

will agree as to the period of contract performance which will be covered by the funds. The provisions of paragraphs (b) through (d) of this clause will apply in like manner to the additional allotted funds and agreed substitute date, and the contract will be modified accordingly.

(e) If, solely by reason of failure of the Government to allot additional funds, by the dates indicated below, in amounts sufficient for timely performance of the contract line item(s) identified in paragraph (a) of this clause, the Contractor incurs additional costs or is delayed in the performance of the work under this contract and if additional funds are allotted, an equitable adjustment will be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the item(s), or in the time of delivery, or both. Failure to agree to any such equitable adjustment hereunder will be a dispute concerning a question of fact within the meaning of the clause entitled "Disputes."

(f) The Government may at any time prior to termination allot additional funds for the performance of the contract line item(s) identified in paragraph (a) of this clause.

(g) The termination provisions of this clause do not limit the rights of the Government under the clause entitled "Default" or "Termination for Cause." The provisions of this clause are limited to the work and allotment of funds for the contract line item(s) set forth in paragraph (a) of this clause. This clause no longer applies once the contract is fully funded except with regard to the rights or obligations of the parties concerning equitable adjustments negotiated under paragraphs (d) and (e) of this clause.

(h) Nothing in this clause affects the right of the Government to terminate this contract pursuant to the clause of this contract entitled "Termination for Convenience of the Government" or paragraph (l) entitled "Termination for the Government's Convenience" of the clause at FAR 52.212-4, "Commercial Terms and Conditions-Commercial Items."

(i) Nothing in this clause shall be construed as authorization of voluntary services whose acceptance is otherwise prohibited under 31 U.S.C. 1342.

(j) The parties contemplate that the Government will allot funds to this contract in accordance with the following schedule:

On execution of contract \$ ____
 (month) (day), (year) \$ ____
 (month) (day), (year) \$ ____
 (month) (day), (year) \$ ____

(End of clause)

ALTERNATE I (DATE). If only a certain line item(s) will be incrementally funded, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) Contract line item(s) ____ is incrementally funded. The sum of \$ ____* ____ is presently available for payment and allotted to this contract. An allotment schedule is contained in paragraph (j) of this clause.

* To be inserted after negotiation.

[FR Doc. E8-23660 Filed 10-6-08; 8:45 am]

BILLING CODE 6820-EP-S

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: Notice of proposed rulemaking.

SUMMARY: The NTSB is proposing to amend its regulations concerning notification and reporting requirements with regard to aircraft accidents or incidents. The existing regulations (49 CFR 830.5) do not include certain events that the NTSB has determined to be necessary. The NTSB anticipates that these proposed amendments will enhance aviation safety by providing the NTSB with direct notification of events that involve safety concerns, thereby enabling the NTSB to conduct investigations, identify necessary corrective actions in a timely manner, and work to prevent transportation accidents.

DATES: Submit comments on or before December 8, 2008.

ADDRESSES: You may send comments using any of the following methods:

1. *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.
2. *Mail:* Mail comments concerning this proposed rule to Deepak Joshi, AS-40, National Transportation Safety Board, 490 L'Enfant Plaza, SW., Washington, DC 20594-2000.
3. *Fax:* (202) 314-6308, *Attention:* Deepak Joshi
4. *Hand Delivery:* 6th Floor, 490 L'Enfant Plaza, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Deepak Joshi, Lead Aerospace Engineer

(Structures), Office of Aviation Safety, (202) 314-6348.

SUPPLEMENTARY INFORMATION:

Regulatory History

On December 27, 2004, the NTSB published a notice of proposed rulemaking (NPRM) titled, "Notification and Reporting of Aircraft Accidents or Incidents and Overdue Aircraft, and Preservation of Aircraft Wreckage, Mail, Cargo, and Records," in the **Federal Register** (69 FR 77150). The December 2004 NPRM proposed various changes to 49 CFR Part 830, all of which affected the types of accidents and incidents that individuals and entities must report under 49 CFR Part 830. The NTSB received numerous comments on the NPRM and carefully considered each comment. In light of some commenters' suggestions and concerns, and to ensure that the NTSB engages in all requisite statutory and regulatory analyses, the NTSB elected to revise the proposed regulations and issue a new NPRM. The NTSB has declined to implement some commenters' suggestions in some proposed sections, and the preamble for each proposed section explains the NTSB's reasoning. Each proposed revision and addition, as well as summaries of and responses to some comments from the prior NPRM, is discussed in detail below. The NTSB does not plan to issue a final notice or proceed in any way with the NPRM that was published on December 27, 2004. The NTSB intends to finalize and proceed with the NPRM herein.

