

## PART 37—TECHNOLOGY INVESTMENT AGREEMENTS

■ 27. The authority citation for part 37 continues to read as follows:

**Authority:** 5 U.S.C. 301 and 10 U.S.C. 113.

■ 28. Section 37.130 is amended by revising paragraph (b)(1) to read as follows:

**§ 37.130 Which other parts of the DoD Grant and Agreement Regulations apply to TIAs?**

\* \* \* \* \*

(b) \* \* \*

(1) Part 1125 (2 CFR part 1125) on nonprocurement debarment and suspension, which applies because it covers nonprocurement instruments in general;

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■ 29. Appendix D to part 37 is amended by revising the introductory text and paragraphs A, B, B.1, B.3, and B.5 to read as follows:

**Appendix D to Part 37—What Common National Policy Requirements May Apply and Need To Be Included in TIAs?**

Whether your TIA is a cooperative agreement or another type of assistance transaction, as discussed in Appendix B to this part, the terms and conditions of the agreement must provide for recipients' compliance with applicable Federal statutes and regulations. This appendix lists some of the more common requirements to aid you in identifying ones that apply to your TIA. The list is not intended to be all-inclusive, however, and you may need to consult legal counsel to verify whether there are others that apply in your situation (e.g., due to a provision in the appropriations act for the specific funds that you are using or due to a statute or rule that applies to a particular program or type of activity).

**A. Certifications**

One requirement that applies to all TIAs currently requires you to obtain a certification at the time of proposal. That requirement is in a Governmentwide common rule about lobbying prohibitions, which is implemented by the DoD at 32 CFR part 28. The prohibitions apply to all financial assistance. Appendix A to 32 CFR part 22 includes a sample provision that you may use, to have proposers incorporate the certification by reference into their proposals.

**B. Assurances That Apply to All TIAs**

DoD policy is to use a certification, as described in the preceding paragraph, only for a national policy requirement that specifically requires one. The usual approach to communicating other national policy requirements to recipients is to incorporate them as award terms or conditions, or assurances. Appendix B to 32 CFR part 22 lists national policy requirements that commonly apply to grants and cooperative

agreements. It also has suggested language for assurances to incorporate the requirements in award documents. Of those requirements, the following six apply to all TIAs:

1. Requirements concerning debarment and suspension in the OMB guidance in 2 CFR part 180, as implemented by the DoD at 2 CFR part 1125. The requirements apply to all nonprocurement transactions.

\* \* \* \* \*

3. Prohibitions on discrimination on the basis of race, color, or national origin in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, *et seq.*). These apply to all financial assistance. They require recipients to flow down the prohibitions to any subrecipients performing a part of the substantive research program (as opposed to suppliers from whom recipients purchase goods or services). For further information, see item a. under the heading "Nondiscrimination" in Appendix B to 32 CFR part 22.

\* \* \* \* \*

5. Prohibitions on discrimination on the basis of handicap, in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). They apply to all financial assistance and require flow down to subrecipients. For further information, see item e.1. under the heading "Nondiscrimination" in Appendix B to 32 CFR part 22.

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■ 30. Appendix E to part 37 is amended by revising paragraph B.2 to read as follows:

**Appendix E to Part 37—What Provisions May a Participant Need To Include When Purchasing Goods or Services Under a TIA?**

\* \* \* \* \*

B. \* \* \*

2. *Debarment and suspension.* A contract award with an amount expected to equal or exceed \$25,000 and certain other contract awards (see 2 CFR 1125.220, which implements OMB guidance in 2 CFR 180.220) shall not be made to parties listed on the Governmentwide Excluded Parties List System, in accordance with the DoD adoption at 2 CFR part 1125 of the OMB guidance implementing E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System accessible on the Internet at [www.epls.gov](http://www.epls.gov) contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than E.O. 12549.

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Dated: June 18, 2007.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Chapters I and III

[Docket No.: FAA-2004-17168]

#### Review of Existing Regulations

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

**ACTION:** Disposition of comments on existing regulations.

**SUMMARY:** The FAA is notifying the public of the outcome of our periodic review of existing regulations. This notice summarizes the public comments we received and our responses to them. This action is part of our effort to make our regulatory program more effective and less burdensome.

**FOR FURTHER INFORMATION CONTACT:** Patrick W. Boyd, Office of Rulemaking, ARM-23, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-7320.

#### SUPPLEMENTARY INFORMATION:

##### Background

Under section 5 of Executive Order 12866, Regulatory Planning and Review, each agency must develop a program to periodically review its existing regulations to determine if they should be changed or eliminated (58 FR 51735, October 4, 1993). The purposes of the review are to make the agency's regulatory program more effective in achieving the regulatory objectives and less burdensome. The FAA conducts its review on a three-year cycle.

On February 25, 2004, we published a notice in the **Federal Register** asking the public to tell us which regulations we should amend, remove, or simplify (69 FR 8575). The notice stated that we would consider the comments and adjust our regulatory priorities consistent with our statutory responsibilities. The notice also stated we would publish a summary of the comments and an explanation of how we would act on them.

##### Summary of Comments

In response to the February 2004 notice, we received 97 comments from 30 different commenters. For comparison, we received 476 comments during the previous review and 82 comments the time before that. We received comments from citizens, private pilots, commercial pilots, and representatives of interest groups and commercial entities. The interest groups that filed comments include the Air Transport Association, the Allied Pilots

Association, the Experimental Aircraft Association, the National Air Carrier Association, and the Regional Airline Association. The commercial entities that filed comments include ABX Air, Inc.; Alteon Training; Apex Aviation Corporation; Boeing Commercial Airplanes; General Electric Aircraft Engines; Honeywell Engines, Systems and Services; Morris Research, Inc.; the Orange County (Ca.) Flight Center; Southwest Airlines; and World Airways.

