to serve on the Board for a period of up to six months or until a successor is appointed, whichever is sooner, provided that the eligibility requirements of the Order are still met. The amendment will more accurately reflect the time needed to fill a Board vacancy.

The amendments will ensure Board continuity and full representation and allow the Board to operate in an effective and efficient manner and should be made effective as soon as possible. Therefore, good cause exists for making this rule effective less than 30 days from the date of publication in the **Federal Register**. The proposed amendments to the order are made final in this action.

List of Subjects in 7 CFR Part 1160

Fluid milk products, Milk, Promotion.

For the reasons set forth in the preamble, 7 CFR part 1160 is amended as follows:

PART 1160—FLUID MILK PROMOTION PROGRAM

1. The authority citation for 7 CFR Part 1160 continues to read as follows:

Authority: 7 U.S.C. 6401–6417.

2. In § 1160.200, paragraph (a) is revised to read as follows:

§ 1160.200 Establishment and membership.

(a) There is hereby established a National Fluid Milk Processor Board of 20 members, 15 of whom shall represent geographic regions and five of whom shall be at-large members of the Board. To the extent practicable, members representing geographic regions shall represent fluid milk processing operations of differing sizes. No fluid milk processor shall be represented on the Board by more than three members. The at-large members shall include at least three fluid milk processors and at least one member from the general public. Except for the member or members from the general public, nominees appointed to the Board must be active owners or employees of a fluid milk processor. The failure of such a member to own or work for a fluid milk processor or its successor fluid milk processor shall disqualify that member for membership on the Board except that such member shall continue to serve on the Board for a period of up to six months following the disqualification or until appointment of a successor Board member to such position, whichever is sooner, provided that such person continues to meet the criteria for serving on the Board as a processor representative.

* * * * *

Dated: May 31, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 00–14186 Filed 6–5–00; 8:45 am]

BILLING CODE 3410–02–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

10 CFR Part 1703

FOIA Fee Schedule

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Update of FOIA Fee Schedule.

SUMMARY: The Defense Nuclear Facilities Safety Board is publishing its annual update to the Freedom of Information Act (FOIA) Fee Schedule pursuant to 10 CFR 1703.107(b)(6) of the Board's regulations.

EFFECTIVE DATE: June 1, 2000.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901, (202) 694–7060.

SUPPLEMENTARY INFORMATION: The FOIA requires each Federal agency covered by the Act to specify a schedule of fees applicable to processing of requests for agency records. 5 U.S.C. 552(a)(4)(i). On March 15, 1991, the Board published for comment in the **Federal Register** its proposed FOIA Fee Schedule. 56 FR 11114. No comments were received in response to that notice and the Board issued a final Fee Schedule on May 6, 1991.

Pursuant to 10 CFR 1703.107(b)(6) of the Board's regulations, the Board's General Manager will update the FOIA Fee Schedule once every 12 months. Previous Fee Schedule updates were published in the **Federal Register** and went into effect, most recently, on June 1, 1999, 99 FR 14685.

Board Action

Accordingly, the Board issues the following schedule of updated fees for services performed in response to FOIA requests.

Defense Nuclear Facilities Safety Board Schedule of Fees for FOIA Services

(Implementing 10 CFR 1703.107(b)(6))

Search or Review Charge—$54 per hour
Copy Charge (paper)—$.04 per page, if done in-house, or generally available commercial rate (approximately $.10 per page)
Copy Charge (3.5′ diskette)—$5.00 per diskette
Copy Charge (audio cassette)—$3.00 per cassette
Duplication of Video
$25.00 for each individual videotape;
$16.00 for each additional individual videotape
Copy Charge for large documents (*e.g.,* maps, diagrams)—Actual commercial rates.

Dated: May 31, 2000.

Kenneth M. Pusateri.

General Manager.

[FR Doc. 00–14043 Filed 6–5–00; 8:45 am]

BILLING CODE 3670–01–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Help Supply Services

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is establishing a size standard of $10 million in average annual receipts for Help Supply Services—Standard Industrial Classification (SIC) 7363. The current size standard for this industry is $5.0 million. This revision is made to better define the size of business in this industry that SBA believes should be eligible for Federal small business assistance programs. SBA is also clarifying language about affiliation when a Professional Employer Organization (PEO) is co-employer of a firm's employees.

DATES: This rule is effective on July 6, 2000.

FOR FURTHER INFORMATION CONTACT: Patricia B. Holden, Office of Size Standards, (202) 205–6618 or (202) 205–6385.

SUPPLEMENTARY INFORMATION: SBA proposed a revision to the size standard for the Help Supply Services industry (SIC 7363) from $5.0 million to $10.0 million average annual receipts (64 FR 55873, dated October 15, 1999). The proposal was made following comments from the public expressing concern that the size standard has not kept pace with the rapid growth in the industry due in part to the trends of outsourcing and downsizing. The industry has changed in two ways—help supply firms are larger and they are providing a wider range of personnel to businesses. We also had a request to allow help supply

firms to exclude funds collected for and remitted to unaffiliated third parties from gross receipts, as is currently done for travel agents and real estate agents, since 60 percent to 85 percent of revenues on many Federal contracts are ''passed-through'' to a firm's employees or associates.

The current size standard for this industry, $5.0 million, is based on gross billings including funds paid to employees (sometimes referred to as ''associates''). Based on a review of industry data, SBA proposed increasing the size standard for the Help Supply Services industry to $10 million in average annual receipts. SBA did not propose a change to the way average annual receipts are calculated for firms in the Help Supply Services industry. Under SBA's size regulations (13 CFR 121.104), the size of a firm for a receipts-based size standard is based on information reported on a firm's Federal tax returns. Generally, receipts reported to the Internal Revenue Service (IRS) include a firm's gross receipts or sales from provision of goods or services. Only when firms in an industry generally display certain characteristics will we exclude certain pass-though revenues from the calculation of gross receipts. As explained in the proposed rule, SBA evaluated this issue and concluded that gross receipts is appropriate in calculating the size of a firm in this industry.

The final rule adopts the proposed size standard of $10 million based on our analysis of the industry as presented in the proposed rule. The comments received on the proposed rule did not provide us with sufficient reasons to alter our assessment of the industry data or the position that the size standard should be based on gross receipts. The comments to the proposed rule and our position are discussed below.

Discussion of Comments

We received six timely comments on the proposed size standard—four from individual firms, one from an association and one from an SBA attorney. The association representing over 1,400 firms supported adopting the proposed rule. Of the four firms who commented, two were opposed, one was for and one was for a size standard increase, but higher than the one proposed. The comments raised four major issues. Each of these issues is discussed below along with our response.

Small Firms May Be Harmed by the Increase in the Size Standard

Two comments raised the issue of small firms being at a disadvantage if they would have to compete with firms in the $5.0 million to $10.0 million range. They contend that companies with $5 million to $10 million in receipts have established themselves in the industry. If these businesses were defined as small, they would take away work from the presently defined small businesses. This issue is raised often when we proposes to increase the size standard, and it is a valid concern. However, we believe our analysis of the industry clearly supports that firms of up to $10 million in receipts are small businesses within this industry. The average firm in the industry generates almost $3 million in receipts and firms of $10 million or less in receipts account for only a little more than a third of total industry receipts. Given these and the characteristics discussed in the proposed rule, we believe we have identified the firms reasonably considered small in this industry.

Related to this issue, we are looking into ways to protect the smaller firms while having a size standard that includes firms of sufficient size to handle the typical Federal procurement. One pilot program currently being tested is the Very Small Business Set-Aside Program. This program reserves procurements of $50,000 or less for very small businesses—defined as a business with not more than 15 employees *and* not more than $1.0 million revenues. The pilot program is being conducted within the geographical area of ten SBA district offices. (For more information on this program, please call the SBA's Office of Government Contracting at (202) 205–6460, or visit our web site at http://www.sba.gov/GC/vsbqa.html.)

Size Standards Methodology and Data

One comment disagreed with our use and analysis of the 1992 Census data to evaluate the size standard for this industry. The comment recommended a size standard to $20.0 million based on more recent data on the industry. In particular, the comment presented data (without citing its sources) showing average firm size and the four-firm concentration ratio to be much higher than our calculations shown in the proposed rule. We used the latest available Census Bureau data on this industry. We recognize that the industry has grown since the last data were collected, but until more complete data are available, we must continue to rely on the 1992 Census data as the most complete and representative data available on the Help Supply Services industry for establishing size standards. We expect to get newer data later this year based on the 1997 Economic Census. If these data show the $10 million to be an inappropriate size standard, we will consider publishing another proposal based on an analysis of that new data.

Calculation of Average Annual Receipts

SBA received one comment stating that firms in this industry do indeed work on commissions, but it is called a ''rate'' and that revenues are artificially inflated if labor costs are not excluded from the calculation. The comment asserts that the labor rate is a pass-through and only the mark-up rate is the firm's revenues. They disagreed with the analysis done by SBA on the factors such as agent-like relationship in arriving at the position not to exclude labor costs for this industry. Further, the comment argued that staffing for this industry is like inventory in other industries.

We disagree. The proposed rule stated five characteristics that we consider in assessing whether or not to exclude certain types of ''pass-through'' revenues. The argument that we should view the personnel supplied by help supply services firms to their client firms as inventory did not convince us that an agent-like relationship exists. Help supply services firms are providing their own resources (or ''inventory'') under their control to another firm. On the other hand, the role of an agent is to represent the agent's principal. Often an agent negotiates a transaction bringing parties together, but always acts on behalf of the principal as required by their fiduciary relationship. The comment did not identify which party would be the principal, but it would not be the employees/associates (also described by the comment as ''inventory'') and it would not be the firm using the employees. Rather, help supply services firms act on their own behalf and in their own interest when negotiating to obtain personnel or to supply staffing to a firm. For an agency to exist, there must be a principal-agent relationship and that is not evident in this industry.

We also do not agree with the position that the labor costs of help supply services firms are the same as funds held in trust for another. While there is a close connection between the wages and benefits of personnel supplied by a help supply services firm and the firm using the personnel, it is the help supply services firm that is responsible for paying the employees' wages and benefits. The revenues paid to the help supply services firm by the firm using the employees legally belong to the help supply services firm even though the help supply services firm has a legal obligation to pay its employees. This is

a much different arrangement than holding funds in trust for an unaffiliated third party. Such trust funds are legally owned by the unaffiliated third party, but collected and distributed by the holder on the owner's behalf. An association representing over 1,400 firms in the help supply services industry also rejected the notion that help supply services firms should be viewed as agents. It also stated that the wages and benefits of the help supply services employees are not earmarked for the purpose of paying employees.

Finally, we recognize that the help supply service firms often apply a rate to labor costs in arriving at a price for supplying personnel to a client. The comment estimated an average rate for the industry. However, there does not appear to be a standard rate provided by the industry, which is one necessary characteristic for allowing an exclusion of certain pass-through revenues. Rather, the comment itself acknowledged that rates vary by firm. An average rate charged by firms in the industry is not the same concept as a common or standard rate applied by firms throughout the industry. Also, we note that many industries operate on a cost plus mark-up basis, but are not agents and their costs are not recognized as ''pass-through'' funds.

Impact of the Proposal on Prior Findings of Affiliation

One comment raised the issue of prior findings of affiliation between a franchisor and franchisee in the staffing industry where the franchisor controlled the ''associates'' of the franchisee. His question was how would the proposal to exempt ''Professional Employee Organizations'' (PEOs) from the presumption of affiliation with the firms to whom they supply personnel affect these earlier decisions. Changing the size standard will not affect prior or subsequent findings of affiliation. The clarification regarding PEOs is narrowly written so as not to impact findings of affiliation based on control or other grounds. It addresses the issue of affiliation between the firm using the employees and the PEO supplying the employees under a co-employment arrangement. It does not address the issue of where or how the PEO obtains the employees it subsequently provides to the firm. In many cases, they were formerly the sole employees of the firm using their services before the firm contracted out the professional administration of its employees. If the PEO obtains its employees from a franchisor, affiliation could still be found between the franchisor and the franchisee where a franchise agreement gives control of the franchisee's ''associates'' to the franchisor. In such cases, the receipts or employment of both the franchisor and the franchisee must be included in the calculation. This is a separate issue from what the clarification addresses, namely, how the firm (using the employees) calculates its size.

Affiliation and Professional Employer Organizations

SBA is also clarifying the language in 13 CFR 121.103(b)(4). Section (b) discusses exclusions from affiliation rules while paragraph (4) specifically excludes business concerns that lease employees. We are inserting ''Professional Employee Organizations (PEOs)'' in this section along with leasing companies. Their relationship with the firms to whom they provide employees and staffing services are similar, yet questions arise from time-to-time because PEOs were not specifically mentioned in the exclusion. SBA will not find a firm affiliated with a leasing company or PEO merely because it uses the services of a leasing company or PEO. However, SBA might find affiliation based on other conditions. Nothing in the clarification of the exclusions to the affiliation rule is intended to change the way a firm must count its employees when determining size. All employees must be counted; whether permanent, part-time, temporary, leased or covered by a contract with a PEO. How a firm obtains its staffing is a business decision, and size standards are not intended to influence its decision in that regard.

Compliance With Executive Orders 12866, 12988, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

SBA has determined that this rule will not be a significant rule within the meaning of Executive Order 12866 since it will not have an impact of $100 million or more. The total amount of Federal procurement and SBA guaranteed loans combined is less than $160 million to this industry annually, and a change to the size standard is unlikely to significantly affect these programs.

For purposes of the Regulatory Flexibility Act, this rule would not have a substantial impact on a significant number of small entities. Although potentially 576 additional firms could gain small business status as a result of this rule, only a very small percentage of firms in the industry compete for Federal procurements or obtain guaranteed loans through SBA's financial assistance programs.

For the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* SBA has determined that this rule would not impose new reporting or record-keeping requirements other than those already required of SBA.

For purposes of Executive Order 13132, SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12988, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 3 of that order.

List of Subjects in 13 CFR Part 121

Government procurement, Government property, Grant programs-business, Loan programs-business, Small businesses.

For reasons stated in the preamble, SBA is amending part 121 of 13 CFR as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation of Part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c), and 662(5); and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

2. Revise § 121.103(b)(4), to read as follows:

§ 121.103 What is affiliation?

* * * * *

§ 121.201 Table [Amended]

(b) * * *

(4) Business concerns which lease employees from concerns primarily engaged in leasing employees to other businesses or which enter into a co-employer arrangement with a Professional Employer Organization (PEO) are not affiliated with the leasing company or PEO solely on the basis of a leasing agreement.

* * * * *

3. In § 121.201, in the table ''SIZE STANDARDS BY SIC INDUSTRY,'' under the heading DIVISION I—SERVICES, add a new entry for SEC Code 7363 in numerical order to read as follows:

SIZE STANDARDS BY SIC INDUSTRY

SIC code and description	Size standards in number of employees or millions of dollars
* * * * *	
DIVISION I—SERVICES	$5.0
* * * * *	
EXCEPT:	
* * * * *	
7363 Help Supply Services	10.0
* * * * *	

Dated: May 30, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–14015 Filed 6–5–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM170; Special Conditions No. 25–162–SC]

Special Conditions: Raytheon Aircraft Company Model 4000; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Raytheon Aircraft Company Model 4000 airplane. This airplane will utilize new avionics/electronics and electrical systems that will perform critical functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These 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.

EFFECTIVE DATE: July 6, 2000.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2145; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Background

On May 3, 1996, Raytheon Aircraft Company, PO Box 85, Wichita, Kansas 67201–0085, submitted an application for a new type certificate for the Raytheon Model 4000. The significant aircraft design features include an 84 inch diameter graphite composite fuselage, new metal wing and a graphite composite skin on aluminum substructure empennage. The Model 4000 is 69 feet, 2 inches in length and 61 feet, 9 inches in width. It has a Primus Epic flightdeck, and two aft mounted PW308A engines. There are 12 forward-facing seats and a forward observer seat. The significant systems features include a new state of the art integrated avionics/electronics and electrical systems suite. The avionics/electronics and electrical systems installed in this airplane have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR § 21.17, Raytheon Aircraft Company must show that the Model 4000 meets the applicable provisions of part 25, as amended by Amendment 25–1 through Amendment 25–87 thereto.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* part 25, as amended) do not contain adequate or appropriate safety standards for the Raytheon Aircraft Company Model 4000 airplane because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model 4000 must comply with the fuel vent and exhaust emission requirements of part 34 and the noise certification requirements of part 36, and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

Special conditions, as appropriate, are issued in accordance with § 11.49, after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Raytheon Aircraft Company Model 4000 airplanes will utilize new avionics/electronics and electrical systems that will perform critical functions. These systems may be vulnerable to HIRF external to the airplane. The significant systems features include a new state of the art integrated avionics/electronics and electrical systems suite. The avionics/electronics and electrical systems installed in this aircraft have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Raytheon Aircraft Company Model 4000. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications coupled with electronic command and control of the airplane, and the use of composite material in the airplane structure, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1, or 2 below: