

Proposed Rules

Federal Register

Vol. 67, No. 230

Friday, November 29, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Reopening of comment period.

SUMMARY: On September 25, 2002, NCUA published for public comment a proposed rule amending § 701.19. 67 FR 60184 (September 25, 2002). The revisions to § 701.19 clarify the scope of the rule and the investments FCUs may use to fund employee benefits. The comment period for this proposed rule was due to have expired on November 25, 2002. Two interested parties have requested an extension of the comment period to respond. In view of this request and NCUA's desire to foster public participation in the rulemaking process, the NCUA Board is reopening the comment period to December 26, 2002.

DATES: Comments must be received on or before December 26, 2002.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428. You are encouraged to fax comments to (703) 518-6319 or email comments to regcomments@ncua.gov instead of mailing or hand-delivering them. Whatever method you choose, *please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518-6540.

By the National Credit Union Administration Board on November 21, 2002.

Becky Baker,
Secretary of the Board.

[FR Doc. 02-30162 Filed 11-27-02; 8:45 am]

BILLING CODE 7535-01-P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 702

Prompt Corrective Action; Net Worth Restoration Plans

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: Pursuant to Congressional mandate, the National Credit Union Administration (NCUA) established a system of prompt corrective action consisting of statutory minimum capital standards for federally-insured credit unions and corresponding remedies to restore net worth. Among the remedies mandated by statute is the requirement to submit a net worth restoration plan for approval by NCUA. NCUA requests public comment on a proposal to allow approval of an abbreviated net worth restoration plan for qualifying credit unions whose net worth ratio has declined marginally below 6 percent because growth in assets outpaces growth in net worth.

DATES: Comments must be received on or before January 28, 2003.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428. *You are encouraged to fax comments to (703) 518-6319 or e-mail comments to regcomments@ncua.gov instead of hand-delivering them. Whichever method you choose, please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: *Legal:* Steven W. Wideman, Trial Attorney, Office of General Counsel, at the above address or by telephone: 703/518-6557. *Technical:* Jon Flagg, Loss/Risk Analysis Officer, Office of Examination and Insurance, at the above address or by telephone: 703/518-6378.

SUPPLEMENTARY INFORMATION: Except where noted, citations to part 702 in this rule refer to 12 CFR 702 *et seq.*, as amended by the NCUA Board in a final rule found elsewhere in this volume of the **Federal Register**. Citations to part 702 are abbreviated to the section number only.

A. Background

1. Development of Part 702

In 1998, the Credit Union Membership Access Act ("CUMAA"), Pub. L. No. 105-219, 112 Stat. 913 (1998), amended the Federal Credit Union Act to require NCUA to adopt by regulation a system of "prompt corrective action" ("PCA") consisting of minimum capital standards and corresponding remedies to improve the net worth of federally-insured "natural person" credit unions. 12 U.S.C. 1790d *et seq.*

In 2000, the NCUA Board adopted part 702 and subpart L of part 747, establishing a comprehensive system of PCA. 12 CFR 702 *et seq.* Part 702 combines mandatory supervisory actions prescribed by statute with discretionary supervisory actions developed by NCUA, all indexed to five statutory net worth categories. 65 FR 8560 (Feb. 18, 2000). A risk-based net worth ("RBNW") component was subsequently integrated into part 702. 65 FR 44950 (July 20, 2000). Subpart L of part 747 established an independent review process allowing affected credit unions and officials to challenge PCA decisions. 12 CFR 747.2001 *et seq.* (2000). Part 702 and subpart L of part 747 took effect August 7, 2000, and first applied to activity in the fourth quarter of 2000. The RBNW component took effect January 1, 2001, and first applied (for quarterly Call Report filers) to activity in the first quarter of 2001.

Since it was first adopted, part 702 has been amended three times. First, to incorporate limited technical corrections. 65 FR 55439 (Sept. 14, 2000). Second, to delete sections made obsolete by adoption of a uniform quarterly schedule for filing Call Reports. 67 FR 12459 (March 19, 2002). And finally, in a final rule adopted today, to incorporate a series of revisions and adjustments designed to improve and simplify the implementation of PCA. That final rule appears elsewhere in this volume of the **Federal Register** and is effective January 1, 2003.

