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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 351

RIN 3206–AI09

Reduction in Force Service Credit; Retention Records

AGENCY: Office of Personnel Management.

ACTION: Final rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations that cover service credit for reduction in force purposes. These final regulations also cover access to reduction in force records by employees and their representatives.

DATES: These regulations are effective May 7, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas A. Glennon or Jacqui R. Yeatman at (202) 606–0960, FAX (202) 606–2329.

SUPPLEMENTARY INFORMATION:

Background

On August 14, 1998, OPM published proposed regulations (63 FR 43640) that covered the crediting of civilian and uniformed service for purposes of reduction in force competition under part 351 of this title. These proposed regulations also covered who has access to reduction in force retention records, when that access is available, and what records are available for review.

Comments (Overview)

OPM received six comments on the proposed regulations: one from a Federal agency, two from veterans' organizations, one from an employee association, one from an employees' union, and one from an individual employee.

Comments on Reduction in Force Service Credit Regulations

OPM's reduction in force regulations found in part 351 are published under authority of 5 U.S.C. 3502(a), which originated in Public Law 78–359 (the Veterans' Preference Act of 1944). The statute provides that OPM's reduction in force regulations must give effect to four factors in releasing employees: (1) Tenure of employment (i.e., type of appointment) (5 U.S.C. 3502(a)(1)); (2) veterans' preference (5 U.S.C. 3502(a)(2)); (3) length of service (5 U.S.C. 3502(a)(3)); and (4) performance ratings (5 U.S.C. 3502(a)(4)).

The proposed regulations clarify longstanding OPM policy on the crediting of civilian and uniformed service for purposes of reduction in force competition under part 351 of this title.

These final regulations cover what types of service are creditable when an agency establishes the order of retention for competing employees in a reduction in force.

The agency concurred with the proposed regulations as written, including the provisions covering both reduction in force service credit and access to retention records by employees and their representatives.

The employee association objected to proposed § 351.503(b)(3), which provides that an employee may not receive dual reduction in force service credit for service performed on active duty in the Armed Forces that is concurrent with civilian employment as a Federal employee.

Proposed § 351.503(b)(3) is adopted without revision. This prohibition against double reduction in force service credit is consistent with the provisions of the statute (i.e., 5 U.S.C. 3502(a)(3)), and longstanding appellate interpretation applicable to OPM's governmentwide programs authorized by 5 U.S.C. (see *Seltzer* v. *Office of Personnel Management*, 833 F.2d 975 (Fed. Cir., 1987)).

The two veterans' organizations objected to proposed § 351.503(b)(2)(i), which provides that a retired member of a uniformed service who is receiving retired pay based upon 20 or more years of active service in the Armed Forces is generally entitled to credit under this part only for the length of time in active service in the Armed Forces during a war, or active duty served in a campaign or expedition for which a campaign badge or expeditionary medal has been authorized.

Proposed § 351.503(b)(2)(ii) provides that a retired member of a uniformed service with 20 or more years of creditable active service in the Armed Forces is entitled to reduction in force service credit for all of that time only if the employee is considered a preference eligible under 5 U.S.C. 3501(a)(3), as implemented in § 351.501(d)(1).

As covered in the summary below of the final reduction in force service credit regulations, proposed § 351.503(b)(2)(i) is adopted without revision. The final regulation incorporates the statutory requirements of 5 U.S.C. 3502(a)(A) and (B), which originated in Public Law 88–448 (the Dual Compensation Act of 1964).

Referencing 5 U.S.C. 3501(a)(3)(A), 5 U.S.C. 3502(a)(B)(ii) (from Pub. L. 88–448) provides that a retired member of a uniformed service with 20 or more years of creditable Armed Forces service is entitled to reduction in force retention service credit only if the individual is receiving a disability retirement from the Armed Forces resulting from injury or disease received in the line of duty as a direct result of armed conflict, or caused by an instrumentality of war that incurred in the line of duty during a period of war as defined by 38 U.S.C. 101 and 301. (OPM implements 5 U.S.C. 3501(a)(3)(A) in § 351.501(d)(1) of the reduction in force regulations.)

