about the merits of a case with those staff members who advise the Board regarding a final decision in the case. It is unnecessary to set out internal procedures implementing this statutory prohibition in a formal rulemaking, and to do so could limit the Board's flexibility with respect to internal organization.

II. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the FDIC hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

The final rule makes a minor amendment to a rule of practice already in place, and affects intra-agency procedure exclusively. Thus, it should not result in additional burden for regulated institutions. The purpose of the revised regulation is to conform the provisions of the regulation to those imposed by statute.

List of Subjects in 12 CFR Part 308

Administrative practice and procedure, Claims, Equal access to justice, Lawyers, Penalties.

Authority and Issuance

For the reasons set out in the preamble, 12 CFR part 308 is amended as set forth below:

PART 308—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 308 is revised to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 1815(e), 1817(a), 1818(j), 1818, 1820, 1828(j), 1829, 1831i, 1831o; 15 U.S.C. 781(h), 78m, 78n(a), 78n(c), 78n(d), 78n(f), 78o, 78o–4(c)(5), 78p, 78q, 78q–1, 78s.

2. In § 308.9, paragraphs (a) and (b) are revised and a new paragraph (e) is added to read as follows:

§ 308.9 Ex parte communications.

(a) *Definition.* (1) *Ex parte communication* means any material oral or written communication relevant to the merits of an adjudicatory proceeding that was neither on the record nor on reasonable prior notice to all parties that takes place between:

(i) An interested person outside the FDIC (including such person's counsel); and

(ii) The administrative law judge handling that proceeding, the Board of Directors, or a decisional employee.

(2) *Exception.* A request for status of the proceeding does not constitute an ex parte communication.

(b) *Prohibition of ex parte communications.* From the time the notice is issued by the FDIC until the date that the Board of Directors issues its final decision pursuant to § 308.40(c):

(1) No interested person outside the FDIC shall make or knowingly cause to be made an ex parte communication to any member of the Board of Directors, the administrative law judge, or a decisional employee; and

(2) No member of the Board of Directors, no administrative law judge, or decisional employee shall make or knowingly cause to be made to any interested person outside the FDIC any ex parte communication.

* * * * *

(e) *Separation of functions.* Except to the extent required for the disposition of ex parte matters as authorized by law, the administrative law judge may not consult a person or party on any matter relevant to the merits of the adjudication, unless on notice and opportunity for all parties to participate. An employee or agent engaged in the performance of investigative or prosecuting functions for the FDIC in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review of the recommended decision under § 308.40 except as witness or counsel in public proceedings.

By Order of the Board of Directors.

Dated at Washington, DC, this 24th day of April, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 95–11481 Filed 5–9–95; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–ANE–45; Amendment 39–9221; AD 95–10–04]

Airworthiness Directives; AlliedSignal Inc. (Formerly Textron Lycoming and Avco Lycoming) Model T5313B and T5317 Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to AlliedSignal Inc. (formerly Textron Lycoming and Avco Lycoming) Model T5313B and T5317 series turboshaft engines, that currently requires initial and repetitive dye penetrant inspections of the centrifugal compressor impeller for cracks, and if necessary, removal from service. This amendment requires the use of a new, more conservative minor cycle counting factors table, introduces a method for prorating past centrifugal compressor impeller usage based on the new cycle counting factors, provides an enhanced centrifugal compressor impeller inspection procedure, and eliminates flyback criteria based on crack size. For those centrifugal compressor impellers that exceed their published life limit, this amendment implements a schedule for safe removal of time-expired parts. This amendment is prompted by a report of an uncontained centrifugal compressor impeller failure and subsequent rotorcraft accident. The actions specified by this AD are intended to prevent centrifugal compressor impeller failure, which can result in an uncontained engine failure, inflight engine shutdown, or damage to the rotorcraft.

DATES: Effective May 25, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 25, 1995.

