

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

#### Related Information

(h) Refer to MCAI EASA Emergency AD No.: 2009-0239-E, dated November 3, 2009; and DG Flugzeugbau Technical note No. 800/36, 843/30, Revision 1, dated September 16, 2009, for related information.

#### Material Incorporated by Reference

(i) You must use DG Flugzeugbau Technical note No. 800/36, 843/30, Revision 1, dated September 16, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact DG Flugzeugbau GmbH, Otto-Lilienthal-Weg 2, 76646 Bruchsal, Federal Republic of Germany; telephone: +49 (0) 7251 3020140; Fax: +49 (0) 7251 3020149; Internet: <http://www.dg-flugzeugbau.de/index-e.html>; E-Mail: [dirks@dg-flugzeugbau.de](mailto:dirks@dg-flugzeugbau.de).

(3) You may review copies of the service information incorporated by reference for this AD at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the Central Region, call (816) 329-3768.

(4) You may also review copies of the service information incorporated by reference for this AD at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

Issued in Kansas City, Missouri on November 18, 2009.

**Patrick R. Mullen,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Parts 91, 125 and 135

[Docket No. FAA-2007-29281; Amendment Nos. 91-310, 125-58, 135-119]

**RIN 2120-AJ09**

#### Removal of Regulations Allowing for Polished Frost

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is removing certain provisions in its regulations that allow for operations with “polished frost” (i.e., frost polished to make it smooth) on the wings and stabilizing and control surfaces of aircraft. The rule is expected to increase safety by not allowing operations with “polished frost,” which the FAA has determined increases the risk of unsafe flight.

**DATES:** These amendments become effective February 1, 2010.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this final rule contact Nancy Lauck Claussen, Air Transportation Division, AFS-200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8166; facsimile: (202) 267-5229, e-mail: [nancy.l.claussen@faa.gov](mailto:nancy.l.claussen@faa.gov).

For legal questions concerning this final rule contact Dean Griffith, Office of the Chief Counsel, AGC-220, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-3073; facsimile: (202) 267-7971; e-mail: [dean.griffith@faa.gov](mailto:dean.griffith@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. This rulemaking is promulgated under the authority described in 49 U.S.C. 44701(a)(5) which requires the Administrator to promulgate regulations and minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security.

##### I. Background

###### A. Summary of the Notice of Proposed Rulemaking (NPRM)

The FAA published an NPRM in the **Federal Register** on May 8, 2008 (73 FR 26049). The NPRM proposed to remove language permitting pilots to takeoff with polished frost adhering to the wings or stabilizing or control surfaces from §§ 91.527(a)(3), 125.221(a), and 135.227(a). The NPRM also proposed to restructure §§ 91.527(b), 125.221(c), and 135.227(c) to clarify the provisions of those sections. The comment period closed on August 6, 2008.

As discussed in the NPRM, the FAA has recognized that adverse aerodynamic effects on lifting surfaces begin as soon as frost begins to adhere to the surfaces. For example, the presence of frost may: (1) Reduce a wing's maximum lift by 30 percent or more; (2) reduce the angle of attack for

maximum lift by several degrees; (3) increase drag significantly; and (4) change unexpectedly the aircraft's handling qualities and performance. The severity of these adverse aerodynamic effects varies significantly depending on: (1) The thickness, density, and location of the frost; (2) the degree of the surface roughness; and (3) the location of the roughness relative to the surface leading edge where significant variations may occur in the local airspeed and surface air loads.

Although polishing frost is currently permitted under part 91 subpart F, and parts 125 and 135, current FAA guidance developed subsequent to the implementation of those regulations cautions against this practice. In Advisory Circular (AC) 135-17, the FAA recommends that all wing frost be removed prior to takeoff, and states that if an operator desires to polish the frost, the aircraft manufacturer's recommended procedures should be followed. See AC 135-17, *PILOT GUIDE Small Aircraft Ground Deicing* (Dec. 14, 1994). Additionally, the FAA issued two Safety Alerts for Operators (SAFOs) regarding polishing frost. SAFO 06002 advises that “operators should avoid smooth or polished frost on lift-generating surfaces as an acceptable preflight condition.” See SAFO 06002, *Ground Deicing Practices for Turbine Aircraft in Nonscheduled 14 CFR Part 135 Operations and in Part 91* (Mar. 29, 2006). SAFO 06014 states that the FAA cannot support the practice of polishing frost “unless an aircraft manufacturer developed explicit, approved procedures for doing so,” and pilots are trained in those procedures. See SAFO 06014, *Polished Frost* (Oct. 6, 2006). The FAA is not aware of any current aircraft manufacturer that has issued recommended procedures for (1) polishing frost, or (2) conducting operations with polished frost. This rulemaking codifies the FAA's current guidance regarding this practice.

Operational concerns also support removing the provisions permitting polishing frost from the regulations. The FAA has no data to support practical guidance for determining how to polish frost on a surface to make it acceptably smooth, other than completely removing the frost and returning the aircraft's critical lifting surfaces to uncontaminated smoothness. Moreover, there is no standard of acceptable smoothness for polished frost provided in regulation, guidance, or by manufacturers. Also, the FAA believes that in an operational environment it is impossible to determine whether the polished frost surface is uniformly, or symmetrically, smooth.

There are at least 12<sup>1</sup> known accidents in which individuals attempted to smooth or polish frost, but the aircraft failed to generate enough lift and crashed shortly after takeoff.<sup>2</sup> The U.S. National Transportation Safety Board (NTSB) has urged operators to ensure that critical surfaces are free of contamination prior to take off. NTSB, *Safety Alert: Aircraft Ground Icing* (2006). The United Kingdom's Department for Transport, Air Accidents Investigation Branch, recommended that the FAA remove the term polished frost from its regulations following an accident at Birmingham, England. See Air Accidents Investigation Branch, Department for Transport, *Aircraft Accident Report 5/2004* (2004), available at [http://www.aairb.gov.uk/sites/aairb/cms\\_resources/5-2004%20N90AG.pdf](http://www.aairb.gov.uk/sites/aairb/cms_resources/5-2004%20N90AG.pdf).

The FAA has determined that an unsafe condition exists if all wing surfaces, other than those under the wing in the area of the fuel tanks,<sup>3</sup> and other critical surfaces are not uniformly smooth upon takeoff and is therefore removing references to "polished frost" from the regulations. This final rule requires operators, when performing operations under part 91 subpart F, part 125, or part 135, to remove all frost from critical surfaces in order to achieve uncontaminated surface smoothness.

In the NPRM, the FAA identified four alternatives to polishing frost that operators may use to comply with this rule. Those alternatives are: (1) Using wing covers to prevent frost accumulation on wings, (2) waiting for frost to melt, (3) storing the aircraft in a heated hangar, or (4) deicing the wing surface. The FAA identified the use of wing covers to prevent frost accumulation on wing surfaces as the lowest-cost alternative for complying with this rule.

#### B. Summary of the Final Rule

This final rule removes language from part 91 subpart F, and parts 125 and 135, which permits aircraft to takeoff with frost that has been polished to make it smooth ("polished frost") on critical surfaces. Under the final rule, operators will be required to remove any

frost adhering to critical surfaces prior to takeoff. Additionally, the rule restructures language in parts 91, 125, and 135 to clarify that aircraft must have functioning deicing or anti-icing equipment to fly under IFR into known or forecast light or moderate icing conditions, or under VFR into known light or moderate icing conditions.

#### C. Summary of Comments

The FAA received 20 comments in response to the proposed rule. The FAA received two comments from manufacturers (Boeing and Gulfstream); three from industry associations (General Aviation Manufacturers Association (GAMA), Air Line Pilots Association International (ALPA), and the National Air Transportation Association (NATA)); and one from the National Transportation Safety Board (NTSB). Additionally, two operators submitted comments: Webster's Flying Service, which is located in Alaska, and Centennial State Aviation, LLC. The FAA also received twelve comments from individuals, including 3 located in Alaska. Eleven of the commenters, including NTSB, GAMA, ALPA, NATA, and Gulfstream generally favored the NPRM. Boeing, Centennial State Aviation, LLC, Webster's Flying Service, and several individual commenters raised concerns, which are discussed below.

### II. Discussion of the Final Rule

The FAA is adopting the rule as proposed, with minor technical and clarifying modifications. The FAA is restructuring 14 CFR 91.527(a), 125.221(a), and 135.227(a), and removing the words "unless that frost has been polished to make it smooth," as proposed.

