

order) under 5 U.S.C. 7123(d), the General Counsel may make application for appropriate temporary relief (including a restraining order) in the district court of the United States within which the unfair labor practice is alleged to have occurred or in which the party sought to be enjoined resides or transacts business. Temporary relief may be sought if it is just and proper and the record establishes probable cause that an unfair labor practice is being committed. Temporary relief shall not be sought if it would interfere with the ability of the agency to carry out its essential functions.

(d) *Actions subsequent to obtaining appropriate temporary relief.* The General Counsel shall inform the district court which granted temporary relief pursuant to 5 U.S.C. 7123(d) whenever an Administrative Law Judge recommends dismissal of the complaint, in whole or in part.

**§ 2423.11 Determination not to issue complaint; review of action by the Regional Director.**

(a) *Opportunity to withdraw a charge.* If the Regional Director determines that the charge has not been timely filed, that the charge fails to state an unfair labor practice, or for other appropriate reasons, the Regional Director may request the Charging Party to withdraw the charge.

(b) *Dismissal letter.* If the Charging Party does not withdraw the charge within a reasonable period of time, the Regional Director will, on behalf of the General Counsel, dismiss the charge and provide the parties with a written statement of the reasons for not issuing a complaint.

(c) *Appeal of a dismissal letter.* The Charging Party may obtain review of the Regional Director's decision to dismiss a charge by filing an appeal with the General Counsel within 25 days after service of the Regional Director's decision. A Charging Party shall serve a copy of the appeal on the Regional Director. The General Counsel shall serve notice on the Charged Party that an appeal has been filed.

(d) *Extension of time.* The Charging Party may file a request, in writing, for an extension of time to file an appeal, which shall be received by the General Counsel not later than 5 days before the date the appeal is due. A Charging Party shall serve a copy of the request for an extension of time on the Regional Director.

(e) *Grounds for granting an appeal.* The General Counsel may grant an appeal when the appeal establishes at least one of the following grounds:

(1) The Regional Director's decision did not consider material facts that would have resulted in issuance of a complaint;

(2) The Regional Director's decision is based on a finding of a material fact that is clearly erroneous;

(3) The Regional Director's decision is based on an incorrect statement or application of the applicable rule of law;

(4) There is no Authority precedent on the legal issue in the case; or

(5) The manner in which the Region conducted the investigation has resulted in prejudicial error.

(f) *General Counsel action.* The General Counsel may deny the appeal of the Regional Director's dismissal of the charge, or may grant the appeal and remand the case to the Regional Director to take further action. The General Counsel's decision on the appeal states the grounds listed in paragraph (e) of this section for denying or granting the appeal, and is served on all the parties. Absent a timely motion for reconsideration, the decision of the General Counsel is final.

(g) *Reconsideration.* After the General Counsel issues a final decision, the Charging Party may move for reconsideration of the final decision if it can establish extraordinary circumstances in its moving papers. The motion shall be filed within 10 days after the date on which the General Counsel's final decision is postmarked. A motion for reconsideration shall state with particularity the extraordinary circumstances claimed and shall be supported by appropriate citations. The decision of the General Counsel on a motion for reconsideration is final.

**§ 2423.12 Settlement of unfair labor practice charges after a Regional Director determination to issue a complaint but prior to issuance of a complaint.**

(a) *Bilateral informal settlement agreement.* Prior to issuing a complaint, the Regional Director may afford the Charging Party and the Charged Party a reasonable period of time to enter into an informal settlement agreement to be approved by the Regional Director. When a Charged Party complies with the terms of an informal settlement agreement approved by the Regional Director, no further action is taken in the case. If the Charged Party fails to perform its obligations under the approved informal settlement agreement, the Regional Director may institute further proceedings.

(b) *Unilateral informal settlement agreement.* If the Charging Party elects not to become a party to a bilateral settlement agreement, which the Regional Director concludes effectuates

the policies of the Federal Service Labor-Management Relations Statute, the Regional Director may choose to approve a unilateral settlement between the Regional Director and the Charged Party. The Regional Director, on behalf of the General Counsel, shall issue a letter stating the grounds for approving the settlement agreement and declining to issue a complaint. The Charging Party may obtain review of the Regional Director's action by filing an appeal with the General Counsel in accordance with § 2423.11(c) and (d). The General Counsel may grant an appeal when the Charging Party has shown that the Regional Director's approval of a unilateral settlement agreement does not effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute. The General Counsel shall take action on the appeal as set forth in § 2423.11(b), (c), (d), (f), and (g).

**§§ 2423.13–2423.19 [Reserved]**

Dated: January 26, 2010.

**Julia Akins Clark,**

*General Counsel, Federal Labor Relations Authority.*

[FR Doc. 2010–2047 Filed 1–29–10; 8:45 am]

**BILLING CODE 6727–01–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Docket No. FAA–2009–0710; Airspace Docket No. 09–ASO–16]**

**Establishment of Class D and E Airspace; Panama City, FL**

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to establish Class D and E airspace at Panama City, FL, to accommodate new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) for the new Northwest Florida-Panama City International Airport. This action would enhance the safety and management of instrument Flight Rules (IFR) operations at the airport.

**DATES:** Comments must be received on or before March 18, 2010.

**ADDRESSES:** Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001; Telephone: 1–800–

647-5527; Fax: 202-493-2251. You must identify the Docket Number FAA-2009-0710; Airspace Docket No. 09-ASO-16, at the beginning of your comments. You may also submit and review received comments through the Internet at <http://www.regulations.gov>.

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

**FOR FURTHER INFORMATION CONTACT:** Melinda Giddens, Airspace Specialist, Operations Support Group, Eastern Service Center, Air Traffic Organization, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5610.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to comment on this rule 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. Those 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-2009-0710; Airspace Docket No. 09-ASO-16." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRMs**

An electronic copy of this document may be downloaded from and comments submitted through <http://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's web page at [http://www.faa.gov/airports\\_airtraffic/air\\_traffic/publications/airspace\\_amendments/](http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/). Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA-400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267-9677, to request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class D and E airspace at Panama City, FL. Class D airspace extending upward from the surface to 2,500 feet MSL within a 4.7-mile radius of the Northwest Florida-Panama City International Airport, and Class E airspace extending from 700 feet above the surface within a 7.2-mile radius of the airport is necessary for the safety and management of SIAPs at the new Northwest Florida-Panama City International Airport. There will be separate rulemaking action removing the existing airspace surrounding the old Panama City-Bay County Airport prior to closing the airport.

Designations for Class D and E airspace areas are published in Paragraph 5000 and 6005, respectively, of FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations 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 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the 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 proposed 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 proposed regulation is within the scope of that authority as it would establish Class D and E airspace at Panama City, FL.

**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, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS**

1. The authority citation for Part 71 will continue 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 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

*Paragraph 5000 Class D Airspace.*

\* \* \* \* \*

**ASO FL D Panama City, FL [New]**

Northwest Florida-Panama City International Airport, FL  
(Lat. 30°21'28" N., long. 85°47'56" W.)

That airspace extending upward from the surface up to and including 2,500 feet MSL within a 4.7-mile radius of the Northwest Florida-Panama City International Airport. This Class D airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

\* \* \* \* \*

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

\* \* \* \* \*

#### ASO FL E5 Panama City, FL [New]

Northwest Florida-Panama City International Airport, FL

(Lat. 30°21'28" N., long. 85°47'56" W.)

That airspace extending upward from 700 feet above the surface of the Earth within a 7.2-mile radius of the Northwest Florida-Panama City International Airport.

\* \* \* \* \*

Issued in College Park, Georgia, on January 21, 2010.

**Michael Vermuth,**

*Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.*

[FR Doc. 2010-2005 Filed 1-29-10; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

#### 30 CFR Parts 57 and 75

#### RIN 1219-AB65

#### Proximity Detection Systems for Underground Mines

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Request for information.

**SUMMARY:** The Mine Safety and Health Administration (MSHA) is requesting information regarding whether the use of proximity detection systems would reduce the risk of accidents where mobile equipment pins, crushes, or strikes miners in underground mines and, if so, how. MSHA is also requesting information to determine if the Agency should consider regulatory action and, if so, what type of regulatory action would be appropriate.

**DATES:** Comments must be received by midnight Eastern Standard Time on April 2, 2010.

**ADDRESSES:** Comments must be identified with "RIN 1219-AB65" and may be sent to MSHA by any of the following methods:

- *Federal E-Rulemaking Portal:* <http://www.regulations.gov>. Follow the

on-line instructions for submitting comments.

- *Electronic mail:* [zzMSHA-Comments@dol.gov](mailto:zzMSHA-Comments@dol.gov). Include "RIN 1219-AB65" in the subject line of the message.

- *Facsimile:* 202-693-9441. Include "RIN 1219-AB65" in the subject line of the message.

- *Regular Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209-3939.

- *Hand Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

#### FOR FURTHER INFORMATION CONTACT:

Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, at [silvey.patricia@dol.gov](mailto:silvey.patricia@dol.gov) (e-mail), 202-693-9440 (voice), or 202-693-9441 (Facsimile).

#### SUPPLEMENTARY INFORMATION:

##### I. Availability of Information

MSHA will post all comments on the Internet without change, including any personal information provided. Access comments electronically at <http://www.msha.gov> under the "Rules and Regs" link. Review comments in person at the Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

MSHA maintains a list that enables subscribers to receive e-mail notification when the Agency publishes rulemaking documents in the **Federal Register**. To subscribe, go to <http://www.msha.gov/subscriptions/subscribe.aspx>.

Information on MSHA-approved proximity detection systems is available on the Internet at [http://www.msha.gov/Accident\\_Prevention/NewTechnologies/ProximityDetection/ProximitydetectionSingleSource.asp](http://www.msha.gov/Accident_Prevention/NewTechnologies/ProximityDetection/ProximitydetectionSingleSource.asp).

##### II. Background

###### A. Review of Proximity Detection Technology and Proximity Detection Systems

Proximity detection is a technology that uses electronic sensors to detect motion or the location of one object relative to another object. Although the technology is not new, application of this technology to mobile equipment in underground mines is new.

MSHA conducted tests in collaboration with proximity detection manufacturers and mine operators at mine sites from 2002 to 2006. The National Institute for Occupational Safety and Health (NIOSH) has

conducted research on proximity detection technologies independently at various times since the mid 1990s to present day. The technologies include radio, ultrasonic, radar, infrared, and electromagnetic field based systems. After reviewing the different types of systems, MSHA determined that the electromagnetic field based system offers the greatest potential for reducing pinning, crushing, and striking hazards to: (1) Remote control continuous mining machine (RCCM) operators and (2) other miners working near RCCMs.

An electromagnetic field based system consists of a combination of electromagnetic field generators and field detecting devices. One example of an electromagnetic field based system uses electromagnetic field generators that are installed on a RCCM and electronic sensing devices that are worn by persons operating the RCCM or working near the RCCM. Another electromagnetic field based system uses field generators worn by the operator of the RCCM and persons working near the RCCM and the sensing devices are installed on the RCCM. These electromagnetic field based systems can be programmed to provide warnings to affected miners or stop the RCCM, or both, when the RCCM operator or other miners get within the predefined danger zone of the RCCM.

In 1998, MSHA studied accidents involving RCCMs and determined that a proximity detection system has the potential to prevent accidents that occur when an RCCM operator or another miner gets within the predefined danger zone of the RCCM. In 2002, in response to an increase in accidents involving RCCMs, MSHA initiated a project in cooperation with a proximity detection system manufacturer and an underground coal mine operator. The Agency's goal was to have the manufacturer develop and test an electromagnetic field based system on an RCCM in an underground coal mine. In 2004, MSHA assisted a second manufacturer with the development of an electromagnetic field based system. The field tests of these two systems focused on addressing hazards to the RCCM operator, but the systems could be adapted to address hazards to other miners working near the RCCM.

MSHA approved both of these systems in 2006 and a third system in 2009 under existing regulations in 30 CFR part 18. These approvals ensure that the systems will not introduce an ignition hazard when operated in potentially explosive atmospheres. The three approved systems are:

- The Frederick Mining Controls, LLC, HazardAvert™ System,