

**§ 86.1845-04 Manufacturer in-use verification testing requirements.**

\* \* \* \* \*

(b) \* \* \*

(5) \* \* \*

(ii) For non-gaseous fueled vehicles, one test vehicle of each evaporative/refueling family shall be tested in accordance with the supplemental 2-diurnal-plus-hot-soak evaporative emission and refueling emission procedures described in subpart B of this part, when such test vehicle is tested for compliance with applicable evaporative emission and refueling standards under this subpart. For gaseous fueled vehicles, one test vehicle of each evaporative/refueling family shall be tested in accordance with the 3-diurnal-plus-hot-soak evaporative emission and refueling emission procedures described in subpart B of this part, when such test vehicle is tested for compliance with applicable evaporative emission and refueling standards under this subpart. The test vehicles tested to fulfill the evaporative/refueling testing requirement of this paragraph (b)(5)(ii) will be counted when determining compliance with the minimum number of vehicles as specified in Table S04-06 and Table S04-07 in paragraph (b)(3) of this section for testing under paragraph (b)(5)(i) of this section only if the vehicle is also tested for exhaust emissions under the requirements of paragraph (b)(5)(i) of this section.

\* \* \* \* \*

(c) \* \* \*

(5) \* \* \*

(ii) For non-gaseous fueled vehicles, one test vehicle of each evaporative/refueling family shall be tested in accordance with the supplemental 2-diurnal-plus-hot-soak evaporative emission procedures described in subpart B of this part, when such test vehicle is tested for compliance with applicable evaporative emission and refueling standards under this subpart. For gaseous fueled vehicles, one test vehicle of each evaporative/refueling family shall be tested in accordance with the 3-diurnal-plus-hot-soak evaporative emission procedures described in subpart B of this part, when such test vehicle is tested for compliance with applicable evaporative emission and refueling standards under this subpart. The test vehicles tested to fulfill the evaporative/refueling testing requirement of this paragraph (b)(5)(ii) will be counted when determining compliance with the minimum number of vehicles as specified in Table S04-06 and table S04-07 in paragraph (b)(3) of this section for testing under paragraph

(b)(5)(i) of this section only if the vehicle is also tested for exhaust emissions under the requirements of paragraph (b)(5)(i) of this section.

\* \* \* \* \*

[FR Doc. 05-23714 Filed 12-7-05; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Research and Special Programs Administration**

**49 CFR Part 173**

**Shippers—General Requirements for Shipments and Packagings**

*CFR Correction*

In Title 49 of the Code of Federal Regulations, parts 100 to 185, revised as of October 1, 2004, on page 591, § 173.315 is corrected by adding paragraph (i)(8) to read as follows:

**§ 173.315 Compressed gases in cargo tanks and portable tanks.**

\* \* \* \* \*

(i) \* \* \*

(8) Each pressure relief valve outlet must be provided with a protective device to prevent the entrance and accumulation of dirt and water. This device must not impede flow through the valve. Pressure relief devices must be designed to prevent the entry of foreign matter, the leakage of liquid and the development of any dangerous excess pressure.

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**DEPARTMENT OF HOMELAND SECURITY**

**Transportation Security Administration**

**49 CFR Part 1540**

**RIN 1652-ZA09**

**Prohibited Items; Allowing Small Scissors and Small Tools**

**AGENCY:** Transportation Security Administration (TSA), DHS.

**ACTION:** Interpretive rule.

**SUMMARY:** To enable transportation security officers to concentrate on more effectively confronting the threat of concealed explosives being taken into the cabin of an aircraft, the Transportation Security Administration (TSA) is removing certain low threat, high volume, and easily identified items from the prohibited items list. This

document amends the TSA interpretive rule that provides guidance to the public on the types of items that TSA considers to be weapons, explosives, and incendiaries, and which are therefore prohibited in airport sterile areas, in the cabins of aircraft, or in passengers' checked baggage. This document removes small scissors and certain small tools from the prohibited items list and adds them to the permitted items list.

**DATES:** Effective December 22, 2005.

**FOR FURTHER INFORMATION CONTACT:** John Randol, Security Operations, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202-4220; telephone (571) 227-1796.

