family unit fall below the official poverty guidelines; or

(3) The dependent receives unauthorized public benefits.

Dated: May 28, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–14656 Filed 6–3–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS 1769–96]

RIN 1115–AE–38

Petitioning Requirements for the H Nonimmigrant Classification

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Immigration and Naturalization Service's (Service) regulations to accommodate the needs of certain United States employers with respect to the filing of new and amended petitions for H–1B nonimmigrant workers. This rule was written in response to a number of complaints received from certain industries which asserted that the current H regulations contain requirements with which some U.S. employers cannot comply. In addition, the current regulations contain certain procedures which are burdensome to both the Service and to the public. Specifically, this rule proposes to amend the Service's regulation with regard to the submission of itineraries with certain H–1B petitions and to amend the Service's regulations regarding the H–1B classification by allowing petitioners to obtain and submit the required certified labor condition application after the petition is initially filed with the Service, but before the petition is adjudicated. Finally, this rule proposes to amend the Service's regulation regarding the revocation of approved H petitions where the beneficiary is no longer employed by the petitioner. This rule will make the H–1B nonimmigrant classification easier for certain U.S. employers to use and will make the requirements for the H–1B nonimmigrant classification more consistent with the practices of the business world.

DATES: Written comments must be submitted on or before August 3, 1998.

ADDRESSES: Please submit written comments, in triplicate, to the Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference the INS number 1769–96 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: John W. Brown, Adjudications Officer, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514–3240.

SUPPLEMENTARY INFORMATION: The current regulation at 8 CFR 214.2(h)(2)(i)(B) provides that an H petition which requires an alien beneficiary to perform services in more than one location must include an itinerary with dates and locations of the services or training to be performed. This regulatory provision was promulgated primarily to address certain practices in the entertainment industry, which, prior to the passage of the Immigration Act of 1990, was one of the largest users of the H–1B classification. (Entertainers now typically enter the United States in the O and P nonimmigrant classifications.) Specifically, this regulation was intended to preclude foreign entertainers who were admitted in H classification for the purpose of performing at a specific engagement from engaging in freelance work in this country subsequent to their admission. The regulation was designed to ensure that aliens seeking H nonimmigrant status have an actual job offer and are not coming to the United States for the purpose of seeking employment following arrival in this country.

Since promulgation of this regulation, however, many industries in the United States, such as the health care and computer consulting industries, have begun to rely more frequently on the use of contract workers. It has been the experience of the Service that many bona fide businesses which provide contract workers to certain industries under the H–1B classification have experienced difficulty in providing complete and detailed itineraries due to the unique employment practices of such industries. For example, companies which are in the business of contracting out physical therapists or computer professionals often get requests from customers to fill a position with as little as 1 day advance notice. Clearly an H–1B petitioner in this situation could not know of all particular contract jobs at the time that it first files the H–1B petition with the Service. As a result, many such bona fide employment contractors do not know all of the locations where a contract worker will be employed at the time the Form I–129, Petition for a Nonimmigrant Worker, is initially filed.

Moreover, some employers who use the H–1B classification may have a legitimate, but unforeseeable, need to transfer their employees on short notice from one work site to another within the organization, such as from the employer's Los Angeles office to its New York office. Under the current regulation, however, such an employer is required to submit with its petition a complete itinerary listing all of the locations where the contract workers will be employed. The regulation as now written, therefore, does not fully reflect current legitimate business practices.

In response to these problems, the Service now proposes to amend its regulations at 8 CFR 214.2(h)(2)(i)(B) and at 8 CFR 214.2(h)(2)(i)(F) to allow certain petitioners to submit a general statement describing the locations where the alien is to be employed, thereby eliminating the necessity of submitting a complete itinerary. A complete itinerary must be submitted only in those instances where the employer is aware of the actual itinerary or where the petitioner is an agent that does not actually employ the beneficiary but merely represents the alien and the alien's employer.

In those instances where the employer does not yet know the alien's complete itinerary at the time the petition is filed, the employer must submit, in lieu of a complete itinerary, a list of the places where it knows the beneficiary will definitely be employed, together with a description of the alien's job duties at those locations. In addition, the employer must submit, to the extent possible, a list describing the alien's possible places of employment and the duties which the alien would perform at such locations. The employer may also be asked to submit a letter with the petition describing its past hiring practices, including a list of past places where it has employed similarly situated persons. The letter must describe the employer's tentative plans to use the beneficiary in an H–1B capacity in the future. However, the absence of a past hiring practice is not a bar to the approval of the petition. Petitions filed without any itinerary may not be approved since this type of petition involves purely speculative employment. Of course, the petitioner

must also submit all other documentary evidence required by the regulation for H–1B classification.

