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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 9

RIN 3150-AD83

### Revision of Specific Exemptions Under the Privacy Act

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations to add exemptions authorized by subsections (j)(2) and (k)(5) of the Privacy Act of 1974, as amended (Privacy Act), to those currently in place for System of Records NRC-18, "Office of the Inspector General (OIG) Investigative Records—NRC," under subsections (k)(1), (k)(2), and (k)(6). The additional exemptions for NRC-18 are necessary to maintain the integrity and confidentiality of these records, to protect the privacy of third parties, and to avoid interference with law enforcement activities. The final rule also updates the list of exemptions that apply to specific NRC systems of records and is necessary to eliminate any confusion regarding the exemption(s) applicable to each system.

**EFFECTIVE DATE:** January 12, 1996.

**FOR FURTHER INFORMATION CONTACT:** Jona L. Souder, Privacy Act Program Manager, Freedom of Information/Local Public Document Room Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Telephone: 301-415-7170.

#### SUPPLEMENTARY INFORMATION:

##### Background

On July 26, 1995 (60 FR 38282), the NRC published a proposed rule in the Federal Register that would amend

NRC's Privacy Act regulations contained in 10 CFR part 9, subpart B. The proposed amendments would add subsections (j)(2) and (k)(5) exemptions to Privacy Act System of Records NRC-18, "Office of the Inspector General (OIG) Investigative Records—NRC," and update the list of exemptions that apply to specific NRC systems of records. On July 26, 1995 (60 FR 38379), the NRC published revisions to NRC-18 that would, among other things, add subsections (j)(2) and (k)(5) exemptions and two new routine uses, revise existing routine uses, and permit disclosures to consumer reporting agencies. The public was provided 40 days in which to comment on the two notices. No comments have been received. In addition, as required by 5 U.S.C. 552a(r) and Office of Management and Budget (OMB) Circular No. A-130, a report on the proposed revisions to the system of records and 10 CFR Part 9 was sent to the Committee on Government Reform and Oversight, U.S. House of Representatives, the Committee on Governmental Affairs, U.S. Senate, and OMB.

Under subsection (j)(2) of the Privacy Act, the head of an agency may issue rules to exempt any system of records within that agency from certain provisions of the Privacy Act if the system is maintained by an agency component whose principal function pertains to the enforcement of criminal laws and if the system of records consists of information compiled for a criminal law enforcement purpose. NRC-18 is maintained by the OIG, a component of NRC which performs, as one of its principal functions, investigations into violations of criminal law in connection with NRC's programs and operations in accordance with the Inspector General Act of 1978, as amended, and contains criminal law enforcement information. Therefore, pursuant to subsection (j)(2), NRC-18 is exempt from all provisions of the Privacy Act except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (e)(7), (e)(9), (e)(10), (e)(11), and (i).

The disclosure of information contained in NRC-18, including the names of persons or agencies to whom the information has been transmitted, would substantially compromise the effectiveness of OIG investigations. Knowledge of these investigations could

enable suspects to prevent detection of criminal activities, conceal or destroy evidence, or escape prosecution. Disclosure of this information could lead to the intimidation of, or harm to, informants and witnesses, and their families, and could jeopardize the safety and well-being of investigative and related personnel, and their families. The imposition of certain restrictions on the way investigative information is collected, verified, or retained would significantly impede the effectiveness of OIG investigatory activities and could preclude the apprehension and successful prosecution of persons engaged in fraud or criminal activity. The exemption is needed to maintain the integrity and confidentiality of criminal investigations, to protect individuals from harm, and for the following specific reasons:

(1) 5 U.S.C. 552a(c)(3) requires an agency to make the accounting of each disclosure of records available to the individual named in the record at the individual's request. These accountings must state the date, nature, and purpose of each disclosure of a record and the name and address of the recipient. Accounting for each disclosure would alert the subjects of an investigation to the existence of the investigation and that they are subjects of the investigation. The release of this information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation and could seriously impede or compromise the investigation, endanger the physical safety of confidential sources, witnesses, law enforcement personnel, and their families, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(2) 5 U.S.C. 552a(c)(4) requires an agency to inform outside parties of correction of and notation of disputes about information in a system in accordance with subsection (d) of the Privacy Act. Because this system of records is being exempted from subsection (d) concerning access to records, this section is inapplicable to the extent that the system of records will be exempted from subsection (d) of the Privacy Act.

(3) 5 U.S.C. 552a(d) and (f) require an agency to provide access to records, make corrections and amendments to

records, and notify individuals of the existence of records upon their request. Providing individuals with access to records of an investigation, the right to contest the contents of those records, and the opportunity to force changes to be made to the information in those records would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Permitting the access normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate with investigators; lead to suppression, alteration, fabrication, or destruction of evidence; endanger the physical safety of confidential sources, witnesses, law enforcement personnel, and their families; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach to satisfy any Government claims growing out of the investigation.

(4) 5 U.S.C. 552a(e)(1) requires an agency to maintain in agency records only "relevant and necessary" information about an individual. This provision is inappropriate for investigations because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear. In other cases, what may appear to be a relevant and necessary piece of information may become irrelevant in light of further investigation.

In addition, during the course of an investigation, the investigator may obtain information that relates primarily to matters under the investigative jurisdiction of another agency, and that information may not be reasonably segregated. In the interest of effective law enforcement, OIG investigators should retain this information because it can aid in establishing patterns of criminal activity and can provide valuable leads for Federal and other law enforcement agencies.

(5) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual, when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The general rule that information be collected "to the greatest extent practicable" from the target individual is not appropriate in investigations. OIG investigators should

be authorized to use their professional judgment as to the appropriate sources and timing of an investigation. It is often necessary to conduct an investigation so the target does not suspect that he or she is being investigated. The requirement to obtain the information from the targeted individual may put the suspect on notice of the investigation and thwart the investigation by enabling the suspect to destroy evidence and take other action that would impede the investigation. This requirement may also prevent an OIG investigator from gathering information and evidence before interviewing an investigative target to maximize the value of the interview by confronting the target with the evidence or information. In certain circumstances, the subject of an investigation cannot be required to provide information to investigators and information must be collected from other sources. It is often necessary to collect information from sources other than the subject of the investigation to verify the accuracy of the evidence collected.

In addition, the statutory term "to the greatest extent practicable" is a subjective standard. It is impossible to define the term adequately so that individual OIG investigators can consistently apply it to the many fact patterns present in OIG investigations.

(6) 5 U.S.C. 552a(e)(3) requires an agency to inform each person whom it asks to supply information on a form that can be retained by the person of the authority under which the information is sought and whether disclosure is mandatory or voluntary, of the principal purposes for which the information is intended to be used, of the routine uses that may be made of the information, and of the effects on the person, if any, of not providing all or some part of the requested information. The application of this provision could provide the subject of an investigation with substantial information about the nature of that investigation that could interfere with the investigation. Moreover, providing such a notice to the subject of an investigation could seriously impede or compromise an undercover investigation by revealing its existence and could endanger the physical safety of confidential sources, witnesses, investigators, and their families, by revealing their identities.

(7) 5 U.S.C. 552a(e)(4)(G) and (H) require an agency to publish a Federal Register notice concerning its procedures for notifying an individual at his or her request, if the system of records contains a record pertaining to him or her, how to gain access to such a record, and how to contest its content.

Because this system of records is being exempted from subsections (d) and (f) of the Privacy Act concerning access to records and agency rules, respectively, these requirements are inapplicable to the extent that the system of records will be exempted from these requirements. However, OIG has published some information concerning its notification, access, and contest procedures. Under certain circumstances, OIG could decide it is appropriate for an individual to have access to all or a portion of his or her records in the system.

(8) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish notice of the categories of sources of records in the system of records. To the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information, to protect privacy and physical safety of witnesses and informants, and to avoid the disclosure of investigative techniques and procedures. OIG will continue to publish such a notice in broad generic terms as is its current practice.

(9) 5 U.S.C. 552a(e)(5) requires an agency to maintain its records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in making any determination about the individual. Much the same rationale is applicable to this exemption as that set out previously in item (4) (duty to maintain in agency records only "relevant and necessary" information about an individual). Although the OIG makes every effort to maintain records that are accurate, relevant, timely, and complete, it is not always possible in an investigation to determine with certainty that all of the information collected is accurate, relevant, timely, and complete. During a thorough investigation, a trained investigator would be expected to collect allegations, conflicting information, and information that may not be based upon the personal knowledge of the provider. When OIG decides to refer the matter to a prosecutive agency, for example, that information would be in the system of records and it may not be possible to determine the accuracy, relevance, and completeness of some information until further investigation is conducted, or indeed in many cases until after a trial (if at all). This requirement would inhibit the ability of trained investigators to exercise professional judgment in conducting a thorough investigation. Moreover, fairness to

affected individuals is ensured by the due process they are accorded in any trial or other proceeding resulting from the OIG investigations.