**SUPPLEMENTARY INFORMATION:**

**Availability of Documents**

You can get an electronic copy using the Internet by—

(1) Accessing the Government Printing Office's Web page at <http://www.gpoaccess.gov/fr/index.html>; or

(2) Visiting TSA's Law and Policy Web page at <http://www.tsa.gov> and accessing the link for "Law and Policy" at the top of the page.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

**Statutory and Regulatory Background**

TSA is responsible for security in all modes of transportation, including aviation. See 49 U.S.C. 114(d). TSA restricts what passengers may carry into the sterile areas of airports and into the cabins of air carrier aircraft. Under TSA's regulation for acceptance and screening of individuals and accessible property, 49 CFR 1540.111, an individual (other than a law enforcement or other authorized individual) may not have a weapon, explosive, or incendiary, on or about the individual's person or accessible property—

- When performance has begun of the inspection of the individual's person or accessible property before entering a sterile area, or before boarding an aircraft for which screening is conducted under § 1544.201 or § 1546.201 of this chapter;

- When the individual is entering or in a sterile area; or

- When the individual is attempting to board or onboard an aircraft for which screening is conducted under § 1544.201 or § 1546.201 of this chapter.

On February 14, 2003, TSA published an interpretive rule that provided guidance to the public on the types of

property TSA considers to be weapons, explosives, and incendiaries prohibited on an individual's person or accessible property, items permitted on an individual's person or accessible property, and items prohibited in checked baggage (68 FR 7444). TSA has amended the interpretive rule several times.<sup>1</sup>

TSA now is modifying the interpretive rule to allow passengers to carry metal scissors with pointed tips and a cutting edge four inches or less, as measured from the fulcrum, through a passenger screening checkpoint and into the cabin of an aircraft. Metal scissors with pointed tips and a blade length greater than four inches will continue to be prohibited. TSA is also providing an exception for screwdrivers, wrenches, pliers, and other tools seven inches or less in length. However, all tools greater than seven inches in length, as well as all crowbars, drills, hammers and saws, will continue to be prohibited.

In the four years since the terrorist attacks of September 11, 2001, a broad range of interconnected security measures have been established that, in combination, now provide more effective security against threats directed at seizing control of aircraft. These interconnected security measures include the introduction of hardened cockpit doors on commercial aircraft, the increased presence of Federal Air Marshals (FAM) onboard commercial flights, as well as a growing number of Federal Flight Deck Officers (FFDO).

With these security measures presently in place, a disproportionate amount of TSA's limited screening resources are directed each day at objects that no longer pose a significant threat. Amending the prohibited items list to allow certain low threat, high volume, and easily identified items, such as small scissors and tools, through the checkpoint will free up time and resources to allow TSA to implement screening procedures that are better targeted for identifying explosives concealed on individuals and in their accessible property, which pose a higher threat to the security of air transportation and air commerce. TSA is making this modification to the interpretive rule in order to more effectively confront the threat of concealed explosives being successfully taken through a passenger screening checkpoint and into the cabin of an aircraft.

### Small Scissors Are Now Permitted

Under the interpretive rule, TSA has considered all metal scissors with pointed tips to be weapons, except ostomy scissors. Therefore, individuals were prohibited from carrying these types of scissors in an airport sterile area or in the cabin of an aircraft. Metal scissors with blunt tips, plastic scissors, and ostomy scissors remain permitted. The interpretive rule as modified in this document allows metal scissors with pointed tips and a cutting edge four inches or less, as measured from the fulcrum, through the passenger screening checkpoint and into the cabin of an aircraft.

While it is possible for an individual or group of individuals to use small scissors as a weapon inside a commercial aircraft, the risk that scissors could be used to seize control of an aircraft is mitigated by the presence of hardened cockpit doors and FAMs, as well as a growing number of FFDOs. Current data shows that, excluding knives and box cutters, sharp objects make up 19 percent of the total number of prohibited items found at the passenger screening checkpoint. During the third and fourth quarters of fiscal year 2005, 1,762,571 sharp objects other than knives and box cutters were found at screening checkpoints. Based on information provided by transportation security officers and other screening experts in the field TSA has determined that scissors make up a large majority of the total number of the sharp objects found at passenger screening checkpoints. Moreover, most of these scissors are small with blades less than four inches in length as measured from the fulcrum.