Statutory and Regulatory Evaluation

This proposed rule would amend the requirements for providing immediate notification to the NTSB of certain aviation events, to include certain events that were not previously reportable. These amendments will enhance aviation safety by providing the NTSB with direct notification of these events and, thereby enabling the NTSB to conduct investigations, identify corrective actions, and propose safety recommendations in a timely manner.

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of the potential costs and benefits under section 6(a)(3) of that Order. As such, the Office of Management and Budget (OMB) has not reviewed this rule under Executive Order 12866. Likewise, this rule does not require an analysis under the Unfunded Mandates Reform Act, 2 United States Code (U.S.C.) 1501-1571, or the National Environmental Policy Act, 42 U.S.C. 4321-4347.

In addition, the NTSB has considered whether this rule would have a significant economic impact on a substantial number of small entities, under the Regulatory Flexibility Act (5 U.S.C. 601–612). The NTSB certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. The NTSB acknowledges that many commenters who submitted comments to the NTSB's previous NPRM regarding 49 CFR Part 830 opined that the NTSB's alteration of the definition of "substantial damage" would have resulted in an increased burden on small entities that engage in the operation of helicopters, via increased insurance rates. In this present NPRM, however, the NTSB does not propose an alteration to the definition of "substantial damage" or any definitions in 49 CFR Part 830; therefore, the NTSB does not foresee the proposed rule herein affecting insurance rates or causing any financial burden on small entities. Indeed, the changes to 49 CFR Part 830 that the NTSB proposes herein will only result in a potential increase in the number of reports that small entities must submit to the NTSB; the NTSB does not anticipate that submitting such reports will have any economic impact on small entities. Moreover, in accordance with 5 U.S.C. 605(b), the NTSB has submitted this certification to the Chief Counsel for Advocacy at the Small Business Administration.

This rule proposes no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) but will increase the number of instances in which the public provides specific information after notifying the NTSB of a reportable event. As such, the NTSB has submitted this NPRM to OMB for review under the Paperwork Reduction Act. The NTSB will continue to use Form No. 6120.1 to collect additional information when the NTSB decides to conduct an investigation arising out of an event that is reportable under 49 CFR Part 830. OMB last approved the use of Form No. 6120.1 on June 30, 2006, and this approval will expire on June 30, 2009 (OMB Control No. 3147–0001). The NTSB estimates that the annual number of respondents for the submission of this notification using the aforementioned form will increase from about 2,100 to about 2,200. All other information regarding the use of Form No. 6120.1 will remain the same. The public may submit comments regarding the collection of this information to the OMB desk officer for the NTSB.

The NTSB recognizes that Congress' intent in promulgating the Paperwork Reduction Act was to reduce the burden on individuals and ensure that the information collected would not be duplicative of other Federal information collections. The NTSB notes that some individuals or entities from which the NTSB must receive notification of an event under Sec. 830.5 may also be required to report the event to the Federal Aviation Administration (FAA). The NTSB asserts, however, that such duplicative reporting is necessary for the NTSB to fulfill its statutory mission of improving safety. For example, with regard to receiving reports of engine and propeller failure data, the NTSB must receive immediate notification of events in which debris has escaped the engine via a path other than the exhaust path, in order to make a timely decision regarding the appropriate type of response. The NTSB's response to such events could include immediately dispatching an investigator to the location of the damaged airplane or, depending on the circumstances, allowing the operator to remove the engine and have it shipped to a repair facility where the engine would be examined. Such a response would not be possible if the operator only reported the event to the FAA because the corresponding FAA regulations allow more time for reporting events when the event occurs on a weekend or holiday. See, for example, 14 CFR 21.3; 14 CFR 121.703; 14 CFR 135.415. In addition, the NTSB notes that 14 CFR 21.3(d)(1)(iii) does not require a report to the FAA if the event has been reported to the NTSB. Furthermore, immediate notification also allows the NTSB to comply with 49 CFR 830.10 and 831.12, which require return of an aircraft's wreckage to its owner in a more timely manner, thereby allowing the owner to arrange for expeditious repair of the parts. The NTSB also notes that it has experienced impediments to some investigations, such as inability to recover and examine critical parts, when the NTSB belatedly received notification of the event. Overall, the NTSB does not anticipate that duplicative reporting will be commonplace, and, to the extent that duplicate reports occur, the NTSB asserts that such reports are necessary and will not cause an undue burden on the public.

