Recordation and Search Systems System of Records is also published in this issue of the **Federal Register**.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS proposes to amend Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: Pub. L. 107–296, 116 Stat. 2135; (6 U.S.C. 101 et seq.); 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. Add at the end of Appendix C to Part 5, the following new paragraph ''69'':

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

69. The DHS/CBP–004 Intellectual Property Rights e-Recordation and Search Systems System of Records consists of electronic and paper records and will be used by DHS and its components. The DHS/CBP–004-Intellectual Property Rights e-Recordation and Search Systems System of Records is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to, the enforcement of civil and criminal laws; investigations, inquiries, and proceedings; national security; and intelligence activities. The DHS/CBP–004-Intellectual Property Rights e-Recordation and Search Systems System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other federal, state, local, tribal, territorial, foreign, or international government agencies. CBP will not assert any exemptions with respect to information in the systems submitted by the intellectual property right owner or the owner's representative. Information in the system pertaining to persons alleged to have infringed on an intellectual property right may be shared with national security, law enforcement, or intelligence agencies pursuant to the published routine uses. The Privacy Act requires DHS to maintain an accounting of the disclosures made pursuant to all routines uses. Disclosing the fact that national security, law enforcement or intelligence agencies have sought particular records may affect ongoing national security, law enforcement, or intelligence activity. As such, pursuant to 5 U.S.C. 552a(j)(2), DHS will claim exemption from subsections (c)(3), (e)(8), and (g) of the Privacy Act of 1974, as amended, as necessary and appropriate to protect this information. In addition, because the system may contain information or records about the unauthorized use of intellectual property rights and disclosure of that information could impede law enforcement investigations, DHS will claim, pursuant to 5 U.S.C. 552a(k)(2), exemption from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) of the Privacy Act of 1974, as necessary and appropriate to protect this information.

Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(e) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS's ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal and could result in disclosure of investigative techniques, procedures, and evidence.

(f) From subsection (g)(1) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Jonathan R. Cantor,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2013–01049 Filed 1–18–13; 8:45 am]

BILLING CODE 9110–06–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 360

RIN 3064–AD99

Records of Failed Insured Depository Institutions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The FDIC is proposing a rule, with request for comments, that would implement section 11(d)(15)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1821(d)(15)(D)). This statutory provision provides time frames for the retention of records of a failed insured depository institution. The proposed rule incorporates the statutory time frames and defines the term ''records.''

DATES: Written comments on the Rule must be received by the FDIC no later than March 25, 2013.

ADDRESSES: You may submit comments by any of the following methods:

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal.* Follow instructions for Submitting comments on the Agency Web Site.
- *Email: Comments@FDIC.gov.* Include ''RIN 3064–AD99'' in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (EST).
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal* including any personal information provided. Comments may be inspected and photocopied in the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–I002, Arlington, VA 22226, between 9 a.m. and 5 p.m. (EST) on business days. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

FOR FURTHER INFORMATION CONTACT: Thomas P. Bolt, Legal Division, (703) 562–2046; Jerilyn Rogin, Legal Division, (703) 562–2409; Gregory D. Talley, Division of Resolutions and Receiverships, (703) 516–5115. Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

When acting as receiver of a failed insured depository institution, the FDIC succeeds to the books and records of the institution.[1] Section 11(d)(15)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1821(d)(15)(D)), hereafter ''Section 1821(d)(15)(D),'' provides that after the end of the six-year period beginning on the date of its appointment as receiver, the FDIC may destroy any records of a failed insured depository institution that the FDIC in its discretion determines to be unnecessary, unless directed not to do so by a court of competent jurisdiction or governmental agency or prohibited by law. In addition, the FDIC may destroy any records that are at least 10 years old as of the date of appointment.

The term ''records'' is not defined in the FDI Act and the legislative history does not provide any guidance on how the term should be interpreted. A broad interpretation is problematic because it would encompass not only all documentary materials that clearly relate to the business of the institution but also materials that have no relevance to its business, or which lack evidentiary value and would not ordinarily be considered ''records.'' In addition, advances in information technology and data storage capabilities have substantially increased the volume of material generated by financial institutions. To illustrate, a ''terabyte'' of electronically stored information (''ESI'') is the equivalent of 77 million printed pages. A typical failed insured depository institution has between 3 and 9 terabytes of ESI, or between 231 million and 693 million pages of material. Currently, the FDIC is housing on its recordkeeping systems 775 terabytes of data from failed insured depository institutions for which the FDIC has been appointed as receiver since 2007—the equivalent of 59.675 billion pages. If the term ''records'' were to be interpreted to encompass all documentary material that the FDIC as receiver obtains from a failed insured depository institution, regardless of its significance or evidentiary value, then the capture, processing, and maintenance of ever-increasing amounts of such material would pose significant unnecessary burdens and inefficiencies both now and in the future. For this reason, the FDIC is proposing a rule to define the term ''records'' in order to designate more specifically the materials that are subject to the FDI Act's record retention provision, thereby enabling the FDIC to manage the records of insured depository institutions in receivership more efficiently and in a legally appropriate manner.

II. Proposed Rule

Authority and Purpose

The FDI Act gives the FDIC broad authority to carry out its statutory responsibilities. Section 11(d)(1) of the FDI Act authorizes the FDIC to ''prescribe such regulations as [it] determines to be appropriate regarding the conduct of conservatorships or receiverships.'' [2] Additionally, section 10(g) of the FDI Act authorizes the FDIC to prescribe regulations, including defining terms, as necessary to carry out the FDI Act.[3] The purpose of the proposed rule is to identify more specifically the materials that are subject to the FDI Act's records retention provision thereby enabling the FDIC to manage the records of an insured depository institution in receivership in a realistic, efficient and legally appropriate manner.

Section-by-Section Analysis

Definitions

Under the proposed rule, documentary materials will be characterized as records for purposes of Section 1821(d)(15)(D) by meeting a formal definition (paragraph (a)) and a functional test (paragraph (b)). The FDIC believes that this two-tiered approach will have the effect of excluding extraneous material that is not related in any way to the transaction of the failed insured depository institution's business.

Paragraph (a)(3) of the proposed rule defines the term ''records'' for purposes of Section 1821(d)(15)(D) to mean ''any reasonably accessible document, book, paper, map, photograph, microfiche, microfilm, computer or electronically created record generated or maintained by an insured depository institution in the course of and necessary to its transaction of business.'' This definition is consistent with the definition of ''records'' in section 210(a)(16)(D) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''),[4] which addresses the retention of records of a systemically important financial (non-bank) institution for which the FDIC is appointed as receiver. The qualification in the definition that ''records'' be ''reasonably accessible'' reflects the text of Federal Rule of Civil Procedure 26(b)(2)(B), which provides that a party from whom discovery is sought need not provide ESI from sources that the party identifies as not reasonably accessible because of undue cost or burden. (For example, a party may be excused from restoring ESI from aging back-up tapes.) Use of the phrase ''reasonably accessible'' would make the definition of ''records'' in the proposed rule consistent with the discovery standard and would also protect the FDIC as receiver from incurring expenses associated with restoring or maintaining the legacy systems of multiple failed insured depository institutions in order to extract documentary material from those systems that is not needed by the Receiver to carry out its functions and was not in use by the insured depository institution to carry out its day-to-day operations prior to its failure.

Paragraph (a) also provides a non-exclusive list of examples of material that will ordinarily be understood to constitute records of the failed institution, specifically, board or committee meeting minutes, contracts to which the insured depository institution is a party, deposit account information, employee and employee benefits information, general ledger and financial reports or data, litigation files, and loan documents.

Two types of materials are excluded from the definition of records in paragraph (a)(3). The first exclusion is for multiple copies of records, either in paper or electronic format. The retention of multiple copies is unnecessary and is not cost-efficient. The second exclusion is for

[1] 12 U.S.C. 1821(d)(2)(A).

[2] 12 U.S.C. 1821(d)(1).

[3] 12 U.S.C. 1820(g).

[4] 12 U.S.C. 5390(a)(16)(D), which defines ''records'' to mean ''any document, book, paper, map, photograph, microfiche, microfilm, computer or electronically of and necessary to its transaction of business.''

examination, operating, or condition reports prepared by, on behalf of, or for the use of the FDIC or any agency responsible for the regulation or supervision of insured depository institutions. The FDIC has consistently maintained that reports of examination and other confidential supervisory correspondence or information prepared by FDIC examiners with respect to an open insured depository institution belong exclusively to the FDIC and not to the insured depository institution, but insured depository institutions often retain copies of reports of examination and other supervisory correspondence.

