

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

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AEA NY E5, Rome NY [NEW]

Griffis Airpark, Rome, NY (431401.68N/0752425.30W)

That airspace extending upward from 700 feet above the surface within a 6 mile radius of Griffis Airpark, Rome, NY

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Issued in Jamaica, New York on January 5, 2001.

F.D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00-AEA-13]

Establishment of Class E Airspace; Harrisonburg, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Harrisonburg, VA. A helicopter Point in Space approach, has been developed for Rockingham Memorial Hospital, Harrisonburg, VA. Controlled airspace extending upward from 700 feet to 1200 feet Above Ground Level (AGL) is needed to contain aircraft executing the approach. This action proposes to establish Class E airspace to include the Point in Space approach to Rockingham Memorial Hospital Heliport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before March 5, 2001.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA-520, Docket No. 00-AEA-13, F.A.A. Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434-4809.

The official docket may be examined in the Office of the Regional Counsel, AEA-7, F.A.A. Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434-4809. An informal docket may also be examined during normal business hours in the Airspace Branch, AEA-520, F.A.A. Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434-4809.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace

Specialist, Airspace Branch, AEA-520, F.A.A. Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434-4809; telephone: (718) 553-4521.

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, 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. 00-AEA-13". The postcard will be date/time stamped and returned to the commenter. All communications received on or before the 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 comments received. All comments submitted will be available for examination in the rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the 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 Office of the Regional Counsel, AEA-7, F.A.A. Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434-4809. Communications must identify the docket number of this NPRM. Persons interested in being placed on 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 E airspace area at Harrisonburg, A RNAV Point in Space Approach has been developed for Rockingham Memorial Hospital

Heliport, Harrisonburg, VA. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the approach. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9H, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed 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 would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 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 order 7400.9H dated September 1, 2000, and effective September 16, 2000, is proposed to be amended as follows:

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

AEA VA E5 Harrisonburg, VA [NEW]

Rockingham Memorial Hospital Heliport (Lat. 3826.898N-long 07852.683W)

That airspace extending upward from 700 feet above the surface within a 6 mile radius of Rockingham Memorial Hospital Heliport.

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Issued in Jamaica, New York on January 5, 2001.

F.D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 100

[IB Docket 98-21; FCC 00-426]

Non-Conforming Use of Direct Broadcast Satellite Service Spectrum

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Communications Commission is evaluating the rules and regulations governing the Direct Broadcast Satellite service. Since the *Notice of Proposed Rulemaking* was adopted in 1998, new issues have arisen concerning non-conforming use of the spectrum allocated to the Direct Broadcast Satellite service. This *Public Notice* seeks comment on this additional issue.

DATES: Comments may be filed on or before March 5, 2001; Reply Comments may be filed on or before March 14, 2001.

ADDRESSES: Electronic comments may be filed using the Commission's Electronic Comment Filing System (ECFS). Comments filed through the ECFS can be sent as an electronic file via Internet to <http://www.fcc.gov/e-file/ecfs.html>. All other filings must be sent to Office of the Secretary, Federal Communications Commission, 445 12th St., SW., rm. TW-A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Selina Khan of the International Bureau at 202-418-7282.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Public Notice* in IB Docket No. 98-21, FCC 00-426 (released December 8, 2000).

On February 26, 1998, the Commission released a Notice of Proposed Rulemaking¹ (*Part 100 Notice*) seeking comment on its

proposal to integrate the direct broadcast satellite ("DBS") service rules incorporated in part 100 of the Commission's rules into part 25 (Satellite Communications) and to streamline and eliminate any unnecessary DBS rules. In addition, the Commission sought comment on its proposal to apply the revised part 1 general auction rules to DBS and eliminate separate DBS auction rules. By applying the parts 1 and 25 application processing and licensing procedures to the DBS service, the Commission seeks to simplify procedures applicable to DBS, eliminate unnecessary paperwork, and harmonize the DBS licensing process with the licensing processes for other satellite services.

The Commission received significant comment on the issues raised in this proceeding. Since that time, however, another issue has arisen as a result of the continuing evolution of the DBS industry. In particular, the public has made inquiries about other potential uses of DBS spectrum. Accordingly, by this Public Notice, the Commission seeks to augment the record in the *Part 100 Notice* on this issue. Specifically, we seek additional comment on the issue of non-conforming uses of DBS spectrum. Under the current policy, a DBS operator must begin DBS operations within five years of receipt of its license, but may otherwise make unrestricted use of the spectrum prior to expiration of the five-year period. After this initial five-year period, a DBS licensee "may continue providing non-DBS service during the remainder of the life of its first satellites (presuming its license is renewed) only on those transponders on which [it] continues to provide DBS service, and that non-DBS use cannot exceed fifty percent of each 24-hour day on any such transponder."² In accordance with this policy, the Commission has stated that it would consider continuing "to permit some degree of non-conforming use of DBS satellites during future generations given the circumstances prevailing at that time."³

The Commission established its "non-conforming use" policy in a series of three decisions: (1) *1986 USSB Declaratory Ruling*;⁴ (2) *1991 Potential*

Uses of DBS Order;⁵ and (3) *1995 DBS Auction Order*.⁶ This policy, which was adopted when DBS was still in its infancy, was intended to provide DBS operators with a source of early revenues that could, in turn, help operators meet the very high up-front costs of launching a DBS system and reduce the risk of monetary loss if the DBS service proved unsuccessful. The Commission has since recognized that DBS is no longer in its early stages.⁷ Rather, it is an established competitor to cable. Consequently, we question whether the original justification for the non-conforming use policy continues to be valid. In addition, we ask for comment on whether there are now other reasons to continue and perhaps even expand the non-conforming use policy. For example, advances in technology, ability to compete with cable services, and new service offerings, may warrant revisiting this policy.

By this *Public Notice*, we request comment on non-DBS services. Specifically, we seek comment on whether we should eliminate, relax, or maintain time or other restrictions on satellite uses of DBS spectrum. We seek comment on the appropriateness of such restrictions before and after the initial five years of the license term, particularly at those orbital locations in the western arc that are currently under-utilized. Commenters should address whether permitting flexible use of DBS spectrum will enhance or impede competition in the multi-channel video programming distribution (MVPD) market. Commenters should address the types of non-DBS services likely to be provided, and whether these services could result in corresponding benefits to MVPD or other competition. We also request comment on whether we should limit other uses to the fixed-satellite service (FSS), as permitted by the U.S. Table of Frequency Allocations.⁸ Moreover, if we allow non-conforming uses of DBS spectrum, should we require those services to conform to the interference criteria associated with DBS, the primary service. We note that two DBS licensees are providing full and robust DBS from locations capable of serving the contiguous United States

¹ See In re Policies and Rules for the Direct Broadcast Satellite Service, Notice of Proposed Rulemaking, IB Docket No. 98-21, 63 FR 11202 (March 6, 1998), 13 FCC Rcd. 6907 (1998) (*Part 100 Notice*).

² Petition of United States Satellite Broadcasting Company, Inc. for Declaratory Ruling Regarding Permissible Uses of the Direct Broadcast Satellite Service, 1 FCC Rcd 977 (1996 *USSB Declaratory Ruling*) at ¶ 13. See also In the Matter of Rules and Policies for the Direct Broadcast Satellite Service, 60 FR 65587 (December 20, 1995), 11 FCC Rcd 9712 (1995) (*DBS Auction Order*) at ¶ 17.

³ *USSB Declaratory Ruling*, supra n. 2, at ¶ 13.
⁴ See generally *USSB Declaratory Ruling*, supra n. 2.

⁵ In the Matter of Potential Uses of Certain Orbital Allocations by Operators in the Direct Broadcast Satellite Service, 6 FCC Rcd 2581 (1991) (1991 *Potential Uses of DBS Order*).

⁶ See *DBS Auction Order*, supra n. 2 at ¶ 17; See also In the Matter of Revision of Rules and Policies for the Direct Broadcast Satellite Service, Notice of Proposed Rulemaking, 60 FR 55822 (November 3, 1995), 11 FCC Rcd 1297 (1995).

⁷ See, e.g. *Part 100 Notice*.

⁸ 47 CFR 2.106.