

SUMMARY SHEET – Part 39 Proposal
Airworthiness Directive Implementation Aviation Rulemaking Committee
FAA Organization/Procedures

Primary Report and Recommendation	Review Part 39.7 & 39.9 and if necessary revise to clarify that AD compliance is an action required of the operator; Recommendation No. 12
Secondary Report and Recommendation	None.
Assigned Members	Sarah MacLeod (ARSA) (POC) Doug Anderson (ANM-7) Steve Jones (AA) Chuck Heald (Boeing) Keith Johnston Steve Fox (AIR) Lynn Pierce (AFS) Ken Kerzner (AFS) Steve Edgar (AIR)
Links to Other Working Groups	Service Information (T2, R1); AD Implementation (T2, R11)
Date to Sent to ARC	September 9, 2010; January 6, 2011
Date of ARC Approval	3/9/11

WORKING GROUP REVIEW OF ISSUE/PROBLEM

Summary of the Issue

Section 39.7 states “[a]nyone who operates a product that does not meet the requirements of an applicable airworthiness directive is in violation of this section.” This language mandates both action by the operator and continued compliance with the Airworthiness Directive requirements (e.g., “configuration”).

Section 39.9 does not impose requirements; rather, it is an explanatory section that emphasizes the impact of non-compliance. It was added to the final rule as a result of comments that the proposed version combined compliance and non-compliance issues in one heading (proposed section 39.5, final version is section 39.7). The final rule stated that the agency added section 39.9 “to refer to § 39.7, which is the rule that operators will violate if they fail to operate or use a product without complying with an AD that applies to that product.”

The CRT recommendation seems to be based upon the change of words in the regulations to accommodate the agency’s directive to write rules using “plain language”. These changes unfortunately, have created more confusion rather making the regulations more clear.

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However, the agency does have the authority to provide reasonable interpretations of its rules. In this case, the agency indicated both in the Notice of Proposed Rulemaking and specifically stated in the Final Rule that the rewording of part 39 did not introduce any new regulatory requirement. There was no change the FAA’s legal authority or general interpretation that once an AD is applied to a product, it must be operated in conformity to that AD on every flight.

The recommendation may also have been precipitated by instances where the operator believed it was in compliance with an AD, but were subjected to extreme scrutiny with respect to minor deviations from the specific instructions in the service bulletin incorporated by reference.

Summary of Discussions

The FAA’s internal analysis of this recommendation is attached to this report as Appendix B; the appendix is retained for information and as a record of the agency’s internal discussions. Subsequently, the FAA Organization/Procedures AD ARC Working Group analyzed the recommendation to produce an initial report. The Working Group spent considerable time discussing the CRT recommendation and expressing its own opinions regarding the reasons the proposal was made.

Rewriting of part 39 in “Plain Language”

Working group members expressed opinions regarding the verb usage and tense in the current “plain language” version of part 39. The sections that are particularly troublesome are presented below, with the “old” version (where applicable) in italics.

- (1) Section 39.11 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.

Section 39.11 Applicability. This subpart identifies those products in which the Administrator has found an unsafe condition as described in Sec. 39.1 and, as appropriate, prescribes inspections and the conditions and limitations, if any, under which those products may continue to be operated.

The opinion was expressed that a reasonable interpretation of the language directing action to “resolve an unsafe condition”, limited the agency from requiring actions that did not relate to correcting the identified unsafe condition. In other words that an AD is limited to those tasks that resolve the unsafe condition, whether the tasks are explicitly listed in the AD or part of a referenced service bulletin (SB).

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The opinion was expressed that this section is merely descriptive of the types of actions required by ADs; it neither imposes obligations on the operator nor limits the FAA’s authority in issuing ADs.

- (2) Section 39.9 What if I operate an aircraft or use a product that does not meet the requirements of an airworthiness directive? If the requirements of an airworthiness directive have not been met, you violate § 39.7 each time you operate the aircraft or use the product.

Extensive discussion on this section revolved around the use of plain language.

The minority position was that the use of the words “have not been met” indicated that “if” the unsafe condition was indeed fixed at a moment in time, this section of the regulations did not apply. In other words, if the AD was at one time complied with as required by section 39.11, this section could not be applicable. The conclusion of the position was this regulation pointed to a specific moment in time, i.e., once the unsafe condition was corrected, the regulation no longer applied, even if the product was determined to be contrary to the requirements of the AD at a later time. If the product was operated “out of configuration”, the section 43.13(b) would be violated, not section 39.7.

The opposing majority position is that language of section 39.7 (as well as its earlier version, i.e., section 39.3) imposes an operational mandate that the requirements of the AD be maintained for each operation occurring after the actions required by the AD are accomplished. It was pointed out that this legal effect was recognized by the CRT in its Finding and Recommendation #11. In other words, this section simply stresses that, for continuing operations of products that do not comply with ADs, each flight is a separate violation. The emphasis on verb tense is misplaced; if a product once complied, but for whatever reason no longer complies, the requirements of the AD “have not been met” when the product is operated.

See Appendix C for the full text of the position on the plain language issue and the FAA’s response.

- (3) Section 39.7 What is the legal effect of failing to comply with an airworthiness directive? Anyone who operates a product that does not meet the requirements of an applicable airworthiness directive is in violation of this section.

Section 39.3 General. No person may operate a product to which an airworthiness directive applies except in accordance with the requirements of that airworthiness directive.

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This section was not discussed with as much vigor as section 39.7; the language in both the old and new version indicates that the product must comply with the AD whenever it is operated or a violation will result.

Difficulty of Determining Compliance

Industry Working Group members expressed frustration and dismay over the extraordinary scrutiny regarding “compliance” with material in service bulletins (incorporated by reference in ADs) that did not have any impact on correcting the unsafe condition. Examples ranged from typographical errors to providing incorrect methods for obtaining access to an area that needed inspection. It was pointed out, however, that operators’ deviations from referenced service bulletins have resulted in failure to correct the unsafe condition(s). The determination of whether a particular action described in the referenced service information is required must be based upon the specific action required by the AD.

An opinion was expressed that if the method of compliance contained information that was not necessary to correct the unsafe condition, the agency may be promulgating a rule that is beyond the stated purpose of part 39. While the section relied on (i.e., § 39.11) describes the content of ADs, it does not limit the FAA’s general rulemaking authority, as defined in 49 U.S.C. 44701. The Working Group did urge the agency to consider the implication of having to obtain an alternative means of compliance (AMOCs) for such unintended matters, particularly the burden on the certificate holders, the Aircraft Certification Service, designees and the FAA-ASIs responsible for oversight.

The Working Group believed that while better written service instructions may eventually solve the issue of having to obtain an AMOC for typographical and other errors, there is an immediate need to quickly determine whether the operator can in fact follow the AD’s means of compliance. If there was an ability to determine that the method contemplated or used was indeed “in accordance with” the AD’s means of compliance, it would/could reduce the number of AMOCs and reduce the fear of finding non-compliance over unintended matters. The Means of Compliance (MOC) process proposed below is intended to address this need.

The Working Group noted that some key issues regarding determining compliance have been tasked to other working groups, namely, the development of better service information and airworthiness directives as well as processes for compliance planning.

The Working Group noted that there is a need to understand exactly what is required by the AD versus the information that is contained in a referenced service document. Often, there is information contained in a referenced service document that is not required by the AD,

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however, in some cases, the industry and the FAA are finding it difficult to distinguish those items sufficiently.

