

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
451120	Hobby, Toy and Game Stores	25.5	
451130	Sewing, Needlework and Piece Goods Stores	25.5	
451140	Musical Instrument and Supplies Stores	10.0	
451211	Book Stores	25.5	
*	*	*	*
451220	Prerecorded Tape, Compact Disc and Record Stores	30.0	
*	*	*	*
452111	Department Stores (except Discount Department Stores)	30.0	
*	*	*	*
452990	All Other General Merchandise Stores	30.0	
*	*	*	*
453210	Office Supplies and Stationary Stores	30.0	
*	*	*	*
453910	Pet and Pet Supplies Stores	19.0	
*	*	*	*
453930	Manufactured (Mobile) Home Dealers	14.0	
*	*	*	*
454111	Electronic Shopping	30.0	
454112	Electronic Auctions	35.5	
454113	Mail Order Houses	35.5	
454210	Vending Machine Operators	10.0	
*	*	*	*

■ 3. In § 121.402 (b), remove the last sentence and add two new sentences to the end of the paragraph to read as follows:

**§ 121.402 What size standards are applicable to Federal Government Contracting programs?**

\* \* \* \* \*

(b) \* \* \* Acquisitions for supplies must be classified under the appropriate manufacturing NAICS code, not under a Wholesale Trade or Retail Trade NAICS code. A concern that submits an offer or quote for a contract or subcontract where the NAICS code assigned to the contract or subcontract is one for supplies, and furnishes a product it did not itself manufacture or produce, is categorized as a nonmanufacturer and deemed small if it has 500 or fewer employees and meets the requirements of 13 CFR 121.406.

\* \* \* \* \*

Dated: September 10, 2010.

**Marie C. Johns,**

*Deputy Administrator.*

[FR Doc. 2010-24855 Filed 10-5-10; 8:45 am]

**BILLING CODE 8025-01-P**

**SMALL BUSINESS ADMINISTRATION**

**13 CFR Part 121**

**RIN: 3245-AF71**

**Small Business Size Standards; Accommodation and Food Services Industries**

**AGENCY:** Small Business Administration (SBA).

**ACTION:** Final rule.

**SUMMARY:** The United States Small Business Administration (SBA) is increasing small business size standards for five industries in North American Industry Classification System (NAICS) Sector 72, Accommodation and Food Services—namely NAICS 721110, Hotels and Motels, from \$7.0 million to \$30 million; NAICS 721120, Casino Hotels, from \$7.0 million to \$30 million; NAICS 722211, Limited Service Restaurants, from \$7.0 million to \$10 million; NAICS 722212, Cafeterias, from \$7.0 million to \$25.5 million; and NAICS 722310, Food Service Contractors, from \$20.5 million to \$35.5 million. As part of its ongoing initiative to review all size standards, SBA has evaluated every industry in Sector 72 to determine whether the existing size standards should be retained or revised.

**DATES:** This rule is effective November 5, 2010.

**FOR FURTHER INFORMATION CONTACT:** Carl Jordan, Program Analyst, Office of Size Standards, (202) 205-6618 or [sizestandards@sba.gov](mailto:sizestandards@sba.gov).

**SUPPLEMENTARY INFORMATION:**

**Introduction**

To determine eligibility for Federal small business assistance programs, SBA establishes small business size definitions (referred to as size standards) for private sector industries in the United States. SBA's existing size standards use two primary measures of business size—annual receipts and number of employees. Financial assets, electric output and refining capacity are used as size measures for a few specialized industries. In addition, SBA's Small Business Investment Company (SBIC) and the Certified Development Company (CDC) Programs determine small business eligibility using either the industry based size standards or net worth and net income based size standards. Currently, SBA's size standards consist of 45 different size levels, covering 1,141 NAICS industries and 17 sub-industry activities. Of these size levels, 32 are based on average annual receipts, eight

are based on number of employees, and five are based on other measures. In addition, SBA has established 11 other size standards for its financial and procurement programs.