(10) 5 U.S.C. 552a(e)(8) requires that an agency make reasonable efforts to serve notice on an individual when any record on the individual is made available to any person under compulsory legal process when such process becomes a matter of public record. Exemption from this requirement is needed to avoid revealing investigative techniques and procedures outlined in those records and to avoid prematurely revealing an ongoing criminal investigation to the subject of the investigation.

(11) 5 U.S.C. 552a(g) provides for civil remedies if any agency fails to comply with the requirements concerning access to records under subsections (d)(1) and (3) of the Privacy Act, maintenance of records under subsection (e)(5) of the Privacy Act, and any other provision of the Privacy Act, or any rule issued thereunder, in such a way as to have an adverse effect on an individual. Allowing civil lawsuits for alleged Privacy Act violations by OIG investigators would compromise OIG investigations by subjecting the sensitive and confidential information in the OIG system of records to the possibility of inappropriate disclosure under the liberal civil discovery rules. That discovery may reveal confidential sources, the identity of informants, and investigative procedures and techniques, to the detriment of the particular criminal investigation as well as other investigations conducted by OIG.

The pendency of such a suit would have a chilling effect on investigations, given the possibility of discovery of the contents of the investigative case file. A Privacy Act lawsuit could become a strategic weapon used to impede OIG investigations. Because the system would be exempt from many of the Privacy Act's requirements, it is unnecessary and contradictory to provide for civil remedies from violations of those specific provisions.

Under subsection (k)(5) of the Privacy Act, the head of an agency may, by rule, exempt any system of records within the agency from certain provisions of the Privacy Act if the system of records contains investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information. However, these records would be exempt only to the extent that the disclosure of this material would

reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

NRC-18 contains information of the type described above. Therefore, in accordance with subsection (k)(5), NRC-18 is exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act to honor promises of confidentiality should the data subject request access to or amendment of the records, or access to the accounting of disclosure of the records for the following reasons:

(1) 5 U.S.C. 552a(c)(3) requires an agency to grant access to the accounting of disclosures including the date, nature, and purpose of each disclosure, and the identity of the recipient. The release of this information to the record subject could alert them to the existence of the investigation or prosecutive interest by NRC or other agencies. This could seriously compromise case preparation by prematurely revealing the existence and nature of the investigation; compromise or interfere with witnesses, or make witnesses reluctant to cooperate; and could lead to suppression, alteration, or destruction of evidence.

(2) 5 U.S.C. 552a(d) and (f) require an agency to provide access to records, make corrections and amendments to records, and notify individuals of the existence of records upon their request. Providing individuals with access to records of an investigation, the right to contest the contents of those records, and the opportunity to force changes to be made to the information in the records would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach to satisfy any Government claims growing out of the investigation or proceeding.

(3) 5 U.S.C. 552a(e)(1) requires agencies to maintain only "relevant and necessary" information about an individual in agency records. This provision is inappropriate for investigations because it is not always possible to detect the relevance or

necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(4) Because NRC-18 is being exempted from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information under subsections (d) and (f) of the Privacy Act, the requirements of 5 U.S.C. 552a(e)(4) (G) and (H) are inapplicable.

(5) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish notice of the categories of sources of records in the system of records. To the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect the privacy and physical safety of witnesses and informants. However, the OIG will continue to publish such a notice in broad generic terms as is its current practice.

In addition, 10 CFR 9.95 is being amended to update the list of exemptions that apply to specific systems of records. The list includes NRC-23, "Office of Investigations Indices, Files, and Associated Records—NRC," and NRC-35, "Drug Testing Program Records—NRC," for which corresponding Part 9 amendments were not previously prepared when each new system was established. NRC-40 has been deleted from this list because a review of the system revealed that the subsections (k)(5) and (k)(6) exemptions of the Privacy Act were no longer needed. This amendment will eliminate any confusion regarding the specific exemption(s) applicable to each system of records.

#### Environmental Impact—Categorical Exclusion

The NRC has determined that this rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

#### Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150-0043.

**Regulatory Analysis**

This final rule adds exemption (j)(2) of the Privacy Act to the NRC regulations that describe exempt systems of records. This is an administrative regulatory action that would make NRC's regulations consistent with the regulations applicable to the majority of statutorily appointed Inspectors General. The rule also adds the (j)(2) and (k)(5) exemptions to the system of records maintained by OIG and clearly links each NRC system of records to the specific exemption(s) of the Privacy Act under which the system is exempt. The rule does not have an economic impact on any class of licensee or the NRC. By more clearly indicating the exemptions under which a system is exempt and by conforming NRC's regulations to those of the majority of statutorily appointed Inspectors General, the rule may provide some benefit to those who may be required to use these regulations.

