

(3) The NPPO must review and maintain all forms and documents related to export program activities in places of production and packinghouses for at least 1 year and, as requested, provide them to APHIS for review.

(b) *Place of production requirements.*

(1) The personnel conducting the trapping required in paragraph (c) of this section must be hired, trained, and supervised by the NPPO of the exporting country. The exporting country's NPPO must certify that each place of production has effective fruit fly trapping programs, and follows control guidelines, when necessary, to reduce quarantine pest populations. APHIS may monitor the places of production.

(2) The places of production producing pitaya for export to the United States must be registered with the NPPO of the exporting country.

(3) Trees and other structures, other than the crop itself, must not shade the crop during the day. No *C. capitata* or *A. ludens* host plants may be grown within 100 meters of the edge of the production site.

(4) Pitaya fruit that has fallen on the ground must be removed from the place of production at least once every 7 days and may not be included in field containers of fruit to be packed for export.

(5) Harvested pitaya fruit must be placed in field cartons or containers that are marked to show the place of production.

(c) *Mitigation measures for C. capitata and A. ludens.* (1) *Pest-free places of production.* (i) Beginning at least 1 year before harvest begins and continuing through the end of the shipping season, trapping for *A. ludens* and *C. capitata* must be conducted in the places of pitaya fruit production with at least 1 trap per hectare of APHIS-approved traps, serviced every 7 days.

(ii) From 2 months prior to harvest through the end of the shipping season, when traps are serviced, if either *A. ludens* or *C. capitata* are trapped at a particular place of production at cumulative levels above 0.07 flies per trap per day, pesticide bait treatments must be applied in the affected place of production in order for the place of production to remain eligible to export pitaya fruit to the continental United States. If the average *A. ludens* or *C. capitata* catch is greater than 0.07 flies per trap per day for more than 2 consecutive weeks, the place of production is ineligible for export until the rate of capture drops to an average of less than 0.07 flies per trap per day.

(iii) The NPPO must maintain records of fruit fly detections for each trap,

update the records each time the traps are checked, and make the records available to APHIS upon request. The records must be maintained for at least 1 year for APHIS review.

(2) *Pest-free area for C. capitata.* If the pitaya fruit are produced in a place of production located in an area that is designated as free of *C. capitata* in accordance with § 319.56–5, the trapping in paragraph (c)(1) of this section is not required for *C. capitata*.

(d) *Packinghouse requirements.* (1) The packinghouses must be registered with the NPPO of the exporting country.

(2) All openings to the outside must be covered by screening with openings of not more than 1.6 mm or by some other barrier that prevents pests from entering the packinghouses.

(3) The packinghouses must have double doors at the entrance to the facilities and at the interior entrance to the area where the pitaya fruit are packed.

(4) While in use for packing pitaya fruit for export to the United States, the packinghouses may only accept pitaya fruit that are from registered places of production and that are produced in accordance with the requirements of this section.

(e) *Post-harvest procedures.* The pitaya fruit must be packed within 24 hours of harvest in a pest-exclusionary packinghouse. Pitaya fruit must be packed in insect-proof cartons or containers that can be sealed at the packinghouse, or covered with insect-proof mesh or a plastic tarpaulin for transport to the United States. These safeguards must be intact upon arrival in the United States.

(f) *Phytosanitary inspection.* (1) The NPPO of the exporting country must visually inspect a biometric sample of pitaya fruit, jointly approved by APHIS and the NPPO of the exporting country, for *D. neobrevipes* and *P. minor*, and cut open a portion of the fruit to detect *A. ludens* and *C. capitata*. If the fruit is from a pest-free area for *C. capitata*, then the fruit will only be inspected for *A. ludens*.

(2) The fruit are subject to inspection at the port of entry for all quarantine pests of concern. Shipping documents identifying the place(s) of production in which the fruit was produced and the packing shed(s) in which the fruit was processed must accompany each lot of fruit presented for inspection at the port of entry to the United States. This identification must be maintained until the fruit is released for entry into the United States.

