

liability by providing ‘clear and convincing evidence’ that they would have taken the same personnel action * * *”). By contrast, in cases where the staff has stronger evidence that protected activity was a contributing factor, such as when a document or employer’s statements confirm an allegation of whistleblower discrimination, it would be unlikely that the employer could make its case by clear and convincing evidence that it would have taken the adverse action regardless. Thus, the Commission in *TVA* did not condone “some amount of retaliation”; rather, it established the standards for determining the existence of whistleblower discrimination if a violation is challenged by an employer.

In deciding *TVA*, the Commission looked to Section 211 for procedural guidance in applying Section 50.7 and generally adopted Section 211’s overall framework. *Id.* at 194. The Commission, however, is not required to follow Section 211’s evidentiary standard. *Id.* at 193–194.⁵ Section 211 establishes DOL’s authority to take action in cases involving whistleblower discrimination, *id.* at 194, but the NRC’s authority to regulate against employee discrimination is derived from the Atomic Energy Act of 1954. Therefore, Section 211 should not be construed as directing the NRC’s evidentiary approach.

Further, contrary to the petitioner’s assertion, the discrimination data from

1999–2009 do not appear to evidence any meaningful trends because the data fluctuates up and down during the years prior to and following *TVA* (2004); in some years since *TVA*, the number of discrimination claims filed is higher than in the years directly preceding *TVA* and in others that number is lower. Also, because the data does not differentiate claims failing to meet the threshold *prima facie* determination from those that were withdrawn by the allegor or came to the NRC as third-party claims,⁶ it is unknown whether there is any change in the percentage of discrimination allegations that were dismissed or withdrawn because they failed to meet the threshold for investigation, as the petitioner asserts.

| | Calendar year | | | | | | | | | | |
|---|---------------|---------|---------|---------|---------|-------------------|---------|---------|---------|---------|---------|
| | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 ⁷ | 2005 | 2006 | 2007 | 2008 | 2009 |
| TOTAL DISCRIMINATION CLAIMS | 139 | 144 | 108 | 97 | 96 | 97 | 118 | 88 | 84 | 94 | 116 |
| Total Claims Resolved/ ⁸ % of Total Claims | 91/65.5 | 91/63.2 | 75/69.4 | 55/56.7 | 70/72.9 | 75/77.3 | 73/61.9 | 37/42.0 | 52/61.9 | 34/36.2 | 10/8.6 |
| NRC Substantiated/ ⁹ % of Total Claims | 6/4.3 | 6/4.2 | 8/7.4 | 0/0 | 4/4.2 | 3/3.1 | 1/0.9 | 2/2.3 | 0/0 | 1/1.1 | 0/0 |
| NRC Not Substantiated/ ⁹ % of Total Claims | 83/59.7 | 84/58.3 | 66/61.1 | 55/56.7 | 64/66.7 | 66/68.0 | 63/53.4 | 23/26.1 | 42/50.0 | 16/17.0 | 7/6.0 |
| Settlements/ ⁹ % of Total Claims | 2/1.4 | 1/0.7 | 1/0.9 | 0/0 | 0/0 | 6/6.2 | 9/7.6 | 9/10.2 | 10/11.9 | 17/18.1 | 3/2.6 |
| Claims Still Open/ ⁹ % of Total Claims | 0/0 | 0/0 | 0/0 | 1/1.0 | 2/2.1 | 1/1.0 | 3/2.5 | 1/1.1 | 2/2.3 | 13/13.8 | 58/50.0 |
| Claims Not Warranting NRC Review/ ¹⁰ % of Total Claims | 48/34.5 | 53/36.8 | 33/30.6 | 41/42.3 | 24/25.0 | 21/21.6 | 42/35.6 | 50/56.2 | 30/35.7 | 47/50.0 | 48/41.3 |

⁷The data contained in this table was obtained from the Allegation Management System.

Finally, the *TVA* decision has had no effect on the way the NRC staff approaches or evaluates whistleblower discrimination claims. That is, the NRC staff continues to issue notices of violations of the Employee Protection Rule to licensees, applicants, and contractors or subcontractors of licensees and applicants based on its assessment as to whether the evidence shows that protected activity was a contributing factor in the adverse action, while also taking into consideration credible evidence that the employer would have taken the same personnel action regardless of the protected activity.

Public Comments on the Petition

Due to this PRM’s primary focus on the continued viability of a Commission adjudicatory decision, it was deemed a legal matter and thus, the NRC did not

prepare a notice of receipt and request for comment, and instead began consideration of the request. Accordingly, there are no public comments on this petition.

Determination of Petition

For reasons cited above, the NRC is denying PRM–50–92.

Dated at Rockville, Maryland, this 28th day of February 2011.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2011–5053 Filed 3–4–11; 8:45 am]

BILLING CODE 7590–01–P

interim program regarding the voluntary use of Alternative Dispute Resolution (ADR) in addressing discrimination complaints and other allegations of wrongdoing was adopted in the NRC’s Enforcement Policy.

⁸Refers to the number of discrimination claims for which either: (1) The NRC’s Office of Investigations (OI) reached a conclusion and (2) those that did not involve an OI investigation and were settled via early-ADR (or licensee-sponsored internal mediation) or in the DOL.

⁹These numbers represent the number of cases settled either through early-ADR or in the DOL. However, the table does not reflect cases that involved DOL settlements between 1/1999 and 9/

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1325; Airspace Docket No. 10–ASO–40]

Proposed Amendment of Class E Airspace; Orangeburg, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E Airspace at Orangeburg, SC, to accommodate the additional airspace needed for the Standard Instrument Approach Procedures (SIAPs) developed for Orangeburg Municipal Airport. This action shall

2004 that also involved an OI case. For information only, those numbers are: 1999–10; 2000–7; 2001–7; 2002–3; 2003–9; and 2004–3.

¹⁰These numbers represent the number of claims that did not meet the threshold *prima facie* determination, were withdrawn by the allegor, or came to the NRC as third-party claims. These numbers do not take into account that some of the open claims might eventually be found to not meet the *prima facie* determination or could be withdrawn by the allegor.

⁵“It is true that our whistleblower regulation, section 50.7, does not adopt the Section 211 evidentiary paradigm as such, but neither does it adopt the *McDonnell Douglas* or *Price Waterhouse* paradigms. Our regulation is prohibitory, not procedural. It renders discriminatory conduct unlawful, but does not purport to prescribe evidentiary standards and approaches for use in NRC enforcement litigation.”

⁶Third party claims are those discrimination claims that come to the NRC from an individual other than the employee who was allegedly discriminated against.

⁷2004 represents both: (1) The year when the Commission decided *TVA* and (2) the year that the

enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport. This action also shall make a minor adjustment to the geographic coordinates of the airport.

DATES: 0901 UTC. Comments must be received on or before April 21, 2011.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12-140, 1200 New Jersey, SE., Washington, DC 20590-0001; Telephone: 1-800-647-5527; Fax: 202-493-2251. You must identify the Docket Number FAA-2010-1325; Airspace Docket No. 10-ASO-40, at the beginning of your comments. You may also submit and review received comments through the Internet at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-6364.

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 (FAA Docket No. FAA-2010-1325; Airspace Docket No. 10-ASO-40) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at <http://www.regulations.gov>.

Comments wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2010-1325; Airspace Docket No. 10-ASO-40." 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/.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (*see* the **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.

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 amend Class E airspace at Orangeburg, SC to provide controlled airspace required to support the SIAPs for Orangeburg Municipal Airport. The existing Class E airspace extending upward from 700 feet above the surface would be modified for the safety and management of IFR operations.

Class E airspace designations are published in Paragraph 6005 of FAA order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will 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 amend Class E airspace at Orangeburg Municipal Airport, Orangeburg, SC.

Lists 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 CLASS E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; 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 Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, effective September 15, 2010, is amended as follows:

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

* * * * *

ASO GA E5 Orangeburg, SC [Amended]
Orangeburg Municipal Airport, SC
(Lat. 33°27'39" N., long. 80°51'32" W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of the Orangeburg Municipal Airport.

Issued in College Park, Georgia, on February 18, 2011.

Mark D. Ward,

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

[FR Doc. 2011-5096 Filed 3-4-11; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 139

[Docket No. FAA-2010-0997; Notice No. 10-14]

RIN 2120-AJ38

Safety Management System for Certificated Airports; Extension of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Second extension of comment period and notice of procedures for submission of clarifying questions.

SUMMARY: The FAA published a proposed rule on October 7, 2010, to require each certificate holder to establish a safety management system (SMS) for its entire airfield environment (including movement and non-movement areas) to improve safety at airports hosting air carrier operations. The American Association of Airport Executives and Airports Council International—North America have requested that the FAA provide additional information supporting the proposed rule and extend the comment period to allow adequate time for the public to analyze and comment on that information and the NPRM. This action extends the comment period until July 5, 2011, and establishes a procedure for handling clarifying questions to the proposed rule.

DATES: The comment period for the NPRM published on October 7, 2010, closing on March 7, 2011 is extended until July 5, 2011. You must submit your clarifying questions in writing using the procedures outlined in this notice by April 6, 2011. The FAA anticipates responding to these submissions and providing a summary report of the pilot studies by May 21, 2011.

ADDRESSES: See the “Procedures for Filing Clarifying Questions” section of this document.

FOR FURTHER INFORMATION CONTACT:

Technical clarifications: Keri Spencer, Office of Airports Safety and Standards, Federal Aviation Administration, e-mail keri.spencer@faa.gov

Legal clarifications: Robert Hawks, Office of the Chief Counsel, Federal Aviation Administration, e-mail rob.hawks@faa.gov.

Cost/benefit clarifications: Nicole Nance, Office of Aviation Policy and Plans, Federal Aviation Administration, e-mail nicole.nance@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 2010, the FAA published Notice No. 10-14, entitled “Safety Management System for Certificated Airports” (75 FR 62008). Comments to that document were to be received on or before January 5, 2011. On December 10, 2010, in response to several requests for extension of the comment period, the FAA granted an additional 60 days for commenters to analyze the NPRM and provide meaningful comment (75 FR 76928).

By comments posted to the docket on February 17, 2011, Airport Council International—North America (ACI-NA) and the American Association of Airport Executives (AAAE) requested the FAA extend the comment period for a second time. ACI-NA and AAAE also requested the FAA provide additional information to allow for meaningful comment on the proposed rule. Specifically, ACI-NA made the following requests:

(1) Additional information is needed regarding the FAA’s proposed SMS implementation strategy, most notably what will be expected in the required SMS Implementation Plans.

(2) Data, findings, and conclusion—both positive and negative—from the three SMS pilot studies need to be made available in the docket so these findings and conclusions can inform the industry’s review of the costs, benefits, and potential issues arising from the implementation of the proposed rule.

(3) The proposed rule needs to be reviewed in conjunction with key guidance documents, especially the revised version of FAA Advisory Circular 150/5200-37. These documents, which are mentioned explicitly in the FAA’s discussion of the proposed rule will describe the standard means of compliance with the proposed rule and are needed to understand the scope and scale of airport SMS requirements.

(4) Additional time will be needed for technical analysis by commenters, including analyses of the costs and benefits of phased SMS implementation,

an implementation approach on which the FAA has specifically requested comments.

AAAE made the following requests:

(1) We request that the FAA make results and recommendations from all three phases of the pilot studies available before closing the comment period.

(2) The FAA is under a statutory deadline to implement the part 121 SMS rule and has proposed a short time schedule for issuing its part 139 training requirements. We request that the comment period remain open until the other regulatory documents have been issued in their final form.

(3) The agency also has committed to issuing an advisory circular on implementation of SMS requirements. We request that the agency leave the comment period open on the proposed SMS rule until at least a draft of the advisory circular is issued. That way, respondents can comment on both documents simultaneously.

AAAE suggests the comment period remain open until at least September 30, 2011.

FAA Response to the Requests

The FAA has carefully considered the requests for extension of the comment period. The FAA believes that the narrative and analysis in the NPRM and Initial Regulatory Evaluation, which was made available in the docket concurrently with NPRM publication, contain sufficient detail and supporting data to permit meaningful comment by the public. The FAA also notes that it has received thoughtful comments from several airports, indicating that sufficient information currently exists in the docket to permit meaningful comment. However, the FAA acknowledges there is a belief among some members of the public that additional information may result in better comments. From the request submitted, it appears the bulk of this concern involves the FAA’s implementation strategy for SMS and the results of the pilot study.

To address this concern about insufficient information, the FAA has determined to pursue a combination of strategies. First, the FAA will accept and respond to specific clarifying questions submitted by the public. This strategy will allow the public to identify specific areas of the NPRM or Initial Regulatory Evaluation that are unclear or for which more information may be desired. The intent is that the public would be able to obtain specific information from the FAA, provided that information exists. The specific procedure is discussed in the