The FAA is adopting the restructuring of 14 CFR 91.527(b), 125.221(c), and 135.227(c) as proposed in the NPRM with technical changes. The FAA is making a minor modification to proposed § 125.221(c)(1) to remove the words "rotor blade." The reference to rotor blades in that section is not necessary as part 125 applies only to airplanes.

The FAA is adopting the proposed language of 14 CFR 91.527(b)(3), 125.221(c)(3), and 135.227(b)(3) in the final rule with a technical correction. The correction clarifies that a transport category airplane must meet the transport category airplane requirements for certification for flight into icing conditions if it will be flown into known or forecast light or moderate icing conditions. This clarification is necessary to avoid any interpretation that would permit flight of transport

category airplanes without icing protection into known or forecast light or moderate icing conditions. This aspect of the final rule addresses a recommendation by the Part 125/135 Aviation Rulemaking Committee, as discussed in the NPRM. See 73 FR 26051.

The remainder of this section discusses comments received in response to the NPRM and the FAA's response to those comments.

#### A. Exception for Takeoffs Made With Frost Under the Wing in the Area of Fuel Tanks

Boeing recommended that in §§ 91.527(a) and 121.629(b), the FAA revise the proposed phrase "except that takeoffs may be made with frost under the wing in the area of the fuel tanks if authorized by the FAA," to read "as otherwise authorized by the Administrator or in accordance with a manufacturer's recommendations." Boeing commented that the FAA has found that a limited amount of frost is acceptable (e.g., cold fuel frost), which does not necessarily relate only to the wing, or even only to the under side of the wing. Further, Boeing noted that the fuel tank area should not be the criterion for determining whether such frost is acceptable because "aerodynamic criticality may or may not necessarily relate to the entire fuel tank area under the wing." Boeing asserted that such a revision would "ensure that previous FAA approvals will not be 'undermined' by interpretation of the new language and would better provide for the ability to address future designs."

The FAA does not agree with Boeing's suggestion to add the words "or in accordance with a manufacturer's recommendations" to the regulatory text. The authority to assess when such takeoffs should be permitted should remain with the FAA. No changes were made to the final rule in response to this comment.

#### B. Applicability to Part 121

Boeing suggested revising the heading of § 91.527 to read "Except for 14 CFR part 121 operations, Operating in icing conditions." Boeing stated that this would eliminate confusion as to what does or does not apply to air carriers, and would help air carriers when conducting ferry, test, and other non-part 121 flights.

Part 121 does not permit operations with polished frost. See 14 CFR 121.629(b). This final rule will make part 91 subpart F, and parts 125, and 135 operations consistent with part 121 with respect to its prohibition on

<sup>1</sup> The FAA identified 11 accidents in the NPRM. During preparation of the final regulatory evaluation, the FAA identified an additional accident relevant to this rulemaking.

<sup>2</sup> Nine of the 12 accidents would not have been prevented by this rule, since the aircraft were involved in part 91 (other than subpart F) operations. Nevertheless, these accidents illustrate the risk involved in flying with polished frost.

<sup>3</sup> Takeoffs may be made with frost under the wing area of the fuel tanks if authorized by the Administrator. See, e.g., 14 CFR 125.221(a)(2), 135.227(a)(2).

operations with polished frost. Therefore, the FAA has determined that making this change to the rule language is unnecessary.

#### *C. Imposes Additional Burdens*

The FAA received several comments pertaining to burdens that could be caused by the proposed rule, including storage problems, availability of hangars for defrosting, overbroad application of the rule, costs associated with the rule, and that changes to the existing rule are not necessary.

Centennial State Aviation, LLC asserted that some aircraft do not have extra space to store wing covers during transport. As noted above, the use of wing covers is only one of the alternatives to polishing frost identified by the FAA. If a particular operator is unable to transport wing covers, it can utilize one of the other methods of removing frost from aircraft.

Webster's Flying Service commented that Alaskan operations should be excepted from the proposed rule changes because there are times when temperatures remain below freezing for long periods of time and hangar facilities are not available to melt frost that has accumulated on aircraft. Pursuant to current §§ 91.527(a)(2), 125.221(a), and 135.227(a), no operator, including those located in Alaska, may take off with snow or ice adhering to the wings or other control surfaces. Thus, operators in Alaska, who must adhere to those regulations, should currently have means to remove snow and ice from their aircraft. The FAA notes that operators can use the same means to rid their aircraft of frost that they use to rid their aircraft of snow and ice, or utilize wing covers or deice the aircraft as an alternative to polishing frost.

