

from "facilitating or encouraging" the shifting of deposits from SAIF-assessable deposits to BIF-assessable deposits for the purpose of evading the assessments applicable to SAIF-assessable deposits.<sup>1</sup> Pub. L. 104-208, 110 Stat. 3009-485, section 2703(d). This statutory prohibition on deposit shifting (the deposit shifting statute) expressly authorizes the FDIC to issue regulations, including regulations defining terms used in the statute, to prevent the shifting of deposits. The deposit shifting statute terminates on the earlier of December 31, 1999, or the date on which the last federally chartered savings association ceases to exist.

The Funds Act was enacted as part of the Economic Growth and Regulatory Paperwork Reduction Act of 1996, Pub. L. 104-208, 110 Stat. 3009-479 through 3009-498, sections 2701-2711, and became effective September 30, 1996. The Funds Act provided for the capitalization of the SAIF through a special assessment on all depository institutions that hold SAIF-assessable deposits.<sup>2</sup>

## II. The Proposed Rule

In February 1997 the FDIC issued a proposed rule to implement the deposit shifting statute. 62 FR 6139 (Feb. 11, 1997). The proposed rule consisted of two basic provisions. The first reiterated the requirement in the statute that the respective federal banking agency deny applications and object to notices filed by depository institutions or depository institution holding companies if the purpose of the underlying transaction was to evade assessments payable on SAIF-assessable deposits. The second provision of the proposed rule would have established a presumption under which entrance and exit fees would be imposed upon depository institutions for deposits that are shifted from SAIF-assessable deposits to BIF-assessable deposits in violation of the deposit shifting statute.

## III. Comments on the Proposed Rule

The comment period for the proposed rule closed on April 14, 1997. The FDIC

<sup>1</sup> Although currently the range of risk-based assessments for BIF-assessable and SAIF-assessable deposits is the same, a higher assessment payable to the Financing Corporation must be paid on SAIF-assessable deposits. Thus, the overall assessment is higher for SAIF-assessable deposits than for BIF-assessable deposits.

<sup>2</sup> Pursuant to this requirement, the FDIC issued a final rule imposing a special assessment on institutions holding SAIF-assessable deposits in an amount sufficient to increase the SAIF reserve ratio to the designated reserve ratio of 1.25 percent as of October 1, 1996. 61 FR 53834 (Oct. 16, 1996), to be codified at 12 CFR 327.41.

received fifteen comments on the proposal. Nine of the comments were from industry trade groups, four from community banks, one from a bank holding company and one from a savings and loan holding company. Nine of the comments opposed the proposed rule. They argued, in essence, that a regulation is unnecessary given that SAIF is now capitalized and the assessment rate differential between BIF and SAIF institutions is not significant. Some who opposed the proposed rule contended that it is unworkably vague, particularly because it does not define key terms, such as "deposit shifting" and "ordinary course of business."

Of the national industry trade groups, one said that a regulation is not necessary and, instead, the agencies should just continue to monitor deposit shifting. Another commented that a regulation would not be necessary, but that the FDIC should consider issuing a policy statement to provide guidance to the industry. A third national trade group said the regulation would be an appropriate measure to enforce the deposit shifting statute. One state industry trade association voiced support for the proposed rule. Five others commented that a regulation was unnecessary.

The four community banks all commented that the regulation would be an appropriate means to enforce the statute. The bank holding company that commented detailed five areas of concern with the proposed rule, essentially citing a "vagueness" problem. The comment filed by the savings and loan holding company alleged, among other things, that the rule would be illegal under the U.S. Constitution and the Administrative Procedure Act.

## IV. Withdrawal of the Proposed Rule

Based on a review of the comments and the FDIC's internal review of the applicable issues, the Board of Directors of the FDIC has decided to withdraw the proposed rule. The Board agrees with the majority of those who commented that the deposit shifting statute can and should be enforced on a case-by case basis and, thus, a regulation to implement and enforce the statute is unnecessary.

This decision is based on several factors: (1) The diminished differential between the assessments paid on BIF-assessable deposits and SAIF-assessable deposits; (2) the lack of evidence of any significant, widespread deposit shifting among depository institutions; (3) the regulatory burden that might result from the issuance of a final rule on deposit shifting; and (4) the ability of the FDIC

and the other federal banking agencies to enforce the deposit shifting statute on a case-by-case basis through the monitoring of any such activity by reviewing quarterly financial reports and by conducting on-site examinations, if necessary.

The Board has decided, therefore, in coordination with the other federal banking agencies, that the deposit shifting statute should be enforced on a case-by-case basis. The FDIC, however, will monitor the effectiveness of this approach and, if necessary, reconsider in the future whether a regulation is needed to implement the deposit shifting statute.

By the order of the Board of Directors.

Dated at Washington, D.C., this 22nd day of July, 1997.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Airspace Docket No. 97-ASO-10]

#### Proposed Amendment to Class E Airspace; Anniston, AL

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend the Class E airspace area at Anniston, AL. Global Positioning System (GPS) Runway (RWY) 3 and RWY 21 Standard Instrument Approach Procedures (SIAPs) have been developed for Talladega Municipal Airport, and a GPS RWY 20 SIAP has been developed for St. Clair County Airport. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate these SIAPs, and for Instrumental Flight Rules (IFR) operations at these airports and the Anniston Metropolitan Airport.

**DATES:** Comments must be received on or before September 9, 1997.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 97-ASO-10, Manager, Airspace Branch, ASO-520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550,

1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305-5586.

#### FOR FURTHER INFORMATION CONTACT:

Wade Carpenter, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5581.

#### 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 those comments a self-addressed, stamped postcard on which the following statement is made:

"Comments to Airspace Docket No. 97-ASO-10." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposed contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contract with FAA personnel concerned with this rulemaking will be filed in the docket.

##### Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO-520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of

Advisory Circular No. 11-2A, which describes the application procedure.

##### 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 Anniston, AL. GPS RWY 3 and RWY 15 SIAPs have been developed for Talladega Municipal Airport, and a GPS RWY 20 SIAP has been developed for St. Clair County Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate these SIAPs, and for IFR operations at these airports and the Anniston Metropolitan Airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 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. 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 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.

##### 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; 14 CFR 11.69.

##### §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 6005 Class E airspace areas extending upward from 700 feet above the surface of the earth.*

\* \* \* \* \*

##### ASO AL E5 Anniston, AL [Revised]

Anniston Metropolitan Airport, AL  
(lat. 33°35'17" N, long. 85°51'29" W)  
Talladega Municipal Airport  
(lat. 33°34'12" N, long. 86°03'04" W)  
St. Clair County Airport  
(lat. 33°33'32" N, long. 86°14'57" W)

That airspace extending upward from 700 feet above the surface within a 12-mile radius of Anniston Metropolitan Airport and within a 9.5-mile radius of Talladega Municipal Airport and within a 11.5 mile radius of St. Clair County Airport, excluding that airspace within Restricted Area R-2101 when the restricted area is active.

\* \* \* \* \*

Issued in College Park, Georgia, on July 15, 1997.

**Wade T. Carpenter,**

*Acting Manager, Air Traffic Division,  
Southern Region.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 211

[Docket No. 97N-0300]

#### Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding of Drugs; Revision of Certain Labeling Controls

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to amend the packaging and labeling control provisions of the current good manufacturing practice (CGMP) regulations for human and veterinary drug products by limiting the application of special control procedures for the use of cut labeling to immediate container labels, individual unit cartons, or multiunit cartons containing immediate containers that are not packaged in individual unit cartons. FDA is also proposing to permit the use of any automated technique,