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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

Revised Rules for Collecting Cotton Research and Promotion Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the Cotton Board's rules and regulations governing the collection of cotton research and promotion assessments. The Cotton Board determined that collection procedures needed to be revised to reduce the risk of non-collection of assessments and permit the early detection of program violations. Revisions require all collecting handlers to submit a no cotton purchased handler report when appropriate and also set forth specific measures to be taken if collecting handlers fail to comply with the regulations, including escrow accounts and interest charges on delinquent accounts. In addition, miscellaneous changes are made for clarity.

EFFECTIVE DATE: March 24, 1986.

FOR FURTHER INFORMATION CONTACT: Naomi Hacker, Chief, Research and Promotion Staff, Cotton Division, AMS, USDA, Washington, DC 20250, (202) 447–2259.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed in accordance with Executive Order 12291 and Department Regulation 1512–1 and was determined not to be a "major rule" since it does not meet the criteria for a major regulatory action as stated in the Order. William T. Manley, Deputy Administrator, AMS, has certified that this action will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The costs of compliance will not be significantly increased in that most of the changes reflect practices that are presently used by the Cotton Board. In addition, while the changes in the regulations will revise collection procedures, such changes will not affect the competitive position or market access of small entities in the cotton industry. The addition of interest charges will apply to only those entities that do not comply with current collection procedures and the addition of a "no cotton purchased" form is a self-certification form only. The changes will be applied to all entities regardless of size.

The information collection provisions in this rule have been given the OMB clearance number 0581–0115.

Background

The Cotton Research and Promotion Act (7 U.S.C. 2101 *et seq.*) provides for the collection of assessments on each bale of upland cotton marketed to support cotton research and promotion activities. The Cotton Research and Promotion Order (7 CFR 1205.301 *et seq.*), which implements the Act, was approved in a beltwide referendum of cotton producers. A 19-member Cotton Board appointed by the Secretary of Agriculture administers the program and collects the assessments. Collecting handlers, generally the first buyers of cotton from producers, are required to collect and remit the assessments to the Cotton Board. Producers who do not wish to participate in the research and promotion program may request a refund of any assessments paid.

The Cotton Research and Promotion Order authorizes the Cotton Board, subject to the Secretary of Agriculture's approval, to make rules and regulations to effectuate the terms and provisions of the Order, and to investigate and report to the Secretary violations of the Order (7 CFR 1205.327). The collection, remittance and reporting requirements are set forth in the Cotton Board Rules and Regulations (7 CFR 1205.500 *et seq.*).

The Cotton Board Rules and Regulations provide in § 1205.514 that each collecting handler shall transmit assessments to the Cotton Board as follows:

a. Each calendar month is a reporting period ending at the close of business on the last day of the month;

b. Collecting handlers prepare a report for each reporting period that cotton is handled on which the handler is required to collect the assessments. These reports are to be mailed to the Cotton Board along with the collected assessments within 10 days after the close of the reporting period.

The Cotton Board collects the research and promotion assessments with the cooperation of collecting handlers and followup efforts by the Cotton Board staff as needed. The objective of this action is to further strengthen the program's collection procedures. Collecting handlers will be more closely monitored to detect actual violations soon after they occur and to help prevent potential violations. The revisions will also enable the Cotton Board to more effectively deal with the small number of collecting handlers who are found to be in violation of the Act and Order. The collection procedures will be strengthened as follows.

First, the Cotton Board Rules and Regulations are amended to require collecting handlers to submit a report to the Cotton Board for reporting periods when no cotton was handled on which assessments were due. This "no cotton purchased" report form will be provided to collecting handlers each month by the Cotton Board. To accommodate handlers who purchase cotton only during certain months, provision will be made for the filing of a final no cotton purchased report at the conclusion of his/her marketing season. The report will be in the form of a certification. It will contain a statement that the collecting handler did not and, for a final report, would not handle any cotton on which assessments were due during the month(s) covered by the report. The handler will be required to sign, date and return the form to the Cotton Board.

Handlers will be required to mail the report to the Cotton Board within 10 days after the close of the reporting period when no cotton was handled on which assessments are due. If a collecting handler handles cotton during any month following submission of the final report for his/her marketing season, such handlers shall send a collecting handler report and remittance to the Cotton Board by the 10th day of the month following the month in which cotton was handled. The report will be a monitoring tool which will allow the

Cotton Board to detect violations earlier than under current procedures.

Further, the regulations are revised by adding a new section 1205.515 to specify certain of the actions that will be available for use by the Cotton Board whenever a collecting handler failed to report and remit assessments that were collected as required by § 1205.514. The actions available to the Cotton Board include: (a) Audits of the collecting handler's books and records to determine assessments due the Cotton Board; (b) requiring the establishment of an escrow account for the deposit of assessments collected, with the frequency and schedule of withdrawals and deposits to be determined by the Cotton Board with the approval of the Secretary; and (c) referral of the matter to the Secretary for appropriate legal action against the collecting handler. The Cotton Board will employ these measures singly or in combination in light of the circumstances of the particular case.

In addition, a new paragraph (d) is added to § 1205.514 to provide that if a collecting handler does not remit his assessments when due the assessments will be increased by an interest charge at rates prescribed by the Cotton Board with the approval of the Secretary. A 5-percent late charge will also be authorized if overdue assessments are not received prior to the subsequent report and assessment payment due from the handler. These provisions are expected to provide further incentive to collecting handlers to pay their assessment obligations promptly.

This rule is intended to reduce the risk of non-collection of research and promotion assessments, thereby enhancing the integrity of the program by helping to ensure that all funds collected are properly transmitted to the Cotton Board.

Proposed Rule

The revisions in the Cotton Board Rules and Regulations were published as a proposed rule in the January 3, 1986 **Federal Register** 51 FR 209.

Comments

Comments on the proposed rule were solicited from interested parties until February 1, 1986. Only one comment was received from a handler of cotton in overall opposition to the proposal. No other comments were received.

Final Rule

The Department believes that there is a need to strengthen regulations to ensure that all funds collected are properly transmitted to the Cotton Board. Therefore, after careful evaluation of all relevant factors, the Department has decided to finalize as proposed the revisions to the Cotton Board's rules and regulations governing the collection of cotton research and promotion assessments.

In 7 CFR Part 1205, § 1205.514 is revised and reorganized to include the no cotton purchased collecting handler report. The heading is changed to "Reports and remittance to Cotton Board." The first sentence of the section is amended because not all reports would transmit assessments. Paragraph (a) remains unchanged. The introductory text of paragraph (b) is shortened for clarity and the remainder of the paragraph is divided into two subparagraphs.

Subparagraph (1) describes the collecting handler report and lists the information needed in the report. Generally the information is the same as that which is currently required except for the deletion of the reference to PIK cotton.

Section 1205.514(b) is amended to clarify the requirement that collecting handler reports be mailed within 10 days after the close of the reporting period. The Cotton Board will use the postmarked date to determine whether a report was mailed on time.

Additionally, § 1205.514(b)(3) now requires the gin code number or, for PIK cotton, the county in which PIK cotton was earned. The provision regarding PIK cotton was promulgated on October 19, 1983 (48 FR 48451) and refers to cotton received by producers as payment-in-kind for acreage diversion. Since this program is no longer in effect, such a provision is obsolete and the revised § 1205.514 requires only the gin code number.

Subparagraph (2) describes the newly proposed no cotton purchased handler report. The collecting handler or the handler's agent will be required to sign and date the report form.

Paragraph (c) of § 1205.514 remains unchanged.

A new paragraph (d) is added to § 1205.514 to provide that if a collecting handler does not remit assessments when due, interest will be charged on the overdue assessments at rates prescribed by the Cotton Board with the approval of the Secretary. In addition to the interest charge, if assessments are not remitted within 10 days after the end of the next reporting period, there shall be a late payment charge of 5 percent of the value of the overdue assessments.

The present § 1205.515, covering receipts for payments of assessments, is redesignated § 1205.516, with paragraph (b) amended to remove as obsolete and unnecessary the reference to the county in which PIK cotton was earned.

Similarly, paragraph (n) of § 1205.500, defining the term "PIK cotton", is removed because it is obsolete.

A new § 1205.515 is added to set forth the actions that could be taken by the Cotton Board against collecting handlers who fail to comply with the requirements of § 1205.514.

Additionally, the procedure cotton producers must follow to obtain refunds of assessments in § 1205.520 is amended to clarify the requirement that producers mail refund applications within 90 days from the date assessments were collected. Paragraph (b) is changed to require that mailed refund applications be postmarked within 90 days from the date assessments were paid. The Cotton Board will use the postmark date to determine whether a refund application was mailed on time.

List of Subjects in 7 CFR Part 1205

Cotton, Administrative practice and procedure, Research and promotion, Cotton Board, Producer assessments, Producer refunds, Reporting and recordkeeping requirements.

Accordingly, Part 1205 of Chapter II, Title 7 of the Code of Federal Regulations of Part 1205 is amended as shown. The Table of Contents is amended accordingly.

PART 1205—[AMENDED]

1. The authority citation for Subpart—Cotton Board Rules and Regulations of Part 1205 is revised to read as follows:

Authority: Sec. 15, 80 Stat. 285; 7 U.S.C. 2114.

§ 1205.500 [Amended]

2. Section 1205.500 is amended by removing paragraph (n).

3. Section 1205.514 is amended by revising paragraphs (a) and (b) and adding paragraph (d) to read as follows:

§ 1205.514 Reports and remittance to Cotton Board.

Each collecting handler shall transmit assessments and reports to the Cotton Board as follows:

(a) *Reporting periods.* Each calender month shall be a reporting period and the period shall end at the close of business on the last day of the month.

(b) *Reports.* Each collecting handler shall make reports on forms made available or approved by the Cotton Board. Each report shall be mailed to the Cotton Board and postmarked within 10 days after the close of the reporting period.

(1) *Collecting handler report.* Each collecting handler shall prepare a separate report form each reporting period for each gin from which such handler handles cotton on which the handler is required to collect the assessments during the reporting period. Each report shall be mailed in duplicate to the Cotton Board and shall contain the following information:

(i) Date of report.

(ii) Reporting period covered by report.

(iii) Gin code number.

(iv) Name and address of handler.

(v) Listing of all producers from whom the handler was required to collect the assessments, their addresses, total number of bales, and total assessments collected and remitted for each producer.

(vi) Date of last report remitting assessments to the Cotton Board.

(2) *No cotton purchased report.* Each collecting handler shall submit a no cotton purchased report form for each reporting period in which no cotton was handled for which the handler is required to collect assessments during the reporting period. A collecting handler who handles cotton only during certain months shall file a final no cotton purchased report at the conclusion of his/her marketing season. If a collecting handler handles cotton during any month following submission of the final report for his/her marketing season, such handler shall send a collecting handler report and remittance to the Cotton Board by the 10th day of the month following the month in which cotton was handled. The no cotton purchased report shall be signed and dated by the handler or the handler's agent.

* * * * *

(d) *Interest and late payment charges.* (1) There shall be an interest charge, at rates prescribed by the Cotton Board with the approval of the Secretary, on any handler failing to remit assessments to the Cotton Board when due.

(2) In addition to the interest charge specified in paragraph (d)(1) above, there shall be a late payment charge on any handler whose remittance has not been received by the Cotton Board within 10 days after the close of the next reporting period. The late payment charge shall be 5 percent of the unpaid balance before interest charges have accrued.

4. Section 1205.515 is redesignated as § 1205.516. Paragraph (b) of newly designated § 1205.516 is revised to read as follows:

§ 1205.516 Receipts for payment of assessments.

* * * * *

(b) Gin code number of gin at which cotton was ginned.

* * * * *

5. A new § 1205.515 is added to read as follows:

§ 1205.515 Failure to report and remit.

Any collecting handler who fails to submit reports and remittances according to reporting periods and time schedules required in § 1205.514 shall be subject to appropriate action by the Cotton Board which may include one or more of the following actions:

(a) Audits of the collecting handler's books and records to determine the amount owed the Cotton Board.

(b) Require the establishment of an escrow account for the deposit of assessments collected. Frequency and schedule of deposits and withdrawals from the escrow account shall be determined by the Cotton Board with the approval of the Secretary.

(c) Referral to the Secretary for appropriate enforcement action.

6. Paragraph (b) of § 1205.520 is revised to read as follows:

§ 1205.520 [Amended]

* * * * *

(b) *Submission of refund application to Cotton Board.* Any producer requesting a refund shall mail an application on the prescribed form to the Cotton Board. The application shall be postmarked within 90 days from the date the assessments were paid on the cotton by such producer. The refund application shall show (1) producer's name and address; (2) collecting handler's name and address; (3) gin code number; (4) number of bales on which refund is requested; (5) total amount to be refunded; (6) date or inclusive dates on which assessments were paid; and (7) the producer's signature or properly witnessed mark. Where more than one producer shared in the assessment payment on cotton, joint or separate refund application forms may be filed. In any such case the refund application shall show the names, addresses and proportionate shares of all such producers. The refund application form shall bear the signature or properly witnessed mark of each producer seeking a refund.

* * * * *

Dated: February 13, 1986.

William T. Manley,

Deputy Administrator Marketing Programs.

[FR Doc. 86-3646 Filed 2-19-86; 8:45 am]

BILLING CODE 3410-02-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards

AGENCY: Small Business Administration.

ACTION: Statement of General Policy, SBA Size Policy Statement No. 1.

SUMMARY: The Small Business Administration (SBA) hereby gives notice of its intended application and interpretation of the definition of "number of employees," at 13 CFR 121.2(b). This Agency regulation has for a number of years provided for the calculation of the number of employees of a business for size standard purposes on several alternative bases, including employees retained on a ". . . full-time, part-time, temporary or other basis . . . ." The Agency has examined its administrative precedents interpreting 13 CFR 121.2(b) as it applies to the treatment of employees not clearly full-time, part-time or temporary employees of a business, and finds that a line of cases exists which deal with employees provided by temporary employment agencies and other employment contractors (hereafter jointly referred to as employment contractors) in a way which is overly mechanical and has the potential for subjecting SBA size determinations to abuse. In these cases, the Agency has merely applied the common law indicia of an employee/employer relationship, i.e., who hires, fires, pays and withholds taxes and provides benefits, to determine whether such individuals should be treated as employees of the business or not. This approach creates a potential for firms to avoid the consequences of their true size by imaginative use of employment contractors. Recognizing this potential for abuse and seeking a way to fairly ascertain which businesses are truly small and which are truly large, the Agency hereby announces that it shall examine the totality of the circumstances under which businesses have obtained employees from employment contractors to determine whether such employees should be considered employees of the subject business on some "other basis," under the existing regulatory language even if not temporary employees of the business under the common law. This general statement of policy also provides specific guidelines as to how the Agency intends to apply the language "other basis" contained in 13 CFR 121.2(b).

EFFECTIVE DATE: February 20, 1986.

ADDRESS: Written comments should be addressed to Robert J. Moffitt, Chairman, Size Policy Board, U.S. Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: David R. Kohler, Associate General Counsel, Office of General Law, (202) 653–6660.

SUPPLEMENTARY INFORMATION: The Small Business Administration (SBA) has determined that the definition of "number of employees" at 13 CFR 121.2(b) requires clarification in light of the decisions issued to date by the former Size Appeals Board (Board) and the current Office of Hearings and Appeals (OHA). This determination is based on the Agency's conclusion that certain size appeal determinations could be read to *necessarily* exclude employees obtained through employment contractors from the number of employees of a business considered in determining such business' size status. Two cases have directly addressed this particular issue: *Appeal of Marinette Marine Corporation and Marine Power Equipment Co.*, No. 1495, September 28, 1981, [*affirmed*, 527 F. Supp. 587 (D.D.C. 1981)], and *Size Appeal of Aeromech Industries, Inc.*, No. 1979, June 22, 1984. The purpose of this statement of general policy is to clarify the approach the Agency intends to take in the future for resolving questions arising under 13 CFR 121.2(b) and involving employment contractors.

Before discussing the specific question of whether individuals whose services are procured through an employment contractor should be counted as employees of a business for size determination purposes, a brief review of the Agency's interpretation of the language "number of employees" is in order. Two general principles have governed size determinations where the number of employees of the business has been in issue. Foremost of these is that all employees of a business, including those of its affiliates, whether full-time, part-time, temporary or otherwise (including floaters), and regardless of whether they are engaged in industries related to the procurement involved in the size protest, count as employees of the business for size status purposes. Second, individuals who are clearly employees of *bona fide* independent contractors/consultants of the business whose size is in question have not been generally considered as temporary employees of that business.

The Agency's decisions in *Marinette Marine* and *Aeromech* follow these general principles. In *Marinette Marine*, the Board held that employees retained for a short period of time through an employment contractor were not "temporary" employees of the protested concern since they were *bona fide* employees of the employment contractor, an unaffiliated business. In that case, the protested concern had utilized replacement workers for the completion of a Navy Contract. While the protested concern maintained surpervision and control over the worker's performance, all other incidents of employment were supplied by the employment contractor. The Board held that the term "temporary" employee in the size regulations does not include employees of other concerns, even if they are performing work on the premises of the prime contractor and subject to its supervision. *See Also Marinette Marine Corp.* v. *Department of Navy*, 527 F. Supp. 587, 590–92 (D.D.C. 1981). The Board appeared to draw on the precedent it established in *Size Appeal of Newton Lumber Co., Ltd.*, No. 502, July 14, 1971, where the status of certain logging contractors was in issue. There, the Size Appeals Board expressly applied the common law test for finding a master/servant relationship, i.e., who hires, fires, pays and withholds taxes, provides benefits and supervises performance. In *Aeromech*, where the status of certain consultants was in issue, OHA referred without further discussion to *Marinette Marine* as standing for the proposition that "persons on the payroll of a temporary personnel agency are not treated as employees of the firm whose small business size status is under consideration." *Aeromech, supra*, p. 6. The decisions in both of these cases follow the reasoning first applied in the context of the independent contractor/consultant cases not involving temporary personnel agencies. The rationale used was that where an individual was either self-employed or employed in the traditional sense by an independent company, i.e., such company selected him or her, paid his or her wages, withheld and paid employment taxes and benefits, etc., he or she could not be considered as also being an employee of the concern whose size was in question. While the Agency does not dispute the general wisdom of this rationale, it is concerned that mechanical application of this rationale ignoring the "other basis" portion of its regulations will result in decisions at variance with the spirit of the Small Business Act and the small business size standards promulgated pursuant thereto.

This concern is based, in part, on the manner in which the Board, and later OHA, analyzed the cases presenting the issue. In the decisions discussed above, the Board and OHA focused on only the common law indicia of an employer/employee relationship, without addressing the totality of the circumstances under which the individuals in question came to labor for the business whose size was in issue.

The mechanical exclusion of employees retained through an employment contractor from the number of employees counted in determining a business' size status would encourage circumvention of the size standards by means of creative employment practices. Therefore, in order to preserve the integrity of its size regulations, the SBA has determined that in appropriate cases individuals whose services have been procured through an employment contractor should be considered "individuals employed on . . . [an] other basis," under 13 CFR 121.2(b) and be counted as part of that business' "number of employees" even if technically the employees of the contractor under common law principles. To do otherwise would be to permit form to prevail over substance. The Agency will not condone the use of employment practices that allow a business to create the facial appearance of being small under the size standards while at the same time deriving the usual benefits from the services of individuals in excess of those standards.

Agency officials charged with the responsibility of making size determinations shall take special care in such cases to determine whether any "other basis," aside from whether a full-time, part-time or temporary employee/employer relationship exists, to properly treat such employees as employees of the subject firm. In doing so, they should consider any information or data relevant to the question of whether an employer is deriving the usual benefits incident to employment of such individuals, and the circumstances under which the situation came to exist. The totality of the circumstances should be considered in order to prevent circumvention of SBA's size regulations, including, but not limited to:

1. Did the company engage and select the employees?

2. Does the company pay the employees wages and/or withhold employment taxes and/or provide employment benefits?

3. Does the company have the power to dismiss the employees?

4. Does the company have the power to control and supervise the employees' performance of their duties?

5. Did the company procure the services of the employees from any employment contractor involved in close proximity to the date of self-certification as a small business?

6. Did the company dismiss employees from its own payroll and replace them with the employees from any employment contractor involved? Were they replaced soon after their dismissal?

7. Are the individual employees supplied by any employment contractor involved the same individuals that were dismissed by the company?

8. Do the employees possess a type of expertise or skill that other companies in the same or similar lines of business normally employ in-house (as opposed to procuring by sub-contract or through an employment contractor)?

9. Do the employees perform tasks normally performed by the regular employees of the business or which were previously performed by the company's own employees?

10. Were the employees procured through an employment contractor to do other than fill in for regular employees of the company who are temporarily absent?

11. Does the contract with the independent contractor have a term based on the term of an existing Government contract?

The presence of one or more single factors on the list in a particular case may but will not necessarily support a finding that the employees should be attributed to the business whose size is in issue. This listing is not meant to be exhaustive, and other factors not listed that demonstrate an effort on the part of the firm to satisfy the SBA size standard in form, while deriving the benefits of a much larger number of employees in fact, must be considered.

In announcing this policy, the Agency recognizes that in the normal course of business operations there are legitimate business reasons in some cases for procuring employees through employment contractors or other kinds of independent contractors. The policy expressed herein should not be construed so as to penalize a business engaging in legitimate business arrangements to adversely affect its size status. The Agency believes that the regulatory language "other basis" was intended to reach situations where the number of employees is *artificially* reduced to meet particular size standards for the purpose of becoming eligible for a particular procurement or for receipt of some other SBA program benefit, while the firm continues to operate or be capable of operating for all intents and purposes as though it employed a larger number of individuals.

Dated: February 10, 1986.

Robert A. Turnbull,

Acting Administrator.

[FR Doc. 86-3647 Filed 2-19-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-103-AD; Amdt. 39-5241]

Airworthiness Directives; McDonnell Douglas Model DC-9 and C-9 (Military) Series Airplanes, Fuselage Numbers 1 Through 1087

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) 85-01-02 applicable to certain McDonnell Douglas Model DC-9 and C-9 (Military) series airplanes, that requires inspection and repairs, if necessary, of certain aft pressure bulkheads. This amendment requires a modification that is referenced in the existing AD as an optional terminating action. This amendment is necessary to clarify the intent of AD 85-01-02, regarding those airplanes modified in accordance with McDonnell Douglas DC-9 Service Bulletins 53-139, 53-139 R1, or production equivalent.

EFFECTIVE DATE: March 31, 1986.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California 90808.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, Sr., Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2826.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to amend an existing airworthiness directive (AD) 85-01-02 to require inspection and repair, as necessary, of the aft pressure bulkhead on certain McDonnell Douglas DC-9 series airplanes was published in the **Federal Register** on October 22, 1985 (50 FR 42714). The comment period for the proposal closed December 10, 1985.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

The first commenter suggested the addition of an alternative initial compliance period of 15,000 landings after accomplishment of the modification or after aircraft delivery (as applicable), or prior to the accumulation of 5,400 additional landings after the effective date of this amendment. The FAA agrees with the addition of an alternative initial compliance period based upon the anticipated effective date of this rule, and supplemental data received. The final rule has been changed accordingly.

The second comment, though received late, is being considered herein. The commenter disagreed with the proposed requirements of paragraph K., to accomplish rework of previously modified pressure bulkheads, unless a crack has been detected. The FAA disagrees. In view of the results of fatique testing of the ventral aft pressure bulkhead by McDonnell Douglas, and the relatively low fatigue life associated with these cracks, the FAA has determined that the accomplishment of paragraph k. of this rule is necessary for all affected airplanes.

Paragraphs K. and L. of the final rule have been changed to incorporate an alternative terminating action. This has been done to clarify the original intent of the rule, and is based on the fact that no viable nondestructive inspection presently exists for the required modifications.

It is estimated that 221 airplanes of U.S. registry will be affected by this AD, that it will take approximately 245 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD is estimated to be $2,165,800.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule, with the changes previously noted.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant