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Issued in Los Angeles, California, on September 11, 1998.

**Leonard A. Mobley,**

*Acting Manager, Air Traffic Division Western-Pacific Region.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Airspace Docket No. 97-ASW-23]

#### Modification to the Gulf of Mexico Low Offshore Airspace Area

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

**ACTION:** Final rule.

**SUMMARY:** This action amends the Gulf of Mexico Low Offshore Airspace Area. Specifically, this action modifies the Gulf of Mexico Low Offshore Airspace Area by extending the boundaries further south and southwest of the current location to the Houston Air Route Traffic Control Center (ARTCC) Flight Information Region/Control Area (FIR/CTA). The FAA is taking this action to provide additional airspace in which domestic air traffic control procedures may be used to separate and manage aircraft operations. This change will enhance the efficient utilization of that airspace.

**EFFECTIVE DATE:** 0901 UTC, October 8, 1998.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sheri Edgett Baron, Airspace and Rules Division, ATA-400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8783.

#### SUPPLEMENTARY INFORMATION:

##### Background

On March 2, 1993, the FAA published a final rule (58 FR 12128) which, in part, redesignated certain control areas over international waters as offshore airspace areas. The redesignations were necessary to comply with the Airspace Reclassification final rule issued on December 17, 1991 (56 FR 65638).

One of the areas affected by the March 2, 1993, final rule was the Gulf of Mexico Control Area. This area was divided vertically into two areas, one of which was redesignated as the Gulf of Mexico Low Offshore Airspace Area.

In June 1996 the FAA completed an evaluation of the airspace over the Gulf of Mexico. The evaluation was a combined effort with representatives from the FAA, Servicios a la Navegacion en El Espacio Aereo Mexicano, and other airspace users. The objective of the evaluation was, in part, to identify areas where air traffic services, air traffic operations, and utilization of airspace could be improved. One conclusion of this evaluation was the determination that system capacity would be enhanced by modifying air traffic control (ATC) procedures used to control aircraft operations in the airspace over the Gulf of Mexico.

Currently, International Civil Aviation Organization (ICAO) oceanic ATC procedures are used to separate and manage aircraft operations that extend beyond the lateral boundary of the existing Gulf of Mexico Low Offshore Airspace Area. Modifying the Gulf of Mexico Low Offshore Airspace Area by extending the boundaries further south and southwest of the current location to the Houston ARTCC FIR/CTA, allows the application of domestic ATC separation procedures over a larger area. This action to modify the offshore airspace area will enhance system capacity and allow for more efficient utilization of that airspace.

On August 5, 1998, the FAA proposed to amend 14 CFR part 71 to modify the Gulf of Mexico Low Offshore airspace area (63 FR 41752). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. Except for editorial changes, this amendment is the same as that proposed in the notice.

##### The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Gulf of Mexico Low Offshore Airspace Area by extending the present airspace boundaries further south and southwest of the current location to the Houston ARTCC FIR/CTA. This modification will allow the application of domestic ATC separation procedures, in lieu of ICAO separation procedures, which will enhance system capacity and allow for more efficient utilization of that airspace.

This modification to the Gulf of Mexico Low Offshore Airspace Area will be effective on October 8, 1998. In order to avoid pilot confusion and to make pilots immediately aware of the modification to the Gulf of Mexico Low Offshore Airspace Area, the FAA finds that good cause exists, pursuant to 5

U.S.C. (d), for making this amendment effective in less than 30 days.

Offshore airspace area designations are published in paragraph 6007 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The offshore airspace area designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (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 is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

##### ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in accordance with the ICAO International Standards and Recommended Practices.

The application of International Standards and Recommended Practices by the FAA, Office of Air Traffic Airspace Management, in areas outside U.S. domestic airspace is governed by the Convention on International Civil Aviation. Specifically, the FAA is governed by Article 12 and Annex 11, which pertain to the establishment of necessary air navigational facilities and services to promote the safe, orderly, and expeditious flow of civil air traffic. The purpose of the document is to ensure that civil aircraft operations on international air routes are performed under uniform conditions.

The International Standards and Recommended Practices in Annex 11 apply to airspace under the jurisdiction of a contracting state, derived from ICAO. Annex 11 provisions apply when air traffic services are provided and a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting this responsibility may apply the International Standards and Recommended Practices that are

consistent with standards and practices utilized in its domestic jurisdiction.

In accordance with Article 3 of the Convention, state owned aircraft are exempt from the Standards and Recommended Practices of Annex 11. The United States is a contracting state to the Convention. Article 3(d) of the Convention provides that participating state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

#### 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 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 the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

*Paragraph 6007 Offshore Airspace Areas*

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##### Gulf of Mexico Low [Revised]

That airspace extending upward from 1,200 feet MSL bounded on the west, north, and east by a line 12 miles offshore and parallel to the Texas, Louisiana, Mississippi, Alabama, and Florida shorelines; bounded on the south from east to west by the southern boundary of the Jacksonville Air Route Traffic Control Center, Miami Oceanic CTA/FIR; Merida UTA/UIR, Houston CTA/FIR; Monterrey UTA/UIR, Houston CTA/FIR; to the point of beginning.

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Issued in Washington, DC, on September 15, 1998.

**Reginald C. Matthews,**

*Acting Program Director for Air Traffic Airspace Management.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 8782]

RIN 1545–AV90

#### Source Rules for Foreign Sales Corporation Transfer Pricing

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations that provide guidance to taxpayers who have made an election to be treated as a foreign sales corporation (FSC). The regulations clarify that the special source rule under section 927(e)(1) applies only to income of related suppliers from sales of export property giving rise to foreign trading gross receipts of a FSC.

**DATES:** *Effective date.* These regulations are effective March 3, 1998.

*Applicability date.* These regulations apply to taxable years beginning after December 31, 1997.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Beck (202) 622–3880 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 927 which was added by the Deficit Reduction Act of 1984, applicable for taxable years of foreign sales corporations beginning after December 31, 1984. Temporary regulations (TD 8126) were published in the **Federal Register** (52 FR 6468) on March 3, 1987. These temporary regulations were amended by temporary regulations published in the **Federal Register** (63 FR 10305) as a Treasury decision (TD 8764) on March 3, 1998. On the same date, a notice of proposed rulemaking cross-referencing TD 8764 was published in the **Federal Register** (63 FR 10351). The proposed rule proposed changes to the grouping and source rules for foreign sales corporation transfer pricing. Comments responding to this notice were received. On June 24, 1998, a public hearing was

held limited to the proposed changes to the grouping rules, since no hearing was requested with respect to the source rule. After consideration of all comments received, the proposed regulations regarding the source rule are adopted as revised by this Treasury decision.

#### Explanation of Provisions

##### A. Current Temporary Regulations

Section 927(e)(1) provides that “under regulations, the income of a person described in section 482 from a transaction giving rise to foreign trading gross receipts of a FSC which is treated as from sources outside the United States shall not exceed the amount which would be treated as foreign source income earned by such person if the pricing rule under section 994 which corresponds to the rule used under section 925 with respect to such transaction applied to such transaction.” Transactions giving rise to foreign trading gross receipts include qualifying sales, leases, licenses and services. Because TD 8126 could be interpreted to apply the special foreign source limit only to sales of export property, § 1.927(e)–1T was amended by TD 8764 to clarify that the regulation applies to any transaction giving rise to foreign trading gross receipts of a FSC, including but not limited to sales, leases, licenses and services. TD 8764 also made conforming changes, added special rules and gave examples regarding the special source rule.

##### B. Discussion of Comments

No comments were received on the special rules added in proposed § 1.927(e)–1(a)(3)(ii). These rules clarify how the corresponding DISC transfer pricing rules are to be applied for purposes of the foreign source limit and are generally taxpayer favorable. No comments were received on Examples (1) and (3) set forth in proposed § 1.927(e)–1(b). These examples illustrate how the limit is applied under different transfer pricing methods for sales transactions.

Comments received did suggest that the rule distinguish between the foreign source income limitation applicable to sales and the limitation applicable to other transactions giving rise to foreign trading gross receipts. In light of these comments, Treasury and the IRS believe that additional consideration should be given to the appropriate scope of the special source rule of section 927(e)(1) and that the expanded special source rule should be withdrawn. Accordingly, the final regulation applies the special source rule only to sales of export