

Issued in Kansas City, Missouri, on May 30, 2001.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, 125 and 135

Exemptions and Exceptions for Flight Data Recorder Requirements

AGENCY: Federal Aviation Administration, DOT.

ACTION: Statement of policy.

SUMMARY: This document identifies the current FAA policies regarding requests for exemption or exception from the operating rules governing the use of flight data recorders in either fixed-wing aircraft or rotorcraft. The final compliance date for the 1997 rule changes and policy changes adopted in 1997 is August 20, 2001. The Federal Aviation Administration (FAA) is publishing this document to provide guidance to operators that have applied or expect to apply for an exemption or exception from the flight data recorder requirements of any operating part.

FOR FURTHER INFORMATION CONTACT: Mr. Howard Swancy, Special Assistant to the Director (AFS-3), Flight Standards Service, FAA, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8237.

SUPPLEMENTARY INFORMATION:

Background

In 1997, the Federal Aviation Administration promulgated new operational regulations for flight data recorders (FDRs) (62 FR 38362, July 17, 1997). At that time, the agency also withdrew a previous information bulletin that stated policy regarding earlier FDR regulations.

Following the publication of the rule and policy statement, the FAA began to receive requests for exemption from the regulations. The FAA uses the term *exemption* to refer to temporary relief from a regulation as granted to a specific petitioner. The FAA is currently reviewing all requests and exemptions in effect regarding FDRs to determine whether they will be made permanent, rescinded, or allowed to expire in the final compliance date, August 20 of this year.

When the 1997 rule was promulgated, the FAA included in § 121.344(l)(2),

§ 121.344a(f), § 125.226(l)(2), and § 135.152(k) those aircraft models that the FAA found were too old, too few, and too expensive to upgrade and still be economically viable to operate. These aircraft were excepted from the FDR requirements and have permanent relief from compliance with the FDR regulations of the applicable section. The FAA indicated that if operators found that additional aircraft models should be considered for permanent exception, a petition for rulemaking that included full support for the exception request should be submitted. Since that time, there have been a considerable number of requests filed.

Following this paragraph is a list of the minimum information necessary to be submitted for *each aircraft model requesting an exception*. Petitioners that already have submitted petitions should review this list and consider supplementing their petitions if they have not previously provided the necessary information. The FAA will consider any information submitted and determine whether more information is necessary for the agency to make a decision whether it is appropriate to propose exception status for a particular aircraft model. Petitioners are cautioned that exception status should *not* be considered automatic when information is submitted, nor should any grant of a temporary exemption from the FDR requirements while an exception request is pending be used to presume that permanent exception status will be granted. This applies to exemptions already issued that expire after August 20, 2001, as well. The FAA anticipates that some aircraft models that have been granted exemptions may not qualify for exception status, and will have to be modified to fully comply with the applicable regulations.

- Is this model currently in production?
- What other models are currently in production (or not in production) that are similar to this model?
- If this model is not currently in production, is there another model that is similar in a way that would facilitate this model's adaptability for FDR retrofit?
- How many aircraft of this model were produced by the manufacturer? How many of similar models?
- How many are still in operation in the United States? How many worldwide?
- Does a supplemental type certificate (STC) exist to retrofit this model (or a similar model) with the required flight data recorder equipment?
- If no STC exists, what is the expected detailed cost to develop a

digital flight data recorder (DFDR) STC for this model? Provide the source of your estimates, including a person who the FAA may contact for verification. Estimates that do not include support from a person or organization qualified to make the estimate will not be accepted.

- What is the expected cost of STC installation per aircraft? Provide a source of information as discussed above.
- What is the estimated downtime per aircraft to install the required equipment? Provide a source for your information as discussed above.
- Operator estimate of cost of aircraft downtime per week for retrofit.
- Costs may be estimated as a range but must be noted as to how the range was established.
- Other information specific to an individual petition for rulemaking may be requested by the agency based on the circumstances presented.

Although only one complete petition for exception need be submitted for each model aircraft, operators are advised not to rely on the submissions of other operators that are seeking relief for the same or similar model aircraft. The FAA will accept materials from petitioners jointly, but will not assemble material from separate petitions to make a complete case for a particular aircraft model.

Petitioners should also be precise as to what requirements they are seeking relief from. No petitioner may expect that exemption or exception status will allow them to remove operational FDR equipment. For example, if an airplane meets the current FDR regulations but petitions for relief from the upgrades required by the 1997 rules, only upgrade relief will be considered. The current regulations must continue to be met, and all installed equipment must continue to be used and maintained according to the regulations. Further, these aircraft should not be presumed to be expected from future changes to the regulations.

Those submitting petitions for rulemaking to seek exception to the FDR requirements should submit the required information to the following: (1) For paper submissions, send the original signed copy of your petition for rulemaking to U.S. Department of Transportation, Docket Management System, 400 7th Street, SW., Room PL 401, Washington, DC 20591-0001; or (2) For electronic submissions, submit your petition to FAA through the Internet using the Docket Management System web site at this Internet address: <http://dms.dot.gov/>.

Recent Concerns

Since the time petitioners first requested that other aircraft be excepted from the applicable FDR regulations, the FAA has learned of at least two circumstances that will affect the way exception requests are analyzed. First, after the initial exemptions were granted, the FAA was informed that operators of exempted aircraft actively sought out more aircraft of these models from overseas and brought them into the United States. Those operators already held exemptions from the FDR regulations for those models, and therefore, believed that those models should be included in their original exemptions. This situation weakens the argument for exception status in at least two ways. First, the greater number of aircraft allows the cost of retrofit to be spread across additional aircraft, reducing the per-aircraft retrofit cost. Second, it lessens any public interest argument an operator may have by increasing the number of aircraft allowed to operate without FDRs. The presence of FDRs has been well established as being in the public interest and an important source of information on accidents and incidents.

The FAA always intended exception status to be very limited. The agency was and remains concerned that older aircraft of which few are left operating under limited circumstances not be denied what use might be left in them. Large numbers of aircraft with considerable economic viability were never meant to be the subject of exception status. For this reason, the FAA will take into account all aircraft worldwide for any model submitted for exception status.

The second circumstance concerns the practice of routinely adding and removing the same aircraft from the registries of the United States and other countries for benefit. The language added to § 135.152 in 1988 was specific in its intent of capturing all aircraft that were brought onto the U.S. register after October 11, 1991, primarily to stop the continued importation of older aircraft that would not need FDRs if the rule had instead used a date of manufacture. In 1997, that provision was expanded to include aircraft that were added to U.S. operations specifications (under foreign registry) after that date. Some of these aircraft were affected by the information bulletin that the agency withdrew in 1997; it was only after withdrawal that the FAA learned that several operators were using the information bulletin, combined with the practice of swapping airplanes between registries, to gain a benefit. The information bulletin

presumed to grandfather any aircraft that had once been registered in the United States from the "brought on the U.S. register" language of § 135.152. Once that information bulletin was withdrawn as being in distinct conflict with the clear language and intent of the rule, the FAA indicated that all persons operating under it had 4 years to bring their aircraft into compliance. It was then that the FAA began to receive numerous requests for exception status. Operators are cautioned that all circumstances will be examined closely. Exception status will most likely *not* be proposed by the FAA when a significant number of any model is still operating. Nor does the fact that an aircraft model is no longer being manufactured automatically mean that exception status will be proposed.

The FAA has been sensitized to the situation that has resulted in distinct benefits being gained by some operators in manipulating the status of their aircraft while the FDR regulations were in flux. The loss of this benefit will not be considered in deciding whether an aircraft model is appropriate for relief from the FDR requirements. This is especially true for aircraft models that have never been brought into compliance with the regulations promulgated in 1988.

Conclusion

All operators are reminded that the compliance date for the 1997 regulations to upgrade FDRs is August 20, 2001. Similarly, aircraft that were affected by the withdrawal of the Flight Standards Information Bulletin in 1997 had the same 4 years to upgrade their aircraft to meet § 135.152. Given the considerable notice of these requirements provided by the final rule, the FAA does not intend to issue exemptions from that date except in the most limited, temporary circumstances, where fully justified. Request for exemption based on lack of installation data (i.e., no STC for their aircraft), parts availability, or generalized plans to retire aircraft will not be granted.

Issued in Washington, DC on May 31, 2001.

Nicholas Sabatini,

Director, Flight Standards Service.

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 270 and 275

[Release Nos. IC-24991 and IA-1945; File No. S7-06-01]

RIN 3235-A105

Electronic Recordkeeping by Investment Companies and Investment Advisers; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the final rule, which was published on Wednesday, May 30, 2001 (66 FR 29224). This rule relates to electronic recordkeeping by investment companies and investment advisers. In FR Document No. 01-13526 beginning on page 29224 for Wednesday, May 30, 2001, the docket line contains an error. The docket line is correct as set forth above.

EFFECTIVE DATE: May 31, 2001.

FOR FURTHER INFORMATION CONTACT: Frances Sienkiewicz at (202) 942-7072.

Dated: May 31, 2001.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01-14218 Filed 6-5-01; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket Nos. 00P-1275 and 00P-1276]

Food Labeling: Health Claims; Plant Sterol/Stanol Esters and Coronary Heart Disease

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule; notice of extension of period for issuance of final rule.

SUMMARY: The Food and Drug Administration (FDA) is extending to July 25, 2001, the period for issuance of a final rule in response to its interim final rule of September 8, 2000, entitled "Food Labeling: Health Claims; Plant Sterol/Stanol Esters and Coronary Heart Disease." FDA's regulations require the agency to issue a notice of such extension if it finds, for cause, that it is unable to issue a final rule within 270 days from the date of publication of the