(3) If *D. neobrevipes* or *P. minor* is found, the entire consignment of fruit will be prohibited from import into the

United States unless the shipment is treated with an approved treatment monitored by APHIS. If inspectors (either from the exporting country's NPPO or at the U.S. port of entry) find a single fruit fly larva in a shipment, they will reject the entire consignment for shipment to the United States, and the place of production for that shipment will be suspended from the export program until appropriate measures, agreed upon by the NPPO of the exporting country and APHIS, have been taken.

(g) *Commercial consignments.* The pitaya fruit may be imported in commercial consignments only.

(h) *Phytosanitary certificate.* Each consignment of pitaya fruit must be accompanied by a phytosanitary certificate issued by the NPPO of the exporting country, containing an additional declaration stating that the fruit in the consignment was produced in accordance with requirements in 7 CFR 319.56–51.

Done in Washington, DC, this 18th day of May 2011.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2011–12755 Filed 5–23–11; 8:45 am]

**BILLING CODE 3410–34–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2010–1167]

#### Proposed Airworthiness Directives Legal Interpretation

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Extension of comment period for a proposed airworthiness directives legal interpretation.

**SUMMARY:** The Federal Aviation Administration published a proposed airworthiness directives legal interpretation for comment. In response to several requests, we are extending the comment period to allow additional time for comment. Comments from the public are requested to assist the agency in developing the final legal interpretation.

**DATES:** Comments must be received on or before June 30, 2011.

**ADDRESSES:** You may send comments identified by Docket Number FAA–2010–1167 using any of the following methods:

- *Federal eRulemaking Portal*: Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

- *Mail*: Send comments to Docket Operations, M-30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

- *Hand Delivery or Courier*: Bring comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax*: Fax comments to Docket Operations at 202-493-2251.

**FOR FURTHER INFORMATION CONTACT:** John King, Staff Attorney, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: 202-267-3073.

#### SUPPLEMENTARY INFORMATION:

##### Background

On April 14, 2011, the Federal Aviation Administration (FAA) published a proposed airworthiness directives legal interpretation in the *Federal Register* for comment (72 FR 20898). The FAA received numerous comments by the close of the comment period on May 16, 2011. Included in the comments were requests to extend the comment period to allow additional time for comment. The FAA is granting an extension until June 30, 2011, for the public to review the proposed interpretation and provide comments. We are repeating the publication of the proposal for the convenience of the reader.

##### The Request

The FAA's Organization/Procedures Working Group (WG) of the Airworthiness Directive Implementation Aviation Rulemaking Committee (AD ARC) requested that the FAA provide a legal interpretation of several provisions in 14 Code of Federal Regulations (CFR) that would help resolve a number of issues that have been debated within the WG. These issues partly result from certain changes made in the plain language revision to CFR part 39 in 2002 (see 67 FR 47998, July 22, 2002).

##### Question 1—Continuing Obligation

Some members of the WG question the extent of an aircraft operator's continuing obligation to maintain an AD-mandated configuration. They ask about two regulations:

##### § 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.

##### § 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.

The majority WG opinion is that the language of § 39.7, and its predecessor § 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. They conclude that § 39.9 expresses the well-established legal position that for continuing operations of products that do not comply with an AD, each flight is a separate violation.

The minority WG opinion is that if the unsafe condition identified in the AD was fixed at a moment in time, then § 39.7 no longer applies. The conclusion of the WG minority was that even if the product was determined to be in a condition contrary to the requirements of the AD at a later time, this change in configuration may be a violation of CFR 43.13 (b), but not § 39.7.

##### Proposed Response 1—Continuing Obligation

Section 39.9 notes the need for both initial action by the aircraft operator and continued compliance by that aircraft operator with the AD requirements. Section 39.9 was added to the final rule in 2002 as a result of comments that the proposed version of the rule language combined compliance and non-compliance issues in one heading (proposed § 39.5, final version is § 39.7 of the 2002 rulemaking). The final rule preamble stated that the agency added § 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."

