ticket. The Service has been informed that the $3 fee could increase the price of an adult ticket for a ferry in Washington State by an average of 20 to 25 percent, with larger percentage increases for lower-priced child and infant tickets. Commenters feared a significant loss of ferry business due to the imposition of this fee, in some cases possibly causing operators to drop seasonal international service.

The Service estimates that one million passengers enter into the United States per year using Pacific Northwest ferries. If passenger volume after the imposition of the $3 fee were to remain constant, the Service's Immigration User Fund could receive as much as $3 million annually from ferry passengers. However, based on comments received, the Service expects that the imposition of the $3 fee will result in a decrease in the number of ferry passengers, as travelers switch to alternative transportation modes. Accordingly, the Service is unable to estimate the amount that will actually be collected.

While the Service is sympathetic to arguments presented by commenters concerned about the likely disproportionate impact of this $3 fee on ferry passengers, it has no discretion under the statute to provide any exemption, waiver, or other accommodation to ferries other than for the Great Lakes ferries, which Congress exempted by law.

3. Benefits of this rule. For years, the Service has been providing the immigration inspection services for commercial vessel operators (including ferries) on voyages originating in the United States, Canada, Mexico, a territory or possession of the United States, or an adjacent island, but has not—until the statutory change being implemented by this rule—been able to charge commercial vessel passengers the immigration user fee for doing so. These services are described further in the Supplementary Information for this rule. The $3 fee is appropriate to offset the costs of seaport inspection services provided, allows for the investment in new resources towards improving the inspection process at seaports, and allows the Service to meet customer service requirements. These services and activities funded by the immigration user fee benefit the national security by screening arriving aliens for possible threats and also benefit the general public by complementing other immigration enforcement activities and speed the processing of legitimate travelers.

Executive Order 13132

This rule will 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. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Pub. L. 104–13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting requirements inherent in a final rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects in 8 CFR Part 286

Air carriers, Immigration, Maritime carriers, Reporting and recordkeeping requirements.

Accordingly, part 286 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 286—IMMIGRATION USER FEE

1. The authority citation for part 286 continues to read as follows:

Authority: 8 U.S.C. 1103, 1356; 8 CFR part 2.

2. Section 286.2 is amended by redesignating paragraph (b) as paragraph (c), and by adding a new paragraph (b), to read as follows:

§ 286.2 Fee for arrival of passengers aboard commercial aircraft or commercial vessels.

* * * * *

(b) A fee, in the amount prescribed in section 286(e)(3) of the Act, per individual, is charged and collected by the Commissioner for the immigration inspection at a port-of-entry in the United States, or for the preinspection in a place outside the United States of each commercial vessel passenger whose journey originated in the United States, Canada, Mexico, territories or possessions of the United States, or adjacent islands, except as provided in § 286.3. All tickets or documents for transportation on voyages that are booked on or after February 27, 2003, will be subject to this immigration user fee.

* * * * *

3. Section 286.3 is amended by revising the introductory text, and by revising paragraph (a), to read as follows:

§ 286.3 Exceptions.

The fees set forth in § § 286.2(a) and 286.2(b) shall not be charged or collected from passengers who fall within any one of the following categories:

(a) Persons arriving at designated ports-of-entry by the following vessels, when operating on a regular schedule: Great Lakes international ferries or Great Lakes vessels on the Great Lakes and connecting waterways;

* * * * *

Dated: December 26, 2002.

Michael J. Garcia,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 03–1808 Filed 1–27–03; 8:45 am]

BILLING CODE 4410–10–P

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Regulation H; Docket No. R–1129]

Reporting and Disclosure Requirements for State Member Banks With Securities Registered Under the Securities Exchange Act of 1934

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board has adopted a final rule to reflect the amendments made to section 12(i) of the Securities Exchange Act of 1934 by the Sarbanes-Oxley Act of 2002. These amendments vest the Board with the authority to administer and enforce several of the enhanced reporting, disclosure and corporate governance obligations imposed by the Sarbanes-Oxley Act with respect to state member banks that have a class of securities registered under the Securities Exchange Act of 1934.

DATES: The final rule is effective on April 1, 2003.

FOR FURTHER INFORMATION CONTACT: Kieran J. Fallon, Senior Counsel (202–452–5270), or Walter R. McEwen, Counsel (202–452–3321), Legal Division; Terrill Garrison, Supervisory Financial Analyst (202–452–2712), Division of Banking Supervision and

Regulation. Users of Telecommunication Device for Deaf (TTD) *only,* call (202) 263–4869.

SUPPLEMENTARY INFORMATION:

Background

Section 12(i) of the Securities Exchange Act (15 U.S.C. 78*l*(i)) (Exchange Act) vests the Board with the authority to administer and enforce the disclosure and reporting requirements of sections 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of the Exchange Act with respect to state member banks that have a class of securities registered under section 12(b) or 12(g) of the Exchange Act (registered banks).[1] Section 208.36 of the Board's Regulation H (12 CFR part 208.36) implements the reporting and disclosure provisions of sections 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of the Exchange Act for registered banks. As a general matter, Regulation H requires registered banks to comply with the rules, regulations and forms adopted by the Securities and Exchange Commission (SEC) under sections 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of the Exchange Act, but requires registered banks to file any reports or forms required by such regulations with the Board (rather than the SEC) and substitutes the ''Board'' for the ''SEC'' each place that term appears in the SEC's rules and forms.

On July 30, 2002, President Bush signed into law the Sarbanes-Oxley Act of 2002.[2] Titles III and IV of the Sarbanes-Oxley Act include a number of provisions that are designed to improve the corporate governance and financial disclosures of issuers that have a class of securities registered under sections 12(b) or 12(g) of the Exchange Act, or that are required to file periodic reports with the SEC under section 15(d) of the Exchange Act (public companies). The Sarbanes-Oxley Act also amended section 12(i) of the Exchange Act to vest the Board with the authority to administer and enforce sections 302, 303, 304, 306(a), 401(b), 404, 406 and 407 of the Sarbanes-Oxley Act, as well as section 10A(m) of the Exchange Act (as added by section 301 of the Sarbanes-Oxley Act), with respect to registered banks.[3]

Summary of Interim Rule

In September 2002, the Board adopted on an interim basis, and requested public comment on, an amendment to section 208.36 of Regulation H to implement the revisions made by the Sarbanes-Oxley Act to section 12(i) of the Exchange Act.[4] The interim rule provided that the Board will administer and enforce the sections of the Sarbanes-Oxley Act incorporated into section 12(i) of the Exchange Act with respect to registered banks. Consistent with the existing provisions of Regulation H, the interim rule also required registered banks to comply with any rules, regulations and forms issued by the SEC under the sections of the Sarbanes-Oxley Act incorporated into section 12(i) of the Exchange Act.

Explanation of Final Rule

The Board received two comments on the interim rule, both of which were filed by trade associations representing banking organizations. After carefully considering these comments, which are discussed below, the Board has adopted a final rule that is identical to the interim rule.

As required by section 12(i) of the Exchange Act, the final rule provides that the Board will administer and enforce the sections of the Sarbanes-Oxley Act described in Table 1 with respect to registered banks. The final rule also generally requires registered banks to comply with any rules, regulations and forms adopted by the SEC to implement the sections of the Sarbanes-Oxley Act listed in Table 1 (''New SEC Rules''), unless such rules, regulations or forms are modified by the Board. If the New SEC Rules require the filing of any documents with the SEC, registered banks must file such documents with the Board (rather than the SEC) in accordance with section 208.36 of Regulation H.

TABLE 1

Section of Sarbanes-Oxley Act	Description	Implementing SEC rules
Section 301 as (codified section 10A(m) of Exchange Act, 15 U.S.C. 78f(m)).	Establishes certain oversight, independence, funding and other requirements for the audit committees of public companies listed on a the national securities exchange, and requires the SEC to issue prohibit any national securities exchange or national securities association from listing the securities of an issuer that fails to comply with these audit committee requirements.	Proposed rules issued for comment. *See* 68 rules that FR 2638, Jan. 17, 2003. The SEC must adopt final rules by April 26, 2003.
Section 302	Mandates that the SEC adopt rules that require the principal executive officer(s) and principal financial officer(s) of public companies to include certain certifications in the issuer's annual and quarterly reports filed under the Exchange Act.	Final rules became effective August 29, 2002. *See* 67 FR 57275, Sep. 9, 2002.[5]
Section 303	Requires the SEC to issue rules prohibiting the officers and directors of public companies, and persons acting under their direction, from fraudulently influencing, coercing, manipulating, or misleading the issuer's independent auditor for purposes of rendering the issuer's financial statements materially misleading.	Proposed rules issued for comment. *See* 67 FR 65325, Oct. 24, 2002. The SEC must issue final rules by April 26, 2003.
Section 304	Requires the chief executive officer and chief financial officer of public companies to reimburse the issuer for certain compensation and profits received if the issuer is required to restate its financial reports due to material noncompliance, as a result of misconduct, with the Federal securities laws.	Section 304 became effective on July 30, 2002. No implementing rules are required.
Section 306(a)	Prohibits the directors and executive officers of any public company of equity securities from purchasing, selling or transferring any equity security acquired by the director or executive officer during any ''blackout period'' with respect to the security.	The SEC adopted final rules on January 8, 2003. *See* SEC Press Release 2003–6 Proposed rules were issued for comment in November 2002. *See* 67 FR 69249, Nov. 15, 2002.

[1] As of December 10, 2002, seventeen state member banks had a class of securities registered under section 12(b) or 12(g) of the Exchange Act and, thus, are considered registered banks.

[2] Pub. L. 102–204, 116 Stat. 745 (2002).

[3] *See* Sarbanes-Oxley Act at section 3(b)(4) (amending 15 U.S.C. 78*l*(i)).

[4] *See* 67 FR 57938, Sept. 13, 2002.

TABLE 1—Continued

Section of Sarbanes-Oxley Act	Description	Implementing SEC rules
Section 401(b)	Requires the SEC to issues rules that prohibit issuers from including misleading pro forma financial information in their filings with the SEC or in any public release, and that require issuers to reconcile any pro forma financial information included in such filings or public releases with the issuer's financial statements prepared in accordance with generally accepted accounting principles (GAAP).	The SEC adopted final rules on January 8, 2003. *See* SEC Press Release 2003–6. Proposed rules were issued for public comment in November 2002. *See* 67 FR 68790, Nov. 13, 2002.
Section 404	Mandates that the SEC issue rules that require all annual reports filed under section 13(a) or 15(d) of the Exchange Act to include certain statements and assessments related to the issuer's internal control structures and procedures for financial reporting. [6]	Proposed rules issued for comment. *See* 67 FR 66207, Oct. 30, 2002.
Section 406	Mandates that the SEC adopt rules that require public companies to (1) disclose in their periodic reports filed under the Exchange Act whether the issuer has adopted a code of ethics for its senior financial officers and, if not, the reasons why such a code has not been adopted; and (2) promptly disclose on Form 8–K any change to, or waiver of, the issuer's code of ethics.	The SEC adopted final rules on January 8, 2003. *See* SEC Press Release 2003–6. Proposed rules were issued for comment in October 2002. *See* 67 FR 66207, Oct. 30, 2002.
Section 407	Mandates that the SEC adopt rules that require public companies to disclose in their periodic reports filed under the Exchange Act whether the audit committee of the issuer includes at least one ''financial expert'' and, if not, the reasons why the audit committee does not include such an expert.	The SEC adopted final rules on January 8, 2003. *See* SEC Press Release 2003–6. Proposed rules were issued for comment in October 2002. *See* 67 FR 66207, Oct. 30, 2002.

[5] The SEC has proposed to modify these certification requirements in certain respects. *See* 67 FR 66207, Oct. 30, 2002.
[6] Section 404 also requires the registered public accounting firm that prepares or issues the audit report for the issuer's annual report to attest to, and report on, the issuer's assessment of its internal control structures and procedures for financial reporting.

Section 12(i) of the Exchange Act permits the Board to modify how the New SEC Rules apply to registered banks if the Board determines that the New SEC Rules are not necessary or appropriate in the public interest or for the protection of investors, and the Board publishes such findings (and the reasons supporting such findings) in the **Federal Register**.[7] The interim rule requested comment on whether it would be appropriate for the Board to modify any of the New SEC Rules at this time.

