

the safety analysis report, without prior NRC approval, under certain conditions. The NRC has also prepared a regulatory analysis (ADAMS Accession number ML16089A379) in support of DG-1334.

This draft regulatory guide clarifies potentially unclear statements in Section 4.3.8 of Nuclear Energy Institute document 96-07, Revision 1, "Guidelines for 10 CFR 50.59 Implementation," (ADAMS Accession number ML003771157) which was endorsed in RG 1.187, Rev 0, (ADAMS Accession number ML003759710) as acceptable guidance for how to comply with NRC regulations in section 50.59 of title 10 of the *Code of Federal Regulations* (10 CFR). Because of the potentially unclear statements in Section 4.3.8 of NEI 96-07, licensees may misinterpret the definition governing the ". . . departure from a method of evaluation . . ." described in the plant's final safety analysis report (as updated).

The draft regulatory guide also adds clarification to statements in Section 4.3.5 of NEI 96-07, Revision 1, whereby licensees may misinterpret the last sentence in the second paragraph in Section 4.3.5 if considered in isolation of the statements earlier discussed in the paragraph.

### III. Backfitting and Issue Finality

Draft regulatory guide DG-1334, if finalized as Regulatory Guide 1.187, Revision 1, would provide guidance on acceptable ways of determining whether licensees may make changes to their facilities and procedures as described in the safety analysis report, without prior NRC approval, under the change process established in 10 CFR 50.59. The draft regulatory guide, if finalized, would not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) and is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52, "Licenses, Certifications and Approvals for Nuclear Power Plants." The subject of this draft regulatory guide, as described above, is an NRC-defined process which does not fall within the purview of subjects covered by either the Backfit Rule or the issue finality provision in 10 CFR part 52. Issuance of the draft regulatory guide, in final form, would not constitute backfitting, and no further consideration of backfitting is required in order to issue the draft or final regulatory guide in final form.

Dated at Rockville, Maryland, this 19th day of December, 2016.

For the Nuclear Regulatory Commission.

**Thomas H. Boyce,**

*Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.*

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## FEDERAL RESERVE SYSTEM

### 12 CFR Parts 217 and 225

[Docket No. R-1547; RIN 7100 AE-58]

#### **Risk-Based Capital and Other Regulatory Requirements for Activities of Financial Holding Companies Related to Physical Commodities and Risk-Based Capital Requirements for Merchant Banking Investments, Regulations Q and Y**

**AGENCY:** Board of Governors of the Federal Reserve System (Board).

**ACTION:** Notice of proposed rulemaking; extension of comment period.

**SUMMARY:** On September 30, 2016, the Board published in the **Federal Register** a notice of proposed rulemaking (NPR) to adopt additional limitations on physical commodity trading activities conducted by financial holding companies under complementary authority granted pursuant to section 4(k) of the Bank Holding Company Act and clarify certain existing limitations on those activities; amend the Board's risk-based capital requirements to better reflect the risks associated with a financial holding company's physical commodity activities; rescind the findings underlying the Board orders authorizing certain financial holding companies to engage in energy management services and energy tolling; remove copper from the list of metals that bank holding companies are permitted to own and store as an activity closely related to banking; and increase transparency regarding physical commodity activities of financial holding companies through more comprehensive regulatory reporting.

Due to the range and complexity of the issues addressed in the NPR, the public comment period has been extended until February 20, 2017. This action will allow interested persons additional time to analyze the proposal and prepare their comments.

**DATES:** The comment period for the notice of proposed rulemaking published on September 23, 2016, (81 FR 67220) regarding risk-based capital and other regulatory requirements for activities of financial holding

companies related to physical commodities and risk-based capital requirements for merchant banking investments is extended from December 22, 2016 to February 20, 2017.

**ADDRESSES:** You may submit comments by any of the methods identified in the NPR.<sup>1</sup> Please submit your comments using only one method.

**FOR FURTHER INFORMATION CONTACT:**

Constance M. Horsley, Assistant Director, (202) 452-5239, Elizabeth MacDonald, Manager, (202) 475-6316, Kevin Tran, Supervisory Financial Analyst, (202) 452-2309, or Vanessa Davis, Supervisory Financial Analyst, (202) 475-6674, Division of Banking Supervision and Regulation; or Laurie Schaffer, Associate General Counsel, (202) 452-2277, Michael Waldron, Special Counsel, (202) 452-2798, Will Giles, Senior Counsel, (202) 452-3351, or Mary Watkins, Attorney, (202) 452-3722, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263-4869.

**SUPPLEMENTARY INFORMATION:** On September 30, 2016, the Board published in the **Federal Register** the NPR. The Board originally set the end of comment period as December 22, 2016, which is 90 days after the date the proposal was published on the Board's Web site and 83 days after the date the proposal was published in the **Federal Register**.

The Board has received comment letters requesting that the Board extend the comment period for the NPR.<sup>2</sup> In support of this request, commenters assert that the December 22, 2016 deadline does not provide sufficient time to thoroughly analyze the full impact of this complex and wide-ranging proposal. The commenters note that a variety of types of participants in physical commodities markets, such as mining companies, other upstream producers and municipally-owned natural gas districts, may be impacted by the multiple proposals contained in the Commodities NPR and that additional time is needed to understand those impacts and develop meaningful, constructive comments.

Due to the range and complexity of the issues addressed in the NPR, the public comment period has been

<sup>1</sup> See 81 FR 67220 (September 30, 2016).

<sup>2</sup> The Board has received requests from Barrick Gold of North America, the National Mining Association, and Clarke Mobile Counties Gas District and its affiliate, the Black Belt Energy Gas District, to extend the end of the comment period.

extended until February 20, 2017. This action will allow interested persons additional time to analyze the proposal and prepare their comments.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, December 20, 2016.

**Robert deV. Frierson,**

*Secretary of the Board.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 91

[Docket No. FAA-2015-2147; Notice No. 15-05]

RIN 2120-AK51

#### Transponder Requirement for Gliders; Withdrawal

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Advance notice of proposed rulemaking (ANPRM); withdrawal.

**SUMMARY:** The FAA is withdrawing a previously published advance notice of proposed rulemaking that sought public comment from interested persons involving glider operations in the National Airspace System. The action responded to recommendations from members of Congress and the National Transportation Safety Board and was intended to gather information to determine whether the current glider exception from transponder equipment and use provides the appropriate level of safety in the National Airspace System. The FAA is withdrawing that action because the limited safety benefit gained does not justify the high cost of equipment.

**DATES:** This action becomes effective December 23, 2016.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this action, contact Patrick J. Moorman, Airspace Regulations Team, AJV-113, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8783; email: [patrick.moorman@faa.gov](mailto:patrick.moorman@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

On August 28, 2006, a Hawker 800XP aircraft<sup>1</sup> and a Schleicher ASW27-18

<sup>1</sup> The Hawker 800XP aircraft was equipped with a Traffic Alert and Collision Avoidance System

glider were involved in a non-fatal midair collision near Reno, Nevada. The collision occurred in flight about 42 nautical miles (NM) south-southeast of the Reno-Tahoe International Airport (RNO), at an altitude of about 16,000 feet (ft.) above mean sea level (MSL), and in an area where gliders are excepted from the transponder equipment requirements in Title 14, section 91.215(b), of the Code of Federal Regulations (14 CFR).<sup>2</sup> The glider was equipped with a transponder, but the transponder was not turned on at the time of the accident.

On March 31, 2008, the National Transportation Safety Board (NTSB) provided safety recommendations to the FAA resulting from an investigation of the accident.<sup>3</sup> The findings of the accident investigation address the limitations of the see-and-avoid concept in preventing midair collisions and, more specifically, the benefits of using transponders in gliders for collision avoidance. The NTSB recommended that the FAA remove the glider exceptions pertaining to the transponder equipment and use requirements, finding that “transponders are critical to alerting pilots and controllers to the presence of nearby traffic so that collisions can be avoided.”

On June 16, 2015, the FAA published an Advance Notice of Proposed Rulemaking (ANPRM) to respond to recommendations from two members of Congress<sup>4</sup> and the NTSB. 80 FR 34346. The ANPRM requested comments on a proposed rulemaking that would require

(TCAS). TCAS is a family of airborne devices that function independently of the ground-based air traffic control (ATC) system, and provide collision avoidance protection for a broad spectrum of aircraft types. All TCAS systems provide some degree of collision threat alerting, and a traffic display.

<sup>2</sup> The exceptions to the rule allow aircraft that were originally certificated without an engine-driven electrical system, such as balloons and gliders, to be operated in the following areas without a transponder: within a 30 nautical mile radius (NMR) of the 36 listed airports listed in Appendix D to part 91 (Mode C veil), provided aircraft remain outside the Class A, B, or C airspace and are below the ceiling of the airspace designated for the Class B or C airport, or 10,000 feet MSL, whichever is lower; above 10,000 feet MSL; and in the airspace from the surface to 10,000 feet MSL within a 10 NMR of any airport listed in appendix D, excluding the airspace below 1,200 feet outside of the lateral boundaries of the surface area of the airspace designated for that airport.

<sup>3</sup> A-08-10 through 13, Safety Recommendations. National Transportation Safety Board, Washington, DC 20594, March 31, 2008. A copy of this letter has been placed in the docket. [www.regulations.gov](http://www.regulations.gov) docket FAA-2005-2147. Note: while NTSB used the term “exemption” the correct term as it relates to this airspace is “excepted.”

<sup>4</sup> The FAA received letters from Senator Harry Reid (D-NV) and Representative Mark E. Amodei (R-NV); Letters are posted to the docket at [www.regulations.gov](http://www.regulations.gov), docket no. FAA-2015-2147.

gliders operating in the National Airspace System (NAS) to be equipped with transponders. The FAA did not propose specific regulatory changes but rather sought public comment on the use of transponders in gliders operating within the excepted areas of § 91.215. The ANPRM also sought input on more recent alternatives to glider equipment including the use of Traffic Awareness Beacon System (TABS)<sup>5</sup> and Automatic Dependent Surveillance Broadcast (ADS-B) Out equipment.<sup>6</sup> The FAA asked for comments from the public and industry to aid in the development of a proposed rule and the analysis of its economic impact.

#### Overview of Withdrawal

Based on the information gathered from the ANPRM and a review of the current operating environment, the FAA finds that it does not have sufficient basis to move forward with rulemaking at this time. While the FAA has determined it is not warranted to move forward with a proposal to remove the glider exception in § 91.215, the FAA will continue to work with local glider communities to increase safety awareness. The FAA will also continue to consider surveillance system alternatives and to work with interested persons to mitigate the risk of aircraft collision with gliders. Further, the FAA recommends that all glider aircraft owners equip their gliders with a transponder meeting regulatory requirements, a rule-compliant ADS-B Out system, or a TABS device.

#### Comment Summary

The FAA received 231 comments in response to its ANPRM. Of the 231 comments received, approximately 18 organizations and 213 individual or anonymous commenters responded. Approximately 161 comments were unfavorable (adverse), 52 comments were favorable, and 18 comments were

<sup>5</sup> TABS is a surveillance system derived from existing transponder and ADS-B requirements. It was developed to increase safety by providing a standard for a low cost surveillance solution for aircraft excepted from §§ 91.215 and 91.225. An aircraft equipped with TABS is visible to other aircraft equipped with collision avoidance systems such as Traffic Advisory System (TAS), Traffic Alert and Collision Avoidance System (TCAS) I, TCAS-II, and ADS-B In. However, a TABS-equipped aircraft is not displayed to controllers. The FAA published Technical Standard Order (TSO)-C199, the standard for TABS, on October 10, 2014.

<sup>6</sup> ADS-B is a satellite-based surveillance system that uses Global Positioning System (GPS) technology to determine an aircraft's location, airspeed, and other data, and broadcasts that information to a network of ground stations, which relays the data to air traffic control displays, and to nearby aircraft equipped to receive the data via ADS-B In.