An individual commented that the FAA is burdening the entire general aviation fleet to address a problem that is only an issue for supercritical and high-wing loading aircraft. That commenter continued that it should be the manufacturer's responsibility to prohibit polishing frost if it negatively affects a particular aircraft model.

This rule does not impact the entire general aviation fleet. The rule only removes references to polished frost from part 91 subpart F, and parts 125 and 135. Further, the FAA is not aware of any manufacturer that condones polishing frost on any of its aircraft.

Boeing suggested that the FAA should revise its Regulatory Flexibility Determination regarding the cost of wing covers and develop more realistic costs for occurrences such as difficulty installing wing covers, possible need for additional personnel or specialized

equipment to assist in placing wing covers on airplanes, possible damage caused by covers sticking to wings, and potential delays attributable to installation or removal of the wing covers. Also, an individual from Alaska interpreted the proposal to mean that aircraft hangars will be a necessity for operations in wintertime, when wing covers offer insufficient protection.

As stated above, other means of removing frost from an aircraft are available. Operators may choose to wait for frost to melt, store their aircraft in a heated hangar, or deice wing surfaces. Likewise, this rule does not mandate removing frost from an aircraft in hangars. Putting aircraft inside hangars is only one of four alternatives cited in the NPRM.

A commenter suggested that the proposal should have been directed to commercial aircraft only. In fact, this rule only affects operations conducted under parts 125, 135, and 91 subpart F. Operations otherwise conducted under part 91 are not affected by the rule.

Lastly, the FAA received several comments in response to the NPRM stating that polishing frost is a safe practice and that the proposed rule change was not necessary. As discussed in the NPRM and this preamble, frost has an adverse aerodynamic effect on critical lifting surfaces and the FAA has determined that polishing frost is an unsafe practice.

The FAA made no changes to the proposed rule language after considering these comments.

#### *D. Rule Could Create Hazards*

Six commenters expressed concern that implementation of the rule would create hazards to operators, aircraft, and the environment as follows. Two commenters, Centennial State Aviation, LLC, and an individual, noted that examining the top of a T-tailed aircraft is difficult. The individual was concerned that such an examination may create safety issues for individuals examining the tail if there is ice on the ramp. That commenter added that the top of a horizontal stabilizer should not be considered a critical surface because it is not a lift-producing surface.

Horizontal stabilizers are a critical surface on every aircraft, and operators must examine them as part of the normal inspections of their aircraft. Further, examining the wing of a high-wing airplane requires the same effort as examining the top of a T-tailed aircraft.

Webster's Flying Service and Boeing raised concerns about damage that could result from using wing covers. Webster's Flying Service asserted that "antennas, etc." could be damaged

while putting on or taking off wing covers and that wind blowing on covers could cause aircraft damage. Boeing commented that wing covers may stick to wings and cause damage. Webster's Flying Service also discussed that under certain conditions, a sheen can form under the wing covers, but that such a sheen would not require polishing and should be determined to be acceptable.

As stated previously, the presence of polished frost on wings or other critical surfaces could be detrimental to the flight characteristics of an aircraft. The FAA recognizes that it may be impractical for some operators to use wing covers. As stated in the NPRM, there are at least three other alternatives to choose from. Those alternatives include waiting for the frost to melt, storing the aircraft in a heated hangar, or deicing the wing surface.

Webster's Flying Service expressed a concern that using deicing fluids as an alternative to polishing frost could cause pollution in lakes and streams. The FAA acknowledges that this rule may lead to an increased use of deicing fluid if operators choose this alternative to polishing frost. However, deicing is only one of the four methods identified by the FAA that operators could use to remove frost from critical surfaces. Further, several factors lead the FAA to believe that wing covers will be the most broadly adopted alternative to polishing frost. As discussed in the regulatory evaluation, wing covers are the lowest-cost alternative to polishing frost available to operators. Office of Aviation Policy and Plans, FAA, *Final Regulatory Evaluation: Removal of Regulations Allowing for Polished Frost on Wings of Airplanes (2009)*. Also, from an operational standpoint, wing covers are portable, enabling operators to use them at any location, from well-equipped airports to remote landing strips, without the need to consider the availability of deicing equipment or a hangar in which to store the aircraft. Additionally, the majority of operators permitted to polish frost are located in Alaska where it is not unusual to operate at locations where deicing facilities may not be present.

