

apply for asylum, pursuant to section 208(a)(2)(A) of the Act, unless the immigration judge determines, by preponderance of the evidence, that:

(i) The Agreement, which includes the Additional Protocol of 2022, does not apply to the alien or does not preclude the alien from applying for asylum in the United States; or

(ii) The alien qualifies for an exception to the Agreement, which includes the Additional Protocol of 2022, as set forth in paragraph (g)(3) of this section.

(3) The immigration judge shall apply the applicable regulations in deciding whether the alien qualifies for any exception under the Agreement, which includes the Additional Protocol of 2022, that would permit the United States to exercise authority over the alien's asylum claim. The exceptions under the Agreement, which includes the Additional Protocol of 2022, are codified at 8 CFR 208.30(e)(6)(iii). The immigration judge shall not review, consider, or decide any issues pertaining to any discretionary determination on whether the alien should be permitted to pursue an asylum claim in the United States notwithstanding the general terms of the Agreement, which includes the Additional Protocol of 2022, as such discretionary public interest determinations are reserved to DHS. However, an alien in removal proceedings who is otherwise ineligible to apply for asylum under the Agreement, which includes the Additional Protocol of 2022, may apply for asylum if DHS files a written notice in the proceedings before the immigration judge that it has decided in the public interest to allow the alien to pursue claims for asylum or withholding of removal.

(4) An alien who is found to be ineligible to apply for asylum under section 208(a)(2)(A) of the Act is ineligible to apply for withholding of removal pursuant to section 241(b)(3) of the Act and the Convention Against Torture. However, the alien may apply for any other relief from removal for which the alien may be eligible. If an alien who is subject to the Agreement, which includes the Additional Protocol of 2022, and section 208(a)(2)(A) of the Act is ordered removed, the alien shall be ordered removed to Canada, in which the alien will be able to pursue his or her claims for asylum or protection against persecution or torture under the laws of Canada

(h) * * *

(1) The immigration judge has authority to apply section 208(a)(2)(A) of the Act, relating to a determination

that an alien may be removed to a third country pursuant to a bilateral or multilateral agreement—other than the 2002 U.S.-Canada Agreement, which includes the Additional Protocol of 2022—in the case of an alien who is subject to the terms of the relevant agreement and is placed in proceedings pursuant to section 240 of the Act. In an appropriate case, the immigration judge shall determine whether under the relevant agreement the alien should be removed to the third country, or whether the alien should be permitted to pursue asylum or other protection claims in the United States. If more than one agreement applies to the alien and the alien is ordered removed, the immigration judge shall enter alternate orders of removal to each relevant country.

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Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security,

Dated: March 22, 2023.

Merrick B. Garland,

Attorney General, U.S. Department of Justice.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1161; Airspace Docket No. 22–ASO–18]

RIN 2120–AA66

Amendment of Class D and Class E Airspace; Greenville, Spartanburg, and Greer, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace, Class E surface airspace, and Class E airspace extending upward from 700 feet above the surface in the Greenville, Spartanburg, and Greer, SC areas due to the decommissioning of the Fairmont non-directional beacon (NDB) and cancellation of associated approaches into Spartanburg Downtown Memorial Airport/Simpson Field, as well as updating the airport's name and geographic coordinates. Additionally, this action updates the name, geographic coordinates, and airspace of Greenville Spartanburg International Airport, Greenville Downtown Airport, and Donaldson Field Airport. Controlled airspace is necessary for the

safety and management of instrument flight rules (IFR) operations in the area.

DATES: Effective 0901 UTC, June 15, 2023. 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 JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the notice of proposed rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at www.regulations.gov using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at www.faa.gov/air_traffic/publications/. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; Telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it amends airspace in Greenville, Spartanburg, and Greer, SC, to support IFR operations in the area.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2022–1161 in the **Federal Register** (87 FR 66636, November 4, 2022) to amend Class D airspace, Class E surface airspace, and Class E airspace extending upward from 700 feet above the surface in the Greenville, Spartanburg, and Greer, SC areas, as well as updating the

airport's name and geographic coordinates. Additionally, Greenville Spartanburg International Airport, Greenville Downtown Airport, and Donaldson Field Airport each require name and geographic coordinate updates, as well as airspace updates. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

Class D airspace designations are published in paragraph 5000, and Class E airspace designations are published in paragraphs 6002 and 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of the document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by amending Class D airspace, Class E surface airspace, and Class E airspace extending upward from 700 feet above the surface in the Greenville, Spartanburg, and Greer, SC area due to the decommissioning of the Fairmont NDB and cancellation of associated approaches into Spartanburg Downtown Memorial Airport/Simpson Field (formerly Spartanburg Downtown Memorial Airport). The Class D airspace for Greenville Spartanburg International Airport is increased to 4.5 miles (previously 4.4 miles), and the geographic coordinates are updated to coincide with the FAA's database. This action also removes the southwest extension of the Class E surface airspace for Spartanburg Downtown Memorial Airport/Simpson Field due to the cancellation of the NDB approaches and updates the airport's name and geographic coordinates to coincide with the FAA's database, and removes the city name from airspace header per order FAA 7400.2. Additionally, this action also updates the airport names of the following airports: Greenville Spartanburg International Airport (formerly Greenville-Spartanburg Airport) and Donaldson Field Airport (formerly Donaldson Center Airport), as well as the geographic coordinates of

both airports. Finally, this action replaces the outdated terms Airport/Facility Directory with the term Chart Supplement and Notice to Airmen with the term Notice to Air Missions in the airspace descriptions.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 5–6.5a.

This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant the preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

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(f), 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 JO 7400.11G,

Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO SC D Greenville, SC [Amended]

Greenville Downtown Airport, SC
(Lat. 34°50'53" N, long. 82°21'00" W)
Greenville-Spartanburg International Airport
(Lat. 34°53'44" N, long. 82°13'08" W)

That airspace extending upward from the surface to and including 3,500 feet MSL within a 4.5-mile radius of Greenville Downtown Airport, excluding that airspace within the Greenville-Spartanburg International Airport, Class C airspace area. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Air Missions. The effective days and times will thereafter be continuously published in the Chart Supplement.

ASO SC D Greenville Donaldson Field Airport, SC [Amended]

Greenville, Donaldson Field Airport, SC
(Lat. 34°45'30" N, long. 82°22'35" W)
Greenville Downtown Airport
(Lat. 34°50'53" N, long. 82°21'00" W)
Greenville-Spartanburg International Airport
(Lat. 34°53'44" N, long. 82°13'08" W)

That airspace extending upward from the surface to and including 3,500 feet MSL within a 4.2-mile radius of Donaldson Field Airport, excluding that airspace within the Greenville Downtown Airport Class D airspace area and excluding that airspace within the Greenville-Spartanburg International Airport Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Surface Airspace.

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ASO SC E2 Greer, Greenville-Spartanburg International Airport, SC [Amended]

Greenville-Spartanburg International Airport, SC
(Lat. 34°53'44" N, long. 82°13'08" W)

That airspace extending upwards from the surface within a 5-mile radius of the Greenville-Spartanburg International Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

ASO SC E2 Spartanburg, SC [Amended]

Spartanburg Downtown Memorial Airport/
Simpson Field, SC
(Lat. 34°54'59" N, long. 81°57'21" W)
Spartanburg VORTAC
(Lat. 35°02'01" N, long. 81°55'37" W)

That airspace extending upwards from the surface within a 4.3-mile radius of Spartanburg Downtown Memorial Airport/

Simpson Field and within 1.8 miles each side of Spartanburg VORTAC 192° radial, extending from the 4.3-mile radius to the VORTAC, excluding the portion within the Greenville-Spartanburg International Airport, SC, Class C airspace area. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

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ASO SC E5 Greenville, SC [Amended]

Greenville Downtown Airport, SC
(Lat. 34°50'53" N, long. 82°21'00" W)
Greenville-Spartanburg International Airport
(Lat. 34°53'44" N, long. 82°13'08" W)
Donaldson Field Airport
(Lat. 34°45'30" N, long. 82°22'35" W)
DYANA NDB
(Lat. 34°41'28" N, long. 82°26'37" W)

That airspace extending upward from 700 feet above the surface within a 9.3-mile radius of Greenville Downtown Airport, and within a 10-mile radius of Greenville-Spartanburg International Airport, and within a 6.7-mile radius of Donaldson Field Airport and within 4 miles northwest and 8 miles southeast of the 224° bearing from the DYANA NDB extending from the 6.7-mile radius to 16 miles southwest of Donaldson Field Airport.

