

**§ 82.11 Compliance with program provisions.**

If USDA or the CCPA determines that any provision of this part have not been complied with by the grower, the grower will not be entitled to diversion payments in connection with tree removal. If a grower does not comply with all the terms of this part, including the requirement specified in § 82.5(b), the grower must refund any payment made in connection with this program, and will also be liable for any other damages incurred as a result of such failure. The USDA may deny any grower the right to participate in this program or the right to receive payments in connection with any diversion previously made under this program, or both, if the USDA determines that:

- (a) The grower has failed to properly remove the clingstone peach trees from the applicable acreage, regardless of whether such failure was caused directly by the grower or by any other person or persons;
- (b) The grower has not acted in good faith, or has engaged in a scheme, fraud, or device, in connection with any activity under this program; or
- (c) The grower has failed to discharge fully any obligation assumed by him or her under this program.

**§ 82.12 Inspection of premises.**

The grower must permit authorized representatives of USDA or the CCPA, at any reasonable time, to have access to their premises to inspect and examine the acreage where the trees were removed as well as any records pertaining to that acreage to determine compliance with the provisions of this part.

**§ 82.13 Records and accounts.**

(a) The growers participating in this program must keep accurate records and accounts showing the details relative to the clingstone peach tree removal, including the contract entered into with any firm removing the trees, as well as the invoices.

(b) The growers must permit authorized representatives of USDA, the CCPA, and the Government Accountability Office at any reasonable time to inspect, examine, and make copies of such records and accounts to determine compliance with provisions of this part. Such records and accounts must be retained for ten years after the date of payment to the grower under the program, or for ten years after the date of any audit of records by USDA, whichever is later. Any destruction of records by the grower at any time will be at the risk of the grower when there is reason to know, believe, or suspect

that matters may be or could be in dispute or remain in dispute.

**§ 82.14 Offset, assignment, and prompt payment.**

(a) Any payment or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien against the crop proceeds thereof in favor of the grower or any other creditors except agencies of the U.S. Government.

(b) Payments which are earned by a grower under this program may be assigned in the same manner as allowed under the provisions of 7 CFR part 1404.

**§ 82.15 Appeals.**

Any grower who is dissatisfied with a determination made pursuant to this part may make a request for reconsideration or appeal of such determination. The Deputy Administrator of Fruit and Vegetable Programs shall establish the procedure for such appeals.

**§ 82.16 Refunds; joint and several liability.**

(a) In the event there is a failure to comply with any term, requirement, or condition for payment arising under the application of this part, and if any refund of a payment to AMS shall otherwise become due in connection with the application of this part, all payments made under this part to any grower shall be refunded to AMS together with interest.

(b) All growers signing an application for payment as having an interest in such payment shall be jointly and severally liable for any refund, including related charges, that is determined to be due for any reason under the terms and conditions of the application of this part.

(c) Interest shall be applicable to refunds required of any grower under this part if AMS determines that payments or other assistance were provided to a grower who was not eligible for such assistance. Such interest shall be charged at the rate of interest that the United States Treasury charges the Commodity Credit Corporation (CCC) for funds, as of the date AMS made benefits available to such grower. Such interest shall accrue from the date of repayment or the date interest increases as determined in accordance with applicable regulations. AMS may waive the accrual of interest if AMS determines that the cause of the erroneous determination was not due to any action of the grower.

(d) Interest determined in accordance with paragraph (c) of this section may be waived on refunds required of the

grower when there was no intentional noncompliance on the part of the grower, as determined by AMS. Such decision to waive or not waive the interest shall be at the discretion of the Administrator or delegatee.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed for, those claims which are addressed in 14 CFR part 1403.

(f) Growers must refund to AMS any excess payments, as determined by AMS, with respect to such application. Such determinations shall be made by the Administrator or delegatee.

(g) In the event that a benefit under this part was provided as the result of erroneous information provided by the grower, or was erroneously or improperly paid for any other reason, the benefit must be repaid with any applicable interest, subject to paragraphs (c) and (d) of § 82.6.

**§ 82.17 Death, incompetency, or disappearance.**

In the case of death, incompetency, disappearance, or dissolution of a clingstone peach grower that is eligible to receive benefits in accordance with this part, any person or persons who would, under 7 CFR part 707 of this title, be eligible for payments and benefits covered by this part, may receive such benefits otherwise due the actual producer, as determined appropriate by AMS.

Dated: July 28, 2005.

**Robert C. Keeney,**

*Acting Administrator, Agricultural Marketing Service.*

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

[Docket No. FAA-2005-21166; Airspace Docket No. 05-AWP-4]

**Proposed Establishment of Class E Airspace; Hana, HI**

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish a Class E airspace area at Hana, HI. The establishment of an Area Navigation (RNAV) Global Positioning System (GPS) Instrument Approach Procedure (IAP) RNAV (GPS) to Runway (RWY) 26 IAP and a RNAV Departure

Procedure (DP) at Hana Airport, Hana, HI has made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the RNAV (GPS) RWY 26 and RNAV DP at Hana Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Hana Airport, Hana, HI.

**DATES:** Comments must be received on or before September 19, 2005.

**ADDRESSES:** Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, S.W., Washington, DC 20590-0001. You must identify the docket number FAA-2005-21166/ Airspace Docket No. 05-AWP-4, at the beginning of your comments. You may also submit comments on the Internet at <http://dms.dot.gov>. You may review the public docket containing the proposal, any comments received, and any final dispositions in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1-800647-5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the Office of the Regional Western Terminal Operations, Federal Aviation Administration, at 15000 Aviation Boulevard, Lawndale, California 90261, telephone number (310) 725-6613.

**FOR FURTHER INFORMATION CONTACT:** Debra Trindle, 310-725-6613.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons 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 both 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

Docket No. FAA-2005-21166; Airspace Docket No. 05-AWP-4." The postcard will be date/time stamped and returned to the commenter.

**Availability of NPRM**

An electronic copy of this document may be downloaded through the Internet at <http://dms.dot.gov>. Recently published rulemaking documents can also be accessed through the FAA's Web page at <http://www.faa.gov> or the Superintendent of Document's Web page at <http://www.access.gpo.gov/nara>.

Additional, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA-400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-8783. Communications must identify both document numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267-9677, to request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

**The Proposal**

The FAA is considering an amendment to 14 CFR part 71 by establishing a Class E airspace area at Hana, HI. The establishment of a RNAV (GPS) RWY 26 IAP and a RNAV DP at Hana Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the RNAV (GPS) RWY 26 IAP and a RNAV DP at Hana Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the RNAV (GPS) RWY 26 IAP and a RNAV DP at Hana Airport, Hana, HI. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9M dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this 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 role" 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)

**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; ROUTES; AND REPORTING POINTS**

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 the Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and Effective, September 16, 2004, is amended as follows:

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

\* \* \* \* \*

**AWP HI E5, Hana, HI [NEW]**

Hana Airport  
(Lat. 20°47'44" N, long. 156°00'52" W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Hana Airport.

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**John Clancy,**

*Area Director, Western Terminal Operations.*  
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