

# 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 39

[Docket No. FAA-2009-0687; Directorate Identifier 2009-NM-033-AD]

RIN 2120-AA64

#### Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 and ERJ 190 Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for the products listed above that would supersede an existing AD. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as: It has been found the occurrence of two events of aircraft being dispatched with the cargo door opened without indication. In one of the events the aircraft took off with the cargo door opened.

The unsafe condition is a cargo door opening during flight, which could result in reduced structural integrity and consequent rapid decompression of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by September 17, 2009.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* (202) 493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-

30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227-901 São Jose dos Campos—SP—BRASIL; *telephone:* +55 12 3927-5852 or +55 12 3309-0732; *fax:* +55 12 3927-7546; *e-mail:* [distrib@embraer.com.br](mailto:distrib@embraer.com.br); *Internet:* <http://www.flyembraer.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221 or 425-227-1152.

#### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

#### FOR FURTHER INFORMATION CONTACT:

Kenny Kaulia, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; *telephone* (425) 227-2848; *fax* (425) 227-1149.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA-2009-0687; Directorate Identifier 2009-NM-033-AD” at the beginning of your comments. We specifically invite

comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>; including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

#### Discussion

On April 17, 2007, we issued AD 2007-06-53, Amendment 39-15035 (72 FR 21088, April 30, 2007). That AD requires actions intended to address an unsafe condition on the products listed above.

The preamble to AD 2007-06-53 specifies that we consider the requirements “interim action” and that the manufacturer is developing a modification to address the unsafe condition. That AD explains that we might consider further rulemaking if a modification is developed, approved, and available. The manufacturer now has developed such a modification, and we have determined that further rulemaking is indeed necessary; this proposed AD follows from that determination.

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directives 2007-03-01R1, effective June 9, 2008, and 2007-03-02R2, effective November 21, 2008 (referred to after this as “the MCAI”), to correct an unsafe condition for the specified products. The MCAI states:

It has been found the occurrence of two events of aircraft being dispatched with the cargo door opened without indication. In one of the events the aircraft took off with the cargo door opened.

The unsafe condition is a cargo door opening during flight, which could result in reduced structural integrity and consequent rapid decompression of the airplane. Required actions include repetitive inspections of the forward and aft cargo doors to detect signs of interference between the lock handle and the aft edge liner assembly and reworking the assembly; a one-time inspection for signs of damage of the lateral roller fitting on the forward and aft cargo door frames at the fuselage and

replacement of the roller if necessary, and modification of the cargo door, which ends the repetitive inspections. After accomplishing the modification, the actions include incorporating information into the maintenance program to include the operational (OPC) and functional (FNC) checks of the forward and aft cargo doors and accomplishing repetitive OPC and FNC checks. You may obtain further information by examining the MCAI in the AD docket.

#### Relevant Service Information

Embraer has issued Alert Service Bulletins 170-52-A036 (for Model ERJ 170 airplanes) and 190-52-A018 (for Model ERJ 190 airplanes); both Revision 01, both dated March 23, 2007. Embraer Alert Service Bulletins 170-52-A036 and 190-52-A018, both dated March 12, 2007, were referred to in the existing AD for accomplishing the required actions. No additional work is necessary for airplanes on which the original issue of the service information has been done.

Embraer has also issued Service Bulletins 170-52-0041, Revision 01, dated June 13, 2008, and 170-52-0044, dated January 18, 2008 (for Model ERJ 170 airplanes); and Service Bulletins 190-52-0023, Revision 02, dated March 11, 2008, and 190-52-0027 dated March 20, 2008 (for Model ERJ 190 airplanes).

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

#### FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

#### Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information

provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a note within the proposed AD.

#### Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 145 products of U.S. registry.

The actions that are required by AD 2007-06-53 and retained in this proposed AD take about 1 work-hour per product, at an average labor rate of \$80 per work hour. Based on these figures, the estimated cost of the currently required actions is \$80 per product.

We estimate that it would take about 7 work-hours per product to comply with the new basic requirements of this proposed AD. The average labor rate is \$80 per work-hour. Required parts would cost about \$17,162 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$2,569,690, or \$17,722 per product.

#### Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. 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.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

#### Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This

proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

*For the reasons discussed above, I certify this proposed regulation:*

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

#### The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

##### § 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39-15035 (72 FR 21088, April 30, 2007) and adding the following new AD:

**Empresa Brasileira De Aeronautica S.A. (EMBRAER):** Docket No. FAA-2009-0687; Directorate Identifier 2009-NM-033-AD.

#### Comments Due Date

- (a) We must receive comments by September 17, 2009.

#### Affected ADs

- (b) The proposed AD supersedes AD 2007-06-53, Amendment 39-15035.

#### Applicability

- (c) This AD applies to EMBRAER Model ERJ 170-100 LR, -100 STD, -100 SE, -100 SU, -200 LR, -200 STD, and -200 SU airplanes; and ERJ 190-100 STD, -100 LR, -100 IGW, -200 LR, -200 STD, and -200 IGW airplanes; certificated in any category.

#### Subject

- (d) Air Transport Association (ATA) of America Code 52: Doors.

**Reason**

(e) The mandatory continuing airworthiness information (MCAI) states:

It has been found the occurrence of two events of aircraft being dispatched with the cargo door opened without indication. In one of the events the aircraft took off with the cargo door opened.

The unsafe condition is a cargo door opening during flight, which could result in reduced structural integrity and consequent rapid decompression of the airplane. Required actions include repetitive inspections of the forward and aft cargo doors to detect signs of interference between the lock handle and the aft edge liner assembly and reworking the assembly; a one-time inspection for signs of damage of the lateral roller fitting on the forward and aft cargo door frames at the fuselage and replacement of the roller if necessary, and modification of the cargo door, which ends the repetitive inspections. After accomplishing the modification, the actions include incorporating information into the maintenance program to include the operational (OPC) and functional (FNC) checks of the forward and aft cargo doors and accomplishing repetitive OPC and FNC checks.

**Compliance**

(f) Required as indicated, unless accomplished previously.

**Restatement of Requirements of AD 2007–06–53, With New Service Information***Preflight Verification of Correct Door Closure*

(g) For Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes; and ERJ 190–100 STD, –100 LR, and –100 IGW airplanes: As of 24 hours after May 7, 2007 (the effective date of AD 2007–06–53), before each flight after closing the cargo doors, verify that the forward and aft cargo doors are closed flush with the fuselage skin, and that all 4 latched and locked indicators at the bottom of each door are green. Persons qualified to do this verification are mechanics and flightcrew members. If it cannot be verified that both doors are closed flush with the fuselage skin, and that all 4 latched and locked indicators at the bottom of each door are green, repair before further flight. Repeat the verification before every flight until accomplishment of the actions required by paragraph (h) of this AD.

**Inspection for Interference and Damage**

(h) For Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes; and ERJ 190–100 STD, –100 LR, and –100 IGW airplanes: Within 10 days after May 7, 2007, do the actions specified in paragraphs (h)(1), (h)(2), and (h)(3) of this AD, in accordance with the Accomplishment Instructions of Embraer Alert Service Bulletins 170–52–A036 (for Model ERJ 170 airplanes) or 190–52–A018 (for Model ERJ 190 airplanes), both dated March 12, 2007; or Revision 01, both dated March 23, 2007; as applicable. As of the effective date of this AD, use Revision 01 of the service bulletins.

(1) Remove the roller fitting cover plate on the forward and aft cargo door frames.

(2) Perform a detailed inspection of the forward and aft cargo doors to detect signs of interference between the lock handle and the aft edge liner assembly. Then rework the aft edge liner assembly at the applicable time specified in paragraph (h)(2)(i) or (h)(2)(ii) of this AD.

(i) If any sign of interference is detected: Rework the assembly before further flight.

(ii) If no sign of interference is detected: Rework the assembly within 150 flight cycles after the inspection.

(3) Perform a detailed inspection for signs of damage of the lateral roller fitting on the forward and aft cargo door frames at the fuselage. If any damage is found, replace the lateral roller fitting before further flight with a new roller fitting having the same part number, in accordance with the applicable service bulletin.

(4) Actions done before May 7, 2007, in accordance with Embraer Alert Service Bulletin 170–52–A036 or 190–52–A018, both dated March 12, 2007, are acceptable for compliance with the corresponding requirements of this AD.

**Note 1:** For the purposes of this AD, a detailed inspection is: “An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.”

**Note 2:** Embraer Alert Service Bulletins 170–52–A036 and 190–52–A018 refer to Embraer Service Bulletins 170–50–0006 and 190–50–0006, respectively, as additional sources of service information for the rework and roller fitting cover plate removal. Embraer Service Bulletins 170–50–0006 and 190–50–0006 are currently at Revision 01, dated March 13, 2007.

**Repetitive Inspections for Damage**

(i) For Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes; and ERJ 190–100 STD, –100 LR, and –100 IGW airplanes: Repeat the inspection specified in paragraph (h)(3) of this AD at intervals not to exceed 150 flight cycles until the terminating action specified in paragraph (k)(3) of this AD has been accomplished.

**Parts Installation**

(j) For Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes; and ERJ 190–100 STD, –100 LR, and –100 IGW airplanes: As of May 7, 2007, no person may install a roller fitting cover plate on the forward and aft cargo door frames on any airplane.

**New Requirements of This AD: Actions and Compliance**

(k) Unless already done, do the following actions.

(1) For Model ERJ 190–200 LR, –200 STD, and –200 IGW airplanes: As of 24 hours after the effective date of this AD, before each flight after closing the cargo doors, verify that the forward and aft cargo doors are closed

flush with the fuselage skin, and that all 4 latched and locked indicators at the bottom of each door are green. Persons qualified to do this verification are mechanics and flightcrew members. If it cannot be verified that both doors are closed flush with the fuselage skin, and that all 4 latched and locked indicators at the bottom of each door are green, repair before further flight. Repeat the verification before every flight until accomplishment of the actions required by paragraph (k)(2) of this AD.

(2) For Model ERJ 190–200 LR, –200 STD, and –200 IGW airplanes: Within 10 days after the effective date of this AD, do the actions specified in paragraphs (k)(2)(i), (k)(2)(ii), and (k)(2)(iii) of this AD, in accordance with the Accomplishment Instructions of Embraer Alert Service Bulletin 190–52–A018, Revision 01, dated March 23, 2007. Repeat the inspection specified in paragraph (k)(2)(iii) of this AD at intervals not to exceed 150 flight cycles until the terminating action specified in paragraph (k)(3) of this AD has been accomplished.

(i) Remove the roller fitting cover plate on the forward and aft cargo door frames.

(ii) Perform a detailed inspection of the forward and aft cargo doors to detect signs of interference between the lock handle and the aft edge liner assembly. Then rework the aft edge liner assembly at the applicable time specified in paragraph (k)(2)(ii)(A) or (k)(2)(ii)(B) of this AD.

(A) *If any sign of interference is detected:* Rework the assembly before further flight.

(B) *If no sign of interference is detected:* Rework the assembly within 150 flight cycles after the inspection.

(iii) Perform a detailed inspection for signs of damage of the lateral roller fitting on the forward and aft cargo door frames at the fuselage. If any damage is found, replace the lateral roller fitting before further flight with a new roller fitting having the same part number, in accordance with Embraer Alert Service Bulletin 190–52–A018, Revision 01, dated March 23, 2007.

(3) *For all airplanes:* Within 5,000 flight cycles after the effective date of this AD, do the actions specified in paragraphs (k)(3)(i) and (k)(3)(ii) of this AD on the forward and aft cargo doors. Accomplishing the actions in this paragraph terminates the repetitive inspections required by paragraphs (i) and (k)(2) of this AD.

(i) Relocate the cargo door closed indication sensor in accordance with the Accomplishment Instructions of Embraer Alert Service Bulletin 170–52–0041, Revision 01, dated June 13, 2008; or 190–52–0023, Revision 02, dated March 11, 2008; as applicable.

(ii) Modify the cargo door lock handle mechanism and replace the forward and aft cargo door roller fittings having part number (P/N) 170–92569–401 and 170–85452–401 with new fittings having P/N 170–92569–403 and 170–85452–403, as applicable. Do the modification in accordance with the Accomplishment Instructions of Embraer Alert Service Bulletins 170–52–0044, dated January 18, 2008; or 190–52–0027, dated March 20, 2008; as applicable.

(4) Actions done before the effective date of this AD in accordance with Embraer

Service Bulletin 170–52–0041, dated September 6, 2007; or 190–52–0023, dated September 6, 2007, or Revision 01, dated December 6, 2007; as applicable; are acceptable for compliance with the corresponding requirements of this AD.

(5) Within 12 months after the effective date of this AD or 12 months after accomplishing the modification required by

paragraph (k)(3) of this AD, whichever occurs later: Incorporate information into the maintenance program to include the operational (OPC) and functional (FNC) checks of the forward and aft cargo doors; in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Agência Nacional de Aviação Civil (or its

delegated agent). Within 6,000 flight hours after doing the actions required by paragraph (k)(3) of this AD, do the OPC and FNC checks and repeat the checks thereafter at intervals not to exceed 6,000 flight hours.

**Note 3:** Guidance on the OPC and FNC checks specified in paragraph (k)(5) of this AD can be found in Table 1 of this AD, as applicable.

TABLE 1—OPC AND FNC GUIDANCE

Manual—	Task—	Date—
Embraer 170 Aircraft Maintenance Manual .....	52–31–00–710–801–A/500 52–31–20–720–801–A/500 52–32–00–710–801–A/500 52–32–20–720–801–A/500	July 15, 2008. July 15, 2008. July 15, 2008. July 15, 2008.
Embraer 190 Aircraft Maintenance Manual .....	52–31–00–710–801–A/500 52–31–20–720–801–A/500 52–32–00–710–801–A/500 52–32–20–720–801–A/500	July 15, 2008. July 15, 2008. July 15, 2008. July 15, 2008.

**Note 4:** For the purposes of this AD, a functional check (FNC) is: “A quantitative check to determine if one or more functions of an item perform within specified limits.”

**Note 5:** For the purposes of this AD, an operational check (OPC) is: “A task to determine if an item is fulfilling its intended purpose. Since it is a failure finding task, it does not require quantitative tolerances.”

#### FAA AD Differences

**Note 6:** This AD differs from the MCAI and/or service information as follows: Where the MCAI includes a compliance time of “after accomplishment of the modification” for revising the maintenance program for Model ERJ–170 airplanes, we have determined that a compliance time of “within 12 months after the effective date of the AD or within 12 months after accomplishment of the modification, whichever occurs later” is appropriate. This compliance time is equivalent to the compliance time required for Model ERJ–190

airplanes. The manufacturer and ANAC agree with this compliance time.

#### Other FAA AD Provisions

(l) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Kenny Kaulia, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2848; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD. AMOCs approved previously in accordance with AD 2007–06–

53, are approved as AMOCs for the corresponding provisions of paragraph (i) of this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

#### Related Information

(m) Refer to Brazilian Airworthiness Directives 2007–03–01R1, dated June 9, 2008, and 2007–03–02R2, dated November 21, 2008; and the service information contained in Table 2 of this AD for related information.

TABLE 2—SERVICE INFORMATION

Service Bulletin	Revision	Date
Embraer Alert Service Bulletin 170–52–A036 .....	01	March 23, 2007.
Embraer Alert Service Bulletin 190–52–A018 .....	01	March 23, 2007.
Embraer Service Bulletin 170–52–0041 .....	01	June 13, 2008.
Embraer Service Bulletin 170–52–0044 .....	Original	January 18, 2008.
Embraer Service Bulletin 190–52–0023 .....	02	March 11, 2008.
Embraer Service Bulletin 190–52–0027 .....	Original	March 20, 2008.

Issued in Renton, Washington, on August 7, 2009.

**Stephen P. Boyd,**

*Acting Manager, Transport Airplane  
Directorate, Aircraft Certification Service.*

[FR Doc. E9-19655 Filed 8-17-09; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 168

[Docket No. USCG-2006-23556, Formerly  
CGD91-202a]

RIN 1625-AA10, Formerly RIN 2115-AE56

#### Escort Vessels in Certain U.S. Waters

**AGENCY:** Coast Guard, DHS.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** The Coast Guard is withdrawing its proposed rule concerning the extension of escort vessel requirements in place for single hulled oil tankers in Prince William Sound, Alaska, and Puget Sound, Washington, to other U.S. waters and to other types of vessels. The Coast Guard has concluded that a rulemaking of national scope, such as this, is neither necessary nor advisable given the existence of more locally oriented options for considering escort vessel requirements.

**DATES:** The proposed rule is withdrawn on August 18, 2009.

**ADDRESSES:** The docket for this withdrawn rulemaking is available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG-2006-23556 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notice, call Lieutenant Bryson Spangler at (202) 372-1357. If you have questions on viewing material in the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

### Background

The Coast Guard has broad authority under the Ports and Waterways Safety Act (PWSA, 33 U.S.C. 1221 *et seq.*) to control vessel traffic in navigable waters of the United States. In addition, section 4116(c) of the Oil Pollution Act of 1990 (OPA 90, Pub. L. 101-380) required the Coast Guard to initiate a rulemaking “to define those areas [including Prince William Sound, Alaska and Puget Sound, Washington] on which single hulled tankers over 5,000 gross tons transporting oil in bulk shall be escorted by at least two towing vessels \* \* \* or other vessels considered appropriate by the Secretary.” The present rulemaking was opened in response to the OPA 90 § 4116(c) requirement and also in order to consider escort vessel requirements under PWSA.

This rulemaking was split off from another rulemaking in 1993; for the history of the parent rulemaking see its final rule (70 FR 55728, Sep. 23, 2005). For this rulemaking, we previously published an advance notice of proposed rulemaking (ANPRM; 58 FR 25766, Apr. 27, 1993), a notice of meeting and request for comments (59 FR 65741, Dec. 21, 1994), and a notice of withdrawal and request for comments (73 FR 20232, Apr. 15, 2008). Further background information appears in the April 2008 notice.

The April 2008 notice proposed the withdrawal of this rulemaking, based on our tentative conclusion that nationwide Coast Guard action to extend statutory escort vessel requirements is not advisable, and that escort vessel requirements for waters other than Puget and Prince William Sounds, or for vessels other than single hulled oil tankers, should be imposed only after local level Coast Guard consideration of specific local needs, conditions, and available alternatives. We asked for public comment on the proposed withdrawal.

### Discussion of Comments

In response to our April 2008 notice, we received 17 letters containing 55 comments. We thank those who commented for their interest.

Twelve comments concerned the need for specific action in Cook Inlet, Alaska, or other local waters. We acknowledge these comments, but restate our position that the need for escort vessels or other protective measures in specific waters should be assessed under PWSA. Therefore, requests for protective measures in specific waters should be addressed to the local Coast Guard sector commander. A list of Coast Guard sectors appears, as part of a

comprehensive list of Coast Guard units, at <http://www.uscg.mil/top/units/>.

Five comments asserted that we have not satisfied our obligations under § 4116(c) of OPA 90, or that withdrawal of the rulemaking at this stage would violate OPA 90. We do not agree that further action is required under OPA 90 or that withdrawal of this rulemaking would violate that act. In 2000, the United States Court of Appeals for the District of Columbia Circuit stated that “it is not at all obvious whether § 4116(c) actually forces the Coast Guard itself to come up with the names of, and instigate rulemaking regarding possible ‘other waters,’” and held that that section “does not create a sufficiently clear duty regarding ‘other waters’ to merit mandamus relief.” *In re Bluewater Network*, 234 F.3d 1305 at 1306 (DC Cir. 2000). Nevertheless, the Coast Guard sought to comply with any possible requirement for regulatory action under § 4116(c) by initiating this rulemaking. After considering public comment on our 1993 ANPRM, we concluded in 1994 that “there is no need to prescribe an absolute minimum of two escort vessels” in other waters, and that “designating any other U.S. waters for escorting requirements will be accomplished using the Coast Guard’s authority under \* \* \* PWSA, which allows greater flexibility concerning the ships to be escorted and the number of escort vessels to be required.” 59 FR at 65743. The Coast Guard stands by its conclusion that § 4116(c) of OPA 90 requires no further consideration under this rulemaking.

Nine comments criticized our proposed reliance on local assessments under PWSA. These comments pointed to alleged flaws in the local assessment process or argued for national standards and timelines to guide local assessments, and most stated that PWSA is not an adequate substitute for continuing this rulemaking under OPA 90. Later in this document, we discuss the Coast Guard PWSA assessment process and provide links to additional information. The PWSA assessment process provides a uniform methodology that can be applied across the nation, and we are always open to considering specific ideas for improving it.

To address two specific concerns that critics of the PWSA process raised: First, the process generally allows for more public input than some commenters realize. It provides a structured way to make sure all significant local stakeholders are represented and participate. Assessment workshops are locally publicized, open to the public, and allow for public