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FAA Policy Statement: Safety—A Shared Responsibility—New Direction for Addressing Airworthiness Issues for Transport Airplanes; Fuel Tank Safety Compliance Extension and Aging Airplane Program Update; Final Rules

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. FAA–2004–17681]

FAA Policy Statement: Safety—A Shared Responsibility—New Direction for Addressing Airworthiness Issues for Transport Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Policy statement.

SUMMARY: This document sets forth the Federal Aviation Administration's (FAA) policy concerning the shared responsibility between design approval holders (DAHs) and operators in achieving certain types of safety objectives. It also provides guidance on the use of DAH requirements to support these safety objectives. This policy statement is intended to further clarify when and how the FAA will use DAH requirements in the future to address certain airworthiness issues for transport airplanes.

DATES: This policy is effective July 12, 2005.

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SUPPLEMENTARY INFORMATION:

Background

As the FAA looks toward the future, we see a need for a new regulatory approach to addressing airworthiness issues in the existing fleet of transport airplanes. As the fleet ages and new designs become more technologically advanced, resolving emerging safety issues has become more complex. This complexity is compounded by the large number of airplanes in the existing fleet, with their many variations in configuration, and the varying kinds of operations authorized under the FAA's operational and flight rules. We are also finding that new technologies are now available, in some cases, to address safety issues that in the past could not be practically resolved.

In our effort to be more effective, we have reviewed our regulatory approach, as well as the performance of the affected aviation industry, in achieving national safety objectives. When the FAA determines that the level of safety for the existing fleet is unacceptable, we have two alternative courses of action:

- For those safety concerns related to a specific type of airplane model, the FAA declares an unsafe condition and requires actions through an airworthiness directive (AD) to achieve an acceptable level of safety.
- When establishing a new safety standard of general applicability (*e.g.*, all air carrier operations, large transport airplanes), the FAA issues general rulemaking that applies to future new designs, new production, the existing fleet (retrofit), or a combination of these, as appropriate.

We consider these two alternatives to be complementary tools. The appropriate alternative depends on the nature and extent of the safety issue. In either case, the FAA assesses the impact and solicits public comment on our proposed actions (except in emergency situations) before implementation.

When general rulemaking has been necessary to address fleet-wide safety issues, our practice has been to issue rules requiring action by the airplane operator. That practice relied on voluntary support from the design approval holders (DAH) to provide data and documents needed to support operator compliance. This approach has generally been successful. DAHs and operators have recognized they have a shared responsibility on certain safety issues, as reflected in the numerous rulemaking advisory committee recommendations transmitted to the FAA that affect continued airworthiness. However, this recognition did not necessarily ensure that information required by operators, such as service bulletins or maintenance or inspection procedures, would be provided in a timely manner.

On occasion, adopting airworthiness requirements only through operational rules has imposed an inappropriate burden on operators. In those cases, the expected support from the DAHs was not timely or consistent. Consequently some operators were unable to comply with the operational rule by the compliance deadline, or incurred substantial unexpected costs to comply. For example, in the program to reinforce flight deck doors, most operators had substantially less than the one year, that we originally anticipated as necessary, to modify their fleet. In the class D to class C cargo compartment conversion program, one type certificate holder did not develop the necessary modifications on time for operator compliance. Also, during this program a number of operators experienced frequent failures of modification parts, a lack of parts and a lack of technical support from several holders of supplemental type certificates.

The FAA concludes that, to achieve our safety objectives, DAHs and operators must have a shared responsibility on certain safety issues affecting the existing fleet. We also conclude, from reviews such as the Commercial Airplane Certification Process Study (March 2002), that we need to facilitate more effective communication of safety information between DAHs and operators. As both technology and airworthiness issues become more complex, certain fleet-wide safety issues require that the FAA take a new approach to facilitate their timely resolution. This new regulatory approach involves implementing complementary requirements for DAHs and operators, when appropriate. This approach was summarized in the Fuel Tank Safety Rule Compliance Extension and Aging Airplane Program Update published in the **Federal Register** on July 30, 2004 (69 FR 45936). We are publishing a document addressing the comments from that notice in this issue of the **Federal Register**.

Policy Statement

Based on our evaluation of more effective regulatory approaches for certain types of safety initiatives and the comments received from the Aging Airplane Program Update (July 30, 2004), the FAA has concluded that we need to adopt a regulatory approach recognizing the shared responsibility between DAHs and operators.[1] When we decide that general rulemaking is needed to address an airworthiness issue, and believe the safety objective can only be fully achieved if the DAHs provide operators with the necessary information in a timely manner, we will propose requirements for the affected DAHs to provide that information by a certain date.

In applying this policy, we will consider the following factors when determining if DAH requirements are needed to support the safety objective:

- *The complexity of developing data and documents to address the safety issue:*[2] Type design data analysis is necessary for the timely, efficient development of necessary data and documents.
- *The need for FAA-approved service instructions to be available in a timely manner:* We need to be confident that when the required data and documents are provided, they will be acceptable,

[1] This policy will not affect the FAA's process for determining when and under what circumstance it is appropriate to issue ADs.

[2] This consideration will also address the potential for a readily identifiable third party to develop the complex data and documents in time to achieve compliance.

are available on time, and can be readily implemented by the operators to comply on large fleets of airplanes.

• *Whether a number of different types of transport airplanes need similar safety improvements:* Because the safety issue is common to many airplanes, we need to ensure that technical requirements and compliance process are consistent to ensure required safety level can be achieved equitably.

• *The safety objective needs to be maintained for the operational life of the airplane:* We need to ensure that future design changes do not degrade the achieved level of safety in the fleet.

• *Additional factors relevant to the safety objective being addressed:* There may be other factors that are unique to a particular safety concern that we also need to consider.

When the FAA takes this regulatory approach to implementing actions necessary for safety through complementary operational and DAH requirements, we will:

• Publish a notice of proposed rulemaking for public comment.

• Provide the rationale for adopting requirements for both the operators and DAHs.

• Identify the affected airplane models and types of operations.

• Define the specific information that must be developed and made available.

• Provide technical information in the rule when it is necessary for compliance.

• Identify processes and procedures for implementation of safety related actions.

• Specify the appropriate compliance times to allow for all of the design, certification, and implementation activity to occur.

• Consider the economic impacts to all affected parties and ensure that the safety benefits are sufficient to warrant the costs.

• Publish the proposed guidance materials associated with the safety initiatives concurrently with the rulemaking proposals, or as soon after as possible. This will enable industry to evaluate all of the related materials as soon as they are available and provide comprehensive comments to the FAA. For any materials that are not available during the comment period on the NPRM, we will provide a separate comment period for the proposed guidance.

• Identify training requirements.

• Seek information from industry to gain a full understanding of these considerations when developing our proposal.

This policy is based on the need to ensure there are acceptable data and documents available in a timely manner to support operator compliance with the related operational rules. The FAA understands that in some cases where airplane modifications are required, third parties may be able to offer engineering support for compliance with the operational rules. However, the FAA believes that requirements for DAHs may still be necessary because DAHs have all of the original data (analysis, models, test results, service experience, etc.) necessary to evaluate their current designs and develop modifications or programs that will enable them to show compliance in a timely way. In addition, these rules may also include production cut-in requirements, so DAHs would have to develop designs to comply with those requirements anyway.

This policy builds on current regulations (14 CFR 21.50 and 21.99) that require DAHs to ''make available'' certain service information that is necessary to maintain the airworthiness of airplanes. The FAA understands that data and documents, such as airplane maintenance manuals, structural repair manuals, service bulletins, etc., and support are part of some purchase contracts between DAHs and operators. In each case, the DAH would be required to ''make available'' the service information developed under a DAH requirement. Since current business relationships are structured to comply with this existing long-standing requirement, we do not anticipate any disruption in these relationships as a result of the DAH requirements. The requirement to ''make available'' does not preclude the DAH from charging for these data and documents.

In adopting this policy, we do not intend to limit the flexibility that a DAH has to contract with a third party to provide a means of compliance with a DAH requirement. This type of business arrangement has been used by DAHs to provide customer support for modifications associated with both required and voluntary configuration changes. If a DAH does rely on third parties, the DAH would still remain fully responsible for ultimate compliance with the requirement.

Under this policy, we will continue to the hold the affected operators responsible for implementing actions necessary for safety. In the event the DAH no longer exists and, therefore, cannot provide the required support, the operator still has the responsibility for complying with the operational rule on time. The operator must work to contract with a party capable of providing the needed support, or potentially remove airplanes from service.

Under this policy, we would not make DAHs responsible for addressing safety problems related to airplane configurations for which they are not the design approval holder. They would not be expected to provide data and documents related to modifications developed by third parties or operator-developed repairs and alterations. However, they may be required to provide guidance on how to assess the effects of those kinds of changes on the DAH's design.

Regulations applying this policy will contain additional features that will help ensure that the required safety related actions are acceptable and available on time for implementation by the operator. A requirement for compliance planning by the DAHs will be an integral part of this new approach to ensure that the DAH and the FAA have a common understanding of how the DAH intends to comply. The FAA is committed to assuring the proposed requirements of this new approach are complied with so that the safety objectives are achieved on time. This approach will also promote the development of consistent and standardized safety related actions.

As previously discussed, this policy statement is the cumulative result of past experience and in-depth reviews of past efforts to ensure the safety of the fleet through the certification and continued airworthiness processes. The FAA concludes that, under the circumstances described above, this new regulatory approach is necessary for safety and provides an efficient and cost effective strategy for addressing complex airworthiness issues in the future.

Issued in Washington, DC on July 6, 2005.

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Associate Administrator for Aviation Safety.

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