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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN: 3245-AE98

Small Business Size Standards; Tour Operators

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is adopting its proposed modification to the way average annual receipts are calculated for firms in the Tour Operators industry (North American Industry Classification System 561520). This change excludes funds received in trust for unaffiliated third parties from the calculation of a tour operator's receipts. The SBA is retaining the current size standard of \$6 million in average annual receipts, as proposed.

DATES: This rule is effective May 5, 2003.

FOR FURTHER INFORMATION CONTACT: Robert N. Ray, Economist, Office of Size Standards, (202) 205-6618.

SUPPLEMENTARY INFORMATION: On October 2, 2002, in response to industry requests, the SBA issued a proposed rule that would modify the way average annual receipts are calculated for firms in the Tour Operators industry (North American Industry Classification System (NAICS) 561520), while retaining the size standard of \$6 million (67 FR 61829). Under the SBA's Small Business Size Regulations (13 CFR 121.104), the receipts of a firm are based on information reported on a firm's Federal tax returns. Generally, receipts reported to the Internal Revenue Service (IRS) include a firm's gross receipts from the sale of goods and services and all other sources of income. The SBA proposed to exclude from the calculation of average annual receipts,

those receipts that are collected for other parties (primarily to the actual transportation and lodging providers) for purposes of determining the size and eligibility of a tour operator for the SBA's assistance. Based on a review of industry practices, the SBA agreed with industry commentators that certain types of receipts should be excluded from the calculation of size for firms in this industry.

Related to this issue, the SBA also considered whether the current size standard continues to be appropriate if receipts collected for third party reimbursement are excluded from a firm's gross receipts. Based on a review of industry data discussed in the proposed rule, the SBA believes the current size standard is appropriate even if size is measured on an adjusted basis rather than by gross receipts. For more information on the size standard analysis of the Tour Operators industry, and the justification for excluding receipts held in trust for payment to transportation and lodging providers, see the October 2, 2002, proposed rule.

Comments on the proposed rule all supported the revised method of calculating the average annual receipts of a tour operator and retaining the \$6 million size standard. Accordingly, the SBA is revising its size standard measure for the Tour Operators industry by excluding funds received in trust for unaffiliated third parties, while retaining the size standard of \$6 million.

Discussion of Comments on the Proposed Rule

The SBA received six comments to the proposed rule. Four comments were from firms in the industry, one comment was from a travel agency, and one was from members of Congress (six U.S. Representatives co-signed a single comment letter).

In summary, all six commentators supported the change to \$6 million in adjusted annual receipts. They all, however, had the following two additional recommendations:

(1) The SBA should extend the application period for its Economic Injury Disaster Loan (EIDL) Program for 60 days after the size standard is revised; and

(2) The SBA should clarify that trust receipts do not refer to formal legal trusts.

Response to Issues Raised by the Comments

The comments expressed the concern that many tour operators continue to need assistance as a result of the September 11, 2001, terrorist attacks, but had not applied for EIDL assistance because they exceeded the gross receipts size standard. The EIDL program provides assistance to businesses that have suffered substantial economic injury, regardless of physical damage, and is located in a declared disaster area. The SBA extended the deadline for submitting an application for EIDL assistance for the September 11, 2001, terrorist attacks until January 31, 2003, for businesses located in the presidentially designated disaster areas of New York and Northern Virginia. However, for areas outside of the area of the physical declaration, the SBA's extension period expired on September 30, 2002. With a revision to the size standard, the commentators recommended that the SBA extend the EIDL application deadline for 60 days after the implementation of the size standard, to afford the newly eligible tour operators an opportunity to apply for EIDL assistance.

The SBA will not grant an extension of the EIDL deadline for tour operators. The SBA carefully considered the reasons presented by the commentators to extend the application deadline, but has elected not to adopt that recommendation.

The comments also recommended that the SBA clarify that "trust receipts" do not require the creation of a formal legal trust. In determining the receipts of a tour operator and other specifically identified activities, footnote 10 of the size standards table allows for the exclusion of "funds received in trusts for an unaffiliated third party, such as books subject to commissions" (13 CFR 121.201). The language of this provision does not require the creation of a legal trust. The SBA follows the "law of agency" in determining whether receipts may be excluded. If money is received under a claim of right, it must be included as the firm's receipts. If, on the other hand, it is received as an agent for another, the money is excluded (see *Size Appeal of Mid-Columbia Engineering*, SBA No. 4134, (1996)). Thus, the current provision does not require that the excludable funds be passed through a legal trust.

