Sunshine Act Meetings

Federal Register
Vol. 53, No. 187
Tuesday, September 27, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY CREDIT CORPORATION

TIME AND DATE: 2:30 p.m., October 14, 1988.

PLACE: Room 104–A Administration Building, U.S. Department of Agriculture, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda to be announced.

CONTACT PERSON FOR MORE INFORMATION: James V. Hansen, Secretary, Commodity Credit Corporation, Room 3603 South Building, U.S. Department of Agriculture, Post Office Box 2415, Washington, DC 20013; telephone (202) 475–5490.

Dated: September 22, 1988.

James V. Hansen,

Secretary, Commodity Credit Corporation.

[FR Doc. 88–22175 Filed 9–23–88; 11:57 am]

BILLING CODE 3410-05-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 36389, Monday, September 19, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern Time) Monday, September 26, 1988.

Change in the Meeting

The meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer, Executive Secretariat, (202) 634–6748.

Dated: September 22, 1988.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 88–22172 Filed 9–23–88; 11:57 am]

BILLING CODE 6750-06-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of September 26, October 3, 10, and 17, 1988.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and closed.

Matters To Be Considered

Week of September 26

There are no Commission meetings scheduled for the Week of September 26.

Week of October 3—Tentative

Wednesday, October 5

10:00 a.m.
Briefing on Status of Peach Bottom *(Public Meeting)*

Friday, October 7

10:00 a.m.
Briefing on Status of Reactor Operator Requalification Program *(Public Meeting)*
11:30 a.m.
Affirmation/Discussion and Vote *(Public Meeting)* (if needed)
2:00 p.m.
Briefing on Status of Policy Statement on Training and Qualification *(Public Meeting)*

Week of October 10—Tentative

Friday, October 14

10:00 a.m.
Briefing on Proposed Rule for Maintenance of Nuclear Power Plants *(Public Meeting)*
11:30 a.m.
Affirmation/Discussion and Vote *(Public Meeting)* (if needed)
2:00 p.m.
Discussion/Possible Vote on Pilgrim Restart *(Public Meeting)*

Week of October 17—Tentative

Wednesday, October 19

2:00 p.m
Briefing on Different Cask Designs for Shipping and Storing Nuclear Materials *(Public Meeting)*

Thursday, October 20,

2:00 p.m.
Briefing on Safety Goal Implementation Plan *(Public Meeting)*
3:00 p.m.
Affirmation/Discussion and Vote *(Public Meeting)* (if needed)

ADDITIONAL INFORMATION: Affirmation of "Commission Order on Seabrook—Partial Decision on Financial Qualification Issues" (Public Meeting) was held on September 22, 1988.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings (Recording)—(301) 492–0292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

September 23, 1988.

Jack Guttmann,

Office of the Secretary.

[FR Doc. 88–22199 Filed 9–23–88; 2:09 am]

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 53, No. 187
Tuesday, September 27, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 88-81]

Agency Report Forms Under OMB Review

Correction

In notice document 88-21365 appearing on page 36515 in the issue of Tuesday, September 20, 1988, make the following correction:

In the first column, in the heading, the docket number was inaccurate and should appear as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 166

[CGD 88-034]

RIN 2115-AC81

Port Access Routes, Approach to Mobile, AL

Correction

In rule document 88-21348 beginning on page 36453 in the issue of Tuesday, September 20, 1988, make the following corrections:

1. On page 36453, in the second column, under **FOR FURTHER INFORMATION CONTACT**, the sixth line should read "Monday through Friday, except holidays.".

2. On page 36454, in the first column, in the fourth complete paragraph, in the 15th and 17th lines, "buoy" was misspelled.

3. On the same page, in the third column, in the seventh paragraph, in the first line, "consideration" was misspelled.

§ 166.200 [Corrected]

4. On the same page, in the same column, in § 166.200(d)(39)(i), in the first table, under latitude, the first line should read "30°38′46″ N".

5. On page 36455, in the first column, in § 166.200(d)(39)(i), in the second table, under longitude, the fifth line should read "88°03′24″ W".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 24594; Amendment Nos. 25-66 and 121-198]

RIN: 2120-AB23

Improved Flammability Standards for Materials Used in the Interiors of Transport Category Airplane Cabins

Correction

In rule document 88-19283 beginning on page 32564 in the issue of Thursday, August 25, 1988, make the following corrections:

PART 25—[AMENDED]

1. On page 32573, in the third column, in Appendix F, in the second paragraph, in the sixth line, "threated" should read "threaded".

2. On the same page, in the same column, in Appendix F, in the fifth paragraph, in the 10th line, "interest" should read "intersect".

NOTE: For a Department of Transportation correction to this document see the Rules section of this issue.

BILLING CODE 1505-01-D

Tuesday
September 27, 1988

Part II

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 38
Education Personnel; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 38

Education Personnel

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs is publishing a final rule that revises existing regulations that establish requirements of employment, discharge, voluntary services and payment of teachers and other personnel in Bureau of Indian Affairs operated schools and agency education positions.

Certain sections of this rule are subject to negotiations with a properly certified union, holding national recognition.

This rule eliminates obsolete regulatory requirements and incorporates new provisions of public laws affecting Indian education.

EFFECTIVE DATE: These regulations shall become effective October 27, 1988.

FOR FURTHER INFORMATION CONTACT: George D. Scott, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior, 18th and "C" Streets NW., Washington, DC 20240, telephone number (202) 343-4872.

SUPPLEMENTARY INFORMATION: The authority for issuing this rule is Pub. L. 95-561, the "Education Amendments of 1978" (25 U.S.C. 2011), as amended by Pub. L. 98-511 and Pub. L. 99-89. This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary-Indian Affairs by 209 DM 8. The Office of the Solicitor has inserted the statutory additions required by Pub. L. 100-297. These consist of (1) inserting a new sub-paragraph (4) to the definition of education position in § 38.3 to comply with section 5112(b)(1)(b)(iv); (2) inserting "or Federal Wage System" into § 38.6 (a) and (b) and "or subchapter IV of Chapter 53" into 38.6(b) to comply with section 5114(a)(1); and (3) inserting "applicant or" into § 38.7(j) to comply with section 5112(a).

On September 2, 1987, the Bureau of Indian Affairs published a proposed rule on Education Personnel in the **Federal Register** (52 FR 33382), which established requirements for voluntary services, employment, discharge, and payment of teachers and other personnel in Bureau of Indian Affairs operated schools and agency education positions.

The public was invited to offer comments on the proposed rule on or before October 2, 1987. Nineteen commenters responded. All comments were considered. From the nineteen commenters, there were 58 comments on specific sections, and 11 comments addressing the general concerns of education. Each comment was considered by the Office of Indian Education Programs, which accepted, rejected, or adopted a modified version of each comment.

Some of the Union comments were not addressed since the Bureau of Indian Affairs negotiated those concerns with the union.

The Bureau's responses to the comments received have been organized into a general category and by specific subparts. The general comments are categorized with responses, then each specific comment is addressed in the section of the proposed rule to which it relates. Some accepted responses necessitated removing sections or sentences of the rule and adding new sections or sentences. In one instance, the change required redesignating a section. For purposes of consistency, all section numbers appearing in this part of the Preamble refer to the proposed rule as published in the **Federal Register** on September 2, 1987. Each comment is followed by the Bureau's response.

General Comments

Eleven comments addressed under this section are those concerned with the general areas of Bureau personnel operations rather than specific sections in the proposed rule.

Comment: One commenter expressed satisfaction with the prorated pay over a 12 month period. The same commenter expressed dissatisfaction with the payroll system and its ability to pay employees correctly and on time. The system's inability to make correct deductions (bonds, rent, etc.), high teacher turnover, methods of instruction, and staff needs were also points of dissatisfaction.

Response: Since the comments are not relative to the proposed rule, we will not respond. However, the dissatisfaction and complaints will be forwarded to the appropriate officers.

Comment: One commenter suggested that we consider merit raises for those who improve their education and/or performance after they reach the $24,000 level.

Response: We believe that § 38.6(c), Adjusting employee basic compensation rates, addresses the commenter's suggestion. This subsection provides for additional raises based on contract renewal, performance, and education.

Comment: Five commenters requested that the Bureau reassess its teacher salaries and increase salaries to make them competitive with surrounding states and/or school districts. Another commenter suggested that pay should be averaged within each individual state and not with all other states. Another commenter said that employees should be compensated for working in geographically isolated areas based on miles traveled and that work hours should be comparable to the local schools.

Response: The Bureau agrees that a reassessment of teacher salaries is needed. However, the original legislation requires that the salaries be comparable to the general salary schedule. Pub. L. 100-297 provides for one of two options for teachers and counselors, to become effective in FY 1991.

Comment: One commenter suggested that Agency Superintendents for Education (ASE's) should be required to meet state administrative requirements.

Response: The position of ASE's is exempted by statute.

Comment: One commenter said that the 30-day comment period was insufficient for him to make any comments.

Response: The proposed rule was published on September 2, 1987, and copies were distributed to the Area and Agencies by September 4, 1987. Copies should have been made available to all school staff by September 15, which would have allowed two weeks of comment time.

The following section responds to specific comments received from the public.

Comments and Responses

Comment: Definitions § 38.3. One commenter recommended that we expand and clarify the term "Area Education Programs Administrator".

Response: We agree. The definition has been rewritten to clarify "Area Education Programs Administrator".

Comment: Definitions § 38.3 Education Position. In one commenter's opinion, the term "Education position" should also apply to business technicians, secretarial-type positions, and registrars.

Response: The positions of business technicians, secretarial-type positions, and registrars are included in the term "Educational position".

Add: The term "probationary period" was added under the Definitions section for clarity.

Comment: Definitions § 38.3. Two commenters recommended that "school term" be defined.

Response: We agree, and "school term" was added to the Definitions section.

Comment: Identification of Qualified Individuals § 38.5(c). One commenter proposed that a pre-employment screening procedure be added that would incorporate a temporary contract not to exceed 120 days; that the applicant should be found suitable for employment within this period of time; and, if documented cause is shown that the applicant is unsuitable, that the contract may be terminated without appeal or grievance rights to the employee.

Response: The proposal was not accepted. The additional procedure does not improve the current screening procedure. The proposal would double the current paper workload and could delay the payment of salaries and the filling of positions.

Comment: Identification of Qualified Individuals § 38.5(c). One commenter requested that we include a provision whereby an applicant who does not accept a position when offered by location indicated on the SF-171 will be deleted from the applicant supply file.

Response: The request was not accepted since this is a procedure and not a regulation. Also, this process is established in the Bureau of Indian Affairs' Manual (BIAM) at 62 BIAM 11.2, Appendix A.

Comment: Adjusting Employee Basic Compensation Rate § 38.6(c)(i). One commenter suggested that the contract renewal incentives be tied to the position rather than the individual.

Response: We believe that the contract renewal incentives must be tied to both the position and individual. This is addressed in the regulations and no changes will be made in the regulations.

Comment: Special Additions to Basic Compensation § 38.6(d)(1). One commenter said the 25 per centum staffing differential was inadequate when recruiting some specialized positions relating to special education.

Response: The Bureau agrees that the staffing differential may be inadequate. However, current statute requires that the staffing differential be tied to the general salary schedule. No change was made.

Comment: Prorating of Pay § 38.6(e)(3). One commenter suggested a longer notification time for employees who wish to change their election of a particular payment plan.

Response: We have considered the recommendation for a longer notification time but feel that 30 days is an adequate time.

Comment: Payment of Compensation to Educators § 38.6(e)(4). One commenter stated that it is unlikely that very many employees will elect a stipend in lieu of overtime or compensatory time because they can earn more through overtime pay. Therefore, any stipend established must be attractive enough to replace the overtime option.

Response: The option is provided by statute. However, we believe that when the stipends are established in 62 BIAM, the stipends and overtime pay will be comparable. No change was made.

Comment: Stipends for Extracurricular Activities § 38.6(e)(4). Two commenters remarked that stipends should equal those established locally and would require local input and considerations before they are set. Another commenter suggested that the final stipend payment be withheld until coaches have checked in all uniforms, equipment, and supplies. The commenter also suggested that stipends should not be in lieu of overtime or compensatory time but should be the only compensation offered.

Response: Subsection 38.6(e)(4)(i) provides for local input with comparable rates to other school districts in or near the area. As for the second comment, we do not believe that withholding of final stipend payments for coaches, and not including other professional fields, would be appropriate. Therefore the suggestion was not accepted. Pub. L. 98-511 section 1142(a) requires that "the Secretary shall provide a stipend in lieu of overtime premium pay or compensatory time off." No changes were made.

Comment: Stipends for Extracurricular Activities § 38.6(e)(4). One commenter asked, "Once an employee elects to be paid a stipend for extracurricular activities, can that employee turn around and demand overtime/compensatory time instead? Why would an employee elect to be paid a stipend if he/she can also demand hour-for-hour overtime/compensatory time? Some restrictions should be made."

Response: The employee may elect to be paid a stipend or overtime/compensatory time, but not both. Why an employee would elect one type of payment over another would be subject to individual preference.

Comment: Appointment of Educators § 38.7. One commenter said that no reference is made to post audit responsibilities of the local Area Personnel Office. Without this procedure, strict adherence to established personnel policies, rules, regulations and procedures, which not only includes the Pub. L. 95-561 contract system but also the Office of Personnel Management regulations, could be seriously jeopardized or compromised.

Response: The reference to post audit responsibilities of the local Area Personnel Office is addressed in the Bureau education personnel manual.

Comment: Appointment of Educators § 38.7. One commenter suggested that we add a subpart called "Temporary Contracts" that would offer a temporary contract for a period not to exceed one year that may be extended for up to one additional year with school board approval.

Response: The suggestion was accepted and a new part has been written retitled "Temporary Contracts". Subsections (i) Waiver of Indian preference, (j) Prohibited reappointments, and (k) Contract renewals have been redesignated as sections (j), (k), and (l) respectively.

Comment: Local School Employees § 38.7(a)(b)(c). One commenter recommended that the school board should be required to state its reasons for disapproving an appointment at the same time they take the action.

Response: As in the current regulation, school boards are governed under such uniform procedures as they may adopt. There was no change with the proposed rule and the recommendation was not accepted.

Comment: Appointment of Educators § 38.7(b)(c). One commenter requested that provisions (b) and (c) should require the Director to respond within the same timeframe (10 days) as required by the Agency Superintendent for Education and Area Education Programs Administrators under the provisions in subpart (a).

Response: The reason that the Director's office response time is longer is due to the time it takes for the mail to reach the Director's office. The ten-day response time is not reasonable. The request was not accepted.

Comment: Employment Contracts § 38.7(d). Two commenters recommended that an additional clause be written into employment contracts whereby a person would be penalized a specified dollar amount for breaking a contract and a specified higher amount if a contract were broken at a late date.

Response: The Bureau does not have the authority or legislation to penalize a person a dollar amount for breaking a contract. No change was made.

Comment: Employment Contracts § 38.7(d). One commenter suggested that the teaching staff should be given tenure rather than the year-to-year contract as provided in the rule.

Response: The statute requires year-to-year contracts; therefore, no change was made.

Comment: Provisional Contracts § 38.7(f). One commenter requested that quarter hours be included in the definition of satisfactory progress, that less than eight semester/quarter hours annually could be satisfactory progress if the employee can demonstrate that less hours are needed.

Response: Since these comments are not directed at the rule, but rather the educational personnel manual, the comments will be considered when the manual is rewritten.

Comment: Provisional Contracts § 38.7(f)(4). One commenter suggested that the word "satisfactory" be defined under this subsection.

Response: The word "satisfactory" will not be defined in the regulation. No change was made.

Comment: Provisional Contracts § 38.7(f)(5). One commenter asked who determines when an employee fails to meet the requirement for making satisfactory progress toward meeting full qualification requirements.

Response: The supervisor will determine when an employee is making satisfactory progress.

Comment: Conditional Appointment § 38.7(g). One commenter recommended deleting the section on conditional appointments since they have not experienced this situation in the last seven years during which 62 BIAM 11 has been in effect.

Response: Conditional appointments are required by Pub. L. 95-561. The recommendation was not accepted.

Comment: Short-Term Contracts § 38.7(h). One commenter expressed the need for a short-term flexible contract that would accommodate employees that work irregular hours with flexible schedules.

Response: Short-term flexible contracts are already currently being utilized as intermittent contracts under 62 BIAM 11.4.2D. Such contracts provide for situations where work occurs on an irregular basis. These contracts may be of year-long or school-year duration. Any intermittent work schedule connotes a "substitute" situation.

Clarification: Clarifying language was added in § 38.7(h)(2)(ii) that reads: "* * * if the qualifications of the individual are lower than required, * * *"

Comment: Waiver of Indian Preference § 38.7(j). One commenter questioned the waiver provision under this part as referring only to "an employee" and not to a "Federal employee".

Response: By implication we read the statute to mean any Federal employee. The waiver provision applying to all Federal employees would provide school boards a wider selection of experience and expertise. No change was made.

Comment: Contract Renewals § 38.7(k). One commenter asked, under this part, "As stated, this means that if a school supervisor recommends nonrenewal and the school board determines that the contract shall be renewed, the school board's determination will prevail without opportunity for reconsideration. Is that the intent of the authors?"

Response: No. An appeal procedure has been added to allow review of a school board's determination to renew a contract not recommended for renewal by the school supervisor or an ASE or AEPA.

Clarification: Clarifying language was added to the first sentence in § 38.7(1)(2) to be consistent with subsection (a) of this section.

Comment: Nonrenewal of Contract § 38.8(a). One commenter asked if an employee is given a written notice for nonrenewal, does this mean that nonrenewal must be for cause and/or reason?

Response: Yes. The cause or reason for nonrenewal must be specified, except during probation.

Comment: Nonrenewal of Contract § 38.8(b). One commenter asked, "How and by whom is this appropriate official or body to be selected or appointed? Is such appointment limited to Federal employees?"

Response: The term "appropriate official" in § 38.8(b) means a Bureau employee. The term "body" means the appropriate tribal entity. The school board is usually elected or appointed by the tribe(s) under such uniform procedures as they may adopt. Appointment to school boards excludes Federal employees, so Federal employees cannot be appointed.

Comment: Nonrenewal of Contract § 38.8(g). One commenter suggested that we should place subsection (g) before subsection (a) since subsection (g) identifies what employees are eligible for in the procedures of sections (a), (b), (c), (d), (e), and (f). The same commenter also questioned the meaning of the phrase "* * * 36 months of continuous service * * *"

Response: The Bureau agreed with the commenter, and subsection (g) was rewritten and moved to the introductory part of this section. The "36 months" was changed to read: "* * * three full continuous school terms * * *"

Comment: Nonrenewal of Contract § 38.8(g). One commenter asked if the 36 month time requirement included consecutive service or actual contract time worked?

Response: The term "36 months" has been changed to "three full continuous school terms", therefore meaning three full consecutive contract terms.

Clarification: Clarifying language was added in the first sentence in § 38.8(g) after contract appointment that reads: "* * * contract appointments, or serving a probationary period."

Deleted: The last sentence in § 38.8(k) was deleted as being superfluous.

Comment: Discharge of Educators § 38.9. One commenter suggested that we simplify the appeal process for the employee.

Response: We believe that the proposed rule cannot be further simplified without harming the due process of the employee. The suggestion was not accepted.

Comment: Discharge for Inadequate Performance § 38.9(b). One commenter suggested that we include a definition of "lack of student achievement".

Response: We believe that the definition for "lack of student achievement" must be determined locally based on the local school program. A national definition could not be applied across all school programs effectively, therefore, the suggestion was not accepted.

Comment: Discharge of Educators § 38.9(b). One commenter recommended that all Office of Indian Education Programs staff in the Central Office also be required to meet the provisions of this part regarding student achievement.

Response: Central Office employees are not educators as defined under the statute.

Comment: Conditions of Employment of Educators § 38.10. One commenter said no references are made to labor-management relations responsibilities and requirements and suggested reference to the Bureau Labor Management Relations responsibilities be included to emphasize to tribal governments and school boards that the Bureau does have a responsibility to bargaining unit employees that assures them the right to representation, even with reservation schools.

Response: No reference is made to labor relations responsibilities under this part. When this Part and a negotiated labor relations agreement conflict, the negotiated agreement governs.

Clarification: The first sentence in § 38.10(c) was rewritten to clarify the administrative process contained in § 38.8 of this part.

Comment: Conditions of Employment of Educators § 38.10(c). One commenter suggested that an explanation should follow as to how the contract is to be terminated.

Response: The contract will be cancelled since it was never consummated.

Comment: Conditions of Employment of Educators § 38.10(e). One commenter thought the Bureau's policy of equal treatment of all employees and applicants was contrary to actual practice.

Response: There have been several laws governing Indian preference for employment in the Bureau. The first was in 1834 and last general provision was the Indian Reorganization Act of 1934 (25 U.S.C. 479). Congress extended preference in employment in the Bureau to qualified Indians and further determined that proper fulfillment of its trust required turning over to the Indians a greater control of their own destinies.

A Supreme Court decision of 1974 (*Morton* vs. *Mancari*) stated: "this preference does not constitute 'racial discrimination.' Indeed, it is not even a 'racial' preference. Rather it is an employment criterion reasonably designed to further the cause of Indian self-government and to make the BIA more responsive to the needs of its constituent groups." The decision further stated that "The preference, as applied, is granted to Indians not as a discrete racial group, but, rather, as members of quasi-sovereign tribal entities whose lives and activities are governed by the BIA in a unique fashion." The Bureau is, therefore, required by law to give preference to qualified Indians in filling positions as required in 25 CFR Part 5 (25 U.S.C. 472 and 479).

Comment: Grievance Procedures § 38.10(f). One commenter recommended that, in locations and for positions covered by an exclusive bargaining unit, the negotiated grievance procedure would be an exclusive avenue of redress for all matters within the scope of the collective bargaining agreement.

Response: We disagree. Collective bargaining is covered under a different statute and is not appropriate to be referenced under this part.

Comment: Length of the Regular School Term § 38.11. One commenter recommended that this section be omitted from this part. The commenter believes that the existence of a cooperative agreement does not automatically waive the 180 days, and Bureau schools must still seek a waiver under § 36.61.

Response: The Bureau partially agreed with the commenter. The part regarding cooperative agreements was deleted, and a provision for waiver in 25 CFR 36.61 was added.

Comment: Personal Leave § 38.12(a)(1). One commenter asked if the proposed rule supersedes the National Council of Bureau of Indian Affairs Educators and National Federation of Federal Employees negotiated agreements that specify hours of personal leave and emergency leave. Another question was whether the supervisor or the principal has the authority to grant emergency leave.

Response: The answer to the first question is no, the proposed rule does not supersede the union agreements. The answer to the second question is yes. The supervisor or principal has the authority to approve emergency leave.

Comment: Personal Leave § 38.12(a)(1)(ii). One commenter recommended that personal and emergency leave should be converted to sick leave at the end of the contract period.

Response: We do not agree with the recommendation, since this would exceed the rate of four hours for each biweekly pay period which is beyond what Congress has authorized.

Comment: Sick Leave §§ 38.12 (a)(2) and (d)(4). One commenter suggested that we include medical and dental appointments under sick leave coverage under these parts.

Response: The Bureau accepted the suggestion and medical and dental appointment are include under "Sick Leave" in §§ 38.12 (a)(2) and (d)(4).

Comment: Sick Leave § 38.12(a)(2). One commenter recommended that sick leave be given at the beginning of the school year.

Response: The Bureau disagrees with the recommendation. We believe that sick leave should be earned and, since sick leave can be accumulated indefinitely, the recommendation was not accepted.

Clarification: School Vacation Time § 38.12(a)(3). The title of this part was shortened to read "School vacation" and the word "time" was deleted. The second and third sentences were deleted and were replaced with the following sentences: "School vacations are scheduled on the annual school calendar during the instructional year and may not be scheduled before the first day of student instruction or after the last day of student instruction. School vacations are not a right of the employee and cannot be paid. * * *"

Comment: Vacation Leave § 38.12(b)(1). One commenter recommended that the 200 hours of leave for full-time year-long contract employees be comparable to the 208 hours of leave for General Schedule positions.

Response: The Bureau disagrees with the recommendation. The 200 hours of vacation leave for year-long contract employees is earned after six or more years of service compared to 208 hours of annual leave for status quo employees with more than 15 years of service. We believe that the 200 hours of vacation leave for year-long contract employees is more than appropriate. No change was made.

Comment: Vacation Leave § 38.12(b)(1). Two commenters recommended that "rather than unused leave being forfeited at separation, we would like to see employees paid hour for hour or lump sum if the leave has been prescheduled and cancelled due to an 'exigency of the public business' ".

Response: The Bureau disagrees with the recommendation. Provisions have been added for carryover of leave. If lump sum payments were made upon separation, this would place an undue burden on the school budget. No changes were made.

Change: Vacation leave hours in § 38.12(c)(1) have been changed from 60 hours to 64 hours and from 100 hours to 104 hours due to collective bargaining with the union. In § 38.12(d) the 18 hours of personal leave was changed to 20 hours and the word "emergency" was inserted between the words "personal leave", again due to collective bargaining.

Comment: Leave System for Education Personnel § 38.12(f). One commenter asked why educators serving with contracts with work weeks of 20 hours a week or less are not eligible for prorated pay.

Response: We do not believe that educators would want a smaller paycheck spread over a year when they work less than 20 hours a week. No change was made.

Comment: Status Quo Employees in Education Positions § 38.13(c)(1). One commenter recommended that "failure of the school board to act within this period of time shall have the effect of approving the conversion of status quo employees to contract positions" be added to the section.

Response: The Bureau disagrees with the recommendation since, by statute only the school board may approve an employee's conversion to a contract position. Therefore, positive action by the school board is required.

Add: A new subsection (b) was added for informational purpose to inform employees of the loss of the early-out retirement eligibility under Pub. L. 96–135. Section (b) was redesignated as subsection (c) in the final revision.

Comment: Voluntary Services § 38.14(a). One commenter requested clarification of the term "earning credit" as a requirement for performing voluntary services. As proposed, the rule indicated that volunteer services are limited to "* * * individuals, groups, and students earning credit * * *"

Response: The Bureau accepted the request, and the phrase "* * * earning credit (i.e., student teaching)." was deleted. This sentence eliminates the limitation for volunteers that they must be earning credits while performing the volunteer services.

Comment: Voluntary Services § 38.14(b). One commenter recommended that the term "representative of the school" be changed to "a representative of the college or university".

Response: The Bureau agreed with the recommendation. However, the term "institution" was used in place of the word "school".

Comment: Voluntary Services. One comment was "that our schools have been cooperating with colleges/universities for a long time in having student teachers, so why should this now need to be covered by regulations?"

Response: Pub. L. 98–511 expands the authority of the Bureau to accept voluntary services in other than student teaching.

The Department of the Interior has determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The information collection requirement contained in § 38.5 uses Standard Form 171 for collection that has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance under 3206–0012. The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The information collection requirement contained in § 38.14 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0116.

The principal authors of this final rulemaking are Ms. Betty Walker, Education Programs Administrator, Minneapolis Area Office; Mr. Larry Holman, Agency Superintendent for Education, Eastern Navajo Agency; Mr. Joe Jarrett, Navajo Area Personnel Officer; and Mr. George D. Scott, Office of Indian Education Programs, Washington, D.C.

List of Subjects in 25 CFR Part 38

Indians-education, Teachers.

For the reasons set out in the preamble, Title 25, Chapter I, Part 38 is revised to read as follows:

PART 38—EDUCATION PERSONNEL

Authority: Secs. 1131 and 1135 of the Act of November 1, 1978 (92 Stat. 2322 and 2327, 25 U.S.C. 2011 and 2015); Secs. 511 and 512 of Pub. L. 98–511; and secs. 8 and 9 of Pub. L. 99–89 (Indian Education Technical Amendments Act of 1985) and Title V of Pub. L. 100–297 (Indian Education Amendments of 1988).

§ 38.1 Scope.

(a) *Primary scope.* This part applies to all individuals appointed or converted to contract education positions as defined in § 38.3 in the Bureau of Indian Affairs after November 1, 1979. This part applies to elementary and secondary school positions and agency education positions.

(b) *Secondary scope.* Section 38.13 applies to employees with continuing tenure in both the competitive and excepted service who encumber education positions.

(c) *Other.* Where 25 CFR Part 38 and a negotiated labor relations agreement conflict, the negotiated agreement will govern.

§ 38.2 Information collection.

(a) The information collection requirements contained in § 38.5 use Standard Form 171 for collection, and have been approved by OMB under 25 U.S.C. 2011 and 2015 and assigned approval number 3206–0012. The sponsoring agency for the Standard Form 171, is the Office of Personnel Management. The information is being collected to determine eligibility for employment. The information will be used to rate the qualifications of applicants for employment. Response is mandatory for employment.

(b) The information collection requirement for § 38.14, Voluntary Services has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0116. The information is being collected to determine an applicants eligibility and selection for appropriate volunteer assignments. Response is voluntary.

§ 38.3 Definitions.

As used in this Part, the term:

"Agency" means the current organizational unit of the Bureau, which provides direct services to the governing body or bodies and members of one or more specified Indian Tribes.

"Agency school board" as defined in section 1139(1), of Pub. L. 95–561, means a body, the members of which are appointed by the school boards of the schools located within such Agency. The number of such members shall be determined by the Director in consultation with the affected tribes. In Agencies serving a single school, the school board of that school shall function as the Agency School Board.

"Agency Superintendent for Education" (ASE) means the Bureau official in charge of education functions at an Agency Office and to whom the school supervisor(s) and other educators under the Agency's jurisdiction, report.

"Area Education Programs Administrator" (AEPA) means the Bureau official in charge of an Area Education Office that provides services to off-reservation residential schools, peripheral dormitories or on-reservation BIA funded schools that are not served by an Agency Superintendent for Education. The AEPA may also provide education program services to tribes not having an Agency Superintendent for Education at their agency. The AEPA has no line authority over agency education programs that are under the jurisdiction of an Agency Superintendent for Education.