Comments for inclusion in the Rules Docket must be received on or before July 10, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–45, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from AlliedSignal Inc., 550 Main St., Stratford, CT 06497; telephone (203) 385–5452. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Daniel Kerman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7130, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: On April 14, 1986, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 86–09–05,

Amendment 39–5293 (51 FR 16506, May 5, 1986), applicable to Avco Lycoming Models T5313B and T5317A turboshaft engines, to require initial and repetitive dye penetrant inspections of the centrifugal compressor impeller for cracks, and if necessary, removal from service. That action was prompted by reports of two centrifugal compressor impellers found cracked at the pressure equalization holes, and one impeller that had ruptured, causing an uncontained engine failure. That condition, if not corrected, could result in centrifugal compressor impeller failure, which can result in an uncontained engine failure, inflight engine shutdown, or damage to the rotorcraft.

Since the issuance of that AD, the FAA has received a report of an accident of a rotorcraft performing repetitive heavy lift (RHL) operations that was caused by an uncontained failure of a centrifugal compressor impeller installed on an AlliedSignal Inc. Model T5317A engine. On October 28, 1994, AlliedSignal Inc. purchased the turbine engine product line from Textron Lycoming. The centrifugal compressor impeller failure was caused by a low cycle fatigue (LCF) crack that initiated and propagated to failure in one of two pressure equalization holes. Following this accident AlliedSignal Inc. has performed engineering analysis that has determined that the existing impeller specific cyclic counting factors were insufficient to account for RHL operations. Updated operator mission profiles and analysis has shown that minor cycle LCF damage associated with RHL operation is greater than previously calculated. Previous inspection instructions required by AD 86–09–05 could result in incomplete inspection of the pressure equalization holes. Experience has shown that cracks in these holes may initiate at the interior of the centrifugal compressor impeller.

The FAA has reviewed and approved the technical contents of Textron Lycoming Service Bulletin (SB) No. T5313B/17–0020, Revision 4, dated July 5, 1994, that revises the impeller minor cycle counting factors for cyclic computation, and provides a method for prorating past centrifugal compressor impeller usage based on the new cycle counting factors. Also, for those centrifugal compressor impellers that exceed their published life limit, this SB implements a schedule for safe removal of time-expired parts. In addition, the FAA has reviewed and approved the technical contents of Textron Lycoming SB No. T5313B/17 0052, Revision 2, dated December 16, 1993, that describes enhanced inspection procedures for greater inspection reliability, and removes flyback criteria based on crack size.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, this AD supersedes AD 86–09–05 to require the following actions: utilization of a new, more conservative minor cycle counting factors table, introduction of a method for prorating past centrifugal compressor impeller usage based on the new cycle counting factors, an enhanced centrifugal compressor impeller inspection procedure, and elimination of flyback criteria based on crack size. For those centrifugal compressor impellers that exceed their published life limit, this amendment implements a schedule for safe removal of time-expired parts. The actions are required to be accomplished in accordance with the service bulletins described previously.

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 94–ANE–45.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will 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. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–5293 (51 FR 16506, May 5, 1986), and by adding a new airworthiness directive,

Amendment 39–9221, to read as follows:

95–10–04 AlliedSignal Inc.: Amendment 39–9221. Docket 94–ANE–45. Supersedes AD 86–09–05, Amendment 39–5293.

Applicability: AlliedSignal Inc. (formerly Textron Lycoming and Avco Lycoming) Model T5313B and T5317 series turboshaft engines, installed on but not limited to Bell 205 series rotorcraft.

Note: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent centrifugal compressor impeller failure, which can result in an uncontained engine failure, inflight engine shutdown, or damage to the rotorcraft, accomplish the following:

(a) Within seven days after the effective date of this airworthiness directive (AD), conduct a revised centrifugal compressor impeller operating cycle count (prorate) in accordance with paragraph 2.E. of Textron Lycoming Service Bulletin (SB) No. T5313B/17–0020, Revision 4, dated July 5, 1994.

(b) Following the revised operating cycle count required by paragraph (a) of this AD, remove from service centrifugal compressor impellers installed on rotorcraft that exceed their life limit on the effective date of this AD, within 50 hours time in service (TIS), or 25 operating cycles, whichever occurs first, and replace with a serviceable part that does not exceed the life limit.

(c) Following the revised operating cycle count required by paragraph (a) of this AD, reinstallation of uninstalled centrifugal compressor impellers that exceed their life limit is prohibited.

(d) Inspect centrifugal compressor impellers, Part Numbers (P/N) 1–100–078–07 and 1–100–078–08, in accordance with the Accomplishment Instructions of Textron Lycoming SB No. T5313B/17–0052, Revision 2, dated December 16, 1993, as follows:

(1) For those centrifugal compressor impellers installed on AlliedSignal Inc. Model T5313B engines, accomplish the following:

(i) For centrifugal compressor impellers with equal to or greater than 4,600 cycles in service (CIS) on the effective date of this AD, initially inspect within 200 CIS after the effective date of this AD.

(ii) For those centrifugal compressor impellers with less than 4,600 CIS on the effective date of this AD, initially inspect no later than 4,800 CIS.

(2) For those centrifugal compressor impellers installed on AlliedSignal Inc. T5317 series engines, accomplish the following:

(i) For those centrifugal compressor impellers with equal to or greater than 3,500 CIS on the effective date of this AD, initially inspect within 200 CIS after the effective date of this AD.

(ii) For those centrifugal compressor impellers with less than 3,500 CIS on the effective date of this AD, initially inspect no later than 3,700 CIS.

(3) Centrifugal compressor impellers found cracked in accordance with the Accomplishment Instructions of Textron Lycoming SB No. T5313B/17–0052, Revision 2, dated December 16, 1993, must be removed from service and replaced with a serviceable part that does not exceed the life limit.

(4) If no cracks are detected, perform repetitive inspections of the centrifugal compressor impellers at intervals not to exceed 500 CIS since last inspection in accordance with the Accomplishment Instructions of Textron Lycoming SB No. T5313B/17–0052, Revision 2, dated December 16, 1993.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(g) The actions required by this AD shall be done in accordance with the following Textron Lycoming service bulletins:

Document No.	Pages	Revision	Date
No. T5313B/17–0052 ..... Total pages: 8.	1–8	2	December 16, 1993.
No. T5313B/17–0020 ..... Total pages: 14.	1–14	4	July 5, 1994.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AlliedSignal Inc., 550 Main St., Stratford, CT 06497; telephone (203) 385–5452. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on May 25, 1995.

Issued in Burlington, Massachusetts, on May 1, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–11353 Filed 5–9–95; 8:45 am]

BILLING CODE 4910–13–P

Federal Aviation Administration

14 CFR Part 121

[Docket No. 27065; Amendment 121–237]

RIN 2120–AE43

Federal Railroad Administration

49 CFR Part 219

[Docket No. RSOR–6]

RIN 2130–AA81

Federal Highway Administration

49 CFR Part 382

[Docket No. MC–116, MC–92–19, MC–92–23]

RIN 2125–AA79, 2125–AC85, 2125–AD06

Federal Transit Administration

49 CFR Part 654

[Docket No. 92–I]

RIN 2132–AA38

Suspension of Pre-employment Alcohol Testing Requirement

AGENCIES: Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, Federal Transit Administration, DOT.

ACTION: Final rule.

SUMMARY: The United States Court of Appeals for the Fourth Circuit recently issued a decision that vacated the pre-employment alcohol testing requirements of the Federal Highway Administration's alcohol testing rule. The Court remanded this provision to the agency for further proceedings consistent with its opinion. While the pre-employment alcohol testing requirements of the Federal Transit Administration, Federal Railroad Administration, and Federal Aviation Administration were not before the Court in the case, the rationale of the Court's decision applies to these requirements as well. For these reasons, the Department is suspending the pre-employment alcohol testing requirements of each of the four operating administrations until further notice.

DATES: This rule is effective May 10, 1995, except for the amendment 49 CFR 382.301 which is effective May 1, 1995.

FOR FURTHER INFORMATION CONTACT: For general questions, the Office of General Counsel (202–366–9306). For questions regarding a specific operating administration, please call the following people: FTA—Judy Meade (202) 366–2896, FRA—Lamar Allen (202) 366–0127, FHWA—Office of Motor Carrier Research and Standards (202) 366–1790, FAA—Bill McAndrew (202) 366–6710.

SUPPLEMENTARY INFORMATION: In its April 5, 1995, decision in *American Trucking Associations, Inc.* v. *FHWA*, the U.S. Court of Appeals for the Fourth Circuit vacated the FHWA's pre-employment alcohol testing rule and remanded it to the agency for further rulemaking consistent with its opinion. The rule implemented the Omnibus Transportation Employee Testing Act of 1991, which required pre-employment testing ''for use, in violation of law or Federal regulation, of alcohol or a controlled substance.'' The rule required commercial motor vehicle employers to administer pre-employment tests to a new driver. The test could occur at any time up to the performance of the driver's first safety-sensitive activity and thus permitted administration of the test either before or after the driver was hired. In vacating and remanding the rule, the court made the following key findings:

- Giving employers the option of conducting ''pre-hire'' pre-employment tests did not satisfy the Act's requirement of testing for alcohol use ''in violation of law or Federal regulation'' since alcohol consumption prior to a job application is generally not illegal.
- If the agency believes that ''pre-employment'' testing also means ''pre-activity'' testing, then it should require the driver to be tested before the performance of each safety-sensitive activity, not just his first.
- The agency's explanation to the court that ''pre-activity'' testing was permitted in order to reconcile the Act's pre-employment testing requirement with its reference to unlawful alcohol use was not supported by the rulemaking record.
- On remand, the agency should consider whether ''pre-employment'' could reasonably mean anything other than ''pre-hire.'' The court noted that it likely did not. The agency should also determine whether Congress intended pre-employment alcohol testing to apply only to the small group of drivers for whom prehire alcohol use might be illegal and estimate how many job applicants will fall into this group.
- The court rejected ATA's alternative argument that FHWA had the statutory authority to waive all drivers from the pre-employment alcohol testing requirement and agreed with FHWA that such an all-encompassing waiver would effectively repeal the requirement and would thus be impermissibly broad.

This decision did not vacate the pre-employment alcohol testing regulations of the other modes, which were not before the court, but these regulations are based on parallel statutory language, and the rationale of the court's decision applies to them as well.

Because the Court's decision has vacated FHWA's pre-employment alcohol testing rule and created substantial uncertainty about the legal validity of the other operating administration's rules, the Department has decided to suspend all four pre-employment alcohol testing rules at this time. This suspension will be until further notice. Following its consideration of the issues involved on remand from the Court, the Department will decide what course of action to follow (e.g., withdrawal or amendment of the requirements, consistent with the Court's opinion). Such action would be taken through the rulemaking process.

As a result of this action, large employers regulated by FHWA are not required to do pre-employment alcohol testing. Employers regulated by FTA, FAA, and FRA who have begun testing are not required to continue pre-employment alcohol testing. Employers who are scheduled to begin pre-employment alcohol testing at a later date (e.g., January 1, 1996) will not be required to do so. Any employer may conduct pre-employment alcohol testing under its own authority. Because of the Court's decision and this suspension, employers who wish to continue such testing may not claim a basis in Federal law or regulation for doing so, however. We would also emphasize that this action applies only to pre-employment alcohol testing. Drug testing, and other types of alcohol tests, are not affected.

As announced by Secretary of Transportation Federico Pena before the Court's decision was issued, the Department is sending a proposed bill to