ASO SC E5 Spartanburg, SC

Spartanburg Downtown Memorial Airport/
Simpson Field, SC
(Lat. 34°54'59" N, long. 81°57'21" W)
Spartanburg VORTAC
(Lat. 35°02'01" N, long. 81°55'37" W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Spartanburg Downtown Memorial Airport/Simpson Field and within 3.1 miles each side of Spartanburg VORTAC 012° radial, extending from the 7-mile radius to 7 miles north of the VORTAC and within 2 miles each side of Spartanburg localizer southwest course, extending from the 7-mile radius to 15.1 miles south of the VORTAC.

Issued in College Park, Georgia, on March 22, 2023

Andrese C. Davis,

Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.

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DEPARTMENT OF STATE

22 CFR Part 22

[Public Notice: 11954]

RIN 1400-AF33

Schedule of Fees for Consular Services—Nonimmigrant and Special Visa Fees

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule adopts as final adjustments to the Schedule of Fees for Consular Services (Schedule of Fees) for several nonimmigrant visa (NIV) application processing fees and the Border Crossing Card (BCC) for Mexican citizens age 15 and over. These adjustments are based on the findings of the most recently approved update to the Cost of Service Model (CoSM) and incorporate revised projections for nonimmigrant visa demand. This rule also addresses public comments received by the Department on the originally proposed fee recommendations found in the notice of proposed rulemaking (NPRM).

DATES: This final rule is effective on May 30, 2023.

FOR FURTHER INFORMATION CONTACT: Johanna Cruz, Management Analyst, Office of the Comptroller, Bureau of Consular Affairs, Department of State; phone: 202-485-8915; email: *fees@state.gov*.

SUPPLEMENTARY INFORMATION:

Background

This rule makes changes to the Schedule of Fees, found at 22 CFR 22.1. The Department generally sets and collects fees for consular services based on the concept of full cost recovery to the U.S. Government. The Department's CoSM uses an Activity-Based Costing (ABC) methodology to calculate annually the direct and indirect costs to the U.S. Government associated with each consular good and service the Department provides. The CoSM provides a comprehensive and detailed look at all consular services as well as all services that the Department performs for other agencies in connection with its consular operations. Fees are based on these cost estimates and the Department aims to update the Schedule of Fees biennially unless a significant change in costs warrants an immediate recommendation to amend the Schedule.

The most recently approved update to the CoSM indicated that fee increases were needed to fully recover the costs of providing several categories of NIV

services. As a result, the Department published an NPRM in the **Federal Register** on December 29, 2021 (86 FR 74018), for a 60-day public comment period that ended on February 28, 2022. The NPRM proposed the following increases:

- The application processing fee for non-petition-based nonimmigrant visas (except E category), from \$160 to \$245;
- The application processing fee for H, L, O, P, Q, and R category nonimmigrant visas, from \$190 to \$310;
- The application processing fee for E category nonimmigrant visas, from \$205 to \$485;
- The processing fee for BCCs for Mexican citizens age 15 and over from \$160 to \$245; and
- The fee for waiver of the two-year residency requirement for exchange visitors, from \$120 to \$510.

As discussed in more depth in the NPRM, the unit costs that inform the recommended fees for each NIV service were calculated by taking the total cost of each service and dividing by the 10-year average number of receipts (*i.e.*, demand) for that service.

The fee increases that will be implemented as a result of this final rule are smaller than those proposed in the NPRM due to revised projections for fiscal year (FY) 2022–2024 demand. The CoSM uses historical workloads as well as projected future workloads to calculate demand for each service. Projecting future demand is extremely difficult because travel for both U.S. citizens and foreign nationals can change quickly and dramatically, as demonstrated by the COVID-19 pandemic. Therefore, the current model update applied a 10-year average for workload volumes for NIVs, using historic workload actuals from FYs 2015–2019 and projected workload volumes for FYs 2020–2024. Using a 10-year average helped minimize the impact of demand volatility on unit cost calculations. Recognizing that actual demand will always vary, this practical approach helped to stabilize fees at an amount sufficient to recover costs with only a modest increase to the consumer. *See* 86 FR 74018, 74020–21.

The fee increases proposed in the NPRM were based on a 10-year average of 7.7 million NIVs of all classes per year. After the NPRM was issued, however, it became apparent that demand for NIVs was rebounding significantly faster than previously anticipated and that actual demand would exceed the projected volume in the NPRM. The Department therefore decided to recalculate demand before moving forward with the final rule to ensure that it did not implement fees in