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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2007-28881; Directorate Identifier 2006-NM-263-AD; Amendment 39-15663; AD 2008-18-06]

RIN 2120-AA64

#### **Airworthiness Directives; McDonnell Douglas Model DC-9-10, DC-9-20, DC-9-30, DC-9-40, and DC-9-50 Series Airplanes, Equipped With a Tail Cone Evacuation Slide Container Installed in Accordance With Supplemental Type Certificate (STC) ST735SO**

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for McDonnell Douglas Model DC-9-10, DC-9-20, DC-9-30, DC-9-40, and DC-9-50 series airplanes, equipped with tail cone evacuation slide containers as specified above. This AD requires modifying the tail cone slide. This AD also requires additional tail cone drops and slide deployments, and repair if necessary. This AD results from several reports of inadvertent tail cone deployments in which the tail cone slide failed to deploy. We are issuing this AD to ensure that the tail cone evacuation slide deploys correctly. Failure of the slide to deploy during an emergency evacuation could result in injury to flightcrew and passengers.

**DATES:** This AD is effective January 7, 2009.

#### **Examining the AD Docket**

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between

9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800-647-5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Ken Sujishi, Aerospace Engineer, Cabin Safety Branch, ANM-150L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5353; fax (562) 627-5210.

#### **SUPPLEMENTARY INFORMATION:**

##### **Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to McDonnell Douglas Model DC-9-10, DC-9-20, DC-9-30, DC-9-40, and DC-9-50 series airplanes, equipped with certain tail cone evacuation slide containers. That NPRM was published in the **Federal Register** on August 6, 2007 (72 FR 43578). That NPRM proposed to require modifying the tail cone slide. That NPRM also proposed to require additional tail cone drops and slide deployments, and repair if necessary.

##### **Comments**

We gave the public the opportunity to participate in developing this AD. We considered the comments received from the one commenter.

##### **Request To Clarify Paragraph (g) of the NPRM**

Northwest Airlines (NWA) requests that we clarify whether the 150-flight-cycle compliance time specified in paragraph (g) of the NPRM starts after the first airplane is modified or after the last airplane is modified. Unless the FAA intends to have operators perform slide deployments while the fleet is still being modified, NWA recommends that the 150-flight-cycle clock start after the modification, or within 24 months after the effective date of the AD, whichever occurs first. NWA also states that it assumes the 150-day compliance clock in that same paragraph is intended for

those operators who have already complied with the intent of the AD or who will comply very quickly after issuance of the AD. NWA states that it would be helpful if this was stated.

We agree with NWA's request for clarification. Our intent was for the operator to start and complete the tail cone modification and fly a minimum of 150 flight cycles before the additional tail cone deployment test, accomplished within 24 months after the effective date of the AD. When there are multiple airplanes, the 150 flight cycles apply to each individual airplane, and start after the modification is done to each airplane individually.

**Scenario:** An operator completes the modification on the first airplane, and then completes the minimum 150 flight cycles two months after the modification. After the operator successfully performs the tail cone slide deployment test on the first airplane, the second airplane is modified a week later. The second airplane will also be required to fly a minimum of 150 flight cycles before the deployment test of the tail cone slide. If the operator has 100 airplanes, then the operator must demonstrate a successful deployment test on 10 percent (ten) of the modified airplanes as terminating action for the AD.

We agree that the proposed 150-day compliance time specified in paragraph (g) of the NPRM needs not only to be clarified, but also revised. The 150-day requirement could impose a schedule hardship for some operators who might need more time to complete the modification. Our intent was to allow the operator time to modify the tail cone slide cover and to perform the deployment test after a minimum of 150 flight cycles after modification, and no later than 24 months after the effective date of this AD.

For all these reasons, we have revised paragraph (g) and added a new paragraph (h) to the AD to clarify the compliance time. The new paragraph (g) begins as follows: “\* \* \* no earlier than 150 flight cycles after doing the modification required by paragraph (f) of this AD, and no later than 24 months after the effective date of this AD. \* \* \*” The new paragraph (h) states that operators should contact the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, if the

repeat deployment cannot be performed as required by paragraph (g) of this AD.

### Request for Exemption From Proposed Requirements

NWA also requests exemption from the proposed requirements of paragraph (g) of the NPRM. NWA states that while performing testing to obtain Supplemental Type Certificate (STC) ST01967CH, it successfully performed 5 tail cone drops and slide deployments with the new design slide installation. NWA believes that the requirement to perform additional slide deployments is arbitrary, and that the 5 tail cone drops performed as part of the STC approval are sufficient to prove the design reliability of its airplanes.

We disagree with the request for exemption. The 5 tail cone drops and slide deployments that NWA did during the STC approval process did not represent the severity of the actual operating environment for the tail cone, including temperature and high takeoff and landing loads, nor did they represent repeated flight cycles with various types of contamination such as dirt and fuel. Tail cone slides must be overhauled, repacked and re-rigged every 3 years and have no other maintenance requirements in order to verify successful deployment. We have not changed the AD in this regard.

### Explanation of Change to Paragraph (f) and Removal of Note 1 of the NPRM

We have revised paragraph (f) of this AD, and have removed Note 1 of this AD, to remove reference to Northwest Airlines STC ST01967CH and Northwest Airlines Drawing 9B25-41477, Revision B, dated September 14, 2006; and Northwest Airlines Drawing 9B25-90399, Revision D, dated December 21, 2006. However, we have approved Northwest Airlines STC ST01967CH as a method for modifying the tail cone slide. Operators may contact the Manager, Los Angeles ACO, for information regarding Northwest Airlines STC ST01967CH for modifying the tail cone slide, as required by paragraph (f) of this AD.

### Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

### Costs of Compliance

There are about 400 airplanes of the affected design in the worldwide fleet. This AD affects about 300 airplanes of U.S. registry. The tail cone drops/slide deployments take about 16 work hours per airplane, at an average labor rate of \$80 per work hour. Required parts cost about \$1,300 per airplane. Based on these figures, the estimated cost of the AD for U.S. operators is \$774,000, or \$2,580 per airplane.

### Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs" describes in more detail the scope of the Agency's authority.

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

### Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

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

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

#### 2008-18-06 McDonnell Douglas:

Amendment 39-15663. Docket No. FAA-2007-28881; Directorate Identifier 2006-NM-263-AD.

#### Effective Date

(a) This airworthiness directive (AD) is effective January 7, 2009.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to McDonnell Douglas Model DC-9-11, DC-9-12, DC-9-13, DC-9-14, DC-9-15, DC-9-15F, DC-9-21, DC-9-31, DC-9-32, DC-9-32 (VC-9C), DC-9-32F, DC-9-33F, DC-9-34, DC-9-34F, DC-9-32F (C-9A, C-9B), DC-9-41, and DC-9-51 airplanes, certificated in any category, equipped with a tail cone evacuation slide container installed in accordance with supplemental type certificate (STC) ST735SO.

#### Unsafe Condition

(d) This AD results from several reports of inadvertent tail cone deployments in which the tail cone slide failed to deploy. We are issuing this AD to ensure that the tail cone evacuation slide deploys correctly. Failure of the slide to deploy during an emergency evacuation could result in injury to flightcrew and passengers.

#### Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

#### Initial Actions to Address Slide Deployment Failures

(f) Within 24 months after the effective date of this AD: Modify the tail cone slide in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

#### Repeat Deployment and Terminating Action

(g) Except as provided by paragraph (h) of this AD, no earlier than 150 flight cycles after doing the modification required by paragraph (f) of this AD, and no later than 24 months after the effective date of this AD: Do additional tail cone drops and slide deployments on a minimum of 10 percent of an operator's fleet of affected airplanes (if fewer than 10 airplanes in the fleet: at least one airplane).

(1) If the tailcone and slide deployments are successful according to the applicable McDonnell Douglas DC-9 airplane maintenance manual, no further action is required by this AD.

(2) If any tailcone and slide deployment is unsuccessful according to the applicable McDonnell Douglas DC-9 airplane maintenance manual, before further flight, repair in accordance with a method approved by the Manager, Los Angeles ACO, FAA.

#### Exception to Compliance Time for Repeat Deployment

(h) For any airplane on which the repeat tail cone drop deployment cannot be performed within 24 months after the effective date of this AD as required by paragraph (g) of this AD: Repeat the deployment as approved by the Manager, Los Angeles ACO, FAA, in accordance with the procedures specified in paragraph (i) of this AD.

#### Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Los Angeles ACO, FAA, ATTN: Ken Sujishi, Aerospace Engineer, Cabin Safety Branch, ANM-150L, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5353; fax (562) 627-5210; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

#### Material Incorporated by Reference

(j) None.

Issued in Renton, Washington, on November 16, 2008.

**Stephen P. Boyd,**

*Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E8-27937 Filed 12-2-08; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### 15 CFR Parts 770 and 774

[Docket No. 080305374-81467-01]

RIN 0694-AE31

#### Clarification of Export Control Jurisdiction for Civil Aircraft Equipment Under the Export Administration Regulations

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Export Administration Regulations (EAR) to clarify how Section 17(c) of the Export Administration Act of 1979 (EAA) is implemented in the EAR in accordance with the Department of Commerce's authority under the EAA. On August 14, 2008, the Department of State published a final rule amending Part 121 of the International Traffic in Arms Regulations (ITAR) to clarify how Section 17(c) of the EAA is implemented in relation to the ITAR (73 FR 47523).

This final rule provides guidance to assist the regulated public in determining what civil aircraft equipment (including parts, accessories, attachments, and components) is subject to the EAR based upon the statutory criteria of the EAA.

**DATES:** This rule is effective: December 3, 2008. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

**ADDRESSES:** You may submit comments, identified by RIN 0694-AE31, by any of the following methods:

*E-mail:* [publiccomments@bis.doc.gov](mailto:publiccomments@bis.doc.gov). Include "RIN 0694-AE31" in the subject line of the message.

*Fax:* (202) 482-3355. Please alert the Regulatory Policy Division, by calling (202) 482-2440, if you are faxing comments.

*Mail or Hand Delivery/Courier:* Timothy Mooney, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, *Attn:* RIN 0694-AE31.

Send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), by e-mail to [jseehra@omb.eop.gov](mailto:jseehra@omb.eop.gov), or by fax to (202) 395-7285; and to the U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Comments on this collection of information should be submitted separately from comments on the final rule (i.e. RIN 0694-AE31)—all comments on the latter should be submitted by one of the three methods outlined above.

**FOR FURTHER INFORMATION CONTACT:** Gene Christiansen, Senior Engineer/Licensing Officer, Office of National Security and Technology Transfer Controls, telephone: (202) 482-2984.

**SUPPLEMENTARY INFORMATION:**

## Background

### *Amendments to the ITAR To Clarify Application of Section 17(c) of the EAA*

On April 11, 2008 (73 FR 19778), the Department of State published the proposed rule, "Amendments to the International Traffic in Arms Regulations: The United States Munitions List". That proposed rule noted that there have been an increasing number of Commodity Jurisdiction (CJ) requests submitted to the Department of State for certain parts and components that have a long history of use on both civil and military aircraft. To provide guidance to the public regarding the proper export control jurisdiction for these parts and components, State proposed in that rule to amend the ITAR, Part 121, to add language clarifying how the criteria of Section 17(c) of the EAA are implemented in accordance with the Department of State's authority under the Arms Export Control Act (AECA). The State Department adopted the proposed rule, which was published, with minor edits, as a final rule on August 14, 2008 (73 FR 47523).

The State Department final rule added a new Note after Category VIII(h) to clarify that any part or component that (a) is standard equipment; (b) is covered by a civil aircraft type certificate (including amended type certificates and supplemental type certificates) issued by the Federal Aviation Administration for civil, non-military aircraft (which expressly excludes military aircraft certified as restricted and any type certification of Military Commercial Derivative Aircraft, defined by FAA Order 8110.101 effective date September 7, 2007 as "civil aircraft procured or acquired by the military"); and (c) is an integral part of such civil aircraft, is subject to the EAR.

Pursuant to the Note to Category VIII(h) of the ITAR, exporters may generally determine whether an item meets the 17(c) criteria. However, where a part or component would fall under a paragraph within ITAR Category VIII designated as Significant Military Equipment (SME) or any other USML category designated as Significant Military Equipment (SME), were such item to be found subject to the ITAR, the exporter is required to submit a CJ request to determine whether the 17(c) criteria are met, except where an SME part or component was integral to civil aircraft prior to August 14, 2008. The Department of Commerce, based on its licensing authority under the EAA, will participate in the review of CJ requests under established interagency procedures. In the course of its review