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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245a

[INS No. 1050-87]

Adjustment of Status for Certain Aliens

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: Section 201 of the Immigration Reform and Control Act (IRCA) provides for the legalization of aliens who have been residing illegally in the United States since before January 1, 1982. Since May 5, 1987, the Service has processed hundreds of thousands of applications for the legalization benefits provided by the IRCA. Actual operational experience with the program has brought about the necessity to amend the Service's regulations in order to correct technicalities and provide additional guidance as required. These regulations were published at 52 FR 16205, May 1, 1987.

DATES: The interim final is effective November 17, 1987. Comments must be received on or before December 17, 1987.

ADDRESSES: Written comments should be mailed in triplicate to Deputy Assistant Commissioner, Legalization, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, or delivered to Room 5250 at the same address.

FOR FURTHER INFORMATION CONTACT: Terrance M. O'Reilly (Deputy Assistant Commissioner, Legalization), (202) 786-3658.

SUPPLEMENTARY INFORMATION: The Immigration Reform and Control Act of 1986 (IRCA), Pub L. 99-603 was enacted on November 6, 1986. This legislation is the most comprehensive reform of our immigration laws since the enactment of the immigration and Nationality Act (NA) in 1952. This rule incorporates various technical and clarifying amendments to the regulations governing the legalization program established by the Immigration Reform and Control Act of 1986 (IRCA), Pub L. 99-603. In particular, the rule amends the term "alien's unlawful status was known to the government," and the list of aliens eligible to apply for legal status is expanded to include "Silva class members," duration of status aliens, asylum applicants and aliens who were paroled into the United States pursuant to the stateside criteria program, aliens paroled on or before May 1, 1987, and aliens who, subsequent to a departure from the United States, reentered the United States as nonimmigrants in order to return to an unrelinquished, unlawful residence. The rule also provides that temporary resident aliens who are under an order to deportation issued prior to their obtaining temporary resident status will not be considered to have been deported if they travel outside of the United States. Additionally, the rule deletes the provision whereby aliens could comply with the requirements of section 321 of the Immigration and Nationality Act (knowledge of English and American Government) at the time of interview for temporary resident status. The rule expands the use of affidavits of support to family members other than a spouse. The rule allows for the use of discretion by a district director in establishing the procedure for travel authorization document completion while an application for temporary residence status is pending. Finally, the rule removes the waiver requirement for aliens found admissible even though their income falls below the proverty level.

Summary of the Interim Rule

Section 254a.(c) is amended to provide that those aliens who departed the United States in order to obtain an immigrant visa at a consulate or embassy in Canada or Mexico, pursuant to the stateside criteria program, and who were paroled back into the United States, may apply for legalization if they are otherwise eligible

Section 245a.1(d) is being amended to further define the term "alien's unlawful status was known to the government." Section 245a.1(d)(4) will be added so that foreign students who can establish that the school they attended or were authorized to attend reported to the Service that the student violated their nonimmigrant student prior to January 1, 1982 will be considered within the category of those aliens whose unlawful status was known to the government. The Service has determined that this change is consistent with Congressional intent for a generous legalization program.

Section 245a.1(d)(2) is amended to correct a grammatical error.

Section 245a.1(e) is amended to correct a grammatical error.

Section 245a.1(l) is being amended to correct a grammatical error.

Section 245a.2(a)(2)(ii) is being amended to correct a grammatical error.

Section 245a.2(b) is being amended to clarify the eligibility status of non-immigrant Foreign Government Representatives (Class A—A-1, A-2); Representatives of Foreign Governments that are members of international organizations (Class G—G-1, G-2, G-3, G-4); and students (Class F). These aliens are often granted duration of status at the time of admission to the United States. This status has, for purposes of section 245A(a)(2)(B) of the INA, as amended by IRCA, created problems in determining when such nonimmigrant aliens' status terminated or expired. These sections address this issue.

The Service has determined that A, G, and F class aliens who were granted duration of status may be eligible for legalization in the following circumstances. Class A and G aliens will be considered eligible for legalization as aliens whose period of authorized admission expired through the passage of time, if the qualifying employment terminated prior to January 1, 1982, or the Department of State acknowledges that the alien's A or G status recognition ceased prior to January 1, 1982 and the alien is otherwise eligible for legalization. A class F alien will be eligible to apply for legalization if the alien completed his or her course of study, including any practical training, and the time period, if

any, in which the alien was granted to depart the United States expired, before January 1, 1982 and the alien is otherwise eligible for legalization.

Section 245a.2(b) is being amended to include those individuals who are members of the class of aliens estabished in *Silva vs. Levi*, No. 76–C4268 (N.D. ILL. March 22, 1977). In 1977, an injunction was issued in the case of *Silva v. Levi*. The Service was enjoined from effecting the departure of certain Western Hemisphere aliens because of an erroneous allocation of immigrant visa numbers to Cuban Refugees. Under this court order, any alien from an independent country of the Western Hemisphere who was present in the United States prior to March 11, 1977, and had a priority date for the issuance of an immigrant visa between July 1, 1968, and December 31, 1976, was permitted to remain in the United States indefinitely and to obtain employment. The notices issued to these aliens by the Service advising them of the foregoing became known as "Silva Letters." The Silva injunction was vacated on November 1, 1981. As of that date, the aliens in the Silva class who had not become permanent residents and who were otherwise in the United States unlawfully, were subject to deportation. Aliens who are members of this class will be eligible to apply for legal status provided they meet all other eligibility requirements.

Section 245a.2(b) is being amended to include individuals who filed asylum applications prior to January 1, 1982. The Service has determined that these individuals were in an unlawful status known to the government when they filed their applications. If the application has been denied or not yet decided and the alien is otherwise eligible for legalization he or she is eligible to file an application for legalization.

Section 245a.2(b) is being amended to address aliens who would be otherwise eligible for legalization except for lawful entries which under current regulations interrupted their continuous unlawful residence. Such aliens will be required to establish that they had been in an unlawful status known to the government or that their stay had expired through the passage of time prior to January 1, 1982. Further, such aliens will be required to establish that they were returning to an unrelinquished, unlawful residence. These circumstances will establish that the applicants committed fraud when they entered the United States. Therefore, they will also be required to submit applications to waive their excludability under section 212(a)(19) of the Immigration and Nationality Act. The waivers may be granted for humanitarian purposes, to assure family unity or when the granting of such a waiver is in the public interest.

Section 245a.2(b) is being amended to clarify the eligibility status of those aliens who are otherwise eligible for legalization but left the United States and were paroled back into the United States on or before May 1, 1987. These aliens will be required to establish that they had been in an unlawful status known to the government or that their stay had expired through the passage of time prior to January 1, 1982. Further, such aliens will be required to establish that they were returning to an unrelinquished, unlawful residence. The Service has determined that this class of aliens should be treated in as equitable a manner as those who entered without inspection.

Section 245a.2(d)(4)(iii) is amended to permit family members in unusual circumstances to submit an affidavit of support on behalf of a legalization applicant. The current regulations provide that only a spouse or parent may file an affidavit of support. However, there are circumstances in which a parent or spouse is unable to file an affidavit of support for the legalization applicant. Such examples are, a minor who resides with and is supported by his or her aunt or uncle; or an elderly person who has retired, or requires special care who resides with and is supported by one of his or her children. This amendment expands this section to permit family members in these and similar situations to file affidavits of support.

Section 245a.2(e)(1) is being amended to correct a grammatical error.

Section 245a. 2(e)(2) is being amended to correct a grammatical error.

Section 245a.2(g) is being amended in order to help eliminate any misconception concerning the age parameters that apply to male aliens for registering under the Military Selective Service Act.

Section 245a.2(k)(4) is being amended to clarify the procedure concerning the special rule for determination of public charge. The Service has determined that the waiver process is not required when a determination is made that an alien is admissible pursuant to this section.

Section 245a.2(m)(2)(i) is amended to provide that Temporary Resident aliens who are under an order of deportation issued prior to their obtaining temporary resident status will not be considered to have deported themselves if they travel outside of the United States. This amendment is necessary because 8 CFR 243.5 provides that aliens who depart the United States while an order of deportation is outstanding are considered to have been deported.

IRCA created a new class of aliens, temporary residents, who are permitted to travel outside of the United States but are not aliens considered lawfully admitted for permanent residence. Since the resident status afforded these aliens is temporary, the Service will not vacate outstanding orders of deportation until the alien receives permanent residence. Therefore, under current regulations a temporary resident who is under an order of deportation will execute that order if he or she departs the United States. In order to avoid these types of situations § 245a.2(m)(2)(i) has been amended.

Section 245a.2(m)(3) is being amended to correct grammatical errors.

Section 245a.2(n)(1) is being amended to allow the Service's district directors the flexibility to determine where the travel documentation will be generated for aliens granted authorization to travel prior to a decision being rendered on their application. District directors may conduct processing at Service locations other than legalization offices. Various factors necessitate granting the district directors this flexibility (e.g., workload at Service locations, equipment, etc.).

Section 245a.2(n)(2) is being amended to correct the title of this paragraph and outline the conditions and procedures for granting travel authorization prior to the granting of temporary resident status.

Section 245a.2(q) is being amended to correct a grammatical error.

