

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2000-8460; Notice No. 00-15]

RIN 2120-AA64

Airworthiness Directives**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The FAA proposes to move several standard provisions currently found in every airworthiness directive into its regulations pertaining to airworthiness directives. The FAA will no longer include these provisions in individual airworthiness directives. This will shorten individual airworthiness directives, making them easier for readers to use.

DATES: Submit your comments by February 12, 2001.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify the docket number FAA-2000-8460 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to <http://dms.dot.gov>. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at <http://dms.dot.gov>.

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.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested persons are invited to participate in the making of the proposed action by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result

from adopting the proposals in this document also are invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals in this document may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this document must include a pre-addressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. FAA-2000-8460." The postcard will be date stamped and mailed to the commenter.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (<http://dms.dot.gov/search>).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view.

You can also get an electronic copy using the Internet through FAA's web page at <http://www.faa.gov/avr/arm/nprm/nprm.htm> or the **Federal Register'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 SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Background*1. Proposed Substantive Changes*

The FAA proposes to revise part 39 of Title 14, Code of Federal Regulations by adding several provisions currently found in many airworthiness directives to part 39 and omitting this language from most individual airworthiness directives. Removing this language from airworthiness directives will place the focus on the unsafe condition which created the need for regulatory action. A number of users have suggested to FAA that this boilerplate language imposed a burden on the reader without contributing to aviation safety. The standard provisions made it harder for the reader to focus on the safety aspects of the airworthiness directive. The FAA proposes to move the following provisions currently found in airworthiness directives to part 39:

1. Airworthiness directives apply even if products have been modified, altered, or repaired in the area addressed by the directive;
2. The FAA may issue a special flight permit if you can't move your product to a repair facility within the time limits imposed by the airworthiness directive; and
3. Specify procedures for asking FAA to approve other methods for complying with the airworthiness directive.

2. Clearer Regulatory Format

Besides the specific provisions discussed above, FAA is proposing this regulation in plain language. Plain language helps readers find requirements quickly and understand them easily. To do that, we have reorganized and reworded the regulation using plain language techniques. Plain language elements in the proposal include the following:

1. Our section headings are in the form of questions to help direct the readers to specific material they need.
2. We have used personal pronouns to reduce passive voice and draw readers into the writing.
3. We have used active verbs to make clear who is responsible for what actions.

We are interested in your comments on this format, and on the clarity of the proposal.

*3. Section-by-Section Discussion of the Proposals**Section 39.1 What is the purpose of this regulation?*

This section would explain that the purpose of the regulation is to set up FAA's system of airworthiness directives. This would replace similar material found currently in part 39.

Section 39.3 What are airworthiness directives?

This section would explain that airworthiness directives are legally enforceable rules that apply to aircraft products. Further, it would define what products are addressed by airworthiness directives. This material is all similar to that in current § 39.1 and 39.3.

Also, this section would state the conditions under which FAA will issue an airworthiness directive. This material is similar to that found in current § 39.1

Section 39.5 Who must comply with airworthiness directives?

This section would clarify that anyone operating a product listed in an airworthiness directive must comply with the airworthiness directive, and that each flight you take without complying is a separate violation. This material is similar to that in current § 39.3.

Section 39.7 What actions do airworthiness directives require?

This section would identify what actions airworthiness directives can require. This material is similar to that in current § 39.11. As under current 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 requirements, and maintenance program requirements.

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

This section would specify that airworthiness directives are amendments to § 39.13; however they are not codified in the annual edition of the Code of Federal Regulations. Airworthiness Directives are published in full in the **Federal Register**.

Also, we no longer need the reference currently found in § 39.13 to airworthiness directives that were formerly in § 507.10. Current § 39.19 transferred these directives to this section and they are still covered by § 39.19.

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

This section would specify that a product is covered even if it has been modified, altered, or repaired in the area addressed by the airworthiness directive. Further, it would specify that if the change prevents you from complying with the airworthiness

directive, you must ask FAA's permission to use another means of complying, and that your request must include specific actions you propose. Although this material is new to part 39, it currently appears as a note in most individual airworthiness directives.

Section 39.17 May I address the unsafe condition in any way other than that set out in the airworthiness directive?

This section would allow anyone to propose to FAA an alternative method of compliance or a change in the time to comply with an airworthiness directive, as long as the proposal provides an acceptable level of safety. It explains how to ask FAA to approve your proposed alternative. This material is new to part 39 but currently appears in most individual airworthiness directives.

Section 39.19 Where can I get information about any other approved alternative means of compliance that FAA might have approved?

This section would tell you where you can get information about alternative methods of complying with airworthiness directives that FAA has already approved for other certificate holders. This material is new to part 39 but currently appears in most individual airworthiness directives.

Section 39.21 What if I can't get my aircraft to a repair facility within the limits specified in an airworthiness directive?

This section would explain that FAA may issue you a special flight permit, often referred to as a "ferry permit," allowing you to fly your aircraft to a place where you can comply with the airworthiness directive if you cannot do so within the time limits in the airworthiness directive. This material is new to part 39 but currently appears in most individual airworthiness directives.

To ensure aviation safety, this section also would provide that FAA may add special requirements for operating a specific piece of equipment to a repair facility. Furthermore, FAA may specify in particular airworthiness directives that we will not issue special flight permits for products covered by that particular directive. The FAA would take this position when the safety issue addressed by the airworthiness directive was so serious that moving an aircraft to a repair facility would create an unacceptable safety risk. You should also note that even for airworthiness directives for which FAA will generally issue special flight permits, we may decline to do so in individual cases

because of the condition of a specific aircraft.

Section 39.25 What do I do if the airworthiness directive conflicts with the Service Bulletin on which it is based?

This section would clarify that in the case of conflicts between an airworthiness directive and a service bulletin, the airworthiness directive prevails. This material is new to part 39 but currently appears in some individual airworthiness directives.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the 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 proposed 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. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, Regulatory Planning and Review, directs the FAA to assess both the costs and benefits of a regulatory change. We are not allowed to propose or adopt a regulation unless we make a reasoned determination that the benefits of the intended regulation justify the costs. Our assessment of this proposal indicates that its economic impact is minimal. Since its costs and benefits do not make it a "significant regulatory action" as defined in the Order, we have not prepared a "regulatory impact analysis." Similarly, we have not prepared a "regulatory evaluation," which is the written cost/benefit analysis ordinarily required for all rulemaking proposals under the DOT Regulatory Policies and Procedures. We do not need to do the latter analysis where the economic impact of a proposal is minimal.

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

Proposed 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. section 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. 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, in any one year (adjusted for inflation.)

However, for regulations with an expected minimal impact the above-specified analyses are not required. The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that 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 proposed regulation. Since this proposed rule revises part 39 by moving several provisions currently found in many airworthiness directives to part 39, the expected outcome is one of minimal impact. The FAA requests comments with supporting justification regarding the FAA determination of minimal impact.

Regulatory Flexibility Act

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 will have a significant economic impact on a substantial number of small entities. If the determination is that it will, 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 1980 act provides that the head of the agency may so certify and an 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 proposed action simply moves existing provisions from individual airworthiness directives into part 39. As a result, the cost is expected to be minimal. Consequently, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small entities. The FAA requests comments with supporting justification regarding the FAA small business impact determination.

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. In addition, consistent with the Administration’s belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this final rule to be minimal and therefore has 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), enacted as Public Law

104–4 on March 22, 1995, 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) 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. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect 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, we determined that this notice of proposed rulemaking would not have federalism implications.

Plain Language

In response to the June 1, 1998 Presidential memorandum regarding the use of plain language, the FAA re-examined the writing style currently used in the development of regulations. The memorandum requires federal agencies to communicate clearly with the public. We are interested in your comments on whether the style of this document is clear, and in any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at <http://www.plainlanguage.gov>.

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 proposed rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the proposed rule has been assessed in accordance with the Energy Policy and

Conservation Act (EPCA) Public Law 94-163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the proposed rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 39

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to revise part 39 of Title 14, Code of Federal Regulations, to read as follows:

PART 39—AIRWORTHINESS DIRECTIVES

Sec.

- 39.1 What is the purpose of this regulation?
 39.3 What are airworthiness directives?
 39.5 Who must comply with airworthiness directives?
 39.7 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 May I address the unsafe condition in any way other than that set out in the airworthiness directive?
 39.19 Where can I get information about any other means of complying approved by FAA?
 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?
 39.25 What do I do if the airworthiness directive conflicts with the Service Bulletin on which it is based?

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

§ 39.1 What is the purpose of this regulation?

The regulations in this part set up FAA's system of Airworthiness Directives.

§ 39.3 What are airworthiness directives?

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.

§ 39.5 Who must comply with airworthiness directives?

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 flight you make is a separate violation of that airworthiness directive.

§ 39.7 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. The 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, 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 § 39.17.

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

Yes, anyone may propose to FAA another 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.

§ 39.19 Where can I get information about any other means of complying approved by FAA?

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.

§ 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?

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.

§ 39.25 What do I do if the airworthiness directive conflicts with the Service Bulletin on which it is based?

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.

Issued in Washington, DC, on November 29, 2000.

Ronald T. Wojnar,

Acting Director, Aircraft Certification Service.
 [FR Doc. 01-420 Filed 1-11-01; 8:45 am]

BILLING CODE 4910-13-P