"Assistant Secretary" means the Assistant Secretary for Indian Affairs of the Department of the Interior.

"Bureau" means the Bureau of Indian Affairs of the Department of the Interior.

"Consult", as used in this part and provided in section 1131(d)(1) (B) and (C) of Pub. L. 95–561, means providing pertinent information to and being available for discussion with the school board, giving the school board the opportunity to reply and giving due consideration to the school board's response, subject to appeal rights provided in § 38.7 (a), (b) and (c), and § 38.9(e)(3).

"Director" means the Deputy to the Assistant Secretary/Director—Indian Affairs (Indian Education Programs) in the Bureau.

"Discharge" means the separation of an employee during the term of the contract.

"Education function" means the administration and implementation of the Bureau's education programs and activities (including school operations).

"Education position", means a position in the Bureau the duties and responsibilities of which:

(a) Are performed on a school term basis principally in a Bureau elementary and secondary school which involve:

(1) Classroom or other instruction or the supervision or direction of classroom or other instruction;

(2) Any activity (other than teaching) that requires academic credits in educational theory and practice equal to the academic credits in educational theory and practice required for a bachelor's degree in education from an accredited institution of higher education; or

(3) Any activity in or related to the field of education notwithstanding that academic credits in educational theory and practice are not a formal requirement for the conduct of such activity; or

(4) support services at or associated with the site of the school; or

(b) Are performed at the Agency level of the Bureau and involve the implementation of education-related Bureau programs. The position of Agency Superintendent for Education is excluded.

"Educator", as defined in section 1131(n)(2) of Pub. L. 95-561 means an individual whose services are required, or who is employed, in an education position as defined in § 38.3.

"Employment contract" means a signed agreement executed by and between the Bureau and the individual employee hired or converted under this part, that specifies the position title, period of employment, and compensation attached thereto.

"Involuntary change in position" means the release of an employee from his/her position instigated by a change in program or other occurrence beyond the control of the employee.

"Local school board", as used in this part and defined in section 1139(7) of Pub. L. 95-561, means a body chosen in accordance with the laws of the tribe to be served or, in the absence of such laws, the body elected by the parents of the Indian children attending a Bureau-operated school. In schools serving a substantial number of students from different tribes, the members shall be appointed by the governing bodies of the tribes affected and the number of such members shall be determined by the Director in consultation with the affected tribes.

"Probationary period" means the extension of the appointed process during which a person's character and ability to satisfactorily meet the requirements of the position are reviewed.

"School board" means an Agency school board or a local school board.

"School supervisor" means the Bureau official in charge of a Bureau school who reports to an Agency Superintendent for Education. In the case of an off-reservation residential school(s), and, in some cases, peripheral dormitories and on-reservation day schools, the school supervisor shall report to the Area Education Programs Administrator.

"School term" is that term which begins usually in the last summer or fall and ends in the Spring. It may be interrupted by one or more vacations.

§ 38.4 Education positions.

(a) The Director shall establish the kinds of positions required to carry out the Bureau's education function. No position will be established or continued for which:

(1) Funds are not available; or

(2) There is not a clearly demonstrable need and intent for it to carry out an education function.

(b) Positions established for regular school operations will be restricted to school term or program duration. Particular care shall be taken to insure that year-long positions are not established unless they are clearly required and involve essential 12-month assignments.

§ 38.5 Qualifications for educators.

(a) *Qualifications related to positions.* Job qualification requirements shall be at least equivalent to those established by the appropriate licensing and certification authorities of the State in which the position is located.

(b) *Qualifications related to individuals.* An applicant for an education position must establish that he/she meets the requirements of the position by submitting an application and a college transcript, as appropriate, to the local school supervisor, Agency Superintendent for Education (ASE), Area Education Programs Administrator (AEPA), or Director and appearing for an interview if requested by the official involved. The applicant's education and experience will be subject to verification by the ASE or the AEPA. Employees who falsify experience and employment history may be subject to disciplinary action or discharge from the position to which he/she is appointed.

(1) School boards may waive formal education and State certification requirements for tribal members who are hired to teach tribal culture and language.

(2) Tribal members appointed under this waiver may not have their basic pay rate set higher than the rate paid to qualified educators in teaching positions at that school.

(c) *Identification of qualified individuals.* The Director shall require each ASE, AEPA, and other appropriate local official in the education program organization to maintain lists of qualified and interviewed applicants for each of the kinds of established positions. Applications on file shall be purged annually. Applicants whose qualifications are established and who indicate an interest in working in specified locations will be included on those local applicant lists. The Director shall maintain a national list of qualified applicants for each of the kinds of positions established. Applicants whose qualifications are established and who either do not indicate an interest in a specific location or indicate an interest in working in any location will be entered on the national list. The national list is a secondary source of applicants.

(d) *Special recruitment and training for Indian educators.* The Director shall review annually the Bureau's "Recruitment of Indian Educators Program" and update as necessary. The Director will define individual training plans for trainees and subsequent promotional opportunities for advancement based upon satisfactory job performance in this program.

§ 38.6 Basic compensation for educators and education positions.

(a) *Schedule of basic compensation rates.* The Director shall establish a schedule for each pay level specified in Part 62 of the Bureau of Indian Affairs Manual (BIAM). The schedule will be revised at the same time as and be consistent with rates in effect under the General Schedule or Federal Wage System for individuals with comparable qualifications, and holding comparable positions.

(b) *Range of pay rates for positions within pay levels.* The range of basic compensation rates for positions assigned to each pay level will be consistent with the General Schedule or Federal Wage System rates that would otherwise be applicable if the position were classified under Chapter 51 or subchapter IV of Chapter 53 of Title 5 of the United States Code (U.S.C.). The maximum pay shall not exceed step 10 of the comparable General Schedule position by more than ten percent.

(c) *Adjusting employee basic compensation rates.* (1) Adjustments in an employee's basic compensation made in connection with each contract renewal will be based on the following:

(i) Contract renewal incentive—one pay increment for each renewal, not to exceed four increments, unless the educator is covered by a negotiated labor union agreement.

(ii) Performance—employees whose performance is rated "above satisfactory"; one pay increment; employees whose performance is rated "outstanding"; two pay increments.

(2) Pay increments based on education may be awarded as outlined in 62 BIAM.

(d) *Special additions to basic compensation.* The Director is authorized to established the following special additions to rates of basic compensation:

(1) The Director may authorize payment of a staffing differential not exceeding 25 per centum of the rate of basic compensation based on a formally-documented request by an ASE or AEPA. Such a staffing differential shall only be authorized in writing when the Director determines that:

(i) It is warranted by the geographic isolation of the work site or other unusually difficult environmental working or living conditions and/or,

(ii) It is necessary as a recruitment or retention incentive. This staffing differential is to be computed on the basic schedule rate before any other additions are computed.

(2) Special rates may be established for recruitment and retention applicable only to a specific position or to specific types of positions in specific locations based on a formally documented request by an ASE or AEPA and submitted to the Director for approval.

(e) *Payment of compensation to educators.* This section applies to those individuals employed under the provisions of Section 1131(m) of Pub. L. 95–561 or Title 5 U.S.C.

(1) *Pay periods.* Educators shall be paid on the basis of a biweekly pay period during the term of the contract. Chapter 55 of Title 5 U.S.C. applies to the administration of pay for educators, except that section 1131(m) of Pub. L. 95–561 provides that 5 U.S.C. 5533 does not apply with respect to the receipt of pay by educators during summer recess under certain circumstances.

(2) *Pay for contract educators.* When an educator is appointed, payment under the contract is to begin as of the effective date of the contract. If an educator resigns or is discharged before the expiration of the term of the contract, pay ceases as of the date of resignation or discharge.

(3) *Prorating of pay.* Within 30 days prior to the beginning of the academic school term, each educator must elect whether to have the annual contractual rate or basic pay prorated over the contractual academic school term, or to have the basic pay prorated over a 12-month period.

(i) Each educator may change such election once during the academic school term, provided notice is given two weeks prior to the end of the fifth month after the beginning of the academic school term.

(ii) An educator who elects a 12-month basis of prorated pay may further elect to be paid in one lump sum at the end of the academic school term for the then remaining amount of rate of basic pay otherwise due, provided notice is given four weeks prior to the end of the academic school term.

(iii) No educator shall suffer a loss of pay or benefits because of elections made under this section.

(4) *Stipends for extracurricular activities.* An employee, if assigned to sponsor an approved extracurricular activity, may elect annually at the beginning of the contract to be paid a stipend in lieu of overtime premium pay or compensatory time when the employee performs additional activities to provide services to students or otherwise support the school's academic and social programs.

(i) The Director is authorized to establish a schedule of stipends for each Bureau Area, taking into consideration types of activities to be compensated and payments provided by public school districts in or near the Area.

(ii) The stipend shall be a supplement to the employee's base pay and is not a part of salary for retirement computation purposes.

(iii) The employee shall be paid the stipend in equal payments over the period of the extracurricular activity.

§ 38.7 Appointment of educators.

(a) *Local school employees.* Local Bureau school employees shall be appointed only by the school supervisor. Before the local school employee is employed, the school board shall be consulted. An individual's appointment may be finalized only upon receipt of a formal written determination certified by the local school board under such uniform procedures as it may adopt. Written determination by the school board should be received within a reasonable period, but not to exceed 30 days. Failure of the school board to act within this period shall have the effect of approving the proposed appointment. The local school board shall use the same written procedure to disapprove an appointment. The school supervisor may appeal to the ASE, or, where appropriate, to the AEPA, any determination by the local school board concerning an individual's appointment. A written statement of appeal describing the action and the reasons the supervisor believes such action should be overturned must be filed within 10 days of receipt of the action from the local school board. A copy of such statement shall be submitted to the school board and the board shall be afforded an opportunity to respond, not to exceed 10 calendar days, in writing, to the appeal. After reviewing such written appeal and response, the ASE or AEPA may, for cause, overturn the action of the local school board. The ASE or AEPA must transmit the determination of the appeal (in the form of a written opinion) to the board and to the supervisor identifying the reasons for overturning the action within 10 calender days. Failure to act within the 10 calendar day period shall have the effect of approving the local school board's determination.

(b) *School supervisors.* School supervisors may be appointed only by the ASE, except the AEPA shall appoint school supervisors for off-reservation boarding schools and those few other schools supervised by the AEPA. The school board shall be consulted before the school supervisor is employed. The appointment may be finalized upon receipt of a formal written determination certified by the school board under any uniform procedures as it may adopt. Written determination by the school board shall be received within a reasonable period, but not to exceed 30 days. Failure of the school board to act within this period shall have the effect of approving the proposed appointment. The school board shall use the same procedure to disapprove an appontment. Within 20 calendar days of receipt of any determination by the school board concerning an individual's appointment, the ASE or AEPA, as appropriate, may appeal to the Director by filing a written statement describing the determination and the reasons the supervisor believes the determination should be overturned. A copy of the statement shall be submitted to the local school board and the board shall be afforded an opportunity to respond, within 10 calendar days, in writing, to such an appeal. The Director may reverse the determination for cause set out in writing to the school board. Within 20 calendar days of the school board's response, the Director shall transmit the determination of the appeal (in the form of a written opinion) to the board and to the ASE or AEPA identifying the reasons for overturning the determination. Failure by the Director to act within the 20 calendar day period shall have the effect of approving the school board's determination.

(c) *Agency office education program employees.* Appointments to Agency office education positions may be made only by the ASE. The Agency school board shall be consulted before the agency education employee is employed, and the appointment may be finalized upon receipt of a formal, written determination certified by the Agency school board under any uniform procedures as it may adopt. Written determination by the school board shall be received within a reasonable period, but not to exceed 30 days. Failure of the school board to act within this period shall have the effect of approving the proposed appointment. The Agency school board shall use the same written procedure to disapprove an appointment. Within 20 calendar days of receipt of any determination by the school board concerning an individual's appointment, the ASE may appeal to the Director by filing a written statement describing the determination and the reasons the supervisor believes the determination should be overturned. A copy of the statement shall be submitted to the Agency school board and the board shall be afforded an opportunity to respond, within 10 calendar days, in writing, to such appeal. After reviewing the written appeal and response, the Director may, for cause, overturn the determination of the Agency school board. Within 20 days of the board's response, the Director shall transmit the determination of the appeal (in the form of a written opinion) to the board and to the ASE identifying the reasons for overturning the determination. Failure of the Director to act within the 20 calendar day period shall have the effect of approving the school's board's determination.

(d) *Employment contracts.* The Bureau shall issue employment contracts each year for individuals employed in contract education positions at the Agency or school levels.

(e) *Absence of local school boards.* Where a local school board has not been established in accordance with section 1139(7) Pub. L. 95–561 with respect to a Bureau school, or where a school board is not operational, and the local school board is required to be given a notice or required to be consulted by statute or these regulations, the official involved shall notify or consult with the Agency school board serving the tribe(s) to which the parents of the Indian children atending that school belong, or, in that absence, the tribal organization(s) of the tribe(s) involved.

(f) *Provisional contracts.* Provisional certification or other limited certificates from the State are not considered full certification and only a provisional contract may be issued. There may be circumstances when no individual who has met the full certification or experience requirements is available for a professional position or when a status quo employee who does not meet full certification or experience requirements desires to convert to contract. When this situation exists, a provisional contract may be issued in accordance with the following:

(1) The contract will be made only:

(i) After it is determined that an individual already meeting certification or experience requirements is not available; or

(ii) For conversion of a status quo employee who does not yet meet all established position requirements.

(2) Consultation with the appropriate school board is required prior to the contract.

(3) The contract may be of 12-month or school-term duration.

(4) The employee will be required to make satisfactory progress toward meeting full qualification requirements.

(5) If the employee fails to meet the requirements established under § 38.7(f)(4), the contract will be terminated. Such termination cannot be grieved or appealed.

(g) *Conditional appointment.* As provided in section 1131(d)(4), Pub. L. 95–561, if an individual who has applied at both the national and local levels is appointed from a local list of applicants, the appointment shall be conditional for 90 days. During that period, the individual's application and background shall be examined to determine if there is a more qualified individual for the position. Removal during this period is not subject to discharge, hearing or grievance procedures.

(h) *Short-term contracts.* (1) There may be circumstances where immediate action is necessary and it is impossible to consult with the local school board. When this situation exists short-term contracts may be made by the school supervisor in accordance with the following:

(i) The length of the contract will not exceed 60 days, or the next regularly scheduled school board meeting, whichever comes first.

(ii) If the board meets and does not take action on the individual in question, the short-term contract may be extended for the duration of the school year.

(iii) It shall be the responsibility of the school supervisor to fully inform the local school board of all such short-term contracts. Failure to do so may be cited as reason to discharge the school supervisor if so requested by the board.