Section 39.9 explains the continuing obligation for aircraft operators to maintain the AD-mandated configuration. Section 39.7 imposes an operational requirement. Because the AD imposes an enforceable requirement to accomplish the mandated actions, the only way to give § 39.7 any meaning is to recognize that operators are required to maintain the AD-mandated configuration. Once the AD requirements are met an operator may only revert to normal maintenance if that maintenance does not result in

changing the AD-mandated configuration.

The objective of part 39 and ADs generally is not just to require accomplishment of particular actions; it is to ensure that, when products are operated, they are free of identified unsafe conditions. Section 39.7 is the regulatory means by which the FAA prevents reintroduction of unsafe conditions. In 1965 the FAA recognized that maintenance may be the cause of some unsafe conditions: "the responsibilities placed on the FAA by the Federal Aviation Act justify broadening the regulation [part 39] to make any unsafe condition, whether resulting from maintenance, design, defect, or otherwise, the proper subject of an AD." (Amendment 39-106; 30 FR 8826, July 14, 1965). Prior to Amendment 39-106 ADs could not be issued unless the unsafe condition was related to a design feature. After Amendment 39-106 ADs could be issued for unsafe conditions however and wherever found. The FAA does not issue ADs as a substitute for enforcing maintenance rules. If a maintenance process is directly related to an unsafe condition, that maintenance action would be proper for an AD. Particularly for unsafe conditions resulting from maintenance, it would be self-defeating to interpret § 39.7 as allowing reversion to the same maintenance practices that caused or contributed to the unsafe condition in the first place.

##### Question 2—Additional Actions

Some members of the WG questioned the extent of an aircraft operator's obligation to accomplish actions referenced in an AD beyond those actions necessary to resolve the unsafe condition specifically identified in an AD.

The opinion of these WG members is that a reasonable interpretation of the language in § 39.11 directing action to "resolve an unsafe condition" limits the FAA from requiring actions that do "not relate to correcting" the identified unsafe condition. In other words, an AD is limited to those tasks that resolve the unsafe condition, even if other tasks are explicitly listed in the AD or in a referenced service bulletin (SB). Even if § 39.11 doesn't explicitly limit the types of actions that the FAA may mandate in ADs, these members believe that ADs are limited to imposing requirements that are both necessary and "directly related" to addressing an unsafe condition because that is the sole purpose of ADs, as defined in part 39. The belief is that this would allow an operator to comply with those actions that, in the operator's opinion, correct

the unsafe condition without having to obtain an alternative means of compliance (AMOC) for other actions, such as access and close-up procedures, that are “not directly related” to addressing that identified unsafe condition.

Other members of the WG have the opinion that § 39.11 is merely descriptive of the types of actions required by an AD; it neither imposes obligations on the operator nor limits the FAA’s authority in issuing an AD. These members believe that, given the FAA’s broad regulatory authority, ADs may impose requirements that operators may not consider necessary and “directly related” to resolving the unsafe condition.

### Proposed Response 2—Additional Actions

The FAA points to the language contained in § 39.11 that answers the WG’s second question.

#### § 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.

First Title 49, United States Code, § 44701, establishes the FAA’s broad statutory authority to issue regulations in the interest of aviation safety, and the issuance of an AD is an exercise of this authority. While describing the types of actions required by ADs, § 39.11 does not limit the broad authority established by the statute. The requirements of the AD are imposed by the language of the AD itself, and not by § 39.11. Thus an AD may require more actions than correcting the specific unsafe condition. An example would be an AD requirement for certain continuing maintenance actions to prevent or detect the unsafe condition in the future.

In developing an AD, the FAA exercises its discretion in determining what actions are to be required in the interest of aviation safety. This discretion is limited only by the Administrative Procedure Act’s prohibition on rulemaking actions that are “arbitrary and capricious.” Provided the actions required by an AD are reasonably related to the purpose of resolving the unsafe condition, it is within the FAA’s discretion to mandate them. For example, service information frequently includes instructions for accessing the area to be worked on to address the unsafe condition. Because these access instructions are reasonably related to addressing the unsafe condition, it is within the FAA’s discretion to mandate them.

We understand that some members of the AD ARC believe that some ADs are overly prescriptive with respect to mandated actions that they believe are unnecessary to address the unsafe condition. As explained previously, § 39.11 does not address this concern. Rather, the rulemaking process by which individual ADs are adopted provides the public with an opportunity to identify and comment upon these concerns with each AD. In addition, each AD contains a provision allowing for approval of an AMOC, which allows operators to obtain relief from requirements they consider unnecessary or unduly burdensome.

### Question 3—Use of the Term “Applicable”

A WG member cited the use of the term “applicable” in a specific AD, AD 2007–07–02 (72 FR 14400, March 28, 2007), which contains these requirements:

(f) Within 60 months after the effective date of this AD: Modify the activation mechanism in the chemical oxygen generator of each passenger service unit (PSU) by doing *all the applicable actions specified in the Accomplishment Instructions of the applicable service bulletin specified in Table 1 of this AD.* [Emphasis added.]

The WG member asked for an explanation of the FAA’s use of the word “applicable” in the two instances of its use in the paragraph (f) of the AD.

### Proposed Response 3—Use of the Term “Applicable”

“Applicable” has the same meaning in both places in paragraph (f). The second usage references Table 1 in the AD that identifies the model(s) of airplanes to which each service bulletin applies. So the “applicable service bulletin” is the one that applies to each corresponding airplane model, as indicated in the table in the AD. Similarly, “all the applicable actions” specified in each applicable service bulletin are those actions that are identified as applying to a particular airplane. “Applicable” is a necessary qualifier in this context for two reasons: (1) In many ADs, the referenced service bulletins specify different actions for different airplane configurations, typically identified as “Group 1, Group 2,” etc. (2) In many ADs, the referenced service bulletins specify different actions depending upon conditions found during accomplishment of previous steps in the instructions, for example, if a crack is smaller than a specified size, repair in accordance with the Structural Repair Manual; if larger, repair in accordance with a method approved by the Aircraft Certification Office. So “applicable” limits the AD’s

requirements to only those that are specified in the service bulletin for the configuration and conditions of the particular airplane. We intend for the word “applicable” to limit the required actions to those that apply to the particular airplane under the specific conditions found.

The opinion that “applicable” in this context should be interpreted to refer only to those actions in the service bulletin that are necessary to address the unsafe condition, and that operators should not be required to accomplish any other actions that they determine are not necessary, is incorrect. Without the modifier “applicable,” the requirement to accomplish “all actions specified in the service bulletin” would literally mandate accomplishing all actions, whether or not applicable to the configuration and condition of a particular airplane. The modifier “applicable” is necessary to avoid this literal, but unintended and likely overly burdensome, meaning.

For example, in AD 2007–07–02 different actions are required depending on the conditions found while accomplishing the modification. The adjective, “applicable,” is necessary to limit the required actions to those that are indicated for the conditions found. The purpose of the phrase, “by accomplishing all the applicable actions specified,” is to eliminate precisely the ambiguity that would be introduced by the WG members’ question. The operator is required to accomplish “all” the actions that are “applicable” to the affected airplane, without allowing discretion to determine which ones are, in the operator’s opinion, “necessary” to address the unsafe condition.

### Question 4—Impossibility

A member of the AD ARC questions whether an AD needs to specifically address “impossibilities” (for example, an AD requiring an action that is not possible for the specific aircraft to which the AD applies, such as modifying parts that have been removed during an earlier alteration).

### Proposed Response 4—Impossibility

The FAA points to the language of §§ 39.15 and 39.17 that answers the fourth question.