Moreover, the NTSB does not anticipate that this rule will have a substantial, direct effect on state or local governments or will preempt state law; as such, this rule does not have implications for federalism under

Executive Order 13132, Federalism. This rule also complies with all applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. In addition, the NTSB has evaluated this rule under: Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights; Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks; Executive Order 13175, Consultation and Coordination With Indian Tribal Governments; Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use; and the National Technology Transfer and Advancement Act, 15 U.S.C. 272 note. The NTSB has concluded that this rule does not contravene any of the requirements set forth in these Executive Orders or statutes, nor does this rule prompt further consideration with regard to such requirements. The NTSB invites comments relating to any of the foregoing determinations and notes that the most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data.

Discussion of Proposed Revisions and Additions

Proposed Revision to Introductory Paragraph of § 830.5

The NTSB proposes to revise the introductory paragraph of Sec. 830.5 to reflect a change in nomenclature for the term "regional office," to identify a recently established regional office in Ashburn, Virginia, and to include a reference to NTSB Headquarters in Washington, DC. In addition, the NTSB proposes to remove the reference to telephone books as a source of contact information for NTSB offices and, instead, direct the public to the NTSB Web site, which contains up-to-date instructions for reporting events listed in Sec. 830.5. Operators, or other persons or entities, who need to notify the NTSB of a reportable event under 49 CFR Part 830 may notify any NTSB regional office or NTSB Headquarters.

Proposed Revision to § 830.5(a)(3)

The NTSB proposes to revise Sec. 830.5(a)(3), which currently requires notification of an event in which a "[f]ailure of structural components of a turbine engine[,] excluding compressor and turbine blades and vanes[.]" occurs. The NTSB's proposed revision of Sec. 830.5(a)(3) would result in notification

of an event 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 believes that such a revision will assist the NTSB with improving aviation safety. The NTSB notes that it has investigated several incidents in which liberated engine fragments penetrated the adjacent inlet or exhaust ducts before impacting the airplane. While some engine manufacturers have argued that such events were not uncontained engine failures because the debris did not penetrate the engine’s cases, the NTSB asserts that the danger of liberated engine debris is cause for concern. Specifically, such debris could affect the aircraft’s structure or systems or the occupants of the aircraft, even though the debris did not penetrate any of the engine’s casings. Indeed, debris that escapes an engine other than out the exhaust path can pose a hazard to the airplane by damaging the structure, disabling systems, or injuring the occupants of the aircraft. Such occurrences certainly concern the NTSB, given the potential effects on the aircraft’s overall safety of flight. Thus, the proposed revision to Sec. 830.5(a)(3) will require the reporting of all events in which debris escapes other than out the exhaust path, not simply those events that result in penetration of the engine casing.

In addition, the NTSB notes that recent generations of turbine engines do not have inlet guide vanes. Therefore, broken blades can escape forward of the engine’s containment case. Further, new airplanes often have inlet ducts composed of composite material that may provide less containment resistance to a ballistic projectile than older metal structures. Therefore, the NTSB is equally concerned about both debris that exits forward of the inlet case through the inlet duct and debris that exits aft of the turbine case through the exhaust duct because it is debris that penetrates the side of the engine through a primary case.

The NTSB recognizes that some entities or individuals in the aviation community may be concerned that identifying the location from which the debris exited the engine may be too difficult and may, therefore, render this proposed revision to Sec. 830.5(a)(3) futile. The NTSB has considered this concern and asserts that such identification will be possible. Specifically, the NTSB is concerned with uncontained events in which internal engine pieces separate and penetrate a primary engine case or penetrate the adjacent inlet or exhaust

duct, rather than contained failures, which involve a cascade of broken pieces exiting the rear of the engine exclusively through the exhaust path. In general, when engine debris penetrates an engine case or the adjacent inlet or exhaust duct, an obvious hole in the case or duct, along with the internal damage to the engine, will exist.

The NTSB also recognizes that some entities or individuals in the aviation community may contend that the NTSB should continue to include all compressor and turbine blade and vane failures. The NTSB has considered this potential viewpoint and believes that investigating every compressor or turbine blade or vane failure would likely not result in significant improvements in aviation safety. In addition, the NTSB acknowledges that some interested individuals or entities may suggest that the NTSB exclude the requirement of reporting events in which the debris escaped forward of the fan containment case. The NTSB is not inclined to implement such a suggestion, based on NTSB investigations of numerous events in which fragments that exited forward of the fan containment case or aft of the turbine case did so at such an acute angle that they were able to penetrate the airplane, thereby causing substantial damage. The NTSB recognizes that some fragments that exit forward of the fan containment case may do so at an angle that is tangential to the fuselage and, thus, would have insufficient energy to result in substantial damage to the aircraft; however, the NTSB remains interested in any event in which the failure of an internal turbine engine component results in the escape of debris other than out the exhaust path. Therefore, based on the foregoing reasons, the NTSB proposes to revise Sec. 830.5(a)(3) to require reporting of any “[f]ailure of any internal turbine engine component that results in the escape of debris other than out the exhaust path.”