(2) The local school board may authorize the school supervisor to make an emergency short-term contract to classroom, dormitory and other positions directly related to the health and safety of students. When this situation exists, short-term contracts may be made in accordance with the following:

(i) If local and agency lists of qualified applicants are exhausted, short-term contracts may be made without regard to qualifications for the position;

(ii) The pay level will be based on the qualifications of the individual employed rather than the requirements of the position, if the qualifications of the individual are lower than required;

(iii) The short-term contract may not exceed the school term and may not be renewed or extended;

(iv) Every 60 days the school supervisor will determine if qualified individuals have been placed on the local or agency lists. If a qualified individual on the list accepts employment, the school supervisor must terminate the emergency appointment at the time the qualified individual is appointed.

(i) *Temporary contracts.* There may be circumstances where a specific position is needed for a period of one year or less. Under these conditions a position may be advertised as a temporary position and be filled under a temporary contract. Such contract requires the same school board approval as a school year contract. If required for the completion of the activities specified in the original announcement, the position, may with school board approval be extended for up to one additional year. Temporary contracts may be terminated at any time and this action is not subject to approval or grievance procedures.

(j) *Waiver of Indian preference.* Notwithstanding any provision of the Indian preference laws, such laws shall not apply in the case of any personnel action within the purview of this section respecting an application or employee not entitled to Indian preference if each tribal organization concerned grants, in writing, a waiver of the application of such laws with respect to such personnel action, where such a waiver is in writing deemed to be a necessity by the tribal organization, except that this shall in no way relieve the Bureau of its responsibility to issue timely and adequate announcements and advertisements concerning any such personnel action if it is intended to fill a vacancy (no matter how such vacancy is created). When a waiver is granted, it shall apply only to that particular position and as long as the employee remains in that position.

(k) *Prohibited reappointment.* An educator who voluntarily terminates employment before the end of the school term may not be appointed to another Bureau education position before the beginning of the following school term. An educator will not be deemed to have voluntarily terminated employment if transferred elsewhere with the consent of the local school or Agency boards.

(l) *Contract renewals.* The appropriate school board shall be notified in writing by the school supervisor and/or ASE or AEPA not less than 90 days before the end of the school term whether or not an individual's contract is recommended for renewal.

(1) If the school board disagrees with the school supervisor's or ASE's or AEPA's recommendations, the board will submit a formal, written certification of its determinations to the school supervisor or ASE or AEPA within 25 days. If the board's determinations are not received within the 25 days, the school supervisor or ASE or AEPA shall issue the 60 day notification of renewal or nonrenawal to the individual as required under § 38.8.

(2) When the school board submits its determination within the 25 days and determines that a contract will be renewed, or nonrenewed, the appropriate official shall issue the required renewal notice, or nonrenawal, or appeal the determination of the school board to the appropriate official who will make a determination in accordance with the appeal procedure is § 38.7(a) of this part. After the probationary period, if the determination is that the contract will not be renewed, the procedures specified in § 38.8 shall apply.

§ 38.8 Nonrenewal of contract.

Where the determination is made that an employee's contract shall not be renewed for the following year, the following procedure will apply to those employees who have completed three full continuous school terms of service under consecutive contract appointments and satisfactory performance in the same or comparable education positions.

(a) The employee will be given a written notice of the action and the reasons thereof not less than 60 days before the end of the school term.

(b) The employee will be given 10 calendar days to request an informal hearing before the appropriate official or body. Upon request, the employee may be given official time, not to exceed eight hours, to prepare a written response to the reason(s).

(c) If so requested, an informal hearing shall be held within 30 calendar days of receipt of the request.

(d) The appropriate official or body will render a written determination within seven calendar days after the informal hearing.

(e) The employee has a right to request an administrative review by the ASE or AEPA of the determination within 10 calendar days of that determination. The ASE or AEPA then has 20 calendar days to render a final decision. Where the employee is the supervisor of the school or an agency education employee, any appeal of the ASE or AEPA would be addressed to the Director for a decision. If the Director or ASE's or AEPA's decision overturns the appropriate official or bodies determination, the appropriate official or body will be notified of the reasons in writing. Failure by the Director or ASE or AEPA to act within the 20 days will sustain the determination. This completes the administrative appeal process.

(f) Failure of any of the parties to meet the requirements of the above procedures will serve to negate the particular action sought by the negligent party.

(g) Those employees with less than three full continuous school terms of consecutive contract appointments are serving a probationary period. Nonrenewal of his/her contract will be considered a continuation of the examining process. This action cannot be appealed or grieved.

(h) Independent of the procedures outlined in this section, the school supervisor or ASE or AEPA, for applicable positions, shall be required to submit to the ASE or AEPA or appropriate higher authority all nonrenewal actions. Within 60 days, the ASE or AEPA shall review the nonrenewal actions and may overturn the determination of nonrenewal. In the event that the ASE or AEPA makes a decision to overturn the school board determination, the ASE or AEPA shall notify the school board in writing of his/her reasons for doing so.

(i) No more than the substantial standard of evidence shall be required to sustain the nonrenewal.

(j) A procedural error shall not be grounds for overturning a determination of nonrenewal unless the employee shows harmful error in the application of the Agency's procedures in arriving at such a decision. For purposes of this section, "harmful error" means error by the Agency in the application of its procedures which, in the absence or cure of the error, might have caused the Agency to reach a conclusion different than the one reached. The burden is upon the appellant to show that based upon the record as a whole, the error was harmful. i.e., caused substantial harm or prejudice to his/her rights.

(k) Nonrenewal of a contract is not discharge and will not follow the discharge procedures.

§ 38.9 Discharge of educators.

(a) *Discharge for cause.* Educators covered under the provision of this section are excluded from coverage under 5 U.S.C. 7511 and 4303. In order to provide due process for educators, the Director shall publish in 62 BIAM representative conditions that could result in the discharge of educators for cause and procedures to be followed in discharge cases.

(b) *Discharge for inadequate performance.* Action to remove educators for inadequate performance will be taken for failure to meet performance standards established under 5 U.S.C. 4302. Performance standards for all educators will include, among others, lack of student achievement. Willful failure to exercise properly assigned supervisory responsibilities by supervisors shall also be cause for discharge.

(c) *Other discharge.* The Director shall publish in 62 BIAM a description of the budgetary and programmatic conditions that may result in the discharge of educators for other than cause during the school term. The individual's personnel record will clearly reflect that the action taken is based upon budgetary or programmatic restraints and is not a reflection on the employee's performance.

(d) *Procedures for discharge for cause.* The Director shall publish in 62 BIAM the procedural steps to be followed by school supervisors, ASE's, and AEPA's in discharge for cause cases. These procedures shall provide (among other things) for the following:

(1) The educator to be discharged shall receive a written notice of the proposal, specifying the causes or complaints upon which the proposal is based, not less than 30 calendar days before the discharge. However, this shall not prohibit the exclusion of the individual from the education facility in cases where exclusion is required for the safety of the students or the orderly operation of the facility.

(2) A reasonable time, but not less than 10 calendar days, will be allotted for the individual to make written and/or oral responses to the charge.

(3) An opportunity will be afforded the individual to review the material relied upon to support the charge.

(4) Official time, not to exceed eight hours, will be provided to the individual to prepare a response to the charge.

(5) The educator may elect to have a representative and shall furnish the identity of any representative to the ASE or AEPA. The ASE or AEPA may disallow, as an employee representative, any individual whose activities as a representative would cause a conflict of interest or position, or an employee whose release from his or her official position would give rise to unreasonable costs to the Government, or when priority work assignment precludes his or her release from official duties. The terms of any applicable collective bargaining agreement and 5 U.S.C. 7114(a)(5) shall govern representation of employees in an exclusive bargaining unit.

(6) The individual has a right to a final decision made by the appropriate level of supervision.

(7) The individual has a right to appeal the final decision and have the merits of the case reviewed by a Departmental official not previously involved in the case. This right includes entitlement to a hearing upon request under procedures in accordance with the requirements of due process under section 1131(e)(1)(B) of Pub. L. 95-561.

(e) *School board action.* (1) The appropriate school board shall be notified as soon as possible, but in no case later than 10 calendar days from the date of issue of the notice of intent to discharge.

(2) The appropriate school board, under any uniform procedure as it may adopt, may issue a formal written certification to the school supervisor, ASE, or AEPA either approving or disapproving the discharge before the expiration of the notice period and before actual discharge. Failure to respond before the expiration of the notice period will have the effect of approving the discharge.

(3) The school supervisor initiating a discharge action may appeal the board's determination to the ASE or AEPA within 10 calendar days of receipt of the board's notice. The ASE or AEPA initiating a discharge may appeal the board's determination to the Director within 10 calendar days of receipt of the board's notice. Within 20 calendar days following the receipt of an appeal, the reviewing official may, for good cause, reverse the school board's determination by a notice in writing to the board. Failure to act within 20 calendar days shall have the effect of approving the board's determination.

(f) *School board recommendations for discharge.* School boards may recommend in writing to school supervisors, ASE's, or AEPA's, and the Director that individuals in the education program be discharged. These written recommendations may follow any procedures formally established internally by the school board or tribal government. However, the written recommendations must contain specific causes or complaints that may be verified or established by investigation of factual situations. The official receiving a board recommendation for discharge of an individual shall acknowledge the recommendation in writing within 10 calendar days of receipt and proceed with a fact finding investigation. The official who finally disposes of the recommendation shall notify the school board of the disposition in writing within 60 calendar days of initiation of the fact finding investigation.

§ 38.10 Conditions of employment of educators.

(a) *Supervision not delegated to school boards.* School boards may not direct, control, or interrupt the day-to-day activities of BIA employees carrying out Bureau-operated education programs.

(b) *Employee handbook.* Employee handbook and recruiting guides shall be developed by each local school or agency to provide specific information regarding:

(1) The working and hiring conditions for various tribal jurisdictions and Bureau locations;

(2) The need for all education personnel to adapt to local situations; and

(3) The requirement of all education personnel to comply with and support duly adopted school board policies, including those relating to tribal culture or language.

(c) *Contract renewal notification.* Employees will be notified 60 calendar days before the end of the school term of the intent to renew or not renew their contract. If an individual's contract is to be renewed, the individual must agree in writing to serve for the next school term. This agreement must be received within 14 calendar days of the date of the notice in order to complete the contract renewal. If this agreement is not received by the fourteenth day, the employee has voluntarily forfeited his or her right to continuing employment. If an individual agrees to serve for the next school term and fails to report for duty at the beginning of the next school term, the contract will be terminated and the individual's future appointment will be subject to the restriction in § 38.7(k) of this part.

(d) *Dual compensation.* An employee accepting a renewal of a school term contract may be appointed to another Federal position during the school recess period without regard to the dual compensation regulations in 5 U.S.C. 5533.

(e) *Discrimination complaints.* Equal Employment Opportunity (EEO) procedures established under 29 CFR Part 1613 are applicable to contract employees under this part. It is the policy of the BIA that all employees and applicants for employment shall be treated equally when considered for employment or benefits of employment, regardless of race, color, sex, religion, national origin, age, or mental or physical health (handicap), within the parameters of Indian preference.

(f) *Grievance procedures.* The Director shall publish in 62 BIAM procedures for the rapid and equitable resolution of grievances. In locations and for positions covered by an exclusive bargaining agreement, the negotiated grievance procedure is the exclusive avenue of redress for all matters within the scope of the negotiated grievance procedure.

(g) *Performance evaluation.* The minimum number of times a supervisor shall meet with an employee to discuss performance and suggest improvements shall be once every three months for the educator's first year at a school or Agency, and twice annually thereafter during the school term.

§ 38.11 Length of the regular school term.

The length of the regular school term shall be at least 180 student instructional days, unless a waiver has been granted under the provisions of 25 CFR 36.61.

§ 38.12 Leave system for education personnel.

(a) *Full-time school-term employees.* Employees on a full-time school-term contract are authorized the following types of leave:

(1) *Personal leave.* A school-term employee will receive 28 hours of personal leave to be used for personal reasons and 12 hours of emergeny leave. This leave only accrues provided the length of the contract exceeds 24 weeks.

(i) The school-term employee will request the use of this leave in advance when it is for personal use or personal business (e.g., going to the bank, etc.). When this leave is requested for emergency purposes (e.g., death in immediate family), it will be requested immediately after the emergency is known, if possible, by the employee and before leave is taken or as soon as the supervisor reports to work on the official work day.

(ii) Final approval rests with the supervisor. This leave shall be taken only during the school term. No compensation for or carryover of unused leave is authorized.

(2) *Sick leave.* Sick leave is an absence approved by the supervisor for incapacity from duty due to injury or illness, not related to or incurred on-the-job and not covered by the Federal Employee's Compensation Act Regulations. Medical and dental appointments may be included under this part. However, whenever possible, medical and dental appointments should be scheduled after instructional time.

(i) Sick leave shall accrue at the rate of four hours each biweekly pay period in pay status during the term of the contract; and no precredit or advance of sick leave is authorized.

(ii) Accumulated sick leave at the time of separation will be recredited to an educator who is reemployed within three years of separation.

(3) *School vacation.* School term employees may receive up to 136 hours of school vacation time for use when school is not in session. School vacations are scheduled on the annual school calendar during the instructional year and may not be scheduled before the first day of student instruction or after the last day of student instruction. School vacations are not a right of the employee and cannot be paid for or carried over if the employee is required to work during the school vacation time or if the program will not permit school term employees to take such vacation time.

(b) *Leave for full-time, year-long employees.* Employees who are on a full-time, year-long contract are authorized the following types of leave:

(1) *Vacation leave.* Absence approved in advance by the supervisor for rest and relaxation or other personal reasons is authorized on a per year basis of Federal Government service as follows: years 1 and 2 of employment—120 hours; years 3–5 of employment—160 hours; 6 or more years—200 hours. The supervisor will determine when vacation leave may be used. Vacation leave is to be scheduled and used to the greatest extent possible during periods when school is not in session and the students are not in the dormitories. Vacation leave is credited to an employee on the day following his or her date of employment, provided the length of the contract exceeds 24 weeks. An employee may carry into succeeding years up to 200 hours of vacation leave. Leave unused at the time of separation is forfeited.

(2) *Sick leave.* Sick leave accumulation and use is authorized on the same basis as for school term employees under § 38.12(a)(2) of this part.

(c) *Leave for part-time year-long employees.* Employees who are on part-time year-long contracts exceeding 20 hours per week are authorized the following types of leave:

(1) *Vacation leave.* Absence approved in advance by the supervisor for rest and relaxation or other personal reasons is authorized on a per year basis of Federal Government service as follows: years 1 and 2 of employment—64 hours; years 3–5 of employment—80 hours; 6 or more years—104 hours. The supervisor shall determine when vacation leave may be used. Vacation leave is to be scheduled and used to the greatest extent possible during periods when school is not in session and the students are not in the dormitories. Vacation leave is credited to an employee on the day following his or her date of employment provided the length of the contract exceeds 24 weeks and may not be accumulated in excess of 104 hours from year to year. An employee may carry over up to 104 hours from one contract year to the next. Leave unused at the time of separation is forfeited.

(2) *Sick leave.* Sick leave is accumulated on the basis of three hours each biweekly pay period in pay status; no precredit or advance of sick leave is authorized. Accumulated sick leave at the time of separation will be recredited to an educator who is reemployed within three years of separation.

