other forms of air transportation such as air cargo and air taxi.

The proposed action would allow 1,000 hours TIS after the effective date of the AD before mandatory accomplishment of the design modification. The average utilization of the fleet for those airplanes in commercial commuter service is approximately 25 to 50 hours TIS per week. Based on these figures, operators of commuter-class airplanes involved in commercial operation would have to accomplish the proposed modification within 5 to 10 calendar months after the proposed AD would become effective. For private owners, who typically operate between 100 to 200 hours TIS per year, this would allow 5 to 10 years before the proposed modification would be mandatory. The time it would take those in air cargo/air taxi operations before the proposed action would be mandatory is unknown because of the wide variation between each airplane used in this service. The exact numbers would fall somewhere between the average for commuter operators and private operators.

The regulations proposed herein would 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 proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 75–26–15, Amendment 39–2464, and by adding a new AD to read as follows:

Pilatus Britten-Norman Ltd.: Docket No. 96–CE–16–AD. Supersedes AD 75–26–15, Amendment 39–2464.

Applicability: Models BN–2, BN–2A, BN–2A–6, BN–2A–8, BN–2A–2, BN–2A–9, BN–2A–3, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN2A MK. 111, BN2A MK. 111–2, and BN2A MK. 111–3 airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent failure of the aileron mass balance attachment, which could result in loss of control of the airplane, accomplish the following:

(a) Prior to the first flight of each day after the effective date of this AD (see NOTE 2 of this AD), inspect the attachment of the aileron mass balance clamp unit for looseness in accordance with the ''Inspection'' section of Britten-Norman Service Bulletin (SB) No. BN–2/SB.67, Issue 1, dated October 24, 1973.

Note 2: The ''prior to first flight of each day after the effective date of this AD'' compliance time required by paragraph (a) of this AD is exactly the same as required by AD 75–26–15 (superseded by this AD).

(b) If a loose attachment of the aileron mass balance clamp unit is found during any of the inspections required by this AD, prior to further flight, modify the aileron and mass balance clamp unit in accordance with the ''b. Sequence of Operations'' section of Britten-Norman SB No. BN–2/SB.67, Issue 1, dated October 24, 1973.

(c) Within the next 1,000 hours time-in-service after the effective date of this AD, unless already accomplished as specified and required by paragraph (b) of this AD, modify the aileron and mass balance clamp unit in accordance with the ''b. Sequence of Operations'' section of Britten-Norman SB No. BN–2/SB.67, Issue 1, dated October 24, 1973.

(d) Accomplishing the modification required by paragraph (b) or (c) of this AD is considered terminating action for the repetitive inspection requirement of this AD.

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

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office (ACO), Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels ACO.

Note 4: Alternative methods of compliance approved in accordance with AD 75–26–15 (superseded by this action) are not considered approved as alternative methods of compliance with this AD.

(g) All persons affected by this directive may obtain copies of the document referred to herein upon request to Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(h) This amendment supersedes AD 75–26–15, Amendment 39–2464.

Issued in Kansas City, Missouri, on May 2, 1996.

Bobby W. Sexton,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–11533 Filed 5–8–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 121

Federal Railroad Administration

49 CFR Part 219

Federal Highway Administration

49 CFR Part 382

Federal Transit Administration

49 CFR Part 653 and 654

[OST Docket No. OST–96–1333 , Notice 96–14]

RIN 2105–AC50

Amendments to Pre-Employment Alcohol Testing Requirements

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This NPRM proposes provisions that would implement a recent statutory change to the pre-employment alcohol testing provisions of the Omnibus Transportation Employee Testing Act of 1991. The proposal would harmonize the regulations with the statute by making pre-employment testing voluntary for employers.

DATES: Comments should be received by July 8, 1996. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent, preferably in triplicate, to Docket Clerk, Docket No. OST–96–1333., Department of Transportation, 400 7th Street, S.W., Room PL-400, Washington, D.C., 20590. Comments will be available for inspection at this address from 9:00 a.m. to 5:00 p.m., Monday through Friday. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date-stamp the postcard and mail it back to the commenter. We note that, because this is a multi-modal rulemaking, we are, for convenience, designating a docket in the Office of the Secretary to receive comments for all concerned operating administrations.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Room 10424, (202-366-9306); 400 7th Street, S.W., Washington D.C., 20590.

SUPPLEMENTARY INFORMATION: In its April 5, 1995, decision in *American Trucking Associations, Inc.* v. *FHWA,* the U.S. Court of Appeals for the Fourth Circuit vacated the FHWA's pre-employment alcohol testing rule and remanded it to the agency for further rulemaking consistent with its opinion. The rule implemented the Omnibus Transportation Employee Testing Act of 1991, which required pre-employment testing ''for use, in violation of law or Federal regulation, of alcohol or a controlled substance.'' The rule required trucking companies to administer pre-employment tests to a new driver. The test could occur at any time up to the performance of the driver's first safety-sensitive activity. This decision did not vacate the pre-employment alcohol testing regulations of the other modes, which were not before the court, but these regulations were based on parallel statutory language, and the rationale of the court's decision applied to them as well.

Because the Court's decision vacated FHWA's pre-employment alcohol testing rule and created substantial uncertainty about the legal validity of the other operating administrations' rules, the Department took action in May 1995 to suspend all four pre-employment alcohol testing rules. As announced by Secretary of Transportation Federico Peña *before* the Court's decision was issued, the Department had decided to transmit a bill to Congress that would make pre-employment alcohol testing discretionary with employers. The Department's proposed legislation was adopted by Congress as § 342 of the National Highway Systems Act of 1995. Section 342 amends the provisions of the Omnibus Transportation Employee Testing Act of 1991 to repeal the requirement that employers conduct pre-employment alcohol testing. In place of the repealed requirement, Congress added a sentence that states ''The [Secretary of Transportation's] regulations shall permit such motor carriers to conduct preemployment testing of such employees for the use of alcohol.'' (§ 342(c); the language of the provisions for the aviation, transit, and railroad industries is parallel.)

To implement this statutory change, the Department's four operating administrations involved—the Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, and Federal Transit Administration—are proposing to remove their existing (but suspended) pre-employment alcohol testing mandates and substitute a provision that would explicitly authorize, but not require, employers to conduct such testing as part of their DOT-based drug and alcohol testing program. This means that an employer has discretion to conduct preemployment alcohol testing under color of Federal statutory and regulatory authority.

An employer's choice to exercise the option to test under Federal authority would have a number of implications. First, the employer would have to comply with Part 40 procedures for the tests. Second, the employer would have to apply preemployment alcohol testing to all safety-sensitive employees covered by DOT drug and alcohol testing regulations. Third, the employer and employees would necessarily accept the consequences of positive tests under DOT regulations. Fourth, the pre-emption provisions of the Department's regulations would apply to pre-employment alcohol testing under the proposed rules.

Each of the four modal amendments embodies these points. There are some drafting differences among the four provisions, reflecting the differences in the underlying modal provisions. It should also be noted that the language of the modal provisions is intended to permit the testing to take place after a conditional offer of employment, earlier in the hiring process, or after a final commitment but before the first performance of safety-sensitive functions (e.g., before the first time a new driver takes a transit bus out on a route). These three provisions also encompass situations in which an individual who has been working for the employer in another capacity transfers to duties involving the performance of safety-sensitive functions.

It is possible, of course, for an employer to conduct pre-employment alcohol tests under its own authority, with no reference to DOT rules, procedures, or authority. In this case, of course, the exercise of the employer's authority is fully subject to any state laws that may constrain the employer's discretion. If the employer chooses to conduct pre-employment testing under the DOT rules, however, the employer commits itself to conducting the tests in full compliance with those rules.

The Department supported the legislation that became § 342 in the belief that a Federal mandate for pre-employment alcohol testing was not necessary. However, employers may determine that pre-employment alcohol testing is a useful part of their substance abuse prevention policies (e.g., as a means of emphasizing to new employees the employer's commitment to an alcohol abuse-free workplace). The Department believes that the proposed rule will facilitate the efforts of

employers who choose to include this element in their programs.

Regulatory Process Matters

The proposed rule is considered to be a nonsignificant rulemaking under DOT Regulatory Policies and Procedures, 44 FR 11034. It also is a nonsignificant rule for purposes of Executive Order 12886. The Department certifies, under the Regulatory Flexibility Act, that the NPRM, if adopted, would not have a significant economic effect on a substantial number of small entities. The NPRM would not impose any costs or burdens on regulated entities, since it makes pre-employment alcohol testing completely voluntary. The rule has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

FAA

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Aircraft pilots, Airmen, Airplanes, Air transportation, Aviation safety, Drug abuse, Drugs, Narcotics, Pilots, Safety, Transportation.

For the reasons set out in the preamble, the Federal Aviation Administration proposes to amend 14 CFR part 121, as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 would continue to read as follows:

Authority: 49 U.S.C. 106(g), 400113, 40119, 44101, 44701-44702, 44705, 44709-44711, 44713, 44716-44717, 44722, 44901, 44903-44904, 44912, 46105.