The alternative to the rule would be to refrain from adopting the identified exemptions. As discussed in this document, failure to adopt the rule could have detrimental effects on the OIG's investigative program and its ability to obtain and protect information.

This constitutes the regulatory analysis for this final rule.

**Regulatory Flexibility Certification**

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this final rule does not have a significant economic impact on a substantial number of small entities. The amendments to 10 CFR part 9 are procedural in nature and will aid an NRC office to perform its criminal law enforcement functions. In addition, the amendments will eliminate any confusion regarding specific exemptions available to each affected Privacy Act system of records notice.

**Backfit Analysis**

The NRC has determined that the backfit rule 10 CFR 50.109 does not apply to this final rule and, therefore, a backfit analysis is not required because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

**List of Subjects in 10 CFR Part 9**

Criminal penalties, Freedom of information, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

For the reasons set out in the preamble and under the authority of the

Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 9.

**PART 9—PUBLIC RECORDS**

1. The authority citation for part 9 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Subpart A also issued under 5 U.S.C. 552; 31 U.S.C. 9701; Pub. L. 99-570. Subpart B also issued under 5 U.S.C. 552a. Subpart C also issued under 5 U.S.C. 552b.

2. In § 9.52, paragraph (b)(4) is revised to read as follows:

**§ 9.52 Types of requests.**

\* \* \* \* \*

(b) *Requests for accounting of disclosures.* \* \* \* (4) Disclosures expressly exempted by NRC regulations from the requirements of 5 U.S.C. 552a(c)(3) pursuant to 5 U.S.C. 552a(j)(2) and (k).

3. In § 9.61, current paragraph (b) is redesignated as paragraph (c), and a new paragraph (b) is added to read as follows:

**§ 9.61 Procedures for processing requests for records exempt in whole or in part.**

\* \* \* \* \*

(b) *General exemptions.* Generally, 5 U.S.C. 552a(j)(2) allows the exemption of any system of records within the NRC from any part of section 552a except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) of the act if the system of records is maintained by an NRC component that performs as one of its principal functions any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crimes, or to apprehend criminals, and consists of—

(1) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release and parole, and probation status;

(2) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or

(3) Reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

\* \* \* \* \*

4. In § 9.80, paragraphs (a)(6), (10), and (11) are revised and a new paragraph (a)(12) is added to read as follows:

**§ 9.80 Disclosure of record to persons other than the individual to whom it pertains.**

(a) \* \* \*

(6) To the National Archives and Records Administration as a record that has sufficient historical or other value to warrant its continued preservation by the United States Government, or to the Archivist of the United States or designee for evaluation to determine whether the record has such value;

\* \* \* \* \*

(10) To the Comptroller General, or any authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(11) Pursuant to the order of a court of competent jurisdiction; or

(12) To a consumer reporting agency in accordance with 31 U.S.C. 3711(f).

5. Section 9.95 is revised to read as follows:

**§ 9.95 Specific exemptions.**

The following records contained in the designated NRC Systems of Records (NRC-5, NRC-9, NRC-11, NRC-18, NRC-22, NRC-23, NRC-28, NRC-29, NRC-31, NRC-33, NRC-35, NRC-37, and NRC-39) are exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) in accordance with 5 U.S.C. 552a(k). In addition, the records contained in NRC-18 are exempt from the provisions of 5 U.S.C. 552a and the regulations in this part, under 5 U.S.C. 552a(j)(2), except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i). Each of these systems of records is subject to the provisions of § 9.61:

(a) Contracts Records Files, NRC-5 (Exemptions (k)(1) and (k)(5));

(b) Equal Employment Opportunity Discrimination Complaint Files, NRC-9 (Exemption (k)(5));

(c) General Personnel Records (Official Personnel Folder and Related Records), NRC-11 (Exemptions (k)(5) and (k)(6));

(d) Office of the Inspector General (OIG) Investigative Records, NRC-18 (Exemptions (j)(2), (k)(1), (k)(2), (k)(5), and (k)(6));

(e) Personnel Performance Appraisals, NRC-22 (Exemptions (k)(1) and (k)(5));

(f) Office of Investigations Indices, Files, and Associated Records, NRC- 23 (Exemptions (k)(1), (k)(2), and (k)(6));

