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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA-2000-8460;

Amtd. No. 39-9471]

EP 7/10/02

RIN 2120-~~AA64~~ AH-17

**Airworthiness Directives**

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

**ACTION:** Final rule

**SUMMARY:** This final rule incorporates several standard provisions previously included in most airworthiness directives into the Code of Federal Regulations.

FAA will no longer include these provisions in individual airworthiness directives. FAA is taking this action to standardize the way we write airworthiness directives. This action will enhance aviation safety by making it easier for users to focus on specific safety concerns addressed in airworthiness directives.

**DATES:** Effective [~~Insert date 30 days after date of publication in the Federal Register.~~ AUG 21 2002]

**FOR FURTHER INFORMATION CONTACT:** Donald Byrne, Assistant Chief Counsel, Regulations Division, AGC-200, Federal Aviation Administration, 800 Independence Ave. SW, Washington, DC 20591; telephone: (202) 267-3073.

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Part IV

## **SUPPLEMENTARY INFORMATION:**

### **Availability of Rulemaking Documents**

You can get an electronic copy of this document through the Government Printing Office's web page at [http://www.access.gpo.gov/su\\_docs/aces/aces140.html](http://www.access.gpo.gov/su_docs/aces/aces140.html) or from the Department of Transportation's electronic Docket Management System (DMS) web page on the internet at <http://dms.dot.gov>. Use the search function to search for Docket Number 8460. This document will be the last item in the list of items under that number. You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW, Washington, DC 20591. Ask for the final rule for Docket Number 8460.

### **Small Business Regulatory Enforcement Fairness Act**

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official, or the person listed under FOR FURTHER INFORMATION CONTACT. You can find out more about SBREFA at our website, <http://www.faa.gov/avr/arm/sbrefa.htm>, or e-mail us at [9-AWA-SBREFA@faa.gov](mailto:9-AWA-SBREFA@faa.gov).

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## **BACKGROUND**

### **1. New Provisions**

FAA is revising part 39 of Title 14 of the Code of Federal Regulations (14 CFR) by adding several provisions currently found in airworthiness directives (ADs). This action will allow us to omit those provisions from individual ADs. Omitting this language from ADs will place the focus of ADs on the unsafe condition that created the need for the directive. Many operators have indicated that this boilerplate language imposed a burden on the reader without contributing to aviation safety. The standard provisions currently found in ADs make it hard for the reader to focus on the safety aspects of the AD. Therefore, FAA is moving several of these standard provisions to part 39.

Specifically, FAA is adding to part 39 the language explaining that ADs apply even if products have been modified, altered, or repaired in the area addressed by the directive. FAA also is adding the language about the use of special flight permits if operators are not able to move their aircraft to a repair facility within the time limits imposed by the AD. Further, the new part 39 will contain procedures for asking FAA to approve alternative methods of compliance with the AD. Finally, FAA is adding the language that requires operators to comply with the requirements of an AD when the AD and a service document referenced in an AD conflict.

### **2. Clearer Regulatory Format**

In addition to moving certain provisions currently found in individual ADs to part 39, FAA wrote this regulation in plain language. We reorganized and reworded the

regulation using plain language techniques. Plain language elements in the proposal include —

- a. Section headings in the form of questions to help direct the readers to specific material they need;
- b. Personal pronouns to reduce passive voice and draw readers into the writing; and
- c. Active verbs to make clear who is responsible for what actions.

### **3. Related Activity**

As part of FAA's effort to improve the way we issue ADs, we will start to issue them in a new, streamlined format. Simpler ADs will appear as charts, with all regulatory information contained within the chart. More complex ADs will make greater use of tables to present complex materials in a clearer manner.

### **4. Discussion of Comments**

FAA issued a notice of proposed rulemaking (NPRM), proposing changes to part 39, as described previously (66 FR 3382; January 12, 2001). FAA received fifteen comments on the proposal from individuals, representatives of industry associations, and businesses who participate in the aviation industry.

General comments: Several commenters generally supported the proposal. They stated that they support the concept of writing ADs in a clear style. They agree that eliminating the standard language from most ADs will help readers focus on the safety information specific to each AD.

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One commenter generally objected to the proposal and several commenters, while supporting the proposal in general, objected to the question and answer format. They stated that it was more difficult to find material with question headings. One commenter stated that “question headings fail to communicate a clear standard.”

We find that question headings help guide readers through the document, especially in non-technical regulations such as this one; therefore, FAA will continue to consider the use of question headings. However, we do agree that use of question headings is not always appropriate. This is particularly true of standard sections at the beginning of many regulations, such as the purpose of the regulation and definitions used in the regulation. On the other hand, switching back and forth between two heading types throughout a regulation may be distracting and confusing to some readers. Accordingly, we have retained the question headings in most of this regulation, but have used the more traditional statement style for the first two sections of the final rule, “Purpose of the Regulation” and “Definition of Airworthiness Directives.”

We do not agree with the comment that question headings fail to provide a clear standard. Standards of a regulation are within the text of each section, not in the heading. Traditional headings in statement form such as “applications” and “general” were never intended to provide a “clear standard” to the reader, and neither are question headings.

Several commenters stated they found pronouns confusing. FAA finds that pronouns help readers relate to a document. However, we agree that it is critical that the referent for each pronoun be clear, and we have tried to achieve that in this final rule.

Several commenters cautioned that if we eliminate the boilerplate notes from specific ADs, we should mention this new part 39 in the preamble to each AD. While we

note that any operator of aircraft regulated by FAA has an obligation to be familiar with FAA regulations, we will refer to part 39 in the preamble of each AD to alert operators to these provisions.

Two commenters stated the rule does nothing to enhance aviation safety. FAA disagrees. As we stated above, we find that this action will allow readers of ADs to focus on the safety related material. We find that clear communication is a safety issue, and this final rule will clarify the provisions of ADs, thereby enhancing aviation safety. Several commenters agreed that removing the boilerplate will allow readers to focus on the safety issues.

Several commenters indicated that FAA should not introduce new regulatory requirements in part 39 in this rulemaking action. The only example that commenters gave was the change to § 39.17, which tells people where to send requests for FAA approval of alternative methods of complying with ADs. We discuss this issue in the section-by-section analysis below. FAA notes that this rulemaking action does not introduce any new regulatory requirements. We are simply moving provisions currently found in ADs to part 39.

Several commenters stated that some headings did not adequately cover the material in the following section, or that FAA needed additional material clarifying the proposed provisions. We agree with several of the comments; therefore, we added new sections to the final rule, and renumbered succeeding sections accordingly.

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## Section-by-Section Discussion of Comments.

### **Section 39.1 Purpose of this regulation.**

This section explains that part 39 establishes the regulatory basis for FAA's airworthiness directives. This would replace similar material found currently in part 39.

One commenter objected to the term "set up" in the proposal, and suggested alternative language. While we have not used the commenter's suggested language, which was much longer, we agree the term "set up" may not be appropriate for a regulation. We have reworded this section to provide a more precise description of the role of part 39.

### **Section 39.3 Definition of airworthiness directives.**

This section explains that ADs are legally enforceable rules that apply to aircraft, aircraft engines, propellers, and appliances. We refer to these items as "products." This definition is similar to that in the prior version of §§ 39.1 and 39.3.

Two commenters suggested that we either define products, which they note is defined only in 14 CFR part 21, or eliminate the term from this section. The prior version of part 39 included the same definition of "product," that is, "aircraft, aircraft engine, propellers, or appliances." We have decided not to change this definition. The definition of "product" in part 21 is similar, but does not include the term "appliance." We will continue to issue ADs applicable to "appliances." To clarify that we will use this term in this part, we have revised the wording in this section to state that ADs cover the following products: aircraft, aircraft engines, propellers, and appliances.

Proposed § 39.3 stated the conditions under which FAA will issue an AD. We have moved this provision into a new section in the final rule, § 39.5. See the discussion of that section below. One commenter suggested the heading of this section did not capture the entire contents of the section. According to the commenter, the section also refers to the conditions that must be present when FAA issues an AD. We agree with the commenter; therefore, we have separated this material into two sections.

**Section 39.5 (new section in final rule) When does FAA issue airworthiness directives?**

This is a new section in the final rule. This material, which is similar to that found in current § 39.1, was in proposed § 39.3. The section describes the conditions under which FAA would issue an AD. FAA issues ADs when we find that an unsafe condition exists in a product and the condition is likely to exist or develop in other products of the same type design. We have renumbered subsequent sections accordingly to accommodate this new section.

One commenter stated that the language in this section could be interpreted to exclude issuing an AD against parts. FAA does not intend this provision to change AD applicability to parts. Except for “appliances,” which are included in the definition of “products,” FAA has not issued ADs that apply to “parts,” independently of the products on which they are installed. Rather, if we find an unsafe condition is caused by a particular part, we issue an AD against the product or products on which the part is installed. For ease of identifying those products, we may specify the part in the applicability provision, “as installed on” particular products. If we are not certain of all

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the products on which the part is installed, we may identify the products we do know about, but indicate that others may also be affected. In all of these cases, however, the AD applies to the products on which these parts are installed, rather than to the parts themselves, simply because parts that are not installed on products do not create an unsafe condition. This new version of part 39 will not change this practice.

**Section 39.7 (proposed § 39.5) Who must comply with airworthiness directives?**

This section clarifies that anyone operating a product listed in an AD must comply with the AD. Proposed § 39.5 also specified that each flight taken without complying with the AD is a separate violation. This material is similar to the prior version of § 39.3.

One commenter noted that the heading of this section does not capture the entire content of the section because the section also addresses the consequences of non-compliance. FAA agrees. Many readers will also want to find information about compliance. Therefore, we have separated this information into a new section, § 39.9, for easy reference.

In considering this comment, we recognized that prior version of § 39.3, which proposed § 39.5 was intended to replace, does not state who must comply with ADs. Rather, it states that no person may operate a product that is subject to an AD except in accordance with the requirements of that AD. This is a statement of the legal effect of failing to comply with ADs. The question of who must accomplish the actions specified in an AD is actually answered by other rules. For example, many ADs require maintenance actions. Other regulations, including those in 14 CFR parts 65, 121,

and 145, identify who is authorized to do maintenance. Further, in the past when FAA took enforcement action relating to failures to comply with an AD, we cited § 39.3 as the regulation that was violated, not the AD itself.

To prevent confusion and to be consistent with past practice, we are revising the question heading for § 39.7 to state, "What is the legal effect of failing to comply with an AD?" We have changed the section to read, "It is a violation of this section for anyone to operate a product when it is not in compliance with an AD that applies to it."

We are re-writing § 39.9 to refer to § 39.7, which is the rule that operators will violate if they fail to operate or use a product without complying with an AD that applies to that product.

**Section 39.9 (new section in final rule) What if I operate or use a product that does not meet the requirements of an airworthiness directive?**

This section specifies that if the requirements of an airworthiness directive have not been met, then each time you operate the aircraft or use the product, you violate § 39.7. In the proposal, this material was in §§ 39.3 and 39.7. We made this change in response to a comment that the title of proposed § 39.5 did not adequately cover this issue.

**Section 39.11 (proposed 39.7) What actions do airworthiness directives require?**

This section identifies what actions ADs can require. This rule is similar to the prior version of § 39.11. As under the former provisions in part 39, FAA intends to retain broad authority to require whatever types of corrective actions we determine to be most

effective in addressing identified unsafe conditions. This includes inspections, repairs, modifications, operating limitations, airworthiness limitations, and maintenance program requirements. We received no comments on this section, and adopt it as proposed.

**Section 39.13 Are airworthiness directives part of the Code of Federal Regulations?**

This section specifies that ADs are amendments to § 39.13. However, ADs are not codified in the annual edition of the Code of Federal Regulations. As with other regulations, ADs are published in full in the Federal Register.

One commenter stated this language is not needed in the rule, and recommended we move it to the preamble. While this language may appear to be just informative and not regulatory, the Office of the Federal Register requires us to include it in part 39. This language has the legal effect of including ADs in the Code of Federal Regulations by publishing them in the Federal Register, without codifying them in the annual edition of the Code. Therefore, we adopt this section as proposed.

**Section 39.15 Does an airworthiness directive apply if the product has been changed?**

This section specifies that ADs apply to products even if they have been modified, altered, or repaired in the area addressed by the AD. Proposed § 39.15 also specified what to do if the change prevents complying with the AD.

One commenter suggested that the heading as proposed did not cover all the material in the section. The section not only specified that ADs apply to products even if they have been modified, altered, or repaired, but also included material on what to do if

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products had been changed in a way that affected an operator's ability to comply with an AD. We agree with the commenter. Therefore, we have moved that second provision into a new section, § 39.17. We discuss this issue and comments received on proposed § 39.15 in the discussion of new § 39.17.

Several commenters expressed confusion about the meaning of the first two sentences of this section as proposed. We agree that the proposed wording was confusing, and have accepted language suggested by one of the commenters. This change in the final rule language is consistent with both past practice and with our intent in the NPRM.

Another commenter suggested that we define product, series, model, and individual aircraft. As discussed previously, we define "product" in § 39.3. We do not agree that the terms "series," "model," and "individual aircraft" need a regulatory definition. An aircraft "model" typically refers to all aircraft covered by a particular type certificate, such as "Boeing Model 747 airplanes." A "series" typically refers to a specific subset of the model that is identified on the type certificate data sheet for the model, such as "Boeing Model 747-400 series airplanes." In addition, the applicability provisions of ADs frequently refer to individual aircraft, as identified by unique line numbers or serial numbers.

**Section 39.17 (new section in final rule) What must I do if a change in a product affects my ability to accomplish the actions required in an airworthiness directive?**

This new section contains material we proposed in § 39.15. We have moved it into a separate section in response to comments. It specifies that if a change in a product

affects your ability to comply with the AD, you must ask FAA's permission to use an alternative method of compliance, and your request must either show that the change eliminated the unsafe condition or include the specific actions you propose. Although this material is new to part 39, it currently appears as a note in individual ADs.

Several commenters suggested that we retain current language for "alternative method of compliance" and that we use this language consistently. We agree with this suggestion.

One commenter suggested that we change the first sentence to say "that" change rather than "a" change. We have accepted this suggestion. The same commenter further suggested that we clarify this provision by stating that it applies to cases where the change alters existing approved actions. We do not agree. As stated in the NPRM regarding this provision, "This material is new to part 39 but currently appears in most individual ADs." This section simply explains the legal effect of the applicability provision of each AD, and this effect is unchanged by the adoption of this final rule. In the past, as in the future, all products identified in the applicability provision of an AD are subject to the AD, and operators must either comply with the provisions of the AD or request approval for an alternative method of compliance. No change to the final rule is necessary.

One commenter suggested repeating the language about products that are "modified, altered or repaired . . ." We find that the term "change" adequately covers these three concepts and therefore this more detailed language is not necessary.

Another commenter noted that if a prior change has made the aircraft safe, FAA should not ground the aircraft pending completion of actions required by an AD. The

comment stated this is an "additional requirement" on safely modified aircraft and FAA should not impose such requirements.

FAA does not agree. ADs apply to a specific product, even if the product has been changed. We cannot tell whether a change satisfies the safety concern until the operator demonstrates that to us. If the operator demonstrated to FAA that the change satisfied the safety concern, we may approve the change as an alternative method of compliance.

One of the reasons why ADs have become so complex is that FAA has tried to address all configuration variations. However, we cannot cover all possible changes under an AD. We issue ADs to address the main configurations approved under type certificates or, in some cases, under supplemental type certificates. If operators have made additional changes, they are responsible for making their aircraft airworthy and getting the necessary approvals to do so.

Similarly, two commenters questioned whether FAA should make a blanket statement that ADs apply to changed products, since the situation may be very complex. One commenter noted,

"It may not be advisable to automatically make the statement the airworthiness directive applies to changed products. This may take away some needed considerations of affected configurations during the formulation of the AD. By this statement, I am saying that there may be a propensity to think the responsibility of consideration of changed configurations can just be thrown to the owner/operator. There are some very complex changes to products on airplanes that cannot be reliably

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delegated to field operations FAA and maintenance personnel. Those complex changes are the very reasons for the omission of the applicability statement to changed products referenced in the Proposed Rule as having historically occurred on airworthiness directive's [sic]. It is frequently necessary to develop airworthiness directive's [sic] that adequately cover known changes to airplanes. Having this automatic responsibility statement may well promote a lack of effort in properly creating the airworthiness directive's [sic] needed to cover various configurations."

Presumably, the purpose of an operator's alternative method of compliance would be to avoid having to undertake the actions required by an AD. If the operator of a product that has been modified, altered, or repaired can show that the change makes the aircraft safe, FAA will approve the new configuration as an alternative method of compliance and the operator would not have to take the actions specified in the AD. This is not a new requirement. All products identified in the applicability provision of an AD have always been subject to the directive. Originally, we began including this note in ADs because some operators had taken the legally incorrect position that, because they had changed their aircraft, they did not have to comply.

In the final rule, we have moved this provision into its own section. We have used the term "alternative method of compliance" rather than a similar term used in the proposal.

**Section 39.19 (proposed § 39.17) May I address the unsafe condition in a way other than that set out in the airworthiness directive?**

This section allows anyone to propose to FAA an alternative method of compliance, including proposals to change the amount of time given to comply with an AD, as long as the proposal provides an acceptable level of safety. This section explains how to ask FAA to approve a proposed alternative. This material is new to part 39 but currently appears in most individual ADs.

One commenter noted that sending copies to “assigned FAA principal or aviation safety inspector” differs from the current process of sending requests for alternative methods of compliance to FAA. Another commenter suggested the method specified in the proposal adds a new burden to operators. We have changed the language in the final rule to clarify that operators who do not have principal inspectors should send their requests directly to the FAA manager responsible for the AD for which they seek approval of an alternative method of compliance. We have also changed the language to allow operators to send a copy of their request simultaneously to the principal inspector and the manager, rather than requiring it. Since the final rule language does not require sending copies to two offices at once, there should be no additional burden imposed by the rule. However, if operators want to send copies to both the inspector and the manager at the same time to expedite the process or for some other reason, the final rule language allows them to do so. Operators can work with their principal inspector and manager to determine which works best for each case.

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We have also added language authorizing FAA to designate an alternative process for submitting requests should the need arise. This flexibility accommodates particular unusual cases or improved processing of these requests, such as increased use of electronic transmissions. We have deleted the reference to Safety Inspectors and instead use the more specific term Principal Inspector.

Several commenters stated that FAA does not always designate managers as contact points for approval of an alternative method of compliance, and suggested that we use a more general term. We are not aware of any cases in which we designate someone other than a manager as a contact for approval of an alternative method of compliance. While some managers may have delegated that function to staff, the manager remains responsible for responding to the requests. Therefore we disagree with this comment.

Two commenters suggested that FAA indicate what standards we will use in reviewing requests for alternative methods of compliance. Further, they suggested that we indicate we will grant the request if the applicant shows the proposal would provide a level of safety at least equal to that provided by the AD. Given the range of unsafe conditions and possible alternative methods, FAA does not find it appropriate that we provide specific standards. We already state that we will approve these requests if they provide an acceptable level of safety. We are not arbitrary in our review of proposals for alternative methods of compliance, and have always approved them if they provide an acceptable level of safety. If FAA determines a proposed alternative is "acceptable" we will approve it, even if it may not be technically "equivalent" or "at least equal to" the method specified in the AD. Thus, the AD itself specifies the standard for approving an alternative method of compliance.

