

of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the rule an explanation why the alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Today's action contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. It imposes no new enforceable duty on any State, local or tribal governments or the private sector. Similarly, EPA has also determined that this action contains no regulatory requirements that might significantly or uniquely affect small government entities. Therefore, today's action is not subject to the requirements of sections 202 and 203 of the UMRA.

5. Executive Order 13132: Federalism

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This final rule authorizes pre-existing State rules. Therefore, Executive Order 13132 does not apply to this final rule.

6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (59 FR 22951, November 9, 2000), requires EPA to develop an accountable process to

ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175 because EPA retains its authority over Indian Country. Therefore, Executive Order 13175 does not apply to this final rule.

7. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it approves a state program.

8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This final rule is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a "significant regulatory action" as defined under Executive Order 12866.

9. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This final rulemaking does not involve technical standards. Therefore, EPA will not be considering the use of any voluntary consensus standards.

10. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental

justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. This final rule does not affect the level of protection provided to human health or the environment because this rule authorizes pre-existing State rules which are equivalent to, and no less stringent than existing federal requirements.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians—lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: December 23, 2009.

Michelle L. Pirzadeh,

Acting Regional Administrator, Region 10.

[FR Doc. 2010-13 Filed 1-6-10; 8:45 am]

BILLING CODE 6560-50-P

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 830

Notification and Reporting of Aircraft Accidents or Incidents and Overdue Aircraft, and Preservation of Aircraft Wreckage, Mail, Cargo, and Records

AGENCY: National Transportation Safety Board (NTSB).

ACTION: Final rule.

SUMMARY: The NTSB is amending its regulations concerning notification and reporting requirements regarding aircraft accidents or incidents. In particular, the NTSB is adding regulations to require operators to report certain incidents to the NTSB. The NTSB is also amending existing regulations to provide clarity and ensure that the appropriate means for notifying the NTSB of a reportable incident is listed correctly in the regulation.

DATES: The revisions and additions published in this final rule will become effective March 8, 2010.

ADDRESSES: A copy of the notice of proposed rulemaking (NPRM), published in the **Federal Register** (FR), is available for inspection and copying in the NTSB's public reading room, located at 490 L'Enfant Plaza, SW., Washington, DC 20594–2000. Alternatively, a copy of the NPRM is available on the government-wide Web site on regulations at <http://www.regulations.gov>.

FOR FURTHER INFORMATION, CONTACT: Deepak Joshi, Lead Aerospace Engineer (Structures), Office of Aviation Safety, (202) 314–6348.

SUPPLEMENTARY INFORMATION:

Regulatory History

On October 7, 2008, the NTSB published an NPRM titled “Notification and Reporting of Aircraft Accidents or Incidents and Overdue Aircraft, and Preservation of Aircraft Wreckage, Mail, Cargo, and Records” in 73 FR 58520. This NPRM proposed and the final rule herein codifies the addition of five reportable incidents, the reporting of which the NTSB believes will improve aviation safety. In particular, the new subsections within 49 CFR 830.5(a) will require operators to report the following: failure of any internal turbine engine component that results in the escape of debris other than out the exhaust path; release of all or a portion of a propeller blade from an aircraft, excluding release caused solely by ground contact; a complete loss of information, excluding flickering, from more than 50 percent of an aircraft's cockpit displays, known as Electronic Flight Instrument System displays, Engine Indication and Crew Alerting System displays, Electronic Centralized Aircraft Monitor displays, or other such displays; Airborne Collision Avoidance System (ACAS) resolution advisories issued either (1) when an aircraft is being operated on an instrument flight rules (IFR) flight plan and compliance with the advisory is necessary to avert a substantial risk of collision between two or more aircraft, or (2) to an aircraft operating in class A airspace; damage to helicopter tail or main rotor blades, including ground damage, that requires major repair or replacement of the blade(s); and any event in which an aircraft operated by an air carrier lands or departs on a taxiway, incorrect runway, or other area not designed as a runway, or experiences a runway incursion that requires the operator or the crew of another aircraft or vehicle to take immediate corrective action to

avoid a collision. The NPRM also proposed certain wording changes to other existing subsections within 49 CFR 830.5(a) for clarity and proposed a change in the footnote that provides the locations of NTSB regional offices.

