

Proposed Rules

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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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96-ANM-011]

Proposed Amendment of Class E Airspace; Baker City, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposed rule would amend the Baker City, Oregon, Class E airspace to provide additional controlled airspace for Instrument Flight Rules (IFR) operations at the Baker City Municipal Airport. The area would be depicted on aeronautical charts for pilot reference. During an airspace review, it was noted that the airport name and the referenced navigational aid were incorrectly stated in the airspace designation for the existing Class E airspace. This proposed rule would correct that error.

DATES: Comments must be received on or before July 1, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, ANM-530, Federal Aviation Administration, Docket No. 96-ANM-011, 1601 Lind Avenue S.W., Renton, Washington 98055-4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James C. Frala, ANM-532.4, Federal Aviation Administration, Docket No. 96-ANM-011, 1601 Lind Avenue S.W., Renton, Washington 98055-4056; telephone number: (206) 227-2535.

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 notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made:

“Comments to Airspace Docket No. 96-ANM-011.” 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 notice 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, Operations Branch, ANM-530, 1601 Lind Avenue S.W., Renton, Washington 98055-4056. Communications must identify the notice 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 part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Baker City, Oregon, to provide additional controlled airspace for IFR operations at the Baker City Municipal Airport. The area would be depicted on aeronautical charts for pilot reference. During an airspace

review, it was noted that the airport name and the referenced navigational aid were incorrectly stated in the airspace designation for the existing Class E airspace. This proposed rule would correct that error. 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 7400.9C dated August 17, 1995, and effective September 16, 1995, 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 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, would 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—[AMENDED]

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, 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace

Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

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

* * * * *

ANM OR E5 Baker City, OR

Baker City Municipal Airport, OR

(lat. 44°50'17" N, long. 117°48'35" W)

Baker City VOR/DME

(lat. 44°50'26" N, long. 117°48'28" W)

That airspace extending upward from 1,200 feet above the surface within 7 miles northeast and 5.3 miles southwest of the Baker City VOR/DME 138° and 317° radials extending from 12.2 miles southeast to 14 miles northwest of the VOR/DME, and within 8.7 miles west and 4.3 miles east of the Baker City VOR/DME 345° radial extending from the VOR/DME to the south edge of V-298, and that airspace east of Baker City VOR/DME bounded on the north by the south edge of V-121, on the southeast by the northwest edge of V-269, and on the southwest by the northeast edge of V-4-444; excluding the Boise, ID, Enroute Domestic Airspace Area.

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Issued in Seattle, Washington, on May 3, 1996.

Richard E. Prang,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 96-12638 Filed 5-17-96; 8:45 am]

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NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Rules Governing Misconduct by Attorneys or Party Representatives Before the Agency

AGENCY: National Labor Relations Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Labor Relations Board (NLRB) is proposing to revise its rules governing misconduct by attorneys and party representatives before the Agency. The proposed changes consolidate the current misconduct rules applicable to unfair labor practice and representation proceedings into a single rule, clarify and revise the current rules to cover such misconduct at any and all stages of any Agency proceeding, whether or not it occurs during a hearing, and set forth the procedures for processing allegations of misconduct. In addition, the proposed changes revise Section 102.21 of the Board's rules governing the filing of answers to unfair labor practice complaints to make that section's disciplinary provisions

applicable to non-attorney party representatives as well as attorneys.

DATES: All comments must be received on or before June 19, 1996.

ADDRESSES: All written comments should be sent to Office of the Executive Secretary, National Labor Relations Board, 1099 14th Street, NW, Room 11600, Washington, DC 20570. Telephone: (202) 273-1940. The comments should be filed in eight copies, double spaced, on 8½ by 11 inch paper and shall be printed or otherwise legibly duplicated.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Executive Secretary, Telephone: (202) 273-1940.

SUPPLEMENTARY INFORMATION: The NLRB's rules governing misconduct by attorneys and party representatives before the Agency are currently set forth in two separate sections of the Board's rules and regulations: Section 102.44 (unfair labor practice proceedings) and 102.66(d) (representation proceedings). These sections, which are virtually identical, currently provide that misconduct at a hearing shall be grounds for summary exclusion from the hearing, and that "such misconduct of an aggravated character" may also be grounds for suspension or disbarment by the Board from further practice before it after due notice and hearing.

Applying these rules, the Board in several cases has suspended or disbarred attorneys or non-attorney party representatives from further practice before the Agency for engaging in misconduct during the course of unfair labor practice or representation hearings. See, e.g., *Joel Kieler*, 316 NLRB 763 (1995); *Sargent Karch*, 314 NLRB 482 (1994); *In re An Attorney*, 307 NLRB 913 (1992); *Kings Harbor Health Care*, 239 NLRB 679 (1978); *Roy T. Rhodes*, 152 NLRB 912 (1965); *Herbert J. Nichol*, 111 NLRB 447 (1955); and *Robert S. Cahoon*, 106 NLRB 831 (1953).

As currently written, however, the Board's rules have several deficiencies. First, they do not specifically cover misconduct that does not occur during the course of a hearing. As a result, the Board has been unable to take effective and appropriate disciplinary action against attorneys or party representatives who are alleged to have engaged in misconduct in the pre-hearing, investigative and/or compliance stages of its proceedings. Thus, for example, the Board recently held that it was without authority under its current rules to institute disciplinary proceedings against an attorney who allegedly suborned perjury during the pre-complaint investigation of an unfair labor practice charge. See *H.P.*

Townsend Mfg. Co., 317 NLRB 1169 (1995). The Board in that case instead transferred the record to the State Bar Association with a request that it investigate whether disciplinary action was warranted.

Second, the Board has found that the language in the current rules, "misconduct of an aggravated character," has sometimes caused confusion about what types of conduct would be subject to suspension or disbarment. See, e.g., *Sargent Karch*, *supra*, 314 NLRB at 486. The courts often consider both "aggravating" and "mitigating" factors in determining the appropriate sanction for attorney misconduct under the ABA Model Rules of Professional Conduct and the various state rules of professional conduct. See ABA/BNA Lawyers Manual on Professional Conduct 101:3101-3102 (1995). However, the phrase "aggravated" misconduct is not often used as in the Board's rules. This has raised questions about whether the Board's rules are intended to cover the same type of conduct covered by those rules.

Third, the Board's rules fail to set forth the procedures to be followed in processing allegations of misconduct. Thus, the Board's current rules fail to advise parties how or where to file allegations of misconduct or how such allegations will be processed or what their rights are.

The proposed changes are intended to address each of these problems. First, the Board is proposing to revise the rules to cover misconduct at any and all stages of any Agency proceeding, whether or not it occurs during a hearing. Unlike under the current rules, under the new rule misconduct by attorneys or party representatives will be subject to disciplinary sanction even if the misconduct occurs during the pre-hearing, investigative or compliance stage of the proceeding.¹

Second, the Board is proposing to delete the phrase "aggravated" misconduct from the rules, and to substitute the phrase "misconduct including unprofessional or improper behavior". By substituting this language it is not the Board's intent to make any change in the kind of conduct currently covered by the Board's misconduct rules. Rather, the Board is simply attempting to make the current rule more understandable by using language that is more familiar to attorneys and party representatives who practice before the Board. The Board will

¹ Misconduct by Agency employees, at any stage of an Agency proceeding, will be dealt with under internal disciplinary procedures.