1996 Act. The Board is composed of 10 producer members and their alternates: one member and alternate from each primary peanut-producing state (in descending order—Georgia, Texas, Alabama, Florida, North Carolina, South Carolina, Oklahoma, Virginia, and New Mexico) and one at-large member and alternate collectively from the minor peanut-producing states. The members and alternates are nominated by producers or producer groups.

Under the Order, the Board administers a nationally coordinated program of promotion, research, and information designed to strengthen the position of peanuts in the market place and to develop, maintain, and expand the demand for peanuts in the United States. Under the program, all peanut producers pay an assessment of one percent of the total value of all farmer's stock peanuts. The assessments are remitted to the Board by handlers and, for peanuts under loan, by the Commodity Credit Corporation.

Pursuant to section 1216.40(b) of the Order, at least once in each five-year period, the Board shall review the geographical distribution of peanuts in the United States and make a recommendation to the Secretary to continue without change or whether changes should be made in the number of representatives on the Board to reflect changes in the geographical distribution of the production of peanuts.

The Board reviewed the most recent NASS data and it reported that in 2005, 2006, and 2007 Mississippi produced 22,400 tons, 23,200 tons, and 29,700 tons of peanuts respectively. Based on this data, the three-year average annual peanut production for Mississippi totals 22,410 tons per year (67,232 divided by 3) which exceeds the requirement set in the Order of 10,000 pounds per year to become a major peanut-producing state. In addition, NASS data showed that Mississippi has produced two percent of the total United States peanut crop which is the same as Oklahoma and Virginia, two of the primary peanut-producing states. At the Board's December 4–5, 2007, meeting, the Board voted unanimously to add Mississippi as a primary peanut-producing state.

Therefore, the addition of a producer member and alternate would carry out the recommendations of the Board. This action will add to the Board a member and an alternate from Mississippi which has become a primary peanut-producing state. The addition of a producer member and alternate member would allow Mississippi representation on the Board's decision making and also potentially provide an opportunity to increase diversity on the Board.

Furthermore, this rule would make amendments to sections 1216.15 and 1216.21 of the Order to add the State of Mississippi as a primary peanut-producing state. Also, this rule would revise sections 1216.40(a) and 1216.40(a)(1) of the Order to specify that the Board will be composed of 11 peanut producer members and their alternates rather than 10.

Nominations and appointments to the Board are conducted pursuant to sections 1216.40, 1216.41, and 1216.43 of the Order. According to these sections, appointments to the Board are made by the Secretary from a slate of nominated candidates. Pursuant to section 1216.41(a) eligible peanut producer organizations within the State as certified pursuant to section 1216.70 shall nominate two qualified persons for each member and each alternate member. The nomination meeting must be announced 30 days in advance. The nominees should be elected at an open meeting among peanut producers eligible to serve on the Board. At the nomination meeting, the Department was present to oversee and to verify eligibility and count ballots. The nominees for the producer member and alternate member will be submitted to the Secretary for appointment to the Board.

An interim final rule concerning this action was published in the **Federal Register** on March 20, 2008 (73 FR 14919). Copies of the rule were made available through the Internet by the Department and the Office of the Federal Register. That rule provided a 30-day comment period which ended on April 21, 2008. Three comments were received by the deadline.

Three favorable comments were received. The commenters state the addition of Mississippi as a major peanut-producing state will ensure that all growers have the opportunity to be equitably represented in setting the vision and goals of the Peanut Promotion, Research, and Information Order.

An interim final rule was published in the **Federal Register** on March 20, 2008 (73 FR 14919), allowing the Board to begin the nomination process to fill the Mississippi member and alternate positions. As a result, the Mississippi nomination process began in April 2008 to allow Mississippi to have representation on the Board for the next term of office beginning January 1, 2009, and ending December 31, 2011.

After consideration of all relevant material presented, the Board's recommendation, and other information, it is hereby found that this rule is consistent with and will tend to effectuate the declared policy of the 1996 Act and therefore should be adopted as a final rule, without change.

List of Subjects in 7 CFR Part 1216

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Peanut promotion, Reporting and recordkeeping requirements.