The NTSB notes that it further analyzed the potential application of the Regulatory Flexibility Act, as published in Title 5 *United States Code* (U.S.C.), sections 601–612, to this rule. Prior to publishing the NPRM, the NTSB considered whether this rule would have a significant economic impact on a substantial number of small entities and certified under 5 U.S.C. 605(b) that this rule would not have such an impact. The NTSB verifies this assessment and notes that while this rule will require some affected individuals to complete NTSB Form 6120.1, “Pilot/Operator Accident/Incident Report,” the cost to complete this form is nominal. Therefore, the NTSB verifies that its certification under 5 U.S.C. 605(b) was valid.

In response to the publication of this NPRM, the NTSB received and carefully considered six comments. The NTSB did not receive any requests for a public meeting; therefore, the NTSB did not hold a public meeting on the NPRM. Below is a summary of and response to each concern that commenters raised, arranged by issue.

Discussion of Comments and Changes

In the interest of ensuring that the provisions of 49 CFR 830.5 are complete, comprehensible, and enforceable, the NTSB's final rule herein includes revisions to three new subsections of 49 CFR 830.5 that the NTSB proposed, including subsections (a)(9), (a)(10), and (a)(12), which proposed requiring reports of a complete loss of information from certain electronic displays, certain types of resolution advisories, and certain runway incursions, respectively. These changes are described in the sections below.

Proposed Revision to Section 830.5(a)(3)

The NPRM proposed to amend 49 CFR 830.5(a)(3) to require notification of incidents in which “[f]ailure of any internal turbine engine component that results in the escape of debris other than out the exhaust path” occurs. The NTSB received two comments on this proposed addition.

One commenter, an aviation industry manufacturing association, objected to the requirement that the NTSB be notified immediately for the following proposed events: Failure of any internal turbine engine component that results in the escape of the debris other than

out the exhaust path and release of all or a portion of a propeller blade from an aircraft, excluding release caused solely by ground contact. The commenter stated that, in accordance with 14 CFR 21.3(c), operators are already required to report such failures to the Federal Aviation Administration (FAA). The commenter further stated that the requirement to report these events to the NTSB would put an additional burden on the operator by requiring duplicate reporting of events. The commenter suggested the development of a joint FAA/NTSB reporting system that would alert both agencies concurrently when one of the reportable events occurs.

The NTSB disagrees with these comments. The NTSB is aware that 14 CFR 21.3 requires holders of type certificates, supplemental type certificates, and parts manufacturing approval to notify the FAA within 24 hours, or the next business day on weekends or holidays, of an engine or component failure. But the NTSB also notes that 14 CFR 21.3(d)(1)(iii) states that a report to the FAA is not required if the event has been reported to the NTSB. The NTSB needs immediate notification of a reportable event to determine the appropriate level of response, which might include immediately dispatching an investigator to the scene. The NTSB continues to believe that utilizing the 14 CFR 21.3 notification system alone that initially reports failures to the FAA presents an unacceptable delay in the notification to the NTSB and the initiation of a response. The NTSB reiterates that it has investigated catastrophic engine failures after being belatedly notified, and critical evidence was lost as a result of the delay in notification, thus hampering the investigation. The NTSB also notes that 49 CFR 830.10 requires the operator of an aircraft involved in a reportable event to preserve the wreckage and all pertinent records until the NTSB takes custody or until the wreckage and records have been released pursuant to 49 CFR 831.12. The NTSB believes that relying on 14 CFR 21.3 reports that would initially be sent to the FAA would delay not only the NTSB's response to the event but also the return of custody of the airplane and/or engine to the operator, thus delaying their repair and return to service. The NTSB is aware that 14 CFR 121.703 and 135.415 require those respective Part 121 or 135 certificate holders to notify their FAA certificate-holding district offices of an engine failure within 24 hours, or the next business day on weekends or holidays. While engine or component failures are

relatively rare, the NTSB is not concerned with every engine or component failure that occurs; therefore, this rule will not materially affect operators. However, the NTSB is very concerned about engine failures that result in debris coming out of the engine through a path other than the exhaust, also referred to as uncontained engine failures. These failures can and have liberated debris, resulting in damage to the airplane or its systems and/or injured passengers. Fortunately, these types of reportable events are very rare. Thus, the NTSB does not expect that it will be unduly burdensome for Part 121 and 135 operators who experience engine failures resulting in debris exiting the engine through a path other than the exhaust or one of the other previously reportable events to make the dual notification to their FAA certificate-holding district offices as well as the NTSB.