2. Request for Comments

The concept of an abbreviated net worth restoration plan ("NWRP") was first raised in the proposed rule that preceded the final rule that the NCUA Board has adopted today. 67 FR 38431 (June 4, 2002). While no specific

proposal was introduced, the NCUA Board invited public comment on the concept of what was then referred to as “safe harbor” approval of an NWRP to benefit credit unions that fall marginally short of “adequately capitalized” primarily because asset growth outstrips income growth. *Id.* at 38437. The proposed rule described the concept in broad terms as “notice of certain criteria established by regulation that, when met, will assure approval.”

NCUA received sixteen public comments on the “safe harbor” concept. Fourteen commenters generally supported the concept, suggesting various criteria for eligibility and for plan contents. Regarding eligibility, six commenters suggested a minimum net worth ratio for a “safe harbor” NWRP: one suggested “just under” 6 percent; two suggested 5.5 percent; two suggested 5 percent; one suggested 3 percent. In contrast, one commenter insisted there should be no minimum net worth ratio required for eligibility. Two commenters urged that a credit union should be eligible only if asset growth was not induced by above market rates on shares and deposits, or only in extraordinary circumstances. A banking industry trade association believed the concept was at odds with CUMAA. Finally, two commenters suggested that a “safe harbor” NWRP should not be subject to automatic revocation if its goals are not met.

Regarding the contents of a “safe harbor” NWRP, a commenter suggested requiring net worth to improve within two quarters. Another suggested setting a required return on average assets that would restore net worth within 3 years. One commenter advocated an earnings retention requirement of 80 to 180 basis points per year, depending on how far below six percent the credit union’s net worth ratio had fallen.

Another urged that a plan should be accepted if a credit union’s earnings are positive, but its net worth ratio remained flat in some quarters due to continued asset growth not induced by above market rates.

Some commenters seemed to equate the concept of “safe harbor” approval with the notion of automatic approval of any form of NWRP that the NCUA Board might adopt as an alternative to the standard NWRP that part 702 now requires. However, as the prior proposed rule confirmed, *id.* at 38437, CUMAA requires NCUA to ensure, as a prerequisite for approval, that an NWRP of any kind “is based on realistic assumptions and is likely to succeed in restoring * * * net worth.” 12 U.S.C. 1790d(f)(5). “Safe harbor” approval was a misnomer to the extent that it implied,

incorrectly, that NCUA would abdicate this statutory responsibility. Through this notice, the NCUA Board invites public comment on a specific proposal—styled a “1st tier net worth restoration plan”—to permit qualifying “undercapitalized” credit unions to submit for approval an abbreviated NWRP.

To facilitate consideration of the public’s views, we ask commenters to address only the proposal for a “1st tier net worth restoration plan.” Also, we urge commenters to recognize that, while given substantial discretion in certain areas of PCA, NCUA lacks the authority to override or expand by regulation the requirements, limitations and definitions that CUMAA expressly prescribed. *See* 12 U.S.C. 1790d(n). For example, NCUA lacks the discretion to abandon the statutory “realistic assumptions” criterion for approving an NWRP. 12 U.S.C. 1790d(f)(5). This rulemaking will not address proposals that would require NCUA to exceed the scope of its statutory authority.

B. Proposal for “1st Tier Net Worth Restoration Plan”

The proposed rule permits an “eligible” federally-insured credit union to submit for NCUA approval a “1st tier net worth restoration plan” (“1st tier NWRP”) if the credit union falls marginally below “adequately capitalized” because asset growth, driven primarily by share and deposit growth, outpaces growth in net worth.¹

1. Eligible Credit Unions

To be eligible to file a 1st tier NWRP, the proposed rule establishes historical net worth, performance, and growth criteria. The three eligibility criteria are designed to qualify only those credit unions that historically are profitable and have become marginally “undercapitalized” primarily because of undiluted share growth.