Under current policy, for each pair of scissors discovered by an x-ray operator, a transportation security officer must perform a physical bag search to locate and remove them. Based on the high number of scissors found at passenger screening checkpoints nationwide, transportation security officers spend a very large amount of their time, attention, and resources focused on finding small scissors. Removing scissors with blades four inches or less in length from the prohibited items list will allow TSA to reallocate screening resources to more effectively search for items at the checkpoint that present a much greater threat, such as explosives.

We believe transportation security officers will be able to easily and immediately adjust to this proposed change in the prohibited items list. Moreover, transportation security officers will continue to improve their performance in identifying scissors on

the x-ray and avoid having to resort to labor intensive physical bag searches. This labor and resource savings will allow TSA to employ other security measures to confront the explosives threat more effectively.

### Certain Small Tools Are Now Permitted

Under the prohibited items list, TSA has effectively considered all tools to be weapons and prohibited passengers from carrying them into an airport sterile area and in the cabin of an aircraft. TSA specifically prohibited crowbars, drills,<sup>2</sup> hammers, saws,<sup>3</sup> screwdrivers (except those in eyeglass repair kits), and also had a catchall provision that prohibits all tools including, but not limited to, wrenches and pliers.

We believe the threat of an individual or individuals seizing control of an aircraft using small tools is mitigated by the presence of hardened cockpit doors, FAMs, and FFDOs. This threat does not justify the enormous time and resource investment dedicated towards screening for these items. Transportation security officers found 468,033 tools in the third and fourth quarters of fiscal year 2005. Thus, small tools represent a category of prohibited items that require transportation security officers to spend an amount of time and resources that is disproportionate to the threat presented by allowing them into an airport sterile area and in the cabin of an aircraft.

Based on information provided by TSA screening experts in the field on actual prohibited items found, we believe that small screwdrivers, wrenches, and pliers make up a large majority of the total number of tools found. Based on this same information, we do not believe screeners are finding large numbers of crowbars, drills, hammers, and saws. Thus, there would be minimal transportation security officer time, attention, and resource gains associated with allowing these low volume tools through a passenger screening checkpoint and into the cabin of an aircraft.

Drawing on its screening and security expertise, TSA has determined seven inches to be a practical and logical standard for allowing screwdrivers, wrenches, pliers, and certain other small tools through the passenger screening checkpoint. Not only will the seven inch standard capture a very large percentage of the total number of tools found, it will be easy for transportation security officers to make determinations regarding tools that no longer pose a significant threat and avoid having to

<sup>1</sup> 68 FR 9902 (technical corrections, March 3, 2003); 70 FR 9877 (prohibiting lighters, March 1, 2005); 70 FR 51679 (permitting certain small scissors that persons with ostomies need, August 31, 2005).

<sup>2</sup> Including cordless portable power drills.

<sup>3</sup> Including cordless portable power saws.

spend the time and resources associated with physically searching passengers' bags for all tools. This resource savings will allow TSA to implement more effective and robust screening procedures that can be targeted at screening for explosives.

TSA is modifying the interpretive rule to remove from the prohibited items list screwdrivers, wrenches, pliers, and other tools seven inches or less in length. All tools greater than seven inches in length, as well as all crowbars, drills, hammers, saws, will continue to be prohibited.

#### Other Technical Changes

TSA also is making a technical change to the interpretive rule. In prior versions of the interpretive rule, the various tools were divided between the Sharp Objects and the Club-Like Items categories. In order to simplify the organization of the prohibited items list, we are creating a new category for Tools (now section I.G) that TSA considers to be weapons.

#### Regulatory Impact Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act of 1996) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. Fourth, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation).

#### Executive Order 12866 Assessment

This rule explains to the public, airport personnel, screeners, and airlines how TSA interprets certain terms used in an existing rule, 49 CFR 1540.111. This interpretative rule is not considered an economically significant regulatory action for purposes of Executive Order 12866. However, there has been significant public interest in aviation security issues since the

terrorist attacks of September 11, 2001. Therefore, this rule is significant for purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB).

#### Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 requires that agencies perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. For purposes of the RFA, small entities include small businesses, not-for-profit organizations, and small governmental jurisdictions. Individuals and States are not included in the definition of a small entity.

The RFA does not apply to this interpretive rule and TSA is not preparing an analysis for the Act, since under 5 U.S.C. 553, TSA is not required to publish a notice of proposed rulemaking. Nonetheless, because this rule will not impose any costs on the public, we have determined and certify that this rule does not have a significant economic impact on a substantial number of small entities.

#### International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. TSA has assessed the potential effect of this interpretive rule and has determined that it will impose the same costs on domestic and international entities and thus has a neutral trade impact.

#### Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a \$100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate

is deemed to be a "significant regulatory action."

This rulemaking does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply and TSA has not prepared a statement under the Act.

#### Executive Order 13132, Federalism

TSA has analyzed this interpretive rule under the principles and criteria of Executive Order 13132, Federalism. We have determined that this action will not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore will not have federalism implications.

#### Environmental Analysis

TSA has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

#### Energy Impact

The energy impact of this action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362). We have determined that this rulemaking is not a major regulatory action under the provisions of the EPCA.

#### Amendments to Interpretation

TSA is making the following changes to the prohibited items list:

1. Section I.G(1) through (5) is established.
2. Section I.B(3) (now section I.G(2)) is amended to read "Reserved."
3. Section I.B(9) (now section I.G(4)) is amended to read "Reserved."
4. Section I.B(10) is amended to read "Scissors, metal with pointed tips and a blade length greater than four inches as measured from the fulcrum."
5. Section I.B(11) (now section I.G(6)) is amended to read "Reserved."
6. Section I.C(6) (now section I.G(1)) is amended to read "Reserved."
7. Section I.C(8) (now section I.G(3)) is amended to read "Reserved."
8. Section I.C(15) (now sections I.G(5, 7–8)) is amended to read "Reserved."
9. Section II.A(17) is amended to read "Scissors, plastic or metal with blunt tips, and metal with pointed tips and a blade four inches or less in length as measured from the fulcrum."
10. Section II.C(1) is established.
11. Section III.E is deleted.

**Text of Interpretive Rule**

The following is the list of prohibited items and permitted items reprinted in its entirety, with the changes inserted.

**Prohibited Items and Permitted Items Interpretation**

I. *Prohibited Items.* For purposes of 49 U.S.C. 40101 et seq. and 49 CFR 1540.111, TSA interprets the terms “weapons, explosives, and incendiaries” to include the items listed below. Accordingly, passengers may not carry these items as accessible property or on their person through passenger screening checkpoints or into airport sterile areas and the cabins of a passenger aircraft.

**A. Guns and Firearms**

- (1) BB guns.
- (2) Compressed air guns.
- (3) Firearms.
- (4) Flare pistols.
- (5) Gun lighters.
- (6) Parts of guns and firearms.
- (7) Pellet guns.
- (8) Realistic replicas of firearms.
- (9) Spear guns.
- (10) Starter pistols.
- (11) Stun guns/cattle prods/shocking devices.

**B. Sharp Objects**

- (1) Axes and hatchets.
- (2) Bows and arrows.
- (3) Reserved.
- (4) Ice axes/Ice picks.
- (5) Knives of any length, except rounded-blade butter and plastic cutlery.
- (6) Meat cleavers.
- (7) Razor-type blades, such as box cutters, utility knives, and razor blades not in a cartridge, but excluding safety razors.
- (8) Sabers.
- (9) Reserved.
- (10) Scissors, metal with pointed tips and a blade length greater than four inches as measured from the fulcrum.
- (11) Reserved.
- (12) Swords.
- (13) Throwing stars (martial arts).

**C. Club-Like Items**

- (1) Baseball bats.
- (2) Billy clubs.
- (3) Blackjacks.
- (4) Brass knuckles.
- (5) Cricket bats.
- (6) Reserved.
- (7) Golf clubs.
- (8) Reserved.
- (9) Hockey sticks.
- (10) Lacrosse sticks.
- (11) Martial arts weapons, including nunchucks, and kubatons.
- (12) Night sticks.

- (13) Pool cues.
- (14) Ski poles.
- (15) Reserved.

**D. All Explosives, Including**

- (1) Ammunition.
- (2) Blasting caps.
- (3) Dynamite.
- (4) Fireworks.
- (5) Flares in any form.
- (6) Gunpowder.
- (7) Hand grenades.
- (8) Plastic explosives.
- (9) Realistic replicas of explosives.

**E. Incendiaries**

- (1) Aerosol, any, except for personal care or toiletries in limited quantities.
- (2) Fuels, including cooking fuels and any flammable liquid fuel.
- (3) Gasoline.
- (4) Gas torches, including micro-torches and torch lighters.
- (5) Lighter fluid.
- (6) Strike-anywhere matches.
- (7) Turpentine and paint thinner.
- (8) Realistic replicas of incendiaries.
- (9) All lighters.

**F. Disabling Chemicals and Other Dangerous Items**

- (1) Chlorine for pools and spas.
- (2) Compressed gas cylinders (including fire extinguishers).
- (3) Liquid bleach.
- (4) Mace.
- (5) Pepper spray.
- (6) Spillable batteries, except those in wheelchairs.
- (7) Spray paint.
- (8) Tear gas.

**G. Tools**

- (1) Crowbars.
- (2) Drills and drill bits, including cordless portable power drills.
- (3) Hammers.
- (4) Saws and saw blades, including cordless portable power saws.
- (5) Other tools greater than seven inches in length, including pliers, screwdrivers, and wrenches.

II. *Permitted Items.* For purposes of 49 U.S.C. 40101 et seq. and 49 CFR 1540.111, TSA does not consider the items on the following lists as weapons, explosives, and incendiaries because of medical necessity or because they appear to pose little risk if, as is required, they have passed through screening. Therefore, passengers may carry these items as accessible property or on their person through passenger screening checkpoints and into airport sterile areas and the cabins of passenger aircraft.

**A. Medical and Personal Items**

- (1) Braille note taker, slate and stylus, and augmentation devices.

- (2) Cigar cutters.

- (3) Corkscrews.

- (4) Cuticle cutters.

(5) Diabetes-related supplies/equipment (once inspected to ensure prohibited items are not concealed), including: insulin and insulin loaded dispensing products; vials or box of individual vials; jet injectors; pens; infusers; and preloaded syringes; and an unlimited number of unused syringes, when accompanied by insulin; lancets; blood glucose meters; blood glucose meter test strips; insulin pumps; and insulin pump supplies. Insulin in any form or dispenser must be properly marked with a professionally printed label identifying the medication or manufacturer's name or pharmaceutical label.

(6) Eyeglass repair tools, including screwdrivers.

- (7) Eyelash curlers.

(8) Knives, round-bladed butter or plastic.

- (9) Reserved.

(10) Matches (maximum of four books, strike on cover, book type).

- (11) Nail clippers.

- (12) Nail files.

(13) Nitroglycerine pills or spray for medical use, if properly marked with a professionally printed label identifying the medication or manufacturer's name or pharmaceutical label.

(14) Personal care or toiletries with aerosols, in limited quantities.

(15) Prosthetic device tools and appliances (including drill, Allen wrenches, pullsleeves) used to put on or remove prosthetic devices, if carried by the individual with the prosthetic device or his or her companion.

(16) Safety razors (including disposable razors).

(17) Scissors, plastic or metal with blunt tips, and metal with pointed tips and a blade four inches or less in length as measured from the fulcrum.

- (18) Tweezers.

(19) Umbrellas (once inspected to ensure prohibited items are not concealed).

(20) Walking canes (once inspected to ensure prohibited items are not concealed).

**B. Toys, Hobby Items, and Other Items Posing Little Risk**

- (1) Knitting and crochet needles.

(2) Toy Transformer® robots and the like.

(3) Toy weapons (if not realistic replicas).

**C. Tools**

(1) Pliers, screwdrivers, wrenches, and other tools seven inches or less in length, excluding crowbars, drills, hammers, and saws.

III. *Items Prohibited in Sterile and Cabin Areas, but May Be Placed in Checked Baggage.* Passengers may place prohibited items other than explosives, incendiaries, disabling chemicals, and other dangerous items (other than individual self-defense sprays as noted below), and loaded firearms in their checked baggage, subject to any limitations provided in DOT's hazardous materials regulation. 49 CFR part 175.