Several commenters stated FAA has previously approved alternative methods of compliance through other regulatory provisions, specifically 14 CFR §§ 21.305(d) and 43.13(c), as well as 14 CFR part 11. The commenters recommend that FAA should continue this practice. This new version of part 39 will not change or eliminate any current bases for FAA's approval of alternative methods of compliance. However, we do not find that we have used these other authorities as the basis for approval. Approvals we have granted under § 21.305(d) or § 43.13(c) do not affect in any way an operator's obligation to either follow the requirements of an AD or get approval for an alternative method of compliance under part 39.

**Section 39.21 (proposed § 39.19) Where can I get information about FAA-approved alternative methods of compliance?**

This section informs you where to get information about alternative methods of compliance with ADs that FAA has already approved for other certificate holders. This material is new to part 39 but currently appears in most individual ADs.

Several commenters stated that if FAA's language means we will make alternative methods of compliance public when they are approved, FAA would be making proprietary information publicly available in violation of 18 U.S.C. § 1905.

We derived this new paragraph in part 39 from a provision used in ADs for many years. By providing information about FAA-approved alternative methods of compliance, FAA does not reveal proprietary information; we simply identify whether we have approved alternative methods of compliance with a particular directive. We handle requests for further information regarding the content or substance of the alternative

method of compliance under the Freedom of Information Act, which provides an exception from disclosure for proprietary information.

**Section 39.23 (proposed § 39.21) May I fly my aircraft to a repair facility to do the work required by an airworthiness directive?**

This section explains that if you do not already have authority in your approved maintenance program to fly your aircraft to a repair facility, FAA may issue you a special flight permit, sometimes called a “ferry permit,” allowing you to fly your aircraft to a place where you can comply with the AD. This material is new to part 39 but currently appears in most individual ADs. Moving this provision to part 39 does not mean that you have authority under previously issued ADs to fly your aircraft to a repair facility.

Since we will allow you to move an aircraft only if it is safe to do so, this section also provides that FAA may add special requirements for flying a specific product to a repair facility to ensure aviation safety. Furthermore, FAA may specify in particular ADs that we will not issue special flight permits for products covered by that particular directive. FAA may take this position when the safety issue addressed by the AD is so serious that moving an aircraft to a repair facility would create an unacceptable safety risk. We may also decline to issue special flight permits in individual cases because of the condition of a specific aircraft.

Several commenters raised the issue of “continuing” authority to fly aircraft to a repair facility. We agree this was not specified in the proposed rule language, and have added language clarifying this in the final version of this section.

One commenter stated that FAA should explain that the local Flight Standards District Office, not the Office where the aircraft is based, issues special flight permits. We have incorporated the commenter's suggestions by adding reference to the local office to the final rule.

Several commenters suggested that we reference requirements in other parts of FAA's regulations concerning how to get a special flight permit. FAA agrees with this comment; therefore, we have added a new section, § 39.25, to the final rule.

**Section 39.25 (new section in final rule) How do I get a special flight permit?**

This section specifies that you can obtain a special flight permit under the provisions of 14 CFR §§ 21.197 and 21.199. We added this section to the final rule in response to comments on proposed § 39.21 (final rule § 39.23) requesting that we address the requirements for obtaining special flight permits.

**Section 39.27 (proposed § 39.25) What do I do if the airworthiness directive conflicts with the service document on which it is based?**

This section clarifies that in the case of conflicts between an AD and a service document, the AD prevails. This material is new to part 39 but currently appears in some ADs.

One commenter suggested that we change the reference to service bulletins to some broader term because sometimes ADs refer to other technical data besides service bulletins. FAA agrees with this comment and has changed the final rule language to reference "service documents."

Finally, one commenter suggested that FAA make available to the public any service bulletin incorporated by reference in an AD. We include a statement in every AD that service documents are available for viewing at FAA. To get your own copy, you must obtain it from the publisher.

#### **Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new information collection requirements associated with this rule.

#### **International Compatibility**

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) **Standards and Recommended Practices** to the maximum extent practicable. FAA determined there are no ICAO Standards and Recommended Practices that correspond to these regulations.

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**Economic Evaluation, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment**

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. §§ 2531-2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of \$100 million or more. in any one year (adjusted for inflation).

For regulations with an expected minimal impact, however, the analyses specified above are not required. The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If we determine that the expected impact is so minimal that the proposal does not warrant a full Evaluation, we include a statement to that effect and the basis for it in proposed regulation.

This final rule simply moves existing provisions from individual Airworthiness Directives (ADs) into part 39. This action streamlines individual Ads, which is expected

to improve the focus of the safety issued addressed in the AD. This final rule imposes no new requirements. No comments were received disputing the facts that the action streamlines individual ADs and imposes no new requirements.

In analyzing this final rule, FAA has determined the rule has benefits which justify the costs, is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in the Department of Transportation Regulatory Policies and Procedures. As the expected impact of this rule will have minimal cost, if any, a full regulatory evaluation is not warranted, and FAA did not prepare one.

Additionally, FAA certifies the rule will not have a significant impact on a substantial number of small entities, has no effect on barriers to international trade, and does not impose an Unfunded Mandate on state, local, or tribal governments, or on the private sector.

### **Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. If the determination is that it would, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This action simply moves existing provisions from individual airworthiness directives into part 39. As a result, the cost is expected to be minimal. FAA did not receive any comments disagreeing with the assessment of minimal cost. Consequently, FAA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

#### **International Trade Impact Assessment**

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

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FAA has accordingly assessed the potential effect of this final rule to be minimal and therefore determined that this rule will not result in an impact on international trade by companies doing business in or with the United States.

#### **Unfunded Mandates Assessment**

The Unfunded Mandates Reform Act of 1995 (the Act), is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This final rule does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply.

#### **Executive Order 13132, Federalism**

FAA analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined this action will not have a substantial direct effect on the States, or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We determined that this final rule, therefore, does not have federalism implications.

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## Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

## Energy Impact

FAA has assessed the energy impact of the final rule under the Energy Policy and Conservation Act (EPCA) Public Law 94-163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. We have determined that the final rule is not a major regulatory action under the provisions of the EPCA.

## List of Subjects in 14 CFR <sup>P</sup>part 39

Aircraft, Aviation <sup>S</sup>Safety, Reporting and recordkeeping requirements.

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## The Amendment

In consideration of the above, the Federal Aviation Administration revises part 39 of Title 14, Code of Federal Regulations, to read 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.

2. Revise part 39 of Title 14, Code of Federal Regulations, to read as follows:

### ~~PART 39--AIRWORTHINESS DIRECTIVES~~

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- 39.1 Purpose of this regulation.
- 39.3 Definition of airworthiness directives.
- 39.5 When does FAA issue airworthiness directives?
- 39.7 What is the legal effect of failing to comply with an airworthiness directive?
- 39.9 What if I operate an aircraft or use a product that does not meet the requirements of an airworthiness directive?
- 39.11 What actions do airworthiness directives require?
- 39.13 Are airworthiness directives part of the Code of Federal Regulations?
- 39.15 Does an airworthiness directive apply if the product has been changed?
- 39.17 What must I do if a change in a product affects my ability to accomplish the actions required in an airworthiness directive?
- 39.19 May I address the unsafe condition in a way other than that set out in the airworthiness directive?
- 39.21 Where can I get information about FAA-approved alternative methods of compliance?
- 39.23 May I fly my aircraft to a repair facility to do the work required by an airworthiness directive?
- 39.25 How do I get a special flight permit?
- 39.27 What do I do if the airworthiness directive conflicts with the service document on which it is based?

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

**§ 39.1 Purpose of this regulation.**

The regulations in this part provide a legal framework for FAA's system of Airworthiness Directives.

**§ 39.3 Definition of airworthiness directives.**

FAA's airworthiness directives are legally enforceable rules that apply to the following products: aircraft, aircraft engines, propellers, and appliances.

**§ 39.5 When does FAA issue airworthiness directives?**

FAA issues an airworthiness directive addressing a product when we find that:

- (a) An unsafe condition exists in the product; and
- (b) The condition is likely to exist or develop in other products of the same type design.

**§ 39.7 What is the legal effect of failing to comply with an airworthiness directive?**

Anyone who operates a product that does not meet the requirements of an applicable airworthiness directive is in violation of this section.

**§ 39.9 What if I operate an aircraft or use a product that does not meet the requirements of an airworthiness directive?**

If the requirements of an airworthiness directive have not been met, you violate § 39.7 each time you operate the aircraft or use the product.

**§ 39.11 What actions do airworthiness directives require?**

Airworthiness directives specify inspections you must carry out, conditions and limitations you must comply with, and any actions you must take to resolve an unsafe condition.

**§ 39.13 Are airworthiness directives part of the Code of Federal Regulations?**

Yes, airworthiness directives are part of the Code of Federal Regulations, but they are not codified in the annual edition. FAA publishes airworthiness directives in full in the Federal Register as amendments to § 39.13.

**§ 39.15 Does an airworthiness directive apply if the product has been changed?**

Yes, an airworthiness directive applies to each product identified in the airworthiness directive, even if an individual product has been changed by modifying, altering, or repairing it in the area addressed by the airworthiness directive.

**§ 39.17 What must I do if a change in a product affects my ability to accomplish the actions required in an airworthiness directive?**

If a change in a product affects your ability to accomplish the actions required by the airworthiness directive in any way, you must request FAA approval of an alternative method of compliance. Unless you can show the change eliminated the unsafe condition, your request should include the specific actions that you propose to address the unsafe condition. Submit your request in the manner described in § 39.19.

**§ 39.19 May I address the unsafe condition in a way other than that set out in the airworthiness directive?**

Yes, anyone may propose to FAA an alternative method of compliance or a change in the compliance time, if the proposal provides an acceptable level of safety.

Unless FAA authorizes otherwise, send your proposal to your principal inspector.

Include the specific actions you are proposing to address the unsafe condition. The principal inspector may add comments and will send your request to the manager of the office identified in the airworthiness directive (manager). You may send a copy to the manager at the same time you send it to the principal inspector. If you do not have a principal inspector send your proposal directly to the manager. You may use the alternative you propose only if the manager approves it.

**§ 39.21 Where can I get information about FAA-approved alternative methods of compliance?**

Each airworthiness directive identifies the office responsible for approving alternative methods of compliance. That office can provide information about alternatives it has already approved.

**§ 39.23 May I fly my aircraft to a repair facility to do the work required by an airworthiness directive?**

Yes, <sup>†</sup> The operations specifications giving some operators authority to operate include a provision that allow them to fly their aircraft to a repair facility to do the work required by an airworthiness directive. If you do not have this authority, the local Flight

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Standards District Office of FAA may issue you a special flight permit unless the airworthiness directive states otherwise. To ensure aviation safety, FAA may add special requirements for operating your aircraft to a place where the repairs or modifications can be accomplished. FAA may also decline to issue a special flight permit in particular cases if we determine you cannot move the aircraft safely.

**§ 39.25 How do I get a special flight permit?**

Apply to FAA for a special flight permit following the procedures in 14 CFR § 21.199.

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**§ 39.27 What do I do if the airworthiness directive conflicts with the service document on which it is based?**

In some cases an airworthiness directive incorporates by reference a manufacturer's service document. In these cases, the service document becomes part of the airworthiness directive. In some cases the directions in the service document may be modified by the airworthiness directive. If there is a conflict between the service document and the airworthiness directive, you must follow the requirements of the airworthiness directive.

Issued in Washington, DC, on JUL 10 2002

  
Jane F. Garvey  
Administrator

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