

Maintenance Branch has amended one SIAP for the Ruby Airport. The amended SIAP is the Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 21, Amendment 2. Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface in the Ruby Airport area would be revised by this action. The proposed airspace is sufficient in size to contain aircraft executing the instrument procedures at the Ruby Airport, Ruby, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9R, *Airspace Designations and Reporting Points*, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class 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 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 United States 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 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class E airspace sufficient in size to contain

aircraft executing instrument procedures at the Ruby Airport, AK, and represents the FAA’s continuing effort to safely and efficiently use the navigable airspace.

#### 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, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; 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 Federal Aviation Administration Order 7400.9R, *Airspace Designations and Reporting Points*, signed August 15, 2007, and effective September 15, 2007, is to be amended as follows:

\* \* \* \* \*

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

\* \* \* \* \*

##### AAL AK E5 Ruby, AK [Revised]

Ruby, Ruby Airport, AK  
(Lat. 64°43’38” N., Long. 155°28’11” W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Ruby Airport, AK, and 8 miles either side of the 051°(T)/070°(M) bearing from the Ruby Airport, AK, extending from the 6.4-mile radius to 20.3 miles northeast of the Ruby Airport, AK; and that airspace extending upward from 1,200 feet above the surface within a 70-mile radius of the Ruby Airport, AK.

\* \* \* \* \*

Issued in Anchorage, AK, on August 22, 2008.

**James Miller,**

*Acting Manager, Alaska Flight Services Information Area Group.*

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### 25 CFR Part 293

RIN 1076–AE99

#### Class III Tribal State Gaming Compact Process

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Extension of comment period for proposed rule.

**SUMMARY:** On July 2, 2008, the Bureau of Indian Affairs (BIA) proposed a rule to establish procedures for Indian tribes and States to submit Tribal-State compacts and compact amendments, governing the conduct of class III gaming activities on the tribe’s Indian lands located within that State, for review and approval by the Secretary of the Interior (see 73 FR 37907). This notice extends the comment period for that proposed rule by 20 days, to September 22, 2008.

**DATES:** The comment period for the proposed rule published on July 2, 2008 (73 FR 37907) is extended to September 22, 2008.

**ADDRESSES:** You may submit comments on the rule, identified by the number 1076–AE99, by any of the following methods:

- *Federal e-rulemaking portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* (202) 273–3153.
- *Mail:* Ms. Paula Hart, Acting Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, 1849 C Street, NW., Mail Stop 3657–MIB, Washington, DC 20240.
- *Hand delivery:* Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, 1849 C Street, NW., Room 3657–MIB, Washington, DC, from 9 a.m. to 4 p.m., Monday through Friday.

Note that requests for comments on the rule and the information collection are separate. Comments on the information collection requirements should be sent to: Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, by e-mail at [http://www.OIRA\\_DOCKET@omb.eop.gov](http://www.OIRA_DOCKET@omb.eop.gov), or by facsimile at (202) 395–6566.

Please also send a copy of your comments on information collection requirements to the Office of Indian Gaming at the above address.

**FOR FURTHER INFORMATION CONTACT:**

Paula Hart, Acting Director, Office of Indian Gaming, (202) 219-4066.

**SUPPLEMENTARY INFORMATION:**

The Indian Gaming Regulatory Act (IGRA), 25 U.S.C. 2701-2721, was signed into law on October 17, 1988. IGRA, 25 U.S.C. 2710, authorizes class III gaming activities on Indian lands when authorized by an approved ordinance, located in a State that permits such gaming and conducted in conformance with a Tribal-State compact. IGRA, 25 U.S.C. 2710(d)(8)(A), (B) and (C), authorizes the Secretary to approve, disapprove or consider approved a Tribal-State compact or compact amendment and publish notice of that approval or considered approval in the **Federal Register**. The submission process for the Tribal-State compact or compact amendment is not clear. Therefore, BIA published a proposed rule on July 2, 2008 (73 FR 37907) to establish procedures for submitting Tribal-State compacts and compact amendments.

The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2, 9, and 2710. The Secretary has delegated this authority to the Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual.

Dated: August 26, 2008.

**George T. Skibine,**

*Acting Deputy Assistant Secretary for Policy and Economic Development—Indian Affairs.*

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**BILLING CODE 4310-02-P**

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## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

### 29 CFR Part 2700

#### Procedural Rules

**AGENCY:** Federal Mine Safety and Health Review Commission.

**ACTION:** Advanced notice of proposed rulemaking.

**SUMMARY:** The Federal Mine Safety and Health Review Commission (the “Commission”) is an independent adjudicatory agency that provides trials and appellate review of cases arising under the Federal Mine Safety and Health Act of 1977 (2000) (the “Mine Act”). Trials are held before the Commission’s Administrative Law Judges, and appellate review is provided by a five-member Review Commission appointed by the President and confirmed by the Senate. The Commission is seeking suggestions for improving its procedures for processing

requests for relief from default and reducing the number of cases in which a party seeks relief before the Commission after default.

**DATES:** Written and electronic comments must be submitted on or before November 3, 2008.

**ADDRESSES:** Written comments should be mailed to Michael A. McCord, General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001. Persons submitting written comments shall provide an original and three copies of their comments. Electronic comments should state “Comments on Advanced Notice of Proposed Rulemaking” in the subject line and be sent to [mmccord@fmshrc.gov](mailto:mmccord@fmshrc.gov).

**FOR FURTHER INFORMATION CONTACT:**

Michael A. McCord, General Counsel, Office of the General Counsel, 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001, telephone 202-434-9935; FAX: 202-434-9944.

**SUPPLEMENTARY INFORMATION:** The Mine Act sets forth dual filing requirements for parties’ contests of citations and orders and their associated proposed civil penalties. 30 U.S.C. 815(a), (d). The Commission has implemented these requirements in 29 CFR part 2700 subparts B and C. Subpart B sets forth the manner in which a party may contest a citation or order before the Secretary has proposed a civil penalty for the alleged violation described in the citation or order. Subpart C sets forth the manner in which a party may contest a civil penalty after a proposed penalty assessment has been issued. If a party chooses not to file a contest of a citation or order under subpart B, it may nonetheless contest the proposed penalty assessment under subpart C. In such circumstances, in addition to contesting the proposed penalty assessment, the party may challenge the fact of violation and any special findings alleged in the citation or order. See 29 CFR 2700.21(b) (“An operator’s failure to file a notice of contest of a citation or order \* \* \* shall not preclude the operator from challenging, in a penalty proceeding, the fact of violation or any special findings \* \* \*.”); *Quinland Coals, Inc.*, 9 FMSHRC 1614, 1621-23 (Sept. 1987) (holding that fact of violation and special findings may be placed in issue by the operator in a civil penalty proceeding regardless of whether the operator has availed itself of the opportunity to file a contest proceeding under subpart B). However, if a party files a contest of a citation or order

under subpart B, it must also file additional pleadings under subpart C in order to challenge the proposed penalty assessment related to the citation or order.

The Mine Act’s dual filing requirements have often led to confusion by parties who may fail to timely file required documents and have their cases result in default. The Commission receives requests for relief from default that generally fall into two categories. Requests in the first category involve circumstances in which a party has failed to file a timely contest of a proposed penalty assessment and the proposed penalty thereby becomes a final order of the Commission by operation of section 105(a) of the Mine Act, 30 U.S.C. 815(a). Requests in the second category involve circumstances in which a Commission Administrative Law Judge issues a default order because a party has failed to file an answer to a petition for assessment of penalty filed by the Secretary of Labor. Currently, the large majority of requests for relief received by the Commission fall within the first category.

Under the Commission’s present practice, requests for relief from default are directed to the Review Commission. In evaluating requests for relief from default, the Review Commission finds guidance in Rule 60(b) of the Federal Rules of Civil Procedure (“Rule 60(b)”). See 29 CFR 2700.1(b) (“the Commission and its Judges shall be guided so far as practicable by the Federal Rules of Civil Procedure”); *Jim Walter Res., Inc.*, 15 FMSHRC 782, 787 (May 1993). The Review Commission has recognized that Rule 60(b) “is a tool which \* \* \* courts are to use sparingly \* \* \*.” *Id.* at 789 (citation omitted); *Atlanta Sand and Supply Co.*, 30 FMSHRC \_\_\_, slip op. at 4, No. SE 2008-327-M (July 16, 2008). The Review Commission has also observed that default is a harsh remedy and that, if the defaulting party can make a showing of good cause for a failure to timely respond, the case may be reopened and appropriate proceedings on the merits permitted. See *Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

Upon application of this standard, if the Review Commission concludes that a request for relief is potentially sufficient on its face to support reopening, but cannot conclusively determine from the record whether relief should be granted, it remands the matter to the Chief Administrative Law Judge. The Chief Administrative Law Judge exercises his discretion to engage in any further fact-finding and determines whether good cause exists for a failure to timely respond. If the