Section 245a.2(s) is being amended to correct a grammatical error.

Section 245a.2(t)(5) is being amended to correct a grammatical error.

Section 245a.2(u)(2)(1) is being amended to correct a grammatical error.

Section 245a.2(w) is being amended to correct a grammatical error.

Section 245a.3(a) is being amended to correct a grammatical error.

Section 245a.3(b)(4)(ii) is deleted. The IRCA does not require an understanding of ordinary English and a knowledge and understanding of the history and Government of the United States in order to obtain temporary resident status. In addition, the Service is currently preparing the guidelines and mechanisms necessary for aliens to comply with the provisions of section 245A(b)(1)(D) of the INA, as amended by IRCA.

Section 245a.3(b)(4)(iii) has been redesignated § 245a.3(b)(4)(ii) and is amended by inserting language regarding the minimum age at which an

alien must satisfy the requirements of section 245A(b)(1)(D) of the INA, as amended by IRCA. The rule also sets forth who is eligible for a discretionary waiver of these requirements.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291.

The Information Collection Requirements contained in this regulation have been cleared by the OMB under the Paperwork Reduction Act.

List of Subjects in 8 CFR Part 245a

Aliens, Temporary resident status, Permanent resident status.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows.

PART 245a—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR LAWFUL TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED BY PUB. L. 99–603, THE IMMIGRATION REFORM AND CONTROL ACT OF 1986

1. The authority citation for Part 245a continues to read as follows:

Authority: Pub. L. 99–603, 100 Stat. 3359; 8 U.S.C. 1101 note.

§ 245a.1 [Amended]

2. Section 245a.1(c)(1) is amended by adding the following sentence to the concluding text of paragraph (c)(1):

* * * * *

(c)(1) * * *

An alien who after appearing for a scheduled interview to obtain an immigrant visa at a Consulate or Embassy in Canada or Mexico but who subsequently is not issued an immigrant visa and who is paroled back into the United States, pursuant to the stateside criteria program, shall be regarded as having been granted advance parole by the Service.

3. Section 245a.1(d)(2) is amended by removing "deportable" and inserting "Deportable" where it appears in the phrase "i.e., Forms I–213, Record of deportable Alien;"

4. Section 245a.1(d) is amended by adding a new paragraph (d)(4) to read as follows:

* * * * *

(d) * * *

(4) The applicant produces documentation from a school approved to enroll foreign students under § 214.3 which establishes that the said school forwarded to the Service a report that clearly indicated the applicant had violated his or her nonimmigrant student status prior to January 1, 1982. In order to be eligible under this part, the applicant must not have been reinstated to nonimmigrant student status.

5. Section 245a.1(e) is amended by removing "prohibitied" and inserting "prohibited" where it appears in the phrase "or any other activity prohibited by section 245(A)(c)(6) of the Act."

6. Section 245a.1(l) is amended by removing "Designate entity", and inserting "Designated entity" where it appears at the beginning of the paragraph.

§ 245a.2 [Amended]

7. Section 245a.2(a)(2)(ii) is amended by removing "endig", and inserting "ending" where it appears in the phrase, "endig on April 4, 1988."

8. Section 245a.2(b), introductory text is revised to read as follows:

* * * * *

(b) *Eligibility.* The following categories of aliens, who are otherwise eligible to apply for legalization, may file for adjustment to temporary residence status:

* * * * *

9. Section 245a.2(b)(8) is amended by changing the word "or" to "on" where it appears immediately preceding "Service Form I–94."

10. Section 245a.2(b) is amended by adding paragraphs (b) (9) through (15) to read as follows:

* * * * *

(b) * * *

(9) An alien who would be otherwise eligible for legalization and who was present in the United States in an unlawful status prior to January 1, 1982, and reentered the United States as a nonimmigrant in order to return to an unrelinquished unlawful residence.

(10) An alien described in paragraph (b)(9) of this section must receive a waiver of the excludable charge 212(a)(19) as an alien who entered the United States by fraud.

(11) A nonimmigrant who entered the United States for duration of status ("D/S") in one of the following classes, A, A–1, A–2, G, G–1, G–2, G–3 or G–4, whose qualifying employment terminated or who ceased to be recognized by the Department of State as being entitled to such classification prior to January 1, 1982, and who has thereafter continued to reside in the United States in an unlawful status.

(12) A nonimmigrant who entered the United States for duration of status ("D/S") in one of the following classes, F, F–1, or F–2, who completed a full course of study, including practical training and whose time period if any to depart the United States after completion of study expired prior to January 1, 1982 and who has remained in the United States in an unlawful status since that time.

