not apply automatically to new part 121 operators so any new part 121 operator will have to apply to be included in these existing exemptions.

V.C. Aircraft Certification

The proposed rule would amend part 121 to require each 10- to 19-passenger seat airplane that is to be operated in scheduled operations and for which an application for type certification is made after March 24, 1995, to be type certificated in the transport category. Affected commuter airplanes are type certificated under the requirements of part 23.

In Notice 95–5 the FAA stated its intent to review the standards of parts 23 and 25 to see if the level of safety intended by part 25 could be achieved for those airplanes with a passenger-seating configuration of 19 or less through compliance with a particular standard of part 23 or another standard, in lieu of the corresponding standard of part 25. On completion of that review the FAA stated its intent in future rulemaking to consider amending part 25 as necessary to accommodate type certification in the transport category of certain types of airplanes previously type certificated in the commuter category.

The FAA also proposed that airplanes configured with 10 to 19 passenger seats already in service or manufactured in the future under an already existing part 23 commuter category type certificate would have to comply by specified compliance dates with certain performance and equipment requirements in part 121. These performance and equipment requirements are discussed later in this preamble.

In Notice 95–5 the FAA included a table that set out a list of potential modifications that were being considered for application to airplanes having a passenger-seating configuration of 10–19 seats that were type certificated in the commuter category (or a predecessor) if the airplanes are to be used in scheduled operations under part 121. The table included a column that indicated that for 12 of the 38 issues addressed, the FAA had determined that any required upgrade should apply only to airplanes manufactured under a type certificate for which application is made after March 24, 1995. Since these 12 issues will be the subject of a future NPRM, the FAA is not addressing specific comments on the substance or cost of these issues in this document.

Comments: ALPA fully supports the proposal to require newly-designed airplanes to comply with the standards of part 25 and also supports continued use of commuter category airplanes. The commenter does not, however, concur that airplanes type certificated under part 23 normal category (i.e., pre-commuter category) should be permitted to remain in operation with more than 10 passenger seats, even in non-air carrier service. ALPA appears to base its position on differences in performance requirements between commuter category and the predecessor normal category standards.

American Eagle supports the proposed rulemaking and states that, ''while there may be limited circumstances when aircraft design and/or manufacture may preclude or delay compliance with FAR part 121 or FAR part 25, cost and weight considerations should not be an acceptable barrier to the increase in safety which is derived from applying the higher standards of aircraft airworthiness, airline operations and passenger safety which those regulations provide.''

In contrast, six other commenters do not believe that any propeller-driven airplanes with 10 to 19 passenger seats should be required to meet the transport category standards of part 25. Although the commenters' reasons vary, the comments focus on three basic issues: (1) Commuter category standards are appropriate for airplanes of this class; (2) there is no evidence that safety would be enhanced by requiring future airplanes to comply with part 25; and (3) the cost of complying with part 25 would be prohibitive.

Similar comments concerning recertification of existing part 23 airplanes under part 25 were also offered, apparently under the misunderstanding that airplanes already type certificated, or derivatives of those airplanes, would have to be recertificated under part 25.

Some commenters believe that the airplane certification issue is of such magnitude that it should be held in abeyance for a separate future rulemaking program. In this regard, the commenters assert that extensive changes to part 25 would be needed to accommodate the airplanes otherwise certifiable under part 23 commuter category and that those changes would entail a considerable expenditure of FAA resources. They further believe that any such changes should be subject to harmonization with corresponding standards of the European Joint Aviation Requirements (JAR).

Several commenters cite the FAA's 1977 proposal to require all airplanes used in air carrier service to meet part 25 transport category standards. That proposal was later withdrawn. According to commenters, the part 23 standards of that era were considerably different from those of today's part 23 commuter category. The level of safety expected by the public today is much greater than that tolerated in 1977.

A number of other commenters address the proposed retrofitting of existing part 23 normal and commuter category airplanes to meet certain part 25 standards. Those comments are addressed in the section-by-section portion of this preamble (Section VI).

One commenter has developed and produces a unique propulsion system in which two turbine engines drive a single propeller through a common gearbox. In addition to the installations already being made in existing airplanes, the commenter anticipates a future installation of this system in an airplane of entirely new design. Since any new model would have to be type certificated under the provisions of part 25 in order to be eligible for operation under part 121, the commenter requests that part 25 be amended to accommodate airplanes with this or similar propulsion systems.

FAA Response: Rather than forcing the retirement of part 23 normal category airplanes, as recommended by ALPA, the FAA proposed in Notice No. 95–5 to permit their continued use in air carrier service provided certain changes were made on a retrofit basis to enhance their level of safety. Banning those airplanes would be extremely costly, but most importantly could result in an unintended safety decrement. Indeed, the FAA's analysis indicates that moving too quickly on the imposition of part 121 standards could have the unintended effect of lowering the level of safety because operators would not be in a financial position to quickly obtain new airplanes and currently there are not enough replacement airplanes available that meet the higher standards. The result could be a shift from 10- to 19-seat turbopropeller airplanes to 9-seat or less reciprocating engine airplanes, which have an even higher accident rate.

The six commenters' assertions that commuter category standards of part 23 are appropriate for airplanes of this class and that there is no evidence that safety would be enhanced by type certification under part 25 are, to a certain extent, correct. Through a number of recent amendments and pending amendments, the level of safety established by the commuter category has been and is being enhanced considerably. In many instances, commuter category airplanes must meet standards that are the same as, or very similar to, those of part 25 transport