

§ 134.406 Review of the administrative record.

(a) Any proceeding conducted under § 134.401(a) through (d) shall be decided solely on a review of the written administrative record, except as provided in § 134.407 and in suspension appeals. For suspension appeals under § 134.401(e), see § 124.305(d).

(b) Except in suspension appeals, the Administrative Law Judge's review is limited to determining whether the Agency's determination is arbitrary, capricious, or contrary to law. * * *

(c) The administrative record must contain all documents that are relevant to the determination on appeal before the Administrative Law Judge and upon which the SBA decision-maker, and those SBA officials that either recommended for or against the decision, relied. * * * The petitioner may object to the absence of a document, previously submitted to, or sent by, SBA, which the petitioner believes was erroneously omitted from the administrative record. In the absence of any objection by the petitioner or a finding by the Judge pursuant to paragraph (e) of this section that the record is insufficiently complete to decide whether the determination was arbitrary, capricious, or contrary to law, the administrative record submitted by SBA shall be deemed complete.

(d) Where the Agency files its response to the appeal petition after the date specified in § 134.206, the Administrative Law Judge may decline to consider the response and base his or her decision solely on a review of the administrative record.

(e) The Administrative Law Judge may remand a case to the AA/8(a)BD (or, in the case of a denial of a request for waiver under § 124.515 of this title, to the Administrator) for further consideration if he or she determines that, due to the absence in the written administrative record of the reasons upon which the determination was based, the administrative record is insufficiently complete to decide whether the determination is arbitrary, capricious or contrary to law. In the event of such a remand, the Judge will not require the SBA to supplement the administrative record other than to supply the reason or reasons for the determination and any documents submitted to, or considered by, SBA in connection with any reconsideration permitted by regulation that occurs during the remand period. After such a remand, in the event the Judge finds that the reasons upon which the determination is based are absent from any supplemented record, the Judge will

find the SBA determination to be arbitrary, capricious, or contrary to law. The Administrative Law Judge may also remand a case to the AA/8(a)BD (or, in the case of a denial of a request for waiver under § 124.515 of this title, to the Administrator) for further consideration where it is clearly apparent from the record that SBA made an erroneous factual finding (e.g., SBA double counted an asset of an individual claiming disadvantaged status) or a mistake of law (e.g., SBA applied the wrong regulatory provision in evaluating the case). A remand under this section will be for a reasonable period.

§ 134.407 [Amended]

51. In § 134.407, paragraph (a), remove the word "The" at the beginning and replace it with the words "Except in suspension appeals, the."

§ 134.408 [Redesignated as § 134.409]

52. Redesignate existing § 134.408 as § 134.409.

53. Add a new § 134.408 as follows:

§ 134.408 Summary decision.

(a) *Generally.* In any appeal under this subpart D, either party may move or cross-move for summary decision, as provided in § 134.212 of this chapter.

(b) *Summary decision based on fewer than all grounds.* If SBA has provided multiple grounds for the 8(a) determination being appealed, SBA may move for summary decision on one or more grounds.

(1) *Non-suspension cases.* Except in suspension appeals, if the Judge finds that there is no genuine issue of material fact as to whether SBA acted arbitrarily, capriciously, or contrary to law as to any such ground or grounds, and that the SBA is entitled to a decision in its favor as a matter of law, the Judge will grant the motion for summary decision and dismiss the appeal.

(2) *Suspension cases.* In suspension appeals, if the Judge finds that there is no genuine issue of material fact as to whether adequate evidence exists that protection of the Federal Government's interest requires suspension, as to any such ground or grounds for the proposed suspension, the SBA is entitled to a decision in its favor as a matter of law, and the Judge will grant the motion for summary decision and dismiss the appeal.

§ 134.409 [Amended]

54. In redesignated § 134.409, paragraph (b), remove the second sentence.

Hector V. Barreto,
Administrator.

[FR Doc. 02-5613 Filed 3-11-02; 8:45 am]

BILLING CODE 8025-01-P

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

[Airspace Docket No. 02-ASO-4]

Proposed Establishment of Class D Airspace; Greenville Donaldson Center, SC, Proposed Amendment of Class E2 Airspace; Greer, Greenville-Spartanburg Airport, SC, and Proposed Amendment of Class E5 Airspace; Greenville, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class D airspace at Greenville Donaldson Center, SC, and amend Class E5 airspace at Greenville, SC. A Federal contract tower with a weather reporting system is being constructed at the Donaldson Center Airport. Therefore, the airport will meet the criteria for establishment of Class D Airspace. Class D surface area airspace is required when the control tower is open to contain existing Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. This action would establish Class D airspace extending upward from the surface to and including 2,500 feet MSL within a 4.2-mile radius of the Donaldson Center Airport. A regional evaluation has determined the existing Class E5 airspace area should be amended to contain the Nondirectional Radio Beacon (NDB) or Global Positioning System (GPS) Runway (RWY) 5 SIAP. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) southwest of Donaldson Center Airport is needed to contain the SIAP. This action would also make a technical amendment to the Class E2 airspace at Greer, Greenville-Spartanburg Airport, SC, and the Class E5 airspace description at Greenville, SC, by changing the name of the Greenville-Spartanburg Airport to the Greenville-Spartanburg International Airport.

DATES: Comments must be received on or before April 11, 2002.

ADDRESSES: Send comments on the proposal in triplicate to:

Federal Aviation Administration, Docket No. 02-ASO-4, Manager, Airspace Branch, ASO-520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305-5586.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5586.

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 action must submit with those comments a self-addressed, stamped postcard on which the following statement is made:

"Comments to Airspace Docket No. 02-ASO-4." 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 proposal contained in this action may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional 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 contact 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 docket 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 establish Class D airspace at Greenville Donaldson Center, SC, and amend Class E5 airspace at Greenville, SC. This proposal would also make a technical amendment to Class E2 airspace at Greer, Greenville-Spartanburg Airport, SC, and the Class E5 airspace description at Greenville, SC, by changing the name of the Greenville-Spartanburg Airport to the Greenville-Spartanburg International Airport. This name change was effective on October 31, 1995. Class D airspace designations for airspace areas extending upward from the surface of the earth and Class E airspace designations for airspace areas designated as surface areas and airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraphs 5000, 6002, and 6005 respectively, of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations 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—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 Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 5000 Class D Airspace
* * * * *

ASO SC D Greenville Donaldson Center Airport, SC [NEW]

Greenville, Donaldson Center Airport, SC (Lat. 34°45'30, long. 80°22'35" W)
Greenville Downtown Airport (Lat. 34°50'52, long. 82°21'00" W)
Greenville-Spartanburg International Airport (Lat. 34°53'56, long. 82°12'49" W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.2-mile radius of Donaldson Center Airport, excluding that airspace within the Greenville Downtown Airport Class D airspace area, and excluding that airspace within the Greenville-Spartanburg International Airport Class C airspace area. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Areas
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ASO SC E2 Greer, Greenville-Spartanburg International Airport, SC [REVISED]

Greenville-Spartanburg International Airport, SC

(Lat. 34°53'56, long. 82°12'49" W)

Within a 5-mile radius of the Greenville-Spartanburg International Airport. 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.

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Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

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ASO SC E5 Greenville, SC [REVISED]

Greenville Downtown Airport, SC

(Lat. 34°50'52, long. 82°21'00" W)

Greenville-Spartanburg International Airport

(Lat. 34°53'56, long. 82°12'49" W)

Donaldson Center Airport

(Lat. 34°45'30, long. 80°22'35" W)

DYANA NDB

(Lat. 34°41'28, long. 82°26'37" W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Greenville Downtown Airport and within a 10 mile radius of Greenville-Spartanburg International Airport and within a 6.7-mile radius of Donaldson Center Airport and within 4 miles northwest and 8 miles southeast of 224° bearing from the DYANA NDB extending from the 6.7-mile radius to 16 miles southwest of the Donaldson Center Airport.

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Issued in College Park, Georgia, on March 5, 2002.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-102740-02]

RIN 1545-BA52

Loss Limitation Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: This document contains proposed regulations under sections 337(d) and 1502 of the Internal Revenue Code. These regulations permit certain losses recognized on sales of subsidiary stock by members of a consolidated group. The regulations apply to corporations filing consolidated returns, both during and after the period of affiliation, and also affect purchasers of the stock of members of a consolidated group. The text of the temporary regulations published in this issue of the **Federal Register** also serves as the text of these proposed regulations. This document also provides notice of a

public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by July 10, 2002. Requests to speak (with outlines of oral comments to be discussed) at the public hearing scheduled for July 17, 2002, at 10 a.m., must be received by June 26, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG-102740-02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 6 p.m. to CC:ITA:RU (REG-102740-02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20044. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at www.irs.gov/regs. The public hearing will be held in the Internal Revenue Service Auditorium, in the Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Sean P. Duffley, (202) 622-7530, or Lola L. Johnson, (202) 622-7550; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, LaNita VanDyke (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224. Comments on the collection of information should be received by May 6, 2002. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start up-costs and the costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in §§ 1.337(d)-2T, 1.1502-20T, and 1.1502-32T. The collection of information is required to allow the taxpayer to make certain elections to determine the amount of allowable loss under § 1.337(d)-2T, § 1.1502-20 as currently in effect, or under § 1.1502-20 modified so that the amount of allowable loss determined pursuant to § 1.1502-20(c)(1) is computed by taking into account only the amounts computed under § 1.1502-20(c)(1)(i) and (ii); to allow the taxpayer to reapportion a section 382 limitation in certain cases; to allow the taxpayer to waive certain loss carryovers; and to ensure that loss is not disallowed under § 1.337(d)-2T and basis is not reduced under § 1.337(d)-2T to the extent the taxpayer establishes that the loss or basis is not attributable to the recognition of built-in gain on the disposition of an asset. The collection of information is required to obtain a benefit. The likely respondents are corporations that file consolidated income tax returns.

Estimated total annual reporting burden: 30,000 hours.

Estimated average annual burden hours per respondent: 2 hours.

Estimated number of respondents: 15,000.

Estimated annual frequency of responses: once.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to the collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating