line of and in line with the existing .190/.194 diameter nutplate clearance hole, and inspect at intervals not to exceed 100 hours time in service, until (c) below, is accomplished, to ascertain that the drain hole is clear.

(c) Within the next 1600 hours time in service after the effective date of this AD, unless already acomplished:

(1) Modify the nose landing gear emergency uplock release mechanism pressure can, P/N 9910073-87, in accordance with the instructions in Douglas Service Bulletin 53-91, or later FAA-approved revisions, or an equivalent means approved by the Chief, Aircraft Engineering Division, FAA Western Region.

NOTE: 1. The drain plug nutplate, listed in S/B 53-91 as an optional removal item, must be permanently removed per the requirements of this paragraph; or,

2. Incorporate a .190/.194 diameter hole as outlined in (b)(2), above, in lieu of removing the nutplate.

(2) For those airplanes that do not have the nutplate removed after compliance with (c)(1), above, the drain plug may be reinstalled at the operator's discretion, provided that the drain hole is incorporated.

NOTE: The checks required per this AD may be performed by a flight crew member or other person designated by the operator.

(d) The requirements of this AD may be terminated when (c), above, has been accomplished.

This supersedes Amendment 39-2215, 40 F.R. 22538, AD 75-11-08.

This amendment is effective August 1, 1975 for all persons except those to whom it was made effective by airmail letters dated May 28, 1975, which contained this amendment.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

ROBERT H. STANTON,
Director,
FAA Western Region.

Issued in Los Angeles, California on July 17, 1975.

[FR Doc.75-19429 Filed 7-25-75;8:45 am]

[Docket No. 14817; Amdt. 39-2280]

PART 39—AIRWORTHINESS DIRECTIVES

Pilatus Aircraft Ltd. B4-PC11 Gliders

Aileron control connecting bolts on Pilatus Aircraft Ltd. B4-PC11 gliders have been inadvertently installed head forward on the aileron control differential bellcrank touching the wing spar fitting that could result in an aileron system jam. Since this condition is likely to exist or develop in other gliders of the same type design, an airworthiness directive is being issued which requires a one-time inspection of aileron control differential bellcrank bolts and shortening or replacing of the airbrake control bellcrank bolts and aileron control differential bellcrank connecting bolts on the affected Pilatus B4-PC11 gliders.

Since this situation requires immediate adoption of this regulation, notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c))).

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (14 CFR § 11.89), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

PILATUS AIRCRAFT LTD. Applies to B4-PC11 gliders Serial Numbers up to and including 159, certificated in all categories.

Compliance is required as indicated.

To detect improper aileron control connecting bolt installation and to prevent aileron jamming accomplish the following:

(a) Within the next ten hours' time in service after the effective date of this AD, unless already accomplished, visually inspect the aileron control connecting bolts on the aileron control differential bellcrank to ensure the bolts are oriented correctly in accordance with Pilatus B4-PC11 Operating Manual, Figure 1, Page 26, or an FAA-approved equivalent.

(b) Within 25 hours' time in service after the effective date of this AD, unless already accomplished, shorten all bolts P/N 116.35.11.070 used on aileron control differential bellcranks and airbrake control bellcranks, in accordance with the accomplishment instructions contained in Pilatus Aircraft Ltd. Service Bulletin No. 1003 dated June 1974, or an FAA-approved equivalent, or replace with modified or replacement bolts supplied by manufacturer or with equivalent FAA-approved bolts.

This amendment becomes effective July 28, 1975.

Issued in Washington, D.C. on July 22, 1975.

J. A. FERRARESE,
Acting Director,
Flight Standards Service.

[FR Doc.75-19431 Filed 7-25-75;8:45 am]

[Docket No. 75SO79; Amdt. 39-2272]

PART 39—AIRWORTHINESS DIRECTIVES

Piper Model PA-28-151 Series Airplanes

There have been reports of over-travel and binding of the carburetor air box valves on PA-28-151 airplanes that could result in the loss of engine power due to loss of capability to control carburetor air. Since this condition is likely to exist or develop in other airplanes of the same type design, an airworthiness directive is being issued to require modification of the carburetor air box on PA-28-151 airplanes.

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

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 F.R. 13697), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

PIPER AIRCRAFT CORPORATION. Applies to PA-28-151 airplanes serial numbers 28-7415001 through 28-7515425; certificated in all categories.

Compliance required within the next 50 hours' time in service or at the next scheduled inspection, whichever occurs first, after the effective date of this AD, unless already accomplished.

To prevent over-travel of the carburetor air box valve, accomplish the following or accomplish an alternate modification method approved by Chief, Engineering and Manufacturing Branch, Southern Region.

(1) Remove lower nose cowl and metal bottom panel for access to the carburetor air box.

(2) Loosen clamps attaching carburetor heat and induction air hoses to air box. Remove hoses from air box.

(3) Remove control cable from bracket and lever on air box. Retain all hardware except cotter pin for reinstallation.

(4) Remove air box bottom and valve by removing (12) #6 screws, nuts, and washers around the bottom of the air box. Retain the air box bottom and valve and attaching hardware for reinstallation.

(5) Remove safety wire securing (4) MS20074-04-04 bolts which mount air box to carburetor. Remove the bolts and AN936A416 washers. Remove air box from carburetor. Remove and discard old 73451-07 gasket, but retain mounting hardware for reinstallation.