(d) *Leave for school term employees on a part-time work schedule in excess of 20 hours per week.* (1) Employees on a part-time work schedule in excess of 20 hours per week may receive a maximum of 102 hours of school vacation time; 20 hours of personal/emergency leave; and 63 hours of sick leave accrued at three hours per pay period for the first 21 pay periods of their contracts. Personal/emergency leave only accrues provided the length of the contract exceeds 24 weeks.

(2) The part-time employee will request the use of this leave in writing in advance when it is for personal use or personal business (e.g., going to the bank, etc.). When this leave is requested for emergency purposes (e.g., death in immediate family), it will be requested immediately after the emergency is known, if possible, by the employee and before leave is taken or as soon as the supervisor reports to work on the official work day.

(3) Final approval rests with the supervisor. This leave shall be taken only during the school year. No compensation for or carryover of unused leave is authorized.

(4) *Sick leave.* Sick leave is an absence approved by the supervisor for incapacity from duty due to injury or illness, not related to or incurred on-the-job and not covered by the Federal Employee's Compensation Act Regulations. Medical and dental appointments may be included under this part. However, whenever possible, medical and dental appointments should be scheduled after instructional time.

(i) Sick leave shall accrue at the rate of three hours each biweekly pay period in pay status for the first 21 pay periods of their contract; no precredit or advance for sick leave is authorized.

(ii) Accumulated sick leave at the time of separation will be recredited to an educator who is reemployed within three years of separation.

(5) *School vacation time.* Part-time employees may receive up to 102 hours of school vacation time for use when school is not in session. Approval for the use of this time will be administratively determined by the school supervisor, ASE or AEPA, and this time may not be scheduled before the start of school or after the end of school.

(i) All school vacation time for part-time employees will be approved at the convenience of the program and not as a right of the employee.

(ii) Vacation time cannot be paid for or carried over for a part-time employee if the employee is required to work during the school vacation time or if the program will not permit part-time employees to take such vacation time.

(e) *Accountable absences for all contract employees.* The following are considered accountable absences:

(1) *Approved absence.* If prescheduled and approved by the school supervisor, ASE or AEPA, as appropriate, an employee may be on leave without pay.

(2) *Absence without leave.* Any absence is not prescheduled or

approved in advance or excused by the supervisor is considered absence without leave.

(3) *Court and military leave.* Employees are entitled to paid absence for jury or witness service and military duty as a member of the National Guard or Reserve under the same terms or conditions as outlined in Sections 6322 and 6323 of Title 5 U.S.C., and corresponding provisions of the Federal Personnel Manual, when the absence occurs during the regular contract period. Employees may be requested to schedule their military leave at times other than when school is in session.

(4) *Administrative leave.* Administrative leave is an excused absence from duty administratively authorized without loss of pay or without charge to leave. This leave is not a substitute for other paid or unpaid leave categories. Administrative leave usually is authorized on an individual basis except when a school is closed or a group of employees are excused from work for a particular purpose. The school supervisor, ASE or AEPA will grant administrative leave. A school closing must be approved by the ASE or AEPA.

(f) Educators serving with contracts with work weeks of 20 hours a week or less are not eligible for any type of paid leave.

(g) For school term educators, no paid leave is earned nor may accumulated leave be used during any period of employment with the Bureau between school terms.

(h) Employees issued contracts for intermittent work are not eligible for any type of paid leave.

(i) *Leave transferred in.* Annual leave credited to an employee's accrued leave balance immediately before conversion to a contract education position or appointment under this part will be carried over and made available to the employee. Sick leave credited to an employee's accrued sick leave balance immediately before conversion to a contract education position or appointment under this part shall be credited to the employee's sick leave account under the system in § 38.12(a)(2) and (b)(2).

§ 38.13 Status quo employees in education positions.

(a) *Status quo employees.* Individuals who were Bureau employees on October 31, 1979, with an appointment in either the competitive or excepted service without time limitation, and who are serving in an education position, shall be continued in their positions under the terms and conditions of that appointment with no change in their status or positions. Such employees are entitled to receive any changes in compensation attached to the position. Although such employees occupy "education positions" as defined in this part, the terms and conditions of their appointment, status, and entitlements are determined by competitive service regulations and procedures. Under applicable procedures, these employees are eligible for consideration for movement to other positions that are defined as "contract education" positions. Such movement shall change the terms and conditions of their appointment to the terms and conditions of employment established under this part.

(b) If the tribe or school board waives the Indian preference law, the employee loses the early-out retirement eligibility under Pub. L. 96–135, "early-out for non-Indians," if they are entitled to the early-out retirement. A memorandum for the record on BIA letterhead shall be signed by the employee and placed on the permanent side of his/her Official Personnel Folder, along with the tribal resolution, if the tribe/school board has waived the Indian preference law to employ the non-Indian."

(c) *Conversion of status quo employees to contract positions.* Status quo employees may request in writing to the school supervisor, ASE or AEPA, as applicable, that their position be converted to contract. The appropriate school board will be consulted and a determination made by such school board whether such individual should be converted to a contract employee.

(1) Written determination by the school board should be received within a reasonable period, but not to exceed 30 days from receipt of the request. Failure of the school board to act within this period shall have the effect of disapproving the proposed conversion.

(2) With school board approval, an involuntary change in position shall not affect the current status of status quo education employees.

§ 38.14 Voluntary services.

(a) *Scope.* An ASE or AEPA may, subject to the approval of the local school board concerned, accept voluntary services on behalf of Bureau schools from the private sector, including individuals, groups, or students. Voluntary service shall be for all non-hazardous activities where public services, special projects, or school operations are improved and enhanced. Volunteer service is limited to personal services received without compensation (salary or wages) by the Bureau from individuals, groups, and students. Nothing in this section shall be construed to require Federal employees to work without compensation or to allow the use of volunteer services to displace or replace Federal employees.

(b) *Volunteer service agreement.* An agreement is a written document, jointly completed by the volunteer, the Bureau school supervisor, and the school board, that outlines the responsibilities of each. In the case of students receiving credit for their work (i.e., student teaching) from an education institution, the agreement will be jointly completed by the student, a representative of the institution, and the Bureau school supervisor. In the case of volunteer groups, the agreement shall be signed by an official of the volunteering organization, the Bureau school supervisor, and the school board and a list of signatures and emergency telephone numbers of all participants shall be attached.

(c) *Eligibility.* Although no minimum age requirement exists for volunteers, schools shall comply with appropriate Federal and State laws and standards on using the services of minors. All volunteers under the age of 18 must obtain written permission from their parents or guardians to perform volunteer activities.

(d) *Status.* Volunteers participating under this part are not considered Federal employees for any purpose other than:

(1) Title 5 U.S.C. Chapter 81, dealing with compensation for injuries sustained during the performance of work assignments.

(2) Federal tort claims provisions published in 28 U.S.C. Chapter 171.

(3) Department of the Interior Regulations Governing Responsibilities and Conduct.

(e) *Travel and other expenses.* The decision to reimburse travel and other incidental expenses, as well as the amount of reimbursement, shall be made by the school supervisor, ASE, AEPA, and the respective school board. Payment is made in the same manner as for regular employees. Payment of travel and per diem expenses to a volunteer on a particular assignment must be supported by a specific travel authorization and cannot exceed the cost of employing a temporary employee of comparable qualification at the school for which a travel authorization is considered.

(f) *Annual report.* School supervisors shall submit reports on volunteers to the ASE or AEPA by October 31 of each year for the preceding year.

W.P. Ragsdale,

Acting Assistant Secretary, Indian Affairs.

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Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121 and 135

Airborne Low-Altitude Windshear Equipment and Training Requirements; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. 19110; Amdt. Nos. 121-199, 135-27]

Airborne Low-Altitude Windshear Equipment and Training Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA amends Part 121 to require airborne low-altitude windshear warning and flight guidance equipment in airplanes and Parts 121 and 135 to require windshear training for flight crewmembers. The National Transportation Safety Board investigations show that low-altitude windshear has been a prime cause of air carrier accidents. This rule is expected to reduce windshear related accidents by training pilots in avoidance and escape techniques and by providing a low-altitude windshear warning system with flight guidance equipment in certain airplanes to increase the margin of safety if windshear is inadvertently encountered.

DATES: *Effective Date:* January 2, 1989.

Compliance Dates: 1. Training requirements in §§ 121.409, 121.419, 121.424, and 121.427; §§ 135.345 and 135.351. January 2, 1991.

2. Equipment requirements in § 121.358(a): January 2, 1991, unless certificate holder obtains an extension in accordance with § 121.358(b).

FOR FURTHER INFORMATION CONTACT: Gary E. Davis, Project Development Branch (AFS-240), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; Telephone (202) 267-8096.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 1987 (52 FR 20560), the FAA published Notice of Proposed Rulemaking (NPRM) 79-11A proposing airborne low-altitude windshear equipment and training requirements. The NPRM was preceded by Advance Notice of Proposed Rulemaking (ANPRM) 79-11 (44 FR 25867, May 3, 1979). The ANPRM invited public participation in addressing low-altidude windshear in the following ways: (1) By placing windshear detection equipment on the ground and transmitting information to the pilot; and (2) by installing equipment aboard the aircraft that would provide the pilot with windshear information in "real time."

The ANPRM and NPRM were actions in the FAA's continuing efforts to combat the windshear problem. A full discussion of studies, Advisory Circulars, accident/incident data, and NTSB recommendations on windshear appeared in the preamble to NPRM 79-11A. The following information briefly summarizes FAA efforts since 1975.

- In 1975, the National Aeronautics and Space Administartion (NASA), in cooperation with the FAA, instituted the Aviation Safety Reporting System (ASRS) whereby safety-related incidents involving aircraft operation are submitted voluntarily and treated anonymously to identify safety problems. Windshear is among the problems identified by reports submitted under this system.
- In 1977, the FAA conducted a study of NTSB reports on aircraft accidents and incidents related to low-altitude windshear that had occurred from 1964 through 1975.
- In May 1977, the FAA amended Part 121 of the Federal Aviation Regulations (FAR) to require air carriers to adopt an approved system for obtaining forecasts and reports of adverse weather conditions, including low-altitude windshear, that could affect the safety of flights on the routes to be flown and at airports to be used.
- The FAA issued Advisory Circular (AC) No. 00-50A, Low Level Wind Shear, to provide guidance in recognizing meteorological conditions that produce windshear phenomena and to recommend certain pilot techniques to minimize the effects of windshear when encountered during takeoff or landing.
- The FAA established a research and development program to examine the hazards associated with low-altitude windshear, develop solutions to the windshear problem, and integrate those solutions into the National Airspace System.
- At 90 major airports within the United States, the FAA installed a ground-based Low-Level Windshear Alert System (LLWAS) capable of detecting the presence of hazardous windshear in the vicinity of the airport at the surface. The FAA intends to install an additional 20 LLWAS's at airports across the nation. In addition, the FAA is working on enhancements to the LLWAS and is cooperating with the National Center for Atmospheric Research on an operational evaluation of a Doppler radar windshear forecasting and alerting system.
- Before issuing ANPRM 79-11, the FAA, through a series of simulator experiments, investigated the effectiveness of airborne low-altitude windshear systems designed to warn pilots of the existence of windshears and to assist them in transiting or avoiding such shears.
- In November 1983, the FAA issued AC No. 120-41, Criteria For Operational Approval of Airborne Windshear Alerting and Flight Guidance Systems, to provide industry with an acceptable means of obtaining operational approval for the use of various airborne windshear systems on air carrier aircraft.
- In 1983, in response to Public Law 97-369, the FAA contracted with the National Academy of Sciences (NAS) to study "the state of knowledge, alternative approaches and the consequences of windshear alert and severe weather conditions relating to takeoff and landing clearances for commercial and general aviation aircraft." The NAS Report, "Low-Altitude Windshear and Its Hazard to Aviation," was published in late 1983.
- In 1986, the FAA contracted with a consortium of aviation specialists from The Boeing Company, United Airlines, McDonnell Douglas, Lockheed-California, Aviation Weather Associates, and Helliwell, Inc., to produce the Windshear Training Aid document and windshear training videos. The Windshear Training Aid, published and distributed to industry by the FAA, provides guidance on developing flight crew windshear training curricula.

In accordance with FAA research findings and the National Transportation Safety Board (NTSB) recommendations that were based on accident investigations, the FAA proposed in NPRM 79-11A windshear training and airborne equipment requirements as part of a "systems concept" to solve the problem of low-altitude windshear. The concept includes an improved low-altitude windshear weather forecasting technique, ground-based windshear detection equipment, airborne windshear warning and flight guidance, and improved flight crew training.

The FAA has decided after thorough consideration of the comments received on the NPRM to proceed with the proposed windshear training and airborne equipment requirements with minor modifications. A detailed discussion of the major issues raised by commenters and the FAA response to the comments follows.

Discussion of Comments

Twenty-seven comments were received on the Notice of Proposed Rulemaking. The comments were submitted by air carriers, airline and pilot associations, manufacturers, individuals, and the NTSB. Most comments commended the FAA for taking action to reduce the hazards of windshear encounters. However, several commenters opposed certain proposed requirements. Specific issues that were addressed in the comments were those on applicability; airborne warning devices; flight guidance systems; training; the compliance date; and Advisory Circulars. Several comments also addressed the cost/benefit aspects of the proposed rule. A few comments recommended entirely different approaches to the windshear problem than the one the FAA proposed. Several comments were information on airborne low-altitude windshear warning and flight guidance systems. All issues and categories of comments are discussed below.

Applicability: Equipment

The proposed requirement in § 121.358 for low-altitude windshear equipment applied to any turbine-powered airplane operated under Part 121 except turbopropeller-powered airplanes. The FAA assumes that when commenters referred to "turbine-powered airplanes", they were using the term as it was defined in proposed § 121.358. The FAA did not propose windshear equipment requirements for any airplanes operated under Parts 91, 125, and 135 because accident history does not justify their inclusion.

• The Air Line Pilots Association (ALPA) objected to the exclusion of reciprocating engine powered and turbopropeller engine powered airplanes from equipment requirements in Part 121. It stated that the table provided in the NPRM showed that a sizeable percentage of the windshear accidents involved the types of airplanes that the proposed rule excluded. The comment also stated that the 1987 Annual Report by the Regional Airlines Association estimates that by 1997 61 million passengers will be carried by members of that Association. According to ALPA these airlines "traditionally use reciprocating engine and turbopropeller powered aircraft."

• The National Transportation Safety Board (NTSB) stated that the "exclusion of reciprocating engine and turbopropeller engine airplanes from this (equipment) requirement may be reasonable based upon the different performance characteristics of those airplanes." However, NTSB did "not concur with the rationale used to exclude turbine-powered airplanes operated under Parts 91, 125, and 135 from this equipment requirement." NTSB stated that it believed that "the absence of accident data to support the need for including these operations may be due to the comparatively smaller population of turbine-powered airplanes used in those operations and, in some cases, an inability to evaluate accident circumstances because of the absence of flight recorder information." The Aerospace Industries Association (AIA) also objected to the exclusion of turbine-powered airplanes operated under Part 135.