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)

The Office of Management and Budget (OMB) has determined that this final rule is a “significant” regulatory action for purposes of Executive Order 12866. Size standards determine which businesses are eligible for Federal small business programs. This is not a major rule, however, under the Congressional Review Act, 5 U.S.C. 800. 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 record keeping requirements. For purposes of Executive Order 13132, the SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order 12988, the SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order. Our Regulatory Impact Analysis follows.

Regulatory Impact Analysis

1. Is There a Need for the Regulatory Action?

The SBA is chartered to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To effectively assist intended beneficiaries of these programs, the SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to the SBA Administrator the responsibility for establishing small business definitions. It also requires that small business definitions vary to reflect industry differences. The preamble of the proposed rule explained the approach the SBA follows when analyzing a size standard for a particular industry as well as the criteria used to determine whether to use adjusted receipts. Based on that analysis, the SBA believes that a change in the way receipts are measured for businesses in the Tour Operators industry is needed to better reflect their size and activities.

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. Under this rule, 238 additional firms generating 21 percent of sales in the industry will obtain small

business status and become eligible for these programs. These include the SBA’s financial assistance programs, economic injury disaster loans and Federal procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses, and small businesses located in Historically Underutilized Business Zones (HUBZone), as well as those awarded through full and open competition after application of the HUBZone or small disadvantaged business price evaluation preference or adjustment. Through the assistance of these programs, small businesses may benefit by becoming more knowledgeable, stable, and competitive businesses.

Other Federal agencies also use the SBA size standards for a variety of regulatory and program purposes. However, discussions with industry representatives identified no other uses of the SBA’s tour operators size standard. If such a case exists where the SBA’s size standard is not appropriate, an agency may establish its own size standards with the approval of the SBA Administrator (*see* 13 CFR 121.902).

The benefits of a size standard change to a more appropriate level would accrue to three groups: (1) Businesses that benefit by gaining small business status from the higher size standards that also use small business assistance programs; (2) growing small businesses that may exceed the current size standards in the near future and who will retain small business status from the higher size standard; and (3) Federal agencies that award contracts under procurement programs that require small business status. Although there may be some procurements that are awarded to tour operators, the SBA’s research was unable to find any Federal contracting awards reported during the last 3 fiscal years.

Newly defined small businesses could benefit from the SBA’s 7(a) Guarantee Loan Program. The SBA estimates that three additional loans totaling approximately \$0.6 million in new Federal loan guarantees would be made to these newly defined small businesses. This represents 21 percent (the percentage increase in coverage of sales in the industry by firms under the higher “real” size standard) of the \$2.9 million yearly average in loans that were guaranteed by the SBA in this industry under these two financial programs from fiscal years 1999 to 2001. These additional loan guarantees, because of their limited magnitude, will have virtually no impact on the overall availability of loans for the SBA’s loan programs, which have averaged about

50,000 loans totaling more than \$12 billion per year in recent years.

The newly defined small businesses would also benefit from the SBA’s EIDL program. Since this program is contingent upon the occurrence and severity of a disaster, no meaningful estimate of benefits can be projected from future disasters. However, for the terrorist attacks of September 11, 2001, the SBA has declined 11 applicants based on size. Many of these companies would likely qualify if pass-through receipts were excluded from a firm’s measure of size in this industry. In addition, out of the newly eligible tour operators, six more loans would likely be approved. Based on an analysis of the September 11, 2001, EIDL assistance, this rule may result in \$607,000 in additional loans.

Federal agencies may benefit from the higher size standards if the newly defined and expanding small businesses compete for more set-aside procurements. However, no Federal contracting has been reported for fiscal years 1999–2001 in the Tour Operators industry and there will be no procurement gains from a higher size standard in this industry for Federal agencies if this pattern continues.

To the extent that up to 238 additional firms could become active in Federal small business programs, this may entail some additional administrative costs to the Federal Government associated with additional bidders for Federal small business procurement programs, additional firms seeking SBA guaranteed lending programs, and additional firms eligible for enrollment in SBA’s PRO-Net data base program. 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 costs are likely to generate minimal incremental administrative costs since mechanisms are currently in place to handle these administrative requirements.

The costs to the Federal Government may be higher on some Federal contracts as a result of this rule. However, any analysis of costs is dependent on contracting in this industry and the last three fiscal years have had no Federal contracting in this industry. The SBA is assuming that this trend will continue and there will be no contracting activity in this industry in the near future.

The SBA believes that there will be no distributional effects among large and small businesses, nor will there be any equity or uncertainty considerations as

a result of this rule. With the small amount of lending to tour operators discussed above, it is unlikely that they would be denied SBA financial assistance due to a larger pool of eligible small businesses. Also, there is little or no Federal contracting in this industry to have an effect on another business.