(6) Install (2) plates, Piper Part Number 35646002, to top stiffener, secured with 8 (4 each plate) MS28470AL3-4 (Piper P/N 420-201) rivets. Installation must prevent valve over-travel.

(7) Install new gasket Piper P/N 73451-07, and reworked air box on carburetor using (4) MS20874-04-04 bolts and AN936A416 washers. Safety wire bolts.

(8) Reinstall bottom and valve assembly to air box using (12) #6 screws, nuts, and washers previously removed. Insure lever on valve is on the same side of box as control cable bracket.

(9) Reinstall control cable. Tighten the swivel fitting nut to draw the core wire into the recess ⅛ its diameter.

(10) Reinstall carburetor heat and induction air hoses on air box and secure with clamps.

(11) Replace cowling and metal bottom panel.

Piper Service Bulletin 474 also pertains to this same subject.

This amendment becomes effective July 30, 1975.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Issued in East Point, Georgia, on July 16, 1975.

LONNIE D. PARRISH,
Acting Director,
Southern Region.

[FR Doc.75-19436 Filed 7-25-75;8:45 am]

[Docket No. 14341; Amdt. 39-2281]

PART 39—AIRWORTHINESS DIRECTIVES

Rolls Royce Model RB-211 Series Engines

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring modification of the oil tank filler cap and housing on Rolls Royce Model RB-211 series engines was published in the Federal Register on March 10, 1975 (40 FR 11003).

Interested persons have been afforded an opportunity to participate in the making of the Amendment. No objections were received. Consistent with the requirements of the AD, in view of the effective date of this amendment, the time for compliance has been deferred until September 1, 1975.

This amendment is made under the authority of sections 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (14 CFR § 11.89), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

ROLL ROYCE (1971) LIMITED. Applies to Rolls Royce RBS 211 series engines, serial numbers 10479 and prior.

Compliance required before September 1, 1975, unless already accomplished.

To prevent engine loss of oil and possible inflight engine shutdown, modify the HS external gearbox oil tank filler cap and housing in accordance with Rolls Royce (1971) Limited Service Bulletin RB211-72-3533, dated August 12, 1974, or an FAA-approved equivalent.

This amendment becomes effective August 27, 1975.

Issued in Washington, D.C., on July 22, 1975.

J. A. FERRARESE,
Acting Director,
Flight Standards Service.

[FR Doc.75-19433 Filed 7-25-75;8:45 am]

[Docket No. 14816; Amdt. 39-2279]

PART 39—AIRWORTHINESS DIRECTIVES

Societe Nationale Industrielle Aerospatiale (Sud Aviation) Alouette Helicopters

There have been reports of out-of-tolerance screw threads installed on the tail rotor pitch change control shaft on Societe Nationale Industrielle Aerospatiale (S.N.I.A.S., formerly Sud Aviation) Alouette II, Alouette-Astazou, and Alouette III helicopters equipped with certain tail rotor gearboxes that could result in jamming of the tail rotor directional control. Since this condition is likely to exist or develop in other helicopters of the same type design, an airworthiness directive is being issued which requires a one-time inspection of the screw threads to determine that the screw width is correct, and to modify, as necessary, certain S.N.I.A.S. Alouette II, Alouette-Astazou, and Alouette III helicopters.

Since this situation requires immediate adoption of this regulation, notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (14 CFR § 11.89), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

SOCIETE NATIONALE INDUSTRIELLE AEROSPATIALE (S.N.I.A.S. formerly SUD AVIATION). Applies to Alouette Helicopters SE3130, SE-313B, SA315B, SE3160, SA316B, SA3180, SA-318B, SA318C, and SA319B equipped with tail rotor gearbox, P/Ns 3130S.66.20.000, 3130S.-66.30.000, 3130.66.40.000, 3130S.66.50.000, 31-30S.66.60.000, or 3130S.66.70.000 without modification AM 1004, or P/Ns 3160S.66.00.000 or 3160S.66.10.000 without modification AM 1582.

Compliance is required within the next 10 hours' time in service after the effective date of this AD, unless already accomplished in accordance with Lama Service Bulletin No. 01.03 for Model SA315B or Alouette Service Bulletin No. 01.29 for the other designated models.

To prevent possible jamming of the tail rotor directional control, accomplish the following:

(a) Determine the width of the top of the square thread at each end of screws P/N 3130S.66.23.002 or 3130S.66.50.016. If the width is between 1.5 and 2.0 mm, the assembly may be reinstalled without further work.

NOTE: Access to the screws is gained by removing the tail rotor pitch change control shaft.

(b) If the thread width is not within 1.5 and 2.0 mm, rework the extreme end of the thread and reinstall the tail rotor pitch change assembly in accordance with Aerospatiale Service Bulletin No. 01.29 dated November 10, 1971 (except Aerospatiale Service Bulletin No. 01.03 dated November 10, 1971 for Model SA315B), or an equivalent approved by the Chief, Aircraft Certification Staff, FAA, Europe, Africa, and Middle East Region, c/o American Embassy, APO New York, N.Y. 09667.

This amendment becomes effective July 28, 1975.

Issued in Washington, D.C. on July 21, 1975.

J. A. FERRARESE,
Acting Director,
Flight Standards Service.

[FR Doc.75-19435 Filed 7-25-75;8:45 am]

[Airspace Docket No. 75-SO-65]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Control Zone and Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the Elizabeth City, N.C., control zone and transition area.

The Elizabeth City control zone is described in § 71.171 (40 F.R. 354) and the Elizabeth City transition area is described in § 71.181 (40 F.R. 441). The present VOR-RWY-1 Instrument Approach Procedure serving Elizabeth City CGAS has been revised to preclude flight within Restricted Area R-5302, which necessitates an alteration of the control zone and transition area descriptions. The NDB-A Instrument Approach Procedure final approach course has been realigned by one degree, which also necessitates a change in the transition area description. Since these amendments are less restrictive in nature, notice and public procedure hereon are unnecessary.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective immediately, as hereinafter set forth.

In § 71.171 (40 F.R. 354), the Elizabeth City, N.C., control zone is amended as follows: "* * * within 3 miles each side of Elizabeth City VOR 195° radial, extending from the 5-mile radius zone to 8.5 miles south of the VOR; * * *" is deleted and "* * * within 3 miles each side of Elizabeth City VOR 188° radial, extending from the 5-mile radius zone to 10 miles south of the VOR; * * *" is substituted therefor.

In § 71.181 (40 F.R. 441), the Elizabeth City, N.C., transition area is amended to read:

ELIZABETH CITY, N.C.

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of CGAS Elizabeth City (latitude 36° 15'35" N., longitude 76°10'20" W.); within 3 miles each side of the 128° bearing from Weeksville RBN, extending from the 8.5-mile radius area to 8.5 miles southeast of the RBN; within 5 miles east and 3 miles west of Elizabeth City VOR 188° radial, extending from the 8.5-mile radius area to 12.5 miles south of the VOR; within 3 miles each side of Elizabeth City VOR 357° radial, extending from the 8.5-mile radius area to 8.5 miles north of the VOR.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Issued in East Point, Ga., on June 18, 1975.

LONNIE D. PARRISH,
Acting Director,
Southern Region.

[FR Doc.75-19437 Filed 7-25-75;8:45 am]

[Airspace Docket No. 75-WE-4]

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

Alteration of Jet Route

On May 30, 1975, a Notice of Proposed Rule Making (NPRM) was published in the Federal Register (40 F.R. 23475) stating that the Federal Aviation Administration (FAA) was considering an amendment to Part 75 of the Federal Aviation Regulations that would realign a segment of J-88 from Los Angeles, Calif., to Santa Barbara, Calif.

Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of comments. All comments received were favorable.

In consideration of the foregoing, Part 75 of the Federal Aviation Regulations is amended, effective 0901 GMT, October 9, 1975, as hereinafter set forth.

In § 75.100 (40 F.R. 705) Jet Route No. 88 is amended to read as follows:

Jet Route No. 88 From Los Angeles, Calif., via Santa Barbara, Calif.; Salinas, Calif.; INT of the Salinas 310° and the Oakland, Calif., 170° radials; to Oakland.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)))

Issued in Washington, D.C. on July 22, 1975.

WILLIAM E. BROADWATER,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.75-19438 Filed 7-25-75;8:45 am]

Title 29—Labor

CHAPTER XVII—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Industrial Slings

Correction

In FR Doc. 75-16221 appearing at page 27368 in the issue of Friday, June 27, 1975, on page 27372 words were dropped and added and type styles set incorrectly in § 1910.184(e)(9)(i) The words now reading "Alloy *steel chain slings.* (i) Worn or damaged formed master links," should read "Alloy steel chain slings with cracked or deformed master links,".

CHAPTER XXV—OFFICE OF EMPLOYEE BENEFITS SECURITY, DEPARTMENT OF LABOR

PART 2555—INTERPRETIVE BULLETINS RELATING TO FIDUCIARY RESPONSIBILITY

Employee Retirement Income Security

In order to provide a concise and ready reference to its interpretations of the provisions of Part 4 of Title I of the Employee Retirement Income Security Act of 1974 relating to fiduciary responsibilities, the Department of Labor will hereafter publish its interpretive bulletins pertaining to fiduciary responsibilities in the Rules and Regulations section of the FEDERAL REGISTER.

Interpretive bulletins IB-75-1 through 75-5, which are published in this issue of the FEDERAL REGISTER and are now included in Part 2555, were previously issued to the public by the Department of Labor.

Copies of the various interpretive bulletins may be obtained from the Labor-Management Services Administration Information Office, Rm. N-5641, New Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Accordingly, 29 CFR Chapter XXV is amended by adding a new Part 2555, Interpretive Bulletins Relating to Fiduciary Responsibility.

Signed at Washington, D.C. this 21st day of July, 1975.

JAMES D. HUTCHINSON,
Administrator of Pension and Welfare Benefit Programs.

Sec.

2555.75-1 Interpretive Bulletin Relating to Section 414(c)(4) of the Employee Retirement Security Act of 1974.
2555.75-2 Interpretive Bulletin Relating to Prohibited Transactions.
2555.75-3 Interpretive Bulletin Relating to Investments by Employee Benefit Plans in Securities of Registered Investment Companies.
2555.75-4 Interpretive Bulletin Relating to Indemnification of Fiduciaries.
2555.75-5 Questions and Answers Relating to Fiduciary Responsibility.

AUTHORITY: Sec. 414(c)(4), Employee Retirement Income Security Act of 1974.

§ 2555.75-1 Interpretive bulletin relating to section 414(c)(4) of the Employee Retirement Income Security Act of 1974.

On December 31, 1974, the Department of Labor issued an interpretive bulletin, ERISA IB 75-1, outlining and clarifying the scope of section 414(c)(4) of the Employee Retirement Income Security Act of 1974. That section provides that section 406 and 407(a) of the Act (relating to prohibited transactions) shall not apply to the provision of certain services before June 30, 1977, between a plan and a party in interest if the three requirements contained in section 414(c)(4) are met. The Department of Labor emphasized that section 414(c)(4) does not delay the applicability of any of the other fiduciary responsibility provisions of Part 4 of Title I of the Act.

The first requirement contained in section 414(c)(4) is that such services must be provided either (1) under a binding contract in effect on July 1, 1974 (or pursuant to renewals of such contract), or (2) by a party in interest who ordinarily and customarily furnished such services on June 30, 1974.

The second requirement is that at all times the services be provided on terms at least as favorable to the plan as would be terms newly negotiated in a current arm's-length transaction with an unrelated party.

The third requirement is that the provision of services must not be or have been, at the time of such provision, a prohibited transaction within the meaning of section 503(b) of the Internal Revenue Code of 1954 or the corresponding provisions of prior internal revenue laws.

If the three requirements of section 414(c)(4) are met, section 406 of the Act will not apply to services provided before June 30, 1977, to customers to whom such services were being provided on June 30, 1974, as well as to new customers.

To the extent section 406 would apply to the receipt of compensation for services rendered, section 406 shall not apply to the receipt of compensation for such services provided before June 30, 1977, if the three requirements of section 414(c)(4) are met.

To the extent section 406 would apply to the providing of multiple services to a plan, section 406 will not apply to the providing of services to the plan before June 30, 1977, if the three requirements of section 414(c)(4) are met.

Thus, if the three requirements of section 414(c)(4) are met, a person serving as fiduciary to a plan who already receives full-time pay from an employer or an association of employers whose employees are participants in such plan, or from an employee organization whose members are participants in such plan, may continue to receive reasonable compensation from the plan for services rendered to the plan before June 30, 1977.

Similarly, until June 30, 1977, for example, a plan consultant who may be a fiduciary because of the nature of the consultative and administrative services being provided may, if the three requirements of section 414(c)(4) are met, continue to cause the sale of insurance to the plan and continue to receive commissions for such sales from the insurance company writing the policy.

Similarly, if the three requirements of section 414(c)(4) are met, a securities broker-dealer who renders investment advice to a plan for a fee, thereby becoming a fiduciary, may furnish other services to the plan, such as brokerage services, and receive compensation therefor. Also, if a registered representative of such a broker-dealer were a fiduciary, the registered representative may receive compensation, including commissions, for brokerage services performed before June 30, 1977.

§ 2555.75-2 Interpretive bulletin relating to prohibited transactions.

On February 6, 1975, the Department of Labor issued an interpretive bulletin, ERISA IB 75-2, with respect to whether a party in interest has engaged in a prohibited transaction with an employee benefit plan where the party in interest has engaged in a transaction with a corporation or partnership (within the meaning of section 7701 of the Internal Revenue Code of 1954) in which the plan has invested.

Generally, investment by a plan in securities (within the meaning of section 3(20) of the Employee Retirement Income Security Act of 1974) of a corporation or partnership will not, solely by reason of such investment, be considered to be an investment in the underlying assets of such corporation or partnership so as to make such assets of the entity "plan assets" and thereby make a subsequent transaction between the party in interest and the corporation or partnership a prohibited transaction under section 406 of the Act.

For example, if an insurance company issues a contract or policy of insurance to a plan and places the consideration for such contract or policy in its general asset account, the assets in such account shall not be considered to be plan assets. Therefore, a subsequent transaction involving the general asset account between a party in interest and the insurance company will not, solely because the plan has been issued such a contract or policy of insurance, be a prohibited transaction.

Similarly, for example, where a plan acquires a security of a corporation or a limited partnership interest in a partnership, a subsequent lease or sale of property between such corporation or partnership and a party in interest will not be a prohibited transaction solely by reason of the plan's investment in the corporation or partnership.

This general proposition, as applied to corporations and partnerships, is consistent with section 401(b)(1) of the Act, relating to plan investments in investment companies registered under the Investment Company Act of 1940. Under section 401(b)(1), an investment by a plan in securities of such an investment company may be made without causing, solely by reason of such investment, any of the assets of the investment company to be considered to be assets of the plan.

However, the preceding paragraphs do not mean that an investment of plan assets in a security of a corporation or partnership may not be a prohibited transaction. For example, section 406(a)(1)(D) prohibits the direct or indirect transfer to, or use by or for the benefit of, a party in interest of any assets of the plan and section 406(b)(1) prohibits a fiduciary from dealing with the

assets of the plan in his own interest or for his own account.

Thus, for example, if there is an arrangement under which a plan invests in, or retains its investment in, an investment company and as part of the arrangement it is expected that the investment company will purchase securities from a party in interest, such arrangement is a prohibited transaction.

Similarly, the purchase by a plan of an insurance policy pursuant to an arrangement under which it is expected that the insurance company will make a loan to a party in interest is a prohibited transaction.

Moreover, notwithstanding the foregoing, if a transaction between a party in interest and a plan would be a prohibited transaction, then such a transaction between a party in interest and such corporation or partnership will ordinarily be a prohibited transaction if the plan may, by itself, require the corporation or partnership to engage in such transaction.

Similarly, if a transaction between a party in interest and a plan would be a prohibited transaction, then such a transaction between a party in interest and such corporation or partnership will ordinarily be a prohibited transaction if such party in interest, together with one or more persons who are parties in interest by reason of such persons' relationship (within the meaning of section 3(14)(E) through (I)) to such party in interest may, with the aid of the plan but without the aid of any other persons, require the corporation or partnership to engage in such a transaction. However, the preceding sentence does not apply if the parties in interest engaging in the transaction, together with one or more persons who are parties in interest by reason of such persons' relationship (within the meaning of section 3(14)(E) through (I)) to such party in interest, may, by themselves, require the corporation or partnership to engage in the transaction.

Further, the Department of Labor emphasizes that it would consider a fiduciary who makes or retains an investment in a corporation or partnership for the purpose of avoiding the application of the fiduciary responsibility provisions of the Act to be in contravention of the provisions of section 404(a) of the Act.

§ 2555.75–3 Interpretive bulletin relating to investments by employee benefit plans in securities of registered investment companies.

On March 12, 1975, the Department of Labor issued an interpretive bulletin, ERISA IB 75–3, with regard to its interpretation of section 3(21)(B) of the Employee Retirement Income Security Act of 1974. That section provides that an investment by an employee benefit plan in securities issued by an investment company registered under the Investment Company Act of 1940 shall not by itself cause the investment company, its investment adviser or principal underwriter to be deemed to be a fiduciary or party in interest "except insofar as such investment company or its investment adviser or principal underwriter acts in connection with an employee benefit plan covering employees of the investment company, the investment adviser, or its principal underwriter."

The Department of Labor interprets this section as an elaboration of the principle set forth in section 401(b)(1) of the Act and ERISA IB 75–2 (issued February 6, 1975) that the assets of an investment company shall not be deemed to be assets of a plan solely by reason of an investment by such plan in the shares of such investment company. Consistent with this principle, the Department of Labor interprets this section to mean that a person who is connected with an investment company, such as the investment company itself, its investment adviser or its principal underwriter, is not to be deemed to be a fiduciary of or party in interest with respect to a plan solely because the plan has invested in the investment company's shares.

This principle applies, for example, to a plan covering employees of an investment adviser to an investment company where the plan invests in the securities of the investment company. In such a case the investment company or its principal underwriter is not to be deemed to be a fiduciary of or party in interest with respect to the plan solely because of such investment.

On the other hand, the exception clause in section 3(21) emphasizes that if an investment company, its investment adviser or its principal underwriter is a fiduciary or party in interest for a reason other than the investment in the securities of the investment company, such a person remains a party in interest or fiduciary. Thus, in the preceding example, since an employer is a party in interest, the investment adviser remains a party in interest with respect to a plan covering its employees.

The Department of Labor emphasized that an investment adviser, principal underwriter or investment company which is a fiduciary by virtue of section 3(21)(A) of the Act is subject to the fiduciary responsibility provisions of Part 4 of Title I of the Act, including those relating to fiduciary duties under section 404.

§ 2555.75–4 Interpretive bulletin relating to indemnification of fiduciaries.

On June 4, 1975, the Department of Labor issued an interpretive bulletin, ERISA IB 75–4, announcing the Department's interpretation of section 410(a) of the Employee Retirement Income Security Act of 1974, insofar as that section relates to indemnification of fiduciaries. Section 410(a) states, in relevant part, that "any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part shall be void as against public policy."

The Department of Labor interprets this section to permit indemnification agreements which do not relieve a fiduciary of responsibility or liability under Part 4 of Title I. Indemnification provisions which leave the fiduciary fully responsible and liable, but merely permit another party to satisfy any liability incurred by the fiduciary in the same manner as insurance purchased under section 410(b)(3), are therefore not void under section 410(a).

Examples of such indemnification provisions are:

(1) Indemnification of a plan fiduciary by (a) an employer, any of whose employees are covered by the plan, or an affiliate (as defined in section 407(d)(7) of the Act) of such employer, or (b) an employee organization, any of whose members are covered by the plan; and

(2) Indemnification by a plan fiduciary of the fiduciary's employees who actually perform the fiduciary services.

The Department of Labor interprets section 410(a) as rendering void any arrangement for indemnification of a fiduciary of an employee benefit plan by the plan. Such an arrangement would have the same result as an exculpatory clause, in that it would, in effect, relieve the fiduciary of responsibility and liability to the plan by abrogating the plan's right to recovery from the fiduciary for breaches of fiduciary obligations.

While indemnification arrangements do not contravene the provisions of section 410(a), parties entering into an indemnification agreement should consider whether the agreement complies with the other provisions of Part 4 of Title I of the Act and with other applicable laws.

§ 2555.75–5 Questions and answers relating to fiduciary responsibility.

On June 25, 1975, the Department of Labor issued an interpretive bulletin, ERISA IB 75–5, containing questions and answers relating to certain aspects of the recently enacted Employee Retirement Income Security Act of 1974 (the "Act").

Pending the issuance of regulations or other guidelines, persons may rely on the answers to these questions in order to resolve the issues that are specifically considered. No inferences should be drawn regarding issues not raised which may be suggested by a particular question and answer or as to why certain questions, and not others, are included. Furthermore, in applying the questions and answers, the effect of subsequent legislation, regulations, court decisions, and interpretative bulletins must be considered. To the extent that plans utilize or rely on these answers and the requirements of regulations subsequently adopted vary from the answers relied on, such plans may have to be amended.

An index of the questions and answers, relating them to the appropriate sections of the Act, is also provided.

INDEX

KEY TO QUESTION PREFIXES

D—Refers to Definitions.
FR—Refers to Fiduciary Responsibility.

Section No.	*Question No.*
3(21)	D–1
3(38)	FR–6, FR–7
402(a)	FR–1, FR–2, FR–3
402(b)(1)	FR–4, FR–5
402(c)(3)	FR–6, FR–7
404(a)	FR–10
405(a)(3)	FR–10
405(b)(1)(A)	FR–10
406(a)	FR–9
409(a)	FR–10
412(a)	FR–8, FR–9

D–1 Q: Is an attorney, accountant, actuary or consultant who renders legal, accounting, actuarial or consulting services to an employee benefit plan (other than an investment adviser to the plan) a fiduciary to the plan solely by virtue of the rendering of such services, absent a showing that such consultant (a) exercises discretionary authority or discretionary control respecting the management of the plan, (b) exercises authority or control respecting management or disposition of the plan's assets, (c) renders investment advice for a fee, direct or indirect, with respect to the assets of the plan, or has any authority or responsibility to do so, or (d) has any discretionary authority or discretionary responsibility in the administration of the plan?

A: No. However, while Attorneys, accountants, actuaries and consultants performing their usual professional functions will ordinarily not be considered fiduciaries, if the factual situation in a particular case falls within one of the categories described in clauses (a) through (d) of this question, such persons would be considered to be fiduciaries within the meaning of section 3(21) of the Act. The Internal Revenue Service notes that such persons would also be considered to be fiduciaries within the meaning of section 4975(e)(3) of the Internal Revenue Code of 1954.

FR–1 Q: If an instrument establishing an employee benefit plan provides that the plan committee shall control and manage the operation and administration of the

plan and specifies who shall constitute the plan committee (either by position or by naming individuals to the committee), does such provision adequately satisfy the requirement in section 402(a) that a "named fiduciary" be provided for in a plan instrument?

A: Yes. While the better practice would be to state explicitly that the plan committee is the "named fiduciary" for purposes of the Act, clear identification of one or more persons, by name or title, combined with a statement that such person or persons have authority to control and manage the operation and administration of the plan, satisfies the "named fiduciary" requirement of section 402(a). The purpose of this requirement is to enable employees and other interested persons to ascertain who is responsible for operating the plan. The instrument in the above example, which provides that "the plan committee shall control and manage the operation and administration of the plan", and specifies, by name or position, who shall constitute the committee, fulfills this requirement.

FR-2 Q: In a union negotiated employee benefit plan, the instrument establishing the plan provides that a joint board on which employees and employers are equally represented shall control and manage the operation and administration of the plan. Does this provision adequately satisfy the requirement in section 402(a) that a "named fiduciary" be provided for in a plan instrument?

A: Yes, for the reasons stated in response to question FR-1. The joint board is clearly identified as the entity which has authority to control and manage the operation and administration of the plan, and the persons designated to be members of such joint board would be named fiduciaries under section 402(a).

FR-3 Q: May an employee benefit plan covering employees of a corporation designate the corporation as the "named fiduciary" for purposes of section 402(a)(1) of the Act?

A: Yes, it may. Section 402(a)(2) of the Act states that a "named fiduciary" is a fiduciary either named in the plan instrument or designated according to a procedure set forth in the plan instrument. A fiduciary is a "person" falling within the definition of fiduciary set forth in section 3(21)(A) of the Act. A "person" may be a corporation under the definition of person contained in section 3(9) of the Act. While such designation satisfies the requirement of enabling employees and other interested persons to ascertain the person or persons responsible for operating the plan, a plan instrument which designates a corporation as "named fiduciary" should provide for designation by the corporation of specified individuals or other persons to carry out specified fiduciary responsibilities under the plan, in accordance with section 405(c)(1)(B) of the Act.

FR-4 Q: A defined benefit pension plan's procedure for establishing and carrying out a funding policy provides that the plan's trustees shall, at a meeting duly called for the purpose, establish a funding policy and method which satisfies the requirements of Part 3 of Title I of the Act, and shall meet annually at a stated time of the year to review such funding policy and method. It further provides that all actions taken with respect to such funding policy and method and the reasons therefor shall be recorded in the minutes of the trustees' meetings. Does this procedure comply with section 402(b)(1) of the Act?

A: Yes. The above procedure specifies who is to establish the funding policy and method for the plan, and provides for a written record of the actions taken with respect to such funding policy and method, including the reasons for such actions. The purpose of the funding policy requirement set forth in section 402(b)(1) is to enable plan participants and beneficiaries to ascertain that the plan has a funding policy that meets the requirements of Part 3 of Title I of the Act. The procedure set forth above meets that requirement.

FR-5 Q: Must a welfare plan in which the benefits are paid out of the general assets of the employer have a procedure for establishing and carrying out a funding policy set forth in the plan instrument?

A: No. Section 402(b)(1) requires that the plan provide for such a procedure "consistent with the objectives of the plan" and requirements of Title I of the Act. In situations in which a plan is unfunded and Title I of the Act does not require the plan to be funded, there is no need to provide for such a procedure. If the welfare plan were funded, a procedure consistent with the objectives of the plan would have to be established.

FR-6 Q: May an investment adviser which is neither a bank nor an insurance company, and which is not registered under the Investment Advisers Act of 1940 in reliance upon an exemption from registration provided in that Act, be appointed an investment manager under section 402(c)(3) of the Act?

A: No. The only persons who may be appointed an investment manager under section 402(c)(3) of the Act are persons who meet the requirements of section 3(38) of the Act—namely, banks (as defined in the Investment Advisers Act of 1940), insurance companies qualified under the laws of more than one state to manage, acquire and dispose of plan assets, or persons registered as investment advisers under the Investment Advisers Act of 1940.

FR-7 Q: May an investment adviser that has a registration application pending under the Investment Advisers Act of 1940 function as an investment manager under the Act prior to the effective date of registration under the Investment Advisers Act?

A: No, for the reasons stated in the answer to FR-6 above.

FR-8 Q: Under the temporary bonding regulation set forth in 29 CFR § 2550.412-1, must a person who renders investment advice to a plan for a fee or other compensation, direct or indirect, but who does not exercise or have the right to exercise discretionary authority with respect to the assets of the plan, be bonded solely by reason of the provision of such investment advice?

A: No. A person who renders investment advice, but who does not exercise or have the right to exercise discretionary authority with respect to plan assets, is not required to be bonded solely by reason of the provision of such investment advice. Such a person is not considered to be "handling" funds within the meaning of the temporary bonding regulation set forth in 29 CFR § 2550.412-1, which incorporates by reference 29 CFR § 464.7. For purposes of the temporary bonding regulation, only those fiduciaries who handle funds must be bonded. If, in addition to the rendering of investment advice, such person performs any additional function which constitutes the handling of plan funds under 29 CFR § 464.7, the person would have to be bonded.

FR-9 Q: May an employee benefit plan purchase a bond covering plan officials?

A: Yes. The bonding requirement, which applies, with certain exceptions, to every plan official under section 412(a) of the Act, is for the protection of the plan and does not benefit any plan official or relieve any plan official of any obligation to the plan. The purchase of such bond by a plan will not, therefore, be considered to be in contravention of sections 406(a) or (b) of the Act.

FR-10 Q: An employee benefit plan is considering the construction of a building to house the administration of the plan. One trustee has proposed that the building be constructed on a cost plus basis by a particular contractor without competitive bidding. When the trustee was questioned by another trustee as to the basis of choice of the contractor, the impact of the building on the plan's administrative costs, whether a cost plus contract would yield a better price to the plan than a fixed price basis, and why a negotiated contract would be better than letting the contract for competitive bidding, no satisfactory answers were provided. Several of the trustees have argued that letting such a contract would be a violation of their general fiduciary responsibilities. Despite their arguments, a majority of the trustees appear to be ready to vote to construct the building as proposed. What should the minority trustees do to protect themselves from liability under section 409(a) of the Act and section 405(b)(1)(A) of the Act?

A: Here, where a majority of trustees appear ready to take action which would clearly be contrary to the prudence requirement of section 404(a)(1)(B) of the Act, it is incumbent on the minority trustees to take all reasonable and legal steps to prevent the action. Such steps might include preparations to obtain an injunction from a Federal District court under section 502(a)(3) of the Act, to notify the Labor Department, or to publicize the vote if the decision is to proceed as proposed. If, having taken all reasonable and legal steps to prevent the imprudent action, the minority trustees have not succeeded, they will not incur liability for the action of the majority. Mere resignation, however, without taking steps to prevent the imprudent action, will not suffice to avoid liability for the minority trustees once they have knowledge that the imprudent action is under consideration.

More generally, trustees should take great care to document adequately all meetings where actions are taken with respect to management and control of plan assets. Written minutes of all actions taken should be kept describing the action taken, and stating how each trustee voted on each matter. If, as in the case above, trustees object to a proposed action on the grounds of possible violation of the fiduciary responsibility provisions of the Act, the trustees so objecting should insist that their objections and the responses to such objections be included in the record of the meeting. It should be noted that, where a trustee believes that a cotrustee has already committed a breach, resignation by the trustee as a protest against such breach will not generally be considered sufficient to discharge the trustee's positive duty under section 405(a)(3) to make reasonable efforts under the circumstances to remedy the breach.

Copies of these interpretative bulletins or other ERISA interpretative bulletins may be obtained from the Labor-Management Services Administration Information Office, Rm. N-5641, New Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C. 21210.

Dated: July 21, 1975, Washington, D.C.

[FR Doc.75-19451 Filed 7-25-75;8:45 am]

Title 32—National Defense

CHAPTER VI—DEPARTMENT OF THE NAVY

PART 706—NAVIGATIONAL LIGHT WAIVERS

Amendments of Ship Nomenclature

Pursuant to the authority vested in the Secretary of the Navy by the provisions of 33 U.S.C. §§ 360 and 1052, the TABLE ONE in 32 C.F.R. § 706.2, is amended as follows to reflect nonsubstantive revisions of ship nomenclature which were promulgated by the Secretary of the Navy effective July 1, 1975:

a. Under the category "CRUISERS" in the "Vessel class or type" column:

(1) Delete "CG(N) (Guided Missile Cruiser)" and substitute "CGN-9 (Guided Missile Cruiser Nuclear Powered)"; no change in other columns.

(2) Delete "CLG (Guided Missile Light Cruiser)" and substitute "CG-4 (Guided Missile Cruiser)"; no change in other columns.

(3) Add "CGN (Guided Missile Cruiser Nuclear Powered) except 9 class"; in column 1, "18 or less"; in column 2, "3 or less"; in column 3, "0.9 or greater to 1"; and in column 4, "17 or greater".

(4) Add "CG (Guided Missile Cruiser) except 4 class", in column 1, "18 or less"; in column 2, "3 or less"; in column 3, "0.9 or greater to 1"; and in column 4, "17 or greater".

b. Under the category "DESTROYERS" in the "Vessel class or type" column: Delete "DLG (Guided Missile Frigate)".

c. Under the category of "PATROL VESSELS" in the "Vessel class or type" column: Delete "DE (Escort Vessel)", and substitute "FF (Frigate) and AGFF (Frigate, research ship)"; no change in other columns.

Additionally, TABLE ONE in 32 C.F.R. § 706.2 is amended by substituting the letters "MSC" for the letters "MSTS" in the "T-AKV" line under the category "Aircraft Carriers" in the "Vessel class or type" column, in order to reflect the redesignation of the "Military Sea Transportation Service" as the "Military Sealift Command".

The table with the foregoing changes incorporated is reprinted below.

Dated: July 17, 1975.

H. B. ROBERTSON, Jr.
Rear Admiral, JAGC, U.S. Navy, Judge Advocate General.

TABLE 1

Vessel class or type	Distance in feet of the forward 20-point white light below minimum required height (based on requirements of international rule 2(a)(iii))	Distance in feet below minimum required vertical separation between and after 20-point white lights (based on requirements of international rule 2(a)(iii))	Ratio of horizontal to vertical separation of the 2 20-point white lights (based on international rule 2(a)(iii) which requires ratio of 3 to 1)	Minimum distance horizontally in feet between forward and after 20-point white lights
Cruisers:				
CA (heavy cruisers)	None	None	0.9 or greater to 1	29 or greater.
CAG (guided missile heavy cruiser)				
CL (light cruiser)				
CGN-9 (guided missile cruiser, nuclear powered)				
CG-4 (guided missile cruiser)				
CGN (guided missile cruiser, nuclear powered) except 9 class.	18 or less	3 or less	do	17 or greater.
CG (guided missile cruiser) except 4 class				
Aircraft carriers:				
T-AKV (MSC auxiliary cargo ship)	11 or less	2 or less	0.7 or greater to 1	20 or greater.
LPH (amphibious assault ship)				
CVA (attack aircraft carrier)				
CVS (ASW support aircraft carrier)				
CC2 (command ship converted from aircraft carrier).	25	None	2 or greater to 1	30 or greater.
AGMR-2 (major communications relay ship converted from aircraft carrier).	do	do	3 or greater to 1	Do.
AVT (auxiliary aircraft transport)	14 or less	do	do	45 or greater.
Auxiliaries:				
ADG (degaussing vessel)	40 or less	3 or less	0.9 or greater to 1	19 or greater.
AG (miscellaneous)				
AGB (icebreaker)				
AGS (surveying ship)				
AKS (general stores issue ship)				
AN (net laying ship)				
APB (self-propelled barracks ship)				
ARSD (salvage lifting vessel)				
AVB (advanced aviation base ship)				
AVM (guided missile ship)				
AVP (small seaplane tender)				
Destroyers:				
DD (destroyer)	18 or less	do	do	17 or greater.
DDE (escort destroyer)				
DDG (guided missile destroyer)				
DDR (radar picket destroyer)				
DL (frigate)				
Amphibious warfare vessels:				
APD (high speed transport)	40 or less	5 or less	1 or greater to 1	21 or greater.
IFS (inshore fire support ship)				
LSD (dock landing ship)				
LST (tank landing ship)				
LSM (medium landing ship)				
LSMR (landing ship medium rocket)	19 or less	None	3 or greater to 1	158 or greater.
Patrol vessels:				
FF (frigate)	17 or less	5 or less	1 or greater to 1	19 or greater.
AGFF (frigate, research ship)				
DER (radar picket escort vessel)				
PC (submarine chaser)				
PCE (escort)				
PCER (rescue escort)				
PC(H) (hydrofoil patrol craft)	None	After white light not carried.	After white light not carried.	After white light not carried.
PHM (patrol hydrofoil missile ship)				
PGM (motor gun boat)	8 or less	None	1 or greater to 1	Do.
Mine vessels:				
MHC (minehunter coastal)	16 or less	3 or less	0.6 or greater to 1	8 or greater.
MSF (minesweeper fleet)				
MSO (minesweeper ocean)				
MSS (minesweeper special)				
Service vessels:				
YG (garbage lighter, self-propelled)	do	5 or less	do	12 or greater.
YV (drone aircraft catapult control craft)				
Self-propelled crane (no hull classification)				
Submersibles:				
NR-1 (nuclear powered research vehicle)	10	After white light neither required nor carried.	After white light neither required nor carried	After white light neither required nor carried.

[FR Doc.75-19367 Filed 7-25-75;8:45 am]