PART 1216—PEANUT PROMOTION, RESEARCH, AND INFORMATION ORDER

■ Accordingly, the interim final rule amending 7 CFR part 1216 which was published at 73 FR 14919 on March 20, 2008, is adopted as a final rule without change.

Dated: July 2, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–15522 Filed 7–8–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 575

[No. OTS–2008–0005]

RIN 1550–[AC15]

Optional Charter Provisions in Mutual Holding Company Structures

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its mutual holding company (MHC) regulations to permit certain MHC subsidiaries to adopt an optional charter provision that would prohibit any person from acquiring, or offering to acquire, beneficial ownership of more than ten percent of the MHC subsidiary's minority stock (stock held by persons other than the subsidiary's MHC).

DATES: *Effective Date:* This final rule is effective on October 1, 2008.

FOR FURTHER INFORMATION CONTACT: Donald W. Dwyer, (202) 906–6414, Director, Applications, Examinations and Supervision—Operations; or David A. Permut, (202) 906–7505, Senior Attorney, Business Transactions Division, Office of Chief Counsel, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

On June 27, 2007, OTS published a notice of proposed rulemaking (NPR) that proposed to amend the MHC Regulations to permit certain MHC subsidiaries to adopt an optional charter provision that would prohibit any person from acquiring, or offering to acquire beneficial ownership of more than ten percent of the MHC subsidiary's minority stock (stock held by persons other than the subsidiary's MHC).[1]

Under the MHC Regulations, a subsidiary MHC, or, where there is no subsidiary MHC, the former mutual savings association that reorganized into an MHC structure (collectively, Subsidiary Company), may sell less than 50 percent of its voting stock to parties other than the top-tier MHC.[2]

Under the MHC Regulations, a Subsidiary Company may adopt a charter provision that prohibits any person from acquiring, or offering to acquire, beneficial ownership of more than 10 percent of the Subsidiary Company's stock during the five years after a minority stock issuance.[3] The purpose of this provision, as is the case with the provision when applied to fully converted associations, is to lessen the vulnerability of the entity to attempts to take unfair advantage of the results of the offering, to protect the integrity of the offering, and to ensure that the offering is completed in a manner that strengthens the issuer.[4]

OTS has become aware of several situations in which minority stockholders have acquired positions in the minority stock of Subsidiary Companies, and have taken actions that appear intended to influence management to engage in stock repurchases or in a sale of the institution. Because a top-tier MHC is required to retain more than 50 percent of the stock of any Subsidiary Company, holders of minority stock (minority stockholders) cannot control the outcome of most issues presented to the stockholders of a Subsidiary Company. However, there are circumstances where OTS's regulations provide that a majority of the minority stock must approve a proposal.[5]

Minority stockholders may acquire a significant percentage of the minority stock without involving either the OTS Acquisition of Control Regulations (Control Regulations) or the charter provision discussed above, both of which are triggered by an acquisition of more than ten percent of the outstanding stock. Thus, for example, if a Subsidiary Company issues thirty percent of its stock in a public offering, a minority stockholder could acquire a third of those shares without implicating either the Control Regulations or the charter provision. In such a case, the minority stockholder may obtain a significant amount of influence, based on its ability to vote on the issues that must be presented separately to minority stockholders.

OTS believes that such a result would be contrary to the purposes of the restrictions addressing post-offering acquisitions of stock in the context of conversions and minority stock offerings, that is, lessening the vulnerability of the entity to attempts to take unfair advantage of the results of the offering, to protect the integrity of the offering, and to ensure that the offering is completed in a manner that strengthens the issuer. Therefore, OTS proposed to add a provision to the MHC Regulations, which could be adopted only by Subsidiary Companies, that would provide that no entity, or person or group acting in concert could acquire more than ten percent of the outstanding minority stock of the Subsidiary Company during the five years after a Minority Stock Issuance. If a stockholder violated this charter provision, the stockholder would not be permitted to vote any stock the stockholder acquired in excess of the limit.

