

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2009-0240; Directorate Identifier 2009-CE-015-AD]

RIN 2120-AA64

#### Airworthiness Directives; Diamond Aircraft Industries GmbH Models DA 40 and DA 40F Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for the products listed above that would supersede an existing AD. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

A case was reported where the NLG leg of a DA 40 aircraft failed in the area of the nose gear leg pivot axle. The affected airplane was mostly operated on grass runways and used for training operations. The investigation showed that the failure was due to a fatigue crack that had developed in the pivot axle. Subsequent material inspections determined that these cracks may also develop on other aircraft, depending on the type of operation.

This condition, if not detected and corrected, could lead to further cases of NLG failure, possibly causing damage to the aircraft and injuries to occupants. To address and correct this unsafe condition, ACG issued AD A-2005-005 to require repetitive inspections of the NLG leg and, in case cracks are found, replacement of the NLG leg with a serviceable unit. Since that AD was issued, Diamond Aircraft Industries developed a redesigned NLG leg which is not affected by the cracking phenomenon addressed by AD A-2005-005.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by April 17, 2009.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* (202) 493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

#### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

#### FOR FURTHER INFORMATION CONTACT:

Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4145; fax: (816) 329-4090; email: [sarjapur.nagarajan@faa.gov](mailto:sarjapur.nagarajan@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2009-0240; Directorate Identifier 2009-CE-015-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to <http://regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

#### Discussion

On August 10, 2007, we issued AD 2007-17-06, Amendment 39-15164 (72 FR 46549, August 21, 2007). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2007-17-06, Diamond Aircraft Industries developed a redesigned NLG leg that is not affected by the cracking phenomenon addressed in Austro Control, which is the aviation authority for Austria, AD No. A-2005-005, dated November 15, 2005.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No. 2009-0016, dated January 22, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

A case was reported where the NLG leg of a DA 40 aircraft failed in the area of the nose gear leg pivot axle. The affected airplane was mostly operated on grass runways and used for training operations. The investigation showed that the failure was due to a fatigue crack that had developed in the pivot axle. Subsequent material inspections determined that these cracks may also develop on other aircraft, depending on the type of operation.

This condition, if not detected and corrected, could lead to further cases of NLG failure, possibly causing damage to the aircraft and injuries to occupants. To address and correct this unsafe condition, ACG issued AD A-2005-005 to require repetitive inspections of the NLG leg and, in case cracks are found, replacement of the NLG leg with a serviceable unit. Since that AD was issued, Diamond Aircraft Industries developed a redesigned NLG leg which is not affected by the cracking phenomenon addressed by AD A-2005-005.

For the reasons described above, this EASA AD retains the requirements of ACG AD A-2005-005, which is superseded, and excludes aircraft from the applicability that have the improved NLG leg installed.

You may obtain further information by examining the MCAI in the AD docket.

#### Relevant Service Information

Diamond Aircraft Industries GmbH has issued Mandatory Service Bulletin No. MSB40-046/3, No. MSBD4-046/3,

dated November 17, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

**FAA’s Determination and Requirements of the Proposed AD**

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

**Differences Between This Proposed AD and the MCAI or Service Information**

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

**Costs of Compliance**

We estimate that this proposed AD will affect 678 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is \$80 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$54,240, or \$80 per product.

In addition, we estimate that any necessary follow-on actions will take about 5 work-hours and require parts costing \$740, for a cost of \$1,140 per product. We have no way of determining the number of products that may need these actions.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA’s authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. “Subtitle VII: Aviation Programs,” describes in more

detail the scope of the Agency’s authority.

We are issuing this rulemaking under the authority described in “Subtitle VII, Part A, Subpart III, Section 44701: General requirements.” Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD 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.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a “significant regulatory action” under Executive Order 12866;
2. Is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 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. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. The FAA amends § 39.13 by removing Amendment 39–15164 (72 FR 46549, August 21, 2007), and adding the following new AD:

**Diamond Aircraft Industries GmbH:** Docket No. FAA–2009–0240; Directorate Identifier 2009–CE–015–AD.

**Comments Due Date**

(a) We must receive comments by April 17, 2009.

**Affected ADs**

(b) This AD supersedes AD 2007–17–06, Amendment 39–15164.

**Applicability**

(c) This AD applies to the following airplanes that:  
 (1) are certificated in any category; and  
 (2) are not equipped with a nose landing gear (NLG) leg part number (P/N) D41–3223–10–00\_1 or higher ( \_2, \_3, etc.).

Model	Serial numbers (S/N)
DA 40 .....	All S/Ns beginning with 40.006.
DA 40F .....	All S/Ns beginning with 40.F001. All S/Ns beginning with 40.FC001.

**Subject**

(d) Air Transport Association of America (ATA) Code 32: Landing Gear.

**Reason**

(e) The mandatory continuing airworthiness information (MCAI) states: A case was reported where the NLG leg of a DA 40 aircraft failed in the area of the nose gear leg pivot axle. The affected airplane was mostly operated on grass runways and used for training operations. The investigation showed that the failure was due to a fatigue crack that had developed in the pivot axle. Subsequent material inspections determined that these cracks may also develop on other aircraft, depending on the type of operation. This condition, if not detected and corrected, could lead to further cases of NLG failure, possibly causing damage to the aircraft and injuries to occupants. To address and correct this unsafe condition, ACG issued AD A–2005–005 to require repetitive inspections of the NLG leg and, in case cracks are found, replacement of the NLG leg with a serviceable unit. Since that AD was issued, Diamond Aircraft Industries developed a redesigned NLG leg which is not affected by the cracking phenomenon addressed by AD A–2005–005.

For the reasons described above, this EASA AD retains the requirements of ACG AD A–2005–005, which is superseded, and excludes aircraft from the applicability that have the improved NLG leg installed.

**Actions and Compliance**

(f) Unless already done, do the following actions:

- (1) Inspect the nose landing gear (NLG) leg for cracks within the next 12 months after September 25, 2007 (the effective date retained from AD 2007–17–06) or within the next 200 hours time-in-service (TIS) after September 25, 2007 (the effective date retained from AD 2007–17–06), whichever occurs later. Do the inspection following

Diamond Aircraft Industries GmbH Mandatory Service Bulletin No. MSB40-046/1, No. MSBD4-046/1, dated April 25, 2007, or Diamond Aircraft Industries GmbH Mandatory Service Bulletin No. MSB40-046/3, No. MSBD4-046/3, dated November 17, 2008.

(2) If any cracks are found during the inspection required in paragraph (f)(1) of the AD or during any inspection required in paragraph (f)(2)(ii) or (f)(3) of this AD, replace the NLG leg before further flight. Do the replacement following Diamond Aircraft Industries GmbH Mandatory Service Bulletin No. MSB40-046/1, No. MSBD4-046/1, dated April 25, 2007; or Diamond Aircraft Industries GmbH Mandatory Service Bulletin No. MSB40-046/3, No. MSBD4-046/3, dated November 17, 2008.

(i) Replacing a NLG leg with a part number (P/N) D41-3223-10-00\_1 or higher ( \_2, \_3, etc.) terminates the repetitive inspections required in this AD.

(ii) Replacing a NLG leg with a P/N D41-3223-10-00 requires repetitive inspections as specified in paragraph (f)(3) of this AD until a P/N D41-3223-10-00\_1 or higher ( \_2, \_3, etc.) is installed.

(3) If no cracks are found during the inspection required in paragraph (f)(1) of this AD or cracked NLG leg is replaced with a P/N D41-3223-10-00 NLG leg, repetitively inspect thereafter at intervals not to exceed 12 months or 200 hours TIS, whichever occurs later, until a P/N D41-3223-10-00\_1 or higher ( \_2, \_3, etc.) is installed. Do these repetitive inspections following Diamond Aircraft Industries GmbH Mandatory Service Bulletin No. MSB40-046/3, No. MSBD4-046/3, dated November 17, 2008.

(i) If a repetitive inspection occurs before the effective date of this AD, then you may use Diamond Aircraft Industries GmbH Mandatory Service Bulletin No. MSB40-046/1, No. MSBD4-046/1, dated April 25, 2007.

(ii) All inspections that occur after the effective date of this AD must be done following Diamond Aircraft Industries GmbH Mandatory Service Bulletin No. MSB40-046/3, No. MSBD4-046/3, dated November 17, 2008.

(4) After installing a P/N D41-3223-10-00\_1 or higher ( \_2, \_3, etc.) as a replacement part, installing a NLG leg P/N D41-3223-10-00 is no longer allowed.

#### FAA AD Differences

**Note:** This AD differs from the MCAI and/or service information as follows: No differences.

#### Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4145; fax: (816) 329-4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector

(PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

#### Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2009-0016, dated January 22, 2009; Diamond Aircraft Industries GmbH Mandatory Service Bulletin No. MSB40-046/1, No. MSBD4-046/1, dated April 25, 2007; and Diamond Aircraft Industries GmbH Mandatory Service Bulletin No. MSB40-046/3, No. MSBD4-046/3, dated November 17, 2008, for related information.

Issued in Kansas City, Missouri, on March 11, 2009.

**John R. Colomy,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E9-5764 Filed 3-17-09; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

#### 33 CFR Part 334

#### Restricted Areas at Cape Canaveral Air Force Station, Patrick AFB, FL

**AGENCY:** United States Army Corps of Engineers, Department of Defense.

**ACTION:** Notice of proposed rulemaking and request for comments.

**SUMMARY:** The U.S. Army Corps of Engineers (Corps) is proposing to amend the existing regulations at 33 U.S.C. 334 to enlarge an existing restricted area in the Banana River and to establish a new restricted area in the Atlantic Ocean for the Cape Canaveral Air Force Station (CCAFS), located on Patrick AFB, Florida. We are also proposing to remove an existing restricted area in the Banana River at CCAFS. CCAFS Command, located at Patrick AFB, Florida, is responding to Department of Defense (DoD) security assessments which have identified a need for CCAFS to have the capability to secure their shoreline. The proposed enhancement

of these capabilities is necessary to counter postulated threats to CCAFS.

**DATES:** Written comments must be submitted on or before April 17, 2009.

**ADDRESSES:** You may submit comments, identified by docket number COE-2009-0001, by any of the following methods:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*E-mail:* [david.b.olson@usace.army.mil](mailto:david.b.olson@usace.army.mil). Include the docket number, COE-2009-0001, in the subject line of the message.

*Mail:* U.S. Army Corps of Engineers, Attn: CECW-CO (David B. Olson), 441 G Street, NW., Washington, DC 20314-1000.

*Hand Delivery/Courier:* Due to security requirements, we cannot receive comments by hand delivery or courier.

*Instructions:* Direct your comments to docket number COE-2009-0001. All comments received will be included in the public docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](http://www.regulations.gov) Web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. All documents in the docket are listed. Although listed in