The commenter also suggested that a system be developed so that the FAA-required 14 CFR 21.3 data would be shared concurrently with the NTSB. While the NTSB appreciates the commenter's suggestion, the NTSB believes that situations could occur in which the notification that the NTSB receives would be delayed, such as occurrences under 14 CFR 21.3 in which notification occurs within 24 hours, or the next business day if the event occurred on the weekend or a holiday.

One commenter, a professional pilots' union, fully concurred with the proposed rule requiring the NTSB to be notified immediately of an event where debris exited an engine through some other path besides the engine's exhaust. The NTSB appreciates the commenter's support on this proposed immediate notification requirement.

In summary, the NTSB understands that this new rule will require Part 121 and 135 operators who, in accordance with 14 CFR 121.703 and 135.415, respectively, must report any engine or component malfunctions or failures to both their FAA certificate-holding district offices and the NTSB. The NTSB continues to believe, however, that the language of the reporting requirement will result in timely notification of incidents in which a failure of an internal engine component resulted in the escape of debris from an exit other than out the exhaust path. Therefore, the NTSB has not amended this addition.

Proposed Addition of Section 830.5(a)(8)

The NPRM proposed to add section 830.5(a)(8) to 49 CFR Part 830 to require

the reporting of any "release of all or a portion of a propeller blade from an aircraft, excluding release caused solely by ground contact." One commenter, a professional pilots' union, dissented with the NTSB regarding the exclusion of a structural failure of a propeller or portion of a propeller caused solely by ground contact. The NTSB disagrees with the commenter's position that the NTSB should broaden the section to include all incidents in which propeller blades or blade sections have separated from an aircraft. The commenter stated that liberated propeller blades or blade segments pose a significant hazard to the crew, passengers, and bystanders.

The NTSB agrees with the commenter regarding the hazards that liberated propeller blades or segments of propeller blades pose to crews, passengers, and bystanders. However, the NTSB notes that propeller blades are designed and certified to operate within the atmosphere and, as such, the expectation is that they remain intact and in place during normal operation. Propeller blades are not designed or expected to continue to remain intact and in place following contact with the ground. The NTSB continues to believe that the language of the reporting requirement will achieve the NTSB's objective of receiving notification of any release of all or a portion of a propeller blade from an aircraft, inconsistent with its design parameters and certification, thus excluding releases caused solely by ground contact. Therefore, the NTSB has not amended this addition.

Proposed Addition of Section 830.5(a)(9)

The NPRM proposed to add section 830.5(a)(9) to 49 CFR Part 830 to require the reporting of "[a] complete loss of information, excluding flickering, from more than 50 percent of an aircraft's certified electronic primary displays." The NTSB has carefully reviewed the comments received concerning this section and has concluded that the language should be amended to require notification of "[a] complete loss of information, excluding flickering, from more than 50 percent of an aircraft's cockpit displays known as: (A) Electronic Flight Instrument System (EFIS) displays; (B) Engine Indication and Crew Alerting System (EICAS) displays; (C) Electronic Centralized Aircraft Monitor (ECAM) displays; or (D) Other displays of this type, which generally include a primary flight display (PFD), primary navigation display (PND), and other integrated displays."

The NTSB now recognizes the need to revise the proposed language to avoid

capturing an excessive number of failures. For example, under the proposed language, a failed electronic exhaust gas temperature (EGT) gauge that is the only means of monitoring EGT would have been reportable. However, the NTSB would not likely be concerned with collecting data concerning or investigating such events; therefore, the NTSB has narrowed the language of this section. The NTSB maintains that this change in the proposed regulatory language is a logical outgrowth of the proposed rule and therefore does not violate the rulemaking requirements of the Administrative Procedure Act (APA).

The NTSB received three comments that addressed this notification requirement. Two commenters stated that they had difficulty determining exactly what types of failures for which notification was required. One commenter provided an example of an electronic display on a general aviation aircraft where a mechanical indication was also included. This commenter was concerned that when the electronic display failed, this event would have to be reported even though a mechanical display of the information was still available. The other commenter stated that the criteria for reporting should be based on the aircraft's certification requirements.