The FAA's Response: Although the table provided in the NPRM shows a number of windshear accidents involving reciprocating engine powered and turbopropeller engine powered airplanes, the airplane types involved are older airplanes that have been in service for many years and that are rapidly being retired from Part 121 operations. As pointed out in the NTSB comment, reciprocating engine powered airplanes and turbopropeller engine powered airplanes currently in operation have "different performance characteristics." The FAA agrees with the NTSB that the performance characteristics of these airplanes generally make them less vulnerable in the event of inadvertent entrance into windshear conditions.

Turbine-powered airplanes that are operated under Parts 91, 125, and 135 are excluded from the equipment requirements for several reasons. Presently no accident/incident data exists to support requiring windshear equipment for these operations. The FAA recently issued a regulation (see 53 FR 26134, July 11, 1988) which requires flight and voice recorders in certain aircraft where they are not now required when those aircraft are operated under Parts 91, 121, 125, and 135. After this rule becomes effective, the FAA will be able to gather more complete data and take appropriate action.

At the present time only reciprocating engine powered and turbopropeller engine powered airplanes are being operated in commuter operations (scheduled operations) under Part 135. On-demand operations under Part 135 and operations under Parts 91 and 125 are conducted with turbine-powered airplanes, but there are fewer flights and these operations are unscheduled operations and therefore do not have the same degree of exposure to hazardous windshear conditions as do the operations covered by this final rule.

Therefore, consistent with the NPRM, the final rule excludes reciprocating engine powered and turbopropeller engine powered airplanes in § 121.358 and does not include any airplanes operated under Parts 91, 125, and 135.

In addition, the FAA has determined that a clarification of "turbopropeller-powered airplanes" as used in proposed § 121.358 is needed in the final rule and has accordingly added the words "with variable pitch propellers with constant speed controls." The addition of these words clarifies the essential design characteristic of turbopropeller-powered airplanes which makes them less vulnerable to the hazards of inadvertent entrance into windshear conditions. The FAA considers this addition necessary in the event that airplanes are manufactured in the future which may have some of the characteristics of turbopropeller-powered airplanes but not variable pitch propellers with constant speed controls. Any such future airplanes would not be excluded from the equipment requirements.

Airborne Low-Altitude Windshear Warning Devices

Sixteen comments specifically mentioned the proposed requirements for airborne warning devices. Ten favored the requirement, three opposed it, and three opposed certain aspects of the requirement. Opposition to the requirement was primarily directed at the need to retrofit existing airplanes. Concerns about the requirement for airborne warning devices were the following:

• One or more of the predictive systems now being developed could be installed on airplanes and validated for far less cost than present warning systems.

• No research has been conducted to show that a warning device system would add a significant margin of safety over training in windshear procedures.

• Airborne warning devices may be counterproductive to training since they may encourage a pilot to pursue a course that by observation alone he would conclude is dangerous.

• Conditions other than windshear may set off the warning, causing a pilot to abort a take-off or landing, thereby creating a potential hazard where none actually exists.

• Requiring installation of warning devices may slow development of predictive systems.

• Only predictive systems can provide a pilot with information early enough to allow escape.

The FAA's Response: The FAA does not agree with the overall position of these comments that requiring an airborne warning device is premature; that the FAA should wait until predictive systems are developed and in the meantime rely solely on training in windshear recognition and escape procedures. The FAA estimates that airborne windshear predictive systems will not be available for operational use for at least another ten years. In the meantime training alone is not enough. Windshear accidents have continued to occur even after windshear training has been incorporated into many certificate holders' training programs. Since windshear training alone cannot guarantee that a pilot will recognize, avoid, or escape windshear conditions, the addition of an airborne warning device will provide flightcrews with an increased margin of safety in inadvertent encounters with low-altitude windshear.

Two systems have already received FAA certification as airborne low-altitude windshear warning and flight guidance devices on various airplanes. In addition, several other manufacturers have made formal application for a Supplemental Type Certificate (STC) for other systems. Any of these systems could provide the flightcrew with enough warning and guidance to enhance the probability of successfully accomplishing the windshear escape procedure for the particular system.

One of the low-altitude windshear warning systems that has been certified and is being used has provided operational data. This data indicated that the warning system provides a significant benefit to the flight crew of the aircraft. This data also indicated that nuisance and false alerts were found to occur at an acceptably low rate to maintain flight crew confidence in the system. (For details see paper titled "Flight Experience with Windshear Detection", by Terry Zweifel presented to the SAE Aerospace Control and Guidance Systems Committee, March 9–11, 1988).

Because of the seriousness of the windshear problem, a regulatory proposal to require implementation of an available low-altitude windshear warning system that could alleviate the problem should not be delayed. The public must be given the maximum available protection from the catastrophic accidents which operating experience has demonstrated can occur.

The requirement for airborne low-altitude windshear warning systems does not mean that the FAA will reduce its commitment to other windshear equipment development. As stated in the NPRM, the FAA will continue to foster research programs to design better flight guidance and control aids which will improve a pilot's ability to avoid an accident in the event of a windshear encounter. Future FAA action will place emphasis on fostering the development of predictive technology for use in systems to detect and avoid inadvertent entrance into windshear. The FAA will continue pursuing a "systems concept" which includes an improved low-altitude windshear weather forecasting technique, ground-based windshear detection equipment, airborne windshear detection equipment, and improved pilot training.

Flight Guidance

Except for the National Transportation Safety Board and the Air Line Pilots Association, virtually all of the commenters either opposed or expressed some reservations about the proposed requirement that the approved airborne low-altitude windshear warning system be equipped "with flight guidance." The overall thrust of the opposing comments, like the comments opposed to installing warning devices, was that the cost of retrofitting present aircraft with a flight guidance system far outweighed the potential benefits. ATA on behalf of its member airlines asserted that "the resources that would be required to install guidance systems could better be used for avoidance systems when they become available—an eventuality not too far in the future, according to some."

The FAA's response: The FAA does not agree that increased safety would be achieved in a more cost effective way by eliminating the flight guidance requirement and waiting for the windshear detection systems presently in development. As previously stated, the FAA does not believe that fully functional, tested, and reliable windshear detection systems are as close at hand as do several commenters. Nor does the FAA believe that a windshear detection system, if developed, would make a windshear flight guidance system unnecessary. While the FAA agrees that windshear avoidance is the most desirable solution to the windshear problem, 100% avoidance may never be achievable so that an effective flight guidance system may still be highly desirable even if a detection system is developed. The cost/benefit aspects of the flight guidance requirement are discussed under the economic evaluation portion of this preamble. Specific comments regarding the flight guidance requirement are discussed below.

• Several commenters stated that the cost to retrofit existing aircraft with flight guidance systems is disproportionate to the safety gain, especially for aircraft that do not now have go-around or takeoff flight guidance functions in their flight director systems. Some of these commenters pointed out that the Windshear Training Aid states that the manual technique (maximum power and establish a 15 degree body angle pitch on the attitude director indicator) comes within 5–10% of the potential performance using flight guidance. One commenter concluded that "the difference between manual (no guidance) recovery and optimal (but not practical) guidance is something at or less than 5%!"

The FAA's Response: The cost/benefit aspects of the flight guidance system requirement are discussed fully under the economic evaluation portion of this preamble. As more fully explained there, the FAA believes that flight guidance systems should be required for turbine-powered airplanes operating under Part 121. The remaining life span of many airplanes already operating under Part 121 is sufficiently long to justify the retrofitting expense of providing low-altitude windshear flight guidance in the event of an inadvertent windshear encounter. The Windshear Training Aid (WTA) statement does not refute this conclusion. However, it should be noted that the conclusions drawn in the WTA with respect to comparing the performance efficiency of the manual technique with flight guidance were based on the assumption that, for the manual technique, the transfer of learning effectiveness from the classroom to the airplane is 100 percent. The conclusion was then drawn that, based on the transfer of learning assumption, the manual technique would be effective 90–95 percent of the time for those few windshears encountered. The behavior pattern resulting from windshear training using various media (e.g. classroom instruction, training devices, cockpit procedures trainers, simulators, etc.) may be degraded over time. Thus, in an actual severe low-altitude windshear encounter, an individual pilot's reaction using the manual technique most likely would not approach the 90–95% potential described in the WTA.

• There is no general industry agreement on present flight guidance algorithms (that is, on just what directions the pilot should be given).

The FAA's Response: One hundred percent agreement on existing algorithms may not exist; however, software has been developed that is adequate to obtain FAA approval. With flight guidance provided by this software, a pilot would have a better change of taking action necessary for the aircraft to survive an inadvertent encounter with low-altitude windshear.

• Adaptation and modification of older electro-mechanical flight director systems may affect the integrity of the existing systems, thereby derogating safety.

The FAA's Response: Modification of older flight director systems should not affect the integrity of those systems. The approved airborne low-altitude windshear warning with flight guidance system to be installed must have been certificated in accordance with the appropriate sections of Part 25 of the FAR and must meet the respective airworthiness and operational approval criteria addressed in AC 25-12 and AC 120-41 or their approved equivalent. This approval process would ensure that the integrity of those systems would not be compromised.

• FAA should not require flight guidance systems until it has completed its characterization of the windshear phenomenon which is not scheduled to be completed until 1991.

The FAA's Response: Enough has been learned about the windshear hazard to permit the certification of several windshear systems. The past accident scenarios are well understood and there has been an enormous amount of data generated by the Joint Airport Weather Studies (JAWS) program. While the potential hazards will continue to be studied and further defined there is an adequate base of knowledge to design and certificate a flight guidance system.

• "Optimal" flight guidance may not be practical at this time since many of the present systems require nose down control inputs very close to the ground.

The FAA's Response: Optimal flight guidance can only be developed when there is complete knowledge of the characteristics of the air mass in front of the aircraft. Optimal flight guidance is a time dependent variable state which must consider a rapidly changing air mass, as well as special situations (i.e., altitude, speed, configuration, etc.). In the certification process the FAA will evaluate all guidance commands, including nose down commands, for appropriateness. If the optimal guidance strategy for a particular windshear situation requires nose down control inputs so close to the ground that it would cause collision with the ground, the guidance strategy would be unacceptable and would not be certificated. It should be noted that "nose down" does not mean below the horizon. It means to lower the nose from its present angle.

• While the flight guidance function provides a small increase in the magnitude of the windshear in which an aircraft can successfully operate, that increase only occurs at very high windshear values. Therefore, because of the serious turbulence what would be encountered, this small gain could easily be offset by the pilot's inability to closely follow the commands being given.

The FAA's Response: The FAA recognizes that in the worst cases of severe windshear escape may not be possible and, depending upon the cause of the windshear phenomena, flight guidance commands may not be readable because of severe turbulence. However, it is possible to have severe windshear without severe turbulence. Furthermore, for those windshears from which escape is possible, flight guidance provides an additional margin of safety. Between the moderate to severe levels of windshear, flight guidance can provide a gain in performance.

Training

Virtually all of the comments received favored the proposed training requirements. A number of comments addressed specific training requirements, particularly those requirements concerning simulator flight training. All specific comments are summarized below.

• Flight Safety International stated that helicopter operators should be excluded from the training requirements for recovery and escape procedures because not enough data exists to develop training in such procedures for helicopters.

The FAA's Response: The FAA agrees with the commenter. The FAA has decided to exclude helicopters from the escape training requirements because there are insufficient data on helicopter response to windshear encounters. Accordingly §§ 135.293(a)(7)(ii) and 135.345(b)(6)(ii) have been changed to include the words "except that rotorcraft pilots are not required to be trained in escaping from low-altitude windshear."

• Some comments showed confusion about the intended meaning of the proposed training requirements. Continental Express was concerned that the proposed rule excludes turbopropeller-powered airplanes in § 121.358 from low-altitude windshear equipment requirements without excluding them from the simulator windshear training requirements in subsequent sections of the rule. Flight Engineers' International Association stated that the proposed flight training requirements do not apply to flight engineers and that the FAA probably intended that they should apply to all cockpit crewmembers. Another commenter was concerned that the required windshear training program might have to be a separate and therefore costly training program.

The FAA's Response: As proposed, the language of § 121.409(d) requires simulator windshear flight training only if the airplane is required to be equipped with low-altitude windshear equipment under § 121.358. Therefore, flight training would not be required for pilots flying those turbopropeller powered airplanes excluded from the coverage of § 121.358.

In response to the comment from Flight Engineers' International Association, the proposed amendments to Part 121 included requirements for initial, transition, and recurrent ground training in windshear recognition, avoidance, and escape procedures for pilots and flight engineers, but proposed requirements for flight training in windshear procedures and equipment use were intended only for pilots who are at the controls of the airplane. Current § 121.425 which covers flight training for flight engineers is not being amended by this rulemaking. Windshear ground training in § 121.419 is applicable to all flight crewmembers while windshear flight training in simulators applies only to pilots operating airplanes equipped with low-altitude windshear equipment. If a certificate holder wishes to provide flight training in windshear procedures and equipment for flight engineers, it may do so, but the FAA is not requiring such training.

Finally, in response to the comment concerning windshear training as a separate program, as the FAA explained in the preamble of the proposed rule, the phrase "an approved low-altitude windshear flight training program" was used to refer to the proposed upgraded flight training requirements. The phrase was not intended to mean that there should be a separate training program for those who must provide low-altitude windshear flight training. Instead, the intention is that the approved low-altitude windshear flight training be incorporated into the certificate holder's approved training program.

• The Air Transport Association (ATA) would like to see different wording than that proposed in §§ 121.409(d) and 121.424(d) which stated that a pilot must have training and practice in "at least" and "at least all of" the windshear escape maneuvers and procedures in the operator's approved low-altitude windshear flight training program. ATA commented that if the FAA's intent was to require that every pilot receive training in every exercise a carrier develops, carriers might be discouraged from developing multiple exercises.

The FAA's Response: One means of approval of the windshear training portion of a certificate holder's approved training program is the Windshear Training Aid developed by the FAA and the industry team led by Boeing. In July, 1987, this material was widely distributed to all Part 121 operators and to part 135 operators conducting scheduled operations and within the FAA. The FAA intends that the minimum number of windshear escape maneuvers to be performed in an approved airplane simulator for approved windshear flight training would include at least the maneuvers and procedures associated with the four basic exercises set forth in the Windshear Training Aid. These exercises have the pilot encounter a windshear situation—(1) Before achieving rotation speed on takeoff; (2) during a rotation on takeoff; (3) during an initial climb shortly after takeoff; and (4) during a precision approach. Each certificate holder should develop sufficient variation in the exercises to avoid stereotyping in the training.

In §§ 121.409(d) and 121.424(d)(2) the phrase "at least" is retained, while "all of" has been deleted from § 121.424(d)(2). These changes should make the FAA intent clear, namely that each pilot must receive training in the minimum number of windshear escape maneuvers and procedures that constitute the certificate holder's approved low-altitude windshear flight training program. The "required" training would not include all the possible exercises that an operator might develop for its approved low-altitude windshear training program.

• While logically most windshear flight training should be conducted in a simulator, some commenters wanted an "escape option" in the event that simulators were not available for training. They did not think a pilot's training should be delayed if windshear training in a simulator is temporarily not available. If the pilot could substitute such training in an airplane, at least for some of the training requirements, this would be of help.