Over the years, SBA has received comments that its size standards have not kept up with changes in the economy and, in particular, that they do not reflect changes in the Federal contracting marketplace. The last overall review of size standards occurred during the late 1970s and early 1980s. Since then, most reviews of size standards have been limited to in-depth analyses of specific industries in response to requests from the public and Federal agencies. SBA also makes periodic inflation adjustments to its monetary based size standards. The latest inflation adjustment to size standards was published in the **Federal Register** on July 18, 2008 (73 FR 41237).

SBA recognizes that changes in industry structure and Federal marketplace over time have rendered existing size standards for some industries no longer supportable by current data. Accordingly, SBA has begun a comprehensive review of its size standards to determine whether existing size standards have supportable bases relative to the current data and, where necessary, to make revisions to existing size standards. Rather than review all size standards at one time, SBA has taken a more manageable approach to reviewing a group of related industries within an NAICS Sector. SBA expects to complete its review of all NAICS Sectors in two years.

As part of its ongoing effort to review all small business size standards, SBA evaluated every industry in NAICS Sector 72, Accommodation and Food Services, to determine whether the existing size standards should be retained or revised, and published a proposed rule for public comment in the October 21, 2009 issue of the **Federal Register** (74 FR 53913) to increase the size standards for five industries in that Sector. The proposed rule was one of a series of proposals that will examine industries grouped by an NAICS Sector. SBA also published concurrently in the same October 21, 2009 issue of the **Federal Register** proposed rules to increase small business size standards for 47 industries in NAICS Sector 44–45, Retail Trade (74 FR 53924) and for 18 industries in NAICS Sector 81, Other Services (74 FR 53941). Similarly, SBA is publishing final rules on NAICS Sector 44–45 and NAICS Sector 81 elsewhere in this issue of the **Federal Register**.

In addition, SBA established its “Size Standards Methodology” for reviewing

small business size standards and modifying them, where necessary. SBA published in the October 21, 2009 issue of the **Federal Register** (74 FR 53940) a notice of its availability, for public comments, on its Web site at <http://www.sba.gov/contractingopportunities/officials/size/index.html>. In addition, SBA has placed a copy of its “Size Standards Methodology” in the electronic docket of the proposed rule and is available there as well.

In evaluating an industry’s size standard, SBA examines the industry’s characteristics (such as average firm size, startup costs, industry competition and distribution of firms by size), Federal government contracting trends, impact on SBA financial assistance programs, and dominance in field of operations. SBA analyzed the characteristics of each industry in NAICS Sector 72 mostly using a special tabulation obtained from the U. S. Bureau of the Census from its 2002 Economic Census (the latest available). SBA also evaluated Federal contracting trends using the data from the Federal Procurement Data System—Next Generation (FPDS—NG) for fiscal years 2006–2008.

To evaluate the impact of changes to size standards on its loan programs, SBA analyzed internal data on its guaranteed loan programs for fiscal years 2006–2008.

SBA’s “Size Standards Methodology” provides a detailed description of analyses of various industry and program factors and data sources and derivation of size standards using the results. In the proposed rule itself, SBA detailed how it applied its “Size Standards Methodology” to review, and to modify where necessary, the existing standards for the Sector and Industries under analysis.

SBA sought comments from the public on a number of issues about its “Size Standards Methodology,” such as whether there are alternative methodologies that SBA should consider; whether there are alternative or additional factors or data sources that SBA should evaluate; whether SBA’s approach to establishing small business size standards makes sense in the current economic environment; whether SBA’s definitions of anchor size standards are appropriate in the current economy; whether there are gaps in SBA’s methodology because of the lack of comprehensive data; and whether there are other facts or issues that SBA should consider in its methodology.

SBA did not receive any comments on “Size Standards Methodology.” SBA continues to welcome comments from interested parties.

In the proposed rule, based on its analyses of current industry and other relevant data, SBA proposed to increase five of the 15 size standards in NAICS Sector 72. SBA’s analyses supported retaining the existing size standards for three industries. As noted in the proposed rule, SBA’s analyses would support reducing size standards for the seven of the remaining industries in the Sector. However, as the proposed rule pointed out, SBA believes that lowering size standards and thereby reducing the number of firms eligible to participate in Federal small business assistance programs would run counter to what the Agency is doing to help small businesses. Therefore, SBA proposed to retain the existing size standards for those seven industries.

