

scope of that authority as it amends controlled airspace at Tobe, CO.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of 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(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 the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011 is amended as follows:

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

* * * * *

ANM CO E5 Tobe, CO [Modified]

Tobe VOR/DME

(Lat. 37°15'31" N., long. 103°36'00" W.)

That airspace north of the Tobe VOR/DME extending upward from 8,500 feet MSL, bounded on the north by V-210, on the southeast by V-263, and on the west by V-389.

Issued in Seattle, Washington, on March 26, 2012.

Robert Henry,

Acting Manager, Operations Support Group, Western Service Center.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2011-0828; Airspace Docket No. 11-AGL-16]

Establishment of Class E Airspace; Boyne City, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Boyne City, MI. Controlled

airspace is necessary to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Boyne City Municipal Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: Effective date: 0901 UTC, May 31, 2012. 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 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT:

Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321-7716.

SUPPLEMENTARY INFORMATION:

History

On November 28, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class E airspace for the Boyne City, MI, area, creating additional controlled airspace at Boyne City Municipal Airport (76 FR 72868) Docket No. FAA-2011-0828. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 feet above the surface to accommodate new standard instrument approach procedures at Boyne City Municipal Airport, Boyne City, MI. This action is necessary for the safety and management of IFR operations at the airport.

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. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44

FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that 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.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, 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 established controlled airspace at Boyne City Municipal Airport, Boyne City, MI.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of 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:

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§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011, is amended as follows:

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

* * * * *

AGL MI E5 Boyne City, MI [New]

Boyne City Municipal Airport, MI
(Lat. 45°12'32" N., long. 84°59'24" W.)

That airspace extending upward from 700 feet above the surface within a 9.9-mile

radius of Boyne City Municipal Airport, and within 2 miles each side of the 080 degree bearing from the airport extending from the 9.9-mile radius to 11.9 miles east of the airport.

Issued in Fort Worth, Texas, on March 26, 2012.

Walter L. Tweedy,

*Acting Manager, Operations Support Group,
ATO Central Service Center.*

[FR Doc. 2012-7932 Filed 4-2-12; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 540

[BOP-1149-F]

RIN 1120-AB49

Inmate Communication With News Media: Removal of Byline Regulations

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) finalizes an interim rule published April 23, 2010, regarding inmate contact with the community which deleted two previous Bureau regulations that prohibited inmates from publishing under a byline, due to a recent court ruling invalidating Bureau regulation language containing this prohibition.

DATES: This rule is effective on May 3, 2012.

FOR FURTHER INFORMATION CONTACT:

Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307-2105.

SUPPLEMENTARY INFORMATION: In this document, the Bureau of Prisons (Bureau) finalizes an interim rule regarding inmate contact with the community which deleted two previous Bureau regulations that prohibited inmates from publishing under a byline, due to a recent court ruling invalidating Bureau regulation language containing this prohibition. The interim rule was published on April 23, 2010 (75 FR 21163), and a technical correction (correcting the effective date of the interim rule to May 7, 2010) was published on May 7, 2010 (75 FR 25110). We received one comment on the interim rule, which we address below.

The commenter first objected to the Bureau's interim rule as having been promulgated incorrectly under the Administrative Procedure Act (APA) (5 U.S.C. 553, *et seq.*). The commenter

stated that the Bureau did not articulate "good cause" under the APA to forego normal notice-and-comment rulemaking procedures.

In response, the Bureau explained its "good cause" in the interim rule. The Bureau stated that the APA (5 U.S.C. § 553(b)(3)(B)) allows exceptions to notice-and-comment rulemaking "when the agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." The Bureau indicated it would be impracticable to invite public comment on the result of a court order invalidating a regulatory provision because prompt implementation of the court order was necessary to afford inmates the benefit of the court's decision and to protect the Bureau from liability arising from potential application of an invalidated regulation.

The commenter states that it was not enough for the Bureau to recognize that the court in *Jordan v. Pugh*, 504 F.Supp.2d 1109 (D. Colo. 2007), issued a decision invalidating the byline language of § 540.20(b). In the interim rule, the Bureau stated that the court found that not all inmate publishing under a byline jeopardizes security, and overruled the byline portion of the provision as facially overbroad for prohibiting all such activity. The commenter posits that the Bureau should have mentioned the ultimate holding in that case. We therefore do so below. The *Jordan* court held as follows:

Court concludes that the Byline Regulation violates the First Amendment rights of Mr. Jordan, other inmates in federal institutions, and the press * * *

It is therefore ordered that judgment shall enter in favor of the Plaintiff, Mark Jordan, and against the Defendants, Michael V. Pugh, J. York, R.E. Derr, B. Sellers, and Stanley Rowlett, in their official capacities:

(1) *Declaring* that the language of 28 CFR 540.20(b), "The inmate may not * * * publish under a byline", violates the First Amendment to the United States Constitution; and

(2) *Enjoining* the Federal Bureau of Prisons from punishing any inmate for violation of 28 CFR 540.20(b)'s provision that: "The inmate may not * * * publish under a byline."

Id. at 1126.

In so holding, the court invalidated 28 CFR 540.20(b)'s "byline" language, a fact that the Bureau indicated in the preamble to the interim rule. The commenter states that "rulemaking prompted by a significant court ruling that holds that a regulation 'violates the First Amendment rights' of the press deserves the full notice-and-comment process specified by law, so that the public may review the Court's ruling,

evaluate the Bureau's response, and comment." The commenter cites to no authority for this statement, and does not take into consideration that the public was able to review the decision when it was published in 2007. The Bureau's response is simple—remove the invalidated regulations. The public was given the opportunity to comment on the Bureau's action during the comment period for the interim rule.

The commenter also rejects the Bureau's statement that the interim rule was necessary to protect the Bureau from liability arising from potential application of an invalidated regulation because the interim rule was published in 2010 whereas the decision was published in 2007. The commenter states that the Bureau should have issued a notice to Bureau staff in 2007 to not enforce the invalidated regulations. The Bureau did, in fact, issue mandatory guidance to its staff on November 27, 2007, which stated that the Bureau

is revising these regulations to remove the byline provision invalidated by the court. Until that occurs, however, an inmate's publishing under a byline, by itself, can no longer support disciplinary action * * * [W]hile the court expressly limited its holding only to the byline language of § 540.20(b), neither should Bureau staff discipline inmates for publishing under a byline under the identical provision in § 540.62(d).

The commenter then argues that the provision in the rule stating that inmates may not act as reporters violates the First Amendment of the U.S. Constitution. We note that this provision was unchanged by the interim rule. However, the commenter indicates that "[b]y repealing the 'byline language' and leaving the prohibition on acting as a reporter, the Bureau has not correctly responded to the holding of the *Jordan* case."

We note that the holding in *Jordan* was limited to invalidation of the "byline" language, not the "reporter" language. In *Jordan*, the court referred to a memorandum issued by the Bureau's Office of General Counsel on October 20, 2006, in which the Bureau clarified to staff that "acting as a reporter" means doing so "on a regular or repeated basis," as opposed to a one-time publication under a byline. This is an important distinction because regular, repeated, compensated activity as a reporter signifies that the inmate is conducting a business, which is prohibited by the Bureau's inmate discipline regulations. Prevention of conducting a business was recognized by the *Jordan* court as a "legitimate penological objective." *Id.* at 1123.