The FAA's Response: The FAA believes that windshear flight training cannot effectively be given in an airplane because the total environment of a windshear cannot be artificially reproduced in an airplane and it would be too dangerous, in addition to being impractical, to search out actual windshear conditions. It is practice in the use of proper procedures and techniques under the extreme conditions of windshear that must be accomplished. This can be done safely only in a simulator.

To minimize the overall impact of the training requirements on simulator time, planning will be necessary. Part 121 certificate holders should plan for the downtime necessary to modify simulators and the increased training time, and should anticipate usual malfunction and maintenance downtime. With proper planning the training compliance date of two years after the effective date of the rule January 2, 1989 should allow for modification of simulators without delays in complying with current training requirements. Certificate holders should begin their planning as soon as this rule is published. They may have to begin their low-altitude windshear training as early as one year after the effective date so that they will not have to schedule special training for second-in-command pilots whose last previous recurrent training occurred less than a year earlier.

As a practical matter, most certificate holders use simulators now to meet the six-month training and proficiency check requirements for a pilot in command. The additional flight training required in windshear procedures will add approximately 15 minutes of simulator time. Approximately 80 percent of the pilots and copilots who will be subject to the windshear flight training requirments have at some time received some windshear flight training in simulators. Although certificate holders will have to revise their programs to meet the new requirements, for most pilots and co-pilots actual training time will not necessarily be significantly increased. Since current requirements for recurrent training allow for a 30-day grace period (14 CFR 121.401(b)), air carriers will have flexibility in meeting the recurrent windshear training requirements. Therefore, with proper planning, the simulator windshear flight training requirements should not significantly affect simulator use.

• Proposed § 121.409(d) stated that a certificate holder must use "an approved simulator for each airplane type * * *." Two commenters stated that if this means that each simulator must have the same windshear related avionics as the aircraft that operator is using, the requirement is too restrictive. They state there are two related problems. One, since simulator time is often leased, simulators that are now being leased by some operators may not be adapted with windshear avionics for the type of windshear equipment the operator will have installed. Thus the operator may have difficulty getting simulator time on simulators with the appropriate windshear avionics. Second, Continental Airlines stated that the "escape maneuver should be generic and not dependent on the hardware installed in the aircraft or simulators."

The FAA's Response: While the responses of most trained pilots to windshear are very similar, the performance of the aircraft and the technical characteristics of the windshear equipment differ. Therefore, a pilot needs to practice in a simulator equipped with the same windshear equipment which will be installed in airplanes the pilot will fly. This is especially important since pilot responses to windshear must be performed within seconds. Pilot understanding of equipment differences and aircraft performance differences could be critical.

The availability of simulator time on simulators with the appropriate windshear avionics is a factor that a certificate holder will need to consider and plan for before installing windshear equipment. A certificate holder that is leasing simulator time will need to determine in advance if that simulator will be updated for the appropriate windshear avionic equipment. Also a simulator owner who wants to continue leasing will need to plan for certificate holders' new windshear flight training requirements. Current rules for simulator flight training require a certificate holder to use an approved simulator for each airplane type, and most simulators are capable of being adjusted to allow training for different windshear systems. Therefore, the FAA anticipates that with proper planning and coordination the industry will be able to provide training on a simulator for each airplane type with the appropriate windshear avionics by the compliance date.

• ATA's comment maintains that mandatory windshear escape training and current approach-to-stall maneuvers required in Part 121 may be redundant. Both types of maneuvers involve high power, low speed conditions, and once clear of the windshear, the cleanup recovery from the windshear escape maneuver is identical to the approach-to-stall cleanup recovery.

The FAA's Response: The FAA does not agree that these are redundant requirements. While some similarity of maneuvers may exist, the situations and objectives are different. Windshear occurs in a highly unstable environment while stalls can occur at any time. Approach-to-stall maneuvers are a proficiency requirement while windshear escape maneuvers and procedures do not have a proficiency objective or a performance standard. In windshear flight training the objective is to practice windshear escape procedures in a real time dynamic environment, not to train to a proficiency standard.

• One commenter supported a six-month recurrent windshear ground training requirement but recommended only an annual requirement in an airplane simulator. The commenter stated that "recovery/escape from a low level windshear is basically a mechanical maneuver" and that "as long as the pilot remembers and understands the concept of recovery the probability of success is greatly increased." Therefore, the commenter maintained that "twice annually, monthly, or weekly practice of recovery maneuvers will not ensure one hundred percent" successful recovery.

The FAA's Response: To clarify, a six-month recurrent simulator windshear flight training requirement would apply only to a pilot in command (§ 121.427(d) and § 121.443(c)(1)(iii) and (d)). A second in command would be required to have annual recurrent training (§ 121.443(c)(1)). Demonstration of proficiency in escaping windshear is not the objective of the windshear flight training requirement. Adding windshear simulator flight training to pilot recurrency requirements will provide the pilot with practice in the correct procedures for an event which from a statistical standpoint will be infrequently encountered, but to which a pilot is potentially exposed at all times. The FAA believes that practice in windshear escape procedures will prepare pilots to respond immediately and appropriately in an inadvertent windshear encounter.

Effective and Complaince Dates

Several commenters who objected to the flight guidance portion of the windshear equipment requirement stated that the two-year compliance date was unacceptable for the following reasons:

• It would require too much downtime for aircraft within a fleet.

• It would be impossible for manufacturers of windshear equipment to supply the equipment within a two-year period.

• There are not enough trained mechanics and other technicians to accomplish the required work within two years, and it would be impractical to recruit and train persons for such a peak-load project since they would likely be laid off afterwards.

• To meet the flight training requirements, simulators would have to be updated, software would have to be developed, and simulators would have considerable downtime. Considering how much simulators are used in pilot flight training and recurrent training and testing, the downtime might seriously interfere with pilot training. In addition, at least one commenter questioned whether the FAA or industry would be responsible for development of the windshear software.

• *The FAA's Response:* Because of the immediacy of the windshear problem, the FAA wants to ensure that there is no unnecessary delay in providing the traveling public with the additional margin of safety sought by these new requirements. However the FAA must allow sufficient time for the resolution of any technical problems with equipment, for production of the needed equipment, and installation and inspection on aircraft. Probably the major limiting factor, other than possible technical problems, is the availability of enough trained mechanics. The FAA recognizes that even if it were practical to train more mechanics to meet increased demand, the necessary training time would make a two-year compliance date for all airplanes impractical. Therefore, to allow time to resolve any technical problems with equipment, for equipment manufacture, order placement, delivery and installation of the equipment, the FAA is permitting a phased compliance schedule for retrofit requirements under certain conditions. The final rule (§ 121.358) requires compliance by two years after the effective date for all airborne equipment requirements unless an operator submits and obtains approval for a retrofit schedule that shows a phased compliance over a 4-year period from the effective date. A request for extension of the compliance date must be submitted no later than 18 months after the effective date. The phased retrofit compliance schedule applies only to airplanes whose date of manufacture was before the effective date of the rule. For the purpose of this section "date of manufacture" means the date the inspection acceptance records reflect that the airplane is complete and meets the FAA Approved Type Design Data. At least 50 percent of such airplanes which are listed on the certificate holder's maintenance operations specifications on the date of submission must be retrofitted within 2 years after the effective date, at least 25 percent more of those airplanes within 3 years, and all of the certificate holder's affected airplanes within 4 years. Any certificate holder that obtains a compliance date extension must comply with the retrofit schedule and submit status reports every six months until completion of the schedule.

The ground and flight training provisions of the final rule will take effect two years after the effective date of the rule. To make sure that all operators are aware of the compliance dates for the training requirements, the final rule includes new § 121.404 and revised § 135.10 that state the exact date for compliance.

For certificate holders to meet the two-year compliance date for all of their pilots, most certificate holders will want to have the new windshear training program approved one year earlier (i.e., not later than one year from the effective date). In this way the certificate holder will be able to give second in command pilots their required windshear training as part of their regularly scheduled annual recurrent training. Otherwise a certificate holder will have to schedule special training for second-in-command pilots whose last previous recurrent training occurred less than a year earlier.

In order for certificate holders to meet this kind of orderly scheduling, it is important that they begin the approval process as soon as possible so that they will not be faced with last minute training and scheduling problems.

While the final rule does not contain a specific compliance date for the necessary conversion of simulators, it can be seen from the above discussion that most simulators will need to be converted within one year after the final rule takes effect.

Although the final rule allows for phased compliance for retrofits, the FAA assumes that planning will begin at the time of publication of the rule.

Advisory Circulars

• Two commenters suggested that advisory material being developed by the FAA needs to be seen and commented on before the FAA proceeds to final rule. One stated that it was difficult to discuss the proposal without an opportunity to comment in parallel on the AC defining criteria for approving airborne low-altitude windshear equipment. The second comment stated that the AC should be part of the public record and should receive public input.

The FAA's response: Before the NPRM was issued the FAA developed and issued AC 00–50A, Low Level Windshear, AC 120–41, Criteria for Operational Approval of Airborne Windshear Alerting and Flight Guidance

Systems, and the Windshear Training Aid previously discussed in this preamble. In November 1987, the FAA issued AC 25–12, Airworthiness Criteria for the Approval of Airborne Windshear Warning Systems in Transport Category Airplanes. Thus, all of the advisory material necessary for manufacturers and certificate holders to comply with the requirements of this final rule has already been published and by the time the rule takes effect will have been available for a sufficient length of time for all interested persons to be familiar with their contents.

Beyond the Scope of NPRM

Several comments submitted were beyond the scope of this proposed rulemaking. The FAA has considered these comments as informational and is not responding to them. A summary of such comments follows:

• One comment recommended that the proposed rule be withdrawn and "in its place a requirement adopted that all transport aircraft eventually be equipped with an EFIS instrumentation system." "EFIS" stands for Electronic Flight Information System. This is a flight instrumentation system and flight guidance system that simplifies the integration of information a pilot receives from his flight instruments.

• One comment recommended that all Part 121 aircraft should operate at reduced weights by limiting the fuel, number of passengers, and baggage and cargo anytime that thunderstorms are predicted for an arrival or departure area. According to the comment this would provide the Part 121 aircraft with maneuverability closer to that of Lear jets which have had relatively few windshear accidents.

• Three comments were received which the FAA determined were primarily information about predictive or flight guidance systems that are being developed or are currently on the market. One recommended that the final rule include a requirement for a predictive system with a compliance date two years after approval of such a system.

• One commenter recommended that the FAA require a flight procedure method for transiting windshears based primarily on airspeed/groundspeed comparison.

• NTSB commended the FAA and the industry, led by the Boeing Company, for development of the Windshear Training Aid and stated that it hopes the Training Aid will be the foundation for FAA approval of training curricula implemented by air carriers in complying with the rule. It recommends that an additional training requirement be added on the use of airborne weather radar for thunderstorm and convective windshear avoidance. It considers this valuable equipment for weather detection during arrival and departure of flights.

• One commenter stated that ground training in windshear detection and escape maneuvers for Parts 125 and 135 pilots was not sufficient and that these pilots should also receive simulator training.

• TWA objected to the requirement to have 14 channels of recording capabilities on flight simulators. It stated that the FAA currently requires 8 channels for certification of flight simulators and that no benefit would be derived from having the additional capabilities. The FAA has not addressed this comment since there is nothing in this rulemaking that states the number of channels required in simulators.

Economic Summary

The following is a summary of the final cost impact and benefit assessment of a regulation to amend Part 121 of the Federal Aviation Regulations (FAR) to require that certain turbine-powered airplanes be equipped with an approved airborne system that warns a pilot of the presence of hazardous low-altitude windshear conditions and if such windshear conditions are inadvertently encountered, provides flight guidance for a missed approach procedure or an escape maneuver. In addition, the rule requires that all Part 121 operators conduct approved low-altitude windshear flight training in a simulator which has installed in it windshear equipment needed to conform to the airplane type being simulated. The rule further requires that Part 121 and 135 certificate holders' training programs be required to include training concerning flight crewmember recognition of, and escape from, inadvertently encountered hazardous low-altitude windshear conditions as part of their normal ground training.

The NTSB has determined that low-altitude windshear has been the prime cause or a contributing factor in numerous air carrier accidents in the last 20 years. The objective of these rules, therefore, is to prevent or reduce accidents attributed to inadvertent encounters with low-altitude windshear.

The methods and assumptions used to prepare the economic impact estimates for the various changes to Part 121 have been developed by the FAA. The estimates of economic impacts for the final rule revisions have been constructed from unit cost and other data obtained from air carriers, industry trade associations, and manufacturers. Information for analysis of benefits was obtained from the safety records of the NTSB and the FAA. The costs calculated for these amendments have been projected over the 16-year period of 1989 to 2004. This analysis compares these costs to benefits accruing over the 15-year span of 1990 to 2004. The purpose of this is to account for the fact that in 1989, the first year after the rule is published, no airplanes equipped with the required avionics will be in service. In 1989, however, impacted entities will incur program and planning start-up costs.

In the Notice of Proposed Rulemaking (NPRM), the FAA invited public comments concerning the technical and operational considerations and economic impact assumptions as these apply to flight guidance systems equipment modification and replacement, the frequency and duration of Part 121 certificate holder's windshear simulator flight training, and the extent to which Part 135 operators provide instruction to their pilots in procedures to recognize and escape inadvertent encounters with low-altitude windshear. Comments on the proposal were submitted by individuals, foreign and domestic air carriers, air carrier and airline pilot associations, avionics manufacturers, and the National Transportation Safety Board. The majority of comments commended the FAA for taking action to reduce the hazards of windshear encounters. A number of commenters, however, opposed certain proposed requirements and disagreed with economic impact estimates presented in the proposal. The FAA has evaluated the public comments and made the final determination regarding their impact. The comments have caused the FAA to revise its analysis and increase compliance costs.

A substantial change in the final rule is the provision of a time-phased retrofit schedule for airborne windshear equipment requirements. The final rule requires compliance by 2 years after the effective date of the final rule for all airborne equipment requirements unless an operator submits a schedule to show phased compliance over a 4-year period from the effective date of the rule. Under § 121.358(b) at least 50 percent of a certificate holder's airplanes that were manufactured before the effective date of the rule must be retrofitted within 2 years, at least 25 percent more within 3 years, and the remainder of airplanes affected within 4 years. The final rule also established that the ground and flight training provisions of the rule will take effect two years after the effective date of the rule. The time permitted for compliance with the ground and flight training requirements will allow certificate holders sufficient time to train flight crews and convert simulators in advance of the compliance date for the required airborne windshear warning and flight guidance equipment. The FAA believes that the time allowed for training and equipment installation and modification will reduce costs and facilitate compliance.

The FAA finds that with the exception of new § 121.358 and the amendments to §§ 121.407, 121.409, 121.424, and 121.427, the amendments affecting Part 121 operators will have a negligible cost or no cost impact. The FAA has also determined the cost of compliance with the upgraded testing and training requirements of the amendments to §§ 135.293, 135.345, and 135.351 to be minimal.