To be eligible, a credit union must meet two net worth criteria. First, a credit union must have a minimum net worth ratio of 5.50% as measured using the quarter-end balance of total assets per § 702.2(k)(1)(iv). New § 702.206(c)(1)(A)(i).² As in the case of

an RBNW requirement, § 702.2(k)(2), when measuring current quarter net worth for eligibility purposes, there is no choice among the four methods otherwise available to calculate the total assets denominator of the net worth ratio. 702.2(k)(1). If there is an applicable RBNW requirement, the credit union’s net worth ratio may not be more than 50 basis points (0.50 percent) below the RBNW requirement. New § 702.206(c)(1)(A)(ii).

Second, for each of the three prior quarters, a credit union must have achieved a net worth ratio of at least 6 percent. New § 702.206(c)(1)(B)(i). In contrast to measuring current quarter net worth by quarter-end total assets, for each of the three prior quarters a credit union may elect among any of the four methods of calculating the total assets denominator of the net worth ratio. If that credit union is subject to a RBNW requirement, it also must have met that requirement in each of the three prior quarters. New § 702.206(c)(1)(B)(ii).

A credit union also must meet a performance criterion: for the current and each of the three preceding quarters, a credit union must have increased the dollar amount of its net worth by 60 basis points (0.60 percent) annual return on average assets (“ROAA”). New § 702.206(c)(1)(C)(i). The ROAA is derived from a credit union’s ROAA “key ratio” in its most recent Financial Performance Report, unless a more recently filed Call Report corrects earlier data. *See* NCUA, *User’s Guide for NCUA’s Financial Performance Report* at 3, 8 (form 8008, 2002 ed.). The 60 basis point ROAA reflects the approximate mean of individual credit unions’ ROAA as of June 2002.

Finally, a credit union must meet a growth criterion: for the period combining the current and three preceding quarters, ending total asset growth may not exceed 110% of the growth in net worth plus shares and deposits.³ New § 702.206(c)(1)(C)(ii). The 110% ceiling is based on growth in net worth, shares and deposits—and excludes growth in borrowings—to narrowly restrict the amount of growth supported by borrowings of a credit union with a net worth ratio below 6 percent. A credit union that grows

least temporarily—and thus will not be required to file any NWRP.

³ For example, assume the four quarters in question cover the calendar year 2002. Compare the difference between 12/31/01 and 12/31/02 quarter-end total assets with the difference between 12/31/01 and 12/31/02 quarter-end net worth plus shares and deposits. To be eligible, the difference in total assets cannot exceed the difference in net worth plus shares and deposits by more than 10 percent.

¹ Citations to proposed new subsection (c) of § 702.206 are preceded by the word “New” and refer to the rule text below. If proposed subsection (c) is adopted, the final rule will redesignate current subsections (c) through (i) as new subsections (d) through (j), respectively.

² A credit union whose net worth ratio is between 5.50 and 5.99% based on the quarter-end balance of total assets may find that calculating its net worth ratio using a daily, monthly or quarterly average of total assets, § 702.2(k)(1)(i)–(iii), will yield a net worth ratio of 6 percent or better. In that event, the credit union will not be “undercapitalized”—at

through substantial borrowings will be required to file a standard NWRP.

Together, these eligibility criteria would allow 57.25% annualized asset growth for one quarter, causing a credit union's net worth ratio to fall from 6 percent to 5.50 percent, provided that its ROAA is 60 basis points.⁴ An annual rate of asset growth greater than 57.25% would reduce a credit union's net worth ratio from 6 percent to below 5.50 percent, necessitating the further supervisory oversight that a longer term, standard NWRP provides.

A credit union that meets the three eligibility criteria must file its 1st tier

NWRP within the same 45-day period that § 702.206(a) prescribes for filing a standard NWRP. New § 702.206(c). And as explained below, an eligible credit union receives a single opportunity to seek NCUA approval of a 1st tier NWRP. New § 702.206(c)(4)(A).