2. In Appendix J, Sec. III, the heading of Sec. III and subsection A are proposed to be revised to read as follows:

Appendix J to Part 121—Alcohol Misuse Prevention Program

* * * * *

III. Types of Alcohol Tests

A. Pre-employment

1. As part of its alcohol misuse program under this part, an employer is permitted, but not required, to conduct pre-employment testing for the use of alcohol. If the employer chooses to conduct such testing under this section, the requirements of paragraphs (2)–(4) of this section apply.

2. The employer shall administer pre-employment alcohol tests to each employee prior to the first time the employee performs safety-sensitive functions for the employer.

3. The employer shall conduct the tests using the procedures of 49 CFR part 40.

4. The employer shall not allow a covered employee to perform safety-sensitive functions, unless the result of the employee's test indicates an alcohol concentration of less than 0.04. If a pre-employment alcohol test result under this section indicates an alcohol concentration of 0.02 or greater but less than 0.04, the provisions of Paragraph F of Section V of this appendix apply.

Issued this 2nd day of May, 1996, at Washington, D.C.

David R. Hinson,

Administrator, Federal Aviation Administration.

FRA

List of Subjects in 49 CFR Part 219

Alcohol and drug abuse, Railroad safety, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, FRA proposes to amend 49 CFR Part 219, as follows:

PART 219—CONTROL OF ALCOHOL AND DRUG USE

1. The authority for part 219 would continue to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20111, 20112, 20113, 20140, 21301, 21304; Pub. L. 103-272 (July 5, 1994); and 49 CFR 1.49(m).

2. In § 219.501, paragraphs (a) and (b) are revised to read as follows:

§ 219.501 Pre-employment tests.

(a) Beginning on January 1, 1995, prior to the first time a covered employee performs covered service for a railroad, the employee shall undergo testing for drugs. No railroad shall allow a covered employee to perform covered service, unless an employee has been administered a test for drugs with a result that did not indicate the misuse of controlled substances. This requirement shall apply to final applicants for employment and to employees seeking transfer for the first time from non-covered service to duties involving covered service.

(b) As part of its alcohol misuse program under this Part, a railroad is permitted, but not required, to conduct pre-employment testing for the use of alcohol. If a railroad chooses to conduct such testing under this section, the requirements of paragraphs (b) (1) and (2) apply.

(1) No railroad shall allow a covered employee to perform covered service, unless an employee has been administered a test for alcohol with a result indicating an alcohol concentration less than .04. This requirement shall apply to final applicants for employment and to employees seeking transfer for the first time from non-covered service to duties involving covered service.

(2) If the test is result is .02 or greater but less than .04, the applicant or employee shall not perform safety-sensitive functions for the railroad, and the railroad shall not permit the applicant or employee to perform such functions, until the applicant's alcohol concentration measures less than .02.

* * * * *

Issued this 2nd day of May, 1996, at Washington, D.C.

Jolene M. Molitoris,

Administrator, Federal Railroad Administration.

FHWA

List of Subjects in 49 CFR Part 382

Alcohol and drug abuse, Highway safety, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the FHWA proposes to amend 49 CFR part 382, as follows:

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

1. The authority for part 382 would continue to read as follows:

Authority: 49 U.S.C. 31306; 49 U.S.C. app. 31201 et. seq.; 49 U.S.C. 31502; 49 CFR 1.48

2. In section 382.301, paragraphs (a) and (b) are revised to read as follows:

§ 382.301 Pre-employment testing.

(a) Prior to the first time a driver performs safety-sensitive functions for an employer, the driver shall undergo testing for controlled substances. No employer shall allow a driver to perform safety-sensitive functions unless the driver has received a controlled substances test result from the medical review officer indicating a verified negative test result.

(b) As part of its alcohol misuse program under this part, an employer is permitted, but not required, to conduct pre-employment testing for the use of alcohol. If the employer chooses to conduct such testing under this section, the requirements of paragraphs (b) (1) through (4) apply.

(1) The employer shall administer a pre-employment alcohol test to each driver prior to the first time any driver performs a safety-sensitive function for the employer, unless —

(i) The driver has undergone an alcohol test permitted or required by this part or the alcohol misuse rule of another DOT agency under part 40 of this title within the previous six

months, with a result indicating an alcohol concentration of less than 0.04; and

(ii) The employer ensures that no prior employer of the driver of whom the employer has knowledge has records of a violation of this part or the alcohol misuse rule of another DOT agency within the previous six months.

(2) Except as provided in paragraphs (b)(i)(1) and (ii) of this section, the employer shall not allow a driver to perform a safety-sensitive function unless the driver has been administered an alcohol test with a result indicating an alcohol concentration of less than 0.04.

(3) If a pre-employment alcohol test result under this section indicates an alcohol concentration of 0.02 or greater but less than 0.04, the provisions of § 382.505 apply.

(4) The employer shall conduct the tests using the procedures of 49 CFR part 40.

* * * * *

3. In § 382.301(d)(1) introductory text, the words ''(1) (i) and (ii)'' are added after the words ''paragraph (b)''.

Issued this 2nd day of May, 1996, at Washington, D.C.

Rodney Slater,

Administrator, Federal Highway Administration.

FTA

List of Subjects

49 CFR Part 653

Drug testing, Grant programs-transportation, Mass transportation, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 654

Alcohol testing, Grant programs-transportation, Mass transportation, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons set out in the preamble, the Federal Transit Administration proposes to amend 49 CFR Part 654, as follows:

PART 654—PREVENTION OF ALCOHOL MISUSE IN TRANSIT OPERATIONS.

1. The authority for Part 654 would continue to read as follows:

Authority: 49 U.S.C. 5331; 49 CFR 1.51

2. Section 654.31 is proposed to be revised to read as follows:

§ 654.31 Pre-employment testing.

(a) As part of its alcohol misuse program under this part, an employer is permitted, but not required, to conduct pre-employment testing for the use of alcohol. If the employer chooses to conduct such testing under this section, the requirements of paragraphs (b) through (d) apply.

(b) The employer shall administer a pre-employment alcohol test before the first time any covered employee performs a safety-sensitive function for the employer.

(c) The employer shall conduct the tests using the procedures of 49 CFR Part 40.

(d) The employer shall not allow a covered employee to perform safety-sensitive functions, unless the result of the employee's test indicates an alcohol concentration of less than 0.04. If a pre-employment alcohol test result under this section indicates an alcohol concentration of 0.02 or greater but less than 0.04, the provisions of § 654.65 apply.

Issued this 2nd day of May, 1996, at Washington, D.C.

Gordon J. Linton,

Administrator, Federal Transit Administration.

[FR Doc. 96–11432 Filed 5–8–96; 8:45 am]

BILLING CODE 4910–62–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 80

[CI Docket No. 95–55, FCC 96–194]

Inspection of Radio Installations on Large Cargo and Small Passenger Ships

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has adopted a *Notice of Proposed Rule Making* (NPRM) which proposes rules to require that large cargo and small passenger vessels arrange for an inspection of such ships by an FCC-licensed technician. The Commission adopted this NPRM to incorporate changes to the Communications Act related to the inspection of ships and to explore ways to improve the Commission's ship inspection process. The intended effect of these proposed rules is to increase the availability of competent, private sector inspectors to conduct inspections of cargo vessels and small passenger vessels required to be inspected by the Commission without adversely affecting safety and, thus, provide greater convenience for the maritime industry.

DATES: Comments must be filed on or before May 24, 1996, and reply comments must be filed on or before June 3, 1996. Written comments by the public and federal agencies on the proposed and/or modified information collections are due by May 24, 1996. Written comments by OMB on the proposed and/or modified information collections on or before July 8, 1996.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, N.W., Washington, DC 20503 or via the Internet to fain—t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: George R. Dillon of the Compliance and Information Bureau at (202) 418–1100. For additional information concerning the information collections contained in this NPRM contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making,* CI Docket No. 95–55, FCC 96–194, adopted April 25, 1996, and released, April 26, 1996. The full text of this *Notice of Proposed Rule Making* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239) 1919 M Street, NW, Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Services, 2100 M Street NW, Washington, DC 20037, telephone (202) 857–3800.

Summary of Notice of Proposed Rule Making

This *Notice of Proposed Rule Making* (NPRM) was initiated to incorporate changes to the Communications Act related to the inspection of ships, to explore ways to improve the Commission's ship inspection process, to reduce administrative burdens on the public and the Commission, and to ensure that vessel safety is not adversely affected. Currently, the Commission inspects the radio installations of approximately 1,110 vessels each year subject to the Communications Act or the Safety Convention. The proposed rules will replace the requirement that the Commission inspect such ships with a requirement that ship owners or operators arrange for an inspection by an FCC-licensed technician.