(g) Recruiting, Examining, and Placement Records, NRC-28 (Exemption (k)(5));

(h) Nuclear Documents System (NUDOCS), NRC-29 (Exemption (k)(1));

(i) Correspondence and Records, Office of the Secretary, NRC-31 (Exemption (k)(1));

(j) Special Inquiry File, NRC-33 (Exemptions (k)(1), (k)(2), and (k)(5));

(k) Drug Testing Program Records, NRC-35 (Exemption (k)(5));

(l) Information Security Files and Associated Records, NRC-37 (Exemptions (k)(1) and (k)(5)); and

(m) Personnel Security Files and Associated Records, NRC-39 (Exemptions (k)(1), (k)(2), and (k)(5)).

Dated at Rockville, MD., this 1st day of December, 1995.

For the Nuclear Regulatory Commission.  
James M. Taylor,

*Executive Director for Operations.*

[FR Doc. 95-30173 Filed 12-12-95; 8:45 am]

BILLING CODE 7590-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 25

[Docket No. NM-120; Special Conditions No. 25-ANM-110]

#### Special Conditions: Jetstream Aircraft Limited Model 4101 Series Airplanes; Automatic Takeoff Thrust Control System

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final special conditions, request for comments.

**SUMMARY:** These special conditions are issued to Jetstream Aircraft Limited for the Jetstream Model 4101 series airplanes. This airplane will have an unusual design feature for which the applicable airworthiness regulations do not contain appropriate safety standards. The unusual design feature is an Automatic Takeoff Thrust Control System (ATTCS) that resets power on the operating engine for compliance with the approach climb performance requirements in § 25.121(d). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is December 6, 1995. Comments must be received on or before January 29, 1996.

**ADDRESSES:** Comments on these final special conditions, request for comments, may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel,

Attn: Rules Docket (ANM-7), Docket No. NM-120, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked "Docket No. NM-120." Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 and 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** William Schroeder, FAA, Standardization Branch, ANM-113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055-4056, telephone (206) 227-2148.

#### SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-120." The postcard will be date stamped and returned to the commenter.

#### Background

On May 24, 1989, British Aerospace Public Limited Company (BAe) (currently Jetstream Aircraft Ltd.) applied for a type certificate for the BAe Model 4100 (currently Jetstream Model 4101) airplane in the transport airplane category. The Jetstream Model 4101 is a transport category airplane powered by two Garrett TPE331-14GR/HR Series turbo-propeller engines mounted on the wing. McCauley Model B/C 5JFR36C1101/2 or 3/4-L114 G/H CA-0 five-blade propellers are installed. The airplane is type certificated with two

flight crewmembers and up to 30 passengers.

The Jetstream Model 4101 will incorporate an unusual design feature, the Automatic Takeoff Thrust Control System (ATTCS), referred to by Jetstream as Automatic Power Reserve or APR, to show compliance with the approach climb requirements of § 25.121(d). Appendix I to part 25 limits the application of performance credit for ATTCS to takeoff only. Since the airworthiness regulations do not contain appropriate safety standards for approach climb performance using ATTCS, special conditions are required to ensure a level of safety equivalent to that established in the regulations.

#### Type Certification Basis

Under the provisions of § 21.101, Jetstream must show that the Model 4101 series airplanes, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A41NM or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. A41NM are as follows:

Based on §§ 21.29 and 21.17 and the type certification application date, the applicable U.S. type certification basis for the Model 4101 was established as follows:

- Part 25 of the FAR dated February 1, 1965, as amended by Amendments 25-1 through 25-66 (all based on BAe application date to CAA), and
- Part 25 of the FAR, Amendments 25-67, 25-68, 25-69, 25-70, 25-71, and
- Part 25 of the FAR, §§ 25.361 and 25.729 and paragraphs 25.571(e)(2), 25.773(b)(2) and 25.905(d), all as amended by Amendment 25-72, and
- Section 25.1419 as amended by Amendments 25-1 through 25-66, and
- Special Conditions (SC) as follows:
  - Special Conditions No. 25-ANM-48 issued August 29, 1991, Lightning and High Intensity Radiated Fields (HIRF)
  - Special Conditions No. 25-ANM-45 issued July 9, 1991, Cabin Aisle Width, and
  - The following exemptions were petitioned for and granted:
    - FAA Exemption No. 5587 issued January 13, 1993, Head Impact Criteria (25.562(c)(5)) for the three most forward passenger seats in passenger cabin, and
    - Equivalent safety findings as follows:
      - 25.349 of the FAR, Rolling Conditions