OTS proposed that the charter provision would not limit the stockholdings of the parent MHC, because the parent MHC, under the Home Owners' Loan Act, must own more than fifty percent of the Subsidiary Company. In addition, OTS proposed that the charter provision except stock held by the Subsidiary Company's Employee Stock Ownership Plan (ESOP) from this limitation, because ESOP acquisitions do not present the concerns that have resulted in OTS limiting post-conversion acquisitions of stock.[6]

II. Public Comments

OTS received 8 comments, from 7 commenters, regarding the NPR. Of these comment letters, four were from trade associations, three were from law firms and one was from an investment firm. Five of the comment letters supported the proposal and three (including two letters from one commenter) opposed the proposal. Four of the five comments in favor of the proposal were submitted by trade associations, and one was from a law firm. Of the three comments opposing the proposal, one was from the investment firm, and the other two were from an attorney who wrote on behalf of his client.

All of the comments in favor of the proposal supported OTS's reasoning as set forth in the NPR, and evidenced a belief that the proposal would appropriately limit the amount of influence minority shareholders would have over management. One commenter stated that the proposed restriction was reasonable in order to keep activist shareholders from ''engaging in control'' over an MHC.

The two commenters who opposed the proposal cited several arguments supporting their position. They asserted that the optional charter provision would make already illiquid stock less liquid; would disenfranchise shareholders, and violate fundamental shareholder rights; was overkill to stop minority shareholders from taking actions to influence management; and was proposed in order to assist management to avoid shareholder accountability and undo the requirement that a majority of minority shareholders vote in favor of management stock benefit plans. These commenters also asserted that the proposed charter provision has no nexus to protecting the conversion (or the minority stock offering process).

In addition, the comments raised technical issues regarding the proposed charter provision.

OTS has carefully considered the public comments. Specific topics addressed by one or more commenters are discussed below. Except as otherwise noted in the discussion below, OTS is adopting the amendments to its regulations as proposed in the NPR.

A. Adoption and Retention of the Charter Provision

Three commenters addressed the time period during which a Subsidiary Company could enact and retain the optional charter provision. Two commenters asked for clarification regarding when the provision could be adopted. In addition, two commenters addressed the length of time for which a charter could include the provision in question. One commenter suggested that Subsidiary Companies should have the ability to determine how long to retain

[1] *See* 72 FR 35205 (Jun. 27, 2008).

[2] *See* 12 CFR 575.7 and 575.14(b)(2008). *See also* 12 U.S.C. 1467a(o)(8)(B).

[3] *See* 12 CFR 552.4(b)(8) and 575.14(c)(2)(2008).

[4] *See, e.g.,* Federal Home Loan Bank Board Order No. 84–90 (Feb. 23, 1984).

[5] *See* 12 CFR 563b.500(a)(7), 563b.555, 575.11(i) and 575.12(a)(3) (2008).

[6] *See* 12 CFR 563b.525(c)(4)(2008), and the optional charter provision at section 552.4, both of which except ESOPs from the post-conversion acquisition restrictions of section 563b.525.

the charter provision, with five years as the outside limit, and another suggested that OTS should permit a Subsidiary Company to retain the charter provision as long as the company considers it appropriate.

OTS is revising the final regulation to provide clearly that, subject to certain limitations discussed below, a Subsidiary Company may adopt the optional charter provision before it conducts its first minority stock offering, at the time of a minority stock offering, or at any time during the five years following the closing of the minority stock offering. However, regardless of when the charter provision is adopted, the charter provision must expire at some time during the five year period that commences upon the closing of the minority stock offering.

OTS has considered the comment requesting that OTS permit the Subsidiary Company to decide for itself how long the charter provision should remain in place. The NPR stresses that the purpose of the charter provision is to lessen attempts to take unfair advantage of the results of an offering, protect the integrity of the offering, and ensure that the offering is completed in a manner that strengthens the issuer. OTS believes that these concerns lessen significantly when more than five years have elapsed since the completion of the offering in question. Accordingly, OTS is retaining the requirement that the provision may be in place only during the five years after the closing of an offering.

B. Applicability of the Charter Provision Where a Shareholder Has Already Acquired More Than Ten Percent of the Minority Stock

The comments that opposed the optional charter provision raised several issues that ultimately related to the manner in which the provision would operate if a shareholder had acquired more than ten percent of the minority stock before the charter provision had been adopted. In this regard, the comments asserted that the rule disenfranchises large stockholders, and that sterilization of shares in excess of ten percent of the minority shares is inappropriate. One of the commenters urged that OTS make the rule applicable only prospectively.

OTS has carefully considered these comments. The NPR did not specifically discuss situations in which a minority shareholder had acquired shares in excess of the limit in the optional charter provision prior to adoption of the provision, and did not contemplate situations in which a shareholder who held shares before adoption of the charter provision would no longer be able to vote those shares.

OTS considered prohibiting a Subsidiary Company from adopting the charter provision only where a party had already acquired more than ten percent of the minority shares, and also considered excepting (''grandfathering'') parties who had acquired more than ten percent of the minority shares at the time of the adoption of the charter provision from the restrictions in the optional charter provision. OTS does not believe that either approach would work well, due to difficulties in knowing how many shares a minority shareholder holds at a particular time. For either approach to work, it would be necessary for shareholders who would not otherwise be subject to reporting requirements to provide information regarding their holdings, and OTS does not believe it is appropriate to impose special reporting requirements on minority shareholders of Subsidiary Companies.

Accordingly, OTS is revising the final regulation to provide that only Subsidiary Companies that have not engaged in minority stock issuance prior to the effective date of the regulation, may adopt the optional charter provision.

OTS is not prohibiting Subsidiary Companies that engage in their initial minority stock offering after the effective date of this regulation from adopting the optional charter provision, even if they do so after a minority stock issuance, and after a minority shareholder acquires more than ten percent of the Subsidiary Company's minority stock. In order to adopt the optional charter provision after a minority stock issuance, however, the Subsidiary Company must provide full disclosure in the offering materials regarding the possibility that the optional charter provision may be adopted at a later time.[7] Accordingly, even if there was no restriction at the time a shareholder acquires a Subsidiary Company's minority stock, such a shareholder will do so with knowledge that its voting power may be adversely affected if the Subsidiary Company later adopts the optional charter provision.

OTS believes that this approach eliminates concerns that the charter provision inappropriately sterilizes votes,[8] violates shareholder rights, or is in any way inconsistent with sound corporate governance.

C. Liquidity

The commenter who addressed liquidity stated that the proposed charter provision would reduce liquidity of the stock of recently converted Subsidiary Companies, because acquirors who otherwise wished to purchase more than ten percent of the Subsidiary Company's shares would not be allowed to do so. OTS notes, however, that such purchases may ultimately decrease liquidity, by reducing, possibly significantly, the number of minority shareholders. The proposed rule may ultimately have the effect of increasing the number of minority shareholders over the number that would otherwise be the case, thereby increasing liquidity. Accordingly, the effect of the charter provision on liquidity is unclear. OTS does not believe that the charter provision will raise significant liquidity concerns.

D. Management Accountability

Comments that opposed the proposed charter provision asserted that the provision helps management avoid accountability to shareholders, and conflicts with the final rule promulgated in 2007 that required that a majority of the minority shareholders vote in favor of stock benefit plans proposed by Subsidiary Companies.[9]

OTS does not believe the charter provision either enables management to avoid shareholder accountability or conflicts with the 2007 final rule requiring a majority of the minority vote in favor of stock benefit plans. The proposed charter provision merely prohibits a single entity from acquiring more than ten percent of the minority shares. Where a separate minority shareholder vote is required, a majority of such shareholders must vote in favor of a matter in order for it to be passed. Accordingly, management remains accountable to shareholders, and the charter provision does not raise the conflict of interest issues that led OTS to continue to require a majority of the minority vote.[10]

E. Purpose of the Charter Provision

With regard to the comments that the only purpose of the charter provision is to make it easier to pass benefit plans,

[7] If the Subsidiary Company engages in multiple minority stock issuances, it would have to make the appropriate disclosures in all such offerings.

[8] OTS has long considered sterilization to be appropriate where an acquiror has violated a regulatory or charter restriction. Both the OTS Mutual-to-Stock conversion regulations and the charter provision at 12 CFR 552.4 include sterilization provisions that apply where the acquiror has violated OTS regulations, or a charter provision, and have included such provisions since the 1970s.

[9] See 72 FR 35145 (2007).

[10] See 72 FR 35145, at 35147–35148 (June 27, 2007).

and that the charter provision is intended to protect insiders' interests, OTS set forth the rationale for the proposed charter provision in the NPR, and has repeated the rationale above. The charter provision does not prevent minority shareholders from voting in opposition to a proposed benefit plan. The charter provision would make it more difficult for a single shareholder to prevent the passage of stock benefit plans, but minority shareholders, as a class, continue to have the power to vote down a stock benefit plan.

F. Treatment of Proxies

One commenter requested clarification regarding whether the charter provision would prohibit a shareholder from soliciting revocable proxies. The regulatory restriction regarding acquisitions of more than ten percent of a class of voting stock after a mutual-to-stock conversion, at 12 CFR 563b.525, provides that ''a person acquires beneficial ownership of more than ten percent of a class of shares when he or she holds any combination of * * * stock or revocable or irrevocable proxies under circumstances that give rise to a conclusive control determination or rebuttable control determination under §§ 574.4(a) and (b) of this chapter.'' The corresponding optional charter provision at 12 CFR 552.4 has been interpreted to apply to proxies in the same manner.[11] OTS is not aware of any reason to treat proxies differently in the context of the charter provision addressed herein.

III. Regulatory Findings

A. Paperwork Reduction Act

OTS has determined that the final rule does not involve a change to collections of information previously approved under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

B. Executive Order 12866

The Director of OTS has determined that the final rule does not constitute a ''significant regulatory action'' for purposes of Executive Order 12866.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601), the Director certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The final rule would permit Subsidiary Companies to adopt an optional charter provision. Accordingly, OTS has determined that a Regulatory Flexibility Analysis is not required.

D. Unfunded Mandates Reform Act of 1995

OTS has determined that the final rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more and that a budgetary impact statement is not required under Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act). The final rule would permit Subsidiary Companies to adopt an optional charter provision. The final rule changes should not have a significant impact on small institutions. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Act.

List of Subjects in 12 CFR Part 575

Administrative practice and procedure, Capital, Holding companies, Reporting and recordkeeping requirements, Savings Associations, Securities.

Authority and Issuance

■ For the reasons set forth in the preamble, OTS is amending Chapter V of title 12 of the Code of Federal Regulations, as set forth below:

PART 575—MUTUAL HOLDING COMPANIES

■ 1. The authority citation for 12 CFR part 575 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828, 2901.

■ 2. Amend § 575.9 by redesignating paragraph (c) as (d), and adding a new paragraph (c) as follows:

§ 575.9 Charters and bylaws for mutual holding companies and their savings association subsidiaries.

* * * * *

(c) *Optional charter provision limiting minority stock ownership.* A federal resulting association or federal acquiree association that engages in its initial minority stock issuance after October 1, 2008 may, before it conducts its initial minority stock issuance, at the time of such minority stock issuance, or at any time during the five years following a minority stock issuance that such association conducts in accordance with the purchase priorities set forth in 12 CFR part 563b, include in its charter the following provision. For purposes of this charter provision, the definitions set forth at § 552.4(b)(8) of this chapter apply. This charter provision expires a maximum of five years from the date of the minority stock issuance. The federal resulting association or federal acquiree association may adopt the charter provision after a minority stock issuance only if it provided, in the offering materials related to its previous minority stock issuance or issuances, full disclosure of the possibility that the association might adopt such a charter provision.

Beneficial Ownership Limitation. No person may directly or indirectly offer to acquire or acquire the beneficial ownership of more than 10 percent of the outstanding stock of any class of voting stock of the association held by persons other than the association's mutual holding company. This limitation expires on [insert date of minority stock issuance] and does not apply to a transaction in which an underwriter purchases stock in connection with a public offering, or the purchase of stock by an employee stock ownership plan or other tax-qualified employee stock benefit plan that is exempt from the approval requirements under § 574.3(c)(1)(vii) of the Office's regulations.

In the event a person acquires stock in violation of this section, all stock beneficially owned by such person in excess of 10 percent of the stock held by stockholders other than the mutual holding company shall be considered ''excess shares'' and shall not be counted as stock entitled to vote and shall not be voted by any person or counted as voting stock in connection with any matters submitted to the stockholders for a vote.

* * * * *

■ 3. Amend § 575.14 by redesignating paragraphs (c)(3) and (4) as (4) and (5), respectively, and add a new (c)(3) to read as follows:

§ 575.14 Subsidiary holding companies.

* * * * *

(3) *Optional charter provision limiting minority stock ownership.* A subsidiary holding company that engages in its initial minority stock issuance after October 1, 2008 may, before it conducts its initial minority stock issuance, at the time it conducts its initial minority stock issuance, or at any time during the five years following a minority stock issuance that such subsidiary holding company conducts in accordance with the purchase priorities set forth in 12 CFR part 563b, include in its charter the provision set forth below. For purposes of this charter provision, the definitions set forth at § 552.4(b)(8) of this chapter apply. This charter provision expires a maximum of five years from the date of the minority stock issuance. The

[11] *See* FHLBB Ops., Dep. G.C. (Aug. 14, 1986, and Oct. 21, 1988).

subsidiary holding company may adopt the charter provision after a minority stock issuance only if it provided, in the offering materials related to its previous minority stock issuance or issuances, full disclosure of the possibility that the association might adopt such a charter provision.

Beneficial Ownership Limitation. No person may directly or indirectly offer to acquire or acquire the beneficial ownership of more than 10 percent of the outstanding stock of any class of voting stock of the association held by persons other than the subsidiary holding company's mutual holding company parent. This limitation expires on [insert date of minority stock issuance] and does not apply to a transaction in which an underwriter purchases stock in connection with a public offering, or the purchase of stock by an employee stock ownership plan or other tax-qualified employee stock benefit plan which is exempt from the approval requirements under § 574.3(c)(1)(vii) of the Office's regulations.

In the event a person acquires stock in violation of this section, all stock beneficially owned in excess of 10 percent shall be considered ''excess stock'' and shall not be counted as stock entitled to vote and shall not be voted by any person or counted as voting stock in connection with any matters submitted to the stockholders for a vote.

* * * * *

Dated: June 20, 2008.

By the Office of Thrift Supervision.

John M. Reich,

Director.

[FR Doc. E8–14374 Filed 7–8–08; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–0915; Airspace Docket No. 07–ASW–13]

Establishment of Class D Airspace; Albuquerque, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D airspace at Albuquerque, NM. Establishment of an air traffic control tower at Double Eagle II Airport, Albuquerque, NM, has made this action necessary for the safety of Instrument Flight Rule (IFR) operations at the airport. This action also makes minor corrections to the geographic coordinates of the airport.

DATES: *Effective Date:* 0901 UTC, September 25, 2008. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Gary Mallett, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76193–0530; telephone (817) 222–4949.

SUPPLEMENTARY INFORMATION:

History

On April 9, 2008, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish Class D airspace at Albuquerque, NM (73 FR 19174, 07–ASW–13 Docket No. FAA–2007–0915). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. This rule makes minor corrections to the geographic coordinates of Double Eagle II Airport. With the exception of editorial changes, and the changes described above, this rule is the same as that proposed in the NPRM. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9R signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR part 71.1. The Class D airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class D airspace extending upward from the surface to and including 7,500 feet MSL within a 4.3-mile radius of Double Eagle II Airport.

The FAA has determined that this 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.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace.

This regulation is within the scope of that authority as it establishes controlled airspace at Double Eagle II Airport, Albuquerque, NM.

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, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE 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 part 71.1 of the Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, signed August 15, 2007, and effective September 15, 2007, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASW NM D Albuquerque, NM [New]

Double Eagle II Airport, NM
(Lat. 35°08′43″ N., long. 106°47′43″ W.)

That airspace extending upward from the surface to and including 7,500 feet MSL within a 4.3-mile radius of Double Eagle II Airport, and within 1 mile each side of the Double Eagle Runway 22 ILS localizer northeast course, extending from the 4.3-mile radius to 5.9 miles northeast of the airport. This Class D airspace area is effective during