2. Contents of 1st Tier NWRP

The proposed rule has two content requirements for a 1st tier NWRP. First, a plan must include a realistic pro forma projection of growth in total assets, shares, ROAA and net worth ratio over the next four quarters, that will result in a net worth ratio of at least 6 percent

and meet any applicable RBNW requirement. New § 702.206(c)(2)(A). The duration of a 1st tier NWRP is four quarters. Second, a plan must include a statement describing how the credit union will control exposure to market and institution risks arising from any new activities that it plans to undertake over the next four quarters. New § 702.206(c)(2)(B). The following table illustrates the ROAA a credit union would need to achieve to restore net worth from 5.50 to 6 percent over four quarters while offsetting given annual growth rates:

TABLE A.—ROAA REQUIRED TO RESTORE NET WORTH TO 6% WHILE OFFSETTING ANNUALIZED ASSET GROWTH

Return on average assets (in basis points)	60	70	80	90	100
Annual rate of asset growth	1.72%	3.45%	5.21%	7.35%	8.78%

As suggested above, a more detailed standard NWRP typically would be appropriate when the annual rate of asset growth is projected to exceed the capacity of the offsetting ROAA to restore net worth to 6 percent and to meet an applicable RBNW requirement over four quarters.

There are three principal differences between the content requirements of a standard NWRP and those of a 1st tier NWRP. First, a standard plan must include complete pro forma financial statements covering a minimum of two years, whereas a 1st tier plan requires four quarters of pro forma projections of total assets, shares and deposits, return on average assets and net worth. Second, a standard plan requires the credit union to specify what steps it will take to meet its schedule of quarterly net worth targets. In contrast, a 1st tier NWRP does not address what steps the credit union will take to become "adequately capitalized" at the end of the term of the plan. Finally, a standard NWRP requires those steps to extend beyond the term of the plan to ensure that the credit union remains at least "adequately capitalized" thereafter for four consecutive calendar quarters. *Id.* In contrast, a 1st tier plan does not address the credit union's net worth after the end of the term of the plan.

3. Criteria for Approval

For an NWRP to be approved, CUMAA requires NCUA to determine that it "is based on realistic assumptions and is likely to succeed in restoring the net worth of the credit union." 12 U.S.C.

1790d(f)(5). To avoid any suggestion that a 1st tier NWRP will be exempt from this statutory mandate, the proposed rule clarifies that approval is subject to NCUA's case-by-case determination that the growth rate and ROAA projected for the credit union rest on realistic assumptions that are likely to succeed in restoring its net worth ratio to 6 percent and satisfying any applicable RBNW requirement at the end of the term of the plan. New §§ 702.206(c)(3), 702.206(c)(2)(A).

Under the proposed rule, a 1st tier NWRP would be evaluated under the existing approval criteria that apply to a standard NWRP. § 702.206(d). First, NCUA would determine whether an NWRP satisfied the content requirements of the proposed rule. Second, NCUA would review the plan's growth and ROAA projections to ensure that they are supported by "realistic assumptions." To that end, the projections will be compared to historical growth and performance measures. Third, absent evidence to the contrary, NCUA would presume that a 1st tier NWRP would not unreasonably increase the credit union's exposure to risk. As part of the three-step evaluation, NCUA may consider the risk presented by any new activities the credit union plans to undertake and by other supervisory information. New § 702.206(c)(2)(B). This would include, for example, information from examination reports or insurance reviews, as well as CAMEL codes (*e.g.*, no composite "4"s or "5"s).

Once the evaluation is completed, NCUA would follow the same schedule for decision and notification that applies to standard NWRPs. § 702.206(f). Absent safety and soundness concerns, a 1st tier NWRP that meets the content requirements discussed above and that is determined by NCUA to be based on "realistic assumptions" should receive prompt approval.⁵

4. Requirement To File Standard NWRP

There are three circumstances in which a credit union that is eligible to file a 1st tier NWRP will be required to file a standard NWRP instead. First, unlike a credit union that files a standard NWRP, the proposed rule gives an eligible credit union a single opportunity to submit a 1st tier NWRP for approval. If that plan is not approved, the credit union will then be required to file a standard NWRP under § 702.206(b), within the time period provided in § 702.206(g). New § 702.206(c)(3)(A).

Second, a continuing decline in net worth ratio while operating under an approved 1st tier NWRP will trigger the requirement to file a standard NWRP. The proposed rule requires a credit union to file a standard NWRP if, during the term of an approved 1st tier NWRP, its net worth ratio declines below 5.5% or declines more than 50 basis points below an applicable RBNW requirement. New § 702.206(c)(4)(B). A more detailed, standard NWRP will enable NCUA to assess the adequacy of a credit union's plans to address the

⁴ A 57.25% annualized rate of growth represents growth of approximately 12%, compounded, per quarter.

⁵ Like a standard NWRP, once a 1st tier NWRP is approved, the credit union will no longer be subject to the statutory restriction on asset growth, 12 U.S.C. 1790d(g)(1)(A), but will still be required to

comply with CUMAA's two other mandatory supervisory actions—the earnings retention requirement, *id.* § 170d(e), and the restriction on MBLs, *id.* § 1790d(g)(2).

causes of a decline in net worth ratio below 5.5%, and to assess more thoroughly the increase in risk to the National Credit Union Share Insurance Fund.

Finally, the proposed rule requires a credit union to file a standard NWRP under § 702.206(b) if, at the end of the term of its 1st tier NWRP (*i.e.*, at the fourth quarter-end), it has failed to restore its net worth ratio to 6 percent and to meet any applicable RBNW requirement. New § 702.206(c)(4)(C). Once that credit union triggers the requirement to file a standard NWRP, it will not be eligible to file another 1st tier NWRP until it is no longer operating under a standard plan.⁶

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis describing any significant economic impact a proposed regulation may have on a substantial number of small credit unions (primarily those under \$1 million in assets). The proposed rule expedites implementation of the existing system of PCA mandated by Congress. 12 U.S.C. 1790d. The NCUA Board has determined and certifies that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions. Thus, a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

NCUA has determined that the proposed rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget. Control number 3133-0161 has been issued for part 702 and will be displayed in the table at 12 CFR part 795.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on State and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily adheres to the fundamental federalism principles addressed by the executive order. This proposed rule

⁶In contrast, a credit union that succeeds in restoring its net worth in the second quarter of a 1st tier NWRP, and that stays "adequately capitalized" for the third and fourth quarters of the plan, will become eligible, in the first quarter after that plan ends, to file another 1st tier NWRP if it declines below "adequately capitalized." By the quarter after the original 1st tier NWRP ends, that credit union will have been "adequately capitalized" in each of the three preceding quarters. New § 702.206(c)(1)(B).

would apply to all federally-insured credit unions, including State-chartered credit unions. Accordingly, it may have a direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This impact is an unavoidable consequence of carrying out the statutory mandate to adopt a system of prompt corrective action to apply to all federally-insured credit unions. NCUA staff has consulted with a committee of representative State regulators regarding the impact of the proposed rule on State-chartered credit unions. Their comments and suggestions are reflected in the proposed rule.

Treasury and General Government Appropriations Act, 1999

NCUA has determined that the proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

NCUA's goal is clear, understandable regulations that impose a minimal regulatory burden. A purpose of the proposed rule is to improve and simplify the existing system of PCA. We request your comments on whether the proposed rule is understandable and minimally intrusive if implemented as proposed.

List of Subjects in 12 CFR Part 702

Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on November 21, 2002.

Becky Baker,

Secretary of the Board.

For the reasons set forth above, 12 CFR part 702 is proposed to be amended as follows:

PART 702—PROMPT CORRECTIVE ACTION

1. The authority citation for part 702 continues to read as follows:

Authority: 12 U.S.C. 1766(a), 1790d.

2. Amend § 702.206 as follows:

a. Redesignate current paragraphs (c) through (i) as new paragraphs (d) through (j) respectively.

b. Add new paragraph (c) to read as follows:

§ 702.206 Net worth restoration plans.