Proposed Revisions to § 830.5(a)(4), (a)(5)

The NTSB proposes to revise Sec. 830.5(a)(4) to remove the word “or,” the inclusion of which was a minor typographical error. In addition, the NTSB proposes to revise Sec. 830.5(a)(5) to correct the grammar and punctuation of this section. Given that these proposed revisions are insignificant, the NTSB believes that further discussion is unwarranted.

Proposed Addition of § 830.5(a)(8)

The NTSB proposes to add Sec. 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.” The NTSB seeks to add this section because a loss of a propeller blade presents a significant hazard to an aircraft and its occupants, given the amount of energy a propeller blade creates and maintains. In this regard, the NTSB’s concern about the release of a propeller blade is similar to its concern for an uncontained engine failure, in that the liberated blade can strike the fuselage, damaging an airplane’s structure and resulting in the disabling of a system or injury to the passengers and crew. The NTSB recognizes that, if the liberated blade struck the airplane, then the NTSB would receive notification and consider investigating the occurrence, in accordance with the current regulations. See 49 CFR 830.5(a) (requiring reporting of an “aircraft accident,” as defined at 49 CFR 830.2). The NTSB, however, has determined that events could occur in which a liberated propeller blade does not strike the airplane. In such circumstances, the NTSB is concerned that operators may determine that the current regulations do not require them to report to the NTSB an event in which they shut down the engine and accomplish an engine-out landing, if the airplane did not sustain any damage. Because propeller blade separations have the potential to cause substantial damage and have previously caused aircraft accidents, the NTSB would like to receive notification of every occasion in which a propeller blade separates, even if the event did not damage the airplane.

Furthermore, the NTSB has learned of events in which the separation of a propeller blade has raised safety concerns that the NTSB could have helped to prevent, had the NTSB received notification of such events. For example, in March 1994, a propeller blade fractured and separated from an Embraer EMB-120 operating in Brazil; however, because no significant damage to the airplane occurred, the NTSB did not receive notification of the event. In August 1995, a propeller blade separated from another Embraer EMB-120 operating in the United States; the separation caused damage to the airplane that was so severe that the pilots were required to make an off-airport forced landing, and several fatalities resulted (NTSB Investigation No. DCA95MA054). Had the NTSB been advised of the event in Brazil, the NTSB could have investigated the event and considered issuing safety recommendations that may have

ultimately prevented the August 1995 crash. Conversely, the NTSB received notification of a propeller blade separation in an ATR 42-500 that occurred in Colombia in January 2002, even though the airplane did not sustain any significant damage (NTSB Investigation No. DCA02WA018). The ensuing investigation revealed that a significant corrosion problem existed on that particular type of propeller blade; as a result, the NTSB issued several safety recommendations. Had the NTSB not received notification and participated in the investigation, the corrosion problem may have continued until another airplane's blade separated, which could have led to an accident.

The NTSB acknowledges that, in many cases, a failure of the propeller blade itself causes the loss of the blade. The NTSB notes, however, that a failure of the propeller hub could also instigate the release of a blade. The NTSB has investigated accidents in which failure of the blade itself or failure of the hub to which the blade was attached caused the loss of a propeller blade and resulted in an accident. Specifically, one such accident resulted in five NTSB safety recommendations to the FAA regarding manufacturing practices and proper blade maintenance, repair, testing, and inspection procedures. See Safety Recommendations A-96-142 through A-96-146, available at <http://www.ntsb.gov>. Another subsequent accident resulted in two NTSB safety recommendations concerning the inspection and repair of the propeller blades. See Safety Recommendations A-02-03 and A-02-04, also available at <http://www.ntsb.gov>. Overall, the NTSB has concluded that it should receive notification of such events and determine whether to conduct an investigation, independent of whether such an event has resulted in an accident, in the interest of fulfilling Congress' intent.

Finally, in this proposed section, the NTSB proposes to exclude propeller blade separations that result solely from ground contact. While the NTSB acknowledges that liberated propeller blades or blade segments pose a significant hazard to the airplane's crew and passengers, as well as to bystanders, the NTSB notes that contact with the ground is well beyond the normal operating environment and design intent of a propeller blade. As a result, operators should not expect a propeller blade to remain intact after striking the ground. Therefore, the NTSB would receive notification of events in which a propeller blade contacted the ground when the event resulted in an accident, pursuant to the NTSB's existing

notification requirements. See 49 CFR 830.5(a) (requiring reporting of an "aircraft accident," as defined at 49 CFR 830.2). Therefore, propeller blade separations that result solely from ground contact are not within the scope of this proposed Sec. 830.5(a)(8).