(13) An alien who establishes that he or she is a member of the class in the Silva-Levi lawsuit (No. 76–C–4268 (N.D. ILL. March 22, 1977)); that is, an alien from an independent country of the Western Hemisphere who was present in the United States prior to March 11, 1977, and was known by the Immigration and Naturalization Service (INS) to have a priority date for the issuance of an immigrant visa between July 1, 1968 and December 31, 1976, inclusive, and who was clearly eligible for an immigrant visa.

(14) An alien who filed an asylum application prior to January 1, 1982 and whose application was subsequently denied or whose application has not yet been decided is considered an alien in an unlawful status know n to the government.

(15) An alien, otherwise eligible who departed the United States and was paroled into the United States on or before May 1, 1987 in order to return to an unrelinquished unlawful residence.

11. Section 245a.2(c)(8) is amended by adding the text "or expired" after the word "terminated" and before the word "subsequent."

12. Section 245a.2(d)(4)(iii) is amended by removing all existing text after the word "children" and adding the following:

* * * * *

(d) * * *

(4) * * *

(iii) * * * of the applicant or a parent in behalf of children which guarantees complete or partial financial support. Acceptance of the affidavit of support shall be extended to other family members in unusual family circumstances.

13. Section 245a.2(e)(1), the concluding paragraph is amended by removing "the applicant must be accompanied" and inserting "the application must be accompanied".

14. Section 245a.2(e)(2), the last sentence is amended by inserting a comma after "director" and before "original."

15. Section 245a.2(g) is amended by removing "27" and inserting "26."

16. Section 245a.2(k)(4), the first sentence is amended by removing the phrase "under paragraph (k)(2) of this section" and adding a period "." after the word "admissible."

17. Section 245a.2(m)(2)(i) is amended by adding the following after the word "proceedings":

* * * * *

(m) * * *

(2) * * *

(i) * * *, such proceedings having been instituted subsequent to the approval of temporary resident status. A temporary resident alien will not be considered deported if that alien departs the United States while under an outstanding order of deportation issued prior to the approval of temporary resident status;

* * * * *

18. Section 245a.2(m)(3) is amended by removing the word "required" after the word "abroad" and before the word "due".

19. Section 245a.2(n)(l) is amended by adding the following sentence between the existing first and second sentences to read as follows:

* * * * *

(n) * * *

(1) * * * INS district directors will determine the Service location for the completion of processing of travel documentation. * * *

20. Section 245a.2(n)(2) is amended by inserting "and travel" after "Employment" and before "authorization" in the title of the paragraph; replacing the word "will" with the word "may" in the first sentence after the word "employment" and before the word "be"; and by removing in the first paragraph the sentences beginning with "Applications may be presented" and concluding with "fee receipt and scheduled appointment" and inserting text to read as follows:

* * * * *

(n) * * *

(2) * * *

* * * Permission to travel abroad may be granted in emergent circumstances in accordance with the Service's advance parole provisions contained in § 212.5(e) of this chapter after an interview has been conducted in connection with an application establishing prima facie eligiblity for temporary resident status.

21. Section 245a.2(n)(2) is further amended by designating the first paragraph as (i) and the second paragraph as (ii).

22. Section 245a.2(q), the last sentence is amended by removing "motion" and inserting "motions" where it appears in the text of the paragraph.

22. Section 245a.2(s) is amended by revising the paragraph heading to read "*Date of adjustment to temporary residence.*"

24. Section 245a.2(t)(5) is amended by removing "Information obtained in granted legalization" and inserting "Information obtained in a granted legalization.

25. Section 245a.2(u)(1), the last sentence of the introductory text is amended by removing "occurance," and inserting "occurence.

26. Section 245a.2(u)(1)(ii) is amended by removing the language following the word "immigrants," and inserting the following language.

* * * * *

(u) * * *

(1) * * *

(ii) * * * unless a waiver is secured pursuant to § 245a.2(k)(2).

* * * * *

27. Section 245a.2(w) is amended by removing "Declaration of intending citizen", and inserting "Declaration of Intending Citizen."

§ 245a.3 [Amended]

28. Section 245a.3(a) is amended by adding a parenthesis after "A" and before "b" in the last sentence of the paragraph.

29. Section 245a.3(b)(4)(i) is amended by removing the word "or" at the end of the paragraph.

30. Section 245a.3(b)(4)(ii) is revised to read as follows:

* * * * *

(b) * * *

(4) * * *

(ii) The requirements of paragraph (b)(4)(i) of the section must be met by each applicant who is 14 years or older, except that these requirements may be waived at the discretion of the Attorney General if the alien is 65 years or older.

* * * * *

31. Section 245a.3(b)(4)(iii) is removed.

Dated: October 26, 1987.

Alan C. Nelson,

Commissioner.

