thereby circumvent the requirement to consider relevant alternatives. *See Citizens Against Burlington,* 938 F.2d at 196, *City of New York* v. *Department of Transportation,* 715 F.2d 732, 743 (1983). The Commission believes that this principle should also apply where a sponsoring entity or applicant seeks the NRC's approval. There may well be circumstances where an entity seeking a CP or COL may be able to establish, consistent with NEPA and current judicial precedents, a narrow statement of purpose and need for the project sufficient to justify excluding from the EIS a consideration of non-nuclear alternative energy sources.

The NRC's current policy is to consider alternative energy sources at the CP stage because alternatives to the construction of a nuclear power plant must be considered before the environmental impacts of construction are realized. The Commission's practice was acknowledged in the statement of consideration for the final rule amending 10 CFR part 51 to bar the consideration of alternative energy source issues in operating license proceedings for nuclear power plants (47 FR 12940; March 26, 1982). The Commission stated that ''in accordance with the Commission's NEPA responsibilities, the need for power and alternative energy sources are resolved in the construction permit proceeding.'' The Commission added that ''[a]lternative energy source issues receive and will continue to receive extensive consideration at the CP stage'' (emphasis added). Thus, the Commission has committed itself to consider alternative energy sources and continues to believe that it should do so to fulfill its NEPA responsibilities. Under 10 CFR part 52, alternative energy sources may be considered at the ESP stage or deferred until the COL stage.

The Commission's position on consideration of alternative energy sources is consistent with other Federal agencies' practices, which have consistently included alternative energy sources when preparing an EIS for a new power generation project. In addition, the NRC's position is consistent with case law. There are many cases involving the adequacy of an agency's alternative energy source review. *See, e.g., Association of Public Agency Customers* v. *Bonneville Power Administration,* 126 F.3d 1158, 1187 (9th Cir. 1997); *Swinomish Tribal Community* v. *FERC,* 627 F.2d 499, 514–16 (D.C. Cir. 1980); *Hawaii County Green Party* v. *Clinton,* 980 F. Supp. 1160, 1167 (D. Haw. 1997). The petitioner did not cite, and the NRC is not aware of, any judicial decision concluding that it is unnecessary for a Federal agency to consider alternative energy sources in licensing a new power generation project.

The petitioner argued, as it did with respect to the need for power, that future ''merchant generators'' will not build and operate a nuclear power plant if there is a superior source of energy. However, the petitioner failed to cite any recent judicial decisions interpreting NEPA which hold that a Federal agency, acting on a project proposal presented by a private sponsor or applicant, need not conduct an independent review of alternatives but may limit its discussion to alternatives that the sponsor or applicant deems reasonable.

The petitioner stated that it is not reasonable to assume that the NRC will be able to identify an alternative energy source that is both feasible and preferable to the choices made by the applicant, but provides no apparent basis for this assertion. The Commission does not agree with the petitioner's assertion. The NRC has extensive experience in identifying and evaluating the feasibility of alternative energy sources in a manner that is sufficient to meet the requirements of NEPA. Indeed, the NRC currently performs such analyses in connection with renewals of nuclear power plant operating licenses (including renewals for plants operated by non-utility entities).

Finally, the petitioner argued that the NRC need not consider alternative energy sources because ''the NRC lacks the authority to compel the applicant to use the alternative * * * [energy] source.'' Petition, at 7. The Commission agrees with the petitioner that the NRC does not have the authority to require the applicant to use an alternative energy source even if there is an alternative with potentially fewer environmental impacts than those associated with operation of the proposed nuclear power plant. However, if the alternative energy source is a reasonable alternative, it should be identified and evaluated. *See Dubois* v. *U.S. Dept. of Agriculture,* 102 F.3d 1273, 1286–87 (1st Cir. 1996), *citing Roosevelt Campobello Int'l Park Committee* v. *United States EPA,* 684 F.2d. 1041 (1st Cir. 1982).

In summary, the petitioner has not shown that it is no longer a necessary part of the Commission's NEPA obligations for the NRC to consider alternative energy sources in rendering decisions regarding reactor licensing.[6]

**Conclusion**

The petitioner has not shown any change in other Federal agencies' practices, judicial consideration of the NEPA obligations of Federal regulatory agencies responsible for licensing privately proposed actions, or other factors underlying the Commission's current policies for considering the need for power or alternative energy sources that would lead the Commission to conclude that consideration of these issues is no longer a necessary part of the Commission's NEPA obligations for reactor licensing decisions. For applications that could result in the commencement of construction (*i.e.*, CP and COL applications), the NRC continues to believe that the agency should address alternative energy sources in the related EIS (unless, the CP or COL application references an ESP that considered alternative energy sources). The NRC also continues to believe that, for such construction approval applications, the agency should address the benefits assessment (*e.g.,* need for power) in the related EIS.

For the reasons cited in this document, the NRC denies the petition.

Dated at Rockville, Maryland, this 23rd day of September, 2003.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 03–24474 Filed 9–26–03; 8:45 am]

**BILLING CODE 7590–01–P**

[6] As previously discussed in footnote [4], it is the Commission's view that § 52.17(a)(2) currently allows the ESP applicant the flexibility to choose to defer consideration of benefits (for example, need for power) of the proposed facility to the time (if ever) that the ESP is referenced by a COL or CP application. In this same context, the ESP applicant need not include an assessment or discussion of alternative energy sources in its environmental report supporting an ESP application. Rather, the applicant may choose to defer consideration of alternative energy sources to the COL or CP application. The Commission's proposed revision to 10 CFR part 52 includes a provision to amend § 52.17(a)(2) to clarify that an ESP applicant has the flexibility of either addressing the matter of alternative energy sources in the environmental report supporting its ESP application or deferring the consideration of alternative energy sources to the time that the ESP is referenced in a licensing proceeding (68 FR 40028, July 3, 2003).

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2003–15876; Airspace Docket No. 03–AGL–14]**

## Proposed Modification of Class E Airspace; Zanesville, OH

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to modify Class E airspace at Zanesville, OH. A Standard Instrument Approach Procedure (SIAP) has been developed for Zanesville Municipal Airport, Zanesville, OH. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing this approach. This action would increase the area of the existing controlled airspace for Zanesville Municipal Airport.

**DATES:** Comments must be received on or before November 20, 2003.

**ADDRESSES:** Send comments on the 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–2003–15876/ Airspace Docket No. 03–AGL–14, 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.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

**FOR FURTHER INFORMATION CONTACT:** Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

**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 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 document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–15876/Airspace Docket No. 03–AGL–14.'' 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 action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, 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

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, 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 14 CFR part 71 to modify Class E airspace at Zanesville, OH, for Zanesville Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would 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 designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed 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 proposed rule will 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

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTINES; 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 the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

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

* * * * *

**AGL OH E5 Zanesville, OH [Revised]**

Zanesville Municipal Airport, OH
(Lat. 39°56′40″ N., long. 81°53′32″ W.)

Zanesville VOR/DME
(Lat. 39°56′27″N., long. 83°53′33″W.)

That airspace extending upward from 700 feet above the surface within a 8.5-mile radius of Zanesville Municipal Airport and within 7 miles east and 4.4 miles west of the Zanesville VOR/DME 220° radial extending from the VOR/DME to 10.5 miles southwest of the VOR/DME, excluding that airspace within the Cambridge, OH Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on September 5, 2003.

**Nancy B. Shelton,**

*Manager, Air Traffic Division, Great Lakes Region.*

[FR Doc. 03–24605 Filed 9–26–03; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2003–15834; Airspace Docket No. 03–AGL–13]**

## Proposed Modification of Class E Airspace; Wilmington Clinton Field, OH

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to modify Class E airspace at Wilmington Clinton Field, OH. A Standard Instrument Approach Procedure (SIAP) has been developed for Wilmington Clinton Field, OH. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing this approach. This action would increase the area of the existing controlled airspace for Wilmington Clinton Field.

**DATES:** Comments must be received on or before November 20, 2003.

**ADDRESSES:** Send comments on the 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–2003–15834/ Airspace Docket No. 03–AGL–13, 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.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

**FOR FURTHER INFORMATION CONTACT:** Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Planes, Illinois 60018, telephone (847) 294–7568.

**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 suggesions 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 document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–15834/Airspace Docket No. 03–AGL–13.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date of comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, 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

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Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, 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 14 CFR part 71 to modify Class E airspace at Wilmington Clinton Field, OH, for Wilmington Clinton Field. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would 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 designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keem them operationally current. Therefore this, proposed 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 proposed rule will 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

Accordingly, pursuant to the authority delegated to me, the Federal