

to cite a specific size that will apply in all installations; however, as a general rule, components with exposed-surface areas of one square foot or less may be considered small enough that they do not have to meet the new standards. Components with exposed-surface areas greater than two square feet may be considered large enough that they do have to meet the new standards. Those with exposed-surface areas greater than one square foot, but less than two square feet, must be considered in conjunction with the areas of the cabin in which they are installed before a determination could be made."

In the late 1990s, the FAA issued Policy Memorandum 97-112-39, *Guidance for Flammability Testing of Seat/Console Installations*, October 17, 1997 (<http://rgl.faa.gov>). That memo was issued when it became clear that seat designs were evolving to include large, non-metallic panels with surface areas that would impact survivability during a cabin fire event, comparable to partitions or galleys. The memo noted that large surface area panels must comply with heat release and smoke emission requirements, even if they were attached to a seat. If the FAA had not issued such policy, seat designs could have been viewed as a loophole to the airworthiness standards that would result in an unacceptable decrease in survivability during a cabin fire event.

In October of 2004, an issue was raised regarding the appropriate flammability standards for passenger seats that incorporated non-traditional, large, non-metallic panels in lieu of the traditional metal covered by fabric. The Seattle Aircraft Certification Office and Transport Standards Staff reviewed this design and determined that it represented the kind and quantity of material that should be required to pass the heat release and smoke emissions requirements. We have determined that special conditions would be promulgated to apply the standards defined in 14 CFR 25.853(d) to seats with large, non-metallic panels in their design.

Applicability

As discussed above, these special conditions are applicable to Boeing Model 777 series airplanes. Because the heat release and smoke testing requirements of § 25.853 are part of the type certification basis for the Model 777, these special conditions are applicable to all new seat certification programs for Model 777 series airplanes. The existing (i.e., with unchanged interiors) Model 777 fleet and follow-on deliveries of Model 777 series airplanes

with previously certificated interiors are not affected. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Boeing Model 777 series airplanes.

1. Except as provided in paragraph 3 of these special conditions, compliance with Title 14 CFR part 25, Appendix F, parts IV and V, heat release and smoke emission, is required for seats that incorporate non-traditional, large, non-metallic panels that may either be a single component or multiple components in a concentrated area in their design.

2. The applicant may designate up to and including 1.5 square feet of non-traditional, non-metallic panel material per seat place that does not have to comply with special condition Number 1, above. A triple seat assembly may have a total of 4.5 square feet excluded on any portion of the assembly (e.g., outboard seat place 1 square foot, middle 1 square foot, and inboard 2.5 square feet).

3. Seats do not have to meet the test requirements of Title 14 CFR part 25, Appendix F, parts IV and V, when installed in compartments that are not otherwise required to meet these requirements. Examples include:

- Airplanes with passenger capacities of 19 or less,
- Airplanes that do not have § 25.853, Amendment 25-61 or later, in their certification basis and do not need to comply with the requirements of 14 CFR 121.312, and
- Airplanes exempted from § 25.853, Amendment 25-61 or later.

4. Only airplanes associated with new seat certification programs approved after the effective date of these special conditions will be affected by the requirements in these special

conditions. Previously certificated interiors on the existing airplane fleet and follow-on deliveries of airplanes with previously certificated interiors are not affected.

Issued in Renton, Washington, on October 19, 2007.

Ali Bahrami

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7-21248 Filed 10-26-07; 8:45 am]

BILLING CODE 4910-13-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2007-0500-200721; FRL-8488-2]

Approval and Promulgation of Implementation Plans Kentucky: Approval of Revisions to the State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a request submitted on May 25, 2007, by the Commonwealth of Kentucky (Kentucky), through the Kentucky Division for Air Quality (KDAQ), to remove the "Potentially hazardous matter or toxic substances" rule from the EPA-approved Kentucky State Implementation Plan (SIP). KDAQ requested that EPA remove this rule from the Kentucky SIP, because the rule is not related to the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). EPA is proposing to approve this request and correct the Kentucky SIP by removing this rule from the SIP pursuant to section 110(k)(6) of the Clean Air Act (CAA).

DATES: Written comments must be received on or before November 28, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2007-0500, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- E-mail:* lakeman.sean@epa.gov.
- Fax:* (404) 562-9019.
- Mail:* "EPA-R04-OAR-2007-0500," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

5. *Hand Delivery or Courier:* Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. "EPA–R04–OAR–2007–0500." EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through www.regulations.gov or e-mail, information that you consider to be CBI or otherwise protected. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either

electronically in www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can also be reached via electronic mail at lakeman.sean@epa.gov.

SUPPLEMENTARY INFORMATION: The CAA requires EPA to set NAAQS for commonly occurring air pollutants that pose public health and welfare threats. These pollutants are known as criteria pollutants. Currently, NAAQS exist for six criteria pollutants—ozone (ground level), particulate matter, carbon monoxide, sulfur dioxide, lead and nitrogen dioxide. On July 12, 1982 (47 FR 30059), EPA erroneously approved Kentucky's "Potentially hazardous matter or toxic substances" rule (401 KAR 63:020) into the SIP. This rule is not related to the attainment and maintenance of the NAAQS. Pursuant to section 110 of the CAA, provisions approved by EPA as part of States' SIPs should generally be related to attainment and maintenance of these NAAQS.

The Kentucky "Potentially hazardous matter or toxic substances" rule applies to antimony, arsenic, bismuth, lead, silica, tin and compounds of such materials. EPA is, therefore, proposing to correct this error by removing the provision from the approved SIP under the authority of section 110(k)(6) of the CAA. Section 110(k)(6) provides: "Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such

determination and the basis thereof shall be provided to the State and public."

Proposed Action

Since Kentucky's "Potentially hazardous matter or toxic substances" rule (401 KAR 63:020) is not directed at the attainment and maintenance of the NAAQS, EPA has found that its prior approval of this particular rule into the Kentucky SIP was in error. Consequently, in order to correct this error, EPA is proposing to remove Kentucky rule 401 KAR 63:020 from the approved Kentucky SIP pursuant to section 110(k)(6) of the CAA. EPA will codify this deletion by revising the appropriate paragraph under 40 CFR part 52, subpart S, section 52.920 (Identification of Plan).

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to remove an erroneously approved State rule from the SIP and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to remove an erroneously approved State rule from the SIP and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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 the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to remove an erroneously approved State rule from the SIP, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 19, 2007.

Russell L. Wright, Jr.,

Acting Regional Administrator, Region 4.

[FR Doc. E7-21245 Filed 10-26-07; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 070717354-7361-01]

RIN 0648-AV73

Endangered and Threatened Species; Designation of Critical Habitat for the North Pacific Right Whale

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comment.

SUMMARY: We, NMFS, completed a status review of the northern right whale and have determined that the right whale in the North Pacific Ocean is a separate and distinct species from the right whales in the North Atlantic Ocean and southern hemisphere. We also find the species to be described in the North Pacific Ocean, the North Pacific right whale (*Eubalaena japonica*), is in danger of extinction throughout its range. We have proposed to list this species as endangered

pursuant to the Endangered Species Act of 1973 (ESA). Here we propose to designate critical habitat for this species. Two specific areas are proposed for designation: one in the Gulf of Alaska (GOA) and another in the Bering Sea. Our most recent mapping calculation indicates this area comprises a total of approximately 36,800 square miles (95,325 square kilometers) of marine habitat. We solicited comments from the public on all aspects of the proposal, including information on the economic, national security, and other relevant impacts of the proposed designation. We may revise this proposal and solicit additional comments prior to final designation to address new information received during the comment period.

DATES: Comments on this proposed rule must be received by close of business on December 28, 2007. Requests for public hearings must be made in writing by December 13, 2007.

ADDRESSES: You may submit comments, identified by 0648-AV73, by any one of the following methods:

- Electronic submissions: Submit all electronic public comments via the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions at that site for submitting comments.
- Mail: Kaja Brix, Assistant Regional Administrator, Protected Resources Division, Alaska Region, NMFS, Attn: Ellen Sebastian, P. O. Box 21668, Juneau, AK 99802
- Hand delivery to the Federal Building : 709 W. 9th Street, Juneau, Alaska .
- Fax: (907) 586-7012, Attn: Ellen Sebastian.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

The proposed rule, maps, stock assessments, and other materials relating to this proposal can be found on the NMFS Alaska Region website <http://www.fakr.noaa.gov/>.

FOR FURTHER INFORMATION CONTACT: Brad Smith, (907) 271-3023, or Marta Nammack, (301) 713-1401.

SUPPLEMENTARY INFORMATION: The ESA, as amended [16 U.S.C. 1531 *et seq.*], grants authority to and imposes requirements upon Federal agencies regarding endangered or threatened species of fish, wildlife, or plants, and habitats of such species that have been designated as critical. The U.S. Fish and Wildlife Service and NMFS share responsibility for administering the ESA. Endangered or threatened species under the authority of NMFS are found in 50 CFR parts 223 and 224.

Background

The North Pacific right whale (*E. japonica*) is a member of the family Balaenidae and is closely related to the right whales that inhabit the North Atlantic and the Southern Hemisphere. Right whales are large baleen whales that grow to lengths and weights exceeding 18 meters and 100 tons, respectively. They are filter feeders whose prey consists exclusively of zooplankton (notably copepods and euphausiids; see below). Right whales attain sexual maturity at an average age of 8-10 years, and females produce a single calf at intervals of 3-5 years (Kraus *et al.*, 2001). Their life expectancy is unclear, but is known to reach 70 years in some cases (Hamilton *et al.*, 1998; Kenney, 2002).

Right whales are generally migratory, with at least a portion of the population moving between summer feeding grounds in temperate or high latitudes and winter calving areas in warmer waters (Kraus *et al.*, 1986; Clapham *et al.*, 2004). In the North Pacific, the feeding range is known to include the GOA, the Aleutian Islands, the Bering Sea, and the Sea of Okhotsk. Although a general northward movement is evident in spring and summer, it is unclear whether the entire population undertakes a predictable seasonal migration, and the location of calving grounds remains completely unknown (Scarff, 1986; Scarff, 1991; Brownell *et al.*, 2001; Clapham *et al.*, 2004; Shelden *et al.*, 2005). Further details of occurrence and distribution are provided below.

In the North Pacific, whaling for right whales began in the GOA (known to whalers as the "Northwest Ground") in 1835 (Webb, 1988). Right whales were extensively hunted in the western North Pacific in the latter half of the 19th century, and by 1900 were scarce throughout their range. Right whales were protected worldwide in 1935 through a League of Nations agreement. However, because neither Japan nor the USSR signed this agreement, both nations were theoretically free to continue right whaling until 1949, when