It is important to note that this proposed rule affects only those entities which are the actual employer of the alien, such as employment contractors and direct employers. In this regard, an employment contractor is one which employs the alien but assigns the alien to work at a different location than the contractor's place of business, based on the terms of a contract with a person or entity seeking the employer's services. A direct employer is one which hires the alien and assigns the alien to work at the employer's place of business. In both instances, the petitioner is the employer of the alien and retains the ability to hire and fire the alien.

An agent who represents both the alien and the alien's employer is not the alien's employer and is required under this proposed rule to submit a complete itinerary. A typical example of this type of agency is the sports agent who has a contract with a sports star and who solicits potential employers in order to obtain the best deal for the alien. Recruitment agencies and entities which merely locate an alien for employers are not the actual employer of the alien and do not fit the Service's definition of an agent. As a result they may not file an H–1B petition.

Historically, the Service has not granted H–1B classification on the basis of speculative, or undetermined, prospective employment. The H–1B classification is not intended as a vehicle for an alien to engage in a job search within the United States, or for employers to bring in temporary foreign workers to meet possible workforce needs arising from potential business expansions or the expectation of potential new customers or contracts. To determine whether an alien is properly classifiable as an H–1B nonimmigrant under the statute, the Service must first examine the duties of the position to be occupied to ascertain whether the duties of the position require the attainment of a specific bachelor's degree. See section 214(i) of the Immigration and Nationality Act (the ''Act''). The Service must then determine whether the alien has the appropriate degree for the occupation. In the case of speculative employment, the Service is unable to perform either part of this two-prong analysis and, therefore, is unable to adjudicate properly a request for H–1B classification. Moreover, there is no assurance that the alien will engage in a specialty occupation upon arrival in this country.

To ensure that petitioners will not use the H–1B classification for speculative employment, this proposed regulation would require petitioners to establish that they, in fact, have employment in a specialty occupation available for the alien at the time that the petition is initially filed. Under this proposed rule, the petitioner would be required to establish, both through the submission of evidence relating to its past employment practices and through the submission of evidence relating to its employment plans for the beneficiary, that the alien will, in fact, commence work in a speciality occupation immediately upon admission in H classification. The petitioner must be able to demonstrate its need for the alien's services within the specialty occupation described in the petition when the petition is filed. It should be noted that this proposed regulation would not relieve the petitioner of its responsibility to file an amended petition when required, for example, when the beneficiary's transfer to a new work site necessitates the filing of a new labor condition application or when the beneficiary is required to obtain a new state license in order to commence employment at the new location. In light of the existing statutory requirements for H–1B classification and the Department of Labor's regulations regarding labor condition applications, the Service is confident that the proposed regulation would ensure that U.S. workers continue to receive protection from employers who might attempt to abuse the H–1B nonimmigrant classification.

Finally, as previously indicated, the regulatory requirement relating to the submission of a complete itinerary was geared primarily for the entertainment industry, which, in light of changes under the Immigration Act of 1990, generally no longer uses the H–1B nonimmigrant classification. While it is preferable that all H–1B petitions be accompanied by complete itineraries listing the dates and places of the alien's employment, the Service recognizes such an across-the-board requirement is no longer practical in today's business environment.

It should be noted that a petition filed by an agent who is not the actual employer of the alien, as described in 8 CFR 214.2(h)(2)(i)(F)(*1*), must be accompanied by an itinerary. The Service wishes to retain strict control over petitions filed under these circumstances since, as noted above, this type of agent, unlike an employment contractor, is not the actual employer of the alien. In such a case, unless the agent submits a complete itinerary, the Service cannot be assured that the alien will be employed continuously as a specialty worker following admission to this country. Moreover, in such a situation, the Service cannot approve the H classification since there would not exist a valid labor condition application for each location where the alien will be employed.

The Service recognizes that implementation of this rule would remove some of the controls which it currently has over prospective H–1B employers at the time they initially file their petitions. To ensure that employers have complied with the terms of the initial petition and supporting labor condition application, the Service proposes to amend its regulations at 8 CFR 214.2(h)(15)(ii)(B)(*1*) relating to extensions of H–1B petitions to include clear language providing Service directors with the authority to require petitioners to submit evidence regarding the alien beneficiary's employment activities under the initial or prior approved petition or petitions.

The Service also proposes to revise 8 CFR 214.2(h)(2)(i)(E) to provide concrete examples of certain common situations where an amended H–1B petition need or need not be filed. While the examples are by no means intended to be exhaustive, the Service believes that such clarification is in the public interest. It should be noted that the Service has previously provided guidance to the public on this issue through a policy memorandum dated October 22, 1992, signed by James J. Hogan, Executive Associate Commissioner, Operations. Hence, the examples described in the proposed regulation merely codify longstanding Service policy and practice.

The proposed rule addresses the following situations. First, where an employer is required, under relevant Department of Labor regulations, to file a new labor condition application, such as following certain temporary or permanent transfers, the employer will also be required to file an amended petition. On the other hand, when an H–1B nonimmigrant is transferred by an employer to another work site within the area covered by the supporting labor condition application, and there are no other changes in the nature or terms of the H–1B nonimmigrant's employment, the employer need not file an amended petition. Second, an employer will be required to file an amended petition where the alien's duties change from one specialty occupation to another. An employer need not file an amended petition, however, where there is a mere

change in the petitioner's name, without a change in the underlying nature or terms of the H–1B employment. In such a situation, the petitioner may simply notify the Service of its name change when and if it files an application to extend the alien's nonimmigrant stay. The Service is amenable to considering additional suggestions from the public for streamlining the amended petition process.

The Service proposes to amend 8 CFR 214.2(h)(11) (i), (ii), and (iii) to indicate that a petition for an H nonimmigrant alien will be automatically revoked if the petitioner notifies the Service that the beneficiary is no longer employed by the petitioning entity. Under the current regulation, when the petitioner notifies the Service that the beneficiary is no longer employed by it in the capacity specified in the petition, the Service is required to send the petitioner a notice of intent to revoke the petition. (See 8 CFR 214.2(h)(11)(iii)(A)(*1*).) This process requires the petitioner to respond to the notice of intent, and then for the Service to take action based on the petitioner's subsequent response. Since the petitioner is the entity which supplied the Service with the information concerning the alien's employment, the current procedure creates unnecessary burdens on both the petitioner and the Service and, therefore, appears to be inappropriate. Moreover, this proposed change will bring the H regulation into conformity with the O and P regulations in this regard.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. This regulation eases certain requirements which some businesses find burdensome by allowing various petitioners the option of submitting a general statement describing the locations where the beneficiary is to be employed, along with other supporting documentation, in lieu of submitting a complete itinerary when filing an H–1B petition.

In addition, the proposed rule also eases other filing requirements associated with the submittal of an H–1B petition by allowing a petitioner the option of submitting a required labor condition application from the Department of Labor after the petition has been filed with the Service. Finally, the regulation also eliminates the requirement that a petitioner respond to a notice of intent to revoke a petition in instances where the petitioner initiated the revocation process by notifying the Service that the beneficiary is no longer employed by the petitioner.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 12612

The regulation proposed 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 rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

Paperwork Reduction Act

The information collection requirement contained in this rule has been cleared by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The OMB clearance number for this collection is 1115–0168.

List of Subjects in 8 CFR Part 214

Administrative practice and procedures, Aliens, Employment, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; 8 CFR part 2.

2. Section 214.2 is amended by:

a. Revising paragraph (h)(2)(i)(B);

b. Revising paragraph (h)(2)(i)(E);

c. Revising paragraph (h)(2)(i)(F);

d. Revising paragraph (h)(4)(i)(B)(*1*);

e. Revising paragraph (h)(4)(iii)(B)(*1*);

f. Revising paragraph (h)(11) (i), (ii), and (iii); and by

h. Revising paragraph (h)(15)(ii)(B)(*1*) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) * * *

(2) * * *

(i) * * *

(B) Services or training in more than one location.—(*1*) *H–1B petitions.* An H–1B petition which require services to be performed or training to be received in more than one location must include, to the extent possible, a complete itinerary with the dates and locations of the services or training to be performed. The petition must be filed with the Service Center having jurisdiction over the place where the petitioner is located. The address which the petitioner specifies as its location on the petition shall be where the petitioner is located for purposes of this paragraph. If the petitioner has not yet determined all of the locations where the beneficiary might be employed at the time of filing, the petitioner must provide an itinerary of all definite employment and provide a description of any proposed or possible employment for the period of time covered by the petition. Petitions filed by an agent must also comport with 8 CFR 214.2(h)(2)(i)(F).

(*2*) *Other H petitions.* A petition for an H–2A, H–2B, or H–3 nonimmigrant alien which requires services to be performed or training to be received in

more than one location must include a complete itinerary with the dates and locations of the services or training to be performed. The petition must be filed with the Service Center having jurisdiction over the area where the petitioner is located. The address which the petitioner specifies on the petition as its location shall be where the petitioner is located for purposes of this paragraph.

* * * * *

(E) *Amended petition—*(*1*) *General.* A nonimmigrant H petitioner which continues to employ the beneficiary shall file an amended petition on Form I–129, with fee, with the Service Center where the original petition was filed to reflect any material changes in the terms and conditions of the H nonimmigrant's employment or training, as specified in the original approved petition. An amended H–1B petition must be accompanied by a current or new labor condition application certified by the Department of Labor. In the case of amended H–2A or H–2B petitions, the amended petition must be accompanied by the appropriate Department of Labor determination.

(*2*) *H–1B petitions.* An amended H–1B petition shall be filed by the petitioner in all cases where the petitioner is required, under 20 CFR part 655, to obtain a new certification of filing of a labor condition application. An amended H–1B petition must also be filed where there is a change in the beneficiary's duties from one specialty occupation to another specialty occupation. A change in the name of the petitioning entity, standing alone, is not a material change and does not require the filing of an amended petition. As these examples are not all-inclusive, it is the responsibility of the petitioner to determine whether, in a particular case, these exists a material change in the terms and conditions of the H nonimmigrant alien's employment or training necessitating the filing of an amended petition.

(F) *Agents as petitioners.* A United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act on its behalf. A United States agent may be: the actual employer of the beneficiary, the representative of both the employer and the beneficiary, or, a person or entity authorized by the employer to act for, or in place of, the employer as its agent. A petition filed by a United States agent must also comply with the provisions of 8 CFR 214.2(h)(2)(i)(B) and is subject to the following conditions:

(*1*) An agent performing the function of an employer, such as where the agent acts as an employment contractor, should provide an itinerary of all definite employment and provide a description of any proposed or possible employment for the period of time covered by the petition. Such an agent need not submit a complete itinerary. A petition filed by such an agent/employer must guarantee the wages and other terms and conditions of employment by contractual agreement with the beneficiary or beneficiaries of the petition.

(*2*) A person or company in business as an agent may file the H petition involving multiple employers as the representative of both the employers and the beneficiary or beneficiaries if the supporting documentation includes a complete itinerary of services or engagements, the agent has fully informed both the employers and the beneficiaries of his or her dual representation, and the agent fully complies with the requirements of 8 CFR part 292. The itinerary shall specify the dates of each service or engagement, the names and addresses of the actual employers, and the names and addresses of the establishments, venues, or locations where the services will be performed. In questionable cases, a contract between the employers and the beneficiary or beneficiaries may be required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.

(*3*) A foreign employer who, through a United States agent, files a petition for an H nonimmigrant alien is responsible for complying with all of the employer sanctions provisions of section 274A of the Act and 8 CFR part 274a.

* * * * *

(4) * * *

(i) * * *

(B) *General requirements for petitions involving a specialty occupation.* (*1*) Before filing a petition for H–1B classification in a specialty occupation, the petitioner should obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed. If the labor condition application is not initially submitted with the petition, the petitioner shall be given an opportunity to obtain a certified labor condition application from the Secretary of Labor and to submit the certified labor condition application to the Service. Under no circumstances, however, may the Service approve the petition prior to submission of a certified labor condition application. The fact that the certification date on the labor condition application may be later than the initial filing date of the petition is not a basis on which to deny the petition.

* * * * *

(iii) * * *

(B) * * *

(*1*) A certification from the Department of Labor that the petitioner has filed a labor condition application with the Secretary of Labor as required under 20 CFR part 655. If the labor condition application is not initially submitted with the petition, the petitioner shall be given an opportunity to obtain a certified labor condition application from the Secretary of Labor and to submit the certified labor condition application to the Service. In all cases, a certified labor condition application must be submitted to the Service before the petition may be adjudicated. The fact that the certification date on the labor condition application may be later than the initial filing date of the petition does not warrant the denial of the petition.

* * * * *

(11) *Revocation of approval of petition* (i) *General.* The director may revoke a petition at any time, even after the expiration of the petition.

(ii) *Automatic revocation.* The approval of any petition is automatically revoked if the petitioner goes out of business, files a written withdrawal of the petition, or notifies the Service pursuant to 8 CFR part 214 that the beneficiary is no longer employed by the petitioner.

(iii) *Revocation on notice.* (A) *Grounds for revocation.* The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:

(*1*) Other than through notification in paragraph (h)(11)(ii) of this section, the beneficiary is no longer employed by the petitioner in the capacity specified in the petition, or if the beneficiary is no longer receiving training as specified in the petition;

(*2*) The statement of facts contained in the petition was not true and correct;

(*3*) The petitioner violated terms and conditions of the approved petition;

(*4*) The petitioner violated requirements of section 101(a)(15)(H) of the Act or paragraph (h) of this section; or

(*5*) The approval of the petition violated paragraph (h) of this section or involved gross error.

(B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. If the petition is revoked in part, the remainder of the petition shall remain approved and a revised approval notice shall be sent to the petitioner with the revocation notice.

* * * * *

(15) * * *

(ii) * * *

(A) * * *

(B) *H–1B extension of stay—(1) Alien in a specialty occupation or an alien of distinguished merit and ability in the field of fashion modeling.* An extension of stay may be authorized for a period of up to 3 years for a beneficiary of an H–1B petition in a specialty occupation or an alien of distinguished merit and ability. The alien's total period of stay may not exceed 6 years. The request for an extension must be accompanied by either a new certification from the Department of Labor valid for the extension period requested, or a photocopy of the prior certification from the Department of Labor indicating that the petitioner has on file a labor condition application valid for the period of time requested by the petitioner for the particular occupation. The director may require the petitioner to submit any evidence which in the director's discretion may be necessary to establish that the petitioner has employed the alien pursuant to the terms of the prior petition(s) and labor condition application(s).

* * * * *

Dated: May 29, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–14785 Filed 6–3–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM148; Notice No. 25–98–03–SC]

Special Conditions: Boeing Model 777 Series Airplanes; Seats With Articulating Seat Backs

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for Boeing Model 777 series airplanes. These airplanes will have novel and unusual design features associated with seats with articulating seat backs. The applicable regulations do not contain adequate or appropriate safety standards for this design feature. The proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: Comments must be received on or before July 20, 1998.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attn: Rules Docket (ANM–7), Docket No. NM148, 1601 Lind Avenue SW, Renton, Washington, 98055–4506; or delivered in duplicate to the Office of the Regional Counsel at the above address. Comments must be marked: Docket No. NM148. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, Propulsion, Mechanical Systems, and Crashworthiness Branch, ANM–112, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2136; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice 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. The proposals described in this notice 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. NM148.'' The postcard will be date stamped and returned to the commenter.

Background

On April 15, 1998, the Boeing Company applied for a change to Type Certificate No. T00001SE to include Model 777 series airplanes equipped with seats with articulating seat backs (seats that have a portion of the seat back that moves under inertia loads). Sicma Aero Seat, a Boeing supplier, has designed a seat for installation on a Boeing 777–300 airplane with an articulating seat back that is designed to rotate forward under a prescribed inertial load. The prescribed inertial load is slightly below the 16g test condition of § 25.562. The inertial load causes the seat back mounted video monitor and headrest assembly to partially separate from the seat back and pivot forward. The goal of the design is to reduce the mass of the upper seat back subject to impact, thereby reducing the Head Injury Criteria (HIC) measurement and enhancing passenger safety.

Section 25.562 specifies that dynamic tests must be conducted for each seat type installed in the airplane. The pass/fail criteria for these seats include structural as well as human tolerance criteria. In particular, the regulations require that persons not suffer serious head injury under the conditions specified in the tests, and that a HIC measurement of not more than 1000 units be recorded, should contact with the cabin interior occur. While the test conditions described in this section are specific, it is the intent of the requirement that an adequate level of head injury protection be provided for crash severities up to and including that specified.

The FAA has established guidance, known as ''simplified HIC certification,'' which provides a simplified procedure for demonstrating compliance with the HIC requirements of § 25.562(c)(5). This procedure provides test conditions that meet the intent of the requirements, without causing excessive testing to be performed. The typical seat back has three areas that are considered head strike zones within the +/−10 degree yaw range of impact orientation. The procedure describes two different tests that address these three head strike zones for the majority of cases.

Because § 25.562 and FAA guidance do not adequately address seats with articulating seat backs, the FAA recognizes that appropriate pass/fail