

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Parts 121, 135, and 145**

[Docket No. FAA-1998-4654; Amendment No. SFAR 36-7; Notice No. 98-15]

RIN 2120-AG64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposed rule would amend and extend Special Federal Aviation Regulation (SFAR) No. 36, which provides that holders of authorized repair station or aircraft operating certificates may approve aircraft products or articles for return to service after accomplishing major repairs using self-developed repair data that have not been directly approved by the FAA. Extension of the regulation would continue to provide, for those that qualify, an alternative from the requirement to obtain direct FAA approval of major repair data on a case-by-case basis.

DATES: Comments must be received on or before December 2, 1998.

ADDRESSES: Comments on this proposed rulemaking should be mailed or delivered, in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA-1998-4654, 400 Seventh Street, SW., Room Plaza 401, Washington, DC 20590. Comments may also be sent electronically to the following Internet address: 9-NPRM-CMTS@faa.gov. Comments may be filed and/or examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Carol Martineau, Policy and Procedures Branch, Aircraft Engineering Division, AIR-110, Federal Aviation Administration, 800 Independence Ave., SW., Washington DC. 20591, telephone: (202) 267-9568.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that may result from adopting the proposals in this document are also invited. Substantive comments

should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in triplicate to the Rules Docket address specified above.

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

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Late-filed comments will be considered to the extent practicable. The proposals contained 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-1998-4654." The postcard will be date-stamped and mailed to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703-321-3339), the Government Printing Office's electronic bulletin board service (telephone: 202-512-1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: (800) 322-2722 or (202) 267-5948).

Internet users may reach the FAA's web page at <http://www.faa.gov/avr/arm/nprm/nprm.htm> or the Government Printing Office's webpage at <http://www.access.gpo.gov/nara> for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM 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. Communications must identify the notice number or docket number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Background

The FAA proposes to extend the termination date of and amend Special Federal Aviation Regulation (SFAR) No. 36, which 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 accomplishing major repairs using data developed by the holder that have not been directly approved by the FAA. Currently, more than 25 air carrier and domestic repair station certificate holders have SFAR 36 authorizations that will expire on January 23, 1999.

History

Prior to the adoption of SFAR 36, certificate holders that were qualified to make repairs were required to obtain FAA approval on a case-by-case basis for data they had developed to perform major repairs. The only alternative to the time-consuming, case-by-case approval method was to petition for and obtain an exemption granting relief from the regulation. The number of exemptions being granted indicated that revisions to the regulations were necessary; SFAR 36 was adopted on January 23, 1978, as an interim rulemaking action. Adoption of the SFAR eliminated the requirement for authorized certificate holders to petition for exemption from the regulation, and allowed the FAA additional time to obtain the information necessary to develop a permanent rule change. Most of the affected certificate holders, however, did not use the provisions of SFAR 36 until it was well into its second year and nearing its expiration date of January 23, 1980. Since the FAA did not yet have sufficient data upon which to base a permanent rule change, the termination date for SFAR 36 was extended to January 23, 1982. To date, SFAR 36 has been extended four times.

The Aviation Rulemaking Advisory Committee (ARAC) is currently working on a proposal for permanent regulatory action. By the end of 1998, ARAC plans to submit a proposal to the FAA detailing a means of establishing an Organization Designation Authorization program which would expand and further standardize the approval functions of the FAA designee system. The ARAC recommendation will propose that certain functions and procedures, including those covered by SFAR 36, be terminated and that current authorization holders be allowed to apply for an Organization Designation Authorization. SFAR 36 is being

extended an additional 5 years to allow time for the ARAC proposal to be fully developed and implemented.

Synopsis of the Rule

Section 1

Aircraft "product," "article," and "component" are defined for the purpose of the SFAR. The definitions clarify the scope of an authorization holder's return to service authority.

Section 2

Paragraph (a) of section 2 describes the general provisions of the current SFAR applicable to the individual types of eligible certificate holders. This proposed rule would amend paragraph (a) to reflect changes in the regulations as a result of the Commuter Rule, which became effective on December 20, 1995. Paragraph (b) of section 2 is deleted and reserved to remove references to part 127. Part 127 was removed from the regulations when the Commuter Rule became effective. Paragraph (c) of section 2 states that an SFAR 36 authorization does not expand the scope of authority of a repair station certificate holder; for example, the authorization does not give a repair station return to service authority for any article for which it is not rated, nor can the authorization change the articles a repair station is rated to repair.

Section 3

Section 3 states that an authorized certificate holder may approve an aircraft product or article for return to service after accomplishing a major repair, using data not approved by the Administrator, only in accordance with the amended SFAR. Section 3 requires that the data used to perform the major repair be developed and "approved" in accordance with the holder's authorization and procedures manual. Section 3 also permits an authorization holder to use its developed repair data on a subsequent repair of the same type of product or article. For each subsequent repair, the holder must determine that accomplishment of the repair, using previously developed data, will return the product or article to its original or properly altered condition and will conform to all applicable airworthiness requirements. In addition, each subsequent use of the data must be recorded in the authorization holder's SFAR records.

Section 4

Section 4 describes the procedures for applying for an SFAR 36 authorization.

Section 5

Section 5 identifies the requirements a certificate holder must meet to be eligible for an SFAR 36 authorization. This proposed rule would amend Paragraph (a)(1) to delete the reference to part 127 and section 135.2, which were removed from the regulations when the Commuter Rule became effective on December 20, 1995. Paragraphs (a)(2), (a)(3), and (b) define the personnel required. Paragraph (c) contains the reporting requirement of the current SFAR that pertains to changes that could affect the holder's continuing ability to meet the SFAR requirements.

Section 6

Section 6 describes the requirement for an approved procedures manual and what information the procedures manual must contain. Paragraph (c) of section 6 requires that an authorization holder that experiences a change in procedures or staff obtain and record FAA approval of the change in order to continue to approve products or articles for return to service under the SFAR.

Section 7

Section 7 sets forth the duration of the authorization. All authorizations issued under this SFAR will terminate upon expiration of the SFAR unless earlier surrendered, suspended, revoked, or otherwise terminated. The proposed rule would extend the duration until January 23, 2004.

Section 8

Section 8 prohibits the transfer of an SFAR 36 authorization.

Section 9

Section 9 retains the current inspection provisions. It also emphasizes that the FAA must be able to determine whether an applicant has, or a holder maintains, personnel adequate to comply with the provisions of the SFAR and any additional limitations contained in the authorization.

Section 10

Section 10 states that an SFAR 36 authorization does not expand the scope of products or articles that an aircraft operator or repair station is authorized to approve for return to service.

Section 11

Section 11 contains the provision that each SFAR 36 authorization holder must comply with any additional limitations prescribed by the Administrator and made a part of the authorization.

Sections 12 and 13

Sections 12 and 13 address data review and service experience requirements and record keeping requirements. Section 12 states the circumstances under which an authorization holder will be required to submit the information necessary for corrective action on a repair. Section 13 describes what information an authorization holder's records must contain.

As noted above, the proposed expiration date for SFAR 36 is January 23, 2004. The 5-year extension would allow time for the ARAC to deliberate and forward a recommendation, and time for the FAA to act upon it.

The extension of SFAR 36 would allow uninterrupted major repair activity by the current authorization holders that qualify under the amended SFAR; those authorizations would be extended without the holders reapplying for authorization. The extension would also allow a new, qualified applicant to obtain an authorization.

Paperwork Reduction Act

Information collection requirements in SFAR 36-7 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 and have been assigned the OMB Control Number 2120-0507. The primary purpose of this proposal is to extend SFAR 36. No additional paperwork burden would be created as a result of this proposal.

International Compatibility

The FAA has determined that a review of the Convention on International Civil Aviation Standards and Recommended Practices is not warranted because there is no comparable rule under ICAO standards.

Regulatory Evaluation

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 Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. And fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) 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, the FAA has determined that the extension of Special Federal Aviation Regulation No. 36 (SFAR 36): (1) would generate benefits that justify its costs; (2) Is not a significant regulatory action under section 3(f) of the Executive Order and is not subject to review by the Office of Management and Budget; (3) is not significant as defined in DOT's regulatory policies and procedures (44 FR 11034; February 26, 1979); (4) would not have a significant impact on a substantial number of small entities; (5) would not affect international trade; and (6) does not contain a significant intergovernmental or private sector mandate. These analyses, available in the docket, are summarized below.

Regulatory Evaluation Summary

The proposed rule would continue to allow domestic repair stations, air carriers, air taxis, and commercial operators of large airplanes, who have authority to return products to service, to accomplish major repairs using self-developed repair data that have not been directly approved by the Federal Aviation Administration (FAA). Without extending SFAR 36, authorized firms would likely incur economic hardship.

The extension of SFAR 36 would not impose incremental cost on the industry or on the FAA and would continue to relieve authorized firms of the economic burden of obtaining FAA approval for data developed by the firms for major repairs. The benefit of the proposed rule is that it allows the firms currently operating under the provisions of SFAR 36 to continue to do so, thereby avoiding the costs which would be incurred if SFAR 36 were to expire before a final rule were implemented. Thus the rulemaking imposes no incremental costs and has positive nonquantifiable benefits.

Because the proposed rule has no costs and positive, although not quantifiable, benefits, the FAA has determined that the benefits of the proposed rule exceed the costs of the proposed rule.

Initial Regulatory Flexibility Determination

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 a 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.

As explained above, there are no incremental costs associated with the proposed extension of SFAR 36. Consequently, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

Consistent with the Administration's belief in the general superiority, desirability, and efficacy of free trade, it is the policy of the Administrator 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 those affecting the import of foreign goods and services into the United States.

In accordance with that policy, the FAA is committed to develop as much as possible its aviation standards and practices in harmony with its trading partners. Significant cost savings can result from this, both to American companies doing business in foreign markets, and foreign companies doing business in the United States.

This rule is available to and affects only domestic repair firms. Therefore there will be no impact on international trade.

Federalism Implications

The regulations proposed herein would 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 proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104-4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of \$100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

The FAA determines that this rule does not contain a significant intergovernmental or private sector mandate as defined by the Act.

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 Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR parts 121, 135, and 145 as follows:

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, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 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), 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. Amend Special Federal Aviation Regulation No. 36 by revising paragraphs 2(a), 3(a)(1), paragraph 5(a)(1), and 7; and by reserving paragraph 2(b) and by revising the termination date to read as follows:

SFAR No. 36

* * * * *

2. *General.* (a) Contrary provisions of § 121.379(b) and § 135.437(b) of this chapter notwithstanding, the holder of an air carrier certificate or operating certificate, that operates large aircraft, and that has been issued operations specifications for operations required to be conducted in accordance with 14 CFR part 121 or 135, may perform a major repair on a product as described in § 121.379 (b) or § 135.437(a), using technical data that have not been approved by the Administrator, and approve that product for return to service, if authorized in accordance with this Special Federal Aviation Regulation.

(b) [Reserved]

* * * * *

3. *Major Repair Data and Return to Service.* (a) * * *

(1) Has been issued an authorization under, and a procedures manual that complies with, Special Federal Aviation

Regulation No. 36–7, effective on January 23, 1999;

* * * * *

5. *Eligibility.* (a) * * *

(1) Hold an air carrier certificate or operating certificate, operate large aircraft, and have been issued operations specifications for operations required to be conducted in accordance with 14 CFR part 121 or 135, or hold a domestic repair station certificate under 14 CFR part 145;

* * * * *

7. *Duration of Authorization.* Each authorization issued under this Special Federal Aviation Regulation is effective from the date of issuance until January 23, 2004, unless it is earlier surrendered, suspended, revoked, or otherwise terminated. Upon termination of such authorization, the terminated authorization holder must:

* * * * *

This Special Federal Aviation Regulation terminates January 23, 2004.

Issued in Washington, DC, on October 27, 1998.

Frank P. Paskiewicz,

Acting Director, Aircraft Certification Service.
[FR Doc. 98–29300 Filed 10–30–98; 8:45 am]

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