

the applicant's "net income after Federal income taxes" will be its net income reduced by an amount computed as follows:

(i) If the applicant is not required by law to pay State (and local, if any) income taxes at the enterprise level, multiply its net income by the marginal State income tax rate (or by the combined State and local income tax rates, as applicable) that would have applied if it were a taxable corporation.

(ii) Multiply the applicant's net income, less any deduction for State and local income taxes calculated under paragraph (b)(2)(i) of this section, by the marginal Federal income tax rate that would have applied if the applicant were a taxable corporation.

(iii) Sum the results obtained in paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

(c) For the Small Business Investment Company (SBIC) program, an applicant must meet one of the following standards:

(1) The same standards applicable under paragraph (a) of this section; or

(2) Including its affiliates, tangible net worth not in excess of \$18 million, and average net income after Federal income taxes (excluding any carry-over losses) for the preceding two completed fiscal years not in excess of \$6 million. If the applicant is not required by law to pay Federal income taxes at the enterprise level, but is required to pass income through to its shareholders, partners, beneficiaries, or other equitable owners, the applicant's "net income after Federal income taxes" will be its net income reduced by an amount computed as follows:

(i) If the applicant is not required by law to pay State (and local, if any) income taxes at the enterprise level, multiply its net income by the marginal State income tax rate (or by the combined State and local income tax rates, as applicable) that would have applied if it were a taxable corporation.

(ii) Multiply the applicant's net income, less any deduction for State and local income taxes calculated under paragraph (c)(2)(i) of this section, by the marginal Federal income tax rate that would have applied if the applicant were a taxable corporation.

(iii) Add the results obtained in paragraphs (c)(2)(i) and (c)(2)(ii) of this section.

\* \* \* \* \*

Dated: May 30, 2001.

**John Whitmore,**

*Acting Administrator.*

[FR Doc. 01-14222 Filed 6-6-01; 8:45 am]

BILLING CODE 8025-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 23

[Docket No. CE167, Special Condition 23-107-SC]

#### Special Conditions; Diamond DA 40; Protection of Systems for High Intensity Radiated Fields (HIRF)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued to Diamond Aircraft Industries GmbH, N.A. Otto-Str. 5, A-2700 Wiener Neustadt, Austria, for a Type Certificate for the Model DA 40 airplane. This airplane will have the potential for novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. The current design does not include novel and unusual design features such as the installation of electronic flight instrument system (EFIS) displays; however, Diamond Aircraft Industries GmbH would like to make the applicable tests necessary for these types of installations for which the applicable regulations do not contain adequate or appropriate airworthiness 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 the airworthiness standards applicable to these airplanes.

**DATES:** The effective date of these special conditions is July 9, 2001. Comments must be received on or before July 9, 2001.

**ADDRESSES:** Comments may be mailed in duplicate to: Federal Aviation Administration Regional Counsel, ACE-7, Attention: Rules Docket Clerk, Docket No. CE167, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE167. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Ervin Dvorak, Aerospace Engineer, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329-4123.

**SUPPLEMENTARY INFORMATION:** The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

#### Comments Invited

Interested persons are invited to submit 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 special conditions may be changed in light of the comments received. All comments received 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. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. CE167." The postcard will be date stamped and returned to the commenter.

#### Background

On May 11, 2000, Diamond Aircraft Industries GmbH, N.A. Otto-Str. 5, A-2700 Wiener Neustadt, Austria, made an application to the FAA for a new Certificate for the Model DA 40 airplane. The current design does not include novel and unusual design features such as the installation of electronic flight instrument system (EFIS) displays; however, Diamond Aircraft Industries GmbH would like to make the applicable tests necessary for these types of installations. The applicable regulations do not contain adequate or appropriate airworthiness 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

the airworthiness standards applicable to these airplanes.

### Type Certification Basis

Under the provisions of 14 CFR 21.17, Diamond Aircraft Industries GmbH, must show that the Model DA 40 aircraft meets the following provisions, or the applicable regulations in effect on the date of application for the Model DA 40: FAR part 23 effective February 9, 1996, through Amendment 23–51. Noise Certification—FAR 36 up to Amendment 10, as applicable. Fuel Venting Emissions—SFAR 27 up to Amendment 3, as applicable; exemptions, if any; and the special conditions adopted by this rulemaking action.

### Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

Special conditions are normally issued in accordance with § 11.19, as required by § 11.38, and become a 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 applicant apply for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate 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

Diamond Aircraft Industries GmbH, plans to test the Model DA 40 such that it could incorporate certain novel and unusual design features into the airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF.

### Protection of Systems From High Intensity Radiated Fields (HIRF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic

systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz .....	50	50
100 kHz–500 kHz .....	50	50
500 kHz–2 MHz .....	50	50
2 MHz–30 MHz .....	100	100
30 MHz–70 MHz .....	50	50
70 MHz–100 MHz .....	50	50
100 MHz–200 MHz .....	100	100
200 MHz–400 MHz .....	100	100

Frequency	Field strength (volts per meter)	
	Peak	Average
400 MHz–700 MHz .....	700	50
700 MHz–1 GHz .....	700	100
1 GHz–2 GHz .....	2000	200
2 GHz–4 GHz .....	3000	200
4 GHz–6 GHz .....	3000	200
6 GHz–8 GHz .....	1000	200
8 GHz–12 GHz .....	3000	300
12 GHz–18 GHz .....	2000	200
18 GHz–40 GHz .....	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, peak electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems that perform critical functions. The term “critical” means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and not-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

### Applicability

As discussed above, these special conditions are applicable to Diamond Aircraft Industries GmbH, Model DA 40 airplane. Should Diamond Aircraft Industries GmbH, apply at a later date

for an amended type certificate to modify the Model DA 40 that incorporates novel or unusual design feature, the special conditions would apply under the provisions of § 21.101(a)(1).

### Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

### List of Subjects in CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

### Citation

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.19 and 11.38.

### The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Diamond Model DA 40 airplane.

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high

intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri, on May 23, 2001.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 01-14233 Filed 6-6-01; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 15 CFR Part 902

#### 50 CFR Part 635

[Docket No. 010530142-1142-01; I.D. 040601J]

**RIN 0648-AP23**

### Atlantic Highly Migratory Species (HMS); NOAA Information Collection Requirements; Regulatory Adjustments

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** NMFS announces approval by the Office of Management and Budget (OMB) of a collection-of-information requirement contained in the final consolidated regulations governing the Atlantic HMS fisheries. Accordingly, NMFS amends the regulations and makes effective the requirement that vessels taking paying customers to fish for Atlantic tunas, swordfish, sharks, and billfish obtain an Atlantic HMS Charter/Headboat permit. This final rule, technical amendment, also updates the OMB table to add this OMB approval, to remove expired control numbers, and to correct control numbers to the appropriate CFR part or section. The intent of this final rule is to inform the public of the effective date of the Atlantic HMS Charter/Headboat permit requirement and to adjust the regulations accordingly.

**DATES:** Effective July 1, 2001.

**ADDRESSES:** Any comments regarding burden-hour estimates for collection-of-information requirements contained in this final rule should be sent to Christopher Rogers, Acting Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3282, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer).

**FOR FURTHER INFORMATION CONTACT:** Brad McHale or Pat Scida, 978-281-9260.

**SUPPLEMENTARY INFORMATION:** On May 28, 1999, NMFS published a final rule (64 FR 29090) to implement the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks (HMS FMP) and Amendment One to the Fishery Management Plan for Atlantic Billfish (Billfish FMP Amendment). One of the measures in the FMPs and the implementing rule required vessels that take paying customers fishing for Atlantic tunas, swordfish, sharks, and billfish to obtain an Atlantic HMS Charter/Headboat permit (50 CFR 635.46(b)). The final rule was published prior to OMB's approval of the information collection requirement for the charter/headboat permit. Therefore, the effective date of this information collection requirement was deferred pending OMB approval. On August 9, 2000, OMB approved the information collection associated with the Atlantic HMS Charter/Headboat permit requirement. As the OMB approval was issued during the midst of the 2000 fishing year, NMFS did not immediately make the regulation effective so as to avoid confusion among charter/headboat operators who had already been issued Atlantic Tunas permits for the 2000 fishing year, and to provide the Agency time to modify the automated permit system to issue the new type of permits.

NOAA codifies its OMB control numbers for information collection at 15 CFR part 902. This final rule/technical amendment notifies the public of the OMB approval of this information collection, codifies OMB control number 0648-0327 for 50 CFR 635.4(b) in the table at 15 CFR 902.1(b), and updates the table at 15 CFR 902.1(b) to remove expired control numbers and to correct control numbers that were not associated with the appropriate CFR part or section.