Webster's Flying Service also asserted that a heating device could pose a fire hazard, especially in cold, dry air where a static spark can occur. This rule does not require operators to use heating devices. In addition, the FAA recognizes that some manufacturers state that their engines must be pre-heated before flight. The FAA notes that such heating devices used for pre-heating an engine may present the same risk noted by the commenter, and that if used appropriately, such risk is minimal.

The FAA has not revised the proposed rule language based on these comments.

#### *E. Problem Could Be Addressed Through Pilot Training*

Three individuals made comments related to pilot training. One suggested training on hazardous pre-flight icing identification in lieu of the proposed rule; another called for improved pilot training in general in lieu of the proposed rule; and the third commented that the FAA include in the rulemaking a means by which all pilots could become educated as to the FAA's rationale for the change in the regulation.

The FAA has provided guidance on polished frost and operations with ice, frost, and snow on aircraft. As discussed above, the FAA issued SAFO 06002 and SAFO 06014, which advise against polishing frost. FAA Advisory Circular 135-17, *PILOT GUIDE Small Aircraft Ground Deicing* (Dec. 14, 1994), recommends that all wing frost be removed prior to takeoff. Polished frost on critical aircraft surfaces poses a hazard and the FAA has determined that removing the provisions permitting polishing of frost is necessary for safe operations. The FAA has not revised the rule language based on these comments.

#### *F. Possible Delays to Emergency Medical Transport Flights*

Centennial State Aviation, LLC, asserted that unless an operator has the ability to polish frost, the practice of removing frost could have a negative impact on the health of a patient on an aeromedical transport flight because of delays resulting from putting on and removing wing and tail covers. The commenter noted this is especially difficult for a single pilot whose aircraft has a 14-foot tail.

The FAA does not condone operating an aircraft in unsafe conditions. Further, the FAA notes that the act of polishing frost could also delay a flight. Accordingly, the FAA has not made changes to the proposed rule language based on this comment.

### **III. Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there is no current or new requirement for information collection associated with this amendment.

### **IV. International Compatibility**

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

### **V. Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment**

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall 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 (Pub. L. 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) 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 with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this proposed rule: (1) Has benefits that justify its costs; (2) is not an economically "significant regulatory action" as defined in section 3(f) of Executive Order 12866; (3) is not "significant" as defined in DOT's Regulatory Policies and Procedures; (4) will not have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will not impose an unfunded mandate on state, local, or

tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

This final rule will remove any references in the Federal aviation regulations that allow takeoffs in situations where frost is present on wings, stabilizing surfaces, or control surfaces, when such frost has been polished to make it smooth. The FAA believes these changes are necessary to improve aviation safety.

For the ten-year period from 2009 to 2018, the total benefits from this final rule are projected to be about \$980,000 (\$689,000 discounted). Of those, \$925,000 (\$650,000 discounted) will accrue to Alaska, while the remaining \$55,000 (\$39,000 discounted) will accrue to the mainland U.S. Costs will depend on which of four alternatives (wing covers, storing the aircraft in a hangar, deicing the surface areas, or waiting for the frost to melt) are selected by operators. The FAA believes that using wing covers is the least costly alternative. Assuming operators choose to use wing covers, over the ten-year period from 2009 to 2018, costs will total roughly \$164,000 (\$130,000 discounted). Of these, \$155,000 (\$123,000 discounted) will accrue to Alaska, and \$9,500 (\$7,500 discounted) will accrue to the mainland U.S. Because benefits exceed costs for both Alaska and the mainland U.S., the FAA concludes the rule is cost-beneficial.

#### *Regulatory Flexibility Determination*

The Regulatory Flexibility Act of 1980 (Pub. L. 96-354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a

significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule will improve aviation safety by removing references to the “polished frost” technique found in 14 CFR 91.527(a), 125.221(a), and 135.227(a). This rulemaking affects operators under part 125, part 135, and those covered by subpart F of part 91 (which includes all part 91 subpart K operations). There are 57 operators operating 188 aircraft that will be affected by the rule. The FAA recognizes that all of these operators are considered small entities based on the following North American Industry Classification System (NAICS) code classifications: Nonscheduled Chartered Passenger Air Transportation—481211 (1500 employees or less); Nonscheduled Chartered Freight Air Transportation—481212 (1500 employees or less); Other Nonscheduled Air Transportation—481219 (\$6.5 million or less in annual receipts). See 13 CFR 121.201.

The FAA assumes that most operators will choose to buy and use wing covers to comply with the final rule. The other alternatives (waiting for the frost to melt, storing the aircraft in a heated hangar, or deicing the aircraft) are more expensive than using wing covers. The FAA estimates that operators will choose to buy wing covers at an initial cost of \$400, plus minimal additional fuel costs and, if needed, an additional cost of \$400 after five years to replace a worn wing cover.

In Alaska, there are 21 operators with one aircraft apiece, and 30 operators operating the remaining 156 aircraft. In the mainland U.S., there are six operators operating 11 aircraft. The smallest operators operate only one plane, and will incur a cost of approximately \$99 per year as a result of this rulemaking, a cost that the FAA does not consider significant. The operator that will be most impacted by the rule operates 16 affected aircraft, and will incur costs of approximately \$1,584 per year as a result of this rulemaking. This operator has annual revenues of \$5 million. The cost of this rulemaking represents 0.03 percent of the gross revenues of that operator, and the FAA does not consider that amount significant. Therefore, as the Administrator of the FAA, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

#### *International Trade Impact Assessment*

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it will have only a domestic impact and therefore will not create unnecessary obstacles to the foreign commerce of the United States.

#### *Unfunded Mandates Assessment*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) 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 an expenditure of \$100 million or more (adjusted annually for inflation with the base year 1995) 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.” The FAA currently uses an inflation-adjusted value of \$136.1 million in lieu of \$100 million. This final rule does not contain such a mandate.

#### **VI. Executive Order 13132, Federalism**

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

#### **VII. Regulations Affecting Intrastate Aviation in Alaska**

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the FAA, when modifying its regulations in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes

other than aviation, and to establish appropriate regulatory distinctions. In the NPRM, we requested comments on whether the proposed rule should apply differently to intrastate operations in Alaska. The FAA received comments from one operator, Webster’s Flying Service, and three individuals in Alaska, which are discussed in “II. Discussion of the Final Rule and Comments.” The FAA has determined that while the regulation will affect some operators in Alaska who polish frost on their aircraft, there is no need to make any regulatory distinctions applicable to intrastate aviation in Alaska because of the safety benefit gained from completely removing frost from critical surfaces.

#### **VIII. Environmental Analysis**

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f. Additionally, the FAA reviewed paragraph 304 of Order 1050.1E and determined that this rulemaking involves no extraordinary circumstances.

#### **IX. Regulations That Significantly Affect Energy Supply, Distribution, or Use**

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a “significant energy action” under Executive Order 13211 because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. In addition, it is not a “significant regulatory action” under Executive Order 12866 or DOT’s Regulatory Policies and Procedures.

#### **X. Availability of Rulemaking Documents**

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visiting the FAA’s Regulations and Policies Web page at [http://www.faa.gov/regulations\\_policies/](http://www.faa.gov/regulations_policies/); or
3. Accessing the Government Printing Office’s Web page at <http://www.gpoaccess.gov/fr/index.html>.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://DocketsInfo.dot.gov>.

#### **XI. Small Business Regulatory Enforcement Fairness Act**

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact your local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. You can find out more about SBREFA on the Internet at [http://www.faa.gov/regulations\\_policies/rulemaking/sbre\\_act/](http://www.faa.gov/regulations_policies/rulemaking/sbre_act/).

#### **List of Subjects**

##### **14 CFR Part 91**

Aircraft, Airmen, Airports, Aviation safety, Freight.

##### **14 CFR Part 125**

Aircraft, Airmen, Airports, Aviation safety, Freight.

##### **14 CFR Part 135**

Air taxis, Aircraft, Airmen, Aviation safety.

#### **XII. The Amendment**

■ In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

#### **PART 91—GENERAL OPERATING AND FLIGHT RULES**

■ 1. The authority citation for part 91 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506-46507, 47122, 47508, 47528-47531, articles

12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180).

■ 2. Amend § 91.527 by revising paragraphs (a) and (b) to read as follows:

##### **§ 91.527 Operating in icing conditions.**

(a) No pilot may take off an airplane that has frost, ice, or snow adhering to any propeller, windshield, stabilizing or control surface; to a powerplant installation; or to an airspeed, altimeter, rate of climb, or flight attitude instrument system or wing, except that takeoffs may be made with frost under the wing in the area of the fuel tanks if authorized by the FAA.

(b) No pilot may fly under IFR into known or forecast light or moderate icing conditions, or under VFR into known light or moderate icing conditions, unless—

(1) The aircraft has functioning deicing or anti-icing equipment protecting each rotor blade, propeller, windshield, wing, stabilizing or control surface, and each airspeed, altimeter, rate of climb, or flight attitude instrument system;

(2) The airplane has ice protection provisions that meet section 34 of Special Federal Aviation Regulation No. 23; or

(3) The airplane meets transport category airplane type certification provisions, including the requirements for certification for flight in icing conditions.

\* \* \* \* \*

#### **PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT**

■ 3. The authority citation for part 125 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701-44702, 44705, 44710-44711, 44713, 44716-44717, 44722.

■ 4. Amend § 125.221 by revising paragraphs (a) and (c) to read as follows:

##### **§ 125.221 Icing conditions: Operating limitations.**

(a) No pilot may take off an airplane that has frost, ice, or snow adhering to any propeller, windshield, stabilizing or control surface; to a powerplant installation; or to an airspeed, altimeter, rate of climb, flight attitude instrument system, or wing, except that takeoffs may be made with frost under the wing in the area of the fuel tanks if authorized by the FAA.

\* \* \* \* \*

(c) No pilot may fly under IFR into known or forecast light or moderate icing conditions, or under VFR into known light or moderate icing conditions, unless—

(1) The aircraft has functioning deicing or anti-icing equipment protecting each propeller, windshield, wing, stabilizing or control surface, and each airspeed, altimeter, rate of climb, or flight attitude instrument system;

(2) The airplane has ice protection provisions that meet appendix C of this part; or

(3) The airplane meets transport category airplane type certification provisions, including the requirements for certification for flight in icing conditions.

\* \* \* \* \*

#### **PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT**

■ 5. The authority citation for part 135 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 41706, 40113, 44701-44702, 44705, 44709, 44711-44713, 44715-44717, 44722, 45101-45105.

■ 6. Amend § 135.227 by revising paragraphs (a) and (c) to read as follows:

##### **§ 135.227 Icing conditions: Operating limitations.**

(a) No pilot may take off an aircraft that has frost, ice, or snow adhering to any rotor blade, propeller, windshield, stabilizing or control surface; to a powerplant installation; or to an airspeed, altimeter, rate of climb, flight attitude instrument system, or wing, except that takeoffs may be made with frost under the wing in the area of the fuel tanks if authorized by the FAA.

\* \* \* \* \*

(c) No pilot may fly under IFR into known or forecast light or moderate icing conditions or under VFR into known light or moderate icing conditions, unless—

(1) The aircraft has functioning deicing or anti-icing equipment protecting each rotor blade, propeller, windshield, wing, stabilizing or control surface, and each airspeed, altimeter, rate of climb, or flight attitude instrument system;

(2) The airplane has ice protection provisions that meet section 34 of appendix A of this part; or

(3) The airplane meets transport category airplane type certification provisions, including the requirements for certification for flight in icing conditions.

\* \* \* \* \*

Issued in Washington, DC, on November 19, 2009.

**J. Randolph Babbitt,**  
*Administrator.*

[FR Doc. E9-28431 Filed 11-30-09; 8:45 am]

BILLING CODE 4910-13-P

## PENSION BENEFIT GUARANTY CORPORATION

### 29 CFR Part 4022

#### Benefits Payable in Terminated Single-Employer Plans; Limitations on Guaranteed Benefits; Maximum Guaranteeable Benefit

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This rule removes Appendix D from Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans. Appendix D is a historical list of the maximum guaranteeable monthly benefit for each year as determined in accordance with section 4022(b)(3)(B) of the Employee Retirement Income Security Act of 1974. This information is available on PBGC's Web site (<http://www.pbgc.gov>).