### Summary of Comments

The proposed rule sought comments from the public on SBA’s proposal to increase size standards for five Industries in NAICS Sector 72. SBA received six comments; four strongly supported the proposed increases in size standards and two did not. The four supporting comments stated that the proposed increases will help more small hotels participate in Federal procurement opportunities reserved for small businesses. It will also help the Federal government meet its hotel and conference accommodation needs. The commenters stated that there are too few conference hotels under the current size standards with little competition for federal business.

Another commenter suggested that there should be only one maximum revenue based and one maximum employee based size standard, regardless of NAICS industry. While this would simplify size standards even more than what SBA had proposed, the Small Business Act states that “the [SBA] Administrator shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries and consider other factors deemed to be relevant by the Administrator.” (15 U.S.C. 632(a)(3)) The relevant data show significant differences among industries within each NAICS Sector, including Sector 72, and SBA believes that varying the size standard by industry not only complies with the Act, but it also serves the best interests of small businesses in that Sector. Therefore, SBA does not presently plan to reduce the number of receipts based size standard levels below eight.

Another commenter stated that an increase from \$7 million to \$30 million was “too drastic,” but provided no

specifics to support this opinion. SBA agrees that such an increase might appear so, but based on its analysis of the industries in Sector 72, fully explained in the proposed rule (*q.v.*), SBA believes that the increases are appropriate.

SBA did not receive any comments on whether it should lower size standards for the seven industries in NAICS Sector 72 for which SBA's analyses supported

reducing the existing size standards. SBA also did not receive any comments on three industries for which SBA's analyses supported retaining the existing size standards. Therefore, SBA is retaining the existing size standards for 10 of the 15 Industries in NAICS Sector 72.

All comments to the proposed rule are available for public review at <http://www.regulations.gov>.

**Conclusion**

Based on its analyses of relevant industry and program data and public comments it received on the proposed rule, SBA has decided to increase five small business size standards in NAICS Sector 72, as shown in the following table.

SUMMARY OF REVISED SMALL BUSINESS SIZE STANDARDS FOR NAICS SECTOR 72

NAICS	Current size standard (\$ million)	Revised size standard (\$ million)
721110—Hotels (except Casino Hotels) & Motels .....	\$7.0	\$30.0
721120—Casino Hotels .....	7.0	30.0
722211—Limited Service Restaurants .....	7.0	10.0
722212—Cafeterias .....	7.0	25.5
722310—Food Service Contractors .....	20.5	35.5

**Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C., Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612) Executive Order 12866**

The Office of Management and Budget (OMB) has determined that this rule is a “significant” regulatory action for purposes of Executive Order 12866. Accordingly, the next section contains SBA's Regulatory Impact Analysis. This is not a major rule, however, under the Congressional Review Act, 5 U.S.C. 800.

**Regulatory Impact Analysis**

*1. Is there a need for the regulatory action?*

SBA believes that adjustments to certain size standards in Sector 72, Accommodation and Food Services, are needed to better reflect the economic characteristics of small businesses in those industries. SBA provides aid and assistance to small businesses through a variety of financial, procurement, business development and advocacy programs. To assist effectively the intended beneficiaries of these programs, SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to SBA's Administrator the responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences. The supplementary information section of this rule explains SBA's methodology for analyzing a size standard for a particular industry.

*2. What are the potential benefits and costs of this regulatory action?*

The most significant benefit to businesses obtaining small business status as a result of this rule is eligibility for Federal small business assistance programs, including SBA's financial assistance programs, economic injury disaster loans, and Federal procurement preference programs for small businesses. Federal procurement regulations provide opportunities for small businesses under SBA's business development programs, such as 8(a), Small Disadvantaged Businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZone), women owned small businesses and service disabled veteran owned small businesses (SDVOSB). Other Federal agencies also may use SBA size standards for a variety of regulatory and program purposes. Through the assistance of these programs, small businesses become more knowledgeable, stable and competitive businesses. In five industries under Sector 72 for which SBA had proposed to increase size standards, about 2,050 additional firms are estimated to obtain small business status and become eligible for these programs.

In the seven industries for which SBA's analyses indicated a lower size standard as appropriate, there are about 450 firms that might have lost their small business status, had SBA proposed lowering them. That number is less than 0.6 percent of the total number of firms in those industries defined as small under the current standards. Thus, the net impact for the Sector as whole is about 2,050

additional firms gaining and none losing small business status under this rule. This will increase the small business share of total industry receipts for the Sector from about 46 percent under the current size standards to nearly 50 percent under the revised standards.

The benefits of increasing certain size standards to a more appropriate level would accrue to three groups: (1) Businesses that benefit by gaining small business status from the higher size standard that also use small business assistance programs; (2) growing small businesses that may exceed the current size standards in the near future and that will retain their small business status from the higher size standards; and (3) Federal agencies that award contracts under procurement programs that require small business status.

Nearly 90 percent of Federal contracting dollars spent in Sector 72 during fiscal years 2006–2008 was accounted for by two of five industries for which size standards have been increased in this rule. SBA estimates that additional firms gaining small business status in those two industries under the new size standards could potentially obtain Federal contracts totaling up to \$75 million per year under the small business set-aside program, the 8(a), HUBZone, and SDVOSB Programs, or unrestricted procurements. This represents about 5.5 percent of the \$1.13 billion in average Federal contract dollars awarded in the Accommodation and Food Services Sector during fiscal years 2006–2008. The added competition for many of these procurements will also likely result in a lower price to the Government for procurements reserved

for small businesses, but SBA is not able to quantify this benefit.

Under SBA's 7(a) Guaranteed Loan Program and 504 Certified Development Company (CDC) Program, SBA estimates only a few additional loans totaling \$1 million to \$2 million in Federal loan guarantees could be made to these newly defined small businesses. Because of the size of the loan guarantees, however, most loans are made to small businesses well below the size standard. Moreover, under the Recovery Act, effective February 17, 2009, SBA temporarily raised guarantees on its SBA's 7(a) loan program and also temporarily eliminated fees for borrowers on SBA 7(a) loans and for both borrowers and lenders on 504 CDC loans, through calendar year 2009, or until the funds are exhausted. The fee elimination is retroactive to February 17, 2009, the day the Recovery Act was signed. In addition, since SBA has applied its CDC alternative size standard to its 7(a) Business Loan Program, more capital is available to small businesses. Thus, increasing the size standards will likely result in an increase in guaranteed loans to businesses in these industries, but it would be impractical to try to estimate the extent of their number and the total amount loaned.

The newly defined small businesses will also benefit from SBA's Economic Injury Disaster Loan (EIDL) Program. Since this program is contingent on the occurrence and severity disasters, no meaningful estimate of benefits can be projected for future disasters.

To the extent that 2,050 additional firms could become active in Federal procurement programs, this may entail some additional administrative costs to the Federal Government associated with additional bidders for Federal small business procurement opportunities, additional firms seeking SBA guaranteed lending programs, additional firms eligible for enrollment in the Central Contractor Registration's Dynamic Small Business Search database and additional firms seeking certification as 8(a) or HUBZone firms or qualifying for SDB status. Among businesses in this group seeking SBA assistance, there could be some additional costs associated with compliance and verification of small business status and protests of small business status. These additional costs are likely to be minimal because mechanisms are already in place to handle these additional administrative requirements.

The costs to the Federal Government may be higher on some Federal contracts. With a greater number of

businesses defined as small, Federal agencies may choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to set-aside contracting is likely to result in competition among fewer bidders. In addition, higher costs may result from additional full and open contracts awarded to HUBZone and SDB businesses because of price evaluation preferences. The additional costs associated with fewer bidders, however, are likely to be minor since, as a matter of law, procurements may be set aside for small businesses or reserved for the 8(a), SDB or HUBZone Programs only if awards are expected to be made at fair and reasonable prices.

The increased size standards may have distributional effects among large and small businesses. Although the actual outcome of the gains and losses among small and large businesses cannot be estimated with certainty, several likely impacts can be identified. There will likely be a transfer of some Federal contracts to small businesses from large businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal contracts for small businesses. Also, some Federal contracts may be awarded to HUBZone or SDB concerns instead of large businesses since those two categories of small businesses may be eligible for an evaluation adjustment for contracts competed on a full and open basis. Similarly, currently defined small businesses may obtain fewer Federal contracts due to the increased competition from more businesses defined as small. This transfer may be offset by a greater number of Federal procurements set aside for all small businesses. The number of newly defined and expanding small businesses that are willing and able to sell to the Federal Government will limit the potential transfer of contracts away from large and currently defined small businesses. The potential distributional impacts of these transfers may not be estimated with any degree of precision because the data on the size of business receiving a Federal contract are limited to identifying small or other than small businesses, without regard to the exact size of the business.

The revisions to the existing size standards for Accommodation and Food Services industries is consistent with SBA's statutory mandate to assist small business. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small

businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them.

#### **Executive Order 12988**

For purposes of Executive Order 12988, SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that Order.

#### **Executive Order 13132**

For purposes of Executive Order 13132, SBA has determined that this rule does not have any Federalism implications warranting the preparation of a federalism assessment.

#### **Paperwork Reduction Act**

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule would not impose new reporting or recordkeeping requirements, other than those required of SBA.

#### **Final Regulatory Flexibility Analysis**

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small entities in Sector 72, Accommodation and Food Services. As described above, this rule may affect small entities seeking Federal contracts, SBA 7(a) and 504 Guaranteed Loan Programs, SBA Economic Injury Disaster Loans, and other Federal small business programs.

Immediately below, SBA sets forth a final regulatory flexibility analysis of this proposed rule addressing the following questions: (1) What is the need for and objective of the rule? (2) what is SBA's description and estimate of the number of small entities to which the rule will apply? (3) what are the projected reporting, record keeping, and other compliance requirements of the rule? (4) what are the relevant Federal rules which may duplicate, overlap or conflict with the rule? and (5) what alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

*(1) What is the need for and objective of the rule?*

Most of SBA's size standards for Accommodation and Food Services industries have not been reviewed since the early 1980s. Technology, productivity growth, international competition, mergers and acquisitions,

and updated industry definitions may have changed the structure of many industries. Such changes can be sufficient to support a revision to size standards for some industries. Based on an analysis of the latest data available to the Agency, SBA believes that the revised standards in this proposed rule more appropriately reflect the size of businesses in those industries that need Federal assistance.

*(2) What is SBA's description and estimate of the number of small entities to which the rule will apply?*

SBA estimates that approximately 2,050 additional firms will become small because of increases in size standard in five industries. That represents 1.1 percent of total firms in those industries. This will result in an increase in the small business share of total industry receipts for this Sector from about 46 percent under the current size standard to nearly 50 percent under the revised standards.

*(3) What are the projected reporting, recordkeeping, and other compliance requirements of the rule and an estimate of the classes of small entities which will be subject to the requirements?*

A new size standard does not impose any additional reporting or recordkeeping requirements on small entities. However, qualifying for Federal procurement and a number of other programs requires that entities register in the Central Contractor Registration (CCR) database and certify at least annually that they are small in the Online Representations and Certifications Application (ORCA). Therefore, businesses opting to participate in those programs must

comply with CCR and ORCA requirements. There are no costs associated with either CCR registration or ORCA certification. Revising size standards alters the access to SBA programs that assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior.

*(4) What are the relevant Federal rules which may duplicate, overlap or conflict with the rule?*

This rule overlaps with other Federal rules that use SBA's size standards to define a small business. Under § 3(a)(2)(C) of the Small Business Act, 15 USC 632(a)(2)(C), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988, November 24, 1995). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

However, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator (13 CFR 121.903). The Regulatory Flexibility Act authorizes an Agency to establish an alternative small business definition, after consultation with the Office of Advocacy of the U.S. Small Business Administration (5 U.S.C. 601(3)). Thus, there may be instances where this rule conflicts with other rules.

*(5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?*

SBA is required to develop numerical size standards for identifying businesses eligible for Federal small business programs. Other than varying the size standards, no alternative exists to the systems of numerical size standards.

**List of Subjects in 13 CFR Part 121**

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

■ For reasons set forth in the preamble, SBA amends 13 CFR part 121 as follows:

**PART 121—SMALL BUSINESS SIZE REGULATIONS**

■ 1. The authority citation for part 121 continues to read as follows:

**Authority:** 15 U.S.C. 632, 634(b)(6), 636(b), 637(a), 644, 657(a), 657(f), and 662(5); and Pub. L. 105–135, Sec. 401, et seq., 111 Stat. 2592.

**Subpart A—Size Eligibility Provisions and Standards**

■ 2. In § 121.201, in the table, revise the entries for “721110”, “721120”, “722211”, “722212”, and “722310” to read as follows:

**§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?**

\* \* \* \* \*

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
* * * * *			
721110	Hotels (except Casino Hotels) and Motels	\$30.0	
721120	Casino Hotels	30.0	
* * * * *			
722211	Limited-Service Restaurants	10.0	
722212	Cafeterias, Grill Buffets, and Buffets	25.5	
* * * * *			
722310	Food Service Contractors	35.5	
* * * * *			

Dated: September 10, 2010.

**Marie C. Johns,**

*Deputy Administrator.*

[FR Doc. 2010-24857 Filed 10-5-10; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2009-1136; Airspace  
Docket No. 09-ANM-26]

#### Establishment and Modification of Class E Airspace; Deer Park, WA

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

**ACTION:** Final rule.

**SUMMARY:** This action will establish and amend existing Class E airspace at Deer Park, WA, to accommodate aircraft using the existing Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) at Deer Park, WA. This will improve the safety and management of Instrument Flight Rules (IFR) operations at the airport.

**DATES:** Effective date, 0901 UTC, January 13, 2011. 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:** Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203-4537.

#### SUPPLEMENTARY INFORMATION:

##### History

On July 19, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend controlled airspace at Deer Park, WA (75 FR 41774). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6002 and 6005, respectively, of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR Part 71.1. The Class E 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 E surface airspace, and adding additional Class E airspace extending upward from 700 feet above the surface, at Deer Park Airport, to accommodate IFR aircraft executing new RNAV (GPS) SIAPs at the airport. This action is necessary for the safety and management of IFR operations.

The FAA has determined 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 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 discusses 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 amends controlled airspace at Deer Park Airport, Deer Park, WA.

#### 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 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

*Paragraph 6002 Class E airspace designated as surface areas.*

\* \* \* \* \*

#### **ANM WA E2 Deer Park, WA [New]**

Deer Park Airport, WA  
(Lat. 47°58'01" N., long. 117°25'43" W.)

Within a 4.1-mile radius of Deer Park 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.

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

\* \* \* \* \*

#### **ANM WA, E5 Deer Park, WA [Modified]**

Deer Park Airport, WA  
(Lat. 47°58'01" N., long. 117°25'43" W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Deer Park Airport, excluding the Spokane, WA, Class E airspace area.

Issued in Seattle, Washington, on  
*September 23, 2010.*

**Lori Andriessen,**

*Acting Manager, Operations Support Group,  
Western Service Center.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2010-0616; Airspace  
Docket No. 10-ANM-6]

#### Modification of Class E Airspace; Pendleton, OR

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

**ACTION:** Final rule.

**SUMMARY:** This action will amend Class E airspace at Pendleton, OR. Decommissioning of the Foris Non-Directional Radio Beacon (NDB) at Eastern Oregon Regional Airport at Pendleton has made this necessary for the safety and management of Instrument Flight Rules (IFR) operations