Commenters did not request that the Board specifically modify any of the New SEC Rules. One commenter, however, requested that the Board, in conjunction with the other Federal banking agencies, solicit public comment after any New SEC Rules are adopted for purposes of determining whether the rule should be modified for registered banks. The Board has reviewed and will continue to review the rules, regulations and forms adopted by the SEC under the Sarbanes-Oxley Act to determine whether it would be appropriate to modify these rules, regulations or forms for registered banks. Members of the public that believe any New SEC Rules issued in the future should be modified for registered banks are encouraged to contact their local Federal Reserve Bank or Board staff. If the Board determines that it would be appropriate to modify any New SEC Rule for registered banks, the Board will publish notice of the modification in the **Federal Register** in accordance with section 12(i) of the Exchange Act.[8]

Both commenters asked the Board to clarify how section 906 of the Sarbanes-Oxley Act applies to registered banks. Section 906 is a criminal provision that requires each ''periodic report filed by an issuer with the Securities [and] Exchange Commission pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934'' to be accompanied by a written statement by the issuer's chief executive officer and chief financial officer (or equivalent) that the report (1) fully complies with the requirements of section 13(a) or 15(d) of the Exchange Act, and (2) fairly presents, in all material respects, the financial condition and results of operations of the issuer.[9] This certification requirement is separate from the certification requirement imposed by section 302 of the Sarbanes-Oxley Act. Because section 906 amends the Federal criminal code, the Department of Justice (DOJ) is the appropriate agency to interpret its scope and application. Nevertheless, pending interpretive guidance from DOJ concerning section 906, the Board has indicated that any periodic reports (*i.e.* 10-K or 10-Q reports) filed with the Board by registered banks after July 29, 2002 (the effective date of section 906), should be accompanied by the certifications required by section 906.[10] This approach is consistent with the current practice of the Federal Deposit Insurance Corporation and Office of the Comptroller of the Currency with respect to state nonmember banks and national banks, respectively, that file reports with such agencies under section 12(i) of the Exchange Act.[11]

Other Sarbanes-Oxley Act Issues Relevant to Registered Banks

Besides the provisions discussed above, the Sarbanes-Oxley Act also

[7] *See* 15 U.S.C. 78l(i)(4).

[8] One commenter expressed concern that the audit committee and internal control report rules issued by the SEC under sections 301, 404 and 407 of the Sarbanes-Oxley Act may conflict with the audit committee and internal control report requirements imposed by section 36 of the Federal Deposit Insurance Act on insured depository institutions. *See* 12 U.S.C. 1831m; 12 CFR part 363. The SEC has indicated that it intends to work with the Federal banking agencies to eliminate, to the extent possible, conflicts between the internal controls reports required by section 404 of the Sarbanes-Oxley Act and the internal controls reports required by section 36 of the FDI Act. *See* 67 FR 66208, 66222, Oct. 30, 2002. Staffs of the Board and SEC also have met to discuss potential conflicts and overlaps between the Sarbanes-Oxley Act and Federal banking laws and regulations.

[9] Sarbanes-Oxley Act at section 906 (codified at 18 U.S.C. 1350).

[10] *See* Letter from Gerald A. Edwards, Jr., Associate Director and Chief Accountant-Supervision of the Board, to Chief Executive Officers and Chief Financial Officers of Banks Reporting to the Board under the Exchange Act, dated Aug. 15, 2002.

[11] *See* Letter from Robert F. Storch, Chief, Accounting and Securities Section of the FDIC, to Chief Executive Officers and Chief Financial Officers of Banks Reporting to the FDIC under the Exchange Act, dated Aug. 13, 2002.

includes a variety of other provisions that will affect all public companies, including state member banks that report to the Board under the Exchange Act. For example, the Act includes important changes relating to the independence of the external auditors of public companies. In addition, the Sarbanes-Oxley Act added several new disclosure requirements to sections 13 and 16 of the Exchange Act that apply to public companies that the Board will be responsible for administering and enforcing with respect to registered banks.[12]