Summary of Final Reduction in Force Service Credit Regulations

Final § 351.503(a) provides that all civilian service as a Federal employee, as defined in 5 U.S.C. 2105(a), is creditable for purposes of determining the reduction in force rights of a competing employee. Civilian service that does not meet the definition set forth in 5 U.S.C. 2105(a) is creditable for retention purposes only if specifically authorized by statute.

Final § 351.503(b)(2)(i) provides that, except as provided in § 351.503(b)(2)(ii), a retired member of a uniformed service who is receiving retired pay based upon 20 or more years of active service in the Armed Forces is entitled to credit under this part only for the length of time in active service in the Armed Forces during a war, or active duty served in a campaign or expedition for which a campaign badge or expeditionary medal

has been authorized. (For additional information on § 351.503(b)(2)(i), refer to the Supplementary Information section above with ''Comments on the Reduction in Force Service Credit Regulations.'')

Final § 351.503(b)(2)(ii) provides that a retired member of a uniformed service with 20 or more years of creditable active service in the Armed Forces is entitled to reduction in force service credit for all of the individual's active service in the Armed Forces only if the employee is considered a preference eligible under 5 U.S.C. 3501(a)(3), as implemented in § 351.501(d)(1).

Final § 351.503(b)(3) provides that an employee may not receive dual retention service credit for service performed on active duty in the Armed Forces that was performed during concurrent civilian employment as a Federal employee.

Final § 351.503(c)(1) provides that the agency is responsible for establishing both the service computation date, and the adjusted service computation date, applicable to each employee competing for retention. Also, the agency is responsible for adjusting the service computation dates to withhold retention service credit for noncreditable service.

Final § 351.503(c)(2) provides that the service computation date includes all actual creditable service under §§ 351.503(a) and (b).

Final § 351.503(c)(3) provides that the adjusted service computation date includes all actual creditable service under §§ 351.503(a) and (b), and additional retention service credit for performance authorized by § 351.504(d).

Final § 351.503(d) covers the calculation of the service computation date for retention purposes.

Final § 351.503(e) covers the calculation of the adjusted service computation date that includes additional service credit for retention purposes that is authorized by § 351.504(d).

OPM further implements § 351.503 through instructions found in the OPM Operating Manual, ''The Guide to Processing Personnel Actions,'' Chapter 6, ''Determining Creditable Service and Determining Service Computation Dates (SCD's).''

Comments on the Reduction in Force Regulations Covering Retention Records

As previously noted in the ''Comments (Overview)'' section of Supplementary Information, the agency that commented on the proposals concurred with the regulations as written, including the provisions on both reduction in force service credit and access to retention records by employees and their representatives.

The employee who commented on the proposed regulations only addressed the provisions covering access to reduction in force records. The employee supported the proposed regulations as written. The employee added that, under the Privacy Act (see the following paragraphs below for additional information on application of the Privacy Act), her former agency denied her access to retention records even after she received a specific notice of separation by reduction in force. The employee concluded that proposed § 351.505 would prevent the recurrence of a similar situation for other employees reached for reduction in force actions.

The employees' union objected to proposed § 351.505(b)(1) on the basis that the regulation violates 5 U.S.C. 552a(d)(1), which is part of the Privacy Act. Specifically, the union argues that proposed § 351.505(b)(1) improperly limited employees' access to retention records and related records only to an employee (including an employee's representative) who actually receives a specific notice of reduction in force. The employees' union also objected to proposed § 351.505(b)(1) on the basis that it violates § 351.201(c), which provides that each agency is responsible for applying OPM's reduction in force regulations uniformly and consistently.

As covered in the summary below of the final reduction in force service credit regulations, proposed § 351.505(b)(1) is adopted without revision.

The union is incorrect in its assertion that 5 U.S.C. 552a(d)(1) of the Privacy Act is applicable to § 351.505 and the retention records that an agency develops under authority of part 351 of this chapter.

As noted by the union, 5 U.S.C. 552a(a)(5) states that ''the term 'system of records'' means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.'' However, the retention records covered by § 351.505 are in fact *''retention register(s)''* developed and maintained under authority of § 351.404 rather than a system of records covered by 5 U.S.C. 552a(d)(1) of the Privacy Act.

Information from retention registers is not first retrieved on the basis of an employee's name or other personal identifying information, but instead on the basis of groups of interchangeable positions, and next on the basis of the four retention factors that define reduction in force competition under part 351 of this chapter. § 351.404(a) provides in pertinent part that ''When a competing employee is to be released from a competitive level under this part (i.e., part 351 of this chapter), the agency shall establish a separate retention register for that *''competitive level.* The retention register is prepared from the current retention records of employees.'' (Emphasis added for reference.)

Section 351.403 similarly provides that each competitive level (which serves as the basis for a retention register) is developed first from the agency's identification and retrieval of groups of positions rather than the names or other identifying information of individual employees. Specifically, § 351.403(a)(1) and (2) provide that ''(1) Each agency shall establish competitive levels consisting of all positions in a competitive area which are in the same grade (or occupational level) and classification series, and which are similar enough in duties, qualification requirements, pay schedules, and working conditions so that the agency may reassign the incumbent of one position to any of the other positions in the level without undue interruption.

''(2) Competititive level determinations are based on each employee's official position, not the employee's personal qualifications.''

Accepting the union's argument that 5 U.S.C. 552a(d)(1) of the Privacy Act is applicable to § 351.505, and a retention register developed and maintained under authority of § 351.404, would mean that a released employee (and the employee's representative) does not have access to any retention records that contained the name, or other identifying retention (such as service dates), of employees competing for positions in the reduction in force. This would result in the same situation described by the employee who commented above on the proposed regulations that, because of its interpretation of the Privacy Act, her agency denied her access to any retention records containing specific information relating to other employees in her competitive area.

The union is also incorrect in its conclusion that proposed § 351.505(b) violates § 351.201(c), which provides that ''Each agency is responsible for assuring that the provisions in this part (i.e., part 351 of this chapter) are uniformly and consistently applied in any one reduction in force.''

Proposed § 351.505(b) for the first time requires agencies to provide retention records to the representative of an employee who has received a

specific notice of reduction in force. Previously, there was no authority in OPM's regulations for agencies to provide union representatives (or any individual other than the employee) with this essential information unless the employee subsequently filed a reduction in force appeal or grievance.

Similarly, proposed § 351.505(c) for the first time specifies the type of retention-related information that an agency would be required to make available to an employee (and/or the employee's representative) who is reached for a reduction in force action. For example, the agency would now be required to provide employees (and their representatives) with access to retention records evidencing how the employee was reached for release from the competitive level, as well as any records related to an employee's potential bump and retreat rights. No longer could an agency claim that it met its obligation to provide retention information to a released employee by simply giving the employee a ''sanitized'' retention register with all of the pertinent information blocked out.

The union is correct in stating that proposed § 351.505(b) would not extend access to agencies' retention records to the public realm. However, the union is incorrect in its argument that proposed § 351.505(b)(1) violates present § 351.201(c), which provides that an agency must apply OPM's reduction in force regulations uniformly and consistently.

OPM clearly recognizes that reduction in force actions impact upon people, sometimes even resulting in actions such as involuntary separations and downgradings. Proposed § 351.505(b) respects the privacy of all individual employees who have received notices of reduction in force actions while still providing them (and their representatives) with a right to relevant information concerning their agency's application of reduction in force procedures to them.

Similarly, § 351.201(c) requires that the agency must apply the same retention procedures to all employees who received specific reduction in force notices (e.g., the agency may not establish different competitive areas based upon grades or classification series). There is no basis for the union to expand the scope of § 351.201(c) and conclude that any employee (or the employee's representative) has the right to view all retention registers. Again, we believe that the policy in proposed § 351.505(b) provides each employee who is reached for a reduction in force action with full information concerning how the agency determined the employee's retention rights, while still recognizing the personal sensitivity of the situation.

Also, the union is incorrect in stating that proposed § 351.505(b) violates 5 U.S.C. 7114(b)(4), which requires an agency to furnish information to a union that is acting as a collective bargaining agent. The union argues that because proposed § 351.505(b) would limit unions' access to employees' retention records, the regulation would constitute an unfair labor practice under 5 U.S.C. 7114(b)(4).

In fact, 5 U.S.C. 7114(b)(4) specifically states that an agency must furnish a union certain information ''to the extent not prohibited by law.'' To the extent that proposed § 351.505(b) prohibits release of information to unions concerning reduction in force retention records, the release of that information is ''prohibited by law'' for purposes of 5 U.S.C. 7114(b)(4). OPM's interpretation is that proposed § 351.505(b) is a regulation that has the force and effect of law. Therefore, proposed § 351.505(b) could not, and does not, violate 5 U.S.C. 7114(b)(4), which is the applicable controlling statute.