[FR Doc. 87-26236 Filed 11-16-87; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 037CE, Special Conditions No. 23-ACE-33]

Special Conditions; Ballistic Recovery System, Inc., Modified Cessna 150/A150 Series Airplanes and 152/A152 Model Airplanes To Incorporate the GARD-150 System

AGENCY: Federal Aviation Administration DOT.

ACTION: Final Special Conditions.

SUMMARY: These special conditions are issued under §§ 21.16 and 21.101(b) of the Federal Aviation Regulations (FAR) to become part of the certification basis for the supplementary type certification of the Ballistic Recovery Systems, Inc., General Aviation Recovery Device (GARD) modifications to Cessna 150/A150 Series and 152/A152 Model Airplanes. This system is referred to as the GARD-150. These modifications have novel or unusual design features associated with a parachute recovery system for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. These special conditions contain additional airworthiness standards which the Administrator finds necessary to establish a level of safety equivalent to that provided by the airworthiness standards applicable to these airplanes.

EFFECTIVE DATE: November 17, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald K. Rathgeber, Aerospace Engineer, Standards Office (ACE-110), Aircraft Certification Division, Central Region, Federal Aviation Administration, Room 1656, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-5688.

SUPPLEMENTARY INFORMATION

Background

On January 12, 1987, Ballistic Recovery Systems, Inc. (BRS), 9242 Hudson Boulevard, Lake Elmo, Minnesota 55042, filed an application for a supplemental type certificate (STC) to install the GARD-150 parachute recovery system on Cessna 150/A150 Series and 152/A152 Model Airplanes. The applicant proposes to certificate a parachute recovery system which is intended to recover an airplane in emergency situations; such as mid-air collision, loss of engine power, loss of airplane control, severe structural failure, pilot disorientation, or pilot incapacitation. The GARD-150 system, which is only to be used as a last resort, is intended to prevent serious injuries to the airplane occupants by parachuting the airplane to the ground.

The GARD-150 system consists of a parachute with a canopy size of approximately 50 feet in diameter which is packed in a pressurized canister mounted in the left aft portion of the baggage compartment. A solid propellant rocket motor is used to deploy the canopy. A door is positioned above the canister to seal the canister, parachute canopy, and rocket motor from the elements and provide free exit

when the canopy is deployed. The GARD–150 is deployed by a mechanical pull handle mounted on the pilot side of the airplane trim wheel pedestal.

The rocket motor initiator is a mechanical device, and the GARD–150 system requires no electrical power. The system is dormant in the normal configuration since the rocket motor is unarmed. At least two separate and independent pilot actions are required to deploy the system.

A four-cable bridle attaches the canopy bridle to the airplane primary structure at wing and main landing gear bulkheads. The cables lengths are designed to provide the best airplane touchdown attitude. The cables are routed externally on each side of the fuselage from the door to the attach points. The cables are covered with small frangible fairings.

The applicant intends to provide a supplement to the FAA-Approved Airplane Flight Manual (AFM) as part of the STC for those airplanes which have such a manual. The supplement will describe the system, define required system maintenance and inspection information. A separate FAA approved GARD–150 Operating Manual will be provided for those airplanes which do not have an FAA-approved AFM.

The GARD–150 system includes a placard located near the pull handle in clear view of the pilot to identify the system and operating envelope, state deployment actions, and provide appropriate warnings. A warning placard is located on the canister near the rocket motor.

The FAA considered the features proposed by BRS for the GARD–150 installation in the Cessna 150/A150 Series and 152/A152 Model Airplanes and concluded that, notwithstanding the existing requirements applicable to these airplanes, which did not envision the use of such systems, special conditions should be promulgated for such systems to provide the necessary level of safety. A notice of proposed special conditions, Notice 23–ACE–33, was published in the **Federal Register** (52 FR 19517–19519, dated May 26, 1987) for the GARD–150 system. This notice requested that comments be received on or before June 25, 1987.

On June 12, 1987, Mr. John Cesnik, on behalf of BRS, petitioned for a 60-day extension of the comment period. In the petition, BRS took issue with several of the special conditions and requested additional time to incorporate up-to-date information for their response to the notice. BRS requested additional time to evaluate: (1) The parachute ground jettisoning requirements, (2) the canister venting requirements, (3) the parachute repack cycle, and (4) the similarity of the BRS emergency parachute to the auxiliary parachute requirements of § 105.43(a)(2) of the FAR.

The FAA reviewed this petition and determined that extending the comment period would afford the petitioner, as well as other interested persons, the opportunity to participate in the development of the final special conditions. An extension of the comment period, Notice No. 23–ACE–33A, was published in the **Federal Register** on July 20, 1987 (52 FR 27222) and extended the closing of the comment period to August 28, 1987.