Design Changes In Production Aircraft versus In-Service Aircraft

The Working Group discussed the difference in regulatory treatment between an aircraft that has had design changes incorporated during production and an aircraft that has been modified in accordance with an AD to incorporate the same design change.

In the first instance, an air carrier's maintenance program manages any "deviations" from the configuration as well as the continued airworthiness (maintenance) of that change under 14 CFR section 43.13, while in the latter instance, "deviations" must be handled through the AMOC process.

An AD is a rule that is promulgated as a "stand alone" requirement which, in essence, changes the "approved design" of aviation products and appliances. For example, if an AD requires the removal and replacement or alteration of an article, the previous article's configuration is no longer eligible for installation, i.e., if it was installed, the product or appliance would no longer meet an approved design. Similarly, if an AD required an inspection at specified intervals, missing an interval would render the aircraft unairworthy since it would not be in a condition for safe operation, i.e., the inspection is required to determine that it remains in a safe condition. The AD-required inspection has the same legal effect as an airworthiness limitation approved as part of the aircraft's type design.

When an aircraft (or other product) is released from a production approval holder's (PAH) quality system, it must conform to its approved design and be in a condition for safe operation (see, 14 CFR section 21.165(b), "new" section 21.146(c)). This would include any type design changes whether initiated voluntarily by the design approval holder or required by the FAA (see, 14 CFR sections 21.95, 21.97 and 21.99).

All maintenance and alteration activities must be accomplished under part 43. Section 43.13 requires maintenance to be performed in accordance with methods, techniques and practices acceptable to the FAA (usually, the maintenance instructions or ICAs from the design/production approval holder) and the work performed must return the article (aircraft) to at least its original (or properly altered) condition. Therefore, in order to ensure compliance with either the "original" configuration of the production certificate holder or an AD mandated configuration, the operator must ensure its maintenance program is returning the aircraft to at least its original or properly altered (i.e., an airworthy) condition.

If the design, i.e., configuration, of the production aircraft did not include an article prohibited by an AD (e.g., the AD did not apply because the type design was changed and excluded the

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prohibited article), the “original” condition of the aircraft would not allow the prohibited article’s installation during maintenance activities because it would not return the article to at least its original condition. Furthermore, the installation of a prohibited (unsafe) article could not be considered “properly altered” under part 43 because it would not meet its approved design.

The difficulty with these distinctions may be addressed by enhancing the use of 14 CFR section 21.50 relating to issuing and updating instructions for continued airworthiness. Whenever a major change to type design is introduced, especially one that is the basis for an AD, the design approval holder should ensure that “mandatory” configuration or inspection action is noted in revisions to maintenance documents.

Maintenance after Terminating Action (“Post-Modification Maintenance”)

There were discussions of whether the product or article could return to the operator’s maintenance program (i.e., be maintained or altered under part 43) after a terminating action was accomplished.

Examples included:

- An AD provides the option of inspection every 1000 flight hours or replacement as a “terminating” action. The operator “terminates” the inspection requirement by performing the replacement and returns to the “original” program of inspection every 2500 flight hours.
- An “initial” AD requires an inspection of an aircraft structural element every 2500 flight hours and if cracking is found the operator must obtain an “approved” repair from the design approval holder; a superseding AD allows replacement as a “terminating action”. After the operator replaces the structural element, the inspection interval goes back to the “original” 5000 hours and if abnormalities are found, they are repaired in accordance with the structural repair manual.
- The AD requires modification of a component to a fuel system, after the modification is accomplished, the subsequent maintenance and/or alteration actions are accomplished in accordance with the component maintenance manual at the intervals (or on condition) specified by the carrier’s maintenance program.
- The examples were carefully vetted as “terminating” actions, in other words, the AD language specifically used the word “terminate”, “terminating” or “terminated”. In all these cases, the operating community members believed that the aircraft or component could be maintained “normally” (under part 43) after the unsafe condition was corrected. The FAA took varying positions “depending” upon the AD “requirements”.

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To the operator community, the word “terminate” means end; it is hard for the certificate holders to understand any other result. If the AD allows (or requires) replacement as a “terminating” action, the AD should be complete and no further action under the AD should ever be required. Other actions may be prohibited, for example, the prohibited configuration cannot be reintroduced. However, unless there are specific follow-on requirements specified in the “terminating action”, e.g., all repairs to this area must always be approved by the design approval holder, then terminating must mean end.

On the other hand, the FAA pointed out that the phrase “terminating action” is used in ADs to refer to actions that terminate repetitive actions or on-going requirements specified in other provisions of the AD, such as repetitive inspections or AFM limitations. It does not “terminate” the requirement for the operator to comply with § 39.7, i.e., to operate the aircraft in accordance with the AD-mandated configuration. Particularly in cases where the unsafe condition addressed by the AD is the result of “normal” maintenance actions that had previously been considered acceptable (e.g., many wiring ADs), a contrary result would allow reintroduction of the unsafe condition, which would be contrary to the intent of the AD and part 39.

REGULATIONS AND GUIDANCE IDENTIFIED FOR REVIEW

- (1) Previous version of part 39 and related preamble language to the NPRM and final rule
- (2) Current version of part 39 and related preamble language to the NRPM and final rule
- (3) Order 1000.36 – FAA Writing Standards
- (4) Order 8110.103 – Alternative Means of Compliance
- (5) Order 8110.54 – Instructions for Continued Airworthiness Responsibilities
- (6) IR-M-8040.1 – Airworthiness Directive Manual
- (7) AD Templates (FAA internal forms)
- (8) AC 39-7C – Airworthiness Directives
- (9) AC 120-16 – Air Carrier Maintenance Programs
- (10) AC 120-79 – Air Carrier Continuing Analysis and Surveillance System (CASS)
- (11) AC 120-77 – Maintenance and Alteration Data
- (12) www.plainlanguage.gov

WORKING GROUP PROPOSAL TO ADDRESS THE RECOMMENDATION(S)/FINDING(S)

There is no need to revise part 39 to deal with this issue; therefore the recommendation is closed.

The Working Group did develop recommendations for consideration by the ARC to resolve and/or avoid any misunderstandings regarding the legal effect of ADs and to address the industry concerns underlying Recommendation 12.

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- Develop a means to apply the work of the Service Information Working Group to existing ADs. We believe that once the Service Information Working Group identifies the methodology for ensuring service information clearly distinguishes between those actions that are critical and those for which operators should be provided flexibility, the same guidance could then be applied to existing AD referenced service bulletins. This approach would be appropriate for ADs that operators consider overly prescriptive and would be adopted by mutual agreement of affected operators and design approval holders. The affected operators and design approval holders could work to revise troublesome service bulletins. These revised service bulletins could then be approved as global AMOCs.
- Develop a “Means of Compliance” (Appendix D) request form to help determine whether an AMOC is necessary for obvious typographical errors, missing or extra steps in a referenced process that make it impossible to complete without filling in or ignoring the steps, and other limited circumstances where referenced service information is erroneous.
- Develop the ability to post general descriptions of AMOCs, stating whether each contains proprietary information but without revealing that information, so that the public is aware of the existence and can efficiently seek copies of non-proprietary AMOCs and the FAA can eliminate some duplicative efforts.
- Develop a legal opinion on the meaning of the questionable sections in part 39 so that the concerns expressed by the CRT can be couched in the proper context. The concerns raised by the CRT involved the use of the plain language in the regulations as well as the perceived inability to place an aircraft back into a regular maintenance program once an AD was required. The FAA’s position is that section 39.9 merely explains the legal effect of any operation of a product in violation of an AD; and section 39.7 is the one violated when an aircraft is operated “that does not meet” the requirements of an AD. Some industry representatives have taken the position that section 39.9 means that, once an action required by the AD has been taken, part 39 would no longer apply. Rather, any operations taken after the date that the AD action was accomplished would be subject to scrutiny under parts 43 and the operating rules (parts 91, 121, 129, 135, et.al.) for failure to operate an aircraft in an airworthy condition. A formal legal interpretation from the FAA would resolve these issues. The request for a legal opinion that was submitted on September 1, 2010, from AFS-301 to AGC-200 is attached as Appendix E.
- To address the issues discussed under the headings, “Design Changes In Production Aircraft versus In-Service Aircraft” and “Maintenance after Terminating Action (“Post-Modification Maintenance), the FAA should ensure that manufacturers develop and provide instructions for continued airworthiness (ICA) for all design changes mandated by AD. It should also ensure that these ICA are referenced in the service information describing the design change as acceptable maintenance procedures so that their use does not require AMOC approval. In addition, the FAA should evaluate whether other methods, techniques, and practices that would normally be acceptable under an operator’s maintenance program are acceptable for maintaining the AD-mandated configuration. If