The revision to the current size standard for tour operators is consistent with the SBA's statutory mandate to assist small business. This regulatory action promotes the Administrator's objectives. One of the SBA's goals in support of the Administrator'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. Size standards do not interfere with State, local, and tribal governments in the exercise of their government functions. In a few cases, state and local governments have voluntarily adopted the SBA's size standards for their programs to eliminate the need to establish an administrative mechanism to develop their own size standards.

Final Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small entities engaged in the Tour Operators industry. As described in the Regulatory Impact Analysis, this rule may impact small entities seeking SBA (7a) Guaranteed Loans or EIDL loans, but it is unlikely to affect SBA's procurement preference programs because of the absence of Federal contracting in this industry. Newly defined small businesses would benefit from the SBA's 7(a) Guaranteed Loan Program. The SBA estimates that three additional loans totaling approximately \$0.6 million in new Federal loan guarantees could be made to these newly defined small businesses. This represents 21 percent (the percentage increase in coverage of sales in the industry by firms under the higher "real" size standard) of the \$2.9 million yearly average in loans that were guaranteed by the SBA in this industry under these two financial programs in fiscal years 1999–2001. These additional loan guarantees, because of their limited magnitude, will have virtually no impact on the overall availability of loans for SBA's loan programs, which have averaged about 50,000 loans totaling more than \$12 billion per year in recent years.

The size standard may also affect small businesses participating in programs of other agencies that use the SBA size standards. As a practical matter, however, the SBA cannot estimate the impact of a size standard change on each and every Federal program that uses its size standards. However, discussions with a major tour operators association indicate that there are no Federal laws or regulations using SBA's size standards for defining small tour operators. In cases where an SBA size standard is not appropriate, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards with the approval of the SBA Administrator (13 CFR 121.902). For purposes of a regulatory flexibility analysis, agencies must consult with SBA's Office of Advocacy when developing different size standards for their programs. (13 CFR 121.902(b)(4)).

Immediately below, SBA sets forth a final regulatory flexibility analysis (RFA) of this rule on the Tour Operators industry addressing the reasons and objectives of the rule; the SBA's description and estimate of small entities to which the rule will apply; the projected reporting, record keeping, and other compliance requirements of the rule; the relevant Federal rules which may duplicate, overlap or conflict with the rule; and alternatives to the final rule considered by the SBA that minimize the impact on small businesses.

(1) What Is the Need for and Objective of the Rule?

The revision to the size standard for tour operators to exclude third party reimbursements more accurately measures the magnitude of operations of a tour operator. The SBA has developed five criteria to assess whether businesses in an industry should be allowed to exclude funds held in trust for third parties. These five criteria were discussed in detail in the October 2, 2002, proposed rule. Tour Operators met the test for each criterion. The SBA found that tour operators consistently act as agents for their clients by arranging travel and related activities provided by third parties. Well over a majority of a tour operator's receipts collected from clients are provided to third party providers. Therefore, a size standard allowing for the exclusion of third party reimbursements is considered a better measure of a tour operator's size than gross receipts.

(2) What Significant Issues Were Raised by the Public Comments in Response to the Initial Regulatory Flexibility Act (IRFA)?

All of the commentators suggested that the SBA should extend the application period for its EIDL program for 60 days after this size standard is revised. The SBA is considering this suggestion. However, this decision is not related to this rule which focuses on the measure of size and the appropriate size standard for the Tour Operators industry. All of the commentators also recommended that the SBA clarify that "trust receipts" do not require the creation of a formal legal trust. However, there is no reference in the SBA's regulations requiring a formal legal trust, and the SBA follows the law of agency in determining whether receipts are excluded. Thus, the current provision does not require that excludable funds be passed through a legal trust.

(3) What Is SBA's Description and Estimate of the Number of Small Entities to Which the Rule Will Apply?

Within the Tour Operators industry, 2,722 businesses out of 3,222 (84.5 percent) have been defined as small using unadjusted annual receipts. The SBA estimates 238 additional tour operators would be considered small as a result of this rule based on the U.S. Census Bureau's special tabulation of the 1997 Economic Census for SBA's Office of Size Standards. These businesses would be eligible to seek available SBA assistance provided that they meet other program requirements. Firms becoming eligible for SBA assistance as a result of this rule cumulatively generate \$600 million in this industry, out of a total of \$2.8 billion in annual receipts. The small business coverage in this industry would increase by 21 percent of total industry receipts and by 7.4 percent of the total number of tour operators. Only a small proportion of these newly eligible businesses are likely to utilize SBA programs, however, almost exclusively in the area of financial assistance. For fiscal years 1999–2001, only 63 loans totaling \$8.7 million were made under SBA's 7(a) program. As a result of the terrorist attacks of September 11, 2001, the SBA made 121 EIDL loans totaling \$12.3 million.

(4) Will This Rule Impose Any Additional Reporting or Record Keeping, or Other Compliance Requirements on Small Business?

A new size standard does not impose any additional reporting, record keeping

or other compliance requirements on small entities for SBA programs. A change in a size standard would not create additional costs on a business to determine whether or not it qualifies as a small business. A business needs to only examine existing information to determine its size, such as Federal tax returns, payroll records, and accounting records. Size standards determines "voluntary" access to the SBA and other Federal programs that assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior. In addition, this rule does not impose any new information collecting requirements from the SBA which requires approval by OMB under the Paperwork Reduction Act of 1980, U.S.C. 3501-3520.

(5) What Are the Steps the SBA Has Taken To Minimize the Significant Economic Impact on Small Business?

Most of the economic impact on small businesses will be positive. The most significant benefits to businesses that will obtain small business status as a result of this rule are eligibility for SBA's financial assistance programs such as 7(a) business loans, 504 business loans, and EIDL assistance. Normally, firms gain from eligibility for the Federal Government's procurement preference programs for small businesses. In this case, however, the SBA anticipates no impact based on the fact that there has been no Federal contracting in this industry over the last

three completed fiscal years. In addition, the projected increase in 7(a) business loans of three additional loans totaling approximately \$0.6 million in new Federal loan guarantees will have virtually no impact on the overall availability of loans for SBA's loan programs, which have averaged about 50,000 loans totaling more than \$12 billion per year in recent years.

(6) What Alternatives Were Considered by the SBA To Accomplish Its Regulatory Objectives While Minimizing the Impact on Small Entities?

The SBA initially considered two alternatives in its proposed rule (67 FR 61829, dated October 2, 2002). First, it considered the \$3 million size standard proposed for the Travel Agencies industry that the SBA also measures on an adjusted receipts basis. The SBA also considered retaining gross receipts to measure the size of a tour operator and adjusting the size standard to a higher level. These two alternatives were discussed in the proposed rule.

The SBA decided not to adopt either of these alternatives in this final rule. The industry characteristics of the Tour Operators industry clearly show that a \$3 million size standard is too low. Also, an appropriate size standard based on gross receipts may harm small businesses. The SBA calculates the size of a tour operator from its Federal tax returns. Some tour operators may report receipts differently for tax purposes, which could result in two tour operators doing the same amount of business

being treated differently for small business status. No comments were received, however, in favor of these alternatives, and all of the commentators supported the change in receipts definition.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business. Loan programs'business, Small businesses.

■ For the reasons set forth in the preamble, the U.S. Small Business Administration amends part 121 of title 13 of the Code of Federal Regulations 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(a), 634(b)(6), 637(a), 644(c) and 662(5) and Sec. 304, Pub.L. 103-403, 108 Stat.4175, 4188.

■ 2. In § 121.201, in the table under "Small Business Size Standards by NAICS Industry":

a. Under the heading Subsector 561—Administrative and Support Services, revise entry 561520 to read as follows; and

b. Revise footnote 10 to read as follows:

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

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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
* * *	* * *	*	*
Subsector 561—Administrative and Support Services			
* * *	* * *	*	*
561520	Tour Operators ¹⁰	 ¹⁰ \$6.0	
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Footnotes

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10. NAICS codes 488510 (part) 531210, 541810, 561510, 561520, and 561920—As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenues.

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Dated: March 6, 2003.

Hector V. Barreto,
Administrator.

[FR Doc. 03–8169 Filed 4–3–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14600; Airspace Docket No. 03–ACE–23]

Modification of Class E Airspace; Knoxville, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for Knoxville, IA revealed a discrepancy in the legal description for the Knoxville, IA Class E airspace. This action corrects the discrepancy by modifying the Knoxville, IA Class E airspace and by incorporating the change into the Class E airspace legal description.

DATES: This direct final rule is effective on 0901 UTC, July 10, 2003.

Comments for inclusion in the Rules Docket must be received on or before May 15, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14600/Airspace Docket No. 03–ACE–23, at the beginning of your comments. You may also submit comments on the Internet at <http://dms.dot.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT:

Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Knoxville, IA. It brings the legal description of this airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will be depicted on appropriate aeronautical charts. 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 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: “Comments to Docket No. FAA–2003–14600/Airspace Docket No. 03–ACE–23.” The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial 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. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) Is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” and Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30,