Type Certification Basis

The type certification basis (TC 3A19) for the Cessna Aircraft Company 150/A150 Series Airplanes and 152/A152 Model Airplanes is Part 3 of the Civil Air Regulations dated May 15, 1956, through Amendment 3–4; § 23.1559, effective March 1, 1978 for S/N 15282032 and for the Model 152 and S/N 681, A1520809 and for the Model A152; Part 36, dated December 1, 1969, plus Amendments 36–1 through 36–5 for the model 152 only; and the special conditions of this Final Action.

Discussion of Comments

Public participation in this rulemaking action was invited by Notice No. 23–ACE–33A and five comments were received. All the commenters provided comments to the same two special conditions. The comments addressed the parachute jettisoning requirements of Special Condition 4(f), and the parachute inspection and repack requirements of Special Condition 7(b).

The notice proposed Special Condition 4(f) which would require the applicant to show that, after ground touchdown, the parachute can be jettisoned under various adverse weather conditions, including high winds. The comments address several technical issues, as well as the costs, involved in complying with this rule. Most of the technical comments fit in one of four categories, including: (1) System reliability, (2) undesired jettisoning, (3) the effect of GARD–150 activation on the airplane airworthiness, and (4) past experiences with similar devices.

Several commenters note that the addition of a ground jettisoning capability would increase the complexity and reduce the overall reliability of the GARD–150 system. One commenter notes that the GARD–150 will most likely use a multiple attach point bridle in order to set a safe airplane attitude at touchdown and this configuration would necessitate a remote jettisoning link which has limited reliability and may cause the parachute to jettison at the wrong time. The commenter indicates that inadvertent jettisoning could happen as a result of equipment malfunction or operator error. One commenter notes that, to his knowledge, there has been no long term experience with parachute jettisoning systems so their reliability record is unproven. Another commenter suggests that the desirability of jettisoning capability should be determined by a risk-benefit analysis, and another commenter believes that use and abuse of the jettisoning capability would add a dimension of risk to the emergency recovery system concept.

Several commenters state their concern that the ground jettisoning capability would provide the possibility of in-flight jettisoning caused by unintentional or inappropriate pilot activation. Two commenters stated their concern that a recovery parachute with jettisoning capability might be used for recreational purposes. These commenters also note that in-flight jettisoning could occur over an area, such as over trees or rough terrain, where flight recovery would be unsafe. One commenter notes that, because the pilot would be under increased stress at the time of the GARD–150 deployment, he may be more likely to activate the parachute jettisoning provisions at the wrong time.

Several commenters discuss the potential for airplane damage resulting from deployment of the parachute recovery system. These comments indicate that the airplane may sustain damage during the deployment which is unknown by the pilot. One commenter notes that either the initial emergency condition or the subsequent deployment of the parachute recovery system could cause damage to the flight controls or the airframe which would make the airplane unairworthy when the parachute is jettisoned. In general, the commenters state concern that in-flight jettisoning of the parachute may result in uncontrollable flight as a result of airplane damage which occurred prior to jettisoning but not recognized by the pilot.

Several commenters refer to experiences with similar systems on ultralights or their experience with cargo parachutes to argue against the jettisoning requirements. One commenter states that BRS has experience with parachute recovery systems on ultralights which do not have jettisoning provisions. According to this commenter, BRS has recorded 26 ultralight recoveries and has had no

serious injuries resulting from the post-recovery ground conditions. Another commenter notes that this proposed special condition is a carry-over from Special Conditions No. 23–ACE–8 published in the **Federal Register** on May 22, 1984 (49 FR 21506) issued for the supplemental type certification of Cessna 150L, 150M, and 152 Models, and 172 and 180 series airplanes to add the Superchute, Ltd. modifications. The commenter concludes the Superchute, Inc. included jettison capability as part of their proposal, but no risk/benefit analysis was done to justify the special condition. The commenter notes that while Superchute has no extensive practical experience, BRS has nearly eight years of experience, delivering in excess of 3000 units for ultralights and experimental airplanes. The commenter states that, in this period, over thirty emergency deployments were made using systems which did not have canopy jettisoning provisions, and none of these deployments resulted in occupant injuries that could have been prevented by jettison capability. Another commenter states that there is no historical envidence of either hang glider or ultralight pilots being injured after a parachute landing.

Other comments received, not technical in nature, have also been considered in developing the final rule action. Two of these commenters state concern that the parachute jettisoning requirements of Special Condition 4(f) would add significant design and testing expenses to the GARD–150 project. One of these commenters estimates that the additional complexity of the jettisoning device would nearly double the cost of the GARD-150 recovery system.

