

**Comments in response to 66 Federal Register 3381 (January 12, 2001)
Submitted electronically to: <http://dms.dot.gov>
and by United States First Class Mail
Docket Number FAA- 2000-8460**

Airworthiness Directives
Comments on the Notice of Proposed Rulemaking

Submitted by the

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Docket Management System
U.S. Department of Transportation
Room Plaza Level 401
400 Seventh Street, SW
Washington, DC 20590-0001

Docket Number FAA-2000-8460

Dear Sir or Madam:

Please accept these comments in response to the Federal Register Notice of Proposed Rulemaking published at 66 Federal Register 3381 (January 12, 2001) (Airworthiness Directives). They are submitted on behalf of the Aircraft Electronics Association and the Airline Suppliers Association.

Substantive Comments

Completeness of Comments

These comments are less complete than the responders consider ideal due to the short comment period permitted by the Federal Aviation Administration. The responders have already filed a request for extension of time designed to permit more complete comments to the docket.

These comments are filed, in part, to indicate to the FAA that there are substantial problems with the hypotheses that have gone into this recodification, and to prompt the FAA to reconsider this recodification activity.

Objection to Question and Answer Format in Part 39

The responders generally object to the use of a question and answer format for Part 39 of Title 14 of the Code of Federal Regulations. For the reasons described below, the question and answer format fails to meet the needs of the government and of the industry.

Usually, Congress issues legislation that provides clear standards. An agency then promulgates regulations that interpret these standards and provide the public with notice concerning the agency's enforcement mechanisms and interpretations. This is often necessary because clear and concise standards sometimes do not address all of the possible permutations of an issue.

Congress has not provided clear standards for airworthiness directives. In fact, Congress has only given the FAA general authority to issue regulations in the interest of safety.

Because Congress has delegated to the FAA the authority to determine how the FAA will promulgate safety regulations, it is incumbent on the FAA to provide clear and concise standards for airworthiness directives (the sort of clear standards one often find in legislation addressing other subject matter).

The FAA has traditionally promulgated clear standards in the regulations, and has interpreted these clear standards through its advisory circulars. It is at the advisory circular level that the plain language initiative would be most valuable to the FAA.

The question and answer format does not provide clear guidance, because it only answers the questions that have been asked – it fails to answer the questions that remain unasked. It would replace (eliminate) the straightforward, clear language that currently exists, so there would be no resource that would provide straightforward standards against which to measure compliance.

The FAA offers three statements in support of the “plain language format.” These have clearly been drawn from some sort of generic description document, as they are inapplicable to the proposed regulations at hand. The preamble to the proposed rule says that the “section headings are in the form of questions to help direct the readers to specific material they need.” The questions do a worse job of directing readers' attention. Simple topic statements are easier to read. The preamble to the proposed rule says that the FAA has “used personal pronouns to reduce passive voice and draw readers into the writing.” Because the personal pronouns do not clearly refer to any particular party, they make the regulations less clear, rather than more clear (this might not be the case if there were legislative guidance to clearly assign obligations that would then be further described in the regulations). The preamble to the proposed rule says that the

FAA has “used active verbs to make clear who is responsible for what actions.” The current regulation is already in the active voice.

For a good example of well-written regulations in the question-and-answer format, the FAA may wish to refer to the Family and Medical Leave Act Regulations. The Act provides clear compliance standards, and the question-and-answer formatted regulations describe how to apply these clear standards in particular situations.

No Safety Benefit

There does not appear to be any safety benefit to the revisions proposed in this notice of proposed rulemaking. Nor does there appear to be any need served or benefit gained from this proposed recodification. For this reason, the FAA should abandon this rulemaking project.

Specific Section-by-Section Comments

Proposed Rule	Comments
<p>Sec. 39.1 What is the purpose of this regulation?</p> <p>The regulations in this part set up FAA's system of Airworthiness Directives.</p>	<p>“Set up” is a colloquialism and as such should be removed from the regulation and replaced. Further, this is not an accurate statement about the effect of these regulations. A more appropriate replacement might be “This Part prescribes procedural requirements for the issue of Airworthiness Directives.” This language would also be parallel to comparable language that already exists in the regulations.</p>
<p>Sec. 39.3 What are airworthiness directives?</p> <p>The FAA's airworthiness directives are legally enforceable rules that apply to all aircraft products; that is, aircraft, engines, propellers, and appliances. We issue 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.</p>	<p>The term “Products” is defined in Part 21 in two different ways (21.1(b) and 21.321(b)). The term is not otherwise defined. Because it is used differently in various places in the regulations, it should either be defined or it should not be used in this regulation. Removing the phrase “aircraft products; that is,” would avoid confusion and achieve the FAA’s desired results.</p> <p>The FAA should also maintain consistency in self-reference. To avoid confusion, the FAA ought to only refer to itself in an explicit manner. The regulations do not define the second-person pronoun “we” to mean the FAA. Replacing all uses of the pronoun “we” with the “the FAA” makes this regulation much more clear.</p>
<p>Sec. 39.5 Who must comply with airworthiness directives?</p> <p>Anyone who operates a product covered by an airworthiness directive must comply with the airworthiness directive. If you do not meet the requirements of an airworthiness directive, each</p>	<p>The use of the pronoun “you” makes the reference of the regulation unclear. To avoid confusion, the FAA ought to refer to enforcement targets in an explicit manner. Replacing all uses of the pronoun “you” with the “the person” or “a person” (as appropriate) makes this regulation much more clear.</p>

<p>flight you make is a separate violation of that airworthiness directive.</p>	
<p>Sec. 39.7 What actions do airworthiness directives require?</p> <p>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.</p>	<p>Once again, the use of the pronoun “you” makes the scope of this regulation vague. A better replacement phrase would be</p> <p>Anyone required to comply with an airworthiness directives must complete the specified inspections, comply with the conditions and limitations and take such actions as may be described in the airworthiness directive to resolve the unsafe condition described in the airworthiness directive.</p>
<p>Sec. 39.13 Are airworthiness directives part of the Code of Federal Regulations?</p> <p>Yes, airworthiness directives are part of the Code of Federal Regulations, but they are not codified in the annual edition. The FAA publishes airworthiness directives in full in the Federal Register as amendments to Sec. 39.13.</p>	<p>No substantive change needed.</p>
<p>Sec. 39.15 Does an airworthiness directive apply if the product has been changed?</p> <p>Yes, an airworthiness directive applies to each product identified in the airworthiness directive, so the affected products aren't listed in the airworthiness directive. We may also just specify a model without listing individual aircraft, even if an individual product has been changed by modifying, altering, or repairing it in the area addressed by the airworthiness directive. If that change affects in any way your ability to accomplish the actions required by the airworthiness directive, you must request FAA approval for another means of complying. Unless you can show that the change eliminated the unsafe condition, your request should include specific actions you propose to address the unsafe condition. Submit your request in the manner described in Sec. 39.17.</p>	<p>The first sentence of this paragraph is self-contradictory. The second clause in particular does not make sense and needs to be redrafted to clearly state the FAA’s intention. One possible redraft would be “Yes, an airworthiness directive applies to each product identified in the airworthiness directive, so the airworthiness directive does not need to list affected products by specific serial number or other specific identification.”</p> <p>For the reasons specified above, the term “we” should be replaced by “the FAA,” and the terms “you” and “your” should be replaced by “a person” and “the person” as appropriate.</p> <p>Where a change to the product makes the airworthiness directive inapplicable, or otherwise renders the aircraft to be in a safe condition, it does not make sense to ground the aircraft pending approval of this alternative configuration. It should be incumbent on the FAA to write airworthiness directives in such a way that they do not impose additional requirements on safely-modified aircraft. Impossibility of compliance due to prior modification should exempt the person from compliance on the grounds of impossibility and inapplicability (particularly modification that makes the aircraft safe with respect to the issue described by the airworthiness directive). Any other method of issuing regulations represents an abridgement of property rights without due process of law.</p>
<p>Sec. 39.17 May I address the unsafe condition in a way other than that set out in the airworthiness directive?</p> <p>Yes, anyone may propose to FAA another</p>	<p>The references to “you” and “your” in this paragraph would be much more clear if they referred to “the proposal” and “the applicant.”</p> <p>Airworthiness Directives do not always list FAA</p>

<p>means of complying or a change in the compliance time, as long as the proposal provides an acceptable level of safety. Send your proposal to the FAA manager identified in the directive. At the same time, if you are an operator, provide a copy to your assigned FAA Principal or Aviation Safety Inspector. Include the specific actions you are proposing to address the unsafe condition. The Inspector may add comments and send them to the FAA Manager. You may use the alternative you propose only if the Manager approves it.</p>	<p>managers as contact points - sometimes they list non-managers (for example, engineers). Airworthiness Directives sometimes list more than one contact point. If the FAA expects the public to make responses based on this regulation, then the FAA must promulgate a correlative regulation that imposes on the FAA an obligation to identify a single FAA Manager in each airworthiness directive who will serve in this role.</p> <p>This regulation should indicate the standards that the FAA will use in <i>reviewing</i> the request; e.g. it could indicate that the FAA will <i>grant</i> the request if the applicant shows that the proposal would provide a level of safety at least equal to that provided by the airworthiness directive.</p> <p>In some cases, the FAA has permitted alternative methods of compliance through application to the local FSDO (e.g. through procedures approved by the principal maintenance inspector and published in the operator's general maintenance manual (14 CFR 43.13(c)), or through process specifications approved by the FAA (14 CFR 21.305(d)). It appears that this rule would preclude such approvals. There does not seem to be any good policy reason for such preclusion. The regulation should not preclude the use of alternative compliance methods approved by other offices of the FAA.</p>
<p>Sec. 39.19 Where can I get information about any other means of complying approved by FAA?</p> <p>The office identified in an airworthiness directive as responsible for approving alternative means of complying can provide information about the existence of any alternatives FAA already has approved.</p>	<p>Does this mean that these alternatives become public information upon approval? Has the FAA decided whether this information will be treated as proprietary information? It appears that the FAA is pledging to make proprietary information publicly available, which could be a violation of criminal law (18 USC 1905).</p>
<p>Sec. 39.21 How can I get a special flight permit to operate my aircraft to a repair facility to do the work required by an airworthiness directive?</p> <p>Unless the airworthiness directive states otherwise, FAA may issue you a special flight permit to fly your aircraft to a place where you can meet the airworthiness directive's requirements. To ensure aviation safety, the FAA may add special requirements for operating your aircraft to a place where the repairs or modifications can be accomplished. The FAA may also decline to issue a special flight permit in particular cases if we determine you cannot move the aircraft safely.</p>	<p>For the reasons discussed above, "we" should be replaced with the term "the FAA" and "you" should be replaced with the term "the applicant."</p> <p>The phrase "in particular cases" should be removed because the ferry permit should never be issued if the FAA finds that it would be unsafe to fly the aircraft.</p>

<p>Sec. 39.25 What do I do if the airworthiness directive conflicts with the Service Bulletin on which it is based?</p> <p>In some cases an airworthiness directive incorporates by reference a manufacturer's service bulletin. In these cases, the service bulletin becomes part of the airworthiness directive. In some cases the directions in the service bulletin may be modified by the airworthiness directive. If there is a conflict between the service bulletin and the airworthiness directive, you must follow the requirements of the directive.</p>	<p>The Federal Register Act requires that material incorporated by reference be made publicly available. The FAA has had problems in the past with availability to the public of referenced service bulletins. This is an excellent place to add the sentence, "Where an airworthiness directive incorporates by reference a manufacturer's service bulletin, the FAA shall make the manufacturer's service bulletin available to the public."</p>
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What is the Aircraft Electronics Association?

The Aircraft Electronics Association represents the interests of the civil aviation avionics business community. The Association's membership includes manufacturers, repair stations and distributors of avionics. Members install aircraft parts during their operations. Although they are not directly required to comply with airworthiness directives, they work as the agents of those owner/operators who are required to comply, and they are the parties who actually implement the compliance strategies.

Airworthiness directives are issued, from time-to-time, against aircraft that contain avionics (and sometimes against the avionics equipment itself). These directives may require the replacement of avionics (e.g. 64 Fed. Reg. 31490 (June 11, 2000)), the modification of avionics (e.g. 65 Fed. Reg. 9209 (Feb. 24, 2000)), or the testing of avionics (e.g. 64 Fed. Reg. 61493 (Nov. 12, 1999)). In each case, avionics repair stations like AEA's members are the parties the implement compliance.

What is the Airline Suppliers Association?

Founded in 1993, the Airline Suppliers Association (ASA) represents the aviation parts distribution industry, and has become known as an organization that fights for safety in the aviation marketplace.

ASA is a proponent of industry quality systems that help assure that aircraft parts sold to operators, repair stations, and mechanics are airworthy and safe. For example, ASA is one of the FAA's partners in the Voluntary Industry Distributor Accreditation Program. In ASA's educational workshops, ASA teaches distributors methods of supporting industry safety through knowledge of applicable airworthiness directives. It is currently a common industry practice for distributors of aircraft parts to maintain current airworthiness directives so as to be able to determine whether existing airworthiness directives impose additional requirements relative to a part or component. This information is then provided

to a subsequent purchaser to support the purchaser's regulatory and safety obligations.

About 25% of ASA's member companies also hold repair station licenses. These companies implement airworthiness directives on behalf of their customers.

Conclusion

The responders recommend that the FAA abandon this rulemaking project on the grounds that it does not affect safety and the change does not benefit aviation safety nor the interests of the United States in any way. It appears to represent change only for the sake of change. This is an inappropriate basis on which to make changes to the regulations.

Recognizing that the inertia of government often finds itself unable to stop a rulemaking project once it has begun, the responders have several other recommendations designed to prevent some of the harm that this rulemaking project could cause.

The responders recommend that the FAA reconsider the use of a question-and-answer format for Part 39 because it strips the regulations of any clear standards for the issuance of airworthiness directives. Question-and-answer format would be more appropriate for advisory guidance, rather than for the regulations describing airworthiness directives. If clear standards were placed in the regulations, then the advisory circulars could present questions raised by the regulations.

The responders also recommend that the FAA carefully review these proposed regulations to identify the new requirements represented herein. Many of these new provisions require a response to an FAA initiative; however there is no correlative FAA obligations to provide the FAA initiative that support the response. The FAA should make sure that the regulations require FAA activity where FAA activity is a prerequisite to industry response.

Respectfully Submitted,

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