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so, either the service information referenced in the AD or the AD itself should explicitly allow them so that AMOC approval is not required.

ALTERNATIVES CONSIDERED

The working group contemplated requesting a change to part 39. However, after considerable discussion, the majority voted not to request a rule change.

The member that dissented believes a rule change is necessary, if the supposition of Recommendation 12 was not accepted by the committee, i.e., that AD compliance is an action required of the operator; it is not necessarily determined by a strict comparison of the aircraft to AD-specified configurations.

IMPLEMENTATION PLAN

Since the Working Group determined that a rule change is not necessary, an implementation plan is unnecessary.

However, to address the underlying concerns that led to the CRT's Recommendation 12, the ARC can request that the following recommendations be implemented through revisions to relevant orders and ACs. Specifically:

- Order 8110.103 should clearly indicate when an AMOC is not required. Specifically, if an ACO determines that a proposed AMOC is unnecessary (i.e., because the request identifies a method of compliance rather than an alternative method of compliance), it should deny the AMOC request.
- AC 39-7C should clearly indicate when compliance has been achieved and how to determine when steps in a service bulletin are mandatory versus those that are merely recommendations of how to proceed to the mandatory actions. While the AC cannot provide detailed guidance for individual ADs, it should discuss the way ADs reference service bulletins and describe the ways in which ADs and service bulletins distinguish between required actions and guidance material (as defined in the recommendations of the SIWG and ADWG).
- AC 120-16E should clearly indicate how the operator can distinguish between means of compliance activities therefore when an AMOC is or is not needed. This guidance should be consistent with Order 8110.103.
- AC 120-79 should insure that the information provided on AD compliance is exactly the same as in the previously listed documents.
- Order 8110.54 should indicate that when a design change has been required by an AD or is AD related, that the service information must clearly indicate the prohibited or required post-modification maintenance actions (or at least reference the AD) so that AMOCs are not required for such actions that are acceptable.

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- AD templates and instructions for their use should ensure that means of compliance are clearly defined so that a determination of whether an AMOC is needed can be made in a more concise and standardized manner.
- IR–M–8040.1 – Re-instate ADAPT and IDAPT Procedures defined in IR–M–8040.1, as per section 9. Section 9 instituted communication avenues that have not been followed. The communication channels and exchange of information would allow the ADAPT team to monitor the AD process on a national basis and thereby fulfill the charter of the ADAPT and IDAPT procedures. In other words, without all the representatives identified in section 9, the team is incomplete and contrary to establishing effective communications.

Note: Recommendation 1 and 11 are interrelated to Recommendation 12, therefore any actions taken based upon this recommendation should be coordinated with the Service Information (Rec. 1) and AD Implementation (Rec. 11) Working Groups. When the implementation plans for those recommendations are finalized, the suggestions made in this document need to be reviewed.

DAHs and air carriers may be required to revise their procedures and manuals to implement the recommendations [timelines and resources to be defined by the ARC].

ASSUMPTIONS/CONSTRAINTS

Success of the suggestions is largely dependent on design approval holder (DAH) and operator implementation of recommendations 1 and 11, respectively. It also depends on aircraft certification office (ACO) and certificate holding district office (CHDO) awareness and oversight of regulatory requirements for all certificate holders involved in the development and implementation of ADs.

ISSUES FOR WORKING GROUP CONSIDERATION

See assumptions/constraints

ISSUES FOR ARC CONSIDERATION

The working group requests that the ARC review the recommendations listed under both the Working Group Proposal to Address the Recommendation(s)/Findings and the Implementation Plan of this report. If the ARC agrees with any recommendation, it can direct that the appropriate group incorporate those changes in the appropriate document or report.

FINDING No. 12

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The Team found that the amended regulatory language in §§ 39.7 and 39.9 could be interpreted as requiring every element of every applicable AD to be in strict compliance with the mandated configuration on every flight. This finding adds emphasis to (1) the need for ADs and service instructions incorporated by reference in ADs to clearly state the safety intent and instructions essential to meeting that intent, (2) the use of professional judgment in compliance determinations, and (3) measures to better plan and monitor AD compliance.

RECOMMENDATION No. 12

The FAA should review §§ 39.7 and 39.9, and, if necessary, revise those sections to clarify that AD compliance is an action required of the operator; it is not necessarily determined by a strict comparison of the aircraft to AD-specified configurations.

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APPENDIXES

Appendix A – Excerpts from FAA Documents Regarding “Deviations” from AD Requirements

AC 39-7C (11/16/1995), par. 12

12. ALTERNATIVE METHODS OF COMPLIANCE. Many AD's indicate the acceptability of one or more alternative methods of compliance. Any alternative method of compliance or adjustment of compliance time other than that listed in the AD must be substantiated and approved by the FAA before it may be used. Normally the office or person authorized to approve an alternative method of compliance is indicated in the AD.

AC 120-77 (10/7/2002), paragraph 6

a. In several situations, prior approval must be obtained from the Administrator before a certificate holder or a repair station may implement changes to documents that are required by the regulations. For example, changes to Airworthiness Directives (AD) may not be made without the prior approval of the Administrator. Typically, this means that an alternative method of compliance (AMOC) must be obtained from the Aircraft Certification Office (ACO) or other designated FAA office. This is because Part 39, section 39.3 requires the operator of any product to which an AD applies to comply with the provisions of an AD. The AMOC procedure is incorporated into an AD; therefore, complying with an AMOC constitutes compliance with the AD. The aircraft manufacturer may have made arrangements for some of its DERs to approve repairs as an AMOC for an AD.

AC 120-16, chapter 8, section 808

a. A new section is needed to address ADs and AMOCs and compliance planning.

Order 8110.103 (9/28/2007), Appendix A

Appendix A. Questions from AMOC Requesters

1. Service Documents in ADs.

a. I converted the AD and the referenced instructions in the referenced service document to an in-house fleet campaign notice, engineering change order, or individual work cards. Do I need an AMOC?

No, if you transfer the AD language to your own in-house instructions and those instructions precisely represent all of the AD requirements and compliance times.

b. I complied with the referenced instructions in the service document revision referenced in the AD before the AD was issued. Do I need an AMOC?

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Maybe. If the AD specifically allows previously accomplished work, you don't need an AMOC. If it is unclear whether the work done prior to the AD is acceptable, contact the office that issued the AD.

c. Do I need an AMOC if I accomplish the instructions in a later version of the DAH service document referenced in the AD?

Yes, any deviations from the technical requirements of the specific document referenced in an AD will need an AMOC. So, if the aircraft DAH did not obtain an AMOC approval for the later version of the service document, you will need to apply for an AMOC. Contact the DAH or FAA office responsible for approving AMOCs to the AD to determine whether the DAH got an AMOC for the service document revision.

d. The referenced instructions in the referenced service document in the AD call for a specific fastener on my aircraft. May I substitute another fastener?

No. You cannot use a different fastener (or any part, material, or process) from what is specifically referenced in an AD without getting an AMOC, unless the procedures in the AD permit substitution. If you substitute another fastener without an AMOC, you violate 14 CFR § 39.7 each time you operate the aircraft.

e. The AD requires me to perform actions in a service document by a certain date. The service document recommends a date that is later than required by the AD. I want to perform the actions at the later date, per the service document. Do I need an AMOC?

Yes. AD requirements override any other language in service documents. You would have to request an AMOC for a change in compliance time to that referenced in the service document.

f. The AD requires that I accomplish specific instructions in a service bulletin. Those instructions reference a manual, and the manual references a standard practice manual. My operating procedure differs from the standard practice manual. Do I need an AMOC to keep using my operating procedure?

Yes. You must accomplish the specific instructions in the service bulletin specified in the AD. That includes any second- or third-tier documents referenced in those service bulletin instructions.

2. Changes in the Area Addressed by ADs.

a. I previously repaired my aircraft structure in the area now addressed by the AD. The repair affects my ability to perform the AD. Must I obtain an AMOC for the AD?

Yes. If a change to a product affects your ability to accomplish the actions required by the AD in any way, you must request FAA approval of an AMOC. Unless you can show the change

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eliminated the unsafe condition, your request should include the specific actions that you propose to address the unsafe condition.

- b. During the last AD inspection, I found the crack that the AD warned about. I obtained an approved repair from the aircraft DAH, which differs from the repair mandated by the AD. Do I need an AMOC for the repair?**

Yes, you must comply with the specific requirements of the AD. So, unless the AD stated that you could repair the crack according to a specific method approved by the DAH, you or the DAH must apply for and obtain an AMOC if any action differs from the specific requirements of the AD.

- c. I developed a repair for cracks identified in an AD using my organization designation authorization. May I use this repair instead of obtaining a repair from the aircraft DAH, as prescribed in the AD?**

No. Before using any repair that differs from the requirements of an AD you must receive an AMOC for the repair.

- d. The AD requires that I visually inspect for cracks. However, the previous owner/operator installed a repair doubler that prevents me from inspecting. Do I need an AMOC?**

Yes. Whenever you cannot apply the specific requirements of an AD, you must seek an AMOC. In this case, you must either devise a new method to inspect the area identified in the AD, or show that the repair reinforces the area and redistributes the loads, so an inspection is no longer required. In either case, you must request and obtain an AMOC to ensure compliance with the AD.

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Appendix B – Initial internal FAA team review of background of issue/problem; this is retained as part of the AD-ARC’s record for information and acknowledgement of the FAA’s internal review of the topic. Recommendations and suggestions of the Working Group to the ARC are stated in the body of this Summary Sheet.

The AD CRT noted that AD configuration requirements may be viewed as absolute, and any deviation can result in a determination of non-compliance with the AD. However, certain minor deviations from configurations specified in the aircraft type design are allowed and managed through maintenance programs, minimum equipment lists, and other programs. In those instances, there is no determination of non-compliance with the operating rules. The AD CRT states that the regulations provide no exception for deviations (after the installation of an AD-mandated configuration) as a result of servicing, maintenance, modification, damage, wear, flight cycles, landing cycles, or any other cause. One specific example cited by the AD CRT was a duct clamp that rotated, relative to the AD-mandated configuration, presumably due to landing cycles. This deviation resulted in the operators’ compliance with the AD being questioned.

The AD CRT suggested that, in the “plain language” rewrite of part 39, the FAA had converted § 39.3 from a requirement for operators to accomplish actions per the AD into a requirement in § 39.7 that the AD-mandated configuration be maintained indefinitely. The AD CRT requests the FAA clarify the intent of the amendment regarding its apparent meaning that any deviation from an AD-specified configuration is a violation of part 39.

The AD CRT also noted that implementing several of their recommendations in the Task 1 and Task 2 reports would reduce vulnerabilities of determinations of AD non-compliance.

Initial internal FAA team response:

The FAA internal Team disagreed with this AD CRT recommendation for several reasons:

- The internal FAA team believed the AD CRT misunderstood the legal effect of former § 39.3. Like current § 39.7, it prohibited **operation** of products except in accordance with applicable ADs. So merely accomplishing the actions required by an AD is not enough; the product had to be operated with the AD-mandated configuration.
- ADs themselves are enforceable regulations, i.e., they require that the mandated actions be accomplished. Limiting § 39.7 to only require action by the operators, as suggested by the AD CRT, would make it redundant of the individual ADs themselves.
- The objective of ADs isn’t just to require accomplishment of particular actions; it is to ensure that, when products are operated, they are free of identified unsafe conditions. The AD CRT’s recommendation to clarify that AD compliance is defined by the operator’s

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taking a specific action, and is not determined by a comparison of the aircraft to AD-specified configurations, would defeat this objective.

- In discussing air carrier implementation of ADs, the AD CRT recognizes the risk of “de-modification” of AD-mandated modifications and identifies means by which operators should avoid this risk. Currently and historically, such de-modification would place the operator in violation of § 39.7 (or former § 39.3). The recommended revision to § 39.7 would eliminate this prohibition—once the AD actions have been accomplished, the operator would have fully complied with § 39.7, so later de-modification would not result in a violation of that section, even if it were done deliberately. For example, under the AD CRTs proposal, an operator would be allowed to install an AD-mandated modification, make the required maintenance record entry of compliance, and then immediately remove the required modification and restore the original configuration. This would be contrary to the objective of the AD.
- Regarding the specific example cited by the AD CRT, it is not apparent how the AD CRT determined that the clamp rotated in service, rather than having been installed improperly in the first place.¹ If the FAA were to investigate this as a violation, that would be a factual issue to be resolved. If we were satisfied that the operator was not responsible for the non-compliance, the case would be closed as “no action” or, at most, as administrative action.
- From this example, one might assume that airplanes’ “falling out” of AD-mandated configurations is a common source of AD violations that must be addressed by revising § 39.7. But the enforcement history of this section (and former § 39.3) contains no examples of enforcement under these circumstances, so the AD CRT’s concerns appear to be unfounded.
- Section 39.7 is the primary means by which the FAA holds operators accountable for compliance with ADs. When, as stated in § 39.9, each operation is treated as a separate violation, the potential for significant civil penalties provides a strong incentive for operators to comply with ADs. Revising this section as suggested would eliminate this essential enforcement tool.
- The AD CRT apparently believed that former § 39.3 permitted minor deviations from AD requirements and this permission was inadvertently withdrawn when we issued current § 39.7. But neither section addresses whether minor deviations are allowed. Rather, they both establish operational violations for operation of products contrary to applicable ADs—a separate and unrelated issue.

¹ Assuming it did rotate in service, this would indicate that either it was installed incorrectly (e.g., correct orientation but insufficient torquing of fasteners) or the design is defective in that it allowed such rotation. If the latter, this problem would presumably exist on other airplanes on which the clamp had been installed. This should be investigated and, if other similar problems are found, we should consider revising the AD, since this appears not to adequately address the unsafe condition. If they’re not found, this indicates the operator installed the clamp incorrectly. In either case, it does not indicate a need to revise § 39.7.

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- While minor deviations from an aircraft’s type design can be appropriately allowed and managed through maintenance programs, and other processes and programs, ADs are different because they establish a “safety net” when unsafe conditions are identified despite these programs. Unlike the general maintenance performance standards, ADs are directive in nature, requiring specific actions to address unsafe conditions. As the FAA recognized in 1965 with the issuance of Amendment 39-106, these unsafe conditions may even result from maintenance practices that had been considered acceptable.² The corrective actions mandated by ADs are necessary to ensure the unsafe condition is properly addressed. Therefore a robust consideration of any proposed deviations is needed.
- As the CRT recognized, deviations to the mandated instructions may be obtained through the alternative method of compliance (AMOC) process. That process involves the review and approval of AMOC proposals by the technical specialists most familiar with the unsafe conditions and the mandated corrective actions. Operators and ASIs typically are not aware of the underlying technical details on which the FAA based its conclusions that an AD is necessary and that the specific corrective actions documented in the service instructions are necessary to mitigate the unsafe condition.³ Therefore, for example, operators may consider that the very maintenance practices that caused the unsafe condition are just a “minor deviation” from the AD-mandated corrective actions. This would defeat the purpose of the AD.
- For example, the FAA’s May 2, 2008, report to the Secretary on “American Airlines MD-80 Groundings” provided several examples of deviations from the requirements of AD 2006-15-15 that introduced unsafe conditions, such as wire chafing, that the AD was intended to prevent and correct.⁴ American not only recorded that the airplanes were in full compliance with the AD, but also twice affirmed to the FAA that they were in compliance. Presumably, American considered these deviations to be “minor.”
- One of the lessons learned from the Aging Transport Systems Rulemaking Advisory Committee and the Enhanced Airworthiness Program for Airplane Systems (EAPAS) rulemaking is that historically operators have paid insufficient attention to ensuring the

² From the preamble to Amendment 39-106: 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.

³ In categorizing many deviations as “minor” in its Task 1 report, the AD CRT also may not have been aware of these underlying technical details.

⁴ “In all four areas highlighted in the Boeing SB, inspectors found instances of incorrect use of nylon tie wraps, incorrect installations of snap tubes, incorrect securing of clamps, clamps not installed at all, no or improper or no wrappings installed, and more importantly, instances of chafing between wire bundles and other surfaces. These were serious and unacceptable failures. In some cases, clamps were loose with the potential to dislodge, becoming free-floating projectiles.” (Report at p. 5)

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safety of wiring changes and maintenance. This has led to numerous unsafe conditions that we've issued ADs to address. In 2006, the FAA issued the EAPAS rule, which among many requirements mandates engineering approval of wiring-related instructions for continued airworthiness. Given this recent history, it would be counterproductive to give these same operators authority to introduce "minor deviations" that could result in the same types of unsafe conditions.

- If deviations are minor, they would be readily approvable as AMOCs. As the report says, these AMOCs should be obtained before the compliance deadline so that AMOC process timeliness is not an issue. Proper operator compliance planning should ensure AMOC approvals are obtained before compliance deadlines. Assuming deviations are discovered after the deadline (e.g., because of workmanship issues such as deviations from one-inch tie-wrap spacing), with the FAA's 24/7 AMOC support, these types of deviations should not result in groundings.
- On the other hand, groundings may occur if the ACO doesn't have sufficient data to determine whether the deviation provides an acceptable level of safety, e.g., if an operator uses a part that has not been evaluated as a substitute for a "critical" part specified in the AD. In this case, an AMOC could not be approved until that data is provided. In this case, an ASI would also have no basis for determining that the deviation is minor.
- Allowing minor deviations to ADs would introduce an element of subjectivity to AD compliance that would significantly undermine AD enforceability. ASIs may reach different conclusions on whether similar deviations are "minor" or "significant." This would then make it difficult to take enforcement action against operators whose deviations that ASIs considered significant.
- In an enforcement context the issue would become whether the operator had a "good faith" belief that the deviation was minor, rather than simply whether they complied with the AD. This would result in more complex and uncertain enforcement actions, necessarily examining the reasonableness of the operator's belief. ADs are the FAA's safety net to address unsafe conditions that have developed despite all other regulatory requirements.

Summary of the internal FAA team proposal:

Focus on implementation of AD CRTs (Task 2) recommendation 1 and 11. Service bulletins should identify whenever flexibility in compliance methods is acceptable and include any revisions to instructions for continued airworthiness (ICA) necessary to prevent de-modification (AD CRT Task 2 Report, Recommendation 1). Within AD compliance planning, operators should improve their processes for identifying the need for AMOC approvals and include maintenance program changes and other "process enhancements" to prevent de-modification (AD CRT Task 2 Report, Recommendation 11). They would also enhance awareness through revision of the applicable guidance and directives that de-modification of AD-mandated configurations would result in non-compliance with the AD, unless an AMOC

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is obtained. While the FAA proposal does not directly implement the AD CRTs recommendation (AD CRT Task 2 Report, Recommendation 12), it does align with the AD CRTs assertion that implementation of certain recommendations would reduce the vulnerabilities of AD non-compliance.

Detailed internal FAA team proposal:

Implementation of AD CRT recommendations will address “minor deviations” and the problems associated with de-modification:

- In its discussion of “user-friendly” improvements to service instructions in the Task 2 Report Recommendation 1, the AD CRT states, “Service instructions . . . should differentiate the critical tasks and task sequences requiring exact conformance from flexible advisory instructions for tasks that are common acceptable air carrier procedures.” If this recommendation is fully implemented, there would be no need to consider whether “minor deviations” require AMOC approval. If the deviation relates to flexible advisory instructions, an AMOC would not be required. On the other hand, if the deviation relates to a critical task or task sequence, any deviation could not be considered minor and would require an AMOC approval.
- In the Task 2 Report Recommendation 1, the AD CRT also states, “Service instructions should be written and traceable to avoid situations where previous AD compliance requirements are inadvertently undone or modified through normal air carrier routine maintenance practices.” In fact, §§ 21.50 and 25.1529 already require that a DAH make available ICA for design changes. These requirements should be emphasized in the context of service bulletins (SBs) describing modifications that are mandated by ADs so that the DAH ensures that, if revisions to the ICA are necessary to prevent de-modification, those ICA revisions are referenced in the SB. In reviewing draft SBs, ACOs should verify that such ICA revisions are included and, if they’re not, work with the DAH to ensure full compliance with the referenced regulations. For example, if the SB describes a change to a wiring configuration that an operator could de-modify by following the DAHs Standard Wiring Practice Manual (SWPM), the SB should include revisions to the SWPM to prevent this.
- In its discussion of Air Carrier Implementation of ADs (§ 2.2.4), the CRT describes “benchmark processes” that air carriers should use in complying with ADs. On the subject of deviations, the report states:

“Benchmark processes clearly show the method of compliance with each requirement of the AD, from modification or procedural/operational (Airplane Flight Manual (AFM) revision to the need for an AMOC. The engineering review could include the requirement for a side-by-side, paragraph-by-paragraph listing of all AD requirements and the associated air carrier engineering authorization (EA) compliance actions.”

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If implemented rigorously so that any necessary AMOC approvals are obtained before the compliance deadline, this process would virtually eliminate the potential for fleet-wide deviations from AD requirements. (Any deviations would result from workmanship issues on individual airplanes.) Particularly in combination with the recommended improvements to service instructions, implementation of this benchmark process would eliminate the need for ASIs to consider whether “minor deviations” are non-compliances. CHDOs should review air carrier manuals to ensure that they include these benchmark processes.

To address workmanship issues; operators should clearly identify on task cards and other work instructions when tasks are associated with AD compliance. All maintenance personnel should be trained on the AD and AMOC process and to know that deviations from these work instructions requires an AMOC approval. Typographical errors or missing steps should be readily addressed by the AD issuing office; this should be addressed under AD CRT (T2), recommendation 1. Except for improper actions by maintenance personnel, this should eliminate deviations that have not been approved as AMOCs.

In its discussion of “Continuous Compliance” in the Task 2 Report Recommendation 11, the AD CRT states, “Air carriers should develop practices to address normal maintenance or other actions that could possibly demodify an AD configuration.” Elsewhere in the report, the AD CRT identifies the air carrier AD compliance planning as the appropriate process to address potential de-modification. Our proposal would provide more detailed guidance on how this should be done. During the air carriers compliance planning consideration should be made if the DAH has referenced ICA revisions in its SB. Even in the absence of revised ICA, the air carrier should evaluate whether revision to its manuals is necessary to prevent de-modification and initiate whatever changes are needed. For example, if the AD requires a particular wiring configuration, the air carrier should review its SWPM to determine whether following it could lead to de-modification. If so, it should incorporate into its SWPM whatever additional information is necessary to prevent this. CHDOs should review air carrier procedures manuals to ensure that they include processes for these evaluations.

Subsequent alterations or repairs that have the effect of taking a product out of an AD-mandated configuration may be approved under the normal AMOC process. Both DAHs and operators recognize this, as demonstrated by DAHs frequently obtaining global AMOC approvals for later SB revisions, and operators using those approvals as the basis for showing compliance with ADs. Regarding individual alterations and repairs to AD-mandated configurations, there appears to be a lack of awareness that AMOC

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approvals are required. While AIR and AFS have provided extensive guidance on AD compliance and AMOCs, the issue of the need for AMOC approvals for “demodifications” is not addressed. AIR and AFS should revise their orders (e.g., Order 8110.103) and ACs (e.g., AC 39-7C) to address this issue. AIR and AFS should also provide training to their workforces to ensure their understanding of these issues. CHDOs should review air carrier procedures manuals to ensure that they include processes for these evaluations.

Issues for ARC consideration from the internal FAA team:

- While the AD CRT identifies air carrier “benchmark processes,” it isn’t clear how extensively air carriers actually use them. In planning implementation of our proposal, it would be helpful to know how significant a change this would be to their current practices.
- Similarly, the AD CRT didn’t identify to what extent DAHs currently recognize and address their obligation to provide ICA for SB modifications, particularly those that are mandated by AD. This information would also be helpful for determining how extensive this change would be (and how extensive current non-compliance with §§ 21.50 and 25.1529 is).

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- **Appendix C** – Section 39.9 uses the present perfect tense (see, www.englishpage.com, www.englishclub.com, www.eclecticenglish.com, www.eslgold.com as well as other sites).

This regulation is written in “plain language” therefore the standard grammatical meaning of the present perfect tense must be applied. There are a few legitimate uses of the tense; the only one that makes sense in the context of the rule is that if the unsafe condition was not resolved at some time in the past by taking the necessary actions within the allowed time period, you will then be violating 39.7 each time you operate the aircraft, because you never met the requirement to do the actions within the specified time period.

The position that the emphasis on verb tense is misplaced is inconsistent with Docket No. FAA–2000–8460; Amendment No. 39-9474, which states “[w]e reorganized and reworded the regulation using plain language techniques.”

Order 1000.36 FAA Writing Standards links to Writing User-Friendly Documents – A Handbook For FAA Drafters says to—

“Define words in a way that does not conflict with ordinary or accepted usage. If possible, use a word in a way that is consistent with its everyday meaning rather than creating a new meaning for your document.”

The www.plainlanguage.gov Web site links to the University of Purdue Web site, which says to use the present perfect tense “...with events occurring at an indefinite or unspecified time in the past – with ever, never, before”. If you substitute “never” for “not” in section 39.9 (...have never/not been met...) the meaning is unchanged and it follows the guidance of the Web site (in addition to the other guidance listed above).

The emphasis on verb tense is, in fact, it is critical. If the committee believes that the intent of the rule is not in accordance with the supposition of Recommendation 12 or with the FAA’s own guidance for plain language, then a rule change is required.

However, a rule change should not be necessary in order to ensure that the unsafe condition continues to be non-compliant. If the unsafe condition is reintroduced by “undoing” the AD after the compliance time, the operator would then be in violation of 43.13(b) Performance Rules.

FAA Response: As discussed earlier in the main document, § 39.9 simply states the well settled legal conclusion that, when products are operated contrary to § 39.7, each operation is considered to be a separate violation. Section 39.9 does not change the meaning of § 39.7, which is unambiguous: “Anyone who operates a product that does not meet the requirements

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of an applicable airworthiness directive is in violation of this section.” Section 39.7 does not distinguish between violations occurring before an AD is complied with and violations occurring after a product is taken out of an AD-mandated condition. After the AD’s compliance deadline (or after an operator indicates in its maintenance records that the AD has been complied with), all operations are prohibited unless the product is operated in accordance with the requirements of the AD or an AMOC. A rule change is not required because, as recognized by the CRT in Finding and Recommendation 11, this is, and was, precisely the FAA’s intent.

Section 43.13(b) is not the regulation which prevents reintroduction of an unsafe condition. Part 39 is the avenue by which FAA identifies an unsafe condition and adopts a directive requiring its correction. After the rule is issued, operators have the legal obligation either to maintain the mandated condition or to obtain approval for an AMOC, which is based on the FAA’s finding that the alternative is acceptable for addressing the unsafe condition. Part 39 does not allow the operator to unilaterally modify the configuration and place the burden on the FAA to prove that the modification reintroduces the unsafe condition. Such a result would be contrary to the plain meaning of § 39.7.

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Appendix D – Means of Compliance Request

	(1) Request Date _____	(2) AD Number _____
Means of Compliance Request	(3) Docket Number FAA— _____	_____
	(4) Directorate Identifier _____	_____
(5) Aircraft Certification Office	_____	
(6) Unsafe condition description	_____	
(7) AD referenced document	_____	
(8) What language is in error, inconsistent or in need of clarification	_____	
(9) Explain why it is in error, inconsistent or needs clarification	_____	
(10) Explain how the issue can be or will be corrected	_____	

Submitter's Information

(Please be aware that this information will not be kept confidential as this document will be made available to the public through a Web site or other means. If the submitter wishes its identity to be kept confidential, the submission must be made as an attachment to an e-mail and the data below must indicate that the contact information is in the e-mail so if there are any questions, contact can be made.)

(11) Name of submitter _____

(12) Contact information _____

For FAA Use Only

(1) Date Received _____ (2) Assigned to _____

(3) No need for an AMOC because _____

(4) Needs an AMOC because _____

Page ____ of ____ AD Number _____ Form Revision Level: Original Revision Date 2010/04/14

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Means of Compliance Request Submitter Instructions	
Purpose:	To determine whether errors, such as typographical mistakes, inconsistencies, or needs for corrections or explanation to maintenance or alteration instructions contained in an Airworthiness Directive (AD), including any document incorporated by reference in that AD, rise to the level that an alternative method of compliance (AMOC) is required. In other words, to determine whether the information provided ensures compliance with the AD and therefore an AMOC is not needed.
Completed by:	Any person with a question regarding an error or any measure that needs correction or clarification regarding the means of compliance contained in an AD.
References:	14 CFR part 39 The AD at issue The documents incorporated by reference in the specific AD
Instructions for completion of this form:	
<p>To complete this form in the most comprehensive manner, obtain the complete AD including any referenced documents. All documents incorporated by reference into the AD are part of the AD. In some cases, the AD-required provisions in IBR documents are specified by statements requiring accomplishment “in accordance with” the provisions.</p> <ul style="list-style-type: none"> • Language stating that an action must be accomplished “in accordance with” a referenced document indicates that the document is the means of compliance. That would include any sub-level documents incorporated by reference. <p>ADs may be obtained from the following Web sites:</p> <p>http://www.faa.gov/regulations_policies/airworthiness_directives/</p> <p>http://www.regulations.gov/ (enter the FAA docket number in the “Enter Keyword or ID” field)</p> <p>http://www.gpoaccess.gov/fr/</p>	
<ul style="list-style-type: none"> • Read the AD carefully and obtain: <ul style="list-style-type: none"> ○ The exact requirements of the AD; in other words, what are the accomplishment requirements? ○ The FAA Directorate Identifier, the format is usually YEAR-XX-XX-AD, example, 2010-NE-05-AD; the “NE” indicates that the New England Region (Engine and Propeller Directorate) issued the AD. 	

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- The Aircraft Certification Office (ACO) or Engine Certification Office (ECO) to which requests for AMOC are to be directed (usually under the heading “Alternative Methods of Compliance” or “Alternative Means of Compliance”).
- The name, title, address and other contact information (such as e-mail) for the person to whom questions or requests for further information may be directed. This information is not always in the AD; you may need to use the following link:

<http://directory.faa.gov/appspub/National/EmployeeDirectory/FAADIR.nsf/?Open>

- Search by last name or
- Search the Aviation Safety “Organizational Listing” for the appropriate Aircraft Certification Service office (remember Directorates are co-located in Regions)

(1) Enter the date that the request will be sent to the FAA.

(2) Enter the AD number; the format will usually be YEAR-XX-XX; example 2010-06-15.

(3) Enter the FAA Docket number, the format will usually be FAA-YEAR-XXXXXXX; example, FAA-2010-0068.

(4) Enter the FAA Directorate Identifier, the format is usually YEAR-XX-XX-AD; example, 2010-NE-05-AD; the “NE” indicates that the New England Region (Engine and Propeller Directorate) issued the AD.

Enter the Aircraft Certification Office (ACO) that is listed in the AD and to which the request will be submitted.

(5) If there is no ACO listed, use the Manager of the Directorate referenced in the AD.

The address of the particular office may be found on the general FAA Web site (<http://www.faa.gov>) or through the directory listed in the general instructions provided above.

Enter the exact language from the AD for the description of the unsafe condition.

(6) Every AD has an unsafe condition description.

Do not vary the description, it must be exactly (word for word) the language used by the FAA.

(7) Enter the exact language from the AD to describe the referenced document (such as an airworthiness limitation or service bulletin) that is or may be the issue.

If the issue is with the AD language itself, enter N/A.

Enter the exact language from the AD or service document that is the problem.

(8) Enter the page, paragraph, sub-paragraph and/or any other descriptor that would allow a person to find the language promptly.

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Explain the exact nature of the error or need for clarification. This section should be in enough detail that the reviewer can clearly establish that the nature of the proposed correction or clarification does not impact the intended method of compliance. In other words, the issue does not have any impact on the ability of the certificate holder to perform the method of compliance. What is the type of error?

- If the error is a typographical, why do you know it is a typographical error, are there other places in the AD or service document that have the word or number correct?
- If the error is an inconsistency, such as a missing step, for example, the document tells you how to remove something but do not provide instructions for replacement or the instructions for replacement are impossible to accomplish, explain that using the reference above to the exact words that are in the document.
- If the error relates to the need for additional steps or measures to those contained in the AD and/or service document, such as drilling extra holes to obtain better access for an inspection, explain why the additional steps or measures will not impact the method of compliance.
- If the error relates to the need for clarifying a method of access or the ability to access an area more easily or more efficiently, explain why the method of access will not impact the method of compliance.

If attachments are necessary to ensure the issue is fully explained; please describe the attachment in this space.

- Explain/provide the “fix” but stating the exact language that should be used to fix the error including clarification of the particular issue.
- Provide any additional information regarding how you as the submitter wish to address the error.
- Please use this space to ensure the complete nature and extent of the error is fully explained.

Please be aware that the submitter’s information will not be kept confidential as this document will be made available to the public through a Web site or other means. If the submitter wishes its identity to be kept confidential, the submission must be made as an attachment to an e-mail and the data below must indicate that the contact information is in the e-mail so if there are any questions, contact can be made.

(11) Use the name of the person most familiar with the problem and/or to whom questions may be addressed or indicate that this information is in the e-mail by which the submission was made.

(12) Use the telephone number or e-mail address of the person to whom questions may be addressed or indicate that this information is in the e-mail by which the submission was made.

- Verify that the all the areas in the form are completed or marked N/A.

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|--|
| <ul style="list-style-type: none">• Verify that the information is accurate. |
| <ul style="list-style-type: none">• Transmit the form along with any attachments to the cognizant ACO with a copy to your assigned aviation safety inspector. |
| <ul style="list-style-type: none">• If you do not wish to be identified on the form ensure the contact information required by the form is contained in the transmission document or method. |

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Instructions to FAA Personnel	
	The office must establish a means for tracking and filing each request.
(1)	Enter the date the request was received by the ACO.
(2)	Enter the person to whom the request was sent for action; enter the name as well as the office affiliation, e.g., John Smith—AEG or Jane Smith—AIR
	<ul style="list-style-type: none"> • In reviewing the request; carefully analysis the exact nature of the actions required by the AD— <ul style="list-style-type: none"> ○ Is the error or need for clarification even part of the means of compliance? In other words, does the AD require the action be taken or is the issue outside the scope of the requirements set forth in the AD? ○ Is the request for correction or clarification clear or is further information needed? ○ Is the error or need for clarification obvious from the context of the AD and its referenced documents? ○ Does the request for correction or clarification contain a comprehensive fix that enhances the means of compliance?
(3)	Enter the reason no alternative means of compliance is needed for the request; e.g., “this request involved issues that were beyond the scope of the AD, the action was not required by the AD”; or, this request involves an obvious typographical error, numerous places where the reference was correct”; or, “this request involves an obvious missing step, the operation could not be completed as intended if the language used in the AD was not read in context.”
(4)	Enter the reason that the request rises to the level where an alternative means of compliance must be sought, e.g., “this request is for a part substitution and therefore must be evaluated for the impact on its ability to correct the unsafe condition” or “this request does not constitute an inconsistency, it is for an alternative means of compliance to that required by the AD.”
	<p>To ensure that there will be consistency in how these matters are handled, and to ensure that the public and the agency knows of these determinations, the completed request, including the reason for the determination should be uploaded to the public document management system under the AD number/docket number through http://www.regulations.gov/ (enter the FAA docket number in the “Enter Keyword or ID” field).</p> <ul style="list-style-type: none"> •
	<ul style="list-style-type: none"> • The completed form, including the transmission letter should be filed per the office records retention filing system.

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Appendix E – Request for Legal Interpretation 14 CFR sections 39.7, 39.9 and 39.11.

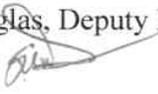


**Federal Aviation
Administration**

Memorandum

Date: SEP 01 2010

To: Rebecca MacPherson, Assistant Chief Counsel for Regulations, AGC-200

From: Steven Douglas, Deputy Division Manager, Aircraft Maintenance Division, AFS-301a 

Subject: Request for Interpretation 14 CFR sections 39.7, 39.9 and 39.11

The Federal Aviation Administration (FAA) Organization/Procedures Working Group (WG) of the Airworthiness Directive Implementation Aviation Rulemaking Committee (AD ARC) believes that an interpretation of 14 Code of Federal Regulations (CFR) sections 39.7, 39.9, and 39.11 would help resolve a number of issues that have been debated within the WG.

These issues result from certain changes made in the “plain language” revision to part 39 in 2004. Specifically WG members expressed divergent opinions regarding the verb usage and tense in the current “plain language” version of part 39.

The sections that are particularly troublesome are presented below, with the “old” version (where applicable) in italics.

- (1) Section 39.11 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.

Section 39.11 Applicability. This subpart identifies those products in which the Administrator has found an unsafe condition as described in Sec. 39.1 and, as appropriate, prescribes inspections and the conditions and limitations, if any, under which those products may continue to be operated.

One opinion is that a reasonable interpretation of the language directing action to “resolve an unsafe condition”, limited the agency from requiring actions that did not relate to correcting the identified unsafe condition. In other words, an AD is limited to those tasks that resolve the unsafe condition, whether the tasks are explicitly listed in the AD or part of a referenced service bulletin (SB).

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- 2
- (2) Section 39.9 What if I operate an aircraft or use a product that does not meet the requirements of an airworthiness directive? If the requirements of an airworthiness directive have not been met, you violate § 39.7 each time you operate the aircraft or use the product.

One opinion is that the use of the words “have not been met” indicated that “if” the unsafe condition was indeed fixed at a moment in time, this section of the regulations did not apply. In other words, if the AD was at one time complied with as required by section 39.11, this section could not be applicable. The conclusion of the position was this regulation pointed to a specific moment in time, i.e., once the unsafe condition was corrected, the regulation no longer applied, even if the product was determined to be contrary to the requirements of the AD at a later time. If the product was operated “out of configuration”, then section 43.13(b) would be violated, not section 39.7.

The other opinion is that the language of section 39.7 (as well as its earlier version, i.e., section 39.3) imposes an operational mandate that the requirements of the AD be maintained for each operation occurring after the actions required by the AD are accomplished.

In other words, this section simply expresses the well established legal conclusion that, for continuing operations of products that do not comply with ADs, each flight is a separate violation. The emphasis on verb tense is misplaced; if a product once complied, but for whatever reason no longer complies, the requirements of the AD “have not been met” when the product is operated on that particular flight.

- (3) Section 39.7 What is the legal effect of failing to comply with an airworthiness directive? Anyone who operates a product that does not meet the requirements of an applicable airworthiness directive is in violation of this section.

Section 39.3 General. No person may operate a product to which an airworthiness directive applies except in accordance with the requirements of that airworthiness directive.

This section was not discussed with as much vigor as section 39.9; the language in both the old and new version indicates that the product must comply with the AD whenever it is operated or a violation will result.

Please advise the WG which of the above opinions is correct and provide whatever additional guidance on the meaning of each section that you think may be useful.

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Appendix F – ARC Member Comments

The following comments were not incorporated directly into the Summary Sheet since they did not reflect the product of the Working Group.

(A) Page 3: Insert the following paragraph at the bottom of page 3 before the heading *Difficulty of Determining Compliance*.

Rewriting of part 39 in “Plain Language”-- ARC’s Perspective

The AD CRT noted that Amendment 39-9474, “...appears to have shifted the determinant of AD compliance from a matter of operator action to one specifically determined by aircraft configuration.” The preamble of that Amendment states, “... this rulemaking action does not introduce any new regulatory requirements.” [Fed. Reg. 67, pg. 47999, Preamble to Amendment 39-9474, Docket No. 2000-8460, July 22, 2002.] The working group stated that the Amendment did not change “the general interpretation” of part 39 – that configuration was the determinant before and after the amendment. However, there is contention in the industry that ADs have, over time, evolved from mandates typically requiring one-time corrective actions with continuous airworthiness of the AD and assured under part 43 maintenance programs, in the same way as for any other configuration specified on the aircraft’s type certificate, to a current “general” interpretation that establishes every AD configuration requirement in a class more inviolable than any other. The significantly increased level of detail incorporated in service instructions mandated by current ADs compared to the instructions of ADs adopted a few decades ago contributed to this evolution toward detailed configuration requirements while supplanting the role of air carrier maintenance to manage configuration. The ARC does not attribute the current focus on configuration to the plain language of Amendment 39-9474. However, the Amendment is a link in the evolution to today’s practices for stating and determining AD compliance.

Recommendations herein embody a need to return toward policies and practices that, to an appropriate extent, accept air carrier maintenance programs as the process for assuring airworthiness after an AD has been installed rather than mandating every configuration element in comprehensive, highly prescriptive service instructions as critical to the safety intent of the AD or to the establishment and maintenance of airworthiness.

(B) With respect to the Working Group’s recommendation to close the task—Propose that this paragraph (and its header) be replaced with the following as an AD ARC position:

If, in response to the attached Request for Interpretation, FAA maintains that configuration is the determinant of compliance with ADs that require configuration changes, a decision on whether or not part 39 requires revision or reinterpretation is pending evaluation of the potential effectiveness of measures proposed by other ARC working groups in eliminating incongruities in compliance determinations that can or have resulted from that position.

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(C) Page 5: The third paragraph of the summary sheet section on “*Design Changes In Production Aircraft versus In-Service Aircraft (page 5)*” discusses ADs as a “stand alone requirement”. In dispositioning an ARC member’s comments to on this paragraph, the Working Group further asserted that ADs, “don’t change [the] type design” of an airplane.

As stated in earlier comments, the AD Compliance Review Team was disappointed to find that there is no definition of airworthy in the regulations, so they described the concept in [AD CRT Report 2, Appendix B, page B-2]. As there is no definition, some consider ADs changes to type design; others to type certificate.

The concept described in the CRT report states that an aircraft is airworthy when it conforms to its type certificate and is in condition for safe operation. According to this concept, an aircraft that was not in compliance with an AD would not conform to its type design or, in turn, its type certificate, and it could not be airworthy even if it actually was in condition for safe operation. (Note the differentiation of compliance and safety.) According to the disposition of comments, the CRT concept could apply to a plane outfitted with an AD modification on the production line, but not to one retrofitted with the same modification for compliance with an AD. In the latter case, the Working Group assertion is that the noncompliance renders the aircraft unairworthy because it is not in condition for safe operation. (Note the equation of compliance with safety.)

There is sufficient confusion on the bearing of ADs on an aircraft’s type design and type certificate to warrant clarification at the regulation level.