Determination of Whether Material Constitutes Records

In determining whether particular material obtained from a failed insured depository institution constitutes a record, the FDIC will consider four factors set forth in paragraph (b). If the FDIC in its discretion determines that one or more of the factors weigh in favor of classifying the material as a record, it will be classified as a record for purposes of Section 1821(d)(15)(D).

The first factor is whether the documentary material relates to the business of the failed insured depository institution. This factor is modeled after section 210(a)(16)(D)(iii) of the Dodd-Frank Act defining ''records'' as materials generated or maintained ''in the course of and necessary to [the institution's] transaction of business.''

The second factor is whether the documentary material was generated or maintained in accordance with the failed insured depository institution's own recordkeeping practices and procedures or pursuant to standards established by the failed insured depository institution's regulators. Thus, the FDIC will consider whether documentary material was retained pursuant to the insured depository institution's recordkeeping practices when determining whether specific documentary material is a record for the purposes of Section 1821(d)(15)(D) and the proposed rule. Likewise, the FDIC will consider whether documentary material was retained pursuant standards imposed by state or federal regulators when determining whether specific documentary material is a record for the purposes of Section 1821(d)(15)(D) and the proposed rule.

The third factor is whether the documentary material is needed by the FDIC to carry out its functions as receiver. This inquiry would permit the classification of documents as records when they are used by the FDIC to carry out its function as receiver, for example, to transfer the failed insured depository institution's assets or liabilities, assume or repudiate the institution's contracts, determine claims, and collect liabilities owed to the institution.

The fourth factor used to determine whether documentary material should be classified as records is the expected evidentiary needs of the FDIC. Records generated and maintained by the failed insured depository institution are used to support enforcement actions and litigation. In addition, records of the insured depository institution may also be required to respond to requests filed under the Freedom of Information Act. This factor is modeled on section 210(a)(16)(D)(i)(II) of the Dodd-Frank Act requiring the FDIC to prescribe records retention regulations with due regard for ''the expected evidentiary needs of the Corporation as receiver of a covered financial company and the public regarding the records of covered financial companies.'' [5]

Paragraph (c) of the proposed rule provides that the FDIC's designation of material as records pursuant to paragraph (b) is solely for the purpose of identifying records that are subject to the retention requirements of Section 1821(d)(15)(D) and the FDIC's designation of specific material as a record under Section 1821(d)(15)(D) should have no effect on whether the material is discoverable or admissible in any court, tribunal or other adjudicative proceeding, nor on whether such material is subject to the Freedom of Information Act, the Privacy Act or other law. Thus, whether specific material is a record pursuant to the proposed rule does not alter its status under evidentiary rules such as the Federal Rules of Evidence (''FRE''). For example, FRE 803(1) provides that ''records of regularly conducted activity'' (''business records'') are not excluded from evidence by the rule against hearsay, regardless of whether the declarant is available as a witness. If certain documentary material meets the requirements of a business record pursuant to FRE 803(1), then whether or not the FDIC determines that specific documentary material constitutes ''records'' pursuant to the proposed rule will not affect the documentary material's status as a business record under FRE 803(1). Likewise, whether specific material is or is not designated as a record for purposes of Section 1821(d)(15)(D) should not affect whether it may be subject to a litigation hold or a request under the Freedom of Information Act, the Privacy Act or other law.

[5] 12 U.S.C. 5390(a)(16)(D)(i)(II).

Destruction of Records

Section 1821(d)(15)(D) sets forth the timeframes for the destruction of a failed insured depository institution's records. Paragraph (d) of the proposed rule incorporates these timeframes: after the end of the six-year period beginning on the date of its appointment as receiver, the FDIC may destroy any records of a failed insured depository institution that the FDIC in its discretion determines to be unnecessary to maintain, unless directed not to by a court of competent jurisdiction or governmental agency or prohibited by law. The FDIC may destroy any records that are at least 10 years old as of the date of appointment. In addition, the proposed rule provides that the FDIC will not destroy records subject to a legal hold imposed by the FDIC. By including legal holds, the proposed rule implements the policy of the FDIC to preserve information (both ESI and paper) that the FDIC may be required to produce to opposing parties in litigation or when otherwise subject to a legal requirement to produce information.

Transfer of Records

In many resolutions of failed insured depository institutions, an acquiring institution will purchase assets or assume liabilities of the failed insured depository institution and, in such a case, must obtain custody of records related to such assets and liabilities. Paragraph (f) of the proposed rule provides that the FDIC's transfer of records to a third party in connection with that party's purchase of assets or assumption of liabilities will satisfy the records retention obligations under Section 1821(d)(15)(D) so long as the transfer is made pursuant to a purchase and assumption agreement under which the transferee agrees that it will not destroy the transferred records for at least six years from the date of the appointment of the FDIC as receiver of the failed insured depository institution unless otherwise notified in writing by the FDIC.

Policies and Procedures

Paragraph (f) of the proposed rule provides that the FDIC may establish policies and procedures with respect to the retention and destruction of records. It is expected that these policies and procedures will address specific matters related to the capture, processing and storage of failed bank records, such as collecting computer hard drives, email databases, and backup and disaster recovery tapes.

III. Request for Comments

The FDIC seeks comments on all aspects of the Proposed Rule. Comments will be considered by the FDIC and appropriate revisions will be made to the Proposed Rule, if necessary, before a final rule is issued. All comments must be received by the FDIC not later than March 25, 2013.

IV. Regulatory Analysis and Procedure

A. Paperwork Reduction Act

No collections of information pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.,* are contained in the proposed rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.,* requires that each Federal agency either certify that a proposed rule would not, if adopted in final form, have a significant economic impact on a substantial number of small entities or prepare an initial regulatory flexibility analysis of the rule and publish the analysis for comment. For purposes of the RFA analysis or certification, financial institutions with total assets of $175 million or less are considered to be ''small entities.'' The FDIC hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed rule defines the term ''records'' under section 1821(d)(15)(D) for purposes of the FDIC's own internal operations and recordkeeping, enabling it to more efficiently manage the records of an insured depository institution in receivership. Accordingly, there will be no significant economic impact on a substantial number of small entities as a result of this rule.

C. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has sought to present the Proposed Rule in a simple and straightforward manner.

List of Subjects in 12 CFR 360

Banks, Banking, Bank deposit insurance, Holding companies, National banks, Participations, Reporting and record keeping requirements, Savings associations, Securitizations.

For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend Part 360 of title 12 of the Code of Federal Regulations as follows:

PART 360—RESOLUTION AND RECEIVERSHIP RULES

■ 1. The authority citation for part 360 is revised to read as follows:

Authority: 12 U.S.C. 1817(b), 1818(a)(2), 1818(t), 1819(a) Seventh, Ninth and Tenth, 1820(b)(3), (4), 1821(d)(1), 1821(d)(10)(c), 1821(d)(11), 1821(d)(15)(D), 1821(e)(1), 1821(e)(8)(D)(i), 1823(c)(4), 1823(e)(2); Sec. 401(h), Pub. L. 101–73, 103 Stat. 357.

■ 2. Add new § 360.11 to read as follows:

§ 360.11 Records of failed insured depository institutions.

(a) *Definitions.* For purposes of this section, the following definitions apply—

(1) *Failed insured depository institution* is an insured depository institution for which the FDIC has been appointed receiver pursuant to 12 U.S.C. 1821(c)(1).

(2) *Insured depository institution* has the same meaning as provided by 12 U.S.C. 1813(c)(2).

(3) *Records* means any reasonably accessible document, book, paper, map, photograph, microfiche, microfilm, computer or electronically-created record generated or maintained by an insured depository institution in the course of and necessary to its transaction of business.

(i) Examples of records include, without limitation, board or committee meeting minutes, contracts to which the insured depository institution is a party, deposit account information, employee and employee benefits information, general ledger and financial reports or data, litigation files, and loan documents.

(ii) Records do not include:

(A) Multiple copies of records; or

(B) Examination, operating, or condition reports prepared by, on behalf of, or for the use of the FDIC or any agency responsible for the regulation or supervision of insured depository institutions.

(b) *Determination of records.* In determining whether particular documentary material obtained from a failed insured depository institution is a record for purposes of 12 U.S.C. 1821(d)(15)(D), the FDIC in its discretion will determine whether one or more of the following factors weigh in favor of classifying the material as a record:

(1) Whether the documentary material relates to the business of the failed insured depository institution,

(2) Whether the documentary material was generated or maintained as records in the regular course of the business of the failed insured depository institution in accordance with its own recordkeeping practices and procedures or pursuant to standards established by the failed insured depository institution's regulators,

(3) Whether the documentary material is needed by the FDIC to carry out its receivership function, and

(4) The expected evidentiary needs of the FDIC.

(c) The FDIC's determination that documentary materials from a failed insured depository institution constitute records is solely for the purpose of identifying those documentary materials that must be maintained pursuant to 12 U.S.C. 1821(d)(15)(D) and shall not bear on the discoverability or admissibility of such documentary materials in any court, tribunal or other adjudicative proceeding, nor on whether such documentary materials are subject to release under the Freedom of Information Act, the Privacy Act or other law.

(d) *Destruction of records.*

(1) Except as provided in paragraph (d)(2) of this section, after the end of the six-year period beginning on the date the FDIC is appointed as receiver of an insured depository institution, the FDIC may destroy any records of such institution which the FDIC, in its discretion, determines to be unnecessary unless directed not to do so by a court of competent jurisdiction or governmental agency, prohibited by law, or subject to a legal hold imposed by the FDIC.

(2) Notwithstanding paragraph (d)(1) of this section, the FDIC may destroy records of an insured depository institution which are at least 10 years old as of the date on which the FDIC is appointed as the receiver of such depository institution in accordance with paragraph (d)(1) of this section at any time after such appointment is final, without regard to the six-year period of limitation contained in paragraph (d)(1) of this section.

(e) *Transfer of records.* If the FDIC transfers records to a third party in connection with an agreement for the

purchase and assumption of assets and liabilities of a failed insured depository institution, the recordkeeping requirements of 12 U.S.C. 1821(d)(15)(D), and paragraph (d) of this section shall be satisfied if the transferee agrees that it will not destroy such records for six years from the date the FDIC was appointed as receiver of such failed insured depository institution unless otherwise notified in writing by the FDIC.

(f) *Policies and procedures.* The FDIC may establish policies and procedures with respect to the retention and destruction of records that are consistent with this section.

Dated at Washington, DC, this 15th day of January 2013.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2013–01080 Filed 1–18–13; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–1295; Airspace Docket No. 12–AAL–10]

RIN 2120–AA66

Proposed Amendment of Area Navigation (RNAV) Route T–266; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify low-altitude RNAV route T–266 in the state of Alaska by removing two non-directional beacons (NDB) as the navigation signal source and replacing them with RNAV waypoints. This action would enhance the safety and efficiency of the National Airspace System (NAS).

DATES: Comments must be received on or before March 8, 2013.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2012–1295 and Airspace Docket No. 12–AAL–10 at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Policy and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2012–1295 and Airspace Docket No. 12–AAL–10) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2012–1295 and Airspace Docket No. 12–AAL–10.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Western Service Center, Operations Support Group, Federal Aviation Administration, 1601 Lind Ave. SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to modify RNAV route T–266 in Alaska. T–266 is currently defined by the Coghland Island, AK, NDB; the Fredericks Point, AK, NDB; and the Annette Island, AK, VOR/DME. The Annette Island VOR/DME would remain as one end point of the route, but the two NDBs would be removed from the route description and replaced by the addition of eight RNAV waypoints (WP). The existing RADKY, AK, fix (near the Coghland Island NDB) would be relocated to the southeast of its current position and would serve as the other endpoint of the route. These changes would enhance safety by providing lower IFR minimum en route altitudes (MEA) on T–266, which would allow aircraft to fly at lower altitudes when inflight icing conditions are encountered. Additionally, the changes support the expanded use of RNAV within the NAS by reducing the reliance on ground-based NDBs for navigation guidance.

RNAV routes are published in paragraph 6011 of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The RNAV routes listed in this document would be subsequently published in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when