

6007, 15000 Aviation Boulevard, Lawndale, California, 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Operations Branch, Air Traffic Division, at the above address.

**FOR FURTHER INFORMATION CONTACT:**

Larry Tonish, Airspace Specialist, Airspace Branch, AWP-520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725-6555.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97-AWP-31." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify

the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedures.

**The Proposal**

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class D airspace area at Hayward, CA. The development of GPS SIAP at Hayward Air Terminal has made this proposal necessary. The intended effect of this proposal is to provide adequate Class D airspace for aircraft executing the GPS RWY 28L SIAP at Hayward Air Terminal, Hayward, CA. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would 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 proposed 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 proposed rule would 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**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

**PART 71—[AMENDED]**

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 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

*Paragraph 5000 Class D Airspace*  
\* \* \* \* \*

**AWP CA D Hayward, CA [Revised]**

Hayward Air Terminal, CA  
(lat. 37°39'34" N, long. 122°07'21" W)  
Metropolitan Oakland International Airport  
(lat. 37°43'17" N, long. 122°13'15" W)

That airspace extending upward from the surface to but not including 1,500 feet MSL within a 3.5-mile radius of the Hayward Air Terminal and within 1.8 miles on each side of the 119° bearing from the Hayward Air Terminal, extending from the 3.5-mile radius to 5.2 miles southeast of the Hayward Air Terminal, excluding that portion within the Metropolitan Oakland International Airport, CA, Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

\* \* \* \* \*

Issued in Los Angeles, California, on July 16, 1997.

**Sabra W. Kaulia,**

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

[FR Doc. 97-21044 Filed 8-8-97; 8:45 am]

BILLING CODE 4910-13-M

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

[Airspace Docket No. 97-AWP-23]

**Proposed Amendment of Class E Airspace; Flagstaff, AZ**

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend the Class E airspace area at Flagstaff, AZ. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 3 has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Flagstaff Pulliam Airport, Flagstaff, AZ.

**DATES:** Comments must be received on or before September 5, 1997.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP-520, Docket No. 97-AWP-23, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California, 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division, at the above address.

**FOR FURTHER INFORMATION CONTACT:**

Larry Tonish, Airspace Specialist, Airspace Branch, AWP-520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725-6555.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97-AWP-23." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each

substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM.

Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedures.

**The Proposal**

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace area at Flagstaff, AZ. The development of GPS SIAP at Flagstaff Pulliam Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS RWY 3 SIAP at Flagstaff Pulliam Airport, Flagstaff, AZ. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraphs 6004 and 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would 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 proposed 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 proposed rule would 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**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

**PART 71—[AMENDED]**

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 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

*Paragraph 6004 Class E airspace areas designated as an extension to a Class D or Class E surface area.*

\* \* \* \* \*

**AWP AZ E4 Flagstaff, AZ [Revised]**

Flagstaff Pulliam Airport, AZ  
(lat. 35°08'18"N, long. 111°40'17"W)  
Flagstaff VOR/DME  
(lat. 35°08'50"N, long. 111°40'27"W)

That airspace extending upward from the surface beginning where a line 1.8 miles northwest of and parallel to the Flagstaff VOR/DME 057° radial intercepts the 6.1-mile radius of the Flagstaff Pulliam Airport, thence clockwise to intercept a line 1.8 miles northwest of and parallel to the Flagstaff VOR/DME 218° radial, thence northeastbound on a line 1.8 miles west of and parallel to the Flagstaff VOR/DME 218° radial to intercept the 3-mile arc of the Flagstaff Pulliam Airport clockwise to intercept the line 1.8 miles northwest of and parallel to the Flagstaff VOR/DME 057° radial and thence to the point of beginning and within 1.8 miles each side of the Flagstaff VOR/DME 127° radial, extending from the 6.1-mile radius to 8.6 miles southeast of the VOR/DME. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

\* \* \* \* \*

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

\* \* \* \* \*

**AWP AZ E5 Flagstaff, AZ [Revised]**

Flagstaff Pulliam Airport, AZ  
(lat. 35°08'18"N, long. 111°40'17"W)  
Flagstaff VOR/DME  
(lat. 35°08'50"N, long. 111°40'27"W)

That airspace extending upward from 700 feet above the surface within a 3.6-mile radius of Flagstaff Pulliam Airport and within a 10-mile radius of the Flagstaff VOR beginning at a line 1.8-miles northwest of

and parallel to the Flagstaff VOR 043° radial extending clockwise to a point beginning at lat. 35°00'00"N, long. 111°36'00"W; to lat. 34°44'00"N, long. 111°50'00"W; to lat. 34°45'00"N, long. 112°01'00"W; to lat. 34°54'00"N, long. 112°05'00"W; to lat. 35°08'00"N, long. 111°52'00"W, thence eastbound along the Flagstaff VOR 263° radial to intercept the 3.6-mile radius of the Flagstaff Pulliam Airport, thence clockwise to the point of beginning. That airspace extending upward from 1,200 feet above the surface within 8.3 miles each side of the Flagstaff VOR 127° and 307° radials, extending from 7 miles northwest to 16.5 miles southeast of the Flagstaff VOR and that airspace bounded by a line beginning at lat. 35°13'32"N, long. 111°04'31"W; to lat. 35°17'17"N, long. 111°02'35"W; to lat. 35°22'00"N, long. 111°16'43"W; to lat. 35°24'00"N, long. 111°26'16"W; to lat. 35°18'00"N, long. 111°35'33"W, thence clockwise via a 10-mile radius of the Flagstaff VOR to lat. 35°16'34"N, long. 111°32'42"W; to lat. 35°19'58"N, long. 111°24'10"W; thence to the point of beginning and that airspace bounded by a line beginning at lat. 35°03'00"N, long. 111°21'00"W; to lat. 35°02'00"N, long. 111°15'00"W; to lat. 35°01'00"N, long. 111°22'00"W; thence to the point of beginning, excluding the Sedona, AZ, Class E airspace area.

\* \* \* \* \*

Issued in Los Angeles, California, on July 21, 1997.

**Thomas L. Parks,**

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

[FR Doc. 97-21043 Filed 8-8-97; 8:45 am]

BILLING CODE 4910-13-M

## OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

### 29 CFR Part 2204

#### Amendment of the Commission's Equal Access to Justice Rules

**AGENCY:** Occupational Safety and Health Review Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to add a new paragraph to the Commission's procedural rules on eligibility under the Equal Access to Justice Act in order to minimize extra unnecessary collateral litigation and to bring the Commission into conformity with the corresponding rule adopted by most other federal agencies.

**DATES:** Comments must be received by September 10, 1997.

**ADDRESSES:** All comments concerning this proposed rule should be addressed to Earl R. Ohman, Jr., General Counsel, Occupational Safety and Health Review Commission, 1120 20th Street, NW, 9th Floor, Washington, DC 20036-3419.

**FOR FURTHER INFORMATION CONTACT:**

Earl R. Ohman, Jr., General Counsel,  
(202) 606-5410.

**SUPPLEMENTARY INFORMATION:** This document proposes to add a paragraph to the procedural rules of the Occupational Safety and Health Review Commission governing applications for attorney's fees under the Equal Access to Justice Act ("EAJA"). Generally, changes to the Commission's rules of procedure are not subject to the provisions of the Administrative Procedure Act requiring notice and opportunity for comment (5 U.S.C. 553(b)(3)(A)). However, because the Commission values the views of those who appear before it, the Commission invites public comment.

As announced in the Commission's decision in *BFW Construction Co.*, OSHRC Docket No. 91-1214, issued on August 6, 1997, the Commission would add a new paragraph (f) to 29 CFR 2204.105, its rule of procedure concerning eligibility under the EAJA. This new provision would state that the net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine the applicant's eligibility under the EAJA. Any individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate under this part, unless such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, financial relationships of the applicant other than those described in this paragraph may constitute special circumstances that would make an award unjust.

When the EAJA was enacted, it required each federal agency to adopt its own rules implementing the EAJA after consultation with the (former) Administrative Conference of the United States ("ACUS"). 5 U.S.C. 504(c)(1). ACUS suggested model rules for agencies, including model rule 0.104(f) on aggregation of net worth for eligibility purposes. 46 FR 32900, 32912 (1981). (The EAJA itself is silent on the issue of aggregation.) Most federal agencies adopted an aggregation rule that closely followed that model rule. See, e.g., 29 CFR 16.105(f) (Department of Labor), 29 CFR 102.143(g) (National Labor Relations Board), and 29 CFR 2704.104(f) (Federal Mine Safety and Health Review Commission). However, the Commission declined to adopt that rule, stating instead that it would decide

the aggregation issue "on a case-by-case basis." 46 FR 48078, 48079 (1981), reprinted in 1980-81 CCH ESHG New Developments ¶ 12,365, p. 15,458 (October 6, 1981). However, as discussed in *BFW Corp.*, deciding the issue on a case-by-case basis applying the "real party in interest" factors developed by federal courts has proven unwieldy and has resulted in extra unnecessary collateral litigation, contrary to the intent of the EAJA. Therefore, the Commission has taken a "second look" at the ACUS model rule and has decided to join many of our fellow agencies in adopting a rule that closely follows the ACUS model.

The Commission also proposes to change all references in Part 2204 to the "EAJ Act" to read "EAJA" to conform to the common shortened reference term for the Equal Access to Justice Act.

#### List of Subjects in 29 CFR Part 2204

Claims, Equal access to justice,  
Lawyers.

For the reasons set forth in the preamble, the Occupational Safety and Health Review Commission proposes to amend Title 29, Chapter XX, Part 2204, of the Code of Federal Regulations as follows:

#### PART 2204—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN PROCEEDINGS BEFORE THE OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

1. The authority citation for Part 2204 continues to read as follows:

**Authority:** Sec. 203(a)(1), Pub. L. 96-481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)); Pub. L. 99-80, 99 Stat. 183.

2. All references in Part 2204 to "EAJ Act" are revised to read "EAJA" wherever they appear.

3. A new paragraph (f) is added to § 2204.105 to read as follows:

#### § 2204.105 Eligibility of applicants.

\* \* \* \* \*

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless such treatment would be unjust and contrary to the purposes of the EAJA in light of the actual relationship between the affiliated entities. In addition, financial