Finally, the union objected to proposed § 351.505(f), which provides that an agency must preserve all registers and records relating to a reduction in force for at least 1 year after the date the agency issues specific notices of reduction in force. As an alternative, the union asked that OPM require agencies to retain all records related to a reduction in force for at least 5 years.

As covered in the summary below of the final reduction in force service credit regulations, proposed § 351.505(f) is adopted without revision.

The union maintained that proposed § 351.505(f) would limit the ability of employees to file appeals or grievances that would potentially establish a link between agency actions in a current reduction in force with one or more previous reduction in force actions conducted by the agency more than 1 year ago. The union used examples such as an employee competing in successive reduction in force actions on a one person competitive level.

The union is incorrect in its assumptions.

Reduction in force actions under authority of part 351 of this chapter are based upon organizational changes, as defined in § 351.201(a)(2), in which employees compete for retention based upon the four factors set forth in 5 U.S.C. 3502(a) (1)–(4).

Section 351.506(a) provides that an employee's rights and benefits in a single reduction in force are based upon the effective date of that reduction in force action. An employee who is separated or downgraded by reduction in force under authority of part 351 and believes that the agency improperly applied OPM's reduction in force regulations in determining the employee's retention rights in that reduction in force has a basic right, as applicable, to file a timely appeal to the Merit Systems Protection Board, or to file a grievance under the provisions of a controlling collective bargaining agreement.

(For reference, § 351.901 provides that a separated or downgraded employee has a basic right to file an appeal to the Merit Systems Protection Board; § 1201.22(b) of the Board's regulations provides that the employee must file the appeal within 30 days of the effective date of the reduction in force action. Section 1201.3(c)(1) of the Board's regulations provides that an employee who is covered by a collective bargaining agreement under 5 U.S.C. 7121 has a basic right to follow the negotiated grievance procedures contained in the agreement for resolving any action that could otherwise be appealed to the Board, except as otherwise provided in § 1201.3(c).)

Turning to the union's example, the fact that an employee was placed in a one person competitive level for two reduction in force actions likely means that the employee simply continues to hold the same unique position. As previously noted, § 351.201(c) provides that the agency is responsible ''* * * for assuring that the provisions in this part are uniformly and consistently applied in *any one reduction in force*.'' (Emphasis added for reference.) Similarly, since § 351.506(a) provides that an employee's retention rights and benefits in a single reduction in force are based upon the effective date of that reduction in force action, each reduction in force is a distinct event for which the agency is responsible under authority of § 351.204. There is no relation between retention records used in a prior reduction in force and records in a later reduction in force.

OPM believes that, again consistent with agency responsibility under authority of § 351.204, the agency may determine whether or not to retain retention records for more than 1 year, as well as the length of the extended retention. For example, an agency may decide to retain the retention records resulting from actions affecting 100 employees longer than retention records resulting from the closure of a duty station staffed with three employees.

Summary of Final Reduction in Force Regulations on Retention Records

Final § 351.505(a) provides that the agency is responsible for maintaining the correct personnel records that are used to determine employees' retention standing.

Final § 351.505(b) provides that the agency must allow its retention registers and related records to be inspected by an employee of the agency who has received a specific reduction in force notice, and/or the employee's representative if the representative is acting on behalf of that individual employee. Previously, there was no authority permitting an employee's representative to have access to pertinent retention records. The representative now has access to pertinent retention records when acting on behalf of an individual employee who has received a specific notice of reduction in force under part 351 of this chapter.

Final § 351.505(b) also provides that an authorized representative of OPM has the right to review an agency's retention records.

Final § 351.505(c) provides that an employee who has received a specific notice of reduction in force has the right to review any completed records used by the agency in a reduction in force action that was taken, or will be taken, against the employee.

Final § 351.505(d) provides that an employee who has not received a specific reduction in force notice has no right to review the agency's retention registers and related records.

Final § 351.505(e) provides that the agency is responsible for ensuring that each employee's access to retention records is consistent with both the Freedom of Information Act and the Privacy Act.