* * * * *

(c) *1st tier net worth restoration plan.* In lieu of subparagraph (b) of this

section, an eligible federally-insured credit union may elect to file a 1st tier NWRP within the time provided in paragraph (a) of this section, as follows:

(1) *Eligibility.* A federally-insured credit union is eligible to file a 1st tier NWRP if—

(i) For the current quarter—

(A) Its net worth ratio is not less than five and one-half percent (5.50%) as measured using the quarter-end balance of total assets per § 702.2(k)(1)(iv); or

(B) It fails to meet any applicable risk-based net worth requirement by not more than 50 basis points (0.50%); and

(ii) For each of the three prior quarters—

(A) It had a net worth ratio of at least 6 percent (6.0%) as measured using any method of measuring total assets available under § 702.2(k)(1); or

(B) It met any applicable RBNW requirement; and

(iii) For the current and three preceding quarters—

(A) The dollar amount of its net worth increased, on average, by at least the equivalent of 60 basis points (0.60%) return on average assets as reflected in the credit union's Financial Performance Report; and

(B) Growth in ending total assets for the four-quarter period did not exceed one hundred ten percent (110%) of growth in the sum of net worth, shares and deposits for that period.

(2) *Contents.* A 1st tier NWRP must—

(i) Include pro forma projections of total assets, shares and deposits, return on average assets and net worth, covering the next four quarters and resulting in a net worth ratio that restores the credit union to at least "adequately capitalized" at the end of the fourth quarter; and

(ii) Describe how the credit union will control exposure to risk from any new activities over the next four quarters.

(3) *Approval.* A 1st tier NWRP will not be approved unless it meets the content requirements set forth in paragraph (c)(2) of this section and satisfies the approval criteria prescribed in paragraphs (d)(2) and (d)(3) of this section.

(4) *Filing of standard plan.* An eligible federally-insured credit union must file a standard NWRP as provided by paragraph (b) of this section, within the period provided in paragraph (a) of this section, if either—

(i) *Plan not approved.* The 1st tier NWRP that the credit union initially submits is not approved;

(ii) *Declining net worth.* The credit union's net worth ratio, while it is operating within the term of an approved 1st tier NWRP, declines either—

(A) Below five and one-half percent (5.50%) as measured using the quarter-end balance of total assets per § 702.2(k)(1)(iv); or

(B) More than 50 basis points (0.50%) below an applicable risk-based net worth requirement; or

(iii) *Net worth not restored.* The credit union is not classified at least "adequately capitalized" at the end of the term of its 1st tier NWRP.

* * * * *

[FR Doc. 02-30089 Filed 11-27-02; 8:45 am]

BILLING CODE 7535-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02-ANM-07]

Proposed Establishment of Class E Airspace, Afton, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Afton, WY. Newly developed Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at Afton Municipal Airport has made this proposal necessary. The establishment of Class E airspace is required to contain aircraft executing instrument flight rule (IFR) operations at Afton Municipal Airport within controlled airspace. The intended effect of this action is to provide an increased level of safety for aircraft executing IFR operations between the terminal and the en route phase of flight at Afton Municipal Airport, Afton, WY.

DATES: Comments must be received on or before January 13, 2003.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM-520, Federal Aviation Administration, Docket No. 02-ANM-07, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Ed Haeseker, ANM-520.8, Federal Aviation Administration, Docket No. 02-ANM-07, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone number: (425) 227-2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit, with those comments, a self-addressed stamped postcard on which the following statement is made:

"Comments to Airspace Docket No. 02-ANM-07." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM-520, 1601 Lind Avenue SW, Renton, Washington 98055-4056. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's 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 Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by establishing Class E airspace at Afton, WY. Two newly developed RNAV SIAP's, RNAV (GPS) RWY34 and RNAV (GPS) RWY 16, at Afton Municipal Airport, has made this proposal necessary. Establishing Class E airspace, 700-feet controlled airspace above the surface of the earth, is required to

contain IFR operations at Afton Municipal Airport, Afton, WY. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route phase of flight environments. The intended effect of this proposal is designed to provide for the safe and efficient use of the navigable airspace.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700-feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class 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. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11013; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 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.