Proposed Addition of § 830.5(a)(9)

The NTSB seeks to add Sec. 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." Through this proposed language, the NTSB seeks to require the reporting of the loss of information from a majority of an aircraft's certified electronic displays.

With regard to the terminology in this proposed section, the NTSB notes that the Federal Aviation Regulations define the term "primary display" as "the display of a parameter that is located in the instrument panel such that the pilot looks at it first when wanting to view that parameter." See 14 CFR 23.1311(c). In addition, the NTSB asserts that the term "flickering" is sufficiently descriptive; the NTSB expects that a considerable majority of operators will interpret the rule correctly and provide notification when appropriate. As explained below, the NTSB seeks to receive notification of events in which a majority of an aircraft's electronic displays become completely blank and display no data or information.

The NTSB's principal intention in proposing this reporting requirement is to become informed of all instances in which more than 50 percent of primary displays go totally blank. The NTSB has determined that a series of totally blank displays in modern aircraft that were subject to reliability considerations during certification indicates a significant failure of redundancy for that aircraft system. The NTSB is concerned that this type of redundancy failure may lead to complete loss of displayed information in the future if the causes of the failure are not identified. Therefore, the NTSB emphasizes that establishing this proposed reporting requirement is necessary for improving transportation safety.

The NTSB acknowledges that, because some aircraft have a certification requirement that requires continued flight to remain possible with all electronic primary displays inoperative, the reporting of a partial loss of these displays may seem counterintuitive. However, while some aircraft do have a certification requirement for continued flight following the loss of all electronic

primary displays, the NTSB has determined that a significant degradation of safety margin results from inoperative primary displays. For example, as a result of a loss of electronic failure displays, an aircraft crew may not be able to deal with the failure appropriately by solely using the stand-by displays. In addition, NTSB investigators have noted during investigations into a number of actual display loss events that the crews did not transition to the stand-by instruments and instead continued to use only a portion of the information available to them while waiting for the primary electronic displays to return to operation. Such a practice could compromise the safety of operation of the aircraft because crews would operate the aircraft in the absence of necessary information, such as navigation data, flight information, and information regarding potential failures of systems. Therefore, the NTSB proposes to require notification of such events, in the interest of investigating the circumstances of such events and assisting in preventing them.

In addition, the NTSB does not intend to narrow the scope of this proposed requirement to cover only those events that occur while the aircraft is airborne because the loss of redundancy that would cause displays to go blank on the ground could also occur while the aircraft is airborne. For example, the NTSB recognizes that a display loss event that resulted from an auxiliary power unit failure while both engines were shut down during deicing before takeoff could occur. The NTSB acknowledges that some unique events may result in the loss of the displays while on the ground that do not represent significant safety events; however, the NTSB anticipates that these types of events will be infrequent and remain in the minority of such occasions. The NTSB must take advantage of the opportunity to investigate causes of display blanking, even when the aircraft at issue was not airborne when the event occurred.

Proposed Addition of § 830.5(a)(10)

The NTSB seeks to add Sec. 830.5(a)(10) to 49 CFR Part 830, to require the reporting of: Airborne Collision and Avoidance System (ACAS) advisories issued either:

(A) 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

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

The NTSB anticipates that this proposed reporting requirement will notify the NTSB of the limited number of encounters that may evidence a serious safety risk and warrant further investigation, in accordance with the NTSB's statutory purpose and mission. This proposed addition will not necessitate the reporting of resolution advisories that arise from benign events but will capture the incidents that are more likely to warrant further safety investigation.

The NTSB acknowledges that resolution advisories are transmitted over mode S data link and may, therefore, be subject to recording at ground-based receivers. The NTSB recognizes that, while such a method of data collection is technically possible, the infrastructure to provide this capability is not sufficiently common to ensure that the NTSB would receive notification of the event through this method. The NTSB also recognizes that pilots involved in loss-of-separation incidents also may make verbal reports to air traffic control (ATC) facilities or may file formal near-midair collision reports through the FAA. The NTSB has determined, however, that the internal process for such reporting of safety events occurring within the ATC system may not be entirely reliable. Further, not all aircraft proximity events that provoke safety concerns meet the FAA's criteria for formal reporting as an operational error or other incident. Therefore, the NTSB has concluded that a source of safety reports not solely dependent on ATC will provide a useful means of ensuring that serious incidents receive adequate attention and will enable improvements to the ATC reporting process, where needed.

Furthermore, the NTSB notes that operators and other reporting individuals or entities should not be concerned that this proposed addition will require frequent removal and retention of aircraft recorders after submission of the required reports. While the NTSB may require operators to provide flight data recorder data as part of incident investigations, the NTSB does not anticipate that this will normally be necessary after ACAS incidents occur, unless other information indicates that a very serious threat of collision clearly existed. Overall, the NTSB is aware that recorder access can be problematic for aircraft operators and will make every effort to minimize the need for such information following incidents reported under this requirement.

The NTSB anticipates that this proposed reporting requirement will assist the NTSB in improving aviation

safety by preventing future accidents and incidents because it will provide the NTSB with information concerning events in which aircraft crews perceived that they had been exposed to a collision hazard. As the International Civil Aviation Organization (ICAO) recently noted, current NTSB regulations do not specifically require the notification of air proximity events. In response to this finding, the NTSB notes that this proposal to require notification of such events is consistent with the ICAO standard, which seeks immediate notification of "near collisions requiring an avoidance [maneuver]."

Proposed Addition of § 830.5(a)(11)

The NTSB seeks to add Sec. 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's previous NPRM sought to amend the definition of "substantial damage" such that the NTSB would consider damage that a helicopter tail or main rotor blade sustained to be "substantial damage" and, therefore, reportable. In light of the comments that the NTSB received on this proposed change, the NTSB determined that such an amendment to the definition of "substantial damage" was not necessary and that the NTSB could instead achieve its purpose of receiving notification of damage that a helicopter tail or main rotor blade sustains by adding this proposed subsection to Sec. 830.5(a). In accordance with this proposed change, the NTSB intends to require owners, operators, and other individuals or entities to report as incidents all rotor blade strikes that result in damage, regardless of what the blades struck.

Receiving reports of damage to rotors under Sec. 830.5 will allow the NTSB and the aviation industry to work cooperatively on these occurrences, and such cooperation is paramount in addressing and resolving operational or mechanical safety issues. In addition, the NTSB's proposal to add this subsection to Sec. 830.5 will resolve the NTSB's concern that operators are misinterpreting 49 CFR Part 830 and are failing to report instances in which collateral damage to other dynamic or structural components of helicopters occurs during blade strikes.

Including damage to rotor blades as reportable incidents will serve to improve safety and to accomplish the NTSB's mission in a number of ways. For example, such notification will help the NTSB collect data for further

refinement and standardization of categorizing helicopter accidents and incidents. The NTSB believes that this proposed addition will, as a result of consistent notification, serve to identify those events that may indicate or identify flight safety issues. In particular, some operational occurrences of tail and main rotor blade damage could adversely affect the structural strength, performance, or flight characteristics of a helicopter, and Congress has charged the NTSB with assisting with the prevention of occurrences such as these.

The NTSB also notes that events involving damage to rotor blades may present legitimate safety issues. For example, on May 3, 2003, a California police helicopter struck power lines during a forced landing that followed an engine malfunction (NTSB Investigation No. LAX04TA202). The tail rotor blade sustained damage, and the operators flew the helicopter to another destination; the flight crew initially reported the damage as minor. The NTSB investigated the occurrence and noted that the engine malfunction resulted from an inadequate overhaul of an engine component. As a result of this finding, the engine manufacturer revised its overhaul procedures to provide for more detailed instructions, thereby improving transportation safety. In addition, the NTSB investigated a helicopter accident that occurred on July 7, 2006, in Hawaii (NTSB Investigation No. LAX06CA227). During the course of this accident, all main rotor blades of the helicopter sustained damage upon striking a tree while landing during an animal eradication flight. The NTSB identified safety issues regarding inadequate preflight planning and in-flight decision-making and notified the operator and the FAA of these deficiencies.

As these examples demonstrate, the NTSB works to improve transportation safety by investigating accidents and making safety recommendations to a variety of entities and organizations. Such safety improvements can occur without a formal safety recommendation and may result from either the NTSB's identification of a trend that may inhibit safe transportation or the NTSB's investigation into the circumstances and facts of a specific occurrence. In this regard, the proposed addition of requiring the public to report occurrences in which a helicopter sustains damage to its tail or main rotor blade will allow the NTSB to obtain data to identify potential trends in helicopter transport that may be of concern and to consider investigating the facts of a specific occurrence.

With regard to the NTSB's intent to collect data regarding helicopter occurrences in the interest of improving safety, the NTSB plans to analyze such data and findings, identify potential trends or areas of concern, and subsequently work through the safety recommendation process to improve safety. Congress has directed the NTSB to collect accident data, and the NTSB has created searchable databases for such data. See 49 U.S.C. 1116. The NTSB may store the data and findings from occurrences of rotor blade damage in a similar manner, to allow investigators to analyze these data and findings in the aggregate. In any event, such data collection will allow the NTSB to identify trends that could indicate potential safety deficiencies and to simplify and accelerate the process of issuing potential safety recommendations.

While this proposed addition will require notification of events in which a helicopter tail or main rotor blade sustains damage, the NTSB notes that it is not seeking the reporting of minor damage that does not adversely affect the performance of the helicopter, such as minor foreign object damage or damage confined to blade balance tabs. Overall, this proposed addition to Sec. 830.5 will enable the NTSB to improve safety with regard to helicopter operations.

Proposed Addition of § 830.5(a)(12)

The NTSB seeks to add Sec. 830.5(a)(12) to 49 CFR Part 830, to require the reporting of:

Any runway incursion event in which an operator, when operating an aircraft as an air carrier:

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

(B) Experiences a reduction in separation that requires the operator or the crew of another aircraft or vehicle to take immediate corrective action to avoid a collision.

In this proposed notification requirement, the NTSB proposes to use the definition of "runway incursion" that the FAA and ICAO currently use; however, the NTSB proposes to require the reporting of only certain types of runway incursions. Under FAA and ICAO guidance, a runway incursion is "any occurrence at an [airport] involving the incorrect presence of an aircraft, vehicle or person on the protected area of a surface designated for the landing and take-off of an aircraft." See FAA Notice NJO7050.1, *Air Traffic Organization Policy* (Oct. 1, 2007); ICAO Procedures for Air Navigation Services—Air Traffic

Management, *PANS ATM Document 4444* (January 2003). The NTSB's proposed notification requirement would require reports of a subset of runway incursions, as specifically designated at proposed subsections (A) and (B).

Moreover, the NTSB's proposed use of the term "air carrier" is also consistent with that of the FAA, which defines "air carrier" as "any person or organization who undertakes, whether directly or indirectly, or by lease or any other arrangement, to engage in air transportation and conducts operations in accordance with 14 CFR [Parts] 121 and 135." See FAA Order 8020.11B and 14 CFR 1.1.

With regard to the intended interpretation of subsection (B) in the NTSB's proposed addition of Sec. 830.5(a)(12), the NTSB notes that crews often may not be aware that they were involved in a situation in which separation between their aircraft and a nearby or adjacent aircraft decreased. Therefore, the NTSB attempts to exclude reports of separation decreases that are nominal or so minor that the operator is not aware of the event. As such, the NTSB intends to add the phrase "requires the operator to take immediate corrective action to avoid a collision" to exclude separation decreases in which neither operator notices or is aware of any separation decrease, or no maneuvering is required to avoid a collision. Therefore, with regard to subsection (B) of the proposed addition of Sec. 830.5(a)(12), the NTSB intends to require notification of separation decreases about which an operator involved becomes aware and takes action to avoid a collision.

Moreover, concerning subsection (B) of the proposed requirement, the NTSB notes that this requirement would apply to certain situations in which a non-air carrier operator must take evasive action to avoid a collision with an air carrier aircraft. For instance, if a Cessna 172 aircraft on departure must take evasive action to avoid a Boeing 747 aircraft that has inadvertently entered the runway, this proposed rule would require a report of the incident. The flight crew of a large air carrier aircraft may not even be aware that a smaller aircraft was in close proximity to it and had to take evasive action. The proposed rule would, nevertheless, require a report of the incident because an air carrier was involved and at least one of the aircraft had to take evasive action to avoid a collision.

Furthermore, the NTSB notes that this proposed notification requirement does not include runway incursions in which ample time and distance exist to avoid

a collision. The NTSB seeks to receive notification of events that require the crew to take evasive action to avoid another aircraft, a vehicle, a person, equipment, or the like; therefore, the NTSB intends to interpret the term "reduction in separation" in the proposed requirement to include a decrease in separation with any object or person. In addition, as stated above, this proposed requirement would only apply to air carriers that operate under 14 CFR Parts 121 or 135, not operators who operate under 14 CFR Part 91. Overall, while the NTSB is aware that numerous runway incursions occur each day, the NTSB notes that this proposed notification requirement would not include a substantial number of such incidents, given the limitations that the proposed regulatory language includes.

The NTSB is aware that operators may be concerned about the time limits for such notification. The NTSB intends to enforce this proposed notification requirement as one that requires notification as soon after the incident as such notification is practicable and safe. For example, as defined above, an aircraft that has experienced a runway incursion upon taking off should notify the NTSB as soon as the aircraft lands at its next destination, if the incursion occurs within the time period that immediately precedes takeoff and the operator is unable to notify the NTSB immediately without compromising the safe operation of the aircraft. Likewise, an aircraft that experiences a runway incursion as defined above upon landing should notify the NTSB as soon as the operator is able to provide such notification without compromising the safe operation of the aircraft. Overall, the NTSB intends to interpret this proposed rule to require notification as soon as the operator is able to provide such notification safely.

The NTSB notes that this proposed reporting requirement is consistent with the NTSB's statutory mission of investigating aviation accidents and incidents and improving transportation safety for the public. The proposed requirement would require notification of circumstances in which an operator narrowly avoided a collision. In addition, this proposed requirement would mandate notification of incidents in which a significant potential for a collision existed and in which an operator aggressively swerved, abruptly slowed or stopped, or rotated and lifted off earlier than planned in the aircraft to avoid a collision. Such events could be the result of operator error, mechanical malfunctions, air traffic controller errors, or a variety of other potential

factors or causes. The NTSB's act of investigating and identifying such factors and causes, and issuing safety recommendations to prevent future occurrences, is the NTSB's principal statutory mission. In particular, notification of such events will greatly enhance the NTSB's ability to improve aviation safety via the NTSB's investigations and safety recommendations; in the absence of such notification, the NTSB must rely on news media sources or the FAA. While such resources are helpful, they do not comprise or amount to timely, direct notification of such events to the NTSB, which is critical for the NTSB's purpose of conducting timely, thorough, effective investigations that are independent. Furthermore, indirect notification also fails to meet ICAO standards and recommended practices.

The NTSB has investigated several incidents of runway incursions and issued safety recommendations as a result of such incidents. For example, the NTSB's investigation into a runway incursion that resulted in a fatal aviation accident on August 27, 2006, in Lexington, Kentucky, determined that the crew's failure to use available cues and aids to identify the airplane's location on the airport surface during taxi, and their failure to cross-check and verify that the aircraft was on the correct runway, resulted in the accident. As a result of this investigation, the NTSB issued several safety recommendations to the FAA: to revise work scheduling policies to reduce the potential of air traffic controllers performing duties while fatigued, to establish initial and recurrent training programs for all air traffic controllers, and to prohibit the issuance of a takeoff clearance during an airplane's taxi to its departure runway until after the airplane has crossed all intervening runways.

In addition, the NTSB also investigated a runway incursion that occurred on June 9, 2005, in Boston, Massachusetts, in which two transport-category aircraft nearly collided due to an air traffic controller's failure to follow an FAA order and the standard operating procedures for the ATC tower. This determination resulted in a safety recommendation that the NTSB issued directly to the Boston ATC facility, in which the NTSB recommended that controllers engage in a specific dialogue to ensure that the receiving controller has a timely reminder that the runway is in use and prompt the receiving controller to resolve immediately any conflicts concerning presence on the runway. The NTSB has also issued other safety recommendations to the FAA as the result of several runway incursions

that the NTSB has investigated, specifically involving procedural changes, such as ensuring that all runway crossings be authorized only by specific ATC clearance, and ensuring that pilots receive adequate notification of clearance changes. See Safety Recommendations A-00-067 and A-00-068, which are available at <http://www.ntsb.gov>. The NTSB anticipates that these recommendations will assist in reducing the number of runway incursions and, therefore, will improve transportation safety. Such a practice is consistent with the NTSB's statutory purpose and Congress's intent. See 49 U.S.C. 1116(b); H.R. Rep. No. 103-239(I) at 1 (1993) (emphasizing the importance of the NTSB's safety recommendations and stating that such recommendations "have saved countless human lives").

List of Subjects in 49 CFR Part 830

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

For the reasons discussed in the preamble, the NTSB proposes to amend 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 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, Pub. L. No. 85-726, 72 Stat. 731 (codified as amended at 49 U.S.C. 40101).

2. Sec. 830.5 is amended by revising the introductory text, paragraphs (a) introductory text, (a)(3) through (5), and adding paragraphs (a)(8) through (12) to read as follows:

§ 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:

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.,

(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 certified electronic primary 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 corrective or evasive action is required to maintain a safe distance from other 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 runway incursion event in which an operator, when operating an aircraft as an air carrier:

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

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

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Dated: October 1, 2008.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. E8-23665 Filed 10-6-08; 8:45 am]

BILLING CODE 7533-01-P