Based on these comments and the NTSB's careful review of the proposed language of the notification requirement, the NTSB decided that some adjustment of the language of this section was required to ensure that the relevant failures will be reported, as described above. The NTSB's principal goal in promulgating this requirement is to capture "display blanking" events in which many of the newer "glass cockpit" type displays have gone blank. The proposed language of this requirement was intended to capture this type of failure, but the NTSB recognizes that a revision specifically mentioning the various types of displays would be advantageous. Therefore, the NTSB has changed the language of this subsection to require the reporting of any "complete loss of information, excluding flickering, from more than 50 percent of an aircraft's cockpit displays known as: (A) Electronic Flight Instrument System (EFIS) displays; (B) Engine Indication and Crew Alerting System (EICAS) displays; (C) Electronic Centralized Aircraft Monitor (ECAM) displays; or (D) Other displays of this type, which generally include a primary flight display (PFD), primary navigation display (PND), and other integrated displays."

Furthermore, another commenter disagreed with the exclusion of “flickering” of instrument displays when considering the reporting requirements in this section. The commenter felt that the “flickering” of displays could be an indication of underlying hardware or software problems. The NTSB considered this potential meaning of “flickering” when it originally defined the language of this section. After reviewing this concept, the NTSB has decided against revising the language of this section. While the NTSB agrees that “flickering” can be a symptom of underlying problems, the NTSB feels that the operator’s maintenance organization is best equipped to deal with this type of symptom. If the “flickering” becomes so severe that the display is unusable, then it should be reported under this section (providing that over 50 percent of the displays were similarly unusable).

One commenter stated that the requirement to report these types of failures to the NTSB constituted a duplicative reporting requirement, as failures are already required to be reported to the FAA. The NTSB feels that the requirement to report these types of failures directly to the NTSB is essential to aviation safety because it ensures that these events will be investigated by NTSB personnel as quickly as possible. In addition, duplicative notifications are not required because the regulations state that any incident reported to the NTSB does not have to be reported separately to the FAA.

As described above, the NTSB continues to believe that it is in the best interest of aviation safety to receive reports of a complete loss of information from certain types of electronic displays. After carefully considering all comments that addressed this section, the NTSB has determined that it must receive notification of complete losses of information, as described above. Consistent with the above discussion, the NTSB has amended this addition.

Proposed Addition of Section 830.5(a)(10)

The NPRM proposed to add section 830.5(a)(10) to 49 CFR Part 830 to require the reporting of the following: Airborne Collision and Avoidance System (ACAS) resolution advisories issued either: When an aircraft is being operated on an instrument flight rules flight plan and corrective or evasive action is required to maintain a safe distance from other aircraft; or to an aircraft operating in class A airspace.

The intent of this requirement is for the NTSB to be notified of incidents

where ACAS-equipped aircraft must actively maneuver to avert a substantial risk of collision with another aircraft and to be notified of incidents where the stringent separation requirements inherent in operations within class A airspace may have been compromised. The NTSB has carefully reviewed the comments received concerning this requirement and amends the language of this requirement to require reports of ACAS resolution advisories issued either (A) when an aircraft is being operated on an IFR flight plan and compliance with the advisory is necessary to avert a substantial risk of collision between two or more aircraft; or (B) to an aircraft operating in class A airspace.

Five commenters were concerned that the original proposed requirement would result in an unmanageable number of reports. In general, regarding the proposed rule’s effect outside class A airspace, commenters placed most of their emphasis on the “corrective or evasive action” language, despite the language that a report would be necessary only when such maneuvers are “* * * required to maintain a safe distance from other aircraft.” The NTSB fully recognizes that when a resolution advisory occurs, it does not necessarily follow that an unsafe encounter is about to occur. The NTSB intends to require reports only when failure to comply with a resolution advisory would lead to an unsafe encounter with another aircraft, that is, an encounter presenting a substantial risk of collision. The NTSB’s expectation is that there are not an unmanageable number of such encounters occurring in the air traffic control (ATC) system. However, if reports show that a large number of these incidents are occurring, the circumstances leading up to the incidents would certainly be a safety issue of major interest to the NTSB. Concern about dealing with the associated reports is not a persuasive rationale for not requiring them, especially if the number of serious incidents is unexpectedly high. The NTSB believes that by further clarifying the definition of incidents to be reported, the burden on both aircraft operators and the NTSB will be limited to addressing high-risk events that warrant further examination and potentially full investigation.