A. *Pepper spray or mace.* A passenger may place one container of self-defense spray in checked baggage, not exceeding 4 fluid ounces by volume, but only if it incorporates a positive means to prevent accidental discharge. See 49 CFR 175.10(a)(4)(ii).

B. *Small arms ammunition.* A passenger may place small arms ammunition for personal use in checked baggage, but only if securely packed in fiber, wood or metal boxes, or other packaging specifically designed to carry small amounts of ammunition. 49 CFR 175.10(a)(5).

C. *Unloaded firearms.* A passenger may place an unloaded firearm or starter pistol in checked baggage if the passenger declares to the airline operator, either orally or in writing, before checking the baggage, that (1) the passenger has a firearm in his or her bag and that it is unloaded, (2) the firearm is carried in a hard-sided container, and (3) the container is locked, and only the passenger has the key or combination. 49 CFR 1540.111(c).

D. *Club-like Items.* A passenger may transport club-like objects and sharp objects in checked baggage, as long as they do not contain explosives or incendiaries.

IV. *Lists are not Exclusive.* Neither the prohibited items list nor the permitted items list contains all possible items. A screener has discretion to prohibit an individual from carrying an item into a sterile area or onboard an aircraft if the screener determines that the item is a weapon, explosive, or incendiary, regardless of whether the item is on the prohibited items list or the permitted items list. For example, if a cigar cutter or other article on the permitted list appears unusually dangerous, the screener may refuse to allow it in sterile areas. Similarly, screeners may allow individuals to bring items into the sterile area that are not on the permitted items list. In addition, items may be prohibited from the cabin of an aircraft, or allowed in only limited quantities, by Department of Transportation regulations governing hazardous materials. Individuals with questions about the carriage of hazardous materials on passenger aircraft may call

the Hazardous Materials Information Center at 1-800-467-4922 for more information.

Issued in Arlington, Virginia, on December 5, 2005.

**Kip Hawley,**

*Assistant Secretary.*

[FR Doc. 05-23817 Filed 12-5-05; 4:16 pm]

**BILLING CODE 4910-62-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 041110317-4364-02; I.D. 112905B]

#### Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer

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

**ACTION:** Temporary rule; inseason quota transfer.

**SUMMARY:** NMFS announces that the State of North Carolina is transferring commercial summer flounder quota to the Commonwealth of Virginia from its 2005 quota. By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved.

**DATES:** Effective December 5, 2005 through December 31, 2005.

**FOR FURTHER INFORMATION CONTACT:** Mike Ruccio, Fishery Management Specialist, (978) 281-9104, fax (978) 281-9135.

**SUPPLEMENTARY INFORMATION:** Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The final rule implementing Amendment 5 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan which was published on December 17, 1993 (58 FR 65936) provided a mechanism for summer flounder quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine

summer flounder commercial quota under § 648.100(d). The Regional Administrator is required to consider the criteria set forth in § 648.100(d)(3) in the evaluation of requests for quota transfers or combinations.

North Carolina has agreed to transfer 4,975 lb (2,257 kg) of its 2005 commercial quota to Virginia to cover a landing of a North Carolina vessel disabled at sea and subsequently granted safe harbor in Virginia. The Regional Administrator has determined that the criteria set forth in § 648.100(d)(3) have been met. The revised summer flounder quotas for calendar year 2005, inclusive of all previous adjustments and transfers published on October 18, 2005 (70 FR 60449), are: North Carolina, 4,604,347 lb (2,088,532 kg), and Virginia, 4,018,881 lb (1,822,964 kg).

#### Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: December 2, 2005.

**Alan D. Risenhoover,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 05-23802 Filed 12-5-05; 2:09 pm]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 050517132-5132-01; I.D. 051105D]

RIN 0648-AT36

#### Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Haddock Incidental Catch Allowance for the Atlantic Herring Fishery

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

**ACTION:** Temporary rule; emergency action; response to public comments; extension of effective period.

**SUMMARY:** NMFS is promulgating this temporary rule to continue the effectiveness of emergency regulations that established an incidental haddock catch allowance for the Atlantic herring fishery. Emergency action was initially