

lender's written request, the Agency may exempt a project from this requirement if requested by the lender and the project meets the following criteria:

(i) *Original appraisal*—the original appraisal that meets the Agency's appraisal requirements with a valuation date no older than 36 months;

(ii) *Valuation*—the appraisal's lowest valuation, regardless of valuation approach and rent restrictions considered, is greater than the section 538 guaranteed loan amount; and

(iii) *Guaranteed loan balance*—the Agency's guaranteed loan's principal balance does not exceed 50 percent [unless a different percent has been announced in a Notice published in the **Federal Register**] of the project's total development costs.

(5) A certificate of substantial completion;

(6) A certificate of occupancy or similar evidence of local approval;

(7) A final inspection conducted by a qualified Agency representative;

(8) A final cost certification in a form acceptable to the Agency;

(9) A submission to the Agency of the complete closing docket;

(10) A certification by the lender that the project has reached an acceptable minimum level occupancy;

(11) An executed regulatory agreement;

(12) The Lender certifies that it has approved the borrower's management plan and assures that the borrower is in compliance with Agency standards regarding property management contained in subparts E and F of this part;

(13) Necessary information to complete an updated necessary assistance review by the Agency under § 3565.204(c); and

(14) Compliance with all conditions contained in the conditional commitment for guarantee.

\* \* \* \* \*

(f) *Continuous Guarantee Compliance*. The continuous guarantee will remain in effect once construction is completed. In order to remain in compliance with 7 CFR part 3565, the following items must be submitted to and approved by the Agency. These items will be submitted to the Agency by the date stated in the Conditional Commitment and any Agency approved extension(s).

(1) Certification from the lender stating that the lender or its qualified representative inspected the property and found that the construction meets the Government's requirements for the standards and conditions for housing

and facilities in 7 CFR part 1924, subpart A and the standards for site development in 7 CFR part 1924, subpart C, or its successor regulations;

(2) Cash flow certification—the lender certifies in writing the project's cash flow assumptions are still valid and depict compliance with the section 538 program's debt service coverage ratio requirement of at least 1.15, based on the lender's analysis of current market conditions and comparable properties in the project's market area;

(3) Documentation that either:

(i) The project has attained a minimum level of acceptable occupancy of 90% for 90 continuous days within the 120-day period immediately preceding the issuance of the permanent guarantee, or

(ii) Additional funds, supplementing the funds required under § 3565.303(d), have been added to the lease-up reserve in an amount the Agency determines is necessary to cover projected shortfalls.

(4) An appraisal of the property;

(5) A certificate of substantial completion;

(6) A certificate of occupancy or similar evidence of local approval;

(7) A final inspection conducted by a qualified Agency representative;

(8) A final cost certification in a form acceptable to the Agency;

(9) A submission to the Agency of the complete closing docket;

(10) A certification by the lender that the project has reached an acceptable minimum level occupancy;

(11) An executed regulatory agreement;

(12) The Lender certifies that it has approved the borrower's management plan and assures that the borrower is in compliance with Agency standards regarding property management contained in subparts E and F of this part;

(13) Necessary information to complete an updated necessary assistance review by the Agency under § 3565.204(c); and

(14) Compliance with all conditions contained in the conditional commitment for guarantee.

#### Subpart J—Assignment, Conveyance, and Claims

##### § 3565.457 [Amended]

■ 8. Section 3565.457 (c)(1) is amended in the first sentence by removing the word "collectibility" and adding "collectability" in its place.

Dated: December 3, 2010.

**Tammy Treviño,**

*Administrator, Rural Housing Service.*

[FR Doc. 2010-33042 Filed 12-30-10; 8:45 am]

**BILLING CODE 3410-XV-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 1

[Docket No. FAA-2010-0812; Amendment No. 1-66]

RIN 2120-AJ81

#### Feathering Propeller Systems for Light-Sport Aircraft Powered Gliders

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This final rule with request for comments amends the definition of light-sport aircraft by removing "auto" from the term "autofeathering" as it applies to powered gliders. This amendment will allow both manual and autofeathering propeller operation for powered gliders that qualify as light-sport aircraft.

**DATES:** This rule becomes effective on March 4, 2011. Submit comments on or before February 2, 2011.

**ADDRESSES:** You may send comments identified by Docket Number FAA-2010-0812 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Fax:* Fax comments to the Docket Management Facility at 202-493-2251.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

*Privacy:* We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <http://DocketsInfo.dot.gov>.

*Docket:* To read background documents or comments received, go to <http://www.regulations.gov> at any time or visit Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Terry Chasteen, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE-114, 901 Locust, Room 301, Kansas City, MO 64106; telephone: (816) 329-4147; fax: (816) 329-4090; e-mail: [terry.chasteen@faa.gov](mailto:terry.chasteen@faa.gov). For legal questions concerning this rule, contact David Pardo, Office of Chief Counsel, AGC-240, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-3073; fax: (202) 267-7971.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

The FAA is adopting this final rule without prior notice and prior public comment because this amendment is relieving in nature, imposes no burden on the public, and is responsive to a petition for exemption and related public comments which sought the relief granted by this rule. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134, February 26, 1979) provide that, to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, we invite interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting this final rule. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this final rule. Before acting on this final rule, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the

comment period has closed if it is possible to do so without incurring expense or delay. We may change this final rule in light of the comments received.

**Small Business Regulatory Enforcement Fairness Act**

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the persons listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at our site, [http://www.faa.gov/regulations%5Fpolicies/rulemaking/sbre\\_act/](http://www.faa.gov/regulations%5Fpolicies/rulemaking/sbre_act/).

**Authority for This Rulemaking**

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701. Under that section, the FAA is charged with prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it establishes minimum standards required in the interest of safety for the design of aircraft.

**Background**

Currently, the definition of light-sport aircraft in § 1.1 General Definitions, Title 14, Code of Federal Regulations (14 CFR), specifies that powered gliders that are light-sport aircraft have a fixed or autofeathering propeller system. The restriction to "autofeathering" has resulted in varying applications of light-sport aircraft (LSA) design.

In 2004, the FAA issued the final rule "Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft" (Sport Pilot Rule) (69 FR 44772, July 27, 2004). That rule established a definition for the term "light-sport aircraft." Since we adopted that rule, the FAA has been working with the LSA industry in evaluating the overall LSA program. The past five years have seen remarkable growth in the overall LSA industry. Over 1,200 new factory-built airplanes, powered parachutes, and weight-shift

control aircraft have received special airworthiness certificates in the special LSA category. One exception to this rapid growth is LSA powered gliders.

The FAA has determined that a propeller on a LSA powered glider can be safely feathered using either a manual or automatic feathering propeller system, which justifies replacing the term "autofeathering" with "feathering." We discuss this determination in the following section.

**Feathering Propeller Systems for Soaring Flight**

When we published the notice of proposed rulemaking (NPRM) entitled Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft on February 5, 2002 that proposed a definition for LSA, we intended that LSA be simple in design and operation and appropriate for operation by sport pilots. For aircraft design, low performance within the constraints of light weight and structural integrity were important. For aircraft operation, simple mechanical systems within the constraints of sport pilot training requirements were important. In that NPRM (67 FR 5376), we stated that "a light sport aircraft, if powered, would be limited to a fixed or ground adjustable propeller." We determined that "a propeller that could not be adjusted in pitch during flight was necessary to limit the operational complexity of the aircraft and would be consistent with the skills necessary to hold a sport pilot certificate."

Some commenters requested that controllable pitch propellers be permitted on LSA. We disagreed that the LSA definition should be revised accordingly because it would require a level of training for sport pilots and repairmen that would not be commensurate with the privileges of their certificates. However, for powered gliders, we revised the final rule to permit autofeathering propeller systems on LSA powered gliders to decrease drag while soaring.

In June 2008, the Light Aircraft Manufacturers Association (LAMA) petitioned the FAA for an exemption to allow manual feathering of a propeller in LSA powered gliders. As part of its request, LAMA provided information concerning the design and operation of manual feathering propeller systems. This petition can be found in Docket No. FAA-2008-0737.

The FAA received approximately 16 comments from 13 commenters in response to the petition. All the commenters supported the petition for exemption. Comments on the petition highlighted the overall benefits for a

LSA powered glider to have the option of being equipped with a manual feathering propeller system.

After reviewing LAMA's petition and the comments received in support of it, the FAA has determined that a change to the definition of LSA for powered gliders is appropriate. The FAA agrees that autofeathering propeller systems are not necessary for the safe operation of LSA powered gliders. These systems, which are typically found in multi-engine aircraft, automatically feather a propeller in the event of a power loss during takeoff. These systems can be complex, heavy, and expensive.

On the other hand, powered gliders typically incorporate a simple, manual feathering propeller system. These simple, two-position manual feathering systems are more consistent with the intended use of a LSA powered glider and the expected level of complexity for LSA operations. For example, these systems allow the pilot to feather the propeller by toggling a switch or moving a lever in the cockpit. This system rotates the propeller blades to be aligned with the wind—from power configuration to soaring configuration—so that the glider may maximize gained altitude through thermal lift only. The ability to feather the propeller is desirable when the glider is aloft and the engine has been intentionally shut off.

A manual feathering propeller system is the lightest, simplest, and most direct way to rotate the propeller blades from power configuration to soaring configuration. This translates to a lower glider weight that may result in better performance and fewer parts or systems that could fail (*i.e.*, better reliability) than with autofeathering systems, while still maintaining low cockpit workload and pilot distraction.

### Design and Standards

Under the provisions of the Sport Pilot rule and the revised Office of Management and Budget (OMB) Circular A-119, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities," dated February 10, 1998, the LSA industry and the FAA have been working with the American Society for Testing and Materials (ASTM) International to develop consensus standards for aircraft issued special airworthiness certificates in the LSA category under § 21.190 for Special Light-Sport Aircraft (S-LSA). These consensus standards, once accepted by the FAA, satisfy the agency's goal for airworthiness certification and establish a verifiable minimum safety level for S-

LSA. In addition, use of the consensus standard process assures government and industry that discussion and agreement on appropriate standards have occurred for the required level of safety.

We believe a simple manually operated propeller system for in-flight feathering would be an acceptable means of compliance with the propeller feathering provisions for LSA.

From the aircraft design perspective, we were concerned that malfunction or misuse of a manual feathering propeller on an LSA powered glider could impose a hazard to the aircraft occupants. Since publication of the Sport Pilot Rule, the FAA has reviewed powered glider accident statistics in the electronic database of the National Transportation Safety Board. The data show 32 accidents in the years 1962 through 2009 (October) with no accidents attributed to the operation of feathering or un-feathering a propeller during flight. The data also indicate that in-flight feathering of a propeller system in powered gliders—many of which are permitted to use either manual or autofeathering propeller system—does not decrease safety.

We find that a manually operated propeller system for in-flight feathering is appropriate. Currently, pilots flying LSA powered gliders are allowed to use a direct-action manual lever to operate the landing gear, which typically occurs at low altitudes during times of high pilot workload. By contrast, feathering the propeller takes place at higher altitudes when pilot workload is minimal. We have determined that this revision to the definition of a LSA recognizes the operational nature of LSA powered gliders and is consistent with the stated design and safety objectives.

### Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires the FAA to consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no current or new requirements for information collection associated with this amendment.

### International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined there are no International Civil Aviation

Organization (ICAO) Standards and Recommended Practices that correspond to this regulation. International standards for Light Sport Aircraft are being coordinated by ASTM International.

### Good Cause for "No Notice"

Section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(B)) authorizes agencies to dispense with certain notice procedures for rules when they find "good cause" to do so. Under section 553(b)(B), the requirements of prior notice and opportunity for comment do not apply when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest."

This final rule will change the definition of LSA powered glider by removing "auto" from "autofeathering," which will eliminate the current restriction on manual feathering propeller designs. Prior public comment is unnecessary because the FAA has already obtained public comments regarding a petition for exemption seeking to eliminate the restriction on manual feathering propeller designs from the definition of light-sport aircraft. This final rule is responsive to those comments, all of which were in support of the petition for exemption.

We do not anticipate significant public comment on this amendment, since it does not impose a requirement.

### Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, Regulatory Planning and Review, directs the FAA to assess both the costs and benefits of a regulatory change. We are not allowed to propose or adopt a regulation unless we make a reasoned determination that the benefits of the intended regulation justify its costs. Our assessment of this final rule indicates that its economic impact is minimal.

### Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Public Law 96-39) prohibits

agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or Tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with the base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination is that the rule is cost relieving, as it eliminates the current restriction on manual feathering propeller designs while maintaining the current safety level.

FAA has therefore determined that this final rule is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures.

#### **Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (Pub. L. 96-354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a

substantial number of small entities. If the agency determines it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear. This rule will not have a significant economic impact because it is cost relieving.

Therefore, as the FAA Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

#### **International Trade Impact Assessment**

The Trade Agreements Act of 1979 (Pub. L. 96-39), as amended by the Uruguay Round Agreements Act (Pub. L. 103-465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule with request for comments and has determined that it will have a cost relieving impact on domestic and international entities and thus has a neutral trade impact.

#### **Unfunded Mandates Assessment**

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The level equivalent of \$100 million in CY 1995, adjusted for inflation to CY 2010 levels by the Consumer Price Index for all Urban Consumers (CPI-U) as published by the

Bureau of Labor Statistics, is \$143.1 million.

This final rule with request for comments does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this regulation.

#### **Executive Order 13132, Federalism**

The FAA has analyzed this final rule with request for comments under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we have determined that this final rule with request for comments does not have federalism implications.

#### **Environmental Analysis**

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 312 and involves no extraordinary circumstances.

#### **Regulations That Significantly Affect Energy Supply, Distribution, or Use**

The FAA has analyzed this final rule with request for comments under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 18, 2001). We have determined that it is not a "significant energy action" under the executive order, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### **Availability of Rulemaking Documents**

You can get an electronic copy using the Internet by:

- (1) Searching the Federal eRulemaking portal at <http://www.regulations.gov>;
- (2) Visiting the FAA's Regulations and Policies Web page at [http://www.faa.gov/regulations\\_policies/](http://www.faa.gov/regulations_policies/); or
- (3) Accessing the Government Printing Office's Web page at <http://www.gpoaccess.gov/fr/index.html>.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking,

ARM-1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the docket and amendment number of this rulemaking.

#### List of Subjects in 14 CFR Part 1

Air transportation.

#### The Amendments

In consideration of the foregoing, the Federal Aviation Administration amends part 1 of Title 14, Code of Federal Regulations, as follows:

#### PART 1—DEFINITIONS AND ABBREVIATIONS

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

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

- 2. Amend the definition of “light-sport aircraft” in § 1.1 by revising paragraph (8) to read as follows:

##### § 1.1 General definitions.

\* \* \* \* \*

*Light-sport aircraft* \* \* \*

(8) A fixed or feathering propeller system if a powered glider.

\* \* \* \* \*

Issued in Washington, DC on December 22, 2010.

**J. Randolph Babbitt,**  
Administrator.

[FR Doc. 2010-33082 Filed 12-30-10; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 65

[Docket No.: FAA-2010-0567; Amendment No. 65-55]

RIN 2120-AJ66

#### Modification of the Process for Requesting a Waiver of the Mandatory Separation Age of 56 for Air Traffic Control Specialists

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA amends its regulation concerning the process for requesting a waiver of the mandatory separation age of 56 for Air Traffic Control Specialists in flight service stations, enroute or terminal facilities, and the David J. Hurley Air Traffic Control System Command Center. Under this final rule, Air Traffic Control Specialists will no longer be required to certify they have not been involved in

an operational error (OE), operational deviation (OD), or runway incursion in the past 5 years. The rule will streamline the waiver process and bring it into conformance with current FAA OE and OD reporting policy.

**DATES:** This amendment becomes effective March 4, 2011.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this final rule contact Kelly J. Neubecker, Airspace, Regulations, and ATC Procedures Group, Office of Airspace Services, AJV-11, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9235; facsimile (202) 267-9328, e-mail [Kelly.Neubecker@faa.gov](mailto:Kelly.Neubecker@faa.gov). For legal questions concerning this final rule contact Anne Moore, Office of Chief Counsel, AGC-240, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3123; facsimile (202) 267-7971, e-mail [Anne.Moore@faa.gov](mailto:Anne.Moore@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106, describes the authority of the FAA Administrator to issue, rescind, and revise regulations. Under this authority, we are amending Special Federal Aviation Regulation No. 103 in 14 CFR part 65 (SFAR 103) by removing paragraph 5.b.vii. The change is within the scope of our authority and is a reasonable and necessary exercise of our statutory obligations.

##### I. Background

On January 23, 2004, H.R. 2673, Consolidated Appropriations 2004, became Public Law 108-199. Within the appropriations bill, there was a mandate that “not later than March 1, 2004, the Secretary of Transportation, in consultation with the Administrator of the Federal Aviation Administration, shall issue final regulations, pursuant to 5 U.S.C. 8335, establishing an exemption process allowing individual Air Traffic Controllers to delay mandatory retirement until the employee reaches no later than 61 years of age.” On January 7, 2005, the FAA published the final rule in the **Federal Register**, 14 CFR part 65 (Docket No. FAA-2004-17334; SFAR No. 103, 70 FR 1634).

The process for an Air Traffic Control Specialist (ATCS) to request a waiver from the mandatory separation age of 56 is currently codified in SFAR 103 and

reflected in the Human Resources Policy Bulletin 35, Waiver Process to Mandatory Separation at Age 56. This policy applies to all ATCSs and their first-level supervisors in flight service, enroute and terminal facilities, and at the David J. Hurley Air Traffic Control System Command Center covered under the mandatory separation provisions of 5 U.S.C. 8335(a) and 8425(a).

The regulation contains information contrary to air traffic policy under amended FAA Order JO 7210.56C, Change 2, effective July 20, 2009. Specifically, paragraph 5.b.vii. of SFAR 103 requires a controller to provide a statement that they have not been involved in an operational error (OE), operational deviation (OD), or runway incursion in the last 5 years while in a control position. This requirement is inconsistent with current air traffic orders developed specifically to foster a safety culture that encourages full and open reporting of safety information and focuses on determining why events occur, rather than placing blame. In support of this culture, FAA Order JO 7210.56C, Change 2 removed all references to employee identification, training record entries, performance management, and return-to-duty actions that were historically tied to reported OE or OD events. Due to this change in policy, the reporting requirements of SFAR 103 5.b.vii. became unverifiable.

##### II. Summary of the NPRM

The FAA published the NPRM on June 2, 2010. (75 FR 30742, Docket No. FAA 2010-0567) The proposed rule invited comments on the proposal to remove paragraph 5.b.vii of SFAR 103, since current practice made those provisions unverifiable. The proposed rule would amend only the requirement for controllers to provide a statement that they have not been involved in an operational error (OE), operational deviation (OD), or runway incursion in the last 5 years while in a control position. The proposal did not affect any other requirements for Air Traffic Controllers who request a waiver.

##### III. Summary of Comments

The comment period for the NPRM closed on July 2, 2010. The FAA received comments from two individuals on the proposal to amend the exemption process allowing ATC to delay mandatory retirement age. Both commenters supported waivers to extend the retirement age in general, and one commenter was also in favor of the specific proposal to remove documentation of any occurrences within the preceding 5 years. The other commenter suggested removing the