The NTSB recognizes that “substantial risk of collision” is somewhat subjective, but the infinite variety of encounter geometries does not lend itself to specific guidance that would apply to every possible scenario. The FAA’s definition of a near midair collision is “an incident associated with

the operation of an aircraft in which a possibility of collision occurs as a result of proximity of less than 500 feet to another aircraft, or a report is received from a pilot or a flight crew member stating that a collision hazard existed between two or more aircraft.” This definition is not incorporated to limit or precisely define the reports desired, but it may be useful in illustrating the nature of the types of incidents for which the NTSB will require notification. Resolution advisories that command maximum vertical speed, “reversal” advisories that require a change in vertical direction after the initial advisory is issued, or encounters that result in zero vertical separation between the aircraft involved are all examples of the types of advisories that the NTSB believes may be indicative of substantial collision risk. Conversely, resolution advisories issued to aircraft operating on closely spaced parallel approaches or in other circumstances where there is no substantial risk of collision need not be reported under this rule.

Four commenters stated that this requirement would effectively mandate the reporting of all resolution advisories. As stated above, the NTSB does not intend for all resolution advisories to be reported. The NTSB expects that the revised language fully addresses this concern and explicitly limits the need for reporting to situations where compliance with a resolution advisory is necessary to avert a significant risk of collision.

Two commenters expressed concern about the potential need to download flight recorder data or remove recorders from aircraft, thereby incurring expense and potential schedule disruption to the aircraft operator. As the NTSB has previously noted, requiring an operator to provide flight recorder data can be disruptive and burdensome. The NTSB carefully considers the need for such information in determining how to investigate serious incidents properly and limits requests to situations where the data is clearly required to understand the sequence of events because other available information, such as recorded radar data, is inadequate. Unless a large number of unreported serious incidents occur, the NTSB does not expect to substantially increase the number of recorder requests made to support this reporting requirement.

Two commenters stated that the NTSB should rely on the FAA for reports of traffic alert and collision avoidance system (TCAS) events. The NTSB does not believe that the FAA’s processes for assessing and reporting

incidents, particularly those involving losses of separation, are sufficiently reliable. Recent Department of Transportation Inspector General investigations have documented repeated failures to report incidents, misclassification of incidents, and other circumstances which lead the NTSB, as an independent agency, to seek additional means of monitoring the performance of the ATC system. The NTSB expects that information provided by aircraft operators under this reporting requirement will help validate the effectiveness of the FAA's reporting process, especially relating to more serious incidents occurring in the system. One of the commenters noted that the NTSB should, in lieu of the proposed reporting requirement, correct the FAA's procedures. The NTSB does occasionally interact with the FAA regarding the efficacy of its internal processes. However, the NTSB has no authority to direct changes to FAA procedures. The NTSB believes that for the significant types of incidents the NTSB expects to investigate under this requirement, occasional duplicative reports are worthwhile to ensure that a complete examination of the circumstances takes place.

Five commenters stated that the proposed reporting requirement should be dropped in favor of existing voluntary confidential data collection systems such as the Aviation Safety Action Program (ASAP), Flight Operational Quality Assurance (FOQA) programs, and the MITRE-operated Aviation Safety Information Analysis and Sharing program. While the NTSB does support such programs in principle, the de-identified and otherwise filtered information available through them is not useful for investigative purposes. The NTSB's duty is to define the types of events that may warrant a safety investigation, evaluate those events as they occur, and investigate as necessary. Existing NTSB reporting requirements predated and, to a large extent, overlap with the types of incidents and accidents for which reports are made to these programs. Nonetheless, the NTSB continues to define reporting requirements and investigate safety incidents as necessary to protect the public interest. The NTSB cannot delegate such responsibilities to external organizations, become wholly dependent on information such organizations may or may not see fit to share, or limit the investigative use of that information to comply with accompanying restrictions. Therefore, the NTSB does not view the data collection programs suggested by the

commenters as an adequate substitute for the proposed reporting requirement.

One commenter noted that pilots may not report incidents without the protection of an ASAP or FOQA program and further inquired about the possible consequences of failing to report such incidents. While a pilot's decision to disregard a reporting requirement is an unfortunate possibility, it is beyond the control of the NTSB. The NTSB presumes good faith on the part of professional aviators with regard to reporting, and the NTSB does not intend to use this requirement to prompt enforcement actions.

The NTSB emphasizes that the intent of this reporting requirement is to identify, evaluate, and investigate (when appropriate) serious incidents where aircraft maneuvers were required to avert substantial risk of collision between TCAS-equipped aircraft and other aircraft in the system and to evaluate situations where resolution advisories occur between aircraft under positive control in class A airspace. The NTSB's intent is not to require the reporting of all resolution advisories or, outside of class A airspace, to require the reporting of any resolution advisory resulting from an encounter between aircraft where no substantial risk of collision exists.

In summary, the NTSB continues to believe that this reporting requirement will achieve the NTSB's objective of receiving notification of aircraft encounters that present a significant risk of collision. The NTSB, however, has determined that amending the language will provide further clarity and assist operators, crews, and other individuals and entities affected by this rule in recognizing that the NTSB seeks notification of the category of occurrences in which hazardous encounters involving ACAS-equipped aircraft occur. As such, the NTSB will require notification of the following: Airborne Collision and Avoidance System (ACAS) resolution advisories issued either: when an aircraft is being operated on an instrument flight rules flight plan and compliance with the advisory is necessary to avert a substantial risk of collision between two or more aircraft; or to an aircraft operating in class A airspace.

Proposed Addition of Section 830.5(a)(11)

The NPRM proposed to add section 830.5(a)(11) to 49 CFR Part 830 to require that the public report "[d]amage to helicopter tail or main rotor blades, including ground damage, that requires major repair or replacement of the blade(s)." The NTSB did not receive any

comments concerning this proposed requirement. Moreover, the NTSB continues to believe that the proposed reporting requirement will achieve the NTSB's objective of receiving notification of all rotor blade strikes that result in damage, regardless of what the blades strike. Therefore, the NTSB has not amended this addition and will require notification of any damage to helicopter tail or main rotor blades that requires major repair or replacement of the blade(s).

Proposed Addition of Section 830.5(a)(12)

The NPRM proposed to add section 830.5(a)(12) to 49 CFR Part 830 to require that the public report the following: Any runway incursion event in which an operator, when operating an aircraft as an air carrier: lands or departs on a taxiway, incorrect runway, or other area not designed as a runway; or experiences a reduction in separation that requires the operator or another aircraft or vehicle to take immediate corrective action to avoid a collision.

The NTSB received one comment on this section, which partially concurred with the proposal and provided suggestions. The commenter stated that the phrase "runway incursion" in the qualifying statement should be deleted because landing and taking off on a taxiway is not a runway incursion. Additionally, the commenter stated that the reporting requirements should include nonrevenue operations (such as ferry flights, maintenance flights/taxi, and reposition flights/taxi). Finally, the commenter believed that events resulting in a go-around should be excluded because that would require a report each time a go-around was conducted if an aircraft or vehicle was on the runway. Although the commenter believed that the events as stated should be reportable, the commenter felt that the language should be clarified.

The NTSB agrees that the term "runway incursion" should be deleted from the beginning of the statement for the reasons provided by the commenter. However, to clarify that the NTSB is requesting reports of separation issues on the runway, the NTSB hereby amends subsection (B) to restrict reports to runway operations. The NTSB also agrees with the commenter's suggestion to include nonrevenue flights because the same pilots fly both revenue and nonrevenue flights.

Finally, the commenter opined that all go-around maneuvers conducted because the runway was not clear would need to be reported. The NTSB disagrees with this assessment. For

example, if a controller instructs the pilot to go around because an aircraft or vehicle is on the runway, that is a controlled situation. The tower controller was aware of the situation and directed a go around. However, if the pilot had to execute a go-around on his own and the tower controller was not aware of the situation, the NTSB would want to know about that event because it may go unreported. Similarly, a tower controller could clear an aircraft to land and inadvertently clear another aircraft onto the runway; if the arriving pilot has to conduct a go-around because of the airplane on the runway, the NTSB should receive a report of the incident.

Based on the NTSB's careful review of the above commentary, the NTSB will now require the reporting of "[a]ny event in which an aircraft operated by an air carrier: (A) [l]ands or departs on a taxiway, incorrect runway, or other area not designed as a runway; or (B) [e]xperiences a runway incursion that requires the operator or the crew of another aircraft or vehicle to take immediate corrective action to avoid a collision."

The NTSB has concluded that this clarification in the regulatory language is a logical outgrowth of the proposed language and is therefore consistent with the rulemaking requirements of the APA.

List of Subjects in 49 CFR Part 830

Aircraft accidents, Aircraft incidents, Aviation safety, Overdue aircraft notification and reporting, Reporting and recordkeeping requirements.

In conclusion, for the reasons discussed in the preamble, the NTSB amends 49 CFR Part 830 as follows:

PART 830—NOTIFICATION AND REPORTING OF AIRCRAFT ACCIDENTS OR INCIDENTS AND OVERDUE AIRCRAFT, AND PRESERVATION OF AIRCRAFT WRECKAGE, MAIL, CARGO, AND RECORDS

1. The authority citation for 49 CFR Part 830 is revised to read as follows:

Authority: Independent Safety Board Act of 1974, as amended (49 U.S.C. 1101–1155); Federal Aviation Act of 1958, Public Law 85–726, 72 Stat. 731 (codified as amended at 49 U.S.C. 40101).

2. Section 830.5 is amended as follows:

A. The section introductory text, paragraph (a) introductory text, paragraphs (a)(3) through (a)(5), and footnote 1 are revised.

B. Paragraphs (a)(8) through (a)(12) are added.

§ 830.5 Immediate notification.

The operator of any civil aircraft, or any public aircraft not operated by the Armed Forces or an intelligence agency of the United States, or any foreign aircraft shall immediately, and by the most expeditious means available, notify the nearest National Transportation Safety Board (NTSB) office,¹ when:

(a) An aircraft accident or any of the following listed serious incidents occur:

* * * * *

(3) Failure of any internal turbine engine component that results in the escape of debris other than out the exhaust path;

(4) In-flight fire;

(5) Aircraft collision in flight;

* * * * *

(8) Release of all or a portion of a propeller blade from an aircraft, excluding release caused solely by ground contact;

(9) A complete loss of information, excluding flickering, from more than 50 percent of an aircraft's cockpit displays known as:

(i) Electronic Flight Instrument System (EFIS) displays;

(ii) Engine Indication and Crew Alerting System (EICAS) displays;

(iii) Electronic Centralized Aircraft Monitor (ECAM) displays; or

(iv) Other displays of this type, which generally include a primary flight display (PFD), primary navigation display (PND), and other integrated displays;

(10) Airborne Collision and Avoidance System (ACAS) resolution advisories issued either:

(i) When an aircraft is being operated on an instrument flight rules flight plan and compliance with the advisory is necessary to avert a substantial risk of collision between two or more aircraft; or

(ii) To an aircraft operating in class A airspace.

(11) Damage to helicopter tail or main rotor blades, including ground damage, that requires major repair or replacement of the blade(s);

(12) Any event in which an aircraft operated by an air carrier:

(i) Lands or departs on a taxiway, incorrect runway, or other area not designed as a runway; or

¹NTSB regional offices are located in the following cities: Anchorage, Alaska; Atlanta, Georgia; West Chicago, Illinois; Denver, Colorado; Arlington, Texas; Gardena (Los Angeles), California; Miami, Florida; Parsippany, New Jersey (metropolitan New York City); Seattle, Washington; and Ashburn, Virginia. In addition, NTSB headquarters is located at 490 L'Enfant Plaza, SW., Washington, DC 20594. Contact information for these offices is available at <http://www.nts.gov>.

(ii) Experiences a runway incursion that requires the operator or the crew of another aircraft or vehicle to take immediate corrective action to avoid a collision.

Dated: December 16, 2009.

Deborah A. P. Hersman,
Chairman.

[FR Doc. E9–30398 Filed 1–6–10; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 21 and 22

[FWS–R9–MB–2009–0002; 91200–1231–9BPP]

RIN 1018–AW44

Migratory Bird Permits; Changes in the Regulations Governing Falconry

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, published a final rule in the **Federal Register** on October 8, 2008, to revise our regulations governing falconry in the United States. With this action, we make several changes to those regulations to correct inconsistencies and oversights and make the regulations clearer.

DATES: This regulations change will be effective on February 8, 2010.

FOR FURTHER INFORMATION CONTACT: Dr. George T. Allen, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 703–358–1825.

SUPPLEMENTARY INFORMATION:

Background

On October 8, 2008, we published a final rule in the **Federal Register** (73 FR 59448) to revise our regulations governing falconry in the United States. We eliminated the requirement for a Federal permit to practice falconry, and made other changes to make it easier to understand the requirements for the practice of falconry, including take of raptors from the wild, and the procedures for obtaining a falconry permit. The rule also added a provision allowing us to approve falconry regulations that Indian Tribes, States, or U.S. territories adopt. The rule became effective November 7, 2008, and changed the Code of Federal Regulations (CFR) at 50 CFR parts 21 and 22.

After publication of the rule, we received questions from the public