**DATES:** Effective December 31, 2009.

**FOR FURTHER INFORMATION CONTACT:** Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202-326-4024. (TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

**SUPPLEMENTARY INFORMATION:** Section 4022(b) of the Employee Retirement Income Security Act of 1974 (ERISA) provides for certain limitations on benefits guaranteed by Pension Benefit Guaranty Corporation (PBGC) in terminating single-employer pension plans covered under Title IV of ERISA. One of the limitations, set forth in ERISA section 4022(b)(3)(B), is a dollar ceiling on the amount of the monthly benefit that may be paid to a plan participant (in the form of a life annuity beginning at age 65) by PBGC. The ceiling is equal to "\$750 multiplied by a fraction, the numerator of which is the contribution and benefit base (determined under section 230 of the Social Security Act) in effect at the time the plan terminates and the denominator of which is such contribution and benefit base in effect in calendar year 1974 [\$13,200]." This formula is also set forth in § 4022.22(b)

of PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR Part 4022). Section 230(d) of the Social Security Act (42 U.S.C. 430(d)) provides special rules for determining the contribution and benefit base for purposes of ERISA section 4022(b)(3)(B).<sup>1</sup>

PBGC has no discretion in the determination of the maximum guaranteeable benefit. The maximum guaranteeable benefit is determined by applying the formula in ERISA section 4022(b)(3)(B) to the contribution and benefit base. Each year Social Security Administration determines, and notifies PBGC of, the contribution and benefit base to be used under ERISA section 4022(b)(3)(B), and PBGC applies the statutory formula to arrive at the maximum guaranteeable benefit. PBGC has historically published a table showing the maximum guaranteeable benefit for each year in appendix D to the benefit payment regulation and updated the list each year by amending the table in the appendix. In recent years, PBGC has also published this information on its Web site (<http://www.pbgc.gov>; click on "Workers & Retirees," then on "Maximum monthly guarantee tables" under the heading "Benefits Information" in the center column).

PBGC has concluded that since the maximum guaranteeable benefits are easily accessible to the public on its Web site, it is no longer necessary to publish the information in the **Federal Register** (where annual updates to appendix D to the benefit payment regulation are published) or the Code of Federal Regulations (where the appendix itself is published). Accordingly, PBGC is removing appendix D from the benefit payment regulation. This action has no substantive legal effect.

General notice of proposed rulemaking is unnecessary. The maximum guaranteeable benefit is determined according to the formula in section 4022(b)(3)(B) of ERISA, and this amendment makes no change in its method of calculation but simply eliminates one of the methods PBGC

<sup>1</sup> For example, under section 230 of the Social Security Act, \$79,200 is the contribution and benefit base that is to be used to calculate the PBGC maximum guaranteeable benefit for 2010. Accordingly, the formula under section 4022(b)(3)(B) of ERISA and 29 CFR § 4022.22(b) is: \$750 multiplied by \$79,200/\$13,200. Thus, the maximum monthly benefit guaranteeable by the PBGC for plans that terminate in 2010 is \$4,500.00 per month in the form of a life annuity beginning at age 65. (If a benefit is payable in a different form or begins at a different age, the maximum guaranteeable amount is the actuarial equivalent of \$4,500.00 per month.)

currently uses to inform the public of the maximum guaranteeable benefit.

PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act does not apply (5 U.S.C. 601(2)).

#### List of Subjects in 29 CFR Part 4022

Pension insurance, Pensions, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 29 CFR part 4022 is amended as follows:

#### PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

**Authority:** 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. Appendix D to part 4022 is removed.

Issued in Washington, DC, this 15th day of November, 2009.

**Vincent K. Snowbarger,**  
*Acting Director, Pension Benefit Guaranty Corporation.*

[FR Doc. E9-28638 Filed 11-30-09; 8:45 am]

BILLING CODE 7709-01-P

## PENSION BENEFIT GUARANTY CORPORATION

### 29 CFR Part 4044

#### Allocation of Assets in Single-Employer Plans; Valuation of Benefits and Assets; Expected Retirement Age

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This rule amends Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans by substituting a new table for determining expected retirement ages for participants in pension plans undergoing distress or involuntary termination with valuation dates falling in 2010. This table is needed in order to compute the value of early retirement benefits and, thus, the total value of benefits under a plan.

**DATES:** *Effective Date:* January 1, 2010.

**FOR FURTHER INFORMATION CONTACT:** Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202-326-