Final § 351.505(f) provides that the agency must preserve all registers and records relating to a reduction in force for at least 1 year after the date the agency issues specific reduction in force notices.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects Federal employees.

List of Subjects in Part 351

Administrative practice and procedure, Government employees, U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending part 351 of title 5, Code of Federal Regulations, as follows:

PART 351—REDUCTION IN FORCE

1. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 1302, 3502, 3503; sec. 351.801 also issued under E.O. 12828, 58 FR 2965.

2. Section 351.503 is revised to read as follows:

§ 351.503 Length of service.

(a) All civilian service as a Federal employee, as defined in 5 U.S.C. 2105(a), is creditable for purposes of this part. Civilian service performed in employment that does not meet the definition of *Federal employee* set forth in 5 U.S.C. 2105(a) is creditable for purposes of this part only if specifically authorized by statute as creditable for retention purposes.

(b)(1) As authorized by 5 U.S.C. 3502(a)(A), all active duty in a uniformed service, as defined in 5 U.S.C. 2101(3), is creditable for purposes of this part, except as provided in paragraphs (b)(2) and (b)(3) of this section.

(2) As authorized by 5 U.S.C. 3502(a)(B), a retired member of a uniformed service who is covered by § 351.501(d) is entitled to credit under this part only for:

(i) The length of time in active service in the Armed Forces during a war, or in a campaign or expedition for which a campaign or expedition badge has been authorized; or

(ii) The total length of time in active service in the Armed Forces if the employee is considered a preference eligible under 5 U.S.C. 2108 and 5 U.S.C. 3501(a), as implemented in § 351.501(d).

(3) An employee may not receive dual service credit for purposes of this part for service performed on active duty in the Armed Forces that was performed during concurrent civilian employment as a Federal employee, as defined in 5 U.S.C. 2105(a).

(c)(1) The agency is responsible for establishing both the service computation date, and the adjusted service computation date, applicable to each employee competing for retention under this part. If applicable, the agency is also responsible for adjusting the service computation date and the adjusted service computation date to withhold retention service credit for noncreditable service.

(2) The service computation date includes all actual creditable service under paragraph (a) and paragraph (b) of this section.

(3) The adjusted service computation date includes all actual creditable service under paragraph (a) and paragraph (b) of this section, and additional retention service credit for performance authorized by § 351.504(d).

(d) The service computation date is computed on the following basis:

(1) The effective date of appointment as a Federal employee under 5 U.S.C. 2105(a) when the employee has no previous creditable service under paragraph (a) or (b) of this section; or if applicable,

(2) The date calculated by subtracting the employee's total previous creditable service under paragraph (a) or (b) of this section from the most recent effective date of appointment as a Federal employee under 5 U.S.C. 2105(a).

(e) The adjusted service computation date is calculated by subtracting from the date in paragraph (d)(1) or (d)(2) of this section the additional service credit for retention authorized by § 351.504(d).

3. Section 351.505 is revised to read as follows:

§ 351.505 Records.

(a) The agency is responsible for maintaining correct personnel records that are used to determine the retention standing of its employees competing for retention under this part.

(b) The agency must allow its retention registers and related records to be inspected by:

(1) An employee of the agency who has received a specific reduction in force notice, and/or the employee's representative if the representative is acting on behalf of the individual employee; and

(2) An authorized representative of OPM.

(c) An employee who has received a specific notice of reduction in force under authority of subpart H of this part has the right to review any completed records used by the agency in a reduction in force action that was taken, or will be taken, against the employee, including:

(1) The complete retention register with the released employee's name and other relevant retention information (including the names of all other employees listed on that register, their individual service computation dates calculated under § 351.503(d), and their adjusted service computation dates

calculated under § 351.503(e)) so that the employee may consider how the agency constructed the competitive level, and how the agency determined the relative retention standing of the competing employees; and

(2) The complete retention registers for other positions that could affect the composition of the employee's competitive level, and/or the determination of the employee's assignment rights (e.g., registers to which the released employee may have potential assignment rights under § 351.701(b) and (c)).

(d) An employee who has not received a specific reduction in force notice has no right to review the agency's retention registers and related records.

(e) The agency is responsible for ensuring that each employee's access to retention records is consistent with both the Freedom of Information Act (5 U.S.C. 552), and the Privacy Act (5 U.S.C. 552a).

(f) The agency must preserve all registers and records relating to a reduction in force for at least 1 year after the date it issues a specific reduction in force notice.

[FR Doc. 99–8587 Filed 4–6–99; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–16–AD; Amendment 39–11111; AD 99–06–15]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 407 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 99–06–15 which was sent previously to all known U.S. owners and operators of Bell Helicopter Textron Canada (BHTC) Model 407 helicopters by individual letters. This AD requires installing a tail rotor pitch-limiting left-pedal stop, installing an airspeed limitation placard, marking a never-exceed velocity (Vne) placard on all airspeed indicators, and revising the Limitations section of the Rotorcraft Flight Manual (RFM). This amendment is prompted by three accidents involving inflight tail rotor blade strikes against the tailboom. The actions specified by this AD are intended to prevent the tail rotor blades from striking the tailboom, which could result in separation of the aft section of the tailboom with the tail rotor gearbox and vertical fin, and subsequent loss of control of the helicopter.

DATES: Effective April 22, 1999, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 99–06–15, issued on March 9, 1999, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 22, 1999.

Comments for inclusion in the Rules Docket must be received on or before June 7, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–16–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The applicable service information may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jurgen Priester, Aerospace Engineer, FAA, Rotocraft Directorate, Rotorcraft Certification Office, ASW–170, 2601 Meacham Blvd., Fort Worth, Texas, 76137, telephone (817) 222–5159, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: On September 25, 1998, the FAA issued Priority Letter AD 98–20–41, applicable to BHTC Model 407 helicopters, which restricted the airspeed to 25 knots indicated airspeed less than the Vne airspeeds indicated on the airspeed limitation placard. The priority letter also required installing an airspeed limitation placard, marking a redline at a Vne of 115 knots and applying a red arc from 115 to 140 knots on all airspeed indicators, and revising the Limitations section of the RFM that requires pilots to maintain yaw trim within one ball width of the centered position of the turn and bank (slip) indicator. That action was prompted by two accidents involving in-flight tail rotor blade strikes against the tailboom on Model 407 helicopters. Persons aboard both helicopters reported hearing a loud ''bang'' immediately prior to experiencing a loss of directional control of the helicopter. Subsequent inspection of the helicopters revealed that the aft section of the tailboom, including the tail rotor, the tail rotor gearbox, and the vertical fin, had separated from the helicopters in-flight. In both cases, inspection of the retrieved tailbooms confirmed that the tailbooms had been struck at least three times by the rotating tail rotor blades. The specific cause of these two in-flight tail rotor blade strikes against the tailboom has not been determined; however, flight test data indicated that tail rotor blade strikes were more likely to occur at higher airspeeds and altitudes. The data indicated that the cause of the tail rotor strikes is excessive tail rotor blade flapping. The reason for the excessive tail rotor blade flapping is unknown, but it may be aggravated by left pedal input. Excessive tail rotor flapping, if not corrected, could result in the tail rotor blades striking the tailboom, separation of the aft section of the tailboom with the tail rotor gearbox and vertical fin, and subsequent loss of control of the helicopter. Transport Canada, which is the airworthiness authority for Canada, issued AD CF–98–36, dated September 25, 1998, to require that the airspeed be reduced to minimize the risk of a tailboom strike during flight. After the issuance of Priority Letter AD 98–20–41, BHTC issued Technical Bulletin No. 407–98–13, dated December 12, 1998 (TB), which recommended a reduction in Vne of only 15 KIAS with the installation of a left pedal stop to limit maximum tail rotor blade pitch

Transport Canada then further notified the FAA that an unsafe condition may continue to exist on BHTC Model 407 helicopters. Transport Canada advised that installing the tail rotor pitch-limiting left-pedal stop in accordance with the TB and further reducing the Vne is required to minimize the risk of a tailboom strike during flight. Transport Canada classified the TB as mandatory, and issued AD CF–98–36R3, dated March 5, 1999, in order to assure the continued airworthiness of these helicopters in Canada. That action was prompted by a third accident involving an in-flight tail rotor blade strike against the tailboom on BHTC Model 407 helicopters. The pilot in this latest accident reported that the helicopter was in straight and level cruise flight at 110 KIAS in non-turbulent conditions when the