

See Part 39.

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Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Agency

[Docket No. 5061; Amdts. 21-3; 39-106]

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

PART 39—AIRWORTHINESS DIRECTIVES

The purpose of this amendment to Parts 21 and 39 of the Federal Aviation Regulations is to remove certain procedural restrictions heretofore imposed on the FAA with regard to the issue of airworthiness directives (AD's). This action was published as a notice of proposed rule making (29 F.R. 6446) and circulated as Notice 64-26 dated May 16, 1964.

That Notice contemplated, first, the nonsubstantive recodification of pertinent Civil Air Regulations and Regulations of the Administrator into the Federal Aviation Regulations and, secondly, deletion of procedural restrictions on the Administrator's authority to issue AD's. The first step was accomplished by amendment published in 29 F.R. 14403, October 20, 1964. This amendment accomplishes the second step.

Part 39 imposes two restrictions on the issue of AD's for unsafe conditions. The unsafe condition giving rise to an AD must (1) have been found as a result of service experience and (2) be with respect to a design feature, part, or characteristic. Both restrictions were originally imposed, prior to the Federal Aviation Act, by the Civil Aeronautics Board (CAB) when it delegated the authority to issue AD's to the Civil Aeronautics Administration (CAA). The Federal Aviation Act of 1958 combined the safety rule making authority of the CAB and CAA and vested it in the FAA and these carried over restrictions are contrary to the intent of that act. This amendment removes the two restrictions from the regulations and will allow AD's to be issued for unsafe conditions however and wherever found.

Most of the comments received in response to the notice of proposed rule making were directed to the remark in the preamble that "an unsafe condition that results from maintenance, as well as one due to a design defect, will be subject to the issuance of an airworthiness directive." The Notice stressed, perhaps unduly, this one cause of unsafe conditions whereas, in actuality, there are many causes. It is clear from the foregoing discussion that the responsibilities placed on the FAA by the Federal Aviation Act justify broadening the regulation to make any unsafe condition, whether resulting from maintenance, design defect, or otherwise, the proper subject of an AD. At the same time the

Agency recognizes that use of AD's to correct improper or inadequate maintenance on the part of particular persons or organizations would impose an unreasonable burden on the vast majority of persons who comply with the regulations and properly maintain their aircraft. The Agency, accordingly, will not issue AD's as a substitute for enforcing maintenance rules. In addition, the present provision that the unsafe conditions must be likely to exist or occur in other aircraft effectively precludes the issue of AD's to correct problems arising from poor maintenance practices on the part of an individual operator.

Two other comments, suggesting that the revised regulations go beyond the minimum standards and reasonable rules and regulations authorized by the Federal Aviation Act, opposed deletion of the restrictions on the ground that the way would thus be open for abuses by individual FAA personnel. This amendment, as such, imposes no additional requirements on anyone. Only when it is implemented through the issue of future AD's will it have any regulatory effect. The issue of AD's is governed by the Administrative Procedure Act and its provisions relating to public notice and procedure. In addition, we agree with the commentators that the Federal Aviation Act of 1958 allows only the issue of minimum standards and reasonable rules and regulations. AD's are no different than the other types of rules issued by this Agency and we cannot and will not issue an AD unless we are convinced that its need and scope are fully justified.

Since service experience would now be only one of several bases that may generate an AD requiring a design change, the § 21.99 catchline is being amended to read "Required design changes."

Interested persons have been afforded the opportunity to participate in making this amendment. All relevant material submitted has been fully considered.

In consideration of the foregoing, Parts 21 and 39 of the Federal Aviation Regulations are amended as follows effective August 13, 1965.

1. By amending the section heading of § 21.99 to read as follows:

§ 21.99 Required design changes.

* * * * *

2. By amending § 39.1(a) to read as follows:

§ 39.1 Applicability.

* * * * *

(a) An unsafe condition exists in a product; and

* * * * *

(Secs. 601 and 603 of the Federal Aviation Act of 1958; 49 U.S.C. 1421 and 1423)

Issued in Washington, D.C., on July 7, 1965.

D. D. THOMAS,
Deputy Administrator.

(As published in the Federal Register /30 F.R. 8826/ on July 14, 1965)