#### § 39.15 Does an airworthiness directive apply if the product has been changed?

Yes, an airworthiness directive applies to each product identified in the airworthiness directive, even if an individual product has been changed by modifying, altering, or repairing it in the area addressed by the airworthiness directive.

#### § 39.17 What must I do if a change in a product affects my ability to accomplish the

**actions required in an airworthiness directive?**

If a change in a product affects your ability to accomplish the actions required by the airworthiness directive in any way, you must request FAA approval of an alternative method of compliance. Unless you can show the change eliminated the unsafe condition, your request should include the specific actions that you propose to address the unsafe condition. Submit your request in the manner described in § 39.19.

If a change to a product makes it impossible to comply with the requirements of an AD, then the operator must request an AMOC approval.

The FAA does not have the resources to determine the modification status of every product to which the AD may apply. If it is impossible to comply with an AD as written, that does not mean the product does not have the unsafe condition. The only way to make sure the product does not, or that there is another acceptable way to address it, is to require an operator to obtain an AMOC approval.

For several years before part 39 was revised in 2002 the FAA included a Note in every AD that contained the same substance as the regulation. This revision to the regulations was a result of some operators claiming that an AD did not apply to a particular airplane because the airplane's configuration had changed, even though that airplane was specifically identified in the "Applicability" paragraph of the AD. But a change in product configuration does not necessarily mean that the unsafe condition has been eliminated, and in some cases the unsafe condition may actually be aggravated. So it is necessary to emphasize that the "Applicability" paragraph of the AD determines AD applicability, not the configuration of an individual airplane. In the case of the affected component having been removed from the airplane, the operator must obtain an AMOC approval. If the removed component is replaced with a different component that may or may not retain the unsafe condition, this is a technical issue that must be addressed through the AMOC process. There are infinite variations on the "impossibility" issue that cannot be anticipated when drafting an AD but for which the AMOC process is well suited.

Issued in Washington, DC, on May 18, 2011.

**Rebecca B. MacPherson,**

*Assistant Chief Counsel for Regulations.*

[FR Doc. 2011-12733 Filed 5-23-11; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2011-0475; Directorate Identifier 2010-NM-199-AD]

RIN 2120-AA64

**Airworthiness Directives; The Boeing Company Model 757 Airplanes**

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for the products listed above. For certain airplanes, this proposed AD would require the installation of new relays adjacent to two of the spoiler control modules that would prevent the deployment of certain spoiler pairs when landing flaps are selected. For certain other airplanes, this proposed AD would require torquing the bracket assembly installation nuts and ground stud nuts, and doing bond resistance tests between the bracket assemblies and the terminal lugs on the ground studs. This proposed AD is prompted by numerous reports of unintended lateral oscillations during the final approach, just before landing. We are proposing this AD to reduce the chance of unintended lateral oscillations near touchdown, which could result in loss of lateral control of the airplane, and consequent airplane damage or injury to flight crew and passengers.

**DATES:** We must receive comments on this proposed AD by July 8, 2011.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H-65, Seattle, Washington 98124-2207; phone: 206-544-5000, extension 1; fax: 206-766-5680; e-mail: [me.boecom@boeing.com](mailto:me.boecom@boeing.com); Internet: <https://www.myboeingfleet.com>. You

may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221.

**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 proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:**

Marie Hogestad, Aerospace Engineer, Flight Controls, ANM-130S, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; phone: 425-917-6418; fax: 425-917-6590; e-mail: [marie.hogestad@faa.gov](mailto:marie.hogestad@faa.gov).

**SUPPLEMENTARY INFORMATION:****Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2011-0475; Directorate Identifier 2010-NM-199-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

**Discussion**

We have received numerous reports of Boeing 757 events where the flight crews experienced unintended lateral oscillations during the final approach, just before landing. One event resulted in a nose gear collapse after a hard landing and another event resulted in a tail strike during a landing that was aborted because of the oscillations. The oscillations are characterized by large