



January 14, 2009

Elizabeth Bumann
Aircraft Certification Service, AIR-140
Federal Aviation Administration
6500 S. MacArthur Blvd., ARB 308
Oklahoma City, OK 73169

Reference: Comments to Draft Airworthiness Directives (AD) Manual, FAA-IR-M-8040.1C

Dear Ms. Bumann:

EAA (Experimental Aircraft Association) is the world leader in recreational aviation. With an international membership of 160,000 people in more than 112 nations, EAA brings together aviation enthusiasts, pilots and aircraft owners who are dedicated to *Sharing the Spirit of Aviation* by promoting the continued growth of aviation, the preservation of its history and a commitment to aviation's future. EAA programs, activities and events are known throughout the world for *Preserving* the heritage of aviation, *Promoting* access to flight, *Protecting* the right to fly, *Preparing* for the future of aviation, and for *Passionately Pursuing* aviation safety and education.

EAA and the FAA share the belief that this document should reflect accurate AD guidance to FAA personnel, DAR's and DER's, aircraft owners, and the Part 63 and 65 individuals who are tasked to maintain aircraft. EAA is aware of internal FAA interpretation conflicts concerning AD applicability to experimental aircraft. These conflicts have arisen as the result of differences of opinion between FSDO/MIDO inspectors, FAA regional guidance, and the regulatory guidance issued by FAA headquarters. It is EAA's hope that the following proposed changes to this document will correct these conflicts and misinterpretations.

1. Request that the following sentence be added to the end of the FOREWORD:

- a. "AD's and safety directives are not applicable to amateur-built aircraft or light-sport aircraft for which the FAA has issued an experimental certificate under §21.191; ultralights and hang gliders not having airworthiness certificates; and components or products installed on such aircraft,"
- b. Reason:
 - i. In accordance with §21.191 experimental amateur-built and experimental light-sport aircraft are non-TC'd aircraft. Per §103.1(c) and §103.7 ultralight aircraft, including hang gliders, do not have any U.S. or foreign airworthiness certificate.
 - ii. In the final rule *Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft* (FAA-2001-11133, effective September 1, 2004), Section IV Comparative Tables, Light-Sport Aircraft Maintenance and Certification Requirements, the FAA clearly established that ADs and safety directives were not applicable to experimental light-sport and amateur-built aircraft.

- iii. *14 CFR part 43.1b*: “This part does not apply to any aircraft for which the FAA has issued an experimental certificate, unless the FAA has previously issued a different kind of airworthiness certificate for that aircraft.” All AD and safety directives must be accomplished by using Part 43 guidance (how it will be applied, who can do the work, what standard will be used, and how it will be recorded), and since Part 43 does not apply to these aircraft, ADs and safety directives therefore also do not apply.
 - iv. *Special Airworthiness Information Bulletin No. ACE-97-04, dated May 29, 1997*: “Under current certification requirements, an aircraft with an experimental certificate is not considered to have an approved ‘type design.’ This means that an aircraft with an experimental certificate is not required to comply with Airworthiness Directives.”
 - v. *FAA letter, Applicability of an AD against a type certificated article installed on an amateur-built aircraft, dated September 5, 2000, Mr. James Jones, Manager Aircraft Engineering Division*: “Because an amateur-built aircraft has no required airworthiness standards, an ‘off-the-shelf’ type certificated article, such as an engine, may be installed on it without regard to the limitations derived in type certification that are essential to safety. This, of course, is the installer’s choice. The intent of type certification of the article is nullified by the lack of an installation approval because the level of safety defined by the type certificate no longer remains validated for the article.”
 - vi. *Report to the Aircraft Certification Management Team, Airworthiness Directive Applicability Team, April 28-30, 1998*: “A type design can exist only with a type certificate, and only after a showing of compliance with applicable requirements and approval by the FAA. A non-TC’d aircraft cannot have a type design. ‘Type design’ as defined in §21.31 is the intent of Part 21.” And, “The wording of the rules shows clearly that in writing the rules, FAA had no intention of issuing AD’s for non-TC’d aircraft. §39.1 requires that the aircraft have a type design as defined in §21.31. A non-TC’d aircraft has no type design. §21.31 requires that the TC holder report product safety problems to the FAA, and §21.99 requires that the TC holder prepare corrective fixes. A non-TC’d aircraft has no TC holder. There is no credible interpretation of existing rules that implies FAA ever intended to issue AD’s against non-TC’d aircraft.”
2. EAA requests chapter 2, paragraph 2b, be changed to read: “14 CFR part 39. This regulation sets the legal framework for ADs which are legally enforceable rules that apply to type-certificated aircraft, aircraft engines, propellers, and appliances when installed on a TC’d aircraft.”
- a. Reason: Same as listed above.

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EAA stands ready to work in partnership with the FAA to resolve the previously mentioned guidance conflicts in order to ensure consistency of application and enforcement of the Federal Aviation Regulations as they relate to continued airworthiness and ADs in particular. Please feel free to contact me should you have any questions concerning the above comments or to pursue this matter further.

Respectfully,

A handwritten signature in black ink that reads "Douglas C. Macnair". The signature is written in a cursive style with a large initial 'D'.

Douglas C. Macnair

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