed that the Airport Traffic Control Tower at Northeast Wyoming Regional Airport is closed permanently, the FAA found it necessary to create new airspace and amend the existing airspace for the safety and management of Instrument Flight Rule (IFR) operations at this airport.

DATES: Effective 0901 UTC, April 22, 2021. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11E, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at https://www.faa.gov/air_traffic/publications/. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783. The Order is also available for inspection at the National Archives and Records Administration (NARA).

For information on the availability of FAA Order 7400.11E at NARA, email fedreg.legal@nara.gov or go to <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

FOR FURTHER INFORMATION CONTACT:

Richard Roberts, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S. 216th Street, Des Moines, WA 98198; telephone (206) 231-2245.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code (U.S.C.). Subtitle I, 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 I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it removes the Class D, establishes a Class E surface area, modifies the Class E airspace as an extension to the surface area and modifies the Class E airspace extending upward from 700 feet AGL at Northeast Wyoming Regional Airport, Gillette, WY to support IFR operations.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 57806; September 16, 2020) for Docket No. FAA-2020-0800 to remove the Class D airspace and modify the following: Class E surface area, the Class E airspace as an extension to the surface area and the Class E airspace extending upward from 700 feet AGL at Gillette-County Airport, Gillette, WY, in support of IFR operations. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was received with

multiple concerns. The commenter was troubled by the language used in the NPRM and concerned it would create difficulty in converting the airspace from Class D to Class E for the airport management team. This included logistical and technical steps in changing the airport structure, definitions of Class D and Class E airspace, equipment and techniques used for changing the airspace, who will monitor the change process, the airport management team's role and responsibilities in completing the change, and an expected timeline. While additional information needed by the airport management team is available and a point of contact provided, no one got in touch with this office or the facility with jurisdiction for the overlying airspace to enquire about information contained in the NPRM. The request for comment was based on the belief that the commenter has a basic knowledge of and understanding about airspace and the equipment and operating rules for each class of airspace. Controlled airspace is airspace of defined dimensions within which ATC service is provided to IFR and VFR flights in accordance with the airspace classification. Within controlled airspace, all aircraft operators are subject to certain qualification, operating, and aircraft equipage requirements (see Title 14 CFR part 91). Controlled airspace in the United States is designated in 14 CFR part 71. Changing the airspace designation is an administrative task. It involves no actions to the physical environment of the airport or its structures. The "timeline", also known as the effective date, of the change in the airspace designation has been determined by FAA orders to ensure safety in execution of that change.

The commenter was also concerned that issues related to possible effects on the entire airport, including civil aviation and the airport's overall safety, were not considered in the proposed rule. In addition, the commenter had questions regarding what standards and criteria were to be used in considering the effectiveness of the changes. The airspace design specialist establishes, modifies or revokes airspace based on criteria documented in FAA Orders by their Flight Standards Division and Airspace Policy Regulations Group. The specialist takes into account, as a prime consideration, the safety and efficiency of air traffic operations in consultation with local Air Traffic Control. In addition, the facility with jurisdiction over the airspace conducts and documents a safety risk analysis to