Our February 2004 request for comments asked that commenters identify three regulations that we should amend or remove. This is to enable us to focus on commenters' high priority concerns. Most commenters limited themselves to three or fewer comments. However, the Air Transport Association filed 21 comments, while Southwest Airlines and the National Air Carrier Association filed 5 each.

Our February 2004 request for comments also asked the public to direct comments about 14 CFR parts 125 and 135 to the working group that is conducting a separate review of those parts to avoid any duplication of effort. We appreciate that commenters complied with this request. For the first time, the regulatory review included 14 CFR Chapter III, the regulations governing commercial space transportation. However, we did not receive any comments on these regulations.

### Response to Comments

We have organized the comments in four groups:

- Comments that we have already addressed,
- Comments that we are addressing,
- Comments that we will address, and
- Comments that we will not address at this time.

Readers should note that, in this document, when we say we "are addressing" a comment, we do not mean we will necessarily address a comment exactly as proposed by a commenter. We reserve the right to "address" comments in a way that is in accord with our statutory authority, balances competing interests, and fosters a safe and efficient civil aviation system. We have carefully considered issues raised by commenters and are taking, or will take, action to address those issues, as discussed below, but we do not guarantee the outcome of our action will always correspond to the commenters' views. With regard to comments that we will not address now, readers should note that, while we disagree with some of the comments, in other cases we simply cannot take

action now due to competing priorities and limited resources.

### Comments That We Have Already Addressed

We have already addressed 23 of the 97 comments. One individual commenter asked us to amend the medical examination requirement to require pilots to report only new medical examinations that occurred after the last application date. *Response:* We have already included this in the instructions printed on the form.

Southwest Airlines asked us to restructure the environmental assessment process for routine airspace and airport expansion. *Response:* On June 8, 2004, we issued revised FAA Order No. 1050.1E, entitled, "Environmental Impacts: Policies and Procedures." The order establishes a categorical exclusion from National Environmental Policy Act requirements for these changes.

The Air Transport Association asked that, before undertaking new regulatory reviews, we conduct a thorough analysis of the accomplishments of the previous review. *Response:* We already do this as part of the review of existing regulations and through the reviews conducted under section 610 of the Regulatory Flexibility Act.

The Air Transport Association also asked that the FAA conduct a rigorous evaluation of the need and impact of every proposed regulation. *Response:* Existing laws and Executive Orders already require this. For example, the National Environmental Policy Act requires analysis of the environmental impact of Federal actions, and Executive Order 12866, Regulatory Review, requires analysis of the costs and benefits of proposed regulatory actions.

An individual commenter asked that the FAA control air pollution, aircraft noise, and crashes and prevent pilots who are under the influence of illegal substances from operating aircraft. *Response:* We already have regulations in place for these purposes, including 14 CFR part 34 (air pollution), part 36 (noise), and part 61 (drug and alcohol testing).

An individual commenter asked that we allow general aviation operations at the Ronald Reagan Washington National Airport. *Response:* While the airport was closed to general aviation as part of the security measures adopted in the aftermath of the terrorist attacks on September 11, 2001, the Transportation Security Administration (TSA) has since reopened the airport to general aviation operations that meet specific security criteria (70 FR 41585, July 19, 2005).

ABX Air recommended removing from 14 CFR part 39 airworthiness directive 91-08-51, amendment 39-7031. This amendment requires certain actions for aircraft equipped with a Honeywell flight management system that had a navigational database. The AD became effective on June 24, 1991 and had a compliance period of 72 hours. *Response:* We agree with the commenter and withdrew AD 91-08-51 on October 5, 2005.

We received four comments on 14 CFR 91.205(b)(12) and 121.353 asking us to require pyrotechnic signaling devices only for aircraft used in extended over-water operations. *Response:* On December 27, 2004, we published a final rule that removes the requirement for a pyrotechnic signaling device for aircraft operated for hire over water and beyond power-off gliding distance from shore for air carriers operating under Part 121 unless it is part of a required life raft. All other operators will continue to be required to have onboard one pyrotechnic signaling device if they operate aircraft for hire over water and beyond power-off gliding distance from shore (69 FR 77596).

World Airways asked us to amend 14 CFR 121.311(e)(2) to allow certain passengers the ability to keep their seats reclined if they do not obstruct others' access to the aisle or emergency exits. *Response:* Paragraph (e)(2) is an exception to the requirement in paragraph (e) that no certificate holder may take off or land an airplane unless each passenger seat back is in the upright position. Paragraph (e)(2) states that paragraph (e) does not apply to seats on which cargo or persons who are unable to sit erect for a medical reason are carried in accordance with procedures in the certificate holder's manual if the seat back does not obstruct any passenger's access to the aisle or to any emergency exit. Thus, we see no need to amend the regulation since it already allows the flexibility the commenter is seeking.

Three commenters, including World Airways, the National Air Carrier Association and the Air Transport Association, filed four comments on the topic of supplemental oxygen. Specifically, they requested we change 14 CFR 121.333(c)(3) and 91.211(b)(2) to allow for a quick seat swap or quick leave by one pilot without requiring the remaining pilot to put on an oxygen mask. *Response:* On November 10, 2005, we published a direct final rule to address these comments (70 FR 68330). The direct final rule procedure involves issuing a final rule with request for comments. If we receive any adverse

comment, we withdraw the rule before it becomes effective. We may then issue a notice of proposed rulemaking. We received an adverse comment from the National Transportation Safety Board stating that we relied on data that did not represent actual pilot performance under realistic decompression conditions. See Docket No. FAA-2005-22915. For this reason, we withdrew the final rule on January 11, 2006 (71 FR 1688). We don't plan any further action at this time.

The Air Transport Association asked that we amend 14 CFR 121.368 by adopting its comments dated May 5, 2003, on inspection procedures. *Response:* Chapter 10, Volume 3 of FAA Order No. 8300.10, Airworthiness Inspectors' Handbook, addresses these comments.

The Air Transport Association also commented on supplemental inspections, 14 CFR 121.370a. This rule requires all aircraft in operation after December 20, 2010, to have a maintenance program that includes damage-tolerance based inspections and procedures. The Association asked that we adopt its comments on inspection procedures dated May 5, 2003 (Docket No. FAA 1999-5401). The regulation imposes an undue burden on operators and may also duplicate other existing regulatory requirements. *Response:* These comments were addressed in the aging aircraft safety final rule, which was published on February 5, 2005 (70 FR 5517).

The Air Transport Association asked for confirmation that 14 CFR 121.393(b) allows a pilot to substitute for a flight attendant during an intermediate stop. *Response:* Existing paragraph (b)(2) allows the certificate holder to substitute for the required flight attendants other persons qualified in the emergency evacuation procedures for that aircraft as required in 14 CFR 121.417 if these persons are identified to the passengers. So the answer is a qualified "yes." A pilot could substitute for a flight attendant during an intermediate stop. The pilot would have to be qualified in the aircraft's emergency evacuation procedures and would have to be identified to the passengers.

We received three comments on our regulations governing mechanical reliability reports (14 CFR 121.703). The Air Transport Association recommended that we require reporting only of significant occurrences and within 72 hours after the aircraft has returned to service, rather than 72 hours after the occurrence. Southwest Airlines asked us to remove service difficulty reporting requirements that have been

previously tracked by individual carriers. The Regional Airline Association asked that we offer air carriers the option to refrain from submitting mechanical reliability reports. *Response:* This issue was the subject of a final rule we published on December 30, 2003 (68 FR 75380), with a request for comments. We subsequently delayed the effective date of the final rule to give us time to consider the comments. On December 29, 2005, we withdrew the final rule to re-examine the Service Difficulty Report (SDR) program. In the same document, we adopted several amendments that improve the functioning of the SDR program (70 FR 76974). These amendments include increasing the time for submitting an SDR from 72 hours to 96 hours after an event occurs that requires an SDR. This change gives certificate holders additional time to prepare the SDR and should reduce the number of supplemental SDRs that need to be filed.

One commenter representing General Electric Aircraft Engines asked that we amend 14 CFR part 187 to correspond with laws passed by Congress that eliminate some fees. The fees that are the subject of the comment are for certification services performed outside the United States. *Response:* We decided in 1997 not to charge these particular fees. Part 187 does not require the agency to charge these fees. It only establishes a method for calculating them.

#### Comments That We Are Addressing

We are in the process of addressing 13 of the 97 comments. General Electric Aircraft Engines commented on the parts manufacturer approval regulations in 14 CFR parts 21 and 45. The comment urged FAA to issue for public comment the most recent version of the document originally prepared by the Parts and Production Certification Working Group of the Aviation Rulemaking Advisory Committee in February 1999. *Response:* We have incorporated the working group's recommendations into an ongoing rulemaking project to revise 14 CFR parts 21 and 45.

Another representative of General Electric Aircraft Engines made several comments on 14 CFR part 21, Certification Procedures for Products and Parts. One comment urged us to address international consortium arrangements in part 21 by allowing multiple international production authorizations. Another comment recommended allowing and recognizing work on complete products that is done by one production certificate (PC)

holder at another PC holder's facility without requiring formal extension of the PC. A third comment asked us to clarify exactly when an engine or propeller is submitted for airworthiness certification or approval. A representative of Honeywell Engines, Systems and Services also commented on part 21. One comment asked us to remove 14 CFR 21.325(b)(3), which limits export airworthiness approvals to products manufactured and located in the United States. The commenter believes that this regulation is unnecessary and costly and does not support a global manufacturing environment. Honeywell stated that it should be the production approval holder's responsibility to make sure products meet the approved design, and the place of production should not matter. Another comment urged elimination of 14 CFR 21.147, which requires the holder of a production certificate to notify us of each change to the quality control system that may affect the inspection, conformity, or airworthiness of the product. In the commenter's view, this requirement is burdensome, unnecessary, and subject to varying interpretation. *Response:* All of these comments are being addressed in an ongoing project to amend part 21 that was published for public comment on October 5, 2006 (71 FR 58913). The comment period closed on February 5, 2007, and we are now in the process of analyzing the comments.

An individual commenter proposed that we require separate exit doors for passengers and flight crewmembers to prevent hijacking of commercial airliners. *Response:* The existing regulations require a reinforced flight deck door that significantly reduces the risk of forced entry onto the flight deck. For airplanes of 20 passengers or greater, the regulations already prescribe separate emergency exits for passengers and flightcrew. It would not be feasible to retrofit the existing commercial airline fleet with separate exit doors. Further, a separate project is addressing suspicious activity or security breaches in the cabin. On September 21, 2005, we issued a notice of proposed rulemaking concerning flightdeck door monitoring and crew discreet alerting systems (70 FR 55492). This proposal would require a means to monitor the door area outside the flightdeck and a means to discretely notify the flightcrew of threats. The comment period closed on November 21, 2005, and we are in the process of preparing the final rule. The existing regulations and this proposal, when it is finalized, will help address

the commenter's concern about hijacking.

A representative of Alteon Training commented there is a pressing need within the industry to update, standardize, and harmonize the various regulations and documents relating to airman and crewmember training. There are multiple documents that include qualification and training requirements for pilots, flight instructors, simulator instructors, check airmen, and training evaluators. Many of the sources of information are in conflict with one another. These documents include 14 CFR parts 61, 91, 135, 121, and 142; various Practical Test Standards; Operations Inspector's Handbooks; and several FAA forms. *Response:* These comments are being addressed by the Flight Simulation final rule, published on October 30, 2006 (71 FR 63391) and by an upcoming proposal to amend subparts N and O of 14 CFR part 121.

One individual recommended we abolish or amend 14 CFR 121.383(c), which prohibits people aged 60 and older from serving as commercial pilots. According to the commenter, the rule is baseless, discriminatory, and deprives the U.S. airline industry of some of its most able and experienced pilots. *Response:* On January 30, 2007, the Administrator announced that the FAA will propose a raise in the mandatory retirement age for U.S. commercial pilots from 60 to 65. The FAA plans to have an NPRM out by the end of calendar year 2007. The public, industry, and individual pilots will then have the opportunity to comment.

Another of the Air Transport Association's comments concerns crewmember requirements at stops where passengers remain on board, 14 CFR 121.393. The Association asked us to confirm that flight attendants may leave the aircraft to conduct passenger-related business as long as the engines are shut down and at least one floor level exit is open when staffing is reduced in accordance with 14 CFR 121.393(b). The reason is that allowing flight attendants to step onto the jet bridge at intermediate stops facilitates communication with ground personnel, reduces delays, and otherwise promotes the efficient use of personnel on through flights. *Response:* A rulemaking team has been established, is considering the issues, and will recommend the best way to proceed.

Another Air Transport Association comment concerns crewmember emergency training, 14 CFR 121.417(c)(2)(ii)(B). The Association recommended elimination of the requirement that recurrent training must include a module on transferring each

type of slide or raft pack from one door to another. The Association believes it is impractical to expect that a crewmember would be able to complete the complex series of steps required to remove a slide or raft from one exit and install it in another in a post-ditching situation. *Response:* This issue is being addressed in an ongoing rulemaking project to revise subparts N and O of 14 CFR part 121.

The Air Transport Association also requested a change to 14 CFR 121.434 to allow the check pilot to step away during flight without a replacement and allow the pilot in training to remain at the controls under certain circumstances. *Response:* This comment is being addressed by an upcoming proposal to amend subparts N and O of 14 CFR part 121.

The Boeing Company commented regarding 14 CFR 25.777, Cockpit controls, and 14 CFR 25.779, Motion and effect of cockpit controls. According to the commenter, 14 CFR 25.777(b) states the direction of movement of cockpit controls must meet the requirements of 14 CFR 25.779. However, that regulation explicitly addresses only a certain list of controls, leaving other controls subject to implicit coverage. The commenter urged us to revise the requirements to either list all controls or include language describing how to show compliance for nonlisted controls. In the commenter's view, the recommended change would improve the efficiency of the production approval process without compromising aviation safety. *Response:* A rulemaking team has been established, is considering the issues, and will recommend the best way to proceed.

#### Comments That We Will Address

We plan to address 13 of the comments. ABX Air commented there are overlaps between 14 CFR 121.370, 121.370a, the proposed widespread fatigue damage rule, and various airworthiness directives on the subject of aging aircraft. The commenter recommends forming a committee to coordinate and eliminate duplication between these items. *Response:* The FAA recently performed a comprehensive review of the Aging Airplane Program. Among other things, our review identified overlapping and redundant requirements in certain rulemaking initiatives, such as those identified by the commenter. Based on this, we developed ways to eliminate duplication between the rulemaking initiatives. A public notice entitled "Fuel Tank Safety Compliance Extension and Aging Airplane Program Update," which was issued on July 30,

2004, summarized the FAA's conclusions and plans (69 FR 45936). These plans should address the recommendation made by the commenter.

The Air Transport Association recommended we adopt the rulemaking recommendations of the Clarification of Major/Minor Repairs or Alterations Working Group of the Aviation Rulemaking Advisory Committee (ARAC). This change would address a controversial enforcement and compliance issue. *Response:* The recently formed Aviation Safety Repairs and Alterations Team is conducting a thorough evaluation of all comments we have received on this issue, including the ARAC recommendations. The team plans to make recommendations for changes to existing policies and development of new policies.

We received 11 comments from several commenters on various aspects of flight time limitations and rest requirements, which are found in 14 CFR 121.471 to 525. Some of the commenters wanted us to guarantee that flight crewmembers get enough rest and to base rest requirements on time on duty rather than on flight time. Some suggested specific language that would require crewmembers to have at least 10 consecutive hours of rest after completing a flight. Another commenter suggested that we restrict the ability of carriers to reduce rest time by allowing reduced rest time only when delays occur that are beyond the carriers' control. Alternatively, one commenter asked us to consider the rest periods during duty in setting the rest-time requirements. *Response:* In 1995, the FAA published a comprehensive notice of proposed rulemaking addressing duty period limitations, flight time limitations, and rest requirements for flight crewmembers. We received a large number of comments. We intend to address these issues and are currently considering our next action.

#### Comments That We Will Not Address at This Time

We received 48 comments that we will not address at this time. We have arranged this section in numerical order of the regulation cited by the commenters, except that we discuss general or overarching comments up front.

The Regional Airline Association made a comment about recent rulemaking proposals. The Association believes FAA policy seems to support the notion that certain advisory material currently contained in Advisory Circulars should instead be placed into the appendices of the FAA regulations.

The justification is not that the FAA wants the industry to conform to only "one means of compliance," but that advisory material placed into an appendix will somehow be easier to revise. The association believes we should use appendices sparingly and not to establish requirements. *Response:* It is true that we have recently adopted Quality Performance Standards (QPS) appendices that contain both regulatory and informational material. We have two reasons for doing so. Much of the material in the QPS appendices is regulatory and properly belongs in the regulations. Secondly, we believe this is a user-friendly approach. By having the advisory material close to the QPS requirements in one document, people will not have to refer to several documents to learn both what is required and a recommended way of complying.

We received two comments on 14 CFR part 1, which contains definitions of terms used throughout our regulations. The National Air Carrier Association proposed we revise part 1 to include definitions of "accepted," "airworthy," "competent," and "repair." *Response:* We disagree with the comment. These particular terms are used in a number of different circumstances in the regulations, and it would not be possible to write all-purpose definitions.

The other comment on part 1 came from a representative of GE Aircraft Engines who urged us to amend part 1 to include definitions of words used in our regulations that have a meaning different from that given in the dictionary. We do not believe this is appropriate. Terms are included in part 1 or in individual regulations because they have specialized meanings.

An individual commenter suggested the cost of the requirements for flotation equipment (14 CFR 25.801) and crewmember training in ditching procedures (14 CFR 121.417) are not offset by any benefits in lives saved or injuries prevented. *Response:* These requirements have been in place for many years. While we acknowledge the number of ditching incidents is low, we do not have any information that the relatively minor cost of these requirements exceeds the benefits they would provide in the event ditching became necessary.

The same commenter questioned whether it is necessary to supply oxygen to the passenger cabin in the event of an emergency. *Response:* Between 1959 and 1996, there were about 40 reported decompression events in the worldwide fleet of large transport category airplanes over 60,000 pounds. Airplanes

are being approved to operate at ever-increasing altitudes, which increases the risk to passengers should a cabin decompression occur. The FAA believes it is necessary to supply oxygen to the passenger cabin in the event of an emergency because any cabin decompression is a serious matter that could lead to permanent injury or death due to lack of oxygen. While these events are rare, we believe the emergency oxygen systems play a significant role in ensuring the well-being of passengers.

An individual proposed that we eliminate the vertical burn test requirement for seat cushions in 14 CFR 25.853(c). In the commenter's view, this is a costly requirement that is not necessary due to advances in technology. *Response:* We do not necessarily disagree with the comment, but due to other ongoing projects, it is not an immediate priority. Southwest Airlines proposed we eliminate 14 CFR 25.853(g) and 121.215(d), which contain requirements to provide lavatory ashtrays and no-smoking signs in the aircraft cabin. According to the commenter, these requirements are unnecessary since smoking has been banned on commercial flights in the U.S. for almost 20 years and announcements to this effect are made throughout each flight. *Response:* We disagree with the comment. Even though smoking is prohibited, there are still smokers, and the lavatory ashtrays provide a safe place to extinguish illegal smoking material. We also believe the sign or placard requirement provides a continuous reminder to passengers of the ban on smoking. This is especially important on longer flights.

ABX Air stated there is a conflict between 14 CFR 25.857 and 121.583 with regard to carrying supernumeraries aboard a cargo airplane. The commenter recommended changing 14 CFR 25.857(e) to allow the supernumeraries identified in 14 CFR 121.583 to be carried aboard airplanes with a Class E cargo compartment. In the commenter's view, the change would eliminate the need for individual exemptions. *Response:* Because the kinds of supernumeraries identified in part 121 are varied, and the duties they may perform during flight are also varied, it is not a straightforward matter to include them all in part 25. We find it appropriate to use the exemption process to consider each case on merit and may initiate rulemaking action as appropriate at some future time.

A representative of General Electric Aircraft Engines recommends we rescind 14 CFR 25.901(b)(2) as obsolete, impossible to interpret consistently, and

having no well-defined means of compliance. This regulation requires the components of each powerplant installation to be constructed, arranged, and installed to ensure their continued safe operation between normal inspections or overhauls. According to the commenter, engines are currently overhauled when a departure from normal operation is observed, not according to a specific time interval. Also, the current large commercial transport fleet operates at an extremely high level of propulsion system reliability. *Response:* We acknowledge that a literal application of this rule at the component level has long since given way to the realities of meeting the intent of the requirement at the airplane system level. This regulation prohibits intentionally exposing the airplane to practically preventable powerplant installation failures. Consequently, we do not agree the regulation is no longer useful or effective. While we plan no immediate action on this issue, we may consider rulemaking in the future to update the requirement and provide standardized compliance guidance, as resources and priorities allow.

The Boeing Company commented that 14 CFR 25.1353, Electrical equipment and installations, and 14 CFR 25.1431, Electronic equipment should be revised to clarify what is meant by "electronic" versus "electrical." The lack of a clear distinction between the terms has posed problems and duplicated efforts during aircraft certification activities. At times, the commenter has shown compliance with both regulations, when compliance with only one is sufficient. To remedy the problem, the commenter suggested we revise 14 CFR 25.1353 to clarify that it pertains to equipment directly related to generation and distribution of primary electrical power. The commenter also recommended we revise 14 CFR 25.1431 to clarify that it pertains to all other electrically powered equipment. *Response:* Existing § 25.1353 applies to both electronic and electrical equipment. While § 25.1353(c) references storage batteries, the regulation is not limited to power generation and distribution functions. For example § 25.1353(a), (b), and (d) apply to all electrical and electronic equipment. Existing § 25.1431 clearly states that it applies to radio and electronic equipment. We are not aware of any misunderstanding of how this regulation applies to the aircraft certification process. For these reasons, we do not believe the recommended changes are necessary.

General Electric Aircraft Engines filed four comments on 14 CFR part 33, which contains the airworthiness

standards for aircraft engines. The commenter believes § 33.17, Fire prevention, does not take account of fire protection zones as used at the aircraft level for engine certification. As a result, the commenter recommends we revise the regulation to allow for the actual installations, with the installation assumptions documented in the installation manual. *Response:* We agree that § 33.17 does not address fire zone definitions. We consider fire zones and aircraft-level installation assessments to be outside the scope of the engine certification process and are addressed during aircraft certification. Changes to part 33 are not appropriate.

The commenter recommended we revise 14 CFR 33.87, Endurance test, to allow the use of other test cycles based on submittal of acceptable data. The commenter notes that the test cycle was defined when engine architecture and control systems were simpler and may not provide the best current test for a specific change or application.

*Response:* The test cycle of § 33.87 and its associated test conditions have been revised in the four decades since we adopted them. There have been two major revisions to the regulation (Amendments 6 and 10) to accommodate the increasing complexity of the engine, airframe, and their interface. The purpose of the endurance test is to show a level of engine operability and durability within the approved engine ratings and limitations and to contribute to an acceptable level of safety for aircraft gas turbine engines. An alternate test cycle may not be as reliable as the one specified in § 33.87. However, our regulations do provide a means for evaluating alternatives and approving those that provide an equivalent level of safety (14 CFR 21.21).

Concerning 14 CFR 33.88, Engine overtemperature test, the commenter stated that the requirement was originally a 5-minute uncooled rotor integrity demonstration (reference AC33-3). As implemented by Amendment 6, it became a 30-minute test which was found to be overly severe because of flowpath limitations. Amendment 10 changed the duration back to 5 minutes but also changed the focus from a rotor integrity demonstration to an overall hot section durability demonstration. There is little evidence that cooled rotors are significantly influenced by a 75 degrees F increase in gas path temperature, making this requirement superfluous from a safety standpoint. Further there is no direct Joint Aviation Requirements—Engines (JAR-E) or Certification Specification—Engines

(CS-E) corollary. JAR-E 700 and CS-E 700, Excess Operating Conditions, is the closest related requirement, and it only comes into play if the conditions of speed and temperature can arise.

*Response:* The engine overtemperature test is intended to ensure that turbine engine hot sections can safely accommodate overtemperature events, which history has shown do occur. Many years of successful service experience provide the necessary validation for the overtemperature requirement. We agree there is no direct JAR-E or CS-E corollary for this requirement. The FAA and the European Aviation Safety Authority continue to work cooperatively toward harmonized regulations, as appropriate.

Concerning 14 CFR 33.97, Thrust reversers, the commenter recommended a revision to address the difference between fan (cold structure) and core (hot structure) reversers. The commenter also pointed out the endurance and calibration tests are almost never performed with the reversers installed. More often than not, simulated service cycles satisfy the requirement of § 33.97(a). *Response:* We agree there have been a number of instances where the endurance, calibration, operation, and vibration tests are run without the reverser installed. We evaluate these instances on a case-by-case basis for compliance. We may consider a change to § 33.97(a) to remove the strict requirement of running tests with the reverser installed; expand the scope of which block tests require an engine and thrust reverser compatibility evaluation; and allow alternate considerations, other than tests, for these evaluations in the future as workload and resources permit.

ABX Air filed four comments on specific airworthiness directives (AD). In each case, the commenter suggested the AD was obsolete and should be withdrawn. Withdrawing the AD would eliminate the cost of tracking and maintaining records. *Response:* In one case, we agree with the suggestion and discussed the issue earlier in this document under the heading “Comments we have already addressed.” Two of the comments concern ADs that require modification of certain protective breathing equipment mask assemblies. Without more information about how cancellation of these ADs would relieve the burden on the commenter, we are unable to evaluate the merits of these recommendations. The fourth comment concerns AD 84-18-07, Amendment 39-4915, which requires inspection of certain discharge cartridges for erroneously placed aluminum foil in the

electrical connector pins. *Response:* We would like to point out that this AD does not apply to components installed on foreign-registered aircraft. It is possible that a U.S. carrier could buy an aircraft that has one of these components installed and has not complied with this AD. Thus, the possibility exists that withdrawal of this AD could lead to an unsafe condition. For this reason, we disagree with the comment.

The Air Transport Association suggested we amend the appropriate section of 14 CFR part 39 to allow the FAA Certificate Management Office (CMO) to approve minor changes or deviations from the means of compliance specified in an Airworthiness Directive. Currently, § 39.19 requires an operator to send a proposed alternate means of compliance through its principal inspector to the manager of the office that issued the AD for review and approval. According to the commenter, allowing the CMO to approve minor deviations would streamline the process and reduce aircraft and engine downtime. *Response:* We disagree with the proposal. Alternative means of compliance to an AD need to be reviewed by an engineer familiar with the technical information in the type design to assure the objective of the AD is attained.

A representative of General Electric Aircraft Engines recommended that we amend 14 CFR 43.3(j) to allow a manufacturer to perform maintenance on any aircraft, aircraft engine, propeller, or part thereof manufactured by him under a type or production certificate without needing any other certificate or authorization. Currently, the regulations allow a manufacturer to either rebuild or alter, but not to perform maintenance on those items. In the commenter's view, requiring a manufacturer to hold a repair station license to perform maintenance on the manufacturer's own products adds an administrative burden on the manufacturer and diverts FAA resources away from critical safety functions. *Response:* We disagree with the comment. The holder of a production certificate has demonstrated the capability to produce accurate copies of a particular design, but has made no showing about the ability to perform various kinds of maintenance. To allow a manufacturer, based on a production certificate, to perform maintenance without determining the manufacturer meets the repair station criteria of 14 CFR part 145 would not be prudent and would not contribute to safety.

The same representative of General Electric Aircraft Engines also filed a comment on 14 CFR part 45, Identification and registration marking. The commenter recommended we coordinate with the Department of Defense (DoD) to make the DoD's unique item identification and the FAA part marking requirements the same for products used in both military and civil aviation. *Response:* We do not disagree with the comment. Currently, DoD is developing its marking requirements. We are monitoring their activities and may consider rulemaking once we have a clear picture of what they will require.

The Experimental Aircraft Association filed a comment on 14 CFR 47.33(c), which contains the requirements for registering aircraft not previously registered anywhere. The Association recommends we allow an applicant for registration of an aircraft built from a kit to file either a bill of sale or an invoice from the manufacturer. Currently, the regulation requires a bill of sale. In the Association's view, this requirement is burdensome because most kit manufacturers do not provide a bill of sale. *Response:* Invoices do not themselves provide proof of ownership. Proof of ownership should include language that shows a sale took place and the signature of the seller. For this reason, we do accept some invoices if they have a signature for the manufacturer and some wording such as "sold to [name of buyer]."

An individual commenter recommended that we eliminate the requirement in 14 CFR 61.23 that private pilots hold a third-class medical certificate. In its place, the commenter suggested we accept a driver's license and require the private pilot to consult an aviation medical examiner if an illness occurs that might reasonably be expected to affect the ability to fly. *Response:* Out of a concern for the potential safety impact of the change given the large number of private pilots, and in the absence of any data to support the change, we are not inclined to change the rule at this time.

A representative of World Airways objected to the requirements of 14 CFR 61.18, 63.14, and 65.14 concerning security disqualification. These regulations require the FAA to deny a pilot certificate when the Transportation Security Administration (TSA) has notified the FAA in writing that an individual poses a security threat. The commenter believes it is inappropriate for FAA to deny a certificate based solely on the recommendation of another organization. The commenter suggested the FAA set up an independent review process to prevent

the careers of aviation professionals from being unjustly terminated by unilateral action of the TSA. *Response:* We disagree with the comment. Congress has given TSA legal authority to make these determinations. It is beyond the scope of FAA's authority to establish a separate mechanism that duplicates TSA's duties. Although in this one particular area there is a separation of duties, FAA and TSA are working closely and cooperating to ensure a safe and secure aviation system.

We received several comments on 14 CFR part 91, which contains our general operating and flight rules. A representative of Apex Aviation proposed that we amend 14 CFR 91.117(c) by adding the words "under VFR" after the word "aircraft." The commenter believes the change would allow operation of an aircraft under IFR at up to 250 knots in certain areas. In the commenter's view, the current regulation unnecessarily slows traffic flow, may interfere with sequencing of aircraft by air traffic control, and costs money and wastes fuel by extending flight time. *Response:* All IFR traffic is under air traffic control, which can specify any speed less than 250 knots that may be necessary. We believe the commenter may have misunderstood the regulation. The speed restrictions in the existing rule do not distinguish between VFR and IFR. The speed restrictions are based on the flight altitude or airspace designation.

A representative of World Airways also commented on 14 CFR 91.117(c), asking that it either be eliminated or restricted to VFR aircraft not in contact with air traffic control. In the commenter's view, the existing limitation may serve a purpose for keeping the closure speeds of aircraft not in contact with air traffic control to a minimum, but for those who routinely operate below Class B airspace in contact with, or at the direction of, air traffic control, this restriction is unnecessary. In fact, it has the potential to degrade safety due to pilot distraction while trying to determine the lateral limits of Class B airspace when on an IFR flight plan. *Response:* The maximum allowable speed is governed by aircraft altitude or airspace designation. There is an exception where the minimum safe airspeed for a particular operation is greater than the maximum prescribed by the rule. In this case, the aircraft may be operated at that minimum, and air traffic control should be advised.

One individual commenter suggested we update 14 CFR 91.207, Emergency locator transmitters, to include the new

406MHz emergency locator transmitter. The change should include actual decoding and reading of the transmitter's identification number and GPS location by independent test equipment to verify the transmitter is sending the correct information through its antenna. *Response:* We disagree with the comment. Approved emergency locator transmitters are specified in technical standard orders (TSOs), which are more easily updated than regulations. The 406 MHz transmitter is included in TSO-C126, which was last updated on December 8, 2006.

Another individual commenter suggested we create an exception from 14 CFR 91.207 to allow turbojet aircraft to use portable emergency locator transmitters, rather than requiring the transmitters to be attached to the aircraft. *Response:* We disagree with the comment. The requirement for transmitters to be attached to the aircraft ensures they are on board for every flight and automatically activate when needed.

A representative of Morris Research, Inc. proposed that we amend 14 CFR 91.213(a)(2) to allow operation of turbine-powered aircraft under part 91 using the FAA-approved master minimum equipment list for that type of aircraft as the approved minimum equipment list without having to get a letter of authorization from the FAA. Among its reasons for the proposed change, the commenter noted that it is burdensome to require each turbine-powered aircraft operated under part 91 to get a letter of authorization to operate with the most insignificant inoperative equipment, such as a passenger reading light. *Response:* While we do not necessarily disagree with the comment, due to resources allocated to other projects, this is not a high priority.

The National Air Carrier Association recommended that we eliminate the requirement that the FAA review and approve wet leases before a certificate holder conducts operations involving a wet lease (14 CFR 119.53). The Association considers this requirement unnecessary, costly, and burdensome. It suggested that providing the wet lease agreement to the FAA before or after the operation allows the FAA to provide adequate surveillance over operational control. *Response:* We are not persuaded that this requirement is unnecessary. In a wet lease situation, the party exercising operational control is held responsible for the safety and regulatory compliance of the flights conducted under the wet lease. It is not in the public interest to allow operations to be conducted under a wet lease (without the FAA having an

opportunity to review the wet lease and determine beforehand which party has operational control) if the party alleging to have operational control is later found not to be responsible for the safety and regulatory compliance of the flights.

There were nine comments filed by the Air Transport Association on 14 CFR part 121 that may have merit, but we are unable to devote resources to a rulemaking project at this time. We do not view these recommended changes as being higher priority than the rulemaking projects already in progress. These comments include the following:

- Amend 14 CFR 121.335, Equipment standards, to eliminate the reference to an obsolete regulation;

- Amend 14 CFR 121.367, Maintenance, preventive maintenance, and alterations programs, by revising the introductory language to consolidate the regulatory requirements;

- Amend 14 CFR 121.613, Dispatch or flight release under IFR or over the top, to allow a flight to be released without meeting the required approach minimums at the destination if an alternate airport is given in the dispatch release;

- Amend 14 CFR 121.619, Alternate airport for destination, to reflect current aircraft and airport approach capabilities;

- Amend 14 CFR 121.619 to reduce minimums from 2,000 to 1,000 feet and from three miles to one mile visibility during the period from one hour before to one hour after estimated time of arrival;

- Amend 14 CFR 121.621, Alternate airport for destination, to either remove or extend the current six-hour time limit on no-alternate operations;

- Amend 14 CFR 121.645, Fuel supply, to eliminate the requirement that fuel loads for international aircraft operations include an extra 10 percent of the total flight time;

- Amend 14 CFR 121.652, Landing weather minimums, to eliminate the reduced landing weather minimums for less experienced pilots when an autopilot or head-up guidance is used (the National Air Carrier Association also filed a comment on this topic); and

- Amend 14 CFR 121.655, Applicability of reported weather minimums, to allow some flexibility when the reported visibility in the main body of the weather report is less than four miles.

The National Air Carrier Association suggested we delete 14 CFR 121.139, Requirements for manual aboard aircraft, in its entirety. This regulation, in part, requires certificate holders conducting supplemental operations to

carry appropriate parts of the printed manual on each airplane when away from the principal base of operations. If the manual is not in printed form, it requires the airplane to carry a compatible reading device. The commenters believe this is an unnecessary requirement given the state of technology today. *Response:* Our view is that the information in the manual must be available wherever the aircraft goes. For this reason, we are not inclined to change the regulation.

A representative of the Orange County (CA) Flight Center suggested we amend one of the flight training requirements of 14 CFR 141.79 to allow use of a flight training device to accomplish the recurrent proficiency check required by paragraph (d)(2). The commenter suggested allowing the flight training device on a rotational basis at schools that have an approved instrument course that requires use of the flight training device. *Response:* While we do not necessarily disagree with the comment, due to resources allocated to other projects, it is not a high priority.

A representative of Honeywell Engines, Systems and Services suggested we change 14 CFR 145.153(b)(1), which requires certificated U.S. repair stations to employ supervisors who are certificated under 14 CFR part 65. The commenter feels this requirement is burdensome, unnecessary, and costly and suggests that a technical lead could ensure that employees performing the work are capable. *Response:* We believe that supervisors must be certified to ensure they can direct the activities of workers who may not be at the journeyman level. For this reason, we are not inclined to change the regulation.

The Boeing Company suggested a change to 14 CFR 183.29(i), which prohibits an acoustical engineering representative (AER) from determining a type design change is not an acoustical change. In the commenter's view, this limit is not consistent with how we manage other designated engineering representatives. It also requires applicants to provide a significant amount of information to FAA to enable us to determine how a type design change should be certified for noise. Removing this limit could improve efficiency without adversely affecting safety. *Response:* We disagree with the comment. An AER is authorized only to determine the noise test, test data, and associated analyses comply with the applicable regulations. A determination that a type design change is an acoustical change is not a compliance determination and would not be

appropriate for an AER, even if the limit were not spelled out in the regulation.

## Conclusion

The FAA finds that reviewing public comments on our regulations helps us in assessing the effectiveness of our regulatory agenda and adjusting the agenda when necessary. As a result of this review, we have identified many issues of importance to the industry and other interested parties. Some of these issues, we are pleased to note, we either have already addressed or are currently addressing. In addition, the review offers us a general understanding of industry's and the public's concerns about our regulations. We intend to continue to request public comments on a three-year cycle to identify any necessary changes to our regulatory program. We plan to issue a notice requesting public comments for our next review later this year.

Issued in Washington, DC, on June 19, 2007.

**Nicholas A. Sabatini,**

*Associate Administrator for Aviation Safety.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 97

[Docket No. 30556 Amdt. No. 3223]

#### Standard Instrument Approach Procedures, Weather Takeoff Minimums; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and/or Weather Takeoff Minimums for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective June 26, 2007. The compliance date for each