

III. Executive Order 12866

The OTS has determined that this final rule is not a significant regulatory action as defined in Executive Order 12866.

IV. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 104 Pub. L. 104-4 (signed into law on March 22, 1995) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more in one year. If the budgetary impact statement is required, section 205 of the Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, this final rule is limited in application to the internal procedures of OTS. The OTS has therefore determined that the final rule will not result in expenditure by State, local, or tribal governments or by the private sector of more than \$100 million. Accordingly, the OTS has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects in 12 CFR Part 509

Administrative practice and procedures, Penalties.

For the reasons set forth in the preamble, the Office of Thrift Supervision hereby amends part 509, chapter V, title 12, Code of Federal Regulation as set forth below:

SUBCHAPTER A—ORGANIZATION AND PROCEDURES

PART 509—RULES OF PRACTICE AND PROCEDURE IN ADJUDICATORY PROCEEDINGS

1. The authority citation for part 509 continues to read as follows:

Authority: 5 U.S.C. 556; 12 U.S.C. 1464, 1467, 1467a, 1813; 15 U.S.C. 78l.

2. Section 509.9 is amended by revising paragraphs (a) and (b) and by adding a new paragraph (e) to read as follows:

§ 509.9 Ex parte communications.

(a) *Definition*—(1) *Ex parte communication* means any material oral or written communication relevant to the merits of an adjudicatory proceeding that was neither on the record nor on reasonable prior notice to all parties that takes place between:

(i) An interested person outside the Office (including such person's counsel); and

(ii) The administrative law judge handling that proceeding, the Director, or a decisional employee.

(2) *Exception.* A request for status of the proceeding does not constitute an *ex parte* communication.

(b) *Prohibition of ex parte communications.* From the time the notice is issued by the Director until the date that the Director issues the final decision pursuant to § 509.40(c) of this subpart:

(1) No interested person outside the Office shall make or knowingly cause to be made an *ex parte* communication to the Director, the administrative law judge, or a decisional employee; and

(2) The Director, administrative law judge, or decisional employee shall not make or knowingly cause to be made to any interested person outside the Office any *ex parte* communication.

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(e) *Separation-of-functions.* Except to the extent required for the disposition of *ex parte* matters as authorized by law, the administrative law judge may not consult a person or party on any matter relevant to the merits of the adjudication, unless on notice and opportunity for all parties to participate. An employee or agent engaged in the performance of investigative or prosecuting functions for the Office in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review of the recommended decision under § 509.40 of this subpart, except as witness or counsel in public proceedings.

Dated: May 23, 1995.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 95-13117 Filed 5-26-95; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95-NM-74-AD; Amendment 39-9241; AD 95-09-03]

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 95-09-03, that was sent previously to all known U.S. owners and operators of Jetstream Model 4101 airplanes by individual letters. This AD requires inspection to determine the number of hours time-in-service on the landing gear control unit, and modification of the cable (electrical wiring circuit) of the landing gear control unit. This amendment is prompted by a report of failure of a micro-switch in the landing gear control unit. The actions specified by this AD are intended to prevent uncommanded retraction of a landing gear, which could adversely affect airplane controllability.

DATES: Effective June 14, 1995, to all persons except those persons to whom it was made immediately effective by priority letter AD 95-09-03, issued on April 18, 1995, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 14, 1995.

Comments for inclusion in the Rules Docket must be received on or before July 31, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 95-NM-74-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The applicable service information may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041-6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: On April 18, 1995, the FAA issued priority letter AD 95-09-03, which is applicable to Jetstream Model 4101 airplanes. That action was prompted by a report of failure of a micro-switch in the landing gear control unit. This failure was apparently due to a manufacturing defect. Investigation revealed that the micro-switch failure caused the units to

produce spurious signals, which resulted in an uncommanded retraction of the landing gear while the airplane was on the ground. This condition, if not corrected, could result in uncommanded retraction of a landing gear, which could adversely affect airplane controllability.

Jetstream has issued Alert Service Bulletin J41-A32-042, dated April 13, 1995, which describes procedures for inspection to determine the number of hours time-in-service on the landing gear control unit. This alert service bulletin also describes procedures for a modification of the cable (electrical wiring circuit) of the landing gear control unit, which will preclude uncommanded retraction of a landing gear in the event of a micro-switch failure. The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the FAA issued priority letter AD 95-09-03 to require inspection to determine the number of hours time-in-service on the landing gear control unit, and modification of the cable (electrical wiring circuit) of the landing gear control unit. The actions are required to be accomplished in accordance with the alert service bulletin previously described.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on April 18, 1995 to all known U.S. owners and operators of Jetstream Model 4101 airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section

39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

This is considered interim action. The manufacturer has advised that it currently is developing a modification that will further address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95-NM-74-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism

implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95-09-03 Jetstream Aircraft Limited:
Amendment 39-9241. Docket 95-NM-74-AD.

Applicability: Model 4101 airplanes, constructor numbers 41001 through 41046 inclusive, and 41048 through 41052 inclusive; having either landing gear control unit part number 717701-1 or 717701 modification A; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different

actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded retraction of the landing gear, which can adversely affect airplane controllability, accomplish the following:

(a) Within 8 hours time-in-service after the effective date of this AD, perform an inspection to determine the number of hours time-in-service on the landing gear control unit, in accordance with Jetstream Alert Service Bulletin J41-A32-042, dated April 13, 1995.

(1) For those airplanes on which the control unit has accumulated less than 200 hours time-in-service: Prior to further flight, modify the cable (electrical wiring circuit) of the landing gear control unit in accordance with the alert service bulletin.

(2) For those airplanes on which the control unit has accumulated 200 hours or more time-in-service: Within 50 hours time-in-service or within 7 days after the effective date of this AD, whichever occurs earlier, modify the cable (electrical wiring circuit) of the landing gear control unit in accordance with the alert service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspection and modification shall be done in accordance with Jetstream Alert Service Bulletin J41-A32-042, dated April 13, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041-6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on June 14, 1995, to all persons except those persons to whom it was made immediately effective by priority letter AD 95-09-03, issued April 18, 1995, which contained the requirements of this amendment.

Issued in Renton, Washington, on May 18, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-12711 Filed 5-26-95; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 94-NM-79-AD; Amendment 39-9242; AD 95-11-07]

Airworthiness Directives; McDonnell Douglas Model DC-10 Series Airplanes and KC-10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas Model DC-10 series airplanes and KC-10A (military) airplanes, that requires inspections to detect cracking of H-11 attach bolts of the upper vertical stabilizer and replacement of these bolts and associated nuts with Inconel bolts and nuts. This amendment is prompted by failure of the attach bolts of the upper vertical stabilizer due to stress corrosion. The actions specified by this AD are intended to prevent undetected cracked or failed attach bolts that may lead to reduced structural integrity of the vertical stabilizer.

DATES: Effective June 29, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 29, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1-L51 (2-60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard,

Lakewood, California 90712; telephone (310) 627-5238; fax (310) 627-5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all McDonnell Douglas Model DC-10 series airplanes and KC-10A (military) airplanes was published in the **Federal Register** on September 19, 1994 (59 FR 47825). That action proposed to require inspections to detect cracking of H-11 attach bolts of the upper vertical stabilizer and replacement with Inconel attach bolts and associated nuts.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

The Air Transport Association of America, on behalf of one of its member operators, requests that the 18-month compliance time for the repetitive inspections required by proposed paragraph (a)(1) be extended to 24 months. The commenter states that this extension in the compliance time would coincide with regularly scheduled maintenance visits, and would result in savings of over \$2,800 per airplane if operators were not required to "special schedule" these airplanes for the inspection.

The FAA does not concur with the commenter's request to extend the compliance time. The FAA has determined that the compliance time, as proposed, represents the maximum interval of time allowable for the affected airplanes to continue to operate prior to accomplishing the required inspections without compromising safety. Further, the FAA's intent is to have the compliance time for the repetitive inspections coincide with the 18-month interval recommended by the manufacturer. Additionally, since the FAA has received an additional report of bolt failure, the FAA finds that the 18-month interval for the repetitive inspections is appropriate to ensure safety of the fleet.

Additionally, the Service Action Requirements Document (SARD) that is referenced in this final rule was developed by McDonnell Douglas only after extensive and detailed consultations with large numbers of operators of Model DC-10 series airplanes. The compliance times were based on these consultations and developed in order to minimize the economic impact on operators without compromising the safety objectives of