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[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 135, and 145

Docket No.: FAA-2003-16527; Amendment No. SFAR 36-8

RIN 2120-AI09

Special Federal Aviation Regulation No. 36, Development of Major Repair Data

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: The Federal Aviation Administration amends and extends Special Federal Aviation Regulation No. 36 (SFAR 36). This final rule extends the SFAR 36 expiration date five years. Also, in this final rule, the FAA makes a technical amendment to Section No. 4 (*Application*) of SFAR 36. SFAR 36 allows holders of authorized repair station or aircraft operating certificates to approve aircraft products or articles for return to service after completing major repairs using self-developed repair data not directly approved by the FAA. Extension of the regulation continues to provide, for those who qualify, an alternative to gaining direct FAA approval of major repair data on a case-by-case basis. The technical amendment to Section No. 4 (*Application*) is necessary to accurately reflect the appropriate FAA office to which applications should be submitted.

DATES: This amendment becomes effective January 23, 2004. Comments for inclusion in the Rules Docket must be received on or before [December 19 2003 ~~*Insert date 30 days after the date of publication in the Federal Register*~~]

ADDRESSES: You may send comments [identified by Docket Number *FAA-2003-*16527 ~~*XXXXX*~~] using any of the following methods:

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- DOT Docket web site: Go to http://dms.dot.gov and follow the instructions for sending your comments electronically.
- Government-wide rulemaking web site: Go to http://www.regulations.gov and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; US Department of Transportation, 400 Seventh Street, S.W., Nassif Building, Room PL-401, Washington, DC 20590-001.
- Fax: 1-202-493-2251.
- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, S.W., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document.

Privacy: We will post all comments we receive, without change, to http://dms.dot.gov, including any personal information you provide. For more information, see the Privacy Act discussion in the SUPPLEMENTARY INFORMATION section of this document.

Docket: To read background documents or comments received, go to http://dms.dot.gov at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, S.W., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ralph Meyer, Delegation and Airworthiness Programs Branch, Aircraft Engineering Division, AIR-140, Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, Oklahoma, 73125; telephone (405) 954-7072; facsimile (405) 954-4104, e-mail ralph.meyer@faa.gov.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (http://dms.dot.gov/search);

(2) Visiting the Office of Rulemaking's web page at http://www.faa.gov/avr/arm/index.cfm; or

(3) Accessing the Government Printing Office's web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue S.W, Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

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 their local FAA official, or

the person listed under FOR FURTHER INFORMATION CONTACT. You can find out more about SBRFA on the Internet at our site, http://www.gov/avr/arm/sbrefa.htm. For more information on SBREFA, e-mail us 9-AWA-SBREFA@faa.gov.

Background

History

On January 6, 1999, the FAA published Special Federal Aviation Regulation (SFAR) No. 36, Development of Major Repair Data, in the **Federal Register** (64 FR 958). The rule became effective January 23, 1999. The rule provided a 5-year extension to an earlier version of SFAR 36 that was set to expire in January, 1999. The SFAR allows authorized certificate holders (domestic repair stations, air carriers, air taxi operators of large aircraft, and commercial operators of large aircraft) to approve aircraft products and articles for return to service after completing major repairs. This is done using data developed by the holder and not directly approved by the FAA. Currently, 17 air carrier and domestic repair station certificate holders have SFAR 36 authorizations. Without an extension of SFAR 36, these authorizations will expire on January 23, 2004.

Absent SFAR 36, qualified certificate holders must obtain case-by-case approval for data they develop for major repairs. The only alternative to the time-consuming approval method is a formal exemption granting relief from this requirement. Historically, the number of such exemptions granted by the FAA indicated that revisions to the regulations were necessary. As a result, the Agency originally adopted SFAR 36 on January 23, 1978, as an interim rulemaking action. Adoption of the SFAR removed the need for petitions for exemption and gave us additional time to gather the information needed to develop a permanent rule change. However, most of the affected certificate

holders did not use the provisions of SFAR 36 until it was well into its second year, nearing its original expiration date of January 23, 1980. Because we lacked the data necessary to create a permanent rule change, the Agency extended the termination date.

Related Activity

Development of a permanent rule change was delayed in anticipation of a recommendation on the subject from the Aviation Rulemaking Advisory Committee (ARAC). On October 22, 1998, the ARAC submitted a proposal for permanent regulatory change. The proposal described an Organization Designation Authorization (ODA) program that would expand and further standardize the approval functions of the FAA designee system. It proposed that certain functions and procedures, including those covered by SFAR 36, be terminated and covered instead by an Organization Designation Authorization. In 1999, we extended SFAR 36 an additional five years to allow for the development and implementation of the ARAC proposal.

However, despite the progress made so far, we have delayed implementing the ODA delegation system. We did this to allow time to gain experience managing organizations under *FAA Order 8100.9, DAS, DOA, and SFAR 36 Authorization Procedures,* issued in August, 2002. The management principles incorporated by this Order serve as the basis for managing ODA holders. Even if an ODA proposal were published immediately, it would not be effective prior to the current expiration date of SFAR 36. The SFAR must be extended to continue the status quo and avoid significant economic and procedural disruption in returning to the earlier system of approvals.

Paragraph 4 of the SFAR currently requires that the application for authority be filed with the appropriate FAA Flight Standards District Office. The more appropriate

office for the applications is now the FAA Certificate Holding District Office. A technical amendment is made to the SFAR to identify the correct office for applications.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. This will be the sixth time the FAA has extended SFAR 36. When this rule was published as a notice of proposed rulemaking on November 2, 1998, the FAA received no comments. Because the Agency is simply extending the termination date of this SFAR, and failing to do so would have serious adverse economic consequences for both industry and government, the FAA asserts that publishing a direct final rule best serves the public interest. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting this rule.

The most helpful comments reference a specific portion of the rule, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the ADDRESSES section of this preamble between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the ADDRESSES section.

Privacy Act: Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477-78) or you may visit http://dms.dot.gov.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this rule in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this rule, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. § 3507(d), the FAA has determined that there are no new requirements for information collection associated with this SFAR.

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. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

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

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to 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 also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. And 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 annually (adjusted for inflation).

In conducting these analyses, FAA has determined this rule: 1) has benefits which do justify its costs, is not a "significant regulatory action" as defined in the Executive Order and is not "significant" as defined in DOT's Regulatory Policies and Procedures; 2) will not have a significant impact on a substantial number of small entities; 3) has no impact on international trade; and, 4) does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

Under the Department of Transportation Order DOT 2100.5 for regulations with an expected minimal impact, the above-specified analyses are not required. If it is determined the expected impact is so minimal that the proposal does not warrant a full evaluation, a statement to that effect and the basis for it is included in the proposed regulation. The FAA has determined that this rule does not warrant a full evaluation for the following reasons.

This final rule extends the existing provisions of SFAR 36 for five years. SFAR 36 allows authorized parties to use self-developed repair data to return products into service and to perform major repairs without the direct approval of this data by the FAA. A disruption of this current practice is likely to result in operational delays and increase approval costs. Thus, the benefit of this rule is the expense avoided of submitting such repair data for FAA approval. Extending SFAR 36 will not impose cost on the industry or the FAA. Because the final rule has positive, although not quantifiable benefits and no costs, the FAA has determined the benefits exceed the costs of the final rule. This

extension of SFAR 36 will have a minimal impact, while not extending SFAR 36 will disrupt current business operations and raise approval costs both to industry and the FAA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980, 5 U.S.C. § 601–612, directs the FAA to fit regulatory requirements to the scale of the business, organizations, and governmental jurisdictions subject to the regulation. We are required to determine whether a proposed or final action will have a "significant economic impact on a substantial number of small entities," as defined in the Act. If we find that the action will have a significant impact, we must do a "regulatory flexibility analysis."

This final rule extends the expiration date of SFAR 36. Its economic impact is minimal. Therefore, the FAA certifies that this action will not have a significant economic impact on a substantial number of small entities.

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. The FAA has assessed the potential effect of this final rule, and because this rule applies only to domestic firms, there will be no impact on international trade.

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 a $100 million or more expenditure (adjusted annually for inflation).

This final rule contains no such mandate. Therefore, the requirements of Title II of the Act do not apply to this regulation.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that 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. Therefore, we determined that this final rule does not have federalism implications.

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.

List of Subjects

14 CFR Part 121

Air carriers, Airworthiness directives and standards, Aviation safety, Safety.

14 CFR Part 135

Air carriers, Air taxis, Air transportation, Aircraft, Airmen, Airplanes, Airworthiness, Aviation safety, Helicopters, Safety.

14 CFR Part 145

Air carriers, Air transportation, Aircraft, Aviation safety, Safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14 of the Code of Federal Regulations parts 121, 135, and 145 as follows:

11/14/03

PART 121-OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701-44702, 44705, 44709-44711, 44713, 44716-44717, 44722, 46105.

PART 135-OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

2. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 41706, 44113, 44701-44702, 44705, 44709, 44711-44713, 44715-44717, 44722.

PART 145-REPAIR STATIONS

3. The authority citation for part 145 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701-44702, 44707, 44717.

4. Special Federal Aviation Regulation No. 36 is amended by revising paragraph 3(a)(1), paragraph 4 ~~and~~ introductory text, introductory text, and the termination date paragraph 7 to read as follows: JMA 11/14/03

SPECIAL FEDERAL AVIATION REGULATION No. 36

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3. ~~Major Repair Data and Return to Service.~~ ~~***~~ JMA 11/14/03

(a) * * *

(1) Has been issued an authorization under, and a procedures manual that complies with, Special Federal Aviation Regulation No. 36-8, effective on January 23, 2004;

* * * * *

4. Application. The applicant for an authorization under this Special Federal Aviation Regulation must submit an application, in writing, and signed by an officer of the applicant, to the FAA Certificate Holding District Office charged with the overall inspection of the applicant's operations under its certificate. The application must contain--

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7. Duration of Authorization. Each authorization issued under this Special Federal Aviation Regulation is effective from the date of issuance until January 23, 2009, unless it is earlier surrendered, suspended, revoked, or otherwise terminated. Upon termination of such authorization, the terminated authorization holder must:

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This Special Federal Aviation Regulation terminates January 23, 2009.

Issued in Washington, DC, on [*insert date*] NOV 13 2003

Marion Blakey

Marion C. Blakey

Administrator

Certified to be a True Copy

John Allen