Public banking organizations are encouraged to review the Sarbanes-Oxley Act and any implementing rules issued by the SEC. The Board also recently issued supervisory guidance designed to assist registered banks and other public banking organizations supervised by the Federal Reserve in understanding and complying with the requirements of the Sarbanes-Oxley Act.[13]

Regulatory Flexibility Act

Pursuant to section 4(a) of the Regulatory Flexibility Act (5 U.S.C. 604(a)), the Board must publish a final regulatory flexibility analysis with this rulemaking. The rule implements for registered banks several of the new reporting and disclosure obligations imposed by the Sarbanes-Oxley Act on public companies. Consistent with section 12(i) of the Exchange Act, the final rule requires registered banks to comply with any rules, regulations or forms that the SEC may issue under the relevant provisions of the Sarbanes-Oxley Act. By incorporating the SEC's rules, regulations and forms by reference, the rule seeks to minimize the potential conflict between the rule and the corresponding SEC rules and, thus, reduce the potential burden associated with complying with the Board's rule. Moreover, as noted above, the Board intends to monitor the SEC rules incorporated by reference into the Board's rule to determine whether it would be appropriate to modify these rules for registered banks.

The objectives and legal basis for the rule are discussed in the supplementary information set forth above. As of December 10, 2002, 17 state member banks had a class of securities registered under sections 12(b) or 12(g) of the Exchange Act and, thus, would be subject to the rule. As of September 30, 2002, only six of these institutions have assets of less than $100 million and are considered small entities for purposes of the Regulatory Flexibility Act. *See* 5 U.S.C. 601; 13 CFR 121.201.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A), the Board has reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. Consistent with the requirements of section 12(i) of the Exchange Act, the final rule requires registered banks to abide by any collection of information requirements adopted by the SEC under sections 301, 302, 303, 304, 306(a), 401(b), 404, 406 and 407 of the Sarbanes-Oxley Act of 2002, unless such collections are modified by the Board. As of December 10, 2002, there were 17 registered banks that will be subject to the final rule. Registered banks may request confidential treatment of any information submitted to the Board under the final rule in the manner described in section 208.36(d) of the Board's Regulation H (12 CFR 208.36(d)).

Because the SEC has not yet adopted final rules to implement many of the sections of the Sarbanes-Oxley Act referenced above, the Board is unable at this time to estimate the annual burden registered banks will incur in complying with the final rule. The Board notes that the SEC must consider the paperwork burden imposed by its rules in connection with its rulemaking process, and provide an estimate of the number of hours persons subject to the rule would spend each year in complying with any collections of information imposed by the SEC's rule. Registered banks and other persons interested in the potential paperwork burden imposed by the Board's rule should monitor the SEC's rulemaking process under the Sarbanes-Oxley Act.

The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, an information collection unless the Board has displayed a currently valid OMB control number. The OMB control number for the information collections required by the final rule is 7100–0091. The Federal Reserve has a continuing interest in the public's opinion of our collections of information. At any time, comments regarding any aspect of the collections of information required by the final rule, including suggestions for reducing burden, may be sent to: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0091), Washington, DC 20503.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act (12 U.S.C. 4809) requires the Board to use ''plain language'' in all rules published in the **Federal Register** after January 1, 2000. The Board believes that the final rule is presented in a simple and straightforward manner and is consistent with this ''plain language'' directive.

Effective Date of Rule

The final rule will become effective on April 1, 2003. Because some of the provisions of the Sarbanes-Oxley Act to be administered and enforced by the Board had previously become effective, the Board made the interim rule effective immediately on publication in the **Federal Register** (*i.e.* September 13, 2002). The Board requested comment on all aspects of the interim rule and has carefully considered those comments in adopting this final rule.

List of Subjects in 12 CFR Part 208

Accounting, Banks, banking, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, the Board of Governors of the Federal Reserve System amends part 208 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 24a, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835a, 1843(l), 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g),

[12] *See* Sarbanes-Oxley Act, sections 401(a), 402, 403 and 409 (to be codified at 15 U.S.C. 78m(i), (j), (k) and (l), and 78p(a)).