Two commenters suggest more objective wording for Special Condition 4(f) which they propose would meet the intent of the rule without specifically requiring parachute jettisoning requirements. These comments suggest wording that would require the applicant to show that the occupants would not be exposed to serious injury after airplane touchdown in various weather conditions including relatively high winds.

The FAA has considered the comments to proposed Special Condition 4(f) and has reevlauated the merits of the requirements for parachute jettisoning capability. The intent of the GARD–150 emergency parachute system is to add a means of preventing a catastrophic crash when all other means of recovery are exhausted or made inoperative. To this end, this system adds to the overall safety of the airplane. However, the deployment of an emergency parachute may result in certain hazards not considered in the original airworthiness standards for these airplanes. The intent of proposed Special Condition 4(f) is to address the hazards posed to occupants in the airplane after ground touchdown when the GARD–150 system is deployed; particularly those hazards which are created by the wind loading the canopy. In reevaluating this special condition, the FAA has reviewed the landing and takeoff performance applying to the Cessna 150 series airplanes, requirements and practices with regard to quick releases for personal parachutes, and the requirements and practices concerning emergency deflations of manned free balloons. The FAA has also considered the airframe and occupant restraint protection which would be available after touchdown. Based on this reevaluation, the FAA concludes that the safety issues addressed by proposed Special Condition 4(f) can be addressed in a more objective manner; therefore, this Final Rule Special Condition requires that the BRS GARD–150 system protect occupants from serious injury after touchdown under various weather conditions, including high winds.

The notice proposed Special Condition 7(b) which would require that operating limitations be prescribed to require that the GARD–150 parachute be inspected and replaced each 120 days. This proposed rule would require that the parachute must be considered an auxiliary parachute in the context of § 105.43(a)(2). The comments addressed issues which, in general, fit into one of the following categories: (1) Classification of the system as an auxiliary parachute, (2) the relation of the GARD–150 system design and appropriate inspection intervals, and (3) damage from excessive repacking.

As Special Condition 7(b) was proposed, the GARD–150 system must be considered an auxiliary parachute in the context of § 105.43(a)(2). Several commenters note that this system is not an auxiliary parachute because it is physically different and performs a different function. One commenter notes that § 105.41(a) states that the applicability of Subpart C of Part 105 is to "parachute equipment used in parachute jumps," and the GARD–150 system is out of the scope of Subpart C. Another commenter states that the GARD–150 system is not a sport or an auxiliary parachute but an emergency parachute system to protect aircraft occupants. The FAA recognizes that the GARD–150 system does not function in the same capacity as an auxiliary parachute for personal parachute jumping. However, when the GARD–150 system is deployed it is intended to serve as the final means of rescue for the airplane occupants. Since no regulations currently address requirements for emergency parachutes, such as the GARD–150, the FAA considered the proposed special condition referencing the inspection and repack times to be a rational requirement.

Several commenters object to imposing the inspection and replacing cycles required in § 105.43(a)(2). Three of the commenters state that the GARD–150 system will use a pressure packed parachute that is similar to systems used in military ejection seats which typically are not repacked for several years, with some repack cycles as long as 15 years. One commenter notes that the GARD–150 system will be protected from moisture and sunlight by both the external housing and internal container, and this commenter expresses concern that frequent reopening and repacking of the system will actually decrease its reliability compared to proper packing at the factory and infrequent handling. Another commenter notes that systems such as the GARD–150 have considerably greater shelf life than an auxiliary parachute used for personal parachuting. One commenter suggests that a realistic repack period for the GARD–150 canopy would be two years.

Several commenters stated concern that accumulated repacking of the parachute may eventually damage the parachute fabric and increase the potential for repacking errors resulting in degraded system performance and reliability.

Two commenters suggest alternate wording for Special Condition 7(b) which would allow the applicant to determine the inspection requirements and provide justification for these requirements to the FAA for approval. The FAA agrees with this more objective approach and the special condition has been modified in this Final Rule to require that the applicant provide operating limitations for inspecting and replacing the GARD–150 parachute and deployment mechanism at intervals approved by the FAA.

Conclusion

The action affects only the Cessna 150/A150 Series and 152/A152 Model Airplanes incorporating the Ballistic Recovery System GARD–150 recovery parachute system. Special Conditions No. 23–ACE–33, incorporated by this action, are not rules of general applicability and apply only to the

series and model or airplane identified in these final special conditions.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, Safety.

The authority citation for these Special Conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 21.16 and 101; and 14 CFR 11.28 and 11.29(b).

Adoption of the Special Conditions

In consideration of the foregoing, the following special conditions are issued as a part of the type certification basis for Cessna 150/A150 Series and 152/A152 Model Airplanes modified to incorporate the GARD-150 parachute recovery system of Ballistic Recovery System, Inc., as follows:

1. Flight Test Demonstration

(a) The GARD-150 system must be demonstrated in flight to satisfactorily perform its intended function, without exceeding the system deployment limit load factors, for the critical flight conditions.

(b) Satisfactory development of the GARD-150 parachute must be demonstrated, at the most critical airplane weight and balance, for the following flight conditions:

(i) Power off stall with slow entry.

(ii) Spin with deployment at one turn.

(iii) Normal cruise at 100 knots and 1G normal load.

(iv) Maneuvering speed with 2G normal load, and

(v) Never exceed speed with 1G normal load.

2. Occupant Restraint

Each seat in an airplane modified with the GARD-150 system must be equipped with a restraint system, consisting of a seat belt and shoulder harness, which will protect the occupants from head and upper torso injuries during parachute deployment and ground impact at the critical load conditions.

3. Parachute Performance

(a) The GARD-150 parachute must comply with the applicable requirements of TSO-C23c, or an approved equivalent, for the critical airplane weights.

(b) The GARD-150 system limit load factor for deployment must not exceed 80 percent of the airplane ultimate load factor.

(c) It must be shown that, although the airplane structure may be damaged, the airplane impact during touchdown will result in an occupant environment in which serious injury to the occupants is improbable.

(d) It must be shown that, with the GARD-150 parachute deployed, the airplane can impact the ground in various adverse weather conditions including winds up to 15 knots, without endangering the airplane occupants.

4. System Functions and Operations

(a) It must be shown that there is no fire hazard associated with activation of the GARD-150 system.

(b) The GARD-150 system must be shown to function reliably and to adequately perform its intended function.

(c) It must be shown that arming and activating the GARD-150 system can only be accomplished in a sequence which makes inadvertent deployment extremely improbable.

(d) It must be demonstrated that the GARD-150 system can be activated without difficulty by various sized people, from a 10th percentile female to a 90th percentile male, while sitting in the pilot or copilot seat.

(e) The GARD-150 system must be labeled to show its identification, function and operating limitations.

(f) It must be shown that the occupants will be protected from serious injury after touchdown under various adverse weather conditions, including high winds.

5. System Protection

(a) All components of the GARD-150 system must provide protection against deterioration due to weathering, corrosion, abrasion, and other causes.

(b) Adequate provisions must be made for ventilation and drainage of the parachute canister and associated structure to ensure the sound condition of the system.

6. System Inspections Provisions

(a) Instructions for continued airworthiness must be prepared for the GARD-150 system which meet the requirements of § 23.1529 of this chapter.

(b) Adequate means must be provided to permit the close examination of the parachute and other system components to ensure proper functioning, alignment, lubrication, and adjustment during any required inspection of the GARD-150 system.

7. Operating Limitations

(a) Operating limitations must be prescribed to ensure proper operation of the GARD-150 system within the approved flight envelope of the airplane.

(b) Operating limitations must be prescribed for inspecting, repacking, and replacing the GARD-150 parachute and deployment mechanism at approved intervals.

Issued in Kansas City, Missouri, on October 22, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-26420 Filed 11-16-87; 8:45 am]

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14 CFR Part 39

[Docket No. 87-CE-25-AD; Amendment 39-5774]

Airworthiness Directives; Gulfstream Aerospace Corporation Models 690, 690A, 690B, 690C, 690D, 695, 695A, and 695B Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Gulfstream Models 690, 690A, 690B, 690C, 690D, 695, 695A, and 695B airplanes, herein referred to as "690 and 695" airplanes, which supersedes AD 86-24-12, by further prohibiting some airplanes from flight into known icing conditions. AD 86-24-12 required the use of continuous ignition during flight in meteorological conditions shown to result in engine flameouts. The FAA has further examined the ignition systems in these airplanes and has determined that the limitations of those airplanes with ignition system having a continuous duty cycle of less than 1 hour do not allow the pilot to provide engine ignition for the expected duration of these meteorological conditions. The requirements of this AD will further provide additional protection against inadvertent engine flameout by prohibiting these airplanes from flight into known icing conditions.

DATES: *Effective Date:* December 18, 1987.

Compliance: As prescribed within the body of the AD unless already accomplished.

ADDRESSES: Gulfstream Service Information Nos. SI-211 and SI-212 both dated June 30, 1986; Gulfstream Custom Kit Nos. 138 dated April 15, 1987, and 139 dated May 28, 1987, applicable to this AD may be obtained at Gulfstream Aerospace Corporation, Wiley Post Airport, P.O. Box 22500, Oklahoma City, Oklahoma 73123; Telephone (405) 789-5000; or this information may be