New § 121.358 and the amendments §§ 121.407, 121.424, and 121.427 have been analyzed independently. For the purpose of this evaluation, however, the costs associated with these revisions have been aggregated. The reason is that these amendments are inextricably related and share the common objective of improving the skills of pilots in recognizing and escaping from inadvertently encountered low-altitude windshear conditions.

New § 121.358 will have an economic impact on the approximate 3,800 airplanes expected to be in service in 1990 and 3,200 airplanes expected to be manufactured between 1991 and 2004 because they would be required to be equipped with an FAA-approved system providing airborne windshear warning and flight guidance. The estimated cost of this amendment is $372.2 million in 1987 dollars and $218.5 million at a present worth discount rate of 10 percent over the 16-year period of 1989 to 2004.

The amendment to § 121.407 would require that air carriers install approved windshear aerodynamic data programs in their flight simulators. The estimated cost of modifying the 150 flight simulators currently in use by Part 121 certificate holders is $6.2 million in 1987 dollars.

The cost per hour of additional simulator utilization has been estimated under § 121.409 and added to the time captains and first officers would spend in a flight simulator to comply with the windshear simulator flight training requirements of §§ 121.424 and 121.427.

The FAA has determined that approximately 80 percent of the affected certificate holders already provide the windshear flight training required by §§ 121.424 and 121.427. Therefore, the amendments to these sections would impact approximately 20 percent of the active and future captains and first officers of the 149 Part 121 certificate holders affected by the rule. The estimated cost of compliance with the initial, transition, and upgrade windshear flight simulator training requirements of § 121.424 would be $13.4 million in 1987 dollars and $7.1 million when discounted at 10 percent over the 15-year span between 1989 and 2004. The estimated cost of requiring the affected captains and first officers to undergo windshear simulator flight training pursuant to the recurrent training requirements specified in § 121.427 would be $33.8 million in 1987 dollars and $15.2 million at a present worth discount rate of 10 percent over the same time period.

This analysis indicates that the total cost of compliance with the equipment acquisition, installation, maintenance and flight training requirements contained in this rule is estimated to have a present value of $246.5 million over the 16 year-period of 1989 to 2004.

To estimate the benefits for the NPRM, the FAA examined the safety record of Part 121 air carriers for the 15-year period between 1971 and 1985. At the time, this review indicated that 15 accidents attributed to windshear phenomena occurred during this period. A more recent review, however, reveals that two more accidents attributed to windshear have been added to the safety record by the NTSB for the same 15-year period in question. Accordingly, the losses associated with the 17 accidents are the basis for the benefits of this rule. Moreover, the analysis has been advanced to reflect the more recent 15-year period of 1972 to 1986.

To arrive at a loss rate indicative of the cost of these accidents, the total financial loss of these accidents was divided into the total number of turbine-powered airplane air carrier operations for the same 15-year period of 1972 to 1986. This calculation established a loss rate of $4.34 per turbine-powered air carrier operation over the 15-year period of 1972 to 1986. Similarly, to estimate the future accident prevention value of this rule, the established loss rate was multiplied by the number of operations forecast for the 15 years from 1990 to 2004. This calculation reveals that the estimated potential discounted benefit associated with the prevention of casualty loss in accidents attributed to windshear to be $451.6 million.

The FAA has been unable to quantitatively estimate the accident prevention effectiveness of these amendments. The total discounted cost of compliance of these amendments can be fully recovered if the rule is only 55 percent effective in reducing future casualty loss. The FAA believes that enactment of these amendments will significantly reduce the number of future windshear incidents and accidents and that benefits will exceed costs.

This regulatory evaluation focused on the rulemaking it supported. There are other programs which are also designed to reduce the risk of windshear accidents. These other programs are justified partially by benefits included in this analysis, and additional benefits over and above those necessary to justify the rulemaking. FAA does not believe this rulemaking would eliminate or reduce the need for other programs such as terminal Doppler weather radar and Low-Level Wind Shear Alert Systems.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 requires a review of rules to assess their impact on small business. The required Part 121 amendments will have a significant economic impact on a substantial number of small entities. However, the FAA finds that there are no viable alternatives for small air carriers to adopt that would reduce the cost of compliance yet achieve the level of protection sought by this rulemaking. The amendments to part 135 have been determined to impose only minimal costs. Therefore, Part 135 certificate holders would not incur a significant economic impact as a result of these amendments.

International Trade Impact Statement

These amendments will have little or no impact on trade opportunities of United States firms doing business overseas or for foreign firms doing business in the United States. These amendments apply only to Part 121 and Part 135 certificate holders and assign responsibility for the provision of the required equipment and windshear training programs specified in the rule to the operating certificate holder. Because most Part 121 and Part 135 certificate holders compete domestically for passenger and cargo revenues with other U.S. operators, this rule will not cause a competitive fare disadvantage for U.S. carriers.

Federalism Implications

The regulations herein would not have substantial direct effects on the states, on the relationship between the National government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, it is determined that these regulations do not have federalism implications requiring the preparation of a Federalism Assessment.

Paperwork Reduction Act Approval

The recordkeeping and reporting requirements contained in this final rule (§ 121.358) have been submitted to the Office of Management and Budget for review since these provisions were not included in the notice of proposed rulemaking. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs (OMB), New Executive Office Building, Room 3001, Washington, DC 20503, Attention: FAA Desk Officer (Telephone 202–395–7340). A copy should be submitted to the FAA docket.

Conclusion

The FAA has determined that this amendment is not major under Executive Order 12291 but that it is significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). For the reasons discussed above, it also has been determined that the amendments to Part 121 will have a significant economic impact on a substantial number of small entities, but that the amendments to Part 135 will not have a significant economic impact on a substantial number of small entities.

List of Subjects

14 CFR Part 121

Air carriers, Air transportation, Aviation safety, Common carriers, Safety, Transportation, Windshear.

14 CFR Part 135

Air carriers, Air taxi, Air transportation, Aviation safety, Safety, Windshear.

The Rule

Accordingly, the Federal Aviation Administration amends Parts 121 and 135 of the Federal Aviation Regulations (14 CFR Parts 121 and 135) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for Part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

2. By adding a new §121.358 to read as follows:

§ 121.358 Low-altitude windshear system equipment requirements.

(a) Except as provided in paragraph (b) of this section, after January 2, 1991, no person may operate a turbine-powered airplane unless it is equipped with an approved system providing airborne windshear warning with flight guidance. For the purpose of this section, "turbine-powered airplane" includes, e.g., turbofan-, turbojet-, propfan-, and ultra-high bypass fan-powered airplanes. The definition specifically excludes turbopropeller-powered airplanes with variable pitch propellers with constant speed controls.

(b) A certificate holder may obtain an extension of the compliance date in paragraph (a) of this section for airplanes manufactured before January 2, 1989 if it obtains FAA approval of a retrofit schedule. For the purposes of this section, an airplane is considered manufactured on the date the inspection acceptance records reflect that the airplane is complete and meets the FAA Approved Type Design Data. To obtain approval of a retrofit schedule and show continued compliance with that schedule, a certificate holder must do the following:

(1) Submit a request for approval of a retrofit schedule by June 1, 1990 to the Flight Standards Division Manager in the region of the certificate holding district office. Final approval will be granted by the Director of Flight Standards (AFS–1).

(2) Show, for those airplanes subject to this section that are listed in the certificate holder's maintenance operations specifications on the date that the request for extension is submitted, that at least 50% of those airplanes manufactured before January 2, 1989 will be equipped by January 2, 1991, at least 25% more of those airplanes by January 2, 1992, and all of the certificate holder's airplanes required to be equipped in accordance with this section by January 4, 1993.

(3) Comply with its retrofit schedule and submit status reports containing information acceptable to the Administrator. The initial report must be submitted by January 2, 1991, and subsequent reports must be submitted every six months thereafter until completion of the schedule. The reports must be submitted to the FAA Flight Standards District Office charged with the overall inspection of the certificate holder's operations.

3. By adding a new § 121.404 to read as follows:

§ 121.404 Windshear training: Compliance dates.

After January 2, 1991, no certificate holder may use a person as a flight crewmember unless that person has completed—

(a) Windshear ground training in accordance with § 121.419 of this part.

(b) Windshear flight training, if applicable, in accordance with §§ 121.409, 121.424, and 121.427 of this part.

4. By amending § 121.407 by adding a new paragraph (d) to read as follows:

§ 121.407 Training program: Approval of airplane simulators and other training devices.

* * * * *

(d) An airplane simulator approved under this section must be used instead of the airplane to satisfy the pilot flight training requirements prescribed in the certificate holder's approved low-altitude windshear flight training program set forth in § 121.409(d) of this part.

5. By amending § 121.409 by adding a new paragraph (d) to read as follows:

§ 121.409 Training courses using airplane simulators and other training devices.

* * * * *

(d) Each certificate holder required to comply with § 121.358 of this part must use an approved simulator for each airplane type in each of its pilot training courses that provides training in at least the procedures and maneuvers set forth in the certificate holder's approved low-altitude windshear flight training program. The approved low-altitude windshear flight training, if applicable, must be included in each of the pilot flight training courses prescribed in §§ 121.409(b), 121.418, 121.424, and 121.427 of this part.

6. By amending § 121.419 by revising paragraph (a)(2)(vi) to read as follows:

§ 121.419 Pilots and flight engineers: Initial, transition, and upgrade ground training.

(a) * * *

(2) * * *

(vi) Procedures for—

(A) Recognizing and avoiding severe weather situations;

(B) Escaping from severe weather situations, in case of inadvertent encounters, including low-altitude windshear, and

(C) Operating in or near thunderstorms (including best penetrating altitudes), turbulent air (including clear air turbulence), icing, hail, and other potentially hazardous meteorological conditions;

* * * * *

7. By amending § 121.424 by revising paragraphs (a), (b), and (d) to read as follows:

§ 121.424 Pilots: Initial, transition, and upgrade flight training.

(a) Initial, transition, and upgrade training for pilots must include flight training and practice in the maneuvers and procedures set forth in the certificate holder's approved low-altitude windshear flight training program and in Appendix E to this part, as applicable.

(b) The maneuvers and procedures required by paragraph (a) of this section must be performed inflight except—

(1) That windshear maneuvers and procedures must be performed in a simulator in which the maneuvers and procedures are specifically authorized to be accomplished; and

(2) To the extent that certain other maneuvers and procedures may be performed in an airplane simulator, an appropriate training device, or a static airplane as permitted in Appendix E to this part.

* * * * *

(d) If the certificate holder's approved training program includes a course of training utilizing an airplane simulator under § 121.409 (c) and (d) of this part, each pilot must successfully complete—

(1) With respect to § 121.409(c) of this part—

(i) Training and practice in the simulator in at least all of the maneuvers and procedures set forth in Appendix E to this part for initial flight training that are capable of being performed in an airplane simulator without a visual system; and

(ii) A flight check in the simulator or the airplane to the level of proficiency of a pilot in command or second in command, as applicable, in at least the maneuvers and procedures set forth in Appendix F to this part that are capable of being performed in an airplane simulator without a visual system.

(2) With respect to § 121.409(d) of this part, training and practice in at least the maneuvers and procedures set forth in the certificate holder's approved low-altitude windshear flight training program that are capable of being performed in an airplane simulator in which the maneuvers and procedures are specifically authorized.

8. By amending § 121.427 by revising the introductory text of paragraph (d)(1) to read as follows:

§ 121.427 Recurrent training.

* * * * *

(d) * * *

(1) For pilots, flight training in an approved simulator in maneuvers and procedures set forth in the certificate holder's approved low-altitude windshear flight training program and flight training in maneuvers and procedures set forth in Appendix F to this part, or in a flight training program approved by the Administrator, except as follows—

* * * * *

9. By amending § 121.433 by revising paragraph (c)(2) and adding a new paragraph (e) to read as follows:

§ 121.433 Training required.

* * * * *

(c) * * *

(2) For pilots, a proficiency check as provided in § 121.441 of this part may be substituted for the recurrent flight training required by this paragraph and the approved simulator course of training under § 121.409(b) of this part may be substituted for alternate periods of recurrent flight training required in that airplane, except as provided in paragraphs (d) and (e) of this section.

* * * * *

(e) Notwithstanding paragraphs (c)(2) and (d) of this section, a proficiency check as provided in § 121.441 of this part may not be substituted for training in those maneuvers and procedures set forth in a certificate holder's approved low-altitude windshear flight training program when that program is included in a recurrent flight training course as required by § 121.409(d) of this part.

10. By amending Part 121, Appendix E by revising the first paragraph to read as follows:

Appendix E—Flight Training Requirements

The maneuvers and procedures required by § 121.424 of this part for pilot initial, transition, and upgrade flight training are set forth in the certificate holder's approved low-altitude windshear flight training program and in this appendix and must be performed inflight except that windshear maneuvers and procedures must be performed in an airplane simulator in which the maneuvers and procedures are specifically authorized to be accomplished and except to the extent that certain other maneuvers and procedures may be performed in an airplane simulator with a visual system (visual simulator), an airplane simulator without a visual system (nonvisual simulator), a training device, or a static airplane as indicated by the appropriate symbol in the respective column opposite the maneuver or procedure.

* * * * *

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

11. The authority citation for Part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

12. By revising § 135.10 to read as follows:

§ 135.10 Compliance dates for certain rules.

After January 2, 1991, no certificate holder may use a person as a flight crewmember unless that person has completed the windshear ground training required by §§ 135.345(b)(6) and 135.351(b)(2) of this part.

13. By amending § 135.293 by revising paragraph (a)(7) to read as follows:

§ 135.293 Initial and recurrent pilot testing requirements.

(a) * * *

(7) Procedures for—

(i) Recognizing and avoiding severe weather situations;

(ii) Escaping from severe weather situations, in case of inadvertent encounters, including low-altitude windshear (except that rotorcraft pilots are not required to be tested on escaping from low-altitude windshear); and

(iii) Operating in or near thunderstorms (including best penetrating altitudes), turbulent air (including clear air turbulence), icing, hail, and other potentially hazardous meteorological conditions; and

* * * * *

14. By amending § 135.345 by revising paragraph (b)(6) to read as follows:

§ 135.345 Pilots: Initial, transition, and upgrade ground training.

* * * * *

(b) * * *

(6) Procedures for—

(i) Recognizing and avoiding severe weather situations;

(ii) Escaping from severe weather situations, in case of inadvertent encounters, including low-altitude windshear (except that rotorcraft pilots are not required to be trained in escaping from low-altitude windshear); and

(iii) Operating in or near thunderstorms (including best penetrating altitudes), turbulent air (including clear air turbulence), icing, hail, and other potentially hazardous meteorological conditions;

* * * * *

15. By amending § 135.351 by revising paragraph (b)(2) to read as follows:

§ 135.351 Recurrent training.

* * * * *

(b) * * *

(2) Instruction as necessary in the subjects required for initial ground training by this subpart, as appropriate, including low-altitude windshear training as prescribed in § 135.345 of this part and emergency training.

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Issued in Washington, DC, on September 22, 1988.

T. Allan McArtor,

Administrator.

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