[13] *See* The Sarbanes-Oxley Act of 2002, SR Letter 02–20 (Oct. 29, 2002). One commenter expressed concern that the Board and the other Federal banking agencies may require all banking organizations to comply with some or all of the provisions that the Sarbanes-Oxley Act imposes only on public companies. As the Board previously has stated, the Board, in conjunction with the other Federal banking agencies, is reviewing its existing regulations and supervisory guidance to determine what, if any, changes may be appropriate in light of the Sarbanes-Oxley Act. Such review is outside the scope of this rulemaking. Nevertheless, the Board recognizes that nonpublic banking organizations typically have fewer resources and less complex operations than public banking organizations and that it may be inappropriate to require all nonpublic banking organizations to comply with requirements legislatively mandated only for public companies.

78l(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. Section 208.36(a) is revised to read as follows:

§ 208.36 Reporting requirements for State member banks subject to the Securities Exchange Act of 1934.

(a) *Filing, disclosure and other requirements*—(1) *General.* Except as otherwise provided in this section, a member bank whose securities are subject to registration pursuant to section 12(b) or section 12(g) of the Securities Exchange Act of 1934 (the 1934 Act) (15 U.S.C. 78l(b) and (g)) shall comply with the rules, regulations and forms adopted by the Securities and Exchange Commission (Commission) pursuant to—

(i) Sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of the 1934 Act (15 U.S.C. 78f(m), 78l, 78m, 78n(a), (c), (d) and (f), and 78p); and

(ii) Sections 302, 303, 304, 306, 401(b), 404, 406 and 407 of the Sarbanes-Oxley Act of 2002 (codified at 15 U.S.C. 7241, 7242, 7243, 7244, 7261, 7262, 7264 and 7265).

(2) *References to the Commission.* Any references to the ''Securities and Exchange Commission'' or the ''Commission'' in the rules, regulations and forms described in paragraph (a)(1) of this section shall with respect to securities issued by member banks be deemed to refer to the Board unless the context otherwise requires.

* * * * *

By order of the Board of Governors of the Federal Reserve System, January 23, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–1922 Filed 1–27–03; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–318–AD; Amendment 39–13027; AD 2003–03–03]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777 Series Airplanes Equipped With Rolls-Royce Model Trent 800 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 777 series airplanes. This action requires revising the Airplane Flight Manual to specify that the engine anti–ice must be ''on'' during all ground and flight operations when icing conditions exist or are anticipated. This action is necessary to prevent ingestion of ice that could cause shutdown of both engines during operation in icing conditions, and result in a forced landing of the airplane.

DATES: Effective February 12, 2003.

Comments for inclusion in the Rules Docket must be received on or before March 31, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–318–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–318–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The information pertaining to this AD may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Margaret Langsted, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1335; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received a report of an engine surge and automatic shutdown on a Boeing Model 777 series airplane equipped with Rolls-Royce Trent 800 series engines, while in light icing conditions during descent. Investigation revealed that the airplane total air temperature (TAT) and the engine T2 probes were iced over. In addition, both engines were operating at minimum flight idle and the engine anti-ice systems had not activated. Boeing Model 777 series airplanes have a primary in-flight icing detection system (PIIDS) that senses icing conditions and automatically activates the engine and wing anti-ice systems, if the flight deck anti-ice switch is in the AUTO position (normal procedure). Activation of the engine anti-ice system sends hot air to the engine inlet lip to keep it free of ice buildup; raises the minimum allowable engine speed from ''minimum flight idle'' to ''approach idle,'' which improves the engine operating characteristics; and turns on the engine igniters to facilitate relight if a flameout should occur. The investigation indicated that the PIIDS did not detect icing and activate the engine anti-ice system; the engine surge was the result of ice ingestion; and the engine did not automatically recover from the engine surge. Such ingestion of ice could cause shutdown of both engines during operation in icing conditions, and result in a forced landing of the airplane.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent ingestion of ice that could cause shutdown of both engines during operation in icing conditions, and result in a forced landing of the airplane. This AD requires revision of the Limitations Section of the Airplane Flight Manual (AFM) to remove certain procedures and to add certain other procedures that specify that engine anti-ice must be ''on'' during all ground and flight operations when icing conditions exist or are anticipated, except when the outside air temperature (OAT) is below −40 degrees Centigrade.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified